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9 **UNITED STATES DISTRICT COURT**
10 **NORTHERN DISTRICT OF CALIFORNIA**

11 Brian Brach, on behalf of himself and all
12 others similarly situated,

13 Plaintiff,

14 v.

15 Wells Fargo & Co., Wells Fargo Bank,
16 N.A., and Wells Fargo Home Mortgage,

17 Defendants.

Case No. 17-cv-05990

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

INTRODUCTION

1
2 1. This action addresses the third in a series of fraudulent business practices that
3 Wells Fargo has inflicted on its banking customers. First, in 2016, the story broke that Wells
4 Fargo employees had opened millions of fraudulent accounts in customers’ names. Driven by
5 intense pressure to meet Wells Fargo’s unrealistic performance goals, employees opened
6 fraudulent checking accounts, savings accounts, and credit accounts in customers’ names.
7 Customers were often charged fees for opening and maintaining accounts that they didn’t
8 authorize or even know about.

9 2. Then in 2017, another scandal broke that rattled Wells Fargo. Insurance brokers
10 working at the bank’s behest had forced unwanted car insurance on automobile loan borrowers.
11 These borrowers were forced to pay for insurance they didn’t want or need, since they already
12 had their own insurance policies. The insurance brokers received commissions for forcing this
13 undesired and redundant insurance on Wells Fargo’s customers.

14 3. Now, this action arises from yet another revelation about the unscrupulous
15 practices of Wells Fargo employees. Wells Fargo offered its mortgage applicants a locked-in
16 interest rate for a set period of time, usually 60 days. If it took Wells Fargo longer than 60 days to
17 process the application, Wells Fargo was supposed to pay a fee to extend the locked in rate. Wells
18 Fargo’s policy was to pass this fee on to the borrower only if the borrower was at fault for
19 delaying the application process.

20 4. Loan officers and managers, however, had their performance numbers impacted if
21 the bank paid the extension fees. Lower performance numbers meant less incentive pay.
22 Employees in the mortgage department would thus place blame for delays on Wells Fargo
23 customers when, in reality, it was Wells Fargo that triggered delays. By blaming the customer,
24 Wells Fargo was able to shift the responsibility for paying extension fees from itself to its
25 customers. Numerous former Wells Fargo employees have come forward—in a letter to
26 Congress, a whistleblower complaint, and interviews with the media—to reveal that they
27 observed a systematic practice of fraudulently charging extension fees to customers when delays
28 in the application process were not the customers’ fault. As a result, Wells Fargo wrongfully

1 collected millions of dollars in extension fees.

2 5. As Forbes writes, “Every tale of corporate scandal begins with culture—and
3 Wells Fargo’s culture ... made it the kind of place where frontline employees could feel
4 ungoverned and libertine enough to fabricate millions of customer accounts.” The same cutthroat
5 corporate culture that led to the account opening fraud also led to shifting blame, and,
6 consequently, payment responsibility, to customers for delays in mortgage application processing.
7 By doing so, Wells Fargo employees were able to maintain their performance numbers and secure
8 their incentive pay at the expense of Wells Fargo customers.

9 **PARTIES**

10 6. Plaintiff Brian Brach, a natural person, is a resident and citizen of New Jersey.

11 7. Defendant Wells Fargo & Co. is incorporated in Delaware with its principal place
12 of business in San Francisco, California.

13 8. Defendant Wells Fargo Bank, N.A. is a national banking association chartered
14 under the laws of the United States with its principal place of business in Sioux Falls, South
15 Dakota. Wells Fargo Bank, N.A. is Wells Fargo & Co.’s principal subsidiary and is the successor
16 by merger to Wells Fargo Home Mortgage, Inc.

17 9. Defendant Wells Fargo Home Mortgage is currently a division of Wells Fargo
18 Bank, N.A. and has its principal place of business in Des Moines, Iowa.

19 **JURISDICTION AND VENUE**

20 10. This Court has subject matter jurisdiction under the Class Action Fairness Act, 28
21 U.S.C. § 1332(d), because at least one Class member is of diverse citizenship from at least one
22 defendant, there are 100 or more Class members, and the aggregate amount in controversy is
23 greater than \$5 million.

24 11. This Court has personal jurisdiction over Defendants because they are at home in
25 California and the claims for relief relate to Defendants’ acts and omissions directed to,
26 emanating from, and occurring within California.

27 12. Venue is proper in this District pursuant to 28 U.S.C. § 1931(b)(3) because the
28 Court has personal jurisdiction over Defendants, a substantial portion of the alleged wrongdoing

1 occurred in this District, and Defendants have sufficient contacts with this District.

2 13. Venue is also proper pursuant to 28 U.S.C. § 1391(b)(2) because a substantial part
3 of the events or omissions giving rise to the claims arose in this District.

4 **INTRADISTRICT ASSIGNMENT**

5 14. Assignment to the San Francisco Division is proper because a substantial part of
6 the events and omissions which gave rise to the claims occurred at Wells Fargo's headquarters in
7 San Francisco at 420 Montgomery Street.

8 **FACTUAL ALLEGATIONS**

9 **I. Overview of Rate Lock Fees**

10 15. Prospective mortgage borrowers typically seek the lowest possible interest rate.
11 Even slight changes in the interest rate can make a substantial difference. The average borrower
12 can save approximately \$32,000 over the life of their mortgage by reducing their interest rate by
13 only 0.5%.¹

14 16. When prospective borrowers apply for a mortgage, they receive a quoted interest
15 rate. The quoted rate depends on the applicant's creditworthiness, plus overall market conditions.
16 But, market conditions can change, and mortgage applications take time to process. Interest rates
17 may substantially rise while the application is pending. To protect against this possibility, lenders
18 like Wells Fargo offer applicants the option to lock in their interest rates for a set period, typically
19 60 or 90 days.²

20 17. When the application process takes longer than 60 to 90 days, the rate lock
21 expires. The rate lock can be extended further, but for a fee. Industry standard practice is that the
22 lender pays the extension fee when *it* is at fault for delays in the application process.³

23
24 _____
25 ¹ The average mortgage in 2017 was approximately \$309,000, over a 30-year term, with an
26 interest rate of 4.1 percent. *See* Jonathan Wathen, *Here's the Size of the Average American's*
Mortgage, The Motley Fool (Feb. 25, 2017), <https://goo.gl/annyqS>. Reducing this interest rate to
27 3.6 percent would save approximately \$32,000 over the repayment term.

28 ² <https://www.wellsfargo.com/mortgage/tools/faqs/>.

³ <http://www.thetruthaboutmortgage.com/mortgage-rate-lock/>.

1 **II. Wells Fargo Is At Fault for Most Delays in Mortgage Processing**

2 18. Wells Fargo claims, on its website, that it usually finishes processing its mortgage
3 applications before the rate lock expires.⁴

4 19. Not so, says a former loan officer at Wells Fargo, Frank Chavez. In a letter to the
5 House and Senate banking committees, Chavez wrote that Wells Fargo frequently missed the rate
6 lock expiration deadline due to a “backlog of mortgage loan applications.” Former employees of
7 Wells Fargo, interviewed by *ProPublica*, said the delays in processing mortgage applications
8 were due to “the inexperience and low pay of the processing and underwriting staff,” and “to keep
9 costs down, the bank understaffed the offices.”⁵ Chavez says that “the vast majority of delays”
10 were the fault of Wells Fargo, caused by “underwriting backlogs, loan processing backlogs, [or]
11 other circumstances outside the control of the customer/borrower.”

12 **III. A Cutthroat Corporate Culture Caused Employees to Falsify Records to**
13 **Charge Extension Fees to Customers**

14 20. It is standard in the industry for banks to pay the extension fee when they are
15 responsible for delays that make the extension necessary. Consistent with this custom, Wells
16 Fargo has a policy of covering extension fees in cases where the company is primarily responsible
17 for the delays that necessitated the extension.

18 21. Wells Fargo’s managers, however, were not happy when the bank had to pay
19 extension fees because it hurt their branch’s numbers. *ProPublica* reports, based on interviews
20 with two former Wells Fargo employees, that managers’ bonuses “took a hit if the bank paid out
21 too many extension fees.”⁶ One employee said, managers would emphasize during branch
22 meetings that “extensions were costing the branch money.”⁷ Managers made clear that extension
23

24 ⁴ *Id.* (“closing generally occurs within the rate-lock period”).

25 ⁵ Jesse Eisinger, *Here’s Another Way Wells Fargo Took Advantage Of Customers*, *ProPublica*
26 (Jan. 23, 2017), <https://www.propublica.org/article/heres-another-way-wells-fargo-took-advantage-of-customers>.

27 ⁶ Jesse Eisinger, *ProPublica*, *supra* note 5.

28 ⁷ *Id.*

1 fees were to be “‘Borrower paid,’ never ‘Lender paid.’”⁸

2 22. The culture at Wells Fargo put tremendous pressure on employees to meet
3 performance goals. *The Los Angeles Times* reported that Wells Fargo had a corporate culture that
4 put “relentless pressure” on employees to hit performance targets, which “led to ethical
5 breaches.”⁹ Allegations came to light in 2016 that Wells Fargo employees had opened millions of
6 fraudulent checking, savings, and credit accounts in customers’ names.¹⁰ In all, the bank
7 estimates, its employees opened 3.5 million unauthorized accounts, without customers knowing.¹¹

8 23. Similarly, because rate lock fees affected a branch’s numbers, Chavez says, there
9 was a “systematic effort” to force customers to pay rate lock extension fees, “which Wells Fargo
10 should have paid out of its own pocket.”

11 24. Mauricio Alaniz, a former Wells Fargo employee, who alleges he was fired for
12 blowing the whistle about the extension fee scheme, says that “[Wells Fargo Home Mortgage]
13 employees would conceal the true reason for the delay and would falsify internal records to make
14 it appear as if the delays were the fault of the customer. For example, [Wells Fargo Home
15 Mortgage] underwriters and processors would falsely mark a file as having missing or incomplete
16 customer information despite the fact that the information had already been fully provided by the
17 customer. [Wells Fargo Home Mortgage] employees would also classify delays as ‘customer-
18 caused’ or ‘customer-related’ even if the delay was actually caused by the [Wells Fargo Home
19 Mortgage] employee failing to timely request, pass-on, or process customer information.”

20 25. Chavez says that the “most blatant methods of attempting to transfer blame onto
21 customers” for “expected future delays” was to have loan processors flag “the file for ‘missing’
22

23 ⁸ *Id.*

24 ⁹ Bethany McLean, *How Wells Fargo’s Cutthroat Corporate Culture Allegedly Drove Bankers to*
25 *Fraud*, Vanity Fair (Summer 2017), <https://www.vanityfair.com/news/2017/05/wells-fargo-corporate-culture-fraud>.

26 ¹⁰ *Id.*

27 ¹¹ Stacy Cowley, *Wells Fargo Review Finds 1.4 Million More Suspect Accounts*, N.Y. Times
28 (Aug. 31, 2017), <https://www.nytimes.com/2017/08/31/business/dealbook/wells-fargo-accounts.html>.

1 customer documentation or information that had already been provided by the borrower.” “The
2 customers would have to refile, blowing the [rate lock] deadline,” *ProPublica* notes.¹²

3 26. And *ProPublica* reports, “Sometimes loan officers would ask customers to submit
4 extra documents that Wells Fargo did not need for its initial assessments, burdening them with
5 paperwork to ensure they didn’t meet the deadline.”¹³

6 27. When customers missed the rate lock expiration deadline, the extension fees could
7 be substantial. *The L.A. Times* reports, “Rate-lock fees can be significant, typically ranging from
8 0.125% to 0.25% of the total amount of a mortgage.”¹⁴ Because the fee is calculated as a
9 percentage of total principal, and mortgage applicants often seek to borrow considerable amounts,
10 the total dollar amount of extension fees can be in the thousands.¹⁵

11 28. Chavez writes, although the rate lock fee scheme is “more complicated and less
12 intuitive than the Fraudulent Account Opening Scandal of earlier this year, I believe the damage
13 done to Wells Fargo mortgage customers in this case is much, much more egregious.”

14 PLAINTIFF’S EXPERIENCE

15 29. On, March 24, 2008, Plaintiff Brian Brach sent his mortgage application to Wells
16 Fargo, by both email and Federal Express. Mr. Brach applied for a Wells Fargo renovation
17 mortgage, backed by the Federal Housing Administration. Wells Fargo estimated, on Mr. Brach’s
18 mortgage application, that the estimated processing time for the application would be 30 days,
19 even though other Wells Fargo documents note that renovation loans take a “minimum” of 45
20 days to process. Mr. Brach’s mortgage application says that Mr. Brach had a rate lock period of
21 60 days.

22 30. Mr. Brach provided the requested paperwork to Wells Fargo as quickly as
23 reasonably possible. For example, Wells Fargo requested that Mr. Brach provided a “Work Write

24 ¹² *Id.*

25 ¹³ *Id.*

26 ¹⁴ James Rufus Koren, *Wells Fargo stuck mortgage borrowers with extra fees, whistle-blower's*
27 *lawsuit says*, Los Angeles Times (July 14, 2017), <http://www.latimes.com/business/la-fi-wells-fargo-rate-lock-20170714-story.html>.

28 ¹⁵ *See id.*

1 Up” showing the renovations that had been done on the house and the cost. Mr. Brach provided a
2 Work Write Up the same day. When Wells Fargo identified a minor deficiency in the Work Write
3 Up, Mr. Brach provided a revised Work Write Up the very next day.

4 31. Wells Fargo was responsible for several delays during the mortgage application
5 and underwriting process. On April 10, 2008, for example, Mr. Brach emailed Wells Fargo to say
6 that he could not order the title work on the property until Wells Fargo provided him with a
7 commitment letter. Wells Fargo did not respond to this email for two weeks. When Wells Fargo
8 responded, Mr. Brach furnished the requested paperwork within one day. Wells Fargo took
9 another eleven days to provide Mr. Brach with the commitment letter.

10 32. If not for Wells Fargo’s delays, closing would have occurred within the 60-day
11 rate lock deadline listed on the mortgage application. Instead, closing occurred 81 days after Mr.
12 Brach submitted his mortgage application.

13 33. Wells Fargo’s settlement papers indicated that the bank was charging Mr. Brach a
14 rate lock extension fee of \$915.92. To close, Mr. Brach had to pay this fee.

15 CONSUMER COMPLAINTS

16 34. Borrowers have long complained about Wells Fargo charging extension fees when
17 Wells Fargo was at fault for delays. One consumer writes in 2008 that he paid \$500 to extend his
18 30-day rate lock period, despite delays being Wells Fargo’s fault: “Although I was ready to close
19 well before the anticipated date, the 7 days that my consultant delayed relaying information to me
20 coupled with the 14 days of the appraisal process lead to me not being able to close before the
21 rate expired. I had no control over these situations as Wells Fargo had made all the
22 arrangements.”

23 35. Another consumer writes in 2009 that he had to do “four rate extensions” because
24 his loan officer was unresponsive to emails, and when he did receive emails, “there are
25 misspellings and poor grammar.” The consumer continued, “It’s impossible to reach WF
26 representatives by phone, and when I do, there is a series of mixed messages and confusion on
27 their part. If I didn’t have a low rate locked in, I would stop the process with WF and try
28 refinancing through another bank/credit union.”

1 a. Whether Wells Fargo engaged in a systematic effort to shift the cost of extension
2 fees to its customers for lender-caused delays;

3 b. Whether Wells Fargo created a high-pressure work environment that encouraged
4 managers and employees to shift the cost of extension fees to its customers for lender-caused
5 delays;

6 c. Whether Wells Fargo knew that employees were falsifying records to pass
7 extension fees on to customers;

8 d. Whether Wells Fargo failed to enact policies and procedures to ensure that all
9 extension fees charged to customers were legitimate;

10 e. Whether Wells Fargo engaged in unfair or deceptive conduct in originating or
11 refinancing mortgages;

12 f. Whether Wells Fargo has been unjustly enriched;

13 g. Whether Wells Fargo breached the covenant of good faith and fair dealing;

14 h. Whether Plaintiff and the Class have suffered damages due to Wells Fargo's
15 conduct, and the amount of such damages.

16 42. Plaintiff is a member of the putative Class. The claims asserted by the Plaintiff in
17 this action are typical of the claims of the members of the putative Class, as the claims arise from
18 the same course of conduct by the Defendants and the relief sought is common.

19 43. Plaintiff will fairly and adequately represent and protect the interests of the
20 members of the putative Class, as his interests are coincident with, not antagonistic to, the other
21 members of the Class.

22 44. Plaintiff has retained counsel competent and experienced in both consumer
23 protection and class action litigation. Plaintiff's counsel specifically has experience litigating
24 some of the largest and most complex consumer class actions, including numerous consumer
25 class actions in the Northern District of California.

26 45. Certification of the Class is appropriate pursuant to Fed. R. Civ. P. 23(b)(3)
27 because questions of law or fact common to the respective members of the Class predominate
28 over questions of law or fact affecting only individual members. This predominance makes class

1 litigation superior to any other method available for the fair and efficient adjudication of these
2 claims including consistency of adjudications. Absent a class action it would be highly unlikely
3 that the members of the Class would be able to protect their own interests because the cost of
4 litigation through individual lawsuits might exceed the expected recovery.

5 46. Certification of the Class is also appropriate pursuant to Fed. R. Civ. P. 23(b)(1),
6 (b)(2), and/or (c)(4).

7 47. A class action is a superior method for the adjudication of the controversy in that it
8 will permit a large number of claims to be resolved in a single forum simultaneously, efficiently,
9 and without the unnecessary hardship that would result from the prosecution of numerous
10 individual actions and the duplication of discovery, effort, expense, and the burden on the courts
11 that individual actions would create.

12 48. The benefits of proceeding as a class action, including providing a method for
13 obtaining redress for claims that would not be practical to pursue individually, outweigh any
14 difficulties that might be argued with regard to the management of the class action.

15 TOLLING

16 49. In 2013, an *L.A. Times* investigation revealed that Wells Fargo placed intense
17 pressure on employees to meet aggressive sales targets and oft impossible quotas. In 2015, a
18 lawsuit by the Los Angeles city attorney prompted further investigation into Wells Fargo's sales
19 practices and cutthroat corporate culture. The Consumer Financial Protection Bureau fined Wells
20 Fargo \$100 million, in September 2016, because Wells Fargo employees had opened millions of
21 fraudulent accounts in customers' names. When the CFPB announced the fine, Wells Fargo
22 issued a press release, saying that its own internal investigation revealed 2 million affected
23 accounts "going back into 2011."¹⁶ After increased public scrutiny, Wells Fargo investigated
24 further, and eventually announced that 1.5 million additional accounts were affected going back
25

26
27 ¹⁶ Wells Fargo, *Wells Fargo Issues Statement on Agreements Related to Sales Practices* (Sept. 8,
28 2016), <https://newsroom.wf.com/press-release/corporate-and-financial/wells-fargo-issues-statement-agreements-related-sales>.

1 to 2009, “nearly doubling the time frame” during which the fraud occurred.¹⁷

2 50. Then, in July 2017, *The N.Y. Times* reported on a leaked Wells Fargo internal
3 report, which found that insurance brokers associated with the bank had forced unwanted and
4 unneeded car insurance and premiums on over 800,000 of the bank’s auto loan customers, and
5 received commissions for doing so.¹⁸ The *N.Y. Times* piece spurred Wells Fargo to issue a press
6 release, saying that it would issue refunds to some customers who were affected between 2012
7 and 2017.¹⁹ But, Wells Fargo’s force placed insurance program dates back to 2006.²⁰ Numerous
8 consumers with loans from between 2006 and 2012 say Wells Fargo charged them for force
9 placed insurance, even though they already had their own car insurance.²¹ Wells Fargo has yet to
10 admit any wrongdoing for the 2006-2012 period.

11 51. In a now familiar pattern, *ProPublica* reported in 2017 that Wells Fargo
12 employees had improperly charged mortgage applicants for missing the deadline on their interest
13 rate locks, when it was the bank’s fault for delays.²² Wells Fargo reacted to the news by saying it
14 would reimburse some customers who were affected between September 2013 to February 2017.
15 Wells Fargo gave no reason for the September 2013 cutoff.

16 _____
17 ¹⁷ Statement of Tim Sloan, Wells Fargo CEO, *Before the U.S. Senate Committee on Banking,*
18 *Housing and Urban Affairs* (Oct. 3, 2017), <https://goo.gl/Pokbjv>.

19 ¹⁸ Gretchen Morgenson, *Wells Fargo Forced Unwanted Auto Insurance on Borrowers*, *N.Y.*
20 *Times* (July 27, 2017).

21 ¹⁹ Wells Fargo, *Wells Fargo Announces Plan to Remediate Customers for Auto Insurance*
22 *Coverage*, *BusinessWire* (July 27, 2017), <https://goo.gl/pNgYVS>.

23 ²⁰ Morgenson, *supra* note 18.

24 ²¹ See, e.g., <https://goo.gl/Sz5HRj> (“I too was bullied into that fraudulent auto insurance scheme
25 when I took a title loan out for my vehicle back in 2008. I told Wells Fargo I already had
26 sufficient auto insurance through Farmers in California, and they still ignored me and added their
27 ratchet auto coverage to my monthly statements. And yes it did cause extreme hardship to pay the
28 bill monthly, along with added late fees when I missed the due date, (plus I continued paying for
my auto insurance through Farmers!) I made 54 payments to them with boosted added charges. I
would absolutely love reparations for this horrific abuse.”); <https://goo.gl/2WzgwM> (complaint
from March 9, 2008: “Our experience is the same as others, this is obviously a well
choreographed scam. In spite of initial demonstration of insurance coverage, a collateral policy
was put in place and added to monthly charges.”)

²² Jesse Eisinger, *ProPublica*, *supra* note 5.

1 52. Patricia McCoy, a former Consumer Financial Protection Bureau mortgage
2 official, stated that Wells Fargo’s practices surrounding rate lock extension fees “fits a pattern,”
3 which could be seen only after the above scandals “came to light.”²³ The recently revealed
4 pattern, according to McCoy, is that “Wells Fargo had a business model ... that emphasized
5 generating fees charged to consumers under duplicitous circumstances simply for the sake of
6 padding revenue.”²⁴

7 53. Wells Fargo’s current CEO, in testimony to the Senate banking committee, called
8 the task of unearthing the full extent of “instances of possible misconduct” at Wells Fargo and the
9 “practices that could harm [its] customers” a “massive undertaking.”²⁵

10 54. Plaintiff and the Class could not have discovered, through reasonable diligence,
11 that Wells Fargo’s was systematically charging customers for rate lock extension fees, despite
12 lender-caused delays. Evidence of the systematic nature of this practice was within Defendants’
13 exclusive control. As a result, any applicable statutes of limitation are tolled.

14 55. In addition, any applicable statutes of limitation have been tolled by Wells Fargo’s
15 knowing, active, and fraudulent concealment of the facts alleged herein. Wells Fargo has
16 reportedly known about the practice of wrongfully charging rate lock fees to borrowers, but has
17 not publicly admitted the problem.

18 56. Additionally, Defendants were, and are, under a continuous duty to disclose to
19 Plaintiff and the Class the true cost of financing a mortgage at Wells Fargo, including the
20 likelihood that the bank’s delays would result in the borrower being charged a fee to extend their
21 locked interest rate. Wells Fargo did not make this disclosure, and Plaintiff and Class members
22 reasonably relied on the bank’s active concealment of the true nature of or basis for rate lock
23 extension fees, which rendered the cost estimate in the mortgage application misleading. Based
24

25 ²³ Matt Egan, *Wells Fargo wrongly hit homebuyers with fees to lock in mortgage rates*, CNN
26 Money (Oct. 4, 2017), <http://money.cnn.com/2017/10/04/investing/wells-fargo-mortgage-rate-lock-fees/index.html>.

27 ²⁴ *Id.*

28 ²⁵ Statement of Tim Sloan, *supra* note 17.

1 on the foregoing, Wells Fargo is precluded by estoppel from relying on the statute of limitations
2 defense.

3 **First Cause of Action**

4 *Violation of Truth in Lending Act (TILA)*
(against all Defendants)

5 57. Plaintiff incorporates by reference all allegations, as if fully set forth herein.

6 58. TILA requires that creditors provide residential mortgage borrowers with, among
7 other things, a disclosure of finance charges and fees, and a good faith estimate of the costs of
8 closing. *See* 15 U.S.C. § 1638(a).

9 59. Defendants are creditors within the meaning of TILA. *See* 15 U.S.C. § 1602(g).

10 60. Defendants violated TILA by failing to disclose to borrowers who obtained
11 mortgage rate locks that Wells Fargo was likely to charge them a fee for extending the rate lock.
12 This charge was likely due to the prevalence of lender-caused delays at Wells Fargo.

13 61. Plaintiff and the Class have been injured and suffered monetary losses due to
14 Wells Fargo's violations of TILA.

15 62. Plaintiff and the Class are entitled to actual and/or statutory damages, attorney's
16 fees, and costs, pursuant to 15 U.S.C. § 1640(a).

17 **Second Cause of Action**

18 *Violation of Real Estate Settlement Procedures Act (RESPA)*
(against all Defendants)

19
20 63. Plaintiff incorporates by reference all allegations, as if fully set forth herein.

21 64. RESPA prohibits accepting "unearned fees," including "any portion, split, or
22 percentage of any charge made or received from the rendering of a real estate settlement service
23 in connection with a transaction involving a federally related mortgage loan other than for
24 services actually performed." 12 U.S.C. § 2607(b).

25 65. In providing mortgages to Plaintiff and the Class, Defendants rendered real estate
26 settlement services in connection with a transaction involving a federally-related mortgage loan.

27 66. In charging rate lock extension fees due to lender-caused delays, Defendants
28 violated RESPA by accepting and splitting an unearned settlement service fee. The fee was not

1 charged for a service actually performed, but rather was charged because Wells Fargo could not
2 timely process mortgage applications or complete the underwriting process.

3 67. The fee was not bona fide compensation for services actually performed because
4 Defendants' own actions necessitated extending the rate lock period.

5 68. As a result, Plaintiff and the Class are entitled to damages of three times the
6 amount of rate lock extension fees, attorneys fees, and costs, pursuant to 12 U.S.C. § 2607(d).

7 **Third Cause of Action**
8 *Violation of California's Unfair Competition Law (UCL)*
(against all Defendants)

9 69. Plaintiff incorporated by reference all allegations, as if fully set forth herein.

10 70. Defendants violated the UCL, Cal. Bus. & Prof. Code § 17200 *et seq.*, by engaging
11 in unfair and unlawful business acts and practices.

12 71. Defendants' conduct constitutes an unfair practice, within the meaning of the
13 UCL, because their conduct was unscrupulous and caused substantial harm. This conduct
14 includes fostering a corporate culture where fraud is encouraged, blaming customers for delays in
15 the mortgage application process that were actually Defendants' or their affiliate's fault, and
16 charging rate lock extension fees to customers despite Wells Fargo's fault in failing to close the
17 mortgage by the rate lock expiration deadline. Customers were harmed by being forced to pay
18 fees for delays for which Wells Fargo was responsible and being forced to provide redundant
19 paperwork to Wells Fargo that they had already previously provided. As Wells Fargo's acts and
20 practices had no utility, the harms stemming from Wells Fargo's conduct outweigh the conduct's
21 utility.

22 72. The conduct described above is additionally unfair because it violates the policy
23 and spirit of TILA and RESPA, as outlined above.

24 73. Additionally, Defendants' conduct is unlawful, within the meaning of the UCL,
25 because it violates TILA and RESPA, as outlined above.

26 74. Plaintiff and the Class were injured and lost money or property as a result of
27 Defendants' unfair and unlawful acts and practices. Plaintiff seek injunctive relief as well as
28 restitution, including of amounts they paid to Defendants in the form of rate lock extension fees.

Fourth Cause of Action

Violation of New Jersey's Consumer Fraud Act (CFA)
(against all Defendants)

75. Plaintiff incorporates by reference all allegations, as if fully set forth herein.

76. The CFA prohibits the use of “any unconscionable commercial practice” in connection with the sale of real or personal property, or services, or with respect to subsequent performance thereof. N.J.S. § 56:8-2.

77. One way a practice can be deemed “unconscionable” under the CFA is if it violates the set of regulations that have been promulgated pursuant to the CFA. Regulatory violations are treated as strict liability under the CFA.

78. One regulation promulgated pursuant to the CFA regulates sellers of services related to residential renovations. Defendants sell mortgage services as part of construction and renovation loans. *See* N.J. A.D.C. § 13:45A-16.2.

79. The regulation requires sellers to disclose, as part of their offered price, all finance charges, obligations, costs or fees to be paid. *See* N.J. A.D.C. § 13:45A-16.2(a)(6)(viii).

80. In not disclosing the possibility, likelihood, existence, or amount of charges for rate lock extensions, Defendants failed to include, in their offered price, all finance charges, obligations, costs or fees to be paid as part of the transaction.

81. Plaintiff and the Class suffered an ascertainable loss as a result of Defendants’ failure to disclose in its mortgage applications the possibility, likelihood, existence, or amount of rate lock extension fees.

82. As a result, Plaintiff and the Class are entitled to treble damages, including three times the amount of extension fees, and attorneys’ fees plus costs, pursuant to N.J.S. 56:8-19.

Fifth Cause of Action

Unjust Enrichment
(against all Defendants)

83. Plaintiff incorporates by reference all allegations, as if fully set forth herein.

84. Defendants were unjustly enriched at the expense of Plaintiff and the Class through payment of fees wrongly charged to extend mortgage interest rate locks.

85. Under the circumstances, it would be inequitable and against good conscience to

1 permit Defendants to retain the ill-gotten benefits that they received from Plaintiff and the Class
2 from unjustly charging them for rate lock extensions.

3 86. Plaintiff and the Class seek restitution and/or disgorgement of fees that Defendants
4 received from charging for extensions of locked interest rates.

5 **Sixth Cause of Action**

6 *Breach of Covenant of Good Faith and Fair Dealing*
(against all Defendants)

7 87. Plaintiff incorporates by reference all allegations, as if fully set forth herein.

8 88. Plaintiff and the Class entered into contracts with Defendants to secure mortgages,
9 and performed all their material obligations under the contracts.

10 89. Implied in all contracts is an implied covenant, imposing a duty on the parties to
11 act in good faith and deal fairly with one another.

12 90. In charging Plaintiff and the Class to extend locked interest rates when Defendants
13 were responsible for delays necessitating the extension, Defendants breached its duty of good
14 faith and fair dealing, acting contrary to the spirit and intention of the mortgage contracts.

15 91. Wells Fargo's knew or should have known of its policy or practice of shunting rate
16 lock extension fees on faultless borrowers, and used borrowers' lack of knowledge about this
17 policy and practice to Defendants' advantage.

18 92. Defendants also acted in bad faith by foisting rate lock extension fees on
19 borrowers, who faced higher interest rates or having a home purchase fall through if they did not
20 pay the extension fees.

21 93. Additionally, by omitting rate lock extension fees from its disclosures of estimated
22 closing costs, Defendants did not act in good faith and did not deal fairly with borrowers,
23 inducing them to rely on an estimate that hid probable fees.

24 94. By disclosing timelines for closing that were unrealistic, given how long it took
25 Defendants to process loan applications, Defendants acted in bad faith. Defendants did not deal
26 fairly with Plaintiff and the Class by relying on unrealistic timelines in determining their initial
27 rate lock period.

28 95. As a result of Defendants' breach of the covenant of good faith and fair dealing,

1 Plaintiff and the Class were harmed, including by foregoing the right to get a locked in interest
2 rate without paying additional fees.

3 96. Plaintiff and the Class sustained damages in an amount to be determined by this
4 Court, including interest and attorneys' fees. Plaintiff and the Class also seek restitution and
5 disgorgement of profits relating to charges for rate lock extension fees and/or declaratory relief as
6 may be appropriate.

7 **PRAYER FOR RELIEF**

8 WHEREFORE, Plaintiff Brian Brach, on behalf of himself and the Class, seek the
9 following relief:

10 A. An order certifying this action as a class action under Fed. R. Civ. P. 23, defining
11 the Class as requested herein, appointing Gibbs Law Group LLP as Class Counsel, and finding
12 that Plaintiff is a proper representative of the Class;

13 B. Declaratory relief, declaring Defendants' actions unlawful;

14 C. Injunctive relief, including an order prohibiting Defendants from charging any
15 further rate lock extension fees for lender-caused delays;

16 D. Compensatory, statutory, treble, or other damages, restitution, disgorgement,
17 attorneys' fees, statutory costs, and such other relief as is just and proper.

18 **DEMAND FOR JURY TRIAL**

19 Plaintiff demands a trial by jury for all issues so triable.

20 DATED: October 19, 2017

/s/ Eric. H. Gibbs

Eric H. Gibbs

21
22 **GIBBS LAW GROUP LLP**
Eric H. Gibbs (SBN 178658)
23 Michael L. Schrag (SBN 185832)
Amy Zeman (SBN 273100)
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CIVIL COVER SHEET

The JS-CAND 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved in its original form by the Judicial Conference of the United States in September 1974, is required for the Clerk of Court to initiate the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Brian Brach, on behalf of himself and all others similarly situated

(b) County of Residence of First Listed Plaintiff Monmouth County, New Jersey (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number) Eric H. Gibbs, Gibbs Law Group LLP, 505 14th Street, Suite 1110, Oakland, CA 94612

DEFENDANTS

Wells Fargo & Company, Wells Fargo Bank, N.A., and Wells Fargo Home Mortgage

County of Residence of First Listed Defendant (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff 2 U.S. Government Defendant 3 Federal Question (U.S. Government Not a Party) 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- Citizen of This State Citizen of Another State Citizen or Subject of a Foreign Country PTF DEF 1 1 2 2 3 3 4 4 5 5 6 6 Incorporated or Principal Place of Business In This State Incorporated and Principal Place of Business In Another State Foreign Nation

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Table with 5 columns: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Includes categories like Insurance, Personal Injury, Real Property, Labor, Immigration, Bankruptcy, Social Security, and Federal Tax Suits.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding 2 Removed from State Court 3 Remanded from Appellate Court 4 Reinstated or Reopened 5 Transferred from Another District (specify) 6 Multidistrict Litigation-Transfer 8 Multidistrict Litigation-Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): Real Estate Settlement Procedures Act, 12 U.S.C. § 2601, et seq.; Truth in Lending Act, 15 U.S.C. § 1601, et seq.

Brief description of cause:

Consumer class action re: wrongful mortgage interest rate lock extension fees

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, Fed. R. Civ. P. DEMAND \$

CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S), IF ANY (See instructions):

JUDGE Maxine M. Chesney

DOCKET NUMBER 3:17-cv-04995

IX. DIVISIONAL ASSIGNMENT (Civil Local Rule 3-2)

(Place an "X" in One Box Only) SAN FRANCISCO/OAKLAND SAN JOSE EUREKA-MCKINLEYVILLE

DATE 10/19/2017

SIGNATURE OF ATTORNEY OF RECORD

/s/ Eric H. Gibbs

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS-CAND 44

Authority For Civil Cover Sheet. The JS-CAND 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved in its original form by the Judicial Conference of the United States in September 1974, is required for the Clerk of Court to initiate the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I. a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the “defendant” is the location of the tract of land involved.)
- c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section “(see attachment).”
- II. Jurisdiction.** The basis of jurisdiction is set forth under Federal Rule of Civil Procedure 8(a), which requires that jurisdictions be shown in pleadings. Place an “X” in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
- (1) United States plaintiff. Jurisdiction based on 28 USC §§ 1345 and 1348. Suits by agencies and officers of the United States are included here.
 - (2) United States defendant. When the plaintiff is suing the United States, its officers or agencies, place an “X” in this box.
 - (3) Federal question. This refers to suits under 28 USC § 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
 - (4) Diversity of citizenship. This refers to suits under 28 USC § 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS-CAND 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an “X” in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerk(s) in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.
- V. Origin.** Place an “X” in one of the six boxes.
- (1) Original Proceedings. Cases originating in the United States district courts.
 - (2) Removed from State Court. Proceedings initiated in state courts may be removed to the district courts under Title 28 USC § 1441. When the petition for removal is granted, check this box.
 - (3) Remanded from Appellate Court. Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
 - (4) Reinstated or Reopened. Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
 - (5) Transferred from Another District. For cases transferred under Title 28 USC § 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
 - (6) Multidistrict Litigation Transfer. Check this box when a multidistrict case is transferred into the district under authority of Title 28 USC § 1407. When this box is checked, do not check (5) above.
 - (8) Multidistrict Litigation Direct File. Check this box when a multidistrict litigation case is filed in the same district as the Master MDL docket. Please note that there is no Origin Code 7. Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC § 553. Brief Description: Unauthorized reception of cable service.
- VII. Requested in Complaint.** Class Action. Place an “X” in this box if you are filing a class action under Federal Rule of Civil Procedure 23. Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction. Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS-CAND 44 is used to identify related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.
- IX. Divisional Assignment.** If the Nature of Suit is under Property Rights or Prisoner Petitions or the matter is a Securities Class Action, leave this section blank. For all other cases, identify the divisional venue according to Civil Local Rule 3-2: “the county in which a substantial part of the events or omissions which give rise to the claim occurred or in which a substantial part of the property that is the subject of the action is situated.”
- Date and Attorney Signature.** Date and sign the civil cover sheet.

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Wells Fargo Deceptively Passed Delay Fees onto Mortgage Loan Customers, Lawsuit Claims](#)
