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7 SUPERIOR COURT OF THE STATE OF CALIFORNIA

8 FOR THE COUNTY OF SACRAMENTO

9 THE PEOPLE OF THE STATE OF
CALIFORNIA, by and through the
10 CALIFORNIA CORPORATIONS
COMMISSIONER,

11 Plaintiff,

12 vs.

13 WELLS FARGO FINANCIAL CALIFORNIA,
14 INC., a California Corporation, and DOES 1
through 10,

15 Defendants.
16

Case No.:

**COMPLAINT FOR PERMANENT
INJUNCTION, CIVIL PENALTIES AND
ANCILLARY RELIEF**

(Financial Code §§ 22306, 22337, 22713,
22750, and 22751; Title 10, California
Code of Regulations section 1426)

17 Demetrios A. Boutris, California Corporations Commissioner, acting to protect the
18 public from unlawful finance lending activity, brings this action in the public interest in the
19 name of the People of the State of California, and alleges as follows:

20 **SUMMARY OF ALLEGATIONS**

21 Defendants marketed and distributed in California "draft loans" resembling checks,
22 along with loan documents that purported to disclose the cost of borrowing the money.
23 These draft loans created a loan transaction upon negotiation by the customer. The draft
24 loan is also known as an "instant loan check" or "live check" and is essentially a
25 negotiable instrument.

26 However, on over 15,000 of these draft loans, Wells Fargo Financial charged
27 customers higher fees than it disclosed in the loan documents. The first time the
28 Department discovered these violations in July 2001, the Department of Corporations

1 required Wells Fargo Financial to refund the overcharges to its customers. Wells Fargo
2 Financial assured the Department at that time that similar errors would not occur in the
3 future.

4 Contrary to Wells Fargo Financial's representations, the Department of
5 Corporations discovered in a second audit in April 2002 that Wells Fargo Financial
6 continued to violate the law by overcharging the same customers on the same loans.
7 The total amount of overcharges to date is \$871,010.22.

8 **VENUE AND JURISDICTION**

9 1. Plaintiff, by this action and pursuant to Financial Code section 22713, seeks
10 to enjoin defendants from violating the California Finance Lenders Law (Financial Code
11 sections 22000 et seq.) Plaintiff also seeks civil penalties pursuant to Financial Code
12 section 22713 and other ancillary relief as is appropriate.

13 **DEFENDANTS**

14 2. Defendant Wells Fargo Financial California, Inc., a California corporation,
15 and Does 1 through 10, (collectively referred to hereafter as "Wells Fargo Financial") are
16 licensed finance lenders with the California Department of Corporations (hereafter
17 referred to as "the Department"), and at all times mentioned herein engaged in unlawful
18 activity, described below, conducted in various counties throughout the State of
19 California. Plaintiff is informed and believes, and therein alleges that Wells Fargo
20 Financial engaged in violations of the Financial Code, and did so willfully.

21 **FACTUAL BACKGROUND**

22 3. At all relevant times herein, Wells Fargo Financial marketed a loan product
23 called a "draft loan" which is a printed advertisement resembling a check and which when
24 negotiated by the customer creates a loan transaction. Draft loans are also called
25 "instant loan checks", "live checks" and "guaranteed loan offers." These "guaranteed
26 loan offers" are regulated under the California Financial Code, and the regulations
27 promulgated thereunder, including California Code of Regulations, Title 10, Chapter 3,
28 Section 1556.

1 4. Beginning at a time unknown to the Department, Wells Fargo Financial
2 distributed these draft loans to customers throughout California and elsewhere, along
3 with additional materials including a “conditional endorsement” which explained the terms
4 of the loan. (The draft loan, conditional endorsement, and the additional materials are
5 referred to throughout as the “loan documents.” The portion that resembles a check is
6 referred to throughout as the “draft.”) Once a customer endorsed and cashed the draft,
7 the parties were purportedly bound by the terms specified in the loan documents. These
8 loan documents purported to disclose to customers the cost of borrowing the money,
9 expressed in terms of an annual percentage rate and a monthly rate of charge.

10 5. Wells Fargo Financial distributed an unknown number of these draft loans
11 throughout California, in many versions, each containing different terms and/or loan
12 amounts. Each version was labeled with a form number and other identifying information
13 near the top of the draft.

14 6. During a July 2001 field branch audit of Wells Fargo Financial, the
15 Department discovered that, on some of these draft loans, Wells Fargo Financial was
16 assessing interest at a different and higher rate than was disclosed in the loan
17 documents.

18 7. On or around July 20, 2001, the Department directed Wells Fargo Financial
19 to conduct a self-audit on all draft loans. This first self-audit revealed that Wells Fargo
20 Financial had overcharged over 15,000 customers on their draft loans. Wells Fargo
21 Financial agreed to give refunds to those customers.

22 8. In a letter sent on or around January 17, 2002, Wells Fargo Financial
23 represented to the Department that it had given refunds totaling \$532,988.35 to those
24 customers that had been overcharged. Wells Fargo Financial also represented to the
25 Department that they had put procedures in place to ensure that interest would be
26 assessed as disclosed in the loan documents, and that similar errors would not occur in
27 the future.

28 9. In light of these assurances and the payment of the refunds, the

1 Department elected to take no further remedial action at that time, although it indicated to
2 Well Fargo Financial that future examinations were likely.

3 10. On or around April 15, 2002, the Department began a routine company-
4 wide regulatory examination of Wells Fargo Financial, during which Department
5 examiners discovered that Wells Fargo Financial continued to overcharge the same
6 customers on the same draft loans. As a result, Wells Fargo Financial began a second
7 self-audit.

8 11. On or around July 10, 2002, Wells Fargo Financial submitted its second
9 self-audit report establishing that it had overcharged the same customers an additional
10 \$338,023.63, and representing it had again refunded the overcharged amount to these
11 customers. Wells Fargo Financial has overcharged its customers a total of \$871,010.22,
12 and continued to overcharge them despite representing to the Department that it would
13 correct the problem.

14 **FIRST CAUSE OF ACTION**

15 **EXCESS CHARGES**
16 (Financial Code §§22306, 22337)

17 12. Plaintiff realleges and incorporates herein by reference paragraphs 1
18 through 10 inclusive, as though set forth at length herein.

19 13. Financial Code section 22337(a) states:
20 "Each finance lender shall: (a) Deliver or cause to be delivered to the
21 borrower, or any one thereof, at the time the loan is made, a statement
22 showing in clear and distinct terms the name, address, and license number
23 of the finance lender and the broker, if any. The statement shall show the
24 date, amount, and maturity of the loan contract, how and when repayable,
the nature of the security for the loan, if any, *and the agreed rate of charge
or the annual percentage rate* pursuant to Regulation Z promulgated by the
Board of Governors of the Federal Reserve System (12 C.F.R. 226)
(emphasis added.)

25 14. Financial Code section 22306 provides:
26 "No amount in excess of that allowed in this article shall be directly or
27 indirectly charged, contracted for, or received by another person, and the
28 total charges of the finance lender and broker and any other person in the
aggregate shall not exceed the maximum rate provided for in this article."

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15. Financial Code section 22713 states:

(a) Whenever the commissioner believes...that any person has violated or is about to violate a provision of this division...the commissioner may, in the commissioner's discretion, bring an action...against that person to enjoin that person from continuing that violation or doing any act in furtherance of the violation. Upon a proper showing, a permanent or preliminary injunction, restraining order, or writ of mandate shall be granted and other ancillary relief may be granted as appropriate.

(b) If the commissioner determines that it is in the public interest, the commissioner may include in any action authorized by subdivision (a) a claim for ancillary relief, including, but not limited to, a claim for restitution, disgorgement, or damages on behalf of the persons injured by the act or practice constituting the subject matter of the action. The court shall have jurisdiction to award additional relief.

16. Financial Code section 22751 states:

(a) If any amount other than or in excess of the charges permitted by this division is charged or contracted for, or received, for any reason other than a willful act of the licensee, the licensee shall forfeit all interest and charges on the loan and may collect or receive only the principal amount of the loan.

(b) Subdivision (a) shall not apply to an error in computation if (1) the licensee shows by a preponderance of the evidence that the violation was not intentional and resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adapted to avoid any such error, and (2) within 60 days of discovering the error, the licensee notifies the borrower of the error and makes whatever adjustments in the account are necessary to correct the error.

17. Wells Fargo Financial, a licensed finance lender, violated section 22306 by charging customers in excess of what was disclosed in their loan documents associated with the draft loans.

18. Wells Fargo Financial's pattern of conduct, as set forth above, demonstrates the necessity for granting permanent injunctive and ancillary relief restraining such and similar acts in violation of §22306, and providing restitution or disgorgement to investors. In addition, under section 22751(a) Wells Fargo Financial shall forfeit all interest and charges on the loan.

WHEREFORE, Plaintiff prays for judgment against Wells Fargo Financial, as set forth below.

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1 **SECOND CAUSE OF ACTION**

2 WILLFUL VIOLATIONS

3 (Financial Code §§22306, 22337, Title 10, California Code of Regulations §1426)

4 19. Plaintiff realleges and incorporates herein by reference paragraphs 1
5 through 17 inclusive, as though set forth at length herein.

6 20. California Code of Regulations, Title 10, Article 3, section 1426 provides: "A
7 finance company shall maintain its books, accounts and records in accordance with
8 generally accepted accounting principles and good business practice."

9 21. Financial Code section 22713 states:

10 "(c) Any person who willfully violates any provisions of this division, or who
11 willfully violates any rule or order adopted pursuant to this division, shall be
12 liable for a civil penalty not to exceed two thousand five hundred dollars (\$
13 2,500) for each violation, which shall be assessed and recovered in a civil
14 action brought in the name of the people of the State of California by the
15 commissioner in any court of competent jurisdiction..."

16 22. Financial Code section 22750 states:

17 "(a) If any amount other than, or in excess of, the charges permitted by this
18 division is willfully charged, contracted for, or received, the contract of loan
19 is void, and no person has any right to collect or receive any principal,
20 charges, or recompense in connection with the transaction."

21 23. Despite being put on notice by the Department that it had overcharged over
22 15,000 customers prior to the first self-audit, and despite its assurances it had
23 implemented procedures to ensure similar errors would not occur again, Well Fargo
24 Financial continued to overcharge its customers.

25 24. This prior knowledge, together with Wells Fargo Financial's continued
26 violations, establishes that Wells Fargo Financial acted willfully in violation of section
27 22713.

28 25. Wells Fargo Financial's pattern of conduct, as set forth above,
demonstrates the necessity for granting permanent injunctive and ancillary relief
restraining such and similar acts in violation of section 22306, and imposing appropriate
civil penalties.

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6. For such and further relief as the court may deem just and proper.

Dated: January 2, 2003

DEMETRIOS A. BOUTRIS
California Corporations Commissioner

By: _____
DANIEL P. O'DONNELL
Attorney for Plaintiff
People of the State of California