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17 **UNITED STATES DISTRICT COURT**
18 **NORTHERN DISTRICT OF CALIFORNIA**

19 LARRY VEACH, individually and on behalf of
20 all others similarly situated,

21 Plaintiff,

22 v.

23 WELLS FARGO & COMPANY, a Delaware
24 Corporation; WELLS FARGO BANK, N.A., a
25 National Banking Association,

26 Defendants.

Case No. 3:16-cv-05459

CLASS ACTION COMPLAINT FOR:

1. **Unjust Enrichment;**
2. **Violations of the Electronic Fund Transfer Act, 15 U.S.C. § 1693, et seq.;**
3. **Violations of the Unfair Competition Law, Cal. Bus. & Prof. Code § 17200, et seq.;**
4. **Breach of the Contractual Covenant of Good Faith and Fair Dealing;**
5. **Conversion**

DEMAND FOR JURY TRIAL

27 Plaintiff Larry Veach (“Plaintiff”), on behalf of himself and all others similarly situated,
28 alleges the following against Defendants Wells Fargo & Company and Wells Fargo Bank, N.A.
(collectively, “Wells Fargo”).

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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

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.

1 **COMMON ALLEGATIONS OF FACT**

2 16. Wells Fargo is the fourth-largest bank in the United States, with assets of \$1.75 trillion.

3 17. Wells Fargo offers an array of consumer financial products and services, including
4 checking and savings accounts, debit or ATM cards, credit cards, mortgages, and online banking.

5 **Wells Fargo's Wrongful Account-Creation Policies and Practices**

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

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

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

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

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

23 23. There was intense pressure within Wells Fargo to cross-sell. Wells Fargo managers
24 evaluated each banker's performance, based upon his or her cross-selling sales quota, four times per
25 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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1 card accounts. Bankers who did not meet their “solutions” quotas were disciplined with negative
2 feedback or by being required to work extra hours.

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

- 6 a. opening unauthorized bank accounts for Wells Fargo customers;
- 7 b. transferring funds to those unauthorized accounts from authorized accounts;
- 8 c. submitting credit-card applications Wells Fargo customers had not requested;
- 9 d. using Wells Fargo customers’ information to order debit cards they had not
10 requested; and
- 11 e. enrolling Wells Fargo customers in online banking services they had not
12 requested.

13 26. One practice in which Wells Fargo bankers engaged to meet their sales quotas was
14 known as “simulated funding.” Wells Fargo provided financial incentives to bankers who funded
15 accounts shortly after their opening. These incentives prompted Wells Fargo bankers to open deposit
16 accounts without customers’ knowledge and then to transfer funds from the customers’ preexisting
17 accounts to temporarily fund the unauthorized accounts, so as to trigger compensation for the banker
18 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:

- 25 a. telling consumers that they would be charged monthly fees on their checking
26 accounts unless they created a savings account;
- 27 b. falsely representing that certain accounts did not entail monthly fees, when in
28 fact they did;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

5 **The CFPB Consent Order**

6 36. On September 8, 2016, Wells Fargo Bank and the Consumer Financial Protection
7 Bureau (“CFPB”) executed a “Stipulation and Consent to the Issuance of a Consent Order” (the
8 “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.

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

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

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

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

25 42. The Consent Order does not provide any measure of compensation for time and money
26 expended by consumers in attempts to mitigate harm and to avoid future harm from Wells Fargo’s
27 wrongful creation of additional accounts.
28

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.

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.

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

4 89. Subterfuge, evasion, and oppression violate the obligation of good faith in contractual
5 performance even when an actor believes his conduct to be justified. Bad faith may be overt or may
6 consist of inaction, and fair dealing may require more than honesty. Bad faith and unfair dealing
7 include willful rendering of imperfect performance, interference with the other party's performance,
8 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.

12 91. Wells Fargo's unauthorized account-creation practices depart from commercially
13 reasonable banking practices. No reasonable consumer expects Wells Fargo to create new accounts
14 for the purpose of imposing extra fees without notification or consent. Wells Fargo's creation of
15 unauthorized accounts for that purpose violates the spirit and contravenes the intent of its banking
16 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.

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

22 **FIFTH CLAIM FOR RELIEF**

23 **Conversion**
24 **(On Behalf of the National Class)**

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

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

- 1 D. Actual damages in an amount according to proof;
2 E. Punitive and exemplary damages;
3 F. Pre-judgment interest at the maximum rate permitted by law;
4 G. Reasonable attorneys' fees and costs as provided for under applicable law; and
5 H. Such other relief as this Court deems just and proper.

6 **DEMAND FOR JURY TRIAL**

7 Plaintiff hereby demands a jury trial on all issues so triable.

8 Dated: September 23, 2016

Respectfully submitted,

9 By: /s/ Daniel C. Girard

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