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12 GEORGE AGAK

13 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
14 **COUNTY OF VENTURA**

15 WELLS FARGO BANK, N.A.

16 Plaintiff,

17 vs.

18 GEORGE W. AGAK, an individual

19 Defendant.

20 _____
21 AND RELATED CROSS-ACTION(S)

Case No.: 56-2017-00500587-CL-CL-VTA

**SECOND AMENDED CROSS-
COMPLAINT**

CLASS ACTION

1. **Breach of Contract**
2. **Fraud**
3. **Unfair Competition Law (Bus. & Prof. Code §§17200 et. seq.**
4. **Civil Code §1747.50**
5. **Declaratory Relief**
6. **Consumer Legal Remedies Act (Civil Code §§1750 et. seq.)**

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23
24 Defendant and Cross-Complainant GEORGE W. AGAK alleges against Plaintiff and Cross-
25 Defendant WELLS FARGO BANK, N.A., as follows:

- 26
- 27 1. Cross-Complainant GEORGE W. AGAK is an individual, residing in the County of
28 Ventura, State of California.

1 2. Cross-Defendant WELLS FARGO BANK, N.A. is a South Dakota corporation
2 qualified and licensed to do business in California, and in Ventura County.

3 3. Venue and jurisdiction properly lie with this Court, as it is the place where at least one
4 defendant resides, is incorporated, or has its principal place of business or a substantial amount of the
5 events which gave rise to this suit occurred. Cross-Defendant hereby demands a jury trial.

6 4. Cross-Complainant GEORGE W. AGAK and others similarly situated entered into a
7 consumer credit agreement with Cross-Defendant WELLS FARGO BANK, N.A. According to the
8 terms and conditions of the “Consumer Credit Card Customer Agreement & Disclosure Statement,”
9 the agreement between the parties includes the following pertinent terms:
10

11 **“Fees and Interest**

12 **(13) Fees.** You agree to pay the following fees. You will find the fee amounts in the
13 Important Terms of Your Credit card Account.

- 14 • **Annual Fee.** This fee may be charged if applicable. If your Account has an annual fee, you
15 are responsible for paying it every year while your Account is open. The annual fee will
16 not continue to be billed after your Account is closed.
- 17 • **Balance Transfer Fee.** This fee may be charged if you engage in a balance transfer
18 transaction.
- 19 • **Cash Advance Fee.** This fee may be charged when a Cash Advance is posted to your
20 Account.
- 21 • **Overdraft Protection Advance Fee.** This fee may be charged when an overdraft amount
22 is advanced to the checking account linked by you to your Account.
- 23 • **Foreign Currency Conversion Fee.** This fee may be charged on each Purchase transaction
24 converted into a U.S. dollar amount by MasterCard or Visa.
- 25 • **Late Fee.** This fee may be charged each time we do not receive the required Minimum
26 Payment due by the Payment Due Date.
- 27 • **Returned Check or Returned Payment Fee.** This fee may be charged when a payment
28 is not processed the first time or is returned unpaid.

23 Additional fees may be charged if agreed between you and us. All fees will be added to the
24 Purchases balance, except Cash Advance fees which will be added to the Cash Advance balance
25 on your Account.”

25 5. According to account statements just produced in discovery in this action by Cross-
26 Defendant WELLS FARGO, N.A., Cross-Defendant has been continuously and improperly charging
27 Cross-Complainant GEORGE W. AGAK a monthly “credit defense” fee, in an amount that varies,
28

1 approximately in the range of \$17 to \$71, each month. These illegal “credit defense” fees were
2 charged without obtaining the express consent and/or agreement of Cross-Complainant GEORGE W.
3 AGAK, in violation of the consumer credit terms and conditions, as noted herein above. On
4 information and belief, the total amount of illegal fees charged exceeds approximately \$4,500, plus
5 charged interest that has accrued thereon, in an amount to be determined and proven at trial. These
6 unauthorized “credit defense” fees, and all interest accrued therein, must be credited to the account
7 and returned to Cross-Complainant GEORGE W. AGAK.
8

9 **CLASS ACTION ALLEGATIONS**

10 6. Cross-Complainant brings this class action on behalf of himself and all others
11 similarly situated pursuant to Code of Civil Procedure §382 and Civil Code §1781.
12

13 7. The Classes which Cross-Complainant seeks to represent are defined as:

14 **Breach of Contract Class** – All Wells Fargo, N.A. credit card consumers in California
15 who were charged a credit defense fee without agreeing to being charged said fee at
16 any time beginning three (3) years prior to the filing of the Complaint through the date
17 notice is mailed to the class.

18 **Fraud Class** – All Wells Fargo, N.A. credit card consumers in California who were
19 induced into opening a credit card with Wells Fargo, N.A. upon the representation in
20 the consumer credit agreement that they would not be charged any additional fee
21 without their agreement, at any time beginning three (3) years prior to the filing of the
22 Complaint through the date notice is mailed to the class.

23 **Injunctive Relief Class** – All Wells Fargo, N.A. credit card consumers in California
24 who were charged a credit defense fee without agreeing to being charged said fee from
25 the time of the filing of the Complaint.

26 8. Numerosity: The Class is so numerous that joinder of all individual members in one
27 action would be impracticable. The disposition of their claims through this class action will benefit
28 both the parties and this Court. Cross-Complainant is informed and believes and thereon alleges that
there are, at a minimum, many thousands of members that comprise the Class. Members of the Class
may be notified of the pendency of this action by techniques and forms commonly used in class

1 actions, such as by published noticed, e-mail notice, website notice, first-class mail, or combinations
2 thereof, or by other methods suitable to this class and deemed necessary and or appropriate by the
3 Court.

4 9. Common Questions of Fact and Law: There are a well-defined community of interest
5 and common questions of fact and law affecting the members of the Class. The questions of fact and
6 law common to the Class predominate over questions which may affect individual members and
7 include the following: (a) whether WELLS FARGO BANK, N.A. improperly, unlawfully, or unfairly
8 charged consumer credit customers a fee for “credit defense” without obtaining express consent; (b)
9 whether WELLS FARGO BANK, N.A. violated Civil Code §§1750 *et. seq.*; (c) whether WELLS
10 FARGO BANK, N.A. violated Business and Professions Code §§17200 *et. seq.*; and (d) the relief,
11 including injunctive and other equitable relief, to which Cross-Complainant and the Class are entitled.
12

13 10. Typicality: Cross-Complainant’s claims are typical of the claims of the entire Class.
14 Cross-Complainant and all Class members entered into a consumer credit agreement with WELLS
15 FARGO BANK, N.A., and were charged a fee for “credit defense” without consent and in violation
16 of the consumer credit agreement. The claims of Cross-Complainant and members of the Class are
17 based on the same legal and remedial theories and arise from the same unlawful conduct.
18

19 11. Adequacy of Representation: Cross-Complainant is an adequate representative of the
20 Class because his interests do not conflict with the interests of the Class which Cross-Complainant
21 seeks to represent. Cross-Complainant will fairly, adequately, and vigorously represent and protect
22 the interests of the Class and has no interests antagonistic to the Class. Cross-Complainant has
23 retained counsel who is competent and experienced in the prosecution of class action litigation.
24

25 12. Superiority: A class action is superior to other available means for the fair and efficient
26 adjudication of the claims of the Class. While the aggregate damages which may be and if awarded
27 to the Class are likely to be substantial, the actual economic damages suffered by individual members
28

1 of the Class are likely relatively small. As a result, the expense and burden of individual litigation
2 makes it economically infeasible and procedurally impracticable for each member of the Class to
3 individually seek redress for the wrongs done to them. The likelihood of individual Class members
4 prosecuting separate claims is remote. Individualized litigation would also present the potential for
5 varying, inconsistent or contradictory judgments, and would increase the delay and expense to all
6 parties and the court system resulting from multiple trials of the same factual issues. In contrast, the
7 conduct of this matter as a class action presents fewer management difficulties, conserves the
8 resources of the parties and the court system, and would protect the rights of each member of the
9 Class. Plaintiff knows of no difficulty to be encountered in the management of this action that would
10 preclude its maintenance as a class action.
11

12 13. Injunctive or Declaratory Relief: A class action is also appropriate because Defendants
13 have acted or refused to act on grounds that apply generally to the Class, so that final injunctive relief
14 or corresponding declaratory relief is appropriate respecting the Class as a whole.
15

16 **FIRST CAUSE OF ACTION – BREACH OF CONTRACT**
17 **(By Cross-Complainant and all Classes against Cross-Defendant)**

18 14. Cross-Complainant GEORGE W. AGAK re-alleges and incorporate by this reference
19 every allegation contained this Cross-Complaint. Cross-Complainant GEORGE W. AGAK and
20 Cross-Defendant WELLS FARGO, N.A. were parties to a consumer credit agreement. Cross-
21 Complainant GEORGE W. AGAK did all, or substantially all, of the significant things that the
22 consumer credit agreement required him to do. As only recently learned in discovery and documents
23 produced by Cross-Defendant in this action, Cross-Defendant WELLS FARGO, N.A. has been
24 continuously and improperly charging Cross-Complainant GEORGE W. AGAK a monthly “credit
25 defense” fee, in an amount that varies, approximately in the range of \$17 to \$71, each month. These
26 illegal “credit defense” fees were charged without obtaining the express consent and/or agreement of
27 Cross-Complainant GEORGE W. AGAK, in violation of the consumer credit terms and conditions.
28

1 AGAK was induced into opening a credit card with Cross-Defendant WELLS FARGO, N.A. based
2 on his justifiable reliance on the terms of the consumer credit agreement that any additional fees not
3 listed in the consumer credit agreement had to be expressly agreed to by him, i.e. “if agreed between
4 you and us”. These illegal “credit defense” fees were charged without obtaining the express consent
5 and/or agreement of Cross-Complainant GEORGE W. AGAK.

6
7 19. Cross-Defendant WELLS FARGO, N.A. made these representations (that it would not
8 charge any fees not listed on the consumer credit agreement without prior consent) with knowledge
9 of its falsity, and with an intent to deceive consumers like Cross-Complainant GEORGE W. AGAK.

10 20 As a direct result of the above conduct in charging a monthly unauthorized “credit
11 defense” fee, Cross-Complainant GEORGE W. AGAK has suffered a direct pecuniary loss of being
12 charged illegal fees of approximately \$4,500, plus charged interest that has accrued thereon, in an
13 amount to be determined and proven at trial. These unauthorized “credit defense” fees, and all interest
14 accrued therein, must be credited to the account and returned to Cross-Complainant GEORGE W.
15 AGAK.

16
17 **THIRD CAUSE OF ACTION – VIOLATION OF UNFAIR COMPETITION LAW, Bus &**
18 **Prof. Code §§17200 et. seq.**
19 **(By Cross-Complainant and all Classes against Cross-Defendant)**

20 21. Cross-Complainant GEORGE W. AGAK re-alleges and incorporate by this reference
21 every allegation contained in this Cross-Complaint. Cross-Complainant asserts this claim on behalf
22 of himself and the Class. The above-described conduct of Cross-Defendant WELLS FARGO BANK,
23 N.A., in illegally charging Cross-Complainant GEORGE W. AGAK and other similarly situated
24 credit card consumers an unauthorized “credit defense” fee without first obtaining their consent and
25 agreement to said fee, constitutes unfair competition, an act of deception on the general public, and
26 an unlawful, unfair and fraudulent business practice under Bus. & Prof. Code, §§17200 et. seq. As a
27 direct result of the above conduct in improperly charging a monthly “credit defense” fee, Cross-
28

1 Complainant GEORGE W. AGAK and other similarly situated consumers has suffered a direct
2 pecuniary loss of being charged illegal fees, plus charged interest that has accrued thereon, in an
3 amount to be determined and proven at trial. Cross-Complainant GEORGE W. AGAK and the
4 Injunctive Relief Class seeks an order from the Court to enjoin Cross-Defendant WELLS FARGO,
5 N.A. from continuing to charge “credit defense” fees to its consumers without receiving prior consent
6 from said consumers.
7

8 **FOURTH CAUSE OF ACTION – VIOLATION OF SONG-BEVERLY CREDIT CARD**
9 **ACT, Civil Code §1747.50**
10 **(By Cross-Complainant and all Classes against Cross-Defendant)**

11 22. Cross-Complainant GEORGE W. AGAK re-alleges and incorporate by this reference
12 every allegation contained in this Cross-Complaint. Cross-Complainant asserts this claim on behalf
13 of himself and the Class.

14 23. On September 6, 2018, Cross-Complainant GEORGE W. AGAK provided written
15 notice to Cross-Defendant WELLS FARGO, N.A. explaining that he had been charged unauthorized
16 “credit defense” fees as shown on his credit card statements. After receiving the inquiry, Cross-
17 Defendant WELLS FARGO BANK, N.A. failed, and continues to fail, to correct the above described
18 billing errors, including charging an illegal and unauthorized fee in violation of the parties’ consumer
19 credit agreement, and has also charged interest and benefited from finance charges in connection with
20 the billing error. As a direct result of the above conduct in improperly charging a monthly “credit
21 defense” fee, and refusing to reimburse the accurate amount with interest and correct such, Cross-
22 Complainant GEORGE W. AGAK and other similarly situated consumers has suffered a direct
23 pecuniary loss of being charged illegal fees, plus charged interest that has accrued thereon, in an
24 amount to be determined and proven at trial.
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1 **FIFTH CAUSE OF ACTION – DECLARATORY RELIEF**
2 **(By Cross-Complainant and all Classes against Cross-Defendant)**

3 24. Cross-Complainant GEORGE W. AGAK re-alleges and incorporate by this reference
4 every allegation contained in this Cross-Complaint. An actual and immediate controversy has arisen
5 and now exists between Cross-Complainant and Cross-Defendants regarding the monthly charging
6 of a “credit defense,” fee without prior consent and agreement of consumer Cross-Complainant, in
7 violation of the terms and conditions of the parties’ consumer credit agreement. Cross-Complainant
8 seeks a declaration of the rights, duties, and obligations, if any, under Code of Civil Procedure §1060,
9 with respect to Cross-Defendants, including a determination of the validity and amount of any monies
10 purportedly owed between the parties. A judicial determination is necessary and appropriate at this
11 time in order that the parties ascertain their rights and obligations to each other, and conclude the
12 ongoing financial hardship, burden, and distress caused by Cross-Defendant depriving Cross-
13 Complainant monies due to him from the breach of the consumer credit agreement.

14 **SIXTH CAUSE OF ACTION – VIOLATION OF CONSUMER LEGAL REMEDIES ACT,**
15 **Civil Code §§1750 et seq.**
16 **(By Cross-Complainant and all Classes against Cross-Defendant)**

17 25. Cross-Complainant GEORGE W. AGAK re-alleges and incorporate by this reference
18 every allegation contained in this Cross-Complaint. Cross-Complainant asserts this claim on behalf
19 of himself and the Class. WELLS FARGO BANK, N.A.’s conduct of charging Cross-Complainant
20 GEORGE W. AGAK and others similarly situated a fee for “credit defense” without consent is an
21 unlawful violation of Section 1770 of the Civil Code, including but not limited to subsections (5),
22 (14), (16), (17), and (19). As a direct result, Cross-Complainant GEORGE W. AGAK and others
23 similarly situated have suffered a direct pecuniary loss of being charged illegal fees, plus charged
24 interest that has accrued thereon, in an amount to be determined and proven at trial.
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PRAYER

Cross-Complainant GEORGE W. AGAK, on behalf of himself and others similarly situated, prays for judgment on all causes of action against Cross-Defendant WELLS FARGO BANK, N.A. as follows:

1. An order that each of the Classes be certified as a class;
2. An order that Cross-Complainant GEORGE W. AGAK be certified as the representative of each Class;
3. An order that Plaintiff's counsel be confirmed as each Classes counsel;
4. For non-economic damages in an amount according to proof; and in excess of the minimum jurisdictional limits of this court;
5. For economic damages in an amount according to proof; and in excess of the minimum jurisdictional limits of this court;
6. For interest as allowed by law;
7. All costs and attorneys' fees as allowed by law;
8. For all statutory and treble damages as allowed by law;
9. For declaratory relief;
10. An order enjoining the methods, acts, or practices declared to be unlawful by Section 1770; and
11. Such other and further relief as the Court may determine to be just and proper.

Date: January 11, 2022

McCATHERN LLP

BY:


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CHRISTINE ZAOUK
Attorneys for Defendant/Cross-Complainant,
GEORGE W. AGAK