

1 VIRGINIA JO DUNLAP (CA BAR NO. 142221)
Acting Assistant Commissioner
2 ALAN S. WEINGER
Supervising Counsel
3 JUDY L. HARTLEY (CA BAR NO. 110628)
Senior Corporations Counsel
4 Department of Corporations
320 West 4th Street, Suite 750
5 Los Angeles, California 90013-2344
Telephone: (213) 576-7604
6 Facsimile: (213) 576-7181

7 Attorneys for Defendant

8
9 IN THE UNITED STATES DISTRICT COURT
10 FOR THE EASTERN DISTRICT OF CALIFORNIA

11 WELLS FARGO BANK, N.A., and WELLS)
12 FARGO HOME MORTGAGE, INC.,)

13 Plaintiffs,)

14 vs.)

15)
16 DEMETRIOS A. BOUTRIS, in his official)
17 capacity as Commissioner of the California)
Department of Corporations,)

18 Defendant.)

Civil Action No. S-03-0157 GEB JFM

)
) DECLARATION OF DIAUN M. BURNS IN
) SUPPORT OF DEFENDANT’S OPPOSITION
) TO PLAINTIFFS’ MOTION FOR
) PRELIMINARY INJUNCTION

)
)
) Hearing Date: March 10, 2003
) Time: 9:00 a.m.
) Location: Courtroom 10

)
) **Hearing Requested**
)

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21 I, DIAUN M. BURNS, declare as follows:

22 1. I make the following statements based on personal knowledge. If called as a witness, I
23 could and would competently testify as follows.

24 2. I am employed by the California Department of Corporations (“Department”) as the
25 Special Administrator for the California Residential Mortgage Lending Act (“CRMLA”) (California
26 Financial code Section 50000 et. seq.). I make this declaration in my official capacity and not
27 otherwise.
28

1 3. I have been the Special Administrator for the CRMLA since July 1, 1995. My duties
2 include issuing licenses for residential mortgage lenders and residential mortgage loan servicers
3 under the CRMLA. I am also responsible for receiving, reviewing, and the distributing the Report of
4 Principal Amount of Loans Originated and Aggregate Amount of Loans Serviced (“Loan Report”).
5 I am personally informed of all licensees who have not submitted their annual audited financial
6 statements or paid their assessments under the CRMLA and I initiate enforcement actions against
7 those licensees. I am familiar with the Department’s procedure for maintaining documents and
8 business records pertaining to CMRLA licensees and prospective licensees. I have access to, and am
9 required to maintain on behalf of the Department, all public and confidential documents pertaining
10 to all CRMLA licensees and prospective licensees. I am an official custodian for these records.

11 4. The CRMLA was enacted in California in 1994 with an operative date of January 1,
12 1996. On March 25, 1996, Norwest Mortgage, Inc. (“Norwest”) voluntarily applied to the
13 Commissioner for a residential mortgage lender and residential mortgage loan servicer license under
14 the CRMLA. A true and correct copy of Norwest’s CRMLA license application without exhibits is
15 attached and incorporated as Exhibit 1.

16 5. A CRMLA license for lending and servicing was granted to Norwest by the
17 Commissioner on July 18, 1996. A true and correct copy of the CRMLA license issued to Norwest
18 is attached and incorporated as Exhibit 2.

19 6. On or about October 1999, Norwest informed the Commissioner that Norwest
20 Corporation, Norwest’s parent, and Wells Fargo & Co. had merged on November 2, 1998, and that
21 as a result of the merger, on December 1, 1999, a one time organizational change would occur,
22 resulting in Norwest’s parent company changing from Norwest Nova, Inc. to Wells Fargo Bank,
23 N.A.

24 7. On April 26, 2000, Norwest submitted a request to the Commissioner to change its
25 name to Wells Fargo Home Mortgage , Inc. (“WFHMI”). On July 17, 2000, the Commissioner
26 approved Norwest’s name change request to WFHMI. A true and correct copy of the CRMLA
27 amended license reflecting the name change from Norwest to WFHMI is attached and incorporated
28 as Exhibit 3.

1 8. During its tenure as a CRMLA licensee, WFHMI has consistently filed all reports and
2 paid all assessments required by the CRMLA. WFHMI has also submitted to all regulatory
3 examinations scheduled by the Commissioner, and responded to all correspondence of the
4 Commissioner concerning these regulatory examinations.

5 9. The CRMLA is not the only means in California in which to conduct residential
6 mortgage lending and/or loan servicing business. One can conduct such business in California under
7 a license from the California Department of Real Estate or through numerous exemptions listed in
8 California Financial Code § 50003.

9 10. WFHMI has never requested an interpretive opinion from the Commissioner regarding
10 an exemption or exception from the CRMLA. WFHMI has also never attempted to surrender its
11 license based upon its ownership or otherwise. WFHMI did not claim it was exempt from the
12 CRMLA by virtue of being an operating subsidiary of Wells Fargo Bank until January 2003, after
13 the Commissioner made an absolute demand upon WFHMI to conduct an audit and make refunds
14 regarding per diem overcharges and Truth In Lending Act understatements.

15 11. California Financial Code Section 50204(o) prohibits lenders licensed under the
16 CRMLA from charging interest for more than one day prior to the recording of the mortgage or deed
17 of trust. Typically in California, the lender wires the loan proceeds to title and/or the settlement
18 agent the day before closing and the deed of trust is recorded the same day as loan proceeds are
19 disbursed for the borrowers' use; payoff existing mortgage, etc. ("closing"). The settlement and/or
20 title agents cause the deed of trust to be recorded, and take instruction directly from the lender as to
21 the recording.

22 12. In April 2001, the Department commenced a regulatory examination of WFHMI. The
23 regulatory examination disclosed, among other items, that WFHMI was overcharging per diem
24 interest in violation of California Financial Code § 50204(o) and was understating finance charges in
25 many of the loans reviewed by the Department. A regulatory letter detailing the findings of the
26 regulatory examination was sent to WFHMI in December 2001. Various correspondence went
27 between the Department and WFHMI as described in the Declaration of Patricia Speight filed
28 herewith. I began specifically communicating with WFHMI in June 2002 based upon the contents

1 of the March 18, 2002 response from WFHMI. A true and correct copy of my June 11, 2002 letter is
2 attached and incorporated as Exhibit 4.

3 13. On August 5, 2002, I received a response from WFHMI to my June 11, 2002 letter
4 dated August 1, 2002. In that correspondence, WFHMI questioned the validity of California
5 Financial Code § 50204(o) based upon Section 501(a)(1) of the Depository Institutions Deregulation
6 and Monetary Control Act of 1980 (“DIDMCA”). WFHMI did not otherwise contest the
7 Department’s jurisdiction over it. A true and correct copy of the WFHMI August 1, 2002 letter is
8 attached and incorporated as Exhibit 5.

9 14. On August 30, 2002, the Department received a further response from WFHMI dated
10 August 28, 2002. In that correspondence, WFHMI questioned the Department’s findings with
11 respect to the Truth In Lending Act. This correspondence from WFHMI was limited to Truth In
12 Lending Act issues. A true and correct copy of the WFHMI August 28, 2002 letter is attached and
13 incorporated as Exhibit 6.

14 15. On December 4, 2002, I sent a letter to WFHMI responding to both the August 1 and
15 August 28, 2002 letters. My December 4, 2002 letter demanded that WFHMI perform the audits as
16 requested by the regulatory letters previously sent, and make refunds where appropriate with regard
17 to the per diem interest issue. A true and correct copy of my December 4, 2002 letter is attached and
18 incorporated as Exhibit 7.

19 16. In December 2002, I had various telephone conversations with Greg Schwager, in-
20 house counsel for WFHMI, and outside counsel also in regards to a continuance to respond to the
21 Department’s demand. Continuances were granted, and on January 17, 2003, I sent a letter to
22 WFHMI’s outside counsel, William L. Stern, establishing a deadline for WFHMI to respond to the
23 Department regarding its plan to conduct the audit and make refunds. A true and correct copy of my
24 January 17, 2003 letter is attached and incorporated as Exhibit 8.

25 17. On January 22, 2003, I received a letter from Mr. Stern setting forth WFHMI’s
26 alternate proposal to a full audit, as the audit demanded by the Department would cost \$2,000,000.
27 The letter also questioned the Department’s jurisdiction over WFHMI in that it was an operating
28 subsidiary of a national bank. This is the first time WFHMI ever questioned the jurisdiction of the

1 Department under the CRMLA. A true and correct copy of the WFHMI January 22, 2003 letter is
2 attached and incorporated as Exhibit 9.

3 18. I have seen WFHMI's web site and certain advertising distributed to prospective
4 California consumers. WFHMI represents to California consumers that it is licensed under the
5 CRMLA. California consumers are led to believe that all the consumer protection provisions of the
6 CRMLA apply to residential mortgage loans from WFHMI.

7 19. California Financial Code section 50307 requires CRMLA licensees submit the Loan
8 Report on or before the first day of March. The Loan Report filed by WFHMI in January 2002
9 states that WFHMI made 74,775 loans in California in 2001. A true and correct copy of WFHMI's
10 Loan Report for calendar year 2001 is attached and incorporated as Exhibit 10. WFHMI has not
11 filed the Loan Report for the calendar year 2002, which is due March 1, 2003.

12 20. I have reviewed the Loan Reports filed to date by CRMLA licensees for calendar year
13 2002. There has been an approximate 41% increase in loan origination activities in calendar year
14 2002 over calendar year 2001. Applying this figure to the loan activity of WFHMI for 2001, the
15 loan activity for 2002 would be approximately 105,433 loans. This would make WFHMI's loan
16 totals for 2001 and 2002 equal to 180,188, not the 300,000 loans WFHMI claims.

17 21. WFHMI claims the audit demanded by the Commissioner would cost at least \$18
18 million. However, as discussed above, in recent correspondence to the Commissioner, WFHMI
19 estimated the audit costs at approximately \$2 million. See Exhibit 9.

20 22. On February 4, 2003, the Commissioner instituted proceedings to revoke WFHMI's
21 CRMLA license. WFHMI had committed numerous violations of the CRMLA, which it refused to
22 correct. By claiming preemption in its January 2003 correspondence and by filing this lawsuit,
23 WFHMI noticed the Commissioner of its intention not to abide by the requirements of the CRMLA.
24 If an entity maintains a CRMLA license and advertises to California consumers that it is a CRMLA
25 licensee, that entity must comply with all the provisions of the CRMLA and orders of the
26 Commissioner or have its license subject to revocation.

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23. Pursuant to sections 50310 and 50311, the CRMLA specifically allows a reasonable amount of time to complete any loans in progress and transfer all servicing in order to avoid any disruption to customers.

24. A review of the Department's records discloses many of the CRMLA branches are located within branch locations of Wells Fargo Bank.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed at Los Angeles, California this 21st day of February 2003.

DIAUN M. BURNS
Declarant