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8
9 **UNITED STATES DISTRICT COURT**
10 **NORTHERN DISTRICT OF CALIFORNIA**

11 MYRON CURRY, DARRELL FORNEY and
12 CHESTER NELSON, individually and on
behalf of all others similarly situated,
13 Plaintiffs,

14 v.

15 WELLS FARGO BANK, N.A.,
16 Defendants.

Case No.

Magistrate Judge

CLASS ACTION COMPLAINT FOR:

1. Breach of Contract;
2. Intentional Infliction of Emotional Distress;
3. Negligence;
4. Fraudulent Concealment;
5. Violations of California’s Homeowners Bill of Rights;
6. Violations of California Unfair Competition Law, Cal. Bus. and Prof. Code. § 17200, *et seq.*;
7. Violations of the Illinois Consumer Fraud and Deceptive Practices Act

DEMAND FOR JURY TRIAL

21
22
23 Plaintiffs Myron Curry, Darrell Forney, and Chester Nelson, individually and on behalf of
24 all others similarly situated, (“Plaintiffs”) bring this Class Action Complaint for Damages against
25 Defendant Wells Fargo Bank, N.A. (“Defendant”). Plaintiffs make these allegations based on
26 personal information as to those allegations pertaining to themselves and their personal
27

1 circumstances and upon information and belief based upon the investigation of Counsel and facts
2 that are matters publicly known, on all other matters and state as follows:

3 **NATURE OF THE ACTION**

4 1. The benefits of homeownership have long been the cornerstone of the American
5 Dream, allowing people, regardless of economic status, to accumulate wealth by gaining access
6 to credit, building equity, and reducing housing costs.¹
7

8 2. This case seeks recourse for the hundreds, if not thousands or tens of thousands,
9 of borrowers who suffered damages as a result of Defendant’s “calculation errors,” which
10 stemmed from a common cause, and resulted in Defendant wrongfully denying permanent loan
11 modifications for borrowers.

12 3. Defendant is one of the largest financial institutions in America and one of the
13 nation’s largest residential home mortgage servicers. Among other things, Defendant provides
14 mortgage loan modification services to consumers who have defaulted on their mortgage.

15 4. Defendant uses mortgage loan modification tools to create automated calculations
16 and to determine whether consumers in default are eligible for loan modifications under
17 Government Sponsored Enterprise (“GSE”) and other federal agency requirements.

18 5. Between 2010 and 2018, Defendant failed to detect or ignored multiple systematic
19 errors in its automated decision-making software. This software determined customers’
20 eligibility for a government-mandated mortgage modification during a time of extreme financial
21 distress. Its importance to these customers’ lives cannot be overstated. Yet, Defendant failed to
22

23
24 ¹[https://www.forbes.com/sites/forbesrealestatecouncil/2021/09/28/homeownership-and-the-ameri
can-dream/?sh=15efd6d23b55](https://www.forbes.com/sites/forbesrealestatecouncil/2021/09/28/homeownership-and-the-american-dream/?sh=15efd6d23b55) (last visited Feb. 16, 2024)

1 adequately test, audit, and verify that its software was correctly calculating whether customers
2 met threshold requirements for a mortgage modification. Defendant further failed to regularly
3 and properly audit the software for compliance with government requirements—allowing
4 life-changing errors to remain uncorrected for years.

5 6. As a result of Defendant’s deficient auditing and compliance procedures,
6 Defendant repeatedly violated the Home Affordable Modification Program (“HAMP”) and other
7 government statutes, regulations, and enforcement orders over a period of at least eight years. By
8 this conduct, Defendant denied Plaintiffs and other Class members mortgage modifications that
9 Defendant was legally required to offer.

10 7. To make matters worse, even after discovering the 2013 error, Defendant
11 continued using the faulty mortgage modification software to assess borrowers’ eligibility for
12 modification options for more than two years. Defendant did not implement new controls until
13 October 2015. And, it did not disclose the error to federal regulators or the public until August
14 2018.

15 8. Moreover, despite discovering the error in 2013 and allegedly implementing new
16 controls in 2015, Defendant still did not reform its auditing and verification practices. Related
17 errors that would affect hundreds of additional borrowers were not discovered, remedied, or
18 disclosed until 2018 or later.

19 9. Defendant’s failure to implement adequate auditing and compliance procedures
20 was not an accident. As scandal after scandal comes to light, it has become all too clear that
21 Defendant and its parent company intentionally abandoned their oversight responsibilities—and
22 did so to a shocking degree. And, until they were caught red handed, they concealed those
23 failures.

1 Delaware with its principal place of business and corporate headquarters in San Francisco,
2 California

3 **JURISDICTION AND VENUE**

4 18. Jurisdiction is proper in this Court under 28 U.S.C. §1332 (diversity jurisdiction).
5 Specifically, this Court has subject matter and diversity jurisdiction over this action under 28
6 U.S.C. § 1332(d) because this is a class action where the amount in controversy exceeds the sum
7 or value of \$5 million, exclusive of interest and costs, there are more than 100 members in the
8 proposed Class, and at least one Class member is a citizen of a state different from Defendant.
9

10 19. Supplemental jurisdiction to adjudicate issues pertaining to state law is proper in
11 this Court under 28 U.S.C. §1367.

12 20. Defendant routinely conducts business in the State where this district is located,
13 has sufficient minimum contacts in this State and has intentionally availed itself of this
14 jurisdiction by marketing and selling products and services, and by accepting and processing
15 payments for those products and services within this State.
16

17 21. Venue is proper in this Court under 28 U.S.C. § 1391 because a substantial part of
18 the events that gave rise to the claims of the Plaintiffs occurred within this District, and
19 Defendant does business in this Judicial District.

20 **INTRADISTRICT ASSIGNMENT**

21 22. Pursuant to Civil L.R. 3-2(c), this case is properly assigned to the San Francisco
22 or Oakland Division because a substantial part of the events or omissions that give rise to
23 Plaintiffs' and Class members' claims occurred in San Francisco County.
24

COMMON FACTUAL ALLEGATIONS

23. Plaintiffs, on behalf of themselves and all similarly situated persons, seek to recover statutory damages, punitive damages, and actual damages resulting from Defendant’s wrongful conduct in connection with Plaintiffs’ and Class members’ residential mortgage loans.

A. Defendant services residential mortgage loans nationwide.

24. Defendant is one of the nation’s largest providers of residential home mortgage loans. It services, and at all times relevant hereto has serviced, residential home mortgage loans nationwide.

25. Defendant is a loan servicer and lender. It derives income in a number of ways including (a) payments based on a percentage of each borrower’s principal balance pool, (b) float interest, (c) late fees, (d) foreclosure fees, (e) property inspection and preservation fees, and (f) broker opinion fees.

26. Defendant is a wholly-owned and controlled subsidiary of Wells Fargo & Company (NYSE: WFC), one of the nation’s largest financial institutions. Wells Fargo & Company is a Delaware corporation headquartered in San Francisco, California and a registered bank holding company.

27. Wells Fargo & Company describes itself as a “diversified, community-based financial services company with \$1.87 trillion in assets.” *Wells Fargo & Company*, Quarterly Report Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934 (Form 10-Q), p. 3, (Nov. 6, 2018). It provides “banking, investment, and mortgage products and services as well as consumer and commercial finance, through 8,050 locations, 13,000 ATMs, digital (online, mobile, and social), and contact centers (phone, email, and correspondence).” *Id.* Wells Fargo &

1 Company employs approximately 262,000 full-time employees in 37 countries and serves “one
2 in three households in the United States.” *Id.*

3 **B. Defendant employs uniform, nationwide loan servicing, loan modification,
4 and foreclosure practices.**

5 28. Defendant utilizes uniform and standardized loan servicing, loan modification,
6 and foreclosure practices nationwide. Much of Defendant’s uniform and standardized loan
7 servicing, loan modification, and foreclosure practices are reliant upon automated processes,
8 systems, and tools.

9 29. Defendant’s loan servicing, loan modification, and foreclosure practices are
10 governed by federal requirements and obligations.

11 30. The Federal Housing Administration (“FHA”) is an agency within the United
12 States Department of Housing and Urban Development (“HUD”) that supplies mortgage
13 insurance to FHA-approved lenders, insuring loans on single-family homes.

14 31. Mortgage insurance protects lenders from the risk of borrower defaults because
15 the FHA agrees to pay lenders in the event of borrower default.

16 32. Lenders must be pre-approved to qualify for FHA mortgage insurance. They must
17 also comply with HUD regulations.

18 33. Defendant is a pre-approved lender that qualifies for FHA mortgage insurance.
19 Defendant is therefore required to comply with HUD regulations.

20 34. For loans that are protected by FHA mortgage insurance, Defendant and the
21 borrower(s) executed loan documents that incorporate by reference HUD regulations.

22 35. In 2008, the federal government began the Troubled Asset Relief Program
23 (TARP). Pursuant to TARP, all servicers that receive funding from TARP must participate in
24 HAMP.
25
26

1 they are so requested. In return, Defendant agrees in the Modification Contract to examine the
2 borrower's eligibility for all available modifications. If the borrower is eligible for any available
3 mandatory modifications, Defendant is required by the Modification Contract (as well as HAMP,
4 other Department of Treasury directives, FHA regulations and binding GSE guidelines) to extend
5 a trial period plan.²

6
7 41. These standardized Modification Contracts incorporate all applicable obligations
8 in the HAMP provisions, regulations, directives, guidelines, procedures, documentation,
9 instructions, bulletins, frequently asked questions, letters, directives, and other communications
10 issued by the Department of Treasury, GSEs, and federal agencies (collectively, "Program
11 Documentation.").

12 42. In all relevant communications with borrowers, Defendant represents that it will
13 extend trial period plans to any borrower who is eligible for a mandatory modification under
14 GSE guidelines and the HAMP.

15 43. Defendant receives incentive payments for every successful modification under
16 the Program Documentation. However, Defendant also benefits from unsuccessful modifications,
17 along with foreclosures. If a federally mandated modification is not required, Defendant can
18 offer modification and temporary payment plans outside of HAMP, often under terms that are
19 less favorable to the borrower than federally-mandated plans. Furthermore, Defendant can
20 continue to obtain foreclosure, late fees, property inspection, preservation, and broker opinion
21 fees. What is more, Defendant receives higher float interest payments for non-modification
22 options such as a short sale or a foreclosure. It further receives higher principal balance pool
23

24 ² In some circumstances, the Fannie Mae, Freddie Mac and FHA regulations and guidelines
25 require lenders like Wells Fargo to evaluate borrowers who do not submit applications using the
26 same criteria as for the underwritten applications, except for the consideration of the borrower's
27 income. Some of these "Streamlined" modifications may also have been impacted by the
28 software errors.

1 payments if it does not reduce the principal balance pursuant to Program Documentation
2 requirements.

3 **C. Defendant repeatedly fails to oversee, test, and audit its uniform loan**
4 **servicing, mortgage modification, and foreclosure practices.**

5 44. In 2010, the Office of Comptroller of the Currency (“OCC”) discovered multiple
6 deficiencies and unsafe and unsound practices in Defendant’s residential mortgage servicing,
7 modification, and foreclosure programs. The OCC determined that Defendant failed to oversee,
8 audit, and test its foreclosure and modification tools and practices and failed to comply with
9 applicable laws, prioritizing profits over compliance and causing substantial harm to consumers.

10 45. The OCC’s investigation and related investigations resulted in millions of dollars
11 in fines assessed by the Federal Reserve to Wells Fargo & Company.

12 46. As a result, Defendant agreed to two consent orders with the OCC, committing to
13 taking all necessary and appropriate steps to remedy the deficiencies and unsafe and unsound
14 practices identified by the OCC. In the consent orders, Defendant agreed to form compliance
15 committees and programs subject to the oversight of the OCC. It agreed to adopt processes to
16 better oversee, audit, and conduct ongoing testing of its loan servicing, modification, and
17 foreclosure tools and practices and ensure legal and regulatory compliance. Some such agreed
18 processes were targeted at better oversight, auditing, and testing of automated tools, modification
19 and foreclosure review, and fee assessments.

20 47. But Defendant failed to remedy the deficiencies and unsafe and unsound practices
21 identified by the OCC. It failed to adopt adequate oversight, auditing, and testing processes and
22 programs. And it failed to detect and/or correct repeated and systemwide servicing, modification,
23 and foreclosure process errors.
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1 48. In 2015, the OCC again determined that, despite the 2011 consent cease and desist
2 orders, Defendant continued to fail to adequately oversee, audit, and test its servicing,
3 modification, and foreclosure practices for compliance. As a result, the OCC assessed millions of
4 dollars in monetary penalties against Defendant's parent company, Wells Fargo & Company.

5 49. In early 2018, the OCC discovered additional and ongoing compliance and
6 conduct failures in Defendant's loan servicing, modification, and foreclosure programs and
7 processes. The OCC determined that Defendant's deficiencies and compliance failures
8 constituted reckless and unsafe or unsound practices in violation of federal law and that
9 Defendant failed to implement and maintain an adequate compliance risk management program.
10 It found that Defendant failed to implement adequate oversight, control, auditing, and testing of
11 its servicing, modification, and foreclosure programs and practices. The OCC also found that
12 Defendant failed to adequately report compliance concerns, compliance failures, and Defendant's
13 efforts to remedy them.
14

15 50. As a result, Wells Fargo & Company and the Defendant entered into a consent
16 cease and desist order with the OCC, again agreeing to adopt system-wide compliance programs
17 and oversight.
18

19 51. The Federal Reserve also issued a consent cease and desist order in early 2018
20 restricting Defendant's growth until governance, oversight, risk management, auditing, and
21 testing is improved. In its consent cease and desist order, the Federal Reserve reports that it
22 determined Defendant "pursued a business strategy that emphasized sales and growth without
23 ensuring that senior management had established and maintained an adequate risk management
24 framework commensurate with the size and complexity of the Firm, which resulted in weak
25 compliance practices."
26

1 Knight Desktop Application. But Defendant did not disclose this accounting error to government
2 regulators, the public, or affected borrowers until almost three years later, on August 3, 2018 (the
3 “August Report”). Despite detecting this error, Defendant concealed it from the public and the
4 OCC, likely in an attempt to avoid additional fines and further OCC supervision.

5 67. Even after discovering the calculation error, Defendant continued to conduct
6 foreclosures on the homes of borrowers negatively affected by its “second” calculation error.

7 68. Even after discovering the calculation error, Defendant continued to issue
8 inaccurate periodic statements and notices to affected borrowers.

9 69. In its August Report, Defendant committed to dedicating \$8 million towards
10 remediating customers who were affected by Defendant’s “calculation error.”

11 70. In or around September 2018, Defendant sent form letters to consumers affected
12 by its “calculation error.” In those letters, Defendant informed each consumer that, “[W]hen you
13 were considered for a loan modification, you weren’t approved, and now we realize that you
14 should have been. We based our decision on a faulty calculation and we’re sorry. If it had been
15 correct, you would have been approved for a trial modification.”

16 71. Although Defendant’s letters state that it “*now realize[s]*” (emphasis added) it has
17 made an error causing it to wrongfully fail to approve the consumer’s modification, Defendant’s
18 August Report demonstrates that it has known about the error since August 2013.

19 72. In short, Defendant’s apology letters admit that (a) its accounting error caused
20 consumers to be wrongfully denied a loan modification, (b) its accounting error caused
21 consumers harm, (c) its accounting error resulted in inaccurate negative reporting to consumer
22 reporting agencies that should be corrected, and (d) Defendant had done nothing before
23 September 2018 to remediate consumers and correct inaccurate credit reporting.
24
25
26

1 **G. Defendant’s “third” automated error.**

2 73. Despite being on notice of its automated calculation errors discovered in 2013 and
3 2014, Defendant still failed to implement adequate oversight, auditing, and testing compliance
4 controls. That failure resulted in additional automated errors causing Defendant to wrongfully
5 refuse to provide modifications on hundreds of additional borrowers’ homes.

6 74. On November 6, 2018, Defendant’s parent company Wells Fargo & Company
7 issued its Quarterly Report Pursuant to Section 13 or 15(d) of the Securities Exchange Act of
8 1934. *Wells Fargo & Company*, Quarterly Report Pursuant to Section 13 or 15(d) of the
9 Securities Exchange Act of 1934 (Form 10-Q), p. 3, (November 6, 2018) (“November Report”).
10 In its November Report, Wells Fargo & Company disclosed for the first time a third set of related
11 calculation errors affecting an additional 245 consumers, which was identified using a
12 “subsequent expanded review.” The November Report also indicates that the first accounting
13 error was actually corrected on October 2, 2015 (as opposed to October 20, 2015 as stated in the
14 August Report):
15

16 An internal review of the Company’s use of a mortgage loan modification
17 underwriting tool identified a calculation error regarding foreclosure attorneys’
18 fees affecting certain accounts that were in the foreclosure process between April
19 3, 2010, and October 2, 2015, when the error was corrected. **A subsequent
20 expanded review identified related errors regarding the maximum allowable
21 foreclosure attorneys’ fees permitted for certain accounts that were in the
22 foreclosure process between March 15, 2010, and April 30, 2018, when new
23 controls were implemented. Similar to the initial calculation error, these
24 errors caused an overstatement of the attorneys’ fees that were included for
25 purposes of determining whether a customer qualified for a mortgage loan
26 modification or repayment plan pursuant to the requirements of
27 government-sponsored enterprises (such as Fannie Mae and Freddie Mac), the
28 Federal Housing Administration (FHA) and the U.S. Department of Treasury’s
Home Affordable Modification Program (HAMP). Customers were not actually
charged the incorrect attorneys’ fees. **As a result of these errors, taken together
and subject to final validation, approximately 870 customers were incorrectly
denied a loan modification or were not offered a loan modification or
repayment plan in cases where they otherwise would have qualified. In****

1 **approximately 545 of these instances, after the loan modification was denied**
2 **or the customer was deemed ineligible to be offered a loan modification or**
3 **repayment plan, a foreclosure was completed.** The Company has contacted a
4 substantial majority of the approximately 870 affected customers to provide
5 remediation and the option also to pursue no-cost mediation with an independent
mediator. Attempts to contact the remaining affected customers are ongoing. Also,
the Company's review of these matters is ongoing, including a review of its
mortgage loan modification tools.

6 (Emphasis added).

7 75. The November Report demonstrates that Defendant's loan modification
8 underwriting tool suffered from the attorneys' fee calculation error for more than eight years.

9 76. During those eight years, Defendant wrongfully reported inaccurate information
10 to credit reporting agencies regarding the residential mortgage loans of consumers affected by its
11 calculation error. Namely, Defendant reported to credit reporting agencies that borrowers were in
12 default on their residential home loans, when in reality they were wrongfully prohibited from
13 modifying their mortgage payments. And meanwhile, borrowers faced the consequences,
14 including increased borrowing costs, loss of equity and the appreciation of their home, legal fees,
15 devastating impacts to consumer credit, and incidental costs related to the sudden need to move.
16

17 77. During those eight years, Defendant also wrongfully foreclosed on the homes of
18 consumers affected by its calculation error—consumers who should have been offered loan
19 modifications instead of facing foreclosure.

20 78. Also during those eight years, on information and belief, Defendant issued
21 periodic statements and notices in connection with consumers' residential home mortgage loans
22 that contained inaccurate information as a result of the automated calculation error.
23

24 79. The November Report also admits that Defendant was aware of the accounting
25 error on or before April 30, 2018. But Defendant did not disclose this accounting error to the
26 public or affected borrowers until over six months later, on November 6, 2018.

1 80. Despite knowing that its automated errors harmed consumers (and admitting in its
2 Apology Letter that it was appropriate to request consumer reporting agencies remove any
3 negative reporting), Defendant made no effort before November 2018 to rescind the inaccurate
4 and negative information reported to credit reporting agencies regarding consumers affected by
5 the automated errors.

6 81. Every additional week and month that a mortgagor spends in the “default zone”
7 with regard to their mortgage materially and negatively affects the mortgagor’s credit. Every
8 additional week and month that a mortgagor is stuck in the “default zone” is another week or
9 month where the mortgagor is limited in ability to pay, purchase, buy, earn, rent, or maybe even
10 obtain or continue gainful employment. Every additional week or month in this “default zone” is
11 another week or month accruing damages that are more difficult to recover from each subsequent
12 week or month.

13 82. In Exhibit 13 to its 2019 Form 10-K Annual Report, Defendant disclosed that
14 “[t]his effort to identify other instances in which customers may have experienced harm is
15 ongoing, and it is possible that we may identify other areas of potential concern.”
16

17 **H. The *Hernandez* and *Ryder* Litigation.**

18 83. Before this action was filed, two putative class actions over the prior calculation
19 errors were filed against Wells Fargo which resulted in final approval of class action settlements:
20 *Alicia Hernandez, et al. v. Wells Fargo Company, et al.*, N.D. Cal. Case No.
21 3:18-cv-07354-WHA (the “Hernandez case”), and *Ethan Ryder, et al. v. Wells Fargo Bank, N.A.*,
22 S.D. Ohio Case No. 1:19-cv-00638-TSB (the “Ryder case”).
23

24 84. In the Order granting Preliminary Approval of the Class Settlement in the
25 Hernandez case, the Court defined the nationwide settlement class as follows:
26

1 All persons in the United States who between 2010 and 2018 (i) qualified for a
2 home loan modification or repayment plan pursuant to the requirements of
3 government-sponsored enterprises (such as Fannie Mae and Freddie Mac), the
4 Federal Housing Administration (FHA), the U.S. Department of Treasury's Home
5 Affordable Modification Program (HAMP); (ii) were not offered a home loan
6 modification or repayment plan by Wells Fargo due to excessive attorney's fees
7 being included in the loan modification decisioning process; and (iii) whose home
8 Wells Fargo sold in foreclosure.

9 See *Alicia Hernandez, et al. v. Wells Fargo & Company, et al*, 3:18-cv-07354-WHA, Doc. 277 at
10 pp. 1-2 (N.D. Cal. Apr. 19, 2020).

11 85. The Court granted final approval of the settlement in the Hernandez case on
12 October 12, 2020. See *Hernandez*, Doc. 292.

13 86. The settlement in the Hernandez case totaled \$21,907,778 with over \$18.2 million
14 in payments to putative class members. See *Hernandez*, Doc. 344 at pp. 2-3.

15 87. In the Order granting Preliminary Approval of the Class Settlement in the Ryder
16 case, the Court defined the nationwide settlement class as follows:

17 All persons in the United States who between 2010 and 2018 (i) qualified for a
18 home loan modification or repayment plan pursuant to the requirements of
19 government-sponsored enterprises (such as Fannie Mae and Freddie Mac), the
20 Federal Housing Administration (FHA), or the U.S. Department of Treasury's
21 Home Affordable Modification Program (HAMP); (ii) were not offered a home
22 loan modification or repayment plan by Wells Fargo because of excessive
23 attorneys' fees being included in the loan modification decisioning process; (iii)
24 whose home Wells Fargo did not sell in foreclosure; and (iv) are reflected in the
25 Settlement Class List as defined herein.

26 See *Ethan Ryder, et al. v. Wells Fargo Bank, N.A.*, 1:19-cv-00638-TSB, Doc. 50 at p. 3.

27 88. The Court granted final approval of the settlement in the Ryder case on January 25,
28 2022. See *Ryder*, Doc. 57.

89. The settlement in the Ryder case totaled \$12,000,000 with over \$9,098,900 in
payments to putative class members. See *Ryder*, Doc. 55 at p. 16.

1 90. The Plaintiffs in this case are not part of the classes who received relief in either
2 the Hernandez case or the Ryder case.

3 **I. A Consent Order and a new round of Apology Letters**

4 91. Following the resolutions of the *Hernandez* and *Ryder* matters, Wells Fargo
5 entered into a Consent Order with the CFPB on December 20, 2022 in *In re Wells Fargo Bank,*
6 *N.A.*, Case No. 2022-CFPB-0011. (the “Consent Order”).

7 92. In the Consent Order, Wells Fargo acknowledged that

- 8 a. “Respondent has incorrectly denied mortgage loan modification applications
9 and miscalculated fees and other charges for thousands of mortgage
10 borrowers,..., resulting in at least \$195 million in remediation being paid to
11 affected borrowers...”³;
- 12 b. “In one such significant technology and internal controls failure, from at least
13 2011 through April 2018, Respondent’s process for evaluating loan
14 modification applications was affected by errors in the relevant calculation
15 formulas. These errors resulted in an overstatement of the attorneys’ fees
16 included in the calculation, which sometimes caused an otherwise qualified
17 borrower not to be offered a loan modification.”⁴;
- 18 c. “Respondent became aware of this problem in late 2013 and, after reviewing
19 the issue, concluded that it did not adversely affect borrowers’ ability to
20 obtain loan modifications. Respondent attempted to correct the attorneys’ fee
21
22
23
24

25 _____
26 ³ *In the Matter of Wells Fargo Bank, N.A.*, C.F.P.B. Admin. Proceeding File No.
2022-CFPB-0011 (2022), ECF No. 1, ¶ 23, pp. 9-10.

27 ⁴ *Id.* at ¶ 24, p. 10.

1 calculation, but later determined (in March 2018) that it had not fixed the
2 issue and was continuing to fail to offer some borrowers loan modifications.”⁵;

3 d. “Another error occurred from July 2013 until September 2018, when
4 Respondent did not offer no-application modifications to approximately 190
5 borrowers with Government Sponsored Entity (GSE) loans. Respondent
6 erroneously identified these borrowers as deceased and therefore did not
7 assess their eligibility for modifications.”⁶; and

8 e. “Respondent’s mortgage servicing operations experienced other errors that
9 resulted in Respondent assessing borrowers unwarranted charges and fees in
10 various situations, including when certain consumers paid off a mortgage that
11 had been subject to a foreclosure judgment; Respondent failed in certain cases
12 to timely pay the appropriate amount of property taxes; Respondent
13 miscalculated the interest rate on certain adjustable rate mortgages after a loan
14 modification ended; and Respondent did not give certain consumers complete
15 information about their ability to stop paying for expensive private mortgage
16 insurance.”⁷

17
18
19 93. On same day as entering the Consent Order, Charlie Scharf, Wells Fargo’s Chief
20 Executive Officer, stated publicly that “Our top priority is to continue to build risk and control
21 infrastructure that reflects the size and complexity of Wells Fargo and run the company in a more
22
23
24

25 _____
⁵ *Id.* at ¶ 25, p. 10.

26 ⁶ *Id.* at ¶ 26, pp. 10-11.

27 ⁷ *Id.* at ¶ 27, p. 11

1 controlled, disciplined way”⁸ and “We remain committed to doing the right thing for our
2 customers...”⁹

3 94. Wells Fargo’s newfound commitment to doing the right thing for its customers
4 appears to be short-lived however because beginning in early December 2023, Wells Fargo
5 began sending the Plaintiffs and putative class members form letters which state, in part, “During
6 a review of the account, we identified that when the loan was considered for payment assistance
7 options, an error may have occurred. As a result, we are enclosing a check for \$200.00.” (the
8 “Apology Letters”).
9

10 95. Although the Apology Letters reference a “review of the account”, the Consent
11 Order, the *Hernandez* settlement, the *Ryder* settlement, and affirmative statements made in its
12 10-K’s referenced *supra*, demonstrate that Wells Fargo has known about the calculation errors
13 since at least August 2013.

14 96. In short, Defendant’s Apology Letters, much like the ones sent in the fall of 2018,
15 admit that (a) its accounting error caused consumers to be wrongfully denied a loan
16 modification, admit that (b) its accounting error caused consumers harm, (c) its accounting error
17 resulted in inaccurate negative reporting to consumer reporting agencies that should be corrected,
18 and (d) Defendant had done nothing before September 2018 to remediate consumers and correct
19 inaccurate credit reporting.
20

21 **PLAINTIFF MYRON CURRY’S ALLEGATIONS**

22 97. On or about March 8, 2004, Plaintiff Curry entered into a mortgage for the Curry
23 Property.
24

25 ⁸ [https://newsroom.wf.com/English/news-releases/news-release-details/2022/Wells-Fargo-Enters-i](https://newsroom.wf.com/English/news-releases/news-release-details/2022/Wells-Fargo-Enters-into-Agreement-with-CFPB-to-Resolve-Multiple-Issues/default.aspx)
26 [nto-Agreement-with-CFPB-to-Resolve-Multiple-Issues/default.aspx](https://newsroom.wf.com/English/news-releases/news-release-details/2022/Wells-Fargo-Enters-into-Agreement-with-CFPB-to-Resolve-Multiple-Issues/default.aspx) (last visited Mar. 1, 2024)

27 ⁹ *Id.*

1 98. In the summer of 2009, Plaintiff Curry began reaching out to Defendant about
2 options to modify his loan.

3 99. Between 2009 and 2016, Plaintiff Curry submitted between 15 - 20 applications
4 for loss mitigation.

5 100. Sometime in late 2015/early 2016, Plaintiff Curry was verbally notified that he
6 was approved for a loan modification but he never received a trial payment plan.

7 101. By spring 2016, Plaintiff Curry received additional correspondence from Wells
8 Fargo notifying him that he did not qualify for a modification.

9 102. Shortly after receiving the denial correspondence, Plaintiff Curry received
10 correspondence from Defendant notifying him that a Notice of Foreclosure Sale had been
11 initiated on the Curry Property.

12 103. In an attempt to avoid the financially disastrous consequences of the foreclosure
13 and in an effort to also avoid losing the equity in his property in June 2016, Plaintiff Curry sold
14 the Curry Property.

15 104. Almost seven and a half years later, on December 15, 2023, Plaintiff Curry
16 received a form Apology Letter from Defendant. The form Apology Letter inaccurately states
17 that Defendant just now realized that it committed an error and Defendant “apologize[d] for any
18 inconvenience this caused”.

19 105. Along with the Apology Letter, Defendant enclosed a check for \$200.00. This
20 payment is insufficient to compensate him for the harm he suffered as a result of Defendant’s
21 wrongful practices.

22 106. The Apology Letter was the first time Plaintiff Curry learned that Defendant had
23 committed a calculation error and that his modification request should have been approved.

1 Never in the years since the foreclosure and forced sale of the Curry Property did Defendant
2 attempt to discuss with Plaintiff Curry the calculation error(s) or its wrongful failure to provide
3 mortgage assistance.

4 107. Shortly after receiving the Apology Letter, Plaintiff Curry contacted Defendant
5 about the letter. That contact led to Plaintiff Curry receiving a second letter from Defendant
6 dated January 2, 2024, in which Defendant notified Plaintiff Curry that:

7
8 “During a review, your account was identified as previously being offered a loan
9 modification. An error may have occurred with that trial offer, which could have affected
10 the trial payment amount. This loan modification was not completed, and your account
11 may not have been impacted by this issue during the trial period. If it was, the difference
12 would have been less than \$200.00. To make this right, we mailed any potentially
13 impacted customers a letter and a check for \$200.00...You also requested to know the
14 terms associated with this potential error. We’ve completed our review of your request.
15 *We’ve determined the bank cannot ascertain the terms/specific details you have*
16 *requested; we are unable to provide that information.” (emphasis added)*

17 108. Defendant’s repeated refusal to provide mortgage assistance (to which Plaintiff
18 Curry was eligible by Defendant’s own admissions in the Consent Order and again in the January
19 2, 2024 letter), and Defendant’s refusal to correct its error after identifying its automated
20 calculation errors, along with the loss of his home, caused Plaintiff Curry significant economic
21 and non-economic damages.

22 **PLAINTIFF DARRELL FORNEY’S FACTUAL ALLEGATIONS**

23 109. On or about April 10, 2012, Plaintiff Forney entered into a mortgage related to the
24 Forney Property.

25 110. On or about November 3, 2016, Plaintiff Forney contacted Defendant in
26 anticipation of a proposed default.

1 111. By the end of November 2016, Plaintiff Forney submitted a facially complete loss
2 mitigation application, with a second facially complete loss mitigation application submitted in
3 mid-August 2017.

4 112. On or about January 31, 2017, Plaintiff Forney spoke with Defendant's
5 representative who informed him by phone that his November 2016 application had been
6 approved for a short-term modification assistance; however, by the time he received that
7 information on January 31, 2017, the ability to accept the assistance had expired.
8

9 113. In mid-November 2017, Plaintiff Forney received a letter in response to the
10 mid-August 2017 loss mitigation application from Defendant, which notified him that he was not
11 eligible for any assistance programs except a short sale.

12 114. By December 28, 2018, Plaintiff Forney lost the Forney Property.

13 115. Almost five years later, Defendant sent Plaintiff Forney a form Apology Letter
14 dated December 7, 2023. The form Apology Letter inaccurately states that Defendant just now
15 realized that it committed an error, and that Defendant "apologize[d] for any inconvenience this
16 caused".
17

18 116. This was the first time Plaintiff Forney learned that Defendant had committed a
19 calculation error and that his modification request should have been approved. Never in the
20 years since losing the property did Defendant attempt to discuss with Plaintiff Forney the
21 calculation error(s) or its wrongful failure to provide mortgage assistance.

22 117. Along with the Apology Letter, Defendant enclosed a check for \$200.00. This
23 payment is insufficient to compensate him for the harm he suffered as a result of Defendant's
24 wrongful practices.
25
26
27

1 118. Defendant’s repeated refusal to provide mortgage assistance (to which Plaintiff
2 Forney was eligible by Defendant’s own admissions in the Consent Order), Defendant’s refusal
3 to correct its error after identifying its automated calculation errors, along with the loss of his
4 home caused Plaintiff Forney significant economic and non-economic damages.

5 **PLAINTIFF CHESTER NELSON’S FACTUAL ALLEGATIONS**

6 119. On or about March 21, 2011, Plaintiff Nelson entered into a mortgage related to
7 the Nelson Property.

8 120. On or about August 25, 2013, Plaintiff Nelson received correspondence from
9 Defendant dated on August 25, 2013, stating that his facially complete modification application
10 had been received and was being processed.

11 121. By late 2015/early 2016, after sending other modification applications, Defendant
12 sent written correspondence to Plaintiff Nelson notifying him that he did not qualify for a
13 modification due to feasibility concerns. Plaintiff Nelson submitted an appeal of his denial in
14 March 2016, but never received any additional correspondence from Defendant related to the
15 denial or his appeal.

16 122. On June 29, 2015, Defendant initiated a Complaint for Foreclosure in the Cook
17 County (IL) Chancery Court, Case No. 2015 CH 10053 (the “Nelson Foreclosure”).

18 123. The Nelson Property was sold on May 21, 2018, and the Order for Possession was
19 signed on December 3, 2018.

20 124. Approximately five years from the date that the Order of Possession was signed,
21 Defendant sent Plaintiff Nelson a form Apology Letter dated December 6, 2023. The form
22 Apology Letter inaccurately states that Defendant just now realized that it committed an error,
23 and that Defendant “apologize[d] for any inconvenience this caused”.
24
25
26

- 1 f. What actions and/or disclosures did Defendant take and/or make each time
2 it discovered errors in its automated loan modification tools and related
3 software?
4
5 g. When was Defendant on notice of the risk of errors in its automated loan
6 modification tools due to inadequate oversight, auditing, and testing
7 compliance mechanisms?
8
9 h. Did Defendant undertake any effort to correct its erroneous reporting to
10 credit reporting agencies prior to September of 2018?
11
12 i. Did Defendant owe contractual obligations to Class members by failing to
13 approve them for loan modifications or repayment plans for which they
14 were qualified pursuant to the requirements of government sponsored
15 enterprises, the FHA, and HAMP?
16
17 j. Did Defendant breach those contractual obligations?
18
19 k. Was Defendant's conduct extreme and outrageous?
20
21 l. Did Defendant intentionally, with substantial certainty, or with reckless
22 indifference cause serious emotional harm to members of the Class?
23
24 m. Did Defendant conceal or misrepresent to members of the Class its
25 automated calculation errors and/or their entitlement to loan
26 modifications?
27
28 n. Was any such concealment or misrepresentation material to Class
members' loan modification?

1 135. **Typicality.** Each of the Plaintiffs' claims are typical of those of other Class and
2 Subclass members. Plaintiffs were each borrowers who owned residential real property with a
3 residential mortgage loan that was owned and/or serviced by Wells Fargo between 2010 and
4 2018. Each of the Plaintiffs' loans entered loss mitigation review between 2010 and 2018. Each
5 of the Plaintiffs' loans qualified for a mortgage loan modification trial period repayment plan
6 between 2010 and 2018. Each of the Plaintiffs completed the trial period repayment plan
7 between 2010 and 2018. Defendant improperly denied each of the Plaintiffs' loss mitigation
8 review for a permanent loan modification between 2010 and 2018 due to automated calculation
9 and related errors pertaining to Defendant's use of a mortgage loan modification and
10 underwriting tool. Each of the Plaintiffs received the December 2023 apology letter from
11 Defendant. As such each of the Plaintiffs' claims arise from the same factual circumstances as
12 the claims of other Class members, their damages and injuries are akin to those of other Class
13 members, and Plaintiffs are each seeking relief consistent with the relief sought by the Class.
14

15 136. **Adequacy.** Each of the Plaintiffs are an adequate representative because each one
16 of them is a member of the Class that they seek to represent, are committed to pursuing this
17 matter against Defendant to obtain relief for the Class, and have no conflicts of interest with the
18 Class. Moreover, Plaintiffs' attorneys are competent and experienced in litigating class actions
19 such as this one. Plaintiffs intend to vigorously prosecute this case and will fairly and adequately
20 protect Class members' interests.
21

22 137. **Superiority.** A class action is superior to any other available means for the fair
23 and efficient adjudication of this controversy, and no unusual difficulties are likely to be
24 encountered in the management of this class action. The quintessential purpose of the class
25 action mechanism is to permit litigation against wrongdoers even when damages to an individual
26

1 plaintiff may not be sufficient to justify individual litigation. Here, the damages suffered by
2 Plaintiffs and the Class are relatively modest compared to the burden and expense required to
3 individually litigate their claims against Defendant, and thus, individual litigation to redress
4 Defendant's wrongful conduct would be impracticable. Individual litigation by each Class
5 member would also strain the court system. Individual litigation creates the potential for
6 inconsistent or contradictory judgments and increases the delay and expense to all parties and the
7 court system. By contrast, the class action device presents far fewer management difficulties and
8 provides the benefits of a single adjudication, economies of scale, and comprehensive
9 supervision by a single court.
10

11 TOLLING ALLEGATIONS FOR ALL CLAIMS

12 138. The causes of actions alleged herein by Plaintiffs against Defendant did not
13 accrue or were tolled until Plaintiffs discovered, or could have discovered with the exercise of
14 reasonable diligence, the facts giving rise to their legal claims. Based upon the allegations
15 contained herein the earliest any of the Plaintiffs could have learned of their claims was
16 December 5, 2023.
17

18 139. Based upon the allegations contained herein, Plaintiffs had no realistic possibility,
19 until receiving the Apology Letters, to know that (a) they qualified for a loan modification and
20 (b) they were wrongfully denied for a mortgage modification based on a miscalculation done by
21 Defendant's automated decision-making tool that was exclusively under the control of Defendant
22 at all times (as it remains).
23

24 140. Based upon the allegations contained herein Plaintiffs had no realistic ability to
25 discover any facts only known to Defendant regarding the wrongful denial for the mortgage
26 modifications submitted between 2010 and 2018. Defendant's automated decision-making tool is
27

1 not public, and the mathematical calculations used to determine eligibility for any mortgage
2 modification depend solely on variables within Defendant's exclusive control or information
3 provided exclusively to Defendant.

4 141. Based on the foregoing, any applicable statutes of limitations are also tolled by
5 Defendant's knowing, active, and ongoing concealment of the facts alleged herein. Defendant
6 discovered at least one, if not multiple, software errors back in August 2013 which contributed to
7 the wrongful denial of loan modifications of the Plaintiffs and all borrowers similarly
8 situated. Based on the allegations contained herein and each 10-Q issued by Wells Fargo &
9 Company since August 2018, Defendant deliberately concealed any information regarding the
10 wrongful denials until September 13, 2018. Defendant has a continuous duty to disclose the truth
11 to Plaintiffs and, based upon the actions herein, Plaintiffs reasonably relied on Defendant's
12 ongoing concealment until taking the actions to procure discovery described herein.
13

14 **CAUSES OF ACTION**

15 **COUNT ONE:**
16 **BREACH OF CONTRACT**
17 **(Brought on behalf of the Plaintiffs, Class and Subclasses)**

18 142. Plaintiffs incorporate by reference all prior allegations of this Complaint as if
19 fully restated herein.

20 143. When Plaintiffs and putative class members financed their homes, they entered
21 into Security Instruments (typically referred to as either a mortgage, deed or trust or security
22 deed) that set forth the conditions under which the lender could accelerate the borrower's
23 payments and foreclosure on the property.
24
25
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27

1 144. Wells Fargo was subject to the terms of these Security Instruments, either as the
2 original lender, an assignee, and/or as the mortgage servicer authorized to act on behalf of the
3 lender.

4 145. A reasonable interpretation of the Security Instruments required Wells Fargo to
5 provide Plaintiffs and Class members all available options to cure a default at the time of default
6 existed under the terms of the Security Instrument.

7 146. Based on the allegations *supra*, Plaintiffs and each member of the Class provided
8 documents, information, and certifications in compliance with the Security Instruments for
9 Defendant to review for their eligibility for loan modification.

10 147. As a result of receiving these documents from Plaintiffs and Class members,
11 Wells Fargo was required under the terms of the Security Instruments to consider the Plaintiffs
12 and Class members for a loan modification and to provide that loan modification if appropriate.

13 148. Based on the allegations *supra*, Defendant reviewed each of the Plaintiffs and
14 Class members for a loan modification.

15 149. Based on the allegations *supra*, following the review for a loan modification,
16 Defendant denied the applications for loan modification based upon faulty automated
17 calculations in determining the Trial Plan Payments and/or permanent loan modification
18 payments. By Defendant's own admissions in the Consent Order and the Apology Letters had
19 the automated calculation(s) been correct, Plaintiffs and each of the putative Class members
20 would have been approved for a modification. Wells Fargo breached its obligations to Plaintiffs
21 and putative Class members under the Security Instruments.

22 150. Defendant's breach impacted Plaintiffs and Class members at a time when they
23 were experiencing extreme hardship. As a result of the faulty automated calculation, Defendant
24

1 incorrectly provided negative credit information to consumer reporting agencies. Plaintiffs and
2 Class members were not offered trial modifications and/or were offered less beneficial
3 modification plans. Ultimately, Plaintiffs and Class members were damaged by Defendant's
4 breach.

5
6 151. Defendant also breached its duties under the Security Instruments by failing to
7 give Plaintiffs and Class members adequate notice of the mortgage modification.

8 152. Defendant discovered its "first" automated calculation error on or before October
9 2, 2015. While Defendant states that it fixed the first automated calculation error on October 2,
10 2015, it failed to disclose the error to the public until August 3, 2018, and failed to disclose the
11 error to individuals it affected until September 2018. Despite admitting its error and that its error
12 caused Plaintiffs and Class members to suffer significant harm, Defendant did nothing for almost
13 three years to mitigate the harm it caused to Plaintiffs and Class members, keeping the
14 accounting error a secret. On information and belief, Defendant continued to fail to offer
15 modification plans to Plaintiffs and Class members after discovering its automated calculation
16 error. Defendant breached the duty of good faith and fair dealing it owed to Plaintiffs and Class
17 members.
18

19 153. Defendant discovered its "second" automated calculation error on or before April
20 30, 2018. While Defendant states that it "implemented new controls" on April 30, 2018, it failed
21 to disclose the error to the public until November 6, 2018. Despite admitting its error and that its
22 error caused Plaintiffs and members of the Class to suffer significant harm, Defendant has done
23 nothing to mitigate the harm it caused to Plaintiffs and Class members. Defendant breached the
24 duty of good faith and fair dealing it owed to Plaintiffs and Class members.
25
26

1 billions of dollars in HAMP funds from the U.S. Government, Defendant systematically injured
2 Plaintiffs and Class members through modification denials stemming from Defendant's reckless
3 and heartless cover ups and known and yet unmitigated errors.

4 159. Defendant knew or should have known that by denying Plaintiffs and Class
5 members a loan modification, its conduct would result in serious emotional distress to Plaintiffs
6 and the other Class members, as the loss or potential loss of a home is an emotionally significant
7 event.
8

9 160. Defendant's reckless disregard for such emotional distress was beyond all
10 possible bounds of decency and completely intolerable in a civilized community.

11 161. The U.S. Government's creation of HAMP and other loan modification programs
12 show that it intended for no person in a situation similar to Plaintiffs and Class members to have
13 to endure what Defendant forced Plaintiffs and Class members to endure.
14

15 162. Defendant's conduct was intentional and evidences a callous and reckless
16 disregard for the rights of its customers and for the risk its actions posed to its customers.

17 163. Defendant's intentional extreme and outrageous conduct proximately caused
18 Plaintiffs' and Class members' to suffer emotional distress and damages, in an amount to be
19 proven at trial.
20

21 **COUNT THREE**
22 **NEGLIGENCE**

23 **(Brought on behalf of the Plaintiffs, Class and Subclasses)**

24 164. Plaintiffs incorporate by reference all prior allegations of this Complaint as if
25 fully restated herein.
26

1 165. Defendant had an obligation to ensure that the information and statements it
2 reported to credit reporting agencies were true and accurate. Defendant had a duty to Plaintiffs
3 and Class members to report fair, honest, and accurate information to the credit reporting
4 agencies.

5
6 166. Defendant made statements to the credit reporting agencies regarding the
7 Plaintiffs' and Class members that were derogatory to their credit. The negative and derogatory
8 information reported by Defendant to the credit reporting agencies was that the Plaintiffs and
9 Class members had experienced a foreclosure or other negative event related to their mortgages.

10 167. When Defendant made these negative and derogatory statements about Plaintiffs
11 and Class members, it knew or should have known that the statements were false and/or
12 inaccurate, based upon Defendant's own miscalculations.

13
14 168. The reporting of a negative event related to a mortgage has a serious detrimental
15 effect on credit. The reporting of a foreclosure is taken as an indication of poor creditworthiness.
16 The reporting of a foreclosure or other negative event related to a mortgage reduces one's credit
17 score between 85 to as much as 160 points.

18
19 169. Defendant's reporting of a negative event related to a mortgage against the
20 Plaintiffs and Class members had a serious and detrimental effect upon their credit and
21 creditworthiness. Defendant's reporting of a negative event related to a mortgage against
22 Plaintiffs and Class members reduced their credit scores substantially.

23 170. The effect of Defendant's reporting of a negative event related to a mortgage
24 against the Plaintiffs and members of the Class was not transitory. Upon information and belief,
25 certain negative events related to a mortgage remain on a consumer's credit report for seven
26

1 years. Defendant's reporting of a negative event related to a mortgage against the Plaintiffs and
2 the members of the Class therefore resulted in long-term damage to their credit, creditworthiness,
3 and credit scores.

4 171. Defendant's reporting of a negative event related to a mortgage regarding
5 Plaintiffs and Class members was untrue or, in the least, requiring additional information so as to
6 make the reporting of a negative event related to a mortgage not misleading. The communication
7 of a negative event related to a mortgage created a false impression that would be contradicted by
8 the inclusion of omitted facts.

9 172. Defendant concedes that the negative event related to a mortgage was not correct
10 and that, at the least, Plaintiffs and Class members should have been approved for a trial
11 modification that could have avoided a negative event related to a mortgage. Therefore, the
12 reporting of a negative event related to a mortgage was false or at least gave a misleading
13 impression that would have been contradicted by including the omitted facts of the circumstances
14 of the negative event related to a mortgage.

15 173. Defendant wrote to Plaintiffs and Class members as follows, showing the untrue
16 and misleading nature of the reporting of a negative event related to a mortgage: "We have some
17 difficult news to share. When you were considered for a loan modification, you weren't approved,
18 and now we realize that you should have been." As set forth herein, Defendant admits it erred.

19 174. Defendant's reporting of a negative event related to a mortgage was reckless, or at
20 least negligent, at the time that it was made and, upon information and belief, the reporting of a
21 negative event related to a mortgage was knowingly false not later than 2013. Yet, Defendant
22 failed to take any action to correct its false statements and allowed reports of a negative event
23
24
25
26

1 related to a mortgage that it knew to be false to tarnish the credit of Plaintiffs and Class members
2 for years.

3 175. Upon information and belief, Defendant knew or should have known that there
4 were flaws in its mortgage modification application software as early as 2011 and before the time
5 it foreclosed upon or initiated other negative events related to a mortgage on the homes of
6 Plaintiffs and Class members. Defendant thereby acted recklessly and maliciously.
7

8 176. As set forth herein, the OCC and the Board of Governors of the Federal Reserve
9 warned Defendant and its parent company in 2011 that, inter alia, the Bank was engaged in
10 “unsafe or unsound practices in residential mortgage servicing and in the Bank’s initiation and
11 handling of foreclosure proceedings.” The Comptroller advised the Bank that it had failed to
12 devote sufficient resources to the administration of its foreclosure processes, failed to perform
13 adequate oversight, risk management, and audit of those processes, and failed to adequately
14 oversee third-party vendors. The Comptroller, furthermore, specifically required the
15 implementation of “processes to ensure that all fees, expenses, and other charges imposed on the
16 borrower are assessed in accordance with the underlying mortgage note” and applicable legal
17 requirements. Therefore, by the time of the negative event related to a mortgage of the homes of
18 Plaintiffs and Class members, Defendant was on notice to correct deficiencies with respect to the
19 calculation of fees charged to borrowers and its failure to do so was reckless and therefore
20 malicious.
21
22

23 177. Furthermore, upon information and belief, Defendant knew that there were flaws
24 in its mortgage modification application software as early as 2013, which specifically resulted in
25 the sort of erroneous denials of modifications at issue in this case. As set forth herein,
26

1 Defendant's internal documents show that the software error resulting in the claims in this case
2 was reported to Defendant and known within the organization no later than 2013. Upon
3 information and belief, Defendant therefore knew or should have known that it had wrongly
4 denied applications for mortgage modifications by that time.

5
6 178. Once Defendant knew or should have known that it had wrongly denied
7 applications for mortgage modifications, Defendant's report of the Plaintiffs' and Class members'
8 negative events related to a mortgage to credit reporting agencies was not only recklessly untrue,
9 but willfully so. At that point, Defendant was required to disclose information or to make
10 corrective statements in order to make the previous statements that Plaintiffs and Class members
11 had been subject to negative events related to a mortgage not misleading.

12
13 179. Therefore, Defendant's statements to credit reporting agencies with respect to the
14 negative event related to a mortgage of Plaintiffs and Class members were both recklessly
15 malicious at the time they were made, and willfully malicious once Defendant knew or should
16 have known that it had wrongly denied applications for mortgage modifications. Defendant's
17 report that Plaintiffs and Class members had experienced negative events related to a mortgage
18 was thus a communication made with malicious and/or willful intent not subject to preemption
19 by the Fair Credit Reporting Act.

20
21 180. Further, Defendant willfully, or at least recklessly, failed to correct its statements
22 regarding Plaintiffs and Class members, and to correct the wrong information that it had provided
23 to the credit reporting agencies. It did this with the knowledge of the serious impacts this
24 inaction would have on Plaintiffs and Class members.

1 181. Plaintiffs and Class members were left to deal with a negative event related to a
2 mortgage on their credit report, that they would have to explain to future mortgage lenders for the
3 rest of their lives, because they were not offered a mortgage modification due to Defendant's
4 misconduct, which is a serious derogatory credit item which caused Plaintiffs and Class members
5 damage.
6

7 182. As a result of Defendant's statements affecting their credit, Plaintiffs and Class
8 members suffered damages in an amount subject to proof, including loss of time and money
9 spent in efforts to repair their credit; loss of favorable interest rates or other favorable loan terms;
10 damage to credit; and opportunity costs due to damaged credit or higher costs of borrowing.
11

12 **COUNT FOUR**
13 **FRAUDULENT CONCEALMENT**
14 **(Brought on behalf of Plaintiff Curry and the California Subclass)**

15 183. Plaintiff Curry incorporates by reference all prior allegations of this Complaint as
16 if fully restated herein.

17 184. Plaintiff Curry brings this claim for relief on behalf of himself and the California
18 Subclass.

19 185. Based on the allegations herein, Wells Fargo knew as early as August 2013 that
20 the automated calculation error was yielding inaccurate determinations as to whether borrowers,
21 like Plaintiff Curry and the California Subclass members, qualified for a modification. Instead of
22 admitting these errors, Wells Fargo sent Plaintiff Curry and each California Subclass member
23 correspondence stating that his or her request for modification had been denied and made no
24 mention of the real causes of the denial.

25 186. Each denial letter sent by Wells Fargo to Plaintiff Curry and the California
26 Subclass members provided an alleged reason for the denial of a mortgage modification, but
27

1 failed to disclose a material fact: their denials were based on faulty software, and thus were
2 likely erroneous.

3 187. Wells Fargo had a duty to disclose the software error – a material fact – to
4 Plaintiff Curry and California Subclass members. By informing Plaintiff Curry and California
5 Subclass members that they were denied mortgage modifications, but not that those denials were
6 based on calculations made by software it knew to be faulty, Wells Fargo stated half-truths. One
7 who undertakes to make a statement must not only state the truth, but may not conceal any facts
8 within his knowledge which materially qualifies his statement. Since Wells Fargo chose to speak
9 in stating that Plaintiff Curry and California Subclass members did not qualify for a
10 modification, it was required to make a full disclosure. This is particularly true because Wells
11 Fargo had superior knowledge as to all material facts surrounding the eligibility for a
12 modification for Plaintiff Curry and California Subclass members.
13

14 188. Wells Fargo knew Plaintiff Curry and California Subclass members would
15 reasonably rely upon its representations and intended that Plaintiff Curry and California Subclass
16 members rely upon its statements that Plaintiff Curry and California Subclass members did not
17 qualify for a mortgage modification.
18

19 189. Plaintiff Curry and California Subclass members reasonably believed Wells
20 Fargo's representation that they did not qualify for a modification. They had no reason to know
21 Wells Fargo based that determination on a software tool that had a material error in it.

22 190. Had Wells Fargo disclosed the whole truth to Plaintiff Curry and California
23 Subclass members, they would have been able to seek review of the incorrect decisions on their
24 mortgage modifications by a competent third party, such as an attorney, agency, or other
25 organization or individual with knowledge of mortgage modification requirements and processes.
26

1 They would then have become aware that the denials of their mortgage modifications were
2 erroneous, and would have been able to prevent the wrongful foreclosures and other harm that
3 flowed from Wells Fargo's error.

4 191. As a result of Wells Fargo's fraudulent omissions and failures to disclose, Plaintiff
5 Curry and California Subclass members have been injured in fact and suffered a loss of money
6 and/or property. Plaintiff Curry and California Subclass members suffered damages, including
7 loss of their homes; loss of equity in their homes; loss of tax benefits; loss of appreciation in their
8 homes' value following foreclosure; loss of time and money spent in an effort to avoid
9 foreclosure; loss of time and money put into their homes; loss of time and money to find new
10 housing and move their families; loss of favorable interest rates or other favorable loan terms;
11 damage to credit; and opportunity costs due to damaged credit or higher mortgage payments.
12

13 **COUNT FIVE**
14 **VIOLATIONS OF CALIFORNIA'S HOMEOWNERS BILL OF RIGHTS**
15 **(Brought on behalf of Plaintiff Curry and the California Subclass)**

16 192. Plaintiff Curry incorporates by reference all prior allegations of this Complaint as
17 if fully restated herein.

18 193. Plaintiff Curry brings this claim for relief on behalf of himself and the California
19 Subclass.

20 194. Under California's Homeowners Bill of Rights, Wells Fargo had an obligation to
21 ensure that competent and reliable evidence, including the borrower's loan status and
22 information, supported its right to foreclose before it filed a notice of default or notice of sale in
23 connection with the foreclosure of the real property of Plaintiff Curry and the California Subclass
24 members. Cal. Civ. Code § 2924.17.
25
26
27

1 195. Wells Fargo materially and recklessly violated its obligation because Plaintiff
2 Curry's loan information and the California Subclass members' loan information did not support
3 Wells Fargo's right to foreclose. By Wells Fargo's own admissions in the Consent Order and
4 Apology Letters, Plaintiff Curry's loan information and the California Subclass members' loan
5 information showed that they qualified for a mortgage modification. Wells Fargo was therefore
6 required to offer Plaintiff Curry and California Subclass members the opportunity to cure their
7 default by accepting a mortgage modification before it could exercise its right to foreclose the
8 Security Instruments of the loans of Plaintiff Curry and California Subclass members.
9

10 196. The software that Wells Fargo used to wrongly determine that Plaintiff Curry and
11 California Subclass members did not qualify for a mortgage modification was not reliable and
12 Wells Fargo was reckless in using the software and relying upon it to support its right to
13 foreclose. The software's results had not been properly verified or audited, and as a result,
14 multiple material errors remained uncorrected in the software for at least five to either years, if
15 not longer. Wells Fargo willfully and recklessly continued to rely on its software even after the
16 government cited it for failing to adequately audit its mortgage modification and foreclosure
17 procedures; even after the government found a software error had led the Bank to wrongfully
18 deny mortgage modifications in 2013-2014; and even after Wells Fargo discovered another
19 software error that caused it to wrongly deny modifications in 2015.
20

21 197. As a result of Wells Fargo's violation of the Homeowners Bill of Rights, Plaintiff
22 Curry and California Subclass members suffered damages according to proof, including loss of
23 their homes; loss of equity in their homes; loss of tax benefits; loss of appreciation in their
24 homes' value following foreclosure; loss of time and money spent in an effort to avoid
25 foreclosure; loss of time and money put into their homes; loss of time and money to find new
26

1 housing and move their families; loss of favorable interest rates or other favorable loan terms;
2 damage to credit; and opportunity costs due to damaged credit.

3 198. Pursuant to California Civil Code section 2924.19(b), Plaintiff Curry and each
4 member of the California Subclass seeks an award of treble actual damages or statutory damages
5 of \$50,000, whichever is greater.

6
7 **COUNT FIVE**
8 **VIOLATIONS OF CALIFORNIA'S HOMEOWNERS BILL OF RIGHTS**
9 **(Brought on behalf of Plaintiff Curry and the California Subclass)**

10 199. Plaintiffs incorporate by reference all other allegations of this Complaint as if
11 fully restated herein.

12 200. Plaintiffs bring this claim on behalf of themselves and the Class.

13 201. In the alternative, should the Court decide that out-of-state Plaintiffs cannot
14 maintain this claim against Defendant, Plaintiff Curry brings this claim for relief on behalf of
15 himself and the California Subclass.

16 202. Wells Fargo has violated and continues to violate California's Unfair Competition
17 Law (UCL), which prohibits unlawful, unfair, or fraudulent practices.

18 203. Wells Fargo engaged in unlawful practices by denying mortgage modifications to
19 Plaintiffs and Class members in violation of HAMP and other governmental requirements.

20 204. Wells Fargo engaged in unfair practices by failing to properly verify or audit the
21 automated software it used to determine whether Plaintiffs and Class members were eligible for a
22 mortgage modification. Wells Fargo's faulty verification and auditing practices allowed multiple
23 systemic errors to remain uncorrected for five to eight years and persisted even after the
24 government cited Wells Fargo for failing to adequately audit its mortgage modification and
25 foreclosure processes; even after the government found a software error had led the Bank to
26

1 wrongfully deny mortgage modifications in 2013-2014; and even after Wells Fargo discovered
2 another software error that caused it to wrongly deny modifications in 2015.

3 205. Wells Fargo’s Board and executive leadership further engaged in unfair practices
4 by failing to properly oversee the Bank’s compliance with HAMP and other governmental
5 requirements.

6 206. Wells Fargo’s lack of central oversight has led to a series of consumer abuses and
7 billions of dollars in government fines. Yet despite repeatedly promising to reform its oversight
8 practices, Wells Fargo’s Board and executive leadership repeatedly failed to implement or
9 maintain procedures to ensure the Bank was complying with HAMP or other applicable
10 government requirements.

11 207. Both Wells Fargo’s verification and auditing practices and its oversight practices
12 are unethical, unscrupulous, or substantially injurious to consumers; any legitimate utility of the
13 practices are outweighed by the harm to consumers; and the practices run afoul of the public
14 policies underlying HAMP and California Homeowners Bill of Rights, which seek to help
15 homeowners avoid foreclosure and promote fair mortgage lending and servicing practices.

16 208. As a result of Wells Fargo’s violations of the UCL, Plaintiffs and Class members
17 have suffered injury in fact and lost money and property, including loss of their homes; loss of
18 equity in their homes; loss of tax benefits; loss of appreciation in their homes’ value following
19 foreclosure; loss of time and money spent in an effort to avoid foreclosure; loss of time and
20 money put into their homes; loss of time and money to find new housing and move their
21 families; loss of favorable interest rates or other favorable loan terms; damage to credit; and
22 opportunity costs due to damaged credit.
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1 D. For entry of judgment in favor of Plaintiffs and members of the Class and/or
2 Subclasses for pre-judgment interest on all damages; and

3 E. For such other and further relief as the Court deems just and equitable.

4 **JURY DEMAND**

5 Plaintiffs request a trial by jury of all claims that can be so tried.

6 Dated: March 7, 2024

7 Plaintiffs MYRON CURRY, DARRELL FORNEY
8 and CHESTER NELSON individually and on
9 behalf of all others similarly situated,

10 By: /s/ Alisa Adams

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*Pro Hac Vice Applications Anticipated

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