

C 07-0916 RSL

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

GEORGE COLE, a Washington resident, on
behalf of himself and all others similarly
situated,

Plaintiffs,

v.

WELLS FARGO BANK, N.A., a national
association,

Defendant.

NO.

C 07-0916 RSL

**CLASS ACTION COMPLAINT FOR
DAMAGES, RESTITUTION, AND
INJUNCTIVE RELIEF**

DEMAND FOR JURY TRIAL

Plaintiff, on behalf of himself and all others similarly situated, hereby demands a trial
by jury and alleges as follows:

I. PARTIES

1.1 Plaintiff George Cole is an individual residing in the Western District of
Washington.

1.2 Upon information and belief, Defendant Wells Fargo Bank, N.A. ("Wells
Fargo") is a national association with its principal place of business in San Francisco,
California. Wells Fargo maintains various offices and does substantial and continuous
business in the state of Washington, including in the Western District of Washington.

II. JURISDICTION AND VENUE

2.1 This is a class action.

1 the PMA Package on its website, in its branch offices, and, upon information and belief,
2 elsewhere.

3 3.3 One of the advertised available features of the PMA Package is a personal line
4 of credit account (the "Personal Line of Credit").

5 3.4 Beginning in 2006, Wells Fargo uniformly promised in its advertising and
6 elsewhere not to charge an annual fee on the Personal Line of Credit for PMA Account holders.

7 3.5 Plaintiff George Cole holds a PMA Account, and signed up for the Personal
8 Line of Credit as part of the account. Wells Fargo represented to Plaintiff that it would not
9 charge an annual fee in connection with the Personal Line of Credit.

10 3.6 Nevertheless, in August 2006, Wells Fargo invoiced Plaintiff for a \$25.00
11 annual fee, purportedly in connection with his Personal Line of Credit. Wells Fargo
12 automatically withdrew the \$25.00 annual fee from Plaintiff's PMA Account in or around
13 October 2006.

14 3.7 Wells Fargo failed to furnish to Plaintiff an initial disclosure statement that
15 accurately reflected the legal obligation between the parties, as required by the federal Truth in
16 Lending Act, 15 U.S.C. § 1601 *et seq.* and pertinent implementing regulations ("TILA").
17 Wells Fargo also failed to furnish to Plaintiff a change in terms disclosure in compliance with
18 TILA requirements before it charged the \$25.00 annual fee.

19 3.8 Wells Fargo has not repaid Plaintiff the monies wrongfully charged.

20 3.9 Wells Fargo has also failed to notify Plaintiff that the monies were wrongfully
21 charged, in violation of TILA.

22 3.10 Wells Fargo has engaged in substantially the same course of conduct with
23 numerous other customers in multiple counties in the Western District of Washington,
24 including King County.

1 IV. CLASS ACTION ALLEGATIONS

2 4.1 Plaintiff brings this action on behalf of himself and two plaintiff classes initially
3 defined as follows:

4 Nationwide Class: All persons and entities who, at any time from January 2006
5 through the present, (1) maintained a PMA Account with Wells Fargo, (2)
6 contracted for the no fee personal line of credit feature of the PMA Account, and
(3) were charged a fee in connection with the personal line of credit.

7 Washington Class: All persons and entities who, at any time from January 2006
8 through the present, (1) maintained a PMA Account with Wells Fargo through a
9 branch located within the state of Washington, (2) contracted for the no fee
personal line of credit feature of the PMA Account, and (3) were charged a fee in
connection with the personal line of credit.

10 Excluded from both Classes are Wells Fargo, any entity in which Wells Fargo has a controlling
11 interest or which has a controlling interest in Wells Fargo, and Wells Fargo's legal
12 representatives, assignees, and successors. Also excluded are the judge to whom this case is
13 assigned and any member of the judge's immediate family.

14 4.2 This action has been brought and may be maintained as a class action under
15 Federal Rule of Civil Procedure (F.R.C.P.) 23.

16 4.3 Numerosity of the Class – F.R.C.P. 23(a)(1). Class members are so numerous
17 that their individual joinder herein is impracticable. Plaintiff estimates that the members of
18 each Class number in the thousands or tens of thousands. The precise number of Class
19 members and their addresses are unknown to Plaintiff, but can be obtained from Wells Fargo's
20 records.

21 4.4 Existence and predominance of common questions of fact and law –
22 F.R.C.P. 23(a)(2), (b)(3). Common questions of law and fact exist as to all Class members.
23 These questions predominate over the questions affecting only individual Class members, and
24 include:
25
26

1 (a) Whether Wells Fargo engaged in a common course of charging customers a fee
2 for the Personal Line of Credit, after uniformly representing to and agreeing with those
3 customers that it would not charge such a fee.

4 (b) Whether Wells Fargo engaged in a common course of failing to furnish an initial
5 disclosure to customers who signed up for the Personal Line of Credit that reflected the terms
6 of the legal obligation between the parties, in violation of Regulation Z.

7 (c) Whether Wells Fargo's conduct, as alleged herein, violates 15 U.S.C. § 1637.

8 (d) Whether Wells Fargo's practices, as alleged herein, have the capacity to deceive
9 a substantial portion of the public.

10 (e) Whether Wells Fargo has violated Washington's Consumer Protection Act,
11 RCW § 19.86.020.

12 (f) Whether Wells Fargo engaged in a common course of failing and refusing to
13 reimburse the improper and undisclosed fee charged for the Personal Line of Credit.

14 (g) Whether Wells Fargo has been unjustly enriched as a result of the conduct
15 alleged herein.

16 4.7 **Typicality – F.R.C.P. 23(a)(3)**. Plaintiff's claims are typical of the claims of
17 the Classes because, as with all other Class members, Plaintiff was charged a fee by Wells
18 Fargo for the Personal Line of Credit, even though Wells Fargo represented to and agreed with
19 Plaintiff that it would not charge such a fee.

20 4.8 **Adequacy – F.R.C.P. 23(a)(4)**. Plaintiff is an adequate representative of both
21 Classes, because his interests do not conflict with the Classes, and he has retained counsel
22 experienced and competent in consumer class action litigation. The interests of the Class
23 members will be fairly and adequately protected by Plaintiff and his counsel.

24 4.9 **Superiority – F.R.C.P. 23(b)(3)**. The class action is superior to other available
25 means for the fair and efficient adjudication of Class members' claims. The damages or other
26 financial detriment suffered by individual Class members is relatively small compared to the

1 burden and expense that individual litigation of the Class members' claims against Defendant
2 would entail. It would thus be virtually impossible for Class members, on an individual basis,
3 to obtain effective redress for the wrongs done to them. Furthermore, even if Class members
4 could afford such individualized litigation, the court system could not. Individualized litigation
5 would create the danger of inconsistent or contradictory judgments arising from the same set of
6 facts. Individualized litigation would also increase the delay and expense to all parties and the
7 court system from the issues raised by this action. By contrast, the class action device provides
8 the benefits of adjudication of these issues in a single proceeding, economies of scale, and
9 comprehensive supervision by a single court, and presents no unusual management difficulties
10 under the circumstances present here.

11 **V. FIRST CLAIM FOR RELIEF: VIOLATION OF THE TRUTH IN LENDING**
12 **ACT, 15 U.S.C. § 1601 et seq.**

13 5.1 Plaintiff, on his own behalf and on behalf of the Nationwide Class, realleges and
14 incorporates paragraphs 1 through 4.10 of this Complaint as though fully set forth herein.

15 5.2 Under 15 U.S.C. § 1601 et seq. (TILA) and 12 C.F.R. § 226.1 et seq. (the
16 regulations promulgated by the Board of Governors of the Federal Reserve System to
17 implement TILA, known as Regulation Z), Defendant was obliged to make certain
18 disclosures to Plaintiff, including an initial disclosure statement reflecting the terms of the
19 legal obligation between the parties personal line of credit, including the amounts of all
20 fees that would be charged. By failing to provide Plaintiff with the required disclosures,
21 Defendant violated 15 U.S.C. § 1637, 12 C.F.R. § 226.5, 12 C.F.R. § 226.6, and 12 C.F.R.
22 § 226.9.

23 5.3 Accordingly, on behalf of himself and the other Nationwide Class members,
24 Plaintiff seeks actual damages, statutory damages, and costs of suit, including a reasonable
25 attorneys' fee, under 15 U.S.C. § 1640.
26

1 **VI. SECOND CLAIM FOR RELIEF: VIOLATION OF THE WASHINGTON**
2 **CONSUMER PROTECTION ACT, RCW § 19.86.010 et seq.**

3 6.1 Plaintiff, on his own behalf and on behalf of the Washington Class, realleges
4 and incorporates paragraphs 1 through 5.3 of this Complaint as though fully set forth
5 herein.

6 6.2 Wells Fargo is a “person” within the meaning of the Washington Consumer
7 Protection Act, RCW § 19.86.010(1), and conducts “trade” and “commerce” within the
8 meaning of the Washington Consumer Protection Act, RCW § 19.86.010(2).

9 6.3 Plaintiff and the other Washington Class members are “persons” within the
10 meaning of the Washington Consumer Protection Act, RCW § 19.86.010(1), and the fees
11 wrongfully charged in connection with Plaintiff’s personal line of credit constitute “assets”
12 within the meaning of the Washington Consumer Protection Act, RCW § 19.86.010(3).

13 6.4 Defendant’s actions are unfair and/or deceptive within the meaning of the
14 Washington Consumer Protection Act, RCW § 19.86.010 et seq.

15 6.5 Defendant’s actions as alleged herein occurred in the conduct of trade or
16 commerce directly or indirectly affecting the people of the State of Washington.

17 6.6 Defendant advertises a no-fee personal line of credit as one of the features of
18 its PMA Account. Defendant’s charging a fee and failure to notify its customers of same
19 has the tendency or capacity to mislead consumers.

20 6.7 Defendant’s general course of conduct has an impact on the public interest,
21 and the acts complained of herein are ongoing and/or have a substantial likelihood of being
22 repeated.

23 6.8 Defendant’s conduct has injured Plaintiff’s property and the property of all
24 others similarly situated.

25 6.9 Plaintiffs and the other Washington Class members are therefore entitled to
26 actual damages, treble damages, costs of suit, including a reasonable attorneys’ fee, and
such further equitable relief as the Court may deem proper.

1 **VII. THIRD CLAIM FOR RELIEF: BREACH OF CONTRACT**

2 7.1 Plaintiff, on his own behalf and on behalf of the Nationwide Class, realleges
3 and incorporates paragraphs 1 through 6.9 of this Complaint as though fully set forth
4 herein.

5 7.2 Wells Fargo breached its written and oral contracts with Plaintiff and the
6 other Nationwide Class members not to charge a fee on the personal line of credit
7 associated with the PMA Account.

8 7.3 As a result of Wells Fargo's breach of contract, Plaintiff and the other
9 Nationwide Class members have been damaged in an amount to be proven at trial.

10 **VIII. FOURTH CLAIM FOR RELIEF: UNJUST ENRICHMENT**

11 8.1 Plaintiff, on his own behalf and on behalf of the Nationwide Class, realleges
12 and incorporates paragraphs 1 through 7.3 of this Complaint as though fully set forth
13 herein.

14 8.2 In doing the things herein alleged, Wells Fargo has received monies and
15 benefits and wrongfully accepted and retained those benefits to the detriment of Plaintiff
16 and all others similarly situated.

17 8.3 Defendant's enrichment at the expense of Plaintiff and the other Nationwide
18 Class members was unjust. It is unconscionable for Defendant to retain those monies
19 received and any interest thereon and proceeds therefrom.

20 8.4 Plaintiff and the other Nationwide Class members are therefore entitled to a
21 return or refund of all amounts they have paid Defendant for improper and undisclosed
22 charges.

23 **IX. FIFTH CLAIM FOR RELIEF: INJUNCTIVE RELIEF**

24 9.1 Plaintiff, on his own behalf and on behalf of the Nationwide Class, realleges and
25 incorporates paragraphs 1 through 8.4 of this Complaint as though fully set forth herein.
26

1 DATED this 13th day of June, 2007.

2 TOUSLEY BRAIN STEPHENS PLLC

3
4 

5 By _____
6 Kim D/Stephens, WSBA #11984
7 Michael D. Daudt, WSBA #25690
8 Beth E. Terrell, WSBA #26759
9 Paul W. Moomaw, WSBA #32728
10 *Attorneys for Plaintiffs*

11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
GALLAGHER LAW OFFICE, P.S.
Daniel C. Gallagher, WSBA # 21940
Attorneys for Plaintiffs