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F I L E D
Superior Court of California
County of San Francisco

DEC 07 2020

CLERK OF THE COURT
BY: Amrakes Jones
Deputy Clerk

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN FRANCISCO**

9 NICHOLAS R. MAGILL, on behalf of
10 himself and all others similarly situated,

11 Plaintiff,

12 v.

13 WELLS FARGO BANK, N.A.

14 Defendant.

Case No. **CGC-20-588327**

CLASS ACTION COMPLAINT

[DEMAND FOR JURY TRIAL]

15 Plaintiff Nicholas R. Magill ("Plaintiff"), on behalf of himself and all persons similarly situated,
16 allege the following based on personal knowledge as to allegations regarding the Plaintiff and on
17 information and belief as to other allegations.

INTRODUCTION

18 1. Plaintiff brings this action on behalf of himself, the general public, and a class of all
19 similarly situated consumers against Defendant Wells Fargo Bank, N.A. ("Wells Fargo" or
20 "Defendant"), arising from its routine practice assessing more than one "insufficient funds fee ("NSF
21 Fee") or "overdraft fee" ("OD Fee) on the same item ("Multiple Fees").

22 2. Wells Fargo misleadingly and deceptively misrepresents the above practice in its
23 publicly-available marketing materials, including its own account contracts. Wells Fargo also omits
24 material facts pertaining to each of the above practices in its publicly-available marketing materials,
25 including its account contracts.

26 3. Research shows that fees are the most important factor influencing consumers' selection
27 of a new banking provider. See Ron Shevlin, "How Consumers Choose a Bank: A Tale of Two
28

BY FAX

1 Surveys.” Insight Vault, Cornerstone Advisors, 23 Aug. 2018,
2 [https://www.cornstone.com/insightvault/2018/08/23/how-consumers-choose-a-bank-a-tale-of-two-](https://www.cornstone.com/insightvault/2018/08/23/how-consumers-choose-a-bank-a-tale-of-two-surveys/)
3 [surveys/](https://www.cornstone.com/insightvault/2018/08/23/how-consumers-choose-a-bank-a-tale-of-two-surveys/) (summarizing two consumer surveys that revealed that the most important factor influencing
4 consumers’ selection of a new banking provider is the amount of fees charged) (last visited November
5 27, 2020).

6 4. Wells Fargo’s customers have been injured by Wells Fargo’s improper practices to the
7 tune of millions of dollars bilked from their accounts in clear violation of their agreements with Wells
8 Fargo.

9 5. To this day, Wells Fargo continues to deceive the general public regarding its Multiple
10 Fee scheme. Wells Fargo’s account contracts and marketing materials are publicly available online and
11 in Wells Fargo branches to all current and prospective accountholders. The general public relies on
12 representations in these documents to make important financial decisions regarding which financial
13 institution they would open a checking account with. These unsuspecting consumers would have no
14 way of knowing about the Multiple Fee described herein that Wells Fargo assesses on its customers
15 prior to establishing a banking relationship with Wells Fargo. Consumers who have already opened
16 Wells Fargo accounts also rely on the misrepresentations and omissions in the publicly-available
17 account documents when making every day financial transactions.

18 6. The Pew Charitable Trusts has emphasized the importance of transparent checking
19 account fee disclosures for both comparison shopping for checking accounts and for effective fee
20 avoidance:

21 Bank accounts are an essential financial product, used by 9 in 10 American households,
22 and need to be safe and transparent. Account agreements and fee schedules provide
23 customers with account costs, terms, and conditions. Among the largest U.S. banks,
24 however, the median length of checking account disclosure documents is 40 pages, and
the information is presented in varied formats with inconsistent wording, making it
difficult for consumers to easily find the information they need to comparison shop,
avoid overdraft and other fees, and manage their money.

25 The Pew Trusts, “The Benefits of Uniform Checking Account Disclosures.”

26 7. Members of the public considering opening a checking account have the right to accurate
27 information regarding the checking accounts they are considering. Reasonable consumers would not
28

1 agree to open Wells Fargo checking accounts if they were informed, for example, that they could incur
2 Multiple Fees on the same ACH or check transaction.

3 8. On behalf of himself and the classes, Plaintiff seeks damages, restitution, and injunctive
4 relief on behalf of the general public for Wells Fargo's breach of contract and the covenant of good faith
5 and fair dealing and violations of California's consumer protection laws.

6 **PARTIES**

7 9. Plaintiff Magill is a resident of Victorville, California and holds a Wells Fargo checking
8 account.

9 10. Defendant Wells Fargo Bank is engaged in the business of providing retail banking
10 services to consumers, including to Plaintiff and members of the putative Class. Wells Fargo operates
11 banking centers, and thus conducts business, throughout the State of California. Its headquarters are in
12 Redwood City, CA.

13 **JURISDICTION AND VENUE**

14 11. This Court has jurisdiction over this matter because the amount in controversy exceeds
15 \$25,000.

16 12. Venue is proper in this District pursuant to CCP § 395(a).

17 13. Wells Fargo regularly and systematically provides retail banking services throughout the
18 State of California, including in this county, and provides retail banking services to its customers,
19 including members of the putative Class. As such, it is subject to the personal jurisdiction of this Court.

20 **FACTUAL BACKGROUND AND GENERAL ALLEGATIONS**

21 **I. WELLS FARGO CHARGES MULTIPLE FEES ON THE SAME ITEM**

22 14. As alleged more fully herein, Wells Fargo's Online Access Agreement, Consumer
23 Account Agreement, and Checking Account Disclosures (collectively "Account Documents") allow it
24 to charge a *single* \$35 NSF Fee or a *single* \$35 OD Fee when an item, including an electronic payment
25 item, is returned for insufficient funds, or paid into insufficient funds.

26 15. Wells Fargo breaches its contract when it charges more than one \$35 NSF Fee or \$35
27 OD Fee on the same item, since the contract explicitly states—and reasonable consumers understand—
28 that the same item can only incur a single NSF or OD Fee.

1 16. Wells Fargo similarly breaches its contract when it charges both a \$35 NSF Fee (or
2 multiple NSF Fees) and a \$35 OD Fee on the same item since the contract explicitly states—and
3 reasonable consumers understand—that the same item cannot incur both types of fees.

4 17. This abusive practice is not universal in the financial services industry. Indeed, major
5 banks like JP Morgan Chase—the largest consumer bank in the country—do not undertake the practice
6 of charging more than one NSF Fee on the same item when it is reprocessed. Instead, Chase charges
7 one NSF Fee even if an item is resubmitted for payment multiple times.¹

8 18. Wells Fargo’s Account Documents misrepresent this practice. To the contrary, the
9 Account Documents indicate it will only charge a single NSF Fee or OD Fee on an item.

10 **A. Plaintiff’s Multiple Fee Transactions**

11 19. In support of his claims, Plaintiff offers examples of fees that should not have been
12 assessed against his checking account.

13 20. On May 24, 2017, Plaintiff attempted a payment via the ACH system from his checking
14 account for \$50.00.

15 21. Wells Fargo rejected payment of that item due to insufficient funds in Plaintiff’s account
16 and charged him a \$35 NSF Fee for doing so. Plaintiff does not dispute this initial fee, as it is allowed
17 by Wells Fargo’s Account Documents.

18 22. Unbeknownst to Plaintiff, and without his request to Wells Fargo to reprocess the item,
19 however, six days later, on May 30, 2017, Wells Fargo processed the same \$50.00 item again, and again
20 charged Plaintiff a \$35 NSF Fee for doing so.

21 23. In sum, Wells Fargo charged Plaintiff \$70 in fees to attempt to process a single payment.

22 24. Plaintiff understood the payment to be a single item as is laid out in Wells Fargo’s
23 Account Documents, capable at most of receiving a single NSF Fee (if Wells Fargo returned them) or a
24 single OD Fee (if Wells Fargo paid them). Wells Fargo itself also understood the item to be a single
25

26 ¹ As indicated by Chase’s printed disclosures, an “item” maintains its integrity even if multiple
27 processes are affected on it: “If we return the same item multiple times, we will only charge you one
28 Returned Item Fee for that item within a 30-day period.”

1 item, and its systems categorized them as such. Indeed, on Plaintiff's bank statement, Wells Fargo
2 described subsequent attempts to debit the item as "RETRY PYMT."

3 **B. The Imposition of Multiple Fees on a Single Item Violates Wells Fargo's Express**
4 **Promises and Representations.**

5 25. The Account Documents provide the general terms of Plaintiff's relationship with Wells
6 Fargo and therein Wells Fargo makes explicit promises and representations regarding how transactions
7 will be processed, as well as when NSF Fees and OD Fees may be assessed.

8 26. The Account Documents contain explicit terms indicating that NSF Fees will only be
9 assessed once per item, when in fact Wells Fargo regularly charges two or more NSF Fees and/or OD
10 Fees per item even though a customer only requested the payment or transfer once.

11 27. According to the Online Banking Agreement, Wells Fargo promises that it will charge
12 either an OD Fee or an NSF Fee on a given transaction:

13 If we receive a bill payment drawn against your checking account or a Command
14 Asset Program, and there are insufficient available funds in your Funding Account to
15 cover the payment, we may at our sole discretion:

- 16 • Cover the payment by transferring available credit or funds from an account you
17 have linked for Overdraft Protection, or
- 18 • Pay the bill payment and create an overdraft on your account, or
- 19 • Decline the bill payment, or
- 20 • Re-attempt the bill payment the following business day (until this second attempt is
21 completed, the payment is pending and cannot be canceled).

22 "Online Access Agreement," attached as Ex. A, p. 6 ("Online Banking Agreement").

23 28. The Consumer Account Agreement supports these promises, defining "Item" as:

24 *An item is an order, instruction, or authorization to withdraw or pay funds or*
25 *money from an account.* Examples include a check, draft, and an electronic
26 transaction (including Automated Clearing House (ACH), an ATM withdrawal, and a
27 purchase using a card to access an account). *An item also includes a purported*
28 *order, instruction, or authorization to withdraw or pay funds or money from an*
account, unless otherwise prohibited by law or regulation.

"Consumer Account Agreement, Important legal information, disclosures, and terms you need to
know," attached as Ex. B, p. 1 ("Consumer Account Agreement") (emphasis added).²

² This agreement's name changed in 2018 to use the word "Deposit" instead of "Consumer," but its
terms relevant to the claims plead are materially the same during the entire relevant time period.

1 29. Wells Fargo’s simple checking account disclosure, which is both a contract document
2 and used by Wells Fargo to market to consumers, states:

3 ***Overdraft and returned item \$35 per item (non-sufficient funds/NSF) fees***

4 **Note:**

- 5 • No overdraft fee will be assessed on ATM and everyday debit card transactions (transactions may be declined) unless Debit Card Overdraft Service is added to the account. See the “Debit Card Overdraft Service” section for more information.
- 6 • No more than three overdraft and/or returned item fees will be charged on any business day
- 7 • No overdraft or returned item fees on transactions \$5 or less
- 8 • No overdraft fees if at the end of our nightly processing, both your ending daily account balance and your available balance are overdrawn by \$5 or less and there are no items returned for nonsufficient funds after all transactions have posted
- 9 • No extended or continuous overdraft fee.

10 “A guide to your common checking account fees,” attached as Ex. C (the “Guide”).

11 30. Using the same term “item,” the Guide states that a maximum of \$35 in fees will be
12 charged for any given item or transaction.

13 31. The Consumer Account Agreement also states:

14 Then, decide whether to pay your transaction into overdraft or return it unpaid: At
15 our discretion, **we may pay a check or automatic payment into overdraft, rather**
16 **than returning it unpaid.** This is our standard overdraft coverage. If we pay the
17 transaction into overdraft, it may help you avoid additional fees that may be assessed
18 by the merchant. Debit card transactions presented to us for payment (whether
19 previously approved by us or not) will be paid into overdraft and will not be returned
20 unpaid, even if you do not have sufficient funds in your account.

21 **Our standard overdraft coverage is when, at our discretion, we pay checks or**
22 **automatic payments (such as ACH payment) into overdraft rather than**
23 **returning them unpaid.** You can request to remove our standard overdraft coverage
24 from your account by speaking to a banker.

25 Important: If you remove our standard overdraft coverage from your account, the
26 following will apply if you do not have enough money in your account or accounts
27 linked for Overdraft Protection to cover a transaction: • **We will return your checks**
28 **and automatic payments (such as ACH payments) and assess a non-sufficient**
funds (NSF) returned item fee and you could be assessed additional fees by
merchants.

29 Ex. B, pp. 19-20.

30 32. All these provisions indicate that one of two things will occur: payment or rejection; OD
31 Fee or NSF Fee.

32 33. Additionally, the same check or ACH payment on an account cannot conceivably

1 become a new item each time it is rejected for payment then reprocessed, especially when—as here—
2 Plaintiff took no action to resubmit the item.

3 34. There is zero indication anywhere in the Account Documents that the same check or
4 ACH is eligible to incur multiple fees.

5 35. Even if Wells Fargo reprocesses a check or ACH for payment, it is still the same check
6 or ACH. Wells Fargo’s reprocessing is simply another attempt to effectuate an accountholder’s original
7 order or instruction.

8 36. As alleged herein, Plaintiff took only a single action to make a single ACH payment; he
9 may therefore be charged only a single fee.

10 37. The disclosures described above never discuss a circumstance where Wells Fargo may
11 assess multiple NSF Fees for an item that was returned for insufficient funds and later reprocessed one
12 or more times and returned again, or paid during a subsequent reprocessing and charged an OD Fee
13 after having been charged one or more NSF Fee.

14 38. In sum, Wells Fargo promises that one \$35 NSF Fee or one \$35 OD Fee will be assessed
15 per check or ACH, and this must mean all iterations of the same instruction for payment. As such,
16 Wells Fargo breached the contract, and also misrepresented its fee practice, when it charged more than
17 one fee per item.

18 39. Reasonable accountholders understand any given authorization for payment to be one,
19 singular item, as that term is used in Wells Fargo’s Account Documents.

20 40. Taken together, the representations and omissions identified above convey to customers
21 that all submissions for payment of the same transaction will be treated as the same “item,” which Wells
22 Fargo will either authorize (resulting in an overdraft item) or reject (resulting in a returned item) when it
23 decides there are insufficient funds in the account. Nowhere does Wells Fargo represent that it will treat
24 each reprocessing of a check or ACH payment as a separate item, subject to additional fees, nor do
25 Wells Fargo customers ever agree to such fees.

26 41. Customers reasonably understand, based on the language of the Account Documents,
27 that Wells Fargo’s reprocessing of checks or ACH payments are simply additional attempts to complete
28 the original order or instruction for payment, and as such, will not trigger additional NSF or OD Fees.

1 In other words, it is always the same item.

2 42. Each of the foregoing agreements and disclosures are publicly available documents
3 online and in Wells Fargo branches to all current and prospective accountholders. Wells Fargo and the
4 general public rely on those documents making important financial decisions regarding to whom they
5 entrust their money. In addition, Wells Fargo accountholders rely on those documents in making every
6 day financial transactions and predicting which transactions will incur fees and for how much.

7 43. Indeed, consumers have no shortage of options when it comes to retail banking
8 institutions, many of which provide checking accounts with similar or identical features. Thus,
9 consumers rely on publicly accessible information in distinguishing between those options and
10 determining which bank will give them the best overall value for their money.

11 44. Unfortunately for consumers, to this day, Wells Fargo misrepresents and omits the true
12 cost of using a Wells Fargo account to existing and prospective accountholders.

13 45. The public seeking to understand which banking institutions will meet their needs are not
14 reasonably informed and cannot consider Well Fargo's fee practices when assessing their options
15 because Wells Fargo's disclosures are misleading, but consumers are entitled to know the truth.

16 46. Banks like Wells Fargo that employ this abusive multiple fee practice know how to
17 disclose it plainly and clearly. Indeed, other banks and credit unions that do engage in this abusive
18 practice disclose it expressly to their accountholders—something Wells Fargo never did.

19 47. For example, First Hawaiian Bank engages in the same abusive practices as Defendant,
20 but at least currently discloses it in its online banking agreement, in all capital letters, as follows:

21 **YOU AGREE THAT MULTIPLE ATTEMPTS MAY BE MADE TO SUBMIT A**
22 **RETURNED ITEM FOR PAYMENT AND THAT MULTIPLE FEES MAY BE**
23 **CHARGED TO YOU AS A RESULT OF A RETURNED ITEM AND**
RESUBMISSION.

24 *Terms and Conditions of FHB Online Services*, First Hawaiian Bank 40, [https://www.fhb.com/](https://www.fhb.com/en/assets/File/Home_Banking/FHB_Online/Terms_and_Conditions_of_FHB_Online_Services_RX)
25 [en/assets/File/Home_Banking/FHB_Online/Terms_and_Conditions_of_FHB_Online_Services_RX](https://www.fhb.com/en/assets/File/Home_Banking/FHB_Online/Terms_and_Conditions_of_FHB_Online_Services_RX)
26 [P1.pdf](https://www.fhb.com/en/assets/File/Home_Banking/FHB_Online/Terms_and_Conditions_of_FHB_Online_Services_RX) (last accessed September 25, 2019) (emphasis added).

27 48. Central Pacific Bank, a leading bank in Hawai'i, states in its Fee Schedule under the
28 "MULTIPLE NSF FEES" subsection: "Items and transactions (such as, for example, checks and

1 electronic transactions/payments) returned unpaid due to insufficient/non-sufficient (“NSF”) funds in
2 your account, may be resubmitted one or more times for payment, and a \$32 fee will be imposed on you
3 each time an item and transaction resubmitted for payment is returned due to insufficient/nonsufficient
4 funds.” *Miscellaneous Fee Schedule*, Central Pacific Bank 1 (Feb. 15, 2019),
5 <https://www.centralpacificbank.com/PDFs/Miscellaneous-Fee-Schedule.aspx>.

6 49. BP Credit Union likewise states: “We may charge a fee each time an item is submitted or
7 resubmitted for payment; therefore, you may be assessed more than one fee as a result of a returned
8 item and resubmission(s) of the returned item.”

9 50. Wells Fargo makes the opposite representation, and in so doing, deceives its
10 accountholders.

11 51. If Wells Fargo was enjoined from misleading consumers about the fees it charges,
12 Plaintiff and other members of the public would be able to rely on Well Fargo’s account disclosures in
13 order to make informed banking decisions in the future.

14 **C. The Imposition of Multiple NSF Fees or OD Fees on a Single Item Breaches Wells**
15 **Fargo’s Duty of Good Faith and Fair Dealing.**

16 52. Parties to a contract are required not only to adhere to the express conditions in the
17 contract, but also to act in good faith when they are invested with a discretionary power over the other
18 party. In such circumstances, the party with discretion is required to exercise that power and discretion
19 in good faith. This creates an implied promise to act in accordance with the parties’ reasonable
20 expectations and means that Wells Fargo is prohibited from exercising its discretion to enrich itself and
21 gouge its customers. Indeed, Wells Fargo has a duty to honor transaction requests in a way that is fair to
22 Plaintiff and its other customers and is prohibited from exercising its discretion to pile on ever greater
23 penalties. Here—in the adhesion agreements Wells Fargo foisted on Plaintiff and its other customers—
24 Wells Fargo has provided itself numerous discretionary powers affecting customers’ bank accounts. But
25 instead of exercising that discretion in good faith and consistent with consumers’ reasonable
26 expectations, Wells Fargo abuses its discretion to take money out of consumers’ accounts without their
27 permission and contrary to consumers’ reasonable expectations that they will not be charged multiple
28 fees for the same transaction.

- 1 b) Whether such conduct enumerated above violates the contract;
- 2 c) Whether such conduct is deceptive or in bad faith;
- 3 d) Whether Wells Fargo violated California's Unfair Competition Law;
- 4 e) Whether Plaintiff and other members of the Class have sustained damages as a result of
- 5 Wells Fargo's wrongful business practices described herein, and the proper measure of
- 6 damages;
- 7 f) Whether Plaintiff and other members of the Class are entitled to restitution as a result of
- 8 Wells Fargo's wrongful business practices described herein, and the proper measure of
- 9 that restitution.

10 60. The parties are numerous such that joinder is impracticable. Upon information and
11 belief, and subject to class discovery, the Class consist of thousands of members or more, the identity of
12 whom are within the exclusive knowledge of and can be ascertained only by resort to Wells Fargo's
13 records. Wells Fargo has the administrative capability through its computer systems and other records
14 to identify all members of the Class, and such specific information is not otherwise available to
15 Plaintiff.

16 61. It is impracticable to bring Class members' individual claims before the Court. Class
17 treatment permits a large number of similarly situated persons or entities to prosecute their common
18 claims in a single forum simultaneously, efficiently, and without the unnecessary duplication of
19 evidence, effort, expense, or the possibility of inconsistent or contradictory judgments that numerous
20 individual actions would engender. The benefits of the class mechanism, including providing injured
21 persons or entities with a method for obtaining redress on claims that might not be practicable to pursue
22 individually, substantially outweigh any difficulties that may arise in the management of this class
23 action.

24 62. Plaintiff's claims are typical of the claims of the other Class members in that they arise
25 out of the same wrongful business practices by Wells Fargo, as described herein.

26 63. Plaintiff is more than an adequate representative of the Class in that they have a Wells
27 Fargo checking account and have suffered damages as a result of Wells Fargo's and improper business
28 practices. In addition:

- 1 a) Plaintiff is committed to the vigorous prosecution of this action on behalf of himself and all
- 2 others similarly situated and have retained competent counsel experienced in the
- 3 prosecution of class actions and, in particular, class actions on behalf of consumers against
- 4 financial institutions;
- 5 b) There is no conflict of interest between Plaintiff and the unnamed Class members;
- 6 c) They anticipate no difficulty in the management of this litigation as a class action; and
- 7 d) Plaintiff's legal counsel has the financial and legal resources to meet the substantial costs
- 8 and legal issues associated with this type of litigation.

9 64. Plaintiff knows of no difficulty to be encountered in the maintenance of this action that
10 would preclude its maintenance as a class action.

11 65. Wells Fargo has acted or refused to act on grounds generally applicable to the class,
12 thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the
13 class as a whole.

14 66. All conditions precedent to bringing this action have been satisfied and/or waived.

15 **FIRST CAUSE OF ACTION**
16 **BREACH OF CONTRACT INCLUDING THE COVENANT**
17 **OF GOOD FAITH AND FAIR DEALING**
18 **(On behalf of the Class)**

19 67. Plaintiff Magill incorporates by reference each of the allegations set forth in the
20 preceding paragraphs.

21 68. Plaintiff and Wells Fargo have contracted for bank account, deposit, checking, ATM,
22 and debit card services, as embodied in the Account Documents.

23 69. Wells Fargo has misconstrued in its Account Documents its true check and ACH
24 processing practices and breached the express terms of the Account Documents. No contractual
25 provision authorizes Wells Fargo to charge Multiple Fees on the same check or ACH.

26 70. Therefore, Wells Fargo breached the terms of its Account Documents by charging
27 Multiple Fees on the same transaction.

28 71. Under the laws of the state of California where Wells Fargo does business, good faith is
an element of every contract. Whether by common law or statute, all such contracts impose upon each

1 party a duty of good faith and fair dealing. Good faith and fair dealing, in connection with executing
2 contracts and discharging performance and other duties according to their terms, means preserving the
3 spirit – not merely the letter – of the bargain. Put differently, the parties to a contract are mutually
4 obligated to comply with the substance of their contract in addition to its form.

5 72. Evading the spirit of the bargain and abusing the power to specify terms constitute
6 examples of bad faith in the performance of contracts. Subterfuge and evasion violate the obligation of
7 good faith in performance even when an actor believes their conduct to be justified. Bad faith may be
8 overt or may consist of inaction, and fair dealing may require more than honesty. Examples of bad faith
9 are evasion of the spirit of the bargain, willful rendering of imperfect performance, abuse of a power to
10 specify terms, and interference with or failure to cooperate in the other party’s performance.

11 73. Wells Fargo has breached the covenant of good faith and fair dealing in the Account
12 Documents through its overdraft policies and practices as alleged herein.

13 74. Further, Wells Fargo uses its contractual discretion to take money out of consumers’
14 accounts without their permission and contrary to their reasonable expectations that they will not be
15 charged Multiple Fees for the same transaction.

16 75. Plaintiff and members of the Class have performed all, or substantially all, of the
17 obligations imposed on them under the Account Documents.

18 76. Plaintiff and members of the Class have sustained damages as a result of Wells Fargo’s
19 breach of the contract and the covenant of good faith and fair dealing.

20 **SECOND CAUSE OF ACTION**
21 **VIOLATION OF THE UNFAIR COMPETITION LAW**
22 **Cal. Bus. & Prof. Code § 17200, et seq.**
23 **(On behalf of the Class)**

24 77. Plaintiff Magill incorporates the preceding allegations by reference as if fully set forth
25 herein.

26 78. Wells Fargo’s conduct described herein violates the Unfair Competition Law (the
27 “UCL”), codified at California Business and Professions Code section 17200, *et seq.*

28 79. The UCL prohibits, and provides civil remedies for, unfair competition. Its purpose is to
protect both consumers and competitors by promoting fair competition in commercial markets for

1 goods and services. In service of that purpose, the Legislature framed the UCL’s substantive provisions
2 in broad, sweeping language.

3 80. By defining unfair competition to include “any unlawful, unfair or fraudulent business
4 act or practice,” the UCL permits violations of other laws to be treated as unfair competition that is
5 independently actionable and sweeps within its scope acts and practices not specifically proscribed by
6 any other law.

7 81. The UCL expressly provides for injunctive relief, and also contains provisions denoting
8 its public purpose. A claim for injunctive relief under the UCL is brought by a plaintiff acting in the
9 capacity of a private attorney general. Although the private litigant controls the litigation of a UCL
10 claim, the private litigant is entitled to recovery compensatory damages for his own benefit, but only
11 disgorgement of profits made by the defendant through unfair or deceptive practices in violation of the
12 statutory scheme or restitution to victims of the unfair competition.

13 82. Wells Fargo’s conduct violates the UCL by charging Multiple Fees on the same check or
14 ACH.

15 83. Defendants committed fraudulent business acts and practices in violation of Cal. Bus. &
16 Prof. Code § 17200, *et seq.*, in the following respect, among others:

17 Wells Fargo’s practice of falsely indicating in account documents that only a single NSF
18 Fee or OD Fee will be charged on checks or ACH.

19 84. Specifically, Defendants’ conduct was not motivated by any business or economic need
20 or rationale. The harm and adverse impact of Wells Fargo’s imposition of Multiple Fees on the same
21 transaction was neither outweighed nor justified by any legitimate reasons, justifications, or motives.

22 85. Plaintiff Magill and the Class relied on Wells Fargo’s misrepresentations and omissions
23 in the publicly available account disclosures when opening and continuing to use their accounts,
24 understanding Multiple Fees would not be charged on a single ACH payment or check. Had he known
25 he would be charged Multiple Fees, he would not have used his account for such transactions.

26 86. The harm to Plaintiff Magill and members of the Class arising from Wells Fargo’s unfair
27 practices relating to the imposition of Multiple Fees on the same transaction outweighs the utility, if
28

1 any, of those practices.

2 87. Wells Fargo's unfair business practice relating to NSF Fees and OD Fees as alleged
3 herein are immoral, unethical, oppressive, unscrupulous, unconscionable, and/or substantially injurious
4 to Plaintiff Magill and Class members.

5 88. Wells Fargo's conduct was substantially injurious to consumers in that they have been
6 forced to pay Multiple Fees on the same transaction, which is the contract with Wells Fargo does not
7 promise.

8 89. As a result of Wells Fargo's violations of the UCL, Plaintiff Magill and members of the
9 Class have paid, and/or will continue to pay NSF and/or OD Fees and thereby have suffered and will
10 continue to suffer actual harm.

11 90. In addition, Wells Fargo's conduct continues to deceive the general public. Well Fargo's
12 misrepresentations and omissions in its publicly available account documents and marketing materials
13 are likely to deceive current and prospective accountholders making corresponding public injunctive
14 relief necessary.

15 **PRAYER FOR RELIEF**

16 WHEREFORE, Plaintiff demands judgment against Defendant for himself and the members of
17 the Class as follows:

- 18 (a) Declaring Wells Fargo's multiple fee policies and practices to be wrongful, unfair,
19 and a breach of contract;
- 20 (b) Restitution of all relevant OD Fees and NSF Fees paid to Wells Fargo by Plaintiff
21 and the Class, as a result of the wrongs alleged herein in an amount to be determined
22 at trial;
- 23 (c) Disgorgement of the ill-gotten gains derived by Wells Fargo from its misconduct;
- 24 (d) Actual damages in an amount according to proof;
- 25 (e) Statutory, punitive, and exemplary damages, as permitted by law;
- 26 (f) Pre-judgment interest at the maximum rate permitted by applicable law;
- 27 (g) Public injunctive relief to enjoin Wells Fargo's practice of charging Multiple Fees on
28 a single ACH payment or check;

- 1 (h) Costs and disbursements assessed by Plaintiff in connection with this action,
2 including reasonable attorneys' fees pursuant to applicable law; and
3 (i) Such other relief as this Court deems just and proper.

4 **DEMAND FOR JURY TRIAL**

5 Plaintiff and all others similarly situated hereby demand trial by jury on all issues in this
6 complaint that are so triable as a matter of right.

7 Dated: December 7, 2020


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