

3. As a condition of receiving \$25 billion in bailout funds under the TARP, Wells Fargo, N.A., doing business as Wells Fargo Home Mortgage (hereinafter “Wells Fargo” or “the bank”), agreed to provide mortgage modifications to struggling homeowners pursuant to HAMP.
4. Instead of providing relief to homeowners consistent with the purpose for which HAMP was created, Wells Fargo has used the program to enrich itself by intentionally delaying the processing of HAMP applications and extending trial modification periods in order to maximize its own revenue and fees at the expense of and by defrauding homeowners. Wells Fargo has also assessed hidden and prohibited fees onto the loans of homeowners who received permanent modifications despite the bank’s representations to the contrary.
5. Plaintiff Shea Hecht (“Plaintiff”) brings this action against Wells Fargo, Gross Polowy Orlans, LLC (hereinafter “Gross Polowy Orlans” or “the law firm”) and various John Does, (collectively “Defendants”) on behalf of himself and a class consisting of all homeowners throughout the state of New York whose home loans were serviced and modified by Wells Fargo under the HAMP program (the “Class Members”) at any time during the applicable statute of limitations period (the “Class Period”).

FACTUAL BACKGROUND

The Home Affordable Modification Program

6. Congress passed the Emergency Economic Stabilization Act of 2008, 12 U.S.C. §§ 5201, *et seq.*, on October 3, 2008 and amended it with the American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5, 123 Stat. 115, on February 17, 2009 (together, the “Act”).

7. The purpose of the Act was to grant the Secretary of the Treasury authority to restore liquidity and stability to the financial system and to ensure that such authority is used in a manner that “protects home values” and “preserves homeownership.” 12 U.S.C. § 5201.
8. The Act granted the Secretary of the Treasury the authority to establish the Troubled Asset Relief Program, or TARP. 12 U.S.C. §§ 5211, *et seq.* Under TARP, the Secretary may purchase or make commitments to purchase troubled assets from financial institutions. *Id.* Congress allocated up to \$700 billion to the Treasury for TARP. 12 U.S.C. § 5225.
9. The Act further mandates, with regard to any assets acquired by the Secretary of the Treasury that are backed by residential real estate, that the Secretary “shall implement a plan that seeks to maximize assistance for homeowners” and use the Secretary’s authority over servicers to encourage them to take advantage of programs to “minimize foreclosures.” 12 U.S.C. § 5219. The Act grants authority to the Secretary of the Treasury to use credit enhancement and loan guarantees to “facilitate loan modifications to prevent avoidable foreclosures.” *Id.*
10. On February 18, 2009, pursuant to their authority under the Act, the Treasury Secretary and the Director of the Federal Housing Finance Agency created the Making Home Affordable (“MHA”) initiative to help at-risk homeowners avoid foreclosure by restructuring their mortgages.
11. The Home Affordable Modification Program, or HAMP, is the portion of the MHA initiative that provides mandatory directives for implementation. HAMP creates a uniform loan modification protocol and provides financial incentives for participating servicers to modify loans.

12. Because Wells Fargo accepted \$25 billion in bailout funds it is and was at all times throughout the Class Period required to participate in HAMP for all loans on which it functions as a loan “servicer.” Michael J. Heid, who was at the time of signing the Co-President of Wells Fargo, executed a Servicer Participating Agreement (“SPA”) with the federal government on April 13, 2009; thereby binding Wells Fargo to comply with HAMP procedures. On March 16, 2010, Michael J. Heid, as Executive Vice President of Wells Fargo, signed an Amended and Restated SPA.
13. These SPAs obligate Wells Fargo to comply with HAMP procedures. The SPAs explicitly incorporate all guidelines and procedures, as well as any Supplemental Directives, which include all directives, bulletins, letters, supplemental documentation, instructions and other communications issued by the Treasury, Fannie Mae or Freddie Mac regarding HAMP. Each of these documents is incorporated by reference herein.
14. Fannie Mae and Freddie Mac have issued a number of HAMP Handbooks for mortgage loans that are not owed or guaranteed by Fannie Mae or Freddie Mac (the “Handbook(s)”). The Handbooks are a consolidated resource for programmatic guidance related to HAMP and are incorporated by reference herein. They set out the HAMP-related activities Wells Fargo must perform for first lien mortgage loans that originated on or before January 1, 2009.

The HAMP Application Process

15. Wells Fargo is obligated to pre-screen for HAMP eligibility all first lien mortgages where two or more payments are due and unpaid. Wells Fargo is obligated to solicit for HAMP any borrowers who pass the pre-screen.

16. In its written solicitations for HAMP Wells Fargo represents that payment help is available for the homeowner. In its telephone solicitations, which are scripted and were made uniformly to Plaintiff and the Class Members, Wells Fargo represents that it offers HAMP modification programs to help homeowners stay in their homes, and that the program can include forgiving debt, restructuring payments and lowering the loan's interest rate.
17. Wells Fargo's HAMP application packet, or "Starter Kit," includes conspicuous representations that identify its modification program as a "HAMP" program. Based on these representations, a reasonable applicant would believe that Wells Fargo administers its HAMP modification program pursuant to the HAMP rules by which it is legally bound.
18. The Starter Kit also includes multiple, explicit representations that there are no fees associated with the program, such as "**NO FEES.** There are no fees under the Home Affordable Modification Program."
19. The Starter Kit includes numerous representations indicating Wells Fargo's intention to "help" the homeowner, such as "[w]e're here to help you through the process. You can count on us to work with you through every step of the process" and "HELPING YOU STAY IN YOUR HOME." Wells Fargo also makes specific representations about the "help" that it will provide, including, *inter alia*, that "[i]f you meet the eligibility criteria, you will be offered a Trial Period Plan."
20. Wells Fargo also represents in the Starter Kit that "it may take up to 30 days for us to review your documents[,] and that "[w]e will process your request as quickly as possible."
21. Contrary to these representations, Wells Fargo intentionally delays the HAMP application process for the purpose of increasing the fees, costs, penalties and interest that accrue on

the loan in order to increase the bank's revenues. As a pretext for the delay, Wells Fargo repeatedly instructs homeowners to submit documents and information that they have already submitted to the bank, and documents and information that are not relevant to the decision-making process.

The Trial Period Plan and Permanent Modification

22. The next step in the HAMP process is the Trial Period Plan (the "TPP"). The TPP consists of a specified three or four month period during which the homeowner is required to make monthly mortgage payments in an amount meant to approximate the homeowner's post-HAMP modification mortgage payment.
23. Wells Fargo's TPP Agreement includes multiple, conspicuous representations that the homeowner will not be charged any fees for receiving a HAMP modification, including, but not limited to "[y]ou will not be charged any fees for this Trial Period Plan or a modification."
24. Wells Fargo's TPP Agreement includes conspicuous representations that identify its modification program as a "HAMP" program. The TPP Agreement also includes representations about Wells Fargo's interest in keeping the homeowner in his or her home.
25. The TPP Agreement provides that the homeowner must make three or four trial period payments on the dates specified therein. Pursuant to the TPP Agreement, Wells Fargo has the right to require the homeowner to work with a credit counselor. The TPP Agreement also requires the homeowner to establish an escrow account into which he or she must make the required escrow payments, and to submit documents and make certain representations about his or her circumstances.

26. The TPP Agreement further provides that after the homeowner makes each of the trial period payments specified therein, he or she will be granted a permanent modification on the defined Modification Effective Date.
27. The HAMP Handbooks do not require the HAMP modification agreement to be notarized.
28. Despite the fact that Plaintiff and Class Members fully performed their duties under their TPP Agreements, they were not granted permanent modifications after making all of the required trial period payments on the Modification Effective Date.
29. Instead, Wells Fargo intentionally delayed granting permanent modifications to Plaintiff and Class Members. Wells Fargo had a financial incentive to extend the duration of the trial period. Throughout the trial period, fees, interest and penalties continue to accrue which are capitalized onto the balance of the loan when the permanent modification is granted. As a pretext for the delay, Wells Fargo requests documents that have already been submitted and documents and information that are not relevant to the homeowner's qualifications for a HAMP modification.
30. Furthermore, although the Starter Kit, TPP Agreement and modification agreement include multiple, conspicuous representations that there are "[n]o fees or other charges for this modification," Wells Fargo actually charges each homeowner thousands of dollars for the HAMP modification.
31. The HAMP Handbooks in effect throughout the Class Period expressly provide that certain fees are considered modification fees and may not be passed on to the homeowner:

fees associated with modification of the mortgage, such as modification agreement recording fees and title fees generally are not covered by the security

agreement and may not be capitalized.¹ Recording fees and title fees generally are considered administrative costs and may be reimbursable by the investor through the ordinary course of business, such as applicable investor contracts² Servicers may not charge the borrower to cover the administrative processing costs incurred in connection with HAMP.³ The servicer pays and will not be reimbursed for any actual out-of-pocket expenses, including, but not limited to, any required notary fees, recordation fees, title costs, property valuation fees, credit report fees, or other allowable and documented expenses.⁴

32. The modification fees charged to homeowners include, but are not limited to, recording fees, title fees and property valuation fees. Since these fees are, in violation of the HAMP rules, capitalized onto the balance of the homeowner's loan, the homeowner ends up paying interest on the modification fees as well.
33. While Wells Fargo's Starter Kit, TPP and other HAMP program documents explicitly and conspicuously represent that there are no fees for a HAMP modification, Wells Fargo intentionally buries its sole disclosure about these fees under pages of HAMP modification documents. All but one of these fees is identified only in a single footnote to a line item called "Recoverable Expenses." Wells Fargo does not even disclose the amount it charged individually for each of these fees. Furthermore, the footnote states explicitly that there are additional fees included in the line item "Recoverable Expenses" that are not identified.

¹ *Making Home Affordable Program Handbook for Servicers of Non-GSE Mortgages*, Versions 1.0-4.4 at Chapter II, Section 6.3.1, ADMINISTRATIVE WEBSITE FOR SERVICERS, HOME AFFORDABLE MODIFICATION PROGRAM, <https://www.hmpadmin.com/portal/programs/guidance.jsp> (last visited April 19, 2015).

² *Id.*

³ *Id.* at Chapter II, Section 9.3.3.

⁴ *Id.*

As such, Plaintiff reserves the right to add to his allegations regarding the modification fees assessed by Wells Fargo following discovery.

Foreclosure

34. The HAMP Handbooks in effect throughout the Class Period prohibited Wells Fargo from referring loans to foreclosure unless the homeowner had been evaluated for HAMP and determined to be ineligible for the program, failed to comply with his or her TPP Agreement, or the bank's efforts to solicit the homeowner for the program had failed.⁵
35. Wells Fargo referred to foreclosure homeowners who had applied for a HAMP modification and submitted all of the required documents and information without first finding them to be ineligible for the program. Wells Fargo also referred to foreclosure homeowners who had been granted TPPs and fully performed in accordance with their TPP Agreements. As a result, homeowners were charged substantial foreclosure fees.
36. The law firm Gross Polowy Orlans⁶ filed and prosecuted foreclosure actions against homeowners on Wells Fargo's behalf. In its letters to homeowners, Gross Polowy Orlans represented that "[t]he law firm of Gross Polowy Orlans, LLC and the attorneys whom it employs are debt collectors who are attempting to collect a debt" Similarly, the Starter Kit and TPP Agreements sent to homeowners, including those sent to Plaintiff,

⁵ *Id.* at Chapter II, Section 3.1.

⁶ Gross Polowy Orlans was started by two former practice leaders at the Steven J. Baum law firm (the "Baum firm"), which closed down in 2012 following negative publicity over its allegedly unlawful foreclosure practices and unscrupulous behavior, including, for example, robo-signing. Prior to closing down the firm entered into multi-million dollar settlements with the New York Attorney General and the Manhattan U.S. Attorney over the firm's allegedly unlawful foreclosure practices. The New York Attorney General's investigation found that the firm had routinely brought foreclosure proceedings without taking the appropriate steps to verify the accuracy of the allegations or the banks' right to foreclose. The New York Attorney General also found that the Baum firm repeatedly caused delay in the scheduling of mandatory foreclosure settlement conferences. Numerous Gross Polowy Orlans attorneys and staff members joined the law firm immediately after leaving the Baum firm.

included representations that “this communication is an attempt to collect a debt” and that the Fair Debt Collection Practices Act applied.

37. New York Civil Practice Law and Rules (“CPLR”) § 3408 requires Wells Fargo to attend or send attorneys on its behalf to mandatory settlement conferences with homeowners against whom it has filed a foreclosure action. CPLR § 3408 requires Wells Fargo to negotiate in good faith with the homeowner to determine whether a modification could allow the homeowner to remain in his or her home. Wells Fargo was represented at the settlement conferences by Gross Polowy Orlans.
38. Homeowners who attended all mandatory foreclosure settlement conferences, negotiated in good faith, and complied fully with HAMP program requirements had their HAMP modifications delayed by Defendants. Defendants repeatedly requested documents that had already been submitted, and requested documents and information that were not relevant to the process. Wells Fargo also sent attorneys to appear at the settlement conferences without granting them settlement authority. As a result, additional interest, fees and costs were assessed to the homeowners.

JURISDICTION AND VENUE

39. Jurisdiction is proper pursuant to 28 U.S.C. § 1332(d)(2). Plaintiff is a citizen of the state of New York. Wells Fargo is a mortgage lender headquartered in San Francisco, California, and does business nationwide. Upon information and belief, the aggregate amount in controversy is in excess of \$5,000,000, exclusive of interest and costs.
40. Jurisdiction is proper pursuant to 28 U.S.C. § 1331 because this is an action arising under the laws of the United States.

41. This Court has personal jurisdiction over Wells Fargo because the bank conducts and transacts business in the state of New York.
42. This Court has personal jurisdiction over Gross Polowy Orlans because the law firm is headquartered in the state of New York and conducts and transacts business throughout the state.
43. Venue is proper because many Class Members reside in the Eastern District of New York and Wells Fargo and Gross Polowy Orlans have, at all relevant times, been doing business in the Eastern District of New York.

THE PARTIES

44. Plaintiff Shea Hecht is a resident of Poughkeepsie, New York.
45. Wells Fargo Bank, N.A. is a national banking association chartered in Sioux Falls, South Dakota and acts and operates as a mortgage lender with a principal place of business in San Francisco, California.
46. Gross Polowy Orlans is and at all times relevant hereto was a debt collection and foreclosure law firm headquartered in Amherst, New York; doing business throughout the state of New York.
47. The members of the proposed class are all homeowners throughout the state of New York whose home loans were serviced and modified by Wells Fargo under the HAMP program throughout the Class Period.
48. The true names and capacities, whether individual, corporate, associate, or otherwise, of Defendants DOES 1 through 10 are unknown to Plaintiff, who therefore sues said Defendants by such fictitious names. Plaintiff alleges that each of said fictitious Defendants is in some manner responsible for the acts hereinafter set forth. Plaintiff will

amend this Complaint to show the true names and capacities of these DOE Defendants, as well as the manner in which each fictitious Defendant is responsible, when these facts are ascertained.

AGENCY ALLEGATIONS

49. Plaintiff is informed and believes, and on that basis alleges, that at all times herein mentioned each of the Defendants was an agent, servant, employee, and/or joint venture of each of the remaining Defendants, and was at all times acting within the course and scope of such agency, service, employment, and/or joint venture, and each Defendant has ratified, approved, and authorized the acts of each of the remaining Defendants with full knowledge of said facts.
50. Each of the Defendants aided and abetted, encouraged, rendered substantial assistance to the other Defendants in making the misrepresentations, engaged in the deceptive practices, acted in bad faith, and committed all violations of law alleged herein. In taking action, as alleged herein, to aid and abet and substantially assist the commissions of these wrongful acts and other wrongdoings complained of, each of the Defendants acted with an awareness of his/her/its primary wrongdoing and realized that his/her/its conduct would substantially assist the accomplishment of the wrongful conduct, wrongful goals, and wrongdoing.
51. There is a unity of interest between Defendants, and each acts as the alter ego of the other.

PLAINTIFF'S EXPERIENCE WITH WELLS FARGO

52. Plaintiff Shea Hecht's experience with Wells Fargo exemplifies the foregoing problems.
53. In 2005, Plaintiff purchased and moved into a house located in Poughkeepsie, New York.

54. As a result of the financial crisis and the recession, Plaintiff's employer struggled to meet its payroll obligations. Plaintiff's small business struggled as well. As a result, Plaintiff suffered a reduction in income. Consequently, Plaintiff could not pay his mortgage without a modification and fell behind on his payments.
55. Plaintiff received a phone call from an employee from Wells Fargo, who was the servicer at the time for Plaintiff's first lien home mortgage loan. The employee stated that Wells Fargo offers HAMP modification programs to help homeowners stay in their homes, and that the programs include forgiving debt, restructuring payments and reducing the loan's interest rate.
56. Shortly thereafter Plaintiff received a HAMP application packet, or Starter Kit, from Wells Fargo.
57. Wells Fargo represented in the Starter Kit that "it may take up to 30 days for us to review your documents[,]” and that “[w]e will process your request as quickly as possible.”
58. The Starter Kit documents also included conspicuous representations that “[t]here are no fees under the Home Affordable Modification Program.”
59. Additionally, the Starter Kit documents identified Wells Fargo's modification program as a HAMP program and included representations indicating Wells Fargo's intention to help Plaintiff. Wells Fargo also represented in its Starter Kit that “[i]f you meet the eligibility criteria, you will be offered a Trial Period Plan.”
60. Plaintiff read each of the aforementioned representations and in reliance thereon, timely submitted all the requested documents in the manner requested by Wells Fargo.
61. Even though Plaintiff qualified for and was entitled to a HAMP modification, Wells Fargo did not get back to Plaintiff within 30 days with a decision about his HAMP application.

Instead, Wells Fargo repeatedly requested documents and information that Plaintiff had already submitted, and documents and information that were not relevant to Plaintiff's qualifications for a HAMP Application. As a result of these delays, Plaintiff incurred additional interest, fees, penalties, and costs, which is what Wells Fargo had intended.

62. Plaintiff continued to fully comply with Wells Fargo's instructions regarding his HAMP application. As a result, Plaintiff did not pursue other opportunities to save his home, or otherwise minimize the financial harm he was suffering due to his inability to make his mortgage payments without a modification.
63. Months went by and, as Wells Fargo continued to request documents and represent that Plaintiff was being considered for a HAMP modification, Plaintiff received, to his surprise, a debt collection letter and notice indicating that Wells Fargo had filed a foreclosure action against him. The debt collection letter was sent by Gross Polowy Orlans and included a representation that "[t]he law firm of Gross Polowy Orlans, LLC and the attorneys whom it employs are debt collectors who are attempting to collect a debt"
64. The foreclosure action against Plaintiff had also been filed by Gross Polowy Orlans. Gross Polowy Orlans appeared for Wells Fargo at the mandatory settlement conferences.
65. Plaintiff attended all mandatory foreclosure settlement conferences, negotiated in good faith, and complied fully with the HAMP program requirements. Regardless, Defendants intentionally delayed processing his HAMP application and granting him a HAMP modification. Defendants requested documents that Plaintiff had already submitted to them, and documents and information that were not relevant to the process. Gross Polowy Orlans attorneys also appeared at the settlement conferences without the authority to dispose of the action. As a result, Plaintiff accrued interest, costs, penalties and fees.

66. On January 10, 2014, Plaintiff was offered a TPP and received a TPP Agreement. The TPP Agreement included multiple, conspicuous representations that Plaintiff would not be charged a fee for his HAMP modification, including, but not limited to, “[y]ou will not be charged any fees for this Trial Period Plan or a modification.” On January 29, 2014, Plaintiff accepted the TPP Agreement. Pursuant to the TPP Agreement, Plaintiff was obligated to make three trial payments of \$2,076.69 with the first payment of \$2,076.69 due on February 1, 2014, the second payment of \$2,076.69 due on March 1, 2014, and the third payment of \$2,076.69 due on April 1, 2014.
67. Pursuant to the TPP Agreement Plaintiff was required to work with a credit counselor to create a household budget to reduce his debt, to establish an escrow account and to pay required escrows into that account, and to submit documents and make representations about his personal circumstances.
68. The TPP Agreement provided that “[o]nce you make all of your trial period payments on time, we will send you a modification agreement detailing the terms of the modified loan.”
69. The TPP Agreement further provided that if Plaintiff complied his loan would automatically be modified on the Modification Effective Date, which was defined in the TPP Agreement as May 1, 2014.
70. Although Plaintiff fully performed each of his obligations pursuant to the TPP Agreement, his loan was not modified after he had made the final trial period payment on the Modification Effective Date.
71. Instead, Defendants purposefully delayed the length of the trial period in order to increase fees, interest, and penalties on the loan. As a pretext for the delay, Defendants demanded that Plaintiff resubmit documents that had already been submitted. As a result, Plaintiff

paid more in interest, penalties and fees and the balance of his loan was higher when he received a permanent modification.

72. Furthermore, contrary to Defendants' multiple, conspicuous representations that Plaintiff would not be charged any fees for his modification, Plaintiff was charged title fees, recording fees, broker's price opinion/appraisal fees, and other unspecified fees for his HAMP modification. These fees were capitalized onto the balance of Plaintiff's loan and as a result he has paid interest on these fees.

CLASS ALLEGATIONS

73. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, Plaintiff seeks certification of the following class ("the Class"):

All homeowners throughout the state of New York whose home loans were serviced and modified by Wells Fargo under the HAMP program during the Class Period.

74. This putative class action meets the requirement of Fed. R. Civ. P. 23(a), Fed. R. Civ. P. 23(b)(2), and Fed. R. Civ. P. 23(b)(3).
75. All members of the Class have been subject to and affected by the same conduct. Defendants have engaged in a common course of conduct with respect to all HAMP modifications.
76. All members of the Class have been subject to and affected by Defendants' intentional delays in processing HAMP applications and granting permanent modifications and have been assessed fees for their HAMP modifications and have suffered economic harm as a result.
77. The Class is properly brought and should be maintained as a class action under Rule 23(a), satisfying the class action prerequisites of numerosity, commonality, typicality, and adequacy because:

78. Numerosity: Class Members are so numerous that joinder of all members is impracticable.

Plaintiff believes that there are thousands of Class Members. The precise number of members of the Class and their identities are ascertainable from the business records of Defendants.

79. Common Questions of Fact and Law: The questions of law and fact common to the Class Members which predominate over any questions which may affect individual Class

Members include, but are not limited to:

- a) Whether Defendants are responsible for the conduct alleged herein which was uniformly directed at Plaintiff and all members of the Class;
- b) Whether Defendants' misconduct set forth in this complaint demonstrates that Defendants have engaged in unfair, fraudulent, or unlawful business practices with respect to their representations regarding Defendants' HAMP modification program;
- c) Whether Defendants' false and misleading statements concerning their HAMP modification practices and concealment of material facts regarding their HAMP modification practices were likely to deceive reasonable consumers;
- d) Whether Defendants failed to act in good faith regarding Plaintiff's and Class Members' HAMP modifications;
- e) Whether Defendants provided Plaintiff and members of the Class with the required information concerning their HAMP modifications.
- f) Whether Defendants charged Plaintiff and Class Members fees for their HAMP modifications;

- g) Whether Defendants violated 15 U.S.C. § 1692 *et seq.*
- h) Whether Plaintiff and members of the Class are entitled to injunctive relief; and
- i) Whether Plaintiff and members of the Class are entitled to money damages under the same causes of action as the other members of the Class.

80. Typicality: Plaintiff is a member of the Class. Plaintiff's claims are typical of the claims of the Class as the claims arise from the same course of conduct by Defendants and the relief sought is common. Every member of the Class applied for and received a HAMP modification and paid additional interest, fees, and costs because of Defendants' intentional delays and misrepresentations. Each member of the class paid fees for their HAMP modifications. Each of the Class Members have the same or substantially similar claims to Plaintiff's for relief against these practices.

81. Adequacy: Plaintiff is an adequate representative of the Class because his interests do not conflict with the interests of the members of the Class he seeks to represent; he has retained counsel competent and experienced in complex class action litigation and they intend to vigorously prosecute this action. The interests of the members of the Class will be fairly and adequately protected by Plaintiff and his counsel. Defendants have acted in a manner generally applicable to the Class, making relief appropriate with respect to Plaintiff and the members of the Class. The prosecution of separate actions by individual members of the Class would create a risk of inconsistent and varying adjudications.

82. The Class is properly brought and should be maintained as a class action under Rule 23(b) because a class action is superior. Pursuant to Rule 23(b)(3), common issues of law and

fact predominate over any other questions affecting only individual members of the Class. The issues of the Class fully predominate over any individual issue because Defendants have acted on grounds that apply generally to the Class, so that final injunctive relief is appropriate with respect to the Class as a whole. In addition, this class action is superior to other methods for fair and efficient adjudication of this controversy because, *inter alia*:

83. Superiority: A class action is superior to the other available methods for the fair and efficient adjudication of this controversy because:
- a) The joinder of numerous individual members of the Class is impracticable, cumbersome, unduly burdensome, and a waste of judicial and/or litigation resources;
 - b) The individual claims of the members of the Class may be relatively modest compared with the expense of litigating the claim, thereby making it impracticable, unduly burdensome, expensive, if not totally impossible, to justify individual actions;
 - c) When Defendants' liability has been adjudicated, all claims of the members of the Class can be determined by the Court and administered efficiently in a manner far less burdensome and expensive than if it were attempted through filing, discovery, and trial of all individual cases;
 - d) This class action will promote orderly, efficient, expeditious, and appropriate adjudication and administration of claims of the members of the Class;
 - e) Plaintiff knows of no difficulty to be encountered in the management of this action that would preclude its maintenance as a class action;

- f) This class action will assure uniformity of decisions among members of the Class; and
- g) The Class is readily definable and prosecution of this action as a class action will eliminate the possibility of repetitious litigation.

INJUNCTIVE CLASS RELIEF

- 84. Rules 23(b) (1), (2), and (3) contemplate a class action for purposes of seeking class-wide injunctive relief. Since Defendants have acted on grounds that apply generally to the Class, injunctive relief on a Class-wide basis is a viable and suitable solution to remedy their continuing misconduct.
- 85. The injunctive Class is properly brought and should be maintained as a class action under Rule 23(a), satisfying the class action prerequisites of numerosity, commonality, typicality, and adequacy because:
 - 86. Numerosity: Individual joinder of the members of the injunctive Class would be wholly impracticable. Plaintiff believes that Class Members number in the thousands. The precise number and identities of the Class Members are ascertainable from Defendants' business records.
 - 87. Commonality: Questions of law and fact are common to members of the Class. Defendants have acted on grounds that apply generally to the Class. Thus, all members of the Class have a common cause against Defendants to stop their misleading conduct through an injunction. Since the issues presented by this injunctive Class deal exclusively with Defendants' misconduct, resolution of these questions would be necessarily common to the Class. Moreover, there are common questions of law and fact inherent in the resolution of an injunctive Class, including, *inter alia*:

- a. Resolution of the issues presented in the 23(b)(3) Class;
 - b. Whether members of the Class will continue to suffer harm by virtue of Defendants' misrepresentations and deceptive and unlawful practices; and
 - c. Whether, on equitable grounds, Defendants should be prevented from continuing to make misrepresentations and to engage in deceptive and unlawful practices.
88. Typicality: Plaintiff's claims are typical of the claims of the injunctive Class because his claims arise from the same course of conduct. Plaintiff is a typical representative of the Class because, like all members of the injunctive Class, he paid additional interest, fees and costs as a result of Defendants' intentional delays in processing his HAMP application and in granting him a permanent modification, and paid fees for his HAMP modification.
89. Adequacy: Plaintiff will fairly and adequately represent and protect the interests of the injunctive Class. His claims are common to all members of the injunctive Class and he has a strong interest in vindicating his rights. In addition, Plaintiff and the Class are represented by counsel who is competent and experienced in consumer protection, complex litigation and class action litigation.
90. The injunctive Class is properly brought and should be maintained as a class action under Rule 23(b)(2) because Plaintiff seeks injunctive relief on behalf of the members of the Class on grounds generally applicable to the entire injunctive Class. Certification under Rule 23(b)(2) is appropriate because Defendants have acted or refused to act in a manner that applies generally to the injunctive Class. Any final injunctive relief or declaratory relief would benefit the entire injunctive Class as Defendants would be prevented from continuing their misleading, deceptive and unlawful practices.

FIRST CAUSE OF ACTION
VIOLATION OF NEW YORK GBL § 349
(On Behalf of Plaintiff and All Class Members)

91. Plaintiff repeats and realleges each and every allegation contained in all the foregoing paragraphs as if fully set forth herein.
92. New York General Business Law Section 349 (“GBL § 349”) declares unlawful “[d]eceptive acts or practices in the conduct of any business, trade, or commerce or in the furnishing of any service in this state”
93. GBL § 349(h) directs that “any person who has been injured by reason of any violation of [GBL § 349] may bring an action in his own name to enjoin such unlawful act or practice”
94. The conduct of Wells Fargo alleged herein constitutes recurring, “unlawful” deceptive acts and practices in violation of GBL § 349, and as such, Plaintiff and the Class Members seek monetary damages and the entry of preliminary and permanent injunctive relief against Wells Fargo, enjoining them from making misrepresentations regarding HAMP applications and the HAMP modification process, from misrepresenting that they do not charge fees for HAMP modifications, from misrepresenting that they follow HAMP guidelines, and from intentionally extending the duration of the HAMP application process and trial period in order to increase interest, fees, penalties or other costs of HAMP applicants’ loans.
95. There is no adequate remedy at law.
96. Wells Fargo misleadingly, inaccurately and deceptively represented to Plaintiff and Class Members that a HAMP modification could help them and could involve forgiving debt, restructuring payments, and lowering their interest rates and that after their HAMP

application documents were submitted it would take up to 30 days for Wells Fargo to review their documents and that their request would be processed as quickly as possible. Wells Fargo made these misrepresentations with the intention of delaying the process beyond 30 days in order to cause Plaintiff and Class Members to accrue interest, penalties and fees and to increase their loan balances.

97. Wells Fargo misleadingly, inaccurately and deceptively misrepresented to Plaintiff and Class Members that they would receive a permanent modification after they had successfully made the final trial payment specified in their TPP Agreements on the defined Modification Effective Date. Wells Fargo made each of these misrepresentations with the intention of delaying the process beyond the period of time represented in order to cause Plaintiff and Class Members to accrue interest, penalties and fees and to increase their loan balances.
98. Wells Fargo misleadingly, inaccurately and deceptively misrepresented to Plaintiff and Class Members that they would not be charged any fees for a HAMP modification. Wells Fargo made each of these misrepresentations with the intention of charging Plaintiff and Class Members fees for their HAMP modifications.
99. Wells Fargo misleadingly, inaccurately and deceptively misrepresented to Plaintiff and Class Members that the bank administers its modification program pursuant to the HAMP rules. Wells Fargo made each of these misrepresentations with the intention of violating the HAMP rules for the purpose of assessing extra fees, interest and other costs onto the loans of Plaintiff and Class Members.
100. Contrary to what Wells Fargo represented to Plaintiff and Class Members, the bank did not process their HAMP applications within 30 days or as quickly as possible and did not grant

them permanent modifications on the Modification Effective Date after they had fully complied with their TPP Agreements and timely made the final trial payment specified therein.

101. Instead, Wells Fargo intentionally delayed the process in order to increase the interest, fees, penalties and other costs incurred by Plaintiff and Class Members and to increase the balance of their loans and to prevent them from pursuing other options that would have been less costly to them.
102. As a pretext for the delays, Wells Fargo, *inter alia*, repeatedly demanded that Plaintiff and Class Members submit documents that had already been submitted, and submit documents and information that were not necessary or relevant to Plaintiff's and Class Members' qualifications for a HAMP modification.
103. Furthermore, contrary to Wells Fargo's representations, the bank charged Plaintiff and Class Members fees for their HAMP modifications.
104. Wells Fargo also, contrary to its representations, failed to comply with HAMP rules.
105. Wells Fargo's improper consumer-oriented conduct caused interest, fees and penalties to accrue on Plaintiff's and Class Members' loans and caused them to lose out on less expensive options for saving their homes or otherwise minimizing the financial harm they suffered from their inability to make their mortgage payments.
106. The delay also caused Plaintiff and Class Members to fall behind on their mortgages for a longer period of time, and to have negative information about them reported to the credit bureaus for a longer period of time. As a result, they had more difficulty obtaining credit, and any credit they were able to obtain was more expensive than it would have been

otherwise. The increase in the balance of Plaintiff and Class Members' loans also caused them to pay more for taxes and insurance.

107. Wells Fargo made its untrue and/or misleading statements and misrepresentations and engaged in deceptive acts and practices willfully, wantonly, and with reckless disregard for the truth.
108. Wells Fargo' misrepresentations induced the Plaintiff and Class Members to apply for HAMP modifications, enter into TPP Agreements, make payments, forego other less expensive alternatives for saving their homes or to forego other opportunities to minimize the financial harm sustained from their inability to make mortgage payments without a modification, to spend time gathering information and submitting documents to Wells Fargo, to pay fees for their HAMP modifications, to pay additional interest, fees, penalties, costs, taxes and insurance premiums, and to pay more for their loans.
109. Wells Fargo's deceptive and misleading practices constitute deceptive acts and practices in the conduct of its business in violation of New York General Business Law § 349(a) and Plaintiff and Class Members have been damaged thereby.
110. As a result of Wells Fargo's recurring, "unlawful," deceptive acts and practices, Plaintiff and Class Members are entitled to monetary, treble and punitive damages, injunctive relief, restitution and disgorgement of all moneys obtained by means of Wells Fargo's unlawful conduct, interest, and attorneys' fees and costs.

SECOND CAUSE OF ACTION
BREACH OF CONTRACT
(On Behalf of Plaintiff and All Class Members)

111. Plaintiff repeats and realleges each and every allegation contained in all the foregoing paragraphs as if fully set forth herein.

112. Plaintiff and Class Members entered into TPP Agreements with Wells Fargo which were valid, binding and enforceable agreements to permanently modify Plaintiff and Class Members' mortgages after they had made the final trial payments specified in their TPP Agreements on the defined Modification Effective Date.
113. The TPP Agreements expressly evidenced the intent of Plaintiff and Class Members and Wells Fargo to be bound by the terms agreed upon on the date they entered into the TPP Agreements.
114. The TPP Agreements reflect the material and essential terms of Plaintiff's and Class Members' agreements with Wells Fargo.
115. Plaintiff and Class Members timely performed all of their obligations under the TPP Agreements with Wells Fargo as embodied in the TPP Agreements. Pursuant to the TPP Agreements, Wells Fargo was obligated to provide Plaintiff and Class Members with permanent mortgage modifications after they had made the final payment specified by their TPP Agreements on the defined Modification Effect Date. The TPP Agreements also required Wells Fargo to grant Plaintiff and Class Members permanent HAMP modifications without charging them any modification fees. Wells Fargo materially breached its obligations under the TPP Agreements by delaying the date on which Plaintiff and Class Members were granted permanent modifications, and by charging them fees for their HAMP modifications.
116. As a result of Wells Fargo's breach of the TPP Agreements, Plaintiff and Class Members incurred additional interest, fees and penalties, suffered damage to their credit ratings, impaired their ability to obtain credit, increased the cost of any credit available to them and paid more for insurance and taxes. Plaintiff and Class Members suffered and will continue

to suffer reasonable and foreseeable consequential damages resulting from such breaches, including payment of increased interest, longer loan payoff times, higher principal balances, deterrence from seeking other remedies to address their default and/or unaffordable mortgage payments, and other damages for breach of contract.

117. Plaintiff and Class Members have been damaged by Wells Fargo's breach of the TPP Agreements in an amount to be proven at trial.

THIRD CAUSE OF ACTION
FRAUDULENT INDUCEMENT
(On Behalf of Plaintiff and All Class Members)

118. Plaintiff repeats and realleges each and every allegation contained in all the foregoing paragraphs as if fully set forth herein.
119. In its TPP Agreements that it signed and sent to Plaintiff and Class Members, Wells Fargo intentionally misrepresented that if Plaintiff and Class Members made the trial period payments specified therein and fully performed under their TPP Agreements, they would be granted permanent HAMP modifications after making the final specified trial period payment on the defined Modification Effective Date. Wells Fargo also represented to Plaintiff and Class Members that they would not be charged any fees for receiving a HAMP modification.
120. Wells Fargo knew these representations were false at the time it sent the TPP Agreements to Plaintiff and Class Members. Wells Fargo made these misrepresentations to Plaintiff and Class Members with the intention of assessing additional and undisclosed costs, fees, penalties and interest on their loans. To achieve that end Wells Fargo planned to purposefully delay the process of granting permanent HAMP modifications to homeowners, including to Plaintiff and Class Members. Wells Fargo intended to place the

blame for the delays on Plaintiff and Class Members by misrepresenting that they had not submitted all of the required documents or properly completed their HAMP paperwork.

121. Through this scheme devised by Wells Fargo, the bank intended to profit from its receipt of government bailout funds while merely feigning compliance with the HAMP rules. Wells Fargo further intended to use its feigned compliance with the HAMP rules and misrepresentations in the Starter Kit and TPP Agreement to induce homeowners, including Plaintiff and Class Members, into entering into and performing under TPP Agreements with Wells Fargo.
122. Wells Fargo knew that throughout the HAMP application process and trial period, interest, fees and costs would accumulate and would be capitalized onto the balance of Plaintiff's and Class Members' loans once they were granted permanent HAMP modifications. By misrepresenting the duration of the trial period, Wells Fargo misrepresented the amount of costs, fees and penalties that would be charged to Plaintiff and Class Members.
123. Wells Fargo also intended to profit by charging HAMP modification fees to Plaintiff and Class Members despite its multiple conspicuous representations to the contrary. This intention is evidenced in part by Wells Fargo's multiple, conspicuous representations that it does not charge any fees for a HAMP modification in the Starter Kit and TPP Agreement, and its identification of the HAMP modification fees in a footnote on a HAMP modification document that is sent to Plaintiff and Class Members as one document in a stack of many.
124. By representing that a HAMP modification would cost less for Plaintiff and Class Members than Wells Fargo actually planned, the bank intended to induce them into

entering into TPP Agreements and permanent HAMP modification agreements instead of pursuing other less expensive options.

125. These representations were material because they caused Plaintiff and Class Members to pay substantially more for their loans (including costs, fees and penalties), and to pay more for associated taxes and insurance. Wells Fargo also reported Plaintiff and Class Members as delinquent for a longer period of time, which impaired their access to credit and made any credit they could access more expensive.
126. These misrepresentations induced Plaintiff and Class Members into applying for a HAMP modification and into entering into and performing under the TPP Agreements.
127. Plaintiff and Class Members reasonably relied on the representations Wells Fargo made about their permanent HAMP modifications in their TPP Agreements and in the Starter Kit. Wells Fargo was legally obligated to comply with the terms of its TPP Agreements. Wells Fargo also had a legal duty to comply with the rules of the HAMP program.
128. Plaintiff's and Class Members' reliance on these false representations actually and proximately caused them to suffer damages in that they paid extra interest, fees, costs and penalties, the balance of their loans increased, their associated tax liabilities and insurance premiums increased, they made TPP payments using money that could have been used to pursue other avenues of relief, lost time, suffered damage to their credit scores, and lost the opportunity to pursue other avenues for saving their homes and/or credit.
129. Plaintiff and Class Members seek actual damages caused by Wells Fargo's false misrepresentations, punitive damages, interest, costs, and attorneys' fees in an amount to be determined at trial, and an order compelling Wells Fargo to cease its practice of intentionally causing delays in order to increase the fees, interest and costs that it can

charge to homeowners, and to cease making misrepresentations to homeowners regarding the fees it charges for HAMP modifications.

FOURTH CAUSE OF ACTION
VIOLATION OF THE FDCPA 15 U.S.C. § 1692 *et seq.*
(On Behalf of Plaintiff and All Class Members)

130. Plaintiff repeats and realleges each and every allegation contained in all the foregoing paragraphs as if fully set forth herein.
131. Wells Fargo is a debt collector pursuant to 15 U.S.C. § 1692a(6) because the loan was in default or alleged to be in default at the time it was transferred to them for servicing.
132. Gross Polowy Orlans is a debt collector pursuant to 15 U.S.C. § 1692a(6). The Act applies to law firms, including when they engage in litigation activity, and Gross Polowy Orlans regularly engages in debt collection activity.
133. 15 U.S.C. § 1692f provides that “[a] debt collector may not use unfair or unconscionable means to collect or attempt to collect any debt. Without limiting the general application of the foregoing, the following conduct is a violation of this section: (1) The collection of any amount (including any interest, fee, charge, or expense incidental to the principal obligation) unless such amount is expressly authorized by the agreement creating the debt or permitted by law”
134. 15 U.S.C. § 1692e provides that “[a] debt collector may not use any false, deceptive, or misleading representation or means in connection with the collection of any debt. Without limiting the general application of the foregoing, the following conduct is a violation of this section: . . . (4) The representation or implication that nonpayment of any debt will result in the arrest or imprisonment of any person or the seizure, garnishment, attachment, or sale of any property or wages of any person unless such action is lawful and the debt

collector or creditor intends to take such action[;] (5) The threat to take any action that cannot legally be taken or that is not intended to be taken[;] . . . (10) The use of any false representation or deceptive means to collect or attempt to collect any debt or to obtain information concerning a consumer.”

135. The foregoing acts and omissions of Wells Fargo and Gross Polowy Orlans constitute numerous and multiple violations of the Fair Debt Collection Practices Act (“FDCPA”) including, but not limited to, provisions of 15 U.S.C. § 1692e and 15 U.S.C. § 1692f.
136. Wells Fargo and Gross Polowy Orlans used unfair and unconscionable means to collect and attempt to collect a debt in violation of 15 U.S.C. § 1692f by collecting and attempting to collect HAMP modification fees from Plaintiff and Class Members. Wells Fargo represented in the Starter Kit and TPP Agreements that Plaintiff and Class Members would not be charged any fees for receiving a HAMP modification. The HAMP modification fees were also forbidden by the HAMP rules.
137. Wells Fargo and Gross Polowy Orlans used false, deceptive, and misleading representations in connection with a debt in violation of 15 U.S.C. § 1692e when they threatened and initiated foreclosure proceedings against Plaintiff and Class Members. Pursuant to the HAMP rules, Wells Fargo was forbidden from initiating foreclosure proceedings against HAMP applicants who had not been determined to be ineligible for the program or had not failed to perform under a TPP Agreement. Plaintiff and Class Members were eligible for the HAMP program, had fully complied and were entitled to a HAMP modification.
138. Wells Fargo and Gross Polowy Orlans used unfair and unconscionable means to collect and attempt to collect a debt in violation of 15 U.S.C. § 1692f by intentionally delaying the

HAMP application and modification process in order to increase the fees, interest, costs and penalties charged to Plaintiff and Class Members, and also violated 15 U.S.C. § 1692e by making false representations in order to collect these increased fees, interest, costs and penalties.

139. Plaintiff and Class Members have been and continue to be damaged by the Defendants' violations of 15 U.S.C. § 1692 *et seq.* Plaintiff and Class Members incurred legal costs and fees, interest, penalties and other costs as a result of Defendants' violations of 15 U.S.C. § 1692 *et seq.*
140. As a result of each and every one of Defendants' violations of the 15 U.S.C. § 1692 *et seq.*, Plaintiff and Class Members are entitled to actual damages, statutory damages, and reasonable attorneys' fees and costs.

FIFTH CAUSE OF ACTION
PROMISSORY ESTOPPEL
(On Behalf of Plaintiff and All Class Members)

141. Plaintiff repeats and realleges each and every allegation contained in all the foregoing paragraphs as if fully set forth herein.
142. Wells Fargo unambiguously promised to Plaintiff and Class Members that if they applied for a HAMP modification and submitted their documents that Wells Fargo would review them within 30 days and process their request for a HAMP modification as quickly as possible.
143. Wells Fargo's promise was intended to induce Plaintiff and Class Members into relying on it so they would make payments and/or refrain from pursuing other options for saving their homes or minimizing the financial harm caused by their inability to make their mortgage payments without a modification.

144. Plaintiff and Class Members indeed relied on Wells Fargo's promises by submitting HAMP applications, submitting the requested documents, fully complying with Wells Fargo's repeated requests for documents and information and otherwise fully complying throughout the HAMP application process, making payments and/or refraining from pursuing other options for saving their homes or otherwise minimizing the harm caused by their inability to make their mortgage payments without a modification.
145. Given Wells Fargo's representations Plaintiff's and Class Members' reliance was reasonable.
146. Plaintiff's and Class Members' reliance was to their detriment. Plaintiff and Class Members incurred interest, penalties and fees as Wells Fargo delayed, made payments and/or lost out on other opportunities to save their homes and/or remedy their inability to make their mortgage payments without a modification, and suffered extended damage to their credit scores which impaired their ability to access credit and increased the cost of any credit they were able to obtain.
147. As a result of Wells Fargo's behavior Plaintiff and Class Members are entitled to damages, interest, costs and attorneys' fees in an amount to be determined at trial.

SIXTH CAUSE OF ACTION
PROMISSORY ESTOPPEL
(On Behalf of Plaintiff and All Class Members)

148. Plaintiff repeats and realleges each and every allegation contained in all the foregoing paragraphs as if fully set forth herein.
149. Wells Fargo unambiguously promised to Plaintiff and Class Members that if they accepted the bank's offer to enter into a TPP Agreement and fully performed all of the terms therein, Wells Fargo would grant them a permanent modification after the final trial payment

specified therein had been made on the defined Modification Effective Date and that they would not be charged any fees for their HAMP modifications.

150. Wells Fargo's promise was intended to induce Plaintiff and Class Members into relying on it to get them to make payments, perform their obligations under the TPP Agreements, and to refrain from pursuing other options for saving their homes or otherwise minimizing the financial harm caused by their inability to make their mortgage payments without a modification.
151. Plaintiff and Class Members indeed relied on Wells Fargo's promise by making payments, fully complying with the terms of their TPP Agreements, and by refraining from pursuing other options for saving their homes or otherwise minimizing the financial harm caused by their inability to make their mortgage payments without a modification.
152. Given Wells Fargo's representations, Plaintiff's and Class Members' reliance was reasonable.
153. Plaintiff's and Class Members' reliance was to their detriment. Plaintiff and Class Members incurred interest, penalties, fees and costs as a result of Wells Fargo's intentional delays and intentional assessment of HAMP modification fees onto their loans. Plaintiff and Class Members must also pay more in taxes and for insurance premiums as a result of the increase in their loan balances. Furthermore, Plaintiff and Class Members suffered extended damage to their credit scores which impaired their ability to access credit and increased the cost of any credit they are able to obtain. Plaintiff and Class Members also lost out on other less expensive options for saving their homes and/or otherwise minimizing the financial harm caused by their inability to make their mortgage payments without a HAMP modification.

154. As a result of Well Fargo's behavior, Plaintiff and Class Members are entitled to damages, interest, costs and attorneys' fees in an amount to be determined at trial.

SEVENTH CAUSE OF ACTION
VIOLATION OF NEW YORK CPLR. § 3408(f)
(On Behalf of Plaintiff and All Class Members)

155. Plaintiff repeats and realleges each and every allegation contained in all the foregoing paragraphs as if fully set forth herein.
156. CPLR § 3408(a) provides, in relevant part, as follows:
- [i]n any residential foreclosure action involving a home loan . . . in which the [homeowner] is a resident of the property subject to foreclosure . . . the court shall hold a mandatory settlement conference within sixty days after the date when proof of service upon such [homeowner] is filed with the county clerk for the purpose of holding settlement discussions pertaining to the relative rights and obligations of the parties under the mortgage loan documents, including, but not limited to . . . help[ing] the [homeowner] avoid losing his or her home, and evaluating the potential for a resolution in which payment schedules or amounts may be modified or other workout options may be agreed to[.]
157. CPLR § 3408(f) requires that “[b]oth the [lender] and [the homeowner] shall negotiate in good faith.”
158. The conduct of Defendants alleged herein constitutes a breach of the duty of good faith pursuant to CPLR § 3408(f).
159. Defendants in bad faith and for the purpose of increasing the interest, fees, penalties and other costs assessed on Plaintiff and Class Members' loans, intentionally failed to consider and evaluate Plaintiff and Class Members' HAMP applications, delayed and/or failed to

reach or inform Plaintiff and Class Members of their decision regarding their HAMP applications, made incorrect and false calculations, prolonged trial periods, repeatedly demanded documents and information that had already been submitted and/or that was unnecessary and irrelevant to the Plaintiff's and Class Members' qualifications for a HAMP modification, sent Plaintiff and Class Members conflicting and contradictory communications and failed to timely attend all settlement conferences.

160. Furthermore, Wells Fargo sent their counsel, Gross Polowy Orlans, to settlement conferences without authorization to dispose of the foreclosure case.
161. Defendants acted willfully and wantonly and with a design to defraud and to seek an unconscionable advantage.
162. As a result of Defendants' intentional failure to negotiate in good faith, Plaintiff and Class Members were assessed additional interest, penalties, fees and other costs that were added to the balance of their loans.
163. As a result of Defendants' bad faith behavior Plaintiff and Class Members are entitled to monetary and punitive damages, injunctive relief, restitution and disgorgement of all moneys obtained by means of Defendants' bad faith behavior, interest, and attorneys' fees and costs.

EIGHTH CLAIM FOR RELIEF
COMMON LAW UNJUST ENRICHMENT
(On Behalf of Plaintiff and All Class Members)

164. Plaintiff repeats and realleges each and every allegation contained in all the foregoing paragraphs as if fully set forth herein.
165. Plaintiff, on behalf of himself and all Class Members, brings a common law claim for unjust enrichment.

166. Because of Defendants' misrepresentations and deceptive and unlawful practices Plaintiff and Class Members accrued interest, fees, penalties and other costs.
167. Defendants' unlawful conduct as described in this Complaint allowed Defendants to knowingly realize substantial revenues to the detriment or impoverishment of Plaintiff and Class Members and to Defendants' benefit and enrichment. Defendants have thereby violated the fundamental principles of justice, equity, and good conscience.
168. Plaintiff and Class Members conferred significant financial benefits and paid substantial compensation to Defendants as a result of Defendants' misrepresentations and deceptive and unlawful practices.
169. Under New York's common law principles of unjust enrichment, it is inequitable for Defendants to retain the benefits conferred by Plaintiff's and Class Members' overpayments.
170. Plaintiff and Class Members seek disgorgement of all profits resulting from such overpayments and establishment of a constructive trust from which Plaintiff and Class Members may seek restitution.

JURY DEMAND

Plaintiff demands a trial by jury on all issues.

WHEREFORE, Plaintiff, on behalf of himself and the Class, prays for judgment as follows:

- (a) Declaring this action to be a proper class action and certifying Plaintiff as the representative of the Class under Rule 23 of the FRCP;
- (b) Entering preliminary and permanent injunctive relief against Wells Fargo, directing Wells Fargo to correct its practices and comply with GBL § 349;

- (c) Awarding monetary, treble and punitive damages pursuant to GBL § 349, CPLR § 3408, 15 U.S.C. § 1692 *et seq.* and state common law;
- (d) Awarding Plaintiff and Class Members their costs and expenses incurred in this action, including reasonable allowance of fees for Plaintiff's attorneys and experts, and reimbursement of Plaintiff's expenses; and
- (e) Granting such other and further relief as the Court may deem just and proper.

Dated: April 23, 2015

THE SULTZER LAW GROUP, P.C.

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