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December 13, 2024

**By Electronic Mail**

The Honorable Laura M. Provinzino  
U.S. District Court Judge  
U.S. District Court for the District of Minnesota  
316 N. Robert Street  
St. Paul, MN 55101  
provinzino\_chambers@mnd.uscourts.gov

Re: *Navarro, et al. v. Wells Fargo & Company, et al.*,  
Case No. 0:24-cv-03043-LMP-DTS

Dear Judge Provinzino:

We are counsel to Defendant Wells Fargo & Company in the above-referenced action. In advance of the oral argument on Defendant’s Motion to Dismiss, which is scheduled for December 17, 2024 at 1:30 p.m. CST, we write to bring to the Court’s attention a recent decision from the Second Circuit Court of Appeals that further supports Defendant’s Motion to Dismiss the Complaint in this action.

In *Singh v. Deloitte LLP*, 2024 WL 5049345 (2d Cir. Dec. 10, 2024), the Second Circuit concluded that to state a claim for breach of fiduciary duty based on allegations of excessive fees, plaintiffs must compare the *total* fees paid by their plan for the services at issue with *total* fees paid by the allegedly comparable plans for the same nature and quality of services. *Id.* at \*5. Furthermore, plaintiffs must allege with “specificity” the type and quality of services the plan received from its recordkeeper as compared to the services received by the alleged comparable plans. *Id.* at \*5, 7. Applying these principles, the Second Circuit observed that although the *Singh* plaintiffs contested the total recordkeeping fees paid by their plan, they compared only the plan’s direct fees—excluding indirect fees—with the direct fees paid by the allegedly comparable plans. The Court concluded that this pleading deficiency required dismissal of the complaint because “the comparison of direct costs alone provides limited insight into whether *total* recordkeeping fees paid by the Plaintiffs were excessive, as compared to other plans.” *Id.* at \*5. The Court similarly concluded that the *Singh* plaintiffs failed to provide the requisite specificity concerning the services provided to their plan and the allegedly comparable plans.

The Second Circuit’s opinion relied extensively on precedents from around the country, including several from the Eighth Circuit cited in Defendants’ Motion to Dismiss in this action. The Second Circuit’s opinion further supports the conclusion here that Plaintiffs failed to state a claim for relief because (1) it is improper to compare the fees for component parts of the Wells



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Fargo Health Plan's (the "Plan's") prescription drug program, i.e., certain prescription drugs and administrative fees, to the fees for component parts of allegedly comparable prescription drug programs; and (2) the Complaint contains no plausible allegations regarding the fees charged to the Plan and whether they were excessive relative to the specific services offered. (ECF No. 30 at 22-23; ECF No. 41 at 8-9.)

We thank the Court for its consideration of this submission.

Respectfully submitted,

*/s/ Russell L. Hirschhorn*

Russell L. Hirschhorn

cc All counsel of record