

1 Michael L. Schrag (SBN 185832)  
2 Joshua J. Bloomfield (SBN 212172)  
3 **GIBBS LAW GROUP LLP**  
4 505 14th Street, Suite 1110  
5 Oakland, California 94612  
6 Telephone: (510) 350-9700  
7 Facsimile: (510) 350-9701  
8 mls@classlawgroup.com  
9 jjb@classlawgroup.com

6 Richard M. Paul III  
7 Ashlea G. Schwarz  
8 **PAUL LLP**  
9 601 Walnut Street, Suite 300  
10 Kansas City, Missouri 64106  
11 Telephone: (816) 984-8100  
12 Facsimile: (816) 984-8101  
13 Rick@PaulLLP.com  
14 Ashlea@PaulLLP.com

12 *Counsel for Plaintiff and Proposed Class*

14 **UNITED STATES DISTRICT COURT FOR THE**  
15 **NORTHERN DISTRICT OF CALIFORNIA**

16 Alicia Hernandez, individually and on behalf  
17 of all others similarly situated,

17 Plaintiff,

18 v.

19 Wells Fargo Bank, N.A.,

20 Defendant.

Case No. 18-cv-07354

**CLASS ACTION COMPLAINT**

DEMAND FOR JURY TRIAL

**I. INTRODUCTION**

1  
2 1. Losing your home through a foreclosure is one of the most disruptive events that you  
3 could experience.

4 2. Recognizing this, Congress set aside \$50 billion in stimulus funding for the Home  
5 Affordable Modification Program (HAMP). Created in the wake of the mortgage crisis, HAMP was  
6 designed to keep people in their homes, providing a measure of stability to homeowners facing  
7 unemployment or underemployment in harsh economic conditions.

8 3. Wells Fargo accepted up to \$6.4 billion in HAMP funding, but failed to fulfill its  
9 obligations and duties to its customers under HAMP’s loan modification program.

10 4. Rather than use software developed by Fannie Mae to calculate a borrower’s eligibility  
11 for HAMP, Wells Fargo developed its own proprietary tool. Wells Fargo now admits that this tool  
12 caused systematic miscalculations that led to Wells Fargo wrongfully denying loan modifications to  
13 over 870 borrowers who qualified for a loan modification under HAMP. Of those, Wells Fargo admits  
14 it foreclosed on 545 borrowers when it should have instead offered them a loan modification.

15 5. Loan modifications often substantially reduce borrowers’ monthly payments.

16 6. Plaintiff Alicia Hernandez was the exact type of person whom HAMP was supposed to  
17 help. Prior to 2008, she was working full-time and bought a condo in North Bergen, New Jersey.

18 7. When the recession hit, however, she lost her job to downsizing and needed the help that  
19 HAMP was supposed to provide.

20 8. Rather than extend a HAMP modification, Wells Fargo miscalculated and initiated  
21 foreclosure proceedings. Ms. Hernandez fought foreclosure pro se for years, but in the end, she was  
22 foreclosed on.

23 9. As part of its voluntary remediation program – designed to reassure investors and the  
24 public that Wells Fargo can be a trusted brand once again – Wells Fargo sent her a check for \$15,000.  
25 The accompanying letter informed Ms. Hernandez that Wells Fargo had discovered that she wasn’t  
26 offered a loan modification due to a “faulty calculation.” And if not for the error, she would have been  
27 approved for a HAMP modification.

28 10. Wells Fargo’s letter did not explain how Wells Fargo determined the amount offered by

1 check, but nonetheless assured that it should be sufficient to “make things right.”

2 11. Seeking full and fair compensation, Plaintiff brings this action on behalf of herself and  
3 others similarly affected by Wells Fargo’s faulty calculations.

4 **II. JURISDICTION**

5 12. This Court has subject matter jurisdiction over this action under 28 U.S.C. § 1332(d)(2)  
6 because this is a class action wherein the amount in controversy exceeds the sum or value of  
7 \$5,000,000, exclusive of interest and costs, there are at least 870 members in the proposed class, and at  
8 least one member of the class of plaintiffs is a citizen of a state different from the Defendant.

9 13. This Court has personal jurisdiction over Defendant Wells Fargo Bank, N.A., because it  
10 is headquartered in California and conducts business in the state of California.

11 14. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b) because a substantial part  
12 of the events or omissions giving rise to the claims occurred in, were directed to, and/or emanated from  
13 this District.

14 **III. INTRADISTRICT ASSIGNMENT**

15 15. Assignment to the Oakland/San Francisco division is proper because Wells Fargo Bank,  
16 N.A. is headquartered in San Francisco, California and a substantial part of the events or omissions  
17 which give rise to the claims occurred there.

18 **IV. PARTIES**

19 16. Plaintiff Alicia Hernandez is a resident and citizen of Pennsylvania, who owned a home  
20 in New Jersey during the relevant time period.

21 17. Defendant Wells Fargo Bank, N.A. is incorporated in Delaware, and its principal place  
22 of business is 420 Montgomery Street, San Francisco, California 94104.

23 **V. FACTUAL ALLEGATIONS**

24 **A. Background on Wells Fargo**

25 18. Wells Fargo has historically been the nation’s largest mortgage lender. That lasted until  
26 a string of scandals stemming from Wells Fargo’s misdeeds started coming to light in 2017.<sup>1</sup> According

27 \_\_\_\_\_  
28 <sup>1</sup> Samantha Sharf, *Quicken Loans Overtakes Wells Fargo As America’s Largest Mortgage Lender*, FORBES (Feb. 5, 2018),  
<https://tinyurl.com/largest-lender>.

1 to Wells Fargo’s latest quarterly filing with the Securities & Exchange Commission (SEC), the bank  
2 holds \$284 billion in mortgage debt, and another \$36 billion on second-mortgages.<sup>2</sup>

3 19. At the end of 2016, federal regulators revealed that Wells Fargo’s employees had  
4 “secretly created millions of unauthorized bank and credit card accounts without their customers  
5 knowing it.”<sup>3</sup>

6 20. In July 2017, the *New York Times* revealed that Wells Fargo had charged more than  
7 800,000 borrowers for “force-placed” car insurance that they did not want or need.<sup>4</sup> The bank was only  
8 allowed to charge for “force-placed” insurance if the car-loan customer did not have their own auto  
9 insurance, but these customers *did* have their own insurance.<sup>5</sup> The *New York Times* reported that 25,000  
10 Wells Fargo borrowers had their vehicles wrongfully repossessed as a result of Wells Fargo adding  
11 these additional premium amounts for the force-placed insurance to consumers’ monthly loan  
12 statements.<sup>6</sup>

13 21. In April 2018, federal regulators settled an enforcement action with Wells Fargo for \$1  
14 billion related to its force-placement of unneeded auto insurance, on top of the \$1.5 billion that Wells  
15 Fargo already faced in penalties from the Department of Justice and state regulators for the opening of  
16 fraudulent accounts.<sup>7</sup>

17 22. And now, Wells Fargo has caused certain customers to lose their homes and suffer  
18 financial, physical, and emotional hardships. In August 2018, Wells Fargo admitted that a “software  
19 error” had caused it to deny mortgage modifications to 625 borrowers who actually qualified for and  
20 were entitled to a mortgage modification under federal law.<sup>8</sup> This admission was based on information  
21 it knew in 2015 but chose not to disclose for nearly three years.

22 23. In November 2018, Wells Fargo announced that it had understated the number of

23 <sup>2</sup> Wells Fargo & Company, *Form 10-Q for Quarter Ending Sept. 30, 2018*, SECURITIES & EXCHANGE COMMISSION (Oct. 24,  
24 2018), <https://tinyurl.com/ybazi2wl>.

<sup>3</sup> Jackie Wattles et al., *Wells Fargo's 20-month nightmare*, CNN (Apr. 24, 2018), <https://tinyurl.com/cnn-20-mo-nightmare>.

<sup>4</sup> Gretchen Morgenson, *Wells Fargo Forced Unwanted Auto Insurance on Borrowers*, NEW YORK TIMES (July 27, 2017),  
25 <https://tinyurl.com/y8p5c4sd>.

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

<sup>6</sup> *Id.*

<sup>7</sup> Matthew Goldstein, *Wells Fargo Pays \$1 Billion to Federal Regulators*, NEW YORK TIMES (Apr. 20, 2018),  
27 <https://tinyurl.com/wf-reg-fines>.

<sup>8</sup> Ben Lane, *Wells Fargo reveals software error wrongly denied much-needed mortgage modifications*, HOUSING WIRE  
28 (Aug. 3, 2018), <https://tinyurl.com/y8j9ljvg>.

1 affected borrowers and that it was actually 40% more; now Wells Fargo claims a total of 874 were  
2 wrongfully denied loan modifications by the software error.<sup>9</sup> These borrowers should have received a  
3 loan modification under the federal Home Affordable Modification Program (HAMP), but were  
4 incorrectly denied.<sup>10</sup>

5 24. In the end, at least 545 mortgage borrowers lost their homes through foreclosures  
6 because of Wells Fargo's software error.<sup>11</sup>

7 25. This lawsuit seeks remedies for the harm Wells Fargo caused all borrowers who were  
8 erroneously denied a mortgage modification.

9 **B. The Federal HAMP Program**

10 26. "In response to rapidly deteriorating financial market conditions in the late summer and  
11 early fall of 2008, Congress enacted the Emergency Economic Stabilization Act. The centerpiece of the  
12 Act was the Troubled Asset Relief Program (TARP), which required the Secretary of the Treasury to  
13 "implement a plan" to "minimize foreclosures" and keep troubled mortgage-borrowers in their homes.<sup>12</sup>

14 27. The Treasury Secretary created the HAMP program to carry out Congress's mandate.  
15 HAMP received \$50 billion in TARP funds.<sup>13</sup> Mortgage lenders that *chose* to participate in the HAMP  
16 program were eligible to receive allocations of these stimulus funds.

17 28. Wells Fargo chose to participate in HAMP.

18 29. To participate, Wells Fargo was required to comply with all HAMP program  
19 requirements. In exchange for up to \$6.4 billion in HAMP funds, Wells Fargo agreed to abide by all  
20 "guidelines and procedures issued by the Treasury with respect to [HAMP]" and "any supplemental  
21 documentation ... issued by the Treasury," including "Supplemental Directives." *See* Wells Fargo,  
22 *Amended and Restated Servicer Participation Agreement*, § 1(B).<sup>14</sup>

23 30. In a Supplemental Directive, the Treasury Secretary required loan-servicers participating  
24 in HAMP to issue a mortgage modification to any borrower who met all the criteria to qualify. *See*

25 \_\_\_\_\_  
26 <sup>9</sup> Ben Lane, *Wells Fargo reveals software error led to hundreds of faulty foreclosures*, HOUSING WIRE (Nov. 6, 2018),  
<https://tinyurl.com/y94ezdje>.

27 <sup>10</sup> *Id.*

28 <sup>11</sup> *Id.*

<sup>12</sup> *Wigod v. Wells Fargo Bank, N.A.*, 673 F.3d 547, 556 (7th Cir. 2012).

<sup>13</sup> *Id.*

<sup>14</sup> Available at <https://tinyurl.com/wells-fargo-hamp-agreement>.

1 Supplemental Directive 09–01 (if a borrower meets all qualifying criteria, “the servicer MUST offer the  
2 modification”) (emphasis in original).

3 31. To be eligible for HAMP, borrowers needed to (among other things):

4 a. Show that they had suffered a financial hardship;

5 b. Be able to pay 31% of their monthly income towards the mortgage.

6 32. If the borrower met these eligibility criteria, the loan servicer participating in HAMP  
7 was required to issue a mortgage modification if the “Net Present Value” of the modified mortgage was  
8 positive, meaning it was “more profitable to modify the loan” than to “allow the loan to go into  
9 foreclosure.”<sup>15</sup> In simplified terms, the basic formula for calculating Net Present Value is:

10 
$$\text{Net Present Value} = (\text{Expected Revenue from Modified Mortgage}) - (\text{Expected Cost of Foreclosing}).$$

11 33. In essence, a positive Net Present Value meant that the lender was expected to lose  
12 money by foreclosing on rather than modifying the mortgage.

13 34. If the Net Present Value calculation was positive, the Treasury Secretary required the  
14 loan servicer to issue a modification. If it was negative, the servicer could choose to offer a  
15 modification, but did not have to. *See* Supplemental Directive 09-01. Loan servicers received HAMP  
16 money for every loan modification they issued, as an incentive to offer modifications.

17 35. When modifying a mortgage, HAMP-participating lenders were required to reduce the  
18 borrower’s monthly mortgage payment to get it “as close as possible to 31 percent” of the borrower’s  
19 monthly income.<sup>16</sup> To achieve this, loan servicers were required to reduce the interest rate on the loan.<sup>17</sup>  
20 If this reduction was insufficient to get the payment down to 31 percent of borrower income, the loan  
21 servicer was required to convert the mortgage to a 40-year term.<sup>18</sup> If that wasn’t enough, the servicer  
22 had to place the loan in forbearance and waive interest on the loan while in forbearance.<sup>19</sup>

23 36. Borrowers who qualified for HAMP were generally given a “trial” modification for  
24 three months or more. If they were able to pay the modified amount and remained HAMP-eligible, they  
25 could receive a permanent modification.

26  
27 <sup>15</sup> *Wigod v. Wells Fargo Bank, N.A.*, 673 F.3d 547, 557 (7th Cir. 2012).

<sup>16</sup> Supplemental Directive 09–01.

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

1           **C.      Wells Fargo’s Proprietary Software Miscalculates “Net Present Value,” Wrongly**  
 2           **Denying Mortgage Modifications to Borrowers**

3           37.      Fannie Mae created a software tool for loan servicers to use for calculating Net Present  
 4 Value (NPV) for HAMP purposes.<sup>20</sup> Fannie Mae is a financial-services corporation created by  
 5 Congress.

6           38.      As the Treasury Secretary notes, Fannie Mae’s NPV calculator was made available to  
 7 HAMP-participating loan-servicers on the HAMP servicer web portal, “www.financialstability.gov.”<sup>21</sup>

8           39.      The Treasury Secretary’s Supplemental Directive 09-01 allows loan servicers with \$40  
 9 billion or more in mortgage loans to use their own proprietary NPV calculator, rather than the default  
 10 calculator provided on the HAMP web portal.<sup>22</sup>

11          40.      In a July 2018 SEC filing, Wells Fargo revealed that it had discovered a “calculation  
 12 error” in a software tool it used to determine whether to issue a mortgage loan modification.<sup>23</sup> The tool  
 13 miscalculated certain fees when “determining whether a customer qualified for a mortgage loan  
 14 modification pursuant to the requirements” of HAMP.<sup>24</sup> Wells Fargo said that the software error was  
 15 corrected on October 20, 2015; yet Wells Fargo did not disclose the error for another three years.<sup>25</sup>  
 16 Wells Fargo determined that the software error had affected “approximately 625 customers,” who were  
 17 “incorrectly denied a loan modification.”<sup>26</sup> Wells Fargo said it had set aside \$8 million to “remediate”  
 18 the error without any explanation as to how it calculated this amount.<sup>27</sup>

19          41.      In an October 2018 SEC filing, Wells Fargo expanded the number of consumers harmed  
 20 by its conduct. It said that although the software error had been fixed on October 20, 2015, Wells Fargo  
 21 had discovered “related errors” that had continued until April 30, 2018.<sup>28</sup> Wells Fargo said, “Similar to  
 22 the initial calculation error, these errors caused an overstatement of the attorneys’ fees that were  
 23

24 <sup>20</sup> See Supplemental Directive 09-01, at \*4, available at <https://tinyurl.com/hamp-supp-dir>.

25 <sup>21</sup> *Id.* at \*4-5.

26 <sup>22</sup> *Id.* at \*5.

27 <sup>23</sup> Wells Fargo & Company, *10-Q for Period Ending June 30, 2018*, SEC (July 25, 2018), <https://tinyurl.com/y9te58qx>.

28 <sup>24</sup> *Id.* at \*5.

<sup>25</sup> *Id.*

<sup>26</sup> *Id.*

<sup>27</sup> *Id.*

<sup>28</sup> Wells Fargo & Co., *10-Q for Period Ending September 30, 2018*, <https://tinyurl.com/ybazz2wl>.

1 included for purposes of determining whether a customer qualified for a mortgage loan modification.”<sup>29</sup>  
 2 Attorneys’ fees are relevant to HAMP’s Net Present Value calculation because they are a substantial  
 3 cost in the foreclosure process. An overstatement of attorneys’ fees would exaggerate the loss that the  
 4 lender expected to take on the loan, reducing the Net Present Value of a modification, and erroneously  
 5 reducing the number of modifications offered. As a result of the attorneys’ fees overstatement, “870  
 6 customers were incorrectly denied a loan modification,” according to Wells Fargo.<sup>30</sup> Of those, 545  
 7 customers lost their homes to foreclosure.<sup>31</sup>

8 42. In its latest SEC filing, Wells Fargo said it had “contacted a substantial majority of the  
 9 approximately 870 affected customers to provide remediation.”<sup>32</sup> Wells Fargo’s “remediation” is  
 10 typically a check of between \$1,400 and \$25,000. The basis for these amounts is not explained or  
 11 supported.

12 43. Plaintiff brings this lawsuit on behalf of herself and other similarly situated borrowers  
 13 throughout the U.S. because this amount is insufficient to compensate for the loss of their homes and  
 14 other damages and injuries suffered.

15 44. Wells Fargo essentially concedes as much when, in its SEC filing, it also stated that it is  
 16 giving customers “the option also to pursue no-cost mediation with an independent mediator”<sup>33</sup> to  
 17 negotiate additional compensation.

18 **D. Wells Fargo’s Miscalculation Errors and Resulting Foreclosures Caused Class**  
 19 **Members Substantial Financial and Other Harm**

20 45. In the wake of the 2008 financial crisis, homeowners were struggling to make ends  
 21 meet.

22 46. Class members applied for loan modifications and many were told that they did not  
 23 qualify for a loan modification. Class members had little choice but to take Wells Fargo at its word that  
 24 they did not qualify for HAMP.

25 47. Starting in the fall of 2018, Wells Fargo sent borrowers, including Ms. Hernandez, a  
 26

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27 <sup>29</sup> *Id.* at \*6.

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

<sup>31</sup> *Id.*

<sup>32</sup> *Id.*

<sup>33</sup> *Id.*



1 letter. The letter said:

2           When you were considered for a loan modification, you weren't approved, and now we  
3 realize that you should have been. We based our decision on a faulty calculation, and  
4 we're sorry. If it had been correct, you would have been approved for a trial  
5 modification.

6           48.     Included with the letter, Wells Fargo sent Class members a check ranging from \$1,400  
7 to \$25,000. Wells Fargo did not explain the basis for the amount offered to customers and why some  
8 were offered more than others. Nor has Wells Fargo told Class members what the "faulty calculation"  
9 was or why it occurred.

10           49.     But as Wells Fargo admits in the letter, customers suffered serious financial harm as a  
11 result of foreclosures that should never have happened. In the letter, Wells Fargo says: "We've  
12 carefully considered what we can do for you. You'll find a payment enclosed to help make up for your  
13 **financial loss.**" (emphasis added.) Wells Fargo also admits in the letter that customers suffered  
14 "negative reporting" on their credit reports.

15           50.     Although Wells Fargo does not acknowledge it, Class members suffered other  
16 substantial harm as well.

17                   **Plaintiff's Experience**

18           51.     Ms. Hernandez lost her job due to mass layoffs following the financial crisis.

19           52.     She began the loan modification process in 2012-13, but Wells Fargo told her that she  
20 didn't qualify for a HAMP modification. Wells Fargo instituted foreclosure proceedings in late 2013.

21           53.     Ms. Hernandez fought the foreclosure pro se for several years, but Wells Fargo  
22 foreclosed on her property in late 2015, around the same time Wells Fargo now says that it discovered  
23 and fixed the software error.

24           54.     Three years later, in September 2018, Wells Fargo sent Ms. Hernandez its form letter  
25 and a check for \$15,000.

26           55.     The check does not make up for the severe financial and other consequences that Wells  
27 Fargo's calculation error inflicted on Ms. Hernandez, including the money and equity she lost from the  
28 foreclosure, the damage to her credit rating, and other serious consequences for her and her family.

1 **VI. CLASS ALLEGATIONS**

2 56. This putative class action is brought pursuant to Rule 23(b)(2), 23(b)(3), and 23(c)(4) of  
3 the Federal Rules of Civil Procedure on behalf of the following Nationwide Class:

4 All persons who were denied a HAMP mortgage modification by Wells Fargo due to a  
5 calculation error with respect to attorneys' fees for purposes of determining whether a customer  
6 qualified for a loan modification or related errors regarding the maximum allowable foreclosure  
attorneys' fees.

7 57. In addition, Plaintiff asserts claims on behalf of the following New Jersey Subclass:

8 All persons who were denied a HAMP mortgage modification by Wells Fargo for a property  
9 located in New Jersey due to a calculation error with respect to attorneys' fees for purposes of  
10 determining whether a customer qualified for a loan modification or related errors regarding the  
maximum allowable foreclosure attorneys' fees.

11 58. Excluded from the Class are: Wells Fargo Bank, N.A. and any of its parents,  
12 subsidiaries, affiliates, officers and directors, current or former employees, and any entity in which  
13 Wells Fargo has a controlling interest. Also excluded are any individuals who make a timely election to  
14 opt out of this proceeding using the proper protocol. Also excluded are: any federal, state or local  
15 governments, including any governmental departments, agencies, divisions, bureaus, boards, sections,  
16 groups, counsels, or subdivisions. Lastly, excluded from the Class are: any judges assigned to hear any  
17 aspect of this litigation, as well as their immediate family members.

18 59. Plaintiff reserves the right to modify or amend this Class definition before the Court  
19 determines whether certification is appropriate.

20 60. Numerosity. The Class is so numerous that joinder of all members is impracticable. The  
21 number of affected individuals exceeds 800, according to Wells Fargo's own SEC filings.

22 61. Commonality. There are questions of law and fact common to the Class, which  
23 predominate over any questions affecting only individual Class members. These common questions of  
24 law and fact include, without limitation:

- 25 a. Whether Wells Fargo's software program or calculation protocols were negligently  
26 designed and/or used;
- 27 b. Whether Wells Fargo's conduct violated federal HAMP rules;
- 28 c. What caused the miscalculation error(s);

- 1 d. What process Wells Fargo used to determine which borrowers were affected or  
2 unaffected by the miscalculation error(s);
- 3 e. What process Wells Fargo used to determine how much money to send each Class  
4 Member as part of its voluntary remediation program;
- 5 f. What process Wells Fargo used to notify Class Members of the availability of a check  
6 and other relief, given that the foreclosed property address is unlikely to be Class  
7 Members' current address;
- 8 g. Whether Defendant's conduct was an unlawful or unfair business practice under Cal.  
9 Bus. & Prof. Code § 17200, et seq.;
- 10 h. Whether Defendant's conduct emanated from California, such that California law should  
11 be applied for all Class members;
- 12 i. Whether Plaintiff and the Class are entitled to equitable relief, including, but not limited  
13 to, injunctive relief and restitution;
- 14 j. Whether Plaintiff and the other Class members are entitled to actual, statutory, or other  
15 forms of damages, and other monetary relief.

16 62. Typicality. The named plaintiff's claims are typical of those of other Class members  
17 because each seeks to recover for injuries caused by the same calculation error and each was denied a  
18 HAMP mortgage modification by Wells Fargo.

19 63. Adequacy. Plaintiff will fairly and adequately represent and protect the interests of the  
20 members of the Class. Plaintiff's counsel are competent and experienced in litigating class actions.

21 64. Superiority. A class action is superior to other available methods for the fair and  
22 efficient adjudication of this controversy since joinder of all the members of the Class is impracticable.  
23 Furthermore, the adjudication of this controversy through a class action will avoid the possibility of  
24 inconsistent and potentially conflicting adjudication of the asserted claims. There will be no difficulty  
25 in the management of this action as a class action.

26 65. Damages for any individual Class member are likely insufficient to justify the cost of  
27 individual litigation, so that in the absence of class treatment, Defendant's violations of law inflicting  
28 substantial damages in the aggregate would go unremedied.



1 the problem, were within Wells Fargo's exclusive control.

2 74. As a result, any applicable statutes of limitation are tolled.

3 75. In addition, any applicable statutes of limitation have been tolled by Wells Fargo's  
4 knowing, active, and fraudulent concealment of the facts alleged herein. Wells Fargo kept Plaintiff and  
5 all Class Members ignorant of vital information essential to the pursuit of their claims, without any  
6 fault or lack of diligence on the part of Plaintiff.

7 76. Wells Fargo admits in an SEC filing that it knew about the software errors as early as  
8 October 2015. Yet it continued foreclosure proceedings against Plaintiff and Class Members, and did  
9 not inform Plaintiff or Class Members about the errors until late 2018.

10 77. Wells Fargo was also under a continuous duty to disclose this information to Plaintiff  
11 and Class Members.

12 78. Plaintiff and Class Members reasonably relied on Wells Fargo's active concealment of  
13 the facts as alleged herein.

14 79. As a result, Wells Fargo is precluded by estoppel from relying on a statute of limitations  
15 defense.

16 **COUNT I: NEGLIGENCE**

17 (On Behalf of Plaintiff and Nationwide Class)

18 80. Plaintiff incorporates all allegations as if fully set forth herein.

19 81. Wells Fargo owed a duty to Plaintiff and Class Members to implement HAMP's  
20 requirements for offering mortgage modifications.

21 82. Wells Fargo had a duty to exercise reasonable care in the creation, implementation, and  
22 use of its internal software to determine whether a mortgage modification was required under HAMP  
23 regulations.

24 83. Wells Fargo had a duty to ensure that borrowers who met all objective requirements  
25 were given a HAMP mortgage modification.

26 84. Wells Fargo failed to exercise reasonable care in the creation, implementation, and use  
27 of its internal software to determine whether a mortgage modification was required under HAMP  
28 regulations.

1 85. Wells Fargo failed to ensure that borrowers who met all objective requirements were  
2 given or offered a HAMP mortgage modification.

3 86. Wells Fargo denied or failed to offer mortgage modifications to Plaintiff and Class  
4 Members who met all objective requirements to receive a permanent HAMP mortgage modification.

5 87. Wells Fargo breached its duties to Plaintiff and Class Members by:

- 6 a. Failing to perform mortgage servicing functions consistent with its responsibilities to  
7 Plaintiff and Class Members;
- 8 b. Creating, implementing, and using an internal software program and protocols that were  
9 flawed and defective and incorrectly calculated whether a borrower was entitled to a  
10 HAMP mortgage modification;
- 11 c. Failing to properly supervise its agents and employees, including its loss mitigation and  
12 collection personnel; foreclosure attorneys; and technical, computer, and engineering  
13 employees who developed, implemented, and used the internal software to determine  
14 whether a borrower qualified for a HAMP mortgage modification;
- 15 d. Making inaccurate calculations and determinations of Plaintiff's and Class Members'  
16 eligibility for a HAMP mortgage modification;
- 17 e. Not conducting sufficient testing to determine whether its internal software program was  
18 correctly calculating whether a borrower was entitled to a HAMP mortgage  
19 modification;
- 20 f. Failing to give HAMP mortgage modifications and other foreclosure alternatives to  
21 qualified borrowers; and
- 22 g. Concealing the error in its internal software program from approximately 2015 through  
23 October 2018.

24 88. Wells Fargo knew or should have known that borrowers such as Plaintiff and Class  
25 Members would suffer injury as a result of Wells Fargo's failure to exercise reasonable care.

26 89. Wells Fargo's violations of law and/or negligence were the direct and proximate cause  
27 of Plaintiff and Class Members' injuries, harm and economic loss, which Plaintiff and Class Members  
28 suffered and will continue to suffer.



1 97. Wells Fargo engaged in business acts and practices that are immoral, unethical,  
2 oppressive, unscrupulous, and substantially injurious to consumers by, among other things:

- 3 a. Failing to perform mortgage servicing functions consistent with its responsibilities to  
4 Plaintiff and Class Members;
- 5 b. Creating, implementing, and using an internal software program and protocols that were  
6 flawed and defective and incorrectly calculated whether a borrower was entitled to a  
7 HAMP mortgage modification;
- 8 c. Failing to properly supervise its agents and employees, including its loss mitigation and  
9 collection personnel; foreclosure attorneys; and technical, computer, and engineering  
10 employees who developed, implemented, and used the internal software to determine  
11 whether a borrower qualified for a HAMP mortgage modification;
- 12 d. Making inaccurate calculations and determinations of Plaintiff's and Class Members'  
13 eligibility for a HAMP mortgage modification;
- 14 e. Not conducting sufficient testing to determine whether its internal software program was  
15 correctly calculating whether a borrower was entitled to a HAMP mortgage  
16 modification;
- 17 f. Failing to give HAMP mortgage modifications and other foreclosure alternatives to  
18 qualified borrowers; and
- 19 g. Concealing the error in its internal software program from approximately 2015 through  
20 October 2018.

21 98. The harms from these business acts and practices outweigh any potential utility.

22 99. Wells Fargo's business acts and practices offend established public policies that are  
23 tethered to specific constitutional, statutory, and/or regulatory provisions, such as HAMP. The  
24 Department of the Treasury states that "HAMP was designed to help families who are struggling to  
25 remain in their homes."<sup>34</sup>

26 100. A business act or practice is "unlawful" when it is proscribed by some other statute,  
27 regulation, or constitutional provision. "By proscribing 'any unlawful' business practice, the UCL

28 <sup>34</sup> U.S. Dep't of the Treasury, *Home Affordable Modification Program (HAMP)* (accessed Nov. 14, 2018),  
<https://tinyurl.com/treas-hamp>.



1 permits injured consumers to ‘borrow’ violations of other laws and treat them as unlawful competition  
2 that is independently actionable.” *In re Adobe Sys., Inc. Privacy Litig.*, 66 F. Supp. 3d 1197, 1225 (N.D.  
3 Cal. 2014).

4 101. Wells Fargo engaged in business acts or practices that were proscribed by law, including  
5 the following: Wells Fargo engaged in unfair business practices under § 5 of the Federal Trade  
6 Commission (FTC) Act, and Wells Fargo violated the requirements of HAMP, such as Supplemental  
7 Directive 09–01 (if a borrower meets all qualifying criteria, “the servicer MUST offer the  
8 modification”) (emphasis in original).

9 102. Uniformly telling borrowers that they were not qualified for a HAMP mortgage  
10 modification when they in fact were qualified constitutes a fraudulent practice under the UCL because  
11 it was likely to deceive Plaintiff and Class Members about their entitlement to a mortgage modification  
12 under HAMP and the adequacy of Wells Fargo’s methods for evaluating someone’s entitlement to a  
13 HAMP modification.

14 103. Wells Fargo knew or had reason to know that Plaintiff and Class Members were entitled  
15 to a mortgage modification under HAMP, or Wells Fargo acted with reckless disregard for the truth.  
16 Wells Fargo had superior knowledge and exclusive control of the facts, figures, and tools to determine  
17 Plaintiff’s and Class Members’ entitlement to modifications under HAMP, and Plaintiff and Class  
18 Members could not have reasonably discovered the truth without tremendous difficulty.

19 104. Plaintiff saw or heard Wells Fargo’s misrepresentations concerning her entitlement to a  
20 HAMP modification, and reasonably relied on those misrepresentations.

21 105. As a direct and proximate result of Wells Fargo’s unfair, unlawful, and fraudulent  
22 business acts and practices, Plaintiff and Class Members suffered injury in fact and lost money or  
23 property, including through:

- 24 a. wrongful foreclosures;
- 25 b. otherwise avoidable losses of homes to foreclosure;
- 26 c. less favorable mortgage modifications;
- 27 d. increased fees and other costs to avoid or attempt to avoid foreclosure;
- 28 e. lost equity in homes that were foreclosed on;

- 1 f. loss of savings in fruitless attempts to secure mortgage modifications;
- 2 g. loss of opportunities to pursue other refinancing or loss mitigation strategies; and
- 3 h. increased costs associated with lowered credit scores.

4 106. Because of Wells Fargo's unlawful, unfair, and fraudulent business practices, Plaintiff  
5 and Class Members are entitled to relief, including attorneys' fees and costs, restitution, declaratory  
6 relief, and a permanent injunction enjoining Wells Fargo from its unlawful, fraudulent, and unfair  
7 practices. Plaintiff also seeks reasonable attorneys' fees and costs under applicable law, including  
8 Federal Rule of Civil Procedure 23 and California Code of Civil Procedure § 1021.5.

9 **COUNT IV: NEW JERSEY CONSUMER FRAUD ACT**

10 (On Behalf of Plaintiff and New Jersey Subclass)

11 107. Plaintiff incorporates all allegations as if fully set forth herein.

12 108. The New Jersey Consumer Fraud Act, N.J. Stat. §§ 56:8-1, et seq., prohibits  
13 unconscionable practices, deception, fraud, false pretense, false promise, misrepresentation, as well as  
14 the knowing concealment, suppression, or omission of any material fact with the intent that others rely  
15 on the concealment, omission, or fact.

16 109. Wells Fargo's unconscionable and deceptive practices include:

- 17 a. Failing to perform mortgage servicing functions consistent with its responsibilities to  
18 Plaintiff and Class Members;
- 19 b. Creating, implementing, and using an internal software program and protocols that were  
20 flawed and defective and incorrectly calculated whether a borrower was entitled to a  
21 HAMP mortgage modification;
- 22 c. Failing to properly supervise its agents and employees, including its loss mitigation and  
23 collection personnel; foreclosure attorneys; and technical, computer, and engineering  
24 employees who developed, implemented, and used the internal software to determine  
25 whether a borrower qualified for a HAMP mortgage modification;
- 26 d. Making inaccurate calculations and determinations of Plaintiff's and Class Members'  
27 eligibility for a HAMP mortgage modification;
- 28 e. Not conducting sufficient testing to determine whether its internal software program was

1 correctly calculating whether a borrower was entitled to a HAMP mortgage  
2 modification;

3 f. Failing to give HAMP mortgage modifications and other foreclosure alternatives to  
4 qualified borrowers; and

5 g. Concealing the error in its internal software program from approximately 2015 through  
6 October 2018.

7 110. Wells Fargo's representations and omissions were material because they were likely to  
8 deceive Plaintiff and Class Members about their entitlement to a mortgage modification under HAMP  
9 and the adequacy of Wells Fargo's methods for evaluating someone's entitlement to a HAMP  
10 modification.

11 111. Wells Fargo intended to mislead Plaintiff and Class Members and induce them to rely on  
12 its misrepresentations and omissions.

13 112. Wells Fargo acted intentionally or knowingly to violate New Jersey's Consumer Fraud  
14 Act, and recklessly disregarded Plaintiff and Class Members' rights.

15 113. As a direct and proximate result of Wells Fargo's unconscionable and deceptive  
16 practices, Plaintiff and Class Members suffered injury in fact and lost money or property, including  
17 through:

18 a. wrongful foreclosures;

19 b. otherwise avoidable losses of homes to foreclosure;

20 c. less favorable mortgage modifications;

21 d. increased fees and other costs to avoid or attempt to avoid foreclosure;

22 e. lost equity in homes that were foreclosed on;

23 f. loss of savings in fruitless attempts to secure mortgage modifications;

24 g. loss of opportunities to pursue other refinancing or loss mitigation strategies; and

25 h. increased costs associated with lowered credit scores.

26 114. Because of Wells Fargo's unconscionable and deceptive business practices, Plaintiff and  
27 Class Members are entitled to relief, including injunctive relief, other equitable relief, actual damages,  
28 treble damages, restitution, and attorneys' fees and costs.

1 **COUNT V: NEGLIGENCE PER SE**

2 (On Behalf of Plaintiff and Nationwide Class)

3 115. Plaintiff incorporates by reference the above allegations as if fully set forth herein.

4 116. Wells Fargo violated California’s Unfair Competition Law (UCL), as fully discussed  
5 above. Moreover, as discussed above, Wells Fargo also violated federal HAMP regulations, such as  
6 Supplemental Directive 09–01 (if a borrower meets all qualifying criteria, “the servicer MUST offer the  
7 modification”).

8 117. Wells Fargo’s violation of the UCL and HAMP regulations directly and proximately  
9 caused Plaintiff’s and Class Members’ injuries including but not limited to:

- 10 a. wrongful foreclosures;
- 11 b. otherwise avoidable losses of homes to foreclosure;
- 12 c. less favorable mortgage modifications;
- 13 d. increased fees and other costs to avoid or attempt to avoid foreclosure;
- 14 e. lost equity in homes that were foreclosed on;
- 15 f. loss of savings in fruitless attempts to secure mortgage modifications;
- 16 g. loss of opportunities to pursue other refinancing or loss mitigation strategies;
- 17 h. increased costs associated with lowered credit scores; and
- 18 i. significant stress and emotional distress.

19 118. The injuries resulted from an occurrence of the nature that the UCL and HAMP  
20 regulations were designed to prevent.

21 119. Plaintiff and Class Members are members of the class of persons for whose protections  
22 the laws and regulations were adopted.

23 **IX. PRAYER FOR RELIEF**

24 WHEREFORE, Plaintiff, on behalf of herself and all Class members, requests judgment be  
25 entered against Defendant and that the Court grant the following:

- 26 a. An order determining that this action may be maintained as a class action under Rule 23  
27 of the Federal Rules of Civil Procedure, that Plaintiff is a proper class representative,  
28 that Plaintiff’s attorneys be appointed class counsel pursuant to Rule 23(g) of the Federal

1 Rules of Civil Procedure, and that the class notice be promptly issued;

- 2 b. Judgment against Defendant for Plaintiff's and Class Members' asserted causes of  
3 action;
- 4 c. Appropriate declaratory relief against Defendant;
- 5 d. Preliminary and permanent injunctive relief against Defendant;
- 6 e. An award of all applicable damages;
- 7 f. An award of reasonable attorneys' fees and other litigation costs reasonably incurred;
- 8 and
- 9 g. Any and all relief to which Plaintiff and the Class may be entitled.

10 **X. DEMAND FOR JURY TRIAL**

11 Plaintiff demands trial by jury for all issues so triable.

12  
13 Dated: December 5, 2018

/s/ Michael L. Schrag

14 **GIBBS LAW GROUP LLP**  
15 Michael L. Schrag (SBN 185832)  
16 Joshua J. Bloomfield (SBN 212172)  
17 505 14th Street, Suite 1110  
18 Oakland, California 94612  
19 Telephone: 510-350-9700  
20 Facsimile: 510-350-9701  
21 mls@classlawgroup.com  
22 jjb@classlawgroup.com

23 Richard M. Paul III  
24 Ashlea G. Schwarz  
25 **PAUL LLP**  
26 601 Walnut Street, Suite 300  
27 Kansas City, Missouri 64106  
28 Telephone: 816-984-8100  
Facsimile: 816-984-8101  
Rick@PaulLLP.com  
Ashlea@PaulLLP.com

*Counsel for Plaintiff and Proposed  
Class*