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14 *and all others similarly situated*

15 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
16 **COUNTY OF SAN DIEGO**

17 )  
18 MICHAEL STOFF, an individual on behalf of )  
19 himself and all others similarly situated, )

20 Plaintiff,

21 vs.

22 WELLS FARGO BANK, N.A. and DOES 1 - )  
23 10 )

24 Defendants. )  
25 )  
26 )  
27 )  
28 )

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

**THIRD AMENDED CLASS ACTION  
COMPLAINT FOR DAMAGES AND  
INJUNCTIVE RELIEF**

**DEMAND FOR JURY TRIAL**

Action Filed: June 18, 2020  
Trial Date: None Set

**ELECTRONICALLY FILED**  
Superior Court of California,  
County of San Diego  
**03/23/2023** at 03:20:00 PM  
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By Vanessa Sezenol, Deputy Clerk

1 Plaintiff Michael Stoff (“Plaintiff” or “Mr. Stoff”) individually, and on behalf of the Class  
2 defined below of similarly situated persons, files this Third Amended Class Action Complaint. Plaintiff  
3 files suit against Wells Fargo Bank, N.A. and DOES 1 and through 10 (collectively “Wells Fargo” or  
4 “Defendant”). Plaintiff brings this action based upon personal knowledge of the facts pertaining to  
5 himself, and on information and belief as to all other matters, by and through undersigned counsel.

## 6 INTRODUCTION

7 1. Plaintiff brings this action against Defendant for violating the California Consumer  
8 Credit Reporting Agencies Act (“CCCRAA”), California. Civil Code § 1785.1 et seq. Wells Fargo  
9 violates this statute knowingly and willfully, and as a matter of Company-wide policy.

10 2. In early 2020 as the Covid-19 pandemic began spreading rapidly throughout the United  
11 States, the federal government enacted the Coronavirus Aid, Relief, and Economic Security Act (the  
12 “CARES Act”). The CARES Act was a \$2.2 Trillion economic stimulus bill designed (according to the  
13 U.S. Treasury Dept.) to “provide fast and direct economic assistance for American workers, families,  
14 and small businesses, and preserve jobs for American industries.”<sup>1</sup> An important provision of the  
15 CARES Act sought to protect homeowners affected by the pandemic. Congress mandated that banks  
16 and other lenders provide mortgage forbearances of up to 360 days for individuals who may suffer  
17 negative economic effects due to the pandemic.

18 3. Importantly, in order to avoid any negative economic effects on those relying on the  
19 benefits of the CARES Act forbearance, Congress also mandated that if the mortgage loan was  
20 “current” at the time of the forbearance, then consumer information furnishers “shall” continue to report  
21 the mortgage as “current” to Consumer Reporting Agencies (“CRAs”). See, 15 U.S.C. § 1681s-  
22 2(a)(1)(F)(ii)(I).

23 4. Shortly after the CARES Act became law, Mr. Stoff attempted to avail himself of this  
24 provision and sought a forbearance for the mortgage on what had been his primary residence. He  
25 obtained that forbearance from his lender and mortgage processor, Wells Fargo. But contrary to the  
26 requirements of the CARES Act, Wells Fargo did *not* continue to report Plaintiff’s mortgage simply as

27 <sup>1</sup> See, <https://home.treasury.gov/policy-issues/cares#:~:text=The%20Coronavirus%20Aid%2C%20Relief%2C%20and,preserve%20jobs%20for%20American%20industries>. (last visited March 23, 2021)

1 “current.” Instead, Wells Fargo immediately changed the way it reported Plaintiff’s mortgage to the  
2 various CRAs in numerous important ways. For example:

3 5. Wells Fargo added a special code to his loan status for the sole purpose of reporting his  
4 mortgage as “in forbearance.” Wells Fargo did so even before he had “forborne” a payment on his  
5 mortgage – that is, when his mortgage was still current and no payments had been missed or were  
6 otherwise past due. When Wells Fargo next reported on Plaintiff’s mortgage to the CRAs it included  
7 this code to notify them that the account was “in forbearance.”

8 6. Wells Fargo also *stopped* reporting the “Payment History” of Plaintiff’s mortgage as  
9 “current” and instead reported it as “no information” for the month(s) that his mortgage was in  
10 forbearance.

11 7. Wells Fargo also changed the “Terms Frequency” code to “D” for “deferred.” Wells  
12 Fargo similarly added a “K4 Segment” Code specifically designed to inform the CRAs that Plaintiff’s  
13 mortgage payment was “deferred” and the next payment was not due for 3 months (the length of the  
14 initial CARES Act forbearance).

15 8. Each of the above changes to the status of Plaintiff’s mortgage had the effect  
16 individually and in conjunction of conveying to the CRA’s that Plaintiff’s mortgage was no longer  
17 “current,” that it was “in forbearance,” and payments had been “deferred.” In doing so, Wells Fargo  
18 violated the CARES Act reporting requirement, causing the information provided to CRAs to be  
19 inaccurate and incomplete. Because Defendant reported inaccurate and incomplete information to  
20 CRAs concerning Mr. Stoff’s mortgage, Wells Fargo also violated the CCCRAA’s complete and  
21 accurate reporting mandate. Wells Fargo reported all of its mortgages the same way as a matter of  
22 Company-wide practice and policy.

23 9. Defendant’s reporting of Plaintiff’s and Class Members’ mortgages in this manner was  
24 contrary to the rest of the industry. In fact, Wells Fargo commissioned a third party company to survey  
25 the industry in order to gain an understanding of what its competitors in the industry were doing for  
26 CARES Act reporting. The result of the survey showed that 5 out of 5 (i.e. 100%) of respondent banks  
27 were *not* reporting the CP code for “in forbearance” and were *not* reporting current mortgages the way  
28 Wells Fargo was reporting them.

1           10.       Moreover, Wells Fargo’s Mortgage Servicing Platform (“MSP”) is a technology that is  
2 leased from a company called BlackKnight, Inc (“BlackKnight”). The MSP is an industry-standard  
3 system created and updated by Black Knight that is (in certain aspects) customizable by each individual  
4 user, such as Wells Fargo. The MSP is the automated internal system used by Wells Fargo for  
5 organizing and furnishing information via Metro 2 to the CRAs.

6           11.       Upon enactment of the CARES Act, BlackKnight met with its customers and others in  
7 order to modify the MSP to bring it into CARES Act compliance. For accounts like Mr. Stoff’s that  
8 were “current” at the time of a CARES Act forbearance, BlackKnight made 2 significant changes to the  
9 MSP for how “forbearances” were reported in its automated system. First, the comment code “CP”  
10 would no longer be systematically applied to forbearances, as it had been before the CARES Act.  
11 Second, the Payment History would automatically “roll” with a value of “0” – which was the code  
12 meaning “current” – instead of “D” which told the CRA that no information was being provided. But  
13 rather than follow the industry standard and its own technology provider, Wells Fargo chose to adopt  
14 BlackKnight’s changes to the automated MSP system, specifically so Wells Fargo could continue to  
15 include the CP code, and specifically not to apply the code for “current” in the Payment History.

16           12.       Mr. Stoff learned his mortgage had been reported “in forbearance,” “deferred,” and no  
17 longer “current” when he received an email from CreditKarma, LLC’s credit reporting website. That  
18 email informed him that his credit score had materially declined by almost 40 points, which decline was  
19 a result of his mortgage loan being reported as “in forbearance” (or similar). Had he known Wells Fargo  
20 was going to report a change in the status of his mortgage in such a manner, he would not have accepted  
21 the forbearance in the first place.

22           13.       Upon learning of Wells Fargo’s change in the reported status of his mortgage, Mr. Stoff  
23 found himself in the untenable position of having to choose between (1) the economic benefits of  
24 forbearance provided for by Congress in the CARES Act, or (2) the benefits attendant with a better  
25 credit score and a mortgage that was not reported as being “in forbearance,” “deferred,” and “not  
26 current.” Wells Fargo itself, as well as many other lenders, refused to allow those borrowers who had  
27 availed themselves of the benefits of a CARES Act accommodation to refinance their mortgages or  
28 obtain a new mortgage (or other secured credit) until they were no longer “in forbearance” under the

1 CARES Act. Faced with this predicament, Mr. Stoff sought and paid for advice of his attorney to better  
2 understand what had happened and what his options were. Ultimately, because Mr. Stoff was  
3 concerned how his reduced credit score would affect his ability to purchase a house in the near future  
4 and obtain other consumer credit, he withdrew his CARES Act “forbearance” – thereby losing the  
5 economic benefit of delaying payment of the mortgage on the home for up to 360 days. Moreover,  
6 because the CARES Act permits a consumer to invoke the forbearance provision only once, Plaintiff  
7 has now lost forever his one opportunity.

8 **PARTIES**

9 14. Plaintiff is a natural person who at all relevant times was a resident in the State of  
10 California, City and County of San Diego. He is an investor and entrepreneur and he relies on his credit,  
11 borrowing ability and cash flow for the deals in which he is involved, including real estate endeavors.  
12 Defendant’s misconduct negatively affected his ability to obtain credit, including requiring him to agree  
13 to and pay higher rates and fees required by lenders in order for Mr. Stoff to obtain credit going  
14 forward.

15 15. Plaintiff is a “consumer” as defined by Cal. Civ. Code § 1785.3(b).

16 16. Plaintiff obtained a mortgage for the purchase of his single family home on or about  
17 March 16, 2015 from Wells Fargo. Since that time, Wells Fargo has continued to service Plaintiff’s  
18 mortgage. The mortgage is federally backed by Freddie Mac and now owned by that entity. As the  
19 mortgage servicing agent, and since the beginning of the mortgage, Wells Fargo has routinely and as a  
20 course of business reported the loan status of Plaintiff’s mortgage to at least four major CRAs including  
21 Experian, Equifax, TransUnion, and Innovis.

22 17. Defendant Wells Fargo Bank, N.A. is a subsidiary of Wells Fargo & Co., a publicly  
23 traded bank holding company. According to Wells Fargo & Co’s 2020 SEC Form 10-K, Defendant  
24 Wells Fargo Bank, N.A. is the “principal subsidiary with assets of \$1.8 trillion, or 90% of the  
25 Company’s assets.”<sup>2</sup>

26  
27 \_\_\_\_\_  
28 <sup>2</sup> Filed Feb. 23, 2021.





1           29.     The U.S. Congress began taking a number of actions to address the financial effects of  
2 the pandemic on U.S. citizens and businesses. One of the first significant actions by Congress to  
3 address the economic effects of the pandemic was the passage of the so-called “Coronavirus Aid,  
4 Relief, and Economic Security Act” (the “CARES Act”). On March 27, 2020, the CARES Act was  
5 signed into law.

6           30.     Section 4022 of the CARES Act provides for up to 360 days of mortgage forbearance for  
7 consumers who hold residential mortgages. In order not to penalize consumers for availing themselves  
8 of the CARES Act forbearance provision, section 4021 of the CARES Act mandated that creditors  
9 continue to report any such debts with a CARES Act forbearance as “current” to CRAs, if the mortgage  
10 was current at the time of the forbearance:

11           (ii) REPORTING.—Except as provided in clause (iii), if a furnisher makes an  
12 accommodation with respect to 1 or more payments on a credit obligation or account of a  
13 consumer, and the consumer makes the payments or is not required to make 1 or more  
14 payments pursuant to the accommodation, the furnisher shall—

                  (I) report the credit obligation or account as current

15 15 U.S.C. § 1681s-2(a)(1)(F)(ii)(I).

16           31.     The CARES Act amendment at issue applies to those who have actively taken action to  
17 obtain “an agreement to defer 1 or more payments, make a partial payment, forbear any delinquent  
18 amounts, modify a loan or contract, or any other assistance or relief granted to a consumer who is  
19 affected by the coronavirus disease 2019 (COVID–19) pandemic.” 15 U.S.C. § 1681s-2(a)(1)(F)(ii)(I).

20           32.     Notably, Congress intended to preserve consumers’ economic standing at the time of the  
21 pandemic. See 15 U.S.C. § 1681s-2(a)(1)(F)(ii)(I) (if consumer was current, must continue to report as  
22 current); 15 U.S.C. § 1681s-2(a)(1)(F)(ii)(II)(aa) (if delinquent, must report the same delinquency during  
23 accommodation period).

24           33.     The Consumer Financial Protection Bureau (“CFPB”) is the federal agency charged with  
25 enforcing the FCRA and regulating CRAs and furnishers thereunder. See, e.g. *Shaw v. Experian Info.*  
26 *Sols. Inc.*, 891 F.3d 749, 752 n.1 (9th Cir. 2018).<sup>3</sup> Following the enactment of the CARES Act, the

27 \_\_\_\_\_  
28 <sup>3</sup> Before the creation of the CFPB in 2010, the FTC played a key role concerning enforcement of the  
FCRA.



1 CFPB issued COVID-19 pandemic guidance related to the CARES Act and FCRA requirements in the  
2 form of “Compliance Aids” (the “CFPB Guidance”).<sup>4</sup>

3 34. CFPB Compliance Aids “present the requirements of existing rules and statutes in a  
4 manner that is useful for compliance professionals, other industry stakeholders, and the public . . .  
5 Compliance Aids are designed to accurately summarize and illustrate the underlying rules and statutes.”  
6 Policy Statement on Compliance Aids, [https://www.federalregister.gov/documents/2020/01/27/2020-  
7 00648/policy-statement-on-compliance-aids](https://www.federalregister.gov/documents/2020/01/27/2020-00648/policy-statement-on-compliance-aids). Last visited March 23, 2021.

8 35. With respect to when furnishers report consumers as current pursuant to the CARES Act,  
9 the CFPB Guidance warns that furnishers “should consider all of the trade line information they furnish  
10 that reflects a consumer’s status as current or delinquent.” *See* CFPB Guidance at Question 7.  
11 “Furnishers are encouraged to ensure they understand the data fields that the consumer reporting  
12 agencies to whom they report utilize and which standard data reporting formats may apply.” *Id.*

13 36. The CFPB Guidance also makes clear that furnishers cannot use special comment codes  
14 to ensure compliance with the CARES Act. *See, Id.* at Question 8 (“Furnishing a special comment code  
15 indicating that a consumer with an account is impacted by a disaster or that the consumer’s account is in  
16 forbearance does not provide consumer reporting agencies with this CARES Act-required information  
17 and therefore furnishing such a comment code is not a substitute for complying with these  
18 requirements.”).

### 19 **The California Consumer Credit Reporting Agencies Act (“CCCRAA”)**

20 37. Similar to the FCRA, the California Legislature found that the banking system is  
21 dependent on fair and accurate credit reporting. As such, California enacted the CCCRAA, Cal. Civ.  
22 Code § 1785 et seq., to ensure fairness, impartiality, and to protect consumer privacy. The CCCRAA  
23 imposes duties on sources that provide credit information to CRAs such as Defendant Wells Fargo here,  
24 called “furnishers.”

25  
26  
27 <sup>4</sup> See [https://files.consumerfinance.gov/f/documents/cfpb\\_fcra\\_consumer-reporting-faqs-covid-  
19\\_2020-06.pdf](https://files.consumerfinance.gov/f/documents/cfpb_fcra_consumer-reporting-faqs-covid-19_2020-06.pdf). (last updated Jun. 16, 2020) (“This is a Compliance Aid issued by the Consumer  
28 Financial Protection Bureau.”). Last visited March 23, 2021.

1           38.     The California Legislature enacted CCCRAA “to require that consumer credit reporting  
2 agencies adopt reasonable procedures for meeting the needs of commerce for consumer credit . . . and  
3 other information in a manner that is fair and equitable to the consumer, with regard to the  
4 confidentiality, accuracy, relevancy, and proper utilization of such information.” Cal. Civ. Code §  
5 1785.1(d).

6           39.     Section 1785.25 prohibits the furnishing of information to a CRA if the furnisher “knows  
7 or should know the information is incomplete or inaccurate.” Cal. Civ. Code § 1785.25(a). Subdivision  
8 (g) provides that one who supplies information to a CRA “is liable for failure to comply with this  
9 section, unless the furnisher establishes by a preponderance of the evidence that, at the time of the  
10 failure to comply with this section, the furnisher maintained reasonable procedures to comply with  
11 those provisions.” Cal. Civ. Code § 1785.25(g).

12           40.     The Ninth Circuit has addressed the relationship between the FCRA and state statutes  
13 such as the CCCRAA:

14           In general, the FCRA does not preempt any state law “except to the extent that those laws  
15 are inconsistent with any provision of this subchapter, and then only to the extent of the  
16 inconsistency.” § 1681t(a). But this general rule has several exceptions, including the  
17 following:

18                   No requirement or prohibition may be imposed under the laws of any State . . . with  
19 respect to any subject matter regulated under . . . section 1681s-2 of this title, relating  
20 to the responsibilities of persons who furnish information to consumer reporting  
21 agencies, except that this paragraph shall not apply--

22                   (i) with respect to section 54A(a) of chapter 93 of the Massachusetts Annotated Laws  
23 (as in effect on September 30, 1996); or

24                   (ii) with respect to section 1785.25(a) of the California Civil Code (as in effect on  
25 September 30, 1996)

26           *Gorman v. Wolpoff & Abramson, LLP*, 584 F.3d 1147, 1172 – 1173 (9th Cir. 2009) (amended).

27           “Because the plain language of the preemption provision does not apply to private rights of action, and  
28 because the likely purpose of the express exclusion was precisely to permit private enforcement of these  
provisions, we hold that the private right of action to enforce California Civil Code section 1785.25(a)  
is not preempted by the FCRA.” *Id.* at 1173.

1 **Wells Fargo’s Mortgage Servicing Business**

2 41. Wells Fargo earns substantial revenues from its mortgage servicing business. When  
3 borrowers like the Plaintiff and Class Members make their monthly mortgage payments, Wells Fargo is  
4 responsible for collecting and applying borrowers’ payments on behalf of the owner of the borrowers’  
5 mortgage loans in accordance with the requirements of the borrowers’ loan documents and applicable  
6 law, including relevant provisions of the Fair Credit Reporting Act and the CCCRAA.

7 42. As part of its mortgage servicing operations, Wells Fargo collects borrowers’ monthly  
8 payments, which are applied to principal and interest, taxes and insurance, and other fees and charges  
9 that may have been assessed to such accounts. Wells Fargo then disburses these payments to the  
10 appropriate parties, such as lenders, investors, taxing authorities, insurers, and other relevant entities.

11 43. Wells Fargo earns massive revenues from mortgage loan servicing in several ways.  
12 **First**, Wells Fargo may earn a per-loan servicing fee established by its servicing agreements with the  
13 owner(s) or investor(s) that are entitled to payment of the principal and interest payments set forth in the  
14 mortgage loan documents. **Second**, Wells Fargo may earn income on unapplied funds, which accrues  
15 during that time between when consumers pay and when funds are remitted to the loans’ owners.  
16 **Third**, Wells Fargo retains all or part of certain fees it collects from borrowers, such as late charges.  
17 **Fourth**, for loans owned by Ginnie Mae, Fannie Mae, and Freddie Mac (such as Plaintiff’s mortgage  
18 here), Wells Fargo earns incentive payments after loans are placed in forbearance and borrowers accept  
19 and comply with certain “workout options” offered by Wells Fargo to cure the forborne payments,  
20 which generally involve repayment plans, deferral agreements, or specific kinds of loan modifications.  
21 For example, for every Freddie Mac mortgage Wells Fargo places into forbearance (i.e. Plaintiff’s  
22 mortgage), Wells Fargo stands to earn \$500 to \$1,000 in incentive payments depending on the workout  
23 option accepted by the borrower at the end of the forbearance term. **Last**, Wells Fargo earned hundreds  
24 of millions of dollars through the “early buyout trade,” in which they bought certain mortgages with a  
25 CARES Act forbearance and then, once the borrower was out of forbearance, sold the same mortgages  
26 back to investors at a substantial profit.

1 **Plaintiff Michael Stoff's Experience**

2 44. During March 2020, Plaintiff and his wife were looking to buy a new home. Like the  
3 vast majority of homebuyers, as part of the house-hunting process Plaintiff and his wife were in need of  
4 a mortgage to finance the purchase. Plaintiff's and his wife's credit scores, as well as the contents of  
5 any consumer report provided by a CRA to a potential lender, were necessarily an important aspect of  
6 the home-buying process. The higher the credit score, and the more favorable the consumer report, the  
7 more likely a consumer is to qualify for a mortgage and to obtain a more favorable interest rate on that  
8 mortgage. The same logic also applies to other consumer loans, such as car loans and credit cards.<sup>5</sup>

9 45. Plaintiff already had a residential mortgage from Wells Fargo in connection with a  
10 single-family residence located in the city and county of San Diego, CA dated on or about March 16,  
11 2015 (hereinafter, the "Mortgage"). That Mortgage continued and continues to be serviced by Wells  
12 Fargo or one of its related entities. The Mortgage, like most mortgages in the United States, is backed  
13 by the federal government, and is now owned by Freddie Mac.

14 46. Upon learning of the CARES Act and its provision for a penalty-free forbearance, in  
15 early April 2020, while Plaintiff was interacting online with Wells Fargo, he clicked a button, answered  
16 three questions, and received a 3-month forbearance of his Mortgage obligations. The forbearance is an  
17 "accommodation" as defined by 15 U.S.C. § 1681s-2(a)(1)(F)(ii).

18 47. At the time he received the forbearance, Plaintiff was "current" on his Mortgage.  
19 Accordingly, Defendant was required to continue reporting the mortgage as current to CRAs including  
20 Experian, Equifax, TransUnion, and Innovis.

21 48. Defendant instead furnished incomplete or inaccurate information concerning Mr. Stoff's  
22 Mortgage to these consumer reporting agencies. More specifically, rather than continue to report the  
23 Mortgage as "current" Wells Fargo materially changed the information furnished to CRAs concerning  
24 Plaintiff's mortgaged by: (1) adding a "comment code" that the industry recognizes to signify that the  
25 loan is "in forbearance;" (2) stopping reporting the mortgage as "current" in the "Payment History;" (3)

26 \_\_\_\_\_  
27 <sup>5</sup> For example, the difference of one-half of a percentage point on a traditional 30-year mortgage on a  
28 \$500,000 house can cost the consumer nearly \$40,000 over the life of the mortgage in additional  
interest payments (assuming a down payment of 20% and a mortgage of 80% the purchase price).

1 reporting the mortgage as “deferred” in the “Terms Frequency;” and, (4) adding a “K4 Segment” Code  
2 informing the CRAs that Plaintiff’s mortgage payment was “deferred” and the next payment was not  
3 due for 3 months (the length of the initial CARES Act forbearance). By doing so, Defendant was no  
4 longer reporting the Mortgage as current but was, in fact, reporting that the Mortgage was “in  
5 forbearance,” “deferred,” and “not current.”

6 49. Defendant claims that the reason it reported Mr. Stoff’s and Class Members’  
7 forbearances in this manner is because it was consistent with CDIA guidance. But that is no basis for  
8 refusing to follow the FCRA and violating the CCRAA. In fact, Wells Fargo admits that for  
9 “delinquent” mortgages that obtained a CARES Act forbearance, the Company chose not to follow  
10 CDIA guidance at all – not because the guidance was wrong, but because it was too much work for  
11 Wells Fargo to report delinquent mortgages with CARES Act forbearance in the manner instructed by  
12 CDIA guidance.

13 50. Defendant’s decision to report Plaintiff’s and all other Class Members’ CARES Act  
14 accommodations in this manner was the result of a nation-wide policy developed at Wells Fargo and  
15 approved at the highest levels of the Company. To create this policy required Board-level approval, and  
16 it was specifically approved by a Board-created committee called the “Cross-Discipline Decision  
17 Room,” or “CDDR.” The CDDR was comprised of approximately 10 senior executives of the  
18 corporate parent of Defendant, Wells Fargo & Company, including Wells Fargo & Co.’s Chief  
19 Operating Officer, its Chief Credit Risk Officer, and its CEO of the Consumer Bank.

20 51. In early May 2020, Plaintiff received an email from the credit monitoring service, Credit  
21 Karma, notifying him that his credit score had fallen nearly 40 points. Fearful of how that would affect  
22 his ability to obtain a new mortgage and other consumer loans in the future, and the higher interest rates  
23 and fees he would be required to pay for such loans (such as a credit card, refinance, or other consumer  
24 credit instruments), Mr. Stoff pulled a copy of his Equifax credit report.

25 52. He then discovered that Wells Fargo violated the CARES Act’s reporting requirements  
26 by reporting that his Mortgage was “in forbearance,” “deferred,” and “not current.” This negatively and  
27 materially impacted his credit score as reported by CreditKarma, LLC.

28

1           53.     As a direct and proximate result of Wells Fargo’s misconduct, Mr. Stoff contacted his  
2 attorney for advice on what Wells Fargo had done to his credit and how to remedy Wells Fargo’s credit  
3 reporting violation. Mr. Stoff incurred more than \$300 in legal expenses in doing so.

4           54.     In order to repair and mitigate the damage to his credit score and mortgage status caused  
5 by Wells Fargo’s misconduct, and in order to avoid missing out on credit opportunities and paying  
6 higher consumer credit costs in the future (including for a mortgage on a new home he was in the  
7 market to purchase), Mr. Stoff withdrew his CARES Act forbearance for the Mortgage.

8           55.     As a direct and proximate result of Wells Fargo’s misconduct, Plaintiff lost the ability to  
9 obtain a penalty-free forbearance on his Mortgage and paid his Mortgage for at least 3 months and  
10 potentially as many as 12 months when he should have been entitled to avoid those mortgage payments  
11 without penalty.

12           56.     Additionally, in order to repair the damage to his credit Mr. Stoff was required to (and  
13 did) file a “dispute” with the CRAs, in order to get them to change how they reported his Mortgage  
14 status and continue to accurately report his Mortgage as “current.”

15           57.     Nevertheless, this did not completely remedy the inaccurate and incomplete reporting of  
16 Plaintiff’s mortgage. The “Payment History” continued to report the “payment” (i.e. the “not current”  
17 code) for the month of April 2020 for another 23 months. This occurred because the Payment History  
18 is a “rolling” history designed every month to report the history for the prior 24 months. And the code  
19 for the month of April 2020 was never changed back to “current” by Defendant after he challenged  
20 Defendant’s reporting, after he withdrew his CARES Act forbearance, and even after Defendant assured  
21 him his account would be reported as “current.”

22  
23 **Defendant’s Inaccurate And Incomplete Information Harms Plaintiff and the Class**

24           58.     For borrowers who are subjected to Wells Fargo’s practice of designating “current”  
25 accounts as “in forbearance,” “deferred,” and “not current,” potential credit grantors, employers,  
26 background checkers, and any other party who reviews such borrowers’ credit reports are given the  
27 inaccurate impression that the borrower has experienced a serious economic hardship that is ongoing,  
28

1 when in reality this is not necessarily the case. Moreover, it creates the impression that the consumer is  
2 an increased credit risk, when in fact they may not be.

3 59. Wells Fargo borrowers with loans placed into CARES Act forbearance status and  
4 reported as Wells Fargo did, also lost access to credit markets, including losing the ability to refinance  
5 existing loans, obtain new mortgages and home equity loans, or obtain credit cards or other kinds of  
6 new secured and unsecured lines of credit at the then-current historically low interest rates. Because  
7 Wells Fargo materially changed the information furnished to CRAs for Plaintiff and Class Members as  
8 set forth herein, including by adding a special comment code to the credit reports of borrowers  
9 indicating their mortgage loan has been placed into forbearance status, even if the borrower continues  
10 making monthly mortgage payments during the forbearance period it will appear as if he is in arrears.

11 60. But obtaining a CARES Act forbearance does not mean the consumer necessarily stops  
12 paying their mortgage. The consumer can continue to pay it, all or in part, while in forbearance. Wells  
13 Fargo even encourages consumers to do so. Its website informs borrowers,<sup>6</sup>

14 You can make payments during the suspension – even partial payments – at any time. This will  
15 reduce how much you’ll owe at the end of the payment suspension period.

16 61. Wells Fargo’s false, inaccurate and incomplete credit reporting regarding borrowers  
17 whose loans Wells Fargo placed into forbearance status therefore caused borrowers to suffer needless  
18 reputational harm that can result in increased interest rates and other consumer credit costs, loss of  
19 employment opportunities, lost security clearances, increased insurance premiums, and other  
20 consequences resulting from Wells Fargo’s inaccurate and incomplete representations to CRAs that  
21 such borrowers are in forbearance, deferred, and not current.

22 62. Creditors and furnishers such as Wells Fargo provide CRAs with the status of their  
23 debtors’ accounts automatically using codes and other automatically-populated information. Wells  
24 Fargo is a highly sophisticated entity with an army of analysts and attorneys studying the CARES Act  
25 and other legislation. Wells Fargo opted to ignore the CARES Act’s requirement that it continue to  
26

27 <sup>6</sup> [https://update.wf.com/coronavirus/home-lending/?\\_ga=2.10347957.146674605.1616093352-854574996.1615911730](https://update.wf.com/coronavirus/home-lending/?_ga=2.10347957.146674605.1616093352-854574996.1615911730) (last visited March 23, 2021).  
28



1 report mortgages in forbearance as “current.” In so doing, Wells Fargo willfully violated the CCCRAA  
2 and damaged Plaintiff and the class he seeks to represent.

3 63. And Wells Fargo had a huge economic incentive to do so – it was profiting from its own  
4 customers who went into a CARES Act forbearance. It made money on the front end -- \$500 to \$1,000  
5 for those customers who went into forbearance, and at the back end by exploiting the so-called “early  
6 buyout trade.” According to the Wall Street Journal, the early buyout trade is as follows:

- 7 • When a mortgage is made through programs run by the Federal Housing Administration  
8 or the Department of Veterans Affairs, it will typically get pooled with others in a  
9 Ginnie Mae bond. Ginnie Mae is a government-owned mortgage corporation that backs  
10 the bonds that get sold to investors.
- 11 • Later, if that borrower stops making payments consistent with the CARES Act  
12 forbearance, Ginnie Mae rules allow the mortgage servicer (Wells Fargo) to buy it out  
13 of the pool after 90 days at face value. That means the mortgage company pays an  
14 amount equal to the unpaid principal balance and any interest due at the time.
- 15 • The mortgage company then works with the borrower to get him or her current again—  
16 for example, by letting the homeowner make up the missed payments at the end of the  
17 loan so that they become immediately current upon the first payment.
- 18 • Once the borrower is out of forbearance and has resumed payments, the mortgage  
19 company sells the loan back into a new pool that gets bought by investors, often for  
20 more than what the mortgage company paid.<sup>7</sup>

21 64. According to a Wells Fargo spokesman, these early pool buyouts increased substantially  
22 in 2020. *Id.* Wells Fargo bought \$30 billion of mortgages where the homeowners had a forbearance or  
23 received an accommodation in 2020. *Id.* As set forth above, Investors are eager to get their hands on  
24 these loans as they carry interest rates that are higher than the going rate and believe that many of these  
25 borrowers are unlikely to refinance in the near future. *Id.* Thus, Wells Fargo’s improper reporting to  
26 credit bureaus made it difficult if not absolutely impossible for its own customers to refinance or obtain  
27 a mortgage at more favorable rates, and ensured that Wells Fargo could turn a massive profit on its own  
28 CARES Act forbearances.

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26 <sup>7</sup> Ben Eisen, “Mortgage Companies Are Making Money Off Your Forbearance Plan,” *Wall Street*  
27 *Journal* (June 16, 2021), appeared in print edition as “Mortgage Firms Cash In on Forbearance,”  
28 available online at <https://www.wsj.com/articles/mortgage-companies-are-making-money-off-your-forbearance-plan-11623835802> (last accessed January 20, 2023).



1 **Wells Fargo Is A Recidivist Offender in Exploiting Its Own Customers**  
2 **And Acted Willfully Here**

3 65. Wells Fargo is a recidivist offender in taking advantage of its own customers and  
4 consumers, frequently without the customer’s knowledge. As detailed below, it has paid huge civil and  
5 criminal penalties in recent years for this misconduct, and is currently operating under numerous  
6 consent orders with various regulators throughout the country.

7 66. Wells Fargo – including through its Bank Holding Company Wells Fargo & Co. – has a  
8 history and reputation for putting its own financial interests above its customers, to the severe detriment  
9 of consumers and even its own shareholders. Over the last several years, Wells Fargo has been  
10 prosecuted criminally and civilly by numerous government entities here in the United States on  
11 numerous occasions. To this day it is currently operating under February 2018 consent order with the  
12 Federal Reserve Board and April 2018 consent orders with the CFPB and OCC. And just recently  
13 (December 20, 2022) it entered into a new Consent Order with the CFPB.

14 67. While Wells Fargo’s recidivism is too vast and sprawling to detail here, some of the  
15 evidence that Wells Fargo acted willfully here includes:

- 16 • In February 2018, the Company entered into a consent order with the Board of  
17 Governors of the Federal Reserve System (FRB). As required by the consent order, the  
18 Company’s Board of Directors (Board) submitted to the FRB a plan to enhance the  
19 Board’s governance and oversight of the Company, and the Company submitted to the  
20 FRB a plan to further improve the Company’s compliance and operational risk  
21 management program, including the program(s) at Defendant Wells Fargo Bank, N.A..
- 22 • On April 20, 2018 the Company entered into consent orders with the CFPB and the  
23 Office of the Comptroller of the Currency (OCC) to pay an aggregate of \$1 billion in  
24 civil money penalties to resolve matters regarding the Company’s compliance risk  
25 management program and past practices involving certain automobile collateral  
26 protection insurance (CPI) policies and certain mortgage interest rate lock extensions.
- 27 • In October 2018, the Company entered into an agreement to resolve the New York  
28 Attorney General’s investigation pursuant to which the Company paid \$65 million to the  
State of New York.
- In December 2018, the Company entered into an agreement with all 50 state Attorneys  
General and the District of Columbia to resolve an investigation into the Company’s  
retail sales practices (which involved practices at Defendant Wells Fargo Bank, N.A.),  
CPI and GAP, and mortgage interest rate lock matters, pursuant to which the Company  
paid \$575 million.

- 1 • On February 21, 2020, the Company entered into an agreement with the Department of  
2 Justice to resolve the Department of Justice’s criminal investigation into the Company’s  
3 retail sales practices (which involved practices at Defendant Wells Fargo Bank, N.A.),  
4 as well as a separate agreement to resolve the Department of Justice’s civil  
5 investigation. The Department of Justice criminal settlement includes the Company’s  
6 agreement that the facts set forth in the settlement document constitute sufficient facts  
7 for the finding of criminal violations.
- 8 • On February 21, 2020 the Company also entered into an Order to resolve the SEC’s  
9 investigation arising out of the Company’s retail sales practices (including practices at  
10 Defendant Wells Fargo Bank, N.A.. The SEC order contains a finding, to which the  
11 Company consented, that the facts set forth include violations of Section 10(b) of the  
12 Securities Exchange Act of 1934 and Rule 10b-5 thereunder. As part of the resolution of  
13 the Department of Justice and SEC investigations, the Company has agreed to make  
14 payments totaling \$3.0 billion.
- 15 • On December 20, 2022, Defendant Wells Fargo Bank, N.A. entered into a Consent  
16 Order with the CFPB in which it admitted violating numerous laws in various aspects it  
17 its business over a period of many years, including its home mortgage servicing  
18 business. The Consent Order requires numerous conditions to remedy past misconduct  
19 and prevent future similar misconduct, including specific oversight provisions by the  
20 Board of Directors, and reimbursement to consumers of \$2 Billion. In addition, Wells  
21 Fargo was required to pay a civil penalty of an additional \$1.7 Billion.

22 68. Moreover, Wells Fargo is currently defending litigation on behalf of nationwide classes  
23 for intentionally putting certain consumers into a CARES Act forbearance without the consumers’  
24 knowledge or consent, in an effort to protect itself and earn fees from the CARES Act to the substantial  
25 detriment of those consumers. See, e.g. *Forsburg v. Wells Fargo & Co., et al.*, Case No. 5:20-cv-00046  
26 (W.D. Va. Filed July 23, 2020).

27 69. These are just some of the examples of Wells Fargo intentionally placing its financial  
28 interest above its customers, investors and consumers generally. As a result of these and numerous  
other prosecutions, lawsuits, and regulatory actions, and in compliance with certain consent orders,  
Wells Fargo has been required to create a thorough and robust system of oversight, risk management  
and corporate governance that assures the Company’s decision to report CARES Act forbearances went  
to the highest levels within Wells Fargo, and was done knowingly and intentionally by the Company as  
a Company-wide practice.

70. Wells Fargo is a sophisticated mortgage lender and servicer, Wells Fargo knew when it  
changed its account status reporting and intentionally designated Plaintiff’s and the Class’s mortgages

1 as “in forbearance,” “deferred,” and “not current” that it was doing so unlawfully, in violation of the  
2 CARES Act and Cal. Civ. Code § 1785.25. Defendant was acting willfully and is subject to an award  
3 of punitive damages for each violation.

#### 4 **CLASS ALLEGATIONS**

5 71. Wells Fargo claims to be the largest residential mortgage lender and mortgage service  
6 provider in the United States. Wells Fargo is highly sophisticated in its methodology and practices, and  
7 has automated the way it furnishes credit information to CRAs. Thus, no individual attaches a  
8 particular code to a particular account.

9 72. Using its automated processes, Defendant automatically marked many thousands, if not  
10 millions, of current mortgages as being “in forbearance” rather than simply “current” as the CARES Act  
11 required, and in doing so, Defendant violated the CCCRAA.

12 73. Plaintiff brings this action on behalf of himself and all others similarly situated.  
13 Specifically, Plaintiff seeks to certification of a class defined as:

14 All mortgagees with a mortgage in the United States of America whose accounts  
15 were current, who received a CARES Act forbearance on or after March 27, 2020  
16 and whose account was reported as “in forbearance” (or something similar) by  
17 Defendant to a consumer reporting agency.

18 74. Excluded from the Class are Defendant, including any entity in which Defendant has a  
19 controlling interest, is a parent or subsidiary, or which is controlled by Defendant, as well as the  
20 officers, directors, affiliates, legal representatives, heirs, predecessors, successors, and assigns of  
21 Defendant. Also excluded are the judges and court personnel in this case and any members of their  
22 immediate families. Plaintiff reserves the right to amend the Class definition or include subclasses if  
23 discovery and further investigation reveal that the Class should be expanded or otherwise modified.

24 75. The Class is so numerous that joinder is impracticable. The exact number of Class  
25 Members is unknown to Plaintiff at this time and can be ascertained only through appropriate discovery.

26 76. There exists a well-defined community of interest in the questions of law and fact  
27 involved that affect the parties to be represented. These common questions of law and fact predominate  
28 over questions that may affect individual Class Members. Such issues include, but are not limited to:  
(a) whether Defendant’s forbearance agreement is an “accommodation” under 15 U.S.C. § 1681s-

1 2(a)(1)(F)(ii); (b) whether Defendant was required to report customers' accounts as "current;" (c)  
2 whether Defendant's conduct in reporting accounts as "in forbearance" (or something similar) violated  
3 the CCCRAA; (d) the availability and amount of statutory penalties; and (e) attorney's fees and costs.

4 77. The claims of Plaintiff are typical of the claims of the Class he seeks to represent.

5 78. The claims of Plaintiff and of the Class originate from the same conduct, practice, and  
6 procedure on the part of Defendant. Thus, if brought and prosecuted individually, the claims of each  
7 class member would require proof of the same material and substantive facts. Plaintiff possesses the  
8 same interests and has suffered the same injuries as each Class Member. Plaintiff asserts identical  
9 claims and seeks identical relief on behalf of the unnamed Class Members.

10 79. Plaintiff will fairly and adequately protect the interests of the Class and has no interest  
11 adverse to or which directly and irrevocably conflicts with the interests of other Class Members.

12 80. Plaintiff is willing and prepared to serve this Court and the proposed Class as a Class  
13 representative. The interests of Plaintiff are co-extensive with and not antagonistic to those of the  
14 absent Class Members.

15 81. Plaintiff has retained the services of counsel who are experienced in consumer protection  
16 claims, as well as complex class action litigation, will adequately prosecute this action, and will assert,  
17 protect, and otherwise represent Plaintiff and all absent Class Members.

18 82. Moreover, a class action is superior to other methods for the fair and efficient  
19 adjudication of the controversies raised in this Complaint in that: (a) individual claims by Class  
20 Members will be impracticable as the costs of pursuit would far exceed what any one plaintiff or Class  
21 Member has at stake; (b) as a result, very little litigation has been commenced over the controversies  
22 alleged in this Complaint and individual Members are unlikely to have an interest in prosecuting and  
23 controlling separate individual actions; and (c) the concentration of litigation of these claims in one  
24 forum will achieve efficiency and promote judicial economy.

25 **FIRST CAUSE OF ACTION**  
26 **Violation of Cal. Civ. Code § 1785.25(a)**

27 83. Plaintiff realleges and incorporates by reference the allegations set forth in each of the  
28 preceding paragraphs of this Complaint.

1 84. California Civil Code § 1785.25(a) provides “A person shall not furnish information on a  
2 specific transaction or experience to any consumer credit reporting agency if the person knows or  
3 should know the information is incomplete or inaccurate.”

4 85. Wells Fargo is a “person” as defined by § 1785.3(j).

5 86. Wells Fargo was required to continue to furnish information to CRAs that Plaintiff’s and  
6 the Class’s accounts were current and not report them as “in forbearance,” “deferred,” and/or “not  
7 current.”

8 87. Because Wells Fargo was required to identify Plaintiff and the Class’s accounts as  
9 “current” and not “in forbearance,” “deferred,” and “not current” pursuant to the CARES Act, Wells  
10 Fargo violated § 1785.25 when it did so as alleged herein because the information furnished was  
11 inaccurate and/or incomplete.

12 88. Wells Fargo knew or should have known that the information that it furnished to the  
13 consumer credit reporting agencies was inaccurate and incomplete.

14 89. As a direct and proximate result of the foregoing misconduct by Wells Fargo, Plaintiff  
15 has been damaged insofar as he had his credit score materially reduced, has spent money on an attorney,  
16 has spent significant time and effort investigating and challenging the reported status of his mortgage,  
17 and ultimately was forced to withdraw his forbearance and make mortgage payments that he would  
18 otherwise not have been required to make, in order to avoid the restrictions on his ability to borrow, the  
19 harm to his credit and the extra costs he would have incurred for consumer credit as set forth above.  
20 Wells Fargo is liable to Plaintiff and the Class for amounts directly and proximately caused by  
21 Defendant, and in an amount set by statute, and is subject to injunctive relief for the violation(s) of Cal.  
22 Civ. Code § 1785.25(a). On information and belief, to this day Defendant continues to violate Cal. Civ.  
23 Code §1785.25(a) in the same manner.

24 **PRAYER FOR RELIEF**

25  
26 WHEREFORE, Plaintiff prays for relief as follows:

27 A. For an order holding that this action may be maintained as a class action, and that  
28 Plaintiff is appointed as class representative and counsel herein as class counsel;

- 1 B. For an order finding that Wells Fargo willfully violated the CCCRAA;
- 2 C. For an order awarding Plaintiff and the Class actual damages, if any, pursuant to Cal.
- 3 Civ. Code § 1785.31(a)(2)(A);
- 4 D. For an order awarding Plaintiff and the Class statutory and punitive damages pursuant to
- 5 Cal. Civ. Code § 1785.31(a)(2)(B) in the amount of at least \$100 and not more than \$5,000 for each
- 6 violation as the Court deems proper;
- 7 E. For injunctive relief in a form adequate to remedy Wells Fargo's past conduct and
- 8 prevent future harm as described herein;
- 9 F. For an award of all costs of suit herein incurred;
- 10 G. For an award of reasonable attorney's fees; and
- 11 H. For such other and further relief as the Court may deem just and proper.

12 **DEMAND FOR JURY TRIAL**

13 Plaintiff hereby demands a trial by jury as to all causes of action so triable.

14

15 Dated: January 20, 2023

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