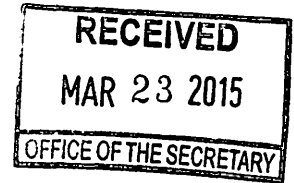


UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION



In the Matter of _____)

Judy K. Wolf _____)

Respondent. _____)

) **Administrative Proceeding**
) **File No. 3-16195**
) **Judge Cameron Elliot**

RESPONDENT JUDY K. WOLF'S POST-HEARING BRIEF

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To find Judy liable, the Division must prove by a preponderance of the evidence that she *willfully aided and abetted or caused* Wells Fargo Advisors (“Wells Fargo”) to produce falsified records. While it is undisputed that Ms. Wolf added two sentences to a spreadsheet and created a coversheet containing those two sentences for her supervisor, the obligations that the Division argues that Wells Fargo primarily violated, and Ms. Wolf willfully aided and abetted or caused, are only triggered by the Staff’s document requests. The spreadsheet and coversheet are not required records. Therefore, the only basis for liability in this matter is a determination that Ms. Wolf knew or should have known about the Staff’s document requests, and with that knowledge failed to preserve documents called for by those requests.

The Division failed to prove that Ms. Wolf knew (or even should have known) of the SEC’s investigation of Wells Fargo Advisors’ Compliance Department at the time that she added those two sentences, or that she prepared these documents for any purpose other than a completely innocent reason: to be responsive to her supervisor’s request. Indeed, the Division presented no evidence that Ms. Wolf had knowledge at the time she added the sentences that the

Staff's¹ document requests to Wells Fargo demanded production of her Burger King review file or that Wells Fargo intended to produce the spreadsheet or the coversheet to the Staff as part of that review file. Rather, Ms. Wolf's testimony demonstrates the contrary and refutes the numerous inferences that the Division asks this Court to draw about her knowledge of the Staff's investigation. Accordingly, as demonstrated below, this Court must find that Ms. Wolf is not liable for the violations charged in this case.

Although the Division's failure of proof should be dispositive, it is equally clear that the punishment it seeks – a lengthy bar and second tier civil penalties – is unwarranted. Ms. Wolf, who has an otherwise unblemished record of over thirty years in the securities and compliance industry, no longer works in the industry and has no plans or ability to return. Furthermore, second tier penalties would be contrary to the public interest, even if Ms. Wolf had the ability to pay, which she does not. Punishment, if any, should be minimal.

FACTUAL BACKGROUND

In 2009, Wells Fargo began to conduct insider trading reviews. Hr'g Tr. at 312:12-18; Ex. 343.² Ms. Wolf, who was a low-level employee in Wells Fargo's Compliance Department,³ drafted the written policies and procedures for such reviews, with input from her supervisors, Roseann St John and Modesto Moya. Hr'g Tr. at 105:9-14, 309:3-5, 310:7-11; Stipulated Facts

¹ For purposes of clarity, this brief refers to the individuals conducting the SEC investigative activities as the Staff, and the individuals representing the SEC in this administrative proceeding as the Division.

² Ms. Wolf's testimony at the hearing is cited as "Hr'g Tr. ____." Ms. Wolf's investigative testimony -- submitted as Exhibits 521 and 532 in this proceeding -- is cited as "Wolf Tr. ____." Hearing Exhibits are cited as "Ex. ____."

³ Hr'g Tr. at 308:9-309:2.

¶¶ 10 & 11. Over the years, Ms. Wolf conducted hundreds of insider trading reviews. *See* Ex. 343. No one else at Wells Fargo conducted the initial review. Hr'g Tr. at 111:13-17, 112:14-17, 155:18-21, 309:6-9; Stipulated Facts ¶ 15. And, although Ms. Wolf suggested, in 2009, that Ms. St John look over the reviews that Ms. Wolf conducted, that policy was not implemented until September 27, 2012. Hr'g Tr. at 312:12-18; Ex. 368 at PRADO-SEC-025383. Instead, Ms. Wolf conducted the reviews on her own, and made a decision to escalate a review to Ms. St John in situations that she determined suggested possible insider trading. *See, e.g.*, Ex. 610 at 14 (“Both Ms. St John and her supervisor, Modesto Moya, testified that while Ms. Wolf often raised issues for discussion, she had the discretion to close a file without further escalation if she felt no further action as required.”). Although, Ms. Wolf kept a spreadsheet log to track her reviews, she did not consider the log to be part of the insider trading review file. Hr'g Tr. at 158:17-159:4, 159:20-22, 428:24-429:4; Wolf Tr. at 344:3-17, 397:9-19; Stipulated Facts ¶ 17; Ex. 610 at 13 (noting that the insider trading review policies and procedures did not require the spreadsheet).

To initiate reviews, Ms. Wolf relied primarily on news stories. *See* Ex. 252 at 4-5; *see also, e.g.*, Hr'g Tr. at 111:19-22, 385:2-25; Ex. 610 at 8-9. Ms. Wolf would review certain websites for situations, such as a merger or acquisition, which might cause a stock price to increase or decrease, presenting an opportunity for Wells Fargo clients or brokers who possessed inside information to profit or avoid losses. Ex. 252 at 4; Hr'g Tr. at 112:14-17, 113:20-114:2; *see also* Ex. 610 at 8-9. When Ms. Wolf located such a situation, and determined that a review was appropriate, she documented her reason for *initiating* the review, as required by the policies and procedures that she helped draft. *See, e.g.*, Hr'g Tr. at 114:3-24, 385:2-386:5; Ex. 252 at 4-5 (Identify Situations for Review). One way that Ms. Wolf did this was by printing a news story

that showed why she initiated the review. *See, e.g.,* Hr'g Tr. at 112:24-114:21, 309:3-310:14, 385:15-25; Ex. 252 at 5. In most cases, that meant printing the Yahoo!Finance webpage, because it would show both the stock movement and news headlines. Hr'g Tr. at 385:15-25; Ex. 255 (Yahoo!Finance webpage); Wolf Tr. at 145:24-146:6, 211:13-212:5; *see also* Hr'g Tr. at 309:20-310:6.

On September 2, 2010, the acquisition of Burger King Holdings, Inc. by 3G Capital Partners Ltd. was publicly announced. *See, e.g.,* Ex. 255 (Yahoo!Finance webpage); Stipulated Facts ¶ 21. Ms. Wolf saw the public announcement and decided an insider trading review was warranted. *See* Ex. 255; *see also* Exs. 610 & 611. She printed the Yahoo!Finance webpage to document her reasons for initiating the review – specifically, the merger announcement and the stock price movement. Ex. 255 (handwritten note on Yahoo!Finance webpage reflecting 24% increase in stock price; headlines noting acquisition); Hr'g Tr. at 309:20-310:6; Stipulated Facts ¶ 26. That was all that Wells Fargo's policies and procedures required. *See* Hr'g Tr. at 112:18-114:23, 309:3-310:14, 310:23-25, 382:16-25, 383:1-6, 385:2-386:9; Wolf Tr. at 211:13-212:5; *see also* Hr'g Tr. at 152:18-21 (stating that policies did not require retaining anything that would evidence an insider trading review).⁴

⁴ *See also* Ex. 610 at 13 (“[The Review Procedures] also direct that ‘[o]nce a situation has been identified for review, print the news stories for the file.’ (Procedure at 5). This sentence appears in the section on news stories related to the announcement of a transaction triggering a review, rather than in the section on trading reviews and reviews for red flags, which comes later in the document. The Staff has questioned why the pre-announcement news stories other than the Yahoo!Finance report were not printed out. *The answer is the procedures did not require those stories to be printed out . . .*”) (emphasis added).

After Ms. Wolf decided that the Burger King acquisition warranted a review and memorialized how she identified the situation for review, she conducted a review.⁵ *See, e.g.*, Ex. 255; *see also* Ex. 610 at 8-13. Although Ms. Wolf recalls reviewing articles at the time that contained “rumors” of the acquisition in the marketplace,⁶ and Wells Fargo later confirmed that such information existed,⁷ Ms. Wolf did not print the news articles, as the Wells Fargo policy did not require it. Hr’g Tr. at 264:3-10, 309:20-310:6. With the benefit of hindsight and everything that has now occurred, she wishes that she had done so. Hr’g Tr. at 209:22-24, 273:2-7, 432:14-433:12. Ms. Wolf closed the review with no findings,⁸ and retained the review file (consisting of the frontrunning report, largest position report, option report, and Yahoo!Finance webpage) as required by the policies and procedures.⁹

⁵ The Division will undoubtedly claim that Ms. Wolf’s Burger King insider trading review was inadequate. Even if it was, the adequacy of her review is of no moment in this case.

⁶ Hr’g Tr. at 239:4-7, 263:17-23, 279:9-23, 432:14-433:6.

⁷ Ex. 610 at 3 (“There were, indeed, rumors of a potential acquisition before the acquisition was announced. On August 25, 2010, StreetInsider.com reported ‘Burger King Holdings Inc. shares and options are seeing interest, with takeover chatter contributing to the move.’ An August 31, 2010 Wall Street Journal article disclosed by the parties. After the announcement, Investopedia Advisor reported that Burger King had accepted a ‘long-rumored’ bid from 3G Capital”); *id.* at 16.

⁸ *See, e.g.*, Hr’g Tr. at 162:22-25; Ex. 380 at PRADO-SEC-025241 (“Routine review performed by Retail Control Group on 09/02/10 with no findings for escalation.”).

⁹ *See, e.g.*, Ex. 252; Hr’g Tr. at 122:8-19, 182:22-183:4, 310:15-311:23; Wolf Tr. at 57:17-24, 210:8-212:5. No specific SEC rule or regulation required Ms. Wolf to keep a record of her insider trading reviews. Only Wells Fargo’s policies and procedures required that she do so. Again, Ms. Wolf followed those policies and procedures, creating a file of the documents required, and retaining that file, first on-site and then later off-site at Iron Mountain. Hr’g Tr. at 194:25-195:3.

Unbeknownst to Ms. Wolf, the Staff began an inquiry into possible insider trading by Prado and his customers shortly after the Burger King acquisition (the “Prado Investigation”). *See, e.g.*, Ex. 380 at PRADO-SEC-025241 (documenting blue sheet requests starting in September 2010). Although Wells Fargo was cooperating in the Prado Investigation, Ms. Wolf heard nothing about it. *See, e.g., id.* (documenting blue sheet requests); *see also* Hr’g Tr. at 195:7-12 (Ms. Wolf first learned about the Prado Investigation in mid-September 2012), 205:16-206:4. No one asked Ms. Wolf about her Burger King review, attempted to check with her how Wells Fargo might have missed potential insider trading by one of its employees, or brought the matter to her attention in any way. *See generally* Wolf Tr.; Hr’g Tr.; Stipulated Facts; Exhibits. The Division has presented no evidence that Ms. Wolf received any communication informing her that she might possess documents relevant to the Staff’s Prado Investigation. *See generally* Wolf Tr.; Hr’g Tr.; Stipulated Facts; Exhibits.

The failure of anyone at Wells Fargo to speak to Ms. Wolf about the Prado Investigation may have been an oversight by Wells Fargo. Stipulated Facts ¶¶ 28-30. The Staff, both in June and July 2012, issued requests for documents to Wells Fargo that called for Ms. Wolf’s Burger King review file. Stipulated Facts ¶¶ 28 & 29; Exs. 517 & 518. Nonetheless, no one spoke to Ms. Wolf, or collected any material from her, and on September 7, 2012, Wells Fargo certified full compliance with the Staff’s document requests. Stipulated Facts ¶ 30; Ex. 602.

It was not until almost two years after the Division began its Prado Investigation that Ms. Wolf first learned about it. *See, e.g.*, Hr’g Tr. at 205:16-206:4; Ex. 380 at PRADO-SEC-025241-50; Hr’g Tr. at 195:4-198:15, 201:12-203:13, 205:5-10, 257:6-258:2, 392:15-22. On September 14, 2012, Ms. Wolf’s supervisors asked her some questions about Mr. Prado. Ms. Wolf provided information to her supervisors in response, including that she performed a “[r]outine [insider

trading] review . . . on 09/02/10 with no findings for escalation,” and Prado’s FINRA report. Ex. 380 at PRADO-SEC-025241-50; Hr’g Tr. at 203:14-204:20; *see also* Ex. 603. The Division presented no evidence that Ms. Wolf learned that the Staff’s investigation included scrutiny of Wells Fargo’s Compliance Department’s review of trading of Burger King stock (the “Wells Fargo Investigation”). Indeed, the Division presented no evidence that Ms. Wolf’s supervisors knew about the Wells Fargo Investigation at that time, or that Ms. Wolf’s supervisors’ questions related to the Staff’s investigation of the Compliance Department. *See generally* Hr’g Tr.; Wolf Tr.; Stipulated Facts; Exhibits; *see also* Ex. 380 at PRADO-SEC-025241-50 (providing publicly available FINRA report and the Division’s own blue sheet requests).

Ms. Wolf did not hear anything else about the Prado Investigation until the Division publicly announced its charges against Prado on September 20, 2012. Ex. 603; Hr’g Tr. at 210:11-19, 259:2-6; Stipulated Facts ¶ 31. Reacting to that public announcement, Ms. Wolf’s supervisors asked her a few more questions. *See* Exs. 603 & 608. Again, Ms. Wolf provided them with information and material in response to their questions. *See* Exs. 603 & 608; Stipulated Facts ¶ 34. One piece of the information that Ms. Wolf told Ms. St John was that “rumors” about a sale of Burger King had been circulating in the marketplace before the acquisition announcement. Ex. 380 at PRADO-SEC-025251. In an attempt to avoid any confusion about what material had been part of her original Burger King review in 2010, Ms. Wolf thereafter created a separate file for the material that she gathered as a result of her supervisors questions. Hr’g Tr. at 387:3-12, 391:6-10, 392:23-393:5, 393:14-394:6.

On or about September 28, 2012, due to her supervisors’ inquiries, Ms. Wolf decided, with Ms. St John’s permission, to recall her original Burger King review file from off-site storage. Hr’g Tr. at 218:7-219:2, 312:19-313:8; Stipulated Facts ¶ 35; Ex. 516. She requested

the file from off-site to review the original frontrunning report, which contained handwritten notations about her Burger King review. Ex. 255 at 2-6. No evidence exists that her decision to do so related in any way to the Staff's Prado Investigation or its Wells Fargo Investigation, because no evidence exists that, after Ms. Wolf recalled the Burger King review file, her supervisors or anyone else asked her questions about it or for anything connected to her review file until several months later. Once recalled, the original Burger King review file remained behind Ms. Wolf's desk until, as discussed below, Ms. St John requested part of it months later. Hr'g Tr. at 230:2-7, 313:9-14.

In late September 2012, Ms. Wolf's supervisor, Ms. St John, began to review the insider trading reviews conducted by Ms. Wolf. Ex. 608; Hr'g Tr. at 212:19-23, 312:3-6. This development did not concern Ms. Wolf. Hr'g Tr. at 312:7-11, 317:17-24; Wolf Tr. at 290:11-292:21. Indeed, she thought it was a good idea and she had suggested it years earlier. Hr'g Tr. at 312:12-18.

No one spoke to Ms. Wolf about anything connected to Burger King again until the SEC publicly announced that it had settled a case with one of Prado's customers, Igor Cornelsen, on November 30, 2012. Hr'g Tr. at 223:7-224:21, 313:15-314:16; Ex. 605. Again, Ms. Wolf's supervisors asked her for some information, but none of their questions related to her Burger King review,¹⁰ and no one asked to see her Burger King review file. Hr'g Tr. at 313:24-314:19; Ex. 605.

Approximately one month later, on December 28, 2012, Ms. St John asked Ms. Wolf, for the first time, for part of her Burger King review file: the original copy of Ms. Wolf's

¹⁰ Ex. 605; Hr'g Tr. at 313:24-314:16.

frontrunning report from her 2010 Burger King review. Hr'g Tr. at 225:14-226:1, 314:20-24, 386:17-387:2, 388:18-389:14; Wolf Tr. at 382:12-383:12. Ms. St John knew the review file contained additional materials, because she had been reviewing the insider trading review files for several months;¹¹ and because she knew that the policies and procedures for insider trading reviews required additional documentation.¹²

Before providing Ms. St John with the original frontrunning report, Ms. Wolf made a copy of it and affixed a post-it note to the copy of the frontrunning report to remind her that she had given the original to Ms. St John. Ms. Wolf then placed the copy in the separate file that she had created earlier for material related to trading in Burger King generated after her original review. Hr'g Tr. at 314:25-315:14, 315:25-316:7, 317:25-318:19, 387:13-388:15; Wolf Tr. at 382:12-383:10; *see also* Ex. 381 at PRADO-SEC-025091-94 (copy of frontrunning report with post-it note affixed in Ms. Wolf's 2012-13 Burger King file). Ms. Wolf then, pursuant to a practice that Ms. Wolf and Ms. St John developed earlier in December 2012, attached a coversheet to the original frontrunning report before she gave it to Ms. St John. Hr'g Tr. at 172:10-173:17, 177:18-178:5, 190:9-191:12, 230:8-231:10, 256:5-14, 395:24-396:25; Stipulated Facts ¶ 20. The purpose of this coversheet was to provide information, in a summary format, that might be useful to Ms. St John in answering *internal* questions, like the questions Ms. Wolf had previously received. Hr'g Tr. at 256:15-257:5, 262:16-21; Wolf Tr. at 128:20-129:17, 372:20-373:1, 373:17-374:23, 385:14-20, 388:2-11, 397:9-398:3. Therefore, Ms. Wolf, before printing the coversheet, added two new sentences of information about her initial review. Hr'g

¹¹ *See, e.g.*, Ex. 608.

¹² Stipulated Facts ¶ 11; Hr'g Tr. at 105:12-14.

Tr. at 263:17-23, 279:9-20, 429:5-14. She added those sentences by putting them on her spreadsheet, and then printing the coversheet from the spreadsheet entry regarding her Burger King review. Hr'g Tr. at 229:7-11, 230:8-231:10, 256:5-14; Stipulated Facts ¶¶ 37-40; Ex. 379 at PRADO-SEC-025205-10 (the coversheet and frontrunning report in Ms. St John's file).

Ms. St John did not tell Ms. Wolf why she needed part of Ms. Wolf's Burger King review file, and Ms. Wolf did not ask. Hr'g Tr. at 259:19-260:3; Wolf Tr. at 373:20-374:3, 383:11-12. Ms. St. John had asked Ms. Wolf for material regularly and routinely over the nine years that they worked together, and it was not Ms. Wolf's practice to question Ms. St John, her supervisor, about why Ms. St John needed material that she requested. Hr'g Tr. at 260:19-261:1; *see also id.* at 427:24-428:2. Ms. Wolf testified that she did not know the Staff was then investigating the Wells Fargo Compliance Department. *Id.* at 259:12-24. She did not know that the Staff had issued document requests calling for her file, either as part of the Prado Investigation or otherwise. *Id.* at 315:15-20; Stipulated Facts ¶ 36; Wolf Tr. at 374:4-12, 374:18-23. Indeed, she did not know that she was providing information related to any Staff investigation. Hr'g Tr. at 315:21-24, 316:15-18. She testified that, if she had known any of those facts, she would not have attached the coversheet to the frontrunning report before providing the material to Ms St John, and that she never intended to disrupt an SEC investigation in any way. Hr'g Tr. at 326:1-8.

Without her knowledge, the material Ms. Wolf provided to Ms. St John made its way to Wells Fargo's attorneys. Nonetheless, no one came to discuss her Burger King insider trading review with her or to make sure that Wells Fargo had collected her complete Burger King review file. Hr'g Tr. at 316:8-10. Instead, on January 11, 2013, Wells Fargo's attorneys apparently produced the documents that Ms. Wolf had provided to Ms. St John – specifically, the

frontrunning report (part of Ms. Wolf's original Burger King review file) and the newly created coversheet. Ex. 534 at Response 6; Stipulated Facts ¶ 37; Ex. 611 at 3 n.2. Indeed, Wells Fargo produced the coversheet and frontrunning report in response to a December 21, 2012 document request that did not call for them. Compare Stipulated Facts ¶ 36 and Ex. 519 ¶ 1 with Ex. 534 at Response 6. The part of the Burger King review file that Wells Fargo's attorneys provided to the Staff was only described as "evidencing a Compliance Surveillance review of trading in Burger King," not as the actual review file. Ex. 534 at Response 6. In any event, Ms. Wolf did not know that Wells Fargo had produced the frontrunning report and coversheet. Hr'g Tr. at 316:11-18.

On January 25, 2013, Ms. Wolf attended a meeting with Ms. St John, Mr. Moya, and Philip Toben, in-house counsel for Wells Fargo, in Ms. St John's office. Hr'g Tr. at 236:10-16; Stipulated Facts ¶ 43. This is the first time that Ms. Wolf recalls talking to Mr. Moya directly about any aspect of her Burger King review. Hr'g Tr. at 219:9-23. The meeting was short, lasting approximately 15 minutes. *Id.* at 236:16-19. During the meeting, Ms. Wolf learned, for the first time, that the Staff's investigation might concern her and her Burger King insider trading review. *Id.* at 236:19-21; 239:11-15. Ms. Wolf does not recall looking at her review, or a substantive discussion of her review during that meeting, however. Hr'g Tr. at 316:19-23; Wolf Tr. at 381:15-22. Instead, Ms. Wolf testified that there was a general supportive discussion of her review (*i.e.*, that she had followed the policies and procedures and made a judgment call). Hr'g Tr. at 317:11-16. The participants in the meeting also reassured Ms. Wolf by telling her that Mr. Moya had previously testified in other matters, that Wells Fargo would provide her with a lawyer, and that she should anticipate testifying for a relatively short time, hopefully, by videoconference. Hr'g Tr. at 236:21-237:5; Stipulated Facts ¶ 46. Ms. Wolf left the meeting

unconcerned about the fact that she had closed the Burger King review without escalation or about providing investigative testimony. Hr'g Tr. at 316:24-317:16, 317:17-24; *see also* Wolf Tr. 386:15-387:1.

On February 28, 2012, Ms. St John asked Ms. Wolf to prepare a memorandum for Modesto Moya summarizing her Burger King review in 2010, and the information that she had provided to her supervisors related to Burger King in 2012-13. Stipulated Facts ¶ 44; Exs. 520 & 619; Hr'g Tr. at 237:6-238:7. Consistent with the information that Ms. Wolf provided her supervisors in September, and the information she provided Ms. St John on the coversheet in December, the memorandum reflected that she had observed information about "acquisition rumors" in September 2010, and that those rumors were one of her reasons, among several, for closing the review with no findings. Stipulated Facts ¶ 45; Ex. 520 at PRADO-SEC-025227-28; Hr'g Tr. at 238:18-239:7, 240:5-13.

Approximately one month after the January 25, 2013 meeting, Wells Fargo provided Ms. Wolf with counsel. On March 8, 2013, Ms. Wolf signed an engagement letter with Stephen Young, who had previously represented Prado and continued to represent Wells Fargo. Stipulated Facts ¶ 46. On March 11, 2013, Ms. Wolf signed an engagement letter with Philip Toben, an in-house lawyer for Wells Fargo who also represented Wells Fargo and other individuals. Stipulated Facts ¶ 47.

On March 11, 2013, Ms. Wolf met with her attorneys to prepare for her initial investigative testimony. Hr'g Tr. at 320:4-7. Mr. Toben was there in-person. Mr. Young participated by phone. Hr'g Tr. at 319:22-320: 11. During that meeting, Ms. Wolf does not believe that she reviewed the coversheet with her lawyers. Wolf Tr. at 394:1-3, 397:9-19. She did, however, realize that the attorneys did not have her complete Burger King review file.

Hr'g Tr. at 319:4-9. Ms. Wolf retrieved the missing materials from her Burger King review file – two spreadsheets stored electronically, the largest positions report, an options report, and a Yahoo!Finace webpage – and provided them to her attorneys. Exs. 606 & 614. This was the first time that Ms. Wolf provided any Burger King related material to attorneys. Hr'g Tr. at 319:10-12. Ms. Wolf still did not know there were Staff document requests that called for her Burger King review file. *Id.* at 319:25-320:3. And, while she overheard Mr. Toben and Mr. Young discussing production, she did not know what their discussion pertained to or what was ultimately decided. *Id.* at 318:20-319:21. Later that day, Mr. Toben and Mr. Young produced the documents that Ms. Wolf provided to them along with the material that had been produced months earlier (*i.e.*, the coversheet and frontrunning report). Ex. 606; Ex. 611 at 3 n. 2; Ex. 614; *see also* Exs. 256-57. No one told Ms. Wolf about the production, and she remained ignorant of what documents had been produced until her initial investigative testimony two days later. Hr'g Tr. at 319:18-21.

On March 13, 2013, Ms. Wolf provided investigative testimony to the Division via videoconference. It was the first time that she ever testified in any matter, and she was not well prepared. Hr'g Tr. at 242:10-244:11, 320:12-14. Ms. Wolf made mistakes during her initial investigative testimony regarding the coversheet. First, she testified that the coversheet was part of her original review file. Hr'g Tr. at 189:6-23, 248:14-23; Stipulated Facts ¶ 50. Second, she testified that all of the information on the coversheet was entered at the time of her original review. Hr'g Tr. at 232:22-233:5, 244:22-247:24; Stipulated Facts ¶ 51. In response to this investigative testimony, the attorneys conducting the deposition, David Brown and Megan Bergstrom, became agitated. Ms. Wolf noticed their behavior and seemingly hostile

questioning,¹³ but she believed her testimony to be accurate and she stuck with it. *Id.* at 321:23-322:1.

That night, Ms. Wolf worried about whether her investigative testimony about the coversheet had been accurate, and decided to try to confirm that it had been. *Id.* at 233:8-25, 322:2-15. The next morning, she realized that she could do so by reviewing the month-end report that another member of the Retail Control Group created for Ms. St John each month. *Compare Ex. 343 (Burger King entry) with Ex. 618 (Burger King entry); Hr'g Tr. at 234:1-236:2, 322:13-21; Wolf Tr. at 399:15-18.* As part of that report, a snapshot was taken of the entries for that month on the insider trading review spreadsheet. Ex. 618 (snapshot); Hr'g Tr. at 234:1-236:2. Ms. Wolf knew that the snapshot would capture how the Burger King spreadsheet entry looked at the end of September 2010. Hr'g Tr. at 234:1-236:2, 322:13-21. Upon reviewing the snapshot, she realized that her investigative testimony the day before had been inaccurate, because the snapshot version of the Burger King spreadsheet entry did not contain the two sentences added to the comments and notes section that the Staff's attorneys had focused on the day before. *Compare Ex. 343 with Ex. 618; see also Hr'g Tr. at 322:13-21.*

Ms. Wolf also checked her other insider trading review files, which were still sitting behind her desk. Those files did not contain coversheets for the reviews in 2010. Therefore, she also discovered that her investigative testimony that the coversheet was part of her original Burger King review file was incorrect. Hr'g Tr. at 395:9-23, 399:3-400:3.

Upon recognizing that she had erred during her investigative testimony, Ms. Wolf contacted her attorney, Mr. Toben, who she had previously known from working at Wells Fargo

¹³ Hr'g Tr. at 233:8-17.

and whom she viewed as her primary attorney. *Id.* at 249:25-250:3, 322:22-323:4, 323:11-324:1; Wolf Tr. at 370:10-18, 399:19-24. Ms. Wolf only knew Mr. Young, her other attorney, briefly and her contact with him had been very limited before her testimony. Hr'g Tr. at 324:2-11, Wolf Tr. at 403:19-404:1; *see also* Wolf Tr. at 402:12-18. Ms. Wolf first told Mr. Toben about her mistake by telephone and then she provided him with materials that showed her mistake, including the snapshot from the month-end report that showed the Burger King entry as it existed at the end of September 2010. Ex. 618 (snapshot); Exs. 616 & 617; Hr'g Tr. at 248:21-23, 322:22-323:4; Wolf Tr. at 370:10-18, 400:16-21, 401:3-402:1, 405:14-23, 406:1-407:17. Ms. Wolf believed that Mr. Toben would know what to do and how to help her correct her initial investigative testimony. Hr'g Tr. at 323:14-17.

Later that day, Mr. Toben received a subpoena from the Staff requesting material to test the veracity of Ms. Wolf's investigative testimony. *Compare* Ex. 523 (Division request sent at 4:32 PM) *with* Exs. 617-18 (sent at 2:53:28 PM). Mrs. Wolf did not know that the Staff intended to make such a request at the time she attempted to correct her testimony, Hr'g Tr. at 323:5-10, and, despite the nature of the request and the fact that it went to her attorney, no one told her about the request. *Id.* at 249:8-13, 249:25-251:7, 323:11-13. No one told Ms. Wolf about Wells Fargo's March 25, 2013 response to that request either, even though it was made by her lawyer, Mr. Young. Ex. 524; Hr'g Tr. at 250:9-251:11. Indeed, Ms. Wolf did not speak with Mr. Toben or Mr. Young again until March 27, 2013, when they told her that they could no longer represent her due to a conflict between their other client, Wells Fargo, and Ms. Wolf.¹⁴ Mr. Toben also

¹⁴ The meeting was likely caused by Wells Fargo's request for additional testimony by Ms. Wolf, but Ms. Wolf does not recall her lawyers at the time informing her about the Division's request to take her testimony a second time. Hr'g Tr. at 251:8-252:5, 253:20-25.

informed Ms. Wolf that Wells Fargo would assist her in engaging new counsel. Hr'g Tr. at 254:1-16, 324:2-11.

Wells Fargo then placed Ms. Wolf on administrative leave. Stipulated Facts ¶ 57. She was asked to stay out of the office until Wells Fargo resolved some issues with the SEC. Hr'g Tr. at 252:6-23. Ms. Wolf received no substantive explanation for being placed on administrative leave. Hr'g Tr. at 252:14-253:19; Wolf Tr. at 352:6-354:6. Wells Fargo later terminated Ms. Wolf. Stipulated Facts ¶ 57. Mr. Moya called and told her that her termination related to concerns about the alteration of a document. Hr'g Tr. 280:21-281:24; Wolf Tr. at 356:10-357:17. Ex. 403. Mr. Moya did not discuss the basis of that decision with Ms. Wolf. Although she recognized the decision as unfair and it was the first time that she had ever been fired, Ms. Wolf felt she had no recourse because Missouri is an at-will state and any attempt to fight the determination would cost her money that she did not have. Hr'g Tr. at 327:24-329:15, 423:19-425:6.

On April 10, 2013, Ms. Wolf engaged Steven Salky of Zuckerman Spaeder LLP. Hr'g Tr. at 325:1-8; Stipulated Facts ¶ 56. Realizing that Mr. Toben had failed to correct her initial investigative testimony, Ms. Wolf authorized Mr. Salky to make a proffer on her behalf. Hr'g Tr. at 325:9-18, 422:25-423:18. Mr. Salky did so on April 24, 2013. *Id.* at 62:7-9. In doing so, Mr. Salky provided the following statement on Ms. Wolf's behalf:

Judy will correct her testimony that (1) she made all the entries on the review spreadsheet regarding the Burger King insider trading review in September 2010; and (2) she included the excerpt from the spreadsheet regarding the Burger King review in her file in 2010. During her testimony, she made an assumption that she must have entered comments into the spreadsheet when she performed her initial review based on her usual practice and she made an assumption based on her more current practice that she included the spreadsheet in her initial review file. Judy is now

unsure that she made all of the entries on the spreadsheet and, if she did, when that occurred. She will testify that it is more likely than not that she made the notes/comments and findings entries in the spreadsheet in 2012 and included the spreadsheet in the review file in 2012, as part of her providing information and materials to her superiors. She will explain the various times in 2012 she was asked for information relating to her Burger King review, but it's too complex for me to cover in this proffer.

Id. at 62:11-63:9.¹⁵

On April 10, 2014, Ms. Wolf provided investigative testimony for a second time. Her testimony expanded upon Mr. Salky's earlier proffer on her behalf. Stipulated Facts ¶¶ 58 & 59. Ms. Wolf first clarified that she created the coversheet in 2012, and that some of the information on the coversheet, including the two sentences, was added after her initial review. Wolf Tr. at 369:11-370:18, 371:17-372:18. She then explained that, based on her usual practice and due to the fact that she did not remember adding the sentences at the time, she mistakenly assumed that she must have drafted all of the information on the coversheet at the time of her initial Burger King review in 2010. *Id.* at 395:7-398:3, 407:10-17. While the Division tried, at trial, to distort Ms. Wolf's April 10, 2014 investigative testimony, she clearly testified that she was unaware that the SEC had requested her Burger King review documents at the time that she edited the spreadsheet, that she did not know if Ms. St John was aware of such Staff request at the time Ms. St John asked her for a copy of the frontrunning report, and that she did not have any information

¹⁵ Wells Fargo also took the position that Ms. Wolf's testimony, contrary to the Staff's view, was not intentionally false and, instead, likely the result of a mistaken belief. Ex. 611. Among other things, Wells Fargo noted that: (1) intentional misconduct would be "strange and completely out of character for a compliance officer with an otherwise unblemished record and impeccable reputation during a long career"; (2) Ms. Wolf maintained two Burger King files, one for material from 2010 and one for material from 2012-13; and (3) the fact that the spreadsheet covered hundreds of reviews and was updated in the normal course. *Id.*

that Mr. Moya was being asked by the SEC for documents evidencing a review at that time. *Id.* at 373:17-374:23.

Ms. Wolf's testimony at the hearing remained consistent with both her attorney proffer and her testimony on April 10, 2014 about her earlier testimonial errors, and why they occurred. *See, e.g.,* Hr'g Tr. at 172:10-19, 185:13-16, 189:15-23, 190:9-191:12, 320:25-322:1.

LEGAL STANDARDS REGARDING LIABILITY

The Division alleges that Ms. Wolf aided and abetted or caused several securities law violations by Wells Fargo. Each alleged violation involves the *production* of documents. Section 17(a) of the Securities Exchange Act of 1934 requires brokers and dealers, like Wells Fargo, to "furnish" copies of certain records to the Division. 15 U.S.C. § 78q(a). Rule 17a-4(j), thereunder, elaborates by requiring brokers and dealers to "furnish promptly to a representative of the Commission legible, true, complete, and current copies of those records of [records required to be preserved by 17a-4(j)], or any other record of the member, broker or dealer subject to examination under section 17(b) of the Act . . . that are requested by the representative of the Commission." 17 C.F.R. § 240.17a-4(j). Similarly, Section 204(a) of the Investment Advisers Act provides: "All records (as so defined) of such investment advisers are subject at any time, or from time to time, to such reasonable periodic, special, or other examination by representatives of the Commission" 15 U.S.C. § 80b-4(a). Wells Fargo's primary violation of these statutes and regulations all involved its "late production" and "production of an altered document" requested by the Staff. Stipulated Facts ¶¶ 66-67; Ex. 533 at Summary p. 3-4 ("When Wells Fargo Advisors *produced* documents in response to the staff's request, documents relating to the RCG review of Burger King trading were not *produced*. Wells Fargo Advisors unreasonably delayed for six months *producing* documents relating to the RCG review without

any explanation why they were not *produced* previously. When the documents were *produced*, the firm failed to *produce* an accurate record of the review as it existed at the time of the staff's request") (emphasis added); *id.* at ¶ 34 ("Wells Fargo Advisors' late *production* of documents, and *production* of an altered document, violated these provisions.") (emphasis added); OIP ¶ 20 ("As *produced* by Wells Fargo Advisors in January 2013, Wolf's log stated") (emphasis added), ¶ 25 ("Wolf's alteration of the document, which Wells Fargo then *produced* to Commission staff, was a cause of, and willfully aided and abetted, Wells Fargo Advisors' violations of these provisions.") (emphasis added; footnote omitted), ¶ 26 (same); *see also* Hr'g Tr. at 76:11-15 ("On January 11, 2013 Wells Fargo produced the altered log to the staff without any disclosure that it had been altered.").

To prove that Ms. Wolf willfully aided and abetted Wells Fargo's primary violations of Section 17(a) of the Exchange and Rule 17a-4(j) thereunder, and Section 204(a) of the Investment Advisers Act, the Division must demonstrate by a preponderance of the evidence that: (1) a primary violation occurred; (2) Ms. Wolf possessed general awareness of that her role was part of the overall activity that was improper or illegal; and (3) knowing and substantial assistance by Ms. Wolf in the conduct that constitutes the violation. *See In the Matter of Centreinvest, et al.*, SEC Release No. 60143, 96 SEC Docket 1500, 2009 WL 2356790, at *4 (July 31, 2009) (collecting cases); *see also In the Matter of Thomas R. Delaney II and Charles W. Yancey*, SEC Release No. 755, 2015 WL 1223971, at *31 (Mar. 18, 2015). To satisfy the second element, "[i]n *Howard v. SEC*, the D.C. Circuit stated that there must be proof that the aider and abettor was aware or had knowledge of wrongdoing or, in the absence of knowledge, that the person had a state of mind close to conscious intent." *In the Matter of Centreinvest, et al.*, 2009 WL 2356790, at *4 (discussing *Howard v. SEC*, 376 F.3d 1136, 1142-43 (D.C. Cir.

2004)). To satisfy the third element of aiding and abetting, the Division must show that Ms. Wolf in some way associated herself with Wells Fargo's deficient production, and that she participated in it as something that she wished to bring about. *In the Matter of Thomas R. Delaney II and Charles W. Yancey*, 2015 WL 1223971, at *31 (citing *SEC v. Apuzzo*, 689 F.3d 204, 212-13 (2d Cir. 2012)).

To establish that Ms. Wolf caused Wells Fargo's primary violations, the Division must show by a preponderance of the evidence that: (1) a primary violation occurred; (2) in which an act or omission of Ms. Wolf contributed; and (3) Ms. Wolf knew, or should have known that her conduct would contribute to the violation. *In the Matter of Centreinvest, et al.*, 2009 WL 2356790, at *5 (collecting cases)

ARGUMENT REGARDING LIABILITY

The issue in this case is whether at the time she added two sentences to her insider review spreadsheet, Judy Wolf knew that the Staff was seeking the production of her Burger King insider trading review file. Ms. Wolf has convincingly testified that she did not know and the Division presented no evidence at trial to the contrary. Indeed, no evidence was presented that Ms. St John, the supervisor whose request for a portion of Ms. Wolf's file caused Ms. Wolf to add the two sentences to her spreadsheet, knew either that the Staff was investigating Wells Fargo's Compliance Department's Burger King review or that the Staff had requested the production of Ms. Wolf's Burger King review file.

Having failed to present any evidence of these critical facts, the Staff asks this Court to infer that Ms. Wolf nonetheless should have known that her spreadsheet might become the subject of SEC review, because she learned in September 2012 that the Staff was investigating the Wells Fargo broker, Waldyr Prado, for illegal insider trading (that Ms. Wolf's review had failed to reveal). Putting aside that "should have known" fails to satisfy the exacting legal standard for aiding and abetting liability, the Staff's inferences are unwarranted. The evidence is that Ms. Wolf was simply asked by her supervisors in 2012 to gather certain items of information about Prado and/or one of his customers. No reasonable person would have been alerted by their simple and routine requests that her conduct was then or would become the subject of SEC scrutiny and Ms. Wolf has testified that she made no such illogical leap. Moreover, the evidence is that when Ms. Wolf learned that her Burger King review file was the subject of SEC scrutiny, during her initial March 13, 2013 investigative testimony, she made the effort to assure that the previous faulty production of the file in which she played an unknowing role was corrected; this is not the conduct of someone trying to alter documents to mislead the SEC.

A. The Division Failed to Demonstrate that Ms. Wolf Knew or Should Have Known about the Staff's Document Requests that Called for Her Burger King Review File When She Created the Coversheet, or that Wells Fargo Produced the Frontrunning Report and the Coversheet on January 11, 2013.

It is undisputed that in 2010, the Staff began to investigate whether Prado and his customers had engaged in insider trading of Burger King stock. As part of that investigation, the Staff issued two document requests to Wells Fargo that would have called for Ms. Wolf's file. The Staff made one request in June 2012 and an additional request in July 2012. Stipulated Facts ¶¶ 28 & 29; Exs. 517 & 518. The Division presented no evidence, however, that Ms. Wolf received any notice of the Staff's document requests. *See generally* Hr'g Tr.; Wolf Tr.; Exhibits; Stipulated Facts. Although, Wells Fargo certified, on September 7, 2012, that its production was complete, it was in fact not complete, because the production did not contain Ms. Wolf's Burger King review file, which was still off-site at Iron Mountain. Stipulated Facts ¶ 30; Exs. 516 & 602. Likewise, the Division presented no evidence that Ms. Wolf learned of Wells Fargo's certification of completeness. *See generally* Hr'g Tr.; Wolf Tr.; Stipulated Facts; Exhibits.

On September 14, 2012, through a forwarded e-mail, Ms. Wolf learned, for the first time, about the Staff's Prado Investigation and that Wells Fargo was cooperating in that investigation. Hr'g Tr. at 195:4-198:15, 201:12-203:13, 205:5-10, 205:16-206:4, 257:6-258:2, 392:15-22; Ex. 380 at PRADO-SEC-025241. At the hearing, the Division repeatedly attempted to show that this e-mail should have alerted Ms. Wolf that her Burger King review was also under scrutiny and that her review file was likely subject to subpoena. To each version of that line of questioning, Ms. Wolf *correctly* emphasized that she only knew about an investigation into *Prado* and did not leap to the conclusion that her prior Burger King insider trading review was either under investigation or that her file was being requested for production. Hr'g Tr. at 109:10-19, 205:5-10, 257:6-23. Her failure to make such a connection is completely reasonable. The SEC is

charged with pursuing persons who engage in illegal insider trading, but not usually investigating compliance department failures to have reported the insider trading.

In any event, on September 20, 2012, the Division charged Prado. Ex. 603; Hr'g Tr. 210:11-19, 259:2-6; Stipulated Facts ¶ 31. Even assuming, for the sake of argument, that Ms. Wolf should have known that her Burger King review was part of the Staff's Prado Investigation (and no reason or evidence exists to believe that), the charging of Prado would have ended the only investigation about which Ms. Wolf had any knowledge.

Following the Staff's public announcement of its charges against Prado, Ms. Wolf received various questions from her supervisors. Exs. 603 & 608. But these questions were never presented to Ms. Wolf as arising from a SEC investigation into her Burger King review or otherwise. And the Division presented no evidence that Ms. Wolf's supervisors' requests for information were, in fact, connected in any way to either its Prado Investigation or Wells Fargo Investigation. *See generally* Hr'g Tr.; Wolf Tr; Exhibits; Stipulated Facts. Critially, no one asked Ms. Wolf for her Burger King review file. Hr'g Tr. at 31:9-23.

In November 2012, the Staff publicly announced a settlement with one of Mr. Prado's customers, Igor Cornelesen. Ex. 605; Hr'g Tr. at 223:7-20, 313:24-314:4. As might be expected, Ms. Wolf's supervisors asked her if Mr. Cornelesen had traded Burger King through Wells Fargo. Ex. 605; Hr'g Tr. at 314:5-16. Again, those questions, in response to a public Staff press release, reasonably appeared to Ms. Wolf to be matters of routine and, not surprisingly, did not alert her that her Burger King insider trading review was under SEC scrutiny. Hr'g Tr. at 314:17-19. In fact, Mr. Cornelesen, as Ms. Wolf informed her supervisors, never traded Burger King through Wells Fargo. Ex. 605; Hr'g Tr. at 314:8-16. And, again, the Division presented no evidence that the questions Ms. Wolf's supervisors asked her on November 30, 2012 had

anything to do with the Staff's Wells Fargo Investigation. *See generally* Hr'g Tr.; Wolf Tr.; Exhibits; Stipulated Facts. The Division also presented no evidence that anyone, in November 2012, asked Ms. Wolf for her Burger King review file. Hr'g Tr. at 314:17-19. These events could not, as the Division seems to contend, have alerted Ms. Wolf that she, her review, or even the Wells Fargo Compliance Department was under investigation.

Approximately one month later, on December 28, 2012, Ms. St John asked Ms. Wolf for part of her Burger King review file, and Ms. Wolf, pursuant to her current practice, provided the material requested with a newly added coversheet containing two new sentences. Hr'g Tr. at 225:14-226:1, 314:20-24, 315:25-316:7, 386:17-387:2, 387:13-388:15, 388:18-389:14; Wolf Tr. at 382:12-383:12; *See also* Ex. 379 at PRADO-SEC-025205-10 (the coversheet and frontrunning report in Ms. St John's file). As Ms. Wolf testified, she added the coversheet with the new sentences to provide her supervisor with information, in a summary format, that might be useful to Ms. St John in answering *internal* questions, like the questions Ms. Wolf had previously received. Hr'g Tr. at 256:15-257:5, 262:16-21, 314:20-315:25; Wolf Tr. at 128:20-129:17, 372:20-373:1, 373:17-374:23, 385:14-20, 388:2-11, 397:9-398:3. Again, the Division presents no evidence that Ms. Wolf knew Ms. St John's request for part of her Burger King review file related in any way to either the Staff's Prado Investigation or Wells Fargo Investigation. *See generally* Hr'g Tr.; Wolf Tr.; Exhibits; Stipulated Facts; *see also* Hr'g Tr. at 259:12-260:3, 315:15-24, 316:15-18, 326:1-8; Wolf Tr. at 373:20-374:23, 382:12-383:12. Indeed, the Division presented no evidence that Ms. St John, who only requested part of the file, made her request of Ms. Wolf with the understanding that she was collecting documents to respond to a Staff demand for documents. *See generally* Hr'g Tr.; Wolf Tr.; Exhibits; Stipulated Facts. As discussed

above, the Division put forth no evidence that Ms. Wolf had any reason to believe that she (or even Wells Fargo) continued to be involved in any way in a Staff investigation.

On January 11, 2013, Wells Fargo produced to the Staff the six pages, including the new coversheet that Ms. Wolf provided to Ms. St John. Ex. 534 at Response 6; Stipulated Facts ¶ 37; Ex. 611 at 3 n. 2. The Division presented no evidence that Ms. Wolf knew about this production, or the indirect role she played in it. *See generally* Hr’g Tr.; Wolf Tr.; Exhibits; Stipulated Facts; *see also* Hr’g Tr. at 316:8-10. The Division presented no evidence that anyone spoke with Ms. Wolf about it. *See generally* Hr’g Tr.; Wolf Tr.; Exhibits; Stipulated Facts; *see also* Hr’g Tr. at 316:8-10. This is the production error that the Division points to in Wells Fargo’s settlement and Ms. Wolf’s OIP as forming the basis for Wells Fargo’s primary violation,¹⁶ and the Division

¹⁶ *See* Ex. 533 at 3-4 (“During an investigation, Commission staff formally requested that Wells Fargo Advisors produce all documents relating to reviews of trading by the registered representative who traded in Burger King securities. When Wells Fargo Advisors produced documents in response to the staff’s request, documents relating to the RCG Group review of Burger King trading were not produced. Wells Fargo Advisors unreasonably delayed for six months producing documents relating to the RCG review without any explanation why they were not produced previously. When the documents were produced, the firm failed to produce an accurate record of the review as it existed at the time of the staff’s request.”), ¶ 30 (“In July 2012, the Commission staff requested, among other things, that Wells Fargo Advisors produce all documents relating to compliance reviews relating to Prado. Wells Fargo Advisors produced documents in response to this request, but the production did not contain any documents relating to RCG’s September 2010 review of the trading in Burger King, even though that review directly related to trading in Burger King by Prado and his customers. In January 2013, after a follow up request from the Commission staff, Wells Fargo Advisors, for the first time, produced documents relating to the RCG’s review of Prado’s Burger King trades including the reviewer’s files and an excerpt of the log of the look back reviews she performed in response to this request.”), ¶ 31 (“The Commission staff took the testimony of a compliance officer in March 2013. After the compliance officer’s testimony, Wells Fargo Advisors produced evidence indicating that a portion of the documents produced to the Commission staff in January 2013 had been altered by the compliance officer in December 2012 prior to the production.”); OIP ¶ 19 (“In January 2013, Wells Fargo Advisors produced documents relating to Wolf’s look back review of trading in Burger King securities by Prado and his customers. The production included the Burger King file Wolf created in September 2010 that contained a cover page excerpt from the log that

advanced no evidence that Ms. Wolf had, or should have possessed, even a hunch that she was playing a part in Wells Fargo's deficient production. Therefore, although Ms. Wolf gave the coversheet to Ms. St John, and the coversheet ended up being produced to the Staff in response to a document request (albeit a different one than the Division says called for the Burger King review file), the Division failed to prove that Ms. Wolf knew she was providing the coversheet for its production. Awareness of her role in the primary violation is required for Ms. Wolf to be liable for willfully aiding and abetted the production of a false record. Evidence that Ms. Wolf knew or should have known that she was contributing to the production of a false record is required for Ms. Wolf to be liable for causing the alleged violations, as well. Proof of those elements is missing.

Furthermore, for the same reasons, the Division failed to prove the third element of aiding and abetting: that Ms. Wolf in some way associated herself with Wells Fargo's deficient production, and that she participated in it as something that she wished to bring about.

That ends this case. Because the primary violations that the Division proved and Wells Fargo settled occurred on January 11, 2013, and Ms. Wolf did not cause or willfully aid and abet those violations, this Court must return a decision holding that Ms. Wolf lacks liability for the violations alleged in this action.

referenced the Burger King look back review. Wolf learned by at least January 2013 that Wells Fargo had produced her Burger King file to the Commission.”

B. Although the Division Failed to Allege or Prove a Primary Violation Other than Wells Fargo January 11, 2013 Production, the Evidence Presented by the Division about Events Following that Date Fail to Demonstrate by a Preponderance of the Evidence that Ms. Wolf Committed the Violations Alleged.

Even if this Court considers facts after January 11, 2013, the Division still cannot meet its burden to demonstrate by a preponderance of the evidence that Ms. Wolf caused or willfully aided and abetted Wells Fargo's *production* violations. The Division put forth no evidence that Ms. Wolf knew or should have known that she participated in a production of the coversheet to the Staff until her testimony on March 13, 2013, and the evidence then shows that Ms. Wolf, upon realizing her role in that deficient production, immediately attempted to correct any confusion that resulted from her creation of the coversheet and her testimonial errors.

On January 25, 2013, during a meeting with Mr. Toben, Mr. Moya, and Ms. St John, Ms. Wolf learned, for the first time, that the Staff wanted her to provide investigative testimony. Paragraph 19 of the Division's OIP alleges that Ms. Wolf "knew by at least January 2013 that Wells Fargo had produced her Burger King file," but, as discussed above, the Division presented no evidence to support that contention. Although, Ms. Wolf's trial testimony clarified that she attended a meeting on January 25, 2013, there is no evidence that the discussion during the January 25, 2013 meeting alerted Ms. Wolf to the fact that the Staff made document requests that called for her Burger King review file. *See generally* Hr'g Tr.; Wolf Tr.; Exhibits; Stipulated Facts; *see also* Hr'g Tr. at 316:19-23; Wolf Tr. at 381:15-22. On the contrary, the evidence about the January 25, 2013 meeting demonstrated that the participants did not discuss Ms. Wolf's Burger King review file, that it was a short meeting, that the participants were supportive of Ms. Wolf, and that she left the meeting unconcerned. Hr'g Tr. at 236:10-237:5, 239:11-15, 316:24-317:24; Wolf Tr. at 386:15-387:1.

On February 28, 2013, Mr. Wolf produced a memorandum for Mr. Moya at Ms. St John's request. Stipulated Facts ¶ 44; Exs. 520 & 619; Hr'g Tr. at 237:6-238:7. She completed the memorandum in one day and, she provided it and her two files related to Burger King to Mr. Moya. Again, the Division presented no evidence that Mr. Moya's request related to a production request by the Staff, or that Ms. Wolf would have perceived it as related to a Staff production request. *See generally* Hr'g Tr.; Wolf Tr.; Exhibits; Stipulated Facts. Indeed, the only reasonable inference is that Mr. Moya's request for a memorandum related to his preparation for his upcoming investigative testimony. *See* Ex. 604 (March 5, 2013 e-mail discussing scheduling Mr. Moya's investigative testimony).

A little over two month after the January 25, 2013 meeting, Wells Fargo first provided Ms. Wolf with attorneys to assist her with her investigative testimony. Stipulated Facts ¶¶ 46 & 47. On March 11, 2013, Ms. Wolf met with her attorneys to prepare for her initial investigative testimony. Hr'g Tr. at 320:4-14. In doing so, she realized that the lawyers did not have her complete Burger King review file. *Id.* at 319:4-9. Notably, she provided them with the missing materials from her original file – specifically, the largest positions report, an options report, the Yahoo!Finance webpage, and two options spreadsheets. Exs. 606, 611 at 3 n.2, 614. While Ms. Wolf later heard the attorneys discussing a possible production, she did not know what they were discussing why or what they decided. Hr'g Tr. at 319:18-21.

On March 13, 2013, in her initial investigative deposition, which was the first time that she had ever testified in any proceeding, Ms. Wolf testified incorrectly that the coversheet was part of her original Burger King review file and that she had entered all the information on the coversheet in September 2010. Hr'g Tr. 189:6-23, 232:22-233:5, 244:22-247:24, 248:14-23, 320:12-14; Stipulated Facts ¶¶ 50 & 51. The Division attaches great significance to this

erroneous testimony. None exists, however. As an initial matter, Ms. Wolf's testimony was not an act of production, as it would need to be to support the charges. Furthermore, March 13 was the first time that she learned that her Burger King review file had been produced to the Staff, and that she potentially participated in the production. When pressed by the Staff's attorneys about the possibility that the production was deficient, Ms. Wolf got it wrong, but, tellingly, she tried to correct the production error by providing documents and information to her attorney the very next morning. Hr'g Tr. at 2333:6-236:2, 249:25-250:3, 322:13-323:4, 323:11-324:1, 395:9-23, 399:3-400:3; Wolf Tr. at 369:24-370:18, 399:15-24, 400:16-21, 401:3-402:1, 405:14-23, 406:1-407:17; Exs. 616-18.

In short, the Division presents no evidence that, following the January 11, 2013, primary violations, Ms. Wolf knew or should have known that she had participated in Wells Fargo's flawed production, let alone consciously participated in Wells Fargo's deficient production. The Division merely demonstrated that Ms. Wolf made testimonial mistakes that she immediately tried to fix. Therefore, even if this Court considers evidence of the events occurring after January 11, 2013, those events fail to advance the Division's case that Ms. Wolf willfully aided and abetted or caused the primary violations.

C. Conclusion

To meet its burden, the Division must show by a preponderance of the evidence: (1) that Ms. Wolf knew or should have known that the Staff issued a document request calling for production of her Burger King review file; and (2) that, on January 11, 2013, when Wells Fargo produced part of her file, Ms. Wolf knew or should have known, or intended, that her actions would prevent Wells Fargo from complying with such a request. The Division's case, which relies on inferences contradicted by the evidence presented, fell well short of meeting that

burden. It presented no evidence that Ms. Wolf knew the Staff issued a request for her Burger King review file prior to Wells Fargo's deficient production of it on January 11, 2013, or that she gained such knowledge at any point before her March 13, 2013 investigative testimony. The evidence actually demonstrates that when, on March 14, 2013, Ms. Wolf realized that she had contributed to Wells Fargo's problematic production, she tried to fix the problem. Accordingly, Ms. Wolf is not liable for the alleged offenses.

LEGAL STANDARD REGARDING PUNISHMENT

"To determine whether sanctions are in the public interest, the Commission considers six factors: (1) the egregiousness of the respondent's actions; (2) whether the violations were isolated or recurrent; (3) the degree of scienter; (4) the sincerity of the respondent's assurances against future violations; (5) the respondent's recognition of the wrongful nature of his or her conduct; and (6) the likelihood that the respondent's occupation will present opportunities for future violations." *In the Matter of Edward Tamimi*, SEC Release No. 63605, 100 SEC Docket 4557, 2010 WL 5239275, at *2 (Dec. 23, 2010) (citing *Steadman v. SEC*, 603 F.2d 1126, 1140 (5th Cir. 1979), *aff'd on other grounds*, 450 U.S. 91 (1981)); *see also In the Matter of Mitchell, Porter & Williams, Inc.*, SEC Release No. 64438, 101 SEC Docket 87, 2011 WL 1734208, at *3 (May 6, 2011) (same). "The Commission's inquiry into the appropriate sanction to protect the public interest is a flexible one, and no one factor is dispositive." *In the Matter of Edward Tamimi*, SEC Release No. 63605, 2010 WL 5239275, at *2 (citation omitted). "Remedial sanctions are not intended to punish a respondent, but to protect the public from future harm." *Id.* (citation omitted).

To obtain the second tier civil penalty the Division requests, it must demonstrate that the alleged violation involved "fraud, deceit, manipulation, or deliberate or reckless disregard of a

regulatory requirement.” 15 U.S.C. § 78u-2(b)(2). The Court may also consider whether a civil penalty is in the public interest by analyzing the following factors: “(1) whether the act or omission for which such penalty is assessed involved fraud, deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement; (2) the harm to other persons resulting either directly or indirectly from such act or omission; (3) the extent to which any person was unjustly enriched, taking into account any restitution made to persons injured by such behavior; (4) whether such person previously has been found by the Commission, another appropriate regulatory agency, or a self-regulatory organization to have violated the Federal securities laws, State securities laws, or the rules of a self-regulatory organization, has been enjoined by a court of competent jurisdiction from violations of such laws or rules, or has been convicted by a court of competent jurisdiction of violations of such laws or of any felony or misdemeanor described in section 78o(b)(4)(B) of this title; (5) the need to deter such person and other persons from committing such acts or omissions; and (6) such other matters as justice may require.” 15 U.S.C. § 78u-2(c).

ARGUMENT REGARDING PUNISHMENT

The Division seeks to impose sanctions well beyond those called for by a fair consideration of the record in this matter. To the extent that the Division argues that it needs such sanctions to deter similar conduct in the future, as explained below, that position does not comport with a consideration of the *Steadman* factors. Moreover, the Division already accomplished its goals, as Ms. Wolf had been terminated and has been unable to obtain employment, much less employment in the securities industry. A permanent bar and second-tier civil penalty will unnecessarily punish Ms. Wolf, not protect the public from future harm or serve the public interest in any way.

Additionally, as set forth below, Ms. Wolf lacks the ability to pay the level of civil penalty that the Division seeks. The penalties the Division seeks would cripple Ms. Wolf and, in turn, her family.

A. No Public Interest Supports the Punishment Requested by the Division.

1. Ms. Wolf's Conduct Was Not Egregious.

As set forth above, the Division failed to prove that Ms. Wolf's conduct was improper, let alone egregious. The purpose of the statutes and regulations at issue here is to allow the Staff to obtain accurate records. Ms. Wolf's alleged misconduct did little, if anything, to impede the Staff's access to accurate records. Ms. Wolf was the first person to testify in the Staff's investigation of Wells Fargo's Compliance Department¹⁷ and, within two weeks of her initial investigative testimony, the Staff knew with certainty that she erred during her investigative

¹⁷ Stipulated Facts ¶ 49.

testimony about the coversheet.¹⁸ Indeed, Ms. Wolf informed her attorney that she erred, and provided him with a document that showed that the coversheet attached to Exhibit 255 could not have been part of her Burger King review file in September 2010 the day after her initial investigative testimony.

2. The Alleged Violations Are Clearly Isolated.

During the course of its investigation, the Staff collected and reviewed all of Ms. Wolf's insider trading review files. It also questioned her about many of them. The Division, however, presented no evidence of any other records being altered by Ms. Wolf. Therefore, the record demonstrates the isolated nature of the alleged violations.

3. The Degree of Scienter

This case is about scienter. As discussed above, the evidence presented supports Ms. Wolf's contention that she possessed none.

4. Ms. Wolf Recognizes that the Conduct Alleged Would Be Wrong.

The Division contends that Ms. Wolf refuses to admit wrongdoing. That is correct, as she did not commit the alleged violations. That does not mean, however, that Ms. Wolf is defiant. While denying she falsified a document, Ms. Wolf repeatedly acknowledged that knowingly altering a document would have been improper,¹⁹ and that she wished she had done some things differently, such as asking Ms. St John more questions about why she needed Ms. Wolf's Burger King review file.²⁰ Therefore, while Ms. Wolf has not, as the Division would

¹⁸ Ex. 524.

¹⁹ Hr'g Tr. at 137:5-14, 140:10-141:2, 143:18-145:11, 146:10-147:1; *see also Id.* at 281:25-284:2, 325:19-327:3.

²⁰ *Id.* at 281:25-284:2.

require, admitted liability, she has recognized that the alleged conduct would, if true, be improper.

5. Ms. Wolf Provided this Court with Sincere Assurances that She Will Not Commit Future Violations and that the Opportunity for Future Violations is Nonexistent.

Ms. Wolf is out of the securities industry, and she has no desire to rejoin the industry, particularly in a compliance role. *Id.* at 285:24-286:6, 439:5-440:9.²¹ Indeed, given the nature of the charges in this case, she would not be able to get a job in the industry even if she desired one and is found not liable. *Id.* at 331:8-11; Wolf Tr. at 359:3-6. No possibility of her committing a future violation exists.

6. Conclusion

Any consideration of punishment will be, in some sense, a subjective judgment made by this Court, should it reach the issue. The Division overreaches in this case, and the *Steadman* factors support a much less severe sanction than the permanent bar that the Division requests.

B. Second-Tier Penalties Are Not Warranted.

The Division seeks second-tier penalties, alleging that Ms. Wolf's conduct involved "fraud, deceit, manipulation, or deliberate or reckless disregard for a regulatory requirement." 15 U.S. C § 78-J(b)(2) The Division failed to satisfy this standard.

Assuming for argument sake that the Division met the threshold requirement for imposing second-tier penalties, other factors argue strongly against the Division's request. *See*

²¹ *Id.* Tr. at 439:12-19 ("I believe there – I didn't used to believe this, but I didn't know. There's so much individual risk for a person there and there's really very little protection. It's – I didn't know it at the time, but considering – the compensation level, the risk is much too high for the compensation. Even for employees who are just rank-and-file . . . I was just a rank-and-file, quote, worker bee in the compliance department and look at the risk – look at what happened to me. That there's no reason for someone on that level to have that type of exposure.").

15 U.S.C. § 78u-2(c). Ms. Wolf never harmed another person. She was not unjustly enriched; indeed, she did not benefit at all. The Division never alleged, let alone demonstrated, that Ms. Wolf committed other violations previously. As explained above, no need to deter Ms. Wolf exists, and any need to deter others has already been achieved through the OIP. Lastly, justice does not argue for the harsh punishment the Division seeks; it argues against it.

Accordingly, this Court should not, even under the Division's version of events, impose second-tier penalties.

C. Ms. Wolf Lacks the Ability to Pay More than a Nominal Penalty.

In considering whether to impose a civil penalty, this Court may consider Ms. Wolf's inability to pay. 15 U.S.C. § 78u-2(d). Ms. Wolf was a low-level compliance employee. Hr'g Tr. at 308:9-308:2. [REDACTED]

[REDACTED] While she was working, Ms. Wolf earned approximately \$61,000 per year, *Id.* at 308:9-14, and, over thirty years of employment, [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

23 [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] If this Court determines that Ms. Wolf's actions warrant a civil penalty (and it should not), it should, at most, impose a nominal civil penalty, not the draconian and debilitating civil penalty that the Division requests.

D. Conclusion

While the Division may be properly motivated by a desire to deter future wrongdoing in seeking the sanctions and civil penalties it requests, we respectfully suggest that the Division failed to engage in a rigorous analysis of whether the facts of this case, based on the evidence it mustered, warrant them here. The analysis above demonstrates that the sanctions and civil penalties requested would not be in the public interest, would be disproportionate, and would be financially devastating to Ms. Wolf.

CONCLUSION

For the reasons stated above, the Division failed to meet its burden of proof. Accordingly, this Court should hold that Ms. Wolf lacks liability for the violations alleged.

Date: March 20, 2015

Respectfully submitted,



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