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ELECTRONICALLY FILED
Superior Court of California,
County of San Diego
04/25/2023 at 01:16:00 PM
Clerk of the Superior Court
By Cheyenne Preston, Deputy Clerk

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10 SUPERIOR COURT OF CALIFORNIA
11 COUNTY OF SAN DIEGO
12

13 MICHAEL STOFF, an individual, on behalf of
himself and all others similarly situated,
14
Plaintiff,
15
vs.
16 WELLS FARGO BANK, N.A. and DOES 1
17 through 10,
18 Defendants.
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20

Case No. 37-2020-00020808-CU-BT-CTL
Assigned for All Purposes to:
Hon. Katherine Bacal
Dept. C-69

**DEFENDANT WELLS FARGO BANK,
N.A.'S ANSWER TO PLAINTIFF'S
THIRD AMENDED COMPLAINT**

Action Filed: June 18, 2020
Trial: TBD

21 In answer to the Third Amended Complaint filed March 23, 2023 (“Complaint” or “TAC”)
22 by Plaintiff Michael Stoff (“Plaintiff”), Defendant WELLS FARGO BANK, N.A. (“Wells Fargo”)
23 hereby responds as follows:

24 **GENERAL DENIAL**

25 Pursuant to Code of Civil Procedure section 431.30(d), Wells Fargo generally and
26 specifically denies each and every allegation contained in the Complaint. Wells Fargo further
27 denies that Plaintiff, any putative class member, or any other person or entity has sustained any
28 injuries, damages, losses and/or detriment by reason of any act or omission on the part of Wells

1 Fargo, or on the part of any agent, servant, employee, representative, officer, director, affiliate, or
2 partner of Wells Fargo, and denies that Plaintiff or anyone has been damaged in any amount
3 whatsoever. This paragraph is incorporated by reference into each and every affirmative defense
4 set forth below.

5 **AFFIRMATIVE DEFENSES**

6 Without taking on the burden of proof where it belongs to Plaintiff, as separate and distinct
7 affirmative defenses to the Complaint and to each allegation contained therein, Wells Fargo
8 hereby alleges the following affirmative defenses:

9 **FIRST AFFIRMATIVE DEFENSE**

10 **(Failure to State a Claim for Relief)**

11 1. The Complaint fails to state facts sufficient to constitute a claim for relief against
12 Wells Fargo for violation of the California Consumer Credit Reporting Agencies Act, California
13 Civil Code § 1785.1 *et seq.* (“CCRAA”).

14 **SECOND AFFIRMATIVE DEFENSE**

15 **(Lack of Standing)**

16 2. Plaintiff and putative class members lack standing to pursue the claim alleged
17 because he/they suffered no injury in fact as a result of the challenged conduct.

18 **THIRD AFFIRMATIVE DEFENSE**

19 **(CCRAA Inapplicable Outside California)**

20 3. Plaintiff brings a single claim against Wells Fargo for alleged violation of the
21 CCRAA on behalf of himself and a putative nationwide class, including borrowers who live in
22 states other than California. (TAC ¶ 73.) As a matter of law, other states’ citizens cannot assert
23 claims under California’s CCRAA. California statutes do not apply extraterritorially absent clear
24 language in the statute or legislative history that establishes a contrary intent. Neither the
25 language of this statute nor its legislative history supports extraterritorial application of the
26 CCRAA. To the contrary, the CCRAA explicitly protects only California residents.

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FOURTH AFFIRMATIVE DEFENSE

(Claim Barred by Contract / Inability to Apply CCRAA to Borrowers Whose Mortgage Agreements Elect Non-California Law)

4. Plaintiff’s CCRAA claim cannot be advanced on behalf of a putative nationwide class because non-California borrowers agreed in the security instruments governing their relationships with Wells Fargo that the instruments would be governed by the law of the jurisdiction in which their properties are located and this contractual choice of law must be honored.

FIFTH AFFIRMATIVE DEFENSE

(Due Process / Application of the CCRAA on Behalf of a Nationwide Class Would Violate Wells Fargo’s Due Process Rights)

5. Applying California’s CCRAA to non-resident borrowers would violate Wells Fargo’s due process rights.

SIXTH AFFIRMATIVE DEFENSE

(Preemption)

6. The Fair Credit Reporting Act, 15 U.S.C. § 1681 *et seq.* (“FCRA”) preempts any attempt to apply California’s CCRAA to other states’ citizens.

SEVENTH AFFIRMATIVE DEFENSE

(Responsibility of Plaintiff, Putative Class Members, and/or Third Parties)

7. Any injury or damage to Plaintiff or putative class members was a result of the acts of Plaintiff, putative class members, and/or third parties, and any claims against Wells Fargo should be reduced in proportion to the faults of Plaintiff, putative class members, and/or third parties.

EIGHTH AFFIRMATIVE DEFENSE

(Failure to Join Necessary Parties)

8. Full relief and a fair accounting of the relative fault of all parties, if any, cannot be determined as Plaintiff has failed to join necessary parties. Among other things, Plaintiff’s “credit damage” allegations cannot be fairly evaluated nor justly determined absent joinder of the credit

1 reporting agencies or any other person or entity responsible for the conduct that Plaintiff contends
2 gives rise to his and putative class members' claims. Wells Fargo furnished accurate information
3 regarding Plaintiff's loan and the loans of putative class members. It has no responsibility for or
4 control over how credit reporting agencies or other third parties interpret that information,
5 generate a credit score therefrom, or publish it to third parties. Wells Fargo cannot, therefore, be
6 responsible for any alleged decline in the credit score computed by third parties based on their
7 interpretation of the data furnished by Wells Fargo.

8 **NINTH AFFIRMATIVE DEFENSE**

9 **(Intervening/Superseding Cause)**

10 9. Any injury or damage to Plaintiff or putative class members was a result of an
11 intervening/superseding act by Plaintiff, putative class members, and/or third parties, and Wells
12 Fargo is therefore not at fault by reason of any of the acts or omissions alleged.

13 **TENTH AFFIRMATIVE DEFENSE**

14 **(Maintenance of Reasonable Practices and Procedures)**

15 10. To the extent there was any violation of the CCRAA, which Wells Fargo denies,
16 Wells Fargo is not liable because at the time of the alleged violation Wells Fargo maintained
17 reasonable procedures to comply with the provisions of that Act. (See Cal. Civ.
18 Code 1785.25(g).) Any violations by Wells Fargo were unintentional and resulted despite the
19 maintenance of procedures reasonably adapted to avoid such violations.

20 **ELEVENTH AFFIRMATIVE DEFENSE**

21 **(Statute of Limitations)**

22 11. Plaintiff's and putative class members' claims are barred, in whole or in part, by
23 the applicable statute of limitations, including, but not limited to: Cal. Civ. Code § 1785.33.

24 **TWELFTH AFFIRMATIVE DEFENSE**

25 **(Cannot Recover Statutory Penalties or Punitive Damages)**

26 12. Plaintiff and putative class members cannot meet the requirements of Cal. Civ.
27 Code § 1785.31 in order to recover punitive or statutory damages.

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THIRTEENTH AFFIRMATIVE DEFENSE

(Failure to Mitigate)

13. The damage alleged in the Complaint resulted, in whole or in part, from the failure of Plaintiff and putative class members to mitigate alleged damages, if any.

FOURTEENTH AFFIRMATIVE DEFENSE

(Waiver)

14. Plaintiff and putative class members have waived the right to seek the relief herein due to his/their own acts and/or omissions with reference to the subject matter of the Complaint.

FIFTEENTH AFFIRMATIVE DEFENSE

(Estoppel)

15. Plaintiff and putative class members, by reason of his/their own knowledge, statements, conduct, approval, authorization and/or ratification, are estopped from recovery herein.

SIXTEENTH AFFIRMATIVE DEFENSE

(Unclean Hands)

16. Plaintiff's and putative class members' claims are barred by the doctrine of unclean hands.

SEVENTEENTH AFFIRMATIVE DEFENSE

(Compliance With Governing Law)

17. Wells Fargo's conduct was consistent with, permitted by, dictated by, and in certain respects required by, applicable federal and state law, and therefore cannot be the subject of recovery in this action.

EIGHTEENTH AFFIRMATIVE DEFENSE

(Limitation of Liability)

18. Wells Fargo's liability in this action, if any, is limited pursuant to all applicable contracts, covenants, conditions, restrictions, and bylaws operating as between Wells Fargo and Plaintiff and/or putative class members.

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NINETEENTH AFFIRMATIVE DEFENSE

(Good Faith)

19. This action is barred, in whole or in part, because Wells Fargo always acted in good faith and honesty in fact, and always observed reasonable commercial standards of fair dealing in the trade when dealing with Plaintiff and putative class members.

TWENTIETH AFFIRMATIVE DEFENSE

(Comparative Fault)

20. Plaintiff's and putative class members' claims are barred, in whole or in part, because he/they are at fault with respect to matters alleged in the Complaint, and his/their recovery, if any, should be barred or reduced in proportion to his/their comparative fault.

TWENTY-FIRST AFFIRMATIVE DEFENSE

(Consent/Ratification)

21. Plaintiff and putative class members consented to, invited and/or ratified all of Wells Fargo's acts or omissions which gave rise to the occurrences alleged in the Complaint and his/their claims are therefore barred.

TWENTY-SECOND AFFIRMATIVE DEFENSE

(Reasonably Available Alternatives)

22. Plaintiff and putative class members are barred from bringing the Complaint, and the claims contained therein, because he/they had a reasonably available alternative to the action which he/they took or failed to take. Plaintiff and putative class members could have avoided, in whole or in part, the damages, if any, alleged in the Complaint.

TWENTY-THIRD AFFIRMATIVE DEFENSE

(Failure to Exhaust Administrative Remedies)

23. Plaintiff's and putative class members' claims are barred in whole or in part by Plaintiff's and putative class members' failure to exhaust administrative remedies.

TWENTY-FOURTH AFFIRMATIVE DEFENSE

(Benefit Received)

24. Plaintiff and putative class members' claims are barred or limited by the benefit

1 Plaintiff and/or putative class members retained from Wells Fargo's activities.

2 **TWENTY-FIFTH AFFIRMATIVE DEFENSE**

3 **(Laches)**

4 25. Plaintiff's and putative class members' claims are barred, in whole or in part, by
5 operation of the doctrine of laches.

6 **TWENTY-SIXTH AFFIRMATIVE DEFENSE**

7 **(Assumption of Risk)**

8 26. Plaintiff and putative class members are barred from asserting any claim against
9 Wells Fargo by reason of Plaintiff's and putative class members' assumption of the risk of the
10 matters causing the injuries and damages incurred, if any.

11 **TWENTY-SEVENTH AFFIRMATIVE DEFENSE**

12 **(Truth/Accuracy of Information)**

13 27. Plaintiff's and putative class members' claims are precluded because the
14 information furnished by Wells Fargo, if any, was and is true and accurate.

15 **TWENTY-EIGHTH AFFIRMATIVE DEFENSE**

16 **(Settlement, Release and *Res Judicata*)**

17 28. To the extent Plaintiff or putative class members seek to recover for claims
18 encompassed by previously litigated or settled actions, the claims herein, including purported class
19 claims and allegations, are barred as a result of applicable settlements, releases, and the doctrine of
20 *res judicata*.

21 **TWENTY-NINTH AFFIRMATIVE DEFENSE**

22 **(Unknown Affirmative Defenses)**

23 29. Wells Fargo presently has insufficient knowledge and information on which to
24 form a belief as to whether it has additional, but as yet unstated, affirmative defenses available to
25 it, and reserves the right to assert additional affirmative defenses in the event discovery indicates
26 such defenses would be appropriate.

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PRAYER

WHEREFORE, Wells Fargo prays as follows:

1. That Plaintiff takes nothing by reason of the Complaint;
 2. For judgment in Wells Fargo’s favor and dismissal of the action with prejudice;
 3. That the Court award Wells Fargo its costs of suit and reasonable attorneys’ fees;
- and
4. For such other and further relief as the Court deems just.

DATED: April 25, 2023

SEVERSON & WERSON
A Professional Corporation

By: 
REBECCA S. SAELAO

Attorneys for Defendant WELLS FARGO BANK, N.A.

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PROOF OF SERVICE

**Michael Stoff v. Wells Fargo Bank, N.A.
Case No. 37-2020-00020808-CU-BT-CTL**

At the time of service, I was over 18 years of age and not a party to this action. I am employed in the County of San Francisco, State of California. My business address is 595 Market Street, Suite 2600, San Francisco, CA 94105.

On April 25, 2023, I served true copies of the following document(s):

**DEFENDANT WELLS FARGO BANK, N.A.’S ANSWER TO PLAINTIFF’S
THIRD AMENDED COMPLAINT**

on the interested parties in this action as follows:

SEE ATTACHED SERVICE LIST

BY MAIL: I enclosed the document(s) in a sealed envelope or package addressed to the persons at the addresses listed in the Service List and placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with Severson & Werson's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid.

BY E-MAIL: I caused a copy of the document(s) to be sent from e-mail address tmp@severson.com to the persons at the e-mail addresses listed in the Service List. The document(s) were transmitted, and I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on April 25, 2023, at Petaluma, California.



Tiffany M. Pierce

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SERVICE LIST

Michael Stoff v. Wells Fargo Bank, N.A.
Case No. 37-2020-00020808-CU-BT-CTL

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