

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF GEORGIA**

KIMARA SMITH, individually and on behalf  
of all others similarly situated,

*Plaintiff,*

vs.

WELLS FARGO BANK, N.A.

*Defendant.*

**Civil Action No. CV124-125**

**JURY TRIAL DEMANDED**

**CLASS ACTION COMPLAINT**

Plaintiff KIMARA SMITH, (“Plaintiff”), individually and on behalf of all others similarly situated, respectfully submits the following Complaint against Defendant Wells Fargo Bank, N.A. (“Wells Fargo” or “Defendant”). Plaintiff makes the following allegations, upon information and belief based on, among other things, the investigation of counsel, and review of public documents.

**PRELIMINARY STATEMENT**

1. Consumers depositing checks have no way of knowing whether a check deposited will bounce. However, financial institutions have a long history of charging the depositor astronomical fees as a result of a bounced check.<sup>1</sup> Many merchants have expressed great disdain for this action and Plaintiff, and others similarly situated have brought this action to court. Thus, this case arises from Defendant’s breach of these listed duties and rules.

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<sup>1</sup> <https://www.forbes.com/advisor/banking/returned-check-fees-cost-of-bounced-check/>

2. Plaintiff bring this action on behalf of herself, and all similarly situated persons who were charged \$12 for trying to deposit checks, that unbeknownst to them bounced between February 1, 2024, and March 30, 2024 (the "Blanket Fees").

3. This action is brought to remedy various violations of law in connection with Defendant's breach of contract, implied covenant of good faith and fair dealings and unjustly enriched actions.

4. Specifically, Defendant has a "blanket policy of charging deposited item return unpaid fees on all returned checks, regardless of the origin of the check or the cause of its return".<sup>2</sup>

5. Between February 1, 2024, and March 30, 2024, Wells Fargo, N.A. charged Plaintiff and other individuals blanket \$12 fees for check deposits that bounced.<sup>3</sup>

6. The allegations herein are based on personal knowledge as to Plaintiff' own experiences and are made as to other matters based on an investigation by counsel, including analysis of publicly available information.

### **JURISDICTION AND VENUE**

7. This Court has subject matter jurisdiction over this action under the Class Action Fairness Act, the relevant portion of which is codified at 28 U.S.C. §1332(d). The aggregated claims of the individual Class Members exceed the sum or value of \$5,000,000, exclusive of interests and costs, and this is a class action in which more than two-thirds of the proposed Plaintiff class, on the one hand, and Defendant, on the other, are citizens of different states.

8. This Court has personal jurisdiction over Defendant because Defendant has

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<sup>2</sup> <https://www.law360.com/articles/1812501/wells-fargo-hit-with-class-action-over-bounced-check-fees>

<sup>3</sup> *Id.*

purposefully availed itself to this District's jurisdiction and authority, given Defendant's contacts within this District through Defendant's extensive financial services throughout this District and they are registered to do business in the State of Pennsylvania.

9. Venue is proper in this District under 28 U.S.C. §1391 because a substantial part of the events or omissions giving rise to Plaintiff's claims occurred in this District, given that Defendant conducts financial services throughout the United States and within this District.

### **PARTIES**

10. Plaintiff Kimara Smith is a citizen of the State of Georgia and resides in Wadley, Georgia.

11. On several occasions, Plaintiff deposited checks into her Wells Fargo bank account.

12. On February 15, 2024, Plaintiff deposited a check into her bank account but was charged with a blanket \$12 fee because the check bounced.

13. Defendant is a corporation headquartered in San Francisco, California and registered to do business in the State of California, the State of Pennsylvania and throughout the United States. Defendant's Corporate Headquarters is located at 420 Montgomery Street, San Francisco, California 94104.

14. Defendant is a financial services company with approximately \$1.9 trillion in assets.<sup>4</sup>

15. Defendant provides banking, investment and mortgage products and services, as well as consumer and commercial finance, through more than 7,300 locations, 12,000 ATMs,

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<sup>4</sup> See Form 10-K for Wells Fargo & Co. (2022) at 1. Available at: <https://www08.wellsfargomedia.com/assets/pdf/about/investor-relations/sec-filings/2022/10k.pdf> (last accessed June 20, 2024).

the internet (wellsfargo.com) and mobile banking; and has offices in over 40 countries and territories to support customers who conduct business in the global economy.<sup>5</sup>

16. As of December 31, 2022, Defendant realized nearly \$3.1 billion in revenue for deposit-related fees.<sup>6</sup>

## **FACTUAL ALLEGATIONS**

### **I. WELLS FARGO IMPOSED A BLANKED “JUNK FEE” ON ALL RETURNED CHECKS, IRRESPECTIVE OF CAUSE**

17. Deposited Item Return Fees are widespread within the banking industry, with most major banks and financial institutions utilizing them as a standard fee structure. However, these fees are nothing more than tools used to generate revenue at the expense of innocent depositors for the actions of others.

18. The CFPB issued published Bulletin 2022-06 on November 7, 2022 (the “Bulletin”).<sup>7</sup> The Bulletin, *entitled Unfair Returned Deposited Item Fee Assessment Practices*, highlights the CFPB’s concern about deceptive practices related to Deposited Item Returned Fees, specifically where fees are disproportionate to the actual costs incurred by the bank, or where customers are not adequately informed about the fees and their potential applicability.

19. More importantly, the CFPB deemed these fees unfair under the Consumer Financial Protection Act. They held that financial institutions, like Wells Fargo, charge consumers Returned Item Fees “for all returned transactions irrespective of the circumstances of the transaction or patterns of behavior on the account.” The Bulletin provides in relevant

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<sup>5</sup> <https://business.sfchamber.com/list/member/wells-fargo-521>

<sup>6</sup> See Exhibit 13 to Form 10-K at 171. Available at: <https://www08.wellsfargomedia.com/assets/pdf/about/investor-relations/sec-filings/2022/exhibit-13.pdf> (last accessed June 20, 2024).

<sup>7</sup> <https://www.federalregister.gov/documents/2022/11/07/2022-23933/bulletin-2022-06-unfair-returned-deposited-item-fee-assessment-practices> (last accessed June 20, 2024).

part:

The Consumer Financial Protection Act (CFPA) prohibits covered persons from engaging in unfair acts or practices. Congress defined an unfair act or practice as one that (A) “causes or is likely to cause substantial injury to consumers which is not reasonably avoidable,” and (B) “such substantial injury is not outweighed by countervailing benefits to consumers or to competition.”

Blanket policies of charging Returned Deposited Item fees to consumers for all returned transactions irrespective of the circumstances of the transaction or patterns of behavior on the account are likely unfair.

Fees charged for Returned Deposited Items cause substantial injury to consumers. Under the blanket policies of many depository institutions, Returned Deposited Item fees cause monetary injury, in the range of \$10-19 for each returned item. **Depository institutions that charge Returned Deposited Item fees for returned checks impose concrete monetary harm on a large number of customers.**

In many of the instances in which Returned Deposited Item fees are charged, consumers would not be able to reasonably avoid the substantial monetary injury imposed by the fees. **An injury is not reasonably avoidable unless consumers are fully informed of the risk and have practical means to avoid it.** Under blanket policies of many depository institutions, Returned Deposited Item fees are charged whenever a check is returned because the check originator has insufficient available funds in their account, the check originator instructs the originating depository institution to stop payment, or the check is written against a closed account. **But a consumer depositing a check would normally be unaware of and have little to no control over whether a check originator has funds in their account, will issue a stop payment instruction, or has closed the account.** Nor would a consumer normally be able to verify whether a check will clear with the check originator’s depository institution before depositing the check or be able to pass along the cost of the fee to the check originator.

87 FR 66940, 66941 (emphases added).

20. The CFPB primarily addressed the lack of benefit and disproportionality associated with such fees, finding that “[c]heck processing is a service made broadly available to all depositors of checks, and *there is no separate benefit to consumers from having a deposited check returned, as opposed to paid.*” *Id.* The CFPB further found that these fees are not “well-tailored to recoup costs” because “the fee is charged to depositors even where the depository

institution incurs no such loss from the returned transaction, and institutions usually do not collect the fee in those limited circumstances where they actually incur a loss.” *Id.* The CFPB has clearly signaled its intention to impose stricter oversight and raise legal challenges against those unfair and predatory practices.

21. Wells Fargo conducts a large retail webbing across the country. Within their webbing, Wells Fargo offers a wide variety of services, from opening deposit accounts, including a checking and savings account, to customers like Plaintiff and the putative Class and Sub-class members.

22. In connection with opening a direct account with Wells Fargo, each customer sustains a “Deposit Account Agreement” (“Deposit Agreement”). This Agreement governs the terms and conditions of each deposit account held with Wells Fargo.

23. The Deposit Agreement confirms that a customer’s account is located in the state where the person applied. Nevertheless, if a customer applied for an account online, and Wells Fargo had an address on record in a state where it had a branch at the time of the application, the account is “located” in the state of the address on record with Wells Fargo.<sup>8</sup>

24. Although the Deposit Agreement confirms that Wells Fargo had a blanket policy of charging a Deposited Item Return Unpaid Fee on attempted deposits that were returned unpaid, regardless of the underlying facts or circumstances,<sup>9</sup> it does not disclose the amount of any fee that Wells Fargo would charge for returned deposited items.

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<sup>8</sup> See Wells Fargo Deposit Agreement, effective July 25, 2023, Additional Terms and Services, Laws governing your account, at 38, attached hereto as Exhibit A.

<sup>9</sup> *Id.*, Cashed/Deposited items returned unpaid, at 6.

25. The Deposit Agreement states “[i]f an item you deposited or cashed is returned to us unpaid, we can deduct the amount from any account you have with us... In addition, we’ll charge you all applicable fees.”<sup>10</sup>

26. The Deposit Agreement applies along with the “Consumer Schedule,” an overview of fees associated with Wells Fargo accounts. The “Consumer Account Fees and Information Schedule” notes that “deposited item returned unpaid for any reason” has a “\$0” per item fee.<sup>11</sup>

27. The Consumer Schedule, aimed at providing fee clarity, explicitly states a “\$0” fee for deposited items returned unpaid for any reason.

28. It is unreasonable for a consumer to be charged for a Deposited Item Return Unpaid Fee when that fee is not disclosed in the Deposit Agreement and accompanying Consumer Schedule.

29. In addition to such fee being undisclosed, in practice Wells Fargo charged its customers a blanket \$12 fee for transactions that are returned by no fault of the customer.

30. Generally, a customer depositing a check anticipates receipt of the funds. Unfortunately, external factors can lead to a deposit being returned paid. This can occur due to the sender’s account insufficiency, a stop payment ordered by the sender, or even processing errors. Therefore, these unforeseeable circumstances can expose the depositor to unfair and unavoidable financial repercussions.

31. Consumers attempting to deposit funds, like Plaintiff, lacked any control on the outcome of the transaction, and could not protect herself against any action taken against them

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<sup>10</sup> See *id.*, Cashed/Deposited items returned unpaid, at 6.

<sup>11</sup> See Wells Fargo Consumer Account Fees and Information, effective July 25, 2023, Service Fees, at 11, attached hereto as Exhibit B.

by Wells Fargo. Consumers have no way to verify whether the sender's account contains the amount quoted on the check.

32. Therefore, Wells Fargo's blanket policy of charging Deposited Item Return Unpaid Fees on all returned deposits, regardless of the origin of the check or the cause of its return, is unjust because it penalizes consumers for circumstances outside of their control.

## **II. WELLS FARGO CHARGED PLAINTIFF DEPOSITED ITEM RETURN FEES**

### **A. Plaintiff Kimara Smith**

33. Plaintiff alleges that Defendant charged Deposited Item Returned Fees because such check could not be processed against the originator's account.

34. Plaintiff's account was located in the State of Georgia at the time she opened the account and remains so to this day.

35. On or about February 15, 2024, she attempted to deposit a check into her Wells Fargo account.

36. At the time, she attempted to deposit the check into her Wells Fargo account, she had no reason to believe that the check would be returned unpaid.

37. On or around February 15, 2024, to her surprise and by no fault of her own, the check she deposited was returned unpaid. Wells Fargo charged her a Deposited Item Return Unpaid Fee of \$12.00.

38. Because the \$12 Deposited Item Return Unpaid Fee which Wells Fargo charged was assessed pursuant to Wells Fargo's blanket policy of assessing such fees irrespective of the facts and circumstances surrounding her attempt to deposit the check into her account, the Deposited Item Return Fee was unjust and unlawful.

39. Additionally, Wells Fargo's failure to disclose the \$12 Deposited Item Return Unpaid Fee in their Deposit Agreement and Consumer Schedule was unjust and unlawful.

**CLASS ACTION ALLEGATIONS**

40. Plaintiff bring this action on behalf of herself and as a class action, pursuant to Fed. R. Civ. P. 23(a), 23(b)(2), and/or 23(b)(3). Specifically, the class and subclass are defined as follows:

**Nationwide Class (the "Class")**

All individuals who, during the applicable statute of limitations, had or have Accounts with Wells Fargo and were charged a Deposited Item Return Fee by Wells Fargo.

**Georgia State Subclass (the "Georgia Sub-class")**

All individuals who, during the applicable statute of limitations, had or have Accounts with Wells Fargo located in Georgia and were charged a Deposited Item Return Fee by Wells Fargo.

41. Excluded from the Class and Sub-classes is Defendant, its parents, subsidiaries, affiliates, officers and directors, and judicial officers and their immediate family members and associated court staff assigned to this case.

42. Plaintiff reserves the right to modify or amend the definitions of the proposed Class and Sub-class before the Court determines whether certification is appropriate.

43. The particular members of the (i) Nationwide Class and the (ii) Georgia Sub-class, are capable of being described without difficult managerial or administrative problems. The members of the putative classes are also readily identifiable from the information and records in the possession or control of Defendant or its affiliates and agents and from public records.

44. Certification of Plaintiff's claims for class-wide treatment is appropriate because Plaintiff can prove the elements of their claims on a class-wide basis using the same evidence as would be used to prove those elements in individual actions alleging the same claims.

45. The proposed Class are so numerous that the joinder of all members is impracticable.

46. This action has been brought and may be properly maintained on behalf of the Class proposed herein under Federal Rule of Civil Procedure 23.

**Numerosity: Fed. R. Civ. P. 23(a)(1)**

47. Upon information and belief, the Class is so numerous that the joinder of all members is impracticable. While the exact number and identities of individual members of the Class are unknown at this time, such information is in the sole possession of Defendant and obtainable by Plaintiff only through the discovery process. Members of the Class may be notified of the pendency of this action by recognized, Court-approved notice dissemination methods, which may include U.S. Mail, Electronic Mail, internet postings, social media, and/or published notice.

**Typicality: Fed R. Civ. P. 23(a)(3)**

48. Plaintiff's claims are typical of the claims of the members of the Class and Sub-Class, because, inter alia, all Class and Sub-class members have been injured through the uniform misconduct described above and were charged improper and deceptive fees as alleged herein. Moreover, Plaintiff's claims are typical of the Class and Sub-class members' claims because Plaintiff is advancing the same claims and legal theories on behalf of herself and all members of the Class and their respective Sub-class. In addition, Plaintiff is entitled to relief under the same causes of action and upon the same facts as the other members of the proposed Class and Sub-class.

**Adequacy: Fed. R. Civ. P. 23(a)(4)**

49. Plaintiff will fairly and adequately protect the interest of the members of the Class

and Sub-class. Plaintiff and the members of the Class and Subclass each maintained an account with Defendant and were harmed by Defendant's misconduct in that they were assessed unfair Deposited Item Return Fees. Plaintiff will fairly and adequately represent and protect the interest of the Class and Sub-class and have retained competent counsel experienced in complex litigation and class action litigation. Plaintiff has no interest antagonistic to those of the Class or Sub-class, and Defendant has no defenses unique to Plaintiff.

**Predominance and Superiority: Fed. R. Civ. P. 23(b)(3)**

50. A class action is superior to all other available means for the fair and efficient adjudication of claims of Plaintiff and Class Members and questions of law and fact common to all Class Members predominate over questions affecting only individual Class Members. The damages or other financial detriment suffered by individual Class and Sub-class members is relatively small compared to the burden and expense that would be incurred by individual litigation of their claims against Defendant. It would be virtually impossible for a member of the Class or one of the Sub-classes, on an individual basis, to obtain effective redress for the wrongs committed against him or her. Further, even if the Class or Sub-class members could afford such individualized litigation, the court system could not. Individualized litigation would create the danger of inconsistent or contradictory judgments arising from the same set of facts. Individualized litigation would also increase the delay and expense to all parties and the court system from the issues raised by this action. On the other hand, the class action device provides the benefits of adjudication of these issues in a single proceeding, economics of scale, and comprehensive supervision by a single court, and presents no management difficulties under the circumstances here.

51. Plaintiff seeks monetary damages, including compensatory damages on behalf of

the Class and Sub-classes, and other equitable relief on grounds generally applicable to the entire Class and the Sub-classes, to enjoin and prevent Defendant from engaging in the acts described. Unless a Class and the Sub-classes are certified, Defendant will be allowed to profit from its unfair and unlawful practices, while Plaintiff and the members of the Class and Sub-class will have suffered damages. Unless a Class-wide injunction is issued, Defendant may continue to benefit from these alleged violations, and the members of the Class and Sub-classes, in addition to the general public, may continue to be unfairly treated.

52. Defendant has acted and refused to act on grounds generally applicable to the Class and the Sub-class, making final injunctive relief appropriate with respect to the Class as a whole.

**Common Questions of Fact and Law: Fed. R. Civ. P. 23(b)(4)**

53. This action involves questions of law and fact common to the Class. The common legal and factual questions include, but are not limited to, the following:

- a. Whether Defendant's assessment of Deposited Item Return Unpaid Fees is within the applicable statute of limitations was unfair, deceptive, or misleading;
- b. Whether Defendant breached the Deposit Agreement with Plaintiff and the Class by charging an undisclosed Deposited Item Return Unpaid Fee;
- c. Whether Defendant breached the covenant of good faith and fair dealing by charging Plaintiff and the Class an undisclosed Deposited Item Return Unpaid Fee;
- d. Whether Defendant was unjustly enriched as a result of charging Plaintiff and the Class the Deposited Item Return Unpaid Fee;
- e. Whether Defendant's conduct, as alleged herein, constitutes a violation of Georgia's Uniform Deceptive Trade Practices Act, codified at O.C.G.A. § 10-1-370 *et seq.*;
- f. The proper method or methods by which to measure damages and/or restitution and/or disgorgement; and

- g. Whether Plaintiff and the Class and Sub-classes are entitled to declaratory and injunctive relief and the nature of that relief.

**CAUSES OF ACTION**

**COUNT I**  
**BREACH OF CONTRACT**  
**(On behalf of Plaintiff and the Class)**

54. Plaintiff repeats and realleges each and every allegation mentioned in Paragraphs 1-53 as if fully set forth herein. Plaintiff brings this count on behalf of herself and members of the Class against Defendant.

55. Plaintiff and each member of the Class entered into a uniform Deposit Agreement with a Consumer Schedule with Defendant that governs the assessment of fees for certain banking services. Neither the Consumer Schedule that forms part of the Deposit Agreement, nor the Deposit Agreement itself, states the amount of the fee that Defendant may assess for Deposited Item Return Fees.

56. Plaintiff and each member of the Class have performed all conditions, covenants, and promises required by each of them on their part to be performed in accordance with the terms of the Deposit Agreement, except for those they were prevented from performing or which were waived or excused by Defendant's misconduct.

57. Defendant breached the express terms of the Deposit Agreement by, inter alia, assessing Deposited Item Return Fees because there was not authorization to charge these fees in the amount charged within the Deposit Agreement, and the fee amount was not assented to in the terms of the Deposit Agreement.

58. As a result of Defendant's breach of the Deposit Agreement, Plaintiff and the members of the Class have been damaged in an amount to be proved at trial and seeks relief as a

set forth in the Prayer below.

**COUNT II**  
**BREACH OF THE IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING**  
**(On behalf of Plaintiff and the Class)**

59. Plaintiff repeats and realleges Paragraphs 1-53 as if fully set forth herein.

60. Plaintiff bring this count on behalf of herself and the Classes against Defendant.

61. Plaintiff and each member of the Class entered into a uniform Deposit Agreement with a Consumer Schedule with Defendant that governs the assessment of fees for certain banking services. Neither the Consumer Schedule, which forms part of the Deposit Agreement, nor the Deposit Agreement, state the amount of the fee that Defendant may assess for Deposited Item Returned Unpaid Fees.

62. A covenant of good faith and fair dealing is implied in Plaintiff's and members of the Class's Deposit Agreements with Defendant. Whether by common law or statute, all contracts impose upon each party a duty of good faith and fair dealing. Good faith and fair dealing, in connection with executing contracts and discharging performance and other duties according to their terms, means preserving the spirit—not merely the letter—of the bargain. Thus, the parties to a contract are mutually obligated to comply with the substance of their contract in addition to its form. Evading the spirit of the bargain and abusing the power to specify terms constitutes examples of bad faith in the performance of the contracts.

63. The material terms of the Deposit Agreement therefore included the implied covenant of good faith and fair dealing, whereby Defendant covenanted that it would, in good faith and in exercise of fair dealing, deal with Plaintiff and each member of the Class fairly and honestly and do nothing to impair, interfere with, hinder, or potentially injure the rights and benefits under the contract of Plaintiff and the members of the Class.

64. Plaintiff and the members of the Class have performed all conditions, covenants, and promises required by each of them on their part to be performed in accordance with the terms and conditions of the contract, except for those they were prevented from performing or which were waived or excused by Defendant's misconduct.

65. As alleged herein, Defendant breached the implied covenant of good faith and fair dealing by charging Plaintiff and the members of the Class Deposited Item Return Unpaid Fees for attempting to deposit checks that could not be deposited for various reasons, none of which were the fault of the Plaintiff.

66. Defendant's actions to augment its revenue from Deposited Item Return Unpaid Fees impedes the right of Plaintiff and the members of the Class from receiving benefits that they reasonably expect to receive under the contract, as the money entrusted to Defendant for their banking activities was stolen because of the undisclosed fee.

67. Upon information and belief, Defendant's actions as alleged herein were performed in bad faith, in that the purpose behind the practices and policies alleged herein was to increase Defendant's revenue from Deposited Item Return Unpaid Fees at the expense of their customers, which completely evades Plaintiff's and the members of the Class's reasonable expectations.

68. Plaintiff and the members of the Class have sustained damages as a result of the Defendant's conduct as alleged herein.

69. As a result of Defendant's breach of the implied covenant of good faith and fair dealing, Plaintiff and the members of the Class have been damaged in an amount to be proved at trial and seek relief as set forth in the Prayer below.

**COUNT III**  
**UNJUST ENRICHMENT**

**(On behalf of Plaintiff and the Class)**

70. Plaintiff incorporates paragraphs 1-53 as if fully set forth herein.

71. Plaintiff bring this count on behalf of herself and the Classes against Defendant.

72. Plaintiff and members of the Class were, and many continue to be, customers of Defendant with deposit accounts. They reasonably believed that Wells Fargo would not charge them unreasonable fees beyond their control. Plaintiff and members of the Class suffered financial losses when they were charged Deposited Item Return Unpaid Fees in the form of funds deducted from their accounts.

73. By charging Deposited Item Return Unpaid Fees, Defendant unjustly enriched itself by taking a benefit—a \$12 charge each time an item was returned—from each of their customers' accounts, regardless of the cause, without providing any additional service or value to Plaintiff and members of the Class. Defendant has accepted and retained these benefits even though Defendant failed to provide any service or product to the customer and failed to provide any manner to avoid these fees, thereby making Defendant's retention unjust.

74. By its wrongful acts and omissions described herein, including charging fees for actions beyond the customer's control, and for which consumers had absolutely no way of avoiding, Defendant was unjustly enriched at the expense of Plaintiff and the members of the Class.

75. Plaintiff and the Class's detriment, and Defendant's enrichment, were related and flowed from the wrongful conduct alleged in this Complaint.

76. Defendant has profited from its unlawful, unfair, misleading, and deceptive practices at the expense of Plaintiff and the Class members. It would be inequitable for Defendant to retain the profits, benefits, and other compensation obtained from its wrongful conduct

described herein.

77. Plaintiff and the members of the Class have been damaged as a direct and proximate result of Defendant's unjust enrichment.

78. Plaintiff and the members of the Class are entitled to recover from Defendant all amounts wrongfully collected and improperly retained by Defendant.

79. As a direct and proximate result of Defendant's wrongful conduct and unjust enrichment, Plaintiff and the members of the Class are entitled to restitution of, disgorgement of, and/or imposition of a constructive trust upon all profits, benefits, and other compensation obtained by Defendant for its inequitable and unlawful conduct.

**COUNT IV**  
**VIOLATION OF GEORGIA'S UNIFORM DECEPTIVE TRADE PRACTICES ACT**  
**(UDPTA) O.C.G.A. § 10-1-370 ET SEQ.**  
**(Plaintiff Kimara Smith on behalf of herself and the Georgia Subclass)**

80. Plaintiff Kimara Smith incorporates paragraphs 1-53 as if fully set forth herein.

81. Plaintiff Kimara Smith brings this count on behalf of herself and the Classes against Defendant.

82. Plaintiff Kimara Smith is a "person" and a "consumer" pursuant to O.C.G.A. § 10-1-371(5), as she and all members of the Sub-class are natural persons as defined herein.

83. Defendant is a "person" pursuant to O.C.G.A. § 10-1-371(5), as it is an entity, corporation, or company as defined therein.

84. Defendant engages in the sale of merchandise pursuant to O.C.G.A. § 10-1-372(8).

85. Plaintiff Kimara Smith maintained a Wells Fargo account located in Georgia, pursuant to the Deposit Agreement, during the applicable statute of limitation period.

86. Georgia's Uniform Deceptive Trade Practices Act ("UDPTA") notes that a person is engaging in a deceptive trade practice when, "in the course of his business, vocation, or

occupation, he makes false or misleading statements of fact concerning the reasons for, existence of, or amounts of price reductions; or engages in any other conduct which similarly creates a likelihood of confusion or of misunderstanding...” O.C.G.A. § 10-1-372(a)(10-11).

87. Defendant unilaterally imposed such charges on Plaintiff Kimara Smith and all Georgia Sub-class members and automatically debited their accounts accordingly.

88. Defendant imposed unlawful fees on its customers in the form of Deposited Item Return Unpaid Fees, which its customers could do nothing to avoid. There was no justification for imposing these blanket fees, which the CFPB has deemed “junk fees.” By imposing these fees, which provided no service or product to its consumers, including Plaintiff Kimara Smith, Defendant engaged in an unconscionable commercial practice in violation of the UDPTA.

89. Charging Deposited Item Return Fees disproportionately impacted vulnerable consumers, which is fundamentally unfair and exploits disadvantaged groups. These fees, imposed regardless of the actions of the account holder, provide no additional service. In addition, charging Deposited Item Return Unpaid Fees is deceptive because consumers do not expect to be charged fees where they are not disclosed, and where the consumer has no control or fault.

90. Under the CFPA, an “unfair” act or practice is one that “causes or is likely to cause substantial injury to consumers which is not reasonably avoidable,” and “such substantial injury is not outweighed by countervailing benefits to consumers or to competition.” 12 U.S.C. § 5531(c)(1).

91. The CFPB—through Bulletin 2022-06—has determined that Deposited Item Return Unpaid Fees, such as those charged by Wells Fargo, are materially unfair and deceptive because they cause substantial injury to consumers and fall within the CFPA’s definition of unfair acts and practices because such fees cause substantial financial injury to accountholders,

are not reasonably avoidable by accountholders, and do not provide a benefit that outweighs the injury they cause.

92. Thus, pursuant to the CFPB's Bulletin 2022-06, Defendant's practice of charging Deposited Item Return Fees is deceptive and unfair and constitutes an unconscionable commercial practice in violation of the OCGA.

93. Defendant's unlawful acts caused Plaintiff Kimara Smith and the Sub-class to suffer an ascertainable loss. Specifically, Defendant's unlawful acts caused Plaintiff Kimara Smith and the Georgia Sub-class to suffer an ascertainable loss of, including but not limited to, the amount of the Deposited Item Return Unpaid Fee charged by Defendant.

94. As a result of Defendant's unlawful acts as alleged herein, Plaintiff Kimara Smith and the Georgia Sub-class have been damaged in the amount of the Deposited Item Return Fees collected by Defendant from customers with accounts located in Georgia. Plaintiff Kimara Smith and the Georgia Sub-class are entitled to recovery of their ascertainable losses, treble damages, and reasonable attorneys' fees and costs pursuant to O.C.G.A. § 10-1-372.

### **PRAYER FOR RELIEF**

**WHEREFORE**, Plaintiff respectfully request that the Court enter judgment against Defendant in the form of an Order:

- A. Certifying this action as a class action under Rule 23(b)(2) and (b)(3) of the Federal Rules of Civil Procedure and naming Plaintiff as a representative of the Class and Plaintiff's undersigned attorneys as Class Counsel to represent the Class and Sub-class Members;
- B. Naming Plaintiff Kimara Smith as the representative of the Georgia Sub-class;
- C. Declaring that Defendant's conduct violated the laws referenced herein;

- D. Finding in favor of Plaintiff and the Class and Sub-classes on all counts asserted herein;
- E. Awarding actual, consequential, punitive, statutory, and treble damages;
- F. For injunctive relief as pleaded or as the Court may deem proper;
- G. For disgorgement and restitution to Plaintiff and the Class and/or Sub-class members of all monies received or collected from Plaintiff and the Class and/or Sub-class members and all other forms of equitable relief;
- H. Costs including reasonable attorneys' fees, court costs, and other litigation expenses; and,
- I. Any other relief the Court may deem just and proper.

**DEMAND FOR JURY TRIAL**

Plaintiff, individually and on behalf of all those similarly situated, hereby requests a jury trial, pursuant to Federal Rule of Civil Procedure 38, on any and all claims so triable.

Dated: August 1, 2024

Respectfully Submitted,

/s/ Brent Kaufman  
Brent Kaufman  
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***ATTORNEY FOR THE PLAINTIFF***

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

(a) PLAINTIFFS

KIMARA SMITH

(b) County of Residence of First Listed Plaintiff WADLEY, GA (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number) POULIN WILLEY ANASTOPOULOU, LLC

32 ANN STREET CHARLESTON, SC 29403 (803) 222-2222

DEFENDANTS

WELLS FARGO BANK, N.A.

County of Residence of First Listed Defendant SAN FRANCISCO, CA (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff
2 U.S. Government Defendant
3 Federal Question (U.S. Government Not a Party)
4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

Table with columns for Plaintiff and Defendant citizenship (Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country) and incorporation status.

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Large table with categories: CONTRACT, REAL PROPERTY, CIVIL RIGHTS, TORTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding
2 Removed from State Court
3 Remanded from Appellate Court
4 Reinstated or Reopened
5 Transferred from Another District (specify)
6 Multidistrict Litigation - Transfer
8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 28 U.S.C. §1332(d)

Brief description of cause: DEFENDANT IMPOSED JUNK FEES ON CUSTOMERS

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ 5,000,000.01 CHECK YES only if demanded in complaint: JURY DEMAND: X Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE DOCKET NUMBER

DATE 08/01/2024 SIGNATURE OF ATTORNEY OF RECORD s/ Brent Kaufman

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

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