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

JOHN SILVERMAN and J. EDWARDS
JEWELRY DISTRIBUTING, LLC, as
representatives of all similarly situated
persons,

Plaintiffs,

vs.

WELLS FARGO & COMPANY;
WELLS FARGO BANK, NATIONAL
ASSOCIATION; and DOES 1 – 10,
inclusive,

Defendants.

CASE NO.:

CLASS ACTION COMPLAINT

DEMAND FOR JURY TRIAL

Plaintiffs John Silverman and J. Edwards Jewelry Distributing, LLC, file this Original Class Action Complaint. Plaintiffs institute this action in accordance with, and to remedy violations by, Defendants Wells Fargo & Company and Wells Fargo Bank, National Association (hereinafter collectively referred to as “Wells Fargo” or

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1 “Defendants”) of the Truth in Lending Act, 15 U.S.C.A. §1601, *et seq.* (hereinafter
2 “TILA”) and the California Unfair Competition Law, Cal. Bus. & Prof. Code §§
3 17200, *et seq.* Plaintiffs bring this action individually and on behalf of all other
4 persons similarly situated (hereinafter “Class Members”) to recover damages and to
5 enjoin Defendants’ unlawful conduct.
6

7
8 **I. INTRODUCTION**

9 This case arises out of Wells Fargo’s manipulation of merchants and
10 consumers. In violation of the Truth in Lending Act, Wells Fargo has created and
11 maintains a credit card program through which it actively encourages retailers to
12 build the “fees” that these merchants must pay Wells Fargo into the regular price of
13 goods and services, while representing to retail consumers that the goods and
14 services that they purchase are being financed at zero percent interest. It represents
15 to merchants such as Plaintiffs that its scheme is thoroughly vetted and perfectly
16 legal, and that these fees are not finance charges. In reality, Wells Fargo’s
17 financing scheme results in the creation of illegal hidden finance charges, and the
18 imposition of double-digit interest rates on consumers. As a consequence of its
19 scheme, Wells Fargo improperly collects and retains monies charged to retail
20 consumers as sales tax – which taxes should not be charged on finance charges –
21 and withholds these monies from merchants.
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26 **II. PARTIES**

27
28 Plaintiff John Silverman is a natural person who resides in El Paso, Texas.

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Plaintiff J. Edwards Jewelry Distributing, LLC is a Nevada Limited Liability Corporation with its principal place of business in El Paso, Texas. Plaintiff John Silverman is the President and Manager of Plaintiff J. Edwards Jewelry Distributing, LLC.

Defendant Wells Fargo & Company is a Delaware corporation with its principal place of business in San Francisco, California. Wells Fargo & Company is a financial services company with \$1.5 trillion in assets, and provides banking, insurance, investments, mortgage, and consumer and commercial finance through more than 8,300 locations, 15,300 ATMs, and the Internet. It has approximately 263,000 full-time employees and is ranked 25th on Fortune Magazine’s 2017 rankings of America’s 500 largest corporations. Wells Fargo & Company operates the fourth largest bank in the United States, and is the largest bank headquartered in California. Wells Fargo & Company currently has in excess of 23 million cardholders, which represents approximately 4.15% of the retail credit card market. Wells Fargo & Company is a “creditor” as defined by the Truth in Lending Act, 15 U.S.C. § 1602(g), and its implementing regulations 12 C.F.R. §226.2 (17).

Defendant Wells Fargo Bank, N.A. is a national banking association chartered under the laws of the United States. Wells Fargo Bank, N.A. is a subsidiary of Wells Fargo & Company, and provides most of the banking products and services that are the subject of this action. Wells Fargo Bank, N.A.’s headquarters and principal place of business is at 420 Montgomery Street, San

1 Francisco, California 94104. Wells Fargo Bank, N.A. is a “creditor” as defined by
2 the Truth in Lending Act, 15 U.S.C. § 1602(g), and its implementing regulations 12
3 C.F.R. §226.2 (17).
4

5 Each Defendant is a “person” within the meaning of California Business and
6 Professions Code §17201.
7

8 All conditions precedent to the Named Plaintiffs proceeding with this lawsuit
9 have occurred.

10 **III. JURISDICTION AND VENUE**

11 This Court has subject matter jurisdiction pursuant to the Class Action
12 Fairness Act, 28 U.S.C. § 1332(d), because Named Plaintiffs are residents of Texas
13 and Nevada and Defendants are citizens of Delaware, California, and South Dakota;
14 there are 100 or more class members, many of whom are citizens of states other
15 than those where Defendants are citizens; and the aggregate amount in controversy
16 will exceed \$5,000,000, exclusive of interest and costs.
17

18 Pursuant to 28 U.S.C.A. § 1367, Plaintiff and Class Members invoke the
19 supplemental jurisdiction of this Court to hear and decide claims against the
20 Defendants arising under state law.
21

22 Venue in this District is appropriate under 28 U.S.C.A. §§ 1391 (b) and (c)
23 and 1441(a) because: (i) Defendants are actively doing business in this State and are
24 subject to personal jurisdiction throughout the State; (ii) Defendants transact
25 business in the State and in the District by and through the operation of retail banks
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1 in this State and District; and (iii) a substantial part of the acts, transactions, events
2 and/or omissions giving rise to the claims occurred in this District.

3
4 **IV. THE TRUTH IN LENDING ACT (“TILA”) 15 U.S.C. §§1601-1666j**

5 In 1968, Congress enacted the Truth in Lending Act, 15 U.S.C. §§1601-
6 1666j (TILA), in response to a growing number of consumer complaints regarding
7 certain lending practices. Congress specifically stated that the TILA is intended so
8 ensure “the informed use of credit” by consumers. 15 U.S.C. § 1601(a). “The
9 informed use of credit,” Congress decreed, “results from an awareness of the cost
10 thereof by consumers.” Thus, “It is the purpose of this subchapter to assure a
11 meaningful disclosure of credit terms so that the consumer will be able to compare
12 more readily the various credit terms available to him and avoid the uninformed use
13 of credit, and to protect the consumer against inaccurate and unfair credit billing
14 and credit card practices.” *Id.* In order to achieve this broad purpose, the TILA
15 regulates, among other things, the advertising of credit cards and the specific
16 disclosures that must accompany offers of credit to consumers. More specifically,
17 the TILA requires that any “finance charge” that the consumer will bear under the
18 credit transaction be disclosed clearly and accurately. *See* 15 U.S.C. §1683(a)(3).
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24 As the United States Supreme Court has observed, the possibility of hidden
25 finance charges was one of Congress’s chief concerns when drafting the TILA:

26
27 One means of circumventing the objectives of the Truth in Lending
28 Act, as passed by Congress, was that of ‘burying’ the cost of credit in
the price of goods sold. Thus in many credit transactions in which

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creditors claimed that no finance charge had been imposed, the creditor merely assumed the cost of extending credit as an expense of doing business, to be recouped as part of the price charged in the transaction. Congress was well aware, from its extensive studies, of the possibility that merchants could use such devices to evade the disclosure requirements of the Act. The Committee hearings are replete with suggestions that such manipulation would render the Act a futile gesture in the case of goods normally sold by installment contract.

Mourning v. Family Publications Serv., Inc., 411 U.S. 356, 366–67, 93 S. Ct. 1652, 1659, 36 L. Ed. 2d 318 (1973) Because Congress was acutely aware that “some creditors would attempt to characterize their transactions so as to fall one step outside whatever boundary Congress attempted to establish,” Congress elected to word the act broadly and “entrust its construction to an agency with the necessary experience and resources to monitor its operation.” *Mourning v. Family Publications Serv., Inc.*, 411 U.S. 356, 365, 93 S. Ct. 1652, 1658, 36 L. Ed. 2d 318 (1973). This agency was originally the Federal Reserve Bank. The Dodd Frank Wall Street Reform and Consumer Protection Act, 12 U.S.C. §5511, transferred this regulatory authority to the Consumer Finance Protection Bureau (hereinafter “CFPB”). Thus, as of July 21, 2011, the CFPB is the agency that promulgates regulations under TILA and publishes the accompanying “official interpretations” of the TILA.

A. The TILA Definition of Finance Charges Generally Includes Any Discount For The Purpose of Inducing Payment By Cash

The TILA defines a “finance charge” as:

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the sum of all charges, payable directly or indirectly by the person to whom the credit is extended, and imposed directly or indirectly by the creditor as an incident to the extension of credit. The finance charge does not include charges of a type payable in a comparable cash transaction.

15 U.S.C. § 1605(a). The regulations provide more explanation regarding what is – and what is not – a finance charge. Specifically, 12 C.F.R. § 226.4, entitled simply, “Finance Charge,” provides, in pertinent part:

- (b) Examples of finance charges. The finance charge includes the following types of charges, except for charges specifically excluded by paragraphs (c) through (e) of this section:
 - (9) Discounts for the purpose of inducing payment by a means other than the use of credit.

The official staff interpretation further explains this principle:

Discounts for payment by other than credit. The discounts to induce payment by other than credit mentioned in § 226.4(b)(9) include, for example, the following situation: The seller of land offers individual tracts for \$10,000 each. If the purchaser pays cash, the price is \$9,000, but if the purchaser finances the tract with the seller the price is \$10,000. The \$1,000 difference is a finance charge for those who buy the tracts on credit.

12 C.F.R. Pt. 226, Supp. 1 § 226.4-4(b)(9)(1). Thus, the general rule is that a discount offered to customers that pay in cash but withheld from customers paying with a particular form of credit is considered a finance charge to those customers paying with the particular form of credit.

B. A Discount from the Regular Price Is Unquestionably a Finance Charge if Paid by Credit Card

The Cash Discount Act of 1981 amended the Truth in Lending Act. Its provisions are codified at 15 U.S.C.A § 1666f and state, in pertinent part:

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(b) Finance charge

With respect to any sales transaction, any discount from the regular price offered by the seller for the purpose of inducing payment by cash, checks, or other means not involving the use of an open-end credit plan or a credit card shall not constitute a finance charge as determined under section 1605 of this title if such discount is offered to all prospective buyers and its availability is disclosed clearly and conspicuously.

15 U.S.C.A. § 1666f (West). Consequently, as of the date of passage of this act, a retailer was – and remains today – free to offer a consumer a discount from the regular price if the consumer pays by means other than a credit card; if so, that discount is not considered a finance charge.

This change in the law which is also reflected in the regulations. In light of the Cash Discount Act, 12 C.F.R. § 226.4(c)(8) now provides that “Discounts offered to induce payment for a purchase by cash, check, or other means, as provided in section 167(b) [15 U.S.C.A § 1666f] of the Act” are not finance charges.

Nevertheless, to fall within the exception created by the Cash Discount Act – and to escape treatment as a finance charge – the discount cannot be offered to those who pay by credit card. If the discounted price is paid by credit card, then such discount forfeits the special dispensation granted to it by the Cash Discount Act of 1981 and is – in fact – a finance charge.

C. If the Regular Price of an Item is Increased for Card Purchasers, The Difference in Price is a Finance Charge

There is another scenario in which a cash discount is legally determined by

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1 the TILA to be a finance charge. While a discount for cash payment from the
2 regular price may not be classified as a finance charge, if the regular price is
3 grossed up to capture the costs of financing, such increase is considered a
4 surcharge, and therefore is a finance charge under the TILA. The TILA defines a
5 surcharge as “any means of increasing the regular price to a cardholder which is not
6 imposed upon customers paying by cash, check, or similar means.” 15 U.S.C.A. §
7 1602 (West).

10 **V. FACTS**

11 **A. The Wells Fargo Program**

12 Named Plaintiffs herein were owners and operators of a chain of jewelry
13 stores. While the Wells Fargo program that Named Plaintiffs participated in was
14 called the “Jewelry Advantage Program,” on information and belief this program
15 was identical in all material respects to programs offered by Defendants to retailers
16 of numerous types of merchandise and services to consumers, including – among
17 other items – furniture, home repair, tires, appliances, and electronics. Defendants
18 have various names for these diverse programs, which include Wells Fargo
19 Automotive Advantage, Wells Fargo Health Advantage, Wells Fargo Home
20 Furnishings, and Wells Fargo Home Projects.

21 Defendants actively promoted to the Named Plaintiffs and Class Members –
22 and to retail customers – a financing scheme to finance the sale of services and
23 merchandise. The scheme was advertised at, promoted at and sold through
24

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1 Plaintiffs’ and the Class Members’ brick and mortar retail establishments and the
2 Named Plaintiffs’ and the Class Members’ websites to potential retail customers.
3
4 During all relevant times herein, Defendants’ financing scheme is advertised and
5 marketed by use of such terms as “no interest”, “interest free”, “same as cash”,
6 “zero interest” and “0% APR” or “no interest if paid in full within [xx] months.”
7
8 The Wells Fargo Program allowed participating retailers to offer several different
9 prices and financing programs for a single item, including “no interest” financing
10 for 12, 24, 48 or 60 months. Based on the length of time financed, Defendants’
11 discount rate charged to the merchant is adjusted to reflect the time price
12 differential. The discounts can vary depending on the length of time the customer
13 is financing. This discount can amount to as much as 22.5% for the 60 month
14 program.
15

17 Because the Class Members simply turned the customer over to Defendants
18 following the customer’s agreement to make the purchase, the customer became
19 Defendants’ customers and cardholder and signed contracts with and made
20 payments to Defendants.
21

22 At all times relevant herein, Named Plaintiffs and all Class Members were
23 parties to a Wells Fargo Dealer Agreement (hereinafter, the “Agreement”). While
24 the Agreement has been modified in minor ways over the years, the portions of the
25 agreement relevant to this action have remained in place. The current incarnation
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1 of the Dealer Agreement is attached as Exhibit 1. Among other provisions, the
2 Dealer Agreement states, in pertinent part, as follows:

3
4 2. IDENTIFICATION OF PARTIES.

5 You agree to begin utilizing this Program upon receipt of the necessary
6 supplies and Instructions and Procedures, **as determined by us in our sole
discretion**, on how to:

- 7 (a) process credit applications;
8 (b) obtain credit authorizations on Invoices; and
9 (c) present Invoices to us for payment.

10 4. DEFINITIONS.

11 (g) “Credit Card Agreement” is defined as a written agreement between
12 us and the Cardholder containing terms and conditions that govern the
13 Account. **Any changes to the Credit Card Agreement will be solely
made by Wells Fargo.**

14 (h) “Consumer Credit Card Account Application” is defined as an
15 application for an Account for financing under the Program, in either
16 written or electronic format, which may include but not be limited to
17 any documents relating to a Consumer Credit Card Account
18 Application that we may require you to print through the IPS (as
19 defined in subparagraph 7(a)(ii) of this Agreement), that upon
20 completion of and presentment to us represents such consumer
21 customer’s desire to open an Account and their consent to undergo
22 financial review. **Such Consumer Credit Card Account Application
includes all documents containing the terms, conditions, and
disclosures governing such applications as provided for by Law, and
is owned and governed by us. Any changes to the Consumer Credit
Card Account Application will be solely made by Wells Fargo.**

23 (j) “Initial Disclosures” are defined as a disclosure or set of disclosures
24 that you will provide each Cardholder at the opening of an Account **in
a manner and method determined by us in accordance with our
Instructions and Procedures. Such Initial Disclosures must include,
without limitation, the Truth in Lending disclosures and any other
disclosures as determined by us in accordance with all applicable
Law.**

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(k) “Instructions and Procedures” is defined as any instructions or procedures that we communicate to you and update from time to time.

(o) “Program” is defined as the Card program that is contemplated by this Agreement for the purpose of arranging financing of your consumer customers’ purchases.

(q) “Wells Fargo Confidential Information” is defined as: (A) Cardholder Account Information governed by subparagraph 5(a); and (B) Wells Fargo’s Confidential Information it provides to you, including without limitation, information about its systems, business practices, and any other information regarding it or its practices as governed by subparagraph 5(b) of this Agreement.

5. INFORMATION SECURITY.

(b) You agree to treat all other information (whether written or oral) which is furnished (whether before or after the date hereof) by us or our directors, officers, employees, affiliates or representatives to you or your representatives and all analyses, compilations, forecasts, studies or other documents or information prepared by us or on our behalf, in connection with this Agreement including, but not limited to, discount rates and any other pricing information as well as processes and passwords for any Internet sites or other technology, confidentially, and not to disclose any information to any:

(i) third party, except as may be provided for in subparagraph 6(i) below; or

6. PROGRAM REQUIREMENTS.

(b) DOCUMENTATION, EXAMINATIONS AND AUDITS.

(iii) POLICIES AND PROCEDURES. You agree that we may periodically examine, solely for our purposes only, those policies, procedures, internal controls, and training materials of yours relating to your offering this Program to your consumer customers to ensure compliance with our Instructions and Procedures and with the provisions of all Laws as described in subparagraph 9(b)(ii) below with respect to (without limitation) advertising, marketing, sourcing of consumers, sales practices, and the controls in place to ensure the security of your information systems.

- 1 (c) USE OF PROGRAM AND COMPLIANCE. Wells Fargo is
2 committed to meeting or exceeding all regulatory requirements that are
3 applicable to our Program. You play an integral role in helping us
4 ensure our compliance with all regulatory requirements due to your
5 interactions with the consumer. In connection with your role, you
6 acknowledge and agree that:
- 7 (i) you are responsible for complying with the provisions of all Laws
8 as described in subparagraph 9(b)(ii) below or otherwise may be
9 set forth in this Agreement;
- 10 (ii) *you are responsible for complying with all requirements of this*
11 *Agreement and the Instructions and Procedures for the*
12 *Program that we communicate to you and update from time to*
13 *time;*
- 14 (iii) you will collaborate with us on all training required by us in
15 connection with the Program, to be completed in the time frame
16 indicated by us, and designate the necessary and appropriate
17 employees of yours at the appropriate level and departments
18 within your business (e.g. office manager, finance manager,
19 marketing/advertising manager) to attend all required training
20 related to their role and responsibilities in connection with the
21 Program. Such employees will be responsible for disseminating
22 the requirements of such training to all employees within your
23 business who may be involved with the subject matter of the
24 training, such as employees who accept any Consumer Credit
25 Card Account Application, Invoice or transaction that may be
26 processed under our Program, *so that your employees will be*
27 *equipped to accurately and completely follow all of the*
28 *requirements for providing financing under the Program.* If
such employees leave your employment or change roles within
your business, you will promptly notify us within ten (10) days of
the employee's departure and designate a replacement employee
or employees to assume this role for your business and ensure that
person or those persons complete all required training; and . . .
- (v) *in the event you create and maintain independent and ongoing*
educational programs designed to educate and train your
employees on the requirements for offering financing to your
consumer customers and with the purpose of educating your
employees about the laws that affect your business, your
industry and address the offering of financing, then such
training programs will be reviewed and approved by us and such
approval will be for our benefit only and may not be relied upon

for any purpose. Additionally, you agree that in the event we determine, in our sole discretion, that your independent training program does not meet our requirements, you agree to work with us, in good faith, to address any deficiencies and update any such training programs.

(e) APPROVAL OF ADVERTISING AND OTHER ASPECTS OF PROGRAM.

(i) We reserve the right, in our sole discretion to approve or disapprove all aspects of this Program including, but not limited to, advertising, promotional material, credit terms and credit features, and including any changes to the Program, whether in hard copy, on television, on the radio, on the internet or in any other electronic form. Such approval is for our benefit only, you may not rely on such approval for any purpose. You will give us a minimum of ten (10) business days to review any such requests for approval.

7. PROGRAM PROCESSES (CONSUMER CREDIT CARD ACCOUNT APPLICATIONS AND INVOICES).

(a) PROCESSING CONSUMER CREDIT CARD ACCOUNT APPLICATIONS AND TRANSACTIONS.

(i) In connection with your processing of Consumer Credit Card Account Applications, Invoices, Credit Memos and authorizations, you acknowledge and agree you will: (A) follow all terms of this Agreement and our Instructions and Procedures in connection with any processing method made available to you pursuant to this subparagraph 7(a),

(c) TRANSACTIONS AND PROCEDURES.

(vii) DOWN PAYMENTS. If less than the full amount of any transaction is covered by an Invoice, you will obtain payment in full by cash, check, or major credit card for the remaining balance due at the time the transaction is consummated. We will not finance down payments or deposits on an Account.

8. PAYMENTS UNDER THE PROGRAM.

(b) PAYMENT BY YOU. You agree to pay us the discount rates and Administrative Fees as set forth in writing by us from time to time (a "Price Sheet"). . . .

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1 9. REPRESENTATIONS AND WARRANTIES.

2 (b) As to all transactions involving your consumer customers, you
3 represent and warrant to us the following:

4 (ii) that you have complied with the provisions of all Laws,
5 including but not limited to Laws governing your profession and
6 your business practices, all Consumer Protection Laws
7 including the Fair Credit Reporting Act, all applicable fair
8 lending laws and regulations, the Federal Truth in Lending Act,
9 the Federal Equal Credit Opportunity Act, as amended, the
10 federal Unfair, Deceptive, or Abusive Acts and Practices
11 regulations, all state law counterparts of them, and all
12 applicable regulations promulgated under any of them,
13 including, without limitation, any provisions requiring adverse
14 action notification to any individual;

15 (iv) that with respect to all advertising and marketing of Products,
16 financing, or both, you, your employees, your subcontractors,
17 your assigns, and/or your agents have, in all respects, complied
18 with:

19 (A) this Agreement,

20 (B) standards that we may communicate to you at our option and
21 for our sole benefit from time to time, and

22 (C) all applicable Laws, including but not limited to, all Laws
23 governing your business, advertising, home improvement
24 and door-to-door sales, (if applicable), and adherence to all
25 related licensing, registration, documentation disclosure
26 requirements, and any other such requirements as set forth by
27 Law;

28 (xi) that you have not increased the purchase price of any Product or
added any additional fee for financing to the Cardholder to any
Invoice;

(xii) that you have not taken any adverse action against an applicant
or consumer customer because the applicant or consumer
customer is a member of a protected class, as defined by
applicable Law, or because the applicant or consumer customer
has chosen to use credit to finance the purchase, nor have you
engaged in any practice that has an impermissible negative impact
on members of such protected class or consumer customer that
has chosen to use credit to finance the purchase;

11.USE OF MARKS.

(a) For the sole purpose of (1) identifying you as a participant in the Program; (2) administering and operating the Program; and (3) promoting the Program and Wells Fargo's related products and services to Cardholders, **you hereby grant Wells Fargo a nonexclusive right and license to use, reproduce, and publicly display any and all trademarks, trade names, logos, symbols, and designs appurtenant to your business,** (the "Licensed Trademarks"), including the right to sublicense to third party vendors for the purposes of creating any and all materials for the execution and administration of this Program, subject to all specified requirements of you with respect to the proper use of the Licensed Trademarks. Wells Fargo agrees not to alter, change, or otherwise modify such Licensed Trademarks in any manner, or use them in combination with any other words or symbols without your prior approval. The license granted hereunder is binding upon and inures to the benefit of the grantor's successors and assigns.

(d) Right to Use Wells Fargo Materials. During the term of this Agreement, Wells Fargo hereby grants to you a non-exclusive, nontransferable, right to use materials created or provided by Wells Fargo to you, for use in connection with the Program and any other materials that are copyrighted or capable of being copyrighted by Wells Fargo ("Wells Fargo Provided Materials"), subject to the terms and conditions of this Agreement, including the following.

- (i) **Dealer may not modify, change, alter, delete from, or add to Wells Fargo Provided Materials, including but not limited, to any change in text, graphics, color, size, or position;**
- (ii) Dealer will not use or disclose the Wells Fargo Provided Materials, in whole or in part, for the purpose of offering a product that competes with Wells Fargo;
- (iii) Dealer will use the Wells Fargo Provided Materials in the manner specified by Wells Fargo or as otherwise agreed to by the parties in writing;
- (iv) **Wells Fargo retains all right, title and interest in and to the Wells Fargo Provided Materials. The Wells Fargo Provided Materials are the sole property of Wells Fargo and any and all uses by you of the Wells Fargo Provided Materials will inure to the benefit of Wells Fargo.** Any rights to the Wells Fargo Provided Materials are limited to the express terms of the license in this paragraph 11;

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12. OTHER PROVISIONS.

(l) ACCOUNT ADMINISTRATION. You acknowledge and agree that we have sole authority to prescribe the terms and conditions of the Credit Card Agreement, the terms of the Account, and the credit standards and criteria of current and prospective Cardholders and that we may change our credit standards at any time in our sole discretion without notice to you.

(m) TITLE OF PROGRAM. Neither you nor any parent, subsidiary, or affiliate of yours will by virtue of this Agreement, secure any title to or other ownership interest in any elements of the Program. You acknowledge and agree that the Program is our exclusive property and that all of the elements of the Program, including Cardholder lists, our Instructions and Procedures, written specifications, training materials, programs, systems and screens, and all documentation and materials relating thereto, constitute trade secrets, which are our exclusive property. You agree to use the elements of the credit program and information about the credit program only for the purpose of enabling you to use the credit program provided under this Agreement and for no other purpose.

Wells Fargo Dealer Agreement (emphasis supplied).

As is clear from the foregoing language – as well as the balance of the Dealer Agreement – Defendants exercised a great deal of control over what their participating retailers could say to customers regarding both the program and the interest rate. In fact, the Agreement prohibited participating retailers from disclosing any program fees or discount rates to any third party.

B. Wells Fargo Encouraged and Expected Participating Retailers to Gross Up Their Retail Prices to Cover the “Cost” of the Wells Fargo Financing and Participating Retailers Did So

Wells Fargo supplied participating retailers with a one page document entitled: “Managing the Costs of Financing.” (Exhibit 2). In the introductory paragraph of this document, Wells Fargo states: “If your business wants to account

1 for the cost of financing (i.e., discount fee, transaction fee, program fees, etc.), the
 2 cost must be included in your product’s overall price versus being included as a fee
 3 charged to customers using our Card to finance their purchase.” This document
 4 went on to explain how to properly price retail items:
 5

6 Scenario: ABC Furniture sells furniture for an entire home. They offer special terms financing to all of their
 7 customers, along with cash and credit as a form of payment. They do not charge customers an additional fee to
 8 finance but want to cover their cost in the overall profit margin. Below are examples of the correct and incorrect
 9 way to include the special terms financing fee on an invoice.

<p>10 Correct Example</p> <p>11 Couch – \$1500</p> <p>12 Chair – \$1000</p> <p>13 Lamp – \$300</p> <p>14 Overall Price – \$2800</p> <p>15 Cash Discount – \$100</p> <p>16 Final Cost – \$2700</p> <div style="text-align: right; font-size: 2em;">✓</div>	<p>10 Incorrect Example</p> <p>11 Couch – \$1500</p> <p>12 Chair – \$1000</p> <p>13 Lamp – \$300</p> <p>14 Overall Price – \$2800</p> <p>15 Financing Fee – \$280</p> <p>16 Final Cost – \$3080</p> <div style="text-align: right; font-size: 2em;">✗</div>
--	--

17 In the correct example above, the merchant has built the cost of financing into the price of the products and then
 18 discounted the overall price for his customer paying with cash.

19 **C. A Typical Purchase and Finance Transaction Illustrates How Wells**
 20 **Fargo Hid the Finance Charge, Improperly Imposed Sales Taxes on the**
 21 **Hidden Finance Charge, and Improperly Retained these Tax Monies**

22 A typical jewelry purchase illustrates how Wells Fargo’s scheme was
 23 perpetrated. The customer would be presented with two options. The “First
 24 Option” would be to pay the “regular price” of \$3,000 for a diamond ring if the
 25 customer elected to sign up for the Defendants’ financing through the Jewelry
 26 Advantage program. This financing was described as a 0% APR with equal
 27 payments with a 60 month term. In other words, as long as the customer made their
 28

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1 payments each month and paid the entire balance by the end of 60 months, there
2 would be – according to Defendants – no interest. Unbeknownst to the customer,
3 was the fact that in order to offer a customer this financing option, Defendants
4 exacted a heavy price: Plaintiff J. Edwards Diamonds was required to forfeit 22.5%
5 of the total cost of the retail item in exchange for financing the 60-month “0%
6 interest” transaction.
7

8
9 If the customer chose the first option, the customer would be charged not
10 only the retail price of \$3,000, but also the applicable sales tax required by the local
11 taxing authority. This amount is added to underlying price of the merchandise or
12 service, and this total amount is financed. Assuming for purposes of this example
13 that the sales tax amount was 8%, the customer was charged \$3,240. Defendants
14 thus collect the retail price of the item – which includes the undisclosed 22.5%
15 (\$675) – plus the total amount of the sales tax. The sales tax was calculated on a
16 sales price that includes the 22.5% hidden finance charge. Defendants would then
17 pay the retailer 77.5% of the total amount paid by the customer (in this example,
18 \$2,511), and retain 22.5% (in this example, \$729) as the “program fee.” The
19 retailer was then obligated to remit to the local taxing authority the entire \$240 in
20 sales tax, despite having recovered only \$186 of this amount in taxes from
21 Defendants. (In fact, because finance charges are exempt from sales taxes, the sales
22 tax should have been assessed only on the actual price of the item (\$2,325), rather
23 than the entire \$3,000.) The retailer, by virtue of its participation in this program,
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1 was shortchanged by Defendants to the tune of \$54 on this one transaction. It is
2 this amount that Named Plaintiffs and the Class Members seek to recover from
3 Defendants.
4

5 The “Second Option” for the customer would be to pay cash for the ring, at
6 the “discounted” amount of \$2,325.00. Thus, the customer could “save” \$675 by
7 paying in cash rather than signing up for Defendants’ credit card. The retailer was
8 willing to offer the cash discount to the customer because if the customer paid cash
9 then the retailer would not have to pay Defendants \$675 in fees that Defendants
10 assessed to the retailer as part of its financing program – and of course the retailer
11 would not lose the additional \$54 in sales tax monies improperly retained by the
12 Defendants.
13
14

15 Thus, the amount of the discount is typically built in the price of the item,
16 separately imposed on the customer, and paid directly to Defendants by the
17 customer. The merchant receives no part of the hidden finance charge. In the
18 foregoing example, the customer actually pays not 0% APR for financing, but \$675
19 in undisclosed pre-calculated, hidden finance charges – which amounts to a
20 whopping 29%.
21
22

23 Because a portion of the amount financed by the consumer is improperly
24 characterized by Defendants as the retail purchase price rather than what it really is
25 – a hidden finance charge – sales tax is improperly charged to the consumer on the
26 hidden finance charge. Unwitting participating retailers remit the entire tax –
27
28

1 including the tax on the undisclosed finance charge – to their local taxing
2 authorities. As a consequence, the portion of that sales tax applicable to the hidden
3 finance charge is retained by Defendants and not paid to Named Plaintiffs and Class
4 Members. Thus, Named Plaintiffs and Class Members – who have paid the total
5 sales tax assessed on the transaction to their local taxing authorities – are out this
6 money.
7

8
9 **D. Defendants Were and Are Fully Aware That Their Participating**
10 **Retailers Were Routinely Accepting Credit Card Payments for the Cash Price**

11 **1. Defendants Specifically Approved the Format, Verbiage and**
12 **Functionality Of Named Plaintiffs’ Retail Website, Which Clearly**
13 **Provided Customers The Ability To Pay The Cash Discount Price**
14 **Via Credit Card**

15 Pursuant to Paragraph 6(e)(i) of the Dealer Agreement, any credit card
16 offerings on Named Plaintiffs’ or participating retailers’ retail websites required
17 approval by Defendants’ compliance department. When Named Plaintiffs set up
18 their website, Defendants’ employee Dixie McConnell, a “Business Liaison
19 Consultant” at Wells Fargo, took charge of site development and worked directly
20 with Named Plaintiffs’ programmers in order to create the format and verbiage.
21 Critically, since customers could not pay using cash when buying online, a credit
22 card was the only method of payment that could be used if a customer did not want
23 to finance the purchase via the Defendants’ “0%” credit card.
24
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1 As is clear from the below screenshot, Named Plaintiffs website offered –
2 with Defendants’ full knowledge, approval and participation -- the ability to finance
3 for 60 months at 0% APR or receive a discounted price and pay that discounted
4 price via a non-Program credit card instead of financing:
5

J. EDWARDS DIAMONDS
home • diamonds • diamond education • rings • about us • benefits • financing • faqs • warranty • contact us

Like us on Facebook

14K White Gold Victorian 3 Stone Engagement Ring

Style #RE1983W1404SA

She'll always feel special with these beautiful diamonds adorning her hand. Promise her your heart in the form of the 14K White Gold Vintage 3 Stone Engagement Ring.

CENTER STONE INFORMATION
Center stone sold separately. Not included in style information or price.

INFORMATION

Width	7mm
Metal Weight	3.58 grams
Available Sizes	3 to 9 what's my size?

Finance Price: \$1,542
Buy this ring for \$25.70 per month with 0% APR.* Total payments are \$1,542. Time to repay is 60 months.**
[Click here for financing details.](#) Estimated monthly payment is based on financing full purchase.

Credit Card Price: \$1,311
Pay in full by credit card receive a \$231 discount.

Choose finance or credit card price when checking out

Each ring is custom made. Please allow 1 to 3 weeks for delivery.

Matching Item

Wedding Band
Style #RVV1983W1404SA

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1 This screen shot, along with an additional five screenshots that are attached to this
2 Complaint as Exhibit 3, scotch any claim that Defendants were unaware of – or did
3 not approve of, encourage and facilitate – its participating merchants’ practice of
4 accepting credit cards for the “cash price.” As a result, the representation of 0%
5 interest rate was a clear TILA violation.
6

7

8 **2. Receipts Forwarded to Defendants Provided Details of the** 9 **Transactions**

10 Further evidence of Defendants’ knowledge and acquiescence is provided by
11 transaction-level documentary evidence. It is and was common practice for
12 Defendants to fail to approve enough credit for the customer to make the purchase.
13 The customer, for example, would desire to purchase an item for \$8,000. However,
14 Defendants would only approve \$5,000 worth of credit through its program. As a
15 result, the customer would pay the difference – in this example the \$3,000
16 difference – with either a credit card issued by a different bank or a Wells Fargo
17 card the customer had previously set up with Wells Fargo (collectively referred to
18 herein as a “Non-Program Credit Card”). In instances such as these, Named
19 Plaintiffs – and, on information and belief, Class Members also – discounted the
20 remaining \$3,000 to the cash equivalent and allowed the customer pay that amount
21 with the Non-Program Credit Card. As a requirement of the program, copies of
22 receipts detailing these transactions were forwarded to Defendants. These receipts
23 clearly showed that the amount paid by Non-Program Credit Card had been
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1 discounted. A sampling of these receipts is attached as Exhibit 4.¹ Thus,
 2 Defendants were fully aware that retailers were routinely allowing customers to pay
 3 the discounted cash price with a credit card, and that the representation of 0%
 4 interest was improper and illegal.
 5

6 **3. Correspondence from the Named Plaintiffs Also Put Defendants**
 7 **on Notice that Its Participating Retailers Were Routinely**
 8 **Accepting Credit Card Payments for the Cash Price and**
 9 **Misrepresenting its Product as “0% Interest”**

10 In 2008, the Albuquerque office of the New Mexico Attorney General began
 11 investigating the sales practices of J. Edwards Diamonds. On October 11, 2012,
 12 Lori Chavez, at the time an Assistant Attorney General at the New Mexico
 13 Attorney General’s office sent an email to Stevan Looney, counsel for J. Edwards
 14 Diamonds, in which she stated:
 15

16 We have been reviewing the state of the law as it concerns the offering of
 17 discounts by merchants to the public based upon the form of payment. The
 18 two primary sources relied upon to determine the state of the law has
 19 remained the same: Truth in Lending Act, 15 USC sec 166f(b) which defines
 20 when a discount off a seller’s regular price does not constitute a finance
 21 charge, and the Electronic Fund Transfer Act, 15 USC sec 1693o-2 which
 22 prohibits payment card networks from restricting any person from offering
 discount incentives to use cash, checks, debit cards or credit cards. Neither

23 ¹ The first page of Exhibit 4 is a typical transaction utilizing both Wells Fargo and Non-Program
 24 Credit Cards as payment after receiving a discounted price. As is revealed by the sales tags taped
 25 to the receipt, the 1.00 carat diamond had a retail sticker price of \$14,024 and was discounted to
 26 \$10,097. The ring had a retail sticker price of \$14,660 and was discounted to \$11,288. The
 27 customer was given an additional "promo" discount of \$1,069.26. The subtotal is \$20,315.74,
 28 plus tax of \$1,676.05. Total is \$21,991.79. Customer was approved by Defendants for \$17,600,
 and then had to pay the balance of the total with two Discover cards. Because a payment plan
 must be submitted along with invoices, Defendants would have seen the plan was for 60 months
 0% interest, and the customer was given discounts, and the customer paid by their open end credit
 plan and by credit card.

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1 statute is directly on point since the TILA regulates creditors, which we agree
2 does not include J. Edwards, and the EFT regulates payment card networks
3 involving electronic fund transfers, which we also agree does not apply to J.
4 Edwards.

5 Pursuant to 15-USC sec 1666f(b), any discount from the regular price offered
6 by the seller for purposes of inducing payment by cash, check or other means
7 not involving open-end credit plans or credit cards does not constitute a
8 finance charge. We agree that cash discounts include debit card transactions.

9 . . .

10 We maintain our position that the application of discounts, previously
11 utilized by J. Edwards, constitutes a hidden finance charge.

12 This email is attached as Exhibit 5. On May 21, 2017 Named Plaintiff John
13 Silverman forwarded this email to the Defendants in the present action.

14 On January 24, 2017 Named Plaintiff John Silverman sent a letter to James
15 Strother, Executive Vice President and General Counsel of Wells Fargo in which he
16 stated:

17 WF has used our company, and thousands of other retailers, to
18 promote and sell their “interest free” scheme. WF has a very intimate
19 relationship with each of its retailers and therefore, knew, or should have
20 known, based on the way the programs were being presented by retailers
21 to customers, including the various types of discounts and methods of
22 payment being offered, that TILA laws were being violated. Our
23 company, and all other retailers, rely on WF's expertise and knowledge of
24 the laws related to consumer financing. By offering customers increased
25 discounts for choosing shorter financing terms, by offering discounts for
26 cash and allowing customers to pay by credit card, by inflating prices to
27 cover the WF discount amounts which are then separately imposed on
28 financing customers and payable directly to WF, these are all actions that
fit TILA definitions of a finance charge. . . .

The WF programs and the various methods of discounting offered
by us to our customers were not only approved by WF's local office, but
later approved in a letter from Mike Lancaster, WF District Manager.

1 Additionally, when we created our website, WF, through its representative
2 Dixie McConnell, took charge of site development and worked directly
3 with our programmers in order to create the format and verbiage. The
4 offering on the website had to be approved by WF's compliance
5 department. Our site offered the ability to finance for 60 months at 0%
6 APR or receive a discount and pay by credit card instead of financing.
7 Operating in this manner was clearly a violation of TILA. As one of the
8 largest finance companies in the United States, WF knew the laws
9 regarding consumer financing. But rather than providing the proper
10 guidance to our company, and other retailers, WF ignored the possible
11 damages retailers could sustain by violating the laws. Instead, WF
12 willfully encouraged and allowed retailers to continue to violate TILA
13 laws and participate in a deceptive scheme in an effort to create more loan
14 volume and profits for their own business.

11 John Silverman also forwarded the contents of this letter in an email to the Wells
12 Fargo Board of Directors. This email is attached as Exhibit 6 to this complaint.

14 A letter dated June 12, 2017 from Counsel for Named Plaintiffs to Warren
15 Buffet, major shareholder in Wells Fargo, with copy to Timothy Sloan, CEO of
16 Wells Fargo & Co. provides further evidence. In that letter, which is attached as
17 Exhibit 7, Counsel states:

19 Thousands of merchant dealers in the country are using the same
20 method of promotion and sales tactics that J. Edwards was using.
21 Unfortunately, the retailers may not be aware that they are
22 participating in a fraudulent financing scheme. . . . Starting in January,
23 2017,. Mr. Silverman contacted James Strother, Wells Fargo's general
24 counsel. Mr. Strother forwarded the letter to an attorney in his law
25 department [who] . . . has received all the various statutes and details
26 regarding the laws and TILA violations. It is clear that the Wells
27 Fargo "zero interest" financing program is being fraudulently
28 presented by retail dealers to consumers and it is clear that Wells
Fargo is participating in these fraudulent schemes because of their
contracts with the dealer merchants, customers and federal law.

1 As if the foregoing evidence were not proof enough, the correspondence sent
2 to Defendants by Named Plaintiffs establish conclusively that Defendants were well
3 aware of the fatal flaws in their “0%” card program, yet chose to do nothing,
4 thereby further defrauding members of the class and consumers.
5

6 **4. Finally, Wells Fargo Knows that Its Cardholders are Using Credit**
7 **Cards to Pay the Cash Discount Price for Retail Items at**
8 **Participating Retailers By Virtue of the Fact that It Processes**
9 **Over 4% of United States Credit Card Transactions**

10 As mentioned, *supra*, in Section II, Defendants issue nearly one out of every
11 twenty credit cards issued in the United States. Their credit card offerings are not
12 limited to the 0% credit card programs they promote to participating retailers, but
13 include numerous categories of Non-Program Credit Cards marketed through their
14 websites and retail branch locations such as the Wells Fargo Cash Wise Card, the
15 Wells Fargo Visa Signature Card, the Wells Fargo Rewards Card, the Wells Fargo
16 Platinum Card, the Wells Fargo Cash Back College Card, the Wells Fargo Secured
17 Credit Card, the Wells Fargo Propel American Express Card, and co-branded credit
18 cards (the Dillard’s department store card and the Sacramento State One-Card, for
19 instance).
20
21
22

23 By virtue of Defendants’ market share and the volume of its credit card
24 transactions, Defendants have a great deal of data from these credit card purchases.
25 Included in this data are details of purchases made – at the cash discount price – by
26
27
28

1 Defendants' customers using Defendants' Non-Program Credit Cards at retailers
2 that have signed Dealer Agreements.

3
4 **E. Wells Fargo's Scheme Is Immensely Profitable to Defendants and**
5 **Results in Significant Harm to Class Members and Consumers**

6 On information and belief, Defendants finance approximately
7 \$8,000,000,000 (\$8 billion) worth of sales under the Program each year. Thus,
8 Defendants collect approximately \$800,000,000 (\$800 million) in hidden and
9 illegal finance charges plus approximately \$64,000,000 (\$64 million) in sales tax
10 (based on national sales tax averages) per year. The amount of sales tax on the
11 illegal finance charges paid to the various local taxing authorities in error due to the
12 hidden finance charges over the course of four years is approximately \$256,000,000
13 (\$256 million). This is the amount that should be reimbursed to Class Members.

14
15
16 **VI. FRAUDULENT CONCEALMENT ALLEGATIONS**

17
18 Absent discovery, Plaintiffs are unaware of, and unable through reasonable
19 investigation to obtain, the true names and identities of those individuals in the
20 employ of Defendants responsible for disseminating false and misleading
21 marketing materials regarding financing scheme. Defendants necessarily are in
22 possession of all of this information. Plaintiffs' claims arise out of Defendants'
23 fraudulent concealment of the legal infirmities in its financing scheme. To the
24 extent that Plaintiffs' claims arise from Defendants' fraudulent concealment, there
25 is no one document or communication – and no one interaction – upon which
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1 Plaintiffs base their claims. Plaintiffs alleges that at all relevant times, including
2 specifically at the time they entered into the Dealer Agreement with Defendants,
3 Defendants knew, or were reckless in not knowing, of the violations of the Truth in
4 Lending Act; Defendants were under a duty to disclose violations based upon its
5 exclusive knowledge of the violations, and its concealment of the violations; and
6 Defendants never disclosed the violations to Plaintiffs or the public at any time or
7 place or in any manner.

8
9
10 Plaintiffs make the following specific fraud allegations with as much
11 specificity as possible absent access to the information necessarily available only to
12 Defendants:

- 13
14 a. **Who:** Defendants actively concealed the TILA violations from
15 Plaintiffs and Class Members while simultaneously touting the legality
16 and soundness of the program. Plaintiffs are unaware of, and therefore
17 unable to identify, the true names and identities of those specific
18 individuals in Defendants' employ responsible for such decisions.
- 19
20 b. **What:** Defendants knew, or were reckless or negligent in not knowing,
21 that its financing scheme was violative of the Truth in Lending Act.
22 Defendants concealed the violations and made representations about
23 the legality and soundness of its financing scheme.
- 24
25 c. **When:** Defendants concealed material information regarding the TILA
26 violations at all times and made representations about the legality and
27
28

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1 soundness of its financing scheme on an ongoing basis, until the
2 present, as alleged above in Section V. And when Plaintiffs confronted
3 with Defendants regarding the problems with their financing program,
4 Defendants denied any knowledge of or responsibility for the TILA
5 violations, and actually blamed Plaintiffs for causing the problem.
6

7
8 d. **Where:** Defendants concealed material information regarding the true
9 nature of the financing program in every communication it had with
10 Plaintiffs and Class Members and made representations about the
11 legality and soundness of the financing program. Plaintiffs are aware
12 of no document, communication, or other place or thing, in which
13 Defendants disclosed the truth about the TILA violations to anyone
14 outside of Defendants' employ. Such information is not adequately
15 disclosed in any sales documents, displays, advertisements, or on
16 Defendants' website.
17

18
19
20 e. **How:** Defendants concealed the TILA violations from Plaintiffs and
21 Class Members and made representations about the legality and
22 soundness of its financing scheme. Defendants actively concealed the
23 truth about the existence and nature of the TILA violations from
24 Plaintiffs and Class Members at all times, even though it knew about
25 the TILA violations and knew that information about the TILA
26 violations would be important to a reasonable consumer.
27
28

1 f. **Why:** Defendants actively concealed material information about the
2 TILA violations for the purpose of inducing Plaintiffs and Class
3 Members to participate in their financing programs, rather than doing
4 business with Defendants' competitors. Had Defendants disclosed the
5 truth, for example in its advertisements or other materials or
6 communications, Plaintiffs and Class Members would have been
7 aware of it, and would not have participated in the program.
8
9

10 **VII. TOLLING OF THE STATUTE OF LIMITATIONS**

11 **Fraudulent Concealment Tolling**

12 Upon information and belief, Defendants have known of the TILA violations since
13 well before Plaintiffs and Class Members began participating in the program, and
14 has concealed from or failed to notify Plaintiffs, Class Members, and the public of
15 the full and complete nature of the TILA violations. Any applicable statute of
16 limitation has therefore been tolled by Defendants' knowledge, active concealment,
17 and denial of the facts alleged herein.
18
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20

21 **Estoppel**

22 Defendants were and are under a continuous duty to disclose to Plaintiffs and Class
23 Members the true character, quality, and nature of the financing program.
24 Defendants actively concealed the true character, quality, and nature of the
25 financing program and knowingly made representations about the legality and
26 soundness of the financing program. Plaintiffs and Class Members reasonably
27
28

1 relied on Defendants' knowing and affirmative representations and/or active
2 concealment of these facts. Based on the foregoing, Defendants are estopped from
3 relying on any statutes of limitation in defense of this action.
4

5 **VIII. CLASS ALLEGATIONS**

6 This action is maintained as a class action on behalf of the following described
7 class:
8

9 All persons who reside within the United States and who entered into
10 a Dealer Agreement with any of the Defendants as part of the
11 following programs: Wells Fargo Jewelry Advantage, Wells Fargo
12 Automotive Advantage, Wells Fargo Health Advantage, Wells Fargo
Home Furnishings, Wells Fargo Home Projects.

13 Excluded from the Class are all employees, including, but not limited
14 to, Judges, clerks and court staff and personnel, of the United States
15 District Court, their spouses, and any minor children living in their
16 households. Also excluded are employees of Wells Fargo, N.A. and
17 Wells Fargo Financial National Bank, their spouses, and any minor
18 children living in their households. Also excluded are Class counsel
and their employees, their spouses, and any minor children living in
their households

19 The unlawful actions of Defendants entitle Named Plaintiffs and Class
20 members to restitution, actual damages and injunctive relief.
21

22 The members of the Class for whose benefit this action is brought are so
23 numerous that joinder of all Class Members is impracticable. The exact number of
24 members of the Class are unknown to Named Plaintiffs. However, members of the
25 Class are reasonably believed to number in excess of 5,000. The identity of
26
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28

1 individuals qualifying for Class Membership is readily ascertainable via inspection
2 of documents maintained by Defendants.

3
4 Named Plaintiffs will fairly and adequately protect the interests of the Class
5 and have retained counsel experienced and capable in class action litigation and in
6 the field of consumer law. Named Plaintiffs understand and appreciate their duties
7 to the Class under FED. R. CIV. P. RULE 23 and are committed to vigorously
8 protecting the rights of absent members of the Class.
9

10 Named Plaintiffs are asserting claims that are typical of the claims of each
11 member of the Class they seek to represent, in that Defendants' actions with respect
12 to the Named Plaintiffs was identical to Defendants' action with respect to the
13 members of the Class that Named Plaintiffs seek to represent. All claims alleged on
14 behalf of the Class flow from this conduct. Moreover, each member of the Class
15 suffered similar harm as a consequence of Defendants' conduct. Finally, there is no
16 conflict between Named Plaintiffs and the members of the Class with respect to this
17 action.
18
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21 There is a well-defined community of interest in the questions of law and fact
22 affecting the parties to be represented. Questions of law and fact arising out of
23 Defendants' conduct are common to all members of the Class, and such common
24 issues of law and fact predominate over any questions affecting only individual
25 members of the Class. Issues of law and fact common to members of the class
26 include, but are not limited to, the following:
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- a. Whether each of the Defendants is a “creditor” as that term is defined by the Truth in Lending Act;
- b. Whether Defendants, by instructing plaintiffs to increase their prices to include Defendants’ charges for financing, creates a hidden finance charge;
- c. Whether Defendants’ collection of sales tax on the finance charge is improper or illegal;
- d. Whether Defendants are liable for restitution and/or damages and the amount of such restitution and/or damages; and
- e. Whether as a result of Defendants’ misconduct, Named Plaintiffs and the Class are entitled to equitable and declaratory relief, and, if so, the nature of that relief.

The relief sought by members of the class is common to the entirety of the class.

Defendants have acted on grounds generally applicable to each member of the Class, thereby making formal declaratory relief or corresponding injunctive relief appropriate with respect to the Class as a whole.

This action is also properly maintained as a class action in that the prosecution of separate actions by individual members of the class would create a risk of adjudication with respect to individual members which would establish incompatible standards of conduct for Defendants.

This action is properly maintained as a class action in that the prosecution of separate actions by individual members of the Class would create a risk of adjudications with respect to individual members which would, as a practical

1 matter, be dispositive of the interests of the other members not parties to the
2 adjudication, or would substantially impair or impede their ability to protect their
3 interests.
4

5 A class action is superior to other available methods for the fair and efficient
6 adjudication of the claims asserted herein given that, among other things:
7

- 8 a. significant economies of time, effort, and expense will inure to the
9 benefit of the Court and the parties in litigating the common issues on
10 a class-wide instead of a repetitive individual basis;
- 11 b. the size of the individual damages claims of most members of the
12 Class is too small to make individual litigation an economically viable
13 alternative, such that few members of any of the Class have any
14 interest in individually controlling the prosecution of a separate action;
- 15 c. without the representation provided by Plaintiff herein, few, if any,
16 members of the Class will receive legal representation or redress for
17 their injuries;
- 18 d. class treatment is required for optimal deterrence;
- 19 e. despite the relatively small size of the claims of many individual
20 members of the Class, their aggregate volume, coupled with the
21 economies of scale inherent in litigating similar claims on a common
22 basis, will enable this case to be litigated as a class action on a cost
23 effective basis, especially when compared with repetitive individual
24 litigation;
- 25 f. no unusual difficulties are likely to be encountered in the management
26 of this class action;
- 27 g. absent a class action, Defendants' illegal conduct will go unremedied
28 and uncorrected; and
- h. absent a class action, the members of the Class will not receive
compensation, and will continue to be subjected to Defendant's illegal
conduct.

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Concentrating this litigation in one forum would aid judicial economy and efficiency, promote parity among the claims of the individual members of each of the Class, and result in judicial consistency.

IX. CAUSES OF ACTION

**FIRST CAUSE OF ACTION
Asserted on Behalf of Named Plaintiffs and the Class
Violations of California’s Unfair Competition Law Cal. Bus. &
Prof. Code §§ 17200, *et seq.***

Named Plaintiffs incorporate by reference each and every prior and subsequent allegation of this Complaint as if fully restated herein.

California’s Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200, *et seq.*, protects both consumers and competitors by promoting fair competition in commercial markets for goods and services. California’s Unfair Competition Law is interpreted broadly and provides a cause of action for any unlawful, unfair, or fraudulent business act or practice. Any unlawful, unfair, or fraudulent business practice that causes injury falls within the ambit of California’s Unfair Competition Law.

Defendants engage in substantial sales and marketing of their financial products and services within the State of California.

Because of Defendants’ unlawful and unfair business practices, Named Plaintiffs and members of the Class were unfairly, and unlawfully misled into promoting Defendants’ illegal financing scheme, and into paying unnecessary sales

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1 taxes. Named Plaintiffs relied, to their detriment, on Defendants' false
2 representations, detailed above, regarding the costs, benefits, and policies governing
3 Defendants' products. The Class was uniformly exposed to Defendants' unlawful
4 and unfair business practices.

5
6 Additionally, as detailed above, Defendants also engaged in unfair, unlawful
7 and/or fraudulent acts or practices by promoting its financing schemes.

8
9 Pursuant to the California Supreme Court's decision in *McGill v. Citibank,*
10 *N.A.*, 2 Cal. 5th 945, 216 Cal.Rptr.3d 627, 393 P.3d 85 (2017), Plaintiffs
11 specifically request as a remedy under the UCL that this Court issue a public
12 injunction requiring Defendant to immediately cease operation of its current
13 financing programs.

14
15
16 **SECOND CAUSE OF ACTION**
17 **Asserted on Behalf of Named Plaintiffs and the Class**
18 **Violations of the Truth in Lending Act**

19 Named Plaintiffs incorporate by reference each and every prior and
20 subsequent allegation of this Complaint as if fully restated herein.

21 As detailed, *supra* in Section IV, the Truth in Lending Act prohibits the
22 imposition of hidden finance charges. The disclosure statement issued in
23 conjunction with this consumer credit transactions violated the requirements of
24 Truth in Lending and Regulation Z in the following and other respects:

- 25
26 (a) By failing to include in the finance charge certain charges imposed by
27 Defendants payable by consumers incident to the extension of credit as
28

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required by 15 U.S.C. § 1605 and Regulation Z § 226.4, thus improperly disclosing the finance charge in violation of 15 U.S.C. § 1638(a)(3) and Regulation Z § 226.18(d).

(b) By improperly including certain charges in the amount financed which are finance charges, Defendants improperly disclosed the amount financed by consumers in violation of 15 U.S.C. § 1638(a)(2) and Regulation Z § 226.18(b).

(c) By calculating the annual percentage rate (APR) based upon improperly calculated and disclosed finance charges and amount financed, 15 U.S.C. § 1606, Regulation Z § 226.22, Defendants understated the disclosed annual percentage rate in violation of 15 U.S.C. § 1638(a)(4) and Regulation Z § 226.18(c).

By reason of the aforesaid violations of the Act and Regulation Z, Defendants are liable to Named Plaintiffs and Class Members in the amount of actual damages to be established at trial, and attorneys fees and costs in accordance with 15 U.S.C. § 1640.

THIRD CAUSE OF ACTION
Asserted on Behalf of Named Plaintiffs and the Class
Unjust Enrichment

Named Plaintiffs incorporate by reference each and every prior and subsequent allegation of this Complaint as if fully restated here.

1 As a result of Defendants' unlawful and deceptive actions described above,
2 Defendants were enriched at the expense of Named Plaintiffs and the Class through
3 collection and retention of improper sales tax on items sold through the Class
4 Members, which Defendants unlawfully and/or deceptively reaped from customers.
5

6 Under the circumstances, it would be against equity and good conscience to
7 permit Defendants to retain the ill-gotten benefits that they received from Named
8 Plaintiffs and the Class, in light of the fact that Wells Fargo used illegal, deceptive,
9 and/or unfair practices to induce Class Members to enter into the Dealer
10 Agreements. Thus, it would be unjust and inequitable for Defendants to retain the
11 benefit without restitution to the Plaintiffs and the Class for the monies retained by
12 Defendants as a result of the unfair, deceptive, and/or illegal practices.
13

14 **X. REQUEST FOR RELIEF**

15
16
17 Named Plaintiffs, individually and on behalf of all others similarly situated,
18 request judgment against Defendants as follows:
19

20 A. For an order certifying the Class and, under Federal Rules of Civil
21 Procedure 23(b)(2) and 23(b)(3), appointing Named Plaintiffs as representative of
22 the Class and appointing the lawyers and law firms representing Named Plaintiffs
23 as counsel for the Class;
24

25 B. Declaring Defendants' actions to be false, misleading, and/or
26 deceptive;
27
28

1 C. Permanently enjoining Defendants from performing further unfair and
2 unlawful acts as alleged herein;

3
4 D. For all recoverable compensatory, statutory, and other damages
5 sustained by Named Plaintiffs and the Class, including disgorgement, unjust
6 enrichment, and all other relief allowed under applicable law;

7
8 E. Granting Named Plaintiffs and the Class awards of restitution and/or
9 disgorgement of Wells Fargo's profits from its unfair and unlawful practices
10 described above;

11
12 F. For costs;

13 G. For both pre-judgment and post-judgment interest on any amounts
14 awarded;

15
16 H. For appropriate injunctive relief, including a public injunction as
17 articulated by the California Supreme Court in *McGill v. Citibank, N.A.*, 2 Cal. 5th
18 945, 216 Cal.Rptr.3d 627, 393 P.3d 85 (2017).

19
20 I. For treble damages insofar as they are allowed by applicable laws;

21 J. For appropriate individual relief as request above;

22
23 K. For payment of attorneys' fees and expert fees as may be allowable
24 under applicable law; and

25 L. For such other and further relief, including declaratory relief, as the
26 Court may deem proper.

27
28 ///

1 **XI. DEMAND FOR JURY TRIAL**

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

3
4 Respectfully submitted,

5
6 /s/ Matthew A. Berliner

7 Matthew A. Berliner
California State Bar No. 224384

8 **FORTIS LLP**

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10 Costa Mesa, CA 92626

11 714.418.5840 office

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14 Scot Wilson

California State Bar No. 223367

15 **ROBINSON CALGANIE, INC.**

16 19 Corporate Plaza Drive

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17 949.720.1288

18 949.720.1292 – Facsimile

swilson@robinsonfirm.com

19 Walt D. Roper

20 Texas State Bar No. 00786208

21 **THE ROPER FIRM, P.C.**

22 3131 McKinney Avenue

Suite 600

23 Dallas, TX 75204

24 214.420.4520

1+214.856.8480 – Facsimile

walt@roperfirm.com

25
26 *(application of pro hac vice admission will*
27 *be filed within ten days)*

28
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Robert A. Skipworth
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*(application of pro hac vice admission will
be filed within ten days)*

ATTORNEYS FOR PLAINTIFFS

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Exhibit 1

Wells Fargo Retail Services

Wells Fargo Jewelry Advantage[®] Credit Card Program

Enrollment Package

I'm happy to introduce you to the *Wells Fargo Jewelry Advantage* Credit Card Program. Wells Fargo Retail Services has designed this program to generate sales and enhance the loyalty of your customers. We're committed to help you successfully grow your business.

Besides unmatched support and personal service our dedicated team provides, participants benefit from:

- Easy program enrollment and smooth onboarding
- Individually guided training and relationship support
- Fully integrated marketing programs and tools
- Simple online tools to use and manage the program
- Immediate purchasing power for approved customers and a revolving line of credit for future purchases

For over 50 years, we've helped thousands of companies across multiple industries grow, and we look forward to the opportunity of working with yours.

Enroll today. The next step is yours. Use the Enrollment Checklist to guide you through completing, signing, and returning the documents necessary to sign you up. As a participating business, you'll receive a welcome kit, comprehensive training, and much more to help drive your sales.

Thank you for your business.

Sincerely,



Dan Abbott
Executive Vice President
Wells Fargo Bank, N.A.

Contact us

If you have any questions regarding these enrollment materials, please contact our team at Wells Fargo Retail Services.

1-800-577-5191

Monday – Friday
8:00 a.m. to 5:00 p.m. Central Time

Enrollment Steps

STEP 1

Review the enclosed Enrollment Package, Dealer Agreement, and complete all of the required documents on the checklist.

STEP 2

Complete Enrollment Package, sign and date the completed Dealer Application.

NOTE: Each Principal, Partner, or Owner listed in Section 3 of the Dealer Application is required to sign.

STEP 3

To ensure faster service, please fax or email in all required documents that have a check box in the Enrollment Checklist to:

1-877-279-4548

or

RSFDealerEnrollment@wellsfargo.com

Enrollment Checklist:

The boxes indicate documentation that must be completed, signed, and returned.

- Wells Fargo Retail Services General Dealer Agreement Application
- W9 — Request for Taxpayer Identification Number and Certification
- Bank Information
- Additional Locations
- Extended Product Warranty and Service Agreement
- Training Information
- Information Security
- Wells Fargo Credit Connect (Paperless) Request

Retain the documents below for your records along with a copy of any amendments, addendums, or exhibits to the Agreement.

Table of Contents for the Instructions & Procedures

Wells Fargo Retail Services General Dealer Agreement



- We encourage you to complete the Enrollment Package electronically. Be sure to print and sign the Dealer Application.
- Wells Fargo recommends the use of secure email when emailing confidential information to us.

Wells Fargo Retail Services General Dealer Agreement Application Wells Fargo Jewelry Advantage[®] Credit Card Program

All fields must be completed. If a specific field does not apply, mark the field as "N/A."

DK 0318 WF Jewelry Advantage

Section 1			
Business Legal Name ("Dealer") — as reported to the IRS		Phone Number (no toll-free numbers)	
Primary Dealer DBA ("Doing Business As") — as it should appear for customers, 25 character limit		Office Fax Number	
Business Website/ URL		Fax Number for Credit Decisions	
Physical Address (no P.O. Boxes)	City	State	ZIP Code
Mailing Address <input type="checkbox"/> Same as above	City	State	ZIP Code
Shipping Address (no P.O. Boxes, for Supplies) <input type="checkbox"/> Same as above	City	State	ZIP Code
Contact Name	Position	Email Address	

Section 2			
Description of all Products/services		States you conduct business in	Federal tax ID
		Does your business engage in Internet gambling or wagering? <input type="checkbox"/> Yes <input type="checkbox"/> No	
		Do you provide goods or services outside of your permanent place of business? <input type="checkbox"/> Yes <input type="checkbox"/> No If yes, are those exclusively at fairs, trade shows, or other expos? <input type="checkbox"/> Yes <input type="checkbox"/> No	
In Business since (mm/yy)	Annual Sales (Production) Revenue	Annual Sales Finance Volume	Average Ticket
Business Structure: <input type="checkbox"/> Sole Proprietorship <input type="checkbox"/> Partnership <input type="checkbox"/> Limited Liability Company <input type="checkbox"/> Privately Held Corporation <input type="checkbox"/> Publicly Traded Corporation <input type="checkbox"/> Other _____			

Section 3			
Principal's, Partner's, or Owner's Information - Please list the owners with the largest share of ownership. The combined ownership must be 50% or more. Attach an additional page with ownership information if necessary.			
Name 1	% Owner %	Social Security Number	Owner since (mm/yy)
Home Address	City	State	ZIP Code
Name 2	% Owner %	Social Security Number	Owner since (mm/yy)
Home Address	City	State	ZIP Code
Name 3	% Owner %	Social Security Number	Owner since (mm/yy)
Home Address	City	State	ZIP Code
Name 4	% Owner %	Social Security Number	Owner since (mm/yy)
Home Address	City	State	ZIP Code

[SIGNATURES ON NEXT PAGE]

Wells Fargo Retail Services General Dealer Agreement Application Wells Fargo Jewelry Advantage[®] Credit Card Program

DK 0318 WF Jewelry Advantage

Section 4

PLEASE NOTE: IT IS IMPORTANT TO PROVIDE A VOIDED CHECK, WHICH DISPLAYS THE DEALER'S CHECKING AND BANK ROUTING NUMBERS. PURSUANT TO THE AGREEMENT WITH WELLS FARGO BANK, N.A. ("WELLS FARGO"), WELLS FARGO MAY CREDIT OR DEBIT YOUR BUSINESS CHECKING ACCOUNT.

I/We certify the information provided in connection with this Wells Fargo Retail Services Enrollment Package is true, to the best of my/our knowledge and understand this information may be used for the purpose of qualifying my/our business for participation in Wells Fargo's revolving credit card program and for retaining my/our business in such program. I/We authorize Wells Fargo to obtain credit reports on my/our business above and upon the principals, partners, and/or owners who have signed below for the purpose of qualifying my/our business for participation in Wells Fargo's revolving credit card program. I/We understand that I/we are also authorizing Wells Fargo to obtain credit reports now and in the future for the purposes of evaluating my/our business for future retention. I/We also understand that I/we may be required at any time to provide a copy of my/our businesses' most recent financial statements as of the end of the most recent fiscal year including a balance sheet and a statement of income in reasonable detail and prepared in accordance with generally accepted accounting principles.

This Wells Fargo Retail Services General Dealer Agreement Application ("Application") is submitted to obtain approval to participate in the Wells Fargo Jewelry Advantage Credit Card Program on behalf of the above-mentioned Dealer ("Dealer"). The undersigned ("I," "me," or "my") certify that I have read the above provisions and all information provided herein is true and complete. I have the power and authority to execute and deliver this Application and to enter into and consummate the Wells Fargo Retail Services General Dealer Agreement (GDA-Gen18) ("Agreement") on behalf of the Dealer, by my signature below, to all terms and conditions of the Agreement. I hereby certify, represent and warrant that the Dealer has agreed to abide by all terms and conditions of the Agreement, and that if and when Wells Fargo approves this Application, the Dealer will, without further action, be bound by the Agreement and any Instructions and Procedures (as defined in the Agreement) as Wells Fargo may communicate from time to time. I acknowledge that this Application is subject to approval by Wells Fargo.

PLEASE READ THE WELLS FARGO RETAIL SERVICES GENERAL DEALER AGREEMENT (GDA-GEN18) CAREFULLY PRIOR TO SIGNING THIS APPLICATION BECAUSE SIGNING BELOW BINDS THE DEALER TO SUCH AGREEMENT. THE AGREEMENT MAY NOT BE ALTERED OR CHANGED. ANY ALTERATIONS OR CHANGES TO THE AGREEMENT ARE VOID AND UNENFORCEABLE.

ALL INDIVIDUALS LISTED IN SECTION 3 MUST SIGN BELOW.

Authorized Signature 1	Printed Name
Title	Date
Authorized Signature 2	Printed Name
Title	Date
Authorized Signature 3	Printed Name
Title	Date
Authorized Signature 4	Printed Name
Title	Date

By signing the filled-out form, you:

1. Certify that the TIN you are giving is correct (or you are waiting for a number to be issued),
2. Certify that you are not subject to backup withholding, or
3. Claim exemption from backup withholding if you are a U.S. exempt payee. If applicable, you are also certifying that as a U.S. person, your allocable share of any partnership income from a U.S. trade or business is not subject to the withholding tax on foreign partners' share of effectively connected income, and
4. Certify that FATCA code(s) entered on this form (if any) indicating that you are exempt from the FATCA reporting, is correct. See *What is FATCA reporting*, later, for further information.

Note: If you are a U.S. person and a requester gives you a form other than Form W-9 to request your TIN, you must use the requester's form if it is substantially similar to this Form W-9.

Definition of a U.S. person. For federal tax purposes, you are considered a U.S. person if you are:

- An individual who is a U.S. citizen or U.S. resident alien;
- A partnership, corporation, company, or association created or organized in the United States or under the laws of the United States;
- An estate (other than a foreign estate); or
- A domestic trust (as defined in Regulations section 301.7701-7).

Special rules for partnerships. Partnerships that conduct a trade or business in the United States are generally required to pay a withholding tax under section 1446 on any foreign partners' share of effectively connected taxable income from such business. Further, in certain cases where a Form W-9 has not been received, the rules under section 1446 require a partnership to presume that a partner is a foreign person, and pay the section 1446 withholding tax. Therefore, if you are a U.S. person that is a partner in a partnership conducting a trade or business in the United States, provide Form W-9 to the partnership to establish your U.S. status and avoid section 1446 withholding on your share of partnership income.

In the cases below, the following person must give Form W-9 to the partnership for purposes of establishing its U.S. status and avoiding withholding on its allocable share of net income from the partnership conducting a trade or business in the United States.

- In the case of a disregarded entity with a U.S. owner, the U.S. owner of the disregarded entity and not the entity;
- In the case of a grantor trust with a U.S. grantor or other U.S. owner, generally, the U.S. grantor or other U.S. owner of the grantor trust and not the trust; and
- In the case of a U.S. trust (other than a grantor trust), the U.S. trust (other than a grantor trust) and not the beneficiaries of the trust.

Foreign person. If you are a foreign person or the U.S. branch of a foreign bank that has elected to be treated as a U.S. person, do not use Form W-9. Instead, use the appropriate Form W-8 or Form 8233 (see Pub. 515, *Withholding of Tax on Nonresident Aliens and Foreign Entities*).

Nonresident alien who becomes a resident alien. Generally, only a nonresident alien individual may use the terms of a tax treaty to reduce or eliminate U.S. tax on certain types of income. However, most tax treaties contain a provision known as a "saving clause." Exceptions specified in the saving clause may permit an exemption from tax to continue for certain types of income even after the payee has otherwise become a U.S. resident alien for tax purposes.

If you are a U.S. resident alien who is relying on an exception contained in the saving clause of a tax treaty to claim an exemption from U.S. tax on certain types of income, you must attach a statement to Form W-9 that specifies the following five items.

1. The treaty country. Generally, this must be the same treaty under which you claimed exemption from tax as a nonresident alien.
2. The treaty article addressing the income.
3. The article number (or location) in the tax treaty that contains the saving clause and its exceptions.
4. The type and amount of income that qualifies for the exemption from tax.
5. Sufficient facts to justify the exemption from tax under the terms of the treaty article.

Example. Article 20 of the U.S.-China income tax treaty allows an exemption from tax for scholarship income received by a Chinese student temporarily present in the United States. Under U.S. law, this student will become a resident alien for tax purposes if his or her stay in the United States exceeds 5 calendar years. However, paragraph 2 of the first Protocol to the U.S.-China treaty (dated April 30, 1984) allows the provisions of Article 20 to continue to apply even after the Chinese student becomes a resident alien of the United States. A Chinese student who qualifies for this exception (under paragraph 2 of the first protocol) and is relying on this exception to claim an exemption from tax on his or her scholarship or fellowship income would attach to Form W-9 a statement that includes the information described above to support that exemption.

If you are a nonresident alien or a foreign entity, give the requester the appropriate completed Form W-8 or Form 8233.

Backup Withholding

What is backup withholding? Persons making certain payments to you must under certain conditions withhold and pay to the IRS 28% of such payments. This is called "backup withholding." Payments that may be subject to backup withholding include interest, tax-exempt interest, dividends, broker and barter exchange transactions, rents, royalties, nonemployee pay, payments made in settlement of payment card and third party network transactions, and certain payments from fishing boat operators. Real estate transactions are not subject to backup withholding.

You will not be subject to backup withholding on payments you receive if you give the requester your correct TIN, make the proper certifications, and report all your taxable interest and dividends on your tax return.

Payments you receive will be subject to backup withholding if:

1. You do not furnish your TIN to the requester,
2. You do not certify your TIN when required (see the instructions for Part II for details),
3. The IRS tells the requester that you furnished an incorrect TIN,
4. The IRS tells you that you are subject to backup withholding because you did not report all your interest and dividends on your tax return (for reportable interest and dividends only), or
5. You do not certify to the requester that you are not subject to backup withholding under 4 above (for reportable interest and dividend accounts opened after 1983 only).

Certain payees and payments are exempt from backup withholding. See *Exempt payee code*, later, and the separate Instructions for the Requester of Form W-9 for more information.

Also see *Special rules for partnerships*, earlier.

What is FATCA Reporting?

The Foreign Account Tax Compliance Act (FATCA) requires a participating foreign financial institution to report all United States account holders that are specified United States persons. Certain payees are exempt from FATCA reporting. See *Exemption from FATCA reporting code*, later, and the Instructions for the Requester of Form W-9 for more information.

Updating Your Information

You must provide updated information to any person to whom you claimed to be an exempt payee if you are no longer an exempt payee and anticipate receiving reportable payments in the future from this person. For example, you may need to provide updated information if you are a C corporation that elects to be an S corporation, or if you no longer are tax exempt. In addition, you must furnish a new Form W-9 if the name or TIN changes for the account; for example, if the grantor of a grantor trust dies.

Penalties

Failure to furnish TIN. If you fail to furnish your correct TIN to a requester, you are subject to a penalty of \$50 for each such failure unless your failure is due to reasonable cause and not to willful neglect.

Civil penalty for false information with respect to withholding. If you make a false statement with no reasonable basis that results in no backup withholding, you are subject to a \$500 penalty.

Criminal penalty for falsifying information. Willfully falsifying certifications or affirmations may subject you to criminal penalties including fines and/or imprisonment.

Misuse of TINs. If the requester discloses or uses TINs in violation of federal law, the requester may be subject to civil and criminal penalties.

Specific Instructions

Line 1

You must enter one of the following on this line; **do not** leave this line blank. The name should match the name on your tax return.

If this Form W-9 is for a joint account (other than an account maintained by a foreign financial institution (FFI)), list first, and then circle, the name of the person or entity whose number you entered in Part I of Form W-9. If you are providing Form W-9 to an FFI to document a joint account, each holder of the account that is a U.S. person must provide a Form W-9.

a. **Individual.** Generally, enter the name shown on your tax return. If you have changed your last name without informing the Social Security Administration (SSA) of the name change, enter your first name, the last name as shown on your social security card, and your new last name.

Note: ITIN applicant: Enter your individual name as it was entered on your Form W-7 application, line 1a. This should also be the same as the name you entered on the Form 1040/1040A/1040EZ you filed with your application.

b. **Sole proprietor or single-member LLC.** Enter your individual name as shown on your 1040/1040A/1040EZ on line 1. You may enter your business, trade, or "doing business as" (DBA) name on line 2.

c. **Partnership, LLC that is not a single-member LLC, C corporation, or S corporation.** Enter the entity's name as shown on the entity's tax return on line 1 and any business, trade, or DBA name on line 2.

d. **Other entities.** Enter your name as shown on required U.S. federal tax documents on line 1. This name should match the name shown on the charter or other legal document creating the entity. You may enter any business, trade, or DBA name on line 2.

e. **Disregarded entity.** For U.S. federal tax purposes, an entity that is disregarded as an entity separate from its owner is treated as a "disregarded entity." See Regulations section 301.7701-2(c)(2)(iii). Enter the owner's name on line 1. The name of the entity entered on line 1 should never be a disregarded entity. The name on line 1 should be the name shown on the income tax return on which the income should be reported. For example, if a foreign LLC that is treated as a disregarded entity for U.S. federal tax purposes has a single owner that is a U.S. person, the U.S. owner's name is required to be provided on line 1. If the direct owner of the entity is also a disregarded entity, enter the first owner that is not disregarded for federal tax purposes. Enter the disregarded entity's name on line 2, "Business name/disregarded entity name." If the owner of the disregarded entity is a foreign person, the owner must complete an appropriate Form W-8 instead of a Form W-9. This is the case even if the foreign person has a U.S. TIN.

Line 2

If you have a business name, trade name, DBA name, or disregarded entity name, you may enter it on line 2.

Line 3

Check the appropriate box on line 3 for the U.S. federal tax classification of the person whose name is entered on line 1. Check only one box on line 3.

IF the entity/person on line 1 is a(n) . . .	THEN check the box for . . .
• Corporation	Corporation
• Individual • Sole proprietorship, or • Single-member limited liability company (LLC) owned by an individual and disregarded for U.S. federal tax purposes.	Individual/sole proprietor or single-member LLC
• LLC treated as a partnership for U.S. federal tax purposes, • LLC that has filed Form 8832 or 2553 to be taxed as a corporation, or • LLC that is disregarded as an entity separate from its owner but the owner is another LLC that is not disregarded for U.S. federal tax purposes.	Limited liability company and enter the appropriate tax classification. (P= Partnership; C= C corporation; or S= S corporation)
• Partnership	Partnership
• Trust/estate	Trust/estate

Line 4, Exemptions

If you are exempt from backup withholding and/or FATCA reporting, enter in the appropriate space on line 4 any code(s) that may apply to you.

Exempt payee code.

- Generally, individuals (including sole proprietors) are not exempt from backup withholding.
- Except as provided below, corporations are exempt from backup withholding for certain payments, including interest and dividends.
- Corporations are not exempt from backup withholding for payments made in settlement of payment card or third party network transactions.
- Corporations are not exempt from backup withholding with respect to attorneys' fees or gross proceeds paid to attorneys, and corporations that provide medical or health care services are not exempt with respect to payments reportable on Form 1099-MISC.

The following codes identify payees that are exempt from backup withholding. Enter the appropriate code in the space in line 4.

- 1—An organization exempt from tax under section 501(a), any IRA, or a custodial account under section 403(b)(7) if the account satisfies the requirements of section 401(f)(2)
- 2—The United States or any of its agencies or instrumentalities
- 3—A state, the District of Columbia, a U.S. commonwealth or possession, or any of their political subdivisions or instrumentalities
- 4—A foreign government or any of its political subdivisions, agencies, or instrumentalities
- 5—A corporation
- 6—A dealer in securities or commodities required to register in the United States, the District of Columbia, or a U.S. commonwealth or possession
- 7—A futures commission merchant registered with the Commodity Futures Trading Commission
- 8—A real estate investment trust
- 9—An entity registered at all times during the tax year under the Investment Company Act of 1940
- 10—A common trust fund operated by a bank under section 584(a)
- 11—A financial institution
- 12—A middleman known in the investment community as a nominee or custodian
- 13—A trust exempt from tax under section 664 or described in section 4947

The following chart shows types of payments that may be exempt from backup withholding. The chart applies to the exempt payees listed above, 1 through 13.

IF the payment is for . . .	THEN the payment is exempt for . . .
Interest and dividend payments	All exempt payees except for 7
Broker transactions	Exempt payees 1 through 4 and 6 through 11 and all C corporations. S corporations must not enter an exempt payee code because they are exempt only for sales of noncovered securities acquired prior to 2012.
Barter exchange transactions and patronage dividends	Exempt payees 1 through 4
Payments over \$600 required to be reported and direct sales over \$5,000 ¹	Generally, exempt payees 1 through 5 ²
Payments made in settlement of payment card or third party network transactions	Exempt payees 1 through 4

¹ See Form 1099-MISC, Miscellaneous Income, and its instructions.

² However, the following payments made to a corporation and reportable on Form 1099-MISC are not exempt from backup withholding: medical and health care payments, attorneys' fees, gross proceeds paid to an attorney reportable under section 6045(f), and payments for services paid by a federal executive agency.

Exemption from FATCA reporting code. The following codes identify payees that are exempt from reporting under FATCA. These codes apply to persons submitting this form for accounts maintained outside of the United States by certain foreign financial institutions. Therefore, if you are only submitting this form for an account you hold in the United States, you may leave this field blank. Consult with the person requesting this form if you are uncertain if the financial institution is subject to these requirements. A requester may indicate that a code is not required by providing you with a Form W-9 with "Not Applicable" (or any similar indication) written or printed on the line for a FATCA exemption code.

A—An organization exempt from tax under section 501(a) or any individual retirement plan as defined in section 7701(a)(37)

B—The United States or any of its agencies or instrumentalities

C—A state, the District of Columbia, a U.S. commonwealth or possession, or any of their political subdivisions or instrumentalities

D—A corporation the stock of which is regularly traded on one or more established securities markets, as described in Regulations section 1.1472-1(c)(1)(i)

E—A corporation that is a member of the same expanded affiliated group as a corporation described in Regulations section 1.1472-1(c)(1)(i)

F—A dealer in securities, commodities, or derivative financial instruments (including notional principal contracts, futures, forwards, and options) that is registered as such under the laws of the United States or any state

G—A real estate investment trust

H—A regulated investment company as defined in section 851 or an entity registered at all times during the tax year under the Investment Company Act of 1940

I—A common trust fund as defined in section 584(a)

J—A bank as defined in section 581

K—A broker

L—A trust exempt from tax under section 664 or described in section 4947(a)(1)

M—A tax exempt trust under a section 403(b) plan or section 457(g) plan

Note: You may wish to consult with the financial institution requesting this form to determine whether the FATCA code and/or exempt payee code should be completed.

Line 5

Enter your address (number, street, and apartment or suite number). This is where the requester of this Form W-9 will mail your information returns. If this address differs from the one the requester already has on file, write NEW at the top. If a new address is provided, there is still a chance the old address will be used until the payor changes your address in their records.

Line 6

Enter your city, state, and ZIP code.

Part I. Taxpayer Identification Number (TIN)

Enter your TIN in the appropriate box. If you are a resident alien and you do not have and are not eligible to get an SSN, your TIN is your IRS individual taxpayer identification number (ITIN). Enter it in the social security number box. If you do not have an ITIN, see *How to get a TIN* below.

If you are a sole proprietor and you have an EIN, you may enter either your SSN or EIN.

If you are a single-member LLC that is disregarded as an entity separate from its owner, enter the owner's SSN (or EIN, if the owner has one). Do not enter the disregarded entity's EIN. If the LLC is classified as a corporation or partnership, enter the entity's EIN.

Note: See *What Name and Number To Give the Requester*, later, for further clarification of name and TIN combinations.

How to get a TIN. If you do not have a TIN, apply for one immediately. To apply for an SSN, get Form SS-5, Application for a Social Security Card, from your local SSA office or get this form online at www.SSA.gov. You may also get this form by calling 1-800-772-1213. Use Form W-7, Application for IRS Individual Taxpayer Identification Number, to apply for an ITIN, or Form SS-4, Application for Employer Identification Number, to apply for an EIN. You can apply for an EIN online by accessing the IRS website at www.irs.gov/Businesses and clicking on Employer Identification Number (EIN) under Starting a Business. Go to www.irs.gov/Forms to view, download, or print Form W-7 and/or Form SS-4. Or, you can go to www.irs.gov/OrderForms to place an order and have Form W-7 and/or SS-4 mailed to you within 10 business days.

If you are asked to complete Form W-9 but do not have a TIN, apply for a TIN and write "Applied For" in the space for the TIN, sign and date the form, and give it to the requester. For interest and dividend payments, and certain payments made with respect to readily tradable instruments, generally you will have 60 days to get a TIN and give it to the requester before you are subject to backup withholding on payments. The 60-day rule does not apply to other types of payments. You will be subject to backup withholding on all such payments until you provide your TIN to the requester.

Note: Entering "Applied For" means that you have already applied for a TIN or that you intend to apply for one soon.

Caution: A disregarded U.S. entity that has a foreign owner must use the appropriate Form W-8.

Part II. Certification

To establish to the withholding agent that you are a U.S. person, or resident alien, sign Form W-9. You may be requested to sign by the withholding agent even if item 1, 4, or 5 below indicates otherwise.

For a joint account, only the person whose TIN is shown in Part I should sign (when required). In the case of a disregarded entity, the person identified on line 1 must sign. Exempt payees, see *Exempt payee code*, earlier.

Signature requirements. Complete the certification as indicated in items 1 through 5 below.

1. Interest, dividend, and barter exchange accounts opened before 1984 and broker accounts considered active during 1983. You must give your correct TIN, but you do not have to sign the certification.

2. Interest, dividend, broker, and barter exchange accounts opened after 1983 and broker accounts considered inactive during 1983. You must sign the certification or backup withholding will apply. If you are subject to backup withholding and you are merely providing your correct TIN to the requester, you must cross out item 2 in the certification before signing the form.

3. Real estate transactions. You must sign the certification. You may cross out item 2 of the certification.

4. Other payments. You must give your correct TIN, but you do not have to sign the certification unless you have been notified that you have previously given an incorrect TIN. "Other payments" include payments made in the course of the requester's trade or business for rents, royalties, goods (other than bills for merchandise), medical and health care services (including payments to corporations), payments to a nonemployee for services, payments made in settlement of payment card and third party network transactions, payments to certain fishing boat crew members and fishermen, and gross proceeds paid to attorneys (including payments to corporations).

5. Mortgage interest paid by you, acquisition or abandonment of secured property, cancellation of debt, qualified tuition program payments (under section 529), ABLE accounts (under section 529A), IRA, Coverdell ESA, Archer MSA or HSA contributions or distributions, and pension distributions. You must give your correct TIN, but you do not have to sign the certification.

What Name and Number To Give the Requester

For this type of account:	Give name and SSN of:
1. Individual	The individual
2. Two or more individuals (joint account) other than an account maintained by an FFI	The actual owner of the account or, if combined funds, the first individual on the account ¹
3. Two or more U.S. persons (joint account maintained by an FFI)	Each holder of the account
4. Custodial account of a minor (Uniform Gift to Minors Act)	The minor ²
5. a. The usual revocable savings trust (grantor is also trustee) b. So-called trust account that is not a legal or valid trust under state law	The grantor-trustee ¹ The actual owner ¹
6. Sole proprietorship or disregarded entity owned by an individual	The owner ³
7. Grantor trust filing under Optional Form 1099 Filing Method 1 (see Regulations section 1.671-4(b)(2)(i)(A))	The grantor*
For this type of account:	Give name and EIN of:
8. Disregarded entity not owned by an individual	The owner
9. A valid trust, estate, or pension trust	Legal entity ⁴
10. Corporation or LLC electing corporate status on Form 8832 or Form 2553	The corporation
11. Association, club, religious, charitable, educational, or other tax-exempt organization	The organization
12. Partnership or multi-member LLC	The partnership
13. A broker or registered nominee	The broker or nominee

For this type of account:	Give name and EIN of:
14. Account with the Department of Agriculture in the name of a public entity (such as a state or local government, school district, or prison) that receives agricultural program payments	The public entity
15. Grantor trust filing under the Form 1041 Filing Method or the Optional Form 1099 Filing Method 2 (see Regulations section 1.671-4(b)(2)(i)(B))	The trust

¹ List first and circle the name of the person whose number you furnish. If only one person on a joint account has an SSN, that person's number must be furnished.

² Circle the minor's name and furnish the minor's SSN.

³ You must show your individual name and you may also enter your business or DBA name on the "Business name/disregarded entity" name line. You may use either your SSN or EIN (if you have one), but the IRS encourages you to use your SSN.

⁴ List first and circle the name of the trust, estate, or pension trust. (Do not furnish the TIN of the personal representative or trustee unless the legal entity itself is not designated in the account title.) Also see *Special rules for partnerships*, earlier.

*Note: The grantor also must provide a Form W-9 to trustee of trust.

Note: If no name is circled when more than one name is listed, the number will be considered to be that of the first name listed.

Secure Your Tax Records From Identity Theft

Identity theft occurs when someone uses your personal information such as your name, SSN, or other identifying information, without your permission, to commit fraud or other crimes. An identity thief may use your SSN to get a job or may file a tax return using your SSN to receive a refund.

To reduce your risk:

- Protect your SSN,
- Ensure your employer is protecting your SSN, and
- Be careful when choosing a tax preparer.

If your tax records are affected by identity theft and you receive a notice from the IRS, respond right away to the name and phone number printed on the IRS notice or letter.

If your tax records are not currently affected by identity theft but you think you are at risk due to a lost or stolen purse or wallet, questionable credit card activity or credit report, contact the IRS Identity Theft Hotline at 1-800-908-4490 or submit Form 14039.

For more information, see Pub. 5027, Identity Theft Information for Taxpayers.

Victims of identity theft who are experiencing economic harm or a systemic problem, or are seeking help in resolving tax problems that have not been resolved through normal channels, may be eligible for Taxpayer Advocate Service (TAS) assistance. You can reach TAS by calling the TAS toll-free case intake line at 1-877-777-4778 or TTY/TDD 1-800-829-4059.

Protect yourself from suspicious emails or phishing schemes. Phishing is the creation and use of email and websites designed to mimic legitimate business emails and websites. The most common act is sending an email to a user falsely claiming to be an established legitimate enterprise in an attempt to scam the user into surrendering private information that will be used for identity theft.

The IRS does not initiate contacts with taxpayers via emails. Also, the IRS does not request personal detailed information through email or ask taxpayers for the PIN numbers, passwords, or similar secret access information for their credit card, bank, or other financial accounts.

If you receive an unsolicited email claiming to be from the IRS, forward this message to phishing@irs.gov. You may also report misuse of the IRS name, logo, or other IRS property to the Treasury Inspector General for Tax Administration (TIGTA) at 1-800-366-4484. You can forward suspicious emails to the Federal Trade Commission at spam@uce.gov or report them at www.ftc.gov/complaint. You can contact the FTC at www.ftc.gov/idtheft or 877-IDTHEFT (877-438-4338). If you have been the victim of identity theft, see www.IdentityTheft.gov and Pub. 5027.

Visit www.irs.gov/IdentityTheft to learn more about identity theft and how to reduce your risk.

Privacy Act Notice

Section 6109 of the Internal Revenue Code requires you to provide your correct TIN to persons (including federal agencies) who are required to file information returns with the IRS to report interest, dividends, or certain other income paid to you; mortgage interest you paid; the acquisition or abandonment of secured property; the cancellation of debt; or contributions you made to an IRA, Archer MSA, or HSA. The person collecting this form uses the information on the form to file information returns with the IRS, reporting the above information. Routine uses of this information include giving it to the Department of Justice for civil and criminal litigation and to cities, states, the District of Columbia, and U.S. commonwealths and possessions for use in administering their laws. The information also may be disclosed to other countries under a treaty, to federal and state agencies to enforce civil and criminal laws, or to federal law enforcement and intelligence agencies to combat terrorism. You must provide your TIN whether or not you are required to file a tax return. Under section 3406, payers must generally withhold a percentage of taxable interest, dividend, and certain other payments to a payee who does not give a TIN to the payer. Certain penalties may also apply for providing false or fraudulent information.

Bank Information

Dealer Name _____

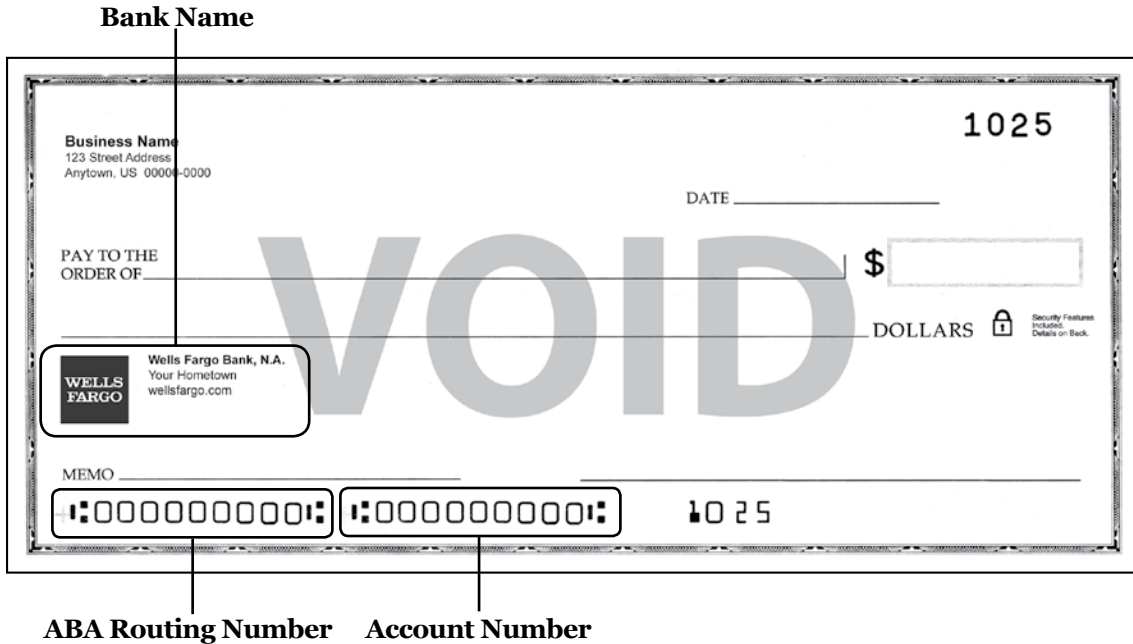
Please note: It is important to provide a voided check, which displays your businesses' checking and bank routing numbers. Pursuant to the Agreement with Wells Fargo Retail Services ("Wells Fargo"), Wells Fargo may credit or debit your businesses' checking account.

Check one:

All funding will be going to one account.

ABA Routing Number	Account Number	Bank Name
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Funding will go to different accounts for each location.
(Please complete the Additional Locations page.)



Important Reminders



- If you have an ACH filter on your account, please inform your bank of the following information to ensure you receive timely deposits. ACH Debit Filters - Wells Fargo WFRETAILo8 & Wells Fargo WFRETAILo9.
- Attach voided check here.
- Your funds will be deposited in this account.
- If you have multiple locations and each location has different account information, complete an Additional Locations page for each location.

Additional Locations

Do these locations operate under the same legal name that is listed on the Dealer Application? Yes No

If no, please fill out a separate Dealer Application and enrollment for each legal entity.

Location 1 Information			
Primary Dealer DBA ("Doing Business As") — as it should appear for customers, 25 character limit			
Physical Address (no P.O. Boxes)		City	State ZIP Code
Mailing Address <input type="checkbox"/> Same as above		City	State ZIP Code
Shipping Address (no P.O. Boxes, for Supplies) <input type="checkbox"/> Same as above		City	State ZIP Code
Contact Name	Position	Email Address	
Phone Number (no toll-free numbers)	Fax Number for Credit Decisions	Office Fax Number	
Is the bank account information the same? <input type="checkbox"/> Yes <input type="checkbox"/> No <i>If No, please attach a voided check and fill out Bank Information below:</i>			
ABA Routing Number	Account Number	Bank Name	

Location 2 Information			
Primary Dealer DBA ("Doing Business As") — as it should appear for customers, 25 character limit			
Physical Address (no P.O. Boxes)		City	State ZIP Code
Mailing Address <input type="checkbox"/> Same as above		City	State ZIP Code
Shipping Address (no P.O. Boxes, for Supplies) <input type="checkbox"/> Same as above		City	State ZIP Code
Contact Name	Position	Email Address	
Phone Number (no toll-free numbers)	Fax Number for Credit Decisions	Office Fax Number	
Is the bank account information the same? <input type="checkbox"/> Yes <input type="checkbox"/> No <i>If No, please attach a voided check and fill out Bank Information below:</i>			
ABA Routing Number	Account Number	Bank Name	

Location 3 Information			
Primary Dealer DBA ("Doing Business As") — as it should appear for customers, 25 character limit			
Physical Address (no P.O. Boxes)		City	State ZIP Code
Mailing Address <input type="checkbox"/> Same as above		City	State ZIP Code
Shipping Address (no P.O. Boxes, for Supplies) <input type="checkbox"/> Same as above		City	State ZIP Code
Contact Name	Position	Email Address	
Phone Number (no toll-free numbers)	Fax Number for Credit Decisions	Office Fax Number	
Is the bank account information the same? <input type="checkbox"/> Yes <input type="checkbox"/> No <i>If No, please attach a voided check and fill out Bank Information below:</i>			
ABA Routing Number	Account Number	Bank Name	

Extended Product Warranty and Service Agreement

Dealer Name _____

Wells Fargo Retail Services must review any non-manufacturer extended product warranties and/or service agreements which may be included in any financed transaction under our Program. **This excludes standard manufacturer warranties associated with the product itself or any in-house warranties offered by your business.**

Refer to the Agreement and Instructions and Procedures for additional information regarding offering extended product warranties and service agreements in connection with our Program.

Does your business offer extended product warranties and/or service agreements, with a separate cost, that you intend to include in any financed transaction under Wells Fargo Retail Services’s Credit Card Program?

Yes No

If yes, please provide the following information regarding every extended product warranty and/or service agreement, with a separate cost, you sell and which may be included in any financed transaction under the Program.

Extended Product Warranty/Service Agreement

Warranty/Agreement Name _____

Description and term(s) of coverage _____

What Product(s) or service(s) are covered _____

Coverage

Provided by _____

Address _____ City _____ State _____ ZIP Code _____

Website/URL _____

Extended Product Warranty/Service Agreement

Warranty/Agreement Name _____

Description and term(s) of coverage _____

What Product(s) or service(s) are covered _____

Coverage

Provided by _____

Address _____ City _____ State _____ ZIP Code _____

Website/URL _____

For additional extended product warranty/service agreements, please provide the above information on an additional page and submit with your Enrollment Package. You ***must*** include your Business Legal Name on each page.

Training Information

Dealer Name _____

As a new Dealer on the Wells Fargo Jewelry Advantage Credit Card Program, it is important that you designate a primary training contact. This individual will be responsible for:

- Attending a live training with a professional training consultant
- Training current and new employees within your business, especially those who will be offering financing
- Completing an annual required training to certify your understanding of the financing program
- Performing ongoing training with your staff in the event of updates or changes to the finance program

Primary Training Contact Details:

Name	Position/Title
Phone Number	Email Address

If this individual changes during your program participation, please contact our team so we can ensure we are sending all future training correspondence to the correct individual.

Information Security

As outlined in the Information Security Section of the Agreement, you will not retain in any format, electronic or otherwise, any Cardholder Account Information beyond what is required under the Agreement for retaining Invoices and Consumer Credit Card Account Applications.

Cardholder Account Information includes the following applicant/co-applicant data elements from the Consumer Credit Card Account Application:

- Social Security Number
- Date of Birth
- Income
- Account Number

By signing the Wells Fargo Retail Services General Dealer Agreement Application, you are acknowledging and agreeing to this requirement.

- Check this box if you have questions regarding this requirement and would like a member of the Wells Fargo Retail Services team to contact you to discuss this further.

Wells Fargo Credit Connect (Paperless) Request

Dealer Name _____

Wells Fargo offers two paper-free processing methods called Wells Fargo Credit Connect. One method is for the Consumer Credit Card Account Application (“Credit Application”) and the second method is for the Credit Application and Invoice submittals. Instructions and Procedures for Wells Fargo Credit Connect will be sent to the email address provided on the Training Information page.

Choose one option below:

- YES – Enroll my business in Wells Fargo Credit Connect for **Credit Application submittals only**
(I understand that the paperless Credit Applications do not replace the Invoice, and that Invoices will be paper-based).
- YES – Enroll my business in Wells Fargo Credit Connect for **Credit Application and Invoice submittals**.
- NO – I do not want to use Wells Fargo Credit Connect.



Paper Credit Applications and Invoices must continue to be available for customers who do not agree to receive their terms and conditions electronically.

Table of Contents for the Instructions and Procedures

The table below provides a description of each section contained within the Instructions and Procedures document which is referenced throughout the Agreement. You may access the full Instructions and Procedures document at the following link: <http://retailservices.wellsfargo.com/instructions.pdf>. This document provides an overview of two specific sections contained in the Instructions and Procedures document.

Section 29 of the Instructions and Procedures document describes our requirements for conducting transactions in languages other than English. It is imperative that consumers receive all material terms and conditions of both our financing Program and of any sales transactions in the same language as is principally used to discuss, present, negotiate, or advertise the material terms of the transaction. At this time, we provide Credit Card Agreements and Privacy Notices in English. However, for Dealers located in California, our Credit Card Agreement also contains Interpreter Disclosures for California consumers who have discussed sales transactions and Card terms and conditions with Dealers in Spanish, Chinese, Korean, Vietnamese, or Tagalog. If a California consumer has a qualified interpreter, these five languages may be used by a Dealer located in California who is transacting with a California consumer in connection with our Program.

Section 33 of the Instructions and Procedures document describes our requirements relative to the Americans with Disabilities Act (ADA). Wells Fargo is committed to ensuring equal access to its Products and services for individuals protected under the ADA. Under the ADA, persons with disabilities are required to be given services and accommodations in the most integrated setting appropriate to their individual needs. Participating Dealers must have the ability to abide by the ADA requirements.

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3.	Training	24.	Audits/Examinations of Book and Records
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5.	Offering Credit	26.	Funding for transactions
6.	New Cardholder Accounts (taking a Consumer Credit Card Account Application)	27.	Wells Fargo's Right to Reject or Revoke Acceptance of an Invoice
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12.	Completing an Invoice	33.	Americans with Disabilities Act — Effective Communication for Individuals with Disabilities
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**WELLS FARGO RETAIL SERVICES
GENERAL DEALER AGREEMENT**

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**WELLS FARGO RETAIL SERVICES
GENERAL DEALER AGREEMENT**

Recitals

- (a) Wells Fargo Bank, N.A. issues consumer credit cards under the Program, and Wells Fargo Retail Services, a division of Wells Fargo Bank, N.A., administers the Program.
- (b) You desire to provide your consumer customers with a convenient financing vehicle to pay for Products and related services via their use of Cards.
- (c) We are in the business of providing Card programs in the United States to finance such Products.
- (d) You desire to enter into this Agreement for the purpose of arranging financing of your consumer customers' purchase of Products.

Agreement

1. **RECITALS.** The Recitals set forth above are true and correct, are incorporated into this Agreement by reference, and constitutes an integral part of the Agreement.
2. **IDENTIFICATION OF PARTIES.** This Wells Fargo Retail Services General Dealer Agreement (the "**Agreement**") is made by and between Wells Fargo Bank, N.A. located at 101 North Phillips Avenue, Sioux Falls, South Dakota, 57104 (referred to as "**we**," "**us**," "**our**," or "**Wells Fargo**") and the Dealer ("**you**," "**your**," or "**Dealer**") which has signed a Wells Fargo Retail Services General Dealer Agreement Application or a Wells Fargo Retail Services General Dealer Agreement Consent Form (each referred to as the "**Application**"). This Agreement is effective upon our final approval of your Application. This Agreement supersedes all prior agreements, representations, promises and statements, written or oral, made in connection with the subject matter of this Agreement, except any certifications, representations or warranties made in the Application, and no prior agreement, representation, promise or statement not written in this Agreement or in the Application will be binding on the parties. You agree to begin utilizing this Program upon receipt of the necessary supplies and Instructions and Procedures, as determined by us in our sole discretion, on how to:
 - (a) process credit applications;
 - (b) obtain credit authorizations on Invoices; and
 - (c) present Invoices to us for payment.
3. **IDENTIFICATION OF CARD.** The name of the Card, which may change upon notice to you, will be the credit card indicated on the Application. The Cards will be credit cards which can be used at participating Retail Locations and at any place where the Cards are accepted. The Cards and their accompanying Credit Card Agreements will be governed by the laws of the State of South Dakota.
4. **DEFINITIONS.**
 - (a) "**Account**" is defined as a Cardholder's credit card account owned by us that the Cardholder can use for purchasing Products from you.
 - (b) "**Account Number**" is defined as a unique identification number assigned by us to an Account issued to a Cardholder.
 - (c) "Administrative Fee" is defined as any fee charged by us for participating in the Program, certain services rendered in connection with the Program that is set forth in writing from time to time, or both.
 - (d) "**Card**" is defined as a card with an Account Number issued to a Cardholder for use in connection with the Program.
 - (e) "**Cardholder**" is defined as a consumer customer(s) that has applied for and has been approved for an Account.
 - (f) "**Cardholder Account Information**" is defined as any personal information about any applicant or co-applicant or any Cardholder received in connection with an Account or potential Account including that information found in, on, or with a Consumer Credit Card Account Application for or through Card use, or is obtained from us, including but not limited to, the applicant and co-applicant's name, address, Social Security number, date of birth, income information, Account Number, Account limits and Account balances and Account activity.
 - (g) "**Credit Card Agreement**" is defined as a written agreement between us and the Cardholder containing terms and conditions that govern the Account. Any changes to the Credit Card Agreement will be solely made by Wells Fargo.
 - (h) "**Consumer Credit Card Account Application**" is defined as an application for an Account for financing under the Program, in either written or electronic format, which may include but not be limited to any documents relating to a Consumer Credit Card Account Application that we may require you to print through the IPS (as defined in subparagraph 7(a)(ii) of this Agreement), that upon completion of and presentation to us represents such consumer customer's desire to open an Account and their consent to undergo financial review. Such Consumer Credit Card Account Application includes all documents containing the terms, conditions, and disclosures governing such applications as provided for by Law, and is owned and governed by us. Any changes to the Consumer Credit Card Account Application will be solely made by Wells Fargo.
 - (i) "**Credit Memo**" is defined as evidence of a credit given for the cancellation or the return of Products, or both, regarding a previously presented Invoice, in paper or electronic form, or any other such adjustment or credit by you to an Account.
 - (j) "**Initial Disclosures**" are defined as a disclosure or set of disclosures that you will provide each Cardholder at the opening of an Account in a manner and method determined by us in accordance with our Instructions and Procedures. Such Initial Disclosures must include, without limitation, the Truth in Lending disclosures and any other disclosures as determined by us in accordance with all applicable Law.
 - (k) "**Instructions and Procedures**" is defined as any instructions or procedures that we communicate to you and update from time to time.
 - (l) "**Invoice**" is defined as evidence of a Card sale in paper or electronic form for Products purchased from you and includes any and all other documents referred to in the Invoice.
 - (m) "**Law**" or "**Laws**" is/are defined as all United States federal, state and local laws, regulations, rules, and ordinances, including but not limited to, the Fair Credit Reporting Act, the Truth in Lending Act, all applicable fair lending laws and

regulations, the Federal Equal Credit Opportunity Act, as amended, and Section 5 of the Federal Trade Commission Act (FTC Act) – Unfair, Deceptive and Abusive Acts and Practices Regulation – and all state law counterparts of such, and all applicable regulations promulgated under these laws.

- (n) **“Products”** are defined as any good, service, or merchandise that you offer, sell, or provide that has not otherwise been prohibited under this Agreement or that requires our prior approval as may be noted hereunder.
- (o) **“Program”** is defined as the Card program that is contemplated by this Agreement for the purpose of arranging financing of your consumer customers’ purchases.
- (p) **“Retail Location”** is defined as a retail store location where consumer customers make purchases from you while physically in the store.
- (q) **“Wells Fargo Confidential Information”** is defined as: (A) Cardholder Account Information governed by subparagraph 5(a); and (B) Wells Fargo’s Confidential Information it provides to you, including without limitation, information about its systems, business practices, and any other information regarding it or its practices as governed by subparagraph 5(b) of this Agreement.

5. INFORMATION SECURITY.

- (a) You agree not to disclose Cardholder Account Information, including any nonpublic personal information as defined in the Gramm-Leach Bliley Act of 1999, title V, and its implementing regulations to:
 - (i) any third party, including, but not limited to, a third-party service provider that you may use to store or backup your business or consumer data/information (e.g. cloud computing services); or
 - (ii) any employee of yours who does not have a business need to know such information. Further, you agree that you will not retain, in any format, electronic or otherwise, any Cardholder Account Information beyond what is required of you under this Agreement for retaining Invoices and Consumer Credit Card Account Applications.
 - (iii) further, for the purposes of clarity, you will not retain in any electronic format, any information gathered in connection with any Consumer Credit Card Account Application, including without limitation: Account Number, Social Security number, date of birth, or income without our prior written consent.
- (b) You agree to treat all other information (whether written or oral) which is furnished (whether before or after the date hereof) by us or our directors, officers, employees, affiliates or representatives to you or your representatives and all analyses, compilations, forecasts, studies or other documents or information prepared by us or on our behalf, in connection with this Agreement including, but not limited to, discount rates and any other pricing information as well as processes and passwords for any Internet sites or other technology, confidentially, and not to disclose any information to any:
 - (i) third party, except as may be provided for in subparagraph 6(i) below; or
 - (ii) employee of yours who does not have a business need to know such information without our prior written consent. You acknowledge that the information described in subparagraph 5(b) constitutes our proprietary information and trade secrets and that monetary damages alone may be insufficient to protect and compensate us for wrongful disclosure of such information.
- (c) You agree that you will not use or disclose the information described in subparagraphs 5(a) and 5(b) other than to carry out the purposes for which we disclosed the information. You agree that you will obtain our prior written consent before allowing any non-permanent employee of yours (such as a temporary employee or vendor) access to our Cardholder Account Information even if such access is for purposes of this Agreement. You agree to take appropriate security measures to protect any information described in subparagraphs 5(a) and 5(b) above against accidental or unlawful destruction, anticipated threats or hazards, and unauthorized access, use, tampering, and copying during storage in your computing or paper environment. You agree to follow our Instructions and Procedures regarding your retention, storage, and eventual destruction of any information described in subparagraphs 5(a) and 5(b) above. In the event you discover or suspect any information described in subparagraphs 5(a) and 5(b) above has been disclosed to or accessed by a third party, you will immediately notify us of the disclosure to a third party and you will assist us in investigating the unauthorized disclosure to determine the magnitude and impact of such disclosure. We are, accordingly, entitled to equitable relief, including, but not limited to, injunctive relief, in addition to any other remedies to which we may be entitled, to enforce the provisions of this paragraph 5.
- (d) You will promptly notify us of any unauthorized access and take appropriate action to prevent further unauthorized access while information is in your possession or while it is in transit to us. You will cooperate with us, and will pay all related expenses, provide any notices and information regarding such unauthorized access to appropriate law enforcement agencies and government regulatory authorities, and affected consumer customers which we in our sole discretion deem necessary. At your expense and in consultation with us, you will provide such affected consumer customers with access to credit monitoring services, credit protection services, credit fraud alerts, or similar services which we in our sole discretion deem necessary to protect such affected consumer customers.
- (e) Disclosure.
 - (i) If you are compelled by Law or judicial order to disclose any information provided by us as described in this paragraph 5, you will provide us with prior notice of such compelled disclosure, unless such prior notice is prohibited by Law or not reasonably possible under the circumstances. If you are not able to provide us with prior notice of such compelled disclosure, you will provide us with notice of such compelled disclosure as soon as such notice is reasonably possible. In each such instance, you will provide us with reasonable assistance (at our cost) if we wish to contest the disclosure.
 - (ii) Further, in the event of any legal process or government action, which may include but is not limited to, breach, bankruptcy, or administrative or regulatory action, you are precluded from voluntarily producing this Agreement, any and all attachments to this Agreement and any Program materials that may contain our proprietary business information, trade secrets, or otherwise sensitive information, unless required to disclose such documents and materials by a judicial order, provided, however, you will provide us with reasonable notice in order to attempt to quash such judicial order, to seek an appropriate protective order, or both.

- (iii) Additionally, you agree that if a federal bank regulator or other regulatory agency or authority, requests that we disclose any information you have provided to us to it or to another federal bank regulator, agency or authority in connection with its supervisory activities, we may disclose such information to such entity without notice to you.

6. PROGRAM REQUIREMENTS.

- (a) **FINANCIAL STATEMENTS AND CREDIT REPORTS.** You authorize us to obtain credit reports on your business and to obtain credit reports individually upon any combination of the principals, partners, or owners who have signed the Application, and therefore this Agreement, for the purpose of qualifying your business for participation in the Program which is covered by this Agreement and for evaluating your business for continued participation in the Program. You understand that you are authorizing us to obtain credit reports and instructing any consumer reporting agency to provide such report now and in the future for the purpose of evaluating your business for future retention and participation in the Program. You also understand that upon request you may be required at any time to provide a copy of your businesses' most recent financial statements, including your balance sheets, statements of income and retained earnings, cash flows and any accompanying notes, in reasonable detail and prepared in accordance with generally accepted accounting principles.
- (b) **DOCUMENTATION, EXAMINATIONS AND AUDITS.**
- (i) **PROGRAM DOCUMENTATION.** You are required to maintain certain Program Documentation in connection with this Program. For the purposes of this Agreement, "Program Documentation" must include, without limitation, all Invoices and documents used with such Invoices, your books and records relating to such Invoices, Credit Memos and Consumer Credit Card Account Applications, in addition to any and all documents used in connection with such, whether in electronic or printed form.
- (A) **Consumer Credit Card Account Applications.** You will deliver to us the original, physical Consumer Credit Card Account Application portion of the Credit Card Agreement (including Consumer Credit Card Account Applications that are declined by us) within fifteen (15) days of the submission of such Consumer Credit Card Account Application to Wells Fargo and in accordance with this Agreement and our Instructions and Procedures. The Consumer Credit Card Account Application portion of the Credit Card Agreement contains Cardholder Account Information and the Cardholder's signature. In the event we request that you retain the Consumer Credit Card Account Application, you will maintain such Program Documentation as set forth in subparagraph 6(b)(i)(C) below. Additionally, at any time during the term of this Agreement, we may redesign the Consumer Credit Card Account Application and Credit Card Agreement, individually or jointly, as we deem necessary or appropriate, and we may update our Instructions and Procedures regarding the retention, storage, and transmittal of Consumer Credit Card Account Applications. Any such redesigns or updates will go into effect upon our notice to you of such changes. If such changes are not required by Law or a regulatory body, we will attempt to provide you with at least thirty (30) days advanced notice.
- (B) **Invoices.** If an Invoice is presented physically, you will also deliver to us a copy of any document referred to in the Invoice. If an Invoice is presented electronically, or via facsimile, you will retain the original, physical Invoice and the original of any document referred to in the Invoice in a secure and orderly manner in accordance with subparagraph 6(b)(i)(C) below.
- (C) **Retention Requirements.** With respect to all Program materials (e.g. Invoices, Credit Memos), you are instructed or required to maintain in connection with this Agreement, you agree: (1) to keep all Program Documentation in a secure manner and to protect the confidentiality of the Program Documentation as governed by paragraph 5 of this Agreement; (2) to retain the original Program Documentation in a secure and orderly manner in accordance with our Instructions and Procedures for seven years (or such other time period we notify you of) from the original date of the Program Documentation. After such seven year period (or such other time period that we notify you of), you will destroy the Program Documentation in accordance with our Instructions and Procedures and in a manner that renders the data contained in the Program Documentation unreadable and unidentifiable, unless you are notified by us or a third party that such Program Documentation is subject to a records preservation order ("RPO") issued by a court of competent jurisdiction or by a federal or state regulatory body with the power to require the preservation of such Program Documentation. You will continue to retain the Program Documentation subject to an RPO in a secure and orderly manner until such time as the RPO is terminated at which time you will destroy the Program Documentation in accordance with our Instructions and Procedures and in a manner that renders the data unreadable and unidentifiable; and (3) we may conduct regular audits of the Program Documentation retained by you.
- (D) **Submission of Documentation upon our request.** If we request any Consumer Credit Card Account Application, Invoice (including any document referred to in the Invoice), Credit Memo or any other document evidencing a Consumer Credit Card Account Application, Invoice or transaction presented to us, you will deliver it to us in a manner and time period as communicated by us to you and in accordance with our Instructions and Procedures.
- (ii) **EXAMINATION AND AUDITS.** You agree that upon our request you will provide such Program Documentation as we may request from time to time, in a form and manner approved by us and agreed to by the parties and compliant with Wells Fargo's information security requirements, for the purpose of Program oversight and ongoing risk management. Further, we reserve the right to conduct regular onsite audits of any Program Documentation at any location of yours where such Program Documentation is retained to determine that all the requirements of this Agreement are met. Any such audits will be conducted during your regular business hours as often as we believe is necessary with twenty-four (24) hours notice from us to you.
- (iii) **POLICIES AND PROCEDURES.** You agree that we may periodically examine, solely for our purposes only, those policies, procedures, internal controls, and training materials of yours relating to your offering this Program to your consumer customers to ensure compliance with our Instructions and Procedures and with the provisions of all Laws as described in subparagraph 9(b)(ii) below with respect to (without limitation) advertising, marketing, sourcing of consumers, sales practices, and the controls in place to ensure the security of your information systems.

- (c) **USE OF PROGRAM AND COMPLIANCE.** Wells Fargo is committed to meeting or exceeding all regulatory requirements that are applicable to our Program. You play an integral role in helping us ensure our compliance with all regulatory requirements due to your interactions with the consumer. In connection with your role, you acknowledge and agree that:
- (i) you are responsible for complying with the provisions of all Laws as described in subparagraph 9(b)(ii) below or otherwise may be set forth in this Agreement;
 - (ii) you are responsible for complying with all requirements of this Agreement and the Instructions and Procedures for the Program that we communicate to you and update from time to time;
 - (iii) you will collaborate with us on all training required by us in connection with the Program, to be completed in the time frame indicated by us, and designate the necessary and appropriate employees of yours at the appropriate level and departments within your business (e.g. office manager, finance manager, marketing/advertising manager) to attend all required training related to their role and responsibilities in connection with the Program. Such employees will be responsible for disseminating the requirements of such training to all employees within your business who may be involved with the subject matter of the training, such as employees who accept any Consumer Credit Card Account Application, Invoice or transaction that may be processed under our Program, so that your employees will be equipped to accurately and completely follow all of the requirements for providing financing under the Program. If such employees leave your employment or change roles within your business, you will promptly notify us within ten (10) days of the employee's departure and designate a replacement employee or employees to assume this role for your business and ensure that person or those persons complete all required training; and
 - (iv) we may request a report on any and all trainings held in connection with the Program and you will provide us with such report within five (5) business days we request such information. Such report may include information such as the total number of employees trained, the total number of employees involved with the Program, their company titles, training date, and the frequency of training and methods by which they were trained; and
 - (v) in the event you create and maintain independent and ongoing educational programs designed to educate and train your employees on the requirements for offering financing to your consumer customers and with the purpose of educating your employees about the laws that affect your business, your industry and address the offering of financing, then such training programs will be reviewed and approved by us and such approval will be for our benefit only and may not be relied upon for any purpose. Additionally, you agree that in the event we determine, in our sole discretion, that your independent training program does not meet our requirements, you agree to work with us, in good faith, to address any deficiencies and update any such training programs.
 - (vi) In the event you fail to comply with the training and compliance standards set forth in this subparagraph 6(c), we have the option to terminate this Agreement by providing you written notice of our decision to terminate.
- (d) **RETAIL LOCATIONS AND SALES INFORMATION.**
- (i) You will provide us with a list of all your Retail Locations upon execution of this Agreement, including the physical address, telephone number, facsimile number, and manager's name.
 - (ii) You will provide us with an updated Retail Location list upon the closing of any Retail Locations or with thirty (30) days prior notice of any new Retail Location openings.
 - (iii) In the event you conduct a "going out of business" or "sold as is" sale at any Retail Location, you will provide us with thirty (30) days prior written notice and you will not process Consumer Credit Card Account Applications or further sales transactions on Cards without our prior express written approval. Further, upon such notice by you, we reserve the right, in our sole discretion, to terminate this Agreement.
 - (iv) Upon our request, you will provide us with sales figures for each Retail Location on a monthly or other periodic basis.
- (e) **APPROVAL OF ADVERTISING AND OTHER ASPECTS OF PROGRAM.**
- (i) We reserve the right, in our sole discretion to approve or disapprove all aspects of this Program including, but not limited to, advertising, promotional material, credit terms and credit features, and including any changes to the Program, whether in hard copy, on television, on the radio, on the internet or in any other electronic form. Such approval is for our benefit only, you may not rely on such approval for any purpose. You will give us a minimum of ten (10) business days to review any such requests for approval.
 - (ii) Additionally, you acknowledge and agree that in no event will you utilize Online Behavioral Advertising methods to advertise financing via the Internet, including any advertising for this Program and any other third-party financing program you may use. For purposes of this Agreement, "Online Behavioral Advertising" is defined as the tracking of a consumer's online activities over time— including the searches the consumer has conducted, the webpages visited, and the content viewed – to deliver advertising targeted to the individual consumer's interests. This definition includes: (A) "first party" advertising, where no data is shared with third parties, or contextual advertising, where an ad is based on a single visit to a webpage or single search query; and (B) "retargeting," in which the activity of visiting one website is used to deliver an ad on a third-party site. This restriction on Online Behavioral Advertising is not intended to restrict the advertising of your Products, provided that such Online Behavioral Advertising of your Products in no way attaches to or otherwise operates to include advertising for financing.
- (f) **HONORING CARDS.** You agree that you will honor without discrimination any valid Card when properly presented as payment from Cardholders for purchases, and will maintain a policy that does not discriminate among consumer customers seeking to apply for the purpose of making purchases through the use of a Card. You will promote the Program covered by this Agreement to encourage consumer customers who do not have an Account to apply for one and to encourage Cardholders who have an Account to use it to purchase Products from you.
- (g) **CREDIT PROGRAMS OFFERED.** You agree that you will not present any Consumer Credit Card Account Applications to us that have been submitted to another lender. All Consumer Credit Card Account Applications must be in a form and manner provided or approved by us. You will not use our Consumer Credit Card Account Application form, our disclosures, our Cardholder Account Information, or any combination thereof with any other lender.

(h) EXTENDED PRODUCT WARRANTIES AND SERVICE AGREEMENTS

You will comply with the requirements of this subparagraph 6(h) and you expressly will not offer extended product warranties and service agreements underwritten by you or an Affiliate of yours in conjunction with purchases made by Cardholders without our prior written approval. Additionally, you will provide us with information regarding other third-party extended product warranties and service agreements that are financed in connection with our Program as follows:

- (i) You may not offer extended product warranties and service agreements underwritten by you or an Affiliate of yours, in conjunction with purchases made by Cardholders without our prior written approval. Such approval is for our benefit only, and we reserve the right to withdraw our approval at any time and in our sole discretion. You may not rely on such approval for any purpose. You will provide us with a copy of any extended warranty for which you are seeking approval. No prior approval will be required for any extended product warranty or service agreement, which is underwritten by your business.
 - (ii) For all third-party extended product warranties and service agreements that are financed in connection with our Program, you agree to proactively provide us with the information outlined in the Instructions and Procedures and in the time frame and manner described in the Instructions and Procedures.
 - (iii) In connection with the Program, you agree to offer and finance only extended product warranties and service agreements which have been identified by you under this subparagraph 6(h) and accompanying Instructions and Procedures and which are related to the Products you finance under the Program; and
 - (iv) For purposes of this subparagraph 6(h) and for paragraph 9 below only, an "Affiliate" of yours, is a person or entity that directly, or indirectly, controls, or is controlled by, or is under common control with you. For purposes of this definition of Affiliate, "control" means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person or entity, whether through the ownership of voting shares, by contract, or otherwise.
- (i) THIRD PARTY/SUBCONTRACTOR REQUIREMENTS. You will not utilize any third parties, contractors, or subcontractors (hereinafter "Third Party") in connection with the Program without Wells Fargo's prior written consent. In the event Wells Fargo consents to your use of a Third Party in connection with the Program, you acknowledge and agree to all of the following requirements:
- (i) You will ensure you have a written contract in place requiring the Third Party to comply with all applicable terms of the Agreement between you and us with regard to the goods or services the Third Party provides.
 - (ii) You will ensure your contract with the Third Party describes the scope of goods and services to be provided, the applicable service level agreements which must be met, and the Third Party's role in helping you comply with the terms of this Agreement.
 - (iii) You will ensure you have all necessary contractual obligations, monitoring and oversight activities in place with regard to any Third Parties who have access to Wells Fargo's Confidential Information, including technology professionals with access to production or data storage systems. These contractual obligations and oversight activities with Third Parties must be designed to ensure your full compliance with the terms of the Agreement including but not limited to: business continuity planning, information security, confidentiality, digital security, and third party oversight, system access.
 - (iv) You will ensure you have a termination process in place in the event your relationship with the Third Party is terminated for any reason. The termination process should address the return or destruction of Wells Fargo's Confidential Information, and the removal of any access to Wells Fargo's Confidential Information.
- (j) BACKGROUND OF EMPLOYEES/AGENTS. The parties acknowledge and agree that applicable Law and regulatory guidance obligates Wells Fargo to ensure that no person who has been convicted of any criminal offense involving dishonesty, a breach of trust, or money laundering, or who has participated in a pre-trial diversion with respect to such an offense, or who has been convicted of a felony within the last ten (10) years, participates (directly or indirectly) in the provision of services in connection with the Program that: (a) require access to Cardholder Account Information; or (b) that relate to Wells Fargo's computer networks, information systems, databases or secure facilities under circumstances that would permit access to such systems. As it relates to this Agreement, Cardholder Account Information and Wells Fargo's Confidential Information, you agree that you will take all commercially reasonable measures to ensure full compliance with this Agreement, including without limitation, through the performance of any necessary background checks, and we reserve the right to request written confirmation of your compliance with this subparagraph 6(j) at any time. Wells Fargo may perform its own checks, at its sole discretion and for its sole purposes, at any time without notice to you. Failure to comply with any portion of this subparagraph 6(j) may result in immediate termination of this Agreement.
- (k) INDEMNIFICATION. Dealer agrees to indemnify and hold harmless Wells Fargo, its Affiliates, and their respective employees, officers, directors and agents, from and against any and all Losses to the extent such Losses arise out of, are connected with, or result from:
- (i) any breach by Dealer of any of the terms, covenants, or other provisions contained in this Agreement (including the Instructions and Procedures);
 - (ii) any representation or warranty made to Wells Fargo which proves to have been untrue or incorrect in any material respect as of the date made by Dealer in this Agreement, in the Application, or in any other instrument or document delivered by Dealer when made or deemed made hereunder;
 - (iii) any transaction, contract, understanding, promise, representation, or any other relationship, actual, asserted, or alleged, between Dealer and any Cardholder, as the case may be;
 - (iv) any Products or services, the purchase of which was financed under the Program (including, without limitation, any product liability or warranty claims relating thereto);
 - (v) any act or omission, where there was a duty to act, by Dealer or its employees, officers, directors or agents including without limitation, the failure of Dealer to comply with any Laws applicable to the Program, or those applicable to the Dealer;

- (vi) any advertisements, solicitations or other promotions of the Program or of Products to the extent prepared by or on behalf of Dealer;
- (vii) Wells Fargo's lawful rejection for credit of one or more applicants under the Program;
- (viii) the charging of any amount to a Card in breach of this Agreement, including without limitation, any fees charged for the use of the Card, any fraudulent charge on the part of you or any employee of yours or any other charge or transaction in breach of this Agreement or any Law.
- (vix) any amounts Wells Fargo determines, in its sole discretion, needed to refund Cardholders as a result of Dealer failing to provide the correct version of the following documentation to the Cardholder: Consumer Credit Card Account Application, Initial Disclosures, Credit Card Agreement, or Invoice disclosure (e.g. special terms disclosure).

If Wells Fargo receives any claim or demand or is subject to any suit or proceeding of which a claim may be made against Wells Fargo under this subparagraph 6(k), Wells Fargo will, as a condition of being indemnified by the Dealer, give prompt written notice thereof to the Dealer. However, failure to comply with this subparagraph 6(k) will not relieve Dealer of its indemnification obligations except to the extent such failure prejudices Dealer. For purposes of this subparagraph 6(k) "Losses" means any and all losses, liabilities, costs, and expenses (including, without limitation, reasonable attorneys' fees and expenses, reasonable out-of-pocket costs, interest, and penalties), settlements, equitable relief, judgments, damages, claims, demands, offsets, defenses, actions, or proceedings by whomsoever asserted.

- (l) LIMITATION OF CONSEQUENTIAL DAMAGES. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT WILL WE BE LIABLE TO YOU OR ANY OTHER PERSON FOR ANY PUNITIVE, SPECIAL, INDIRECT, INCIDENTAL, CONSEQUENTIAL OR COVER DAMAGES, INCLUDING WITHOUT LIMITATION LOSS OF PROFIT, LOSS OF PERSONAL PROPERTY, OR ANY OTHER SIMILAR DAMAGE OR LOSS.
- (m) WELLS FARGO DIGITAL SECURITY.

- (i) Compliance With Wells Fargo's Standards. You and your Personnel, will comply with all of Wells Fargo's requirements in relation to the security of the Wells Fargo facilities, computing environments and otherwise, including those requirements set forth in paragraph 5 of this Agreement entitled "INFORMATION SECURITY" and our Instructions and Procedures. For purposes of this Agreement, "Personnel" is defined as any of your employees, subcontractors, vendors or agents. This obligation includes the obligation of your Personnel, wherever located, to comply with the terms of this Agreement, our Instructions and Procedures, and any Wells Fargo security or information processing requirements as communicated to you by Wells Fargo. You will ensure such Personnel fully comply with all requirements set forth in this Agreement and are able to fully perform all requirements set forth herein. Wells Fargo's requirements may include, without limitation: (a) administrative, technical, and physical safeguards; (b) specific requirements set for and communicated in a policy or writing and provided by Wells Fargo to you including those that may be set forth from time to time in our Instructions and Procedures.

- (ii) System/Facilities Access. You acknowledge and agree that Wells Fargo may require further agreements or clearances in the event you need access to certain Wells Fargo's systems or facilities. You represent and warrant that your access to Wells Fargo's computing environment: (a) will not result in an alteration or the disabling of any hardware or software security programs residing on Wells Fargo's hardware or systems, and (b) will not result in your allowing unauthorized traffic to pass through Wells Fargo's computing environment as a result of your access into Wells Fargo's networks. If you allow unauthorized traffic to pass into Wells Fargo's networks, Wells Fargo may immediately terminate this access and hold you accountable for any damages resulting from such access.

- (iii) Data Safeguards. You acknowledge and agree that you have established and will maintain safeguards against the destruction, loss, alteration of, or unauthorized access to Wells Fargo's Confidential Information in your possession ("Data Safeguards"). In the event Wells Fargo asks you to make changes to your Data Safeguards, you will implement the Wells Fargo-requested changes to the Data Safeguards on the schedule mutually agreed upon by you and us. You agree that any Consumer Credit Card Account Application accessed by a consumer customer, except for Consumer Internet Applications as provide for in subparagraph 7(b)(ii) of this Agreement, may only be accessed at your Retail Location/s, or such other location as Wells Fargo may agree to in advance and in writing and which must be signed by us.

- (iv) Review of Control Standards:

- (a) You may not possess/maintain Wells Fargo's Confidential Information at a non-Wells Fargo site without express written consent of Wells Fargo, which may be withheld for any reason, provided Wells Fargo hereby consents to your possession and maintenance of Wells Fargo's Confidential Information relating to the Program in connection with this Agreement. You agree that you will not maintain Wells Fargo's Confidential Information in any electronic format and will limit input of Consumer Application information to Wells Fargo's provided systems, unless otherwise agreed to in writing by both parties through an amendment to this Agreement.

- (b) ***You will not route or store Wells Fargo's Confidential Information, including Cardholder Account Information outside of the United States and you will not, in connection with routing, managing, or storing Wells Fargo's Confidential Information, utilize the services of any Personnel that originate or occur outside of the United States without the express written approval provided by our executive team in advance of any such use or routing, which may be withheld for any reason.***

- (v) Risk Assessments.

- (a) Audits. Wells Fargo reserves the right to conduct risk assessments, site audits, or other evaluations of the operations of Personnel for the purpose of ensuring a secure digital environment at any time, the nature of which and time frame of to be set forth in writing to you from time to time ("Compliance Assessments"), as determined by it in its sole discretion, and you agree that you and your Personnel will comply with such Compliance Assessments. All Compliance Assessments will be done using Wells Fargo's information security standards as the basis of evaluation and such Compliance Assessments may require site audits, or other risk evaluations of your systems or the systems of your Personnel.

- (b) Audits and Your Personnel. Personnel will cooperate in providing to Wells Fargo or its auditors (including any federal or regulatory auditors with jurisdiction over Wells Fargo's operations, specifically, the Office of the Comptroller of the Currency ("OCC")) any information reasonably requested by Wells Fargo or its auditors that is necessary or required for the verification of any element of any product or service used in connection with the Program by Personnel under this Agreement in accordance with the Law and the terms and conditions of this Agreement, provided that (1) such audits by Wells Fargo may only occur during normal business hours at the locations where Personnel perform any tasks relating to products or any service used in connection with the Program or retain records containing Wells Fargo's Confidential Information, and only after providing notice to you (not less than twenty-four hours notice), (2) such inspections will be conducted in a manner that is designed to minimize any adverse impact on normal business operations, (3) Wells Fargo will comply with all standard safety and security procedures of Personnel in conducting any such audits, and (4) any information accessed by Wells Fargo or its auditors in the performance of any such audit will be deemed to be your confidential information; however, the results of the audit are the property of Wells Fargo, or the auditor, as applicable.
- (c) Correcting for Identified Risks. If Wells Fargo identifies a critical control weakness or risk that could adversely impact your ability to perform under the terms and conditions of this Agreement, including a risk to Cardholder Account Information, Wells Fargo's ability to comply with the Law or your business continuity capabilities, Wells Fargo will promptly inform you in writing of such control weakness and reserves the right to immediately suspend processing until corrected of any Consumer Credit Card Applications, Invoices, or Credit Memos under the Program that may be compromised by such risk. You will have ten (10) business days to respond to such written notice, and thirty (30) days to remedy the weakness. Any such remediation must be independently verified to Wells Fargo's reasonable satisfaction by you, at your sole cost; this verification may be done by your own internal audit group if Wells Fargo agrees that such group is independent from the division or Personnel who provide the products or services used in connection with the Program, or may also be done by a third-party auditor that is reasonably acceptable to Wells Fargo.
- (vi) You will only provide Wells Fargo's Confidential Information to Personnel in accordance with paragraph 5 of this Agreement. Wells Fargo is an intended third-party beneficiary of any agreements entered into between you and Personnel to comply with paragraph 5 herein, and Wells Fargo has a direct right of action to enforce the terms and conditions of these agreements. You have established and will maintain commercially reasonable safeguards against the destruction, loss, alteration of, or unauthorized access to Wells Fargo's Confidential Information in the possession of Personnel, which safeguards will include policies for the disposal/destruction of any such data that are commensurate with the sensitivity of the materials to be disposed, in accordance with the terms of this subparagraph 6(m)(vii). You represent and warrant that you will take all steps necessary to ensure fulfillment of this obligation and will take all reasonable measures, including court proceedings, to restrain Personnel from unauthorized disclosure or use of Wells Fargo's Confidential Information. You acknowledge and agree that Wells Fargo's Confidential Information, in particular Cardholder Account Information, may, in accordance with Wells Fargo information security policies, require encryption and/or other information security controls when it is transmitted over a network, or is stored, processed or managed on equipment belonging to you and Personnel (including portable equipment such as laptops and other portable devices), whether this equipment is used at a Wells Fargo site or elsewhere, and you agree to conform to such encryption policies, pursuant to the terms of this subparagraph 6(m).
- (n) Equipment and Connections.
- (i) Computing Devices. You agree to take all commercially reasonable steps to protect all Computing Devices on which Wells Fargo's Confidential Information will be collected or stored from cybercrime or any other cyber-threats, including without limitation viruses, spyware, hacking, or data tampering. "Computing Device" means a desktop computer, laptop computer, or approved mobile device owned and maintained by you. Consumer customer owned devices are expressly excluded from this definition and must not be used under the Program except for those Consumer Credit Card Applications that are received by us in compliance with subparagraph 7(b)(ii) of this Agreement. You will maintain any Computing Device, utilized under the terms of this Agreement, in conjunction with Wells Fargo's security and fire-wall requirements for transmitting Wells Fargo's Confidential Information including Cardholder Account Information, as well as any other security requirements Wells Fargo may require with respect to computing software or mobile applications generally, and that Wells Fargo may communicate to you from time to time. Further, you agree to maintain all Computing Devices in such a way as to keep each one up to date and to enhance or remediate any security features and to maintain them such that all Computing Devices continue to be compatible with Wells Fargo's systems, requirements, and policies. If at any time any Wells Fargo owned or leased Computing Devices or software are used by you in connection with this Agreement, you agree that you have no right, title, or interest in the Wells Fargo owned or leased Computing Devices or software.
- (ii) Virus. You represent and warrant that: (A) the computing environment(s) used by Personnel are free from all generally-known viruses, worms, Trojans, and other "malware," and that Personnel have deployed commercially reasonable antivirus software; and (B) any software code written by Personnel or materials furnished by you to Wells Fargo will be free from: (1) any computer code or instructions that may disrupt, damage, or interfere with Wells Fargo's use of its computer and/or telecommunication facilities, e.g. malicious code, viruses, etc., and (2) devices capable of automatically or remotely stopping the code from operating (e.g. passwords, fuses, time bombs, etc.). Upon the discovery by you, or upon information Wells Fargo receives and shares with you of any threat to any Computing Devices by cybercrime or any other cyber-threats, including without limitation viruses, spyware, hacking, or data tampering, you agree to immediately take action to secure any and all affected Computing Devices or to disable any such Computing Devices and to provide Wells Fargo with all data and any other information regarding the threat to, or attack on, such Computing Device. Wells Fargo's review of data or information relating to your Computing Devices

and any related projects and tasks associated with such Computing Devices is strictly for Wells Fargo's purposes only and you may not rely on such review for any purpose other than to document your compliance with this Agreement.

- (iii) User Access Termination. Upon termination of this Agreement for any reason, you will, in the time frame and manner communicated by us in any Instructions and Procedures or other notice, terminate physical and electronic (e.g. logical) access to all Wells Fargo facilities and computer systems or networks to which Personnel may have access. In the case of a specific Personnel who is being removed or replaced, you will terminate such access within twenty-four (24) hours of the event giving rise to the need for termination.
 - (o) DIGITAL AND OTHER DATA COLLECTION. You further acknowledge and agree that you will not collect any Cardholder Account Information directly or otherwise from the information written or typed into the Consumer Credit Card Account Application, whether through a photocopy, any digital copy and paste functionality or through the use of any mobile platform application functionality or any other similar technology, and you will not seek to alter or adjust our Consumer Credit Card Account Application, whether in print or digital form in any way. You may, with full and transparent disclosure as to the purpose of such collection and upon receipt of the consumer customer's express consent, collect consumer customer information for your business purposes using other methods outside of and independent from any use of the Consumer Credit Card Account Application.
7. **PROGRAM PROCESSES (CONSUMER CREDIT CARD ACCOUNT APPLICATIONS AND INVOICES).**
- (a) PROCESSING CONSUMER CREDIT CARD ACCOUNT APPLICATIONS AND TRANSACTIONS.
 - (i) In connection with your processing of Consumer Credit Card Account Applications, Invoices, Credit Memos and authorizations, you acknowledge and agree you will: (A) follow all terms of this Agreement and our Instructions and Procedures in connection with any processing method made available to you pursuant to this subparagraph 7(a), (B) be responsible for providing each of your locations with the necessary equipment to allow you to process Consumer Credit Card Account Applications, Invoices, Credit Memos, and authorizations, and (C) be responsible for any and all costs to maintain the equipment needed for each such processing method and obtain any upgrades of such equipment which we may deem necessary for such processing method utilized. Upon making any of the processing methods listed in this subparagraph 7(a) available to you, we will provide you with access to the applicable Instructions and Procedures and provide you with further instructions regarding connecting with our systems.
 - (ii) CREDIT CONNECTIONS. Unless otherwise agreed upon by the parties, we will provide you with an Internet address to access and process Consumer Credit Card Account Applications, Invoices, Credit Memos, and authorizations (the "IPS"). The IPS will be an address on a commercial site on the World Wide Web portion of the Internet accessible by you but not accessible directly by consumers. The IPS will be owned, managed, and maintained by us. We retain the right, title and interest in and to the IPS and your rights to the IPS are limited to the express terms of this Agreement. We retain the option to determine in our sole discretion, to terminate any rights that you have to use the IPS.
 - (iii) We may elect to make other methods available to you for processing in any of the following: Consumer Credit Card Account Applications, Invoices, Credit Memos, or authorizations (collectively hereinafter "Alternate Processing Methods"). Such Alternate Processing Methods may include, but not be limited to: (A) using Verifone equipment, (B) using a voice response unit ("VRU") to transmit Consumer Credit Card Account Applications, receive credit decisions, and transmit requests for authorizations only, or (C) using your point of sale equipment via a system-to-system connection provided we have provided you the necessary record layout and format, information security requirements, and connectivity requirements to establish communication with us. Each party will be responsible for its own costs relative to any modifications or hardware necessary to implement such connection.
 - (iv) USE OF WELLS FARGO CREDIT CONNECT.
 - (A) The Wells Fargo Credit Connect or "WFCC" is a Wells Fargo application and transaction submission commercial site on the Internet that Wells Fargo may, at its sole discretion, make accessible, in whole or in part to you solely to be used with your Computing Devices. You acknowledge and agree that you are expressly prohibited from using a consumer customer owned computing device for purposes of the WFCC. You further acknowledge and agree that such site is only accessible directly to consumers through you at your Retail Locations or such other locations as agreed upon in writing between you and us. The WFCC will be owned, managed, and maintained by us. We retain the right, title and interest in and to the WFCC and your rights to the WFCC are limited to the express terms of this Agreement. We retain the option to determine in our sole discretion, to terminate any rights that you have to use the WFCC. You agree that in the event that any Computing Device you utilize is not directly supported by our WFCC, you will not use any such Computing Device to assist consumer customers in applying for Cards.
 - (B) You are responsible for providing each of your Retail Locations with the necessary equipment and Internet connectivity, including all Computing Devices to connect to the WFCC. Unless otherwise agreed upon by us in writing, you will be responsible for any and all costs to maintain such equipment, and any upgrades to such equipment, which we may deem necessary in our sole discretion. We may provide you with Instructions and Procedures from time to time that govern the use of Computing Devices including, without limitations, any security requirements we may have and additional instructions in how to process Consumer Credit Card Account Applications or transactions, if applicable, via the WFCC.
 - (C) You agree to take all precautions outlined in subparagraph 6(m) of this Agreement. In addition, you will maintain any Computing Device that utilizes the WFCC in conjunction with our security and firewall requirements for submitting Consumer Credit Card Account Applications and transactions to us, as well as any other security requirements we may require with respect to computing software or mobile applications generally, and that we may communicate to you from time to time.
 - (D) You further acknowledge and agree that you will not make available to consumer customers who apply for Cards using your Computing Devices any information or material that (1) is false or misleading; (2) discriminates against a legally protected class of persons; (3) is directed toward minors; (4) is harassing, libelous, threatening, obscene,

defamatory, would violate the intellectual property rights of any party, or is otherwise unlawful; (5) would give rise to civil liability; or (6) constitutes or encourages conduct that could constitute a criminal offense under any applicable Law or regulation. You will submit all proposed advertising, sale promotions, and other material that will appear on your Computing Devices in which the Program covered by the Agreement is mentioned or language is used from which the Program covered by the Agreement may be inferred or implied in accordance with the requirements set forth in subparagraph 6(e) of this Agreement.

- (E) In the event that Cardholder records (e.g. Invoices, Credit Memos) flow through the WFCC for purposes of providing a consumer customer with a more convenient paperless consumer customer experience, including any Consumer Credit Card Account Applications and transactions, such records are subject to retention of the original documentation evidencing each Consumer Credit Card Account Application and transaction in a secure and orderly manner in accordance with our Instructions and Procedures and as set forth in subparagraph 6(b) of this Agreement unless such Consumer Credit Card Account Application or transaction is originated and maintained by us and we provide you with advance written notice that such record keeping will be handled by us.
 - (F) The WFCC may be temporarily unavailable from time to time without notice for reasons which may include, but not be limited to, system changes, hardware or software updates, or power outages. In addition, we may, in our sole discretion, permanently terminate the availability of the WFCC at any time in the event we determine, in our sole discretion, that the WFCC is being utilized in a manner contrary to the terms of this Agreement.
 - (G) As it relates to the consumer customers, your Computing Devices and the WFCC, you acknowledge and agree that you will not require any consumer customer who objects to apply using this process or the WFCC and upon such request you will provide them with an alternative option to applying for a Card. You will ensure that the Consumer Credit Card Account Application is administered in accordance with our Instructions and Procedures and all applicable Laws.
 - (v) Notwithstanding anything to the contrary in this paragraph 7, processing may be temporarily unavailable from time to time without notice to you for reasons which may include but not be limited to, system changes, hardware or software updates, or power outages.
- (b) **NEW CONSUMER CUSTOMER ACCOUNTS.**
- (i) **RETAIL LOCATIONS.** If a person wants to apply for an Account, you will:
 - (A) give the person the current version of the Credit Card Agreement, the Initial Disclosures, and any other documentation we may reasonably request;
 - (B) collect the Consumer Credit Card Account Application information in accordance with this Agreement and our Instructions and Procedures;
 - (C) obtain the applicant(s) legal signature, in a form and manner prescribed by us in our Instructions and Procedures, that acknowledges their receipt of the Initial Disclosures, the Credit Card Agreement and applying for an Account; and process the Consumer Credit Card Account Applications in accordance with this Agreement and our Instructions and Procedures.
 - (D) In the event we allow you to utilize an approved method of taking Consumer Credit Card Account Applications using an in-person, oral application process using a modified Consumer Credit Card Account Application, you will ensure each Consumer Credit Card Account Application collected through such oral process is taken in accordance with our Instructions and Procedures and retained as set forth in subparagraph 6(b)(i) of this Agreement.
 - (E) Retention of Consumer Credit Card Account Applications and any related documentation will be handled as follows:
 - (1) When using a paper Consumer Credit Card Account Application, deliver to us the original, physical Consumer Credit Card Account Application portion of the Credit Card Agreement (including Consumer Credit Card Account Applications that are declined by us) in accordance with subparagraph 6(b)(i)(A).
 - (2) You acknowledge and agree that you will use our Consumer Credit Card Account Applications, forms, disclosures, and other related documents and any other Program elements solely to administer this Program. You further agree that you will not share Cardholder Account Information with any other third-party financing company.
 - (ii) **CONSUMER INTERNET APPLICATIONS.** If we determine, in our sole discretion, that we will provide you with the ability to allow consumers to apply for credit over the Internet from a link maintained on your website, the following subparagraphs 7(b)(ii)(A)-(C) will apply.
 - (A) **OWNERSHIP OF THE CONSUMER INTERNET APPLICATION.** The “Consumer Internet Application” will be a commercial site on the World Wide Web portion of the Internet, accessible by consumers that will provide a means for consumers to apply for a Card. The Consumer Internet Application site will be owned, managed, and maintained by us. We retain all right, title and interest in and to the Consumer Internet Application site and your right to the Consumer Internet Application site is limited to the express terms of this Agreement. No other right to the Consumer Internet Application site, express or implied, is granted to you by virtue of this Agreement. A Consumer Credit Card Account Application submitted to us using the Consumer Internet Application site will be considered to be a “Consumer Credit Card Account Application” to us for purposes of this Agreement. A signature in electronic form (and in compliance with the E-Sign Act) will be considered a “signature” for purposes of this Agreement, and a document signed with a signature in electronic form (and in compliance with the E-Sign Act) will be considered to be “signed” for purposes of this Agreement.
 - (B) **REQUIREMENTS FOR YOUR WEBSITE:**
 - (1) You will establish and maintain a link on the home page or appropriate pages relating to financial services of your website by which a visitor may access the Consumer Internet Application site.

- (2) You will not make available on your website any information or material that:
 - (aa) is false or misleading;
 - (bb) discriminates against a legally protected class of persons;
 - (cc) is directed toward minors;
 - (dd) is harassing, libelous, threatening, obscene, defamatory, would violate the intellectual property rights of any party, or is otherwise unlawful;
 - (ee) would give rise to civil liability; or
 - (ff) constitutes or encourages conduct that could constitute a criminal offense under any applicable Law.
- (3) You will submit to us, at our request, at the address we designate, all proposed advertising, sale promotions, and other material that will appear on your website in which the Program covered by this Agreement in accordance with subparagraph 6(e) of this Agreement.
- (4) You will submit to us, at our request, at the address we designate, all proposed major changes to your website in content or links to other websites and will not make such changes if we object.
- (C) AVAILABILITY OF THE INTERNET APPLICATION SITE. The Consumer Internet Application site may be temporarily unavailable from time to time without notice to you. In addition, we may, in our sole discretion, permanently terminate the availability of the Consumer Internet Application site at any time. Upon request or upon termination of this Agreement, you will remove the link and any other references to this Program from your website.
- (iii) Notwithstanding, anything to the contrary in this subparagraph 7(b), Wells Fargo reserves the right, in its sole discretion, to:
 - (A) make changes to how Consumer Credit Card Account Applications are processed;
 - (B) redesign the Consumer Credit Card Account Applications and the Credit Card Agreement as we deem necessary or appropriate; and
 - (C) update our Instructions and Procedures regarding the collection of, transmittal and retention of Consumer Credit Card Account Applications. In the event we do so, you agree to collect, process, store, and remit such Consumer Credit Card Account Applications in accordance with the Instructions and Procedures which we provide to you from time to time.
- (c) TRANSACTIONS AND PROCEDURES.
 - (i) PRESENT CARD. The Cardholder must present a valid Card at the time of sale unless the transaction is covered under subparagraph 7(d) of this Agreement or the Account was established at the time of purchase.
 - (ii) INVOICE. Card sales will be evidenced by Invoices in a form approved by us. The Invoice must be legibly completed by you in accordance with this Agreement and our Instructions and Procedures. In the event that we approve a form of Invoice supplied by you and you subsequently make revisions to such Invoice form, you agree to resubmit such Invoice to us for re-approval prior to using such revised form.
 - (iii) AUTHORIZATION. If we so require, you will contact our authorization center in accordance with this Agreement and our Instructions and Procedures. Authorization numbers are valid for ninety (90) days unless we otherwise inform you that we are cancelling the authorization prior to the end of the ninety (90) day period. If an authorization expires before Products are delivered, you will submit a new request for authorization. We may change the length of time an authorization number is valid by advising you in writing including updating the Instructions and Procedures.
 - (iv) SINGLE TRANSACTION. You will include all Products purchased in any given transaction in the total amount(s) on any Invoice(s) submitted to us in connection with said transaction and you will not submit, sell, or assign any part of that transaction to any other creditor for purchase. You will not submit Invoices to us if the purchase of an individual Product has been split into two Invoices.
 - (v) SIGNATURE. You will require the Cardholder to sign the Invoice for all sales made in your presence.
 - (vi) COPY TO CARDHOLDER. You will provide a copy of the completed Invoice to the Cardholder at the time of the sale if the sale is made in your presence.
 - (vii) DOWN PAYMENTS. If less than the full amount of any transaction is covered by an Invoice, you will obtain payment in full by cash, check, or major credit card for the remaining balance due at the time the transaction is consummated. We will not finance down payments or deposits on an Account.
 - (viii) NO EXTRA CHARGE FOR CARD SALES. You will not discriminate against Cardholders by adding an extra or special charge to the normal price of the Products when a sale is a Card sale.
 - (ix) CONSUMER PURCHASES ONLY. Card purchases must be for personal, family, or household purposes.
 - (x) DELIVERY OF PRODUCTS. Products purchased by a Cardholder that are being shipped or delivered must be shipped or delivered to a Cardholder's residence unless shipment or delivery to another location is authorized by the Cardholder and approved by us. Notwithstanding the immediate preceding sentence, you acknowledge and agree that Products purchased with Cards must not be shipped to (A) any address designated as a Post Office Box; (B) any warehouse or storage facility; (C) any dockyard or shipping/freight facility; or (D) any address outside of the United States.
 - (xi) CARD SALES VIA THE INTERNET. No Card sales may be originated under this Agreement via the Internet on a website of yours without our prior written consent, which will include the execution of an amendment to this Agreement.
 - (xii) NO CASH ADVANCES. Cash advances by you to a Cardholder may not be charged to an Account under any circumstances. No cash may be given to a Cardholder by you in connection with any Card transaction.
- (d) PURCHASES WITHOUT CARD. If you make a Card sale to a Cardholder at a Retail Location but the Cardholder does not have his or her Card with him or her, you will confirm the Cardholder's identity, then confirm that you have the proper Account Number and otherwise process the transaction using normal procedures.

(e) PRESENTMENT OF INVOICES.

- (i) You will present Invoices to us in accordance with this Agreement and our Instructions and Procedures.
- (ii) Invoices must only be presented to us after the transaction is completed. You agree to make every reasonable effort to electronically present these Invoices to us within three (3) days of the transaction completion date, unless it is temporarily impractical to do so, at which time you will have fifteen (15) days after the date the transaction was completed to present the Invoice electronically or physically to us. For the purposes of this Agreement, a transaction is completed after you have performed all of your obligations to the Cardholder in connection with each Invoice, including, but not limited to, the delivery of purchased Products to the Cardholder, the performance of any service purchased by the Cardholder, or both as required. You will retain all Invoices in accordance with the requirements set forth in subparagraph 6(b)(i) of this Agreement. If we request the original, physical Invoice for any Invoice presented to us electronically or via facsimile, or any document referred to in an Invoice, you will deliver it to us in a manner and time period as communicated by us to you. If we request, you will execute a separate assignment of any Invoice and we are authorized to place your endorsement on any Invoice or any check or similar instrument related to an Invoice at any time. Payment for an Invoice will not constitute a waiver by us of any of our rights. All figures are subject to final audit and checking by us.
- (iii) You will allow us to conduct regular audits of the Invoices retained by you as governed by and set forth in subparagraph 6(b)(i) of this Agreement.
- (iv) In the event your retention of the Invoices accepted by us is determined by us to be contrary to any Law, or is objected to by any federal, state or local regulatory authority, you agree to deliver all such Invoices within thirty (30) days of the date of our notice or such other time as required by any Law, regulatory authority, or court.
- (v) You agree not to present Invoices that you know or should have known to be either fraudulent or not authorized by the Cardholder.

(f) **REFUNDS AND EXCHANGES.** You agree to establish and maintain a fair and uniform policy for any combination of an exchange, cancellation, or return of Products sold under Card sales and to give credit upon each such return, but never in cash and only by issuance of a Credit Memo in a form approved by us. Such Credit Memos will be for the full purchase price of the Products returned plus all related fees and taxes. You will provide notification to the Cardholder in the form of a copy of the Credit Memo. You will present all Credit Memos to us in accordance with the terms of this Agreement and our Instructions and Procedures. You will sign and retain each original, physical Credit Memo as set forth in subparagraph 6(b)(i) of this Agreement. If we request the original, physical Credit Memo for any Credit Memo presented to us, you will deliver it to us within seven (7) days after receiving the request. You will pay us the amount of any Credit Memo on demand, or we may at our option deduct the amount of any Credit Memo, returns or adjustments from the amount we owe to you for Invoices presented to us. In the event you present the Credit Memo to us more than sixty (60) days after the date of any Invoice presented to us, or such different time as we may notify you, in writing, you will continue to be obligated for the amount of any discount rate to the purchase price, and we will not be required to refund the amount of any discount rate withheld by us in connection with any such Credit Memo.

(g) **COLLECTIONS.** We have the sole right to collect or receive payments on Invoices presented to us unless they are rejected or revoked by us. You agree not to attempt to collect or accept any payments that we have the right to receive. You authorize us to do every act and thing necessary to collect and discharge Credit Card Agreements, including the right to endorse any check or draft payable to you in connection with such Credit Card Agreements, and Invoices. In addition, to the extent allowable under the applicable Laws, you agree that we are entitled to claim any sales tax refunds or deductions resulting from bad debt losses charged off by us on all Accounts, whether currently in existence or created in the future, and you irrevocably relinquish and assign to us any right, title and interest in all refunds, deductions or credits of sales or use, gross receipts, transaction privilege, or other taxes with respect to all Accounts. You hereby authorize us to do every act and thing necessary to collect such tax refunds, deductions or credits, and you agree to assist us in doing so to the extent we may so reasonably request.

8. PAYMENTS UNDER THE PROGRAM.

(a) **PAYMENT BY US.** We will pay you the net amount of all Invoices less applicable discount rate and the amount of all Credit Memos presented to us by you in accordance with our Instructions and Procedures and accepted by us during the period. We may also deduct any revoked Invoices, Administrative Fees, and any other amounts you owe us under this Agreement and any other contractual arrangement you may have with us should such amounts not be paid by you as agreed. We will pay you by automatic deposit through the Automated Clearing House (ACH) or by any other method that we notify you of and choose to use. We will initiate an automatic deposit or otherwise initiate the payment within a reasonable time after the Invoices and Credit Memos are presented, provided, however, that we reserve the right to periodically audit transactions before funding, or if we reasonably believe that you are insolvent or may be in default under any provision of this Agreement, we reserve the right to audit all transactions prior to funding. Any such auditing of transactions may delay funding. Any payment made by us to you will not be final but will be subject to subsequent review and verification by us.

(b) **PAYMENT BY YOU.** You agree to pay us the discount rates and Administrative Fees as set forth in writing by us from time to time (a "Price Sheet"). The discount rate may vary depending on the terms of the purchase, the date of the purchase, or any other variable set by us including any promotional offers, such as volume rebates as disclosed in the Price Sheet that we provide you. The discount rate used for an Invoice will be the discount rate in effect on the date we accept the Invoice and is subject to change upon written notice to you. Administrative Fees will be assessed each month in an amount to be disclosed on the Price Sheet and will be subject to change at any time upon written notice to you. You also agree to pay us for any Credit Memos presented, any Invoices we revoke and any other amounts you owe us under this Agreement and any other contractual arrangement you may have with us. Discount rates and Credit Memos will be collected as outlined in subparagraph 8(a) above provided you presented Invoices sufficient to cover the amount of the discount rates and Credit Memos. You authorize us to initiate a debit entry for Administrative Fees as governed by subparagraph 8(c) below. You

also authorize us to initiate a debit entry for any Credit Memos, discount rates and any other amount you owe us under this Agreement and any other contractual arrangement you may have with us as governed by subparagraph 8(c) below in the event such amounts are not paid to us as provided for under this Agreement.

- (c) **AUTHORIZATION FOR AUTOMATIC DIRECT DEPOSITS (ACH CREDITS) AND DIRECT DEBITS (ACH DEBITS).**
- (i) You authorize us to initiate credit entries for amounts that we may owe you. You authorize us to initiate debit entries for any credit entries in error or any time the amount you owe us under this Agreement and any other contractual arrangement you may have with us or is more than the amount we owe you. Such credit and debit entries will be to the bank account identified on the Application. Both parties acknowledge that the origination of ACH transactions described herein must comply with the provisions of U.S. Law and NACHA rules.
 - (ii) The authorizations set forth in subparagraph 8(c)(i) above will remain in effect until the date on which no balances remain on Accounts. We agree to comply with written notifications from an authorized representative of yours, which alter your bank account information (i.e. name and address of bank or financial institution, transit/ABA number or account number), provided, however, that we receive such notification in a time and manner sufficient to give us and the bank or other financial institution reasonable opportunity to act on it.
- (d) **RIGHT TO REJECT OR REVOKE ACCEPTANCE.**
- (i) We may reject, or having accepted, may revoke acceptance of any Invoice presented by you:
 - (A) if you do not retain or deliver, as required, the original, physical Consumer Credit Card Account Application, Invoice, or any document referred to in the Invoice to us as required by this Agreement;
 - (B) if the Consumer Credit Card Account Application and Invoice are not in all respects legible, completed, and as represented, warranted, and agreed in this Agreement;
 - (C) if the purchase was made under subparagraph 7(d), and the Cardholder denies that he authorized the purchase;
 - (D) if:
 - (1) the Products have been returned,
 - (2) the Products have not been accepted by the Cardholder or not delivered or performed by you as agreed, this includes but is not limited to, transactions where you have presented us the Invoice prior to the Products being delivered (including installation, if applicable) and the Cardholder refuses to accept delivery of the Products or where the Cardholder cancels the transaction without accepting delivery of the Product(s),
 - (3) you have presented the Invoice to us in violation of our Instructions and Procedures,
 - (4) there is any dispute, claim, or defense asserted by the Cardholder,
 - (5) the Invoice is not valid and legally enforceable according to its terms,
 - (6) the authorization number for the Invoice is expired at the time the Invoice is presented,
 - (7) there has been any allegation of negligence, fraud, or dishonesty by you or any of your employees, or
 - (8) fees were charged to the Cardholder for the use of the Card (e.g., financing fees);
 - (E) if we reasonably believe, in our sole discretion, that you may be unable or unwilling to satisfy your obligations under the terms of this Agreement; or
 - (F) if you have breached any representation or warranty or are in default under any term of this Agreement, we may reject, or having accepted, may revoke acceptance of any and all Invoices presented, whether or not previously authorized or approved by us. We may continue to reject any and all Invoices presented until you have cured any breach of warranty or any default under this Agreement.
 - (ii) Notwithstanding subparagraph 9(a)(i), you agree that you are responsible for all transaction(s) that we deem, in our sole discretion, to be fraudulent and that we may reject or revoke acceptance of any Invoice containing such transactions.
 - (iii) If we revoke acceptance of any Invoice, you will pay us on demand the amount of the Invoice affected plus any finance charges related to the Invoice under the Credit Card Agreement with us. If we reject any Invoice, we will not pay for said Invoice. You also agree to indemnify us against any and all liability, loss, claims, or demands arising in connection with any Invoice we reject or for which we revoke acceptance, including reasonable attorney's fees. In the event that we reject an Invoice from you, or in the event that we revoke acceptance of an Invoice from you, you agree to abide by the terms of the Agreement signed by the consumer customer and you agree that to the extent you owe us money pursuant to this subparagraph 8(d), we may deduct such amounts as provided in subparagraph 8(c).
- (e) **SUSPENSION OF PROCESSING.** If you fail or refuse to pay any amounts owed to us under this Agreement after our demand, if we suspect fraud by anyone associated with your business, or if you are otherwise in breach of any covenant in this Agreement including but not limited to the requirements of subparagraph 6(c) above, we may cease authorization for and the funding or acceptance of any Invoices and cease the processing of Consumer Credit Card Account Applications.
- (f) **RESERVE.** If we determine, in our sole discretion, that any of the following conditions set forth in subparagraphs 8(f)(i)-(vii) exist, then you will pay us upon demand, or we may withhold from any amounts we owe you for Invoices presented us, or we may debit your bank account an amount we deem necessary to fund a reserve ("Reserve Account"):
- (i) Your financial condition has deteriorated;
 - (ii) you have failed to comply with the provisions of any Laws or you have failed to provide adequate training of your employees for use of the Program as set forth in subparagraph 6(c) above;
 - (iii) you are in breach of this Agreement;
 - (iv) we experience unusual levels of Cardholder disputes, complaints, or other repurchase obligations of yours under the Program;
 - (v) the number of Invoices or Credit Memos presented to us is substantially different from historical trends;
 - (vi) we have become aware of some other fact, event, or circumstance related to the Program which leads us to establish a reserve fund; or
 - (vii) if a notice of termination has been provided by one party to the other in connection with this Agreement.

We may charge to the Reserve Account any amount you owe us, including but not limited to amounts owed under this Agreement. Your obligations to us will not be limited by the amount held in the Reserve Account. The Reserve Account does not excuse you from paying us any amount you would otherwise owe us. We will be the sole account holder of the Reserve Account and any interest that accrues thereon. We will return to you any amount remaining in the Reserve Account when we determine a Reserve Account is no longer necessary, provided, however, the refund will be no later than two (2) years from the effective termination date of this Agreement.

9. REPRESENTATIONS AND WARRANTIES.

- (a) As to each Consumer Credit Card Account Application, Credit Card Agreement, and Invoice presented or delivered to us, and the transaction it evidences, you represent and warrant to us the following:
- (i) that you have verified the identity of the consumer customer and that the consumer customer was of legal age and competent to open an Account at the time of the execution of the Consumer Credit Card Account Application, and/or the Credit Card Agreement, and that the Consumer Credit Card Account Application, Invoice, and Credit Card Agreement are bona fide and were actually made and agreed to by each person identified as an applicant or Cardholder;
 - (ii) that the Products which are the subject of the Credit Card Agreement and Invoice are truly and accurately described therein, are fit and merchantable for their intended purpose, have been or will be delivered into the possession of the Cardholder and any services so described have been or will be performed, and that all installation (if applicable) has been or will be completed in a proper and workmanlike manner to the Cardholder's complete satisfaction;
 - (iii) that the amount recited in the Invoice as having been received upon the signing thereof as part of the purchase price of the Products, was actually paid in cash, by Products received in trade, or a combination of cash and trade, at no more than its actual cash value, and that the amount owed upon the Invoice at the time of its execution is correctly stated therein;
 - (iv) that you have full and complete title to the Products, if any, subject only to the rights of the consumer customer which exist by virtue of the Credit Card Agreement and the Invoice;
 - (v) that the Invoice represents a bona fide sale of only Products in the ordinary course of business for the total sale price, and that you have performed your obligations to the Cardholder in connection with the transaction evidenced by the Invoice;
 - (vi) that the transaction involves no advance of cash and no transaction other than that described in the Invoice;
 - (vii) that the transaction is, in all respects, in compliance with all Instructions and Procedures, this Agreement, and all Laws governing the same;
 - (viii) that the Consumer Credit Card Account Application, Credit Card Agreement, and the Initial Disclosures given to the consumer customer were the most recently provided versions available and a true completed copy of the Invoice was given to the Cardholder at the time of the transaction;
 - (ix) that you have no knowledge or notice of any facts, events, issues, or circumstances that would impair enforceability or collection of the Credit Card Agreement or Invoice as against the named Cardholder;
 - (x) that you have properly and fully completed all forms pursuant to our Instructions and Procedures, and that the Credit Card Agreement and Invoice are legally enforceable according to their terms; and
 - (xi) that you fully acknowledge and agree that you will honor a Cardholder's right of cancellation or rescission including any rights a Cardholder may exercise after the Product is delivered, any service or work is completed, and the transaction has been funded by us. You further represent and warrant that you have the right to present the Invoice to us, and that there are no liens, mortgages, encumbrances, or security interests upon the Invoice or the rights evidenced by the Invoice;
 - (xii) that there are no present or future unvested or unrecorded rights that could give rise to a mechanic's, materialman's, or laborer's lien;
 - (xiii) that the Cardholder has no claim or defense to payment of any amount reflected on the Invoice based upon materials or workmanship or any act or omission of you, your employees, contractors, laborers, or representatives;
 - (xiv) that you have not taken a Consumer Credit Card Account Application for an Account via telephone including an application taken by a call center unless otherwise agreed in a separate writing by the parties which will include an amendment to this Agreement;
 - (xv) that the consumer customer identified on the documents that you have submitted to us is not a principal, officer, director, manager, owner, or employee of your business; and
 - (xvi) you represent and warrant to us as to each Invoice presented or delivered to us, and the transaction it evidences, that the Invoice is presented or delivered as governed by subparagraph 7(e) or as otherwise set forth in this Agreement.
- (b) As to all transactions involving your consumer customers, you represent and warrant to us the following:
- (i) that when you offer any financing promotions under the Program, you will ensure all consumer customers purchasing like or similar Products of similar cost have equal access to such promotions;
 - (ii) that you have complied with the provisions of all Laws, including but not limited to Laws governing your profession and your business practices, all Consumer Protection Laws including the Fair Credit Reporting Act, all applicable fair lending laws and regulations, the Federal Truth and Lending Act, the Federal Equal Credit Opportunity Act, as amended, the federal Unfair, Deceptive, or Abusive Acts and Practices regulations, all state law counterparts of them, and all applicable regulations promulgated under any of them, including, without limitation, any provisions requiring adverse action notification to any individual;
 - (iii) that you will comply with all applicable Laws related to servicing and collecting any Account returned to you;
 - (iv) that with respect to all advertising and marketing of Products, financing, or both, you, your employees, your subcontractors, your assigns, and/or your agents have, in all respects, complied with:
 - (A) this Agreement,
 - (B) standards that we may communicate to you at our option and for our sole benefit from time to time, and

- (C) all applicable Laws, including but not limited to, all Laws governing your business, advertising, home improvement and door-to-door sales, (if applicable), and adherence to all related licensing, registration, documentation disclosure requirements, and any other such requirements as set forth by Law;
- (v) that you have not charged a cash advance or any other transaction to an Account for any cash that you have given the consumer customer;
 - (vi) that you have not charged a restocking fee or any other fee that we may in our sole discretion identify as prohibited to an Account (e.g. financing fee);
 - (vii) that you will not offer cash back programs or vouchers in conjunction with purchases made by Cardholders;
 - (viii) that you will comply with the requirements of subparagraph 6(h) above and you will not offer extended product warranties and service agreements underwritten by you or an Affiliate of yours in conjunction with purchases made by Cardholders without our prior written approval and you will provide us with information regarding other third-party extended product warranties and service agreements that are financed in connection with our Program. All of the representations and warranties set forth in this Agreement still apply to any approved extended warranties. Any approved extended warranty will be treated as any other sales transaction under this Agreement;
 - (ix) that you will comply with all obligations under any extended product warranty or service agreement, whether underwritten by you, an Affiliate or a third party, provided or sold to the Cardholder by you;
 - (x) that there have been no representations or warranties made to the Cardholder other than warranties approved in compliance with subparagraph 9(b)(viii) above or a third party's or manufacturer's standard warranties and in the event a manufacturer or third party breaches a standard warranty, you will cure the breach within thirty (30) days of notice of such breach;
 - (xi) that you have not increased the purchase price of any Product or added any additional fee for financing to the Cardholder to any Invoice;
 - (xii) that you have not taken any adverse action against an applicant or consumer customer because the applicant or consumer customer is a member of a protected class, as defined by applicable Law, or because the applicant or consumer customer has chosen to use credit to finance the purchase, nor have you engaged in any practice that has an impermissible negative impact on members of such protected class or consumer customer that has chosen to use credit to finance the purchase;
 - (xiii) that you, your employees, your subcontractors, your assigns, and your agents do not have liens, mortgages, encumbrances, or security interests in a Cardholder's property as a result of a Cardholder's Products purchased with the Card;
 - (xiv) that your use of our forms, disclosures, and other related documents and any other Program elements is solely to be used for your administration of and participation in this Program and that you will not use such forms in connection with any other financing program or consumer transaction;
- (c) You agree that if any representation or warranty is breached or if a Cardholder asserts any claim or defense arising out of any Consumer Credit Card Account Application, Credit Card Agreement, Invoice, or transaction evidenced by any Consumer Credit Card Account Application, Credit Card Agreement, or Invoice or cancels any transaction evidenced by any Consumer Credit Card Account Application, Credit Card Agreement, or Invoice, you will pay us on demand the amount of any Invoice or Account affected plus any finance charges related to the Invoice or Account under the Credit Card Agreement with us. You also agree to reimburse, indemnify, and hold us harmless for any and all breaches of representations, warranties, damages and costs, including attorney's fees, which we may sustain as a result of any such event. We may at our option deduct any amount you owe us pursuant to this paragraph or any other provision of this Agreement from any amount we may owe you.
- (d) You acknowledge and agree that "restricted transactions" as defined in the Unlawful Internet Gambling Enforcement Act of 2006 and Regulation GG ("Restricted Transactions") issued thereunder are prohibited from being processed through any relationship between you and us, or through any consumer customer account. You represent and warrant that you will not submit such Restricted Transactions for processing through any relationship between you and us, or through any consumer customer account. In the event we identify a suspected Restricted Transaction, we may block or otherwise prevent or prohibit such transaction, we may close the Account or end the relationship, and we may seek any other remedies available to us under this Agreement or otherwise.
- (e) You represent and warrant that:
- (i) prior to the execution of this Agreement that you have fully and accurately disclosed to us in writing your full legal business name, any names under which you do business as, your Tax-payer Identification Number and the Taxpayer Identification Number of any other entities from which you will be submitting Consumer Credit Card Account Applications, Invoices, and any other transactions to us under this Agreement; and
 - (ii) the execution of this Agreement is within your power, has been duly authorized by all necessary corporate, partnership, or other action and does not contravene any government or contractual restriction on you. You are a business entity duly organized, validly existing and in good standing under applicable Laws, with full legal power and authority to conduct your business and to perform all your obligations under this Agreement.
 - (iii) the execution of this Agreement does not constitute a breach or violation of any other obligation of yours or any other agreement to which you are party.
 - (iv) you are, and throughout the term of this Agreement will remain, duly authorized and properly licensed (including any required professional licenses) under all applicable Laws to transact business as presently conducted, and to fully perform your obligations under this Agreement.
- (f) If you learned of our Program through a manufacturer or trade group and have enrolled in the Program as a result of such a relationship, that you continue to be associated with the manufacturer or trade group and that you will promptly notify us in the event you cease to be associated with such manufacturer or trade group.

- (g) You represent that you are the exclusive owner of the Licensed Trademarks (as defined in paragraph 11 of this Agreement) or, that if you do not own the Licensed Trademarks, that your licenses to use the Licensed Trademarks include the power to grant us a sublicense to use the Licensed Trademarks in connection with the Program.

10. TERM AND TERMINATION.

- (a) **TERM.** This Agreement will be effective on the date this Agreement becomes effective pursuant to paragraph 2 above and will remain effective until one party gives the other party written notice of its decision to terminate this Agreement. Provided, however, we may terminate this Agreement without notice to you if you breach this Agreement, are subject to a high level of fraud, as determined by us at our sole discretion, or if you fail to submit Invoices and/or Consumer Credit Card Account Applications to us in any consecutive six-month time period.
- (b) **EFFECT OF TERMINATION.** Notwithstanding termination of this Agreement, the provisions of this Agreement will continue in force as to all Consumer Credit Card Account Applications or Invoices accepted or approved by us, provided, however, that if an authorization number for an Invoice is no longer valid under subparagraph 7(c), we will not be obligated to accept such Invoice. In the event that we have provided any equipment to you in connection with this Program, you agree to return such equipment to us upon termination of this Agreement. In addition, upon notice of termination, we will provide you with modified requirements for processing transactions with us during the wind down of the Program.
- (c) **REMEDIES UPON DEFAULT.** In the event of breach by either party, the non-breaching party will be entitled to exercise any and all rights and remedies as are available to it at Law or in equity. The non-breaching party may exercise remedies concurrently or separately, and the exercise of one remedy will not be deemed either an election of such remedy or a preclusion of the right to exercise any other remedy.

11. USE OF MARKS.

- (a) For the sole purpose of (1) identifying you as a participant in the Program; (2) administering and operating the Program; and (3) promoting the Program and Wells Fargo's related products and services to Cardholders, you hereby grant Wells Fargo a nonexclusive right and license to use, reproduce, and publicly display any and all trademarks, trade names, logos, symbols, and designs appurtenant to your business, (the "Licensed Trademarks"), including the right to sublicense to third party vendors for the purposes of creating any and all materials for the execution and administration of this Program, subject to all specified requirements of you with respect to the proper use of the Licensed Trademarks. Wells Fargo agrees not to alter, change, or otherwise modify such Licensed Trademarks in any manner, or use them in combination with any other words or symbols without your prior approval. The license granted hereunder is binding upon and inures to the benefit of the grantor's successors and assigns.
- (b) You acknowledge and agree that if there is any claim against you or Wells Fargo, that the Licensed Trademarks or any modifications thereof, as authorized by you, infringe the rights of another party, you will, at your own expense, defend Wells Fargo's right to use of the Licensed Trademarks as authorized under this Agreement. In the event any such claim is resolved adversely to you or Wells Fargo, or in the event you agree to discontinue the use of any subject mark(s) included in or connected to the Licensed Trademarks in order to resolve any such claim, which you shall have the right to do in your sole discretion, then you agree to indemnify Wells Fargo against any expenses Wells Fargo incurs in discontinuing use of the Licensed Trademarks and adopting use of alternative non-infringing marks. You further agree to indemnify Wells Fargo against all liabilities Wells Fargo incurs to third parties (including, without limitation damage awards obtained by such third parties against Wells Fargo), together with Wells Fargo's reasonable costs of defending against such liabilities (including reasonable attorney fees), arising from Wells Fargo's use of the Licensed Trademarks, when such usage is in accordance with the terms of this Agreement. Subject to the foregoing, if requested by you, Wells Fargo agrees to immediately discontinue the use of any Licensed Trademarks where there has been a claim of infringement and the claim has been resolved adversely to you or Wells Fargo, or where you agree to discontinue use of the Licensed Trademarks in order to resolve the claim.
- (c) Upon the termination or expiration of this Agreement, Wells Fargo agrees to cease all use of the Licensed Trademarks provided that Wells Fargo may continue to use such Licensed Trademarks applicable to Wells Fargo's use, reproduction, and display of the Licensed Trademarks on Cardholder billing statements and communications with Cardholders related to Accounts until no further amounts remain outstanding on such Accounts.
- (d) **Right to Use Wells Fargo Materials.** During the term of this Agreement, Wells Fargo hereby grants to you a non-exclusive, nontransferable, right to use materials created or provided by Wells Fargo to you, for use in connection with the Program and any other materials that are copyrighted or capable of being copyrighted by Wells Fargo ("Wells Fargo Provided Materials"), subject to the terms and conditions of this Agreement, including the following.
- (i) Dealer may not modify, change, alter, delete from, or add to Wells Fargo Provided Materials, including but not limited, to any change in text, graphics, color, size, or position;
 - (ii) Dealer will not use or disclose the Wells Fargo Provided Materials, in whole or in part, for the purpose of offering a product that competes with Wells Fargo;
 - (iii) Dealer will use the Wells Fargo Provided Materials in the manner specified by Wells Fargo or as otherwise agreed to by the parties in writing;
 - (iv) Wells Fargo retains all right, title and interest in and to the Wells Fargo Provided Materials. The Wells Fargo Provided Materials are the sole property of Wells Fargo and any and all uses by you of the Wells Fargo Provided Materials will inure to the benefit of Wells Fargo. Any rights to the Wells Fargo Provided Materials are limited to the express terms of the license in this paragraph 11;
 - (v) Dealer will not take steps that would cause one to believe that materials created or provided by you ("Dealer Provided Materials") were created or provided by Wells Fargo or that Wells Fargo endorses the Dealer Provided Materials; and
 - (vi) Wells Fargo will at all times be the sole and exclusive owner of all such Wells Fargo Provided Materials. No other rights to the Wells Fargo Provided Materials, express or implied, are granted by virtue of this Agreement.
 - (vii) Dealer will not utilize the Wells Fargo Trademarks in any way other than what is set forth in the Wells Fargo Provided Materials.

12. OTHER PROVISIONS.

- (a) **SURVIVAL CLAUSE.** All rights and obligations of the parties created under this Agreement will survive termination of this Agreement.
- (b) **ASSIGNMENT.** You will not assign this Agreement without our written consent. You agree that we may, at our sole discretion, assign this Agreement to any party or affiliate, including, but not limited to, our affiliate, Wells Fargo & Company, upon notice to you of such assignment. Any transfer or assignment of this Agreement by you, without our prior written consent, by operation of law or otherwise, is voidable by us.
- (c) **U.S.A. PATRIOT ACT.** Notwithstanding anything to the contrary, we have certain requirements under the U.S.A. Patriot Act with which we must comply before opening an Account for a consumer customer. Since you have initial contact with the consumer customer, you agree to assist us in complying with the U.S.A. Patriot Act. Such assistance may include, but not be limited to, providing a disclosure (as prescribed by us) to the applicant and co-applicant before he/she applies to open an Account with us, and verifying applicant's and co-applicant's identity including, but not limited to, an applicant's and co-applicant's full name, physical address, date of birth, and collecting his or her Taxpayer Identification Number (which for a U.S. Citizen is his/her Social Security number) upon our request and in the manner we reasonably request.
- (d) **DELAY IN ENFORCEMENT.** Our failure at any time to insist upon the performance of any provision of this Agreement will not operate as a waiver of any right or remedy we have under this Agreement. A waiver of one provision of this Agreement will not operate as a waiver of any other provision.
- (e) **NOT AGENCY OR PARTNERSHIP.** You are not our agent or partner for any purpose whatsoever. You are not granted any right or authority to assume or create any obligation or responsibility on behalf of us, or in our name, or to bind us in any manner whatsoever.
- (f) **NOTICES.**
 - (i) All notices under this Agreement must be in writing. Notices will be effective:
 - (A) three (3) business days from the date of mailing by regular first class U.S. mail;
 - (B) one (1) business day from the date of mailing by a commercial overnight mail carrier such as Federal Express, etc.; or
 - (C) the business day on which notice is sent by facsimile with a date and time confirmation sheet that the fax went through to the other party. For purposes of this subparagraph 12(f), Saturdays, Sundays, and federal holidays are considered non-business days. All notices to us must be sent to the addresses or fax numbers set forth below or to such other addresses or fax numbers as we may advise you in writing. Notices to you will be sent to your address or fax number listed on the Application or such other address and fax number as you may substitute by advising us of such by written notice. Wells Fargo Retail Services, a division of Wells Fargo Bank, N.A., 800 Walnut Street, Des Moines, Iowa 50309 Attn: Executive Vice President Fax No. 1-515-557-7044. You also acknowledge that we may send you promotions, advertising, and other communications of ours and our affiliates from time to time using any of the following methods:
 - (aa) via mail at the address listed on the Application which accompanies this Agreement;
 - (bb) via fax at the fax number listed on the Application which accompanies this Agreement; or
 - (cc) any other marketing channel including but not limited to USPS mail, email, or telephone.
 - (ii) Throughout this Agreement, reference is made to our Instructions and Procedures. Notwithstanding the above provisions regarding notice, you agree that we may post our Instructions and Procedures on our website in the "Online Resources Center" section (or any other place we may designate) and that doing such will constitute notice to you of such Instructions and Procedures. You also agree that you have an ongoing obligation to check the website on a monthly basis for any updates or changes to those Instructions and Procedures. Such website is currently located at www.wellsfargo.com/retailservices; however, we may change the website address upon prior written or electronic notice to you.
 - (iii) You agree to provide us with prompt notification of any state or federal regulatory agencies' inquiries (e.g. inquiry by a state Attorney General's office, by a State regulator, by a federal regulator such as the Consumer Financial Protection Bureau, the Federal Trade Commission, etc.); and any legal action received by you with respect to your advertising, marketing, sourcing of consumers, sales practices, if one of our applicants or Cardholder's is involved in the legal action or if the legal action otherwise involves or makes reference to our credit card Program.
- (g) **CARDHOLDER COMPLAINTS AND BILLING DISPUTES.** You will refer any customer complaint or inquiry correspondence from a consumer who has financed a Product using our Program directly to us as set forth in our Instructions and Procedures.
- (h) **MODIFICATIONS.** We may modify this Agreement by providing prior written notice to you. Your continued submission of Invoices or Consumer Credit Card Account Applications or other participation in the Program after the effective date of any such modification will constitute your acceptance of the modified terms and your agreement to be bound by them.
- (i) **YOUR OBLIGATIONS UNAFFECTED.** Your obligations under this Agreement are not affected by any settlement, extension, forbearance, or variation in terms that we may grant in connection with any Account or by the release of the obligations of the Cardholder by a court or by operation of Law.
- (j) **ACTIONS OF EMPLOYEES.** You are responsible for the actions of your employees. In the event employment of one of your employees is terminated, you will take reasonable steps to ensure they no longer have access to any Cardholder Account Information or access to our systems including changing any passwords necessary to access such information or system.
- (k) **SEVERABILITY.** If any part of this Agreement is found to be illegal or unenforceable, then that part will be curtailed only to the extent necessary to make it, and the remainder of this Agreement, legal and enforceable.
- (l) **ACCOUNT ADMINISTRATION.** You acknowledge and agree that we have sole authority to prescribe the terms and conditions of the Credit Card Agreement, the terms of the Account, and the credit standards and criteria of current and prospective Cardholders and that we may change our credit standards at any time in our sole discretion without notice to you.

- (m) **TITLE OF PROGRAM.** Neither you nor any parent, subsidiary, or affiliate of yours will by virtue of this Agreement, secure any title to or other ownership interest in any elements of the Program. You acknowledge and agree that the Program is our exclusive property and that all of the elements of the Program, including Cardholder lists, our Instructions and Procedures, written specifications, training materials, programs, systems and screens, and all documentation and materials relating thereto, constitute trade secrets, which are our exclusive property. You agree to use the elements of the credit program and information about the credit program only for the purpose of enabling you to use the credit program provided under this Agreement and for no other purpose.
- (n) **GOVERNING LAW.** This contract will be governed by, construed, and enforced in accordance with the laws of the state of South Dakota without giving effect to the conflict of laws provisions thereof.
- (o) **FCRA NOTIFICATION REQUIREMENT.** Pursuant to the Fair Credit Reporting Act (Public Law #91-508 – Title VI of the Consumer Credit Protection Act), you agree to notify each prospective Cardholder of the name and address of our office whenever the purchase is intended for personal, family, or household use. The name and address is as follows: Wells Fargo Bank, N.A., P.O. Box 14517 Des Moines, IA 50315.
- (p) **FACSIMILES.** This Agreement, through the Application, may be executed by facsimile or some other enforceable electronic signature which will be deemed an original.
- (q) **NO THIRD-PARTY RIGHTS.** Nothing expressed or referred to in this Agreement will be construed to give any person other than the parties to this Agreement any legal or equitable right, remedy, or claim under or with respect to this Agreement or any provision of this Agreement. This Agreement and all of its provisions and conditions are for the sole and exclusive benefit of the parties to this Agreement and their respective heirs, administrators, executors, successors, legal representatives, and assigns.
- (r) **CASH ADVANCE FEATURE.** You acknowledge and agree that the Cards we issue to Cardholders may allow them the ability to obtain cash advances from us in accordance with the terms and conditions set forth in Credit Card Agreements. You acknowledge and agree that the total available credit for a Cardholder, at any given time, may be allocated to such cash advance transactions. Nothing in this subparagraph 12(r) operates to nullify any of the terms and conditions set forth in this Agreement, including but not limited to subparagraph 7(c)(xii) prohibiting cash advances by you to Cardholders.
- (s) **BINDING EFFECT.** This Agreement, through the Application, will also be binding on and inure to the benefit of the parties' respective heirs, administrators, executors, successors, legal representatives, and assigns.
- (t) **FORCE MAJEURE.** No party will be responsible, nor incur any liability to another party for any failure to comply with the terms of this Agreement due to causes beyond its reasonable control, including, without limitation, fire, storm, flood, acts of war, accident, insurrection, sabotage, labor disputes, computer system malfunction, acts of God, acts of third parties, acts of federal, state or local government or judicial action ("force majeure"), provided that such actions that do not substantially hinder or prohibit performance will not excuse total nonperformance.
- (u) **ENTIRE AGREEMENT.** Notwithstanding the authorization in subparagraph 8(c)(i), this Agreement and the Application or Consent Form supersede all prior agreements, representations, promises and statements, written or oral, made in connection with the subject matter of this Agreement and the Application and no prior agreement, representation, promise or statement not written in this Agreement will be binding on the parties. Any outstanding disputes, credit applications, Credit Card Agreements, accounts, account balances, Invoices or sales slips, credit memos, or other transactions between the parties under any prior agreement between the parties is subject to the terms and conditions of this Agreement after the date of execution and thereafter. This Agreement will also be binding on and inure to the benefit of the parties' respective heirs, administrators, executors, successors, legal representatives, and assigns.

Exhibit 2



Wells Fargo Retail Services

Managing the Costs of Financing

One of the most important decisions to be made in your business is the pricing of your products and services. If your business wants to account for the cost of financing (i.e., discount fee, transaction fee, program fee, etc.), the cost must be included in your product's overall price versus being included as a fee charged to customers using our Card to finance their purchase.


Please keep in mind that violations of this financing policy could result in cardholder refunds and you will be responsible for all costs associated with those refunds. If you have any questions, please reference the Representations and Warranties section of your Agreement with us, or call your Wells Fargo Relationship Manager/Representative.

Scenario: ABC Furniture sells furniture for an entire home. They offer special terms financing to all of their customers, along with cash and credit as a form of payment. They do not charge customers an additional fee to finance but want to cover their cost in the overall profit margin. Below are examples of the correct and incorrect way to include the special terms financing fee on an invoice.

Correct Example

Couch – \$1500
Chair – \$1000
Lamp – \$300


Overall Price – \$2800
Cash Discount – \$100
Final Cost – \$2700



Incorrect Example

Couch – \$1500
Chair – \$1000
Lamp – \$300

Overall Price – \$2800
Financing Fee – \$280
Final Cost – \$3080



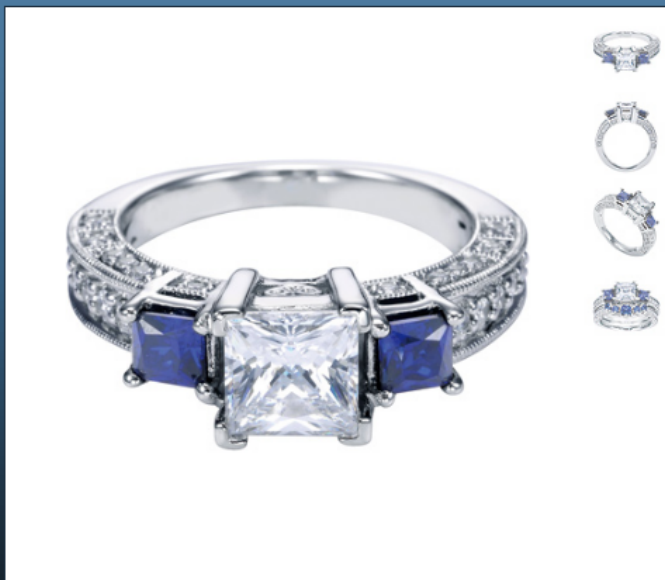
In the correct example above, the merchant has built the cost of financing into the price of the products and then discounted the overall price for his customer paying with cash.



Exhibit 3



Like us on Facebook



14K White Gold Victorian 3 Stone Engagement Ring

Style #RE1983W1404SA

She'll always feel special with these beautiful diamonds adorning her hand. Promise her your heart in the form of the 14K White Gold Vintage 3 Stone Engagement Ring.

CENTER STONE INFORMATION

Center stone sold separately. Not included in style information or price.

INFORMATION

Width	7mm
Metal Weight	3.58 grams
Available Sizes	3 to 9 what's my size?

Finance Price: \$1,542

Buy this ring for \$25.70 per month with 0% APR.* Total payments are \$1,542. Time to repay is 60 months.** [Click here for financing details.](#) Estimated monthly payment is based on financing full purchase.

Credit Card Price: \$1,311

Pay in full by credit card receive a \$231 discount.

Matching Item

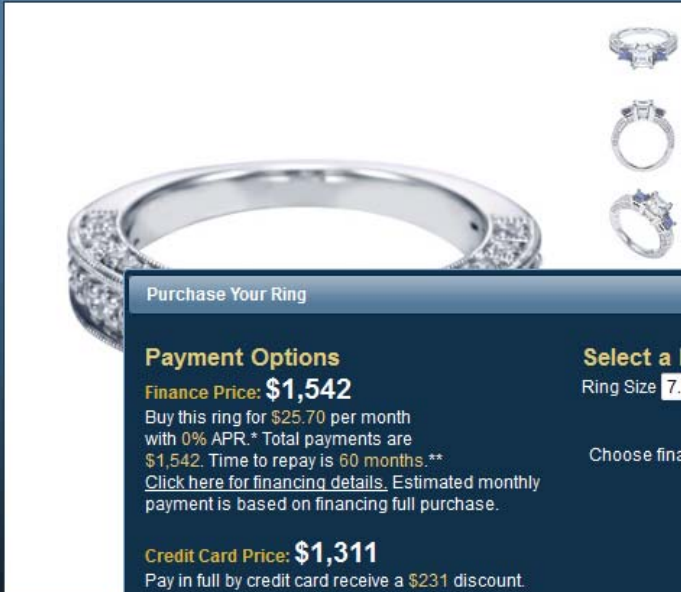


Wedding Band
Style #RW1983W1404SA

Choose finance or credit card price when checking out

[Add to Cart](#)

Each ring is custom made. Please allow 1 to 3 weeks for delivery.



14K White Gold Victorian 3 Stone Engagement Ring

Style #RE1983W1404SA

She'll always feel special with these beautiful diamonds adorning her hand. Promise her your heart in the form of the 14K White Gold Vintage 3 Stone Engagement Ring.

CENTER STONE INFORMATION

Center stone sold separately. Not included in style information or price.



Purchase Your Ring [Close]

Payment Options

Finance Price: \$1,542

Buy this ring for \$25.70 per month with 0% APR.* Total payments are \$1,542. Time to repay is 60 months.** [Click here for financing details.](#) Estimated monthly payment is based on financing full purchase.

Credit Card Price: \$1,311

Pay in full by credit card receive a \$231 discount.

Select a Ring Size

Ring Size [what's my size?](#)

Choose finance or credit card price when checking out

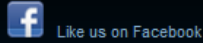
Matching Item



Wedding Band
Style #RW1983W1404SA

Choose finance or credit card price when checking out

Each ring is custom made. Please allow 1 to 3 weeks for delivery.

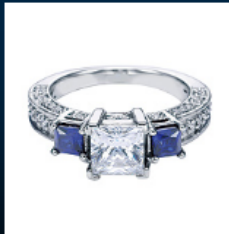


GIA Certified Princess Diamonds

Our Diamond Selection Features Only the Best GIA Grades For Cut, Depth %, Table %, Polish, Symmetry and Fluorescence

We have taken the confusion out of buying diamonds. Our professional diamond buyers have searched through thousands of diamonds in order to select only those GIA certified diamonds that meet our strict grading criteria for cut, table %, depth %, polish, symmetry and fluorescence. You can be sure that every diamond on our site has been selected to offer the best value.

Please choose a diamond for your **14K White Gold Victorian 3 Stone Engagement Ring:**



Style #RE1983W1404SA
Ring Size: 7.00

Shape (choose one)

- Cushion
- Emerald
- Marquise
- Oval
- Pear
- Princess
- Radiant
- Round

Color (select all that apply)

- D
- E
- F
- G
- H
- I
- J
- K

37 Total Results

First << 1 2 3 >> Last

Carat Weight	Color	Clarity	Depth	Table	Polish	Symmetry	Fluorescence	Ratio	Price/Stock#
1.00 Carat	D	VVS2	76.00	76.00	VG	VG	N	1.04	See Price
1.00 Carat	E	VVS2	77.50	68.00	G	G	N	1.04	See Price
1.00 Carat	F	VVS1	75.00	72.00	EX				See Price
1.00 Carat	G	VVS2	75.60	73.00	VG				See Price
1.00 Carat	H	VVS1	74.90	72.00	EX				See Price
1.01 Carat	D	VVS1	72.60	71.00	EX				See Price
1.01 Carat	E	VVS1	74.90	70.00	EX				See Price
1.01 Carat	E	VS1	71.40	72.00	VG				See Price
1.01 Carat	F	VVS1	70.90	67.00	VG				See Price
1.01 Carat	G	VVS1	75.40	70.00	EX				See Price
1.01 Carat	G	VVS1	78.80	69.00	EX				See Price

Stock# 606232 ✖

[View GIA Report](#)

Finance Price: \$9,214
Buy this diamond for \$153.57 per month with 0% APR.* Total payments are \$9,214. Time to repay is 60 months.**
[Click here for financing details.](#) Estimated monthly payment is based on financing full purchase.

Credit Card Price: \$7,187
Pay in full by credit card and receive a \$2,027 discount.

Choose finance or credit card price when checking out


[Add to Cart](#)



Like us on Facebook

[Cart Review](#) > [Credit Application](#) > [ID Verification](#) > [Terms & Conditions](#) > [Payment](#) > [Confirmation](#)

Please review your diamond and setting selection below.

	Financed Price	Credit Card Price
 <p>14K White Gold Victorian 3 Stone Engagement Ring Setting Style #RE1983W1404SA Ring Size: 7.00</p>	<p>Setting: \$1,542</p> <p>Buy this ring for \$25.70 per month with 0% APR.* Total payments are \$1,542. Time to repay is 60 months.** Click here for financing details. Estimated monthly payment is based on financing full purchase.</p>	<p>Setting: \$1,311</p> <p>Pay in full by credit card receive a \$231 discount.</p>
<p>Diamond Stock #606232 1.00 ct, princess, F/VVS1. View GIA Report</p>	<p>Diamond: \$9,214</p> <p>Buy this diamond for \$153.57 per month with 0% APR.* Total payments are \$9,214. Time to repay is 60 months.** Click here for financing details. Estimated monthly payment is based on financing full purchase.</p>	<p>Diamond: \$7,187</p> <p>Pay in full by credit card and receive a \$2,027 discount.</p>

[remove](#)

Financed Total

\$10,756

Buy this ring for \$179.26 per month with 0% APR.* Total payments are \$10,756. Time to repay is 60 months.**
[Click here for financing details.](#)
 Estimated monthly payment is based on financing full purchase.

[finance my purchase](#)

Credit Card Total

\$8,498

Pay in full by credit card receive a \$2258 discount.

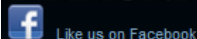
[pay by credit card](#)

* All diamonds are subject to prior sale.

Sales Tax is collected only on orders shipped to addresses in Nevada.

The prices are for purchases made directly from J. Edwards United Diamond Import Company.

If you have questions please contact us or call our office at 866-997-8811. (Hours: Mon – Fri, 10:00am to 6:00pm central time)



[Cart Review](#) > **Credit Application** > [ID Verification](#) > [Terms & Conditions](#) > [Payment](#) > [Confirmation](#)

Application Status

Congratulations, you have been approved for a Wells Fargo Jewelry Advantage Credit Card limit of \$15,000.00:

Your Wells Fargo Jewelry Advantage Number is: 5774421718000012

Please write this number down or [print this page](#) for your records. Keep in a safe place.

You have selected the following items:



14K White Gold Victorian 3 Stone Engagement Ring
Setting Style #RE1983W1404SA
Ring Size: 7.00

Diamond Stock #606232
1.00 ct, princess, F/VVS1.

Your total purchase is \$10,755.85

Please choose one of the three ways to proceed below:

- If you want to proceed with your selection and finance the entire purchase amount, [click here](#)
- If you want to reduce the finance amount and receive a discount for any amount paid on your credit card, [click here](#)
- If you would like to modify your selection, [click here](#)

YOU HAVE A 30 DAY INSPECTION PERIOD

Your Wells Fargo Jewelry Advantage Number is: 5774421718000012

Discount Calculator

The more you pay on your credit card, the bigger your discount. Use the discount calculator slider bar to choose the amount to finance* and the amount to pay by credit card.
*Your financed amount cannot exceed your approved limit.

Wells Fargo Jewelry Advantage Credit Card

Credit Limit
\$15,000.00

Amount to Finance
\$ 7000.00



Your Credit Card
Amount to Charge
\$ 2967.25

Discount
\$788.60

Total
\$9,967.25

For your Jewelry Advantage credit card, your estimated monthly payment will be \$116.67. Total payments are \$7,000.00. Time to repay is 60 months. ([review financing details](#))

60 months special terms do not apply to this portion of your purchase and are instead subject to the terms and conditions on your card.

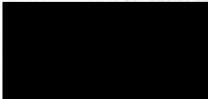

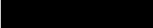

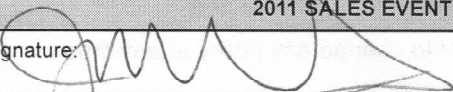
Ok Cancel

proceed with your selection and finance the entire purchase amount, [click here](#)

Exhibit 4

J. EDWARDS DIAMONDS

SEE REVERSE SIDE FOR STORE POLICIES
 1840 JOE BATTLE BLVD EL PASO TX 915-356-3535

Sold To: 		Ship To:	
Telephone: 		Sales Person: 3 	
Date: December 23, 2011		Account Type: ML	Account Number: 
* * * Cash Sale * * *			
Item Number	Description	Quantity	Sell Price
Slsp1: 3 JOE ENRIQUEZ			
DLRX100472	1.00 CT RD G-SI1 GIA	1	10,097.00
13062459	14W DIA SEMI BG .88CTW	1	11,288.00
DISC04900	3 MONTH PAYMENT DISCOUNT	-1	-1,069.26
			Subtotal
			Tax
			Total
WELLS FARG	17600.00		21,991.79
DISCV	2196.00		
DISCV	2195.79	Tot Paid	21,991.79
2011 SALES EVENT			
Customer Signature: 			






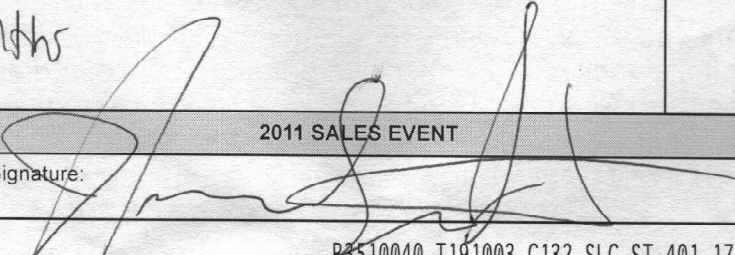


60Mts

B3570040 T191917 C150 SLC ST 401 19:26:56

J. EDWARDS DIAMONDS

SEE REVERSE SIDE FOR STORE POLICIES
 1840 JOE BATTLE BLVD EL PASO TX 915-356-3535

Sold To: 	Ship To:		
Telephone: 	Sales Person: 12 		
Date: December 17, 2011	Account Type: ML * * * Cash Sale * * *	Account Number: 	
Item Number	Description	Quantity	Sell Price
	Slsp1: 12 RAUL PORRAS		
13081154	14W 3RD ANN RG ICTW-B	1	3,233.00
DISC04900	3 MONTH PAYMENT DISCOUNT	-1	-161.65
Subtotal			3,071.35
Tax			253.38
Total			3,324.73
Tot Paid			3,324.73
VISA WELLS FARG		200.00 3124.73	
			
2011 SALES EVENT			
Customer Signature: 			

60 mths

B3510040 T191003 C132 SLC ST 401 17:03:54

Exhibit 5

From: Chavez, Lori [<mailto:lchavez@nmag.gov>]
Sent: Thursday, October 11, 2012 3:01 PM
To: Stevan D. Looney
Cc: Karen Meyers; MICHAEL D. STELL; Melissa Moreno; Melinda Pate
Subject: J. Edwards Question of Law

Dear Stevan:

We have been reviewing the state of the law as it concerns the offering of discounts by merchants to the public based upon the form of payment. The two primary sources relied upon to determine the state of the law has remained the same: Truth in Lending Act, 15 USC sec 166f(b) which defines when a discount off a seller's regular price does not constitute a finance charge, and the Electronic Fund Transfer Act, 15 USC sec 1693o-2 which prohibits payment card networks from restricting any person from offering discount incentives to use cash, checks, debit cards or credit cards. Neither statute is directly on point since the TILA regulates creditors, which we agree does not include J. Edwards, and the EFT regulates payment card networks involving electronic fund transfers, which we also agree does not apply to J. Edwards.

Pursuant to 15-USC sec 1666f(b), any discount from the regular price offered by the seller for purposes of inducing payment by cash, check or other means not involving open-end credit plans or credit cards does not constitute a finance charge. We agree that cash discounts include debit card transactions.

Pursuant to 15 USC sec 1693o-2, payment card networks may not inhibit the ability of any person from providing a discount or in-kind incentive for payment by use of cash, checks, debit cards or credit cards to the extent that (i) the discount or in-kind incentive does not differentiate on the basis of the issuer or the payment card net work and (ii) such discount or in-kind incentive is offered to all prospective buyers and disclosed clearly and conspicuously.

We maintain our position that the application of discounts, previously utilized by J. Edwards, constitutes a hidden finance charge, as briefed in our Motion for Partial Summary Judgment on Count I. However, in an effort to avoid expending more time and financial resources in resolving this unsettled question of law, we propose a compromise based upon the "limitation on restrictions on offering discounts for use of a form of payment" laid out in 15 USC sec 1693o-2.

We propose that, by agreement and without any admission as to this question of law, J. Edwards be permitted to discount off the regular sell price indicated on the sticker attached to each item in the store. The discount shall be used as an incentive to encourage consumers to choose a particular form of payment over another. Therefore, with the limitation set forth below, J. Edwards would be permitted to provide a "cash", "check", "debit" or "credit card" discount.

Such discount rates offered to customers purchasing items from J. Edwards utilizing third party credit cards, such as, but not limited to, Discover, American Express, Visa or Mastercard, must be offered the same discount offered to customers using the J. Edwards private label credit card such as the Jewelry Advantage Program. Also, if J. Edwards arranges the credit through a private label credit card company for the buyer (for example the Wells Fargo's "Jewelry Advantage Program"), the discount rate offered each buyer must be the same regardless of the period of time the item is financed. The credit card discount price may not be represented as the

“cash” price. Credit card discounts must be published and made available to all buyers. All available published discounts must be (1) included in J. Edward’s advertisements, (2) clearly and conspicuously posted in bold type in its store, and (3) orally offered to all prospective buyers.

Please let me know your thoughts on these points.

Under the Partial Consent Decree signed by the parties, your clients agreed to revise its advertising on radio and television within 10 days after entry of the consent decree and provide our office with a copy of the revised radio and television advertising within 10 days of completion. Those copies should have been received by our office no later than September 17, 2012. To date, we have not received those copies.

Additionally, you clients were to provide our office with a complete accounting of all adjustments made for each active lease, including the consumer names, addresses, contact information, balance remaining due, original lease price and date of notice to the consumer. To date, we have not received that information.

Your clients must adhere to the timeframes and settlement terms specified in the consent decree. Please provide us assurances that this will be remedied as soon as possible.

--

Lori Chavez
New Mexico Attorney General's Office
111 Lomas NW, Suite 120
Albuquerque, NM 87102
505-222-9043

Exhibit 6

From: John Silverman
Sent: Tuesday, February 07, 2017 11:52 AM
To: boardcommunications@wellsfargo.com
Subject: FW: Deceptive Trade/Fraud to Board of Directors

To: Wells Fargo Financial National Bank
Board of Directors

Ladies/Gentlemen,

I sent the below email to Mr. James Strother, January 24, 2017. I asked for a response within 10 days. To date I have not received a response. Since I have no way of knowing whether or not Mr. Strother received my correspondence, I am writing to the board in an effort to reach him or the appropriate person. The letter below explains the situation.

Because of the nature of its contents, I would assume someone from your corporate office would respond. Hopefully, this follow up will reach the appropriate person.

Again, if I do not get a response from this second attempt, I will begin taking the actions as expressed in my letter.

Yours truly,
John Silverman

**JOHN SILVERMAN
P. O. BOX 220154
EL PASO, TEXAS 79913
915-494-5237**

January 24, 2017

Mr. James Strother
Executive Vice President/ General Counsel
Wells Fargo Financial National Bank
420 Montgomery Street
San Francisco, CA 94104

Re: Deceptive Trade Practices/Fraud

SENT VIA EMAIL AND FEDERAL EXPRESS

Dear Mr. Strother,

I am writing you on behalf of J. Edwards Diamonds, El Paso, Texas, for whom I am the managing member, as well as J. Edwards Diamonds New Mexico and J. Edwards United Nevada.

We have recently become aware that the Wells Fargo Retail Financing Program (WF) violates various laws pertaining to federal consumer protection, deceptive trade practices, false advertising and unfair trade practices. Additionally, and more importantly, your programs and actions reflect a willful intent to commit fraud. Because our company acted as a facilitator in arranging financing with WF for our customers, we have incurred great legal expense in our effort to defend your illegal scheme.

The purpose of this letter is an effort to reach an agreement in which we are reimbursed by WF for the expenses we have incurred over many years as a result of participating in your programs.

Following are some of the facts for your consideration: Our company used your WF Jewelry Financing Program for some 15 years. We were initially contacted by your local El Paso office manager. In an effort to gain our business, he promised us various and advantageous benefits compared to the finance company we were using at the time. The benefits were more "same as cash" (zero interest) programs, a better approval rate, more advertising support and most importantly, various programs on an exclusive basis

in our trade area. At the time we agreed to participate, it was understood that we would offer our customers a sliding scale of discounts in which discounts would be increased in exchange for customers choosing shorter financing terms. In other words, we would offer a discount if a customer chose the 24 months interest free plan instead of the 36 months interest free plan, an even larger discount if a customer chose the 12 months interest free plan instead of the 24 months interest free plan and finally our largest discount if a customer chose to pay cash instead of financing at all. It was agreed at the time that our discounting method was a great way to promote and sell your various financing programs. As time went on, we introduced the 60 months interest free plan. Again, we offered the sliding scale of discounts, beginning with the 60 months interest free plan. As an example, we would present pricing for a particular product as follows: The price for the 60 months interest free financing is \$2,135, or 36 months interest free is \$1,985, or 24 months interest free is \$1,865, or 12 months interest free is \$1,772 or for cash \$1,666. As you can see, the overall discount from the 60 months plan to the cash level is 22%.

Our retail pricing structure was calculated to include and cover the largest WF discount of 22% for the 60 months interest free plan, as well as all of the other WF discounts through the various and shorter financing levels. It was our intent to always receive our cash price, whether paid to us by WF or by the customer. In order to insure that we always received our cash price, we inflated our retail ticket price to include the WF discount amount. To be clear, we did not offer our cash price first and then add on for financing. We always presented the highest financing price first, which had the WF discount amount included, then discounted down from that highest price.

As you can imagine, when customers would see the dollar difference, as in the above example, between the 60 months interest free financing price (\$2,135) and the lowest price for cash (\$1,666), the difference being \$469, they would challenge our claim of "interest free" by saying that we are not offering interest free financing as advertised, but instead would argue that the \$469 difference was actually the interest already built in the price.

While our claim of "interest free" financing was the subject of many conversations with customers, the issue gained the attention of the Attorney General. The AG's position was that transactions with customers, which included the WF discounts and our corresponding pricing methods, were based on time, price differential. Furthermore, our pricing system with inflated prices to cover the WF discounts, were not "interest free" to customers but instead prices that included undisclosed finance charges. All elements of our transactions were not only a violation of TILA laws, but the advertising and promotion of the pricing as "interest free" violated various laws regarding deceptive trade, false advertising and unfair trade practices. The cost to defend and settle the matter with the AG was several hundred thousand dollars.

Since that time our company has undergone Texas sales tax audits. In the course of the latest audit, our attorney has agreed with the AG's position and has determined that our financing programs were not "interest free" rather included undisclosed finance charges paid to WF by the customer. Because we paid sales tax on the entire sale amount, which included finance charges, he has determined that we have overpaid sales tax amounts, as finance charges are not subject to sales tax. As a result, we have overpaid a significant amount of sales tax for many years.

Our attorney has spent considerable time researching TILA regulation Z, as well as past cases in which pricing and discounting were handled in similar ways between customers, merchants and third party finance companies. Based on his findings, our attorney has concluded that the WF discount amounts were not "the cost of doing business", rather hidden finance charges buried in the price. He has concluded that the entire promotion, presentation, marketing and sales to consumers not only violated TILA laws, but was actually a deceptive scheme to hide finance charges.

WF has used our company, and thousands of other retailers, to promote and sell their "interest free" scheme. WF has a very intimate relationship with each of its retailers and therefore, knew, or should have known, based on the way the programs were being presented by retailers to customers, including the various types of discounts and methods of payment being offered, that TILA laws were being violated. Our company, and all other retailers, rely on WF's expertise and knowledge of the laws related to consumer financing. By offering customers increased discounts for choosing shorter financing terms, by offering discounts for cash and allowing customers to pay by credit card, by inflating prices to cover the WF discount amounts which are then separately imposed on financing customers and payable directly to WF, these are all actions that fit TILA definitions of a finance charge.

Included at the bottom of this letter is a list of definitions from the Truth In Lending Act, Regulation Z...

The WF programs and the various methods of discounting offered by us to our customers were not only approved by WF's local office, but later approved in a letter from Mike Lancaster, WF District Manager. Additionally, when we created our website, WF, through its representative Dixie McConnell, took charge of site development and worked directly with our programmers in order to create the format and verbiage. The offering on the website had to be approved by WF's compliance department. Our site offered the ability to finance for 60 months at 0% APR or receive a discount and pay by credit card instead of financing. Operating in this manner was clearly a violation of TILA. As one of the largest finance companies in the United States, WF knew the laws regarding consumer financing. But rather than providing the proper guidance to our company, and other retailers, WF ignored the possible damages retailers could sustain by violating the laws. Instead, WF willfully encouraged and allowed retailers to continue to violate TILA laws and participate in a deceptive scheme in an effort to create more loan volume and profits for their own business.

To recap: The WF discount is a finance charge, as defined by TILA regulation Z. By inflating the retail price to cover the WF discount, it is a charge separately imposed on the customer only when financing. As a result, the WF discount is not a cost of doing business. The discounts are based on cost of money and length of time... time, price differential. WF is aware that all retailers inflate the price to cover the WF discount amount, an amount not imposed on a cash customer. WF is aware that all retailers will discount when a customer chooses a shorter financing term or chooses to pay a cash price, which is typically paid by credit card. The retailer receives no benefit nor part of the WF discount amount. WF receives 100% of the discount amount paid by the customer directly to WF. Once WF pays the cash price to the retailer, the retailer has no further concern in the transaction. WF is aware that our company and others advertise and promote "interest free" financing although as defined, the transactions are not actually interest free.

If this issue is made public, WF retailers everywhere will have tremendous liability exposure to their customers that took advantage of the program and could face fines for deceptive trade, false advertising, unfair trade practices and fraud. It would be devastating for retailers as their businesses would be irreparably damaged as a result of lying to their customers. For WF's willing participation, the problem could be even more devastating. Refunds for sales tax overpayments to thousands of retailers, as well as refunds, penalties and fines as a result of a fraudulent scheme perpetrated against millions of consumers, could equate to many billions of dollars.

We do not want to make this a public issue. This is why I am reaching out to you in hopes we can meet and negotiate a settlement to reimburse us for the costs we have incurred. However, if you do not respond to us within 10 days from the date of this letter, or if we are unable to agree on terms of a reimbursement settlement, then we will contact the AG explaining that as a common practice, other area retailers are continuing to advertise and promote the WF "interest free" programs, while using the same illegal and fraudulent tactics for which we were charged. Obviously, these issues affect more consumers than just those in our trade area. Therefore, in addition to pursuing this with the AG in our area, we will take the matter to the Attorneys General in all the states where WF does business. Additionally, because this matter affects millions of consumers, we will contact the major media organizations.

After reviewing the facts, I am sure you will see this as a legitimate and extremely problematic issue for WF. Hopefully you will respond to me, or our attorney copied below, and accept our offer to meet and bring this matter to a close.

Yours truly,

John Silverman

CC
Robert A. Skipworth
Attorney
310 N. Mesa
Suite 600
El Paso, Texas 79901
915-533-0096

The Truth In Lending Act (TILA) regulation Z and definitions....

§ 1026.4 Finance charge.

(a) *Definition.* The finance charge is the cost of consumer credit as a dollar amount. It includes any charge payable directly or indirectly by the consumer and imposed directly or indirectly by the creditor as an incident to or a condition of the extension of credit. It does not include any charge of a type payable in a comparable cash transaction. Because prices are inflated to cover WF discount amounts, and prices are discounted for cash, the discount amount is imposed separately only on financing customers and not cash customers. The discount amount is paid by customers directly to WF.

"A discount imposed on a credit obligation when it is assigned by a seller-creditor to another party is not a finance charge so long as the discount is not separately imposed on the consumer". Regulation Z (12 C.F.R. pt 226 Supp I at 308-309) The discount amount is separately imposed on the consumer, paid directly by consumer to WF.

(b) *Examples of finance charges.* The finance charge includes the following types of charges, except for charges specifically excluded by paragraphs (c) through (e) of this section:

(1) Interest, time price differential, and any amount payable under an add-on or discount system of additional charges. The WF discounts and our corresponding discounts to customers for choosing shorter financing terms, or to pay cash, were calculated based on the cost of money and length of time financed.

(9) Discounts for the purpose of inducing payment by a means other than the use of credit. We offered discounts for choosing shorter financing terms as well as a cash discount paid by credit card.

(c) *Charges excluded from the finance charge.* The following charges are not finance charges:

(8) Discounts offered to induce payment for a purchase by cash, check, or other means, as provided in section 167(b) of the Act. **§ 167. Use of cash discounts** (b) With respect to any sales transaction, any discount from the regular price offered by the seller for the purpose of inducing payment by cash, checks, or other means **not involving the use of an open-end credit plan or a credit card** shall not constitute a finance charge as determined under section 106, if such discount is offered to all prospective buyers.

Sellers who arrange credit. If the seller of the property or services involved arranged for financing but is not a creditor as to that sale, the transaction is not a credit sale. Thus, if a seller assists the consumer in obtaining a direct loan from a financial institution and the consumer's note is payable to the financial institution, the transaction is a loan and only the financial institution is a creditor.

Charges in comparable cash transactions. Charges imposed uniformly in cash and credit transactions are not finance charges. In determining whether an item is a finance charge, the creditor should compare the credit transaction in question with a similar cash transaction. A creditor financing the sale of property or services may compare charges with those payable in a similar cash transaction by the seller of the property or service. Retailer's finance price is higher than cash price. Price has been inflated to cover WF discount amount

the following items are finance charges, If the charge in a credit transaction exceeds the charge imposed in a comparable cash transaction, only the difference is a finance charge.

Costs of doing business. Charges absorbed by the creditor as a cost of doing business are not finance charges, even though the creditor may take such costs into consideration in determining the interest rate to be charged or the cash price of the property or service sold. However, if the creditor separately imposes a charge on the consumer to cover certain costs, the charge is a finance charge if it otherwise meets the definition.

i. A discount imposed on a credit obligation when it is assigned by a seller-creditor to another party is not a finance charge as long as the discount is not separately imposed on the consumer.

Deferred interest or similar transactions. An issuer offering a deferred interest or similar plan, such as a promotional program that provides that a consumer will not be obligated to pay interest that accrues on a balance if that balance is paid in full prior to the expiration of a specified period of time, may not disclose a 0% rate as the rate applicable to deferred interest or similar transactions if there are any circumstances under which the consumer will be obligated for interest on such transactions for the deferred interest or similar period.... if the finance charge is hidden in the price, should not say it is 0%

Exhibit 7

ROBERT A. SKIPWORTH

Attorney at Law / Mediator

310 N. Mesa, Suite 600

El Paso, Texas 79901

Board Certified
Civil Trial Law
Licensed in Texas and New Mexico

(915) 533-0096
(915) 544-5348 facsimile
www.robertskipworth.com
E-mail: rskipworth@aol.com

June 12, 2017

Mr. Warren Buffett
Berkshire Hathaway, Inc.
3555 Farnam Street, Suite 1440
Omaha, NE 68131

RE: J. Edwards Jewelers and Wells Fargo
Fraudulent Financing Scheme

Dear Mr. Buffett:

Since I know that you are a major shareholder in Wells Fargo, I think that you would be interested in knowing the information in this letter since it reveals great potential damage to Wells Fargo.

My client is John Silverman who used to own and operate a regional chain of jewelry stores by the name of J. Edwards Jewelers with its headquarters here in El Paso. J. Edwards was a Wells Fargo merchant dealer for many years and then became aware that the company was participating in a fraudulent financing scheme promoted by Wells Fargo. The Attorney General of the State of New Mexico filed suit against J. Edwards which centered around Wells Fargo's "zero interest" financing scheme in which J. Edwards offered its customers Wells Fargo's long term financing plans at zero interest. Unfortunately, the "zero interest" was not actually zero interest but instead had interest hidden in the prices consumers paid to Wells Fargo.

The AG suit alleged that J. Edwards was violating many of the Truth-in-Lending Act (TILA) Regulation Z requirements with practically every sale. J. Edwards' method of pricing, discounting, payment collection and sales tax collection violated TILA Regulation Z leading to charges of deceptive trade, false advertising, unfair business practices and fraud. Wells Fargo was not a party to that suit.

Although J. Edwards eventually settled with the AG, J. Edwards learned of the problem which is ongoing and much larger than J. Edwards. Thousands of merchant dealers in the country are using the same method of promotion and sales tactics that J. Edwards was using. Unfortunately, the retailers may not be aware that they are participating in a fraudulent financing

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scheme and deceiving their customers on a daily basis which may number in the millions. (See footnote below).

Starting in January 2017, Mr. Silverman contacted James Strother, Wells Fargo's general counsel. Mr. Strother forwarded the letter to an attorney in his law department in Des Moines. The letter from Mr. Silverman asked for reimbursement of expenses incurred as a result of participating in and selling consumers on the fraudulent program being promoted by Wells Fargo and also asked for costs of defending the lawsuit with the Attorney General. For the last five months, discussions ongoing with the attorney in Des Moines and have not yielded any results. Mr. Silverman was told that Wells Fargo does not think they have any responsibility for the actions of their retail dealers nor for the costs incurred by J. Edwards in promoting and defending Wells Fargo's program.

The attorney in Des Moines has received all the various statutes and details regarding the laws and the TILA violations. It is clear that the Wells Fargo "zero interest" financing program is being fraudulently presented by retail dealers to consumers and it is clear that Wells Fargo is participating in these fraudulent schemes because of their contracts with the dealer merchants, customers and federal law. Thus, in my opinion, Wells Fargo is in a position of overall liability for the fraud being perpetrated on a vast number of consumers.

The problem here is that the attorney in the Des Moines office, and probably others, are not grasping the bank's potential liability. Mr. Silverman has made it clear that if he, on behalf of J. Edwards, and Wells Fargo are unable to reach a reasonable resolution, he intends to go to the national media, the Consumer Financial Protection Bureau, Attorneys General in various states and possibly, along with other retail dealers and consumers, file a class action lawsuit against Wells Fargo.

Mr. Silverman is not interested in creating another scandal for Wells Fargo unless he has to; but, he and I would like to discuss this matter with someone who understands the scope of the situation and can make a decision regarding reimbursement to Mr. Silverman and J. Edwards for the large sums of money that were paid to promote and defend the Wells Fargo program.

Thank you for your assistance in this matter.

Sincerely,

Robert A. Skipworth

RAS:amh

cc: Timothy Sloan
President/CEO Wells Fargo & Co.

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(Footnote: Under the WF program, a merchant can advertise its product (tires, appliances, diamonds, etc.) for a certain retail price. The consumer can choose to purchase the item for the retail price as advertised and finance the retail price through WF for 60 months @ “zero interest”. However, when WF pays the merchant for the item, on the customer’s behalf, they only pay the merchant 77.5% of the retail price. The discounted amount of 22.5% WF pays the merchant can be equated to the merchant’s “cash price” when the merchant is offering a cash discount to the customer.

It is important to note, that in most cases, merchants will offer a discount for cash to their customers. Thus, the consumer could pay a “lower cash price” and not finance with WF. According to TILA Regulation Z, because the consumer pays a higher price to finance the item with WF, than when paying the cash price, the difference between the finance price and the cash price is an undisclosed (hidden) finance charge paid directly by the consumer to WF over the term of the contract.

When promoting the financing as “zero interest”, the hidden finance charge is deceptive and illegal under Regulation Z.)

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

JOHN SILVERMAN and J. EDWARDS JEWELRY DISTRIBUTING, LLC, as representatives of all similarly situated persons

(b) County of Residence of First Listed Plaintiff (EXCEPT IN U.S. PLAINTIFF CASES) OUT OF STATE

(c) Attorneys (Firm Name, Address, and Telephone Number) FORTIS LLP Matthew A. Berliner (SBN 224384) 650 Town Center Drive Suite 1530 Costa Mesa, CA 92626 (714) 839-3800

DEFENDANTS

WELLS FARGO & COMPANY; WELLS FARGO BANK, NATIONAL ASSOCIATION; and DOES 1 – 10, inclusive

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)

Table with columns for Plaintiff (PTF) and Defendant (DEF) citizenship: Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, 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)

Large table with categories: CONTRACT, REAL PROPERTY, TORTS (PERSONAL INJURY, CIVIL RIGHTS, PRISONER PETITIONS, HABEAS CORPUS, OTHER), FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES.

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): Truth in Lending Act, 15 U.S.C.A. §1601, et seq. and the California Unfair Competition Law, CAL. BUS. & PROF. CODE §§ 17200, et seq. Brief description of cause: Consumer action premised upon failure to disclose hidden finance charges and wrongful retention of sales tax

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 DOCKET NUMBER

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

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

DATE 06/28/2018

SIGNATURE OF ATTORNEY OF RECORD

/s/ Matthew A. Berliner

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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: [Wells Fargo Financing Programs Steal from Merchants and Consumers, Class Action Suit Alleges](#)
