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11
12 **UNITED STATES DISTRICT COURT**
13 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**
14

15 MITCHELL HEADLINE,

16 Court File No.: _____

17 Plaintiff, on behalf of himself
18 and all others similarly situated,

19 **CLASS ACTION COMPLAINT**

20 v.

21 **JURY TRIAL DEMANDED**

22 WELLS FARGO & COMPANY,
23 WELLS FARGO BANK, N.A., D/B/A
24 WELLS FARGO DEALER SERVICES,
25 NATIONAL GENERAL HOLDINGS
26 CORP. and NATIONAL GENERAL
27 INSURANCE COMPANY
28

Defendants.

CLASS ACTION COMPLAINT

1 For his Complaint against Defendants, Wells Fargo & Company, Wells Fargo
2 Bank, N.A., National General Holdings Corp., and National General Insurance Company,
3 Plaintiff, Mitchell Headline (“Plaintiff”), individually and on behalf of all other members
4 of the public similarly situated, based on personal knowledge as to matters concerning
5 Plaintiff and on information and belief as to all other matters alleges as follows:
6

7
8 **I. NATURE OF THE ACTION**

9 1. Defendants, Wells Fargo & Company and Wells Fargo Bank, N.A.
10 (collectively “Wells Fargo”), and Defendants, National General Holdings Corp., and
11 National General Insurance Company (collectively, “National General”), formed an
12 unlawful enterprise in which they charged hundreds of thousands of unsuspecting auto
13 loan borrowers for auto insurance that they did not need. As a result, these borrowers not
14 only were charged premiums for insurance coverage that they neither needed nor were
15 required to have, but the increased charges caused borrowers to incur late fees and
16 charges for insufficient funds, sustain damage to their credit ratings, and lose their
17 vehicles to repossession or pay additional fees to get their vehicle back. Defendants
18 reaped the resulting financial windfall.
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23 2. Defendants’ scheme was publicly exposed in a story published in *The New*
24 *York Times* on July 27, 2017. As detailed in that story and a concurrently-published press
25 release issued by Wells Fargo, in response to customer complaints, Wells Fargo
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1 commissioned a consulting firm to prepare a report regarding auto insurance policies that
2 were sold to Wells Fargo borrowers from January 2012 to July 2016.

3
4 3. According to the report commissioned by Wells Fargo, approximately
5 800,000 Wells Fargo auto loan borrowers were charged for auto insurance that they did
6 not need, 274,000 Wells Fargo borrowers became delinquent on their auto loans as a
7 result of the unnecessary insurance, and 25,000 Wells Fargo borrowers had their vehicles
8 wrongfully repossessed.
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11 4. Wells Fargo publicly stated, “We take full responsibility for our failure to
12 appropriately manage the CPI program and are extremely sorry for any harm this caused
13 our customers, who expect and deserve better from us.”
14

15
16 5. The auto insurance policies at issue in this case are commonly referred to as
17 Collateral Protection Insurance (“CPI”) which are similar to auto insurance policies
18 commonly taken out by vehicle owners to cover the cost of damage to the vehicle.

19
20 6. National General is the insurer who issued CPI policies for Wells Fargo
21 borrowers. When a consumer purchased a vehicle with financing obtained from Wells
22 Fargo, National General would receive the buyer’s information, and it should have
23 checked a database to determine if the buyer had auto insurance. If the buyer did not have
24 insurance, National General would “force place” insurance, and the buyer would then be
25 charged for the CPI premiums.
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1 7. In reality Wells Fargo charged borrowers for CPI that was underwritten by
2 National General whether the borrower had his or her own insurance or not. In many
3 instances the borrower was not informed of the CPI charges. In many instances, Wells
4 Fargo continued to charge the borrower for CPI even after the borrower provided proof of
5 insurance.
6

7
8 8. Not only were the CPI policies unnecessary, they were more expensive than
9 the coverage borrowers obtained on their own. National General received commissions
10 on CPI that it placed on Wells Fargo's borrowers, and at least for some of the relevant
11 time period, Wells Fargo shared in the commissions.
12

13 9. Compounding the shocking nature of the misconduct, Defendants' failure to
14 properly disclose to their customers the unlawful CPI policies and/or the resulting
15 automatic deductions from customers' bank accounts often put them in a financial
16 tailspin. These unlawful deductions resulted in account delinquencies, overdrawn
17 payment accounts, increased interest rates, repossessed vehicles, and damage to
18 borrowers' credit.
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22 10. This is a proposed class action brought by Plaintiff on behalf of all persons
23 who obtained an auto loan from Wells Fargo and who were required to pay for a CPI
24 policy.
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1 **II. JURISDICTION AND VENUE**

2 11. Jurisdiction is proper in this Court under 28 U.S.C. § 1332(d)(2). The matter
3 in controversy, exclusive of interest and costs, exceeds the sum or value of \$5,000,000
4 and is a class action in which members of the class of plaintiff are citizens of states
5 different from Defendants. Further, greater than two-thirds of the members of the Class
6 reside in states other than the states in which Defendants are citizens.
7

8
9 12. This Court also has jurisdiction over this matter under 28 U.S.C. §§ 1331,
10 1961, 1962 and 1964. This Court has personal jurisdiction over Defendants under 18
11 U.S.C. §1965. In addition, under 28 U.S.C. § 1367, this Court may exercise supplemental
12 jurisdiction over the state law claims because all of the claims are derived from a
13 common nucleus of operative facts and are such that Plaintiff ordinarily would expect to
14 try them in one judicial proceeding.
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16

17 13. Venue is proper in this District under 28 U.S.C. § 1391(b), (c), and (d)
18 because Defendants regularly transact business in this District, a substantial part of the
19 events giving rise to Plaintiff’s claims occurred in this District, and one or more of the
20 Defendants are licensed to do business in, are doing business in, or had agents in this
21 District.
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23

24 **III. PARTIES**

25 14. Plaintiff, Mitchell Headline, is an individual and a citizen of Cannon Falls,
26 Minnesota.
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1 15. Defendant, Wells Fargo & Company, is a corporation organized under the
2 laws of Delaware and headquartered in San Francisco, California.

3 16. Defendant, Wells Fargo Bank, N.A., is a subsidiary of Wells Fargo &
4 Company, and is a national bank organized and existing as a national association under
5 the National Bank Act, 12 U.S.C. §§ 21 *et seq.* The principal place of business of Wells
6 Fargo Bank, N.A.'s division Wells Fargo Dealer Services is Irvine, California.
7

8 17. Defendant, National General Holdings Corp., is a Delaware corporation and
9 insurance holding company headquartered in New York, New York.
10

11 18. Defendant, National General Insurance Company, is a corporation organized
12 under the laws of Missouri and headquartered in Winston-Salem, North Carolina.
13 National General is a subsidiary of National General Holdings Corp.
14

15 19. Whenever in this Complaint reference is made to any act, deed, or conduct
16 of Defendants committed in connection with the enterprise, the allegation means that
17 Defendants engaged in the act, deed, or conduct by or through one or more of their
18 officers, directors, agents, employees or representatives, each of whom was actively
19 engaged in the management, direction, control or transaction of the ordinary business and
20 affairs of Defendants and the enterprise.
21

22 20. Plaintiff is informed and believes, and based thereon, alleges that at all
23 material times herein each Wells Fargo defendant was the agent, servant, or employee of,
24 and acted within the purpose, scope, and course of said agency, service, or employment,
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1 and with the express or implied knowledge, permission, and consent of the other Wells
2 Fargo defendant, and ratified and approved the acts of the other Wells Fargo defendant.

3
4 21. Wells Fargo & Company exercises specific and financial control over the
5 operations of Wells Fargo Bank, N.A., and it dictates the policies and practices of Wells
6 Fargo Bank, N.A. Wells Fargo & Company also exercises power and control over the
7 specific activities at issue in this lawsuit, and it is the ultimate recipient of the ill-gotten
8 gains described herein.
9

10 **IV. FACTUAL BACKGROUND**
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12 22. Defendants unlawfully charged more than 800,000 of their borrowers for
13 CPI that they neither needed nor requested. In many instances, Defendants failed to
14 properly disclose to the borrowers that they were being charged for CPI. And, in many
15 instances, even after the borrowers informed Defendants that they should not be charged
16 for CPI, Defendants continued to insist that the borrowers pay premiums for CPI. As a
17 result, borrowers were unlawfully charged inflated CPI policy premiums and interest, late
18 fees, and, in some cases, had their vehicles repossessed. Because of Defendants' unlawful
19 acts, borrowers saw their bank accounts overdrawn, their credit ratings damaged, and
20 unwarranted fees assessed.
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24 23. The impacted consumers obtained an auto loan from Wells Fargo Bank,
25 N.A., which required borrowers to maintain insurance coverage for the vehicle. Wells
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1 Fargo provided the borrower's information to National General who was to then verify if
2 the borrower had insurance coverage on the vehicle.

3
4 24. If the borrower failed to provide proof of insurance, Defendants were
5 required to send the borrower a request that he or she provide proof of insurance.
6 Defendants, however, placed these CPI policies on borrowers who in many instances
7 already had auto insurance. Thus, borrowers were paying premiums and interest on
8 redundant CPI policies they did not need or request.
9

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11 25. Defendants failed to properly disclose both the CPI policies and their
12 resulting charges to borrowers.

13
14 26. Because the CPI charges were not properly disclosed and unknown to
15 borrowers, they often resulted in delinquencies when the borrower had insufficient funds
16 to cover the cost of the CPI policy. Defendants also assessed late fees to borrowers' bank
17 accounts and charges for insufficient funds. These actions by Defendants damaged
18 borrowers' credit reports when they reported the delinquencies to credit reporting
19 agencies.
20

21
22 27. Wells Fargo's internal rules regarding the order in which payments are
23 applied to a customer's account amplified the problem. When Wells Fargo received a
24 payment on an auto loan account, it applied the payment in the following order: interest
25 on the auto loan, interest on the CPI, principal on the auto loan, and then premium on the
26 CPI policy.
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1 28. This order of payments resulted in both an increased amount of overall
2 interest paid by borrowers and frequently overdrawn bank accounts and auto loan
3 delinquencies.
4

5 29. The extra, unexpected, and undisclosed additional expense pushed
6 approximately 274,000 of Defendants' auto loan customers into delinquency resulting in
7 almost 25,000 wrongly repossessed vehicles.
8

9 30. Not only were the CPI policies unnecessary, they were more expensive than
10 the auto insurance policies customers had already obtained on their own.
11

12 31. Defendants obtained the policies through National General who received a
13 commission on the policies "sold" to borrowers. For at least some period Wells Fargo
14 shared in the commissions with National General.
15

16 **V. PLAINTIFF'S ALLEGATIONS**

17 32. Plaintiff, Mitchell Headline, purchased a 2003 Audi A4 from CarTime Auto
18 Center in Dundas, Minnesota in 2013.
19

20 33. Plaintiff financed the purchase of his vehicle with a loan from Wells Fargo.
21

22 34. Plaintiff made payments on the Wells Fargo loan until he traded in the Audi
23 in August, 2016.
24

25 35. Wells Fargo charged Plaintiff for CPI for some or all of the duration of the
26 loan repayment period.
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1 36. Plaintiff purchased auto insurance from Progressive when he first bought the
2 Audi. He maintained the required insurance throughout the entire time he owned the
3 Audi.
4

5 37. Because Plaintiff purchased and maintained his own auto insurance with
6 Progressive Defendants had no justification or contractual right to charge Plaintiff for
7 CPI or to collect payment for CPI from Plaintiff.
8

9 **VI. STATUTE OF LIMITATIONS**

10 38. Any applicable statutes of limitations have been tolled by Defendants'
11 knowing and active concealment, denial, and misleading actions, as alleged herein.
12 Plaintiff and members of the Class, as defined below, were kept ignorant of critical
13 information required for the prosecution of their claims without any fault or lack of
14 diligence on their part. Plaintiff and members of the Class could not reasonably have
15 discovered the true nature of the Defendants' force-placed insurance scheme.
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19 39. Defendants are under a continuous duty to disclose to Plaintiff and members
20 of the classes the true character, quality, and nature of the charges they assess on
21 borrowers' accounts. Defendants knowingly, affirmatively, and actively concealed the
22 true character, quality, and nature of their assessment of the CPI premiums against
23 borrowers' accounts. Plaintiff and members of the Class reasonably relied upon
24 Defendants' knowing, affirmative, and active concealment. Based on the foregoing,
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1 Defendants are estopped from relying on any statutes of limitation as a defense in this
2 action.

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4 40. The causes of action alleged herein did or will only accrue upon discovery of
5 the true nature of the charges assessed against borrowers' accounts as a result of
6 Defendants' fraudulent concealment of material facts. Plaintiff and members of the Class
7 did not discover and could not have discovered through the exercise of reasonable
8 diligence, the true nature of the unlawful fees assessed against their accounts.
9

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11 **VII. CLASS ACTION ALLEGATIONS**

12 41. Plaintiff brings this action, on behalf of himself and all others similarly
13 situated, as a class action under Rule 23 of the Federal Rules of Civil Procedure.
14

15 42. The classes Plaintiff seeks to represent are defined as follows:

16 **Nationwide Class**

17 All residents of the United States of America who obtained an
18 auto loan through Wells Fargo Bank, N.A. or its subsidiaries or
19 divisions, and who were assessed charges for CPI.

20 **Minnesota State Class**

21 All residents of the State of Minnesota who obtained an auto
22 loan through Wells Fargo Bank, N.A. or its subsidiaries or
23 divisions, and who were assessed charges for CPI.

24 **Tying Sub-Class**

25 All persons in the United Sates who obtained a dealer-arranged
26 automotive loan through Wells Fargo Bank, N.A., or its
27 subsidiaries or divisions, at a dealership at which Wells Fargo
28 was a preferred or primary lender, and who were charged for
CPI and/or related fees at a time when the vehicle subject to the
loan was covered under a separate automobile insurance policy.

1 43. Plaintiff reserves the right to amend the Class definitions if discovery and
2 further investigation reveals that the Class should be expanded or otherwise modified.

3 44. Plaintiff reserves the right to request sub-classes as appropriate.
4

5 45. This action is brought and properly may be maintained as a class action
6 under the provisions of Federal Rules of Civil Procedure 23(a)(1)-(4) and 23(b)(1), (b)(2)
7 or (b)(3), and satisfies the requirements thereof. As used herein, the term “Class
8 Members” shall mean and refer to the members of the Class.
9

10 46. Community of Interest: There is a well-defined community of interest
11 among members of the Class, and the disposition of the claims of these members of the
12 Class in a single action will provide substantial benefits to all parties and to the Court.
13

14 47. Numerosity: While the exact number of members of the Class is unknown to
15 Plaintiff at this time and can only be determined by appropriate discovery, membership in
16 the Class is ascertainable based upon the records maintained by Defendants. At this time,
17 Plaintiff is informed and believes that the Class includes approximately 800,000
18 members. Therefore the Class is sufficiently numerous that joinder of all members of the
19 Class in a single action is impracticable under Federal Rule of Civil Procedure Rule
20 23(a)(1), and the resolution of their claims through the procedure of a class action will be
21 of benefit to the parties and the Court.
22

23 48. Ascertainability: Names and addresses of members of the Class are available
24 from Defendants’ records. Notice can be provided to the members of the Class through
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1 direct mailing, publication, or otherwise using techniques and a form of notice similar to
2 those customarily used in consumer class actions arising under California state law and
3 federal law.
4

5 49. Typicality: Plaintiff's claims are typical of the claims of the other members
6 of the Class which he seeks to represent under Federal Rule of Civil Procedure 23(a)(3)
7 because Plaintiff and each member of the Class has been subjected to the same unlawful,
8 deceptive, and improper practices and has been damaged in the same manner thereby.
9

10 50. Adequacy: Plaintiff will fairly and adequately represent and protect the
11 interests of the Class as required by Federal Rule of Civil Procedure Rule 23(a)(4).
12 Plaintiff is an adequate representative of the Class, because he has no interests which are
13 adverse to the interests of the members of the Class. Plaintiff is committed to the
14 vigorous prosecution of this action and, to that end, Plaintiff has retained counsel who are
15 competent and experienced in handling class action litigation on behalf of consumers.
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19 51. Superiority: A class action is superior to all other available methods of the
20 fair and efficient adjudication of the claims asserted in this action under Federal Rule of
21 Civil Procedure 23(b)(3) because:
22

- 23 (a) The expense and burden of individual litigation make it economically
24 unfeasible for members of the Class to seek to redress their claims other than
25 through the procedure of a class action.
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1 (b) If separate actions were brought by individual members of the Class, the
2 resulting duplicity of lawsuits would cause members to seek to redress their
3 claims other than through the procedure of a class action; and
4

5 (c) Absent a class action Defendants likely would retain the benefits of their
6 wrongdoing, and there would be a failure of justice.
7

8 52. Common questions of law and fact exist as to the members of the Class, as
9 required by Federal Rule of Civil Procedure 23(a)(2) and predominate over any questions
10 which affect individual members of the Class within the meaning of Federal Rule of Civil
11 Procedure 23(b)(3).
12

13 53. The common questions of fact include, but are not limited to, the following:
14

15 (a) Whether Defendants engaged in a pattern or practice of racketeering, as
16 alleged herein;
17

18 (b) Whether Defendants engaged in unlawful, unfair, misleading, or deceptive
19 business acts or practices in violation of California Business & Professions
20 Code sections 17200 *et seq.*;
21

22 (c) Whether Defendants engaged in unfair, discriminatory, or unlawful practices
23 in business, commerce, or trade pursuant to Minn. Stat. § 8.31, including by
24 violating the Prevention of Consumer Fraud Act, Minn. Stat. § 325F.68, *et*
25 *seq.*;
26

27 (d) Whether Defendants failed to properly disclose the CPI;
28

- 1 (e) Whether Defendants' practice of charging CPI premiums to borrowers, as
2 alleged herein, is illegal;
- 3 (f) Whether Defendants were members of, or participants in the conspiracy
4 alleged herein;
- 5 (g) Whether documents and statements provided to Plaintiff and members of the
6 Class omitted material facts;
- 7 (h) Whether Plaintiff and members of the class sustained damages, and if so, the
8 appropriate measure of damages; and
- 9 (i) Whether Plaintiff and members of the Class are entitled to an award of
10 reasonable attorneys' fees, pre-judgment interest, and costs of this suit.
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15 54. In the alternative, this action is certifiable under the provisions of Federal
16 Rule of Civil Procedure 23(b)(1) and/or 23(b)(2) because:

- 17 (a) The prosecution of separate actions by individual members of the Class
18 would create a risk of inconsistent or varying adjudications with respect to
19 individual members of the Class which would establish incompatible
20 standards of conduct for Defendants;
- 21 (b) The prosecution of separate actions by individual members of the Class
22 would create a risk of adjudications as to them which would as a practical
23 matter be dispositive of the interests of the other members of the Class not
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1 parties to the adjudications, or substantially impair or impede their ability to
2 protect their interests; and

3
4 (c) Defendants have acted or refused to act on grounds generally applicable to
5 the Class, thereby making appropriate final injunctive relief or
6 corresponding declaratory relief with respect to the Class as a whole and
7 necessitating that any such relief be extended to members of the Class on a
8 mandatory, class-wide basis.
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11 55. Plaintiff is not aware of any difficulty which will be encountered in the
12 management of this litigation which should preclude its maintenance as a class action.

13
14 **FIRST CLAIM FOR RELIEF**

15 **Violations of the Racketeer Influenced and Corrupt Organizations Act**
16 **18 U.S.C. § 1962(c)**
17 **(On Behalf of the Nationwide Class)**

18
19 56. Plaintiff incorporates by reference in this cause of action each and every
20 allegation of the preceding paragraphs, with the same force and effect as though fully set
21 forth herein.

22
23 57. Plaintiff brings this cause of action on behalf of himself and the members of
24 the Nationwide Class.

25 **A. THE CPI ENTERPRISE**

26 58. Defendants are all persons within the meaning of 18 U.S.C. § 1961(3).

27
28 59. At all relevant times, in violation of 18 U.S.C. § 1962(c), Defendants,
including their directors, employees, and agents, conducted the affairs of an association-

1 in-fact enterprise, as that term is defined in 18 U.S.C. § 1961(4) (the “CPI Enterprise”).
2 The affairs of the CPI Enterprise affected interstate commerce through a pattern of
3 racketeering activity.
4

5 60. The CPI Enterprise is an ongoing, continuing group or unit of persons and
6 entities associated together for the common purpose of maximizing profits by unlawfully
7 charging Wells Fargo’s auto borrowers for unlawful, unnecessary, overpriced, and
8 undisclosed collateral protection insurance policies.
9

10 61. While the members of the CPI Enterprise participate in and are part of the
11 enterprise they also have an existence separate and distinct from the enterprise. The CPI
12 Enterprise has a systematic linkage because there are contractual relationships,
13 agreements, financial ties, and coordination of activities between Wells Fargo and
14 National General.
15
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17 62. As discussed above, operating the CPI Enterprise according to Wells Fargo’s
18 policies and procedures, Defendants control and direct the affairs of the CPI Enterprise
19 and use the other members of the CPI Enterprise as instrumentalities to carry out
20 Defendants’ fraudulent scheme.
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23 63. These policies and procedures established by Defendants include having
24 National General verify whether a borrower maintains the required insurance and
25 underwriting a policy on behalf of the borrower, providing lending documents that fail to
26 properly disclose the CPI, providing statements that fail to properly disclose the CPI
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1 premiums, and arranging the order of charges to borrower's accounts to cause borrowers
2 to become delinquent.

3 **B. THE PREDICATE ACTS**

4
5 64. Defendants' systematic schemes to unlawfully charge premiums, interest,
6 and other charges for unnecessary CPI policies on the accounts of borrowers who have
7 auto loans from Defendants, as described above, was facilitated by the use of the United
8 States Mail and wire. Defendants' schemes constitute "racketeering activity" within the
9 meaning of 18 U.S.C. § 1961(1) as acts of mail and wire fraud under 18 U.S.C. §§ 1341
10 and 1343.
11
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13 65. In violation of 18 U.S.C. §§ 1341 and 1343, Defendants utilized the mail and
14 wire in furtherance of their scheme to defraud its auto loan customers by obtaining
15 money from borrowers using false or fraudulent pretenses.
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17 66. Through the mail and wire, the CPI Enterprise provided insurance policies,
18 lending documents, auto loan statements, payoff demands, or proofs of claims to
19 borrowers, demanding that borrowers pay CPI premiums and related charges. Defendants
20 also accepted payments and engaged in other correspondence in furtherance of their
21 scheme through the mail and wire.
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24 67. The CPI policies were unlawful and thus Defendants' representations that
25 the premiums and related charges were owed were fraudulent and in communications to
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1 borrowers, Defendants made false statements using the Internet, telephone, facsimile,
2 United States mail, and other interstate commercial carriers.

3
4 68. Defendants' fraudulent statements were material to Plaintiff and the
5 members of the Nationwide Class. Defendants represented that the CPI charges were
6 lawful and necessary and required for Plaintiff and members of the class to maintain their
7 loan accounts in good standing and avoid further late fees and repossession of their
8 vehicles.
9

10
11 69. Each of these acts constituted an act of mail fraud for purposes of 18 U.S.C.
12 § 1341.

13
14 70. Additionally, using the Internet, telephone, and facsimile transmissions to
15 fraudulently communicate false information about the premiums and fees to borrowers, to
16 pursue and achieve their fraudulent scheme, Defendants engaged in repeated acts of wire
17 fraud in violation of 18 U.S.C. § 1343.
18

19
20 71. In an effort to pursue their fraudulent scheme, Defendants knowingly
21 fraudulently represented that the premiums and charges were owed.

22
23 72. The predicate acts specified above constitute a "pattern of racketeering
24 activity" within the meaning of 18 U.S.C. § 1961(5) in which Defendants have engaged
25 under 18 U.S.C. § 1962(c).

26
27 73. All of the predicate acts of racketeering activity described herein are part of
28 the nexus of the affairs and functions of the CPI Enterprise racketeering enterprise. The

1 racketeering acts committed by the CPI Enterprise employed a similar method, were
2 related, with a similar purpose, and they involved similar participants, with a similar
3 impact on the members of the Class. Because this case is brought on behalf of a class of
4 similarly situated borrowers and there are numerous acts of mail and wire fraud that were
5 used to carry out the scheme, it would be impracticable for Plaintiff to plead all of the
6 details of the scheme with particularity. Plaintiff cannot plead the precise dates of all of
7 Defendants' uses of the mail and wire because this information cannot be alleged without
8 access to Defendants' records.
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12 74. The pattern of racketeering activity is currently ongoing and threatens to
13 continue indefinitely unless this Court enjoins the racketeering activity.
14

15 75. Numerous schemes have been completed involving repeated unlawful
16 conduct that by its nature, projects into the future with a threat of repetition.
17

18 76. As a direct and proximate result of these violations of 18 U.S.C. §§ 1962(c)
19 and (d), Plaintiff and members of the class have suffered substantial damages. Defendants
20 are liable to Plaintiff and members of the Nationwide Class for treble damages, together
21 with all costs of this action plus reasonable attorney's fees, as provided under 18 U.S.C. §
22 1964(c).
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SECOND CLAIM FOR RELIEF

**Violation of the Racketeer Influenced and Corrupt Organizations Act,
Conspiracy to Violate Title 18 United States Code section 1962(c)
18 U.S.C. § 1962(d)
(On Behalf of the Nationwide Class)**

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77. Plaintiff incorporates by reference in this cause of action each and every allegation of the preceding paragraphs with the same force and effect as though fully set forth herein.

78. Plaintiff brings this cause of action on behalf of himself and the members of the Nationwide Class.

79. As set forth above, in violation of 18 U.S.C. § 1962(d), Defendants conspired to violate the provisions of 18 U.S.C. § 1962(c).

80. As set forth above, Defendants, having directed and controlled the affairs of the CPI Enterprise, were aware of the nature and scope of the enterprise's unlawful scheme, and they agreed to participate in it.

81. As a direct and proximate result, Plaintiff and the members of the Nationwide Class have been injured in their business or property by the predicate acts which make up Defendants' patterns of racketeering activity in that unlawful force-placed insurance premiums were assessed on their auto loan accounts.

THIRD CLAIM FOR RELIEF

**Violation of Unfair Business Practices Act
California Business & Professions Code §§ 17200, *et seq.*
(On Behalf of the Nationwide Class)**

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82. Plaintiff incorporates by reference in this cause of action each and every allegation of the preceding paragraphs with the same force and effect as though fully set forth herein.

83. Plaintiff brings this cause of action on behalf of himself and the members of the Nationwide Class.

84. California Business and Professions Code section 17200 prohibits “any unlawful, unfair or fraudulent business act or practice.” For the reasons described above, Defendants have engaged in unfair or fraudulent business acts or practices in violation of California Business and Professions Code sections 17200, *et seq.*

85. Defendants’ charging Plaintiff and members of the Nationwide Class for unnecessary and unrequested CPI policies and making fraudulent statements regarding the charges, and omissions of material facts constitute unlawful practices because they violate, *inter alia*, 18 U.S.C. §§ 1341, 1343, and 1962; California Civil Code sections 1572, 1573, 1709, 1710, and 1711; and the common law.

86. Defendants’ charging Plaintiff and members of the Nationwide Class for unnecessary and unrequested force-placed insurance policies, fraudulent statements regarding the charges, and omissions of material facts, as set forth herein, also constitute

1 “unfair” business acts and practices within the meaning of California Business and
2 Professions Code sections 17200 *et seq.*, in that Defendants’ conduct was injurious to
3 consumers, offended public policy, and was unethical and unscrupulous. Defendants’
4 violation of California’s consumer protection and unfair competition laws in California
5 resulted in harm to consumers.
6

7
8 87. There were reasonable alternatives available to Defendants to further their
9 legitimate business interests, other than the conduct described herein.
10

11 88. California Business and Professions Code section 17200 also prohibits any
12 “fraudulent business act or practice.” Defendants’ charging Plaintiff and Nationwide
13 Class members for unnecessary and unrequested CPI policies, fraudulent statements
14 regarding the charges, and omissions of material facts, as set forth above, was false,
15 misleading, or likely to deceive the public within the meaning of California Business and
16 Professions Code section 17200. Defendants’ conduct and statements were made with
17 knowledge of their effect, and were done to induce Plaintiff and members of the
18 Nationwide Class to pay the CPI premiums.
19
20

21
22 89. Plaintiff relied on the reasonable expectation that Defendants comply with
23 the law. Plaintiff and members of the Nationwide Class relied on Defendants’
24 representations that the CPI charges were lawful and necessary and required to maintain
25 their loans in good standing and avoid repossession of their vehicles.
26
27
28

1 The transactions by which Defendants charged Plaintiff and the Minnesota State Class for
2 CPI are “sales” as that term is defined in Minn. Stat. § 325F.68, subd. 4.

3
4 96. Minnesota’s Prevention of Consumer Fraud Act (Minn. Stat. § 325F.69,
5 subd. 1) prohibits “[t]he act, use, or employment by any person of any fraud, false
6 pretense, false promise, misrepresentation, misleading statement or deceptive practice,
7 with the intent that others rely thereon in connection with the sale of any merchandise,
8 whether or not any person has in fact been misled, deceived, or damaged thereby.”

9
10
11 97. Moreover, as set forth in Minn. Stat. § 8.31, subd. 1 and 3a, any person
12 injured by “unfair, discriminatory, and other unlawful practices in business, commerce,
13 or trade...specifically, but not exclusively...the Prevention of Consumer Fraud Act”
14 “may bring a civil action and recover damages, together with costs and disbursements,
15 including costs of investigation and reasonable attorney’s fees, and receive other
16 equitable relief as determined by the court.”
17
18

19 98. Defendants’ conduct in charging Minnesota State Class Members for the
20 unnecessary, overpriced CPI policies constitutes fraud, false pretense, false promise,
21 misrepresentation, misleading statement and/or deceptive practice. This conduct also
22 constitutes an unfair and unlawful business practice.
23
24

25 99. In the course of their business Defendants concealed and suppressed
26 material facts concerning the CPI. Defendants failed to properly disclose the policies and
27 failed to disclose the policies were unnecessary and unlawful.
28

1 104. Within this product market, Wells Fargo has market power due to the unique
2 competitive dynamics that exist at automobile dealerships with preferred lender
3 relationships. Unlike in the broader market place consumers seeking dealer-arranged auto
4 financing at dealerships with preferred lender relationships are typically directed to a
5 single lender or small group of lenders often with minimal consumer input and without
6 providing comparative offerings. Thus at dealerships where Wells Fargo was a preferred
7 or primary lender, Wells Fargo had appreciable market power when borrowers sought
8 auto loans arranged by dealers.
9
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12 105. Wells Fargo's sale of auto loans in this market is a separate product and/or
13 service from the sale of automobile insurance. Most auto loan customers prefer, and do in
14 fact, purchase automobile insurance separately from where they obtain automobile
15 financing.
16

17 106. By forcing Plaintiff and the members of the Tying Sub-Class to pay for
18 unwanted CPI as part of obtaining an auto loan, Wells Fargo unlawfully tied its auto
19 loans to the CPI policies underwritten by National General. Such illegal tying
20 unreasonably restrains trade and is unlawful under Section 1 of the Sherman Act.
21

22 107. Moreover, there is no appropriate or legitimate business justification for
23 Defendants to force auto loan customers, such as Plaintiff and members of the Tying
24 Sub-Class, to also pay for automobile insurance.
25
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1 108. Defendants' illegal tying practices have caused damage to Plaintiff and the
2 members of the Tying Sub-Class in violation of Section 1 of the Sherman Act.

3 **SIXTH CLAIM FOR RELIEF**

4 **Violations of 12 U.S.C. § 1972**
5 **(Bank Holding Company Act)**
6 **(On Behalf of Plaintiff and the Tying Sub-Class)**

7
8 109. Plaintiff incorporates by reference in this cause of action each and every
9 allegation of the preceding paragraphs with the same force and effect as though fully set
10 forth herein.
11

12 110. Plaintiff brings this claim on behalf of himself and the Tying Sub-Class, as
13 described above.
14

15 111. Wells Fargo is a bank within the meaning of 12 U.S.C. § 1971 and 12
16 U.S.C. § 1841(c).
17

18 112. Despite purporting to allow Plaintiff and members of the Tying Sub-Class to
19 maintain their own automobile insurance in lieu of purchasing CPI, in practice Wells
20 Fargo required Plaintiff and members of the Tying Sub-Class to purchase CPI in
21 exchange for financing. Each such Class Member who obtained an auto loan from Wells
22 Fargo was also charged for CPI regardless of whether they maintained independent
23 automobile insurance.
24
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1 119. By their wrongful acts and omissions of material facts, Defendants were
2 unjustly enriched at the expense of Plaintiff and members of the Class.

3 120. Thus, Plaintiff and members of the Class were unjustly deprived.

4 121. It would be inequitable and unconscionable for Defendants to retain the
5 profit, benefit and other compensation they obtained from their fraudulent, deceptive, and
6 misleading conduct alleged herein.
7

8 122. Plaintiff and members of the Class seek restitution from Defendants, and
9 seek an order of this Court disgorging all profits, benefits, and other compensation
10 obtained by Defendants from their wrongful conduct.
11

12
13 **VIII. PRAYER FOR RELIEF**

14 Plaintiff, and on behalf of himself and all others similarly situated, request the
15 Court to enter judgment against Defendants as follows:
16

17 123. Certifying the Classes, as requested herein, certifying Plaintiff as the
18 representatives of the Classes, and appointing Plaintiff's counsel as counsel for the
19 Classes;
20

21 124. Ordering that Defendants are financially responsible for notifying all
22 members of the Classes of the alleged omissions discussed herein;
23

24 125. Awarding Plaintiff and the members of the Classes compensatory damages
25 in an amount according to proof at trial;
26
27
28

1 126. Awarding restitution and disgorgement of Defendants' revenues and/or
2 profits to Plaintiff and members of the Classes;

3 127. Awarding Plaintiff and the members of the Classes treble damages in an
4 amount according to proof at trial;

5 128. Awarding declaratory and injunctive relief as permitted by law or equity,
6 including: enjoining Defendants from continuing the unlawful practices as set forth
7 herein, and directing Defendants to identify, with Court supervision, victims of its
8 conduct and pay them restitution and disgorgement of all monies acquired by Defendants
9 by means of any act or practice declared by this Court to be wrongful;
10

11 129. Ordering Defendants to engage in corrective advertising;

12 130. Awarding interest on the monies wrongfully obtained from the date of
13 collection through the date of entry of judgment in this action;

14 131. Awarding attorneys' fees, expenses, and recoverable costs reasonably
15 incurred in connection with the commencement and prosecution of this action; and
16

17 132. For such other and further relief as the Court deems just and proper.
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21 **IX. JURY DEMAND**

22 Pursuant to Fed. R. Civ. P. 38(b), Plaintiffs demand a trial by jury on all matters so
23 triable.
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Respectfully submitted,

HELLMUTH & JOHNSON, PLLC

Dated: September 22, 2017

By: /s/Jack Atnip, III

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**ATTORNEYS FOR PLAINTIFF AND
PROPOSED CLASSES**

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ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Third Lawsuit Filed Against Wells Fargo, National General Over Alleged Auto Insurance Scheme \[UPDATE: SETTLED\]](#)
