

**FOR IMMEDIATE RELEASE**

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## **AG Balderas Brings Lawsuit against Wells Fargo for Opening Thousands of Fake Accounts**

*Albuquerque, NM* - Today, Attorney General Hector Balderas announced that the Office of the Attorney General's Consumer and Environmental Protection Division filed a lawsuit against Wells Fargo Bank, N.A. for illegal business practices in opening unauthorized accounts in the name of thousands of New Mexicans.

"As the fiscal agent for the State, and a provider of banking services to thousands of New Mexicans, Wells Fargo has failed to resolve their violations of law," said Attorney General Hector Balderas. "Its deeply troubling that a company with this much at stake in our state would mislead New Mexico consumers and allow unlawful profiteering. We look forward to seeking justice in a court of law."

The complaint alleges that Wells Fargo violated the New Mexico Unfair Trade Practices Act by opening accounts without authorization of the consumer, enrolling consumers in unauthorized products and lying to consumers about the true status of their relationship with Wells Fargo. By the company's own public statements, it is estimated that more than 20,000 New Mexico accounts may have been opened without authorization.

The Attorney General is bringing this action on behalf of New Mexican taxpayers and will direct funds recovered to increasing financial literacy for students and at-risk families in New Mexico.

If you had an unauthorized account opened by Wells Fargo, the Attorney General urges you to report it. File a complaint online at <https://www.nmag.gov/file-a-complaint.aspx> or call the Office of the Attorney General at 1-844-255-9210.

A copy of the complaint is attached.

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**STATE OF NEW MEXICO  
COUNTY OF SANTA FE  
FIRST JUDICIAL DISTRICT COURT**

STATE OF NEW MEXICO, *ex rel.*  
HECTOR H. BALDERAS, Attorney General,

No. \_\_\_\_\_

*Plaintiff,*

v.

WELLS FARGO & COMPANY and WELLS  
FARGO BANK, N.A.,

*Defendants.*

**COMPLAINT FOR VIOLATIONS OF  
NEW MEXICO'S UNFAIR PRACTICES ACT**

COMES NOW Plaintiff, the State of New Mexico, *ex rel.* Honorable Hector H. Balderas, Attorney General of the State of New Mexico (“Plaintiff” or the “State”), and brings this action against Wells Fargo & Company and Wells Fargo Bank, N.A. (collectively, “Wells Fargo” or “Defendants”), seeking statutory penalties, restitution, attorneys fees, and costs recoverable at law or in equity to remedy Defendants’ willful and deliberate violations of New Mexico’s Unfair Practices Act (hereinafter, “UPA”), NMSA 1978 §§ 57-12-1 to 57-12-26 (1967, as amended through 2009). In support of its Complaint, the State avers as follows:

**I. INTRODUCTION**

1. With ninety branches across the State, Wells Fargo is the largest bank in New Mexico. Across the State, consumers relied on Wells Fargo to hold and protect their money. But instead of ensuring that its customers’ money was safe, Wells Fargo opened accounts for them and enrolled them in services that its customers had not authorized, were not aware of, or both. In fact,

Wells Fargo's business model created an environment that encouraged the creation and opening of fake accounts, and fraudulent enrollments, about which Wells Fargo's customers were unaware.

2. This business model was based in part on enrolling customers in multiple banking products. Stemming from a top-down mantra of "eight is great," Wells Fargo employees were encouraged to get eight Wells Fargo products into the hands of each customer. This type of sales practice, which Wells Fargo referred to as "cross-selling" its "products," proved burdensome for bank employees as they struggled to meet demanding quotas and satisfy even more demanding managers.

3. To meet these demanding quotas, Wells Fargo employees began opening deposit accounts and credit cards for Wells Fargo customers, and signing the customers up for online-banking services and debit cards, without the customers' knowledge or permission. The unrealistic sales quotas drove its bankers to engage in fraudulent behavior, including forging customers' signatures on account applications to meet unreachable goals. Wells Fargo knew about these sales practices for years, but did not stop them.

4. Wells Fargo's cross-selling practices created a fee-generating machine that produced extraordinary profits for the corporation at the expense of its customers. Between 2001 to mid-2016, Wells Fargo employees created more than 1.5 million unauthorized deposit accounts and issued more than 500,000 credit card applications nationwide.

5. After news reports indicated that the problem reached back to 2009, Wells Fargo launched a new review of its accounts. On August 31, 2017, Wells Fargo announced that it had identified approximately 3.5 million potentially fake bank and credit card accounts that it had

opened, without authorization, in the names of its customers from January 2009 through September 2016.<sup>1</sup>

6. This was a drastic increase from the approximately two million fake bank and credit card accounts that government regulators revealed Wells Fargo to have opened in the September 2016 bombshell that shook the banking industry.

7. Richard Cordray, Director of the Consumer Financial Protection Bureau (“CFPB”), whose investigation helped bring Wells Fargo’s fraudulent sales practices to light, stated: “The gravity and breadth of the fraud that occurred at Wells Fargo cannot be pushed aside as the stray misconduct of just a few bad apples. . . . [T]he stunning nature and scale of these practices reflects instead the consequences of a diseased orchard.” Mr. Cordray further stated: “As we have seen here . . . unchecked incentives and an unrealistic and uncaring culture of high-pressure sales targets can lead to serious consumer harm.”<sup>2</sup>

8. Through its apparent success in cross-selling, Wells Fargo was able to show steady quarterly growth to investors, while also signaling to investors that it maintained deep relationships with its customers.

9. But the steady growth came at a price. Wells Fargo employees had to engage in ruthless and fraudulent sales practices or face firing. As one former Wells Fargo employee put it:

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<sup>1</sup>See Laura J. Keller, *Wells Fargo Boosts Fake-Account Estimate 67% to 3.5 Million*, BLOOMBERG, August 31, 2017, <https://www.bloomberg.com/news/articles/2017-08-31/wells-fargo-increases-fake-account-estimate-67-to-3-5-million>. (last visited June 11, 2018).

<sup>2</sup> Written Testimony of Richard Cordray, Director, CFPB, Before the Senate Committee on Banking, Housing, and Urban Affairs, available at <https://www.consumerfinance.gov/about-us/newsroom/written-testimony-richard-cordray-director-cfpb-senate-committee-banking-housing-and-urban-affairs/> (last visited June 11, 2018).

“[I]f you didn’t game, you didn’t eat.”<sup>3</sup> All the while, New Mexico citizens were lied to by the very institution that they were relying on to protect their hard-earned money and financial security.

10. As reported by a former Wells Fargo employee, Wells Fargo employees would often attach the unauthorized accounts to a bogus mailing address so that customers’ account statements would not show the unauthorized accounts that had been opened in their names. Every time that Wells Fargo sent customers account statements that omitted the unauthorized accounts opened in their names, Wells Fargo falsely represented the complete nature of their open accounts with Wells Fargo.

11. Where unauthorized accounts were included on customers’ bank statements, these bank statements falsely represented the unauthorized accounts as being legitimate and authorized.

12. Additionally, Wells Fargo representatives falsely represented to customers that they were only opening accounts that these customers requested, when, in fact, Wells Fargo would also be opening additional unauthorized accounts in their names.

13. Wells Fargo abused the trust placed in it by the State and citizens of the State of New Mexico, causing them significant harm. For some customers, their accounts were placed into collection. For others, they were forced to fight with debt collection agencies for fees charged by Wells Fargo on the unauthorized accounts. The citizens of this State have suffered as a result of Wells Fargo’s practices, which were exacerbated by the bank’s misrepresentations. Thousands of New Mexico citizens were victims of Wells Fargo’s fraudulent scheme.<sup>4</sup>

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<sup>3</sup> Kevin Dugan, *Ex-Wells Fargo Employees Challenge CEO’s Fraud Denial*, NEW YORK POST, September 15, 2016, <https://nypost.com/2016/09/15/ex-wells-fargo-employees-challenge-ceos-fraud-denial/> (last visited June 11, 2018).

<sup>4</sup> The Case for Holding Megabanks Accountable: An Examination of Wells Fargo’s Egregious Consumer Abuses, Report Prepared by the Democratic Staff of the Committee on Financial Services, U.S. House of Representatives, September 29, 2017, <https://democrats->

14. By willfully opening fake accounts in the names of its New Mexico customers, willfully signing up its New Mexico customers for unauthorized services, and willfully misrepresenting to these customers the extent of and nature of their Wells Fargo accounts and services, Wells Fargo betrayed the trust placed in it by New Mexico and its citizens.

15. To deter future fraudulent practices by Wells Fargo, and to protect New Mexico citizens from abuse by the financial institutions in which they place their trust, New Mexico seeks civil penalties from Wells Fargo pursuant to UPA § 57-12-11 for each of Wells Fargo's willful violations of the New Mexico UPA.

## **II. JURISDICTION**

16. This court has personal jurisdiction over Defendants because, among other things, Defendants operate bank branches within New Mexico, offer online banking services to New Mexico citizens, have advertised their banking products and services within New Mexico and to New Mexico citizens, have sold their banking products and services within New Mexico and to New Mexico citizens, and have willfully opened unauthorized accounts in the names of New Mexico citizens, and have engaged in all unlawful practices alleged herein in the State of New Mexico..

17. By transacting business in the State of New Mexico and violating New Mexico law within the State of New Mexico, Defendants are subject to the specific personal jurisdiction of the Courts of this State under New Mexico's long-arm statute for all claims arising out of or relating to the opening of unauthorized accounts in the names of New Mexico citizens. *See* NMSA 1978 § 38-1-16 (1971).

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[financialservices.house.gov/uploadedfiles/09.29.17\\_staff\\_report\\_final.pdf](https://financialservices.house.gov/uploadedfiles/09.29.17_staff_report_final.pdf) (last visited June 11, 2018).

18. This Court's exercise of personal jurisdiction over Defendants is consistent with due process as Defendants purposefully availed themselves of the privilege of conducting banking business in New Mexico and the State's claims relating to unauthorized accounts arise from this banking business. *Id.*

19. This Court has subject matter jurisdiction because the claims at issue arise under the statutes of the State of New Mexico, including UPA § 57-12-8 and UPA § 57-12-11.

20. Venue is proper in Santa Fe County because Plaintiff resides here, and some of Defendants' acts, practices, and conduct which give rise to this civil action occurred here in Santa Fe County. *See* NMSA 1978 §§ 38-3-1 (1988); UPA § 57-12-8.

### **III. THE PARTIES**

#### **A. PLAINTIFF**

21. Plaintiff is the State of New Mexico, *ex rel.* Hector H. Balderas, the duly-elected Attorney General of the State of New Mexico, who has the statutory authority to enforce laws for the public's protection, and is authorized to act on behalf of the State prosecute all actions when the interests of the State require action in his judgment. NMSA 1978 § 8-5-2 (1975).

22. The Attorney General is specifically authorized to bring suit on behalf of the State to enforce the UPA. *See* UPA § 57-12-8.

#### **B. DEFENDANTS**

23. Defendant Wells Fargo & Company is incorporated in Delaware with its principal place of business in San Francisco, California. Wells Fargo & Company is a financial services company with \$1.9 trillion in assets, and provides banking, insurance, investments, mortgage, and consumer and commercial finance services through more than 8,500 locations, 13,000 ATMs, and the internet. It is ranked 25th on Fortune Magazine's 2017 rankings of America's 500 largest corporations.

24. Defendant Wells Fargo Bank, N.A. is 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, N.A. provides Wells Fargo & Company personal and commercial banking services, and is Wells Fargo & Company's principal subsidiary.

25. Wells Fargo is the largest bank in New Mexico, with approximately \$9 billion in local deposit volume.<sup>5</sup> It has approximately 90 branches statewide.<sup>6</sup>

26. Wells Fargo is also the State of New Mexico's fiscal agent. As the State's fiscal agent, Wells Fargo, among other things, holds the State's monies and accounts and provides credit and debit card services to the State.

27. Wells Fargo also provides banking services for New Mexico State University ("NMSU"), and has the exclusive right to solicit banking business from students on the New Mexico State University campus. Wells Fargo provides the "Enhanced Aggie ID Card" to NMSU students. This card not only acts as a student's official student ID but also can be used as a debit card linked to the student's Wells Fargo checking account.

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<sup>5</sup> See Christopher Ortiz, *State's Largest Bank Closing Some Branches*, ALBUQUERQUE BUSINESS FIRST, July 20, 2017, <https://www.bizjournals.com/albuquerque/news/2017/07/20/states-largest-bank-closing-some-branches.html> (last visited June 11, 2018).

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

#### **IV. FACTUAL ALLEGATIONS**

##### **A. WELLS FARGO AND ITS CROSS-SELLING OBSESSION**

28. Billing itself as “America’s Community Bank,” Wells Fargo serves over 22 million retail bank households, nationwide.<sup>7</sup> With approximately 90 branches in New Mexico, it has more branches in New Mexico than any other bank.

29. According to the leaders of Wells Fargo’s Community Banking segment, Wells Fargo employees were the company’s “most important constituents” and every Wells Fargo employee “work[s] for the customer.”<sup>8</sup>

30. On the other hand, Wells Fargo and its Community Banking leaders also placed a constant and unrealistic emphasis on “cross-selling.”

31. “Cross-selling” refers to the practice of selling multiple banking “products” to a single Wells Fargo customer. For example, if a customer had a checking account, Wells Fargo employees were pressured to sign that customer up for a savings account, a credit or debit card, online banking services, or other banking products.

32. Cross-selling lay at the heart of Wells Fargo’s long-term strategy. As stated by Wells Fargo’s former CEO, Dick Kovacevich: “Cross-Selling—or what we call ‘needs-based’ selling—is our most important strategy. Why? Because it is an ‘increasing returns’ business model.”

33. Wells Fargo’s emphasis on cross-selling is evident from its filings with the Securities and Exchange Commission (“SEC”) and in its Annual Reports.

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<sup>7</sup>Wells Fargo Community Banking Presentation, May 20, 2014, available at <https://www08.wellsfargomedia.com/assets/pdf/about/investor-relations/presentations/2014/community-banking-presentation.pdf> (last visited June 11, 2018).

<sup>8</sup> *Id.*

34. For example, in its 2013 Annual Report, Wells Fargo touted its cross-selling strategy: “Our retail bank household cross-sell was a record 6.16 products per household in November 2013, up from 6.05 in November 2012 and 5.93 in November 2011. We believe there is more opportunity to cross-sell as we continue to earn more business from our customers. Our goal is eight products per household. . . .”<sup>9</sup> Wells Fargo further noted: “Our cross-sell strategy, diversified business model and the breadth of our geographic reach facilitates growth in both strong and weak economic cycles. We can grow by expanding the number of products our current customers have with us, gain new customers in our extended markets, and increase market share in many businesses.”<sup>10</sup>

35. Likewise, in its 2014 Annual Report, Wells Fargo boasted about its “products” per customer and its “cross-sell strategy”: “Our vision is to satisfy all our customers’ financial needs, help them succeed financially, and 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.”<sup>11</sup> The 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.”<sup>12</sup>

36. Indeed, Wells Fargo’s Annual Reports are replete with such examples. For example:

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<sup>9</sup> Wells Fargo’s 2013 Annual Report at 44.

<sup>10</sup> *Id.* at 30.

<sup>11</sup> Wells Fargo’s 2014 Annual Report at 30.

<sup>12</sup> *Id.* at 44.

## 2010 Annual Report

- **“Community Banking: Cross-sell milestone:** If anyone tells you it’s easy to earn more business from current customers in financial services, don’t believe them. We should know. We’ve been at it almost a quarter century. **We’ve been called, true or not, the “king of cross-sell.”**<sup>13</sup>
- “Our ability to grow revenue and earnings will suffer if we are unable to sell more products to customers. Selling more products to our customers – “cross-selling” – is very important to our business model and key to our ability to grow revenue and earnings. Many of our competitors also focus on cross-selling, especially in retail banking and mortgage lending. This can limit our ability to sell more products to our customers or influence us to sell our products at lower prices, reducing our net interest income and revenue from our fee-based products. It could also affect our ability to keep existing customers. New technologies could require us to spend more to modify or adapt our products to attract and retain customers. Increasing our cross-sell ratio – or the average number of products sold to existing customers – may become more challenging and we might not attain our goal of selling an average of eight products to each customer.”<sup>14</sup>

## 2011 Annual Report

- “Our ‘cross-selling’ efforts to increase the number of products our customers buy from us and offer them all of the financial products that fulfill their needs is a key part of our growth strategy, and our failure to execute this strategy effectively could have a material adverse effect on our revenue growth and financial results.”<sup>15</sup>

## 2012 Annual Report

- “Cross-sell of our products is an important part of our strategy to achieve our vision to satisfy all our customers’ financial needs. Our retail bank household cross-sell was 6.05 products per household in fourth quarter 2012, up from 5.93 a year ago. 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 customer, which is approximately half of our estimate of potential demand for an average U.S. household. In fourth quarter 2012, one of every four of our retail banking households had eight or more of our products.”<sup>16</sup>

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<sup>13</sup> Wells Fargo’s 2010 Annual Report at 5-6.

<sup>14</sup> *Id.* at 98.

<sup>15</sup> Wells Fargo’s 2011 Annual Report at 109.

<sup>16</sup> Wells Fargo’s 2012 Annual Report at 44.

### **2013 Annual Report**

- “Cross-sell of our products is an important part of our strategy to achieve our vision to satisfy all our customers’ financial needs.”<sup>17</sup>

### **2014 Annual Report**

- “Our ability to grow primary customers is important to our results because these customers have more interactions with us, have higher cross-sell and are more than twice as profitable as non-primary customers.”<sup>18</sup>

### **2015 Annual Report**

- “We aspire to create deep and enduring relationships with our customers by providing them with an exceptional experience and by discovering their needs and delivering the most relevant products, services, advice, and guidance. An outcome of offering customers the products and services they need, want and value is that we earn more opportunities to serve them, or what we call cross-sell. Cross-sell is the result of serving our customers well, understanding their financial needs and goals over their lifetimes, and ensuring we innovate our products, services and channels so that we earn more of their business and help them succeed financially. Our approach to cross-sell is needs-based as some customers will benefit from more products, and some may need fewer. We believe there is continued opportunity to meet our customers’ financial needs as we build lifelong relationships with them. One way we track the degree to which we are satisfying our customers’ financial needs is through our cross-sell metrics, which are based on whether the customer is a retail banking household or has a wholesale banking relationship.”<sup>19</sup>

37. Wells Fargo’s emphasis on cross-selling was acknowledged by both the press and investors. For example, as noted in a June 2010 Bloomberg story titled “Wells Fargo Pushes Cross-Sales to Replace Lost Growth”: “Cross-selling is so central to Wells Fargo that managers mentioned it 108 times at last month’s two-day investor conference.”<sup>20</sup>

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<sup>17</sup> Wells Fargo’s 2013 Annual Report at 44.

<sup>18</sup> Wells Fargo’s 2014 Annual Report at 31.

<sup>19</sup> Wells Fargo’s 2015 Annual Report at 46.

<sup>20</sup> See David Henry and Dakin Campbell, *Wells Fargo Pushes Cross-Sales to Replace Lost Growth*, BLOOMBERG, June 22, 2010, <http://www.bloomberg.com/news/articles/2010-06-22/wells-fargo-says-eight-is-great-as-banks-cross-sell-to-replace-lost-growth>. (last visited June 11, 2018).

38. The reason for Wells Fargo's focus on cross-selling was to show steady quarterly growth to investors, and to also show Wall Street that Wells Fargo maintained deep relationships with its customers. Investors in banks equate growth in cross-selling and growth in the customer base to growth in earnings, and from mid-2010 to just before September 8, 2016, Wells Fargo's share price grew from roughly \$24 to \$50.56 – a 111% increase.

39. Wells Fargo's artificially inflated stock price is demonstrative of its willingness to place profits and bonuses ahead of New Mexico citizens. The inflation resulted in enormous compensation for the company's executives. Between 2012 and 2015, as Wells Fargo's share price soared, driven by Wells Fargo's purported successes in its cross-selling strategy, CEO John Stumpf was the banking industry's highest paid CEO, receiving \$155 million in stock options. Carrie Tolstedt, the head of Community Banking at Wells Fargo, and the executive responsible for supervising Wells Fargo's roughly 6,000 retail branches, ground zero for the bank's illegal scheme, received compensation of over \$27 million in the three years preceding September 2016.

#### **B. WELLS FARGO'S CROSS-SELLING OBSESSION RESULTED IN MASSIVE FRAUD**

40. Wells Fargo's cross-selling obsession required Wells Fargo branches and employees to meet unrealistic sales quotas, and created perverse incentives for the employees and motivated management at all levels to conceal the fraud.

41. One example of Wells Fargo's arbitrary and unrealistic cross-selling expectations was its "Gr-eight initiative." This initiative, created by Wells Fargo's former CEO, Mr. Kovacevich, set a target of eight banking products per household. Why eight? Because, according to Kovacevich, it "rhymes with GREAT!" Thus, Wells Fargo embarked on a course to sell its customers eight banking products per household, without any consideration of whether this was in accordance with these customers' actual needs.

42. Faced with unrealistic sales quotas, Wells Fargo management consistently coerced and threatened employees to meet those quotas. Employees who missed sales quotas were forced to stay late or work weekends to catch up. They were also threatened with termination. From the top down, Wells Fargo was effectively directing its employees to meet sales goals by any means necessary, including engaging in fraudulent sales practices and related conduct.

43. The fraudulent sales practices and related conduct that Wells Fargo employees engaged in were done with the objective and purpose of meeting Wells Fargo's sales goals, and were thus performed within the scope of the employees' employment with Wells Fargo.

44. Wells Fargo's employees were able to engage in these fraudulent sales practices because of their employment with Wells Fargo, and the trust that Wells Fargo's customers placed in Wells Fargo as their bank. Due to their positions within Wells Fargo, these employees had control over customers' personal and sensitive financial matters, and they took advantage of this control and betrayed Wells Fargo's customers' trust by engaging in the conduct alleged herein.

45. Wells Fargo management was aware that employees were engaging in fraudulent sales practices to meet sales goals as early as 2002, but allowed these practices to continue and maintained the demands and incentives that encouraged these practices.

46. One common tactic involved creating a false deposit account by moving a small amount of money from the customer's existing Wells Fargo account to open a new one. In this scenario, the Wells Fargo internal systems would give the employee credit toward her sales goals for opening a new account, and the accounts would often, in turn, generate fees for Wells Fargo.

47. Another common tactic involved applying for credit card accounts without customer authorization. When customers later complained about receiving cards they did not request, they were advised to simply destroy the unrequested and unauthorized cards. But

destroying the unauthorized cards did not close the account or repair the impact to a customer's credit profile.

48. In another common practice, Wells Fargo signed customers up for numerous products without customer consent. When a customer opened an account, Wells Fargo representatives would open a series of other accounts at the same time, including, but not limited to, savings accounts and credit cards, or other products such as life insurance, and "Express Send" (an online program that allows customers to send money to foreign countries). When customers discovered an unauthorized account and inquired about it to Wells Fargo, Wells Fargo would misrepresent to them that the extra products and services automatically came with the authorized accounts.

49. In yet another practice, when customers would ask to convert an existing checking or savings account into a new type of account, Wells Fargo would disregard the request for a conversion, open a new account in order to create a "sale," and then not close the old account.

50. As part of its practice of opening unauthorized accounts in the names of its customers, Wells Fargo made repeated false and misleading statements to its customers.

51. As reported by a former Wells Fargo employee, Wells Fargo employees would often attach the unauthorized accounts to a bogus mailing address so that customers' account statements would not show the unauthorized account that had been opened in their name.<sup>21</sup> Thus, in all such instances, Wells Fargo sent customers account statements that misrepresented the complete nature of their open accounts with Wells Fargo.

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<sup>21</sup> See James Queally, *Wells Fargo Customers: Here's What To Look For If You're Concerned*, LOS ANGELES TIMES, May 5, 2015, <http://www.latimes.com/business/la-fi-protect-yourself-from-bank-fraud-wells-fargo-20150505-story.html> (last visited June 11, 2018).

52. When Wells Fargo did include the unauthorized accounts on the bank statements it sent to its customers, the inclusion of these accounts on the bank statements was a false and misleading representation that these accounts were authorized or otherwise legitimate.

53. Further, Wells Fargo represented to customers that it was only opening requested accounts, when in fact, it was opening additional, unauthorized accounts.

54. In addition to opening unauthorized bank and credit card accounts and misrepresenting and/or omitting information about those accounts from its customers, Wells Fargo also engaged in a variety of other deceptive practices, including falsely informing customers that certain products were only available with other product offerings, signing customers up for debit cards without their knowledge or authorization, and enrolling customers in online banking without their knowledge or authorization.

55. Customers suffered significant harm in numerous ways from Wells Fargo's illegal business practices, including but not limited to the following: (a) customers lost money to service fees charged for unauthorized accounts and services; (b) customer accounts were placed into collection, forcing customers to fight with debt collection agencies for fees charged by Wells Fargo on unauthorized accounts; (c) customers' credit reports were detrimentally affected, resulting in a negative impact on, among other things, job applications, automobile loans, and mortgage applications; and (d) customers were forced to purchase costly identity theft protection services to ensure against further fraudulent activities.

### C. THE WELLS FARGO FRAUD COMES TO LIGHT

56. In September 2016, government regulators, including the CFPB and the Office of the Comptroller of the Currency (“OCC”), announced that, after investigating Wells Fargo’s fraudulent sales practices, Wells Fargo opened more than 1.5 million unauthorized deposit accounts and submitted applications for over 560,000 credit card accounts between May 2011 and July 2015.<sup>22</sup> These numbers were based on Wells Fargo’s own analysis, *and are undisputed by Wells Fargo.*

57. In a Consent Order, issued by the CFPB and consented to by Wells Fargo, Wells Fargo admitted that it had opened over 1.5 million unauthorized accounts, admitted that it had submitted unauthorized applications for more than 560,000 credit cards, admitted that it had enrolled customers in online-banking services without their knowledge or consent, and admitted to having requested debit cards and created PINs without their customers knowledge or consent.

58. In October 2016, Michael King, a Wells Fargo regional vice president of corporate communications, reported that 18,847 accounts may have been opened in New Mexico without customer approval.<sup>23</sup>

59. In light of the continued revelation of unauthorized accounts after October 2016, the correct number is likely much higher.

60. In announcing the fraud, Richard Cordray, Director of the CFPB said, “Rather than put its customers first, Wells Fargo built and sustained a program where the bank and many of its

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<sup>22</sup> Written Testimony of Richard Cordray, Director, CFPB, Before the Senate Committee on Banking, Housing, and Urban Affairs, available at <https://www.consumerfinance.gov/about-us/newsroom/written-testimony-richard-cordray-director-cfpb-senate-committee-banking-housing-and-urban-affairs/> (last visited June 11, 2018).

<sup>23</sup> Ellen Marks, *Wells Fargo Refunds \$25K to NM Customers*, ALBUQUERQUE JOURNAL, Oct. 26, 2016, <https://www.abqjournal.com/875652/wells-fargo-refunds-25k-to-nm-customers.html> (last visited June 11, 2018).

employees served themselves instead, violating the basic ethics of a banking institution, including the key norm of trust.”<sup>24</sup>

61. After news of the scandal broke, Wells Fargo employees commented on their experiences working at the bank. A New York Post article contained these revealing comments allegedly posted by former Wells Fargo employees, noting that Wells Fargo’s high-pressure sales environment dated back to at least 2004:

- “Doing the stuff [the bank] got popped for was a known secret, and damned near everyone did it.”
- “No one cared to fix the problems. The final straw was knowing I was doing stuff the right way and could never match the numbers of the people that were doing stuff the wrong way and got promoted past me.”
  - “I was there from 2004 and if you didn’t game, you didn’t eat.”
  - “The people [CEO John Stumpf] has put in place helped further the issue they are dealing with now of a culture of dishonesty and screwing customers.”<sup>25</sup>

62. It further came to light that Wells Fargo retaliated against employees who reported the illegal sales tactics and tried to stop the ongoing fraud.<sup>26</sup>

63. Upon revelation of the fraud, lawmakers throughout the government delivered stinging criticisms of Wells Fargo – a chorus that has only increased over time. Senator Elizabeth Warren described Wells Fargo’s behavior as a “staggering fraud.”<sup>27</sup> Treasury Secretary Jack Lew commented, “[t]he pattern of behavior that we’ve seen here is something that needs to stop. It is

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<sup>24</sup> *Id.*

<sup>25</sup> Dugan, *supra* note 3.

<sup>26</sup> Matt Egan, *Wells Fargo Admits to Signs of Worker Retaliation*, CNN, Jan. 24, 2017, <http://money.cnn.com/2017/01/23/investing/wells-fargo-retaliation-ethics-line/index.html?iid=EL> (last visited June 11, 2018).

<sup>27</sup> Matt Egan, *Wells Fargo Scandal: Elizabeth Warren Wants Answers*, CNN, Sept. 12, 2016, <http://money.cnn.com/2016/09/12/investing/wells-fargo-hearing-senate-ceo-testify-elizabeth-warren/index.html> (last visited June 11, 2018).

not acceptable to do things that are designed to increase either an individual or firm's bottom line by deceiving customers or passing on charges that are either invisible or they don't know about."<sup>28</sup> Comptroller of the Currency Thomas Curry echoed these sentiments, stating, "[t]hese practices ... undermine the fundamental trust that goes to the heart of the bank-customer relationship. They are unacceptable and have no place in the federal banking system."<sup>29</sup>

64. No longer able to defend the failures of its senior leadership amidst public outrage, on September 28, 2016, Wells Fargo's Board announced that Wells Fargo was clawing back compensation valued at \$41 million and \$19 million, respectively, from Mr. Stumpf and Ms. Tolstedt in light of the scandal. Unsurprisingly, reaction to the announcement was as dismissive as it was swift: "The bank already waited too long to start sanctioning top executives . . . 'It's a dollar short and a day late.'"<sup>30</sup> Indeed, by that time, management-level employees had already been richly rewarded with robust compensation, bonuses, and stock options for many years for perpetuating the fraudulent cross-selling scheme at the expense of customers, shareholders, and lower-level employees.

65. On September 20, 2016, the Senate Committee on Banking, Housing, and Urban Affairs held a hearing on the matter (the "Senate Hearing"), and Committee members from both

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<sup>28</sup> Maggi McGrath, *Treasury Secretary Jack Lew: What Wells Fargo Did Was 'Unacceptable,'* FORBES, Sept. 13, 2016, <https://www.forbes.com/sites/maggiemcgrath/2016/09/13/treasury-secretary-jack-lew-what-wells-fargo-did-was-unacceptable/#d39b0c01383b> (last visited June 11, 2018).

<sup>29</sup> "Oral Statement of Thomas J. Curry Comptroller of the Currency before the Committee on Banking, Housing, and Urban Affairs," Sept. 20, 2016.

<sup>30</sup> Elizabeth Dexheimer, Dakin Campbell, and Caleb Melby, *Wells Fargo's CEO Forfeits \$41 Million in Fight to Keep Job,* BLOOMBERG, Sept. 28, 2016, <http://www.bloomberg.com/news/articles/2016-09-27/wells-fargo-ceo-forfeits-more-than-41-million-amid-board-review>. (last visited June 11, 2018).

parties lambasted Mr. Stumpf and Wells Fargo. Below are just a few of the quotes the Senators directed at Mr. Stumpf:

- Senator Elizabeth Warren: “You squeezed your employees to the breaking point so you could cheat customers and drive up the value of your stock. And when it all blew up, you kept your job, your multi-million dollar bonuses, and went on TV and blamed thousands of \$12-an-hour employees trying to meet cross-sell quotas. You should resign. You should be criminally investigated by the Department of Justice and Securities and Exchange Commission.”
- Senator Pat Toomey: “Wells Fargo wasn’t cross-selling. Failing to notify these customers about these sham accounts, this isn’t cross-selling, this is fraud.”
- Senator Toomey: “You state unequivocally that there are no orchestrated effort or scheme [sic], as some have called it, by the company. But when thousands of people conduct the same kind of fraudulent activity, it's a stretch to believe that every one of them independently conjured up this idea of how they would commit this fraud.”
- Senator Warren: “You keep saying, ‘The board, the board,’ as if they're strangers you met in a dark alley . . . . You are not passive here. If you have nothing to do, then what are you doing serving as chairman of the board? If you have no opinion on the most massive fraud to hit this bank since the beginning of time, how do you get to continue getting a check as chairman of the board?”
- Senator Sherrod Brown: “You would think the lessons of the financial crisis, which came at such a high cost to our country, would change the way banks do business.”<sup>31</sup>

66. Following the hearing, the criticism continued. Ed Mierzwinski, consumer program director at the U.S. Public Interest Research Group, said Stumpf’s apology was insufficient to contain the scandal. “I think the CEO of Wells Fargo failed to disprove that it was a massive fraud,” said Mierzwinski, who attended the hearing. “No senator believed him.”<sup>32</sup>

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<sup>31</sup> Transcript of the September 20, 2016 hearing before the Senate Committee on Banking, Housing, and Urban Affairs, available at <https://www.gpo.gov/fdsys/pkg/CHRG-114shrg23001/pdf/CHRG-114shrg23001.pdf> (last visited June 11, 2018).

<sup>32</sup> James Rufus Koren, *Wells Fargo CEO’s Testimony Was Not Believable, Expert Says*, LOS ANGELES TIMES, Sept. 20, 2016, <http://www.latimes.com/business/la-fi-wells-fargo-live-1474402107-htmlstory.html> (last visited June 11, 2018).

67. In April 2017, Wells Fargo clawed back an additional \$28 million in compensation from Mr. Stumpf, and an additional \$47 million compensation from Ms. Tolstedt.<sup>33</sup> Both Mr. Stumpf and Ms. Tolstedt were forced out of Wells Fargo due to the fraud.

68. In August 2017, Wells Fargo announced that it had uncovered an additional 1.4 million fake accounts, bringing the total number of fake bank and credit card accounts to 3.5 million.<sup>34</sup> Wells Fargo has not yet revealed the total number of fraudulent accounts opened in New Mexico.

## **V. CLAIMS AND VIOLATIONS ALLEGED**

### **A. COUNT 1 – VIOLATIONS OF THE NEW MEXICO UNFAIR PRACTICES ACT FOR THE UNCONSCIONABLE TRADE PRACTICE OF OPENING UNAUTHORIZED ACCOUNTS**

69. The State of New Mexico reasserts, realleges, and incorporates by reference each of Paragraphs 1-68, above, as though fully set forth herein.

70. New Mexico's UPA is consumer protective legislation that prohibits the economic exploitation of consumers in the State of New Mexico through, among other things, unfair, false, deceptive, or misleading advertising or conduct of business in an unfair manner.

71. Pursuant to UPA § 57-12-2(A), Defendants are each a "person" under the UPA.

72. The checking accounts, savings accounts, and credit cards offered by Wells Fargo are "goods" or "services" under the UPA.

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<sup>33</sup> Matt Egan, *Wells Fargo Claws Back \$75 Million From Former CEO and Top Exec*, CNN, April 10, 2017, <http://money.cnn.com/2017/04/10/investing/wells-fargo-board-investigation-fake-accounts/index.html> (last visited June 11, 2018).

<sup>34</sup> Matt Egan, *Wells Fargo Uncovers Up To 1.4 Million More Fake Accounts*, CNN, Aug. 31, 2017, <http://money.cnn.com/2017/08/31/investing/wells-fargo-fake-accounts/index.html> (last visited June 11, 2018).

73. Pursuant to UPA § 57-12-2(E) an “unconscionable trade practice” means “an act or practice in connection with the sale, lease, rental or loan, or in connection with the offering for sale, lease, rental or loan, of any goods or services . . . that to a person’s detriment: (1) takes advantage of the lack of knowledge, ability, experience or capacity of a person to a grossly unfair degree; or (2) results in a gross disparity between the value received by a person and the price paid.”

74. Pursuant to UPA § 57-12-3, “Unfair or deceptive trade practices and unconscionable trade practices in the conduct of any trade or commerce are unlawful.”

75. Pursuant to UPA § 57-12-11, “In any action brought under Section 57-12-8 NMSA 1978, if the court finds that a person is willfully using or has willfully used a method, act, or practice declared unlawful by the Unfair Practices Act, the attorney general, upon petition to the court, may recover, on behalf of the state of New Mexico, a civil penalty not exceeding five thousand dollars (\$5,000) per violation.”

76. Wells Fargo opened unauthorized bank accounts and credit card accounts in the names of thousands of New Mexico Wells Fargo customers, in violation of the trust that these customers placed in Wells Fargo. Wells Fargo was in a commercial relationship with each of the New Mexico customers for whom it opened unauthorized accounts.

77. Wells Fargo took grossly unfair advantage of the lack of knowledge of those New Mexico customers for whom it opened unauthorized accounts. Because Wells Fargo opened these accounts without authorization or without even telling these customers, the customers did not know, and could not have known, that Wells Fargo was opening unauthorized accounts in their names. The opening of the unauthorized accounts was to the detriment of these customers because

it subjected them to, actual or potential, account fees and other charges, and damaged credit scores. This opening of the unauthorized accounts was willful.

78. Each time Wells Fargo opened an unauthorized account for a New Mexico customer, Wells Fargo committed a separate, independent, and willful violation of the UPA through its unconscionable trade practices.

79. Wells Fargo should, therefore, be assessed a separate civil penalty of \$5,000 for each independent violation, and all other such relief as may be just and proper should be recovered by the State.

**B. COUNT 2 – VIOLATIONS OF THE NEW MEXICO UNFAIR PRACTICES ACT FOR THE UNCONSCIONABLE TRADE PRACTICE OF ENROLLING CUSTOMERS IN ONLINE-BANKING SERVICES**

80. The State of New Mexico reasserts, realleges, and incorporates by reference each of Paragraphs 1-68, above, as though fully set forth herein.

81. New Mexico’s UPA is consumer protective legislation that prohibits the economic exploitation of consumers in the State of New Mexico through, among other things, unfair, false, deceptive, or misleading advertising or conduct of business in an unfair manner.

82. Pursuant to UPA § 57-12-2(A), Defendants are each a “person” under the UPA.

83. The online-banking services offered by Wells Fargo are “goods” or “services” under the UPA.

84. Pursuant to UPA § 57-12-2(E) an “unconscionable trade practice” means “an act or practice in connection with the sale, lease, rental or loan, or in connection with the offering for sale, lease, rental or loan, of any goods or services . . . that to a person’s detriment: (1) takes advantage of the lack of knowledge, ability, experience or capacity of a person to a grossly unfair degree; or (2) results in a gross disparity between the value received by a person and the price paid.”

85. Pursuant to UPA § 57-12-3, “Unfair or deceptive trade practices and unconscionable trade practices in the conduct of any trade or commerce are unlawful.”

86. Pursuant to UPA § 57-12-11, “In any action brought under Section 57-12-8 NMSA 1978, if the court finds that a person is willfully using or has willfully used a method, act, or practice declared unlawful by the Unfair Practices Act, the attorney general, upon petition to the court, may recover, on behalf of the state of New Mexico, a civil penalty not exceeding five thousand dollars (\$5,000) per violation.”

87. Wells Fargo enrolled New Mexico Wells Fargo customers in unauthorized online-banking services without their knowledge or authorization, in violation of the trust that these customers placed in Wells Fargo. Wells Fargo was in a commercial relationship with each of the New Mexico customers that it enrolled in online-banking services.

88. Wells Fargo took grossly unfair advantage of the lack of knowledge of those New Mexico customers whom it enrolled in online-banking services. Because Wells Fargo enrolled these customers without authorization or without even telling these customers, the customers did not know, and could not have known, that Wells Fargo was enrolling them in online-banking. The unauthorized enrollment was to the detriment of these customers because it subjected them to, actual or potential, unauthorized charges and fraud. This unauthorized enrollment was willful.

89. Each time Wells Fargo enrolled a New Mexico customer in online-banking services without their knowledge or authorization, Wells Fargo committed a separate, independent, and willful violation of the UPA through its unconscionable trade practices.

90. Wells Fargo should, therefore, be assessed a separate civil penalty of \$5,000 for each independent violation, and all other such relief as may be just and proper should be recovered by the State.

**C. COUNT 3 – VIOLATIONS OF THE NEW MEXICO UNFAIR PRACTICES ACT FOR THE UNCONSCIONABLE TRADE PRACTICE OF ISSUING UNAUTHORIZED DEBIT CARDS**

91. The State of New Mexico reasserts, realleges, and incorporates by reference each of Paragraphs 1-68, above, as though fully set forth herein.

92. New Mexico’s UPA is consumer protective legislation that prohibits the economic exploitation of consumers in the State of New Mexico through, among other things, unfair, false, deceptive, or misleading advertising or conduct of business in an unfair manner.

93. Pursuant to UPA § 57-12-2(A), Defendants are each a “person” under the UPA.

94. The debit cards offered by Wells Fargo are “goods” or “services” under the UPA.

95. Pursuant to UPA § 57-12-2(E) an “unconscionable trade practice” means “an act or practice in connection with the sale, lease, rental or loan, or in connection with the offering for sale, lease, rental or loan, of any goods or services . . . that to a person’s detriment: (1) takes advantage of the lack of knowledge, ability, experience or capacity of a person to a grossly unfair degree; or (2) results in a gross disparity between the value received by a person and the price paid.”

96. Pursuant to UPA § 57-12-3, “Unfair or deceptive trade practices and unconscionable trade practices in the conduct of any trade or commerce are unlawful.”

97. Pursuant to UPA § 57-12-11, “In any action brought under Section 57-12-8 NMSA 1978, if the court finds that a person is willfully using or has willfully used a method, act, or practice declared unlawful by the Unfair Practices Act, the attorney general, upon petition to the court, may recover, on behalf of the state of New Mexico, a civil penalty not exceeding five thousand dollars (\$5,000) per violation.”

98. Wells Fargo issued debit cards, and created PINs, in the name of New Mexico Wells Fargo customers without the customers’ knowledge or authorization, in violation of the trust

that these customers placed in Wells Fargo. Wells Fargo was in a commercial relationship with each of the New Mexico customers for whom it issued unauthorized debit cards.

99. Wells Fargo took grossly unfair advantage of the lack of knowledge of those New Mexico customers for whom it issued unauthorized debit cards. Because Wells Fargo issued these debit cards without authorization or without even telling these customers, the customers did not know, and could not have known, that Wells Fargo was issuing debit cards in their names. The issuance of the unauthorized debit cards was to the detriment of these customers because it subjected them to, actual or potential, unauthorized charges. The issuance of the unauthorized debit cards was willful.

100. Each time Wells Fargo issued an unauthorized debit card for a New Mexico customer, Wells Fargo committed a separate, independent, and willful violation of the UPA through its unconscionable trade practices.

101. Wells Fargo should, therefore, be assessed a separate civil penalty of \$5,000 for each independent violation, and all other such relief as may be just and proper should be recovered by the State.

**D. COUNT 4 – VIOLATIONS OF THE NEW MEXICO UNFAIR PRACTICES ACT FOR FALSE AND MISLEADING ACCOUNT STATEMENTS**

102. The State of New Mexico reasserts, realleges, and incorporates by reference each of Paragraphs 1-68, above, as though fully set forth herein.

103. The UPA is consumer protective legislation that prohibits the economic exploitation of consumers in the State of New Mexico through, among other things, unfair, false, deceptive, or misleading advertising or conduct of business in an unfair manner.

104. Pursuant to UPA § 57-12-2(A), Defendants are each a “person” under the UPA.

105. The checking accounts, savings accounts, credit cards, and other banking products offered by Wells Fargo are “goods” or “services” under the UPA.

106. Pursuant to UPA § 57-12-2(D) an “unfair or deceptive trade practice” means “a false or misleading oral or written statement, visual description or other representation of any kind knowingly made in connection with the sale, lease, rental or loan of goods or in the extension of credit or in the collection of debts by a person in the regular course of the person’s trade or commerce, that may, tends to or does deceive or mislead any person.” Such practices include: “representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities that they do not have” and “using exaggeration, innuendo or ambiguity as to a material fact or failing to state a material fact if doing so deceives or tends to deceive.” UPA § 57-12-2(D)

107. Pursuant to UPA § 57-12-3, “Unfair or deceptive trade practices and unconscionable trade practices in the conduct of any trade or commerce are unlawful.”

108. Pursuant to UPA § 57-12-11, “In any action brought under Section 57-12-8 NMSA 1978, if the court finds that a person is willfully using or has willfully used a method, act, or practice declared unlawful by the Unfair Practices Act, the attorney general, upon petition to the court, may recover, on behalf of the state of New Mexico, a civil penalty not exceeding five thousand dollars (\$5,000) per violation.”

109. Wells Fargo opened unauthorized bank accounts and credit card accounts in the names of thousands of New Mexico Wells Fargo customers, in violation of the trust that these customers placed in Wells Fargo. Wells Fargo was in a commercial relationship with each of the New Mexico customers for whom it opened unauthorized accounts.

110. Wells Fargo, in the course of its regular business, knowingly and willfully made deceptive, false, and misleading statements, representations, and omissions in the periodic account statements that it provided to customers who had unauthorized accounts opened in their names.

111. Wells Fargo sent customers account statements that falsely represented that they accurately listed all accounts that a customer had with Wells Fargo, when the account statements actually omitted unauthorized accounts that had been opened in the customers' names. Each such account statement had the tendency to, or did, deceive Wells Fargo customers.

112. Wells Fargo sent customers account statements that listed unauthorized accounts. The statements' inclusion of unauthorized accounts were misrepresentations that these accounts were legitimate. Each such account statement had the tendency to, or did, deceive Wells Fargo customers.

113. Each time Wells Fargo sent, whether electronically or by mail, a deceptive, false, fraudulent or misleading account statement to one of its customers, Wells Fargo committed a separate and independent willful violation of the UPA.

114. Wells Fargo should, therefore, be assessed a separate civil penalty of \$5,000 for each independent violation, and all other such relief as may be just and proper should be recovered by the State.

**E. COUNT 5 – VIOLATIONS OF THE NEW MEXICO UNFAIR PRACTICES ACT FOR FALSE AND MISLEADING STATEMENTS AND OMISSIONS REGARDING NEW ACCOUNTS**

115. The State of New Mexico reasserts, realleges, and incorporates by reference each of Paragraphs 1-68, above, as though fully set forth herein.

116. The UPA is consumer protective legislation that prohibits the economic exploitation of consumers in the State of New Mexico through, among other things, unfair, false, deceptive, or misleading advertising or conduct of business in an unfair manner.

117. Pursuant to UPA § 57-12-2(A), Defendants are each a “person” under the UPA.

118. The checking accounts, savings accounts, credit cards, and other banking products offered by Wells Fargo are “goods” or “services” under the UPA.

119. Pursuant to UPA § 57-12-2(D) an “unfair or deceptive trade practice” means “a false or misleading oral or written statement, visual description or other representation of any kind knowingly made in connection with the sale, lease, rental or loan of goods or in the extension of credit or in the collection of debts by a person in the regular course of the person’s trade or commerce, that may, tends to or does deceive or mislead any person.” Such practices include: “representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities that they do not have” and “using exaggeration, innuendo or ambiguity as to a material fact or failing to state a material fact if doing so deceives or tends to deceive.” UPA § 57-12-2(D)

120. Pursuant to UPA § 57-12-3, “Unfair or deceptive trade practices and unconscionable trade practices in the conduct of any trade or commerce are unlawful.”

121. Pursuant to UPA § 57-12-11, “In any action brought under Section 57-12-8 NMSA 1978, if the court finds that a person is willfully using or has willfully used a method, act, or practice declared unlawful by the Unfair Practices Act, the attorney general, upon petition to the court, may recover, on behalf of the state of New Mexico, a civil penalty not exceeding five thousand dollars (\$5,000) per violation.”

122. Wells Fargo opened unauthorized bank accounts and credit card accounts in the names of thousands of New Mexico Wells Fargo customers, in violation of the trust that these customers placed in Wells Fargo. Wells Fargo was in a commercial relationship with each of the New Mexico customers for whom it opened unauthorized accounts.

123. Wells Fargo, in the course of its regular business, knowingly and willfully made deceptive, false, and misleading statements, representations, and omissions in connection with the opening of new customer accounts. Specifically, Wells Fargo falsely represented to customers that it was opening only accounts that the customers had requested, when it actually opened additional unauthorized accounts in these customers names. Each such statement, representation, and omission had the tendency to, or did, deceive Wells Fargo customers.

124. Each time Wells Fargo made a deceptive, false, or misleading statement, representation, or omission to one of its customers that it was only opening an authorized account, Wells Fargo committed a separate and independent willful violation of the UPA.

125. Wells Fargo should therefore be assessed a separate civil penalty of \$5,000 for each independent violation, and all other such relief as may be just and proper should be recovered by the State.

**F. COUNT 6 – VIOLATIONS OF THE NEW MEXICO UNFAIR PRACTICES ACT FOR ADDITIONAL FALSE AND MISLEADING STATEMENTS AND OMISSIONS RELATING TO UNAUTHORIZED CUSTOMER ACCOUNTS, ONLINE BANKING, AND DEBIT CARDS**

126. The State of New Mexico reasserts, realleges, and incorporates by reference each of Paragraphs 1-68, above, as though fully set forth herein.

127. The UPA is consumer protective legislation that prohibits the economic exploitation of consumers in the State of New Mexico through, among other things, unfair, false, deceptive, or misleading advertising or conduct of business in an unfair manner.

128. Pursuant to UPA § 57-12-2(A), Defendants are each a “person” under the UPA.

129. The checking accounts, savings accounts, credit cards, online-banking services, debit cards, and other banking products offered by Wells Fargo are “goods” or “services” under the UPA.

130. Pursuant to UPA § 57-12-2(D) an “unfair or deceptive trade practice” means “a false or misleading oral or written statement, visual description or other representation of any kind knowingly made in connection with the sale, lease, rental or loan of goods or in the extension of credit or in the collection of debts by a person in the regular course of the person’s trade or commerce, that may, tends to or does deceive or mislead any person.” Such practices include: “representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities that they do not have” and “using exaggeration, innuendo or ambiguity as to a material fact or failing to state a material fact if doing so deceives or tends to deceive.” UPA § 57-12-2(D)

131. Pursuant to UPA § 57-12-3, “Unfair or deceptive trade practices and unconscionable trade practices in the conduct of any trade or commerce are unlawful.”

132. Pursuant to UPA § 57-12-11, “In any action brought under Section 57-12-8 NMSA 1978, if the court finds that a person is willfully using or has willfully used a method, act, or practice declared unlawful by the Unfair Practices Act, the attorney general, upon petition to the court, may recover, on behalf of the state of New Mexico, a civil penalty not exceeding five thousand dollars (\$5,000) per violation.”

133. Wells Fargo opened unauthorized bank accounts and credit card accounts in the names of thousands of New Mexico Wells Fargo customers, enrolled New Mexico Wells Fargo customers in online-banking without their knowledge or authorization, and issued debit cards and PINs in the name of New Mexico Wells Fargo customers without their knowledge or authorization, all in violation of the trust that these customers placed in Wells Fargo. Wells Fargo was in a commercial relationship with each of these New Mexico customers.

134. In connection with these unauthorized accounts, unauthorized online-banking services, and unauthorized debit cards, Wells Fargo, in the course of its regular business, knowingly and willfully made deceptive, false, and misleading statements, representations, and omissions regarding the unauthorized accounts, unauthorized online-banking services, and unauthorized debit cards. These statements include explanations by Wells Fargo to customers regarding unauthorized accounts, services, and banking products; the recommended actions for customers to take in ensuring that any unauthorized accounts, services, and banking products are closed; assurances that such accounts, services, and banking products were closed; and other misleading statements relating to customers' accounts and relationship with Wells Fargo. Each such statement, representation, and omission had the tendency to, or did, deceive Wells Fargo customers.

135. Each and every time Wells Fargo made a deceptive, false, or misleading to one of its customers concerning the customer's accounts – or omitted information about their accounts, Wells Fargo committed a separate and independent willful violation of the UPA.

136. Wells Fargo should, therefore, be assessed a separate civil penalty of \$5,000 for each independent violation, and all other such relief as may be just and proper should be recovered by the State.

## **VI. REQUEST FOR RELIEF**

**WHEREFORE**, Plaintiff, the State of New Mexico, respectfully requests that the Court enter judgment in its favor and against Defendants, as follows:

- a. Awarding the maximum amount of statutory penalties available under UPA § 57-12-11, for each violation of New Mexico's UPA;

- b. Ordering Defendants to disgorge all profits they illegally obtained by and through their illegal conduct, and used to further fund or promote the illegal conduct or that constituted capital available for that purpose; and,
- c. Awarding such other relief as may be available and appropriate under the UPA, or otherwise available and appropriate under the law or in equity.

**VII. DEMAND FOR JURY TRIAL**

Pursuant to Rule 1-038(B)(1) NMRA, Plaintiff demands a jury trial for all claims upon which a jury trial is available.

Dated: August 15, 2018

Respectfully submitted,

**Hector H. Balderas**

**ATTORNEY GENERAL**

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