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9  
10 IN THE UNITED STATES DISTRICT COURT  
11 FOR THE EASTERN DISTRICT OF CALIFORNIA  
12

13 WELLS FARGO BANK, N.A., and WELLS )  
14 FARGO HOME MORTGAGE, INC., )

15 Plaintiffs, )

16 vs. )

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

20 Defendant. )  
21 )

Civil Action No. S-03-0157 GEB JFM  
DEFENDANT'S STATEMENT OF  
UNDISPUTED FACTS IN SUPPORT OF  
MOTION FOR SUMMARY JUDGMENT OR,  
IN THE ALTERNATIVE PARTIAL  
SUMMARY JUDGMENT

Date: May 5, 2003  
Time: 9:00 a.m.  
Location: Courtroom 10

**Hearing Requested**  
[15 minutes each side]

22 Defendant Demetrios A. Boutris, in his official capacity as California Corporations  
23 Commissioner, hereby provides this statement of uncontroverted facts:  
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UNDISPUTED FACT	SUPPORTING EVIDENCE
<p>1. Plaintiff Wells Fargo Bank, N.A. is a national banking association organized and existing under the National Bank Act.</p>	<p>First Amended Complaint, page 7, lines 9-11; Declaration of Peter J. Wissinger in Support of Plaintiff's Motion for Preliminary Injunction, dated February 10, 2003 (hereinafter, "Wissinger Decl."), page 2, lines 6-8.<sup>1</sup></p>
<p>2. Plaintiff Wells Fargo Home Mortgage, Inc. ("WFHMI") is a wholly owned subsidiary of Wells Fargo Bank, N.A.</p>	<p>Plaintiff's Motion for Summary Judgment, page 3, lines 16-18; Wissinger Decl., page 2, lines 6-8; Declaration of John G. Stumpf in Support of Plaintiff's Motion for Summary Judgment, page 2, lines 9-11.</p>
<p>3. WFHMI is a state-chartered corporation and has held such corporate status in California since 1964 (formerly known as Norwest Mortgage, Inc.).</p>	<p>Declaration of Ken A. Nagashima in Support of Defendant's Opposition to Plaintiffs' Motion for Preliminary Injunction, dated February 21, 2003 (hereinafter "Nagashima Decl."), at Exhibit 1.</p>
<p>4. Since 1996, WFHMI has been engaged in the residential mortgage business in California. WFHMI makes residential mortgages and other loans that are secured by first liens on residential real property. WFHMI is a "creditor" under TILA, 15 U.S.C. § 1602(f), and makes or invests in residential real estate loans aggregating more than \$1 million per year.</p>	<p>First Amended Complaint, page 4, lines 20-22; admitted in Defendant's Answer, page 4, lines 12-13.</p>

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<sup>1</sup> For the Court's convenience, all previously filed documents referred to herein, or portions thereof, as are relevant are attached in the Appendix filed herewith and the Court is requested to take judicial notice of such documents.

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UNDISPUTED FACT	SUPPORTING EVIDENCE
<p>5. Since 1996, WFHMI has held licenses to engage in real estate lending activities under the California Residential Mortgage Lending Act ("CRMLA") and the California Finance Lenders Law ("CFLI").</p>	<p>Declaration of Diaun M. Burns in Support of Defendant's Opposition to Plaintiffs' Motion for Preliminary Injunction, dated February 21, 2003 (hereinafter "Burns Decl.") page 2, lines 11-28, Exhibit 3; Declaration of Charles Agbonkpolar in Support of Defendant's Opposition to Plaintiffs' Motion for Preliminary Injunction, dated February 21, 2003 (hereinafter "Agbonkpolar Decl.") page 2, lines 12-20.</p>
<p>6. Defendant Demetrios A. Boutris is the California Corporations Commissioner, the state official charged with enforcing the CRMLA and the CFLI and California Financial Code section 50204(o) against CRMLA licensees. Commissioner Boutris has asserted regulatory, supervisory, examination and enforcement authority over WFHMI as a licensee under both the CRMLA and CFLI.</p>	<p>First Amended Complaint, page 5, lines 1-8; admitted in Defendant's Answer, page 4, lines 14-18; Burns Decl., page 3, lines 1-4; page 3, line 22 to page 4, line 24; Nagashima Decl., page 3, lines 7-10; Agbonkpolar Decl., page 2, line 23 to page 3, line 8.</p>
<p>7. A necessary predicate to maintaining CRMLA and CFLI licenses is compliance with the statutes and applicable regulations.</p>	<p>Burns Decl., page 5, lines 24-26; Nagashima Decl., page 3, lines 25-26.</p>
<p>8. Article III, Section 3.5 of the California Constitution prohibits an administrative agency from declaring a statute unenforceable, or refusing to enforce a statute, on the basis that the statute(s) is unconstitutional or that</p>	<p>Request for Judicial Notice, Item [or Paragraph] 1.</p>

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UNDISPUTED FACT	SUPPORTING EVIDENCE
<p>federal law or federal regulations prohibit the enforcement of such statute(s) unless an appellate court has made a determination that such statute(s) is unconstitutional or enforcement is prohibited by federal law or federal regulations.</p>	
<p>9. WFHMI has never applied to the Commissioner for a ruling that it is exempt from the CRMLA under California Financial Code section 50003.</p>	<p>Burns Decl., page 3, lines 9-10</p>
<p>10. WFHMI has never applied to the Commissioner for a ruling that it is exempt from the CFLL under California Financial Code sections 22050-22054.</p>	<p>Declaration of Ken A. Nagashima in Support of Motion for Summary Judgment, dated April 2, 2003 (hereinafter “Nagashima Second Decl.”) page 2, lines 26-27.</p>
<p>11. WFHMI did not claim it was exempt from the CRMLA by virtue of being an operating subsidiary of Wells Fargo Bank until January 2003, after the Commissioner made an absolute demand upon WFHMI to conduct an audit and make refunds regarding per diem overcharges and Truth in Lending Act understatements.</p>	<p>Burns Decl., page 3, lines 11-14, page 4, lines 25-28, page 5, lines 1-2 and Exhibit 9.</p>
<p>12. WFHMI did not claim that it was exempt from the CFLL by virtue of being an operating subsidiary of Wells Fargo Bank until January 2003, after the Commissioner made an absolute demand upon WFHMI to conduct an</p>	<p>Nagashima Second Decl., page 3, lines 1-4.</p>

UNDISPUTED FACT	SUPPORTING EVIDENCE
<p>1 2 3 4</p> <p>audit and make refunds regarding per diem overcharges and Truth in Lending Act understatements.</p>	
<p>5 6 7 8</p> <p>13. Prior to the commencement of this action, WFHMI never attempted to surrender its licenses under either section 50213 of the CRMLA or section 22711 of the CFLL.</p>	<p>Burns Decl., page 3, lines 10-11; Nagashima Second Decl., page 2, lines 27-28.</p>
<p>9 10 11 12 13 14</p> <p>14. During its tenure as a licensee under both the CRMLA and the CFLL, WFHMI has consistently filed all reports, paid all assessments, and submitted to all regulatory examinations scheduled by the Commissioner, as required by the CRMLA or the CFLL.</p>	<p>Burns Decl., page 3, lines 1-4; Nagashima Second Decl., page 2, lines 22-25; First Amended Complaint, page 10, lines 19-21; admitted in Defendant's Answer, page 7, lines 1-4.</p>
<p>15 16 17 18 19 20</p> <p>15. In addition to submitting to the Commissioner's jurisdiction under both the CRMLA and the CFLL, WFHMI continued to advertise through mailings and on its website that it was licensed under the CRMLA and the CFLL.</p>	<p>Burns Decl., page 5, lines 3-6.</p>
<p>21 22 23 24</p> <p>16. Since August 2001, the Commissioner has conducted one examination of WFHMI under the CRMLA without any objection from WFHMI.</p>	<p>Declaration of Patricia R. Speight in Support of Defendant's Opposition to Plaintiffs' Motion for Preliminary Injunction, page 2, line 12 to page 3, line 3.</p>
<p>25 26 27 28</p> <p>17. Since August 2001, the Commissioner has commenced at least four regulatory examinations of WFHMI under the CFLL.</p>	<p>Declaration of Charles Agbonkpolar in Support of Defendant's Opposition to Plaintiffs' Motion for Preliminary Injunction, page 2, line 26 to page 3, line 8.</p>

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UNDISPUTED FACT	SUPPORTING EVIDENCE
<p>18. On or about December 4, 2002, the Commissioner demanded that WFHMI conduct an audit of its residential mortgage loans made in California during 2001 and 2002, and more specifically, to identify all loans where per diem interest was charged by WFHMI in violation of California Financial Code section 50204(o), make appropriate refunds, and identify instances of understating finance charges in violation of the Truth in Lending Act and California Financial Code section 50204 (i) (j) and (k). The Commissioner specifically reserved the right to proceed with all statutory remedies contained in the CRMLA if compliance was not forthcoming.</p>	<p>Wissinger Decl., page 4, lines 17-25; Burns Decl., page 4, lines 14-18, Exhibit 7; First Amended Complaint, page 2, lines 21-25, admitted in Defendant's Answer, page 3, lines 2-5; First Amended Complaint, page 10, line 27, to page 11, line3, admitted in Defendant's Answer, page 7, lines 8-11.</p>
<p>19. Between December 2002 and January 2003, counsel for WFHMI requested and was granted several continuances to respond to the Commissioner's demand. On or about January 17, 2003, the Commissioner sent a letter to WFHMI's counsel setting a deadline of no later than January 23, 2003, for WFHMI to provide the Department with a plan to conduct the audit and make refunds in compliance with the Commissioner's demand.</p>	<p>Burns Decl., page 4, lines 19-24, Exhibit 8; Wissinger Decl., page 4, lines 25-26.</p>

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<b>UNDISPUTED FACT</b>	<b>SUPPORTING EVIDENCE</b>
<p>20. On or about January 22, 2003, WFHMI sent a letter to the Commissioner stating that WFHMI did not agree with the Commissioner and would not comply with the Commissioner's demand. WFHMI expressly stated that WFHMI was an operating subsidiary of a national bank, and as such, it was subject to the exclusive federal regulation and supervision of the Office of the Comptroller of the Currency ("OCC").</p>	<p>Burns Decl., page 4, lines 25-28, and page 5, lines 1-2, Exhibit 9.</p>
<p>21. On or about January 27, 2003, WFHMI filed a Complaint initiating this federal lawsuit, seeking an injunction and declaratory relief and alleging that WFHMI was not obligated to comply with Financial Code section 50204(o), the CRMLA, CFLL, or the Commissioner's demands.</p>	<p>First Amended complaint, page 1, lines 26-28.</p>
<p>22. In its Complaint, WFHMI explicitly acknowledged that its failure to comply with the Commissioner's demand and the provisions of state law would result in an enforcement action being taken against it by the Commissioner.</p>	<p>Original Complaint filed January 27, 2003, at page 2, lines 5-9; reiterated in the First Amended Complaint, page 2, lines 21-25.</p>

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<p>23. On February 4, 2003, the Commissioner instituted two separate administrative proceedings to revoke WFHMI's CRMLA and CFLL licenses, based on the Commissioner's findings that WFHMI violated Financial Code sections 50204, subdivisions (i), (j), (k) and (o) and 50307(b), and that a fact or condition existed, that if it had existed at the time of original licensure, reasonably would have warranted the Commissioner in refusing to issue the license, and based thereon, grounds existed to revoke the residential mortgage lender and loan servicer license, and the finance lenders licenses, of WFHMI.</p>	<p>Burns Decl., page 5, lines 20-26; Wissinger Decl., page 6, lines 5-7, Exhibit 1, and page 6, lines 16-18, Exhibit 2; Nagashima Second Decl., page 3, lines 5-8.</p>
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Dated: April 4, 2003

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