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IN THE UNITED STATES DISTRICT COURT
 DISTRICT OF UTAH, CENTRAL DIVISION

Lawrence J. Mitchell, Kay Mitchell, Matthew C. Bishop, Tracy Kilgore, Jennifer K. Zeleny, Joseph W. Steele V, Scott Westin, Bruce Bird, Nathan Ornellas, Anu Sood, Brent Miller, Nicholas Beach, Alex Inskeep, Loretta Grady, Richard Fountain, Matthew Gragg, Akoya Lawani, Sharon Williams, Ken Gregory, Sbeen Ajmal, David Self, Edward Dowdy, April Thomas, Don Black, Reza Kamali, Anthony Baquero, Carina Rhea, Shanell Golden, Kim Weston, Adam Brandt, Jacci Brandt, Jennifer King, Ralph McCoy, Aaron Hands, Ayana Smith, Lisa Stern, Mbegane Diouf, Doug Waters, Candyce Ravenell, Paul Fos, Patricia Burkhalter, Blake Knight, Cameron Casey, Jeffery Taylor, Robert Moyer, Marcia Cameron, Gloria Pledger, Charles Jones, Aaron Brodie, Dominique Evans, Richard Farr, Kevin Saliva, Harold Beard, Travis Ashby, Andrew Gorayeb, Scott Mugrage, Edwin Zorilla, Curtis Dowdle, Edward Klann, Steven Stetzel, Glenn Gilleshammer, Wenoka Thompson, Maryann Aldous, Jennifer Porter, Robin Quigg, Tamar Hodges, Barbara Shadoan, Austin Law, Jennifer Ellsworth, Michelle Sterling, Denise Poe, Jamal Dean, Brandon Westman, Concepcion Powell, Adrian Thompson, Eric Talaska, Zachary Christensen, Erica Jones, Stephen Hope, Nedelka Martinsen *et al* and unknown Plaintiffs 1-1,000,000

Plaintiffs

SECOND AMENDED CLASS ACTION COMPLAINT FOR

1. Violation of Utah Protection of Personal Information Act, Utah Code Annotated 13-44-101 et seq.;
2. Stored Communications Act Violations and Data Breach
3. Invasion of Privacy
4. Violation of Gramm-Leach-Bliley Act, 15 U.S.C. §6801
5. Breach of Contract
6. Breach of Implied Contract
7. Intentional Violation of Fair Credit Reporting Act
8. Negligent Violation of Fair Credit Reporting Act
9. Declaratory Judgment
10. Conversion
11. Fraud
12. Unjust Enrichment
13. Violation of the Anti Tying Provision, 15 U.S.C. § 1972 et seq
14. Violation of RICO, 18 U.S.C. §1961 et seq
15. Electronic Mail Fraud, 18 U.S.C. §1037
16. Injunctive Relief

Judge Clark Waddoups

Case 2:16-cv-00966

<p>v.</p> <p>Wells Fargo Bank, National Association, a National Banking Association, and Wells Fargo & Company, a Delaware Corporation, and Does 1-5,300</p>	
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COME NOW Plaintiffs Lawrence J. Mitchell, Kay Mitchell, and Matthew C. Bishop, *et al.* individually and on behalf of all unknown Plaintiffs, 1-1,000,000 (“Plaintiffs”) and bring this class action against Defendants Wells Fargo Bank, National Association and Wells Fargo & Company (collectively “Wells Fargo”) a Delaware corporation, and DOES 1-5,300 (collectively, “Defendants”) on behalf of themselves and all others similarly situated to obtain damages, restitution and injunctive relief for the Class, as defined, below, from Defendants. Plaintiffs make the following allegations upon information and belief, except as to their own actions, the investigation of their counsel, and the facts that are a matter of public record, and aver and allege as follows:

1. Plaintiff Lawrence J. Mitchell and Kay Mitchell are residents of South Jordan, County of Salt Lake, Utah.
2. Plaintiff Matthew Bishop is a resident of Salt Lake County, State of Utah.
3. Plaintiff Tracy Kilgore is a resident of New Mexico.
4. Plaintiff Jennifer K. Zeleny is a resident of Salt Lake County, State of Utah.
5. Plaintiff Joseph Walters Steele V, is a resident of Salt Lake County, State of Utah.
6. Plaintiff Scott Westin is a resident of Utah.
7. Plaintiff Bruce Bird is a resident of Utah.
8. Allen Roberts is a Utah resident.
9. The other Plaintiffs are residents of numerous states.
10. Defendant Wells Fargo & Company is, and at all times relevant hereto was, a corporation organized and existing under the laws of the State of Delaware. Wells Fargo & Company is a financial services company with over \$1.5 trillion in assets, and provides banking, insurance, investments, mortgage, and consumer and commercial finance through more than 9,000 locations, 12,000 ATMs, and via Internet. It has approximately 265,000 full-time

employees, and is ranked 29th on Fortune Magazine's 2014 rankings of America's 500 largest corporations.

11. Defendant Wells Fargo Bank, National Association is, and at all times relevant hereto was, a national banking association chartered under the laws of the United States, with its primary place of business in Sioux Falls, South Dakota. Wells Fargo Bank, National Association provides Wells Fargo & Company's personal and commercial banking services, and is Wells Fargo & Company's principal subsidiary.

12. The true names and capacities of Defendants sued herein as DOES 1 through 5,300, inclusive, are unknown to the Plaintiffs, who therefore sue said Defendants by such fictitious names.

13. Wells Fargo boasts about the average number of products held by its customers, currently approximately six bank accounts or financial products per customer. Wells Fargo seeks to increase this to an average of eight bank accounts or financial products per account holder, a company goal Wells Fargo calls the "gr-eight" initiative.

14. Wells Fargo's resulting market dominance has come at a significant price to the general public, because it has been achieved in large part through an ambitious and strictly enforced sales quota system. Wells Fargo quotas are difficult for many bankers to meet without resorting to the abusive and fraudulent tactics described further below. Moreover, Wells Fargo enforces its sales quotas by constant monitoring. Daily sales for each branch, and each sales employee, are reported and discussed by Wells Fargo's District Managers four times a day, at 11:00 a.m., 1:00 p.m., 3:00p.m., and 5:00p.m. Those failing to meet daily sales quotas are approached by management, and often reprimanded and/or told to "do whatever it takes" to meet their individual sales quotas.

15. Consequently, Wells Fargo's managers and bankers have for years engaged in unethical, and illegal practices called "gaming." Gaming consists of, among other things, opening and manipulating fee generating customer accounts through often unfair, fraudulent, and unlawful means, such as omitting signatures and adding unwanted secondary accounts to primary accounts without permission. Other practices utilized as part of these "gaming" schemes have included misrepresenting the costs, benefits, fees, and/or attendant services that come with an account or product, all in order to meet sales quotas.

16. Defendant Wells Fargo's CEO admitted before the Senate Banking Committee, in a congressional hearing on September 20, 2016, that Wells Fargo had engaged in fraudulent activities, including "gaming," "sandbagging" and "pinning" activities and that Wells Fargo was "deeply sorry" for selling customers unauthorized bank accounts and credit cards.

17. At all relevant times, each Defendant was acting as an agent, servant, assignee, representative, partner, joint venturer, co-conspirator, or employee of the other Defendants, and, in engaging in the acts alleged herein, said actions were within the course and scope of said agency, service, assignment, representation, partnership, joint venture, conspiracy, or employment. Due to the relationship between Defendants, each Defendant has knowledge or constructive notice of the acts of each of the other Defendants.

18. Each Defendant is a "person" within the meaning of Utah, Federal and various State Statutes.

19. In this Complaint, when reference is made to any act or omission of a Defendant, such allegations shall include the acts, and omissions of owners, officers, directors, agents, employees, contractors, vendors, affiliates, and representatives of said Defendant while acting within the course and scope of their employment or agency on behalf of said Defendant.

JURISDICTION AND VENUE

20. This Court has original jurisdiction pursuant to 28 U.S.C. §1332(d)(2). In the aggregate, Plaintiffs claims and the claims of the other members of the Class exceed \$5,000,000.00 exclusive of interest and costs, and there are numerous class members who are citizens of states other than Wells Fargo's state of citizenship.

21. This Court has personal jurisdiction over Wells Fargo because Wells Fargo is authorized to do business in the State of Utah, and operates stores within this Judicial District and Wells Fargo has significant continuous and pervasive contacts with the State of Utah, and maintains numerous banking establishments and employees in the State of Utah, including, upon information and belief, some of the 5,300 employees who were terminated by Wells Fargo for engaging in the gaming tactic established by Wells Fargo.

22. This Court has personal jurisdiction over Plaintiffs because they are residents of the State

of Utah or are class members affected by Defendants actions.

23. Venue is proper in this Court pursuant to 28 U.S.C. §1391 because a substantial part of the events and/or omissions giving rise to the Plaintiffs claims and Class Member claims arise in this action or occurred in this District and because Defendants are subject to personal jurisdiction in this District.

GENERAL ALLEGATIONS

24. Plaintiffs opened accounts with Wells Fargo, dating back to 1989, and/or received some notification that an account had been opened, or attempted to be opened, by Wells Fargo when the Plaintiff had not authorized, nor consented to opening any account with Wells Fargo.

25. *Inter alia*, and not limited to the following, Plaintiffs have had their accounts moved to Wells Fargo without their consent or authorization; Plaintiffs have had credit reports ran without their consent, which has on numerous occasions had a negative impact on Plaintiffs' credit history; Plaintiffs have signed on signature cards for organizations they belong to, only to find that Wells Fargo submitted an application for a credit card and was notified through the U.S. Mail that her credit card application was not approved, and numerous other instances of unfair competition, disclosure of private facts, invasion of privacy, misappropriation of likeness, conversion, breach of contract, and other causes of action to be set forth at the time of trial.

26. Upon information and belief, Wells Fargo is within the top thirty (30) of America's largest corporations, ranked 29th on the Fortune 500 list of top American companies.

27. Wells Fargo's *modus operandi* is to attempt to get each customer to maintain numerous accounts with Wells Fargo. In, a brochure published by Wells Fargo called "The Vision & Values: of Wells Fargo;"¹ Wells Fargo' states: "Going for gr-eight,' Our average retail banking household has about six products with us. We want to get to eight... and beyond. One of every four already has eight or more. Four of every 10 have six or more:"

28. In Wells Fargo's "The Vision & Values: of Wells Fargo," CEO John G. Stumpf states, "Everything we do is built on trust. It doesn't happen with one transaction, in one day on the job or in one quarter. It's earned relationship by relationship." John Stumpf went on to note that

¹ <https://www.wellsfargo.com/about/corporate/vision-and-values/index>

Wells Fargo is one of the nation's largest financial institutions, serving **one in three** U.S. households.²

29. In its 2014 Annual Report to the U.S. Securities and Exchange Commission, Wells Fargo boasts about its "products" per customer and its "cross-sell strategy,"... "Our vision is to satisfy all our customers' financial needs, help them succeed financially, be recognized as the premier financial services company in our markets and be one of America's great companies. Important to our strategy to achieve this vision is to increase the number of our products our customers use and to offer them all of the financial products that fulfill their financial needs." That report further states: "*Our cross-sell strategy is to increase the number of products our customers use by offering them all of the financial products that satisfy their financial needs.*"

30. Wells Fargo further stated in its 2014 Annual Report to the U.S. Securities & Exchange Commission: "we continued to maintain our solid customer relationships across the Company, with retail banking household cross-sell of 6.17 products per household (November 2014); Wholesale Banking cross-sell of 7.2 products per relationship (September 2014); and Wealth, Brokerage and Retirement cross-sell of 10.49 products per retail banking household (November 2014)." Wells Fargo further stated in that same filing: "We believe there is more opportunity for cross-sell as we continue to earn more business from our customers. Our goal is eight products per household"

31. In order to achieve its goal of eight accounts per household, Wells Fargo imposes unrelenting pressure on its bankers to open numerous accounts per customer.

32. Wells Fargo has strict quotas regulating the number of daily "solutions" that its bankers must reach; these "solutions" include the opening of all new banking, credit card accounts, online activities and other "product" sold/serviced by Defendants. Managers constantly hound, berate, demean and threaten employees to meet these unreachable quotas. Managers often tell employees to do whatever it takes to reach their quotas. Employees who do not reach their quotas are often required to work hours beyond their typical work schedule without being compensated for that extra work time, and/or are threatened with, and have been termination, not

² We've become one of the nation's largest financial institutions, serving one in three U.S. households and employing approximately one in 600 working Americans. We have team members in 36 countries, serving **70 million customers** in more than 130 countries around the world. **Forbes magazine ranks us among the top 10 publicly traded companies in the world based on a composite of sales, assets, profits, and market value.** And we are consistently ranked as one of the world's most respected banks by *Barron's* magazine and one of the world's most admired companies by *Fortune* magazine. The reason for this is simple. **We've never lost sight of putting our customers first and helping them succeed financially.**

because of their fraudulent activity, but because their activity did not produce a big enough return for Defendants.

33. The quota and product sales continue and, as noted in John Stumpf's testimony before the Senate Banking Committee, will continue until the end of the year, thus maintaining the pressure on employees, and exposing the public to fraudulent activity which must be stopped via an immediate injunction.

34. The quotas imposed by Wells Fargo on its employees are often not attainable because there simply are not enough customers who enter a branch on a daily basis for employees to meet their, quotas through traditional means. This has resulted in the termination of over five thousand (5,000) employees.

35. Wells Fargo's bankers are thus naturally and predictably forced to resort to alternative means to meet quotas, including using high pressure sales tactics to coerce customers into opening additional accounts or using inaccurate or misleading information about potential accounts to induce customers to open new accounts.

36. Defendant employees who have objected to the fraudulent activity have been terminated, in violation of the Whistleblower's Act.³

37. Wells Fargo employees also pressure their own family members and friends to sign up for accounts to meet their quotas. Some employees report that they have "tapped out" every family member and friend for accounts. Others report that they spend holiday dinners trying to convince family members to sign up for accounts. Management encourages employees to achieve "solutions" through family members. Since these accounts are opened by friends and family as favors, they are often unfunded, and can result in fees charged by Wells Fargo to its own employees' families or acquaintances, even for such "zero balance" accounts.

38. Wells Fargo's credibility is non-existent. Quoting Wells Fargo's CEO, in its Vision and Values "[i]ntegrity is not a commodity. It's the most rare and precious of personal attributes. It is the core of a person's – and a company's- reputation." (See footnote 1)

³ Wells Fargo employee "Sbeen" who worked for Wells Fargo from 2002-2010 was terminated after he filed complaints about management pressure to open accounts without customer permission. "At times for the new sales goal, we were told to open 35 accounts in the morning within 2 hours to collectively hit 300 new accounts to beat the other branches."

39. Employees thus resort to *gaming tactics* to increase their "solutions," and meet minimum quotas. Gaming is so ingrained in the business of Wells Fargo that many of the tactics, employed to meet these sky-high quotas have commonly-used names:

a. "*Sandbagging*" refers to Wells Fargo's practice of failing to open accounts when requested by customers, and instead accumulating a number of account applications to be opened at a later date. Specifically, Wells Fargo employees collect manual applications for various products, stockpile them in an unsecured fashion, and belatedly open up the accounts (often with additional, unauthorized accounts) in the next sales reporting period, frequently before or after banking hours, or on bank holidays such as New Year's Day;

b. "*Pinning*" refers to Wells Fargo's practice of assigning, without customer authorization, Personal Identification Numbers ("PINs") to customer ATM card numbers with the intention of, among other things, impersonating customers on Wells Fargo computers, and enrolling those customers in online banking and online bill paying without their consent;

c. "*Bundling*" refers to Wells Fargo's practice of incorrectly informing customers that certain products are available only in packages with other products such as additional accounts, insurance, annuities, and retirement plans.

40. While Wells Fargo has recently terminated over 5,300 employees (by all sources this is but a fraction of employees who participated in these illegal activities) who engaged in these types of illegal, unethical behavior, fraudulent activities, Wells Fargo, nevertheless, still reward individuals such as Carrie Tolstedt, who was referred to as the "chief sandbagger," with over a \$124 million dollar termination payment.

41. Upon information and belief Carrie Tolstedt with John Stumpf conspired with other Wells Fargo executives to initiate quotas, sales targets, and authorizing, and paying employee incentives, bonuses, and rewarding employees with promotions who assisted in opening more than 2 million unauthorized customer accounts. Wells Fargo continues to encourage this illegal conduct which they acknowledge is unfair, fraudulent and violates numerous Federal and State laws.

42. Although Wells Fargo has admitted its fraudulent activities, John Stumpf continues to blame employees they fired. Wells Fargo was fined approximately \$180 million dollars, which is less than 3% of one quarter's profits - Wells Fargo continues, and will continue to abuse

government programs that were intended to assist and help Americans after the financial meltdown.⁴

43. Last year, while engaging in employee abuse, and customer fraudulent practices, according to written documentation from John Stumpf, Tolstedt was acknowledged for her actions in pushing “strong cross-selling ratios.” In fact Wells Fargo singled out Tolstedt and other executives touting the bank’s “expertise” in selling multiple products which was immensely profitable for the bank.

44. Even after determining that the problems existed, years ago, Wells Fargo took no action to terminate the fraudulent activities, they continued to promote and monetarily reward individuals who opened fraudulent accounts, fabricated false emails, PIN numbers, and intentionally sold customers bundled accounts the customer did not need, or desire.

45. Plaintiffs contend that during testimony, and in subsequent statements issued by Defendants, Wells Fargo intends to stop pushing employees to engage in cross-selling and sales goal initiatives starting in January 2017.

46. Plaintiffs’ allege that unless an immediate injunction is put into place prohibiting the strong arm tactics engaged in by Wells Fargo employees of creating fake accounts to meet sales goals, and quotas, including, but not limited to checking accounts, credit cards, home loans, car loans, *etc.*, additional damage, and losses will be experienced by Wells Fargo customers.

47. Upon information and belief, Wells Fargo employees opened over 1,534,280 deposit accounts that may not have been authorized and that may have been funded through simulated funding, or transferring funds from consumers’ existing accounts without their knowledge or consent.

48. That analysis determined that roughly 85,000 of those accounts incurred about \$2 million in fees. The fees included overdraft fees on linked accounts the consumers already had, monthly service fees imposed for failure to keep a minimum balance in the unauthorized account, and other fees.

49. Section 1036(a)(1)(B) of the CFPA prohibits “unfair” acts or practices. 12 U.S.C. § 5536(a)(1)(B). An act or practice is unfair if it causes or is likely to cause consumers substantial

⁴ A recent CFPB report noted that in 2015, the financial industry collected \$11 billion dollars in overdraft fees alone, or 8% of total profits. During the time frame in question it is estimated that John Stumpf earned in excess of \$200 million in increase of his stock holding with Wells Fargo.

injury that is not reasonably avoidable and is not outweighed by countervailing benefits to consumers or to competition. 12 U.S.C. § 5531(c)(1).

50. By opening unauthorized deposit accounts and engaging in acts of simulated funding, Wells Fargo caused and was likely to cause substantial injury to consumers that was not reasonably avoidable, because it occurred without consumers' knowledge, and was not outweighed by countervailing benefits to consumers or to competition.

51. Section 1036(a)(1)(B) of the CFPA prohibits "abusive" acts or practices. 12 U.S.C. § 5536(a)(1)(B). An act or practice is abusive if it materially interferes with the ability of a consumer to understand a term or condition of a consumer financial product or service. 12 U.S.C. § 5531(d)(1). Additionally, an act or practice is abusive if it takes unreasonable advantage of the inability of the consumer to protect his or her interests in selecting or using a consumer financial product or service. 12 U.S.C. § 5531(d)(2)(B). This includes "hiding" arbitration clauses deep within the boilerplate documents prepared by Defendants.

52. The arbitration clauses are not present in all Plaintiffs agreements with Wells Fargo, and were not bargained for with Plaintiffs.

53. Wells Fargo's acts of opening unauthorized deposit accounts and engaging in simulated funding materially interfered with the ability of consumers to understand a term or condition of a consumer financial product or service, as they had no or limited knowledge of those terms and conditions, including associated fees.

54. Additionally, Wells Fargo's acts of opening unauthorized deposit accounts and engaging in simulated funding took unreasonable advantage of consumers' inability to protect their interests in selecting or using consumer financial products or services, including interests in having an account opened only after affirmative agreement, protecting themselves from security and other risks, including identity theft, and avoiding associated fees. This additionally affected their customers' credit records.

55. Therefore, Wells Fargo engaged in "unfair" and "abusive" acts or practices that violate §§ 1031(c)(1), (d)(1), (d)(2)(B), and 1036(a)(1)(B) of the CFPA. 12 U.S.C. §§ 5531(c)(1), (d)(1), (d)(2)(B), 5536(a)(1)(B).

56. Wells Fargo's analysis, and admissions by Wells Fargo's CEO, concluded that its employees submitted applications for 565,443 credit-card accounts that may not have been authorized by using consumers' information without their knowledge or consent. That analysis

determined that roughly 14,000 of those accounts incurred \$403,145 in fees. Fees incurred by consumers on such accounts included annual fees and overdraft-protection fees, as well as associated finance or interest charges and other late fees.

57. Section 1036(a)(1)(B) of the CFPA prohibits “unfair” acts or practices. 12 U.S.C. § 5536(a)(1)(B). An act or practice is unfair if it causes or is likely to cause consumers substantial injury that is not reasonably avoidable and is not outweighed by countervailing benefits to consumers or to competition. 12 U.S.C. § 5531(c)(1). This is additionally a violation of Utah’s Unfair Practices Act

58. By applying for and opening credit-card accounts using consumers’ information without their knowledge or consent, Wells Fargo caused and was likely to cause substantial injury that was not reasonably avoidable, because it occurred without consumers’ knowledge, and was not outweighed by countervailing benefits to consumers or competition.

59. Section 1036(a)(1)(B) of the CFPA prohibits “abusive” acts or practices. 12 U.S.C. § 5536(a)(1)(B). An act or practice is abusive if it materially interferes with the ability of a consumer to understand a term or condition of a consumer financial product or service. 12 U.S.C. § 5531(d)(1). Additionally, an act or practice is abusive if it takes unreasonable advantage of the consumer’s inability to protect his or her interests in selecting or using a consumer financial product or service. 12 U.S.C. § 5531(d)(2)(B).

60. Wells Fargo’s acts of opening credit-card accounts using consumers’ information without their knowledge or consent materially interfered with the ability of consumers to understand a term or condition of a consumer financial product or service, as they had no or limited knowledge of those terms and conditions, including associated fees.

61. In addition to the foregoing, Wells Fargo activities constituted a violation of 12 U.S.C. § 1972 (section 106 anti-tying provision) of the Bank Holding Company Act Amendments of 1970 (BHCA)⁵, prohibiting financial institutions from imposing anticompetitive conditions on their customers.

⁵ The basic anti-tying provision of 12 U.S.C. § 1972 reads as follows: A bank shall not in any manner extend credit, lease or sell property of any kind, or furnish any service, or fix or vary the consideration for any of the foregoing, on the condition or requirement
(A) that the customer shall obtain some additional credit, property, or service from such bank other than a loan, discount, deposit, or trust service;
(B) that the customer shall obtain some additional credit, property, or service from a bank holding company of such bank, or from any other subsidiary of such bank holding company;

62. Additionally, Wells Fargo's acts of opening credit-card accounts using consumers' information, without their knowledge or consent, took unreasonable advantage of the consumers' inability to protect their interests in selecting or using a consumer financial product or service.

63. Therefore, Wells Fargo engaged in "unfair" and "abusive" acts or practices that violate §§ 1031(c)(1), (d)(1), (d)(2)(B), and 1036(a)(1)(B) of the CFPA. 12 U.S.C. §§ 5531(c)(1), (d)(1), (d)(2)(B), 5536(a)(1)(B), and Utah Unfair Competition Act, and Utah Unfair Practices Act.

64. Beginning in the late 2008, Wells Fargo's employees used email addresses not belonging to consumers/Plaintiffs to enroll consumers in online-banking services without Plaintiffs knowledge or consent. Section 1036(a)(1)(B) of the CFPA prohibits "abusive" acts or practices. 12 U.S.C. § 5536(a)(1)(B). An act or practice is abusive if it takes unreasonable advantage of the consumer's inability to protect his or her interests in selecting or using a consumer financial product or service. 12 U.S.C. § 5531(d)(2)(B).

65. Wells Fargo's acts of enrolling Plaintiffs/consumers in online-banking services without their knowledge or consent took unreasonable advantage of Plaintiffs'/consumers' inability to protect their interests in selecting or using a consumer financial product or service, including interests in having these products or services activated only after affirmative agreement and protecting themselves from security and other risks.

66. Therefore, Wells Fargo engaged in "abusive" acts or practices that violate §§ 1031(d)(2)(B) and 1036(a)(1)(B) of the CFPA. 12 U.S.C. §§ 5531(d)(2)(B), 5536(a)(1)(B).

67. Plaintiffs allege that Section 1975 of the BHCA provides that:

Any person who is injured in his business or his property by reason of anything forbidden in 1972 of this Title may sue therefor in any district court of the United States in which the defendant resides or is found or has an agent, without regard to the amount in controversy, and shall be entitled to recover **three times** the amount of damages

(C) that the customer provide some additional credit, property, or service to such bank, other than those related to and usually provided in connection with a loan, discount, deposit, or trust service;

(D) that the customer provide some additional credit, property, or service to a bank holding company of such bank, or to any other subsidiary of such bank holding company; or

(E) that the customer shall not obtain some other credit, property, or service from a competitor of such bank, a bank holding company of such bank, or any subsidiary of such bank holding company, other than a condition or requirement that such bank shall reasonably impose in a credit transaction to assure the soundness of the credit.

The [Federal Reserve] Board may by regulation or order permit such exceptions to the foregoing prohibition and the prohibitions of section 1843(f)(9) and 1843(h)(2) of this title as it considers will not be contrary to the purposes of this chapter.

sustained by him and the cost of suit including a reasonable attorney's fee. 12 U.S.C. §1975⁶

68. Beginning in 2008, or earlier, Wells Fargo's employees requested debit cards, credit cards, and created PINs to activate them without consumers' knowledge or consent. 35. Section 1036(a)(1)(B) of the CFPA prohibits "abusive" acts or practices. 12 U.S.C. § 5536(a)(1)(B). An act or practice is abusive if it takes unreasonable advantage of the consumer's inability to protect his or her interests in selecting or using a consumer financial product or service. 12 U.S.C. § 5531(d)(2)(B), which is additionally an anti-tying violation of BHCA, Section 1975.

69. Wells Fargo's acts of issuing debit cards or credit cards to consumers/Plaintiffs without their knowledge or consent took unreasonable advantage of consumers' inability to protect their interests in selecting or using a consumer financial product or service. 12 U.S.C. § 5531(d)(2)(B)..

70. Therefore, Wells Fargo engaged in "abusive" acts that violate §§ 1031(d)(2)(B) and 1036(a)(1)(B) of the CFPA. 12 U.S.C. §§ 5531(d)(2)(B), 5536(a)(1)(B), and Section 1975 of the BHCA.

71. Wells Fargo has strict quotas regulating the number of daily "solutions" that its bankers must reach; these "solutions" include the opening of all new banking and credit card accounts. Managers constantly hound, berate, demean and threaten employees to meet these unreachable quotas. Managers often tell employees to do whatever it takes to reach their quotas. Defendants should be enjoined from compelling this practice as it is in direct violation of the law, and has been acknowledged as an admission by Mr. Stumpf, but which Defendants contend they will not cease until the end of 2016.

72. Employees who do not reach their quotas are often required to work hours beyond their typical work schedule without being compensated for that extra work time, and/or are threatened with termination.

73. Plaintiffs who have complained about receiving credit cards they did not request are advised by Wells Fargo to simply destroy the unrequested and unauthorized cards.⁷ However;

⁶ *Jefferson Parish Hosp. Dist. No. 2 v. Hyde*, 466 U.S. 2, 12 (1984) "the essential characteristic of an invalid tying arrangement lies in the seller's exploitation of its control over the tying product to force the buyer into the purchase of a tied product that the buyer either did not want at all, or might have preferred to purchase elsewhere on different terms."

⁷ Plaintiff J. opened an attorneys' trust account in 2014. When opening the account she stressed that the account was regulated by the State Bar and she could not have a line of credit attached to the account. Wells Fargo employees opened the account, and pulled her credit history, without her consent, and opened two credit cards in her name, and the trust account had a line of credit attached to it, contrary to her instructions, and laws regulating

simply destroying these unauthorized cards does not close the account, nor does it repair the impact to a customer's credit profile which may continue to show open credit cards.

74. In the practice known at Wells Fargo as "pinning," a Wells Fargo banker obtains a debit card number, and personally sets the PIN, often to 0000, without customer authorization.

"Pinning" permits a banker to enroll a customer in online banking, for which the banker would receive a solution (sales credit). To bypass computer prompts requiring customer contact information, *bankers impersonate* the customer online, and input false generic email addresses such as 1234@wellsfargo.com, noname@wellsfargo.com, or none@wellsfargo.com to ensure that the transaction is completed, and that the customer remains unaware of the unauthorized activity.

75. Because of Wells Fargo's on-going setting of unrealistic sales goals, Wells Fargo employees have engaged in, and continue to engage in, other gaming tactics, including, but not limited to:

- a. Making misrepresentations to customers to get them to open additional accounts such as falsely stating: "you will incur a monthly fee on your checking account until you add a savings account."
- b. Misrepresenting that additional accounts do not have monthly fees, when they actually do incur such fees.
- c. Referring unauthorized, and therefore unfunded, accounts to collections because, Wells Fargo's practices, cause the accounts to have negative balances.
- d. Wells Fargo sold heavy to individuals holding Mexican Matriculada Consular cards because the lack of a Social Security Number makes it easier to open numerous fraudulent accounts.
- e. Advising customers who do not want credit cards that they will be sent a credit card anyway, and to just tear it up when they receive it.

76. Plaintiffs/customers who have discovered unauthorized accounts often make the discovery accidentally. For instance: (a) unexplained money being withdrawn from authorized accounts to fund unauthorized accounts; (b) mailings from Wells Fargo congratulating a customer on opening a new account the customer does not recognize, or asking a customer to update account information for accounts that the customer does not recognize; (c) calls from

attorneys. J. was regulating her credit history in order to purchase a home. The credit lines and credit authorizations for over \$15,000 had a negative effect on her credit scores and impeded her ability to qualify for a home loan. J. spent numerous hours requesting Wells Fargo to correct her account at the branch level and had to petition Wells Fargo's legal counsel in California to finally remove the credit inquires, and remove the unauthorized credit cards.

collection agencies stating the customer is overdrawn on an account that the customer does not recognize; and (d) discovering that checks a customer intended to be deposited into an authorized account do not appear in monthly statements because the checks had instead been deposited into an unauthorized account.

77. Plaintiffs have been prejudiced in numerous ways by Wells Fargo's gaming: (a) Plaintiffs lose money to monthly service fees charged for unauthorized accounts; (b) plaintiffs accounts are placed into collection, forcing customers to fight with debt collection agencies for fees charged by Wells Fargo on unauthorized accounts; (c) plaintiffs' credit reports are impacting job applications, loans for automobiles, and mortgage applications; and (d) plaintiffs are forced to purchase costly identity theft protection services to ensure against further activities. But for Wells Fargo's quota-based business model, Plaintiffs would not have incurred wrongful fees, been put into collections, suffered derogatory references on their credit reports, or forced to purchase identity theft protection.

78. Plaintiffs' unauthorized accounts remain open, despite repeated requests to Wells Fargo to close those accounts.

79. Plaintiffs have difficulty reporting unauthorized activity. Reaching the correct representative is no guarantee the unauthorized account will be remedied, as complaining Plaintiffs often never received return calls from Wells Fargo, or have remained on hold for four (4) hours or longer to speak with a representative.

80. Wells Fargo knew, or in the exercise of reasonable care should have known, that its employees would not report the complaints made by Plaintiffs, because upon information and belief, Wells Fargo executives, such as Carrie Tolstedt, were more concerned with profit and the “**gr-eight**” program.

81. Wells Fargo requires that all new customer accounts be approved by a branch manager or assistant manager, thereby providing Wells Fargo management with a clear record of the number and types of accounts opened for each customer. However, Wells Fargo has never disclosed in SEC filings that it engaged in opening fake accounts in Plaintiffs names, engaged in identity theft of plaintiffs information, used plaintiffs information without their consent, or charged plaintiffs fees and reported late payments to credit reporting agencies, on plaintiffs accounts that the plaintiff did not even know existed.

82. Despite Wells Fargo's knowledge of gaming by its employees, it has done little, if anything, to either terminate these practices, or to reform the business model it created that has fostered them. While Wells Fargo has made a few minor changes to its policies, and has fired a handful of employees, those efforts have been, at most, cosmetic, and ultimately benefit Wells Fargo by providing them with plausible deniability. However, the policies that encourage these tactics continue, and employees who engage in them continue to be rewarded monetarily, and even promoted, or given bonuses of over \$20 million dollars to executives such as Carrie Tolstedt.

83. Wells Fargo has not altered its quota or goal incentive system, nor has it reduced the illegal fraudulent activities, identity theft, manipulation of processing customer debit card purchases to maximize overdraft fees, *et. al.* (See John Stumpf testimony before Senate Banking Committee) that these practices were not going to be terminated until the end of 2016.

84. Wells Fargo has a plethora of fines, refusal to follow regulatory Orders, or Department of Justice settlement agreements. Plaintiffs contend that because the United States Government decided that Wells Fargo is "to big to fail," Wells Fargo believes it can do whatever it wants with impunity, all the time using interest free money, or virtually interest free money from the United States and the plaintiffs in order to pay the judgments for violation of laws. Because Wells Fargo makes so much money, it doesn't really affect their profitability, as noted that the last fine from CFPA was less than 3% of one quarter's profits. Such a small fine, vis-à-vis their profit provides little, or no incentive to adhere to the law when you can pay less than a days profit for your fraudulent activity that has literally ruined numerous plaintiffs' lives, resulted in the loss of jobs, ruined credit history, shed false light on the plaintiffs, resulted in identity theft, collection activities, and other problems plaintiffs will testify to *ad nauseam*.

CLASS ACTION ALLEGATIONS

85. Plaintiffs bring this action on their own behalf, and on behalf of all other persons similarly situated ("the Class"). The Class that Plaintiffs seek to represent is:

A. All persons who had checking, savings, brokerage accounts, financial advisors, mortgages, credit cards, debit cards, online accounts, or used any of Wells Fargo's banking services beginning on a date unknown to Plaintiffs, but within the six years preceding the filing of this Complaint. Excluded from the Class are Defendants; officers, directors, and employees of Defendants; any

entity in which Defendants have a controlling interest; the affiliates, legal representatives, attorneys, heirs, and assigns of the Defendants.

B. All persons who purchased services from Wells Fargo not during the affected time period, but whose identifying information was stored on Wells Fargo's database. Excluded from the Class are Defendants; officers, directors, and employees of Defendants; any entity in which Defendants have a controlling interest; the affiliates, legal representatives, attorneys, heirs, and assigns of the Defendants.

C. All persons who have been financially harmed or damaged because of Wells Fargo's fraudulent conduct, had improper fees assessed against their accounts, improper overcharges, had their accounts bundled, were sandbagged, or victims of pinning, subjected to financial harm or damages, loss of time, bank charges, late fees, collection costs, and/or other miscellaneous costs and damages. Excluded from the Class are Defendants; officers, directors, and employees of Defendants; any entity in which Defendants have a controlling interest; the affiliates, legal representatives, attorneys, heirs, and assigns of these Defendants.

86. The members of the Class are so numerous that the joinder of all members is impractical. While the exact number of Class members is unknown to Plaintiffs at this time, based on information and belief, it is in the hundreds of thousands, if not millions.

87. There is a well-defined community of interest among the members of the Class because common questions of law and fact predominate, Plaintiffs claims are typical of the members of the Class, and Plaintiffs can fairly and adequately represent the interests of the Class.

88. This action satisfies the requirements of Federal Rules of Civil Procedure, Rule 23(b)(3) because it involves questions of law and fact common to the members of the Class that predominate over any questions affecting only individual members, including, but not limited to:

- a. Whether Defendants, jointly and severally, unlawfully used, maintained, manipulated, lost or disclosed Class members' personal and/or financial information;
- b. Whether Wells Fargo created a hostile working environment which fostered and rewarded fraudulent actions by its employees.
- c. Whether all Defendants violated the requirements of Utah Code Annotated, Section 13-5a 103 *et seq.*
- d. Whether all Defendants' conduct was negligent, and/or grossly negligent;
- e. Whether all Defendants acted willfully and/or with oppression, fraud, malice, or indifference to the consequences to Plaintiffs;

- f. Whether all Defendants' conduct constituted intrusion;
 - g. Whether Defendants' conduct constituted public disclosure of private facts;
 - h. Whether all Defendants' conduct constituted misappropriation of likeness and identity;
 - i. Whether all Defendants' conduct violated Class members' Utah Constitutional Right to Privacy;
 - j. Whether all Defendants' conduct constituted bailment and breach of contract;
 - k. Whether all Defendants' conduct constituted conversion;
 - l. Whether Plaintiffs and the Class are entitled to damages, civil penalties, punitive damages, and/or injunctive relief;
 - n. Whether Plaintiffs and Class Members are entitled to declaratory and injunctive relief;
 - o. Whether Wells Fargo Management engaged in theft of customers funds;
 - p. Whether Wells Fargo breached Gramm Leach Bliley Act, 15 U.S.C. §6801 provisions;
 - q. Whether Defendants actions breached the provisions of the Bank Holding Company Act Amendments of 1970.
 - r. Whether Defendants actions constituted a pattern of racketeering in violation of 18 U.S.C. §§'s 1961 *et seq.*, the Racketeer Influenced and Corrupt Organizations Act (RICO);
 - s. Whether Defendants actions constituted violations of the Fair Credit Reporting Act (FCRA) 15 U.S.C. § 1681, *et seq.*;
 - t. Whether Defendants fraudulent actions violated Plaintiffs right to privacy under Utah Constitution, Article 1, Section 1;
 - u. Whether Defendants actions violated the Stored Communications Act (SCA) 18 U.S.C. § 2702, *et seq.*
89. Plaintiffs claims are typical of those other Class members who have likewise been subjected to financial harm or damages, loss of time, bank charges, late fees and/or other miscellaneous costs and damages.
90. Plaintiffs will fairly and accurately represent the interests of the Class.
91. The prosecution of separate actions by individual members of the Class would create a risk of inconsistent or varying adjudications with respect to individual members of the Class, which would establish incompatible standards of conduct for Defendants and would lead to repetitive adjudication of common questions of law and fact. Accordingly, class treatment is superior to any other method for adjudicating the controversy. Plaintiffs know of no difficulty that will be encountered in the management of this litigation that would preclude its maintenance as a class action under Rule 23(b)(3).

92. Damages for any individual class member are likely insufficient to justify the cost of individual litigation, so that in the absence of class treatment, Defendants' violations of law and fraudulent conduct inflicting substantial damages in the aggregate would go un-remedied without certification of the Class.

93. Defendants have acted or refused to act on grounds that apply generally to the class, as alleged above, and certification is proper under Rule 23(b)(2).

FIRST CLAIM FOR RELIEF

Utah Protection of Personal Information Act, Unfair Competition Act, Deceptive Trade Practices Act and Federal Protection of nonpublic information.

94. Plaintiffs incorporate by reference all proceeding paragraphs as if fully set forth fully herein.

95. Defendants' conduct constitutes unfair and illegal and fraudulent business practices within the meaning of the Utah Unfair Competition Act, Utah Protection of Personal Information Act and Deceptive Trade Practices Acts.

96. Defendants' conduct violated certain laws as alleged herein, and, *ergo*, by engaging in the said conduct in the course of doing business, Defendants engaged in unlawful business practices in violation of the Utah Laws and 15 U.S.C. Section 6801.⁸

97. Plaintiffs contend that by engaging in the above-described conduct in the course of doing business, Defendants engaged in unfair business practices in violation of the unfair business practices and that Defendants had a duty to safeguard Plaintiffs confidential and

⁸ **Error! Main Document Only.** 15 U.S. Code § 6801 (a) Privacy obligation policy. It is the policy of the Congress that each financial institution has an affirmative and continuing obligation to respect the privacy of its customers and to protect the security and confidentiality of those customers' nonpublic personal information.

(b) Financial institutions safeguards. In furtherance of the policy in subsection (a), each agency or authority described in section 6805(a) of this title, other than the Bureau of Consumer Financial Protection, shall establish appropriate standards for the financial institutions subject to their jurisdiction relating to administrative, technical, and physical safeguards—

(1) to insure the security and confidentiality of customer records and information;

(2) to protect against any anticipated threats or hazards to the security or integrity of such records; and (3) to protect against unauthorized access to or use of such records or information which could result in substantial harm or inconvenience to any customer.

personal information.⁹

98. Wells Fargo incentivized employees to use Plaintiffs' personal information¹⁰ by, *inter alia*, fabricating emails allegedly belonging to customers, making illegal data entries, engaging in fraudulent activity on the customer's accounts. Wells Fargo was aware of the ongoing breaches and failed to provide adequate and prompt notice. Consumers were and are entitled to adequate and prompt notification about the illegal actions to help them mitigate the harm and avoid additional instances of fraud as alleged herein. Wells Fargo, however, failed to take reasonable steps to notify consumers that their information has been compromised.

99. Beginning on a date unknown to the Plaintiffs, but within the four years preceding the filing of this Complaint, Defendants and Does 1-100, and each of them, have violated and conspired to violate the Utah and federal statutes by engaging in one or more of the following *unlawful* business acts and practices, among others:

a. Willfully obtaining personal identifying information of another person (which includes name, address, telephone number, health insurance number, taxpayer identification number, school identification number, state or federal driver's license or identification number, Social Security number, place of employment, employee identification number, professional or occupational number, mother's maiden name, demand deposit account number, savings account number, checking account number, PIN or password, alien registration number, government passport number, and date of birth), and using that information for an

⁹ **Error! Main Document Only.**13-44-201 Protection of personal information.

(1) Any person who conducts business in the state and maintains personal information shall implement and maintain reasonable procedures to: (a) prevent unlawful use or disclosure of personal information collected or maintained in the regular course of business; and (b) destroy, or arrange for the destruction of, records containing personal information that are not to be retained by the person.

¹⁰ U.C.A. **Error! Main Document Only.**13-44-102 Definitions. (1)(b)Breach of system security" does not include the acquisition of personal information by an employee or agent of the person possessing unencrypted computerized data unless the personal information is used for an unlawful purpose or disclosed in an unauthorized manner. (2) "Consumer" means a natural person.

(3) (a) "Personal information" means a person's first name or first initial and last name, combined with any one or more of the following data elements relating to that person when either the name or date element is unencrypted or not protected by another method that renders the data unreadable or unusable: (i) Social Security number; (ii) (A) financial account number, or credit or debit card number; and (B) any required security code, access code, or password that would permit access to the person's account; or (iii) driver license number or state identification card number.

unlawful purpose, including to obtain or attempt to obtain credit, goods, services, real property, or medical information without the consent of that person.

b. Being a party to any fraudulent conveyance of any contract or conveyance had, made, or, contrived, with intent to deceive and defraud others, or while being a party to any fraudulent conveyance of any contract or conveyance, wittingly and willingly putting in, using, avowing, maintaining, justifying, or defending the fraudulent conveyance of any contract or conveyance as true and done, had or made in good faith, or upon good consideration.

c. Knowingly accessing and without permission using data, computers, computer systems, or computer networks to execute a scheme to defraud or wrongfully obtain money, property, or data.

d. Knowingly accessing, and without permission taking, copying, or making use of customer information, in violation of Utah's Unfair Competition Act, Utah Protection of Personal Information Act, and Utah's Deceptive Practices Act

e. Knowingly accessing, and without permission taking, copying, or making use of, customer information, in violation of 15 United States Code Section 6801, *et seq.*, and the rules and regulations promulgated thereunder.

100. Beginning on a date unknown to Plaintiffs, but within six years preceding the filing of this Complaint, Defendants and Does 1-5,300, and each of them, have violated and conspired to violating the foregoing statutes by engaging in one or more of the following unfair business acts and practices, among others:

a. Threatening incipient violations of the aforementioned Utah laws; and violated the public policy embodied in and the spirit of those laws;

b. Violation of the established public policy of the State of Utah, which among other things, seeks to ensure that: all monetary contracts are duly authorized by each party; all bank accounts are authorized and agreed to by the customer in whose name the bank account is opened; residents of the state are not harmed in their credit reports by acts not actually performed, or debts not actually incurred, by that resident; personal information of an individual is not improperly obtained and used for, an unlawful purpose; and that when, personal, information is obtained without authority,; that the person whose information .was obtained is informed immediately.

c. Defendants' conduct as described in this Complaint has been immoral, unethical, oppressive and unscrupulous in that Defendants: (1) profited by improperly signing customers up for bank accounts to which the customers did not agree; (2) boast about the average number of accounts per customer they have achieved, knowing that many of those accounts were unauthorized; (3) expose the consumer to financial hardships involving unjustified debt collection and negative credit reporting, thus jeopardizing those customers' ability to obtain mortgages, automobile loans, and employment; and (4) otherwise garnered an unfair advantage over lawfully competing businesses.

d. Wells Fargo's acts and practices alleged in this Complaint have had, and continue to have, a substantial detrimental impact upon its customers and the community. This detrimental impact is not outweighed by any countervailing

reasons, justifications, and motives of Wells Fargo. In short, the harm experienced by the customers and the surrounding community far outweighs the utility of Wells Fargo's conduct.

101. Beginning on a date unknown to the Plaintiffs, Defendants, and each of them, have violated and conspired to violate the previously cited Utah and Federal Laws by engaging in one or more of the following *fraudulent* business acts and practices, among others:

- a. Using misrepresentations, deception, and concealment of material information to open unauthorized accounts in customers' names.
- b. Using misrepresentations, deception, and concealment of material information and then failing to reveal to the customers that their personal information was compromised.

SECOND CLAIM FOR RELIEF

Stored Communications Act Violations and Data Breach

102. Plaintiff incorporate by reference paragraphs 1-101 as if set forth in full particularity herein.

103. The Stored Communications Act (“SCA”) contains provisions that provide consumers with redress if a company mishandles their electronically stored information. The SCA was designed, in relevant part, “to protect individuals’ privacy interests in personal and proprietary information.” S. Rep. No. 99-541, at 3 (1986), *reprinted in* 1986 U.S.C.C.A.N. 3555 at 3557.

104. Section 2702(a)(1) of the SCA provides that “a person or entity providing an electronic communication service to the public shall not knowingly divulge to any person or entity the contents of a communication while in electronic storage by that service.” 18 U.S.C. § 2702(a)(1).

105. The SCA defines “electronic communication service” as “any service which provides to users thereof the ability to send or receive wire or electronic communications.” *Id.* at § 2510(15).

106. Through its payment processing equipment, Wells Fargo provides an “electronic communication service to the public” within the meaning of the SCA because it provides consumers at large with credit and debit card payment processing capability that enables them

to send or receive wire or electronic communications concerning their private financial information to transaction managers, card companies, or banks.

107. By failing to take commercially reasonable steps to safeguard sensitive private financial information, even after Wells Fargo was aware that Plaintiffs' private and confidential information had been compromised by its own employees, Wells Fargo has knowingly divulged customers' private financial information that was communicated to financial institutions, while in electronic storage in Wells Fargo's data systems.

108. Section 2702(a)(2)(A) of the SCA provides that "a person or entity providing remote computing service to the public shall not knowingly divulge to any person or entity the contents of any communication which is carried or maintained on that service on behalf of, and received by means of electronic transmission from (or created by means of computer processing of communications received by means of electronic transmission from), a subscriber or customer of such service." 18 U.S.C. § 2702(a)(2)(A).

109. The SCA defines "remote computing service" as "the provision to the public of computer storage or processing services by means of an electronic communication system." 18 U.S.C. § 2711(2).

110. An "electronic communications systems" is defined by the SCA as "any wire, radio, electromagnetic, photo-optical or photo-electronic facilities for the transmission of wire or electronic communications, and any computer facilities or related electronic equipment for the electronic storage of such communications." 18 U.S.C. § 2510(4).

111. Wells Fargo provides onsite and remote computing services to its customers and the public by virtue of its computer processing services, including, but not limited to, banking services, consumer credit and debit card payments, *etc.* which are used by customers and carried

out by means of an electronic communications system, namely the use of wire, electromagnetic, photo-optical or photo-electric facilities for the transmission of wire or electronic communications received from, and on behalf of, the customer concerning customer private financial information.

112. By failing to take commercially reasonable steps to safeguard sensitive private financial information, and requiring scrutiny of their own employees, Wells Fargo has knowingly divulged customers' private financial information that was carried and maintained on Wells Fargo's computing data bank services.

113. As a result of Wells Fargo's conduct described herein and its violations of Sections 2702(a)(1) and (2)(A) of the SCA, Plaintiffs and Class Members have suffered actual identity theft, as well as damages in the form of (i) improper disclosure of their private confidential information; (ii) out-of-pocket expenses incurred to mitigate the increased risk of identity theft and/or identity fraud pressed upon them by the Data Breach; (iii) the value of their time spent mitigating identity theft and/or identity fraud, and/or the increased risk of identity theft and/or identity fraud; (iv) and deprivation of the value of their private information, for which there is a well-established national and international market. Plaintiffs, on their own behalf and on behalf of the Class Members, seek an order awarding themselves and the Class Members the maximum statutory damages available under 18 U.S.C. § 2707, in addition to the cost for 3 years of credit monitoring services.

WHEREFORE, Plaintiffs, on their own behalf and on behalf of the Class, pray for entry of judgment jointly and severally against Defendants, and awarding Plaintiffs and the Class compensatory damages, statutory damages, treble damages, punitive damages, and reasonable attorney's fees and costs; and such other and further relief as this Court deems just and proper.

THIRD CLAIM FOR RELIEF
Invasion of Privacy

114. Plaintiffs incorporate by reference paragraphs 1-113 as if set forth in full particularity herein.

115. Plaintiffs, and the other Class Members, had a reasonable expectation of privacy in the private information Defendants Wells Fargo obtained from them in opening accounts. Said information was provided in a fiduciary capacity, and Wells Fargo and its employees mishandled and/or failed to protect said information, and knowingly violated their fiduciary duties.

116. By failing to keep Plaintiffs private information safe, and by misusing and/or disclosing said information to unauthorized parties for unauthorized use, Defendants invaded Plaintiffs privacy by:

- a. intruding into Plaintiffs private affairs in a manner that would be highly offensive to a reasonable person;
- b. publicizing private facts about Plaintiffs, which is highly offensive to a reasonable person;
- c. using and appropriating Plaintiffs identity without Plaintiffs' consent;
- d. violating Plaintiffs right to privacy under Utah Constitution, Article 1, Section 1, through the improper use of Plaintiff s private information properly obtained for a specific purpose for another purpose, or the disclosure of it to some third party;
- e. misrepresenting and holding out themselves, as one of the Plaintiffs, in order to secure credit cards, open accounts, open emails, and use the U.S. Mails.

117. Plaintiffs allege that Defendants knew, or acted with reckless disregard of the fact that, a reasonable person in Plaintiffs position would consider Defendants' actions highly offensive.

118. Plaintiffs assert that Defendants, jointly and severally invaded Plaintiffs and the Class Members right to privacy and intruded into Plaintiffs private affairs by misusing and/or disclosing Plaintiffs private information without their informed, voluntary, affirmative and clear consent, and/or failed to properly secure confidential information by encouraging employees to abuse the customers private information for purposes of promotions, personal gains, and monetary

remuneration.

119. Plaintiffs contend that Defendant, without authorization, intentionally invaded, and allowed to be invaded by its employees, the private affairs of Plaintiffs, including their personal and confidential information.

120. Plaintiffs assert the invasion was offensive and would be offensive to a reasonable person.

121. Plaintiffs contend that Defendants intruded into private matters relating to Plaintiffs, including the use of Plaintiffs social security numbers, and other confidential information, in opening unauthorized accounts, credit cards, and impersonating Plaintiffs over a million times.

122. Plaintiffs assert that the intrusion by Defendants caused them to suffer anguish, loss of time, loss of money, loss of credit, and numerous other losses to be set forth at the time of trial.

123. Plaintiffs allege that Wells Fargo had been aware of the employee violations for over a year before taking any action, but failed to take action in lieu of maximizing financial gains from the employees unethical and fraudulent behavior that Wells Fargo was fully aware of, and thereby exposed Plaintiffs to added, unnecessary risk. From 2011 the bank opened more than 2 million deposit and credit card accounts that may not have been authorized.¹¹

124. Plaintiffs contend that as a direct and proximate result of such misuse and disclosures, Plaintiffs reasonable expectations of privacy in their private information was unduly frustrated and thwarted, and that the Defendants' conduct amounted to a serious invasion of Plaintiffs' and the Class Members protected privacy interests.

125. Plaintiff Matthew was not an account holder with Wells Fargo, however he was involved in an identity theft issue with Wells Fargo. Wells Fargo employees opened a business line of credit and allowed charges of \$30,000 to be charged against the account. Plaintiff contacted local and regional representatives of Wells Fargo who refused to listen to the identity theft

¹¹ Wells Fargo employees pushed checking account customers into savings, credit and online accounts that could generate fees. Bank employees were told that the average customer tapped six financial tools but that they should push households to use eight products, according to the complaint. The bank opened more than 2 million deposit and credit card accounts that may not have been authorized, according to the CFPB. <http://www.cnbc.com/2016/09/08/wells-fargo-reaches-185m-settlement-to-settle-secret-account-fraud-case.html>

issues. Plaintiff was required to contact local police and the FBI. Plaintiff had to take the time and effort (and money) to freeze all of his credit reports. The credit reports included “hard inquiries” by Wells Fargo.

126. Defendants had a duty to protect Plaintiffs private information and failed to protect Plaintiffs private information, and in misusing and/or disclosing Plaintiffs private information, Defendants have acted with malice, oppression and in conscious disregard of Plaintiffs and the Class members' rights to have such information kept confidential and private. Plaintiffs, accordingly, seek an award of compensatory damages, nominal damages, punitive damages, attorneys' fees, expert witness fees, and associated court costs on their behalf as well as on behalf of the Class.

FOURTH CLAIM FOR RELIEF
Violation of Gramm-Leach-Bliley Act, 15 U.S.C. §6801

127. Plaintiffs incorporate the allegations in paragraphs 1-126 as if set forth with full particularity herein.

128. Plaintiffs assert that under the Gramm-Leach-Bliley Act, 15 U.S.C. § 6801, Wells Fargo had a duty to protect and keep sensitive personal information that it obtained from customers that conducted banking, financial, credit card and debit card transactions, or other services, secure, private, and confidential.

129. Plaintiffs allege that Wells Fargo violated the Gramm-Leach-Bliley Act by: (a) not adequately safeguarding Plaintiffs' and the Class Members' sensitive personal information, (b) encouraging and rewarding its employees for violating privacy provisions of the Act in order to maximize financial gain; and (c) failing to follow applicable state law designed to protect cardholder information.

130. Plaintiffs contend that Wells Fargo's encouragement and reward to employees for violations of privacy provisions, and those accompanying rules and regulations, and to follow

applicable state law constitutes conspiracy and negligence *per se*.

131. Plaintiffs assert that as a result of Wells Fargo's conduct alleged herein, Plaintiffs and Class Members suffered actual identity theft, as well as damages in the form of (i) improper disclosure of their private and confidential information; (ii) out-of-pocket expenses incurred to mitigate the increased risk of identity theft and/or identity fraud pressed upon them by the data breach; (iii) the value of their time spent mitigating identity theft and/or identity fraud, and/or the increased risk of identity theft and/or identity fraud; (iv) and deprivation of the value of their private and confidential information, for which there is a well-established national and international market.

132. Plaintiffs assert that as a direct and proximate result of Defendant's negligence *per se* Plaintiffs and Class Members were damaged and harmed to their detriment and seek the award of actual damages, compensatory damages, attorneys' fees, and such other and further damages as this Court deems just and reasonable.

WHEREFORE, Plaintiffs, on their own behalf and on behalf of the Class, pray for entry of judgment jointly and severally against Wells Fargo Defendants, and awarding Plaintiffs and the Class compensatory damages, statutory damages, treble damages, punitive damages, and reasonable attorney's fees and costs; and such other and further relief as this Court deems just and proper.

FIFTH CLAIM FOR RELIEF
Breach of Contract

133. Plaintiffs incorporate by reference paragraphs 1-132, as if set forth in full particularity herein.

134. Plaintiffs and the Class members delivered and entrusted their Private information to Defendants for the sole purpose of receiving services from Defendants, including, but not limited to, financial advisors, checking accounts, savings accounts, general banking services,

including brokerage services all with having the ability to engage in financial transactions in safety.

135. Plaintiffs allege that Wells Fargo made representations and entered into contractual and implied contractual relations regarding Wells Fargo's duty to safeguard Plaintiffs private information, including, but not limited to Wells Fargo's representations as set forth by Wells Fargo. (Exhibit A)

136. Plaintiffs contend that nowhere in the Wells Fargo Privacy Policy, does it allow Defendants to access Plaintiffs personal information for Wells Fargo to open accounts in Plaintiffs names without notifying customers, nor obtain emails, using customers names, or fraudulently conduct financial transactions without every notifying Plaintiffs.

137. Plaintiffs and Class Members allege that they entered into valid and enforceable agreements with Defendants whereby Defendants promised to provide goods or services to Plaintiffs and Class Members, and Plaintiffs and Class Members agreed to pay for those goods or services, including payment made with debit or credit cards.

138. Plaintiffs contend that they were never notified that Wells Fargo and its employees received incentives for "**gr-eight**" participation, or using Class Members private information to exploit Class Members for the monetary advantage of Wells Fargo or their employees, which private information included, inter alia, social security numbers which Wells Fargo classifies as "confidential" information. (<https://www.wellsfargo.com/privacy-security/privacy/social-security-number>. Last accessed on September 15, 2016)¹²

139. Plaintiffs allege that a material part of Wells Fargo's promise to provide services to Plaintiffs and Class Members was to adequately protect their personal and confidential information, and that Defendants intentionally, maliciously, and with intent to defraud, used Plaintiffs and Class Members social security numbers to open factious accounts, bundle products, sandbag, PIN, or in Gaming operations engaged in by Defendants, including executive's who may have included Carrie Tolstedt, who aided and abetted Defendants in hiding

¹² Social Security numbers are classified as "Confidential" information under the Wells Fargo Information Security Policy. As such, Social Security numbers may only be accessed by and disclosed to Wells Fargo team members and others with a legitimate business "need to know" in accordance with applicable laws and regulations. Social Security numbers, whether in paper or electronic form, are subject to physical, electronic, and procedural safeguards, and must be stored, transmitted, and disposed of in accordance with the provisions of the Information Security Policy applicable to Confidential information. These restrictions apply to all Social Security numbers collected or retained by Wells Fargo in connection with customer, employee, or other relationships.

from regulators the fraudulent activity engaged in by Defendants.

140. Plaintiffs contend that Wells Fargo operated in a fiduciary position of trust, which position held them to a higher standard of performance than other corporations.

141. Plaintiffs assert that in its privacy policy, Wells Fargo expressly promised Plaintiffs and Class Members that it would protect Plaintiffs' and Class Members' personal and confidential information.

142. Plaintiffs contend that the contracts and applicable laws required Wells Fargo to safeguard Plaintiffs' and Class Members' private and confidential information to prevent its disclosure and/or unauthorized access.

143. Plaintiffs allege that a meeting of the minds occurred, as Plaintiffs and Class Members agreed, *inter alia*, to provide their private and confidential information to Wells Fargo, in exchange for Wells Fargo's agreement to, among other things, protect their private and confidential information.

144. Plaintiffs assert that Wells Fargo failed to protect and safeguard Plaintiffs' and the Class Members' private and confidential information, as agreed to between the parties, and that this failure to protect the confidential and private information of Plaintiffs and Class Members was known to the highest ranking executive members of Wells Fargo, which may have included Carrie Tolstedt.

145. Plaintiffs allege that Wells Fargo's failure to meet these promises and obligations constitutes an express breach of contract.

146. Plaintiffs allege that Wells Fargo breached the contracts by failing to implement sufficient security measures to protect Plaintiffs' and the Class Members' private and confidential information, as described herein, as well as actively "mining" customers' private information to use as Wells Fargo saw fit in order to maximize its own profit.

147. Wells Fargo's breach of its fiduciary duty to safeguard the confidential and private information of Plaintiffs and Class Members, and allowing access to its data security by Wells Fargo employees, constituted a breach of contract and Defendant's promise to supply adequate security and maintain customers' privacy, when in fact Wells Fargo neither supplied adequate security nor instituted adequate procedures to maintain customers' privacy.

148. Plaintiffs further allege that as a direct and proximate result of Wells Fargo's breach,

Plaintiffs and Class Members suffered actual identity theft, as well as damages in the form of (i) improper disclosure of their private and confidential information; (ii) out-of-pocket expenses incurred to mitigate the increased risk of identity theft and/or identity fraud pressed upon them by the data breach; (iii) the value of their time spent mitigating identity theft and/or identity fraud, and/or the increased risk of identity theft and/or identity fraud; (iv) and deprivation of the value of their private and confidential information, for which there is a well-established national and international market. These damages were within the contemplation of Wells Fargo and the Plaintiffs at the time that they contracted.

149. Plaintiffs contend that Wells Fargo breached its duty to safeguard their customers' privacy, and thereafter intentionally failed to inform Plaintiffs and Class members of the data breach/intentional theft and use of confidential information by Defendants.

150. The Utah Supreme Court has held that breach of contract, standing alone, does not call for punitive damages even if intentional and unjustified, but such damages are allowable if there is some independent tort indicating malice, fraud or wanton disregard for the rights of others. Hal Taylor Assocs v. Unionamerica, Inc., 657 P.2d 743, 750 (Utah 1982); See also Dold v. Outrigger Hotel, 54 Hawaii 18, 501 P.2d 368 (1972); Temmen v. Kent-Brown Chevrolet Co., 227 Kan. 45, 605 P.2d 95 (1980); Jackson v. Glasgow, Okla. Ct. App., 622 P.2d 1088 (1980). Plaintiffs contend, upon information and belief, that Wells Fargo management encouraged the theft by outrageous demands on employees, and executive officers being fully aware of the fraudulent activity transpiring under various programs to boost profits such as the “**gr-eight**” programs, calls for punitive damages. Plaintiffs contend that likewise Wells Fargo's failure to implement tighter security and oversight of corporate activities, coupled with its activation of programs which not only encouraged the illegal activity, but also rewarded the activity, call for punitive damages.

151. Plaintiffs contend that the wanton refusal to notify customers of the illegal, unethical activity of Wells Fargo for over a year since Wells Fargo was sued by Los Angeles warrants the imposition of punitive damages against Defendants pursuant to the independent intentional torts committed by the Defendants.

152. Plaintiffs additionally contend that during the time of bailment, Defendants owed Plaintiffs and the Class members a duty to safeguard their information properly and maintain reasonable security procedures and practices to protect such information (as set forth in Wells

Fargo's privacy policies).

153. Plaintiffs allege Defendant Wells Fargo intentionally breached this duty by allowing access to the confidential information and allowing its own employees to fraudulently use customers' private and confidential information.

154. Plaintiffs assert that as a result of these breaches of duty, breach of contract, and breach of bailment, Plaintiffs and the Class members have suffered harm and damage in an amount to be proven at the time of trial.

WHEREFORE, Plaintiffs, on their own behalf and on behalf of the Class, pray for entry of judgment against Defendants Wells Fargo and Does 1-5,300, and awarding Plaintiffs and the Class compensatory damages, statutory damages, treble damages, punitive damages, and reasonable attorney's fees and costs; and such other and further relief as this Court deems just and proper.

SIXTH CLAIM FOR RELIEF

Breach of Implied Contract

155. Plaintiffs incorporate by reference paragraphs 1-155 as if set forth with full particularity herein.

156. Plaintiffs allege that in order to benefit from Wells Fargo's services, Plaintiffs and Class Members were required to disclose their private and confidential information to Wells Fargo.

157. Plaintiffs allege that by providing Wells Fargo their private and confidential information, and upon Wells Fargo's acceptance of such information, Plaintiffs and Class Members entered into implied contracts with Wells Fargo whereby Wells Fargo was obligated to take reasonable steps to secure and safeguard that information, including compliance with federal banking and security laws.

158. Plaintiffs assert that a portion of the services purchased from Wells Fargo by Plaintiffs and Class Members necessarily included compliance with industry-standard measures with respect to the collection and safeguarding of Plaintiffs private and confidential information. Because Plaintiffs and Class Members were denied privacy protections that they paid for and were entitled to receive, Plaintiffs and Class Members incurred actual monetary damages in that they overpaid for the services purchased from Wells Fargo, including the overcharges on accounts, manipulation of accounting to obtain income for Wells Fargo.

159. Plaintiffs and Class Members have suffered additional injury in fact and actual damages, including monetary losses, arising from unauthorized bank account withdrawals and/or related bank fees charged to their accounts.

160. Plaintiffs and Class Members suffered additional damages arising from the costs associated with identity theft and the increased risk of identity theft caused by Wells Fargo's wrongful conduct, particularly given the incidents of actual misappropriation from Class Members' financial accounts, as detailed above.

161. A meeting of the minds occurred, as Plaintiffs and Class Members agreed to provide their private and confidential information to Wells Fargo in exchange for Wells Fargo's agreement to, *inter alia*, provide services and otherwise take reasonable steps to protect Plaintiffs' and Class Members' private and confidential information.

162. Without such implied contracts, Plaintiffs and Class Members would not have provided their private and confidential information to Wells Fargo.

163. Plaintiffs allege that Wells Fargo failed to take reasonable steps to safeguard Plaintiffs' and Class Members' private and confidential information, and that as a result thereof, Wells Fargo allowed authorized and potentially unauthorized access to Plaintiffs' and Class Members' private and confidential information, and failed to take reasonable steps to safeguard that information, Wells Fargo breached its implied contracts with Plaintiffs and Class Members.

164. Plaintiffs assert that as a result of Wells Fargo's breach, Plaintiffs and Class Members suffered damages in the amount of the difference between the price they paid for Wells Fargo's services as promised and the actual diminished value of its services.

165. Additionally, as a result of Wells Fargo's breach, Plaintiffs and Class Members suffered actual identity theft, as well as damages in the form of (i) improper disclosure of their private and confidential information; (ii) out-of-pocket expenses incurred to mitigate the increased risk of identity theft and/or identity fraud pressed upon them by the data breach; (iii) the value of their time spent mitigating identity theft and/or identity fraud, and/or the increased risk of identity theft and/or identity fraud; (iv) and deprivation of the value of their private and confidential information, for which there is a well-established national and international market. These damages were within the contemplation of Wells Fargo and the Plaintiffs at the time that they contracted.

166. Plaintiffs and Class members were the owners and possessors of their private information. As the result of Defendants' wrongful conduct, Defendants have interfered with the Plaintiffs and Class members' rights to possess and control such property, to which they had a superior right of possession and control at the time of conversion.

167. As a direct and proximate result of Defendants' conduct, Plaintiffs and the Class members suffered injury, damage, loss or harm and therefore seek compensatory damages.

168. Plaintiffs allege that in converting Plaintiffs and Class Members private information, Defendants have acted with malice, oppression and in conscious disregard of the Plaintiffs and Class members' rights. Plaintiffs, accordingly, seek an award of punitive damages on behalf of the Class.

169. For example, Plaintiff Steven contends that he used to have a mortgage with Wells Fargo, however, recently upon checking his credit report, his credit report(s) also show that he had a Wells Fargo credit card with a \$5,000 limit, \$5,000 high balance, and no payment information. Steven never had a credit card with Wells Fargo, and tried to dispute the entry with the credit reporting agencies which agencies refused to remove the entry after getting confirmation from Wells Fargo of the accuracy of the account.

170. Plaintiffs allege Defendants owed Plaintiffs a fiduciary duty and by allowing employees to steal their information, Defendants breached this fiduciary duty, as evidenced by numerous federal fines for improper banking activities. (Exhibit B)

171. Plaintiffs and Class members have suffered injury in fact and actual damages including lost money and property as a result of Wells Fargo's violations of the consumer fraud statutes.

172. Plaintiffs and the other Class members' injuries were proximately caused by Wells Fargo's fraudulent and deceptive behavior, which was conducted with reckless indifference toward the rights of others, such that an award of punitive damages is appropriate.

173. By this conduct, Wells Fargo violated the substantive consumer protection and unfair deceptive trade practices acts or statutes of the several States and the District of Columbia, as set forth above, whose laws do not materially differ from that of Utah, and do not conflict with each other for purposes of this action.

174. Additionally, despite the disclosure and dissemination of Plaintiffs and the Class members' private and confidential information occurring on a regular basis for over five (5)

years, Wells Fargo, in violation of Utah's laws, federal laws, as well as the laws of the individual States, regarding contract law, and Data Breach regulations, failed to expeditiously and without unreasonable delay, notify Plaintiffs and the Class Members of the unlawful and unauthorized disclosure and dissemination of their private, personal and confidential information.

WHEREFORE, Plaintiffs, on their own behalf and on behalf of the Class, pray for entry of judgment jointly and severally against Defendants, and awarding Plaintiffs and the Class compensatory damages, statutory damages, treble damages, punitive damages, and reasonable attorney's fees and costs; and such other and further relief as this Court deems just and proper.

SEVENTH CLAIM FOR RELIEF

Intentional Violation of Fair Credit Reporting Act

175. Plaintiffs incorporate the allegations in paragraphs 1-174, as if fully set forth herein.

176. Plaintiffs contend that The Fair Credit Reporting Act ("FCRA") requires consumer reporting agencies to adopt and maintain procedures for meeting the needs of commerce for consumer credit, personnel, insurance and other information in a manner fair and equitable to consumers while maintaining the confidentiality, accuracy, relevancy and proper utilization of such information. 15 U.S.C. § 1681(b).

177. The FCRA allows for a private right of action against any reporting agency for the negligent or willful violation of any duty imposed under the statute.

178. The FCRA defines a "consumer reporting agency" as:

Any person which, for monetary fees, dues, or on a cooperative nonprofit basis, regularly engages in whole or in part in the practice of assembling or evaluating consumer credit information or other information on consumers for the purpose of furnishing consumer reports to third parties, and which uses any means or facility of interstate commerce for the purpose of preparing or furnishing consumer reports.

15 U.S.C. § 1681a(f).

179. FCRA defines a "consumer report" as:

[A]ny written, oral, or other communication of any information by a consumer reporting agency bearing on a consumer's credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living which is used or expected to be used or collected in whole or in part for the purpose of establishing the consumer's eligibility for credit or insurance to be

used primarily for personal, family, or household purposes; employment purposes, or any other purpose authorized under [15 U.S.C. §] 1681(b).
15 U.S.C § 1681a(d).

180. Wells Fargo is a consumer reporting agency as defined under the FCRA because Wells Fargo through third parties, for monetary fees, regularly engages, in part, in the practice of assembling or evaluating consumer credit information or other information on consumers for the purpose of furnishing consumer reports to third parties and/or uses interstate commerce for the purpose of preparing and/or furnishing consumer reports.

181. As a consumer reporting agency, Wells Fargo was (and continues to be) required to adopt and maintain procedures designed to protect and limit the dissemination of consumer credit, personnel, insurance and other information (such as Plaintiffs' and other Class Members' private and confidential information) in a manner fair and equitable to consumers, while maintaining the confidentiality, accuracy, relevancy, and proper utilization of such information.

182. Plaintiffs allege that Defendants violated the provisions of the FCRA by failing to adopt and maintain such protective procedures which, in turn, directly and/or proximately resulted in the theft of Plaintiffs' and Class Members' private and confidential information and its wrongful dissemination.

183. On information and belief, Wells Fargo knowingly failed to adequately implement these proactive actions to secure and protect Plaintiffs' and Class Members' private and confidential information, and/or put itself in a position to immediately notify Plaintiffs and Class Members about the data breach.

184. As a direct and/or proximate result of Wells Fargo's willful and/or reckless violations of the FCRA as described above, Plaintiffs' and Class Members' private and confidential information was stolen and made accessible to unauthorized third parties, including, but not limited to unauthorized access to confidential information, and use thereof, by Wells Fargo employees.

185. As a direct and/or proximate result of Wells Fargo's willful and/or reckless violations of the FCRA, as described above, Plaintiffs and Class Members were (and continue to be) damaged in the form of, without limitation, expenses for credit monitoring and identity theft insurance, out-of-pocket expenses, anxiety, emotional distress, loss of privacy and other economic and non-economic harm.

186. Plaintiffs and Class Members, therefore, are entitled to compensation for their actual damages including, (i) actual damages resulting from the identity theft; (ii) out-of-pocket expenses incurred to mitigate the increased risk of identity theft and/or identity fraud pressed upon them by the data breach; (iii) the value of their time spent mitigating identity theft and/or identity fraud and/or the increased risk of identity theft and/or identity fraud; (iv) deprivation of the value of their private and confidential information, for which there is a well-established national and international market; (v) anxiety and emotional distress; and (vi) statutory damages of not less than \$100, and not more than \$1,000, each, as well as attorneys' fees, litigation expenses and costs, pursuant to 15 U.S.C. §1681n(a).

WHEREFORE, Plaintiffs, on their own behalf and on behalf of the Class, pray for entry of judgment jointly and severally against Defendants, and awarding Plaintiffs and the Class compensatory damages, statutory damages, treble damages, punitive damages, and reasonable attorney's fees and costs; and such other and further relief as this Court deems just and proper.

EIGHTH CLAIM FOR RELIEF

Negligent Violation of Fair Credit Reporting Act

187. Plaintiffs incorporate the allegations in paragraphs 1-186, as if fully set forth herein.

188. In the alternative to Count Seventh, above, Wells Fargo negligently violated the FCRA by failing to adopt and maintain procedures designed to protect and limit the dissemination of Plaintiffs' and Class Members' private and confidential information for the permissible purposes outlined by the FCRA which, in turn, directly and/or proximately resulted in the wrongful dissemination of Plaintiffs' and Class Members' private and confidential information.

189. Wells Fargo's action, by its pressure on employees, and refusing to enforce fiduciary duties because payment of a fine is cheaper to than the profits they obtained, was reasonably foreseeable that Wells Fargo's failure to implement and maintain procedures to protect and secure Plaintiffs' and Class Members' private and confidential information would result in the unauthorized use by Wells Fargo of Plaintiffs' private and confidential information for no permissible purpose under the FCRA.

190. As a direct and/or proximate result of Wells Fargo's negligent violations of the FCRA, as described above, Plaintiffs' and Class Members' private and confidential information was essentially stolen and made accessible for unauthorized purposes by Wells Fargo executives and

employees.

191. As a direct and/or proximate result of Wells Fargo's negligent violations of the FCRA, as described above, Plaintiffs and Class Members were (and continue to be) damaged in the form of, without limitation, actual identity theft, expenses for credit monitoring and identity theft insurance, anxiety, emotional distress, loss of privacy, and other economic and noneconomic harm.

192. Plaintiffs and Class Members, therefore, are entitled to compensation for their actual damages, including, (i) actual damages resulting from the identity theft; (ii) out-of-pocket expenses incurred to mitigate the increased risk of identity theft and/or identity fraud pressed upon them by the data breach; (iii) the value of their time spent mitigating identity theft and/or identity fraud and/or the increased risk of identity theft and/or identity fraud; (iv) deprivation of the value of their private and confidential information, for which there is a well-established national and international market; (v) anxiety and emotional distress; and (viii) attorneys' fees, litigation expenses and costs, pursuant to 15 U.S.C. § 1681o(a).

WHEREFORE, Plaintiffs, on their own behalf and on behalf of the Class, pray for entry of judgment jointly and severally against Defendant Wells Fargo, and awarding Plaintiffs and the Class compensatory damages, statutory damages, treble damages, punitive damages, and reasonable attorney's fees and costs; and such other and further relief as this Court deems just and proper.

NINTH CLAIM FOR RELEIF COUNT

Declaratory Judgment

193. Plaintiffs incorporate the allegations in paragraphs 1-192 as if fully set forth herein.

194. The Declaratory Judgment Act ("DJA") states:

"In a case of actual controversy within its jurisdiction ... any court of the United States, upon the filing of an appropriate pleading, may declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought. Any such declaration shall have the force and effect of a final judgment or decree and shall be reviewable as such."

28 U.S.C. § 2201(a).

195. In the case at hand, there is an actual controversy between the parties of sufficient

immediacy and reality to warrant the issuance of a declaratory judgment, due to the imminence of harm facing Plaintiffs and Class Members. As set forth above, Class Members have already suffered identity theft and damages as a result of the data breach, and the perpetrators are still at large with Class Members' private and confidential information.

196. Plaintiffs seek a declaration that Wells Fargo has breached a contract between those entities and Plaintiffs and Class Members by allowing unauthorized individuals were allowed access to personal financial data, an/or authorized parties engaged in fraudulent activities in accessing and misusing fiduciary, confidential information.

197. Plaintiffs further seek a declaration that due to the imminence and likelihood of harm to Plaintiffs and Class Members, Wells Fargo be ordered to pay for mitigation in the form of legitimate and adequate credit monitoring, identity theft protection, damages, and identity theft insurance, and also be ordered to indemnify Plaintiffs and Class Members for future harm.

TENTH CLAIM FOR RELIEF

Conversion

198. Plaintiffs incorporate by reference all allegations of the preceding paragraphs as though fully set forth herein.

199. Plaintiffs and members of the Class entered into banking agreements with Wells Fargo whereby they deposited funds with Defendant.

200. Plaintiffs contend that Defendant used Plaintiffs confidential information to open credit card accounts, savings accounts, loans, or other "services or products," without Plaintiffs knowledge or consent.

201. Plaintiffs contend that the money they deposited or property they possessed, including mortgages, were their property to which they had the right to possess without the interference of Wells Fargo.

202. Plaintiffs assert Wells Fargo intentionally asserted control over the assets belonging to Plaintiffs, including the fraudulent accounts that were opened with Plaintiffs funds.

203. Plaintiffs allege that Wells Fargo exercised dominion and control over the fees Plaintiffs were charged, including, but not limited to, overdraft fees, late fees, increased interest fees.

204. Plaintiffs contend that the interference by Wells Fargo deprived Plaintiffs of possession of use of the personal property in question, and Wells Fargo's refusal to disclose the theft, conversion, or existence of the personal property constituted an act of intentional malice.

205. Plaintiffs assert the conversion of their funds, and control exerted over their personal property by Wells Fargo caused them to suffer damages, anxiety, stress, loss of personal property, damages in higher costs, and payment of fees which Plaintiffs were not obligated to pay, has caused Plaintiffs damages.

206. Plaintiffs allege they were required to pay Wells Fargo excessive fees, fines, collection costs, had their personal information was misused by Wells Fargo for the benefit of Wells Fargo and its employees.

207. Upon information and belief, executives and employees of Wells Fargo received bonuses in the millions of dollars, including severance fees of over one hundred million dollars, for their participation in the "gr-eight" program where Plaintiffs were the victims of fraudulent activities.

208. Defendant and its employees have been unjustly enriched at the expense of Plaintiffs and the Class and its retention of this benefit under the circumstances would be inequitable.

209. Plaintiffs seek an order requiring Defendant to make restitution to them and the other members of the Class, including a clawback, or disgorgement provision for those who profited personally from the illegal behavior.

ELEVENTH CLAIM FOR RELIEF

Fraud and Misrepresentation

210. Plaintiffs incorporate by reference all allegations of the preceding paragraphs as though fully set forth herein.

211. Plaintiffs allege that Defendants engaged in over two million causes of fraud, including, but not limited to, Plaintiffs have had their accounts moved to Wells Fargo without their consent or authorization; Plaintiffs have had credit reports ran without their consent, Defendants have opened online accounts, loans, credit cards, debit cards, checking accounts, submitted credit applications to credit reporting agencies, and engaged in acts of misappropriation, conversion, identity theft, disclosure of private facts, misappropriation of likeness, and other causes of action to be set forth at the time of trial.

212. Plaintiffs contend that Defendants made false and misleading statements to Plaintiffs regarding the status of their accounts with Wells Fargo.

213. Plaintiffs allege that at the time Defendants made the statements, including those notes in the above paragraphs, Defendants knew the statement were false, or the statements were made recklessly and without regard for its truth.

214. For example, Plaintiff Tracy signed a signature card for a non-profit entity, and Wells Fargo ran her credit and attempted to open an account without her authorization; Plaintiff Anu was told he couldn't open a simple checking account and had to open additional new accounts; Plaintiff Steve had a mortgage account with Wells Fargo and later found out that someone at Wells Fargo had opened a credit card and charged \$5,000, etc.

215. Plaintiffs contend that the statements made by Wells Fargo were made with the intent that the Plaintiffs would rely on the statements, or rely upon no notifications of a data breach as to the safety of their accounts.

216. Plaintiffs did in fact have no reason to believe they were being lied to and in fact did rely upon the fraudulent misrepresentations made by Defendants to their detriment, and damage.

217. Plaintiffs, as a result of the fraudulent activities engaged in by Defendants, suffered damages as a result of relying on said statements. (*Cardon v. Jean Brown Research*, 327 P.3d 22 (2014 Ut. App.))

218. Additionally, Plaintiffs were harmed and damaged by the negligent, material misrepresentations made by Defendants.

219. Plaintiffs allege Defendants made representations to Plaintiffs that important facts regarding their accounts and Defendants actions were true.

220. In fact the representations made by Defendants regarding Defendants actions were not true, and Defendants knew at the time the misrepresentations were made that the statement were lies and not the truth.

221. Defendants were in a superior position to know of the truth of the statements made to Plaintiffs, and knew the Plaintiff would rely upon Defendants representations.

222. Plaintiffs did in fact rely to their financial detriment upon the statements made by Defendants.

223. Plaintiffs suffered harm, injury and damages by their reliance on Defendants misrepresentations. (*West v. Inter-Financial, Inc.* (139 P.3d 1059, (2006 Utah Ct. App.))

WHEREFORE, Plaintiffs, on their own behalf and on behalf of the Class, pray for entry of judgment jointly and severally against Defendants, and awarding Plaintiffs and the Class compensatory damages, statutory damages, treble damages, punitive damages, and reasonable attorney's fees and costs; and such other and further relief as this Court deems just and proper.

TWELFTH CLAIM FOR RELIEF

Unjust Enrichment

224. Plaintiffs incorporate by reference all allegations of the preceding paragraphs as though fully set forth herein.

225. As a result of Defendant fraudulent activities, Wells Fargo and John Does received incentive payments, bonuses, and an increase in the value of their stock ownership.

226. Plaintiffs lost money, time, suffered anguish, lost jobs, had improper fees imposed on accounts, suffered higher interest rates, and other damages as a result of Defendants activities.

227. Defendants have been unjustly enriched at the expense of Plaintiffs and Class Members and the retention of these benefits under the circumstances would be inequitable.

228. Plaintiffs seek an order requiring Defendants make restitution to Plaintiffs and Class Members and to disgorge all gains, bonuses, and incentive pay received from 2012 through the date of trial, and pray for entry of judgment jointly and severally against Defendants, and awarding Plaintiffs and the Class compensatory damages, statutory damages, punitive damages, and reasonable attorney's fees and costs; and such other and further relief as this Court deems just and proper.

THIRTEENTH CLAIM FOR RELIEF

Violation of the Anti-Tying Provisions of the Bank Holding Company Act Amendments of 1970 "BHCA" as Codified at 12 U.S.C. §1972, *et seq.*

229. Plaintiffs incorporate by reference all allegations of the preceding paragraphs as though fully set forth herein.

230. Plaintiffs allege the federal statute was designed to prevent banks from imposing anticompetitive conditions on their customers by requiring customers to take out additional services from a bank who can exert economic power over individuals and businesses through their control of credit.

231. The terms of the statute, as set out in footnote 5, prohibit a bank from requiring a

customer to obtain some additional credit, property, or service for such bank . . . requiring the customer to obtain additional credit, property or service or from any other subsidiary . . . requiring a customer to provide additional credit, property, or service to such bank, other than those related to and usually provided in connection with a loan, deposit....*etc.*

232. Section 1975 of the BHCA provides that “any person who is injured in his business or his property by reason of anything forbidden in 1972 of this Title may sue therefor in any district court of the United States in which the defendant resides or is found or has an agent, without regard to the amount in controversy, and shall be entitled to recover three times the amount of damages sustained by him and the cost of suit including a reasonable attorney’s fee.”

233. Plaintiffs allege, as in the case of Plaintiff Jennifer, in spite of her repeated refusal to obtain a credit card and line of credit on her account, Defendants submitted an application without her authorization or consent. Plaintiff Steve who had a mortgage with Wells Fargo, and Defendants issued, without his knowledge or consent, a credit card in his name to an unknown individual who charged \$5,000. Plaintiff Anu, who wanted to open a checking account and Defendants set up multiple other accounts he did not want so Defendants could meet quotas.

234. Plaintiffs assert Defendants required numerous Plaintiffs’ and Class Members to purchase additional products, through their cross-sales and employee incentives, which falls within the prohibitions contained in BHCA Section 1972 (1) (A-E).

235. Plaintiffs allege that CEO John Stumpf has acknowledged that Defendants actions were fraudulent and that numerous violations of the BHCA act were committed from 2013 when he first became aware of the cross-selling.

236. Plaintiffs contend that the examples provided herein demonstrate that the anti-tying prohibition activities were in fact consummated by Defendants actions in requiring Plaintiffs and Class Members to sign up for accounts they did not want or need, and had no relation to the purpose of their initial transaction with Defendants.

237. Plaintiffs further assert that Defendants profited from the illegal tying actions of Defendants in increased fees, charges, opening accounts, and increase in stock price.

238. Plaintiffs allege that Defendants actions were coercive, and/or carried out behind the backs of Plaintiffs and Class Members.

239. Plaintiff additionally contend that the actions of Defendant resulted in anticompetitive effects, in that Plaintiffs and Class Members were unable to obtain additional credit, or services

when they became aware of Defendants actions.

WHEREFORE, Plaintiffs, on their own behalf and on behalf of the Class, pray for entry of judgment jointly and severally against Defendants, and awarding Plaintiffs and the Class compensatory damages, statutory damages, treble damages, punitive damages, and reasonable attorney's fees and costs; and such other and further relief as this Court deems just and proper.

FOURTEENTH CLAIM FOR RELIEF

Civil Violation of Racketeer Influenced Corrupt Organizations Act 18 U.S.C. §1972 *et seq.*

240. Plaintiffs incorporate by reference all allegations of the preceding paragraphs as though fully set forth herein.

241. Plaintiffs contend that Defendants conspired together to obtain financial rewards by implementing the actions noted above to fraudulently deprive Plaintiffs and Class Members of their assets, name, privacy, *etc.*¹³

242. Section 18 U.S.C. § 1962 (c) prohibits any person from conducting the affairs of an enterprise through a pattern of racketeering.

243. At all relevant times, each Defendant is a person within the meaning of 18 U.S.C. §1961(3) and 1962(c).

244. Each Plaintiff is a person within the meaning of 18 U.S.C. § 1964(c).

245. Each and every Defendant is a person capable of holding legal or beneficial interest in property within the meaning of 18 U.S.C. § 1961(3)

246. Because of each and every of Defendants' violations of Racketeer Influenced & Corrupt Organizations Act ("RICO"), Plaintiffs were financially injured as a result to their business and/or property.

¹³ **Error! Main Document Only.** In *Crocker Nat. Bank v Rockwell International Corp.* (555 F Supp 47 (1982, ND Cal.)) the court held that no connection to organized crime is required for a civil RICO action. In 1984 the Northern District of California agreed (*Wilcox v Ho-Wing Sit* (586 F Supp 561 (1984, ND Cal.)) in a case in which the plaintiffs, limited partners in an investment company, alleged that the defendant general and limited partners fraudulently induced the plaintiffs to sell stock and invest the proceeds in an investment company. The court rejected the defendants' contention that RICO plaintiffs must allege a "nexus" or "link" to organized crime on the part of the defendants. The reason that Congress purposely declined to require that a RICO defendant be proved a member of organized crime for two reasons: 1) Congress was concerned a limitation of the statute to organized crime members would create an unconstitutional "status" offense based on the affiliation rather than the conduct of the defendants; and 2) Congress wanted to avoid imposing a difficult if not impossible burden of proof against defendants who were adept at concealing their organized crime connections.

247. Each and every Defendant violated 18 U.S.C. § 1962(c) by the acts described in the prior paragraphs, and as further described below.

The RICO Enterprise

248. The Defendants and their co-conspirators are a group of “persons” associated together in fact for the common purpose of carrying out an ongoing criminal enterprise, as described in the foregoing paragraphs of this Complaint. These Defendants form this association in fact for the common and continuing purpose described herein and constitute an enterprise within the meaning of 18 U.S.C. § 1961(4) engaged in the conduct of their affairs through a continuing pattern of racketeering activity. There may be other members of the enterprise who are unknown at this time, but which will be uncovered during discovery.

249. At all material times, the enterprise has engaged in, and their activities have affected interstate and foreign commerce within the meaning of 18 U.S.C. § 1962(c).

Pattern of Racketeering Activity in General

250. Defendants, each of whom are persons associated with, or employed by the enterprise, did knowingly, willfully and unlawfully conduct or participate, directly or indirectly in the affairs of the enterprise through a pattern of racketeering activity within the meaning of 18 U.S.C. §1961 (1), 1961(5), and 1962(c).

251. The racketeering activity, through the use of mail fraud (section 1341), wire fraud (1343) and financial institution fraud (section 1344), was made possible by Defendants’ regular and repeated use of the services of the enterprise, including, but not limited to repeated access to Plaintiffs and Class Members confidential and private information, social security numbers, driver’s license information, *etc.*

252. Defendants had the specific intent to engage in the substantive RICO violations alleged herein.

253. Predicate acts of racketeering activity are acts which are indictable under provisions of U.S.C. § 1961(1)(B). Defendants each committed at least two such acts or else aided and abetted such acts.

254. The acts of racketeering were not isolated, but rather the acts of Defendants were related in that they had the same or similar purpose and result, participants, victims and method of commission.

255. Further, the acts of racketeering by Defendants have been continuous. There was repeated conduct during a period of time beginning in approximately in 2010, and there is a continued threat of repetition of such conduct.

256. Defendants mandated that employees must reach a certain goal of new accounts. When employees confronted managers of illegal activity and spoke with the ethics hotline, these individuals were later fired. This created a culture of bullying and fear from managers to the lower level employees, forcing these individuals to choose between ethics and a paycheck.

Pattern of Racketeering: Violation of 18 U.S.C. § 1341

257. 18 U.S.C. § 1341 is designed to protect citizens from fraudulent activities sent through the mail, via the United States Postal Service or through private carrier.

258. Defendants devised a scheme to defraud Plaintiffs and Class Members through opening up millions of fake accounts in order to comply with the unrealistic quota criteria of forcing each client to have eight accounts with Wells Fargo.

259. In pursuing this scheme to defraud Plaintiffs, Defendants regularly prepared and sent out through the Postal Service and other private carriers: rejection letters for credit cards that were processed without the client's authorization; credit card approvals with cards that were processed without authorization; billing statements showing business line of credit to individuals who had not authorized opening up such account, collection notices to clients on accounts that client did not open, and other such incidences.

260. Defendants would look up Plaintiffs information without their consent, submit applications fraudulently for new accounts, and then send out the above mentioned papers through the Postal Service or private carrier to the Plaintiffs address.

261. Defendants would further initiate debt collection and send client accounts that were opened up fraudulently to debt collection agencies.

262. Defendants would knowingly ignore the arbitration agreement within their own contract to take advantage of individuals who were not aware of the arbitration provision and commence court actions against Plaintiffs, again delivering fraudulent paperwork through Postal Service or private carrier.

263. Pursuant to 18 U.S.C. § 1964(c), Plaintiffs are entitled to recover treble damages plus costs and attorneys' fees from each and every Defendant.

Pattern of Racketeering: Violation of 18 U.S.C. § 1343

264. 18 U.S.C. § 1343 is designed to protect citizens from fraudulent activities sent by wire, radio or television transmission.

265. Defendants devised a scheme to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations or promises did cause to be transmitted by means of wire communication in interstate commerce for the purpose of executing said scheme to defraud.

266. In pursuing this scheme to defraud Plaintiffs and Class Members, Defendants consistently caused for false accounts to be opened up in Plaintiffs' names and unilaterally transfer money from one account to the other without Plaintiffs' authorization, knowledge or consent.

267. Many of the new online accounts included monthly charges that Defendants reaped the benefit thereof.

268. Neither Plaintiffs, nor Class Members authorized the opening of false accounts, and did not authorize the transfer of money, causing distress to Plaintiffs and Class Members.

269. Defendants further caused for fraudulent "online banking" accounts to be set up on Plaintiffs' accounts without Plaintiffs authorization, causing fraudulent communication to be sent over the wire.

270. Pursuant to 18 U.S.C. § 1964(c), Plaintiffs are entitled to recover treble damages plus costs and attorneys' fees from each and every Defendant.

Pattern of Racketeering: Violation of 18 U.S.C. § 1344

271. 18 U.S.C. § 1344 is designed to protect citizen's moneys, funds, credits, assets and other property under the control of a financial institution.

272. Defendants devised a scheme to obtain moneys, funds or other property under the control of Wells Fargo, by means of false or fraudulent pretenses.

273. Defendants had access to and control over Plaintiffs' accounts.

274. Defendants used this access to fraudulently create new accounts and transfer money from a Plaintiffs' account to a new account with monthly fees.

275. Defendants used these fraudulent pretenses of new accounts to generate more revenue for Defendants, and for individual workers to keep their positions within the company.

276. Pursuant to 18 U.S.C. § 1964(c), Plaintiffs are entitled to recover treble damages plus costs and attorneys' fees from each and every Defendant.

Predicate Act: Use of Mail Fraud to Defraud in Violation of 18 U.S.C. § 1341

277. Defendants committed acts constituting indictable offenses under 18 U.S.C. § 1341 in that they devised a scheme or artifice to defraud Plaintiffs and the greater public by means of false or fraudulent pretenses.

278. Defendants did place in an authorized depository for mail, or did deposit or cause to be deposited with private commercial interstate carriers and knowingly caused to be delivered by the U.S. postal service, letters, billing statements, credit cards and other matters, in violation of 18 U.S.C. § 1341, or aided and abetted in such criminal acts.

279. Defendants caused delivery of possibly millions of false documents knowingly to Plaintiffs and to the entire class from as early as 2010 to the present, using the mail system to transmit fraudulent information concerning accounts to Plaintiffs.

Predicate Act: Use of Wire Fraud to Defraud in Violation of 18 U.S.C. § 1343

280. Defendants committed acts constituting indictable offenses under 18 U.S.C. § 1343 in

that they devised a scheme or artifice to defraud Plaintiffs and the greater public by means of false or fraudulent pretenses.

281. Defendants did create false accounts and did cause for the transfer of moneys and funds over the wire from Plaintiffs accounts to the new accounts, in violation of 18 U.S.C. § 1343, or aided and abetted in such criminal acts.

282. Defendants caused for the illegal transfer of moneys on numerous accounts, from as early as 2010 to the present, using wire transfers to transmit fraudulent transfer requests and information concerning the Plaintiffs'.

Predicate Act: Use of Bank Fraud to Defraud in Violation of 18 U.S.C. § 1344

283. Defendants committed acts constituting indictable offenses under 18 U.S.C. § 1344 in that they knowingly executed a scheme to obtain moneys, funds, credits or other property under the control of a financial institution by means of a false or fraudulent pretense.

284. Defendants devised a scheme to obtain moneys, funds or other property under the control of Wells Fargo, by means of false or fraudulent pretenses.

285. Defendants had access to and control over Plaintiffs' accounts.

286. Defendants used this access to fraudulently create new accounts and transfer money from a Plaintiffs' account to a new account with monthly fees.

287. Defendants created false accounts and initiated the transfer of moneys in the control of the financial institution, in violation of 18 U.S.C. § 1344, or aided and abetted in such criminal acts.

288. Defendants caused for the illegal transfer from as early as 2010 to the present and used these fraudulent pretenses of new accounts to generate more revenue for Defendants, and for individual workers to keep their positions within the company.

Continuity of Conduct

289. Defendants violations of these laws as set forth herein, each of which directly and

proximately injured Plaintiffs and Class Members, constituted a continuous course of conduct from as early as 2010 to the present.

290. These acts were intended to obtain money from Plaintiffs and Class Members, and to increase stock price through false representations, fraud, deceit, and other improper and unlawful means.

291. Therefore, violations were a part of a pattern of racketeering activity under 18 U.S.C. § 1961 (1) and (5).

292. On information and belief, Defendants have conducted and/or participated directly and/or indirectly, in the conduct of the affairs of the alleged enterprises through a pattern of racketeering activity as defined in violation of 18 U.S.C. § 1962(c).

293. The unlawful actions of Defendants, each of them, have directly, illegally, and proximately caused and continue to cause injuries to Plaintiffs' in their business and property.

294. Pursuant to 18 U.S.C. § 1964 (c), Plaintiffs are entitled to recover treble damages plus costs and attorneys' fees from each and every Defendant.

WHEREFORE, Plaintiffs, on their own behalf and on behalf of the Class, pray for entry of judgment jointly and severally against Defendants, and awarding Plaintiffs and the Class compensatory damages, statutory damages, treble damages, punitive damages, and reasonable attorney's fees and costs; and such other and further relief as this Court deems just and proper.

FIFTEENTH CLAIM FOR RELIEF

Civil Violation of Electronic Mail Fraud, 18 U.S.C. §1037 *et seq.*

295. Plaintiffs incorporate by reference all allegations of the preceding paragraphs as though fully set forth herein.

296. 18 U.S.C. § 1037 is designed to protect individuals from electronic mail fraud.

297. Defendants in affecting interstate commerce, knowingly registered, using information that materially falsifies the identity of the actual registrant, for five or more electronic mail accounts, or online user accounts, and intentionally initiated the transmission of multiple commercial electronic mail messages from said online user accounts.

298. Plaintiffs allege Defendants actions, as set forth above, constitute electronic mail fraud as set forth in 18 U.S.C. § 1037 *et seq.* and that Plaintiffs and Class Members were harmed and damaged to their detriment.

WHEREFORE, Plaintiffs, on their own behalf and on behalf of the Class, pray for entry of judgment jointly and severally against Defendants, and awarding Plaintiffs and the Class compensatory damages, statutory damages, treble damages, punitive damages, and reasonable attorney's fees and costs; and such other and further relief as this Court deems just and proper.

SIXTEENTH CLAIM FOR RELIEF

Request for Injunctive Relief

299. Plaintiffs incorporate by reference all allegations of the preceding paragraphs as though fully set forth herein.

300. Plaintiffs contend that the CEO of Wells Fargo and repeatedly stated that Wells Fargo will continue its cross selling and other current business practices and sells action until January 1, 2017.

301. Plaintiffs contend that Defendants have already admitted that the cross selling is fraught with fraudulent activity, and driven by pressuring the sale of services Plaintiffs and other Class Members do not want or need.

302. Defendants have already been fined for this activity, and if it is allowed to continue, unabated, thousands or hundreds of thousands of unsuspecting customers will be sold products, or have their confidential information used without their authorization or consent.

303. Without the issuance of an immediate injunction, Defendants can continue business as normal, violating laws, engaging in fraudulent activities, opening accounts, emails, credit cards, running unauthorized credit reports, and the other various acts set forth herein.

304. Unless Defendants are enjoined from their criminal and fraudulent behavior, and sales, Plaintiffs and Class Members will continue to be harmed emotionally, financially and Wells Fargo will further its illegal activities.

305. Plaintiffs request this Court issue an Order immediately enjoining Defendants from offering any product, or service not specifically requested for by the customer, including financial services, providing advice or requests on selling stocks or bonds in Defendants brokerage services, and all other activities of Defendants.

WHEREFORE, Plaintiffs, on their own behalf and on behalf of the Class, pray for entry of an immediate injunction prohibiting Defendants from engaging in selling any product service, or the solicitation of the sale of any product, service, mortgage, stock or bonds, issuance of credit cards, loans, online accounts, opening email accounts, transferring money between customers accounts, and ceasing all fraudulent activities.

SEVENTEENTH CLAIM FOR RELIEF

Intentional and/or Negligent Infliction of Emotional Distress

306. Plaintiffs incorporate by reference all allegations of the preceding paragraphs as though fully set forth herein.

307. Utah law requires that the tort of intentional infliction of emotional distress consist of four elements; 1) the Defendants conduct was outrageous and intolerable in that it offended generally accepted standards of decency and morality; 2) Defendants intended to cause, or acted in reckless disregard of the likelihood of causing, emotional distress; 3) Plaintiffs suffered severe emotional distress, and 4) Defendants conduct proximately caused the emotional distress.¹⁴

308. Plaintiffs and Class Members have laid out specific instances which meet and exceed all four requirements of the four prongs of the intentional inflictions of emotional distress. Plaintiffs have set forth the great anxiety, anger, frustration and distress in not getting answers from Defendants, Defendants cavalier attitude, keeping Plaintiffs and Class Members on hold over 4 hours, and not remedying the situation. Defendants in fact intentionally inflicted emotional distress by their conduct vis-à-vis the Plaintiffs and Class Members with indifference or specifically with the purpose of inflicting emotional distress and/or knowing any reasonable person would have known that such would result and were considered outrageous and intolerable in that they offend against the generally accepted standards of decency and morality.

309. In the alternative, Plaintiffs contend that Defendants cavalier attitude of fraudulently opening accounts is demonstrative of Defendants disregard for the emotional distress suffered by Plaintiffs and Class Members.

WHEREFORE, Plaintiffs, on their own behalf and on behalf of the Class, pray for entry of judgment jointly and severally against Defendants, and awarding Plaintiffs and the Class compensatory damages, statutory damages, treble damages, punitive damages, and reasonable

¹⁴ *Prince v. Bear River Mut. Ins. Co.*, 56 p.3d 524 (Utah 202)

attorney's fees and costs; and such other and further relief as this Court deems just and proper.

Plaintiffs and Class Members request

A. Finding that this action satisfies the prerequisites for maintenance as a class action set forth in set forth in Fed.R.Civ.P. 23, and certifying the Class defined herein;

B. Designating Plaintiffs as the representatives of the Class and their undersigned counsel as Class Counsel;

C. Entering judgment jointly and severally in favor of Plaintiffs and the Class and against Wells Fargo Defendants in a sum adequate to punish Defendants more than 3% of one quarters profits;

D. Entering a declaration that Defendants have breached a contract between it and Plaintiffs and Class Members by allowing unauthorized third-parties to access personal financial data, and/or allowed authorized personnel to knowingly misuse, misappropriate, and engage in fraudulent activity with respect to Plaintiffs and Class Members confidential information, and that Defendants be ordered to pay for mitigation in the form of clawbacks from employees who profited from the illegal activity, along with adequate credit monitoring, identity theft protection, and identity theft insurance, and also be ordered to indemnify Plaintiffs and Class Members for future harm; and

E. Granting all such further and other relief as the Court deems just and appropriate as set forth in the complaint.

PRAYER FOR RELIEF WHEREFORE Plaintiffs pray for judgment as follows:

A. For an Order certifying this action as a class action and appointing Plaintiffs and their Counsel to represent the Class;

B. For equitable relief enjoining Defendants, jointly and severally, from engaging in the wrongful conduct complained of herein pertaining to the misuse and/or disclosure of Plaintiffs and Class members' private information, and from refusing to issue prompt, complete and accurate disclosures to the Plaintiffs and Class members;

C. For equitable relief requiring restitution and disgorgement of the revenues wrongfully

retained as a result of Defendants' wrongful conduct, including clawback and disgorgement provisions;

D. For an award of actual damages, compensatory damages, statutory damages, and statutory penalties, in an amount to be determined for Defendants knowing theft, engagement in a continuous pattern of fraud, conspiracy to commit fraud, identity theft, cleaning up each customers' account from inaccurate reporting to credit agencies ;

E. For an award of punitive damages;

F. An award of anti-ting violations with treble damages, attorneys' fees and costs;

F. For an award of costs of suit and attorneys' fees, as allowable by law; and

G. Such other and further relief as this court may deem just and proper as plead herein.

DEMAND FOR JURY TRIAL

Plaintiffs hereby demand a jury trial of their claims to the extent authorized by law.

Dated: November 2, 2016

Christensen Young & Associates, PLLC
/s/ Steven A. Christensen.

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Zane L. Christensen

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