	Case 3:16-cv-05459-KAW Document	t 1 Filed 09/23/16 Page 1 of 16		
1 2 3 4 5 6 7 8 9 10 11 12	Daniel C. Girard (State Bar No. 114826) Jordan Elias (State Bar No. 228731) GIRARD GIBBS LLP 601 California Street, 14th Floor San Francisco, California 94108 Tel: (415) 981-4800 E-mail: dcg@girardgibbs.com E-mail: je@girardgibbs.com John A. Yanchunis (<i>pro hac vice</i> application forthe MORGAN & MORGAN COMPLEX LITIGATION GROUP 201 North Franklin Street, 7th Floor Tampa, Florida 33602 Tel: (813) 223-5505 E-mail: jyanchunis@forthepeople.com <i>Counsel for Plaintiff and the Proposed Class</i>	coming)		
13	UNITED STATES	DISTRICT COURT		
14	NORTHERN DISTRICT OF CALIFORNIA			
15				
 16 17 18 19 20 21 22 23 24 	LARRY VEACH, individually and on behalf of all others similarly situated, Plaintiff, v. WELLS FARGO & COMPANY, a Delaware Corporation; WELLS FARGO BANK, N.A., a National Banking Association, Defendants.	 Case No. 3:16-cv-05459 CLASS ACTION COMPLAINT FOR: Unjust Enrichment; Violations of the Electronic Fund Transfer Act, 15 U.S.C. § 1693, <i>et seq.</i>; Violations of the Unfair Competition Law, Cal. Bus. & Prof. Code § 17200, <i>et seq.</i>; Breach of the Contractual Covenant of Good Faith and Fair Dealing; Conversion 		
24		DEMAND FOR JURY TRIAL		
25				
26	Plaintiff Larry Veach ("Plaintiff"), on beha	If of himself and all others similarly situated,		
27	alleges the following against Defendants Wells Far	rgo & Company and Wells Fargo Bank, N.A.		
28	(collectively, "Wells Fargo").			
	CLASS ACTION COMPLAINT CASE NO. 3:16-CV-05459			
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http://www.girardgibbs.com/

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NATURE OF THE ACTION

1. Wells Fargo has for years created checking, savings, and credit-card accounts for its customers without their knowledge or consent. These unauthorized accounts are a key profit center for Wells Fargo. They have provided the bank with at least tens of millions of dollars in revenue, largely from fees assessed against consumers.

2. Wells Fargo executives directed lower-level bankers to create as many new accounts for Wells Fargo customers as possible, even if the only practical way to carry out this policy was to conceal the creation and existence of the additional accounts. As a consequence of Wells Fargo's policy, the bank has opened well over a million accounts without the consent of the consumers in whose names the accounts were opened.

3. Wells Fargo recently agreed to pay approximately \$190 million in fines for this wrongful conduct to the Consumer Financial Protection Bureau, the Office of the Comptroller of the Currency, and the City and County of Los Angeles. Only \$5 million of this \$190 million is earmarked for injured consumers, and the only consumers who may have the possibility to recover from this fund are those with narrowly defined economic harms.

4. The present action seeks relief for all current and former Wells Fargo customers injured by Wells Fargo's unfair, deceptive, and unconscionable account-creation practices.

PARTIES

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5. Plaintiff Larry Veach is a citizen of the State of Delaware.

6. Defendant Wells Fargo & Company is a Delaware corporation with its principal place of business in San Francisco, California. A financial services corporation, Wells Fargo & Company provides banking, insurance, investment, mortgage, and financial products and services throughout the country.

7. Defendant Wells Fargo Bank, N.A. is a national banking association chartered under the
laws of the United States with its primary place of business in Sioux Falls, South Dakota. Wells Fargo
Bank, N.A. is Wells Fargo & Company's principal subsidiary, and services the retail and commercial
banking arms of Wells Fargo & Company.

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JURISDICTION AND VENUE

8. This Court has subject matter jurisdiction over the claim under the Electronic Fund Transfer Act, 15 U.S.C. § 1693, *et seq.*, pursuant to 28 U.S.C. § 1331.

9. The Court has subject matter jurisdiction over all the claims pursuant to the Class Action Fairness Act, 28 U.S.C. § 1332(d), because there are more than 100 Class members, many of whom are citizens of states other than the states in which Defendants are domiciled, and because the aggregate amount in controversy significantly exceeds \$5 million.

10. This Court has personal jurisdiction over the Defendants because they have sufficient minimum contacts in California to render the exercise of jurisdiction by this Court proper. Defendants intentionally avail themselves of markets within California through the promotion, sale, marketing, and distribution of banking products and services in California. A substantial portion of the wrongdoing alleged herein occurred in California.

11. Venue is proper in the Northern District of California pursuant to 28 U.S.C. §
1391(b)(2) because a substantial portion of the illegal acts giving rise to this action occurred in this
District. Wells Fargo executives and other principal decision makers work at the bank's San Francisco headquarters.

INTRADISTRICT ASSIGNMENT

12. Assignment to the San Francisco Division is proper under Local Rule 3-2(c) because a substantial portion of the illegal acts giving rise to this action occurred in San Francisco County. The conduct detailed in this Complaint emanated from Wells Fargo's San Francisco headquarters.

PLAINTIFF-SPECIFIC FACTS

13. Plaintiff is a current customer of Wells Fargo. Plaintiff opened a personal Wells Fargo checking account in or around 2010.

14. Thereafter, a series of Wells Fargo checking accounts were opened in Plaintiff's name without his prior knowledge or consent. On at least three occasions, Plaintiff received debit cards in the mail for Wells Fargo checking accounts whose opening he never authorized.

15. Wells Fargo's creation of multiple unauthorized accounts in his name resulted in
substantial inconvenience to Plaintiff and cost him both time and money.

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COMMON ALLEGATIONS OF FACT

16. Wells Fargo is the fourth-largest bank in the United States, with assets of \$1.75 trillion.
17. Wells Fargo offers an array of consumer financial products and services, including checking and savings accounts, debit or ATM cards, credit cards, mortgages, and online banking.

Wells Fargo's Wrongful Account-Creation Policies and Practices

18. With the objective of maintaining its profit margins and market position, Wells Fargo devised and implemented a policy of maximizing the number of separate accounts held by its individual banking customers, and then assessing fees to the customers on the basis of those accounts.

19. Wells Fargo accomplished this policy by "cross-selling" banking products and services to existing customers without their knowledge or consent. Wells Fargo thereby increased the number of financial products and services for each of its customers. In turn, Wells Fargo obtained at least tens of millions of dollars in revenue from fees assessed to the "cross-sold" accounts.

20. Wells Fargo formalized its cross-selling efforts through a so-called "Gr-eight" initiative. Under that initiative, Wells Fargo sought to increase the number of accounts held by each of its customers to eight. As implemented by Wells Fargo, the "Gr-eight" initiative generated a very significant revenue stream for the bank.

21. The "Gr-eight" initiative markedly increased Wells Fargo's revenue from fees, in part because the bank created and enforced sales quotas and compensation incentives that led many of its bankers to engage in unscrupulous practices toward consumers.

22. Bankers who met Wells Fargo's cross-selling sales quotas were financially rewarded.Bankers who did not meet these quotas were chastised and pressured by Wells Fargo managers to "do whatever it takes" to meet the quotas.

23. There was intense pressure within Wells Fargo to cross-sell. Wells Fargo managers evaluated each banker's performance, based upon his or her cross-selling sales quota, four times per day.

26 24. Wells Fargo's cross-selling quota system required each Wells Fargo banker to meet a set
27 number of daily "solutions." By "solutions" Wells Fargo meant the opening of new bank and credit-

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card accounts. Bankers who did not meet their "solutions" quotas were disciplined with negative feedback or by being required to work extra hours.

25. As part of Wells Fargo's "Gr-eight" initiative, several thousand Wells Fargo employees engaged in the following acts and practices, among others, without the knowledge or consent of the affected banking customers:

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a. opening unauthorized bank accounts for Wells Fargo customers;

b. transferring funds to those unauthorized accounts from authorized accounts;

c. submitting credit-card applications Wells Fargo customers had not requested;

using Wells Fargo customers' information to order debit cards they had not

requested; and

d.

e. enrolling Wells Fargo customers in online banking services they had not

12 requested.

26. One practice in which Wells Fargo bankers engaged to meet their sales quotas was
known as "simulated funding." Wells Fargo provided financial incentives to bankers who funded
accounts shortly after their opening. These incentives prompted Wells Fargo bankers to open deposit
accounts without customers' knowledge and then to transfer funds from the customers' preexisting
accounts to temporarily fund the unauthorized accounts, so as to trigger compensation for the banker
under Wells Fargo's program of incentives.

19 27. In order to conceal this unauthorized activity from consumers, Wells Fargo's bankers
20 used e-mail addresses not belonging to its customers to enroll them in online banking services they
21 had neither requested nor authorized. The bankers also created debit cards and personal identification
22 numbers to activate those debit cards without notice to or approval from the affected consumers.

23 28. The demanding sales quotas set by Wells Fargo pursuant to its corporate policies led to
24 other unconscionable banking practices as well, including:

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a. telling consumers that they would be charged monthly fees on their checking accounts unless they created a savings account;

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b. falsely representing that certain accounts did not entail monthly fees, when in fact they did;

c. referring unauthorized accounts to collections when Wells Fargo's practices resulted in negative balances;

d. advising consumers who did not want or request credit cards that a credit card was being sent anyway and that they should just discard the card when they received it; and

e. targeting individuals with Mexican Matriculada Consular cards, in particular, for the creation of unauthorized accounts because the lack of a Social Security number made it easier for bankers to open unauthorized accounts; and then telling these individuals not to worry about fees or letters from collection agencies because the absence of a Social Security number meant the debt would not affect them.

Wells Fargo's unauthorized account-creation practices became so widespread that its
employees developed a vernacular for talking about the associated illicit practices.

a. "Pinning" refers to assigning unauthorized personal identification numbers to
debit cards in order to impersonate customers and enroll them in online banking and bill-payment
programs without their consent.

b. "Bundling" refers to misleading customers into thinking that certain financial
products or services are available only in a package with other products or services, for the purpose of
inducing customers to open more accounts than they would have but for this deception.

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c. "Sandbagging" refers to failing to open accounts when asked to do so by customers, so that bankers could stockpile the accounts and open them during a later sales reporting period when financial incentives for the banker were greater.

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Adverse Effects of Wells Fargo's Wrongful Account-Creation Policies and Practices

30. Wells Fargo has created more than 1.5 million unauthorized deposit accounts.

31. Most of these accounts were funded through the transfer of funds from authorized accounts to the unauthorized accounts.

32. Wells Fargo obtained millions of dollars in fees—including penalty fees, overdraft fees,
and monthly service charges—from these unauthorized deposit accounts.

27 28 33. Wells Fargo employees also submitted credit-card applications for more than 500,000 customers without their consent.

34. Wells Fargo obtained millions of dollars in fees—including annual fees, late fees, and finance or interest charges—from unauthorized credit-card accounts.

35. Wells Fargo's creation of unauthorized accounts adversely affected the credit scores of numerous Wells Fargo customers.

The CFPB Consent Order

36. On September 8, 2016, Wells Fargo Bank and the Consumer Financial Protection
Bureau ("CFPB") executed a "Stipulation and Consent to the Issuance of a Consent Order" (the
"Consent Order"). A copy of the Consent Order is attached hereto as Exhibit A.

9 37. The Consent Order provides for a "Redress Plan" whose concrete details are to be set
10 forth in a proposal due in early December 2016. Exh. A, ¶¶ 3(e), 50.

38. The Consent Order requires Wells Fargo to set aside \$5 million to provide redress to
certain Wells Fargo customers affected by the practices described above. *Id.*, ¶ 49. The Consent
Order contemplates disbursement of funds to consumers who incurred fees connected with Wells
Fargo's creation of unauthorized bank or credit-card accounts. *Id.*, ¶¶ 3(a), (f), 51.

39. The Consent Order contemplates that the eventual Redress Plan will be administered by
a consulting firm that Wells Fargo itself hired. *Id.*, ¶ 48.

40. Upon completion of the Redress Plan, any funds not distributed to consumers, or
recouped by Wells Fargo for previously paid redress to consumers, are to be paid to the CFPB, which
may use the remaining funds to further compensate affected Wells Fargo customers. *Id.*, ¶¶ 54-55.
The Redress Plan, however, also vests the CFPB with discretion to "deposit any remaining funds in
the U.S. Treasury as disgorgement." *Id.*, ¶ 55.

41. The Consent Order does not provide any measure of compensation for adverse credit
consequences, including decreased credit scores, experienced by current or former Wells Fargo
customers as a result of Wells Fargo's unlawful practices.

42. The Consent Order does not provide any measure of compensation for time and money
expended by consumers in attempts to mitigate harm and to avoid future harm from Wells Fargo's
wrongful creation of additional accounts.

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1	43. Wells Fargo obtained substantially in excess of \$5 million in fees from consumers as a		
2	result of its creation of unauthorized accounts.		
3	CLASS ACTION ALLEGATIONS		
4	44. Plaintiff brings this action on behalf of himself and all others similarly situated pursuant		
5	to Fed. R. Civ. P. 23. This action satisfies the numerosity, commonality, typicality, adequacy,		
6	predominance and superiority requirements of Rule 23.		
7	45. The proposed Class is defined as:		
8	All Wells Fargo customers in the United States who, within the applicable		
9	statute of limitations preceding the filing of this action to the date of class certification, had unauthorized bank or credit-card accounts opened in		
10	their names.		
11	46. Plaintiff reserves the right to modify or amend the definition of the Class before the		
12	Court determines whether certification is appropriate.		
13	47. Excluded from the Class are Wells Fargo, its parents, subsidiaries, affiliates, officers and		
14	directors, any entity in which Wells Fargo has a controlling interest, all customers who make a timely		
15	election to be excluded, governmental entities, and all judges assigned to hear any aspect of this		
16	litigation, as well as their immediate family members.		
17	48. The members of the Class are so numerous that joinder is impractical. The Class		
18	consists of at least hundreds of thousands of members, whose identity is within the knowledge of		
19	Wells Fargo and can be readily ascertained from Wells Fargo's books and records.		
20	49. There are many questions of law and fact common to the Class, and these common		
21	questions predominate over any questions affecting only individual Class members.		
22	50. Among the questions of law and fact common to the Class are whether Wells Fargo:		
23	a. created unauthorized bank and credit-card accounts in its customers' names;		
24	b. failed to obtain affirmative consent from its customers before creating accounts in		
25	their names;		
26	c. failed to notify consumers that unauthorized accounts had been opened in their		
27	names and that these accounts would generate fees;		
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	7 CLASS ACTION COMPLAINT		
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1	d. failed to provide its customers with a fair opportunity to close unauthorized		
2	accounts;		
3	e. assessed overdraft fees when, but for the creation of unauthorized accounts, the		
4	customer's account or accounts would have had sufficient funds such that no overdraft fee would have		
5	been assessed;		
6	f. failed to provide customers with accurate account information;		
7	g. was unjustly enriched through its wrongful account-creation policies and		
8	practices;		
9	h. violated the Electronic Fund Transfer Act;		
10	i. engaged in unlawful, unfair, and/or fraudulent business practices in violation of		
11	the Unfair Competition Law of California;		
12	j. breached the contractual covenant of good faith and fair dealing; and		
13	k. converted monies belonging to Plaintiff and Class members.		
14	51. The claims of the representative Plaintiff are typical of the claims of the Class in that the		
15	representative Plaintiff, like all Class members, was subjected to unauthorized account creation by		
16	Wells Fargo as a result of its practice of creating unauthorized accounts in its customers' names. The		
17	claims of Plaintiff and all Class members arise from the same wrongful account-creation policies and		
18	practices of Wells Fargo. The factual basis of Wells Fargo's violations is common to all Class		
19	members, and represents a common thread of wrongful conduct that harmed all Class members.		
20	52. Plaintiff will fairly and adequately protect the interests of the Class. Plaintiff has no		
21	interests antagonistic to the interests of any other Class member.		
22	53. Plaintiff is committed to the vigorous pursuit of this action and has retained competent		
23	counsel experienced in the prosecution of class actions and, in particular, consumer protection class		
24	actions against large financial institutions.		
25	54. A class action is superior to other available methods for the fair and efficient		
26	adjudication of this controversy. Because the amount of each individual Class member's claim is		
27	small relative to the complexity of the litigation, and because of Wells Fargo's financial resources, no		
28	Class member could afford to pursue legal redress individually for the violations detailed herein.		
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55. Further, given the complex legal and factual issues involved, individualized litigation would significantly increase the delay and expense to all parties and to the Court. Individualized litigation also would create the potential for inconsistent or contradictory rulings. By contrast, a class action presents far fewer management difficulties, allows claims to be heard which would otherwise go unheard because of the expense of bringing individual lawsuits, and provides the benefits of adjudication, economies of scale, and comprehensive supervision by a single court.

FIRST CLAIM FOR RELIEF

Unjust Enrichment

56. Plaintiff re-alleges paragraphs 1 through 55 above.

57. By its conduct detailed above, Wells Fargo acted unconscionably toward and wrongfully obtained funds from Plaintiff and Class members. Wells Fargo acted with conscious disregard for the rights and interests of Plaintiff and Class members.

58. Wells Fargo's unconscionable and wrongful conduct caused Wells Fargo to be enriched at the direct expense of Plaintiff and Class members.

59. It is inequitable for Wells Fargo to be permitted to retain the financial benefits it received, and may still be receiving, from Plaintiff and Class members due to penalty fees, overdraft fees, and other fees that stem from accounts Wells Fargo sold to or opened for customers without their prior consent, and/or through deceit, concealment, trickery, or other improper means. Wells Fargo's retention of such funds constitutes unjust enrichment.

60. Wells Fargo's unjust enrichment is traceable to, and resulted directly and proximately from, the conduct alleged herein.

61. Wells Fargo's ill-gotten gain rightfully belongs to Plaintiff and Class members. Wells Fargo should be ordered to make restitution or to disgorge the wrongfully obtained funds.

SECOND CLAIM FOR RELIEF

Violations of the Electronic Fund Transfer Act, 15 U.S.C. § 1693, et seq. ("EFTA")

62. Plaintiff re-alleges paragraphs 1 through 55 above.

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63. Wells Fargo's actions as set forth herein violate the Electronic Fund Transfer Act, 15 U.S.C. § 1693, *et seq.* ("EFTA").

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64. The EFTA aims "to provide a basic framework establishing the rights, liabilities, and responsibilities of participants in electronic fund . . . systems." 15 U.S.C. § 1693(b). "The primary objective of [the EFTA] is the provision of individual consumer rights." *Id*.

65. Plaintiff and Class members are "consumers" within section 1693a(6), and Wells Fargo is a "financial institution" because it is a "person who, directly or indirectly, holds an account belonging to a consumer." 15 U.S.C. § 1693a(9).

9 66. Activity on the accounts of Plaintiff and Class members—including unauthorized fund
10 transfers from their accounts—constitute "electronic fund transfer[s]" under the EFTA. 15 U.S.C. §
11 1693a(7).

12 67. The EFTA prohibits a financial institution from issuing a consumer "any card, code, or
13 other means of access to such consumer's account for the purpose of initiating an electronic fund
14 transfer," except where a consumer has requested or applied for the card or other means of access, or
15 where the card or other means of access is provided "as a renewal of, or in substitution for, an
16 accepted card." 15 U.S.C. §§ 1693i(a)(1), (2).

17 68. Wells Fargo violated section 1693(i)(a) of the EFTA when, without Plaintiff's and Class
18 members' request or application, Wells Fargo furnished them means of access to accounts for the
19 purpose of initiating electronic fund transfers.

69. Plaintiff and Class members received cards, credit lines, and accounts they never
requested. Such cards, credit lines, and accounts were not renewals or substitutes for accepted cards.
70. Pursuant to section 1693(m) of the EFTA, Plaintiff and Class members are entitled to
relief, including: (a) actual damages; (b) the lesser of \$500,000 or 1 percent of Wells Fargo's net
worth; (c) damages proximately caused by Wells Fargo's EFTA violations; (d) reasonable attorneys'
fees and costs; and (e) such other relief as the Court may deem appropriate.

THIRD CLAIM FOR RELIEF

Violations of the Unfair Competition Law, Cal. Bus. & Prof. Code § 17200, *et seq*.

71. Plaintiff re-alleges paragraphs 1 through 55 above.

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1	72. Wells Fargo's practices described herein resulted from banking policies that Wells		
2	Fargo devised, ratified, and implemented in California.		
3	73. Wells Fargo's practices described herein constitute unlawful, unfair, and fraudulent		
4	business practices that violate California Business and Professions Code section 17200, et seq.		
5	74. Wells Fargo's acts, omissions, and practices detailed above are unlawful because they		
6	violate the Electronic Fund Transfers Act and because they constitute actual fraud and deceit in		
7	violation of California Civil Code sections 1572 and 1710.		
8	75. Wells Fargo's conduct is unfair because it violates the legislatively declared policies		
9	against actual fraud and deceit in the marketplace for financial services.		
10	76. As set forth above, Wells Fargo acts unfairly in a manner that is substantially injurious		
11	to the consuming public in at least the following respects:		
12	a. Wells Fargo's practice of opening unauthorized banking accounts under		
13	consumers' names is unscrupulous, unethical, outrageous, and oppressive;		
14	b. Wells Fargo's practice of opening unauthorized banking accounts under		
15	consumers' names causes unavoidable harm to consumers;		
16	c. Wells Fargo's practice of opening unauthorized banking accounts under		
17	consumers' names has no utility or countervailing benefit, other than to increase and maintain fee		
18	income for Wells Fargo; and		
19	d. when opening unauthorized banking accounts under consumers' names, Wells		
20	Fargo does not clearly or fairly disclose to the consumers that added penalties, fees, and/or costs will		
21	be assessed in connection with these accounts, which causes consumers to incur unexpected charges		
22	they otherwise would not incur.		
23	77. Wells Fargo's conduct also is fraudulent. Wells Fargo purveys material		
24	misrepresentations and omissions relating to its practice of opening accounts for consumers without		
25	their knowledge or consent. Wells Fargo's fraudulent conduct is likely to, and does, deceive		
26	reasonable consumers in the marketplace for financial services.		
27	78. Wells Fargo concealed its opening of unauthorized accounts, including by using false e-		
28	mail addresses to avoid alerting consumers as to the accounts' existence.		
	11 CLASS ACTION COMPLAINT		

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79. Wells Fargo falsely advised consumers to destroy debit and credit cards as a means of terminating unauthorized accounts. Consumers who acted upon this advice were consequently misled into believing their unwanted accounts were closed, when in fact the accounts remained open and generating fees for the bank.

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80. Wells Fargo's concealment of its unauthorized account generation is material. Had reasonable consumers been notified of Wells Fargo's creation of additional bank or credit-card accounts, they would have declined to approve the creation of the accounts and would have avoided related injurious transactions.

81. All of the aforementioned unlawful and unfair conduct, false statements, omissions,
concealment, and fraudulent acts occurred in the regular course of Wells Fargo's business, and were
part of a generalized course of conduct contrived at Wells Fargo's California headquarters.

82. Wells Fargo's unlawful, unfair, and fraudulent business practices described herein
emanated from California and were approved and implemented by Wells Fargo's sales and marketing
divisions, in California.

15 83. As a direct and proximate result of Wells Fargo's unlawful, unfair, and fraudulent
16 business practices, Plaintiff and Class members have suffered injuries in fact.

17 84. Restitution is accordingly warranted under California Business and Professions Code
18 section 17203.

19 85. Wells Fargo should be enjoined from continuing to engage in these unfair methods of
20 competition and unfair and deceptive trade practices.

FOURTH CLAIM FOR RELIEF

Breach of the Contractual Covenant of Good Faith and Fair Dealing

86. Plaintiff re-alleges paragraphs 1 through 55 above.

87. Plaintiff and Class members contracted with Wells Fargo for banking services.

88. Under the laws of the states where Wells Fargo does business, all contracts impose upon
each party a duty of good faith and fair dealing. Good faith and fair dealing, in connection with
executing contracts and discharging performance and other duties according to their terms, means

28 || preserving the spirit—not merely the letter—of the bargain. Put differently, the parties to a contract

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are mutually obligated to comply with the substance of their contract in addition to its form. Evading the spirit of the bargain and abusing the power to specify terms constitute examples of bad faith in the performance of contracts.

89. Subterfuge, evasion, and oppression violate the obligation of good faith in contractual performance even when an actor believes his conduct to be justified. Bad faith may be overt or may consist of inaction, and fair dealing may require more than honesty. Bad faith and unfair dealing include willful rendering of imperfect performance, interference with the other party's performance, and subversion of the other party's intent in contracting.

9 90. For several years, Wells Fargo has breached the covenant of good faith and fair dealing
10 through its unauthorized account-creation policies and practices. Wells Fargo's account agreements
11 do not contemplate the creation of new accounts for the consumer absent notification or consent.

91. Wells Fargo's unauthorized account-creation practices depart from commercially
reasonable banking practices. No reasonable consumer expects Wells Fargo to create new accounts
for the purpose of imposing extra fees without notification or consent. Wells Fargo's creation of
unauthorized accounts for that purpose violates the spirit and contravenes the intent of its banking
agreements with consumers.

17 92. Plaintiff and Class members have performed all or substantially all of their obligations
18 under the Wells Fargo account agreements.

93. Plaintiff and Class members have sustained damages as a direct and proximate result of
Wells Fargo's breach of the contractual covenant of good faith and fair dealing, in an amount to be
determined at trial.

FIFTH CLAIM FOR RELIEF

Conversion (On Behalf of the National Class)

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94. Plaintiff re-alleges paragraphs 1 through 55 above.

95. Plaintiff and Class members deposited money into and/or held funds in their Wells
Fargo accounts. At all relevant times, Plaintiff and Class members owned, possessed, and had a right
to control the funds in their Wells Fargo accounts.

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96. Wells Fargo owed, and continues to owe, a duty to maintain and preserve its customers' checking, savings, and other account funds to prevent their diminishment through its own wrongful acts.

97. Wells Fargo has wrongfully collected penalty fees, and other fees associated with unwanted and/or unauthorized accounts, from Plaintiff and Class members. Wells Fargo has taken specific and readily identifiable funds from the accounts of Plaintiff and Class members in payment of these fees.

8 98. Wells Fargo's unlawful and unauthorized fee collection interfered with the rights of 9 Plaintiff and Class members to the monies in their bank accounts. Wells Fargo's unlawful and 10 unauthorized fee collection prevented Plaintiff and Class members from using the monies in their bank 11 accounts in the manner they desired.

99. Wells Fargo, without proper authorization or justification, assumed and exercised the 13 right of ownership of these funds, in hostility to the rights of Plaintiff and Class members.

14 100. Wells Fargo continues to retain these funds unlawfully without Plaintiff's and Class 15 members' consent.

16 101. Wells Fargo's wrongful exercise of control over the personal property of Plaintiff and 17 Class members constitutes conversion.

102. By reason of the foregoing, Plaintiff and Class members are entitled to recover from 18 Wells Fargo all damages and costs permitted by law, including all amounts Wells Fargo has 19 20 wrongfully converted.

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PRAYER FOR RELIEF

22 WHEREFORE, Plaintiff, on behalf of himself and the Class he seeks to represent, requests 23 entry of judgment as follows:

Injunctive relief to prohibit Wells Fargo from opening accounts in its customers' 24 A. 25 names without their prior informed consent;

26 Β. Restitution of all fees paid to Wells Fargo by Plaintiff and Class members as a 27 result of the wrongs alleged herein;

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C. Disgorgement of the ill-gotten gains Wells Fargo derived from its misconduct;

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1 2 3 4 5 6 7 8 9 10 11 12 13	 D. Actual damages in an amount act E. Punitive and exemplary damages F. Pre-judgment interest at the maxi G. Reasonable attorneys' fees and conditional data of the state of the	cording to proof; ;; imum rate permitted by law; osts as provided for under applicable law; and ems just and proper. URY TRIAL es so triable. spectfully submitted,	
 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 	dcg je@ Joh for M@ CC 20 Tai (81 jya Co	 15) 981-4800 g@girardgibbs.com @girardgibbs.com an A. Yanchunis (<i>pro hac vice</i> application thcoming) ORGAN & MORGAN OMPLEX LITIGATION GROUP 1 North Franklin Street, 7th Floor mpa, Florida 33602 (3) 223-5505 unchunis@forthepeople.com unsel for Plaintiff and the Proposed Class 	
	15 CLASS ACTION COMPLAINT CASE NO. 3:16-CV-05459		

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