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LEGAL PROCESS #4

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7 SUPERIOR COURT OF THE STATE OF CALIFORNIA

8 FOR THE COUNTY OF SACRAMENTO

9 THE PEOPLE OF THE STATE OF
CALIFORNIA, by and through the
10 CALIFORNIA CORPORATIONS
COMMISSIONER,

11 Plaintiff,

12 vs.

13 WELLS FARGO FINANCIAL CALIFORNIA,
14 INC., a California Corporation, and DOES 1
through 10,

15 Defendants.
16

Case No.: 03AS00011

**FIRST AMENDED COMPLAINT FOR
PERMANENT INJUNCTION, CIVIL
PENALTIES AND ANCILLARY RELIEF**

(Financial Code §§ 22161, 22306, 22337,
22713, 22750, 22751 and 22752; Title 10,
California Code of Regulations §§1426,
1556)

17 Demetrios A. Boutris, California Corporations Commissioner, acting to protect the
18 public from unlawful finance lending activity, brings this action in the public interest in the
19 name of the People of the State of California, and alleges as follows:

20 **SUMMARY OF ALLEGATIONS**

21 On information and belief Plaintiff alleges Defendants marketed and distributed in
22 California "guaranteed loan offers" consisting of actual checks, along with loan
23 documents that purported to disclose the cost of borrowing the money. These
24 guaranteed loan offers created a loan transaction upon negotiation of the check by the
25 customer. The draft loan is also known as an "instant loan check" or "live check" and is a
26 negotiable instrument.

27 However, on more than 15,000 of these guaranteed loan offers, Wells Fargo
28 Financial California charged customers higher fees than it disclosed in the loan

1 documents. The first time the Department discovered these violations in July 2001, the
2 Department of Corporations required Wells Fargo Financial to refund the overcharges to
3 its customers. Wells Fargo Financial assured the Department at that time that similar
4 errors would not occur in the future.

5 Contrary to Wells Fargo Financial's representations, the Department of
6 Corporations discovered in a regulatory examination in April 2002 that Wells Fargo
7 Financial continued to violate the law by overcharging the same customers on the same
8 loans. The total amount of overcharges to date is \$871,010.22.

9 VENUE AND JURISDICTION

10 1. The Commissioner files this complaint and institutes these proceedings
11 pursuant to Financial Code sections 22713, 22750, 22751 and 22752 for injunctive,
12 declaratory and other relief due to violations by the defendants and their co-conspirators
13 of the California Finance Lenders Law (Financial Code sections 22000 *et seq.*) Plaintiff
14 also seeks civil penalties pursuant to Financial Code section 22713 and other ancillary
15 relief as is appropriate.

16 2. Jurisdiction and venue as to each defendant is proper in this judicial district
17 pursuant to the provisions of these Financial Code sections and sections 395(a) and
18 395.5 of the California Code of Civil Procedure. Each defendant maintains an office, has
19 an agent, is found, and/or transacts business, directly or indirectly in the County of
20 Sacramento. The Plaintiff's cause of action arose in part within the County of
21 Sacramento, and a number of the transactions at issue took place in this County. Many
22 of the unlawful acts hereinafter alleged directly affected investors within the State of
23 California and, more particularly, within the County of Sacramento.

24 DEFENDANTS

25 3. Defendant Wells Fargo Financial California, Inc., a California corporation,
26 and Does 1 through 10, (collectively referred to hereafter as "Wells Fargo Financial") are
27 licensed finance lenders with the California Department of Corporations (hereafter
28 referred to as "the Department"), and at all times mentioned herein engaged in unlawful

1 activity, described below, conducted in various counties throughout the State of
2 California. Plaintiff is informed and believes, and thereon alleges that Wells Fargo
3 Financial engaged in violations of the Financial Code, and did so willfully.

4 **FACTUAL BACKGROUND**

5 4. At all relevant times herein, Wells Fargo Financial marketed a loan product
6 called a "guaranteed loan offer" which is a printed advertisement containing an actual
7 check which when negotiated by the customer creates a loan transaction. These
8 "guaranteed loan offers" are regulated under the California Financial Code, and the
9 regulations promulgated thereunder, including California Code of Regulations, Title 10,
10 Chapter 3, Section 1556. "Guaranteed loan offers" are also called "draft loans," "instant
11 loan checks" or "live checks." (These loan products are hereinafter referred to as "draft
12 loans.")

13 5. Beginning at a time unknown to the Department, but at least since July 1,
14 1999, Wells Fargo Financial distributed these draft loans to customers throughout
15 California, along with additional materials which purportedly explained the terms of the
16 loan. (The draft loan and the additional materials are referred to herein as the "loan
17 documents." The check portion is referred to throughout as the "draft.") Once a
18 customer endorsed and cashed the draft, the parties were bound by the terms specified
19 in the loan documents. These loan documents purported to disclose to customers the
20 cost of borrowing the money, expressed in terms of an annual percentage rate and an
21 agreed rate of charge per month. (Hereinafter, "agreed monthly rate of charge.")

22 6. Wells Fargo Financial distributed an unknown number of these draft loans
23 throughout California, in several versions each containing different terms and/or loan
24 amounts. Each version was labeled with a form number and other identifying
25 information.

26 7. During a July 2001 regulatory examination of some of the branches of Wells
27 Fargo Financial, the Department discovered that, on some of these draft loans, Wells
28 Fargo Financial was assessing interest at a different and higher rate than the agreed

1 monthly rate of charge disclosed in the loan documents.

2 8. On or around July 20, 2001, the Department directed Wells Fargo Financial
3 to conduct a self-audit on all draft loans. This first self-audit revealed that Wells Fargo
4 Financial had overcharged over 15,000 customers on at least six versions of these draft
5 loans.

6 9. In an August 20, 2001 letter, and in communications with the Department,
7 Wells Fargo Financial stated that on certain draft loans, the monthly rate of charge in
8 Wells Fargo Financial's computer system was higher than the agreed monthly rate of
9 charge disclosed in the loan documents, and the customers were being charged at the
10 higher rate. At or around that time, Wells Fargo Financial assured the Department it
11 would re-amortize its customers' accounts to reflect the agreed monthly rate of charge
12 disclosed in the loan documents, and refund any excess interest already paid.

13 10. In a letter sent on or around January 17, 2002, Wells Fargo Financial
14 represented to the Department that it had given refunds totaling \$532,988.35 to those
15 customers who had been overcharged. It also noted that most customers received two
16 refunds because of an error in the calculation discovered after the refunds had been
17 initially completed. Wells Fargo Financial also represented to the Department that they
18 had put procedures in place to confirm the accuracy of all disclosures related to these
19 draft loans, and to ensure that similar errors would not occur in the future.

20 11. In light of these assurances and the payment of the refunds, the
21 Department elected to take no further remedial action at that time, although it indicated to
22 Wells Fargo Financial that future examinations were likely.

23 12. On or around April 15, 2002, the Department began another routine
24 company-wide regulatory examination of Wells Fargo Financial, during which Department
25 examiners discovered that Wells Fargo Financial continued to charge the same
26 customers on the same draft loans a monthly rate of charge that was greater than the
27 agreed monthly rate of charge disclosed in the loan documents. As a result, Wells Fargo
28 Financial began a second self-audit.

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loan contract, how and when repayable, the nature of the security for the loan, if any, *and the agreed rate of charge or the annual percentage rate* pursuant to Regulation Z promulgated by the Board of Governors of the Federal Reserve System (12 C.F.R. 226) (emphasis added.)

19. Financial Code section 22306 provides:

"No amount in excess of that allowed in this article shall be directly or indirectly charged, contracted for, or received by another person, and the total charges of the finance lender and broker and any other person in the aggregate shall not exceed the maximum rate provided for in this article."

20. California Code of Regulations, Title 10, Article 3, section 1556 provides:

"(b) A finance company shall not be permitted to make a guaranteed loan offer unless the following conditions are met:...

(3) The finance company expressly agrees to make a loan or loans of any stated amount or amounts (or up to a definitely stated or determinable maximum amount or amounts) at a rate or rates not to exceed a stated annual percentage rate or rates, upon presentation of the offer, and without any credit investigation.

(e) The finance company shall comply with the terms stated in the offer when the offer is accepted by the prospective borrower or borrowers."

21. Financial Code section 22713 states:

(a) Whenever the commissioner believes...that any person has violated or is about to violate a provision of this division...the commissioner may, in the commissioner's discretion, bring an action...against that person to enjoin that person from continuing that violation or doing any act in furtherance of the violation. Upon a proper showing, a permanent or preliminary injunction, restraining order, or writ of mandate shall be granted and other ancillary relief may be granted as appropriate.

(b) If the commissioner determines that it is in the public interest, the commissioner may include in any action authorized by subdivision (a) a claim for ancillary relief, including, but not limited to, a claim for restitution, disgorgement, or damages on behalf of the persons injured by the act or practice constituting the subject matter of the action. The court shall have jurisdiction to award additional relief.

22. Financial Code section 22751 states:

(a) If any amount other than or in excess of the charges permitted by this division is charged or contracted for, or received, for any reason other than a willful act of the licensee, the licensee shall forfeit all interest and charges on the loan and may collect or receive only the principal amount of the loan.

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(b) Subdivision (a) shall not apply to an error in computation if (1) the licensee shows by a preponderance of the evidence that the violation was not intentional and resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adapted to avoid any such error, and (2) within 60 days of discovering the error, the licensee notifies the borrower of the error and makes whatever adjustments in the account are necessary to correct the error.

23. Financial Code section 22752 states:

“(a) If any provision of this division is violated in the making or collection of a loan, for any reason other than the willful act of the licensee, the licensee shall forfeit all interest and charges on the loan and may collect or receive only the principal amount of the loan.”

(b) Subdivision (a) shall not apply to a violation if (1) the licensee shows by a preponderance of evidence that the violation was not intentional and resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adapted to avoid any such error, and (2) within 30 days of discovering the error the licensee notifies the borrower of the error and rectifies the error by making the appropriate changes in the documents or account and by taking other action necessary to correct the error.”

24. Wells Fargo Financial, a licensed finance lender, was required under section 22337(a), to deliver to the borrower a statement showing the agreed rate of charge. Further, under Title 10, section 1556(b)(3) of the Code of Regulations, Wells Fargo Financial agreed not to exceed the rates stated in its loan documents. And, under section 1556(e), Wells Fargo Financial was obligated to comply with the terms, including the agreed monthly rate of charge disclosed in the loan documents, when the customers accepted the offer by cashing the drafts. By charging more than the agreed monthly rate of charge disclosed in their loan documents, Wells Fargo Financial charged an amount other than, or in excess of, the charges permitted under the California Finance Lender’s Law, in violation of sections 22306, 22337(a) and Title 10, Code of Regulations section 1556(b)(3) and (e).

25. Wells Fargo Financial’s pattern of conduct, as set forth above, demonstrates the necessity for granting permanent injunctive and ancillary relief restraining such and similar acts in violation of sections 22306, 22337(a) and Code of

1 Regulations sections 1556(b)(3) and (e), and providing restitution or disgorgement to
2 borrowers, as provided in section 22713.

3 26. Under section 22751(a), Wells Fargo Financial shall forfeit all interest and
4 charges on the loan because it charged in excess of what is permitted under the Finance
5 Lender's Law, such as under section 22306, 22337(a) and Code of Regulations sections
6 1556(b)(3) and (e), by charging more than the agreed monthly rate of charge disclosed in
7 the loan documents, and did not correct the error, that is, did not charge its customers at
8 the agreed monthly rate of charge disclosed in the loan documents within 60 days of
9 discovering the error.

10 27. Further, under 22752(a), Wells Fargo Financial shall forfeit all interest and
11 charges on the loan because it violated provisions of the Finance Lenders law, such as
12 sections 22306, 22337(a), and Code of Regulations sections 1556(b)(3) and (e), in the
13 making or collection of loans, and because it did not rectify the error, that is, it did not
14 charge customers the agreed monthly rate of charge disclosed in the loan documents,
15 within 30 days of discovering the error.

16 WHEREFORE, Plaintiff prays for judgment against Wells Fargo Financial, as more
17 fully set forth below.

18 **SECOND CAUSE OF ACTION**

19 FALSE, MISLEADING OR DECEPTIVE ADVERTISING
20 (Financial Code §§22161)

21 28. Plaintiff realleges and incorporates herein by reference paragraphs 1
22 through 27 inclusive, as though set forth at length herein.

23 29. Financial Code section 22161 states:
24 "No person shall advertise, print, display, publish, distribute, or
25 broadcast, or cause or permit to be advertised, printed, displayed,
26 published, or distributed, or broadcast in any manner, any
27 statement or representation with regard to the business subject to
28 the provisions of this division, including the rates, terms, or
conditions for making or negotiating loans, that is false, misleading,
or deceptive, or that omits material information that is necessary to
make the statements not false, misleading or deceptive,..."

30. Financial Code section 22752 states:

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“(a) If any provision of this division is violated in the making or collection of a loan, for any reason other than the willful act of the licensee, the licensee shall forfeit all interest and charges on the loan and may collect or receive only the principal amount of the loan.”

(b) Subdivision (a) shall not apply to a violation if (1) the licensee shows by a preponderance of evidence that the violation was not intentional and resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adapted to avoid any such error, and (2) within 30 days of discovering the error the licensee notifies the borrower of the error and rectifies the error by making the appropriate changes in the documents or account and by taking other action necessary to correct the error.”

31. Wells Fargo Financial violated section 22161 each time it distributed statements or representations in connection with these draft loans, including the loan documents, monthly statements, communications with customers, among other things, that contained inaccurate disclosure of the loan terms, such as the agreed monthly rate of charge.

32. Wells Fargo Financial’s pattern of conduct, as set forth above, demonstrates the necessity for granting permanent injunctive and ancillary relief restraining such and similar acts in violation of section 22161, and providing restitution or disgorgement to investors, as provided in section 22713.

33. Further, under section 22752(a), Wells Fargo Financial shall forfeit all interest and charges on the loan because it violated provisions of the Finance Lenders Law, namely section 22161, in the making or collection of loans, and because it did not rectify the error, that is, it did not charge customers the agreed monthly rate of charge disclosed in the loan documents, within 30 days of discovering the error.

WHEREFORE, Plaintiff prays for judgment against Wells Fargo Financial, as more fully set forth below.

THIRD CAUSE OF ACTION

WILLFUL VIOLATIONS

(Financial Code §§22161, 22306, 22337, Title 10, California Code of Regulations §§1426, 1556)

34. Plaintiff realleges and incorporates herein by reference paragraphs 1

1 through 33 inclusive, as though set forth at length herein.

2 35. California Code of Regulations, Title 10, Article 3, section 1426 provides: "A
3 finance company shall maintain its books, accounts and records in accordance with
4 generally accepted accounting principles and good business practice."

5 36. Financial Code section 22713 states:

6 "(c) Any person who willfully violates any provisions of this division,
7 or who willfully violates any rule or order adopted pursuant to this
8 division, shall be liable for a civil penalty not to exceed two
9 thousand five hundred dollars (\$ 2,500) for each violation, which
shall be assessed and recovered in a civil action brought in the
name of the people of the State of California by the commissioner
in any court of competent jurisdiction..."

10 37. Financial Code section 22750 states:

11 "(a) If any amount other than, or in excess of, the charges permitted
12 by this division is willfully charged, contracted for, or received, the
13 contract of loan is void, and no person has any right to collect or
14 receive any principal, charges, or recompense in connection with
the transaction."

14 38. Despite being put on notice by the Department that it had overcharged
15 more than 15,000 customers prior to the first self-audit, and despite its assurances it had
16 implemented procedures to ensure similar errors would not occur again, Well Fargo
17 Financial continued to overcharge its customers, in violation of sections 22306, 22337(a)
18 and Code of Regulations sections 1556(b)(3) and (e).

19 39. Wells Fargo Financial did not maintain good business practices in the
20 distribution and management of these draft loans, and it did not maintain procedures
21 reasonably calculated to avoid the multiple errors that occurred with these draft loans, to
22 the detriment of consumers, and in violation of Code of Regulations section 1426.

23 40. Wells Fargo Financial, despite being put on notice by the Department that it
24 had overcharged customers, and despite its assurances it had implemented procedures
25 to ensure similar errors would not occur again, continued to distribute statements and/or
26 representations containing inaccurate disclosure of the loan terms, such as the agreed
27 monthly rate of charge, in violation of section 22161.

28 41. Wells Fargo Financial's prior knowledge, together with its business practices

1 and procedures that led to continued violations, establishes that Wells Fargo Financial
2 acted willfully in violation of section 22713.

3 42. Wells Fargo Financial's pattern of conduct, as set forth above,
4 demonstrates the necessity for granting permanent injunctive and ancillary relief
5 restraining such and similar acts in violation of sections 22306, 22161, and Code of
6 Regulation sections 1426 and 1556, and imposing appropriate civil penalties, as provided
7 in section 22713.

8 43. In addition, under section 22750, all draft loans found to be overcharged at
9 the time of the second self-audit should be considered void, and no further payments
10 should be collected by Wells Fargo Financial.

11 WHEREFORE, Plaintiff prays for judgment against Wells Fargo Financial, as set
12 forth below.

13 **PRAYER**

14 WHEREFORE, Plaintiff prays for judgment against Wells Fargo Financial, as
15 follows:

16 1. That pursuant to Financial Code section 22713 defendant Wells Fargo
17 Financial and all Doe defendants and their agents, servants, employees, associates,
18 officers, representatives, and all persons acting under or in concert with or for them, with
19 actual or constructive notice of any injunction or restraining order issued in this matter,
20 shall be enjoined and restrained from violating section 22306, and from imposing charges
21 on their customers in excess of what was disclosed in the loan documents associated
22 with the draft loans at issue.

23 2. That pursuant to Financial Code section 22713 defendant Wells Fargo
24 Financial and all Doe defendants and their agents, servants, employees, associates,
25 officers, representatives, and all persons acting under or in concert with or for them, with
26 actual or constructive notice of any injunction or restraining order issued in this matter,
27 shall be enjoined and restrained from violating section 22161, and from advertising,
28 printing, displaying, publishing, distributing, or broadcasting, or causing or permitting to

1 be advertised, printed, displayed, published, or distributed, or broadcast in any manner,
2 any statement or representation with regard to the business subject to the provisions of
3 the Finance Lenders Law, including the rates, terms, or conditions for making or
4 negotiating loans, that is false, misleading, or deceptive, or that omits material
5 information that is necessary to make the statements not false, misleading or deceptive.

6 3. That pursuant to Financial Code section 22713 defendant Wells Fargo
7 Financial and all Doe defendants and their agents, servants, employees, associates,
8 officers, representatives, and all persons acting under or in concert with or for them, with
9 actual or constructive notice of any injunction or restraining order issued in this matter,
10 shall be enjoined and restrained from violating Code of Regulations section 1556(b)(3),
11 and from making a loan at a rate or rates exceeding a stated annual percentage rate or
12 rates.

13 4. That pursuant to Financial Code section 22713 defendant Wells Fargo
14 Financial and all Doe defendants and their agents, servants, employees, associates,
15 officers, representatives, and all persons acting under or in concert with or for them, with
16 actual or constructive notice of any injunction or restraining order issued in this matter,
17 shall be enjoined and restrained from violating Code of Regulations section 1556(e), and
18 from not complying with the terms stated in the loan documents when the loan offer was
19 accepted by their customers when they cashed the drafts.

20 5. That pursuant to Financial Code section 22713 defendant Wells Fargo
21 Financial and all Doe defendants and their agents, servants, employees, associates,
22 officers, representatives, and all persons acting under or in concert with or for them, with
23 actual or constructive notice of any injunction or restraining order issued in this matter,
24 shall be enjoined and restrained from violating Code of Regulations section 1426, and
25 from not maintaining its books, accounts and records in accordance good business
26 practices.

27 6. That pursuant to Financial Code section 22751, Wells Fargo Financial shall
28 forfeit all interest and charges on the loan and may collect only the principal amount of

1 the loan, returning said interest and charges to the borrowers.

2 7. That pursuant to Financial Code section 22752, Wells Fargo Financial shall
3 forfeit all interest and charges on the loan and may collect only the principal amount of
4 the loan, returning said interest and charges to the borrowers.

5 8. That pursuant to Financial Code section 22713 Wells Fargo Financial be
6 assessed a civil penalty in an amount not to exceed Two Thousand Five Hundred Dollars
7 (\$2,500) for each separate willful violation of Financial Code section 22161, 22306,
8 22337, and Code of Regulations section 1426 and/or 1556 committed by Wells Fargo
9 Financial as alleged in the Third Cause of Action, according to proof at trial.

10 9. That pursuant to Financial Code section 22750, Wells Fargo Financial's
11 draft loans be considered void because their violations were willful, and they shall have
12 no right to collect or receive any principal, charges or recompense in connection with
13 these transactions.

14 10. That plaintiff recover his costs of suit herein, including costs of investigation.

15 11. For such and further relief as the court may deem just and proper.

16
17 Dated: April 30, 2003

18 DEMETRIOS A. BOUTRIS
19 California Corporations Commissioner

20
21 By: DANIEL P. O'DONNELL
22 Attorney for Plaintiff
23 People of the State of California

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