DEMETRIOS A. BOUTRIS
California Corporations Commissioner
VIRGINIA JO DUNLAP (CA Bar No.142221)
Assistant Commissioner
DANIEL P. O'DONNELL (CA Bar No. 177872)
Corporations Counsel
1515 K Street, Suite 200
Sacramento, California 95814
Telephone: (916) 322-6998

Attorneys for People of the State of California

FILED
ENDORSED
03 AUG 13 PM 2:10
LEGAL PROCESS #1

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SACRAMENTO

THE PEOPLE OF THE STATE OF CALIFORNIA, by and through the CALIFORNIA CORPORATIONS COMMISSIONER, Plaintiff, vs. WELLS FARGO FINANCIAL CALIFORNIA, INC., a Colorado Corporation, and DOES 1 through 10, Defendants.	Case No.: 03AS00011 **SECOND AMENDED COMPLAINT FOR PERMANENT INJUNCTION, CIVIL PENALTIES AND ANCILLARY RELIEF** (Financial Code §§ 22161, 22332, 22337, 22713, 22750 and 22752; Title 10, California Code of Regulations §§1426, 1556)

Demetrios A. Boutris, California Corporations Commissioner, acting to protect the public from unlawful finance lending activity, brings this action in the public interest in the name of the People of the State of California, and alleges as follows:

SUMMARY OF ALLEGATIONS

On information and belief Plaintiff alleges Defendants marketed and distributed in California "guaranteed loan offers" consisting of actual checks, along with loan documents that purported to disclose the cost of borrowing the money. These guaranteed loan offers created a loan transaction upon negotiation of the check by the customer. The draft loan is also known as an "instant loan check" or "live check" and is a negotiable instrument.

However, on more than 15,000 of these guaranteed loan offers, Wells Fargo Financial California charged customers higher rates and/or fees than it disclosed in the

State of California - Department of Corporations

loan documents. The first time the Department discovered these violations in July 2001, the Department of Corporations required Wells Fargo Financial to refund the overcharges to its customers. Wells Fargo Financial assured the Department at that time that similar errors would not occur in the future.

Contrary to Wells Fargo Financial's representations, the Department of Corporations discovered in a regulatory examination in April 2002 that Wells Fargo Financial continued to violate the law by overcharging the same customers on the same loans. The total amount of overcharges to date is $871,010.22.

VENUE AND JURISDICTION

1. The Commissioner files this complaint and institutes these proceedings pursuant to Financial Code sections 22713, 22750 and 22752 for injunctive, declaratory and other relief due to violations by the defendants and their co-conspirators of the California Finance Lenders Law (Financial Code sections 22000 *et seq.*) Plaintiff also seeks civil penalties pursuant to Financial Code section 22713 and other ancillary relief as is appropriate.

2. Jurisdiction and venue as to each defendant is proper in this judicial district pursuant to the provisions of these Financial Code sections and sections 395(a) and 395.5 of the California Code of Civil Procedure. Each defendant maintains an office, has an agent, is found, and/or transacts business, directly or indirectly in the County of Sacramento. The Plaintiff's cause of action arose in part within the County of Sacramento, and a number of the transactions at issue took place in this County. Many of the unlawful acts hereinafter alleged directly affected investors within the State of California and, more particularly, within the County of Sacramento.

DEFENDANTS

3. Defendant Wells Fargo Financial California, Inc., a Colorado corporation, and Does 1 through 10, (collectively referred to hereafter as "Wells Fargo Financial") are licensed finance lenders with the California Department of Corporations (hereafter referred to as "the Department"), and at all times mentioned herein engaged in unlawful

State of California - Department of Corporations

activity, described below, conducted in various counties throughout the State of California. Plaintiff is informed and believes, and thereon alleges that Wells Fargo Financial engaged in violations of the Financial Code, and did so willfully.

FACTUAL BACKGROUND

4. At all relevant times herein, Wells Fargo Financial marketed a loan product called a "guaranteed loan offer" which is a printed advertisement containing an actual check which when negotiated by the customer creates a loan transaction. These "guaranteed loan offers" are regulated under the California Financial Code, and the regulations promulgated thereunder, including California Code of Regulations, Title 10, Chapter 3, Section 1556. "Guaranteed loan offers" are also called "draft loans," "instant loan checks" or "live checks." (These loan products are hereinafter referred to as "draft loans.")

5. Beginning at a time unknown to the Department, but at least since July 1, 1999, Wells Fargo Financial distributed these draft loans to customers throughout California, along with additional materials which purportedly explained the terms of the loan. (The draft loan and the additional materials are referred to herein as the "loan documents." The check portion is referred to throughout as the "draft.") Once a customer endorsed and cashed the draft, the parties were bound by the terms specified in the loan documents. These loan documents purported to disclose to customers the cost of borrowing the money, expressed in terms of an annual percentage rate and an agreed rate of charge per month. (Hereinafter, "agreed monthly rate of charge.")

6. Wells Fargo Financial distributed an unknown number of these draft loans throughout California, in several versions each containing different terms and/or loan amounts. Each version was labeled with a form number and other identifying information.

7. During a July 2001 regulatory examination of some of the branches of Wells Fargo Financial, the Department discovered that, on some of these draft loans, Wells Fargo Financial inaccurately disclosed the agreed monthly rate of charge and/or the

State of California - Department of Corporations

annual percentage rate in the loan documents, and was assessing interest at a different and higher rate than was disclosed in the loan documents.

8. On or around July 20, 2001, the Department directed Wells Fargo Financial to conduct a self-audit on all draft loans. This first self-audit revealed that Wells Fargo Financial had overcharged over 15,000 customers on at least six versions of these draft loans.

9. In an August 20, 2001 letter, and in communications with the Department, Wells Fargo Financial stated that on certain draft loans, the monthly rate of charge in Wells Fargo Financial's computer system was higher than the agreed monthly rate of charge disclosed in the loan documents, and the customers were being charged at the higher rate. At or around that time, Wells Fargo Financial assured the Department it would re-amortize its customers' accounts to reflect the agreed monthly rate of charge disclosed in the loan documents, and refund any excess interest already paid.

10. In a letter sent on or around January 17, 2002, Wells Fargo Financial represented to the Department that it had given refunds totaling $532,988.35 to those customers who had been overcharged. It also noted that most customers received two refunds because of an error in the calculation discovered after the refunds had been initially completed. Wells Fargo Financial also represented to the Department that it had put procedures in place to confirm the accuracy of all disclosures related to these draft loans, and to ensure that similar errors would not occur in the future.

11. In light of these assurances and the payment of the refunds, the Department elected to take no further remedial action at that time, although it indicated to Well Fargo Financial that future examinations were likely.

12. On or around April 15, 2002, the Department began another routine company-wide regulatory examination of Wells Fargo Financial, during which Department examiners discovered that Wells Fargo Financial continued to charge the same customers on the same draft loans a different and higher rate than was disclosed in the loan documents. As a result, Wells Fargo Financial began a second self-audit.

State of California - Department of Corporations

13. On or around July 10, 2002, Wells Fargo Financial submitted its second self-audit report establishing that it had overcharged the same customers an additional $338,023.63, and represented it would again refund the overcharged amount to these customers.

14. In an August 29, 2002 e-mail to the Department, Wells Fargo Financial disclosed that after the first self-audit, it had attempted to correct its computer system that manages these accounts to reflect the agreed monthly rate of charge disclosed in the loan documents. In fact, whatever action Wells Fargo Financial took after the first self-audit, if any, did not correct the error and Wells Fargo Financial, at least up until that point, continued to charge customers at a different and higher rate than was disclosed in the loan documents.

15. In its August 29, 2002 e-mail, Wells Fargo Financial also stated it had now corrected their computer program, and would again re-amortize its customers' accounts to reflect the agreed monthly rate of charge disclosed in the loan documents, as well as refund any excess interest already paid.

16. Wells Fargo Financial has overcharged its customers a total of $871,010.22, and continued to overcharge them despite having knowledge that it was charging customers more than the agreed monthly rate of charge disclosed in the loan documents and despite representing to the Department that it would correct the problem.

FIRST CAUSE OF ACTION

INACCURATE DISCLOSURES
(Financial Code §§22332, 22337, Title 10,California Code of Regulations §1556)

17. Plaintiff realleges and incorporates herein by reference paragraphs 1 through 16 inclusive, as though set forth at length herein.

18. Financial Code section 22332 states:

> "No licensee shall take any note or promise to pay that does not accurately disclose the actual amount of the loan, the time for which it is made, and the agreed rate of charge or the annual percentage rate pursuant to Regulation Z promulgated by the Board of Governors of the Federal Reserve System."

State of California - Department of Corporations

19. Financial Code section 22337(a) states:

"Each finance lender shall: (a) Deliver or cause to be delivered to the borrower, or any one thereof, at the time the loan is made, a statement showing in clear and distinct terms the name, address, and license number of the finance lender and the broker, if any. The statement shall show the date, amount, and maturity of the loan contract, how and when repayable, the nature of the security for the loan, if any, *and the agreed rate of charge or the annual percentage rate* pursuant to Regulation Z promulgated by the Board of Governors of the Federal Reserve System (12 C.F.R. 226) (emphasis added.)

20. California Code of Regulations, Title 10, Article 3, section 1556 provides:

"(e) The finance company shall comply with the terms stated in the offer when the offer is accepted by the prospective borrower or borrowers."

21. Financial Code section 22713 states:

"(a) Whenever the commissioner believes...that any person has violated or is about to violate a provision of this division...the commissioner may, in the commissioner's discretion, bring an action...against that person to enjoin that person from continuing that violation or doing any act in furtherance of the violation. Upon a proper showing, a permanent or preliminary injunction, restraining order, or writ of mandate shall be granted and other ancillary relief may be granted as appropriate.

(b) If the commissioner determines that it is in the public interest, the commissioner may include in any action authorized by subdivision (a) a claim for ancillary relief, including, but not limited to, a claim for restitution, disgorgement, or damages on behalf of the persons injured by the act or practice constituting the subject matter of the action. The court shall have jurisdiction to award additional relief."

22. Financial Code section 22752 states:

"(a) If any provision of this division is violated in the making or collection of a loan, for any reason other that the willful act of the licensee, the licensee shall forfeit all interest and charges on the loan and may collect or receive only the principal amount of the loan."

(b) Subdivision (a) shall not apply to a violation if (1) the licensee shows by a preponderance of evidence that the violation was not intentional and resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adapted to avoid any such error, and (2) within 30 days of discovering the error the licensee notifies the borrower of the error and rectifies the error by making the appropriate changes in the documents or account and by taking

State of California - Department of Corporations

other action necessary to correct the error."

23. Wells Fargo Financial, a licensed finance lender, was required under section 22332 to accurately disclose the agreed monthly rate of charge or the annual percentage rate. Since Wells Fargo Financial chose to disclose both an agreed monthly rate of charge and the annual percentage rate in its loan documents, it was required to accurately disclose both. Similarly, under section 22337(a), Wells Fargo Financial was required to deliver to the borrower a statement showing in clear and distinct terms the agreed rate of charge or the annual percentage rate. Since Wells Fargo Financial chose to disclose both terms, it was required to provide to its borrowers a statement clearly and distinctly showing both terms.

24. Further, under Title 10, section 1556(e), Wells Fargo Financial was obligated to comply with all the terms disclosed in the loan documents when the customers accepted the offer by cashing the drafts. After discovering the inaccurate disclosures in or around July 2001, Wells Fargo Financial, attempted to correct the error, but did not do so until after the second self-audit began sometime after April 15, 2002, almost one year later. By inaccurately disclosing the agreed monthly rate of charge and/or the annual percentage rate in the loan documents, Wells Fargo Financial violated the California Finance Lender's Law, specifically sections 22332, 22337(a) and Title 10, Code of Regulations section 1556(e).

25. Wells Fargo Financial's pattern of conduct, as set forth above, demonstrates the necessity for granting permanent injunctive and ancillary relief restraining such and similar acts in violation of sections 22332, 22337(a) and Code of Regulations section 1556(e), and providing restitution or disgorgement to borrowers, as provided in section 22713.

26. Under 22752(a), Wells Fargo Financial shall forfeit all interest and charges on the loan because it violated provisions of the Finance Lenders law, such as sections 22306, 22337(a), and Code of Regulations section 1556(e), in the making or collection of

State of California - Department of Corporations

loans, and because it did not rectify the error - that is, it continued to charge customers more than the agreed monthly rate of charge disclosed in the loan documents such that it was not accurately disclosing the agreed monthly rate of charge and/or the annual percentage rate, and it was not complying with the terms stated in the offer - within 30 days of discovering the error.

WHEREFORE, Plaintiff prays for judgment against Wells Fargo Financial, as more fully set forth below.

SECOND CAUSE OF ACTION

FALSE, MISLEADING OR DECEPTIVE STATEMENTS
(Financial Code §§22161)

27. Plaintiff realleges and incorporates herein by reference paragraphs 1 through 26 inclusive, as though set forth at length herein.

28. Financial Code section 22161 states:

> "No person shall advertise, print, display, publish, distribute, or broadcast, or cause or permit to be advertised, printed, displayed, published, or distributed, or broadcast in any manner, any statement or representation with regard to the business subject to the provisions of this division, including the rates, terms, or conditions for making or negotiating loans, that is false, misleading, or deceptive, or that omits material information that is necessary to make the statements not false, misleading or deceptive,..."

29. Financial Code section 22752 states:

> "(a) If any provision of this division is violated in the making or collection of a loan, for any reason other that the willful act of the licensee, the licensee shall forfeit all interest and charges on the loan and may collect or receive only the principal amount of the loan."
>
> (b) Subdivision (a) shall not apply to a violation if (1) the licensee shows by a preponderance of evidence that the violation was not intentional and resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adapted to avoid any such error, and (2) within 30 days of discovering the error the licensee notifies the borrower of the error and rectifies the error by making the appropriate changes in the documents or account and by taking other action necessary to correct the error."

30. Wells Fargo Financial violated section 22161 each time it distributed statements or representations in connection with these draft loans, including the loan

State of California - Department of Corporations

documents, monthly statements, communications with customers, among other things, that contained inaccurate disclosure of the loan terms, such as the agreed monthly rate of charge and/or the annual percentage rate.

31. Wells Fargo Financial's pattern of conduct, as set forth above, demonstrates the necessity for granting permanent injunctive and ancillary relief restraining such and similar acts in violation of section 22161, and providing restitution or disgorgement to investors, as provided in section 22713.

32. Further, under section 22752(a), Wells Fargo Financial shall forfeit all interest and charges on the loan because it violated provisions of the Finance Lenders Law, namely section 22161, in the making or collection of loans, and because it did not rectify the error - that is, it continued to charge customers more than the agreed monthly rate of charge disclosed in the loan documents such that it was not accurately disclosing the agreed monthly rate of charge and/or the annual percentage rate, and it was not complying with the terms stated in the offer - within 30 days of discovering the error.

WHEREFORE, Plaintiff prays for judgment against Wells Fargo Financial, as more fully set forth below.

THIRD CAUSE OF ACTION

WILLFUL VIOLATIONS
(Financial Code §§22161, 22332, 22337, Title 10,California Code of Regulations §§1426, 1556)

33. Plaintiff realleges and incorporates herein by reference paragraphs 1 through 32 inclusive, as though set forth at length herein.

34. California Code of Regulations, Title 10, Article 3, section 1426 provides: "A finance company shall maintain its books, accounts and records in accordance with generally accepted accounting principles and good business practice."

35. Financial Code section 22713 states:

> "(c) Any person who willfully violates any provisions of this division, or who willfully violates any rule or order adopted pursuant to this division, shall be liable for a civil penalty not to exceed two thousand five hundred dollars ($ 2,500) for each violation, which shall be assessed and recovered in a civil action brought in the

State of California - Department of Corporations

name of the people of the State of California by the commissioner in any court of competent jurisdiction...

36. Financial Code section 22750 states:

"(b) If any provision of this division is willfully violated in the making or collection of a loan, the contract of loan is void, and no person has any right to collect or receive any principal, charges, or recompense in connection with the transaction."

37. Despite being put on notice by the Department that it had made inaccurate disclosures in the loan documents, and had overcharged more than 15,000 customers prior to the first self-audit, and despite its assurances it had implemented procedures to ensure similar errors would not occur again, Well Fargo Financial continued make inaccurate disclosures in the loan documents, and continued to overcharge its customers out of compliance with the terms stated in the loan documents, in violation of sections 22332, 22337(a) and Code of Regulations sections 1556(e).

38. Wells Fargo Financial did not maintain its books, accounts and records related to these draft loans in accordance with generally accepted accounting principles and good business practices, did not maintain good business practices in the creation, distribution and management of these loan documents and/or draft loans, and did not maintain procedures reasonably calculated to avoid the multiple errors that occurred in the loan documents and/or with these draft loans, to the detriment of consumers, and in violation of Code of Regulations section 1426.

39. Wells Fargo Financial, despite being put on notice by the Department that it had made inaccurate disclosures in the loan documents, and had overcharged customers, and despite its assurances it had implemented procedures to ensure similar errors would not occur again, continued to distribute statements and/or representations containing inaccurate disclosure of the loan terms, such as the agreed monthly rate of charge and/or the annual percentage rate, in violation of section 22161.

40. Wells Fargo Financial's prior knowledge of inaccurate disclosures in the loan documents and that it overcharged customers, together with its maintenance of business practices and procedures that did not rectify the known error and led to

State of California - Department of Corporations

continued violations, establishes that Wells Fargo Financial acted willfully in violation of section 22713.

41. Wells Fargo Financial's pattern of conduct, as set forth above, demonstrates the necessity for granting permanent injunctive and ancillary relief restraining such and similar acts in violation of sections 22332, 22161, and Code of Regulation sections 1426 and 1556, and imposing appropriate civil penalties, as provided in section 22713.

42. In addition, under section 22750, all draft loans still in existence after the first self-audit, where Wells Fargo Financial continued to make inaccurate disclosures and overcharge customers, should be considered void, and Wells Fargo Financial should collect no further payments.

WHEREFORE, Plaintiff prays for judgment against Wells Fargo Financial, as set forth below.

PRAYER

WHEREFORE, Plaintiff prays for judgment against Wells Fargo Financial, as follows:

1. That pursuant to Financial Code section 22713 defendant Wells Fargo Financial and all Doe defendants and their agents, servants, employees, associates, officers, representatives, and all persons acting under or in concert with or for them, with actual or constructive notice of any injunction or restraining order issued in this matter, shall be enjoined and restrained from violating section 22332 and from making inaccurate disclosures in the loan documents associated with the draft loans at issue.

2. That pursuant to Financial Code section 22713 defendant Wells Fargo Financial and all Doe defendants and their agents, servants, employees, associates, officers, representatives, and all persons acting under or in concert with or for them, with actual or constructive notice of any injunction or restraining order issued in this matter, shall be enjoined and restrained from violating section 22337 and from not clearly and distinctly showing terms of the loan in the loan documents associated with the draft loans

State of California - Department of Corporations

at issue.

3. That pursuant to Financial Code section 22713 defendant Wells Fargo Financial and all Doe defendants and their agents, servants, employees, associates, officers, representatives, and all persons acting under or in concert with or for them, with actual or constructive notice of any injunction or restraining order issued in this matter, shall be enjoined and restrained from violating Code of Regulations section 1556(e), and from not complying with the terms stated in the loan documents at the time the loan offer was accepted by their customers when they cashed the drafts.

4. That pursuant to Financial Code section 22713 defendant Wells Fargo Financial and all Doe defendants and their agents, servants, employees, associates, officers, representatives, and all persons acting under or in concert with or for them, with actual or constructive notice of any injunction or restraining order issued in this matter, shall be enjoined and restrained from violating section 22161, and from advertising, printing, displaying, publishing, distributing, or broadcasting, or causing or permitting to be advertised, printed, displayed, published, or distributed, or broadcast in any manner, any statement or representation with regard to the business subject to the provisions of the Finance Lenders Law, including the rates, terms, or conditions for making or negotiating loans, that is false, misleading, or deceptive, or that omits material information that is necessary to make the statements not false, misleading or deceptive.

5. That pursuant to Financial Code section 22713 defendant Wells Fargo Financial and all Doe defendants and their agents, servants, employees, associates, officers, representatives, and all persons acting under or in concert with or for them, with actual or constructive notice of any injunction or restraining order issued in this matter, shall be enjoined and restrained from violating Code of Regulations section 1426, and from not maintaining its books, accounts and records in accordance with generally accepted accounting principles and good business practices.

6. That pursuant to Financial Code section 22752, Wells Fargo Financial shall forfeit all interest and charges on the loan and may collect only the principal amount of

State of California - Department of Corporations

the loan, returning said interest and charges to the borrowers.

7. That pursuant to Financial Code section 22713 Wells Fargo Financial be assessed a civil penalty in an amount not to exceed Two Thousand Five Hundred Dollars ($2,500) for each separate willful violation of Financial Code section 22161, 22332, 22337, and Code of Regulations section 1426 and/or 1556 committed by Wells Fargo Financial as alleged in the Third Cause of Action, according to proof at trial.

8. That pursuant to Financial Code section 22750, Wells Fargo Financial's draft loans be considered void because their violations were willful, and they shall have no right to collect or receive any principal, charges or recompense in connection with these transactions.

9. That Plaintiff, the People, recover their costs of suit herein, including costs of investigation.

10. For such and further relief as the court may deem just and proper.

Dated: August 13, 2003

DEMETRIOS A. BOUTRIS
California Corporations Commissioner

By: _____
DANIEL P. O'DONNELL
Attorney for Plaintiff
People of the State of California

State of California - Department of Corporations