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California Corporations Commissioner
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~~FILED~~
ENDORSED
AUG 25 2003
EDGARD MAYORGA
Deputy Clerk

6 Attorneys for People of the State of California

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 Colorado Corporation, and DOES 1
15 through 10,

16 Defendants.

Case No.: 03AS00011

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

(Financial Code §§ 22161, 22332, 22337,
22713, 22750 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:

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 rates and/or fees than it disclosed in the

1 loan documents. The first time the Department discovered these violations in July 2001,
2 the Department of Corporations required Wells Fargo Financial to refund the overcharges
3 to 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 and 22752 for injunctive, declaratory
12 and other relief due to violations by the defendants and their co-conspirators of the
13 California Finance Lenders Law (Financial Code sections 22000 *et seq.*) Plaintiff also
14 seeks civil penalties pursuant to Financial Code section 22713 and other ancillary relief
15 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 Colorado 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 inaccurately disclosed the agreed monthly rate of charge and/or the

1 annual percentage rate in the loan documents, and was assessing interest at a different
2 and higher rate than was disclosed in the loan documents.

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

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

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

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

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

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19. Financial Code section 22337(a) states:

"Each finance lender shall: (a) Deliver or cause to be delivered to the borrower, or any one thereof, at the time the loan is made, a statement showing in clear and distinct terms the name, address, and license number of the finance lender and the broker, if any. The statement shall show the date, amount, and maturity of the 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.)

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

"(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 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

1 other action necessary to correct the error.”

2
3 23. Wells Fargo Financial, a licensed finance lender, was required under section
4 22332 to accurately disclose the agreed monthly rate of charge or the annual percentage
5 rate. Since Wells Fargo Financial chose to disclose both an agreed monthly rate of
6 charge and the annual percentage rate in its loan documents, it was required to
7 accurately disclose both. Similarly, under section 22337(a), Wells Fargo Financial was
8 required to deliver to the borrower a statement showing in clear and distinct terms the
9 agreed rate of charge or the annual percentage rate. Since Wells Fargo Financial chose
10 to disclose both terms, it was required to provide to its borrowers a statement clearly and
11 distinctly showing both terms.

12 24. Further, under Title 10, section 1556(e), Wells Fargo Financial was
13 obligated to comply with all the terms disclosed in the loan documents when the
14 customers accepted the offer by cashing the drafts. After discovering the inaccurate
15 disclosures in or around July 2001, Wells Fargo Financial, attempted to correct the error,
16 but did not do so until after the second self-audit began sometime after April 15, 2002,
17 almost one year later. By inaccurately disclosing the agreed monthly rate of charge
18 and/or the annual percentage rate in the loan documents, Wells Fargo Financial violated
19 the California Finance Lender's Law, specifically sections 22332, 22337(a) and Title 10,
20 Code of Regulations section 1556(e).

21 25. Wells Fargo Financial's pattern of conduct, as set forth above,
22 demonstrates the necessity for granting permanent injunctive and ancillary relief
23 restraining such and similar acts in violation of sections 22332, 22337(a) and Code of
24 Regulations section 1556(e), and providing restitution or disgorgement to borrowers, as
25 provided in section 22713.

26 26. Under 22752(a), Wells Fargo Financial shall forfeit all interest and charges
27 on the loan because it violated provisions of the Finance Lenders law, such as sections
28 22332, 22337(a), and Code of Regulations section 1556(e), in the making or collection of

1 loans, and because it did not rectify the error - that is, it continued to charge customers
2 more than the agreed monthly rate of charge disclosed in the loan documents such that it
3 was not accurately disclosing the agreed monthly rate of charge and/or the annual
4 percentage rate, and it was not complying with the terms stated in the offer - within 30
5 days of discovering the error.

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

8 **SECOND CAUSE OF ACTION**

9 FALSE, MISLEADING OR DECEPTIVE STATEMENTS
10 (Financial Code §§22161)

11 27. Plaintiff realleges and incorporates herein by reference paragraphs 1
12 through 26 inclusive, as though set forth at length herein.

13 28. Financial Code section 22161 states:

14 "No person shall advertise, print, display, publish, distribute, or
15 broadcast, or cause or permit to be advertised, printed, displayed,
16 published, or distributed, or broadcast in any manner, any
17 statement or representation with regard to the business subject to
18 the provisions of this division, including the rates, terms, or
19 conditions for making or negotiating loans, that is false, misleading,
20 or deceptive, or that omits material information that is necessary to
21 make the statements not false, misleading or deceptive,..."

22 29. Financial Code section 22752 states:

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

28 (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."

30. Wells Fargo Financial violated section 22161 each time it distributed
statements or representations in connection with these draft loans, including the loan

1 documents, monthly statements, communications with customers, among other things,
2 that contained inaccurate disclosure of the loan terms, such as the agreed monthly rate of
3 charge and/or the annual percentage rate.

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

8 32. Further, under section 22752(a), Wells Fargo Financial shall forfeit all
9 interest and charges on the loan because it violated provisions of the Finance Lenders
10 Law, namely section 22161, in the making or collection of loans, and because it did not
11 rectify the error - that is, it continued to charge customers more than the agreed monthly
12 rate of charge disclosed in the loan documents such that it was not accurately disclosing
13 the agreed monthly rate of charge and/or the annual percentage rate, and it was not
14 complying with the terms stated in the offer - within 30 days of discovering the error.

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

17 **THIRD CAUSE OF ACTION**

18 **WILLFUL VIOLATIONS**

19 (Financial Code §§22161, 22332, 22337, Title 10, California Code of Regulations §§1426,
20 1556)

21 33. Plaintiff realleges and incorporates herein by reference paragraphs 1
22 through 32 inclusive, as though set forth at length herein.

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

26 35. Financial Code section 22713 states:

27 "(c) Any person who willfully violates any provisions of this division,
28 or who willfully violates any rule or order adopted pursuant to this
division, shall be liable for a civil penalty not to exceed two
thousand five hundred dollars (\$ 2,500) for each violation, which
shall be assessed and recovered in a civil action brought in the

1 name of the people of the State of California by the commissioner
2 in any court of competent jurisdiction...

3 36. Financial Code section 22750 states:

4 "(b) If any provision of this division is willfully violated in the making
5 or collection of a loan, the contract of loan is void, and no person
6 has any right to collect or receive any principal, charges, or
7 recompense in connection with the transaction."

8 37. Despite being put on notice by the Department that it had made inaccurate
9 disclosures in the loan documents, and had overcharged more than 15,000 customers
10 prior to the first self-audit, and despite its assurances it had implemented procedures to
11 ensure similar errors would not occur again, Well Fargo Financial continued make
12 inaccurate disclosures in the loan documents, and continued to overcharge its customers
13 out of compliance with the terms stated in the loan documents, in violation of sections
14 22332, 22337(a) and Code of Regulations sections 1556(e).

15 38. Wells Fargo Financial did not maintain its books, accounts and records
16 related to these draft loans in accordance with generally accepted accounting principles
17 and good business practices, did not maintain good business practices in the creation,
18 distribution and management of these loan documents and/or draft loans, and did not
19 maintain procedures reasonably calculated to avoid the multiple errors that occurred in
20 the loan documents and/or with these draft loans, to the detriment of consumers, and in
21 violation of Code of Regulations section 1426.

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

28 40. Wells Fargo Financial's prior knowledge of inaccurate disclosures in the
loan documents and that it overcharged customers, together with its maintenance of
business practices and procedures that did not rectify the known error and led to

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

3 41. 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 22332, 22161, and Code of
6 Regulation sections 1426 and 1556, and imposing appropriate civil penalties, as provided
7 in section 22713.

8 42. In addition, under section 22750, all draft loans still in existence after the
9 first self-audit, where Wells Fargo Financial continued to make inaccurate disclosures
10 and overcharge customers, should be considered void, and Wells Fargo Financial should
11 collect no further payments.

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

14 **PRAYER**

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

17 1. That pursuant to Financial Code section 22713 defendant Wells Fargo
18 Financial and all Doe defendants and their agents, servants, employees, associates,
19 officers, representatives, and all persons acting under or in concert with or for them, with
20 actual or constructive notice of any injunction or restraining order issued in this matter,
21 shall be enjoined and restrained from violating section 22332 and from making inaccurate
22 disclosures in the loan documents associated 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 22337 and from not clearly and
28 distinctly showing terms of the loan in the loan documents associated with the draft loans

1 at issue.

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

9 4. That pursuant to Financial Code section 22713 defendant Wells Fargo
10 Financial and all Doe defendants and their agents, servants, employees, associates,
11 officers, representatives, and all persons acting under or in concert with or for them, with
12 actual or constructive notice of any injunction or restraining order issued in this matter,
13 shall be enjoined and restrained from violating section 22161, and from advertising,
14 printing, displaying, publishing, distributing, or broadcasting, or causing or permitting to
15 be advertised, printed, displayed, published, or distributed, or broadcast in any manner,
16 any statement or representation with regard to the business subject to the provisions of
17 the Finance Lenders Law, including the rates, terms, or conditions for making or
18 negotiating loans, that is false, misleading, or deceptive, or that omits material
19 information that is necessary to make the statements not false, misleading or deceptive.

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 with generally
26 accepted accounting principles and good business practices.

27 6. That pursuant to Financial Code section 22752, 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 22713 Wells Fargo Financial be
3 assessed a civil penalty in an amount not to exceed Two Thousand Five Hundred Dollars
4 (\$2,500) for each separate willful violation of Financial Code section 22161, 22332,
5 22337, and Code of Regulations section 1426 and/or 1556 committed by Wells Fargo
6 Financial as alleged in the Third Cause of Action, according to proof at trial.

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

11 9. That Plaintiff, the People, recover their costs of suit herein, including costs
12 of investigation.

13 10. For such and further relief as the court may deem just and proper.

14
15 Dated: August 21, 2003

16 DEMETRIOS A. BOUTRIS
17 California Corporations Commissioner

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19 By: _____
20 DANIEL P. O'DONNELL
21 Attorney for Plaintiff
22 People of the State of California
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1 **Case Name: People of the State of California vs. Wells Fargo Financial California Inc.**
2 **Sacramento County Superior Court Case No. 03AS00011**

3 **PROOF OF SERVICE**
4 [Code Civ. Proc. §1013(a)]

5 I, the undersigned, declare that I am over the age of eighteen (18) years, and not a
6 party to the within entitled action. I am employed at the California Department of
7 Corporations, 1515 K Street, Suite 200, Sacramento, CA. 95814.

8 On the date listed below, I served the following document(s):

9 **THIRD AMENDED COMPLAINT FOR PERMANENT INJUNCTION, CIVIL**
10 **PENALTIES AND ANCILLARY RELIEF**
11 **AND**
12 **STIPULATION TO ALLOW FILING OF THIRD AMENDED COMPLAINT**

13 on the parties in said cause, at the addresses listed below:

14 Donald J. Querio
15 Michael J. Steiner
16 Severson & Werson
17 A Professional Corporation
18 One Embarcadero Center, Suite 2600
19 San Francisco, CA 94111

20 U.S. POSTAL SERVICE: by placing a true and correct copy of the aforementioned
21 document(s) in a sealed envelope and placing it in the mail depository at my place of
22 business with postage prepaid, addressed as listed above.

23 OVER NIGHT EXPRESS DELIVERY; deposited with United Parcel Service at
24 Sacramento, California as follows. The envelope was deposited with United Parcel
25 Service with shipment costs fully prepaid. I am "readily familiar" with the firm's
26 practice of collection and processing correspondence for United Parcel Service
27 shipment. Under that practice it would be deposited with United Parcel Service on
28 that same day with shipment costs thereon fully prepaid at Sacramento, California in
the ordinary course of business. I declare under penalty of perjury under the laws of
the United States of America that the foregoing is true and correct. [X] (Federal) I
declare that I am employed in the office of a member of the bar of this court at whose
direction the service was made.

FACSIMILE: by transmitting the aforementioned document(s) by facsimile to the
parties at the above listed facsimile telephone numbers on (date) from (916) 445-

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6985, which is maintained by the California Department of Corporations, and verifying receipt of same. A true and correct copy of the transmission report is attached hereto and incorporated herein by this reference.

PERSONAL DELIVERY: by hand delivering a true and correct copy of the aforementioned document(s) to the address(es) listed above.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on September 10, 2003, at Sacramento, California.

Jenell Webb
Title: Corporations Legal Analyst