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**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION**

In re:

WELLS FARGO FORBEARANCE  
LITIGATION

No. 3:20-cv-06009-JD

**FOURTH AMENDED CONSOLIDATED  
CLASS ACTION COMPLAINT**

**DEMAND FOR JURY TRIAL**

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1 Plaintiffs Luis and Marisol Castro, Pamela Delpapa, Jenna Doctor, Gerald Forsburg, Samara  
2 Green, Patrick Healy, Brett Jacob, Charles Johnson, Barbara Prado, and Renrick and Vivian Robinson  
3 (collectively, “Plaintiffs”), individually and on behalf of a class of similarly situated persons, bring this  
4 class action lawsuit against Defendants Wells Fargo Bank, N.A. (“Wells Fargo Bank”) and Wells Fargo  
5 & Co. (“WFC”) (collectively, “Wells Fargo” or “Defendants”), and allege as follows:

6 **I. INTRODUCTION**

7 1. In March 2020, Americans were suffering through one of the worst pandemics in our  
8 nation’s history. Millions of Americans had lost their jobs, thousands had lost loved ones, and the impact  
9 of this terrible plague was extending over every sector of our domestic and professional lives. In  
10 response, Congress passed the Coronavirus Aid, Relief, and Economic Security Act (“CARES Act”),  
11 Pub. L. No. 116-136, 134 Stat. 281 (codified as amended in sections of 2, 5, 12, 15, 20, 21, 29, 42, and  
12 45 U.S.C.). The CARES Act, among other things, gave American homeowners concerned about their  
13 ability to make mortgage payments, as a result of the pandemic, the right to forbearances for federally  
14 backed mortgages.

15 2. This relief provided a band-aid, not a cure, staunching what could otherwise have been a  
16 Great Recession-level foreclosure crisis. However, forbearance is not forgiveness, and it is not right for  
17 everyone. Loan forbearance plans are agreements allowing borrowers to reduce or suspend payments  
18 for a short period of time, providing extended time for borrowers to become current on their payments  
19 and repay the amounts owed. Forbearance plans do not forgive unpaid loan payments and have attendant  
20 financial consequences. Being in forbearance restricts a borrower’s access to credit, can damage a  
21 borrower’s credit score, can prevent a borrower from refinancing, and can disrupt collateral  
22 agreements—such as bankruptcy plans or repayment plans—which assume continued payment on the  
23 mortgage.

1           3. For that reason, the CARES Act and related regulatory guidance mandate that  
2 participation in a COVID-19 mortgage forbearance plan is entirely voluntary; that is, a borrower must  
3 be informed of the various terms and conditions of the program and then affirmatively decide to enter  
4 the program, and the borrower retains the right to shorten, terminate, or extend the forbearance term.

5           **SEC. § 4022. FORECLOSURE MORATORIUM AND CONSUMER**  
6           **RIGHT TO REQUEST FORBEARANCE.**

7           ...

8           (b) FORBEARANCE.—

9           (1) IN GENERAL.—During the covered period, *a borrower* with a  
10 Federally backed mortgage loan experiencing a financial hardship due,  
11 directly or indirectly, to the COVID–19 emergency *may request*  
12 *forbearance* on the Federally backed mortgage loan, regardless of  
13 delinquency status, by—

14                   (A) *submitting a request to the borrower’s servicer;*

15                   and

16                   (B) affirming that the borrower is experiencing a financial  
17 hardship during the COVID–19 emergency.

18           (2) DURATION OF FORBEARANCE.—*Upon a request by a*  
19 *borrower* for forbearance under paragraph (1), such forbearance shall be  
20 granted for up to 180 days, and *shall be extended for an additional period*  
21 *of up to 180 days at the request of the borrower, provided that, at the*  
22 *borrower’s request, either the initial or extended period of forbearance*  
23 *may be shortened.*

24           ...

(c) REQUIREMENTS FOR SERVICERS.—

(1) IN GENERAL.— *Upon receiving a request for forbearance from*  
*a borrower under subsection (b), the servicer shall with no additional*  
*documentation required other than the borrower’s attestation to a*  
*financial hardship caused by the COVID–19 emergency* and with no  
fees, penalties, or interest (beyond the amounts scheduled or calculated as  
if the borrower made all contractual payments on time and in full under  
the terms of the mortgage contract) charged to the borrower in connection  
with the forbearance, provide the forbearance for up to 180 days, *which*  
*may be extended for an additional period of up to 180 days at the request*

1 *of the borrower, provided that, the borrower’s request for an extension*  
2 *is made during the covered period, and, at the borrower’s request, either*  
3 *the initial or extended period of forbearance may be shortened.*<sup>1</sup>

4 4. As detailed herein, Wells Fargo—without receiving any request or financial hardship  
5 attestation—opted unwitting borrowers into its COVID-19 mortgage forbearance program. The bank’s  
6 primary purpose in doing so was the same profit motive that led to Wells Fargo’s well-documented  
7 history of violating its customers’ trust. By placing borrowers into forbearance, and causing them to  
8 skip payments, Wells Fargo capitalized on an incredibly lucrative loophole.

9 5. The majority of borrowers that Wells Fargo placed into unwanted forbearance plans had  
10 loans that were securitized and pooled into mortgage-backed securities (“MBS”) by one of two  
11 Government Sponsored Entities, (“GSEs”), the Federal National Mortgage Association (“Fannie Mae”) and the  
12 Federal Home Loan Mortgage Corporation (“Freddie Mac”), or the Government National  
13 Mortgage Association (“GNMA” or “Ginnie Mae”). The resulting securities, agency MBS, trade on a  
14 secondary market.

15 6. Under normal circumstances, investors who purchase agency MBS (as opposed to private  
16 label securities) are insulated from the risk that the borrowers whose mortgages underlie the securities  
17 might fail to make payments because loan servicers are obligated to advance most principal and interest  
18 payments for federally backed loans to the GSEs and Ginnie Mae regardless of whether the loan is  
19 performing.

20 7. If a loan is non-performing for three consecutive months, the loan servicer acquires the  
21 option to voluntarily repurchase the loan from the securities pool at par value.<sup>2</sup> This provides loan  
22 servicers with some limit on their obligation to advance payments for non-performing loans and allows

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23 <sup>1</sup> *Coronavirus Aid, Relief, and Economic Security Act*, H.R. 748, 116th Cong. (2nd Sess. 2020),  
<https://www.congress.gov/116/bills/hr748/BILLS-116hr748enr.pdf> (emphasis added).

24 <sup>2</sup> Par value, also sometimes known as nominal or face value, is the amount at which a security can be  
redeemed, and its generally far less than market value.

1 the loan servicers to pursue loan modification options to help delinquent and distressed borrowers  
2 become current.

3 8. The voluntary repurchase of loans at par value is a profit stream for loan servicers like  
4 Wells Fargo. Once the loan begins performing again, it can either be held for investment, resecured,  
5 or resold. Holding the loans for investment leads to profits based on the difference between the cost to  
6 service and the interest rate. Reselling or resecuring leads to a profit, as the resale price typically  
7 exceeds the par value that the loans are purchased for coupon. Under normal circumstances, this makes  
8 sense because it provides loan servicers a financial incentive to work with risky borrowers to recuperate  
9 loans that are more than 90 days delinquent.

10 9. But by placing federally backed borrowers into *unsolicited* forbearance plans, Wells  
11 Fargo acquired the option to repurchase the underlying loans even though many borrowers did not want  
12 or need forbearance and remained financially solvent. Essentially, by placing loans in forbearance,  
13 Wells Fargo created the fiction that the loans were underperforming, then repurchased the loans at an  
14 artificially low price. As detailed below, Wells Fargo exercised this option at a historic rate, voluntarily  
15 repurchasing tens of billions of dollars' worth of otherwise performing mortgages out of the trust pools,  
16 for billions of dollars less than the loans' market price. Ted Tozer, the former President of Ginnie Mae,  
17 has said that banks engaging in this conduct "are setting themselves up for a huge windfall," and that  
18 the scheme is "almost pure profit."<sup>3</sup>

19 10. In addition to exploiting this highly lucrative loophole, Wells Fargo benefitted by  
20 unilaterally opting unwitting homeowners into its forbearance program in several other ways. As  
21 detailed below, Wells Fargo profited by protecting and increasing the value of the mortgage servicing  
22

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23 <sup>3</sup> Joe Light, *Banks Uncover Loophole to Buy Home Loans at Below-Market Prices*, Bloomberg (Aug. 20,  
24 <https://www.bloomberg.com/news/articles/2020-08-20/banks-poised-for-mortgage-bond-wind-fall-that-may-burn-investors>).

1 rights (“MSRs”) associated with the proposed class members’ mortgages; by capping its potential  
2 advancement liabilities for loans that were not voluntarily repurchased; by rendering the bank eligible  
3 for loan-workout incentive payments; and through spread earned on payments that class members made  
4 which were not timely credited to the borrower’s mortgage. As Plaintiffs’ experiences demonstrate,  
5 many borrowers received no notice that Wells Fargo had placed their mortgages into forbearance. They  
6 only found out about Wells Fargo’s actions when they attempted to apply for credit (including the  
7 refinancing of their mortgage) and were denied, saw the forbearance noted on a credit report, or tried,  
8 but were unable, to make a regularly scheduled mortgage payment with Wells Fargo.

9       11. In those instances when Wells Fargo did send borrowers a template notice informing  
10 them that Wells Fargo had granted them temporary mortgage payment relief, the notice was both  
11 insufficient and inaccurate, containing misleading assurances and inadequate warnings about the  
12 potential consequences of being in forbearance.

13       12. Some borrowers who initially thought they wanted a forbearance later sought to end their  
14 forbearance plan upon learning more about the risks associated with forbearances, which risks Wells  
15 Fargo failed to disclose or misleadingly minimized. As Plaintiff Johnson’s circumstances demonstrate,  
16 Wells Fargo not only failed to comply with the CARES Act’s requirement that borrowers be allowed to  
17 end their forbearance at any time, but they unlawfully extended the period of forbearance after borrowers  
18 requested for their loans to be removed from the program.

19       13. Numerous media reports suggest that these practices are widespread.

20       14. Since the onset of COVID-19, approximately 6.3 million homeowners participated in a  
21 mortgage forbearance program, either knowingly or unknowingly. Upon information and belief, Wells  
22  
23  
24

1 Fargo accounted for over a million of those homeowners, many of whom never requested such  
2 forbearance.<sup>4</sup>

3 15. As a result, those homeowners, including Plaintiffs, suffered damages, including, but not  
4 limited to an inability to access credit, an inability to refinance to historically lower interest rates (and  
5 with mortgage servicers instead of Wells Fargo), an inability to secure additional lines of consumer  
6 credit or to access existing credit, an inability to remove private mortgage insurance (“PMI”),  
7 termination of pending mortgage modification agreements, and time spent dealing with the difficult  
8 situation of removing their mortgages from a program they did not want.

9 16. Defendants’ practice of involuntarily putting homeowners in the unwanted forbearance  
10 program without proper documentation prompted the following statement from Senator Sherrod Brown  
11 of Ohio, the ranking Democrat on the Banking Committee:

12 Once again it seems that Wells Fargo’s sloppy service and shoddy  
13 management are hurting consumers. . . . Wells Fargo should immediately  
14 address each of these complaints and make changes to ensure that no  
15 borrower finds themselves worse off from actions that their servicer takes  
16 without their consent or notice.<sup>5</sup>

17 17. In addition to Senator Brown’s public statement, Senators Elizabeth Warren and Brian  
18 Schatz wrote a letter to the Chief Executive Officer and President of WFC seeking information regarding  
19 its practice of putting mortgagors into forbearance programs without their consent.<sup>6</sup>

20 18. The Senators’ July 29, 2020 letter stated that Wells Fargo “appears to be incapable of  
21 self-governance,” and noted that reports of borrowers being placed in forbearance programs they did

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22 <sup>4</sup> See, e.g., Gretchen Morgenson, *More Wells Fargo customers say the bank decided to pause their  
23 mortgage payments without asking*, NBC News (July 22, 2020), [https://www.nbcnews.com/business/  
24 personal-finance/more-wells-fargo-customers-say-bank-decided-pause-their-mortgage-n1234610](https://www.nbcnews.com/business/personal-finance/more-wells-fargo-customers-say-bank-decided-pause-their-mortgage-n1234610).

<sup>5</sup> *Id.*

<sup>6</sup> Letter from Senators Elizabeth Warren & Brian Schatz, U.S. Senate, to Charles W. Scharf, Chief Exec.  
Off. & President Wells Fargo & Co. (July 29, 2020), [https://www.warren.senate.gov/imo/media/doc/  
2020.07.29%20Letter%20to%20Wells%20Fargo%20on%20Forbearance%20Filings.pdf](https://www.warren.senate.gov/imo/media/doc/2020.07.29%20Letter%20to%20Wells%20Fargo%20on%20Forbearance%20Filings.pdf).

1 not want “raise even more questions about the inability of Wells Fargo and its leadership team to comply  
2 with the law and the needs of its customers.”<sup>7</sup>

3 19. The letter proclaimed that “if these reports are true, they represent one more addition to  
4 a long list of inexcusable actions by Wells Fargo at customers’ expense” because such conduct can affect  
5 borrowers’ credit by suggesting that they are not making payments even when they are and can prevent  
6 them from refinancing their home loans to take advantage of lower interest rates.<sup>8</sup>

7 20. Wells Fargo, for its part, has not denied these allegations. Through its spokesperson Tom  
8 Goyda, Wells Fargo stated that “[i]n the spirit of providing assistance, [it] may have misinterpreted  
9 customers’ intentions in a small number of cases[.]”<sup>9</sup>

10 21. Although Wells Fargo did not identify the complete number of borrowers who were  
11 unwillingly placed into the forbearance program, it reported having received 1,600 complaints of  
12 unwanted forbearances.<sup>10</sup> In a more recent filing with this Court, however, Wells Fargo reported  
13 receiving more than 33,853 complaints.<sup>11</sup> Discovery in this case reveals that Wells Fargo knew that its  
14 methodology to identify borrower complaints was materially flawed.

15 22. The true scope of the problem far exceeds that figure. Freddie Mac and Fannie Mae  
16 publish loan-level performance data containing details on the performance of loans underlying credit  
17 risk transfer securities. The data includes origination characteristics, monthly performance information  
18  
19

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20 <sup>7</sup> *Id.* at 1.

21 <sup>8</sup> *Id.* at 2.

22 <sup>9</sup> Anna Hrushka, *Wells Fargo says it ‘misinterpreted customers’ intentions’ in some forbearance cases*,  
Banking Dive (July 24, 2020), <https://www.bankingdive.com/news/wells-fargo-forbearance-mortgage-payments/582284/>.

23 <sup>10</sup> Gretchen Morgenson, *1600 customers say Wells Fargo paused their mortgage payments without their consent*,  
NBC News (Oct. 1, 2020), <https://www.nbcnews.com/business/personal-finance/1-600-customers-say-wells-fargo-paused-their-mortgage-payments-n1241620>.

24 <sup>11</sup> *See* Dkt. No. 140 at 2 n.1.

1 on the underlying mortgage loans, and the company that services each loan. This data contains a large  
2 majority of mortgages guaranteed by Freddie Mac and Fannie Mae.

3 23. Comparing Wells Fargo's loans to their closest peers, Plaintiffs found the initial  
4 forbearance rate for GSE loans serviced by Wells Fargo was over 30 times greater than the industry  
5 average in April 2020.

6 24. When only looking at loans that had always been current prior to the forbearance, the  
7 difference is even starker. The forbearance rate for Wells Fargo borrowers who were current when their  
8 loan entered forbearance was 6%, compared to 0.14% for the industry. This means, that in the early days  
9 of the CARES Act, a *borrower whose loan had never previously been delinquent was more than 40*  
10 *times more likely to be placed into forbearance if her loan was serviced by Wells Fargo.*

11 25. This disparity declined as Wells Fargo began to face scrutiny and unfavorable media  
12 coverage for its faulty forbearance program. Wells Fargo's forbearance rates reached approximately 2%  
13 in June 2020, still twice the industry average, and approached industry forbearance rates by August  
14 2020. On the whole, Wells Fargo's forbearance rates were twice as high as the rest of the industry over  
15 this time period, suggesting that hundreds of thousands of Wells Fargo's forbearances were the result  
16 of its faulty forbearance program.

17 26. In sum, Wells Fargo cynically converted the CARES Act from protection for borrowers  
18 to a profit driver for the bank, hurting the people Congress intended to help. And it did so at the worst  
19 possible time. Many customers, like Ms. Delpapa, the Castros, Ms. Doctor, and Mr. Jacob, sought to  
20 refinance at more favorable rates or secure additional lines of credit and were unable to do so because  
21 they had been placed in forbearance. Some, like Mr. Johnson, noticed decreases in their credit scores.  
22 Others, like Ms. Green and Mr. Johnson, attempted to make payments, unaware that they were in  
23 forbearance, only to have Wells Fargo unlawfully retain those payments without crediting them towards  
24 the outstanding mortgage or escrow account balances.

1 27. Plaintiffs allege as follows upon personal knowledge as to themselves and their own  
2 experiences and, as to all other matters, upon information and belief including due investigation  
3 conducted by their attorneys.

4 **II. JURISDICTION AND VENUE**

5 28. The Court has jurisdiction over the lawsuit because the suit arises under the Racketeer  
6 Influenced and Corrupt Organizations Act (“RICO”), 18 U.S.C. § 1341 (relating to mail fraud) and  
7 18 U.S.C. § 1343 (relating to wire fraud); the Truth in Lending Act (“TILA”), 15 U.S.C. § 1601, as  
8 implemented through Regulation Z; the Real Estate Settlement Procedures Act (“RESPA”), 12 U.S.C.  
9 § 2601, as implemented through Regulation X; and the Fair Credit Reporting Act (“FCRA”), 15 U.S.C.  
10 § 1681.

11 29. This Court also has subject matter jurisdiction pursuant to the Class Action Fairness Act  
12 of 2005 (“CAFA”), 28 U.S.C. § 1332(d), because at least one Class member is of diverse citizenship  
13 from one defendant, there are 100 or more Class members nationwide, and the aggregate amount in  
14 controversy exceeds \$5,000,000 exclusive of interest and costs.

15 30. The Court also has subject matter jurisdiction over Plaintiffs’ non-federal claims under  
16 28 U.S.C. § 1367, because those claims form part of the same case or controversy as the federal claims.

17 31. This Court has general personal jurisdiction over WFC because it has its principal place  
18 of business in San Francisco, California.

19 32. This Court has general personal jurisdiction over Wells Fargo Bank because its principal  
20 place of business is in San Francisco, California.

21 33. This Court also has general personal jurisdiction over Wells Fargo Bank because its  
22 contacts with California are so constant and pervasive as to render it essentially at home in California.

23 34. This Court has specific personal jurisdiction over Wells Fargo Bank because a substantial  
24 part of the actions or omissions giving rise to Plaintiffs’ claims occurred in this District.

1 35. The exercise of specific personal jurisdiction over Wells Fargo Bank is consistent with  
 2 due process, as Wells Fargo Bank regularly conducts and/or solicits business in, engages in other  
 3 persistent courses of conduct in, and derives substantial revenue from services provided to, persons in  
 4 this District and in California.

5 36. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b)(3) because the Court has  
 6 personal jurisdiction over Defendants and Defendants have sufficient contacts with this District, the  
 7 situs of their principal places of business.

8 37. Venue is also proper in the Northern District of California pursuant to 28 U.S.C.  
 9 § 1391(b)(2) because a substantial part of the events or omissions giving rise to the claims at issue in  
 10 this Complaint occurred in this District.

11 **III. INTRADISTRICT ASSIGNMENT**

12 38. This case is properly brought in the San Francisco Division of the Northern District of  
 13 California. Under Local Rule 3-2(c), cases are to be filed in the Division “where a substantial part of the  
 14 events or omissions giving rise to the claim occurred.”

15 39. Because WFC maintains its headquarters in San Francisco, and Wells Fargo Bank’s  
 16 principal place of business is in San Francisco, under Local Rule 3-2(e), the proper venue for this case  
 17 is the San Francisco Division of the Northern District of California.

18 **IV. PARTIES**

19 **A. Representative Plaintiffs**

20 40. Plaintiffs Luis and Marisol Castro are Texas citizens whose homestead property is  
 21 located in Dallas, Texas. Mr. and Mrs. Castro’s property is encumbered by a lien securing repayment of  
 22 a federally related loan backed by Fannie Mae and is serviced by Wells Fargo.  
 23  
 24

1 41. Plaintiff Pamela Delpapa is a resident and citizen of Riverside County, California. Her  
2 property is encumbered by a loan backed by the Fair Housing Administration, and her loan was serviced  
3 by Wells Fargo until late in 2020.

4 42. Plaintiff Jenna Doctor is a citizen of Florida whose homestead property is located in  
5 Castleberry, Florida. Ms. Doctor's homestead property is encumbered by a lien securing repayment of  
6 a federally related loan backed by the Federal Housing Administration ("FHA") and is serviced by Wells  
7 Fargo.

8 43. Plaintiff Gerald Forsburg is a resident and citizen of Virginia whose homestead property  
9 is located in Shenandoah County, Virginia. Mr. Forsburg's homestead property is encumbered by a lien  
10 securing repayment of a federally related loan backed by the FHA and is serviced by Wells Fargo.

11 44. Plaintiff Samara Green is a resident and citizen of Rockdale County, Georgia, whose  
12 mortgage is serviced by Wells Fargo.

13 45. Plaintiff Patrick Healy is a resident and citizen of San Diego County, California, whose  
14 mortgage is serviced by Wells Fargo.

15 46. Plaintiff Brett Jacob is a resident and citizen of Nassau County, New York, whose  
16 mortgage is serviced by Wells Fargo.

17 47. Plaintiff Charles Johnson is a resident and citizen of Riverside County, California, whose  
18 mortgage is serviced by Wells Fargo.

19 48. Plaintiff Barbara Prado is a California citizen whose homestead property is located in  
20 Fremont, California. Ms. Prado's property is encumbered by liens securing repayment of two federally  
21 related loans backed by the FHA, which are both serviced by Wells Fargo.

22 49. Plaintiffs Renrick and Vivian Robinson are citizens and residents of Grand Prairie,  
23 Texas. Their property is encumbered by a Veterans Administration ("VA") Loan, which loan was  
24 originated by, refinanced by, and is serviced by, Wells Fargo.

1 **B. Defendants**

2 50. Defendant Wells Fargo & Co. (“WFC”) is a diversified financial services company  
3 headquartered in San Francisco, California that provides banking, insurance, investments, mortgage  
4 banking, and consumer finance through banking stores, the internet, and other distribution channels to  
5 customers, businesses, and other institutions in all 50 states and in other countries.

6 51. WFC exercises specific and financial control over the operations of Defendant Wells  
7 Fargo Bank, dictates the policies, procedures, and practices of Wells Fargo Bank, exercises power and  
8 control over the specific activities upon which the claims herein are based, and is the ultimate recipient  
9 of the ill-gotten gains described herein.

10 52. Defendant Wells Fargo Bank, N.A. (“Wells Fargo Bank”) is a national banking  
11 association chartered under the laws of the United States. While it is nominally headquartered in Sioux  
12 Falls, South Dakota, Wells Fargo Bank’s principal place of business is in San Francisco, California.  
13 Wells Fargo Bank provides WFC personal and commercial banking services, is the successor by merger  
14 of Wells Fargo Home Mortgage, Inc., and is WFC’s principal subsidiary.

15 **V. FACTUAL ALLEGATIONS**

16 **A. The Federal Government Passed the CARES Act to Help with the Economic Harm**  
17 **Caused by the COVID-19 Pandemic, in Part by Empowering Borrowers to Opt in to**  
18 **Forbearance Plans.**

19 53. On March 11, 2020, the World Health Organization (“WHO”) declared the COVID-19  
20 outbreak a global pandemic.

21 54. On March 13, 2020, then-President Trump issued the Coronavirus Disease 2019  
22 (COVID-19) Emergency Declaration, which declared that the COVID-19 pandemic was of sufficient  
23  
24

1 severity and magnitude to warrant an emergency declaration for all states, territories and the District of  
2 Columbia.<sup>12</sup>

3 55. In addition to the human tragedy caused by the pandemic, the economic fallout was  
4 immediate and continues to be considerable.

5 56. On March 25, 2020, in response to the economic damage beginning to be felt by  
6 Americans throughout the country, the United States Senate passed the CARES Act.

7 57. The CARES Act was passed by the House of Representatives the following day and  
8 signed into law on March 27, 2020.<sup>13</sup>

9 58. The CARES Act is the single-largest economic stimulus bill in the United States' history,  
10 allocating approximately \$2.2 trillion of support to individuals and business affected by the COVID-19  
11 pandemic.

12 **1. The CARES Act Grants Borrowers the Privilege to Elect Mortgage Forbearance  
13 from Their Loan Servicers.**

14 59. A substantial part of the coronavirus aid package was designed to assist American  
15 homeowners with federally backed mortgages who were in economic distress as a result of the COVID-  
16 19 pandemic.

17 60. First, the CARES Act assisted American homeowners with government backed  
18 mortgages by prohibiting their lenders and mortgage servicers from beginning a judicial or non-judicial  
19 foreclosure or from finalizing a foreclosure judgment or sale through at least August 31, 2020.

20 61. Second, and most relevant to this Action, the CARES Act provided homeowners with  
21 federally backed loans experiencing financial hardships because of COVID-19 with the option to request  
22 up to 180 days of forbearance on their mortgage.

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23 <sup>12</sup> See Trump Whitehouse Archives, March 13, 2020 LETTER FROM PRESIDENT DONALD J. TRUMP ON  
24 EMERGENCY DETERMINATION UNDER THE STAFFORD ACT, [https://trumpwhitehouse.archives.gov/  
briefings-statements/letter-president-donald-j-trump-emergency-determination-stafford-act/](https://trumpwhitehouse.archives.gov/briefings-statements/letter-president-donald-j-trump-emergency-determination-stafford-act/).

<sup>13</sup> See generally CARES Act, Pub. L. No. 116-136.

1           62.     Specifically, Section 4022(b) provides, in relevant part, that:

2                   (b) FORBEARANCE.—

3                   (1) IN GENERAL.—During the covered period [beginning February 15,  
4                   2020 and ending on June 30, 2022], a borrower with a Federally backed  
5                   mortgage loan experiencing a financial hardship due, directly or indirectly,  
6                   to the COVID-19 emergency *may request* forbearance on the Federally  
7                   backed mortgage loan, regardless of delinquency status, by—

8                           (A) submitting a request to the borrower’s servicer and

9                           (B) affirming that the borrower is experiencing a financial  
10                           hardship during the COVID-19 emergency.

11                   (2) DURATION OF FORBEARANCE.—*Upon a request by a borrower  
12                   for forbearance* under paragraph (1), such forbearance shall be granted  
13                   for up to 180 days, and shall be extended for an additional period of up to  
14                   180 days *at the request of the borrower*, provided that, *at the borrower’s  
15                   request*, either the initial or extended period of forbearance may be  
16                   shortened.

17 CARES Act, Pub. L. No. 116-136, 134 Stat. 281, § 4022(b) (emphasis added).

18           63.     Section 4022(c) provides, in relevant part, that:

19                   (c) REQUIREMENTS FOR SERVICERS.—

20                   (1) IN GENERAL.—*Upon receiving a request for forbearance from a  
21                   borrower under subsection (b)*, the servicer shall *with no additional  
22                   documentation required other than the borrower’s attestation to a  
23                   financial hardship caused by the COVID-19 emergency* and with no  
24                   fees, penalties, or interest (beyond the amounts scheduled or calculated as  
if the borrower made all contractual payments on time and in full under  
the terms of the mortgage contract) charged to the borrower in connection  
with the forbearance, provided the forbearance up to 180 days, which may  
be extended for an additional period of up to 180 days *at the request of  
the borrower*, provided that, *the borrower’s request for an extension* is  
made during the covered period, and, *at the borrower’s request*, either the  
initial or extended period of forbearance may be shortened.

*Id.* § 4022(c) (emphasis added).

64.     These provisions make it abundantly clear that participation in a COVID-19 forbearance program is voluntary and to be initiated and maintained only at the request of the mortgagor.

1           65. Congress intentionally limited CARES Act forbearances to only occur upon the request  
2 of a borrower, as can be shown through legislation considered but not enacted. At the same time that the  
3 CARES Act was being negotiated between the chambers, Congressman William Lacy Clay introduced  
4 a bill, H.R. 6340, which would have required servicers to grant automatic loan forbearance for  
5 delinquent borrowers, in addition to granting borrowers the right to receive a forbearance regardless of  
6 delinquency. When the CARES Act was passed, Congressman Clay’s approach was rejected, and the  
7 CARES Act was limited to providing forbearances only upon a borrower’s request.

8           66. As explained by the Consumer Financial Protection Bureau (“CFPB”), a “[f]orbearance  
9 is when [] mortgage servicer[s] or lender[s] allow [mortgagors] to pause or reduce [their] mortgage  
10 payments for a limited period of time while [they] build back [their] finances.”<sup>14</sup>

11           67. Notably, while the CARES Act provides many homeowners with the right to have all  
12 mortgage payments completely paused for a period of time, “[f]orbearance doesn’t mean [mortgagors’]  
13 payments are forgiven or erased. [Rather, mortgagors] are still obligated to repay any missed payments,  
14 which, in most cases, may be repaid over time[.]”<sup>15</sup>

15           68. For mortgagors to avail themselves of the COVID-19 mortgage forbearance option, they  
16 were instructed to contact their loan servicer to obtain information and, if appropriate, request  
17 forbearance.<sup>16</sup>

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22 <sup>14</sup> *Learn about forbearance*, CFPB (page last modified Oct. 21, 2021), <https://www.consumerfinance.gov/coronavirus/mortgage-and-housing-assistance/mortgage-relief/>.

23 <sup>15</sup> *Id.*

24 <sup>16</sup> *See Request forbearance*, CFPB (page last modified Mar. 25, 2021), <https://www.consumerfinance.gov/coronavirus/mortgage-and-housing-assistance/request-forbearance-or-mortgage-relief/>.

1           **2.       Guidance Clarifies the CARES Act’s Protections.**

2           69.       While the CARES Act was passed quickly and with laudable intentions, there has been  
3 a tremendous amount of consumer confusion around many aspects of the CARES Act, including the  
4 forbearance program.

5                       **a.   The Initiation, Maintenance, and Extension of a Forbearance are Decisions  
6                       Left to Borrowers.**

7           70.       The initial term of CARES Act mortgage forbearances was designed to be 180 days<sup>17</sup>  
8 and, after that term expires, lenders were instructed to work with borrowers to—upon request by the  
9 homeowners—extend the forbearance or establish a repayment plan.<sup>18</sup> But borrowers were always  
10 intended to have the ability to only accept a shorter forbearance period, to shorten the term of a  
11 previously-accepted forbearance, and to cancel a forbearance plan. While the text of the Act is clear on  
12 this subject, subsequent guidance has further emphasized that borrowers retain the privilege to shorten,  
13 end, or decline a forbearance.

14           71.       Freddie Mac issued an April 8, 2020 Temporary Service Guidance Related to COVID-  
15 19, which stated that “the length of each forbearance plan term must be for an appropriate length, based  
16

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17 <sup>17</sup> Wells Fargo provided three-month forbearances, notwithstanding guidance requiring that the default  
18 length of forbearance in the event that a loan servicer and borrower could not agree on a length of  
19 forbearance is 180 days. Three consecutive missed payments is enough to render a loan eligible for  
20 voluntary repurchase, as alleged below, further evincing the bank’s true motive in effectuating this  
21 program.

22 <sup>18</sup> *See Information for VA home loan borrowers during COVID-19*, U.S. Dep’t of Veterans Affairs (last  
23 updated Aug. 5, 2022), [https://benefits.va.gov/homeloans/cares-act-frequently-asked-questions.  
24 asp#FAQ6](https://benefits.va.gov/homeloans/cares-act-frequently-asked-questions.asp#FAQ6) (stating that “forbearance is broken down into two pieces; an *initial* period and  
an *additional* period. To receive the initial period, you may notify your mortgage company that you  
are experiencing financial hardship due to the COVID-19 pandemic. As mentioned above, the  
hardship can be direct or indirect. When you notify the mortgage company, you may request up to  
180 days of forbearance. You don’t have to use the entire forbearance period if you can resume  
payments sooner, but **the deadline to request COVID-19 forbearance is through the end of the  
nationally declared emergency**. If you need the additional period, you may notify your mortgage  
company that you are still experiencing hardship due to the COVID-19 pandemic and request up to  
180 additional days of forbearance.”).

1 on the Borrower’s individual circumstances and nature of the hardship, and must be agreed upon with  
2 or requested by the Borrower.”<sup>19</sup>

3 72. As the April 27, 2020 U.S. Department of Housing and Urban Development’s Inspector  
4 General report explained, “[t]he borrower also has the option at any time to shorten the forbearance  
5 period and resume payments.”<sup>20</sup> Likewise, Fannie Mae Lending Letter 2020-02 requires servicers to  
6 inform borrowers that they can shorten a forbearance plan’s terms.<sup>21</sup>

7 73. Thus, not only the initiation, but the maintenance and extension of a CARES Act  
8 forbearance were privileges held by the borrowers, not the loan servicers.

9 **b. Accepting a Forbearance Plan Is an Important Financial Decision Obliging  
10 Servicers to Provide Ample and Accurate Information.**

11 74. CARES Act forbearance plans can help people experiencing temporary hardships due to  
12 COVID-19. But a survey by LendingTree found that 70% of homeowners who have gone into  
13 forbearance did not need the relief.<sup>22</sup>

14 75. Forbearances do not forgive the missed payments and are an important financial decision,  
15 leading to negative credit reporting that effectively denies borrowers access to traditional credit markets.  
16

17 <sup>19</sup> *Bulletin 2020-10: Temporary Servicing Guidance Related to COVID-19*, FreddieMac (Apr. 8, 2020),  
18 <https://guide.freddiemac.com/app/guide/bulletin/2020-10>.

19 <sup>20</sup> Memorandum from Brian T. Pattison, Assistant Inspector Gen. for Evaluation to Joseph M. Gormley,  
20 Deputy Assistant Sec’y for Single Family Housing, *Some Mortgage Loan Servicers’ Websites Offer  
21 Information about CARES Act Loan Forbearance That Is Incomplete, Inconsistent, Dated, and Unclear*  
22 at 2, U.S. Dep’t Hous. & Urban Dev. (Apr. 27, 2020), [https://www.hudoig.gov/sites/default/files/2020-  
23 04/Single%20Family%20Mortgage%20Forbearance%20Brief.pdf](https://www.hudoig.gov/sites/default/files/2020-04/Single%20Family%20Mortgage%20Forbearance%20Brief.pdf).

24 <sup>21</sup> *Lender Letter (LL-2020-02)* at 7, Fannie Mae (updated Dec. 9, 2020), [https://singlefamily.fanniemae  
21 .com/media/22261/display](https://singlefamily.fanniemae.com/media/22261/display).

<sup>22</sup> See Tendayi Kapfidze, *LendingTree Finds the Majority of Homeowners Approved for a Mortgage  
22 Forbearance May Not Have Needed One*, LendingTree (May 18, 2020), [https://www.lendingtree  
23 .com/home/mortgage/majority-of-homeowners-approved-for-mortgage-forbearance-may-not-have-  
24 needed-one-study/](https://www.lendingtree.com/home/mortgage/majority-of-homeowners-approved-for-mortgage-forbearance-may-not-have-needed-one-study/); see also Aly J. Yale, *70% Of Homeowners Seeking Mortgage Relief Don’t  
Actually Need The Help*, Forbes (May 19, 2020), [https://www.forbes.com/sites/allyale/2020/05/  
19/70-of-homeowners-seeking-mortgage-relief-dont-actually-need-the-help/?sh=b52a98052a54](https://www.forbes.com/sites/allyale/2020/05/19/70-of-homeowners-seeking-mortgage-relief-dont-actually-need-the-help/?sh=b52a98052a54).

1 Thus, mortgage servicers are obligated to provide accurate notices to borrowers who are deciding  
2 whether a forbearance is right for them. This, Wells Fargo did not do.

3 76. Servicers like Wells Fargo are required to make sure that borrowers like Plaintiffs are  
4 fully informed about the downsides to a forbearance and provided with an appropriate Evaluation  
5 Notice. As stated in the Fannie Mae, July 15 Lending Letter 2020-02:

6 [S]ervicers must inform the borrower that the payments which are the  
7 subject of a forbearance plan have only been delayed or reduced, not  
8 forgiven, and that once the forbearance plan is complete, one of the  
9 following must occur:

- 10 • the mortgage loan must be brought current through a reinstatement,
- 11 • the borrower is approved for another workout option,
- 12 • the mortgage loan is paid in full, or
- 13 • the servicer refers the mortgage loan to foreclosure in accordance  
14 with applicable law.

15 The servicer must also inform the borrower that he or she may shorten a  
16 forbearance plan term at any time to reduce the amount of payments which  
17 are being delayed or reduced.

18 As stated in the *Servicing Guide* D2-3.2-01, Forbearance Plan, the  
19 forbearance plan terms must be provided to the borrower using the  
20 appropriate Evaluation Notice, which must be revised in accordance with  
21 applicable law. In addition, the servicer must document in the individual  
22 mortgage loan file the borrower's request for forbearance and attestation  
23 as to a financial hardship caused by the COVID-19 emergency, and the  
24 terms of the initial and any extended forbearance, including the duration  
of the forbearance period.<sup>23</sup>

25 77. The template Evaluation Notice, provided in the *Servicing Guide* D2-3.2-01, contains the  
26 following warnings to borrowers contemplating forbearance:

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<sup>23</sup> *Lender Letter (LL-2020-02)* at 7, Fannie Mae (updated Dec. 9, 2020), <https://singlefamily.fanniemae.com/media/22261/display>.

We will not pursue foreclosure during the forbearance plan term. However, the terms of your mortgage remain unchanged. By not making your mortgage payments during the plan's term you will become more delinquent and your credit score may be impacted. For more information refer to the **Additional Forbearance Plan Information and Legal Notices**.

and:<sup>24</sup>

#### **Additional Forbearance Plan Information and Legal Notices**

**Credit Reporting:**

- We will continue to report the delinquency status of your mortgage as well as your entry into a forbearance plan to credit reporting agencies in accordance with applicable law.
- **CREDIT REPORTING AGENCIES MAY CONSIDER THE ENTRY INTO A FORBEARANCE PLAN AS AN INCREASED CREDIT RISK. HOWEVER, A FORECLOSURE WOULD HAVE A MORE NEGATIVE IMPACT TO YOUR CREDIT SCORE.**

78. Yet Wells Fargo's forbearance practices failed to ensure that borrowers understood their obligations and options at the end of the forbearance period; for instance, misleadingly indicating that deferments would be available when that was not the case. Wells Fargo did not include any such warnings. Borrowers were thus deprived of the information required to make an informed decision about whether a forbearance was right for them.

#### **c. Deferment Is the Default Workout Option for Federally-Backed Loans.**

79. Leaving aside the issue of whether mortgagors were even aware that they are in a mortgage forbearance program, the provision that has caused the most confusion is that participating mortgagors often did not know if they had to get their mortgage current at the conclusion of the forbearance period or how Wells Fargo would treat the deferred payments.

80. When a mortgage servicer like Wells Fargo places a loan in forbearance, it permits borrowers to suspend or reduce mortgage payments for a limited time. However, those payments are not forgiven. They are just delayed. The borrower must still repay the missed payments in the future. Some

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<sup>24</sup> *Evaluation Notices* at 18, 19, Fannie Mae (Apr. 12, 2023), [https://www.fanniemae.com/content/guide\\_exhibit/evaluation-model-clauses.doc?\\_ga=2.176411808.465931103.1684514334-593630053.1683832803](https://www.fanniemae.com/content/guide_exhibit/evaluation-model-clauses.doc?_ga=2.176411808.465931103.1684514334-593630053.1683832803).

1 borrowers may be eligible for deferment, which adds the missed payments to the end of loan. Others,  
2 however, may be required to pay them more rapidly. Moreover, during forbearance, interest continues  
3 to accrue even though the principal is not being paid down, and borrowers' escrow accounts are not  
4 funded as anticipated, resulting in an escrow deficit.

5 81. Fannie Mae and Freddie Mac attempted to address the confusion about the post-CARES  
6 Act forbearance loss mitigation landscape when they introduced the "COVID-19 Payment Deferral"  
7 option with Lender Letter (LL-2020-07) and Bulletin 2020-15.<sup>25</sup>

8 82. The COVID-19 Payment Deferral brought Fannie Mae and Freddie Mac in line with the  
9 United States Department of Housing and Urban Development's ("HUD") COVID-19 National  
10 Emergency Standalone Partial Claim option, which provides borrowers with a junior mortgage (zero  
11 additional interest, no fees) not payable until the mortgage is paid off, comprised of the total amount of  
12 payments missed during a CARES Act forbearance period.<sup>26</sup>

13 83. Under a COVID-19 Payment Deferral described in LL-2020-07, all forborne payments  
14 (up to 12 months) are to be placed into a non-interest-bearing balance to be paid back at the end of the  
15 loan term. Thus, the forborne payments are not a source of increased interest accrual upon exiting  
16 forbearance. However, not all borrowers are eligible for a deferral.

17 84. Wells Fargo provided misleading communications to borrowers contemplating entering  
18 payment suspensions, indicating that they would receive a deferral or deferment even when the borrower  
19 was not eligible for a deferral.

20  
21  
22 <sup>25</sup> *Lender Letter (LL-2020-07)*, Fannie Mae (updated Nov. 18, 2020), <https://singlefamily.fanniemae.com/media/22916/display>; *Bulletin 2020-15: Freddie Mac COVID-19 Payment Deferral*, Freddie  
23 Mac (May 13, 2020) <https://guide.freddiemac.com/app/guide/bulletin/2020-15>.

24 <sup>26</sup> *See Mortgagee Letter 2020-06*, HUD(Apr. 1, 2020), <https://www.hud.gov/sites/dfiles/OCHCO/documents/20-06hsngml.pdf>.

1           **3. Millions of Homeowners with Federally Backed Loans Were in a Forbearance**  
2           **Program.**

3           85. As of June 30, 2020, 4.58 million homeowners were in COVID-19 related forbearance  
4 plans, representing 8.6% of all active mortgages.<sup>27</sup>

5           86. All told, roughly 6.2 million homeowners entered into COVID-19 forbearances.

6           87. Some 6.8% of all GSE-backed loans and 12.3% of all FHA & VA loans were in  
7 forbearance plans,<sup>28</sup> and approximately 11% of privately-held mortgages were in some type of  
8 forbearance or deferment program.

9           88. Wells Fargo has stated publicly that it deferred 2.5 million payments for consumer and  
10 small business customers since the start of the pandemic.<sup>29</sup>

11           **B. Wells Fargo Seized Upon the CARES Act as an Opportunity for Profit.**

12           89. Wells Fargo put borrowers into unwanted forbearances. Doing so put the bank “deeply  
13 in the money” while harming the borrowers. Tom Goyda, Wells Fargo’s spokesman, admitted that the  
14 bank “misinterpreted” customer intent in many instances, placing loans into unwanted or unasked-for  
15 forbearances.<sup>30</sup> A more robust explanation for the bank’s motives can be discerned from a statement that  
16 John Shrewsberry, Wells Fargo’s Chief Financial Officer (“CFO”) made in the bank’s earnings call for  
17 the second quarter 2020. Betsy Graseck, an analyst for Morgan Stanley, asked about American Banker’s  
18

19 <sup>27</sup> See Diana Olick, *Loans in coronavirus mortgage bailouts see largest weekly decline yet – but there*  
20 *are more red flags*, CNBC (July 3, 2020), [https://www.cnbc.com/2020/07/03/loans-in-coronavirus-](https://www.cnbc.com/2020/07/03/loans-in-coronavirus-mortgage-bailouts-see-largest-weekly-decline-yet.html)  
21 [mortgage-bailouts-see-largest-weekly-decline-yet.html](https://www.cnbc.com/2020/07/03/loans-in-coronavirus-mortgage-bailouts-see-largest-weekly-decline-yet.html).

22 <sup>28</sup> See *Forbearance Volumes Reverse Course For Largest Decline Yet*, Black Knight, Inc. (July 3, 2020),  
23 [https://www.blackknightinc.com/blog-posts/forbearance-volumes-reverse-course-for-largest-](https://www.blackknightinc.com/blog-posts/forbearance-volumes-reverse-course-for-largest-decline-yet/)  
24 [decline-yet/](https://www.blackknightinc.com/blog-posts/forbearance-volumes-reverse-course-for-largest-decline-yet/) [[https://web.archive.org/web/20200707235819/https://www.blackknightinc.com/blog-](https://web.archive.org/web/20200707235819/https://www.blackknightinc.com/blog-posts/forbearance-volumes-reverse-course-for-largest-decline-yet/)  
[posts/forbearance-volumes-reverse-course-for-largest-decline-yet/](https://web.archive.org/web/20200707235819/https://www.blackknightinc.com/blog-posts/forbearance-volumes-reverse-course-for-largest-decline-yet/)].

<sup>29</sup> See Anna Hrushka, *Wells Fargo says it ‘misinterpreted customers’ intentions’ in some forbearance*  
cases, BankingDive (July 24, 2020), [https://www.bankingdive.com/news/wells-fargo-forbearance-](https://www.bankingdive.com/news/wells-fargo-forbearance-mortgage-payments/582284/)  
[mortgage-payments/582284/](https://www.bankingdive.com/news/wells-fargo-forbearance-mortgage-payments/582284/).

<sup>30</sup> *Id.*

1 reporting on Wells Fargo's Ginnie Mae buyouts. Mr. Shrewsberry explained the option to repurchase  
2 loans placed into forbearances is "deeply in the money."<sup>31</sup>

3 90. This is not the first time that Wells Fargo has violated customers' trust in this manner.  
4 Implementing forbearance plans without customer approval is reminiscent of other troubling practices  
5 at Wells Fargo in recent years. Most notably, Wells Fargo opened an estimated 3.5 million debit or  
6 credit accounts without customer consent, as alleged in a class action complaint in this District and  
7 resolved by a \$142 million settlement finally approved by the Honorable Vince Chhabria<sup>32</sup> and a \$3  
8 billion settlement with the federal government.<sup>33</sup>

9 **1. Wells Fargo Unilaterally Placed Homeowners into Forbearance Programs and**  
10 **Extended Homeowners' Forbearance Plans Without Their Consent.**

11 91. As detailed above, accepting a forbearance is an important and consequential financial  
12 decision, one that a loan servicer cannot unilaterally make on behalf of a borrower. Before the passage  
13 of the CARES Act, for instance, there were substantial restrictions on a loan servicer's ability to grant a  
14 Freddie Mac borrower a forbearance, requiring negotiations of the forbearance terms with the  
15 borrower.<sup>34</sup> Even if a borrower needs the help or is fully informed of the consequences, lenders may not  
16 put a loan in forbearance without a customer requesting it. As the CFPB explains, "you must contact  
17 your loan servicer to request this forbearance."<sup>35</sup> Banks may not institute it automatically. But that's  
18 exactly what Wells Fargo did.

19 <sup>31</sup> See *Wells Fargo (WFC) Q2 2020 Earnings Call Transcript*, Motley Fool (July 14, 2020), <https://www.fool.com/earnings/call-transcripts/2020/07/14/wells-fargo-wfc-q2-2020-earnings-call-transcript.aspx>.

20 <sup>32</sup> See Revised Order Granting Final Approval of Class Action Settlement at 4, *Jabbari v. Wells Fargo & Co.*, No. 3:15-cv-02159-VC (N.D. Cal. June 14, 2018), Dkt. No. 271.

21 <sup>33</sup> See Pete Williams, *Wells Fargo to pay \$3 billion over fake account scandal*, NBC News (Feb. 21, 2020), <https://www.nbcnews.com/news/all/wells-fargo-pay-3-billion-over-fake-account-scandal-n1140541>.

22 <sup>34</sup> *Requirements for a forbearance plan*, Freddie Mac (Dec. 1, 2018), <https://guide.freddiemac.com/app/guide/section/9203.13>.

23 <sup>35</sup> See *Mortgage Forbearance Cares Act Video Transcript*, CFPB (Apr. 2, 2020), [https://files.consumerfinance.gov/f/documents/mortgage-forbearance-cares-act\\_video-transcript.pdf](https://files.consumerfinance.gov/f/documents/mortgage-forbearance-cares-act_video-transcript.pdf).

1 92. Since the passage of the CARES Act in late March 2020, millions of homeowners across  
2 the country attempted to obtain information from their mortgage servicers and lenders as to the specifics  
3 of their COVID-19 forbearance program.<sup>36</sup>

4 93. As numerous media reports have detailed, Wells Fargo unilaterally put borrowers into  
5 their mortgage forbearance programs despite receiving no request from the borrower and/or having no  
6 clear indication of borrowers' consent.<sup>37</sup> Thousands of homeowners were put into mortgage forbearance  
7 programs they did not request or had their forbearance period extended for an additional period of time  
8 without their consent, causing substantial problems for those homeowners.

9 94. As experienced by Plaintiffs, and as attested to in consumer complaints from across the  
10 nation, Wells Fargo automatically placed borrowers in forbearance when they contacted the bank by  
11 phone or online to merely inquire about their options.

12 95. As one consumer told the CFPB, a Wells Fargo employee admitted "that the system is  
13 like a 'hair trigger'" automatically placing loans into forbearance, "even though I did nothing to start a  
14 forbearance."<sup>38</sup>

15 96. In an interview with Fortune Magazine, the Chief Executive Officer of Wells Fargo,  
16 Charles Scharf, explained, regarding the forbearance program, that "every institution makes mistakes."<sup>39</sup>  
17 The forbearance program was in fact a series of mistakes: placing borrowers into unrequested  
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19 <sup>36</sup> See Anna Bahney, *Homeowners are getting mortgage relief they didn't want*, CNN (May 20, 2020),  
20 <https://www.cnn.com/2020/05/20/success/mortgage-forgiveness-homeowner-complaints-coronavirus/index.html>.

21 <sup>37</sup> See Diana Olick, *Some homeowners are getting mortgage bailouts by mistake, and it's keeping them from*  
22 *refinancing*, CNBC (May 12, 2020), <https://www.cnbc.com/2020/05/12/coronavirus-some-homeowners-getting-mortgage-bailouts-by-mistake.html>.

23 <sup>38</sup> *Consumer Complaint 3663700*, CFPB (May 21, 2020), <https://www.consumerfinance.gov/data-research/consumer-complaints/search/detail/3663700>.

24 <sup>39</sup> Rey Mashayekhi, *Can anyone fix Wells Fargo?*, Fortune (Feb. 3, 2021), <https://fortune.com/longform/fixing-wells-fargo-charles-scharf-ceo-regulatory-issues-privacy-fake-account-fraud-scandal-covid/>.

1 forbearance; making it extremely difficult for borrowers to make payments while in a forbearance;  
2 providing inaccurate and misleading information to borrowers considering forbearances; improperly and  
3 inaccurately reporting to credit reporting agencies that borrowers who never requested a forbearance  
4 were in such a plan; and improperly extending forbearances even when a borrower requested to end a  
5 forbearance.

6 97. These “mistakes” were widespread. The CFPB’s database of consumer complaints lists  
7 numerous examples of similar complaints. These are a sample:

8 Due to a job loss, I reached out to Wells Fargo and asked for information  
9 on their Covid-19 mortgage relief program. To clarify, I only asked for  
10 information on the program. The representative on the phone stated that  
11 an information packet would be mailed to me. About a week later, a letter  
12 arrived from Wells Fargo stating that they are “confirming short term  
13 payment relief for the account.” This was not what I had requested. In  
14 addition, the letter states “We won’t report this account to consumer  
15 reporting agencies.” It has now come to light that Wells Fargo has put a  
16 forbearance on the mortgage, preventing any ability to refinance.<sup>40</sup>

17 Wells Fargo put my account in forbearance when I didn’t request it. After  
18 talking to multiple individuals on the phone I was told that if you click the  
19 “more info” button on the site that you will be automatically enrolled  
20 without asking.<sup>41</sup>

21 Wells Fargo will NOT allow us to end our forbearance. We have spent  
22 over 7 hours trying to reach them to resolve this.<sup>42</sup>

23 <sup>40</sup> *Consumer Complaint 3658898*, CFPB (May 19, 2020), <https://www.consumerfinance.gov/data-research/consumer-complaints/search/detail/3658898>.

24 <sup>41</sup> *Consumer Complaint 3751149*, CFPB (July 17, 2020), <https://www.consumerfinance.gov/data-research/consumer-complaints/search/detail/3751149>.

<sup>42</sup> *Consumer Complaint 3749254*, CFPB (July 16, 2020), <https://www.consumerfinance.gov/data-research/consumer-complaints/search/detail/3749254>.

1 [W]e started getting email about COVID-19 relief from Wells Fargo,  
2 regarding mortgage assistance. I sent them an email for more information.  
3 . . . I tried to pay my house note on the WF app, as I have always done.  
4 The app advised me that I did not have an active account, that's when we  
5 called to make the payment. We were told that our loan was in forbearance  
6 and we could make a payment, but it would not post to the loan until after  
7 the forbearance period was over.<sup>43</sup>

8 I contacted my mortgage company WELLS FARGO to inquire about what  
9 types of services were available IF my renter's were unable to make their  
10 payment due to covid. It was for an inquiry purpose and I was told that I  
11 would receive a letter regarding any programs available. . . . I did in fact  
12 receive a letter and in that letter it stated my mortgage was placed in  
13 forbearance! I did not request any forbearance. Recently I was notified by  
14 a lender that it showed on my credit report and have been trying to have it  
15 removed since then.<sup>44</sup>

16 Wells Fargo put me into CARES act forbearance without my consent. I  
17 was unable to make a payment online like I usually do. I called and was  
18 on hold for an hour but finally was able to talk to a rep . . . I told them  
19 they put me into forbearance without my consent. He apologized and said  
20 that the system is like a "hair trigger" even though I did nothing to start a  
21 forbearance, I've never missed a payment, have no reason to apply for  
22 forbearance and am able to make payments.<sup>45</sup>

23 Wells Fargo has placed or enrolled me in forbearance without my  
24 permission. This has negatively impacted me as . . . has placed my home  
equity mortgage application in denial status because of this.<sup>46</sup>

I did not sign anything to agree to forbearance and subsequent calls to  
them I stressed that I'm paying my mortgage and don't want a forbearance.  
Instead they listed it on my credit without authorization. When I called  
them they said it was an error n they are working on it. They ruined my  
wife and my credit.<sup>47</sup>

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20 <sup>43</sup> *Consumer Complaint 3739887*, CFPB (July 10, 2020), <https://www.consumerfinance.gov/data-research/consumer-complaints/search/detail/3739887>.

21 <sup>44</sup> *Consumer Complaint 3661764*, CFPB (May 21, 2020), <https://www.consumerfinance.gov/data-research/consumer-complaints/search/detail/3661764>.

22 <sup>45</sup> *Consumer Complaint 3663700*, CFPB (May 21, 2020), <https://www.consumerfinance.gov/data-research/consumer-complaints/search/detail/3663700>.

23 <sup>46</sup> *Consumer Complaint 3669074*, CFPB (May 26, 2020), <https://www.consumerfinance.gov/data-research/consumer-complaints/search/detail/3669074>.

24 <sup>47</sup> *Consumer Complaint 3662758*, CFPB (May 21, 2020), <https://www.consumerfinance.gov/data-research/consumer-complaints/search/detail/3662758>.

1 I called Wells Fargo, and asked what relief they could provide due to  
 2 Covid-19. . . . I am very familiar with how a forbearance versus a  
 3 deferment works. I was adamant if all they could offer me was a  
 4 forbearance that I was not interested and I was assured by the Wells Fargo  
 5 rep that they would just put the 3 payments at the back end of the loan and  
 6 it was not a forbearance so I agreed. Yesterday . . . I received a notice from  
 7 Wells Fargo asking If I need to extend my forbearance or discuss  
 8 repayment options for the missed payments. I am livid!<sup>48</sup>

9 98. A media report details Wells Fargo’s monitoring of the Chapter 13 bankruptcy dockets  
 10 of its debtor clients and unilateral placement of them into its mortgage forbearance program.<sup>49</sup>

11 99. That article details the plight of numerous borrowers in Chapter 13 bankruptcy who had  
 12 been unwittingly enrolled in Wells Fargo’s mortgage forbearance program:

13 None of the borrowers in the lawsuit who were contacted by NBC News  
 14 told the bank that they’d been affected by COVID-19, and *none had  
 15 requested the bank’s assistance because of it. Nor had they requested  
 16 loan modifications when Wells Fargo claimed they wanted forbearance.*  
 17 In addition, none of the borrowers or their attorneys say they were  
 18 contacted by Wells Fargo.

19 Asked about the discrepancies, Wells Fargo said that because it had seen  
 20 references to COVID-19 in the borrowers’ court filings, it provided  
 21 forbearance.<sup>50</sup>

22 100. When reached for comment, Wells Fargo did not deny the practice of unilaterally  
 23 enrolling unwitting persons to its mortgage forbearance program. It stated, “[i]n the early days of the  
 24 pandemic, we provided immediate payment relief to customers in bankruptcy if a review of their court  
 filings indicated they were impacted by COVID-19 or if they had a loan modification review in  
 process.”<sup>51</sup>

<sup>48</sup> *Consumer Complaint 3707815*, CFPB (June 20, 2020), <https://www.consumerfinance.gov/data-research/consumer-complaints/search/detail/3707815>.

<sup>49</sup> See Gretchen Morgenson, *Troy Harlow has always made sure to pay his mortgage on time. Wells Fargo had other plans for him*, NBC News (July 16, 2020), <https://www.nbcnews.com/business/personal-finance/troy-harlow-has-always-made-sure-pay-his-mortgage-time-n1233635>.

<sup>50</sup> *Id.* (emphasis added).

<sup>51</sup> *Id.*

1 101. Wells Fargo's blunder is not an inconsequential administrative glitch. Rather,  
2 forbearances can have grave impacts on a borrower's credit history and access to credit.

3 102. As Senators Warren and Schatz wrote in a July 29, 2020 letter to WFC Chief Executive  
4 Officer and President, Charles Scharf, the bank was "putting consumers at risk of greater financial  
5 hardship amidst one of the worst economic downturns in our country's history."<sup>52</sup>

6 103. In its first response to the Senators' letter, sent on August 12, 2020, Wells Fargo admitted  
7 putting borrowers into forbearance when they had only "made an inquiry or expressed hardship but had  
8 not explicitly requested a forbearance."<sup>53</sup> In its subsequent response to the Senators' letter, sent on  
9 September 4, 2020, Wells Fargo identified that over 821,000 forbearances in connection with federally-  
10 backed loans had been granted since March 9, 2020.<sup>54</sup> In addition, Wells Fargo identified five scenarios  
11 in which it admitted its practice was to place borrowers into unrequested forbearances.<sup>55</sup>

12 104. First, Wells Fargo placed borrowers into forbearance for borrowers in active bankruptcy  
13 proceedings, without any borrower request. Second, Wells Fargo placed borrowers into forbearance  
14 when a customer contacted the bank via e-mail or phone regarding a COVID-19 hardship, regardless of  
15 whether the borrower requested forbearance. Third, the bank automatically placed borrowers into  
16 forbearance when the borrower was in the process of seeking a loan modification. Fourth, the bank  
17 automatically placed borrowers into forbearance if the borrower had been denied a forbearance before  
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19

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20 <sup>52</sup> Letter from Senators Elizabeth Warren & Brian Schatz, U.S. Senate, to Charles W. Scharf, Chief Exec.  
21 Off. & President Wells Fargo & Co. at 1, (July 29, 2020), [https://www.warren.senate.gov/  
imo/media/doc/2020.07.29%20Letter%20to%20Wells%20Fargo%20on%20Forbearance%20Filings](https://www.warren.senate.gov/imo/media/doc/2020.07.29%20Letter%20to%20Wells%20Fargo%20on%20Forbearance%20Filings.pdf)  
22 [.pdf](https://www.warren.senate.gov/imo/media/doc/2020.07.29%20Letter%20to%20Wells%20Fargo%20on%20Forbearance%20Filings.pdf).

23 <sup>53</sup> Letter from Kristy Fercho, Exec. Vice President Wells Fargo & Co., to Senators Elizabeth Warren &  
24 Brian Schatz, U.S. Senate at PDF p. 4 (Sept. 4, 2020), [https://www.warren.senate.gov/imo/media/  
doc/WF\\_2020.pdf](https://www.warren.senate.gov/imo/media/doc/WF_2020.pdf).

<sup>54</sup> *Id.* at PDF p. 1.

<sup>55</sup> *Id.* at PDF p. 5.

1 the COVID-19 epidemic. Fifth, Wells Fargo placed mortgage and home equity accounts into  
2 forbearance when the borrower had another mortgage-linked account placed into forbearance.<sup>56</sup>

3 105. In the second letter sent on September 4, 2020, Wells Fargo provided updates on the  
4 bank's attempt to contact borrowers.<sup>57</sup> Wells Fargo identified 904 accounts held by customers in active  
5 bankruptcy for whom forbearance was granted without a borrower request.<sup>58</sup> The bank attempted to  
6 contact each borrower, to confirm whether they wanted the forbearance assistance, and were able to  
7 contact 699 of the borrowers.<sup>59</sup> Of those 699 borrowers, Wells Fargo confirmed that 344 did not want  
8 forbearance confirmed that they did not—almost exactly 50%.<sup>60</sup>

9 **2. Wells Fargo's Misleading and Inaccurate Representations Led to Hundreds of**  
10 **Thousands of Borrowers Being Placed in Forbearances They Did Not Knowingly**  
11 **Request.**

12 106. Borrowers in the so-called “business decision groups” were not the only ones placed into  
13 forbearances that they did not knowingly request. As detailed above, accepting a forbearance is an  
14 important financial decision. Federal loan servicers are thus generally required, under RESPA, to  
15 provide adequate disclosures for borrowers contemplating a forbearance. *See* 12 C.F.R. § 1024.41(c).  
16 However, as Plaintiffs' experiences demonstrate, borrowers were placed into unwanted forbearances in  
17 response to misleading prompts after Wells Fargo representatives and automated messages steered the  
18 borrowers into payment deferrals, or when they were requesting for more information about their options  
19 for mortgage assistance.

20 107. Wells Fargo has acknowledged that merely inquiring about forbearance options should  
21 not result in a borrower's unwitting entry into the program. Specifically, Tom Goyda, a Wells Fargo

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22 <sup>56</sup> *Id.*

23 <sup>57</sup> *Id.* at PDF pp. 1–2.

24 <sup>58</sup> *Id.* at PDF p. 1.

<sup>59</sup> *Id.* at PDF p. 2.

<sup>60</sup> *Id.*

1 consumer lending spokesperson admitted that “[j]ust asking about forbearance should not result in a  
2 forbearance being applied.”<sup>61</sup> Charles Scharf, the CEO of Wells Fargo recently stated, regarding the  
3 involuntary forbearance program, that “every institution makes mistakes.”<sup>62</sup> This “mistake” came at the  
4 expense of the borrowers that Congress intended to protect through the passage of the CARES Act, and  
5 generated potentially billions of dollars of profits for Wells Fargo.

6 108. Some borrowers were placed into forbearances based upon phone calls with Wells Fargo  
7 representatives. Others were placed into forbearances after utilizing automated systems established by  
8 Wells Fargo. For many borrowers, these forbearances were not the result of a valid request.

9 **a. Misleading Phone Calls**

10 109. After the CARES Act was passed, the CFPB advised borrowers to contact their mortgage  
11 servicer to learn about potential relief, noting that the “decision to request forbearance should be  
12 considered carefully.”<sup>63</sup>

13 110. Hundreds of thousands of borrowers with mortgage loans serviced by Wells Fargo called  
14 the bank to inquire about available relief.

15 111. However, many borrowers who merely called to learn more information were placed into  
16 forbearances they never asked for. In some instances, as with Mr. and Mrs. Robinson, the borrower  
17 merely requested more information. The customer service representative offered to send a letter with  
18

19  
20 <sup>61</sup> See Anna Bahney, *Homeowners are getting mortgage relief they didn’t want*, CNN (May 20, 2020),  
21 <https://www.cnn.com/2020/05/20/success/mortgage-forbearance-homeowner-complaints-corona-virus/index.html>.

22 <sup>62</sup> Rey Mashayekhi, *Can anyone fix Wells Fargo?*, Fortune, (Feb. 3, 2021), <https://fortune.com/longform/fixing-wells-fargo-charles-scharf-ceo-regulatory-issues-privacy-fake-account-fraud-scandal-covid/>.

23 <sup>63</sup> *Consumer Relief Guide – Your Rights to Mortgage Payment Forbearance and Foreclosure*  
24 *Protection Under the Federal CARES Act* at 1, CFPB, [https://files.consumerfinance.gov/f/documents/cfpb\\_csbs\\_consumers-forbearance-guide\\_2020-05.pdf](https://files.consumerfinance.gov/f/documents/cfpb_csbs_consumers-forbearance-guide_2020-05.pdf) (last visited May 18, 2023).

1 additional information—without disclosing the fact that merely sending the letter would automatically  
2 place the borrower into a forbearance.

3 112. In addition, while discussing forbearances, Wells Fargo’s customer service  
4 representatives did not consistently advise the borrower of the potential negative consequences of being  
5 placed into a forbearance.

6 113. For a period of time, the applicable script did not contain any disclosures of the negative  
7 consequences of a forbearance. While some disclosures were added, others—including disclosures of  
8 known damages to credit scores—were never included. Nor were disclosures ever provided regarding  
9 the known impact of being placed into a forbearance on a borrowers’ eligibility to remove PMI.

10 114. What’s more, Wells Fargo’s customer services representatives did not consistently  
11 provide borrowers with disclosures about the limitations on refinancing or securing new credit that  
12 would result from being placed into a forbearance. Nor did they consistently provide borrowers with  
13 information about the negative consequences on borrowers’ ability to access existing lines of credit.

14 115. Most egregiously, in the vast majority of instances the borrowers’ intent to be placed into  
15 a forbearance was not confirmed and documented.

16 116. Thus, placing borrowers into a forbearance based on a phone conversation in which the  
17 borrower was misled regarding the negative consequences of being placed into a forbearance and  
18 without documented confirmation of the borrowers’ intent to accept a forbearance is another instance of  
19 Wells Fargo placing borrowers into forbearances without a valid request.

#### 20 **b. Misleading Interactive Voice Response System**

21 117. Wells Fargo implemented an interactive voice response (“IVR”) system in April 2020,  
22 ostensibly to address borrowers’ questions concerning relief available to them in the early days of the  
23 pandemic.

24

1 118. The IVR system used a series of recorded messages to justify placing borrowers into  
2 forbearances. Rather than reach quality first person contact and confirming the borrowers' intent, Wells  
3 Fargo automatically placed borrowers into forbearances based upon their responses to the recorded  
4 messages.

5 119. However, these messages did not adequately apprise borrowers that the relief they were  
6 requesting was a forbearance, or of the negative consequences of being placed into a forbearance.

7 120. For a period of time, the IVR system only used the terms "payment assistance" or  
8 "suspension of payments," and not the term "forbearance."

9 121. Even after the IVR system included the term "forbearance," it misleadingly omitted  
10 critical information about what a forbearance was and its impact on a borrower.

11 122. When it was initially deployed, Wells Fargo's IVR system did not apprise borrowers that  
12 the forbearance would be reported to the credit reporting agencies, or the consequences of that reporting.

13 123. Wells Fargo was aware that being placed into a forbearance could impact a borrowers'  
14 credit score, it did not provide any warnings to that effect.

15 124. The bank knew that a borrowers' VantageScore credit score could experience a  
16 substantial decline as a result of being placed into a forbearance. However, despite knowing this fact,  
17 Wells Fargo did not disclose this to borrowers utilizing the IVR system.

18 125. Likewise, despite knowing that being placed into a forbearance could impact a  
19 borrowers' ability to refinance, the IVR system initially contained no information about the impact of  
20 accepting a "payment suspension" on a borrower's ability to refinance.

21 126. When information related to refinancing was added to the IVR system, it remained  
22 misleading, in that it only referred to restrictions on refinancing with Wells Fargo, and not other lenders.  
23 Even the information Wells Fargo communicated regarding its own policies for refinancing after a  
24 forbearance was misleading and inaccurate.

1 127. Similarly, the IVR system initially contained no information about the impact that being  
2 placed in a forbearance would have on a borrowers' ability to secure additional lines of consumer credit,  
3 and when those advisements were added they were incomplete and misleading.

4 128. The IVR system initially contained no information about the impact that being placed in  
5 a forbearance would have on a borrowers' ability to access existing credit, such as a Wells Fargo Home  
6 Equity Line of Credit.

7 129. The IVR system likewise misleadingly communicated that borrowers would have the  
8 option to add unpaid amounts to the end of the loan, or to extend the term of the loan, even though those  
9 options would not be available for all borrowers.

10 **c. Misleading Online Tool**

11 130. In April 2020, Wells Fargo implemented a tool for borrowers to request information  
12 about "payment assistance" online, omitting the term "forbearance." When a borrower viewed their  
13 mortgage account on Wells Fargo's website, a new banner was added that asked if borrowers needed  
14 payment assistance due to COVID-19, inviting them to request a payment suspension by clicking on a  
15 button.

16 131. The word "forbearance" was not used on the banner routing borrowers to the online tool,  
17 nor were any disclosures provided about the potential negative consequences associated with having a  
18 loan in a forbearance.

19 132. Nor, when originally implemented, did the online tool itself use the word "forbearance"  
20 or provide any disclosures to borrowers about the negative consequences associated with having a loan  
21 in a forbearance.

22 133. For a period of time, the online tool only used the terms "payment assistance," "payment  
23 suspension," or "suspension of payments." Even after the online tool included the term "forbearance,"  
24 it misleadingly omitted critical information about what a forbearance was and its impact on a borrower.

1           134. When it was initially deployed, Wells Fargo’s online tool did not apprise borrowers that  
2 the forbearance would be reported to the credit reporting agencies, or the consequences of that reporting.

3           135. Wells Fargo was aware that being placed into a forbearance could impact a borrowers’  
4 credit score, but it did not provide any warnings to that effect. The bank knew that a borrowers’  
5 VantageScore credit score could experience a substantial decline as a result of being placed into a  
6 forbearance. However, despite knowing this fact, Wells Fargo did not disclose this to borrowers utilizing  
7 the online tool.

8           136. Likewise, despite knowing that being placed into a forbearance could impact a  
9 borrowers’ ability to refinance, the online tool initially contained no information about the impact of  
10 “payment suspension” on a borrower’s ability to refinance.

11           137. When information related to refinancing was added to the online tool, it remained  
12 misleading, in that it only referred to restrictions on refinancing with Wells Fargo and not other lenders.  
13 Even the information communicated regarding Wells Fargo’s own policies for refinancing after a  
14 forbearance was misleading and inaccurate.

15           138. Similarly, the online tool initially contained no information about the impact that being  
16 placed in a forbearance would have on a borrowers’ ability to secure additional lines of consumer credit,  
17 and when those advisements were added they were incomplete and misleading.

18           139. Likewise, the online tool initially contained no information about the impact that being  
19 placed in a forbearance would have on a borrowers’ ability to access existing credit, such as a Wells  
20 Fargo Home Equity Line of Credit.

21           140. As well, the online tool misleadingly communicated that all borrowers would have the  
22 option to add unpaid amounts to the end of the loan, or to extend the term of the loan, even though those  
23 options would not be available for all borrowers.

24

1 141. Thus, neither utilization of the online tool nor the IVR system produced valid requests  
2 for forbearances. Wells Fargo's placement of borrowers into forbearances based on these faulty systems  
3 was another instance of borrowers being placed into forbearances without a valid request.

4 142. In response to Senators Warren and Schatz' inquiry, Wells Fargo's spokespeople have  
5 declined to say whether the bank has benefited financially from placing borrowers into unrequested  
6 forbearances. But upon information and belief, Wells Fargo stands to gain a tremendous windfall based  
7 on these practices.<sup>64</sup>

8 **3. The Faulty Forbearance Program Led to Billions of Dollars in Profits for Wells  
Fargo.**

9 143. Placing borrowers into forbearances was not without consequences for the borrowers. It  
10 frustrated borrowers' ability to refinance their mortgages during a time of historically low interest rates.  
11 It rendered borrowers ineligible for removal of PMI. It reduced borrowers' access to existing lines of  
12 credit, and it destroyed their ability to secure new lines of consumer credit. It also led to billions of  
13 dollars in profits for Wells Fargo.

14 **a. Wells Fargo's Misconduct Rendered Billions of Dollars in Loans Eligible for  
Highly Lucrative Voluntary Repurchase.**

15 144. Wells Fargo performs multiple roles in America's housing finance system. This case is  
16 primarily concerned with Wells Fargo's role as a mortgage servicer, in which it receives a fee for acting  
17 as an intermediary between the loan holder and the borrower, performing the day-to-day administrative  
18 tasks associated with the lending side of a mortgage loan. The majority of first lien mortgages in America  
19 are federally backed, meaning that the loan has been securitized by Fannie Mae, Freddie Mac, or Ginnie  
20 Mae, government sponsored mortgage companies ("GSMC's"). Wells Fargo acts as loan servicer for  
21 billions of dollars' worth of such loans.

22  
23 <sup>64</sup> See Joe Light, *Banks Uncover Loophole to Buy Loans at Below-Market Prices*, Bloomberg (Aug. 20,  
24 <https://www.bloomberg.com/news/articles/2020-08-20/banks-poised-for-mortgage-bond-windfall-that-may-burn-investors>).

1           145. Both Fannie Mae and Freddie Mac are government-sponsored private corporations with  
2 congressional charters. They provide liquidity to the housing finance market by purchasing mortgages  
3 from lenders and guaranteeing the default risk linked to their issuances of MBS tied to those loans.  
4 Likewise, Ginnie Mae is a federal government agency that guarantees MBS which are issued by program  
5 participants (like Wells Fargo) for loans linked to mortgages whose default risks are guaranteed by the  
6 FHA, VA, and USDA. Ginnie Mae guarantees MBS investors timely principal and interest payments  
7 for those investments.

8           146. Wells Fargo acts as loan servicer for loans that have been securitized by all three entities,  
9 and in exchange, is paid servicing fees. In this role, Wells Fargo forwards principal and/or interest  
10 payments to the GSMC's, or the investors, depending upon the remittance types of the underlying  
11 servicing contracts.

12           147. For the vast majority of Wells Fargo's GSMC servicing contracts, the obligation to  
13 advance monthly principal and/or interest payments for pooled loans exists even if the borrower does  
14 not pay the bank.

15           148. For Fannie Mae loans, a loan servicer has the option to voluntarily repurchase a mortgage  
16 loan from the MBS pool when the loan has four consecutive payments past due, cutting off the  
17 advancement risk.<sup>65</sup>

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21  
22 <sup>65</sup> *A1-3-01: Requirements for Voluntary Repurchase*, Fannie Mae (Oct. 13, 2021), [https://servicing-  
23 guide.fanniemae.com/THE-SERVICING-GUIDE/Part-A-Doing-Business-with-Fannie-Mae/Subpart  
24 -A1-Contractual-Obligations/Chapter-A1-3-Repurchases-Indemnifications-and-Make-Whole/A1-3-  
01-Requirements-for-Voluntary-Repurchase/1581707431/A1-3-01-Requirements-for-Voluntary-  
Repurchase-10-13-2021.htm](https://servicing-guide.fanniemae.com/THE-SERVICING-GUIDE/Part-A-Doing-Business-with-Fannie-Mae/Subpart-A1-Contractual-Obligations/Chapter-A1-3-Repurchases-Indemnifications-and-Make-Whole/A1-3-01-Requirements-for-Voluntary-Repurchase/1581707431/A1-3-01-Requirements-for-Voluntary-Repurchase-10-13-2021.htm).

1           149. Likewise, for Freddie Mac Loans, a servicer may request to voluntarily repurchase the  
2 GSE's interest in a mortgage, a request that is generally granted for mortgages that are 90 or more days  
3 delinquent.<sup>66</sup>

4           150. For Ginnie Mae loans, the loan servicer has the option to repurchase delinquent loans  
5 issued on or after January 1, 2003, so long as the borrower fails to make payment for three consecutive  
6 months.<sup>67</sup>

7           151. After repurchasing, the servicer's obligation to advance principal and interest payments  
8 ends. In addition, the loan servicer has more flexibility to negotiate workout options with the borrowers  
9 to preserve the mortgage, or, if loss mitigation fails, foreclose.

10           152. Placing loans into forbearances led to the loans being eligible for exercising this option  
11 (called "early pool buyout," or "EPBO"), because it led to missed payments.

12           153. Being placed into a forbearance made a loan more likely to become delinquent for many  
13 reasons. First, it removes the obligation to pay, making it more likely that a borrower would miss  
14 payments they otherwise would have made.

15           154. Second, Wells Fargo obstructed borrowers from making payments using their preferred  
16 and common method of payment. Borrowers that had established automatic payments, or ACH, had  
17 those automatic payments automatically terminated after being placed into forbearances. Coupled with  
18 misleading communications sent to borrowers indicating that if a forbearance was not right for them  
19

20  
21 <sup>66</sup> *Repurchases requested by the Seller/Servicer*, Freddie Mac (Aug. 17, 2016), <https://guide.freddie-mac.com/app/guide/section/3602.4>.

22 <sup>67</sup> *A1-3-01: Requirements for Voluntary Repurchase*, Fannie Mae (Oct. 13, 2021), <https://servicing-guide.fanniemae.com/THE-SERVICING-GUIDE/Part-A-Doing-Business-with-Fannie-Mae/Subpart-A1-Contractual-Obligations/Chapter-A1-3-Repurchases-Indemnifications-and-Make-Whole/A1-3-01-Requirements-for-Voluntary-Repurchase/1581707431/A1-3-01-Requirements-for-Voluntary-Repurchase-10-13-2021.htm>.

1 they could continue making payments as normal, many borrowers placed into unrequested forbearances  
2 were not aware that they had missed payments.

3 155. In addition, for a period of time, borrowers in forbearances were unable to make  
4 payments online or through Wells Fargo's mobile payment app. At the same time, there were widespread  
5 branch closures and limited local branch hours, due to the COVID-19 epidemic. And borrowers who  
6 attempted to make payments through the phone experienced extraordinarily long wait times. Thus,  
7 placing a borrower into a forbearance often led to the loan becoming delinquent.

8 156. Many of these loans were, before Wells Fargo's misconduct, performing. They generally  
9 represent a low risk of falling into foreclosure, as Wells Fargo itself recognized in an earnings call. Mike  
10 Santomassimo, Wells Fargo's Senior Executive Vice President and CFO stated that for loans that had  
11 already exited their COVID-19 forbearance plans, "90% of the balances [are] current as of the end of  
12 the year."<sup>68</sup>

13 157. Once a voluntarily repurchased loan becomes reperforming, it can either be sold in the  
14 non-agency secondary mortgage market, held by the bank/servicer (who profits based on the spread  
15 between the servicing costs and the loan's interest), or resold into the GNMA pools. If resold in the  
16 GNMA pools, the resale price is generally substantially higher than par. For instance, the average trading  
17 price for a Ginnie Mae MBS with a 3.5% coupon was well above the coupon rate from January 2020 to  
18 January 2022, with an average trade value from January 2021 to January 2022 of 107. Thus, if a 3.5%  
19 loan is purchased at par and resold after it becomes reperforming, the loan servicer stands to make a 7%  
20 return.

21  
22  
23  
24 <sup>68</sup> *Wells Fargo (WFC) Q4 2020 Earnings Call Transcript*, Motley Fool (Jan. 15, 2021), <https://www.fool.com/earnings/call-transcripts/2021/01/15/wells-fargo-wfc-q4-2020-earnings-call-transcript/>.

1           158. On the other side of the voluntary purchase transaction are the MBS investors. When  
2 they purchase an MBS at 105 basis points, and part of that pool is bought out at par, the yield of the  
3 MBS decreases. In its disclosures to potential investors, GNMA discloses voluntary repurchase as a  
4 potential risk to investors. However, in typical years, prepayment rates are stable and tied to the normally  
5 occurring delinquencies in the housing market. For instance, on information and belief, in 2017, Wells  
6 Fargo voluntary purchased roughly \$8.6 billion in loans out of GNMA pools. In 2018, that figure was  
7 \$7.8 billion, and in 2019 it was \$6.2 billion. That changed in 2020. Wells Fargo purchased \$30.3 billion  
8 in loans out of GNMA pools in 2020, an unprecedented amount. In 2021, Wells Fargo's repurchase rates  
9 returned to slightly below normal, \$4.6 billion.

10           159. Wells Fargo's conduct did not go unnoticed. Industry reports began to circulate in July  
11 2020, as Wells Fargo's unprecedented buyout rate of 99% of eligible loans serviced by the bank was  
12 having a dramatic and outsized impact on the overall buyout rate (CBR) for Ginnie Mae backed  
13 securities.

14           160. Riskspan, a consulting firm in the residential mortgage, MBS trading, and structured  
15 finance space, detailed the buyout rate increase in July 2020 and reported that "this increase was driven  
16 almost entirely by Wells [Fargo], which accounted for 25% of the servicing in some pools."<sup>69</sup>

17           161. American Banker began reporting on Wells Fargo's conduct, with articles titled "*Banks*  
18 *uncover loophole to buy home loans at below market prices*," reporting that in July and August 2020  
19 alone, Wells Fargo bought \$19 billion of loans out the Ginnie Mae reserves for \$1.5 billion less than the  
20 loans' market price.<sup>70</sup> As former Ginnie Mae president Ted Tozer told Bloomberg News, Wells Fargo

21  
22 <sup>69</sup> Don Brown, *Edge: Bank Buyouts in Ginnie Mae Pools*, RiskSpan (July 20, 2020), <https://riskspan.com/bank-buyouts-in-ginnie-mae-pools/>.

23 <sup>70</sup> *Banks uncover loophole to buy home loans at below-market prices*, Am. Banker (Aug. 20, 2020),  
24 <https://www.americanbanker.com/articles/banks-uncover-loophole-to-buy-home-loans-at-below-market-prices>.

1 and other banks exercising this voluntary repurchase option for loans placed into CARES Act  
 2 forbearances are “setting themselves up for a huge windfall. It’s almost pure profit.”<sup>71</sup> While many  
 3 banks exercised this option, Wells Fargo’s repurchasing far exceeded its peers.

4 162. The Federal Housing Finance Agency (“FHFA”), which regulates the GSEs, anticipated  
 5 the potential that COVID-19 forbearances could be abused by loan servicers, and issued guidance on  
 6 March 21, 2020, informing servicers that loans forborne due to COVID-19 would not generally be  
 7 available for voluntary repurchase, under a national disaster’s exception.<sup>72</sup> In that same guidance, FHFA  
 8 created a new limit on the servicer advance obligations, capping the advance obligations at four  
 9 months.<sup>73</sup> As discussed below, this created an additional incentive for Wells Fargo to place GSE loans  
 10 into forbearance, but as a result of this policy, Fannie Mae and Freddie Mac loans did not experience as  
 11 high of a spike in artificially inflated voluntary repurchases.

12 163. Ginnie Mae, however, took a different approach. On June 29, 2020, Ginnie Mae issued  
 13 APM-20-07, a memorandum incorporating new terms into its policies for resecuritizing reperforming  
 14 loans,<sup>74</sup> due to the recognition that mass early buyouts “could undermine the integrity of the MBS  
 15 program.”<sup>75</sup> Prior to APM-20-07, a loan that had been voluntarily repurchased out of a Ginnie Mae pool  
 16 and brought back to performing status could be resold into the same pool type it was purchased out of.

18 <sup>71</sup> Joe Light, *Banks Uncover Loophole to Buy Home Loans at Below-Market Prices*, Bloomberg  
 19 (Aug. 20, 2020), <https://www.bloomberg.com/news/articles/2020-08-20/banks-poised-for-mortgage-bond-windfall-that-may-burn-investors>.

20 <sup>72</sup> *FHFA Addresses Servicer Liquidity Concerns, Announces Four Month Advance Obligation Limit  
 21 for Loans in Forbearance*, FHFA (Apr. 21, 2020), [https://www.fhfa.gov/Media/PublicAffairs/  
 21 Pages/FHFA-Addresses-Servicer-Liquidity-Concerns-Announces-Four-Month-Advance-  
 Obligation-Limit-for-Loans-in-Forbearance.aspx](https://www.fhfa.gov/Media/PublicAffairs/Pages/FHFA-Addresses-Servicer-Liquidity-Concerns-Announces-Four-Month-Advance-Obligation-Limit-for-Loans-in-Forbearance.aspx).

22 <sup>73</sup> *Id.*

23 <sup>74</sup> *APM 20-07: Temporary Pooling Restrictions on Re-performing Loans*, Ginnie Mae (June 29, 2020),  
 24 [https://www.ginniemae.gov/issuers/program\\_guidelines/Lists/MBSGuideAPMsLib/Attachments/10  
 2/APM%2020-07.pdf](https://www.ginniemae.gov/issuers/program_guidelines/Lists/MBSGuideAPMsLib/Attachments/102/APM%2020-07.pdf).

<sup>75</sup> Seth D. Appleton, *Housing Analysis & Policy Spotlight*, Ginnie Mae (June 29, 2020), [https://www.  
 ginniemae.gov/newsroom/HAPS/Pages/Post.aspx?PostID=39](https://www.ginniemae.gov/newsroom/HAPS/Pages/Post.aspx?PostID=39).

1 Under the new guidance, reperforming loans will be eligible instead to be sold into new pool types  
2 created just for resecuritizing such loans. In addition, the loan must have been current for each of the six  
3 months immediately preceding resecuritization, essentially requiring servicers to hold repurchased loans  
4 for a longer period of time before profiting.

5 164. Wells Fargo's plan was to do exactly that—hold the reperforming loans until they could  
6 be sold or resecuritized. In its 2020 Q4 earnings call, Wells Fargo's CFO, Mike Santomassimo stated  
7 that the bank's mortgage balances would see "headwinds" in 2021, in part due to the "expected sale or  
8 resecuritization of loans previously purchased out of agency mortgage securitizations."<sup>76</sup>

9 165. Mr. Santomassimo was correct—the bank profited tremendously. Based on Wells  
10 Fargo's 2021 reporting, the bank profited by at least \$789 million on the resecuritization of roughly \$13  
11 billion of the \$30 billion in 2020 GNMA repurchases. If the remaining \$17 billion in GNMA loans  
12 repurchased are resecuritized at the same profit rate, that would lead to \$1.8 billion in profits from  
13 resecuritization alone.

14 166. Wells Fargo's more recent financial disclosures continue to repeatedly reference the  
15 gains made on resecuritization of EPBO loans.<sup>77</sup>

16 167. Although the underlying regulations may be complicated, the scheme itself is simple and  
17 conducted in the open: Place otherwise solvent borrowers into unrequested forbearances, manufacture  
18 artificial delinquencies, purchase their loans out of pools at par (less than market value), hold the loans

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20 <sup>76</sup> *Wells Fargo (WFC) Q4 2020 Earnings Call Transcript*, Motley Fool (Jan. 15, 2021), <https://www.fool.com/earnings/call-transcripts/2021/01/15/wells-fargo-wfc-q4-2020-earnings-call-transcript/>.

21 <sup>77</sup> "Noninterest income decreased 13%, driven by lower results in our affiliated venture capital and  
22 private equity businesses; a decline in mortgage banking income on lower originations and gain on  
23 sale margins, as well as lower gains from the resecuritization of loans purchased from securitization  
24 pools[.] . . . Home lending was down 42% on lower mortgage banking income driven by lower  
originations and lower revenue from the resecuritization of loans purchased from securitization  
pools." *Wells Fargo Reports First Quarter 2023 Net Income of \$5.0 billion, or \$1.23 per Diluted  
Share* at 2, 4, Wells Fargo (Apr. 14, 2023), [https://www08.wellsfargomedia.com/assets/pdf/about/  
investor-relations/earnings/first-quarter-2023-earnings.pdf](https://www08.wellsfargomedia.com/assets/pdf/about/investor-relations/earnings/first-quarter-2023-earnings.pdf).

1 and profit once the loans exit forbearance (due to the delta between the interest payments on the loan  
2 and the cost of servicing), and once eligible for resecuritization, repool the loans for even greater  
3 profits.<sup>78</sup>

4 168. To effectuate this scheme, WFC's loan servicing subsidiary, Wells Fargo Bank,  
5 artificially placed the loans into forbearance even when the borrower did not request such relief. But  
6 Wells Fargo Bank did not act alone in performing its part in this scheme—it had the assistance of Black  
7 Knight Financial Services, Inc. (“Black Knight”), a long-time vendor.

8 169. Black Knight, a publicly-traded company, provides a platform for mortgage loan  
9 servicing and borrower communication application, referred to as MSP and LoanSphere. Wells Fargo's  
10 use of these platforms represents a substantial portion of Black Knight's business—in 2016, Black  
11 Knight reported to the SEC in relation to a merger that Wells Fargo was its “largest client,” and  
12 “accounted for approximately 12% of our consolidated revenues” and 15% of the revenues from Black  
13 Knight's Technology and Data segment.<sup>79</sup>

14 170. Black Knight capitalized on the COVID-19 crisis by marketing its MSP platform,  
15 distributing a white paper advertising its products as assisting mortgage servicers in establishing  
16  
17  
18

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19 <sup>78</sup> Wells Fargo is not the first bank to use GNMA's repurchasing in order to unjustly profit. In 2016, the  
20 U.S. Securities and Exchange Commission (“SEC”) filed a civil enforcement action under the  
21 Securities Act and Exchange Act against First Mortgage Corporation (“FMC”), a privately-held  
22 GNMA mortgage issuer which delayed crediting borrower payments in order to render the mortgages  
23 eligible for voluntary repurchase. Complaint, *SEC v. First Mortg. Corp.*, No. 2:16-cv-03772-BRO-E  
24 (C.D. Cal. May 31, 2016), Dkt. No. 1. The SEC alleged that FMC profited by \$7.5 million on a mere  
532 transactions, at a profit rate of 7.5%, and ultimately the United States District Court for the  
Central District of California entered a consent judgment against FMC for \$11,784,474.82. Final  
Judgement as to Defendant FMC at 3, *SEC v. First Mortg. Corp.*, No. 2:16-cv-03772-BRO-E (C.D.  
Cal. July 20, 2016), Dkt. No. 8.

<sup>79</sup> *Black Knight Financial Services Letter to Shareholders* at 30, SEC (Aug. 25, 2017), <https://www.sec.gov/Archives/edgar/data/1704177/000104746917005400/a2233097z424b3.htm>.

1 forbearance, allowing mortgage servicers to automate the management of forbearance programs.<sup>80</sup> Black  
2 Knight gained increased revenue through this churn, assisting Wells Fargo with identifying loans to be  
3 placed into forbearance through its automated mortgage servicing program.

4 171. This enterprise placed mortgages in forbearances without the borrowers' knowledge or  
5 consent. Additional predicate violations include false reporting of the loans' status to credit reporting  
6 agencies. This false reporting utilized Black Knight's platform. Black Knight and Wells Fargo together  
7 modified the platform specifically for COVID-19 forbearance reporting. The specialized COVID-19  
8 forbearance platform facilitated communications to borrowers related to the servicing of COVID-19  
9 forbearance loans and communications with GNMA regarding repurchase and resecuritization.

10 **b. Wells Fargo's Misconduct Capped Its Principal and Interest Advancement**  
11 **Obligations for Loans That Remain in GSE Pools.**

12 172. Even for loans that are not voluntarily repurchased for profit, Wells Fargo is incentivized  
13 to place GSE loans into forbearance in order to minimize its exposure to servicing requirements  
14 obligating Wells Fargo to advance borrowers' delinquent principal and interest payments to the investors  
15 in GSE-sponsored trusts when the loan is not paying.

16 173. Ordinarily, as described above, Wells Fargo's advancement obligations continued for  
17 Fannie Mae loans regardless of whether Wells Fargo collected payment from the borrowers, unless and  
18 until Wells Fargo either foreclosed on the property or determined that the property's foreclosure value  
19 was insufficient to reimburse Wells Fargo for any further advances of monthly principal and interest  
20 after satisfying the remaining principal balance of the delinquent loan.

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22  
23 <sup>80</sup> Michelle Kersch & Mitch Cohen, *Black Knight Issues White Paper on Managing COVID-19 Challenges*  
24 *for Clients Using MSP Servicing System*, Black Knight (Apr. 13, 2020), <https://www.blackknightinc.com/black-knight-issues-white-paper-on-managing-covid-19-challenges-for-clients-using-msp-servicing-system/>.

1           174. However, exclusively for loans in CARES Act forbearances, Fannie Mae and Freddie  
2 Mac have modified those advancement requirements.<sup>81</sup> Servicers of GSE loans, including Wells Fargo,  
3 are obliged to only make four monthly advances of principal and interest payments for delinquent loans  
4 that have been in a CARES Act forbearance.

5           175. Thus, the servicing rights associated with loans that have ever been in a CARES Act  
6 forbearance are increased in value, as they present a lower risk of loss due to the obligation to make  
7 advances while nonperforming for the life of the loan.

8                           **c. Wells Fargo’s Misconduct Prevents Runoff for its Mortgage Servicing  
9 Rights by Reducing Refinancing Opportunities for Borrowers.**

10           176. For much of the last two years, interest rates were at all-time lows, and many  
11 homeowners—such as the Castros, Ms. Delpapa, Ms. Doctor, and Mr. Jacob—sought to take advantage  
12 of these historically low rates by refinancing. If an account is placed into a forbearance program, those  
13 borrowers cannot typically refinance for many months, even after bringing the account current. As  
14 detailed more fully below, by retaining borrowers who might otherwise refinance their mortgages with  
15 other institutions, Wells Fargo protected their mortgaging servicing rights – accounts associated with  
16 the fees Wells Fargo earns for servicing mortgages.

17           177. Wells Fargo generates millions of dollars in revenue servicing mortgages. MSRs are the  
18 capitalized value of the right to receive future cash flows from the servicing of mortgage loans. In Wells  
19 Fargo’s 2021 Annual Report, the bank reported MSRs accounts with a fair value of over \$6,000,000,  
20 recognizing that “MSRs may increase upon repurchase [of loans from GNMA loan securitization  
21 pools].”<sup>82</sup>

22 <sup>81</sup> Gretchen Morgenson, *Troy Harlow has always made sure to pay his mortgage on time. Wells Fargo*  
23 *had other plans for him*, NBC News (July 16, 2020), <https://www.nbcnews.com/business/personal-finance/troy-harlow-has-always-made-sure-pay-his-mortgage-time-n1233635>.

24 <sup>82</sup> *2021 Annual Report Wells Fargo & Company* at 141, <https://www08.wellsfargomedia.com/assets/pdf/about/investor-relations/annual-reports/2021-annual-report.pdf>.

1           178. When borrowers refinance a mortgage with a different servicer, the associated MSR's are  
2 terminated. Thus, when capitalizing the present value of MSR's, loan servicers adjust for the risk that  
3 borrowers will prepay or refinance. This risk of run-off decreases the present value of MSR's. In 2021,  
4 despite historically low interest rates and a red-hot real estate market, Wells Fargo's estimate of  
5 prepayment rates (one measure of "runoff") for their MSR's portfolio *declined* by 11% compared to the  
6 prior year.

7           179. As the Castros, Ms. Delpapa, and Mr. Jacob experienced, being placed in forbearance is  
8 a barrier to refinancing. Before May 19, 2020, a borrower was generally required to wait a year until  
9 they could refinance. As told by a Wells Fargo mortgage servicer client, it was virtually impossible to  
10 obtain any form of credit for up to a year after a forbearance program concluded:

11                   [T]he note on his credit report saying the loan is in forbearance makes it  
12 impossible for him to refinance. Fannie Mae and Freddie Mac, which,  
13 along with the Federal Housing Administration and the Department of  
14 Veterans Affairs, fund or insure the vast majority of mortgages from  
lenders, do not allow borrowers with a loan in forbearance to either  
refinance or obtain a new loan until one year after the loan payments are  
up to date again.<sup>83</sup>

15           180. Even after the FHFA updated guidance relating to borrowers in forbearance,<sup>84</sup> a borrower  
16 with a Fannie Mae or Freddie Mac loan will typically have to wait three months after exiting forbearance  
17 in order to be able to refinance. Thus, by placing borrowers into unsolicited forbearance, Wells Fargo  
18 increased the value of the associated MSR's accounts by reducing the risk of runoff through refinancing.

19  
20  
21 <sup>83</sup> See Diana Olick, *Some homeowners are getting mortgage bailouts by mistake, and it's keeping them from*  
*refinancing*, CNBC (May 12, 2020), [https://www.cnbc.com/2020/05/12/coronavirus-some-homeowners-](https://www.cnbc.com/2020/05/12/coronavirus-some-homeowners-getting-mortgage-bailouts-by-mistake.html)  
22 [getting-mortgage-bailouts-by-mistake.html](https://www.cnbc.com/2020/05/12/coronavirus-some-homeowners-getting-mortgage-bailouts-by-mistake.html) (stating that "It also puts barriers in front of homeowners who  
23 could really benefit now from refinancing and saving on their monthly payments. Servicers are swamped  
with those requests as well. Applications to refinance a home loan are currently up more than 200% from  
a year ago.").

24 <sup>84</sup> *Lender Letter (LL-2021-03), Impact of COVID-19 on Originations*, Fannie Mae (updated Feb. 15,  
2023), <https://singlefamily.fanniemae.com/media/24811/display>.

**d. Wells Fargo's Misconduct Entitles the Bank to Workout Incentive Payments.**

181. By placing borrowers into unrequested forbearances, Wells Fargo was manufacturing delinquencies which it could receive incentive payments for curing. Upon information and belief, for each loan placed into forbearance that Wells Fargo subsequently modifies in accordance with Fannie Mae and Freddie Mac's matrix for loan retention workout options, Wells Fargo receives an incentive fee of up to \$1,000.<sup>85</sup>

Incentive Type	Incentive Amount
Repayment Plan	\$500 Effective for all repayment plans with a first payment due date under the repayment plan on or after July 1, 2020
Payment Deferral/COVID-19 Payment Deferral	\$500 Effective immediately for all Payment Deferrals/COVID-19 Payment Deferrals (NOTE: Payment Deferral evaluations do not begin until on or after July 1, 2020)
Flex Modification <sup>®</sup>	\$1,000 Effective for all Flex Modifications completed with a Trial Period Plan effective date on or after July 1, 2020

182. If the borrower enters into a repayment plan, under which the forborne payments are brought current over a period of up to 12 months, the loan servicer is eligible for a \$500 incentive payment. Likewise, if the forborne payments are deferred to the back of the loan, the servicer is eligible for a \$500 incentive payment. If the loan is modified, to permanently change the payment terms, the servicer is eligible for a \$1,000 incentive payment. The below chart, from Freddie Mac Bulletin 2020-21,<sup>86</sup> details those incentives.

<sup>85</sup> See *Lender Letter (LL-2020-09)*, Fannie Mae (updated July 15, 2020), <https://singlefamily.fanniemae.com/media/23091/display>.

<sup>86</sup> *Bulletin 2020-21: Temporary Servicing Guidance Related to COVID-19*, Freddie Mac (June 10, 2020), <https://guide.freddiemac.com/app/guide/bulletin/2020-21>.

1                   **e. Wells Fargo’s Misconduct Allowed the Bank to Profit from Spread from**  
2                   **Servicing Repurchased Loans.**

3                   183. In Wells Fargo’s 2021 Annual Report the bank reported that it had interest income  
4 associated with loans repurchased from GNMA loan securitization pools of \$1.1 billion. In its earning  
5 call associated with the Q4 2021 report, Wells Fargo stated that it earned \$318 million of interest income  
6 associated with EPBO loans in the fourth quarter alone. Meanwhile, Wells Fargo reported the annual  
7 cost to service at a mere \$91 per loan. Thus, Wells Fargo has earned hundreds of millions of dollars  
8 servicing loans that it repurchased, with staggering profit margins. Rather than spend the amount  
9 necessary to properly service those loans (for instance, confirming with each borrower whether they in  
10 fact had requested a forbearance), Wells Fargo continues to profit at the borrowers’ expense.

11                   **C. Wells Fargo’s Misconduct Harmed the Very Consumers That the CARES Act Was**  
12                   **Intended to Protect.**

13                   184. These gains come at the expense of borrowers, who were placed into unwanted  
14 forbearances or who had forbearance terms extended without their intent. Despite Wells Fargo’s  
15 protestations in its response to Senators Warren and Schatz, these forbearance plans led to real and  
16 substantial damages to borrowers.

17                   185. As has previously been briefed before this Court, FICO performed an analysis which  
18 concluded that the majority of borrowers whose loans were placed into a CARES Act forbearance can  
19 expect a resulting decrease in their credit score.<sup>87</sup>

20                   186. In addition, regardless of any direct impact on borrowers’ credit scores, in practical effect  
21 a forbearance is such a negative indicia that borrowers are rendered ineligible to refinance and capitalize  
22 on record low interest rates, or potentially remove PMI, during the term of the forbearance and for up  
23 to a year after the forbearance plan ends.

24 <sup>87</sup> Paul Panichelli, *Simulated FICO Score Impacts due to Mortgage Forbearance*, FICO (Sept. 29, 2020), <https://www.fico.com/blogs/simulated-fico-score-impacts-due-mortgage-forbearance>.

1           187. The actions taken by Defendants were in direct contravention of the CARES Act  
2 requirements that forbearances be provided in response to the request of the borrower, and with an  
3 attestation of hardship due to COVID-19. In many instances, the borrowers received no notice that they  
4 had been placed in forbearance until several days or weeks later. Even in those instances in which the  
5 borrowers received notice prior to the start of the forbearance, it was woefully insufficient under the  
6 requirements of RESPA, 12 U.S.C. § 2601 *et seq.*

7           188. Many borrowers, unaware that they were in forbearance, continued to make or attempted  
8 to make payments on their loans. Upon information and belief Wells Fargo failed to timely credit those  
9 payments to borrowers' mortgage loans, instead, holding those payments in separate "unapplied funds"  
10 accounts without notifying the borrowers.

11           189. Even when Wells Fargo did, internally, credit borrower payments, its failure to report  
12 timely payments to the credit reporting agencies during the unauthorized forbearance periods was  
13 tantamount to a failure to timely credit, because prospective lenders would not be able to confirm  
14 payments by the borrowers by reference to their credit reports. For those borrowers whose loans were  
15 owned by Wells Fargo, this failure to timely credit payments constituted an actionable violation of the  
16 TILA, 15 U.S.C. § 1601, as detailed *infra*.

17           190. Some individuals, such as the Castros, Ms. Doctor, and Mr. Jacob, noticed that their  
18 mortgages had been noted as "in forbearance," despite never having requested that relief, and that their  
19 credit scores had declined as a result of Wells Fargo's actions. When Mr. Jacob and Ms. Doctor  
20 submitted notices of dispute to the credit reporting agencies, upon receipt of the notices of disputes from  
21 the credit reporting agencies, Wells Fargo was obligated under FCRA, 15 U.S.C. § 1681i, to adequately  
22 investigate and correct the matter. Wells Fargo did not, violating FCRA.

23           191. Many borrowers, like Mr. Forsburg, were in the process of seeking a Home Affordable  
24 Modification Program ("HAMP") loan modification or had already received such relief. In an article by

1 Pulitzer Prize-winning journalist Gretchen Morgenson, writing for NBC News, a Wells Fargo  
2 representative explained that it was Wells Fargo's practice to unilaterally place loans of borrowers who  
3 were in the modification process into forbearance status under the CARES Act, without such borrowers'  
4 prior knowledge or consent.<sup>88</sup> By placing borrowers into forbearance, Wells Fargo risked rendering  
5 them ineligible for the HAMP loan modifications that they would otherwise have been eligible to  
6 receive.

7 192. In Mr. Forsburg's case, Wells Fargo terminated his fully executed modification  
8 agreement without notice, telling him he would have to resubmit his modification application after the  
9 forbearance period ended.

10 193. Tragically, the harms have disproportionately impacted borrowers of color. Borrowers  
11 of color were twice as likely to miss mortgage payments during the early months of the pandemic.<sup>89</sup>  
12 When borrowers attempted to refinance during the historic low interest rates in 2020, Wells Fargo  
13 approved refinancing applications for only 47% of Black homeowners, compared to 72% of White  
14 homeowners.<sup>90</sup>

15 194. The representative Plaintiffs' experiences further demonstrate some of the harms caused  
16 by the unilateral forbearance scheme.

17  
18  
19  
20 <sup>88</sup> Gretchen Morgenson, *Troy Harlow has always made sure to pay his mortgage on time. Wells Fargo*  
21 *had other plans for him*, NBC News (July 16, 2020), <https://www.nbcnews.com/business/personal-finance/troy-harlow-has-always-made-sure-pay-his-mortgage-time-n1233635>.

22 <sup>89</sup> *CFPB Issues Reports Detailing Mortgage Borrowers' Continuing COVID-19 Challenges*, CFPB (May  
23 4, 2021), <https://www.consumerfinance.gov/about-us/newsroom/cfpb-issues-reports-detailing-mortgage-borrowers-continuing-covid-19-challenges/>.

24 <sup>90</sup> Ann Choi *et al.*, *Wells Fargo Faces Persistent Racial Gap in Mortgage Refinancing*, Bloomberg (Mar.  
25, 2022), <https://www.bloomberg.com/news/articles/2022-03-25/wells-fargo-faces-persistent-racial-gap-in-mortgage-refinancing>.

1 **D. Wells Fargo Placed Plaintiffs’ Loans in Forbearance Without Their Consent.**

2 **1. Luis and Marisol Castro, Texas residents**

3 195. Mr. and Mrs. Castro’s mortgage loan, secured by a lien against their homestead property  
4 located at 3221 San Marcus Avenue, Dallas, Texas 75228, is a federally related mortgage loan backed  
5 by Fannie Mae and serviced by Wells Fargo.

6 196. Wells Fargo—through parts of its website—conveyed fraudulent, deceptive, or  
7 misleading representations in debt collection and in obtaining information from Mr. Castro. Wells Fargo  
8 also falsely represented the nature of the services it was rendering with its website.

9 197. In late March, Mr. Castro went to Wells Fargo’s website to pay their April 2020 mortgage  
10 payment.

11 198. While Mr. Castro was on Wells Fargo’s website, he noticed a large “box” on the website  
12 that referenced COVID-19 and contained a button marked “Get Help Now” for payment assistance.

13 199. Mr. Castro was curious about what “payment assistance” would involve and clicked on  
14 the “Get Help Now” button on Wells Fargo’s website, expecting more information about the various  
15 payment assistance options that might be available to him.

16 200. Once Mr. Castro clicked that “Get Help Now” button, Wells Fargo’s website displayed  
17 a message “congratulating” him.

18 201. Mr. Castro did not receive any additional information at that time explaining the terms  
19 or the consequences of the forbearance program, and Mr. Castro assumed that being automatically  
20 enrolled in the program would not be detrimental to him or Mrs. Castro.

21 202. Despite Wells Fargo placing Mr. and Mrs. Castro’s loan account into a forbearance that  
22 he did not request, Mr. Castro proceeded to make his April 2020 payment that same day in late March.

23 203. Wells Fargo accepted Mr. and Mrs. Castro’s April 2020 mortgage payment.  
24

1           204. In late April, Mrs. Castro went to Wells Fargo’s website to make their May 2020  
2 mortgage payment but found that she was unable to log on to make the payment.

3           205. Later that same day, Mrs. Castro called Wells Fargo and made the May 2020 mortgage  
4 payment by phone. Wells Fargo accepted Mr. and Mrs. Castro’s May 2020 payment.

5           206. While speaking with the Wells Fargo representative in connection with their May 2020  
6 mortgage payment, the Wells Fargo representative informed Mrs. Castro that she was unable to make  
7 her payment online because their loan was in forbearance status.

8           207. Mrs. Castro did not understand at the time she was speaking with the Wells Fargo  
9 representative that having a loan in forbearance status could be harmful to her credit or otherwise, but  
10 Mrs. Castro also did not like being unable to make payments online. Accordingly, during her call in late  
11 April 2020, Mrs. Castro asked Wells Fargo’s representative to remove whatever it was that was keeping  
12 her from making her payments online.

13           208. Wells Fargo subsequently removed the restriction on Mr. and Mrs. Castro’s account that  
14 prevented them from making their monthly mortgage payments online, and they have made their June–  
15 August 2020 mortgage payments.

16           209. Wells Fargo did not remove Mr. and Mrs. Castro’s mortgage loan from forbearance status  
17 in April 2020.

18           210. In fact, Wells Fargo sent Mr. and Mrs. Castro a letter dated April 16, 2020, regarding the  
19 “short-term payment suspension.” The April 16, 2020 letter stated: “This payment suspension option is  
20 based on an incomplete application for assistance. Other payment assistance options may be available.  
21 If you would like a review for all available assistance options, you may submit a complete application,  
22 which would include information about your income and expenses. This review is available whether or  
23 not you accept this short-term payment suspension. Please contact us for more information.”  
24

1           211. The April 16, 2020 letter also stated: “Note: If you find you don’t need this short-term  
2 payment suspension, please continue to make your normal payments. Take advantage of this payment  
3 suspension only when you really need it, because you may need to repay any missed payments at the  
4 end of the short-term payment suspension period.”

5           212. The April 16, 2020 letter did not disclose that the forbearance status of Mr. and Mrs.  
6 Castro’s mortgage loan account would be reported to the credit reporting agencies or that Wells Fargo  
7 would suppress its reporting regarding the payments it was receiving from Mr. and Mrs. Castro during  
8 the forbearance period.

9           213. In addition, the April 16, 2020 letter, among other things, used false and deceptive means  
10 for debt collection and/or in attempt to obtain information from the Castros. Along with the statements  
11 concerning collection of the Castros’ payments as listed above, Wells Fargo made the following  
12 statements:

- 13           • “[A]s your account servicer, we are attempting to collect a debt and any information  
14           obtained will be used for that purpose”;
- 15           • “Unless you receive further relief, you’ll need to resume your regular mortgage payment  
16           schedule beginning on July 1, 2020”; and
- 17           • “If you choose to extend your payment suspension period, you will still need to repay all  
18           missed payments.”

19           214. Much of the April 16, 2020 letter discusses the repayment of payments on the Castros’  
20 mortgage loan.

21           215. The April 16, 2020 letter did not inform the Castros that Wells Fargo placed them into  
22 forbearance but instead used the deceptive terms, “short-term payment assistance,” and “payment  
23 suspension.” The April 16, 2020 letter also falsely stated that, “You can end the payment suspension at  
24

1 any time. If you decide to shorten the plan, or if you decide later that this is not the right solution for  
2 you, please contact us.”

3 216. In late May 2020, Mr. and Mrs. Castro decided to refinance their mortgage loan. At the  
4 time, Mr. and Mrs. Castro did not know or understand that Wells Fargo was reporting their mortgage  
5 loan to the credit reporting agencies as in forbearance status.

6 217. Mr. and Mrs. Castro attempted to obtain a refinance but were unable to close on the  
7 refinance of their mortgage loan account in July 2020 because Wells Fargo had reported their mortgage  
8 loan account as in forbearance status.

9 218. Moreover, due to the credit reporting of their loan as in forbearance preventing Mr. and  
10 Mrs. Castro from closing their refinance, Mr. and Mrs. Castro incurred a late fee for their July 2020  
11 monthly mortgage payment because they anticipated that they would not have to make a mortgage  
12 payment in July 2020 due to their anticipated refinance.

13 219. The tradelines for Mr. and Mrs. Castro’s mortgage loan serviced by Wells Fargo on their  
14 TransUnion credit reports indicate in the “Remarks” section of the report that their mortgage loan  
15 account is in forbearance. Further, the “Terms” section of the report states “\$0 per month for 360 months,  
16 Deferred” and Wells Fargo did not report that Mr. and Mrs. Castro made their April–June 2020 mortgage  
17 payments.

18 220. Similarly, the tradelines for Mr. and Mrs. Castro’s mortgage loan serviced by Wells  
19 Fargo on their Equifax credit reports indicate in the “Comments 2” section that their mortgage loan  
20 account was in forbearance in April and May 2020 and the “Payment History” section does not indicate  
21 that Mr. and Mrs. Castro made their April–July 2020 monthly mortgage payments. Moreover, the  
22 “Terms Frequency” is listed as “DEFERRED” and the “Comments” section states their mortgage loan  
23 account is in forbearance.

24

1           221. The tradeline for Mr. and Mrs. Castro’s mortgage loan serviced by Wells Fargo on Mrs.  
2 Castro’s Experian report states the “Status” of the loan as “Open/Never late. Deferred, payments begin  
3 Oct 2020,” and states the monthly payment is “\$0.” Further, the payment history section does not reflect  
4 Wells Fargo’s receipt of Mr. and Mrs. Castro’s April through June 2020 mortgage payments and the  
5 “Comment” section states “Account in Forbearance.”

6           222. Wells Fargo sent Mr. and Mrs. Castro a letter dated July 9, 2020, which informed Mr.  
7 and Mrs. Castro that Wells Fargo had extended the forbearance period for another three months. The  
8 Castros did not consent to Wells Fargo’s extension of the forbearance, which they had not wanted or  
9 authorized in the first place.

10           223. Mr. and Mrs. Castro then contacted Wells Fargo via phone on multiple occasions in June  
11 and July 2020, asking to be removed from the forbearance program.

12           224. On a call in late July 2020, Mr. Castro was informed by a Wells Fargo representative that  
13 the “Get Help Now” button was placed on Wells Fargo’s website due to higher than normal call volume  
14 that resulted in five hour wait times before customers could speak to a Wells Fargo representative.

15           225. On August 3, 2020, Mr. Castro called Wells Fargo again in a further attempt to get his  
16 account removed from forbearance status. He spoke to four different Wells Fargo representatives and  
17 none of them were able to remove his loan from forbearance status. Ultimately, a Wells Fargo  
18 representative hung up on him.

19           **2. Pamela Delpapa, a California resident**

20           226. Another one of the many victims of Wells Fargo’s Faulty Forbearance Program is  
21 Plaintiff Pamela Delpapa. Ms. Delpapa lost her job at a nail salon due to COVID-19.

22           227. Concerned about whether she would be able to make her mortgage payments on her  
23 Riverside County, California property, she called Wells Fargo—her mortgage servicer—on or about  
24 March 17, 2020 to learn about her options.

1           228. At that point, she was paid in advance for five months; in fact, the Wells Fargo  
2 representative she spoke to said she would *not* be a candidate for assistance at this time, but that she  
3 should feel free to call back in five months. She relied on this misrepresentation to her detriment.

4           229. Unbeknownst to her, after that call Wells Fargo placed her loan in forbearance anyway.  
5 She only found out when she called her mortgage broker to refinance her home. Her mortgage broker  
6 told her she could not refinance because her loan was in forbearance. She was understandably shocked.

7           230. When she called Wells Fargo to complain, a Wells Fargo employee told her that when a  
8 borrower calls the bank and pushes the button directing them to information on COVID mortgage  
9 options, the bank automatically places those accounts in forbearance.

10           231. Ms. Delpapa never requested that her mortgage be placed in forbearance. In a June 2020  
11 letter to her, Wells Fargo admitted it placed her mortgage in forbearance without her consent and without  
12 discussing it with her “in detail”:

13           We found that On March 17, 2020, your account was set up for the 90-day forbearance option  
14 that was being offered to our customers. After listening to the phone call between you and our  
15 representative, we discovered that you never requested to be placed on the plan nor was the plan  
16 discussed with you in detail. On May 21, 2020, we updated the account and removed your  
17 account from the forbearance plan as you requested. Additionally we updated our reporting to  
18 ensure the forbearance comment was removed.

19           232. The bank’s letter also conceded that by reporting her mortgage as in forbearance, Wells  
20 Fargo may have damaged Ms. Delpapa’s ability to get consumer credit, as she experienced firsthand:

21           The credit bureaus have independent credit score models. We cannot speculate how any of their  
22 proprietary models account for this; however, we do know, generally, those are not used for  
23 underwriting of credit. If you apply for credit while on a forbearance plan, however, the lender  
24 will see the “account in forbearance” comment on your credit report, and the fact that your  
25 account is in forbearance may impact your ability to qualify for new credit or refinance.

26           233. Since then, Ms. Delpapa attempted to refinance her loan to capitalize on historically low  
27 interest rates. Despite having been prepaid for the period she was in forbearance, that is, despite *not*  
28 *missing a single payment*, she was unable to refinance for months as a result of the forbearance notation.

1           234. This delay in refinancing cost Ms. Delpapa hundreds of dollars, as she remained locked  
2 into her higher interest payment with Wells Fargo for months after Wells Fargo represented that they  
3 had removed her account from a forbearance plan she never requested.

4           **3. Jenna Doctor, a Florida resident**

5           235. Ms. Doctor's mortgage loan, secured by a lien against her property located at 7 Hitching  
6 Post Lane, Casselberry, Florida 32707, is a loan backed by the FHA and serviced by Wells Fargo.

7           236. Ms. Doctor and her husband are both employed and have been able to continue making  
8 their monthly mortgage payments without interruption. Mr. and Mrs. Doctor were current on their  
9 mortgage loan.

10          237. Around the second week of April 2020, Ms. Doctor, using her Wells Fargo online  
11 account, reviewed information about Wells Fargo's COVID-19 and CARES Act relief. After reviewing  
12 the information, Ms. Doctor elected not to enroll in the forbearance program because Ms. Doctor and  
13 her husband were able to continue making their payments and they had no financial need to forgo  
14 payments.

15          238. At no time did Ms. Doctor consent to or request that Wells Fargo place her mortgage  
16 loan account in forbearance.

17          239. However, at some point prior to June 29, 2020, Wells Fargo placed Ms. Doctor's  
18 mortgage loan account in forbearance status without Ms. Doctor's knowledge or consent.

19          240. In the summer 2020, Ms. Doctor was pregnant, with her baby due in late 2020. In June  
20 2020, Ms. Doctor learned that her baby had developed a medical condition that would require treatment,  
21 causing Ms. Doctor and her husband to incur additional out-of-pocket medical expenses. Ms. Doctor  
22 and her husband also wished to make certain upgrades and improvements to their home prior to the birth  
23 of their child.

24

1           241. On or about June 29, 2020, Ms. Doctor contacted a loan officer at the Fairwinds Credit  
2 Union (the “Credit Union”), where Ms. Doctor is a member and account holder. Ms. Doctor sought to  
3 obtain a secured loan to cover both the out-of-pocket medical expenses for herself and her unborn child  
4 and the improvements to her homestead.

5           242. The Credit Union made a “hard inquiry” with Equifax on June 29, 2020. The credit  
6 information the Credit Union received in response to its inquiry indicated that Ms. Doctor’s mortgage  
7 loan was in forbearance.

8           243. Also on June 29, 2020, the Credit Union informed Ms. Doctor that it could not extend  
9 Ms. Doctor credit because her mortgage loan was in forbearance. Ms. Doctor then informed the Credit  
10 Union that she was not in forbearance, that she had made her monthly mortgage payments each month,  
11 and that she never requested a forbearance with Wells Fargo.

12           244. Prior to June 29, 2020, Ms. Doctor had applied for and received several loans with the  
13 Credit Union. Ms. Doctor was informed by the Credit Union that the reason for the decision not to  
14 extend credit to Ms. Doctor on June 29, 2020 was because of the reporting or furnishing to the credit  
15 reporting agency that her Wells Fargo account was in forbearance for May and June 2020.

16           245. During the phone call with Wells Fargo on June 29, 2020, Ms. Doctor was informed that  
17 she was automatically put in forbearance, since every Wells Fargo borrower has been affected by  
18 COVID-19. The Wells Fargo representative indicated that Ms. Doctor’s account was in a forbearance  
19 from May 1, 2020 through July 1, 2020, but Ms. Doctor could “opt-out” of the forbearance program.  
20 Ms. Doctor demanded that her account be removed from the forbearance program, as she had never  
21 requested any forbearance relief with Wells Fargo.

22           246. In a letter from Wells Fargo to Ms. Doctor dated July 1, 2020, Wells Fargo confirmed  
23 that it “canceled the short-term payment suspension” based on Ms. Doctor’s request.

24

1           247. On July 1, 2020, Ms. Doctor contacted Wells Fargo and spoke with a representative  
2 concerning its reporting of the unwanted forbearance to the credit agencies. Wells Fargo refused to  
3 change the information it reported regarding Ms. Doctor’s account and stated that the account would  
4 reflect she had chosen to opt out of the final forbearance month of July 2020.

5           248. On July 6, 2020, Ms. Doctor contacted the Credit Union loan officer about the steps she  
6 took with Wells Fargo and what she needed to do to move forward with a loan. Ms. Doctor was informed  
7 by the Credit Union that her Wells Fargo account was still reported as in forbearance.

8           249. On July 6, 2020, Ms. Doctor called Wells Fargo and spoke with a Wells Fargo supervisor.  
9 Ms. Doctor explained that she needed the forbearance removed from Wells Fargo’s reporting to the  
10 credit reporting agencies because continued reporting would result in her being denied a loan with her  
11 Credit Union. The Wells Fargo supervisor stated Wells Fargo could only send Ms. Doctor an official  
12 “opt out” document.

13           250. Also on July 6, 2020, Wells Fargo sent an email to Ms. Doctor attaching a letter dated  
14 July 1, 2020, which referenced “Confirming your request to opt out of mortgage payment suspension”  
15 and stated that Wells Fargo was returning the account to normal servicing and “reporting payment  
16 activity to the consumer reporting agencies.”

17           251. For the months of April through July 2020, Wells Fargo furnished information to the  
18 credit reporting agencies that the status of Ms. Doctor’s monthly mortgage payments was paid, paid as  
19 agreed, or current. In addition, Wells Fargo furnished information that Ms. Doctor’s mortgage loan  
20 account was in forbearance for at least May and June 2020.

21           252. On July 7, 2020, Ms. Doctor filed a complaint online with the CFPB about Wells Fargo’s  
22 credit reporting and reporting incorrect information. Specifically, Ms. Doctor complained that Wells  
23 Fargo placed her mortgage loan account in forbearance without her knowledge or consent and reported  
24 her mortgage loan as in forbearance to the credit reporting agencies, which would prevent Ms. Doctor

1 from obtaining credit from her Credit Union until the reference to the forbearance was removed from  
2 her credit reports.

3 253. On or about July 7, 2020, Ms. Doctor disputed with Equifax the reporting of false and  
4 incorrect information furnished by Wells Fargo stating that Ms. Doctor's mortgage loan account was in  
5 forbearance. On information and belief, Equifax sent notice of Ms. Doctor's disputes to Wells Fargo  
6 pursuant to 15 U.S.C. § 1681s-2(b).

7 254. On or about July 16, 2020, Ms. Doctor complained again about Wells Fargo's credit  
8 reporting and, by July 16, 2020, Equifax began a re-investigation of Ms. Doctor's dispute relating to  
9 Wells Fargo's reporting of her account as in forbearance.

10 255. On July 31, 2020, Ms. Doctor sent written disputes to Equifax, Transunion, and Experian.  
11 On information and belief, Wells Fargo received notice from each of those credit reporting agencies  
12 pursuant to 15 U.S.C. § 1681s-2(b).

13 256. On or about July 31, 2020, Ms. Doctor received a response from Wells Fargo concerning  
14 her complaint with the CFPB regarding Wells Fargo's placement and reporting of her account in a  
15 forbearance status. Wells Fargo states that it is "unable to remove the forbearance comment that was  
16 previously reported for April 1, 2020, through June 1, 2020." Wells Fargo goes on to state that the  
17 "account was last reported to the consumer reporting agencies on July 15, 2020, as current with no  
18 forbearance comment."

19 257. As of August 6, 2020, Ms. Doctor's Equifax report still noted that her mortgage loan  
20 account was in forbearance for the months of May and June 2020.

21 258. In the July 31, 2020 letter, Wells Fargo made the false and/or misleading statement that  
22 the forbearance coding "had no impact to your FICO [credit] score." The letter stated that Wells Fargo  
23 "did not receive notification from you that you would like to be removed from the [forbearance] plan  
24 until June 30, 2020." But Wells Fargo never informed Ms. Doctor that it had placed her account into

1 forbearance for the months of May and June 2020. It is also unclear how Ms. Doctor should have been  
2 known that her account was in forbearance for the months of May and June 2020, particularly because  
3 she received statements from Wells Fargo on May 8, 2020 requesting her mortgage payment by June 1,  
4 2020, and again on June 5, 2020 requesting her mortgage payment by July 1, 2020.

5 259. As a result of Wells Fargo's false and misleading statements and conduct, Ms. Doctor  
6 suffered damages, including the inability to secure a loan through the Credit Union on June 29, 2020.

7 **4. Gerald Forsburg, a Virginia resident.**

8 260. Mr. Forsburg's mortgage loan, secured by a lien against his property located at 129  
9 Shannon Avenue in Mount Jackson, Shenandoah County, Virginia 22842, is a loan backed by the FHA  
10 and serviced by Wells Fargo.

11 261. Mr. Forsburg's personal liability on the mortgage loan secured by the Shannon Avenue  
12 property was discharged in a Chapter 7 bankruptcy in 2016, although the remaining unpaid debt on that  
13 loan continues to be secured by a lien against the Shannon Avenue property.

14 262. After his 2016 bankruptcy, Mr. Forsburg's mortgage loan fell into default, and Mr.  
15 Forsburg began working with Wells Fargo in an effort to obtain an FHA HAMP loan modification in  
16 order to reduce his interest rate and monthly mortgage payment and to catch up on the arrears owing on  
17 the mortgage loan.

18 263. In connection with his mortgage modification efforts, Mr. Forsburg accepted a trial  
19 modification plan offered by Wells Fargo, which required Mr. Forsburg to make three monthly  
20 payments of \$848.53 for January, February, and March 2020 as a precondition to Wells Fargo providing  
21 Mr. Forsburg with a final mortgage modification.

22 264. Mr. Forsburg made each of the trial modification payments under the trial modification  
23 plan on time and in full, as required.

24

1           265. On March 11, 2020, Wells Fargo approved Mr. Forsburg's loan for a final FHA HAMP  
2 mortgage modification.

3           266. The monthly payment under the terms of Mr. Forsburg's modified mortgage loan is  
4 \$831.75, with the first post-modification installment due May 1, 2020.

5           267. Mr. Forsburg was not required to make a monthly payment for April 2020 under the  
6 terms of his mortgage modification agreement. Moreover, Mr. Forsburg's modified monthly payment  
7 of \$831.75 represents substantial savings compared with his pre-modification monthly mortgage  
8 payment of approximately \$1,052.68. Additionally, the contractual annual interest rate for Mr.  
9 Forsburg's modified loan is 3.5%, a significant reduction of the pre-modification interest rate of 4.875%.

10           268. Mr. Forsburg's mortgage modification recapitalized \$8,648.26 in unpaid amounts,  
11 resulting in a \$148,633.85 new modified principal balance for his mortgage loan secured by the Shannon  
12 Avenue property.

13           269. On March 18, 2020, Wells Fargo sent final modification paperwork via FedEx to Mr.  
14 Forsburg, with instructions that Mr. Forsburg needed to sign the documents and have them notarized  
15 before returning the executed documents to Wells Fargo.

16           270. Mr. Forsburg received the FedEx from Wells Fargo with the final modification  
17 paperwork on March 19, 2020.

18           271. On March 20, 2020, Mr. Forsburg executed the final modification documents before a  
19 notary, who notarized Mr. Forsburg's signature and returned the final modification documents to Wells  
20 Fargo.

21           272. On or about April 2, 2020, Mr. Forsburg attempted to log into Wells Fargo's online  
22 payment portal in order to confirm that Wells Fargo had implemented his FHA HAMP mortgage  
23 modification and to make his May 1, 2020 modified monthly mortgage payment of \$831.75.

24

1           273. When he attempted to log in to make his mortgage payment on April 2, 2020, Mr.  
2 Forsburg received a message from Wells Fargo stating that his mortgage loan had not yet been updated  
3 with the terms of his March 11, 2020, Wells Fargo approved, fully executed, final FHA HAMP  
4 modification, and Wells Fargo indicated that it would “be in touch” with Mr. Forsburg “soon.”

5           274. Unbeknownst to Mr. Forsburg, sometime after March 20, 2020 and prior to April 2, 2020,  
6 Wells Fargo had placed his original, unmodified loan into a three-month forbearance program, effective  
7 as of the mortgage payment due for April 2020.

8           275. Mr. Forsburg did not request that his mortgage loan be placed into forbearance prior to  
9 April 2020, or at any time thereafter.

10          276. Prior to placing Mr. Forsburg’s loan into forbearance status for April 2020, Wells Fargo  
11 did not inform Mr. Forsburg that placing his loan into forbearance would result in Wells Fargo  
12 terminating the final mortgage modification agreement Mr. Forsburg had accepted on March 20, 2020.

13          277. Because Mr. Forsburg’s loan was in forbearance status, Wells Fargo stopped  
14 implementation of the final FHA HAMP mortgage modification that it offered to Mr. Forsburg, which  
15 Mr. Forsburg had accepted.

16          278. Instead, without notice to Mr. Forsburg, Wells Fargo unilaterally placed Mr. Forsburg’s  
17 original, unmodified mortgage loan into forbearance status.

18          279. As a result, without Mr. Forsburg’s prior knowledge or consent, Wells Fargo cancelled  
19 the final FHA HAMP modification Mr. Forsburg had accepted on March 20, 2020.

20          280. When Mr. Forsburg contacted Wells Fargo by phone to make his May 2020 payment  
21 under the newly modified loan terms, he was told that he did not need to make a payment because his  
22 loan was in forbearance. Mr. Forsburg was not told at that time that his modification had not been  
23 implemented by Wells Fargo.

24

1           281. As recently as July 21, 2020, a Wells Fargo representative told Mr. Forsburg that Wells  
2 Fargo placed all loans that were in the modification process into forbearance status.

3           282. Moreover, upon information and belief, after cancelling the modification and placing the  
4 loan in forbearance, Wells Fargo has also placed Mr. Forsburg’s loan in foreclosure status.

5           283. Mr. Forsburg has contacted Wells Fargo multiple times regarding this issue and, despite  
6 spending anywhere from 45–90 minutes on the phone, has not received a definitive answer from Wells  
7 Fargo regarding this issue. Indeed, Wells Fargo’s representatives have given him conflicting information  
8 about the status of his mortgage loan after Wells Fargo placed his account in forbearance.

9           284. In an article by Pulitzer Prize winning journalist Gretchen Morgenson, writing for NBC  
10 News, a Wells Fargo representative explained that it was Wells Fargo’s practice to unilaterally place  
11 loans of borrowers who were in the modification process into forbearance status under the CARES Act,  
12 without such borrowers’ prior knowledge or consent.<sup>91</sup>

13           285. Wells Fargo’s website’s “FAQ” section related to COVID-19 and CARES Act  
14 forbearance indicates that Wells Fargo cancels pending modification applications for its borrowers when  
15 borrowers accept a CARES Act forbearance.<sup>92</sup> Yet, Mr. Forsburg was told by a Wells Fargo  
16 representative that Wells Fargo unilaterally placed borrowers with pending loan modifications into  
17 forbearances.

18           286. Mr. Forsburg had the ability and intention of making the payments required of him under  
19 his modified loan terms, as set forth in the final modification documents he executed and returned to  
20 Wells Fargo on March 20, 2020.

21  
22 <sup>91</sup> Gretchen Morgenson, *Troy Harlow has always made sure to pay his mortgage on time. Wells Fargo*  
23 *had other plans for him*, NBC News (July 16, 2020), <https://www.nbcnews.com/business/personal-finance/troy-harlow-has-always-made-sure-pay-his-mortgage-time-n1233635>.

24 <sup>92</sup> COVID-19 Assistance, Wells Fargo, <https://www.wellsfargo.com/mortgage/manage-account/payment-help/coronavirus> (last visited May 19, 2023).

1 287. Mr. Forsburg did not want or request a CARES Act forbearance from Wells Fargo.

2 288. During the unauthorized forbearance period, Mr. Forsburg was prevented from making  
3 any payment via Wells Fargo's online payment system, other than payment in the amount of his pre-  
4 modification loan; Wells Fargo gives him no option to specify a different payment amount.

5 289. Wells Fargo's actions in placing Mr. Forsburg's loan in forbearance, without Mr.  
6 Forsburg's knowledge or consent, deprived Mr. Forsburg of the opportunity to cure his arrears and lower  
7 his interest rate through the modification.

8 **5. Samara Green, a Georgia resident**

9 290. Plaintiff Samara Green has a mortgage serviced by Wells Fargo in Rockdale County,  
10 Georgia.

11 291. On or about June 15, 2020, a representative from Wells Fargo called Ms. Green to  
12 address concerns Ms. Green had about her escrow payments. During this call, the Wells Fargo  
13 representative talked to Ms. Green about the option of placing her mortgage in forbearance.

14 292. Ms. Green told the Wells Fargo representative that she was not interested in Wells  
15 Fargo's forbearance program.

16 293. Before the June 15, 2020 phone call, Ms. Green had already made a mortgage payment  
17 to Wells Fargo on June 12, 2020.

18 294. However, unbeknownst to Ms. Green, her June 12, 2020 payment was not timely applied  
19 to her mortgage or her escrow account because Wells Fargo placed her mortgage in forbearance without  
20 her knowledge or consent.

21 295. In a letter sent from Wells Fargo to Ms. Green dated June 13, 2020, regarding this  
22 forbearance Wells Fargo confirmed that "as your account servicer, we are attempting to collect a debt  
23 and any information obtained will be used for that purpose". In addition, the letter contained multiple  
24 false and misleading statements.

1           296. The June 13, 2020 letter falsely stated that, “You let us know about a financial hardship  
2 you’re facing as a result of the COVID-19 crisis. To help, we have suspended your mortgage payment  
3 for three months.” The letter also falsely stated that Ms. Green had accepted the “short-term payment  
4 suspension” and that she had “requested payment suspension” when she had not. The letter falsely stated  
5 that, “You can end the payment suspension at any time” and failed to inform Ms. Green that Wells Fargo  
6 did not timely apply her June 12, 2020 payment. The letter was also false and misleading regarding how  
7 Wells Fargo would report her mortgage account with respect to the forbearance.

8           297. On or around June 26, 2020, Ms. Green called Wells Fargo again to further inquire about  
9 fees and the application of escrow payments. During the phone call, the Wells Fargo representative  
10 informed Ms. Green that her mortgage had been placed in forbearance.

11           298. Ms. Green informed the representative that she had never requested nor consented to  
12 forbearance on her mortgage, that Wells Fargo had acted without her knowledge or consent, and she  
13 demanded that her account be taken out of forbearance. Ms. Green received a letter from Wells Fargo  
14 dated July 1, 2020 which memorialized this conversation. As the letter recounted, Wells Fargo placed  
15 Ms. Green’s mortgage into forbearance though she “did not request this.”

16           299. Wells Fargo admits in the letter that though Ms. Green called Wells Fargo to discuss her  
17 escrow account, Wells Fargo instead suspended all her mortgage payments.

18           300. Wells Fargo never informed Ms. Green, either on the June 26, 2020 phone call or in the  
19 June 13, 2020 or July 1, 2020 letters, that Wells Fargo had failed to apply her June 12, 2020 payment to  
20 her mortgage or her escrow account.

21           301. On or about July 15, 2020, Ms. Green went to a Wells Fargo bank branch in order to  
22 make another mortgage payment to Wells Fargo.

1           302.    However, when Ms. Green spoke with the Wells Fargo representative at the bank branch,  
2 she was told that the amount due on her mortgage was over \$3,500, that her prior June payment had not  
3 been applied to her mortgage or her escrow, and that her mortgage had been placed in forbearance.

4           303.    After Ms. Green’s visit to the Wells Fargo branch, she immediately called Wells Fargo  
5 and spoke to a representative. The Wells Fargo representative confirmed that Ms. Green’s mortgage  
6 payment had not been applied to her mortgage or her escrow because she had been placed in forbearance.  
7 The Wells Fargo representative told Ms. Green that her payment had been placed in an “unapplied fund”  
8 and that those payments would be reversed because they could not be applied to her mortgage or escrow  
9 while she was in forbearance.

10          304.    Wells Fargo placed Ms. Green’s loan in forbearance without her consent and incorrectly  
11 reported this to credit reporting agencies.

12          305.    Because Wells Fargo failed to timely apply her June 12, 2020 payment, Wells Fargo  
13 reported to the Credit Reporting Agencies that Ms. Green was 30 days late on her mortgage for the  
14 month of June 2020.

15          306.    While Wells Fargo did, ultimately, apply the June 12, 2020 payment to her mortgage,  
16 they did so months late.

17          307.    Ms. Green did not request a forbearance of her mortgage loan payment obligations, did  
18 not contact Wells Fargo about a forbearance, and she did not—and does not—want a forbearance of her  
19 mortgage payment obligations.

20           **6.     Patrick Healy, a California resident.**

21          308.    Mr. Healy’s residential property located in San Marcos, California, is encumbered by a  
22 lien securing repayment of a mortgage that is serviced by Wells Fargo.

23          309.    In June 2020, Mr. Healy discovered that Wells Fargo had been persistently reporting  
24 inaccurate credit information about this mortgage loan account with Wells Fargo. Specifically, Wells

1 Fargo had been falsely reporting that his mortgage loan was in forbearance and that no payments had  
2 been made on the account for months, at least as of April 2020.

3 310. In a letter from Wells Fargo dated June 3, 2020, Wells Fargo incorrectly stated that  
4 Mr. Healy “had asked for help with [his] mortgage payments because [he] was facing a financial  
5 hardship as a result of the [COVID-19] crisis.” The letter then went on to say, “To help, we suspended  
6 your mortgage payments for three months, but you’ve still been making your payments.”

7 311. However, Mr. Healy never requested or agreed to a forbearance on his mortgage loan or  
8 any type of deferment.

9 312. During the purported period of forbearance, Mr. Healy has been making each monthly  
10 mortgage payment in full and on time, yet Wells Fargo furnished to the credit reporting agencies the  
11 indisputably false and inaccurate information that he had not made any recent monthly payments during  
12 the several months that his account was wrongfully placed in forbearance.

13 313. Mr. Healy contacted Wells Fargo about the forbearance status on the loan that he did not  
14 request. In response, in a letter from Wells Fargo, dated June 15, 2020, Wells Fargo stated “Thank you  
15 for updating us on your situation. We’re confirming that we’ve canceled the short-term payment  
16 suspension.”

17 314. In fact, in a letter from Wells Fargo dated July 6, 2020, Wells Fargo admitted that  
18 Mr. Healy did not request a forbearance. Specifically, Wells Fargo stated: “We found that when you  
19 first spoke with us you requested information about the forbearance plan. We can confirm you did not  
20 request or accept the plan at that time and the plan was added to the account in error.” The letter further  
21 stated in part, “We apologize for any confusion or frustration regarding how your credit report may have  
22 been impacted due to the COVID-19 pandemic.”

23 315. Unfortunately, as a result of the false mortgage forbearance reporting by Wells Fargo,  
24 Mr. Healy was deprived of a home mortgage refinance loan with another lender who declined to extend

1 Mr. Healy credit in light of Wells Fargo’s reporting of the account in forbearance with no recent payment  
2 made.

3 316. After the inaccurate credit reporting with Experian was disputed, Experian in response  
4 indicated that following their “reinvestigation” of the dispute, “The information you disputed has been  
5 updated,” and the credit report, generated on June 20, 2020, then showed that the mortgage account was  
6 current on payments from January to June 2020.

7 317. Only after the dispute was corrected was Mr. Healy able to secure new credit that had  
8 previously been denied for months.

9 **7. Brett Jacob, a New York resident.**

10 318. Plaintiff Brett Jacob has a mortgage serviced by Wells Fargo for a property in Nassau  
11 County, New York.

12 319. On or about March 16, 2020, Mr. Jacob called Wells Fargo and asked that his mortgage  
13 payments no longer be automatically debited from his bank account.

14 320. Mr. Jacob requested that he be permitted to make payments at a time and in a manner of  
15 his own choosing. Wells Fargo honored Mr. Jacob’s request and, a few days later, Mr. Jacob received a  
16 letter from Wells Fargo dated March 20, 2020 confirming that Wells Fargo had “completed your request  
17 to suspend your automatic mortgage payments.”

18 321. Wells Fargo’s entire forbearance program was an unfair and deceptive business practice.  
19 When Wells Fargo agreed to suspend Mr. Jacob’s automatic mortgage payments, its representative told  
20 Mr. Jacob that Wells Fargo would send him information about possible “payment assistance” during the  
21 pandemic. However, unbeknownst to Mr. Jacob, at the time Wells Fargo agreed to suspend Mr. Jacob’s  
22 automatic payments and send him information, Wells Fargo put Mr. Jacob in forbearance without his  
23 knowledge or consent.

1           322. Mr. Jacob received a second letter from Wells Fargo dated March 26, 2020, which was  
2 deceptive and misleading. The letter did not inform Mr. Jacob that Wells Fargo placed him into a  
3 forbearance, nor does the word “forbearance” appear anywhere in the letter. Instead, the letter used  
4 deceptive terms such as “short-term payment relief” and “payment suspension,” and stated that his  
5 mortgage payments were “suspended” until October 1, 2020.

6           323. The March 26, 2020 letter was highly misleading in that it stated that Wells Fargo would  
7 not “report a past-due status” for Mr. Jacob’s account to the credit reporting agencies, when, in fact,  
8 Wells Fargo was reporting that Mr. Jacob’s account was in forbearance. The letter also falsely and  
9 deceptively stated that, “If you do not need the payment relief, you can continue making the payments  
10 as normal and no further action is needed.” However, as noted below, Mr. Jacob was not able to continue  
11 his normal payments using Wells Fargo’s online payment system.

12           324. Mr. Jacob never requested that Wells Fargo place his mortgage into forbearance.

13           325. Since being placed in forbearance, Mr. Jacob tried to make mortgage payments, but  
14 Wells Fargo suspended his ability to make payments through his mobile app.

15           326. Further, though Wells Fargo assures its customers otherwise, the forbearance that he did  
16 not request is reflected on his credit report. Mr. Jacob filed a written notice of dispute with Experian on  
17 September 9, 2020.

18           327. After Wells Fargo placed him in forbearance, Mr. Jacob attempted to secure a small-  
19 business loan but was denied, at least in part because the lender pulled his credit report and saw that his  
20 mortgage had been placed in forbearance.

21           328. In addition, Mr. Jacob’s attempt to refinance his mortgage and to obtain a lower interest  
22 rate on his mortgage was denied because Wells Fargo placed his mortgage into forbearance without his  
23 consent.

24

1           329. Wells Fargo placed Mr. Jacob’s loan in forbearance without his consent and incorrectly  
2 reported this to credit reporting agencies such that it appears on Mr. Jacob’s credit report.

3           330. Mr. Jacob disputed this inaccurate credit reporting with Experian. On information and  
4 belief, Experian sent notice of Mr. Jacob’s dispute to Wells Fargo pursuant to 15 U.S.C. § 1681s-2(b).

5           331. Experian added a comment to Mr. Jacob’s credit report, generated on September 25,  
6 2020, that opined, “The information you disputed has been verified as accurate; however, information  
7 unrelated to your dispute has been updated.”

8           332. Mr. Jacob disputed the forbearance notation, as he had never requested a forbearance.  
9 Rather than investigate whether it had erred in placing Mr. Jacob into a forbearance, Wells Fargo merely  
10 confirmed to Experian that it *had* placed Mr. Jacob into a forbearance. This paltry investigation is  
11 inadequate—akin to a debt collector only investigating whether a disputed debt had been paid, and not  
12 whether they had reported it against the right debtor.

13           333. The credit reporting concerning the forbearance was incorrect, as Mr. Jacob did not  
14 request a forbearance of his mortgage loan payment obligations, did not contact Wells Fargo about a  
15 forbearance, and did not—and does not—want a forbearance of his mortgage payment obligations.

16           **8. Charles Johnson, a California resident.**

17           334. Plaintiff Charles Johnson has a mortgage serviced by Wells Fargo for a property in  
18 Riverside County, California.

19           335. At the end of March 2020, Mr. Johnson called Wells Fargo and asked to be placed into  
20 the forbearance program, to receive short-term payment relief for his mortgage account.

21           336. Per his request, Mr. Johnson’s forbearance period was to last three months, from April  
22 through June 2020.

1           337. Mr. Johnson received a letter from Wells Fargo dated April 6, 2020 confirming that they  
2 had “suspended [his] obligation to make monthly mortgage payments for three months” and that  
3 Mr. Johnson needed to resume his “regular mortgage payment schedule beginning on July 1, 2020.”

4           338. Wells Fargo sent Mr. Johnson a letter dated May 26, 2020 informing him that his account  
5 was due for two payments “for the month(s) of April 1, 2020 through May 26, 2020.”

6           339. Concerned by this correspondence, Mr. Johnson called Wells Fargo and spoke to a  
7 customer representative and asked specifically to be removed from the program when his three-month  
8 period ended.

9           340. He also asked about the process of resuming payments when his forbearance period  
10 ended on July 1, 2020.

11           341. Mr. Johnson did not ask that his forbearance period be extended; in fact, he requested the  
12 exact opposite.

13           342. Despite this conversation, Mr. Johnson received a letter from Wells Fargo dated June 17,  
14 2020, asking Mr. Johnson if he wished to extend his period of forbearance for another three months.

15           343. Mr. Johnson did not want the period of forbearance be extended, and since he already  
16 called Wells Fargo he expected that he would be taken out of the forbearance program.

17           344. However, in a letter from Wells Fargo dated July 8, 2020, Mr. Johnson was informed  
18 that Wells Fargo had yet again “suspended [his] mortgage payments for an additional three months.”  
19 Mr. Johnson was told that he would not need to resume his mortgage payments until October 1, 2020.

20           345. Mr. Johnson made a \$1,446.80 mortgage payment on or about July 1, 2020 which Wells  
21 Fargo accepted.

22           346. However, Wells Fargo failed to apply Mr. Johnson’s July 1, 2020 payment to his  
23 mortgage account.

24

1           347. Mr. Johnson made a \$1,446.80 mortgage payment on or about August 1, 2020 which  
2 Wells Fargo accepted.

3           348. However, Wells Fargo failed to apply Mr. Johnson's August 1, 2020 payment to his  
4 mortgage account, and decrease his principal and interest.

5           349. Mr. Johnson called Wells Fargo on or about July 16, 2020, told a customer service  
6 representative that he never requested that his forbearance period be extended, and requested to be  
7 removed from the forbearance program.

8           350. Wells Fargo did not provide Mr. Johnson with answers to his questions nor was he told  
9 that he was removed from the forbearance program.

10           351. Instead, Mr. Johnson was told to not make a payment on his mortgage and that he would  
11 be receiving further correspondence.

12           352. Mr. Johnson did not receive any further correspondence regarding the status of his  
13 mortgage account.

14           353. Mr. Johnson called Wells Fargo three additional times—on or about August 6th, 7th, and  
15 11th—but Wells Fargo was not able to tell Mr. Johnson that he had been removed from the forbearance  
16 program.

17           354. Because Mr. Johnson's mortgage was placed in an extended forbearance program  
18 without his consent and without his knowledge, Wells Fargo incorrectly reported to the credit reporting  
19 agencies that his mortgage was in forbearance after July 1, 2020 and until October 1, 2020.

20           355. Mr. Johnson's credit score dropped by 13 points after July 1, 2020 as a result of Wells  
21 Fargo's incorrectly reporting to the credit reporting agencies that his mortgage was in forbearance.

22           356. Wells Fargo placed Mr. Johnson's loan in a second forbearance without his consent, and  
23 incorrectly reported this to credit reporting agencies such that it appears on Mr. Johnson's credit report.

24

1 357. Wells Fargo also incorrectly reported the total balance of Mr. Johnson's mortgage,  
2 failing to account for the payments made for the months of April 2020 and May 2020.

3 358. Further, despite placing Mr. Johnson unwillingly into forbearance during these months  
4 and taking Mr. Johnson's payments, Wells Fargo reported to the credit reporting agencies that  
5 Mr. Johnson's mortgage balance had increased from \$141,175 in April 2020 to \$143,288 in June 2020.

6 359. As such, Mr. Johnson suffered damages to his credit and reputation.

7 360. Further, Wells Fargo's extension of Mr. Johnson's forbearance without his request,  
8 failure to account for the payments he made, incorrect reporting to the credit bureaus, and to date failure  
9 to remedy the issues, are continuously causing Mr. Johnson mental anguish, embarrassment, and stress.

10 **9. Barbara Prado, a California resident**

11 361. Barbara Prado is a chef by trade. Until September 1, 2020, for eight years, she had been  
12 employed as a manager by the Bon Appetit cafe and restaurant chain, including throughout March 2020.

13 362. Ms. Prado has two FHA mortgage loans that are serviced by Wells Fargo and are secured  
14 by her homestead property, which is located in Fremont, California.

15 363. Ms. Prado's primary mortgage loan has an account number ending in 4898 (the "Primary  
16 Mortgage Loan").

17 364. From April through September 2020, Ms. Prado's monthly payment on her Primary  
18 Mortgage Loan has been \$1,594.70, which includes principal, interest, and escrow for property taxes  
19 and insurance.

20 365. Ms. Prado's secondary mortgage loan has an account number ending in 9035 (the  
21 "Secondary Mortgage Loan").

22 366. The monthly payment on Ms. Prado's Secondary Mortgage Loan is \$167.90.  
23  
24

1           367. Prior to April 2020, Ms. Prado had arranged for her payments on the Secondary Mortgage  
2 Loan to be automatically drafted from her bank account by Wells Fargo each month in the amount of  
3 \$200.00, designating the \$32.10 surplus to be applied to further reduce the loan’s principal balance.

4           368. Ms. Prado called Wells Fargo on Saturday, March 28, 2020, to inquire about COVID-19  
5 related payment assistance options with respect to her Primary Mortgage Loan only. Including hold  
6 time, Ms. Prado’s March 28, 2020 call to Wells Fargo lasted approximately 43 minutes.

7           369. Ms. Prado does not recall or believe that she ever requested “forbearance” during her  
8 March 28, 2020 call with Wells Fargo and she does not recall authorizing Wells Fargo to place her  
9 Primary Mortgage Loan account into forbearance status effective April 1, 2020.

10           370. Wells Fargo sent Ms. Prado a letter dated September 4, 2020, in which Wells Fargo  
11 asserts that Ms. Prado called Wells Fargo regarding her Primary Mortgage Loan on March 28, 2020,  
12 “and stated that [Ms. Prado] would need two months deferred as [she] did not know when [she] would  
13 be going back to work.”

14           371. Wells Fargo’s September 4, 2020 letter does not assert that Ms. Prado ever requested  
15 “forbearance” as to her Primary Mortgage Loan, nor does it assert that Ms. Prado agreed on March 28,  
16 2020 (or at any other time) to a “payment suspension” that would be immediately effective.

17           372. On September 15, 2020, a Wells Fargo representative, Erica Nosbisch, informed Ms.  
18 Prado that Wells Fargo placed her Primary Mortgage Loan account into forbearance status on March  
19 30, 2020.

20           373. Ms. Prado actually made her monthly mortgage payments on her Primary Mortgage Loan  
21 from April through September 2020.

22           374. In addition to placing Ms. Prado’s Primary Mortgage Loan into forbearance following  
23 Ms. Prado’s March 28, 2020 call, Wells Fargo placed Ms. Prado’s Secondary Loan Account into  
24

1 forbearance status, without Ms. Prado requesting a forbearance on her Secondary Mortgage Loan and  
2 without her knowledge or consent.

3 375. Wells Fargo's September 4, 2020 letter to Ms. Prado acknowledges that Wells Fargo  
4 placed Ms. Prado's Secondary Mortgage Loan into forbearance status without Ms. Prado's consent,  
5 "because of the request from [her] on [her Primary Mortgage Loan]. Due to high call volumes, the  
6 process was automated and forbearance assistance was provided for all accounts associated with [Ms.  
7 Prado's Primary Mortgage Loan]."

8 376. For example, Wells Fargo automatically placed Ms. Prado's Secondary Mortgage into  
9 forbearance without her requesting the forbearance or even knowing that Wells Fargo had placed her  
10 Secondary Mortgage into forbearance. Wells Fargo also cut off the automatic payments on Ms. Prado's  
11 Secondary Mortgage without telling Ms. Prado that it was doing so, causing Ms. Prado to become three  
12 months behind on her Secondary Mortgage through no fault of her own. Wells Fargo automatically  
13 extended the forbearance on Ms. Prado's Secondary Mortgage, even though Ms. Prado did not ask for  
14 Wells Fargo to place her Secondary Mortgage into forbearance and did not request that Wells Fargo  
15 extend a forbearance that she did not even know about.

16 377. The mortgage statements that Wells Fargo sent Ms. Prado seeking collection of the  
17 payments on her Secondary Mortgage were deceptive and misleading. They said "You had asked for  
18 help with mortgage payments because you were facing a financial hardship as a result of the crisis. To  
19 help, we suspended the mortgage payments for a period of time." Ms. Prado did not request that her  
20 Secondary Mortgage be placed into forbearance, did not ask for the forbearance to be extended, and  
21 asked that her loan be taken out of forbearance. Rather than "helping," Wells Fargo unauthorized  
22 forbearance practices caused Ms. Prado's Secondary Mortgage to go three months into default. Another  
23 monthly mortgage statement on the Secondary Mortgage stated, "We have received your request for  
24 short term payment relief. As requested, we have cancelled your future automatic withdrawals." These

1 statements were patently false, as Ms. Prado did not request forbearance for her Secondary Mortgage  
2 and never requested that her automatic payments for that loan be stopped.

3 378. When Wells Fargo placed Ms. Prado's Secondary Mortgage Loan into forbearance  
4 status, it also terminated the pre-arranged automatic electronic monthly payments that Ms. Prado had  
5 set up with Wells Fargo for her Secondary Mortgage Loan without prior notice to Ms. Prado.

6 379. Because she had come to expect that the \$200 monthly payment on her Secondary  
7 Mortgage Loan would be automatically drafted from her bank account each month, Ms. Prado did not  
8 notice that her Secondary Mortgage Loan payments to Wells Fargo for April, May, and June 2020 had  
9 not been drafted from her account.

10 380. On June 10, 2020, at her daughter's urging, and with her daughter present, Ms. Prado  
11 called Wells Fargo to obtain information about the CARES Act forbearance program.

12 381. During her June 10, 2020 call, after listening to a Wells Fargo representative's attempt  
13 to explain how the forbearance program would work, Ms. Prado informed Wells Fargo that she was not  
14 interested in forbearance at that time.

15 382. The Wells Fargo representative Ms. Prado spoke with on June 10, 2020 did not mention  
16 to Ms. Prado that both her Primary Mortgage Loan and her Secondary Mortgage Loan were already, or  
17 had already been, in forbearance.

18 383. On July 9, 2020, Ms. Prado received an email from Wells Fargo informing her that Wells  
19 Fargo would be extending the forbearance term on her Secondary Mortgage Loan for an additional 90  
20 days.

21 384. Ms. Prado was alarmed by Wells Fargo's July 9, 2020 email extending the term of the  
22 unauthorized forbearance on her Secondary Mortgage Loan.

23 385. Ms. Prado did not request that Wells Fargo extend the forbearance on her Secondary  
24 Mortgage Loan.

1           386. On July 9, 2020, Ms. Prado attempted to call Wells Fargo to get information about why  
2 Wells Fargo was sending her an email that said her Secondary Mortgage Loan account was in  
3 forbearance status. However, she was kept on hold for so long that it was interfering with her work and  
4 she ultimately was forced to hang up before she was able to speak with anyone at Wells Fargo.

5           387. So, after getting off work on July 9, 2020, Ms. Prado went to a Wells Fargo branch bank  
6 to seek an explanation for Wells Fargo's email indicating that her Secondary Mortgage Loan was in  
7 forbearance.

8           388. Upon Ms. Prado's arrival at the Wells Fargo branch bank at approximately 4:30pm on  
9 July 9, 2020, Ebonique Edogun, a Wells Fargo representative at the Wells Fargo branch banking  
10 location, attempted to assist Ms. Prado that evening by trying to call Wells Fargo's mortgage division  
11 to obtain information about the forbearance on the Secondary Mortgage Loan.

12           389. Ms. Edogun's call to Wells Fargo on Ms. Prado's behalf remained on hold past the Wells  
13 Fargo branch bank's business hours, until approximately 5:30 p.m. Pacific time. At that point, Ms. Prado  
14 asked Ms. Edogun to end the call so they could both go home.

15           390. The next morning, at approximately 5:30 a.m. Pacific time on July 10, 2020, Ms. Prado  
16 again called Wells Fargo to inquire about the July 9, 2020 email regarding extension of the forbearance  
17 on her Secondary Mortgage Loan.

18           391. During the July 10, 2020 call, Ms. Prado first spoke with a Wells Fargo representative  
19 named Colleen, who later transferred Ms. Prado's call to a supervisor named Rosemary.

20           392. While speaking with Colleen during the July 10, 2020 call, Ms. Prado learned, to her  
21 surprise, that her Primary Mortgage Loan was also in forbearance status.

22           393. During the July 10, 2020 call, Ms. Prado also learned that her Secondary Mortgage Loan  
23 was three months behind because of the unauthorized forbearance on her Secondary Mortgage Loan  
24

1 account and Wells Fargo's undisclosed cancellation of her automatic electronic payment arrangement  
2 with Wells Fargo for the Secondary Mortgage Loan.

3 394. While speaking with Rosemary during the July 10, 2020 call, Ms. Prado requested to  
4 have the forbearance removed from both loans.

5 395. Rosemary, Wells Fargo's representative, advised Ms. Prado during the July 10, 2020 call  
6 that Ms. Prado would be able to defer the missed (forborne) payments on her Secondary Mortgage Loan  
7 to the end of her loan, and that this process would be done through correspondence Ms. Prado would  
8 receive by mail.

9 396. Later in July, instead of offering to defer the missed (forborne) payments on her  
10 Secondary Mortgage Loan, Wells Fargo sent Ms. Prado a letter dated July 13, 2020, informing Ms.  
11 Prado that she had an overdue balance on her Secondary Mortgage Loan account and requesting that  
12 Ms. Prado call Wells Fargo because "...we want to help you."

13 397. Ms. Prado made her July 2020 Secondary Mortgage Loan payment directly to Wells  
14 Fargo in the amount of \$200, which Wells Fargo initially accepted and applied to Ms. Prado's Secondary  
15 Mortgage Loan account on July 14, 2020, designating \$167.90 as the regular payment, and \$32.10 as a  
16 principal payment, as reflected on the July 14, 2020 statement Wells Fargo sent Ms. Prado.

17 398. Wells Fargo then sent Ms. Prado a second statement in July 2020, dated July 16, 2020,  
18 which reverses the \$32.10 that Wells Fargo applied as a principal payment on July 14, 2020, and places  
19 \$32.10 into an unapplied funds account.

20 399. Wells Fargo also sent Ms. Prado a letter dated July 14, 2020, congratulating Ms. Prado  
21 because she was once again enrolled in monthly automatic payments for her Secondary Mortgage Loan,  
22 beginning August 14, 2020.

23 400. Wells Fargo next sent Ms. Prado a letter dated July 15, 2020 stating that her account was  
24 due for "3 payment(s) for the month(s) of May 1, 2020 through July 15, 2020 [sic]." Wells Fargo's July

1 15, 2020 letter offers Ms. Prado various options to “help [her] stay in [her] home,” none of which  
2 included deferral of her payments to the end of the note, as she had been told previously.

3 401. On July 22, 2020, Ms. Prado called Wells Fargo regarding her Secondary Mortgage Loan  
4 account because she was confused by Wells Fargo’s correspondence, which did not comport with her  
5 prior conversation on July 10, 2020 with Wells Fargo’s representative, Rosemary, in which Rosemary  
6 informed Ms. Prado that the forbore payments on her Secondary Mortgage Loan would be put at the  
7 end of her loan.

8 402. A Wells Fargo representative named Raphael spoke with Ms. Prado during the July 22,  
9 2020 call. Raphael informed Ms. Prado that he could see no indication in Wells Fargo’s system that Ms.  
10 Prado had requested forbearance on her Secondary Mortgage Loan and that a Wells Fargo representative  
11 named “Tayion Pugh” appeared to be the person who put the process in motion that resulted in Ms.  
12 Prado’s Secondary Mortgage Loan account being placed into forbearance status. Raphael was not able  
13 to explain why the forbore (without authorization) payments on Ms. Prado’s loan were not being  
14 deferred.

15 403. On July 28, 2020, Ms. Prado accessed her Secondary Mortgage Loan account  
16 information through Wells Fargo’s website in order to determine how much she would need to pay to  
17 bring her Secondary Mortgage loan current. According to Wells Fargo’s website as of July 28, 2020,  
18 Ms. Prado was required to pay \$610.40 to bring her loan current at that time.

19 404. The next day, July 29, 2020, Ms. Prado went to a Wells Fargo branch bank and paid  
20 \$610.40, believing that she was bringing her account contractually current.

21 **10. Renrick and Vivian Robinson, Texas residents**

22 405. The Robinsons’ residence, in Grand Prairie, Texas, is encumbered by a VA mortgage,  
23 which on information and belief was originated by Wells Fargo, refinanced by Wells Fargo, and is  
24 serviced by Wells Fargo.

1 406. On March 20, 2020, Ms. Robinson called Wells Fargo to discuss a potential refinance,  
2 to take advantage of the historically low prevailing interest rates. The Wells Fargo representative told  
3 her about the forbearance program and asked if she wanted to receive some literature on forbearance  
4 relief. Ms. Robinson agreed to accept the literature, but expressly stated that she was not accepting  
5 forbearance.

6 407. As Wells Fargo explained in a letter sent to the Robinsons months later, the customer  
7 service representative added the coding on the Robinsons' loan to have the informational packet sent,  
8 however, this also placed their mortgage into forbearance.

9 408. When the Robinsons received the information, they reviewed it together. They decided  
10 that they did not want or need a forbearance and threw away the notice. However, Wells Fargo had  
11 already placed them into a forbearance.

12 409. The Robinsons discovered this when Mr. Robinson applied for a personal line of credit  
13 from American Express, seeking the travel benefits and perks associated with that credit card. He was  
14 denied because he was in forbearance.

15 410. Shocked, the Robinsons called Wells Fargo and demanded to be removed from  
16 forbearance.

17 411. Although Wells Fargo represented that they had been removed, Mr. Robinson's  
18 application for the personal line of credit was again denied due to the forbearance code on his credit  
19 report. Ultimately, he was only able to secure the personal line of credit after sending verification of his  
20 income.

21 **VI. CLASS ACTION ALLEGATIONS**

22 412. Plaintiffs bring this complaint on behalf of themselves and all others similarly situated  
23 under Federal Rules of Civil Procedure 23(b)(2) and 23(b)(3), or alternatively 23(b)(4). The Nationwide  
24 Class that Plaintiffs seek to represent is defined as follows:

1 All residential mortgage borrowers for whom Wells Fargo Bank, N.A.,  
2 placed a residential mortgage into forbearance or continued forbearance  
3 without receiving the borrower's request or continued consent for a  
forbearance and affirmation that the borrower is experiencing a financial  
hardship due to COVID-19.

4 413. In addition, Plaintiffs Delpapa, Healy, Johnson, and Prado seek to represent the following  
5 California Class:

6 All residential mortgage borrowers for whom Wells Fargo Bank, N.A.,  
7 placed a residential mortgage secured by real property in California into  
8 forbearance or continued forbearance without receiving the borrower's  
request for a forbearance and affirmation that the borrower is experiencing  
a financial hardship due to COVID-19.

9 414. In addition, Plaintiff Doctor seeks to represent the following Florida Class:

10 All residential mortgage borrowers for whom Wells Fargo Bank, N.A.,  
11 placed a residential mortgage secured by real property in Florida into  
12 forbearance or continued forbearance without receiving the borrower's  
request for a forbearance and affirmation that the borrower is experiencing  
a financial hardship due to COVID-19.

13 415. In addition, Plaintiff Green seeks to represent the following Georgia Class:

14 All residential mortgage borrowers for whom Wells Fargo Bank, N.A.,  
15 placed a residential mortgage secured by real property in Georgia into  
16 forbearance or continued forbearance without receiving the borrower's  
request for a forbearance and affirmation that the borrower is experiencing  
a financial hardship due to COVID-19.

17 416. In addition, Plaintiff Jacob seeks to represent the following New York Class:

18 All residential mortgage borrowers for whom Wells Fargo Bank, N.A.,  
19 placed a residential mortgage secured by real property in New York into  
20 forbearance or continued forbearance without receiving the borrower's  
request for a forbearance and affirmation that the borrower is experiencing  
a financial hardship due to COVID-19.

21 417. In addition, Plaintiffs Renrick and Vivian Robinson and Luis and Marisol Castro seek to  
22 represent the following Texas Class:

1 All residential mortgage borrowers for whom Wells Fargo Bank, N.A.,  
2 placed a residential mortgage secured by real property in Texas into  
3 forbearance or continued forbearance without receiving the borrower's  
request for a forbearance and affirmation that the borrower is experiencing  
a financial hardship due to COVID-19.

4 418. In addition, Plaintiff Gerald Forsburg seeks to represent the following Virginia Class:

5 All residential mortgage borrowers for whom Wells Fargo Bank, N.A.,  
6 placed a residential mortgage secured by real property in Virginia into  
7 forbearance or continued forbearance without receiving the borrower's  
request for a forbearance and affirmation that the borrower is experiencing  
a financial hardship due to COVID-19.

8 419. Excluded from the Classes are Wells Fargo's officers, directors and employees; the  
9 judicial officers and associated court staff assigned to this case; and the immediate family members of  
10 such officers and staff.

11 420. **Numerosity:** The members of the Classes are so numerous that joinder of all members  
12 would be impractical. Wells Fargo is one of the nation's largest home lenders and servicers, and media  
13 reports indicate borrowers in at least 14 states have experience non-requested forbearances. The CFPB  
14 has documented dozens of complaints. Wells Fargo recently reported to the United States Senate that  
15 approximately 1,600 borrowers had called to complain about being placed into unwanted forbearances.  
16 Based on the elevated volume of Wells Fargo's borrowers placed into forbearances, when compared to  
17 its industry peers, Plaintiffs estimate that hundreds of thousands of forbearances were the result of Wells  
18 Fargo's faulty program.

19 421. **Commonality and Predominance:** Common questions of law and fact predominate  
20 over any questions affecting only individual members of the Classes. For Plaintiffs and the Classes, the  
21 common legal and factual questions include, but are not limited to the following:

- 22 A. Whether Wells Fargo negligently or intentionally enrolled customers in forbearance  
23 programs without their consent;
- 24 B. Whether Wells Fargo has breached terms implied in its contracts with Plaintiffs and the

1 Class Members;

2 C. Whether Wells Fargo's actions or inactions violated the consumer protection statutes  
3 invoked herein;

4 D. Whether Plaintiffs and the Class members were damaged by Wells Fargo's conduct and,  
5 if so, the appropriate amount of damages;

6 E. Whether, because of Wells Fargo's misconduct, Plaintiffs and the Classes are entitled to  
7 equitable and declaratory relief, and, if so, the nature of such relief.

8 422. **Typicality:** The representative Plaintiffs' claims are typical of the claims of the members  
9 of the Classes. Plaintiffs and all the members of the Classes have been injured by the same wrongful  
10 practices of Wells Fargo. Plaintiffs' claims arise from the same practices and course of conduct that give  
11 rise to the claims of the members of the Classes and are based on the same legal theories.

12 423. **Adequacy:** Plaintiffs will fully and adequately assert and protect the interests of the  
13 Classes, and have retained class counsel who are experienced and qualified in prosecuting class actions.  
14 None of the Plaintiffs nor their attorneys have any interests contrary to or in conflict with the Classes.

15 424. **Predominance and Superiority:** A class action is superior to all other available methods  
16 for the fair and efficient adjudication of this lawsuit because individual litigation of the claims of all  
17 Class members is economically unfeasible and procedurally impracticable. While the aggregate  
18 damages sustained by the Class members are likely in the hundreds of millions of dollars, the individual  
19 damages incurred by each Class member are too small to warrant the expense of individual suits. The  
20 likelihood of individual Class members prosecuting their own separate claims is remote, and even if  
21 every member of the Classes could afford individual litigation, the court system would be unduly  
22 burdened by individual litigation of such cases.

23 425. Further, individual members of the Classes do not have a significant interest in  
24 individually controlling the prosecution of separate actions, and individualized litigation would also

1 result in varying, inconsistent, or contradictory judgments and would magnify the delay and expense to  
2 all of the parties and the court system because of multiple trials of the same factual and legal issues.  
3 Plaintiffs know of no difficulty to be encountered in the management of this Action that would preclude  
4 its maintenance as a class action. In addition, Wells Fargo has acted or refused to act on grounds  
5 generally applicable to the Classes and, as such, final injunctive relief or corresponding declaratory relief  
6 with regard to the Class members as a whole is appropriate.

7 426. Wells Fargo has, or has access to, address and/or other contact information for the Class  
8 members, which may be used to provide notice of the pendency of this Action.

## 9 VII. CAUSES OF ACTION

### 10 FIRST CAUSE OF ACTION

#### 11 **Violation of the Racketeer Influenced and Corrupt Organizations Act (“RICO”),** 12 **18 U.S.C. § 1961 *et seq.* on Behalf of Plaintiffs and the Nationwide Class**

13 427. Plaintiffs incorporate by reference every prior and subsequent allegation of this  
14 Complaint as if fully restated here.

15 428. This claim is brought by Plaintiffs against WFC and Wells Fargo Bank for actual  
16 damages, treble damages, and equitable relief under 18 U.S.C. § 1964, for violations of 18 U.S.C.  
17 §§ 1961 *et seq.*

18 429. Section 1962(c) makes it “unlawful for any person employed by or associated with any  
19 enterprise engaged in, or the activities of which affect, interstate or foreign commerce, to conduct or  
20 participate, directly or indirectly, in the conduct of such enterprise’s affairs through a pattern of  
21 racketeering activity[.]” 18 U.S.C. § 1962(c).

22 430. At all relevant times, each Defendant is and has been a “person” within the meaning of  
23 18 U.S.C. § 1961(3), because they are capable of holding, and do hold, “a legal or beneficial interest in  
24 property.” *Id.*

1 431. WFC and Wells Fargo Bank conducted the affairs of an enterprise through a pattern of  
2 racketeering activity, in violation of 18 U.S.C. § 1962(c), as described herein.

3 432. Plaintiffs are each a “person,” as that term is defined in 18 U.S.C. § 1961(3), and have  
4 standing to sue under 18 U.S.C. § 1964(c) as they were and are injured in their business and/or property  
5 “by reason of” the RICO Act violations described herein.

6 433. Plaintiffs demand the applicable relief set forth in the Prayer for Relief below.

7 **A. WFC, Wells Fargo Bank, Black Knight, and Other Vendors Comprised an Enterprise  
Whose Activities Affect Interstate or Foreign Commerce.**

8 434. Section 1961(4) defines a RICO enterprise as “any individual, partnership, corporation,  
9 association, or other legal entity, and any union or group of individuals associated in fact although not  
10 a legal entity.” 18 U.S.C. § 1961(4).

11 435. The following persons constitute an associated in fact enterprise: (1) WFC; (2) Wells  
12 Fargo Bank; (3) Black Knight; and (4) other vendors, including (without limitation) InfoEx LLC  
13 (“InfoEx”) (collectively, “Wells Fargo-Black Knight Mortgage Servicing Enterprise”), which together  
14 constitute an association in fact enterprise, the purpose of which is engaging in the various activities  
15 involved in Wells Fargo’s mortgage servicing operations.

16 436. The Wells Fargo-Black Knight Mortgage Servicing Enterprise is an ongoing  
17 organization that engages in, and whose activities affect, interstate commerce. In 2020, Wells Fargo  
18 began using the Wells Fargo-Black Knight Mortgage Servicing Enterprise to place borrowers into  
19 unrequested forbearances.

20 437. The Wells Fargo-Black Knight relationship forms the core of the Wells Fargo-Black  
21 Knight Mortgage Servicing Enterprise.

22 438. Black Knight’s Mortgage Servicing Platform (“MSP”) is the database and integrated  
23 software platform through which Wells Fargo manages all aspects of its mortgage servicing business.

24 439. MSP is not just software, and Black Knight’s role with respect to Wells Fargo’s mortgage

1 servicing business is not just that of a software and/or data storage vendor.

2 440. In connection with the Wells Fargo-Black Knight Mortgage Servicing Enterprise, Black  
3 Knight works with Wells Fargo as a data services and financial analysis provider.

4 441. As relevant here, at Wells Fargo's direction, Black Knight created automation for Wells  
5 Fargo's forbearance scheme.

6 442. Wells Fargo has refused to search for documents related to Black Knight, or other  
7 vendors, in connection with the forbearance program. However, documents produced by Wells Fargo in  
8 this litigation responsive to other requests elucidate the structure of this enterprise.

9 443. The structure of the Wells Fargo-Black Knight Mortgage Servicing Enterprise includes  
10 formal "Operating Teams," which are comprised of both Wells Fargo and Black Knight personnel, who  
11 work together to implement Wells Fargo's mortgage servicing business strategies and to address issues  
12 related to Wells Fargo's mortgage servicing operations, including through developing applications and  
13 analyzing/evaluating the vast trove of mortgage servicing data Black Knight maintains on behalf of  
14 Wells Fargo.

15 444. The structure of the Wells Fargo-Black Knight Mortgage Servicing Enterprise includes  
16 a formal "Relationship Council," which is responsible for directly managing the Wells Fargo-Black  
17 Knight relationship as it pertains to Wells Fargo's mortgage servicing business. The Wells Fargo-Black  
18 Knight Relationship Council is comprised of personnel from both Wells Fargo and Black Knight, whose  
19 responsibilities include addressing operational issues and initiatives related to the Wells Fargo-Black  
20 Knight Mortgage Servicing Enterprise.

21 445. In order to oversee the Relationship Council's efforts, Wells Fargo and Black Knight  
22 have also formally established an independent "Executive Board" (complete with its own charter) to  
23 manage their relationship with respect to the Wells Fargo-Black Knight Mortgage Servicing Enterprise.  
24 The Wells Fargo-Black Knight Executive Board is chaired by senior executives at both Wells Fargo and

1 Black Knight, who together establish the objectives and activities of the Executive Board.

2 446. In addition to its chairs, the Wells Fargo-Black Knight Executive Board's membership  
3 consists of more than half a dozen Black Knight representatives and at least as many Wells Fargo  
4 representatives, who each serve terms of at least one year. The chairs are also ultimately responsible for  
5 making decisions on behalf of the Executive Board using input and recommendations from the  
6 Executive Board members.

7 447. To guide their mutual efforts in connection with the Wells Fargo-Black Knight Mortgage  
8 Servicing Enterprise, Wells Fargo and Black Knight have what they describe as a "Governance Model,"  
9 which is in place to manage risk associated with their mutual relationship in connection with the Wells  
10 Fargo-Black Knight Mortgage Servicing Enterprise.

11 448. The Executive Board establishes and approves a "Joint Roadmap" which is a set of  
12 principles governing Black Knight's and Wells Fargo's relationship and strategic goals in the context of  
13 the Wells Fargo-Black Knight Mortgage Servicing Enterprise.

14 449. Through their executive board, Wells Fargo and Black Knight work together to set a  
15 common strategic direction for their relationship as it pertains to Wells Fargo's mortgage servicing  
16 business and their respective business needs.

17 450. As part of their relationship, Wells Fargo provides Black Knight strategic input that Black  
18 Knight uses to develop the MSP platform's capabilities according to industry needs.

19 451. As a part of their relationship embodied in the Wells Fargo-Black Knight Mortgage  
20 Servicing Enterprise, including through the Relationship Council and Executive Board, Black Knight  
21 and Wells Fargo also determine investment opportunities, which are subject to review and approval by  
22 the Executive Board.

23 452. Wells Fargo and Black Knight, through the Wells Fargo-Black Knight Mortgage  
24 Servicing Enterprise, together establish performance scorecards to measure the performance of the

1 network of vendors they engage to assist with mortgage servicing operations, such as attorneys, mail  
2 vendors, property preservation service providers, appraisers, as well as other data and software service  
3 providers.

4 453. Through the Wells Fargo-Black Knight Mortgage Servicing Enterprise, personnel from  
5 both Wells Fargo and Black Knight together actively created, maintained, and implemented the systems  
6 and processes used by Wells Fargo to impose unrequested forbearances and to voluntarily exercise  
7 EPBO options with for eligible GNMA-backed loans that Wells Fargo and Black Knight together placed  
8 into unrequested forbearances.

9 454. Through the Wells Fargo-Black Knight Mortgage Servicing Enterprise, personnel from  
10 both Wells Fargo and Black Knight together developed the automation for the interface between Wells  
11 Fargo's IVR phone system and MSP that caused borrowers' mortgage loans to be placed into  
12 forbearance without their informed consent.

13 455. Likewise, through the Wells Fargo-Black Knight Mortgage Servicing Enterprise,  
14 personnel from both Wells Fargo and Black Knight together developed the automation for the interface  
15 between MSP and Wells Fargo's online applications that caused borrowers' mortgage loans to be placed  
16 into forbearance without their consent.

17 456. Given its role as the provider of the mortgage servicing industry's most widely-used  
18 mortgage servicing platform, Black Knight was aware that Wells Fargo's practices with respect to  
19 placement of borrowers' mortgage loans into forbearance without their consent were extraordinary and  
20 out-of-line with the practices of its other mortgage servicer customers. Black Knight knew that Wells  
21 Fargo was placing a radically greater number of borrowers' loans into forbearance than other servicers,  
22 and Black Knight actively assisted Wells Fargo in placing these borrowers' loans into forbearance.

23 457. Through the Wells Fargo-Black Knight Mortgage Servicing Enterprise, Wells Fargo and  
24 Black Knight created automation that cancelled automatic electronic payment arrangements of

1 borrowers whose loans Wells Fargo placed into forbearance without their consent.

2 458. Through the Wells Fargo-Black Knight Mortgage Servicing Enterprise, Wells Fargo and  
3 Black Knight created the automation that automatically placed into unauthorized forbearance any  
4 “linked” mortgage loan accounts of borrowers who had one or more different Wells Fargo-serviced  
5 mortgage loans in forbearance.

6 459. Wells Fargo and Black Knight together developed and implemented Wells Fargo’s  
7 forbearance scheme using the Wells Fargo-Black Knight Mortgage Servicing Enterprise.

8 460. Through the Wells Fargo-Black Knight Mortgage Servicing Enterprise, personnel from  
9 Wells Fargo and Black Knight jointly began work on Wells Fargo’s forbearance scheme no later than  
10 March 2020.

11 461. Through the Wells Fargo-Black Knight Mortgage Servicing Enterprise, personnel from  
12 Wells Fargo and Black Knight continued to implement, develop, modify, and evaluate the success of  
13 Wells Fargo’s forbearance scheme in regular meetings and email correspondence throughout the  
14 remainder of 2020 and continuing into at least 2021.

15 462. Black Knight’s involvement in Wells Fargo’s forbearance scheme was not part of Black  
16 Knight’s or Wells Fargo’s routine business dealings in connection with the Wells Fargo-Black Knight  
17 Mortgage Servicing Enterprise.

18 463. Upon information and belief, Black Knight was not involved in assisting its mortgage  
19 servicing clients—other than Wells Fargo—with placing borrowers’ mortgage loans into forbearance  
20 without the borrowers’ knowledge or consent.

21 464. Black Knight’s involvement in the Wells Fargo-Black Knight Mortgage Servicing  
22 Enterprise with respect to Wells Fargo’s forbearance scheme was in furtherance of the affairs of the  
23 Wells Fargo-Black Knight Mortgage Servicing Enterprise and did not constitute activity merely in Black  
24 Knight’s individual capacity in pursuit of its individual self-interest.

1           465. In the ordinary course of the Wells Fargo-Black Knight Mortgage Servicing Enterprise,  
2 Wells Fargo also routinely engaged another third party data services business, InfoEx, to provide data  
3 mining and document preparation services for Wells Fargo with respect to Wells Fargo-serviced loans  
4 of borrowers in Chapter 13 bankruptcy, including the preparation and filing of payment change notices,  
5 post-petition fee notices, and other documents routinely filed in mortgage borrowers' Chapter 13  
6 bankruptcy cases.

7           466. As part of Wells Fargo's forbearance scheme, the Wells Fargo-Black Knight Mortgage  
8 Servicing Enterprise engaged InfoEx to harvest bankruptcy-specific information from Black Knight's  
9 MSP system of record, which InfoEx and Wells Fargo used to identify loans of borrowers in Chapter 13  
10 bankruptcy that Wells Fargo chose to place into forbearance without these borrowers' knowledge or  
11 consent.

12           467. InfoEx also participated in the Wells Fargo-Black Knight Mortgage Servicing Enterprise  
13 and the forbearance scheme by preparing and filing false notices of forbearance in the Chapter 13  
14 bankruptcy cases of Wells Fargo borrowers whose loans Wells Fargo chose to place into forbearance  
15 without their knowledge or consent.

16           468. InfoEx knew that the loans of Chapter 13 debtors that Wells Fargo was placing into  
17 forbearance were not being placed into forbearance as a result of the borrowers' requests, but rather  
18 were placed into forbearance based solely on the fact that InfoEx had identified information in filings in  
19 the borrowers' Chapter 13 bankruptcy cases that Wells Fargo interpreted as indicating that the borrower  
20 was experiencing a COVID-19 related hardship.

21           469. In the context of Wells Fargo's forbearance scheme, InfoEx and Wells Fargo personnel  
22 together developed a modified version of an official form used in Chapter 13 bankruptcy cases (pursuant  
23 to Bankruptcy Rule 3002.1) for providing notice of monthly mortgage payment changes, which Wells  
24 Fargo and InfoEx used to file false notices with bankruptcy courts around the United States, which

1 falsely stated that the borrower had requested forbearance relief for their mortgage loan.

2 470. Wells Fargo's and InfoEx's modification of the official bankruptcy form for mortgage  
3 payment changes to state that Wells Fargo placed the borrower's mortgage loan into forbearance at the  
4 borrower's request was not part of InfoEx's routine business dealings.

5 471. InfoEx's involvement in Wells Fargo's forbearance scheme was not part of its routine  
6 business dealings in connection with the Wells Fargo-Black Knight Mortgage Servicing Enterprise.

7 472. Upon information and belief, InfoEx was not involved in assisting its mortgage servicing  
8 customers—other than Wells Fargo—with filing false forbearance notices in borrowers' Chapter 13  
9 bankruptcy cases.

10 473. InfoEx's involvement in the Wells Fargo-Black Knight Mortgage Servicing Enterprise  
11 with respect to Wells Fargo's forbearance scheme was in furtherance of the affairs of the Wells Fargo-  
12 Black Knight Mortgage Servicing Enterprise and did not constitute activity merely in InfoEx's  
13 individual capacity in pursuit of its individual self-interest.

14 474. Wells Fargo directed the affairs of the Wells Fargo-Black Knight Mortgage Servicing  
15 Enterprise with respect to Wells Fargo's forbearance scheme.

16 475. Through the Wells Fargo-Black Knight Mortgage Servicing Enterprise, Wells Fargo  
17 Bank directed Black Knight and InfoEx specifically to identify loans to be placed into unsolicited  
18 forbearance.

19 476. While all Wells Fargo-Black Knight Mortgage Servicing Enterprise members participate  
20 in and are part of the Wells Fargo-Black Knight Mortgage Servicing Enterprise, they each also exist as  
21 separate and distinct entities apart from the Enterprise.

22 477. WFC is a diversified financial services company organized under the laws of Delaware  
23 and registered as a financial holding company and a bank holding company under the Bank Holding  
24 Company Act of 1956, as amended.

1 478. WFC provides banking, investment and mortgage products and services, as well as  
2 consumer and commercial finance through banking locations, ATMs, the internet and mobile banking.

3 479. WFC conducts substantially all of its operations through its subsidiaries, including but  
4 not limited to Wells Fargo Bank, although WFC is a separate and distinct legal entity from its  
5 subsidiaries, including Wells Fargo Bank.

6 480. A significant source of the funds WFC uses to pay dividends on its common and preferred  
7 stock and debt service on its debt is dividends from WFC's subsidiaries, including dividends from Wells  
8 Fargo Bank generated by the Wells Fargo Enterprise's forbearance scheme and Wells Fargo's capital  
9 markets business's conversion of unrequested forbearance into illicit profit vehicles.

10 481. WFC uses funds it obtains from Wells Fargo Bank, including funds generated in  
11 connection with the Wells Fargo-Black Knight Mortgage Servicing Enterprise, including funds  
12 generated by the forbearance scheme, to satisfy WFC's financial obligations, including payments of  
13 principal and interest on WFC's debt.

14 482. The Wells Fargo-Black Knight Mortgage Servicing Enterprise has an ascertainable  
15 structure separate and apart from the pattern of racketeering activity, namely the Wells Fargo-Black  
16 Knight Executive Board, Relationship Council, and Operating Teams, as well as Wells Fargo's and  
17 Black Knight's relationships with InfoEx and other vendors involved with various aspects of the Wells  
18 Fargo-Black Knight Mortgage Servicing Enterprise.

19 **B. The Enterprise Committed Thousands of Predicate Acts.**

20 483. Section 1961(1) of RICO provides that "racketeering activity" includes any act indictable  
21 under 18 U.S.C. § 1341 (relating to mail fraud) and 18 U.S.C. § 1343 (relating to wire fraud). 18 U.S.C.  
22 § 1961(1). As set forth herein, Defendants have engaged, and continue to engage, in conduct violating  
23 each of these laws in order to effectuate their scheme.

24

1           484. As alleged herein, for the purpose of executing and/or attempting to execute the above-  
2 described scheme to defraud or obtain money by means of false pretenses, representations or promises,  
3 Defendants, in violation of 18 U.S.C. § 1341, placed in post offices and/or in authorized repositories  
4 matter and things to be sent or delivered by the United States Postal Service (“USPS”), caused matter  
5 and things to be delivered by commercial interstate carriers, and received matter and things from the  
6 USPS or commercial interstate carriers, including but not limited to serving through the mail  
7 correspondence with some borrowers and correspondence regarding proposed loan retention workout  
8 options with respect to accounts placed into unauthorized forbearance status.

9           485. For the purpose of executing and/or attempting to execute the above-described scheme  
10 to defraud or obtain money by means of false pretenses, representations or promises, Defendants, in  
11 violation of 18 U.S.C. § 1343, transmitted and received by wire, matter and things, including but not  
12 limited to loan data, proposed post-forbearance workout terms and agreements, false forbearance  
13 notices, false reporting to the GSMC’s, as well as to the SEC, Board of Governors of the Federal Reserve  
14 System, and the Office of the Comptroller of the Currency, among others, regarding loans Wells Fargo  
15 subjected to its forbearance scheme, as well as related email correspondence, monthly mortgage  
16 statements and online account information, and phone correspondence.

17           486. The matter and things sent by Defendants via the USPS, commercial carrier, wire, or  
18 other interstate electronic media included, inter alia: false reports to credit reporting agencies that  
19 borrowers requested forbearance and/or failure to report and/or disclose payment receipts; false,  
20 deceptive and misleading written correspondence with borrowers; email correspondence; misleading  
21 websites and mobile device electronic user interfaces that placed borrowers into forbearance with the  
22 click of a single button without warning or explanation, as well as other data used to place accounts into  
23 forbearance status and/or to inform third-parties of borrowers’ loans that Wells Fargo placed into  
24

1 forbearance status without borrowers' consent; agreements; monthly mortgage statements; investor  
2 reporting; correspondence; and payments.

3 487. Other matter and things sent through or received via the USPS, commercial carrier, wire,  
4 or other interstate electronic media by Defendants include information or communications in furtherance  
5 of or necessary to effectuate the scheme.

6 488. Defendants' misrepresentations, acts of concealment, and failures to disclose were  
7 knowing and intentional and made for the purpose of deceiving borrowers, the GSEs, investors in GSE-  
8 backed trusts, the credit markets, equity and debt investors in Wells Fargo, and other persons, regulators,  
9 and entities to conceal or perpetuate Wells Fargo's unlawful scheme.

10 489. Because this is a class action, and there were numerous acts of mail and wire fraud that  
11 were used to carry out the scheme, it would be impracticable for Plaintiffs to plead all details of the  
12 scheme with particularity. Therefore, Plaintiffs cannot plead the precise dates of all of Defendants' use  
13 of the U.S. mail and interstate wire facilities, and corresponding acts of mail and wire fraud, as this  
14 information cannot be alleged without access to Defendants' records.

15 490. Defendants either knew or recklessly disregarded the fact that the misrepresentations and  
16 omissions described above were material, and that the GSMCs, their investors, Defendants' debt and  
17 equity investors, the credit reporting agencies, and participants in credit markets that rely on the integrity  
18 of credit information, as well as the Plaintiffs and the other members of the Class, relied upon or were  
19 injured by their and others' reliance upon the Defendants' misrepresentations and omissions. Had the  
20 GSMCs and their investors, Wells Fargo's debt and equity investors, the participants in the credit  
21 markets, and Plaintiffs and other members of the Class, known that Wells Fargo's placement of loans  
22 into forbearance status without borrower authorization was used as a profit center and/or unlawful loss  
23 mitigation hedge, rather than to effectuate bona fide requested and agreed-to forbearance plans, they  
24 would have immediately halted Defendants' misconduct.

1 **C. Pattern of Racketeering Activity.**

2 491. Defendants have engaged in a “pattern of racketeering activity,” as defined by 18 U.S.C.  
3 § 1961(5), by committing at least two acts of racketeering activity, i.e., indictable violations of 18 U.S.C.  
4 §§ 1341 and 1343 as described above, within the past four years.

5 492. Defendants began placing of borrowers’ mortgage loans into unauthorized forbearances  
6 in March 2020, which is within four years of Plaintiffs’ filing of their original complaint in this case.

7 493. Each Defendant has committed numerous acts of racketeering activity. Racketeering  
8 activities include delivering false and misleading communications to borrowers via mail or wire; false  
9 and misleading communications to government sponsored entities like Ginnie Mae, involving the  
10 exercise of the early pool buyout option and resecuritization of loans that would never have been non-  
11 performing but for Wells Fargo’s unlawfully placing them into forbearances; and false and misleading  
12 communications to credit reporting agencies. These communications continue to this day.

13 494. Each act of racketeering activity was related, had a similar purpose, involved the same  
14 or similar participants and method of commission, had similar results and impacted similar victims,  
15 including Plaintiffs and the other Class members.

16 495. The multiple acts of racketeering activity that Defendants committed were related to each  
17 other and amount to and pose a threat of continued racketeering activity, and therefore constitute a  
18 “pattern of racketeering activity” as defined in 18 U.S.C. § 1961(5). Wells Fargo continues to profit, by  
19 resecuritizing billions of dollars in illicitly repurchased GNMA loans, and reaping the windfalls  
20 associated with servicing and holding those loans up until they are resecuritized.

21 496. As a direct and proximate result, Plaintiffs and Class members have been injured in their  
22 business or property or both by the predicate acts, which make up Defendants’ patterns of racketeering  
23 activity.

1 497. Plaintiffs were injured by Wells Fargo’s material omissions of fact and fraudulent  
2 placement of their loans into forbearance status, including credit damage, loss of access to credit markets  
3 and/or home equity lines of credit, an inability to refinance and costs associated with delayed  
4 refinancing, reputational damage, frustration, outrage, and various out-of-pocket costs, and other  
5 pecuniary damages and general damages.

6 **SECOND CAUSE OF ACTION**

7 **Violation of the Truth in Lending Act (“TILA”), 15 U.S.C. § 1601 *et seq.***  
8 **on Behalf of Plaintiffs and the Nationwide Class**

9 498. Plaintiffs incorporate by reference every prior and subsequent allegation of this  
10 Complaint as if fully restated here.

11 499. TILA requires creditors to provide borrowers with clear and accurate disclosures of terms  
12 dealing with things like finance charges, annual percentage rates of interest, and the borrower’s rights.  
13 In 2010, the Dodd–Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank Act”)   
14 amended TILA to, among other things, require servicers to promptly credit mortgage payments.  
15 15 U.S.C. § 1639f.

16 500. This requirement is implemented through Regulation Z, which states that:

17 In connection with a consumer credit transaction secured by a consumer’s  
18 principal dwelling, no servicer shall . . . (f)ail to credit a payment to the  
19 consumer’s loan account as of the date of receipt, except when a delay in  
crediting does not result in any charge to the consumer or in the reporting  
of negative information to a consumer reporting agency[.]

20 12 C.F.R. § 226.36(c)(1)(i).

21 501. The Dodd–Frank Act amendments to TILA also mandate that servicers credit periodic  
22 payments on consumer credit transactions secured by a consumer’s principal dwelling as of the date of  
23 receipt. 15 U.S.C. § 1639f(a).



1           509. Plaintiffs incorporate by reference every prior and subsequent allegation of this  
2 Complaint as if fully restated here.

3           510. The residences secured by the mortgages in question were the principal residences of  
4 Plaintiffs.

5           511. RESPA, and the accompanying Regulation X, impose requirements on loan servicers  
6 who receive incomplete applications for loan modification. 12 C.F.R. § 1024.41. Borrowers' inquiries  
7 into forbearance are incomplete applications for loan modification, even where those communications  
8 are not requests for forbearances.<sup>93</sup>

9           512. Generally, loan servicers are not to “evade the requirement to evaluate a complete loss  
10 mitigation application for all loss mitigation options available to the borrower by offering a loss  
11 mitigation option based upon” an incomplete application. 12 C.F.R. § 1024.41(c)(2)(i). However, upon  
12 receipt of an incomplete application, a loan servicer may nonetheless offer a short-term payment  
13 forbearance program based on that application. 12 C.F.R. § 1024.41(c)(2)(iii). “Promptly after offering”  
14 a forbearance program, unless the borrower rejects the offer, “the servicer must provide the borrower a  
15 written notice stating [1] the specific payment terms and duration of the program or plan, [2] that the  
16 servicer offered the program or plan based on an evaluation of an incomplete application, [3] that other  
17 loss mitigation options may be available, and [4] that the borrower has the option to submit a complete  
18 loss mitigation application to receive an evaluation for all loss mitigation options available to the  
19 borrower regardless of whether the borrower accepts the program or plan.” *Id.*

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<sup>93</sup> *Lender Letter (LL-2020-02)*, Fannie Mae (updated Dec. 9, 2020), <https://singlefamily.fanniemae.com/media/22261/display>.

1 513. “This requirement applies with respect to every such short-term payment forbearance  
2 program offered, including each successive program renewal or extension”.<sup>94</sup>

3 514. Several Plaintiffs did not receive a notification letter from Wells Fargo until several days  
4 or even weeks after their mortgage loans were already placed in a forbearance. The table below reflects  
5 the timeline in which Wells Fargo first sent Plaintiffs Castro, Delpapa, Green, Johnson, and Prado a  
6 notification letter indicating that their mortgage was placed in forbearance or that forbearance was  
7 extended:

8 Plaintiff	Start of Forbearance	Date of Notification Letter	Difference in Number of Days
9 Castro	Approx. April 1, 2020 (initial forbearance)	April 16, 2020	15 days
10 Castro	Approx. July 1, 2020 (extended forbearance)	July 9, 2020	8 days
11 Delpapa	Approx. March 17, 2020	March 30, 2020	13 days
12 Green	Approx. June 1, 2020	June 13, 2020	12 days
13 Johnson	Approx. April 1, 2020 (initial forbearance)	April 6, 2020	5 days
14 Johnson	Approx. July 1, 2020 (extended forbearance)	July 8, 2020	7 days
15 Prado	Approx. July 1, 2020 (extended forbearance)	July 8, 2020	7 days

16  
17  
18  
19 515. Thus, the mortgage loans of Plaintiffs Castro, Delpapa, Green, Johnson, and Prado were  
20 actually placed into a forbearance (or had a forbearance extended) prior to written notification by Wells  
21

22 <sup>94</sup> *Protections for Borrowers Affected by the COVID-19 Emergency Under the Real Estate Settlement*  
23 *Procedures Act (RESPA), Regulation X* at p. 61 n.99, CFPB (Aug. 31, 2021), [https://files.  
24 consumerfinance.gov/f/documents/cfpb\\_covid-mortgage-servicing\\_final-rule\\_2021-06.pdf](https://files.consumerfinance.gov/f/documents/cfpb_covid-mortgage-servicing_final-rule_2021-06.pdf) (citing 78  
Fed. Reg. 60381, 60401 (Oct. 1, 2013)).

1 Fargo of an offer of forbearance. Further, Wells Fargo’s notification letters to these Plaintiffs were not  
2 “promptly” sent, since most of the notices are dated one or more weeks after the loans were already  
3 placed into a forbearance, in contravention to RESPA.

4 516. Although Wells Fargo provided advance notice to Plaintiffs Doctor, Forsburg, Healy,  
5 Jacob, and Prado (as to the initial forbearance only) that their mortgage loans were scheduled to be  
6 placed in a forbearance, as opposed to an offer of forbearance, most of these Plaintiffs would have had  
7 little time to act on the notice before the forbearance took effect. Indeed, Plaintiffs Prado and Healy  
8 were given only approximately one (1) days’ notice, Plaintiffs Robinson were given only approximately  
9 four (4) days’ notice, and Plaintiff Jacob was given only approximately five (5) days’ notice. Plaintiff  
10 Doctor was given approximately eight (8) days’ notice, and Plaintiff Forsburg was provided with  
11 approximately ten (10) days’ notice with regard to the initial forbearance.

12 517. Each of the notices sent by Wells Fargo to Plaintiffs was woefully inadequate. First, they  
13 did not provide any timeline for acceptance. Instead, the notice informed the borrowers in similar fashion  
14 that the bank was “confirming short-term payment relief for this account” (as was the case for the letter  
15 April 6, 2020 Letter to Plaintiff Johnson and March 27, 2020 letter to Plaintiffs Robinson); “You have  
16 payment suspension for this account” (as was the case for the April 16, 2020 letter to Plaintiffs Castro)  
17 (Exhibit 1: Letter to Plaintiffs Castro, attached hereto); or “You’ve got short-term payment suspension  
18 for your mortgage” (as was the case for the June 13, 2020 letter to Plaintiff Green) (Exhibit 2: Letter to  
19 Plaintiff Green, attached hereto)—relief that had been unilaterally imposed by the bank.

20 518. Second, the notice stated that borrowers could terminate the forbearance either by  
21 continuing to make payments, or by contacting Wells Fargo. For example, the letter to Plaintiff Prado  
22 dated March 31, 2020 stated in part: “If you find you do not need the payment relief, you can continue  
23 to make the payments as normal and no further action is needed,” and “If you don’t think this short-term  
24 payment relief is right for you, please contact us.” (Exhibit 3: Letter to Plaintiff Prado, attached hereto).

1 However, as Plaintiff Johnson discovered, this was not so. Instead of shortening or canceling  
 2 forbearance plans after receiving payments or requests to terminate, forbearance plans were *extended*,  
 3 in direct contravention to the CARES Act.

4 519. As to Plaintiff Jacob, Wells Fargo’s December 16, 2020 letter, rather than affirmatively  
 5 seeking or obtaining customer consent to a forbearance extension, state: **“If we don’t hear from you  
 6 by the end of this month, payment suspension will continue.”**

7 520. The CARES Act expressly states, in a subsection titled “Requirements for Servicers,”  
 8 that a forbearance “may be extended for an additional period of up to 180 days **at the request of the  
 9 borrower**, provided that, the borrower’s request for an extension is made during the covered period,  
 10 and, at the borrower’s request, **either the initial or extended period of forbearance may be  
 11 shortened.**” Section 4022(c)(1) of the CARES Act, Pub. L. No. 116-136, 134 Stat. 281, 490 (2020)  
 12 (codified at 15 U.S.C. § 9056(c)(1)) (emphasis added).

13 521. In addition, as alleged above, Fannie Mae’s Evaluation Notice template<sup>95</sup> includes the  
 14 following sections regarding the impacts of forbearance:

15  
 16  
 17 We will not pursue foreclosure during the forbearance plan term. However, the terms of your mortgage remain  
 18 unchanged. By not making your mortgage payments during the plan’s term you will become more delinquent  
 19 and your credit score may be impacted. For more information refer to the **Additional Forbearance Plan  
 20 Information and Legal Notices**.

21 <sup>95</sup> See *Lender Letter (LL-2020-02)*, Fannie Mae (updated Dec. 9, 2020), [https://www.fanniemae.com/  
 22 content/guide\\_exhibit/evaluation-model-clauses.doc?\\_ga=2.164494463.1758278425.1684438347-  
 23 553886063.1684438347](https://www.fanniemae.com/content/guide_exhibit/evaluation-model-clauses.doc?_ga=2.164494463.1758278425.1684438347-553886063.1684438347). The Evaluation Notice template provided by Fannie Mae is optional, though  
 24 “it reflects a minimum level of information that the servicer must communicate and illustrates a level  
 of specificity that complies with the requirements of this Guide.” *Servicing Guide Fannie Mae Single  
 Family* at 309 (D2-2-05, Receiving a Borrower Response Package (06/09/2021)), Fannie Mae (Aug.  
 10, 2022), <https://singlefamily.fanniemae.com/media/31901/display>.

1 and

2 **Additional Forbearance Plan Information and Legal Notices**

3 **Credit Reporting:**

- 4     ▪ We will continue to report the delinquency status of your mortgage as well as your entry into a  
5     forbearance plan to credit reporting agencies in accordance with applicable law.  
6     ▪ **CREDIT REPORTING AGENCIES MAY CONSIDER THE ENTRY INTO A FORBEARANCE PLAN  
AS AN INCREASED CREDIT RISK. HOWEVER, A FORECLOSURE WOULD HAVE A MORE  
NEGATIVE IMPACT TO YOUR CREDIT SCORE.**

7     522. Third, Wells Fargo’s notice to the Castros dated April 16, 2020, to Plaintiff Delpapa  
8     dated March 30, 2020, to Plaintiff Doctor dated April 22, 2020, to Plaintiff Forsburg dated April 21,  
9     2020, to Plaintiff Green dated June 13, 2020, Plaintiff Healy dated March 31, 2020, to Plaintiff Jacob  
10     dated March 26, 2020, to Plaintiff Johnson dated April 6, 2020, to Plaintiff Prado dated March 31, 2020,  
11     and to the Robinsons dated March 27, 2020 provided no warnings about the potential credit impacts of  
12     being placed in forbearance.

13     523. The CARES Act does contain an amendment to the notice requirements of Regulation X,  
14     granting greater flexibility to loan servicers, but only with regard to deferrals, not forbearances. *See*  
15     12 U.S.C. § 1024.41(c)(2)(v). Congress thus made a clear distinction between a loan deferral, and  
16     forbearance. The latter is an important financial decision that borrowers should make for themselves,  
17     and only when armed with all the necessary information.

18     524. As to Plaintiff Prado, Wells Fargo placed the loan in a forbearance, later apologizing in  
19     a letter dated September 4, 2020, “for any confusion or frustration [Plaintiff Prado] experienced by being  
20     placed into a COVID-19 forbearance”, after expressly acknowledging that Plaintiff Prado had merely  
21     called to inquire on March 28, 2020 about a potential “deferral” of two months.

22     525. Fourth, the initial letters sent to Plaintiff Delpapa dated March 30, 2020, and to Plaintiff  
23     Prado dated March 31, 2020, for example, did not even mention the word “forbearance” but rather  
24     vaguely referred to “short-term payment relief.” *See, e.g.*, Exhibit 3: Letter to Plaintiff Prado.

1           526. Fifth, not only did Wells Fargo omit the above-mentioned warnings when sending notices  
2 to borrowers after placing them in unwanted forbearance plans, when those borrowers contacted Wells  
3 Fargo about this misconduct, the bank provided assurances which this Court has already instructed them  
4 to correct about the absence of credit harm from being placed into a forbearance. Indeed, on December  
5 3, 2020, this Court ordered Wells Fargo to send “corrective notices to all putative class members to  
6 whom they sent a letter that FICO scores are not affected by ‘Account in Forbearance’ codes,” and to  
7 “advise the recipients of the updated FICO guidance regarding the effect of forbearances on FICO  
8 scores.” Dkt. No. 61; *see also* H’rg Tr. 14:10-17 (Dec. 3, 2020). As Plaintiffs Delpapa, Jacob, and  
9 Johnson learned, being placed into forbearance had a serious and negative impact on their credit score  
10 and creditworthiness.

11           527. Wells Fargo’s failure to provide accurate information when making an offer of  
12 forbearance caused concrete harms. Some borrowers, like the Robinsons, understood that by not  
13 affirmatively accepting the forbearance plan they would not be placed in a forbearance. Others were  
14 misled as to their ability to terminate the forbearance, and the impact it would have on their ability to  
15 refinance.

16           528. Had Wells Fargo provided timely, adequate and accurate information about the potential  
17 negative consequences of being placed into a forbearance including potential harm to credit score, the  
18 borrowers would have been able to more expeditiously resolve their unwanted forbearances and become  
19 eligible to refinance sooner.

20           529. RESPA contains a private right of action for violations of this provision. 12 C.F.R. §  
21 1024.41(a) (“A borrower may enforce the provisions of this section [Regulation X] pursuant to section  
22 6(f) of RESPA (12 U.S.C. § 2605(f).”). Plaintiffs allege a violation of Regulation X for the proposed  
23 Nationwide class, as the notices sent by Wells Fargo to Plaintiffs and other borrowers were inadequate,  
24 inaccurate, and/or not prompt.

1 530. Plaintiffs are entitled to actual and statutory damages under 12 U.S.C. § 2605(f) and  
2 attorneys' fees under 12 U.S.C. § 2605(f)(3).

3 **FOURTH CAUSE OF ACTION**

4 **Violation of the Fair Credit Reporting Act ("FCRA"), 15 U.S.C. § 1681 *et seq.***  
5 **on Behalf of Plaintiffs and the Nationwide Class**

6 531. Plaintiffs repeat and reallege the allegations in this Complaint.

7 532. Plaintiffs Jacob and Doctor are "consumers" as that term is defined by 15 U.S.C. §  
8 1681a(c).

9 533. Wells Fargo is a "furnisher" of consumer information as defined by 12 C.F.R.  
10 § 1022.41(c) and as described throughout the FCRA, as Wells Fargo regularly reports consumer account  
11 information to the credit reporting agencies for inclusion in credit reports.

12 534. Wells Fargo willfully violated 15 U.S.C. § 1681s-2(b) by failing to adequately investigate  
13 and correct inaccurate credit reporting information with the credit reporting agencies following Plaintiffs  
14 Doctor and Jacob's formal reinvestigation requests with the credit reporting agencies under 15 U.S.C. §  
15 1681i. Alternatively, Wells Fargo negligently violated 15 U.S.C. § 1681s-2(b) by failing to adequately  
16 investigate and correct inaccurate credit reporting information with the credit reporting agencies  
17 following Plaintiffs Doctor's and Jacob's formal reinvestigation requests with the credit reporting  
18 agencies under 15 U.S.C. § 1681i.

19 535. Plaintiffs and the putative Class members in this case have had their credit information  
20 compiled and furnished by Wells Fargo regarding their mortgage loans indicating falsely that Plaintiffs'  
21 and the putative Class members' loans are in forbearance when Plaintiffs and the putative Class  
22 members did not request forbearance.

1           536. Wells Fargo knew, or should have known, that Plaintiffs and the Class members did not  
2 request or affirmatively consent to the mortgage loan forbearances that Wells Fargo reported to the  
3 credit reporting agencies.

4           537. Despite the fact that Wells Fargo knew or should have known that it placed borrowers  
5 into mortgage forbearances that they did not request or consent to, Wells Fargo had a policy of reporting  
6 the forbearance in the comments section of Plaintiffs' and the Class members' credit reports.

7           538. Plaintiff Jacob submitted a dispute letter to Experian on September 9, 2020, disputing  
8 Wells Fargo's reporting of his mortgage loan account as "in forbearance" when Plaintiff Jacob never  
9 requested or authorized such forbearance.

10           539. Wells Fargo received notice of Plaintiff Jacob's dispute from the credit reporting  
11 agencies and failed to reasonably investigate the dispute.

12           540. Wells Fargo failed to conduct and report the results of a complete investigation into each  
13 dispute raised by Mr. Jacob. Wells Fargo failed to promptly delete, modify, or block reporting of  
14 inaccurate, incomplete, or unverifiable information in response to each dispute raised by Mr. Jacob.

15           541. Wells Fargo has breached its duties as set forth in 15 U.S.C. § 1681s-2(a) by failing to  
16 adequately investigate and fully correct inaccurate credit reporting information with the credit reporting  
17 agencies following Mr. Jacob's dispute of the credit reporting errors.

18           542. Mr. Jacob has incurred actual damages and has suffered physically, mentally, and  
19 emotionally as a result of Wells Fargo's willful violations of the FCRA.

20           543. Plaintiff Doctor likewise submitted dispute letters to Equifax on July 7, 2020 and July  
21 16, 2020.

22           544. Wells Fargo received notice of these disputes from the credit reporting agencies and  
23 failed to conduct and report the result of a complete investigation into Ms. Doctor's dispute. Wells Fargo  
24

1 continued to misleadingly report Ms. Doctor as in a “forbearance”, despite the fact that she had never  
2 requested to be placed in such a program.

3 545. Being reported as in a “forbearance” communicates to potential creditors or third-parties  
4 that a borrower has experienced a financial hardship, and results in an abridgement of the borrowers’  
5 ability to access new credit, such as refinancing their mortgages to receive a lower interest rate, or to  
6 borrower against the equity in their homes.

7 546. Ms. Doctor experienced actual damages as a result of Wells Fargo’s continued inaccurate  
8 reporting, including her inability to access credit, time spent attempting to rectify Wells Fargo’s  
9 inaccurate reporting, and emotional and mental distress and anguish,

10 547. Based on Wells Fargo’s violations of 15 U.S.C. § 1681s-2(b), Plaintiffs and the Class  
11 members are entitled to actual damages, costs, and attorneys’ fees pursuant to 15 U.S.C. § 1681o.

12 548. Moreover, as a result of each and every negligent violation of the FCRA, Plaintiffs and  
13 the Class are entitled to statutory damages and reasonable attorneys’ fees pursuant to 15 U.S.C. § 1681o.

14 549. Plaintiffs and the Class members are also entitled to statutory damages, punitive  
15 damages, and reasonable attorneys’ fees for each and every of Wells Fargo’s willful violation of the  
16 FCRA pursuant to 15 U.S.C. § 1681n(a).

17 **FIFTH CAUSE OF ACTION**

18 **Breach of Implied Covenant of Good Faith and Fair Dealing**  
19 **on Behalf of Plaintiffs Delpapa, Healy, Johnson, and Prado, and the**  
20 **Proposed California Subclass**

21 550. Plaintiffs Delpapa, Healy, Johnson, and Prado bring this claim on behalf of themselves  
22 and the proposed California Subclass.  
23  
24

1           551. Plaintiffs Delpapa, Healy, Johnson, and Prado, the California Subclass, and Wells Fargo  
 2 were parties to contracts, referred to as Deeds, Deeds of Trust, or Securities (collectively, “Deed” or  
 3 “Deeds”). Wells Fargo may be either a signatory to those contracts as the mortgage lender or an assignee  
 4 of that contract as mortgage servicer. For instance, in Ms. Delpapa’s case, Wells Fargo, as the successor  
 5 loan servicer, assumed the obligations of the original lender in her Deed:

6           with a notice of transfer of servicing. If the Note is sold and thereafter the Loan is serviced by a Loan Servicer other than  
 7 the purchaser of the Note, the mortgage loan servicing obligations to Borrower will remain with the Loan Servicer or be  
 8 transferred to a successor Loan Servicer and are not assumed by the Note purchaser unless otherwise provided by the  
 9 Note purchaser.

10           552. In addition to the above language contained in the deeds, some borrowers, had HAMP  
 11 agreements with Wells Fargo, which Wells Fargo violated by unilaterally changing those terms.

12           553. Every contract contains an implied covenant of good faith and fair dealing. The implied  
 13 covenant obligates the parties to cooperate so that each party may obtain the full benefit of performance  
 14 of the contract. The duty of good faith and fair dealing means that parties may not interfere with or fail  
 15 to cooperate in the other party’s performance. Neither party may engage in conduct that impairs or  
 16 prevents the other party from enjoying the benefits of the contract or engage in conduct that prevents  
 17 the other party from performing under the contract.

18           554. As a loan servicer, Wells Fargo assumed the loan servicing obligations in the Deed, and  
 19 the duty to discharges those duties in good faith. In particular, Wells Fargo has a duty under the Deed  
 20 to apply payments it receives from borrowers to interest, principal, and escrow items, in that order.  
 21 Borrowers are obliged to timely pay the amounts due for those items. These duties are described in the  
 22 “Uniform Covenants” section of the Deeds:

23           UNIFORM COVENANTS. Borrower and Lender covenant and agree as  
 24 follows:

1.       **Payment of Principal, Interest, Escrow Items, Prepayment  
 Charges, and Late Charges.** Borrower shall pay when due the principal  
 of, and interest on, the debt evidenced by the Note and any prepayment  
 charges and late charges due under the Note. Borrower shall also pay funds  
 for Escrow Items pursuant to Section 3. Payments due under the Note and

1 this Security Instrument shall be made in U.S. currency. However, if any  
2 check or other instrument received by Lender as payment under the Note  
3 or this Security Instrument is returned to Lender unpaid, Lender may  
4 require that any or all subsequent payments due under the Note and this  
5 Security Instrument be made in one or more of the following forms, as  
6 selected by Lender: (a) cash; (b) money order; (c) certified check, bank  
7 check, treasurer's check or cashier's check, provided any such check is  
8 drawn upon an institution whose deposits are insured by a federal agency,  
9 instrumentality, or entity; or (d) Electronic Funds Transfer.

6 Payments are deemed received by Lender when received at the location  
7 designated in the Note or at such other location as may be designated by  
8 Lender in accordance with the notice provisions in Section 15. Lender may  
9 return any payment or partial payment if the payment or partial payments  
10 are insufficient to bring the Loan current. Lender may accept any payment  
11 or partial payment insufficient to bring the Loan current, without waiver  
12 of any rights hereunder or prejudice to its rights to refuse such payment or  
13 partial payments in the future, but Lender is not obligated to apply such  
14 payments at the time such payments are accepted. If each Periodic  
15 Payment is applied as of its scheduled due date, then Lender need not pay  
16 interest on unapplied funds. Lender may hold such unapplied funds until  
17 Borrower makes payment to bring the Loan current. If Borrower does not  
18 do so within a reasonable period of time, Lender shall either apply such  
19 funds or return them to Borrower. If not applied earlier, such funds will be  
20 applied to the outstanding principal balance under the Note immediately  
21 prior to foreclosure. No offset or claim which Borrower might have now  
22 or in the future against Lender shall relieve Borrower from making  
23 payments due under the Note and this Security Instrument or performing  
24 the covenants and agreements secured by this Security Instrument.

2. Application of Payments or Proceeds. Except as otherwise  
described in this Section 2, all payments accepted and applied by Lender  
shall be applied in the following order of priority: (a) interest due under  
the Note; (b) principal due under the Note; (c) amounts due under Section  
3. Such payments shall be applied to each Periodic Payment in the order  
in which it became due. Any remaining amounts shall be applied first to  
late charges, second to any other amounts due under this Security  
Instrument, and then to reduce the principal balance of the Note.

If Lender receives a payment from Borrower for a delinquent Periodic  
Payment which includes a sufficient amount to pay any late charge due,  
the payment may be applied to the delinquent payment and the late charge.  
If more than one Periodic Payment is outstanding, Lender may apply any  
payment received from Borrower to the repayment of the Periodic  
Payments if, and to the extent that, each payment can be paid in full. To  
the extent that any excess exists after the payment is applied to the full  
payment of one or more Periodic Payments, such excess may be applied

1 to any late charges due. Voluntary prepayments shall be applied first to  
2 any prepayment charges and then as described in the Note.

3 Any application of payments, insurance proceeds, or Miscellaneous  
4 Proceeds to principal due under the Note shall not extend or postpone the  
5 due date, or change the amount, of the Periodic Payments.

6 555. By placing the Class members in forbearance without their consent, Wells Fargo  
7 frustrated and interfered with Class members' ability to perform under the Deeds and failed to cooperate  
8 with the Class members' performance of their contracts. *Harvey v. Bank of Am., N.A.*, No. 12-3238 SC,  
9 2013 WL 632088, at \*2-3 (N.D. Cal. Feb. 20, 2013) (By "frustrating" the borrowers' obligation to pay,  
10 the defendant's conduct gave rise to a claim for breach of the implied covenant.).

11 556. No reasonable party would expect that Wells Fargo would put their mortgage into  
12 forbearance without their consent.

13 557. Wells Fargo likewise engaged in conduct that was contrary to the spirit of the contracts  
14 and the Class members' rights thereunder. Wells Fargo lacked diligence in performing its duties, acted  
15 recklessly in its servicing of the Class members' mortgages, and abused its power by placing loans in  
16 forbearance without consent for its own interest.

17 558. By its actions, Wells Fargo engaged in conduct that was contrary to the spirit of the  
18 contracts, lacked diligence and constituted an abuse of its power.

19 559. As a result of Wells Fargo's breaches of the covenant of good faith and fair dealing,  
20 Plaintiffs Delpapa, Healy, Johnson, and Prado, and the proposed California Subclass were injured. Their  
21 damages include, but are not limited to, damage to their credit including increased borrowing costs,  
22 increased interest accrued as a result of the forbearance, and an inability to refinance or secure additional  
23 lines of credit.  
24

**Breach of Implied Covenant of Good Faith and Fair Dealing  
on Behalf of Plaintiff Doctor and the Proposed Florida Subclass**

560. Plaintiff Doctor brings this claim on behalf of herself and the proposed Florida Subclass.

561. Plaintiff Doctor, the Florida Subclass, and Wells Fargo were parties to contracts, referred to as Mortgages, Deeds of Trust, or Securities (collectively, “Deed” or “Deeds”). Wells Fargo may be either a signatory to those contracts as the mortgage lender or an assignee of that contract as a successor mortgage servicer. For instance, in Ms. Doctor’s case, Wells Fargo, as the successor loan servicer, assumed the obligations of the original lender in her Mortgage, as the Uniform Fannie/Freddie Florida Mortgage provides that “The term ‘Lender’ includes any successors and assigns of Lender.”

562. Those Deeds for GSE-backed loans are substantially identical for all borrowers in material respects.

563. Every contract contains an implied covenant of good faith and fair dealing. The implied covenant obligates the parties to cooperate so that each party may obtain the full benefit of performance of the contract. The duty of good faith and fair dealing means that parties may not interfere with or fail to cooperate in the other party’s performance. Neither party may engage in conduct that impairs or prevents the other party from enjoying the benefits of the contract or engage in conduct that prevents the other party from performing under the contract. The covenant is intended to protect the reasonable expectations of the parties in light of their express agreement. *Ins. Concepts & Design, Inc. v. HealthPlan Servs.*, 785 So. 2d 1232, 1234 (Fla. Dist. Ct. App. 2001).

564. As a loan servicer, Wells Fargo assumed the loan servicing obligations in the deed, and the duty to discharge those duties in good faith. In particular, Wells Fargo has a duty under the Deed to apply payments it receives from borrowers to interest, principal, and escrow items, in that order. Borrowers are obliged to timely pay the amounts due for those items. These duties are described in the “Uniform Covenants” section of the mortgages:

1                   **1. Payment of Principal, Interest, Escrow Items, Prepayment**  
2                   **Charges, and Late Charges.**

3                   Borrower will pay each Periodic Payment when due. Borrower  
4                   will also pay any prepayment charges and late charges due under the Note,  
5                   and any other amounts due under this Security Instrument. Payments due  
6                   under the Note and this Security Instrument must be made in U.S.  
7                   currency. If any check or other instrument received by Lender as payment  
8                   under the Note or this Security Instrument is returned to Lender unpaid,  
9                   Lender may require that any or all subsequent payments due under the  
10                  Note and this Security Instrument be made in one or more of the following  
11                  forms, as selected by Lender: (a) cash; (b) money order; (c) certified  
12                  check, bank check, treasurer's check, or cashier's check, provided any  
13                  such check is drawn upon an institution whose deposits are insured by a  
14                  U.S. federal agency, instrumentality, or entity; or (d) Electronic Fund  
15                  Transfer.

16                  Payments are deemed received by Lender when received at the  
17                  location designated in the Note or at such other location as may be  
18                  designated by Lender in accordance with the notice provisions in Section  
19                  16. Lender may accept or return any Partial Payments in its sole discretion  
20                  pursuant to Section 2.

21                  Any offset or claim that Borrower may have now or in the future  
22                  against Lender will not relieve Borrower from making the full amount of  
23                  all payments due under the Note and this Security Instrument or  
24                  performing the covenants and agreements secured by this Security  
                  Instrument.

**2. Acceptance and Application of Payments or Proceeds.**

**(a) Acceptance and Application of Partial Payments.**

                  Lender may accept and either apply or hold in suspense Partial  
                  Payments in its sole discretion in accordance with this Section 2. Lender  
                  is not obligated to accept any Partial Payments or to apply any Partial  
                  Payments at the time such payments are accepted, and also is not obligated  
                  to pay interest on such unapplied funds. Lender may hold such unapplied  
                  funds until Borrower makes payment sufficient to cover a full Periodic  
                  Payment, at which time the amount of the full Periodic Payment will be  
                  applied to the Loan. If Borrower does not make such a payment within a  
                  reasonable period of time, Lender will either apply such funds in  
                  accordance with this Section 2 or return them to Borrower. If not applied  
                  earlier, Partial Payments will be credited against the total amount due  
                  under the Loan in calculating the amount due in connection with any  
                  foreclosure proceeding, payoff request, loan modification, or  
                  reinstatement. Lender may accept any payment insufficient to bring the  
                  Loan current without waiver of any rights under this Security Instrument  
                  or prejudice to its rights to refuse such payments in the future.

**(b) Order of Application of Partial Payments and Periodic Payments.**

1 Except as otherwise described in this Section 2, if Lender applies  
2 a payment, such payment will be applied to each Periodic Payment in the  
3 order in which it became due, beginning with the oldest outstanding  
4 Periodic Payment, as follows: first to interest and then to principal due  
5 under the Note, and finally to Escrow Items. If all outstanding Periodic  
6 Payments then due are paid in full, any payment amounts remaining may  
7 be applied to late charges and to any amounts then due under this Security  
8 Instrument. If all sums then due under the Note and this Security  
9 Instrument are paid in full, any remaining payment amount may be  
10 applied, in Lender's sole discretion, to a future Periodic Payment or to  
11 reduce the principal balance of the Note.

12 If Lender receives a payment from Borrower in the amount of one  
13 or more Periodic Payments and the amount of any late charge due for a  
14 delinquent Periodic Payment, the payment may be applied to the  
15 delinquent payment and the late charge.

16 When applying payments, Lender will apply such payments in  
17 accordance with Applicable Law.<sup>96</sup>

18 565. By placing the Class members in forbearance without their consent, Wells Fargo  
19 frustrated and interfered with Class members' ability to perform under the Deeds and failed to cooperate  
20 with the Class members' performance of their contracts.

21 566. No reasonable party would expect that Wells Fargo would put their mortgage into  
22 forbearance without their consent.

23 567. Wells Fargo likewise engaged in conduct that was contrary to the spirit of the contracts  
24 and the Class members' rights thereunder. Wells Fargo lacked diligence in performing its duties, acted  
recklessly in its servicing of the Class members' mortgages, and abused its power by placing loans in  
forbearance without consent for its own interest.

568. By its actions, Wells Fargo engaged in conduct that was contrary to the spirit of the  
contracts, lacked diligence and constituted an abuse of its power.

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<sup>96</sup> *Florida-Single Family-Fannie Mae/Freddie Mac UNIFORM INSTRUMENT Form 3010: Mortgage, Freddie Mac (July 2021)*, [https://sf.freddiemac.com/docs/doc/uniform-instruments/form-3010-florida-mortgage\\_07.2021.docx](https://sf.freddiemac.com/docs/doc/uniform-instruments/form-3010-florida-mortgage_07.2021.docx).

1           569. As a result of Wells Fargo’s breaches of the covenant of good faith and fair dealing,  
 2 Plaintiff Doctor and the proposed Florida Subclass were injured. Their damages include, but are not  
 3 limited to, damage to their credit including increased borrowing costs, increased interest accrued as a  
 4 result of the forbearance, and an inability to refinance or secure additional lines of credit.

5                           **Breach of Implied Covenant of Good Faith and Fair Dealing**  
 6                           **on Behalf of Plaintiff Green and the Proposed Georgia Subclass**

7           570. Plaintiff Green brings this claim on behalf of herself and the proposed Georgia Subclass.

8           571. Plaintiff Green, the Georgia Subclass, and Wells Fargo were parties to contracts, referred  
 9 to as Mortgages, Deeds of Trust, or Securities (collectively, “Deed” or “Deeds”). Wells Fargo may be  
 10 either a signatory to those contracts as the mortgage lender or an assignee of that contract as a successor  
 11 mortgage servicer. For instance, in Ms. Green’s case, Wells Fargo, as the successor loan servicer,  
 12 assumed the obligations of the original lender in her Mortgage, as the Uniform Fannie/Freddie Georgia  
 13 Security Deed provides that “[t]he term ‘Lender’ includes any successors and assigns of Lender.”<sup>97</sup>

14           572. In particular, Wells Fargo has a duty under the Deed to apply payments it receives from  
 15 borrowers to interest, principal, and escrow items, in that order. Borrowers are obliged to timely pay the  
 16 amounts due for those items. These duties are described in the “Uniform Covenants” section of the  
 17 mortgages:

18                           **1. Payment of Principal, Interest, Escrow Items, Prepayment**  
 19                           **Charges, and Late Charges.**

20                           Borrower will pay each Periodic Payment when due. Borrower  
 21 will also pay any prepayment charges and late charges due under the Note,  
 22 and any other amounts due under this Security Instrument. Payments due  
 under the Note and this Security Instrument must be made in U.S.  
 currency. If any check or other instrument received by Lender as payment  
 under the Note or this Security Instrument is returned to Lender unpaid,  
 Lender may require that any or all subsequent payments due under the

23 <sup>97</sup> *Georgia-Single Family-Fannie Mae/Freddie Mac UNIFORM INSTRUMENT Form 3011: Security*  
 24 *Deed*, Freddie Mac (Feb. 2022), [https://sf.freddiemac.com/docs/doc/uniform-instruments/form-3011-georgia-security-deed\\_07.2021.docx](https://sf.freddiemac.com/docs/doc/uniform-instruments/form-3011-georgia-security-deed_07.2021.docx).

1 Note and this Security Instrument be made in one or more of the following  
2 forms, as selected by Lender: (a) cash; (b) money order; (c) certified  
3 check, bank check, treasurer's check, or cashier's check, provided any  
4 such check is drawn upon an institution whose deposits are insured by a  
5 U.S. federal agency, instrumentality, or entity; or (d) Electronic Fund  
6 Transfer.

7 Payments are deemed received by Lender when received at the  
8 location designated in the Note or at such other location as may be  
9 designated by Lender in accordance with the notice provisions in Section  
10 16. Lender may accept or return any Partial Payments in its sole discretion  
11 pursuant to Section 2.

12 Any offset or claim that Borrower may have now or in the future  
13 against Lender will not relieve Borrower from making the full amount of  
14 all payments due under the Note and this Security Instrument or  
15 performing the covenants and agreements secured by this Security  
16 Instrument.

## 17 **2. Acceptance and Application of Payments or Proceeds.**

### 18 **(a) Acceptance and Application of Partial Payments.**

19 Lender may accept and either apply or hold in suspense Partial  
20 Payments in its sole discretion in accordance with this Section 2. Lender  
21 is not obligated to accept any Partial Payments or to apply any Partial  
22 Payments at the time such payments are accepted, and also is not obligated  
23 to pay interest on such unapplied funds. Lender may hold such unapplied  
24 funds until Borrower makes payment sufficient to cover a full Periodic  
Payment, at which time the amount of the full Periodic Payment will be  
applied to the Loan. If Borrower does not make such a payment within a  
reasonable period of time, Lender will either apply such funds in  
accordance with this Section 2 or return them to Borrower. If not applied  
earlier, Partial Payments will be credited against the total amount due  
under the Loan in calculating the amount due in connection with any  
foreclosure proceeding, payoff request, loan modification, or  
reinstatement. Lender may accept any payment insufficient to bring the  
Loan current without waiver of any rights under this Security Instrument  
or prejudice to its rights to refuse such payments in the future.

### 20 **(b) Order of Application of Partial Payments and Periodic Payments.**

21 Except as otherwise described in this Section 2, if Lender applies  
22 a payment, such payment will be applied to each Periodic Payment in the  
23 order in which it became due, beginning with the oldest outstanding  
24 Periodic Payment, as follows: first to interest and then to principal due  
under the Note, and finally to Escrow Items. If all outstanding Periodic  
Payments then due are paid in full, any payment amounts remaining may  
be applied to late charges and to any amounts then due under this Security  
Instrument. If all sums then due under the Note and this Security  
Instrument are paid in full, any remaining payment amount may be

1 applied, in Lender's sole discretion, to a future Periodic Payment or to  
2 reduce the principal balance of the Note.

3 If Lender receives a payment from Borrower in the amount of one  
4 or more Periodic Payments and the amount of any late charge due for a  
5 delinquent Periodic Payment, the payment may be applied to the  
6 delinquent payment and the late charge.

7 When applying payments, Lender will apply such payments in  
8 accordance with Applicable Law.<sup>98</sup>

9 573. By placing the Class members in forbearance without their consent, Wells Fargo  
10 frustrated and interfered with Class members' ability to perform under the Deeds and failed to cooperate  
11 with the Class members' performance of their contracts. *See Babalola v. HSBC Bank, USA, N.A.*, 324  
12 Ga. App. 750, 755, 751 S.E.2d 545, 550 (Ga. Ct. App. 2013) (loan servicer's failure to comply with  
13 security deed provisions sufficient to support claim for breach of contract brought by mortgagor).

14 574. No reasonable party would expect that Wells Fargo would put their mortgage into  
15 forbearance without their consent.

16 575. Wells Fargo likewise engaged in conduct that was contrary to the spirit of the contracts  
17 and the Class members' rights thereunder. Wells Fargo lacked diligence in performing its duties, acted  
18 recklessly in its servicing of the Class members' mortgages, and abused its power by placing loans in  
19 forbearance without consent for its own interest.

20 576. By its actions, Wells Fargo engaged in conduct that was contrary to the spirit of the  
21 contracts, lacked diligence and constituted an abuse of its power.

22 577. As a result of Wells Fargo's breaches of the covenant of good faith and fair dealing,  
23 Plaintiff Green and the proposed Georgia Subclass were injured. Their damages include, but are not  
24 limited to, damage to their credit including increased borrowing costs, increased interest accrued as a  
result of the forbearance, and an inability to refinance or secure additional lines of credit.

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<sup>98</sup> *Id.*

**SIXTH CAUSE OF ACTION**

**Unjust Enrichment (Proposed Nationwide Class Applying California Law)**

578. Plaintiffs incorporate by reference every prior and subsequent allegation of this Complaint as if fully restated here.

579. Plaintiffs bring this claim on behalf of themselves and the Nationwide Class.

580. California law can be properly applied to this proposed Nationwide Class, notwithstanding *Mazza v. American Honda Motor Co.*, 666 F.3d 581, 596 (9th Cir. 2012).<sup>99</sup> “Subject to constitutional limitations and the forum state’s choice-of-law rules, a court adjudicating a multistate class action is free to apply the substantive law of a single state to the entire class.” *In re Hyundai & Kia Fuel Econ. Litig.*, 926 F.3d 539, 561 (9th Cir. 2019).

581. This Court sits in diversity jurisdiction over the unjust enrichment claim. Thus, California’s choice of law rules govern this Action.

582. Under California’s choice of law rules, the class action proponent bears the initial burden to show that California has “significant contacts” with the claims to render application of California law constitutional. *Wash. Mut. Bank v. Superior Ct.*, 24 Cal. 4th 906, 921, 103 Cal. Rptr. 2d 320, 15 P.3d 1071 (Cal. 2001). Once the class action proponent makes this showing, the burden shifts to the other side to demonstrate “that foreign law, rather than California law, should apply to class claims.” *Id.*

583. Wells Fargo has constitutionally sufficient contacts with California as their corporate headquarters is located in San Francisco and a substantial percentage (14%) of the properties placed into forbearances are located in California. *See Mazza*, at 590 (finding constitutionally sufficient contacts

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<sup>99</sup> Further, *Mazza* has been overruled by *Olean Wholesale Grocery Cooperative v. Bumble Bee Foods LLC*, 31 F.4th 651, 682 (9th Cir. 2022), *cert. denied sub nom. StarKist Co. v. Olean Wholesale Grocery Cooperative*, 214 L. Ed. 2d 233, 143 S. Ct. 424 (2022).

1 where defendants' corporate headquarters is located in California and one-fifth of the proposed class  
2 members were in California).

3 584. As the application of California law is constitutional, Defendants have the burden of  
4 demonstrating that foreign law should apply, through the three-step governmental interest test. *Gardner*  
5 *v. StarKist Co.*, No. 19-CV-02561-WHO, 2020 WL 6136091, at \*6 (N.D. Cal. Oct. 19, 2020) (denying  
6 motion to deny class certification of nationwide unjust enrichment claim). Those three prongs are (1)  
7 material variance in state laws; (2) if such a variance exists, whether each jurisdiction's interest in the  
8 application of its own law under the circumstances of this particular case leads to a true conflict; and (3)  
9 if a true conflict exists, which state's interests would be more impaired if its policy were subordinated,  
10 given the nature and strength of the interest of each jurisdiction. *Id.* Even assuming *Mazza* remains good  
11 law, and the first prong (variance in state laws) is met, the "second and third prongs require fact-intensive  
12 analysis." *Gardner*, 2020 WL 6136091, at \*6.

13 585. The fact-intensive choice of law determination is not appropriate until class certification,  
14 in particular where (as here) Defendants have refused to provide more than a handful of documents in  
15 response to discovery requests related to unjust enrichment. *See e.g., Brazil v. Dole Food Co.*, No. 12-  
16 CV-01831-LHK, 2013 WL 5312418, at \*11 (N.D. Cal. Sept. 23, 2013) (finding that "striking the  
17 nationwide class allegations at this stage of this case would be premature"); *Dean v. Colgate-Palmolive*  
18 *Co.*, No. EDCV 15-0107 JGB, 2015 WL 3999313, at \*11 (C.D. Cal. June 17, 2015) (holding that a  
19 choice-of-law analysis "is not appropriate at this stage of litigation" and should occur "after the parties  
20 have engaged in discovery"); *Frenzel v. AliphCom*, 76 F. Supp. 3d 999, 1007 (N.D. Cal. 2014) (holding  
21 that a "choice of law analysis is a fact-specific inquiry which requires a more developed factual record  
22 than is generally available on a motion to dismiss").

23 586. Unjust enrichment is a standalone claim in California. *See Bruton v. Gerber Prods. Co.*,  
24 703 F. App'x 468, 470 (9th Cir. 2017); *Penikila v. Sergeant's Pet Care Prods., LLC*, 442 F. Supp. 3d

1 1212, 1215 (N.D. Cal. 2020); *Stevenson v. Allstate Ins. Co.*, No. 15-cv04788-YGR, 2016 WL 1056137,  
2 at \*5 (N.D. Cal. Mar. 17, 2016). One remedy for unjust enrichment is disgorgement, which is “broader  
3 than restitution or restoration of what the plaintiff lost.” *Am. Master Lease LLC v. Idanta Partners, Ltd.*,  
4 225 Cal. App. 4th 1451, 1482–83, 171 Cal. Rptr. 3d 548, 572–73 (Cal. Ct. App. 2014), as modified  
5 (May 27, 2014). There are two types of disgorgement—restitutionary and non-restitutionary. *Id.*  
6 Typically, the defendant’s benefit and plaintiff’s loss are the same, but “many instances of liability based  
7 on unjust enrichment do not involve the restoration of anything the plaintiff previously possessed . . .  
8 includ[ing] cases involving the disgorgement of profits . . . wrongfully obtained.” *Id.* (citation omitted).  
9 This is non-restitutionary disgorgement.

10 587. As this Court has recently held, “California law recognizes a right to disgorgement of  
11 profits resulting from unjust enrichment, even where an individual has not suffered a corresponding  
12 loss.” *Lundy v. Facebook Inc.*, No. 18-CV-06793-JD, 2021 WL 4503071, at \*2 (N.D. Cal. Sept. 30,  
13 2021) (quoting *In re Facebook, Inc. Internet Tracking Litig.*, 956 F.3d 589, 599-600 (9th Cir. 2020));  
14 accord *Cottrell v. AT&T Inc.*, No. 19-CV-07672-JCS, 2020 WL 4818606, at \*4 (N.D. Cal. Aug. 19,  
15 2020).

16 588. Wells Fargo received benefits by placing Plaintiffs and the Nationwide Class into  
17 forbearances without their consent. By placing Plaintiffs and members of the Nationwide Class’s  
18 mortgages in forbearance, Wells Fargo continued to hold and service those mortgage loans, preventing  
19 Plaintiffs and the Nationwide Class from refinancing with another institution, and thus increasing the  
20 value of the MSRs.

21 589. Wells Fargo’s forcing Plaintiffs and the Nationwide Class into forbearance without  
22 consent also provides a potential predicate for Wells Fargo to place GSE-backed mortgages in payment  
23 deferrals or repayment plans, making Wells Fargo eligible for GSE incentive payments of up to \$1,000  
24 per mortgage.

1           590. Wells Fargo's forcing of Plaintiffs and the Nationwide Class into forbearance without  
2 consent additionally capped Wells Fargo's potential obligations to make principal and interest  
3 advancements on loans that remained in the GSE trusts when nonperforming.

4           591. As alleged *supra*, Wells Fargo's voluntary repurchase of loans from the GSE trust  
5 presents a substantial source of unjust profits. By placing the loans into forbearance, Wells Fargo made  
6 missed payments more likely, by removing the immediate risk of foreclosure due to non-payment and  
7 by placing hurdles in front of borrowers who wished to pay. Wells Fargo *turned off automatic loan*  
8 *payments* for borrowers placed into forbearances. Additionally, borrowers in forbearances were unable  
9 to make payments using mobile or online bill payment processes. Due to exorbitant wait times and  
10 branch closures, borrowers were unable to make payments via phone or in person. Thus, placing  
11 borrowers into forbearances led to non-payment.

12           592. When GNMA loans became three months delinquent, they became eligible for voluntary  
13 repurchase out of the GSE trusts, at a discounted rate. Wells Fargo exercised the voluntary repurchase  
14 option at a historic rate, buying tens of billions of dollars of loans out of the GSE trusts, at par value. As  
15 the borrowers did not request forbearance, these loans are easily resold or resecured at the normal  
16 traditional trading value of 5% above par after the borrowers become current.

17           593. Wells Fargo's retention of these benefits is unjust because it placed those loans in  
18 forbearance without the consent of the Plaintiffs and the Nationwide Class and in contravention of the  
19 requirements of the CARES Act.

20           594. Some of the profits Wells Fargo made are coextensive with losses suffered by the  
21 borrowers. When Wells Fargo services loans that it owns, it profits through spread—the difference  
22 between interest payments made on the loans and the cost to service the loan. For loans that Wells Fargo  
23 held, including those it purchased through exercise of the early pool buyout option, these elevated  
24 interest payments were direct benefits paid from borrowers to Wells Fargo. A loan being placed in

1 forbearance indicates that the loan is risky, and even if not barred by regulation, impedes a borrower's  
2 practical ability to refinance with a different lender. By placing borrowers into forbearances, Wells  
3 Fargo made the borrowers ineligible to refinance during a period of historically low interest rates. Thus,  
4 borrowers paid more in interest payments because they couldn't refinance, and those payments went to  
5 Wells Fargo.

6 595. However, most of Wells Fargo's ill-gotten profits are not coextensive with the  
7 corresponding loss to the borrowers. However, the borrowers did suffer losses, including those  
8 associated with the inability to refinance, and damages in law alone would be inadequate to redress this  
9 wrong. Wells Fargo's profit incentives led to the faulty forbearance program, and non-restitutionary  
10 disgorgement is necessary to deter and prevent future misconduct. Wells Fargo's profits from placing  
11 borrowers into forbearance are not coextensive with the damages Plaintiffs suffered, save for above-  
12 market interest payments made to Wells Fargo for loans held by Wells Fargo while borrowers were  
13 barred from refinancing.

14 596. While the damages to the Class members is capable of proof with sufficient certainty,  
15 Wells Fargo's profits are more certain and swiftly calculable. The future harm to consumers due to  
16 reduced credit scores, restricted access to credit, and inability to refinance, are less fixed than Wells  
17 Fargo's profits, and preventing Wells Fargo from retaining those profits is the only adequate remedy.

18 597. As a result, Plaintiffs and proposed Nationwide Class members are entitled to  
19 disgorgement of the benefits Wells Fargo has unjustly retained as a result of its forbearance program, in  
20 an amount to be proven at trial.

#### 21 **Unjust Enrichment (Single-State Subclasses)**

22 598. Plaintiffs incorporate by reference every prior and subsequent allegation of this  
23 Complaint as if fully restated here.

1           599. In the alternative to a nationwide class under California law, Plaintiffs assert claims for  
2 unjust enrichment under the common law of the state of their residences on behalf of themselves and  
3 the following proposed subclasses.<sup>100</sup>

4   **California Unjust Enrichment Subclass**  
5   **Asserted on Behalf of Plaintiffs Delpapa, Healy, Johnson, and**  
6   **Prado, and the California Subclass**

7           600. Unjust enrichment is a standalone claim in California. *See Bruton*, 703 F. App'x at 470  
8 (9th Cir. 2017); *Batis v. Dun & Bradstreet Holding*, No. 22-CV-01924-MMC, 2023 WL 1870057, at \*4  
9 (N.D. Cal. Feb. 9, 2023); *Penikila*, 442 F. Supp. 3d at 1215; *Stevenson*, 2016 WL 1056137, at \*5. One  
10 remedy for unjust enrichment is disgorgement, which is “broader than restitution or restoration of what  
11 the plaintiff lost.” *Am. Master Lease LLC*, 225 Cal. App. 4th 1451, at 1482–83, 171 Cal. Rptr. 3d at 572–  
12 73. There are two types of disgorgement—restitutionary and non-restitutionary. *Id.* Typically,  
13 defendant’s benefit and plaintiff’s loss are the same, but “[m]any instances of ‘liability based on unjust  
14 enrichment . . . do not involve the restoration of anything the [plaintiff] previously possessed . . .  
15 includ[ing] cases involving the disgorgement of profits . . . wrongfully obtained.” *Id.* (citation omitted.)  
16 This is non-restitutionary disgorgement.

17           601. As this Court recently held, “‘California law recognizes a right to disgorgement of profits  
18 resulting from unjust enrichment, even where an individual has not suffered a corresponding loss.’”  
19 *Lundy*, 2021 WL 4503071, at \*2 (quoting *In re Facebook*, 956 F.3d at 599-600) accord *Cottrell*, 2020  
20 WL 4818606, at \*4. In *Batis*, a defendant moved to dismiss an unjust enrichment claim arguing that a  
21 plaintiff must allege that “he lost dollars of his own.” 2023 WL 1870057, at \*4. The court found that  
22 “‘California law,’ as recent Ninth Circuit authority explained, ‘recognizes a right to disgorgement of

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23 <sup>100</sup> Plaintiffs respectfully reserve the right to request leave to add additional representative plaintiffs for  
24 single-state subclasses in the event that a nationwide unjust enrichment claim under California law is  
dismissed for choice of law reasons.

1 profits resulting from unjust enrichment, even where an individual has not suffered a corresponding  
2 loss.” *Id.* (quoting *In re Facebook*, 956 F.3d at 599).

3 602. Wells Fargo received benefits by placing Plaintiffs Delpapa, Healy, Johnson, and Prado  
4 and the California Subclass into forbearances without their consent. By placing Plaintiffs Delpapa’s,  
5 Healy’s, Johnson’s, and Prado’s and California Subclass members’ mortgages in forbearance, Wells  
6 Fargo continued to hold and service those mortgage loans, preventing Plaintiffs Delpapa, Healy,  
7 Johnson, and Prado and the California Subclass from refinancing with another institution, and thus  
8 increasing the value of the MSRs.

9 603. Wells Fargo’s forcing Plaintiffs Delpapa, Healy, Johnson, and Prado and the California  
10 Subclass into forbearance without consent also provides a potential predicate for Wells Fargo to place  
11 GSE-backed mortgages in payment deferrals or repayment plans, making Wells Fargo eligible for GSE  
12 incentive payments of up to \$1,000 per mortgage.

13 604. Wells Fargo’s forcing of Plaintiffs Delpapa, Healy, Johnson, and Prado and the  
14 California Subclass into forbearance without consent additionally capped Wells Fargo’s potential  
15 obligations to make principal and interest advancements on loans that remained in the GSE trusts when  
16 nonperforming.

17 605. As alleged *supra*, Wells Fargo’s voluntary repurchase of loans from the GSE trust  
18 presents a substantial source of unjust profits. By placing the loans into forbearance, Wells Fargo made  
19 missed payments more likely, by removing the immediate risk of foreclosure due to non-payment and  
20 by placing hurdles in front of borrowers who wished to pay. Wells Fargo *turned off automatic loan*  
21 *payments* for borrowers placed into forbearances. Additionally, borrowers in forbearances were unable  
22 to make payments using mobile or online bill payment processes. Due to exorbitant wait times and  
23 branch closures, borrowers were unable to make payments via phone or in person. Thus, placing  
24 borrowers into forbearances led to non-payment.

1           606.     When GNMA loans became three months delinquent, they became eligible for voluntary  
2 repurchase out of the GSE trusts, at a discounted rate. Wells Fargo exercised the voluntary repurchase  
3 option at a historic rate, buying tens of billions of dollars of loans out of the GSE trusts, at par value. As  
4 the borrowers did not request forbearance, these loans are easily resold or resecured at the normal  
5 traditional trading value of 5% above par after the borrowers become current.

6           607.     Wells Fargo's retention of these benefits is unjust because it placed those loans in  
7 forbearance without the consent of Plaintiffs and the California Subclass and in contravention of the  
8 requirements of the CARES Act.

9           608.     Some of the profits Wells Fargo made are coextensive with losses suffered by the  
10 borrowers. When Wells Fargo services loans that it owns, it profits through spread—the difference  
11 between interest payments made on the loans and the cost to service the loan. For loans that Wells Fargo  
12 held, including those it purchased through exercise of the early pool buyout option, these elevated  
13 interest payments were direct benefits paid from borrowers to Wells Fargo. A loan being placed in  
14 forbearance indicates that the loan is risky, and even if not barred by regulation, impedes a borrower's  
15 practical ability to refinance with a different lender. By placing borrowers into forbearances, Wells  
16 Fargo made the borrowers ineligible to refinance during a period of historically low interest rates. Thus,  
17 borrowers paid more in interest payments because they couldn't refinance, and those payments went to  
18 Wells Fargo.

19           609.     However, most of Wells Fargo's ill-gotten profits are not coextensive with the  
20 corresponding loss to the borrowers. However, the borrowers did suffer losses, including those  
21 associated with the inability to refinance, and damages in law alone would be inadequate to redress this  
22 wrong. Wells Fargo's profit incentives led to the faulty forbearance program, and non-restitutionary  
23 disgorgement is necessary to deter and prevent future conduct. Wells Fargo's profits from placing  
24 borrowers into forbearance are not coextensive with the damages Plaintiffs suffered, save for above-

1 market interest payments made to Wells Fargo for loans held by Wells Fargo while borrowers were  
2 barred from refinancing.

3 610. While the damages to the Class members is capable of proof with sufficient certainty,  
4 Wells Fargo's profits are more certain and swiftly calculable. The future harm to consumers due to  
5 reduced credit scores, restricted access to credit, and the inability to refinance, are less fixed than Wells  
6 Fargo's profits, and preventing Wells Fargo from retaining those profits is the only adequate remedy.

7 611. As a result, Plaintiffs Delpapa, Healy, Johnson, and Prado and the California Subclass  
8 are entitled to disgorgement of the benefits Wells Fargo has unjustly retained as a result of its  
9 forbearance program, in an amount to be proven at trial.

10 **Florida Unjust Enrichment Subclass**  
11 **Asserted on Behalf of Plaintiff Doctor and the Florida Subclass**

12 612. To prove unjust enrichment in Florida a plaintiff must prove the essential elements of "a  
13 benefit conferred upon a defendant by the plaintiff, the defendant's appreciation of the benefit, and the  
14 defendant's acceptance and retention of the benefit under circumstances that make it inequitable for him  
15 to retain it without paying the value thereof." *Jackson-Jester v. Aziz*, 48 So. 3d 88, 90–91 (Fla. Dist. Ct.  
16 App. 2010) (quoting *Swindell v. Crowson*, 712 So. 2d 1162, 1163 (Fla. Dist. Ct. App. 1998)). Unjust  
17 enrichment is measured by the defendant's ill-gotten gains rather than the plaintiff's losses. *See SEC v.*  
18 *Levin*, 849 F.3d 995, 1006 (11th Cir. 2017); *Ellett Bros. v. U.S. Fid. & Guar. Co.*, 275 F.3d 384, 388  
19 (4th Cir. 2001) ("Restitution and disgorgement require payment of the defendant's ill-gotten gain, not  
20 compensation of the plaintiff's loss."). There is no requirement that the benefit be directly conferred on  
21 the defendant from the plaintiff, as such a requirement would "undermine the equitable purpose of unjust  
22 enrichment claims." *Williams v. Wells Fargo Bank N.A.*, No. 11-21233-CIV, 2011 WL 4901346, at \*5  
(S.D. Fla. Oct. 14, 2011).

23 613. Wells Fargo received benefits by placing Plaintiff Doctor and the Florida Subclass into  
24 forbearances without their consent. By placing Plaintiff Doctor's and the Florida Subclass's mortgages

1 in forbearance, Wells Fargo continued to hold and service those mortgage loans, preventing Plaintiff  
2 Doctor and the Florida Subclass from refinancing with another institution, and thus increasing the value  
3 of the MSRs.

4 614. Wells Fargo's forcing Plaintiff Doctor and the Florida Subclass into forbearance without  
5 consent also provides a potential predicate for Wells Fargo to place GSE-backed mortgages in payment  
6 deferrals or repayment plans, making Wells Fargo eligible for GSE incentive payments of up to \$1,000  
7 per mortgage.

8 615. Wells Fargo's forcing of Plaintiff Doctor and the Florida Subclass into forbearance  
9 without consent additionally capped Wells Fargo's potential obligations to make principal and interest  
10 advancements on loans that remained in the GSE trusts when nonperforming.

11 616. As alleged *supra*, Wells Fargo's voluntary repurchase of loans from the GSE trust  
12 presents a substantial source of unjust profits. By placing the loans into forbearance, Wells Fargo made  
13 missed payments more likely, by removing the immediate risk of foreclosure due to non-payment and  
14 by placing hurdles in front of borrowers who wished to pay. Wells Fargo *turned off automatic loan*  
15 *payments* for borrowers placed into forbearances. Additionally, borrowers in forbearances were unable  
16 to make payments using mobile or online bill payment processes. Due to exorbitant wait times and  
17 branch closures, borrowers were unable to make payments via phone or in person. Thus, placing  
18 borrowers into forbearances led to non-payment.

19 617. When GNMA loans became three months delinquent, they became eligible for voluntary  
20 repurchase out of the GSE trusts, at a discounted rate. Wells Fargo exercised the voluntary repurchase  
21 option at a historic rate, buying tens of billions of dollars of loans out of the GSE trusts, at par value. As  
22 the borrowers did not request forbearance, these loans are easily resold or resecured at the normal  
23 traditional trading value of 5% above par after the borrowers become current.

24

1           618. Wells Fargo’s retention of these benefits is unjust because it placed those loans in  
2 forbearance without the consent of the Plaintiff Doctor and the Florida Subclass and in contravention of  
3 the requirements of the CARES Act.

4           619. Some of the profits Wells Fargo made are coextensive with losses suffered by the  
5 borrowers. When Wells Fargo services loans that it owns, it profits through spread—the difference  
6 between interest payments made on the loans and the cost to service the loan. For loans that Wells Fargo  
7 held, including those it purchased through exercise of the early pool buyout option, these elevated  
8 interest payments were direct benefits paid from borrowers to Wells Fargo. A loan being placed in  
9 forbearance indicates that the loan is risky, and even if not barred by regulation, impedes a borrower’s  
10 practical ability to refinance with a different lender. By placing borrowers into forbearances, Wells  
11 Fargo made the borrowers ineligible to refinance during a period of historically low interest rates. Thus,  
12 borrowers paid more in interest payments because they couldn’t refinance, and those payments went to  
13 Wells Fargo.

14           620. However, most of Wells Fargo’s ill-gotten profits are not coextensive with the  
15 corresponding loss to the borrowers. However, the borrowers did suffer losses, including those  
16 associated with the inability to refinance, and damages in law alone would be inadequate to redress this  
17 wrong. Wells Fargo’s profit incentives led to the faulty forbearance program, and non-restitutionary  
18 disgorgement is necessary to deter and prevent future conduct. Wells Fargo’s profits from placing  
19 borrowers into forbearance are not coextensive with the damages Plaintiff Doctor suffered, save for  
20 above-market interest payments made to Wells Fargo for loans held by Wells Fargo while borrowers  
21 were barred from refinancing.

22           621. While the damages to the Class members is capable of proof with sufficient certainty,  
23 Wells Fargo’s profits are more certain and swiftly calculable. The future harm to consumers due to  
24

1 reduced credit scores, restricted access to credit, and inability to refinance, are less fixed than Wells  
2 Fargo's profits, and preventing Wells Fargo from retaining those profits is the only adequate remedy.

3 622. As a result, Plaintiff Doctor and the Florida Subclass are entitled to disgorgement of the  
4 benefits Wells Fargo has unjustly retained as a result of its forbearance program, in an amount to be  
5 proven at trial.

6 **Georgia Unjust Enrichment Subclass**  
7 **Asserted on Behalf of Plaintiff Green and the Georgia Subclass**

8 623. The "theory of unjust enrichment applies when as a matter of fact there is no legal  
9 contract ..., but where the party sought to be charged has been conferred a benefit by the party  
10 contending an unjust enrichment which the benefited party equitably ought to return or compensate for."  
11 *Smith v. McClung*, 215 Ga. App. 786, 789(3), 452 S.E.2d 229, 232 (Ga. Ct. App. 1994) (citation  
12 omitted). Under the doctrine, a party is not allowed to enrich itself inequitably at another's expense.  
13 *Stoker v. Bellemeade, LLC*, 272 Ga. App. 817, 832, 615 S.E.2d 1, 14 (Ga. Ct. App. 2005).

14 624. Wells Fargo received benefits by placing Plaintiff Green and the Georgia Subclass into  
15 forbearances without their consent. By placing Plaintiff Green's and the Georgia Subclass's mortgages  
16 in forbearance, Wells Fargo continued to hold and service those mortgage loans, preventing Plaintiff  
17 Green and the Georgia Subclass from refinancing with another institution, and thus increasing the value  
18 of the MSRs.

19 625. Wells Fargo's forcing Plaintiff Green and the Georgia Subclass into forbearance without  
20 consent also provides a potential predicate for Wells Fargo to place GSE-backed mortgages in payment  
21 deferrals or repayment plans, making Wells Fargo eligible for GSE incentive payments of up to \$1,000  
22 per mortgage.

23 626. Wells Fargo's forcing of Plaintiff Green and the Georgia Subclass into forbearance  
24 without consent additionally capped Wells Fargo's potential obligations to make principal and interest  
advancements on loans that remained in the GSE trusts when nonperforming.

1           627. As alleged *supra*, Wells Fargo's voluntary repurchase of loans from the GSE trust  
2 presents a substantial source of unjust profits. By placing the loans into forbearance, Wells Fargo made  
3 missed payments more likely, by removing the immediate risk of foreclosure due to non-payment and  
4 by placing hurdles in front of borrowers who wished to pay. Wells Fargo *turned off automatic loan*  
5 *payments* for borrowers placed into forbearances. Additionally, borrowers in forbearances were unable  
6 to make payments using mobile or online bill payment processes. Due to exorbitant wait times and  
7 branch closures, borrowers were unable to make payments via phone or in person. Thus, placing  
8 borrowers into forbearances led to non-payment.

9           628. When GNMA loans became three months delinquent, they became eligible for voluntary  
10 repurchase out of the GSE trusts, at a discounted rate. Wells Fargo exercised the voluntary repurchase  
11 option at a historic rate, buying tens of billions of dollars of loans out of the GSE trusts, at par value. As  
12 the borrowers did not request forbearance, these loans are easily resold or resecured at the normal  
13 traditional trading value of 5% above par after the borrowers become current.

14           629. Wells Fargo's retention of these benefits is unjust because it placed those loans in  
15 forbearance without the consent of the Plaintiff and the Georgia Subclass and in contravention of the  
16 requirements of the CARES Act.

17           630. Some of the profits Wells Fargo made are coextensive with losses suffered by the  
18 borrowers. When Wells Fargo services loans that it owns, it profits through spread—the difference  
19 between interest payments made on the loans and the cost to service the loan. For loans that Wells Fargo  
20 held, including those it purchased through exercise of the early pool buyout option, these elevated  
21 interest payments were direct benefits paid from borrowers to Wells Fargo. A loan being placed in  
22 forbearance indicates that the loan is risky, and even if not barred by regulation, impedes a borrower's  
23 practical ability to refinance with a different lender. By placing borrowers into forbearances, Wells  
24 Fargo made the borrowers ineligible to refinance during a period of historically low interest rates. Thus,

1 borrowers paid more in interest payments because they couldn't refinance, and those payments went to  
2 Wells Fargo.

3 631. However, most of Wells Fargo's ill-gotten profits are not coextensive with the  
4 corresponding loss to the borrowers. However, the borrowers did suffer losses, including those  
5 associated with the inability to refinance, and damages in law alone would be inadequate to redress this  
6 wrong. Wells Fargo's profit incentives led to the faulty forbearance program, and non-restitutionary  
7 disgorgement is necessary to deter and prevent future conduct. Wells Fargo's profits from placing  
8 borrowers into forbearance are not coextensive with the damages Plaintiffs suffered, save for above-  
9 market interest payments made to Wells Fargo for loans held by Wells Fargo while borrowers were  
10 barred from refinancing.

11 632. While the damages to the Class members is capable of proof with sufficient certainty,  
12 Wells Fargo's profits are more certain and swiftly calculable. The future harm to consumers due to  
13 reduced credit scores, restricted access to credit, and inability to refinance, are less fixed than Wells  
14 Fargo's profits, and preventing Wells Fargo from retaining those profits is the only adequate remedy.

15 633. As a result, Plaintiff Green and the Georgia Subclass are entitled to disgorgement of the  
16 benefits Wells Fargo has unjustly retained as a result of its forbearance program, in an amount to be  
17 proven at trial.

18 **New York Unjust Enrichment Subclass**  
19 **Asserted on Behalf of Plaintiff Jacob and the New York Subclass**

20 634. In New York to prevail on a claim for unjust enrichment, "[i]t is well settled that . . . 'a  
21 party must show that (1) the other party was enriched, (2) at that party's expense and (3) that it is against  
22 equity and good conscience to permit [the other party] to retain what is sought to be recovered.'" *Hochheiser v. Alin*, 59 Misc. 3d 1207(A), 100 N.Y.S.3d 609 (N.Y. Sup. Ct. 2018) (quoting *Citibank, N.A. v. Walker*, 12 A.D.3d 480, 787 N.Y.S.2d 48 (N.Y. App. Div. 2004)). The doctrine of unjust  
23 enrichment does not require wrongful conduct by the one enriched only that the enrichment be unjust.  
24

1 *Ultramar Energy Ltd. v. Chase Manhattan Bank, N.A.*, 179 A.D. 2d 592, 593, 579 N.Y.S.2d 353 (N.Y.  
2 App. Div. 1992). “[I]t is not a necessary element of a cause of action for unjust enrichment to show that  
3 plaintiff suffered a loss corresponding to the gain received by the defendant.” *Saunders v. Kline*, 55  
4 A.D.2d 887, 888, 391 N.Y.S.2d 1, 2 (N.Y. App. Div. 1977).

5 635. Wells Fargo received benefits by placing Plaintiff Jacob and the New York Subclass into  
6 forbearances without their consent, or extending forbearances despite express requests for the  
7 forbearances to be terminated. By placing Plaintiff Jacob’s and members of the New York Subclass’s  
8 mortgages in forbearance, or continuing those forbearances against the borrowers’ wishes, Wells Fargo  
9 continued to hold and service those mortgage loans, preventing Plaintiff Jacob and the New York  
10 Subclass from refinancing with another institution, and thus increasing the value of the MSRs.

11 636. Wells Fargo’s forcing Plaintiff Jacob and the New York Subclass into forbearance  
12 without consent also provides a potential predicate for Wells Fargo to place GSE-backed mortgages in  
13 payment deferrals or repayment plans, making Wells Fargo eligible for GSE incentive payments of up  
14 to \$1,000 per mortgage.

15 637. Wells Fargo’s forcing of Plaintiff Jacob and the New York Subclass into forbearance  
16 without consent additionally capped Wells Fargo’s potential obligations to make principal and interest  
17 advancements on loans that remained in the GSE trusts when nonperforming.

18 638. As alleged *supra*, Wells Fargo’s voluntary repurchase of loans from the GSE trust  
19 presents a substantial source of unjust profits. By placing the loans into forbearance, Wells Fargo made  
20 missed payments more likely, by removing the immediate risk of foreclosure due to non-payment and  
21 by placing hurdles in front of borrowers who wished to pay. Wells Fargo *turned off automatic loan*  
22 *payments* for borrowers placed into forbearances. Additionally, borrowers in forbearances were unable  
23 to make payments using mobile or online bill payment processes. Due to exorbitant wait times and  
24

1 branch closures, borrowers were unable to make payments via phone or in person. Thus, placing  
2 borrowers into forbearances led to non-payment.

3 639. When GNMA loans became three months delinquent, they became eligible for voluntary  
4 repurchase out of the GSE trusts, at a discounted rate. Wells Fargo exercised the voluntary repurchase  
5 option at a historic rate, buying tens of billions of dollars of loans out of the GSE trusts, at par value. As  
6 the borrowers did not request forbearance, these loans are easily resold or resecured at the normal  
7 traditional trading value of 5% above par after the borrowers become current.

8 640. Wells Fargo's retention of these benefits is unjust because it placed those loans in  
9 forbearance without the consent of Plaintiff Jacob and the New York Subclass and in contravention of  
10 the requirements of the CARES Act.

11 641. Some of the profits Wells Fargo made are coextensive with losses suffered by the  
12 borrowers. When Wells Fargo services loans that it owns, it profits through spread—the difference  
13 between interest payments made on the loans and the cost to service the loan. For loans that Wells Fargo  
14 held, including those it purchased through exercise of the early pool buyout option, these elevated  
15 interest payments were direct benefits paid from borrowers to Wells Fargo. A loan being placed in  
16 forbearance indicates that the loan is risky, and even if not barred by regulation, impedes a borrower's  
17 practical ability to refinance with a different lender. By placing borrowers into forbearances, Wells  
18 Fargo made the borrowers ineligible to refinance during a period of historically low interest rates. Thus,  
19 borrowers paid more in interest payments because they couldn't refinance, and those payments went to  
20 Wells Fargo.

21 642. However, most of Wells Fargo's ill-gotten profits are not coextensive with the  
22 corresponding loss to the borrowers. However, the borrowers did suffer losses, including those  
23 associated with the inability to refinance, and damages in law alone would be inadequate to redress this  
24 wrong. Wells Fargo's profit incentives led to the faulty forbearance program, and non-restitutionary

1 disgorgement is necessary to deter and prevent future conduct. Wells Fargo's profits from placing  
2 borrowers into forbearance are not coextensive with the damages Plaintiffs suffered, save for above-  
3 market interest payments made to Wells Fargo for loans held by Wells Fargo while borrowers were  
4 barred from refinancing.

5 643. While the damages to the Class members is capable of proof with sufficient certainty,  
6 Wells Fargo's profits are more certain and swiftly calculable. The future harm to consumers due to  
7 reduced credit scores, restricted access to credit, and inability to refinance, are less fixed than Wells  
8 Fargo's profits, and preventing Wells Fargo from retaining those profits is the only adequate remedy.

9 644. As a result, Plaintiff Jacob and the New York Subclass are entitled to disgorgement of  
10 the benefits Wells Fargo has unjustly retained as a result of its forbearance program, in an amount to be  
11 proven at trial.

12 **Texas Unjust Enrichment Subclass**  
13 **Asserted on Behalf of Plaintiffs Castros and Robinsons and the Texas Subclass**

14 645. A party may recover under the unjust enrichment theory when one person has obtained  
15 a benefit from another by fraud, duress, or the taking of an undue advantage. *Heldenfels Bros. v. City of*  
16 *Corpus Christi*, 832 S.W.2d 39, 41 (Tex. 1992). Non-restitutionary disgorgement is available as remedy  
17 for unjust enrichment in Texas. *See Meadows v. Bierschwale*, 516 S.W.2d 125, 129 (Tex. 1974). Wells  
18 Fargo received benefits by placing Plaintiffs Castros and Robinsons and the Texas Subclass into  
19 forbearances without their consent, and based on inaccurate information. By placing Plaintiffs Castros'  
20 and Robinson's and members of the Texas Subclass's mortgages in forbearance, Wells Fargo continued  
21 to hold and service those mortgage loans, preventing Plaintiffs Castros and Robinsons and the Texas  
22 Subclass from refinancing with another institution, and thus increasing the value of the MSRs.

23 646. Wells Fargo's forcing Plaintiffs Castros and Robinsons and the Texas Subclass into  
24 forbearance without consent also provides a potential predicate for Wells Fargo to place GSE-backed

1 mortgages in payment deferrals or repayment plans, making Wells Fargo eligible for GSE incentive  
2 payments of up to \$1,000 per mortgage.

3 647. Wells Fargo's forcing of Plaintiffs Castros and Robinsons and the Texas Subclass into  
4 forbearance without consent additionally capped Wells Fargo's potential obligations to make principal  
5 and interest advancements on loans that remained in the GSE trusts when nonperforming.

6 648. As alleged *supra*, Wells Fargo's voluntary repurchase of loans from the GSE trust  
7 presents a substantial source of unjust profits. By placing the loans into forbearance, Wells Fargo made  
8 missed payments more likely, by removing the immediate risk of foreclosure due to non-payment and  
9 by placing hurdles in front of borrowers who wished to pay. Wells Fargo *turned off automatic loan*  
10 *payments* for borrowers placed into forbearances. Additionally, borrowers in forbearances were unable  
11 to make payments using mobile or online bill payment processes. Due to exorbitant wait times and  
12 branch closures, borrowers were unable to make payments via phone or in person. Thus, placing  
13 borrowers into forbearances led to non-payment.

14 649. When GNMA loans became three months delinquent, they became eligible for voluntary  
15 repurchase out of the GSE trusts, at a discounted rate. Wells Fargo exercised the voluntary repurchase  
16 option at a historic rate, buying tens of billions of dollars of loans out of the GSE trusts, at par value. As  
17 the borrowers did not request forbearance, these loans are easily resold or resecured at the normal  
18 traditional trading value of 5% above par after the borrowers become current.

19 650. Wells Fargo's retention of these benefits is unjust because it placed those loans in  
20 forbearance without the consent of the Plaintiffs Castros and Robinsons and the Texas Subclass and in  
21 contravention of the requirements of the CARES Act.

22 651. Some of the profits Wells Fargo made are coextensive with losses suffered by the  
23 borrowers. When Wells Fargo services loans that it owns, it profits through spread—the difference  
24 between interest payments made on the loans and the cost to service the loan. For loans that Wells Fargo

1 held, including those it purchased through exercise of the early pool buyout option, these elevated  
2 interest payments were direct benefits paid from borrowers to Wells Fargo. A loan being placed in  
3 forbearance indicates that the loan is risky, and even if not barred by regulation, impedes a borrower's  
4 practical ability to refinance with a different lender. By placing borrowers into forbearances, Wells  
5 Fargo made the borrowers ineligible to refinance during a period of historically low interest rates. Thus,  
6 borrowers paid more in interest payments because they couldn't refinance, and those payments went to  
7 Wells Fargo.

8 652. However, most of Wells Fargo's ill-gotten profits are not coextensive with the  
9 corresponding loss to the borrowers. However, the borrowers did suffer losses, including those  
10 associated with the inability to refinance and the inability to access new lines of credit, and damages in  
11 law alone would be inadequate to redress this wrong. Wells Fargo's profit incentives led to the faulty  
12 forbearance program, and non-restitutionary disgorgement is necessary to deter and prevent future  
13 conduct. Wells Fargo's profits from placing borrowers into forbearance are not coextensive with the  
14 damages Plaintiffs suffered, save for above-market interest payments made to Wells Fargo for loans  
15 held by Wells Fargo while borrowers were barred from refinancing.

16 653. While the damages to the Class members is capable of proof with sufficient certainty,  
17 Wells Fargo's profits are more certain and swiftly calculable. The future harm to consumers due to  
18 reduced credit scores, restricted access to credit, and inability to refinance, are less fixed than Wells  
19 Fargo's profits, and preventing Wells Fargo from retaining those profits is the only adequate remedy.

20 654. As a result, Plaintiffs Castros and Robinsons and the Texas Subclass are entitled to  
21 disgorgement of the benefits Wells Fargo has unjustly retained as a result of its forbearance program, in  
22 an amount to be proven at trial.

**Virginia Unjust Enrichment Subclass  
Asserted on Behalf of Plaintiff Forsburg and the Virginia Subclass**

1  
2 655. An action for unjust enrichment is a recognized claim under Virginia law. To prevail on  
3 a claim for unjust enrichment, a plaintiff must prove “(1) a benefit conferred on the defendant by the  
4 plaintiff;” as well as “(2) knowledge on the part of the defendant of the conferring of the benefit;” and  
5 “(3) acceptance or retention of the benefit by the defendant in circumstances that render it inequitable  
6 for the defendant to retain the benefit without paying for its value.” *T & M Elec., Inc. v. Prologis Trust*,  
7 70 Va. Cir. 403, 405–06 (Va. Cir. Ct. 2006) (citing *Nossen v. Hoy*, 750 F. Supp. 740, 745  
8 (E.D.Va.1990)). Non-restitutionary disgorgement is available, as well as restitutionary disgorgement, if  
9 the circumstances make it equitable for the defendant to disgorge all profits. *Frank Shop, Inc. v. Crown*  
10 *Central Petroleum Corp.*, 264 Va. 1, 564 S.E.2d 134 (2002)). Wells Fargo received benefits by placing  
11 Plaintiff and the Virginia Subclass into forbearances without their consent, or by extending forbearances  
12 despite express requests for the forbearances to be terminated. By placing Plaintiff and members of the  
13 Virginia Subclass’s mortgages in forbearance, or continuing those forbearances against the borrowers’  
14 wishes, Wells Fargo continued to hold and service those mortgage loans, preventing Plaintiff and the  
15 Class from refinancing with another institution, and thus increasing the value of the MSRs.

16 656. Wells Fargo’s forcing Plaintiff and the Virginia Subclass into forbearance without  
17 consent also provides a potential predicate for Wells Fargo to place GSE-backed mortgages in payment  
18 deferrals or repayment plans, making Wells Fargo eligible for GSE incentive payments of up to \$1,000  
19 per mortgage.

20 657. Wells Fargo’s forcing of Plaintiff and the Virginia Subclass into forbearance without  
21 consent additionally capped Wells Fargo’s potential obligations to make principal and interest  
22 advancements on loans that remained in the GSE trusts when nonperforming.

23 658. As alleged *supra*, Wells Fargo’s voluntary repurchase of loans from the GSE trust  
24 presents a substantial source of unjust profits. By placing the loans into forbearance, Wells Fargo made

1 missed payments more likely, by removing the immediate risk of foreclosure due to non-payment and  
2 by placing hurdles in front of borrowers who wished to pay. Wells Fargo *turned off automatic loan*  
3 *payments* for borrowers placed into forbearances. Additionally, borrowers in forbearances were unable  
4 to make payments using mobile or online bill payment processes. Due to exorbitant wait times and  
5 branch closures, borrowers were unable to make payments via phone or in person. Thus, placing  
6 borrowers into forbearances led to non-payment.

7 659. When GNMA loans became three months delinquent, they became eligible for voluntary  
8 repurchase out of the GSE trusts, at a discounted rate. Wells Fargo exercised the voluntary repurchase  
9 option at a historic rate, buying tens of billions of dollars of loans out of the GSE trusts, at par value. As  
10 the borrowers did not request forbearance, these loans are easily resold or resecured at the normal  
11 traditional trading value of 5% above par after the borrowers become current.

12 660. Wells Fargo's retention of these benefits is unjust because it placed those loans in  
13 forbearance without the consent of the Plaintiff and the Virginia Subclass and in contravention of the  
14 requirements of the CARES Act.

15 661. Some of the profits Wells Fargo made are coextensive with losses suffered by the  
16 borrowers. When Wells Fargo services loans that it owns, it profits through spread—the difference  
17 between interest payments made on the loans and the cost to service the loan. For loans that Wells Fargo  
18 held, including those it purchased through exercise of the early pool buyout option, these elevated  
19 interest payments were direct benefits paid from borrowers to Wells Fargo. A loan being placed in  
20 forbearance indicates that the loan is risky, and even if not barred by regulation, impedes a borrower's  
21 practical ability to refinance with a different lender. By placing borrowers into forbearances, Wells  
22 Fargo made the borrowers ineligible to refinance during a period of historically low interest rates. Thus,  
23 borrowers paid more in interest payments because they couldn't refinance, and those payments went to  
24 Wells Fargo.

1           662. However, most of Wells Fargo’s ill-gotten profits are not coextensive with the  
2 corresponding loss to the borrowers. However, the borrowers did suffer losses, including those  
3 associated with the inability to refinance, and damages in law alone would be inadequate to redress this  
4 wrong. Wells Fargo’s profit incentives led to the faulty forbearance program, and non-restitutionary  
5 disgorgement is necessary to deter and prevent future misconduct. Wells Fargo’s profits from placing  
6 borrowers into forbearance are not coextensive with the damages Plaintiff suffered, save for above-  
7 market interest payments made to Wells Fargo for loans held by Wells Fargo while borrowers were  
8 barred from refinancing.

9           663. While the damages to the Class members is capable of proof with sufficient certainty,  
10 Wells Fargo’s profits are more certain and swiftly calculable. The future harm to consumers due to  
11 reduced credit scores, restricted access to credit, and inability to refinance, are less fixed than Wells  
12 Fargo’s profits, and preventing Wells Fargo from retaining those profits is the only adequate remedy.

13           664. As a result, Plaintiff and the Virginia Subclass are entitled to disgorgement of the benefits  
14 Wells Fargo has unjustly retained as a result of its forbearance program, in an amount to be proven at  
15 trial.

16   **SEVENTH CAUSE OF ACTION**

17                                   **California Unfair Competition Law, Cal. Bus. & Prof. Code § 17200 *et seq.***  
18                                   **Asserted on Behalf of Plaintiffs Delpapa, Healy, Johnson, and Prado, and the California Class**

19           665. Plaintiffs incorporate by reference every prior and subsequent allegation of this  
20 Complaint as if fully restated here.

21           666. Plaintiffs Delpapa, Healy, Johnson, and Prado bring this claim on behalf of the California  
22 Class.

23           667. California’s Unfair Competition Law (“UCL”), Business and Professions Code § 17200,  
24 prohibits any “unlawful, unfair, or fraudulent business act or practices.” Cal. Bus. & Prof. Code § 17200.

1 Wells Fargo engaged in unlawful and unfair business acts and practices in violation of the UCL as  
2 follows.

3 668. Wells Fargo’s nonconsensual forbearance program is unlawful under the UCL because  
4 it violates Sections 4022 and 4023 of the CARES Act, which require that a borrower affirmatively  
5 request that their mortgage be placed in forbearance and affirmatively acknowledge they are  
6 experiencing a hardship due to COVID-19, and that loan servicers only extend forbearance upon a  
7 borrower’s request. Additionally, by failing to comply with federal guidance regarding the CARES Act,  
8 Wells Fargo’s forbearance program violated Cal. Civ. Code § 3273.11(a).

9 669. Additionally, Wells Fargo’s practices are unlawful because they violate Regulation N,  
10 “Mortgage Acts and Practices—Advertising,” which forbids “any person to make any material  
11 misrepresentation, expressly or by implication, in any commercial communication, regarding any term  
12 of any mortgage credit product[.]” 12 C.F.R. § 1014.3. Wells Fargo violated Regulation N by failing to  
13 inform borrowers that they were placing their mortgages in forbearance without their consent, and by  
14 sending notices with inaccurate information regarding the impact of forbearances.

15 670. Additionally, Wells Fargo violated Regulations X and Z, as alleged *supra*, by failing to  
16 timely credit loan payments and by failing to provide adequate notice to borrowers associated with the  
17 unilateral forbearance plans.

18 671. Wells Fargo’s conduct described herein threatens an incipient violation of California’s  
19 consumer protection laws, violates the policy or spirit of such laws, and/or otherwise significantly  
20 threatens or harms competition by avoiding procedures intended by the Legislature to protect  
21 California’s consumers, including under the California Consumer Credit Reporting Act (“CCRA”), Cal.  
22 Civ. Code § 1785. 25 *et seq.*, and the Rosenthal Fair Debt Collection Practices Act (“Rosenthal  
23 FDCPA”), Cal. Civ. Code § 1788 *et seq.*

1           672. Wells Fargo’s practices were also unfair under the UCL because placing borrowers’  
2 mortgages in forbearance without their consent is contrary to established public policy; immoral,  
3 unethical, oppressive or unscrupulous; and causes injury to consumers that outweighs its benefits.

4           673. The harm to Plaintiffs Delpapa, Healy, Johnson, and Prado and the California Class of  
5 being placed in a mortgage forbearance without their consent outweighs the utility, if any, of Wells  
6 Fargo’s policies and practices.

7           674. Plaintiffs Delpapa, Healy, Johnson, and Prado and the California Class suffered  
8 ascertainable loss and actual damages as a direct and proximate result of Defendants’ misconduct.

9           675. Pursuant to Cal. Bus. & Prof. Code § 17200, Plaintiffs Delpapa, Healy, Johnson, and  
10 Prado and the California Class seek an order enjoining Defendants’ unfair and/or deceptive acts or  
11 practices; any such orders or judgments as may be necessary to restore to Plaintiffs Delpapa, Healy,  
12 Johnson, and Prado and the California Class any money acquired by unfair competition, including  
13 restitution, as provided in Cal. Bus. & Prof. Code §§ 3345 and 17203; public injunctive relief to prohibit  
14 future violations as alleged herein in the interest of protecting the California public; and any other just  
15 and proper relief available under the California UCL. To the extent these remedies are equitable,  
16 Plaintiffs Delpapa, Healy, Johnson, and Prado and the California Class seek them in the alternative to  
17 any adequate remedy at law they may have.

18           **California Consumer Credit Reporting Act (“CCRA”), Cal. Civ. Code § 1785. 25 et seq.**  
19           **Asserted on Behalf of Plaintiffs Delpapa, Healy, Johnson, and Prado, and the California Class**

20           676. Plaintiffs incorporate by reference every prior and subsequent allegation of this  
21 Complaint as if fully restated here.

22           677. Plaintiffs Delpapa, Healy, Johnson, and Prado bring this claim on behalf of the California  
23 Class.  
24

1           678. The CCRA provides that a “person shall not furnish information on a specific transaction  
2 or experience to any consumer credit reporting agency if the person knows or should know the  
3 information is incomplete or inaccurate.” Cal. Civ. Code § 1785.25(a).

4           679. Wells Fargo, a “person” under the CCRA, furnished information on the mortgages of  
5 Plaintiffs Delpapa’s, Healy’s Johnson’s, and Prado’s and the California Class members’ mortgage  
6 forbearances that it knew or should have known was incomplete or inaccurate to consumer credit  
7 reporting agencies.

8           680. Chiefly, Wells Fargo reported borrowers as in forbearance, with the attendant implication  
9 of financial hardship, when the borrowers had not requested that relief and were not unable to make  
10 payments. One clear example is Ms. Delpapa, who was prepaid for the duration of her forbearance.

11           681. For borrowers who *did* continue to make payments while on unrequested forbearances,  
12 those payments were not properly reported. For instance, Wells Fargo reported Mr. Healy as “Account  
13 in Forbearance,” and also falsely claimed he had not made any recent payments during the forbearance  
14 even though he had, in fact, made every single monthly payment in full and on time even during the  
15 time period that his account had been placed into forbearance.

16           682. The forbearance information reported by Wells Fargo was incomplete, inaccurate, or  
17 materially misleading because the Plaintiffs did not request that their account would be placed in  
18 forbearance, or for that forbearance to be extended, and the false information was negative to Plaintiffs  
19 Delpapa, Healy, Johnson, and Prado and the California Class.

20           683. Plaintiffs Delpapa, Healy, Johnson, and Prado suffered actual damage as a result of this  
21 violation because they were not able to pursue a refinancing or other forms of credit while in forbearance  
22 and for months after exiting those plans.



1 representation or deceptive means to collect or attempt to collect any debt or to obtain information  
2 concerning a consumer.” 15 U.S.C. § 1692e(2), (10).

3 691. Wells Fargo violated the Rosenthal FDCPA through its violations of Section 1692e of  
4 the Federal Act, when it provided false, deceptive, or misleading information about the mortgage debt  
5 of Plaintiffs and the Class to the borrowers. *See Reyes v. Wells Fargo Bank, N.A.*, No. C-10-01667 JCS,  
6 2011 WL 30759, at \*20 (N.D. Cal. Jan. 3, 2011) (finding misleading statements in offer letter of  
7 forbearance agreement was “debt collection” sufficient for a Rosenthal FDCPA claim).

8 692. For example, in a letter from Wells Fargo to Plaintiff Delpapa dated April 2, 2021, Wells  
9 Fargo falsely and misleadingly stated that “when an account is reported as current and in forbearance,  
10 the borrower’s FICO score would not be impacted.”

11 693. Additionally, in a letter from Wells Fargo to Plaintiff Healy dated June 3, 2020, Wells  
12 Fargo falsely stated that Mr. Healy “had asked for help with [his] mortgage payments because [he] was  
13 facing a financial hardship as a result of the [COVID-19] crisis.” Wells Fargo then stated that “To help,  
14 we suspended your mortgage payments for three months, but you’ve still been making your payments.”

15 694. The June 3, 2020 letter from Wells Fargo did not inform Mr. Healy that the “help” they  
16 were offering could negatively impact his credit. Instead, the letter deceptively states that “continuing  
17 to make payments and opting out of payment suspension . . . is a good choice” in order to “[p]rovide[] .  
18 . . the opportunity to apply for new credit or to refinance with Wells Fargo” and to “[r]emove the  
19 comment on your credit report that the loan is in short-term payment suspension.” In other words, the  
20 letter focuses on the benefits of opting out and making payments, but misleadingly and deceptively  
21 omits the financial consequences the forbearance—that Mr. Healy never requested—could cause him.  
22 Nor does the letter state that the forbearance would impact Mr. Healy’s ability to refinance with a lender  
23 other than Wells Fargo.

24

1           695. In a letter from Wells Fargo date July 6, 2020, Wells Fargo admitted that Mr. Healy “did  
2 not request or accept the [forbearance] plan at that time and the plan was added to the account in error.”  
3 Wells Fargo apologized “for any confusion or frustration regarding how your credit report may have  
4 been impacted due to the COVID-19 pandemic.”

5           696. As a result of Wells Fargo’s false and misleading statements, Mr. Healy’s attempt to  
6 extend his credit for a home mortgage refinance loan was declined by another lender.

7           697. Wells Fargo’s false and misleading statements are further exemplified in its  
8 correspondence with Plaintiff Johnson.

9           698. In a letter from Wells Fargo to Mr. Johnson dated June 17, 2020, Wells Fargo states that  
10 it “suspended [Mr. Johnson’s] mortgage payments for three months” but failed to explicitly state that  
11 Mr. Johnson’s account was being placed in forbearance. The letter also included misleading and  
12 deceptive language that failed to disclosure the full consequences of the forbearance plan. Instead, the  
13 letter stated that resuming payments “Provides you with the opportunity to apply for new credit or to  
14 refinance with Wells Fargo” but failed to disclose the impact on Mr. Johnson’s ability to apply for new  
15 credit or refinance with lenders other than Wells Fargo. Indeed, the only discussion of restrictions on  
16 Mr. Johnson’s financing in the June 17, 2020 are mentioned when discussing the impacts of Mr. Johnson  
17 requesting an *extension* for payment suspension. The letter also failed to mention that forbearance could  
18 negatively impact Mr. Johnson’s credit score.

19           699. As a result of Wells Fargo’s false and misleading statements and conduct, Mr. Johnson  
20 suffered damages, including a decrease in his credit score of at least 13 points and an inability to decrease  
21 his principal and interest on his mortgage loan for payments he made in July and August 2020.

22           700. Wells Fargo failed to provide adequate disclosures to the California Class about the  
23 negative consequences of being placed into a forbearance before placing them into that program. Wells  
24 Fargo’s communications with borrowers were false and misleading in that they omitted known negative

1 consequences of being placed into a forbearance and inaccurately described the consequences that Wells  
2 Fargo did disclose.

3 701. As a result of Wells Fargo’s violation of the State and Federal Acts, Plaintiffs Delpapa,  
4 Healy, Johnson, and Prado and the California Class are entitled to actual and statutory damages, fees,  
5 and costs available under those Acts. *See* Cal. Civ. Code § 1788.17; *see also* 15 U.S.C. § 1692k.

6 **NINTH CAUSE OF ACTION**

7 **Georgia Fair Business Practices Act (“GFBA”), O.C.G.A. § 10-1-390 *et seq.***  
8 **Asserted on behalf of Plaintiff Green & the Georgia Class**

9 702. Plaintiffs incorporate by reference every prior and subsequent allegation of this  
10 Complaint as if fully restated here.

11 703. Wells Fargo committed unfair business acts and practices in violation of GFBA, by  
12 providing inaccurate information to Plaintiff Green and the Georgia Class regarding the status of their  
13 loans, the consequences of the forbearance option, and by involuntarily enrolling Plaintiff Green and  
14 the Georgia Class Members into forbearances program.

15 704. Specifically, in a letter from Wells Fargo to Ms. Green dated June 13, 2020, Wells Fargo  
16 used false, deceptive, and misleading language in connection with the collection of Ms. Green’s  
17 mortgage loan. The letter states, “You should know that you’ll still be required to repay any suspended  
18 payments.”

19 705. Wells Fargo improperly placed Ms. Green’s mortgage loan into forbearance without her  
20 consent and knowledge. On June 15, 2020, Ms. Green spoke with a Wells Fargo representative about  
21 her concerns related to her escrow payments and she stated that she was not interested in Wells Fargo’s  
22 forbearance program. Prior to the call, Ms. Green made a mortgage payment to Wells Fargo on June 12,  
23 2020.

1           706. Despite Ms. Green’s express statements, and without her knowledge or consent, Wells  
2 Fargo placed her account into forbearance and failed to timely apply Ms. Green’s June 12, 2020 payment  
3 to her mortgage or escrow account.

4           707. Ms. Green again spoke with a Wells Fargo representative on June 26, 2020, where she  
5 was subsequently informed that her mortgage had been placed into forbearance. Ms. Green informed  
6 the representative that she had never requested or consented to a forbearance and demanded that her  
7 account be taken out of forbearance. In a letter from Wells Fargo to Ms. Green dated July 1, 2020, Wells  
8 Fargo recounts that Ms. Green “did not request” that her mortgage be placed into forbearance. However,  
9 Wells Fargo failed to inform Ms. Green, either on the July 26, 2020 phone call or in the July 1, 2020  
10 letter, that Wells Fargo did not apply Ms. Green’s June 12, 2020 payment to her mortgage or escrow  
11 account.

12           708. Wells Fargo failed to provide adequate disclosures to the Georgia Class about the  
13 negative consequences of being placed into a forbearance before placing them into that program. Wells  
14 Fargo’s communications with borrowers were false and misleading in that they omitted known negative  
15 consequences of being placed into a forbearance and inaccurately described the consequences that Wells  
16 Fargo did disclose.

17           709. Wells Fargo’s unconscionable, deceptive and/or unfair practices caused damages to  
18 Plaintiff Green and the Georgia Class who were unaware that their mortgages had been placed in  
19 forbearance without their knowledge or consent.

20           710. Defendants’ foregoing deceptive acts and practices, including their omissions, were  
21 likely to deceive, and did deceive, consumers acting reasonably under the circumstances.

22           711. As a direct and proximate result of Wells Fargo’s unfair and deceptive practices, Plaintiff  
23 Green and the Georgia Class suffered and will continue to suffer actual damages.

24

1 712. As a direct and proximate result of Defendants’ deceptive acts and practices, including  
2 their omissions, Plaintiff Green and the Georgia Class have been damaged as alleged herein, and are  
3 entitled to recover actual damages to the extent permitted by law, including class action rules, in an  
4 amount to be proven at trial.

5 713. In addition, Plaintiff Green and the Georgia Class seek equitable and injunctive relief  
6 against Wells Fargo on terms that the Court considers reasonable, and reasonable attorneys’ fees and  
7 costs.

8 **TENTH CAUSE OF ACTION**

9 **New York Deceptive Trade Practices Act, N.Y. Gen. Bus Law § 340 *et seq.***  
10 **Asserted on behalf of Plaintiff Jacob and the New York Class**

11 714. Plaintiffs incorporate by reference every prior and subsequent allegation of this  
12 Complaint as if fully restated here.

13 715. Wells Fargo committed unfair business acts and practices in violation of N.Y. Gen. Bus.  
14 § 349, *et seq.*, by providing inaccurate information to Plaintiff Jacob and the New York Class regarding  
15 the status of their loans.

16 716. For example, on March 16, 2020, Mr. Jacob called Wells Fargo and requested that his  
17 mortgage payments no longer be automatically debited from his bank account, but he never requested  
18 that Wells Fargo place his mortgage into forbearance. Mr. Jacob then received a letter from Wells Fargo  
19 dated March 20, 2020, stating that Wells Fargo had “completed your request to suspend your automatic  
20 mortgage payments.”

21 717. Less than one week later, in a letter from Wells Fargo dated March 26, 2020, Mr. Jacob  
22 learned that Wells Fargo placed his mortgage into forbearance for six months and that his monthly  
23 mortgage obligations had been suspended until October 1, 2020. The March 26, 2020 letter falsely stated  
24

1 that the “payment relief option is based on an incomplete application for assistance” despite the fact that  
2 Mr. Jacob never requested forbearance.

3 718. The March 26, 2020 letter did not inform Mr. Jacob that Wells Fargo placed him into a  
4 forbearance, nor does the word “forbearance” appear anywhere in the letter. Instead, the letter used  
5 deceptive terms such as “short-term payment relief” and “payment suspension,” and stated that his  
6 mortgage payments were “suspended” until October 1, 2020.

7 719. The March 26, 2020 letter also provided misleading and false assurances by stating that  
8 Wells Fargo “won’t report a past-due status for this account to the consumer reporting agencies.” In  
9 reality, the forbearance for Mr. Jacob’s loan account is reflected on his credit report—despite the fact  
10 Mr. Jacob never requested a forbearance in the first place.

11 720. As a result, Mr. Jacob’s attempt to secure a small business loan was denied, at least in  
12 part because Wells Fargo reported to credit reporting agencies that Mr. Jacob’s mortgage loan was in  
13 forbearance.

14 721. Additionally, on or about September 2020, Mr. Jacob was unable to refinance his  
15 mortgage and obtain a lower interest rate on his mortgage because Wells Fargo had placed his mortgage  
16 into forbearance without his consent.

17 722. Wells Fargo failed to provide adequate disclosures to the New York Class about the  
18 negative consequences of being placed into a forbearance before placing them into that program. Wells  
19 Fargo’s communications with borrowers were false and misleading in that they omitted known negative  
20 consequences of being placed into a forbearance and inaccurately described the consequences that Wells  
21 Fargo did disclose.

22 723. Wells Fargo’s practices were consumer oriented because they essentially placed  
23 unwilling consumers, who wished to continue making payments on their loans and preserve their credit  
24 history, into forbearance, without even notifying such consumers or obtaining their permission.

1 724. Wells Fargo’s unconscionable, deceptive and/or unfair practices caused damages to  
2 Plaintiff Jacob and the New York Class who were unaware that their mortgages had been place “in  
3 forbearance” without their knowledge or consent.

4 725. Defendants’ foregoing deceptive acts and practices, including their omissions, were  
5 likely to deceive, and did deceive, consumers acting reasonably under the circumstances.

6 726. As a direct and proximate result of Wells Fargo’s unfair and deceptive practices, Plaintiff  
7 Jacob and the New York Class suffered and will continue to suffer actual damages.

8 727. Defendants’ practice was misleading in a material respect because it caused Plaintiff  
9 Jacob and the New York Class damages.

10 728. Plaintiff Jacob and the New York Class did not wish to opt into forbearance, and yet, that  
11 was not an option for them.

12 729. As a direct and proximate result of Defendants’ deceptive acts and practices, including  
13 their omissions, Plaintiff Jacob and the New York Class have been damaged as alleged herein, and are  
14 entitled to recover actual damages to the extent permitted by law, including class action rules, in an  
15 amount to be proven at trial.

16 730. In addition, Plaintiff Jacob and the New York Class seek equitable and injunctive relief  
17 against Wells Fargo on terms that the Court considers reasonable and appropriate, as well as reasonable  
18 attorneys’ fees and costs.

19 **ELEVENTH CAUSE OF ACTION**

20 **Texas Debt Collection Practices Act (“TDCPA”), Tex. Fin. Code § 392.001 *et seq.***  
21 **Asserted on behalf of Plaintiffs Castros and Robinsons and the Texas Class**

22 731. Plaintiffs incorporate by reference every prior and subsequent allegation of this  
23 Complaint as if fully restated here.

1           732. Wells Fargo committed unfair business acts and practices in violation of the Texas Debt  
2 Collection Act, (“TDCA”), Tex. Fin. Code Section 392.001 *et seq.*

3           733. For Plaintiffs Castros, Wells Fargo—through its website—used fraudulent, deceptive, or  
4 misleading representations in debt collection and in obtaining information from Plaintiffs Castros. Wells  
5 Fargo also falsely represented the nature of the services it was rendering with its website.

6           734. As described above, in late March 2020, Mr. Castro logged onto Wells Fargo’s website  
7 and clicked on a “Get Help Now” button for payment assistance as a result of the COVID-19 pandemic.  
8 Upon clicking the button, Wells Fargo’s website displayed a message “congratulating” him.

9           735. Mr. Castro did not receive any additional information at that time explaining the terms  
10 or the consequences of the forbearance program, and Mr. Castro assumed that being automatically  
11 enrolled in the program would not be detrimental to him or Mrs. Castro.

12           736. Wells Fargo sent Mr. and Mrs. Castro a letter dated April 16, 2020, regarding the “short-  
13 term payment suspension.” The April 16, 2020 letter stated: “This payment suspension option is based  
14 on an incomplete application for assistance. Other payment assistance options may be available. If you  
15 would like a review for all available assistance options, you may submit a complete application, which  
16 would include information about your income and expenses. This review is available whether or not you  
17 accept this short-term payment suspension. Please contact us for more information.”

18           737. The April 16, 2020 letter also stated: “Note: If you find you don’t need this short-term  
19 payment suspension, please continue to make your normal payments. Take advantage of this payment  
20 suspension only when you really need it, because you may need to repay any missed payments at the  
21 end of the short-term payment suspension period.”

22           738. The April 16, 2020 letter did not disclose that the forbearance status of Mr. and Mrs.  
23 Castro’s mortgage loan account would be reported to the credit reporting agencies or that Wells Fargo  
24

1 would suppress its reporting regarding the payments it was receiving from Mr. and Mrs. Castro during  
2 the forbearance period.

3 739. In addition, the April 16, 2020 letter, among other things, used false and deceptive means  
4 for debt collection and/or in attempt to obtain information from the Castros. Along with the statements  
5 concerning collection of the Castros' payments as listed above, Wells Fargo made the following  
6 statements:

- 7 • “[A]s your account servicer, we are attempting to collect a debt and any information  
8 obtained will be used for that purpose”;
- 9 • “Unless you receive further relief, you’ll need to resume your regular mortgage payment  
10 schedule beginning on July 1, 2020”; and
- 11 • “If you choose to extend your payment suspension period, you will still need to repay all  
12 missed payments.”

13 740. Much of the April 16, 2020 letter discusses the repayment of payments on the Castros’  
14 mortgage loan.

15 741. The April 16, 2020 letter did not inform the Castros that Wells Fargo placed them into  
16 forbearance but instead used the deceptive terms, “short-term payment assistance,” and “payment  
17 suspension.” The April 16, 2020 letter also falsely stated that, “You can end the payment suspension at  
18 any time. If you decide to shorten the plan, or if you decide later that this is not the right solution for  
19 you, please contact us.”

20 742. As a result of Wells Fargo’s false and misleading statements and conduct, the Castros  
21 suffered damages, including the inability to refinance their mortgage for lower interest rates, a decrease  
22 in their overall credit, and a late penalty that accrued as a result of the barrier imposed for refinancing.  
23  
24

1           743. Plaintiffs Robinsons also were provided with false and misleading information from  
2 Wells Fargo. First, Wells Fargo wrongfully placed the Plaintiffs Robinsons’ account into forbearance  
3 despite the fact that they never requested a forbearance.

4           744. In a letter from Wells Fargo to Plaintiffs Robinsons dated June 15, 2020, Wells Fargo  
5 confirmed the cancellation of “the short-term payment suspension” and stated that it would “return to  
6 normal servicing for your account[,]” including “reporting your payment activity to the consumer  
7 reporting agencies.” However, Wells Fargo misleadingly failed to disclose that the period for which the  
8 Robinsons had been placed in forbearance may have had negative impacts on their credit scores or  
9 ability to obtain a new line of credit.

10           745. As a result of Wells Fargo’s false and misleading statements and conduct, Plaintiffs  
11 Robinsons suffered damages, including the inability to obtain a new line of credit for travel benefits  
12 after Wells Fargo cancelled the forbearance plan—a plan that Plaintiffs Robinsons had never even  
13 requested in the first place—because of the forbearance coding on their credit report.

14           746. Plaintiffs Castros and Robinsons are “consumers” as that term is defined by the TDCPA.

15           747. Plaintiffs Robinsons’ and Castros’ relationships with Wells Fargo arose out of a  
16 “consumer debt” as that term is defined under the TDCPA.

17           748. Wells Fargo regularly collects consumer debt and is a “debt collector” as that term is  
18 defined in the TDCPA.

19           749. Wells Fargo failed to provide adequate disclosures to the Texas Class about the negative  
20 consequences of being placed into a forbearance before placing them into that program. Wells Fargo’s  
21 communications with borrowers were false and misleading in that they omitted known negative  
22 consequences of being placed into a forbearance, and inaccurately described the consequences that  
23 Wells Fargo did disclose.

24

1 750. Plaintiffs Castros and Robinsons and the Texas Class have suffered actual damage, as  
2 alleged above, as a result of Wells Fargo’s misleading reporting of their loan status.

3 751. Plaintiffs Castros and Robinsons and the Texas Class are entitled to their actual damages,  
4 attorneys’ fees, and injunctive relief under Tex. Fin. Code § 392.403.

5 **TWELFTH CAUSE OF ACTION**

6 **Florida Consumer Collections Practices Act (“FCCPA”), Fla. Stat. § 559 *et seq.***  
7 **Asserted on behalf of Plaintiff Doctor and the Florida Class**

8 752. Plaintiffs incorporate by reference every prior and subsequent allegation of this  
9 Complaint as if fully restated here.

10 753. Plaintiff Doctor is a “consumer,” as she is a natural person obligated to pay a debt on her  
11 homestead property.

12 754. The debt which Defendants attempted to collect was a “consumer debt” within the  
13 meaning of Fla. Stat. § 559.55(6) of the FCCPA, as Plaintiff Doctor’s mortgage debt in question arises  
14 out of debt incurred for family or household purposes.

15 755. Defendants violated Fla. Stat. § 559.72(5) of the FCCPA by providing inaccurate  
16 information to Plaintiff Doctor and the Florida Class regarding the status of their loans.

17 756. Specifically, at some point prior to June 29, 2020, Wells Fargo placed Ms. Doctor’s  
18 mortgage loan into forbearance for the months of May and June 2020 without her knowledge and  
19 consent. During this same time period, Wells Fargo furnished information to credit reporting agencies  
20 that Ms. Doctor’s mortgage loan was in forbearance.

21 757. Ms. Doctor only learned that her mortgage had been placed in forbearance after  
22 contacting a loan officer at Fairwinds Credit Union on June 29, 2020 to inquire about obtaining a secured  
23 loan. Ms. Doctor, who was pregnant at the time, sought the loan to cover both out-of-pocket medical  
24 expenses for herself and her unborn child and to make improvements to her homestead.

1           758. Prior to June 29, 2020, Ms. Doctor had applied for and received several loans with the  
2 credit union, but her request to extend credit on June 29, 2020 was denied because of the furnishing to  
3 the credit reporting agency that her Wells Fargo account was in forbearance for May and June 2020.

4           759. On a June 29, 2020 phone call between a Wells Fargo representative and Ms. Doctor, the  
5 representative informed Ms. Doctor that her loan was automatically placed into forbearance since every  
6 Wells Fargo borrower had been affected by COVID-19. The representative told Ms. Doctor that she  
7 could opt out of the forbearance program. Ms. Doctor demanded that her account be removed from the  
8 forbearance program, particularly given that she never requested forbearance relief in the first place.

9           760. On a July 1, 2020 phone call between a Wells Fargo representative and Ms. Doctor, the  
10 representative stated that Ms. Doctor's account would reflect she had chosen to opt out of the final  
11 forbearance month of July 2020 but that Wells Fargo would not change the information it reported that  
12 Ms. Doctor's mortgage loan was in forbearance for the months of May and June 2020.

13           761. Wells Fargo failed to provide adequate disclosures to the Florida Class members about  
14 the negative consequences of being placed into a forbearance before placing them into that program.  
15 Wells Fargo's communications with borrowers were false and misleading in that they omitted known  
16 negative consequences of being placed into a forbearance and inaccurately described the consequences  
17 that Wells Fargo did disclose.

18           762. Defendants' representations to the credit reporting agencies regarding Ms. Doctor and  
19 the members of the Florida Class harmed Ms. Doctor's and the Florida Class members' reputations.  
20 Specifically, due to Defendants' representations to the credit reporting agencies that Ms. Doctor's  
21 mortgage loan account was in forbearance, Ms. Doctor's application for credit was denied.

22           763. Pursuant to § 559.77(2) of the FCCPA, Ms. Doctor is entitled to her actual damages,  
23 statutory damages of \$1,000.00, and her reasonable attorneys' fees and costs. The members of the  
24

1 Florida Class are entitled to statutory damages in the amount of \$500,000 or 1% of the Defendants' net  
2 worth, whichever is less.

3 **THIRTEENTH CAUSE OF ACTION**

4 **Gross Negligence on Behalf of Plaintiffs and the Nationwide Class**

5 764. Plaintiffs incorporate by reference every prior and subsequent allegation of this  
6 Complaint as if fully restated here.

7 765. In a mortgagor-mortgagee relationship, a lender owes a borrower the duty to exercise  
8 reasonable care to avoid a foreseeable risk of injury to the borrower. *Hurd v. BAC Loan Servicing, LP*,  
9 880 F. Supp. 2d 747, 763 (N.D. Tex. 2012) (citing *Thrash v. Ocwen Loan Servicing, LLC*, 433 B.R. 585,  
10 598-97 (Bankr. N.D. Tex. 2010)). *See also Lukasik v. San Antonio Blue Haven Pools, Inc.*, 21 S.W.3d  
11 394, 403 (Tex. App. 2000) (citing *El Chico Corp. v. Poole*, 732 S.W.2d 306, 311 (Tex. 1987) (Every  
12 person has a duty to exercise reasonable care to avoid foreseeable risk of injury to others.)); *Trevino v.*  
13 *HSBC Mortg. Servs., Inc.*, 535 B.R. 110, 150-51 (Bankr. S.D. Tex. 2015).

14 766. By knowingly placing borrowers' loans into forbearance status without their consent,  
15 Defendants demonstrated an utter disregard of prudence amounting to complete neglect of the safety  
16 and financial welfare of Plaintiffs and the Class. Wells Fargo's misconduct is such a degree of  
17 negligence as would shock any fair-minded person. *Ferguson v. Ferguson*, 212 Va. 86, 92, 181 S.E.2d  
18 648, 653 (Va. Ct. App. 1971).

19 767. Alternatively, or additionally, Wells Fargo acted with willful and wanton negligence,  
20 with conscious disregard or reckless indifference, to Plaintiffs' and the Class's rights by placing  
21 Plaintiffs' and the Class's mortgage loans into forbearance status without their knowledge or consent.  
22 Wells Fargo knew from its knowledge of existing circumstances and conditions, as reflected by its own  
23 website and published materials and its own institutional knowledge regarding how the credit markets  
24 would function and the effect a forbearance notation would have on consumers' credit, that its conduct

1 probably would cause injury to Plaintiffs and the Class. *Woods v. Mendez*, 265 Va. 68, 7677, 574 S.E.2d  
2 263, 268 (Va. 2003).

3 768. As a result of Wells Fargo's conduct as described herein, Plaintiffs have been damaged,  
4 including the cancellation mortgage modifications, credit damage, loss of access to credit markets and/or  
5 home equity lines of credit, reputational damage, frustration, outrage, and various out-of-pocket costs  
6 and other pecuniary damages and general damages.

### 7 **VIII. REQUEST FOR RELIEF**

8 769. Plaintiffs, individually and on behalf of all others similarly situated, request that the Court  
9 enter judgment against Defendants, and for Plaintiffs, as follows:

10 A. Certify the Classes under Federal Rules of Civil Procedure 23(b)(2) and 23(b)(3), or  
11 alternatively 23(b)(4), and appoint Plaintiffs as representatives of the Classes and appoint Plaintiffs'  
12 counsel as Class counsel;

13 B. Award declaratory relief, including but not limited to a declaration that Wells Fargo's  
14 actions and business practices are unlawful and that Wells Fargo must comply with state and federal  
15 lending laws;

16 C. Award injunctive relief, including public injunctive relief permanently enjoining Wells  
17 Fargo from performing further unfair and unlawful acts as alleged;

18 D. Award all recoverable compensatory, statutory, and other damages sustained by  
19 Plaintiffs and the Classes, including penalties, and all other relief allowed under applicable law;

20 E. Grant Plaintiffs and the Class awards of restitutionary and non-restitutionary  
21 disgorgement of Wells Fargo's profits from its unfair and unlawful practices described above;

22 F. Award all costs of prosecuting this action, including attorneys' fees and expert fees as  
23 may be allowable under applicable law;

24 G. Award both pre-judgment and post-judgment interest on any amounts awarded;

1 H. Award treble or punitive damages insofar as they are allowed by applicable laws;

2 I. Award appropriate individual relief as requested above; and

3 J. Grant such other and further relief, including declaratory, injunctive, and equitable relief,  
4 as the Court may deem proper.

5 **IX. DEMAND FOR JURY TRIAL**

6 Plaintiffs hereby demand a trial by jury on all issues so triable.

7 DATED this 19<sup>th</sup> day of May, 2023.

8 KELLER ROHRBACK L.L.P.

9 By: s/ Zachary W. Gussin

10 Derek W. Loeser (*Pro Hac Vice*)  
11 Gretchen Freeman Cappio (*Pro Hac Vice*)  
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**CERTIFICATION OF SERVICE**

I, Zachary W. Gussin, hereby certify that on May 19, 2023, I electronically filed the foregoing with the Clerk of the United States District Court for the Northern District of California using the CM/ECF system, which shall send electronic notification to all counsel of record who have appeared in this action.

*s/ Zachary W. Gussin*  
Zachary W. Gussin

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# EXHIBIT 2



June 13, 2020

SAMARA GREEN



Account Information	
Online:	wellsfargo.com
Fax:	1-866-590-8910
Telephone:	1-800-416-1472
Correspondence:	PO Box 10335 Des Moines, IA 50306
Hours of operation:	Mon.- Thu., 7 a.m. - 9 p.m., Fri., 7 a.m. - 8 p.m., Sat., 8 a.m. - 4 p.m., CT
Loan number:	[REDACTED]
Property address:	[REDACTED]

085

Subject: You've got short-term payment suspension for your mortgage

Dear Samara Green:

We know that this is a challenging time as you work to protect what matters most: your health and the health and safety of the people you care for. You let us know about a financial hardship you're facing as a result of the COVID-19 crisis. To help, we have suspended your mortgage payments for three months.

**Your short-term payment suspension (forbearance)**

This payment relief is an immediate payment suspension. It's a temporary pause of your payments for three months. It's not a payment waiver or payment forgiveness. Unless you request or receive further relief, you'll need to resume your regular mortgage payment schedule beginning September 2020.

By accepting this short-term payment suspension, you will be ineligible for any new Wells Fargo mortgage product, including a new home loan or a refinance of an existing home loan, until your financial hardship and payment suspension plan ends.

During payment suspension:

- We won't charge late fees.
- If your loan was current when you requested payment suspension:
  - We won't report missed payments to the consumer reporting agencies.
  - We will report the loan as current with a comment that the loan is in short-term payment suspension (forbearance).
- If your loan was past-due when you requested payment suspension:
  - We will not report any additional missed payments to the consumer reporting agencies during the payment suspension period.
  - We won't refer the loan to foreclosure at this time.

You should know that you'll still be required to repay any suspended payments. If you can make a payment - even a partial payment - you can do so whenever you like. This will help reduce the amount you'll owe at the end of the payment suspension period. You can end payment suspension at any time.

**After your initial three-month payment suspension period ends**

- **If you need more time to recover**, you may have the option to extend the payment suspension period for up to another three months, for a total of six months.

**Account Information**

Loan number:

Property address:

- **If your financial hardship continues beyond six months, you will need to contact us.**

You may have the option to extend the payment suspension for up to another six months, for a total of 12 months, if your loan is covered by the CARES Act. The CARES Act covers federally insured loans backed by Federal Housing Administration (FHA), Veterans Affairs (VA), Fannie Mae (FNMA), Freddie Mac (FHLMC), and U.S. Department of Agriculture (USDA).

If your loan is backed by Wells Fargo or other investors not noted above, other options are available.

**Note:** Keep in mind that extending your payment suspension period means that you'll have more to repay down the road.

**When it comes time to repay**

If you can afford to do so, you can repay the entire amount of missed payments all at once. You can then continue with your normal payments. We understand that you may not be able to do this. We'll work with you to discuss other programs that may help.

We'll consider your financial situation, which includes your loan status, type of loan, whether your payments were current when the COVID-19 emergency was declared in March. This information will help us determine if you're eligible for one of these programs:

- **A repayment plan** - We may be able to divide the amount due from the missed payments into manageable amounts, spread out over time.
- **Payment deferral** - We may be able to move the amount of the suspended payments to the end of your loan term.
- **A loan modification** - We may be able to change certain terms of your loan - such as the interest rate or the time allowed for repayment - to make payments more manageable. This program is intended for customers who are experiencing long-term income reduction due to the crisis.

For up-to-date information about programs that may be available to you, visit [wellsfargo.com/mortgageassist](https://wellsfargo.com/mortgageassist).

**What you need to know about automatic payments**

- You'll need to stop the automatic payments you're making from bill pay on *Wells Fargo Online*<sup>®</sup> or with any other financial institution.
- If you have a plan with us to automatically withdraw your mortgage payments directly from your checking or savings account, you'll need to cancel it right away. If you don't, we'll cancel it in about two business days.
- You'll need to set up any automatic payments or plans again once the payment suspension period ends.

**Ending the payment suspension early**

You can end the payment suspension at any time. If you decide to shorten the plan, or if you decide later that this is not the right solution for you, please contact us.

**Short-term payment suspension impacts**

HP646 708 0106

**Account Information**

Loan number:

Property address:

- **Escrow account:** If you have one for this loan, you may experience a shortage if you miss payments. When this happens, we'll continue to pay your tax and insurance bills. (If you don't have an escrow account, remember to pay your tax and insurance bills directly.) If you miss payments, you may not be able to remove the escrow account.
- **Statements:** We're required to send mortgage billing statements every 30 days that show an amount due. The statement will show your short-term payment suspension under Important Messages.
- **Mortgage insurance:** If you miss payments, you may not be able to remove your mortgage insurance premium as scheduled.
- **Pay-for-performance incentives:** If the loan was modified under the Home Affordable Modification Program (HAMP) or Second Lien Modification Program (2MP) and you don't make a payment during this time, you could lose the pay-for-performance incentives. This is because you must remain in good standing with HAMP and 2MP.
- **Loan modification:** If you have a loan modification that offers principal forgiveness that requires you to be current on your loan, you risk losing that benefit. Contact us to discuss your situation.
- **Restriction on any home equity line of credit:** While you're protected under the payment suspension for this loan, if you have a Wells Fargo home equity line of credit, it will be restricted from further advances and you will not have access to funds from this account. When the payment suspension ends or when you've resumed regular payments, please contact us to request a reinstatement of the account. Additional information will be provided in writing.

**We're here to help**

Thank you for being our customer. For up-to-date information for those affected by COVID-19, visit [wellsfargo.com/mortgageassist](https://wellsfargo.com/mortgageassist).

Home Preservation Department  
Wells Fargo Home Mortgage

**Note:** We are offering you a payment assistance program that is temporary and is based on a partial review of your loan. If you would like a complete review of your loan, which includes a review for other assistance options, additional documentation is required. Please contact us for more information.

**Contact us**

If you'd like to request information, notify us of an error, or share any concerns you may have about the servicing of this account, please contact us at P.O. Box 10335, Des Moines, IA 50306. Please include the account number with all correspondence.

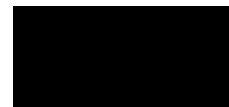
**Get free counseling to help manage expenses and avoid foreclosure.**

Reach out to a local HUD-approved, non-profit housing counseling agency if you're struggling to keep up with monthly expenses, or want help to avoid foreclosure. At no cost, a counselor will work closely with you, providing the information and assistance you need. To find an agency near you, go to [www.hud.gov/offices/hsg/sfh/hcc/fc](https://www.hud.gov/offices/hsg/sfh/hcc/fc). Or call 1-800-569-4287 (TDD 1-800-877-8339).

**Account Information**

Loan number:

Property address:



Be sure you avoid anyone who asks for a fee for counseling or a loan modification, or asks you to sign over the deed to your home, or to make your mortgage payments to anyone other than Wells Fargo Home Mortgage.

**Contact other servicers**

As a reminder, it's important to consider contacting the servicers of any other mortgage loans that are secured by this property to discuss mortgage assistance options.

**An appraisal may be required as part of this process.**

When you apply for assistance on a home that is secured by a first lien, we may need to appraise the home. If we do, you'll receive a copy of any written appraisals related to this application.

Our acceptance and posting of your payments during the short-term payment assistance plan will not be deemed a waiver of the right to accelerate or foreclosure actions, and related activities, and shall not constitute a cure of any default under your loan unless such payments are sufficient to completely cure the entire default under your loan.

All terms and provisions of your current mortgage note and mortgage security instrument remain in full force and effect and you will comply with those terms. Nothing in this assistance shall be understood or construed to be a satisfaction or release in whole or in part of the obligations contained in the loan documents.

Where appropriate, Wells Fargo Home Mortgage is required to inform you that, as your account servicer, we are attempting to collect a debt and any information obtained will be used for that purpose.

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# EXHIBIT 3

Wells Fargo Home Mortgage  
Return Mail Operations  
PO Box 10368  
Des Moines, IA 50306-0368

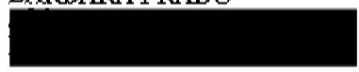


March 31, 2020

DCML1TDTDI 013815



BARBARA PRADO



Account Information	
Online:	wellsfargo.com
Fax:	1-866-590-8910
Telephone:	1-800-416-1472
Correspondence:	PO Box 10335 Des Moines, IA 50306
Hours of operation:	Mon - Thu, 7 a.m. - 9 p.m., Fri., 7 a.m. - 8 p.m., Sat., 8 a.m. - 4 p.m., CT
Loan number:	[Redacted]
Property address:	[Redacted]

Subject: We're confirming short-term payment relief for this account

Dear Barbara Prado:

Thank you for letting us know about a financial hardship you're facing. This may be a difficult time, so please count on us to work with you every step of the way.

You may not know how you'll be affected by the spread of coronavirus (COVID-19), so we want to help by providing you with time to assess your situation. For this reason, we're confirming the following short-term payment relief for your account. If you find you do not need the payment relief, you can continue to make the payments as normal and no further action is needed.

**Your short-term payment relief**

We understand that you may not be able to make your regular payments during this difficult time so we are granting a three month payment suspension. To help:

- We won't report a past-due status for this account to the consumer reporting agencies.
- We won't charge late fees.
- If the account is past-due, we won't refer it to foreclosure during this time.

**Consider the assistance that's best for you**

This short-term payment relief provides you with assistance right away. If you don't think this short-term payment relief is right for you, please contact us.

**What you need to know**

- We have suspended your obligation to make your monthly mortgage payment for three months. Unless you receive further relief, you'll need to resume your regular mortgage payment schedule beginning on July 1, 2020.
- When short-term relief ends:
  - We understand you may not be able to make the missed payments in a lump sum. If you need additional assistance at the end of the three months, we will need to work with you on how to handle the suspended payments. Possible options may include:
    - A continuation of the payment suspension.
    - Moving the missed payments to end of the loan.

**Account Information**

Loan number:

Property address:



- A modification.
  - If you find that you need more time to recover or are unable to catch up, please contact us to talk about your specific financial needs. We can help explore your options.
  - Some longer-term options that may be available might affect the terms of your loan, including the interest rate, maturity date, and monthly payment amount.
  - Reporting the past-due status to the consumer reporting agencies, late fees, and possible foreclosure activities may resume.
- Accepting this short-term payment relief could affect the features of your loan and other payment assistance programs already in place.
  - Any unpaid payments could affect your ability to remove the mortgage insurance premium.
  - If the mortgage was modified under the Home Affordable Modification Program (HAMP) or Second Lien Modification Program (2MP) and you don't make a payment during this time, you could lose the pay-for-performance incentives. This is because you must remain in good standing with HAMP and 2MP.
  - Statements will show past-due during this relief period. You'll also receive required notices about overdue payments.
- This payment relief option is based on an incomplete application for assistance. Other payment assistance options may be available. If you would like a review for all available assistance options, you may submit a complete application, which would include information about your income and expenses. This review is available whether or not you accept this short-term payment relief. Please contact us for more information.

**What you need to do**

- If you're not able to make payments during this time and the payments are automatically withdrawn, you'll need to cancel or suspend the payments. To adjust automatic recurring payments please go to wells Fargo.com to make the adjustments. If you use a bill pay or a third-party payment service, contact the service provider directly to make any changes.
- If the length of the hardship changes or you're still unable to make your payments at the end of the plan, please contact us. We want to help.

**We're here to help**

If you have questions about the information in this letter, please call us at the phone number in the account information box at the top of this letter.

Home Preservation Department  
Wells Fargo Home Mortgage

**Contact us**

If you'd like to request information, notify us of an error, or share any concerns you may have about the servicing of this account, please contact us at P.O. Box 10335, Des Moines, IA 50306. Please include the account number with all correspondence.

**Get free counseling to help manage expenses and avoid foreclosure.**

