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ASSOCIATION

9 UNITED STATES DISTRICT COURT
10 NORTHERN DISTRICT OF CALIFORNIA

11
12 HELEN PALMA,
13 Plaintiff, on behalf of herself
14 and all others similarly
situated,

15 v.

16 WELLS FARGO BANK, NATIONAL
ASSOCIATION, and ROES 1-10,
17 Defendants.
18

Case No. _____

[Originally filed in San Francisco Superior Court, Case No. CGC-24-612124]

**DEFENDANT WELLS FARGO BANK,
NATIONAL ASSOCIATION'S NOTICE
OF REMOVAL**

[28 U.S.C. §§ 1441, 1446]

Complaint Filed: February 2, 2024
Amended Complaint Filed: March 26, 2024
Amended Complaint Served: April 3, 2024
Trial Date: None

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20
21 **TO THIS HONORABLE COURT:**

22 **PLEASE TAKE NOTICE** that pursuant to 28 U.S.C. §§ 1441 and 1446, Defendant
23 Wells Fargo Bank, National Association (“Wells Fargo”) hereby removes to this Court the state
24 court action described below. In support of this Notice of Removal, Wells Fargo states:
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STATE COURT PROCEEDINGS

1
2 1. On or about February 2, 2024, Plaintiff Helen Palma (“Plaintiff”) commenced her
3 civil action against Wells Fargo and Roes 1 through 10, in the Superior Court of California for the
4 County of San Francisco, entitled *Helen Palma v. Wells Fargo Bank, National Association, et al.*,
5 Case Number CGC-24-612124 (the “State Court Action”).

6 2. In her Class Action Complaint (“Complaint”), Plaintiff asserts claims for
7 violations of the Truth in Lending Act (“TILA”), 15 U.S.C. § 1601 *et seq.*; violations of the
8 Rosenthal Fair Debt Collection Practices Act, California Civil Code § 1788 *et seq.*; conversion;
9 violations of California Penal Code § 496; and violations of California’s Unfair Competition
10 Law, California Business and Professions Code § 17200. Plaintiff did not serve the Complaint on
11 Wells Fargo.

12 3. Thereafter, on or about March 26, 2024, Plaintiff filed a First Amended Class
13 Action Complaint (“Amended Complaint”), which she served on Wells Fargo on April 3, 2024.
14 With the Amended Complaint, Plaintiff also served Wells Fargo with a Summons, Civil Case
15 Cover Sheet, Electronically Stored Information Request, and an Alternative Dispute Resolution
16 Information Package. True and correct conformed copies of the Summons, Amended Complaint,
17 Civil Case Cover Sheet, Electronically Stored Information Request, and an Alternative Dispute
18 Resolution Information Package, as they were served on Wells Fargo, are attached as **Exhibit A**.
19 A true and correct copy of the proof of service on Wells Fargo is attached as **Exhibit B**.

REMOVAL IS TIMELY

20
21 4. Removal is timely under 28 U.S.C. § 1446(b) because this Notice of Removal has
22 been filed within thirty (30) days after service of the Amended Complaint on Wells Fargo, and
23 within one year of the commencement of the State Court Action. *Murphy Bros., Inc. v. Michetti*
24 *Pipe Stringing, Inc.*, 526 U.S. 344, 347–48 (1999) (the 30-day deadline to remove set forth in §
25 1446(b) is “triggered by” service of the summons and complaint and not by earlier “receipt of the
26 complaint unattended by any formal service”).
27
28

1 5. Two administrative orders and a case management notice have been filed in the
2 State Court Action, true and correct copies of which are attached as **Exhibit C**. No further
3 proceedings have yet occurred in the State Court Action. A true and correct copy of the State
4 Court Action’s docket is attached as **Exhibit D**.

5 **THE COMPLAINT IS SUBJECT TO REMOVAL BASED ON FEDERAL QUESTION**
6 **GROUND AND SUPPLEMENTAL JURISDICTION**

7 6. The State Court Action involves at least one federal question claim because
8 Plaintiff’s Amended Complaint asserts violations of TILA, 15 U.S.C. § 1601 *et seq.* Under 28
9 U.S.C. § 1331, this Court has original jurisdiction over the TILA claim because it arises under the
10 Constitution, laws, or treaties of the United States.

11 7. Under 28 U.S.C. § 1367, this Court has supplemental jurisdiction over all other
12 claims in the State Court Action because they are so related to the claims over which this Court
13 has original jurisdiction under 28 U.S.C. § 1331 that they form part of the same case or
14 controversy.

15 **THE PROCEDURAL REQUIREMENTS OF 28 U.S.C. § 1446 ARE SATISFIED**

16 8. Removal to this district is proper because the United States District Court for the
17 Northern District of California embraces the place in which the removed action is pending, *i.e.*,
18 the Superior Court of California, County of San Francisco. *See* 28 U.S.C. §§ 1441(a), 1446(a).

19 9. In accordance with 28 U.S.C. § 1446(a), copies of all process, pleadings, and
20 orders served upon Wells Fargo are attached as exhibits to this Notice of Removal.

21 10. In accordance with 28 U.S.C. § 1446(d), Wells Fargo will give Plaintiff written
22 notice of the filing of this Notice of Removal and will file the same with the Superior Court of
23 California for the County of San Francisco.

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CONCLUSION

For the foregoing reasons, Wells Fargo respectfully requests that the State Action be removed to this Court, and no further proceedings be had in the Superior Court of California for the County of San Francisco.

Dated: May 2, 2024

SNELL & WILMER L.L.P.

By: /s/ Amy F. Sorenson

Amy F. Sorenson
Kelly H. Dove (pro hac vice pending)
Aliya L. Astaphan

Attorneys for Defendants
WELLS FARGO BANK, NATIONAL
ASSOCIATION

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INDEX OF EXHIBITS

Exhibit No.	Description	No. of Pages
A	Copies of Pleadings	27
B	Proof of Service	2
C	Notice to Plaintiff - Case Management Conference; Order Denying Complex Designation; Order Granting Fee Waiver	6
D	State Court Docket	2

SNELL & WILMER
 LLP
 LAW OFFICES
 12230 EL CAMINO REAL
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 SAN DIEGO, CALIFORNIA 92130

Exhibit A

Copies of Pleadings

**SUMMONS
(CITACION JUDICIAL)**

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

**NOTICE TO DEFENDANT:
(AVISO AL DEMANDADO):**

WELLS FARGO BANK, NATIONAL ASSOCIATION; ROES 1-10

**YOU ARE BEING SUED BY PLAINTIFF:
(LO ESTÁ DEMANDANDO EL DEMANDANTE):**

HELEN PALMA, Plaintiff, on behalf of herself and all others similarly situated

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association. **NOTE:** The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case.

¡AVISO! Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.sucorte.ca.gov) o poniéndose en contacto con la corte o el colegio de abogados locales. **AVISO:** Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

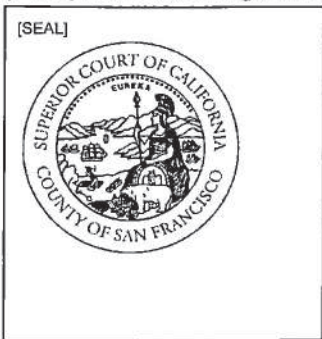
The name and address of the court is:
(El nombre y dirección de la corte es): Civic Center Courthouse
400 McAllister Street, San Francisco, CA 94102

CASE NUMBER:
(Número del Caso): **CGC-24-612124**

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:
(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):
Daniel "Sparky" Abraham, Jubilee Legal; 300 E. Esplanade Dr. #900, Oxnard, CA 93036; 805-946-0386

DATE: **02/05/2024** Clerk, by **DAEJA ROGERS**, Deputy
(Fecha) (Secretario) (Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)
(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).



- NOTICE TO THE PERSON SERVED:** You are served
- as an individual defendant.
 - as the person sued under the fictitious name of (specify):
 - on behalf of (specify): **WELLS FARGO BANK, NATIONAL ASSOCIATION**
under: CCP 416.10 (corporation) CCP 416.60 (minor)
 CCP 416.20 (defunct corporation) CCP 416.70 (conservatee)
 CCP 416.40 (association or partnership) CCP 416.90 (authorized person)
 other (specify):
 - by personal delivery on (date):

1 JUBILEE LEGAL
Daniel "Sparky" Abraham, SBN 299193
2 300 E. Esplanade Dr., 9th Floor
Oxnard, CA 93036
3 Telephone: (805) 946-0386
Facsimile: (805) 620-7834
4 sparky@jubilee.legal

5 Scott C. Borison, SBN 289456
1900 S. Norfolk St. Suite 350
6 San Mateo, CA 94403
Telephone: (301) 620-1016
7 Scott@BorisonFirm.com

8 Attorneys for Plaintiff HELEN PALMA and the Putative Class

ELECTRONICALLY
FILED
Superior Court of California,
County of San Francisco

03/26/2024
Clerk of the Court
BY: WILLIAM TRUPEK
Deputy Clerk

9
10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
FOR THE COUNTY OF SAN FRANCISCO

11 **UNLIMITED CIVIL**

12 HELEN PALMA,

Case No. CGC-24-612124

13
14 Plaintiff, on behalf of
herself and all others
15 similarly situated,

**FIRST AMENDED CLASS ACTION
COMPLAINT FOR DECLARATORY
RELIEF, PUBLIC INJUNCTIVE RELIEF,
AND DAMAGES FOR:**

16 vs.

17 WELLS FARGO BANK, NATIONAL
ASSOCIATION, and ROES 1-10,

18 Defendants.

- 19
20 I. VIOLATIONS OF THE TRUTH IN
LENDING ACT (15 U.S.C. § 1601
ET SEQ.);
21 II. VIOLATIONS OF THE
ROSENTHAL FAIR DEBT
22 COLLECTION PRACTICES ACT
(CIVIL CODE § 1788 *ET SEQ.*);
23 III. CONVERSION;
24 IV. VIOLATIONS OF PENAL CODE
§496; and
25 V. VIOLATIONS OF THE UNFAIR
COMPETITION LAW (BUS. &
26 PROF. CODE § 17200).

27 **DEMAND FOR JURY TRIAL**

1 1. Plaintiff HELEN PALMA (“Ms. Palma” or “Plaintiff”), individually and on behalf of all
2 others similarly situated, by her attorneys, alleges on personal information and upon
3 information and belief based upon, *inter alia*, the investigation made by and through her
4 attorneys, as follows:

5 **INTRODUCTION**

6 2. WELLS FARGO BANK, NATIONAL ASSOCIATION (“Defendant” or “Wells Fargo”)
7 is a major bank. Wells Fargo offers deposit accounts. Well Fargo also offers open end
8 consumer credit to its banking customers. When a customer has both a deposit account
9 and consumer open end credit, Wells Fargo practice is to unilaterally and unlawfully
10 seize funds out of a customers’ deposit account if the customer does not timely pay the
11 open end credit loan.

12 3. Wells Fargo’s does not seek any court approval or provide its customer any notice and
13 opportunity to be heard before it takes the customer’s funds.

14 4. Wells Fargo seizes funds out of customer deposit accounts even when those funds are
15 traceable to protected sources under state and federal law.

16 5. Wells Fargo seizes funds without regard to state rules that govern bank liens and bank
17 levies, and sometimes leaves customers with \$0 in their accounts to meet their basic
18 needs.

19 6. Wells Fargo’s practice of seizing funds from deposit accounts and applying them to open
20 end credit accounts is prohibited by the Truth In Lending Act (“TILA”) and violates
21 numerous other provisions of law.

22 7. Ms. Palma is a piano teacher in San Francisco. She has banked with Wells Fargo since
23 opening her first bank account at 16 years old. Ms. Palma had a Wells Fargo checking
24 account, a Wells Fargo savings account, and a Wells Fargo credit card account.

25 8. Ms. Palma brings this action for declaratory relief, public injunctive relief, and damages
26 against Wells Fargo and ROES 1-10 (together, “Defendants”) to protect the public by
27 challenging its practice of unlawfully seizing funds out of customers’ bank accounts.
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FACTS RELATING TO MS. PALMA

- 9. Ms. Palma banked with Wells Fargo since she was a teenager. She had a Wells Fargo checking account for over 10 years until shortly after Wells Fargo unlawfully took her money.
- 10. Ms. Palma is a working, young adult and all the financial transactions she made using her Wells Fargo credit card and account were for her personal, family or household use. For example, Ms. Palma used her Wells Fargo credit card and bank account to purchase food, pay her rent, and pay for transportation.
- 11. Several years ago, Ms. Palma fell behind on her credit card payments. Wells Fargo sued her and obtained a judgment against her for the outstanding credit card debt.
- 12. State law provides the process by which Wells Fargo may enforce its judgment through a levy on Ms. Palma’s bank accounts. However, that process requires Wells Fargo to give Ms. Palma notice, allows her an opportunity to file a claim of exemption, and requires Wells Fargo to leave Ms. Palma with a minimum amount of money pursuant to California Code of Civil Procedure § 704.220.
- 13. As of February, 2023, a deposit account balance of at least \$1,900 was protected from bank levy under California law.

Wells Fargo Unlawfully Offsets Ms. Palma’s Checking Account

- 14. On February 2, 2023, without prior notice, authorization or any opportunity to be heard, Wells Fargo knowingly and willfully withdrew \$284.03 from Ms. Palma’s savings account and applied it as a payment—a payment to Wells Fargo itself—on Ms. Palma’s open end credit card debt. This left Ms. Palma with \$0 in her savings account.
- 15. On that same day, February 2, 2023, without prior notice or authorization, Wells Fargo knowingly and willfully withdrew \$181.41 from Ms. Palma’s checking account and applied it as a payment—a payment to Wells Fargo itself—on Ms. Palma’s open end

1 credit card debt. This left Ms. Palma with only \$102.74 in her checking account.

2 16. In blatant disregard of these rules, Wells Fargo skipped the legal process for a bank levy,
3 which would have prevented it from taking *any* money out of Ms. Palma's accounts, and
4 instead unlawfully helped itself to her funds and leave her with only \$102.74 to her name.

5 **State and Federal Law Prohibit Offset**

6 17. The Truth in Lending Act ("TILA") and Regulation Z prohibit credit card issuers or open
7 end credit plans from taking money from customers' deposit accounts to offset an
8 indebtedness arising from consumer credit transactions.

9 18. Specifically, TILA states: "A card issuer may not take any action to offset a cardholder's
10 indebtedness arising in connection with a consumer credit transaction under the relevant
11 credit card plan against funds of the cardholder held on deposit with the card issuer"
12 15 U.S.C. § 1666h(a). There are two narrow exceptions to this provision that are not
13 applicable in this case.

14 19. Despite these prohibitions and protections, Wells Fargo's policy and practice is to
15 unlawfully seize customer deposits to offset consumer credit accounts.

16 20. On information and belief, Wells Fargo's policy and practice of offsetting cardholder's
17 deposit accounts is based on a purported contractual provision that violates federal law
18 and California law.

19 21. Wells Fargo is aware that its practice violates the law, and sometimes refunds customer
20 money when the customer complains to regulators. However, Wells Fargo has
21 nonetheless continued its unlawful offsetting practice and takes advantage of those who
22 either do not have the time, energy or resources to complain.

23 22. Ms. Palma brings this action primarily to prevent and prohibit Wells Fargo from
24 engaging in its illegal offset practices as to the general public of potential customers who
25 have yet to enter into a relationship with Wells Fargo, as well as Wells Fargo's current
26 customers.

1 **Wells Fargo Refuses to Give Ms. Palma Her Money Back**

2 23. Between February 2023 and the present, Ms. Palma repeatedly contacted Wells Fargo, on
3 her own and through counsel, asking for her money to be returned.

4 24. Wells Fargo gave Ms. Palma the runaround: customer service would transfer Ms. Palma
5 to the Levy Department; Wells Fargo's Levy Department sent Ms. Palma information for
6 the Reese Law Group, with instructions to contact the Reese Law Group; Reese Law
7 Group directed her back to Wells Fargo's customer service.

8 25. Ms. Palma asked Wells Fargo customer service, their levy department, and the Reese
9 Law Group to explain the grounds on which the withdrawal was authorized.

10 26. Between February 2023 and present, Wells Fargo neither returned the money nor
11 provided evidence that the transaction was authorized.

12 27. On February 23, 2023, Wells Fargo sent Ms. Palma a letter and claimed summarily that
13 Ms. Palma owed the money due to non-payment of a judgment against her and that Wells
14 Fargo was authorized to take it from her checking and savings account.

15 28. Ms. Palma never authorized the withdrawal.

16 29. Despite repeated requests from Ms. Palma and her attorneys, Wells Fargo has not
17 returned these funds. Wells Fargo has no legal right to unilaterally seize Ms. Palma's
18 funds or the funds of any other California resident. In doing so, Wells Fargo committed
19 theft, conversion, and violated numerous provisions of law including the Unfair
20 Competition Law, Business & Professions Code § 17200; the Truth In Lending Act, 15
21 U.S.C. § 1601 *et seq.*; the Rosenthal Fair Debt Collection Practices Act, Civil Code
22 § 1788 *et seq.*; and Penal Code § 496. The public is also entitled to injunctive relief to
23 stop Wells Fargo's practices.

24 30. As of the time of filing this complaint, Ms. Palma has still not received her funds.

25 **JURISDICTION AND VENUE**

26 31. Venue is proper in San Francisco County Superior Court pursuant to California Code of
27 Civil Procedure §§ 393 and 395.5 because one or more of the violations alleged in this
28

1 Complaint arise in the County of San Francisco. Venue is also proper in the San
2 Francisco County Superior Court pursuant to Code of Civil Procedure § 395(b) because
3 this action arises from an alleged extension of credit for personal, family, or household
4 use and Ms. Palma resided in San Francisco County at the commencement of this action.
5 32. This Court has jurisdiction over Plaintiff's claims because Plaintiff is a resident of
6 California, because Defendant regularly conducts business in California, and because the
7 acts and omissions complained of occurred at locations in California.

8 **PARTIES**

9 33. Plaintiff Ms. Palma is a natural person. At all relevant times, Ms. Palma was a resident of
10 San Francisco County, California.
11 34. Defendant, Wells Fargo is a federally chartered corporation with its principal place of
12 business in the state of South Dakota, conducting business in California, including via
13 corporate offices in San Francisco, California.
14 35. The true names and capacities, whether individual, corporate, associate, governmental, or
15 otherwise, of Defendants, ROES 1 through 10, are unknown to Plaintiff at this time, who
16 therefore sues said Defendants by such fictitious names. When the true names and
17 capacities of said Defendants have been ascertained, Plaintiff will amend this Complaint
18 accordingly. Plaintiff is informed and believes, and thereon alleges, that each Defendant
19 designated herein as a ROE is responsible, negligently or in some other actionable
20 manner, for the events and happenings hereinafter referred to, and caused damages
21 thereby to the Plaintiff, as hereinafter alleged.
22 36. At all times herein mentioned, each of the Defendants was the agent, servant, employee
23 and/or joint venturer of their Co-Defendants, and at all said times, each Defendant was
24 acting in the full course and scope of said agency, service, employment and/or joint
25 venture. Any reference hereafter to "Defendants" without further qualification is meant
26 by Plaintiff to refer to each Defendant, and all of them, named above. Defendants'

1 officers and directors ratified or approved of the conduct described herein, including the
2 conduct of its employees or agents.

3 37. Plaintiff is informed and believes, and thereon alleges that at all times herein mentioned,
4 Defendants, ROES 1-10, inclusive, were and are individuals, corporations, partnerships,
5 unincorporated associations, sole proprietorships and/or other business entities organized
6 and existing under and by virtue of the laws of the State of California, or the laws of
7 some other state or foreign jurisdiction, and that said Defendants, and each of them, have
8 regularly conducted business in the County of San Francisco, State of California.

9 **CLASS ALLEGATIONS**

10 38. Plaintiff incorporates the foregoing allegations.

11 39. On information and belief, Wells Fargo's practice of unilaterally taking withdrawals from
12 customer deposit accounts without notice, legal process or an opportunity to be heard,
13 and applying the funds to credit card accounts is a routine and regular practice of Wells
14 Fargo with all persons who have checking and savings accounts and credit card accounts
15 with Wells Fargo.

16 40. Ms. Palma requests that the court certify a class consisting of the following persons:

17 All residents of California who have had Wells Fargo withdraw and use
18 funds from their Wells Fargo deposit accounts to offset balances owed on
19 Wells Fargo open end consumer credit accounts in the four years
20 preceding the filing of this complaint.

21 41. The Plaintiff estimates that there are more than 1,000 members of the Class.

22 **FACTUAL ALLEGATIONS COMMON TO CLASS**

23 42. Wells Fargo's business includes providing checking and savings accounts and credit card
24 accounts to certain members of the public including the Plaintiff and class members.

25 43. Wells Fargo makes unauthorized withdrawals from the checking and saving accounts of
26 the Plaintiff and class members and applies the funds withdrawn as an offset to credit
27 accounts.
28

1 44. On information and belief, the Defendants' position is that these offsets are authorized in
2 Wells Fargo's deposit agreement.

3 45. Plaintiff contends this supposed authorization violates TILA and Regulation Z and state
4 law provisions including the Rosenthal Fair Debt Collection Practices Act, Civil Code
5 § 1788 *et seq.*; and Penal Code § 496.

6 46. There are common questions of law and fact relating to the Class, including:

- 7 a) Whether the Defendants may make withdrawals from the Class members'
8 checking and/or saving accounts for credit card debts?
- 9 b) Whether the Defendants' actions violate the Truth in Lending Act?
- 10 c) Whether the Defendants' actions violate state law?
- 11 d) Whether the Class is entitled to declaratory and/or injunctive relief relating to the
12 Defendants' practices?
- 13 e) Whether the Defendants have made withdrawals from checking or saving
14 accounts of class members for credit card accounts?
- 15 f) Whether the class members are entitled to a return of any withdrawals taken by
16 the Defendants from their checking or savings account for credit card debts?
- 17 g) Whether the Class is entitled to any damages from the Defendants?

18 47. The Defendants acted on grounds that apply generally to all of the Class members.

19 48. The only individual questions concern the identification of Class members and the actual
20 damages of each Class member. This information can be determined by a simple
21 ministerial examination of the business records of the Defendants. Upon information and
22 belief, Defendants maintain business records that consist of extensive and sophisticated
23 computer records that can be searched, downloaded, and printed in minutes. Such
24 business records are, of course, the same records that Defendants have used to support
25 their withdrawals from checking or savings accounts for credit card debts. Such business
26 records are admissible as an exception to hearsay and as a statement by a party.

27 49. Plaintiff's claims are typical of the claims of the Class members.

28

1 50. Plaintiff is similarly situated with and has suffered similar damages as the other members
2 of the Class.

3 51. Plaintiff will fairly and adequately protect the interest of all Class members in the
4 prosecution of this action.

5 52. Plaintiff has retained attorneys who are experienced in consumer protection laws and
6 experienced in class actions.

7 53. Plaintiffs' attorneys are adequate to represent the Class.

8 **FIRST CAUSE OF ACTION**

9 **Truth in Lending Act, 15 U.S.C. § 1601 et seq.**

10 **(Plaintiff on behalf of herself and the Class against all Defendants)**

11 54. The Truth in Lending Act was enacted "to protect the consumer against inaccurate and
12 unfair credit billing and credit card practices." 15 U.S.C. § 1601(a). As alleged herein,
13 Defendants have engaged in just such a practice.

14 55. Ms. Palma brings the first cause of action against Defendants on behalf of herself and the
15 Class under the Truth In Lending Act, 15 U.S.C. § 1666h, and Regulation Z, 12 C.F.R.
16 § 1026.12.

17 56. Ms. Palma realleges and incorporates by reference herein all of the allegations set forth
18 above.

19 57. Ms. Palma is a "consumer" as that term is defined in 12 C.F.R. § 1026.2(a)(11). She used
20 her Wells Fargo credit card primarily for personal, family, or household purposes,
21 including purchasing food, paying rent, and paying for transportation.

22 58. Ms. Palma is a "cardholder" as that term is defined in 15 U.S.C. § 1602(n) and 12 C.F.R.
23 § 1026.2(a)(8).

24 59. Defendants are "creditors" as that term is defined in 15 U.S.C. § 1602(g).

25 60. Defendants are "card issuers" as that term is defined in 15 U.S.C. § 1602(o) and 12
26 C.F.R. § 1026.2(a)(7).

27 61. The Truth In Lending Act ("TILA") and Regulation Z prohibit card issuers from
28 offsetting a cardholder's indebtedness using funds of the cardholder held on deposit with

- 1 the card issuer. 15 U.S.C. § 1666h(a); 12 C.F.R. § 1026.12(d)(1).
- 2 62. Defendants willfully and knowingly used funds belonging to Ms. Palma and members of
3 the class, and held on deposit with Wells Fargo, to offset alleged indebtedness on Wells
4 Fargo credit cards in violation of TILA and Regulation Z.
- 5 63. Defendants' actions in using Ms. Palma's and class members' funds as alleged were not
6 authorized by a valid credit plan for periodic payments.
- 7 64. Defendants did not have a valid consensual security interest in Ms. Palma's or in class
8 members' funds, nor did Defendants have any legal basis to attach, levy, or enforce a
9 court order relating to these funds.
- 10 65. As a result of Defendants' violations of TILA and Regulation Z, Ms. Palma and the class
11 members are entitled to an award of their actual damages pursuant to 15 U.S.C.
12 § 1640(a)(1).
- 13 66. As a result of Defendants' violations of TILA and Regulation Z, Ms. Palma and the class
14 members are entitled to an award of statutory damages in such amount as the court may
15 allow up to the lesser of \$1,000,000 or one percent of the net worth of Defendant
16 pursuant to 15 U.S.C. § 1640(a)(2)(B).
- 17 67. As a result of Defendants' violations of TILA and Regulation Z, Ms. Palma and the class
18 members are entitled to an award of attorneys' fees and costs pursuant to 15 U.S.C.
19 § 1640(a)(3).

20 **SECOND CAUSE OF ACTION**

21 **The California Rosenthal Fair Debt Collection Practices Act, Civil Code § 1788 *et seq.***
22 **(Plaintiff on behalf of herself and the Class against all Defendants)**

- 22 68. The California Rosenthal Fair Debt Collection Practices Act ("RFDCPA") was enacted
23 "to prohibit debt collectors from engaging in unfair or deceptive acts or practices in the
24 collection of consumer debts" Calif. Civil Code § 1788.1(b).
- 25 69. Ms. Palma brings the second cause of action against Defendants on behalf of herself and
26 the class under the RFDCPA, California Civil Code § 1788 *et seq.*
- 27 70. Ms. Palma realleges and incorporates by reference paragraphs 1 – 53 set forth above.
- 28

1 71. At all relevant times, Ms. Palma is and was a “debtor” as that term is defined in
2 California Civil Code § 1788.2(h).

3 72. Defendants are “debt collectors” as that term is defined in California Civil Code
4 § 1788.2(c).

5 73. The money Wells Fargo has claimed Ms. Palma owes or owed on her credit card account
6 at issue is a “consumer debt” as that term is defined in California Civil Code § 1788.2(f).

7 74. Defendants’ practice of seizing funds from customers’ bank accounts, including that of
8 Ms. Palma, is “debt collection” as that term is defined in California Civil Code
9 § 1788.2(b).

10 75. Through the conduct alleged above, Defendants have violated the RFDCPA. Defendants’
11 violations include but are not limited to the following:

12 a) Defendants engaged in conduct the natural consequence of which is to harass and
13 abuse Ms. Palma and class members in violation of California Civil Code
14 § 1788.17 (incorporating 15 U.S.C. § 1692d) by unlawfully seizing money and
15 refusing to return it;

16 b) Defendants used unfair and unconscionable means to collect a debt from Ms.
17 Palma and class members in violation of California Civil Code § 1788.17
18 (incorporating 15 U.S.C. § 1692f), including by unfairly and unconscionably
19 seizing money, taking action to dispossess Ms. Palma and class members of
20 property with no present right to possession of the property, taking action to
21 dispossess Ms. Palma and class members of property that is exempt by law from
22 such dispossession, and the collection of amounts not authorized by agreement or
23 permitted by law;

24 c) Defendants used false, deceptive, and misleading representations or means in
25 connection with collecting a debt from Ms. Palma and class members in violation
26 of California Civil Code § 1788.17 (incorporating 15 U.S.C. § 1692e), including
27 by falsely representing that Defendants were legally authorized to seize money
28

1 from Ms. Palma's and class members' accounts without their knowledge or
2 consent.

3 76. Defendants' violations of the RFDCPA alleged herein were committed willfully and
4 knowingly.

5 77. As a result of Defendants' violations of the RFDCPA, Ms. Palma and the class members
6 are entitled to an award of actual damages in an amount to be proven at trial pursuant to
7 California Civil Code § 1788.17 (incorporating 15 U.S.C. § 1692k(a)(1)).

8 78. As a result of Defendants' violations of the RFDCPA, Ms. Palma is entitled to an award
9 of statutory damages in an amount not to exceed one thousand dollars (\$1,000) pursuant
10 to California Civil Code § 1788.17 (incorporating 15 U.S.C. § 1692k(a)(2)(A)). The class
11 members are entitled to an award of such amount as the court may allow not to exceed
12 the lesser of \$500,000 or one percent of the net worth of Defendants.

13 79. As a result of Defendants' violations of the RFDCPA, Ms. Palma and the class members
14 are entitled to an award of reasonable attorneys' fees and costs pursuant to California
15 Civil Code § 1788.17 (incorporating 15 U.S.C. § 1692k(a)(3)).

16 80. Pursuant to California Civil Code § 1788.32, the remedies provided under the RFDCPA
17 are intended to be cumulative and in addition to any other procedures, rights, or remedies
18 that Ms. Palma and the class members may have under any other provision of law.

19 **THIRD CAUSE OF ACTION**

20 **Conversion**

21 **(Plaintiff on behalf of herself and the Class against all Defendants)**

22 81. Ms. Palma brings the third cause of action against Wells Fargo on behalf of herself and
23 the class for conversion.

24 82. Ms. Palma realleges and incorporates by reference paragraphs 1 – 53 set forth above.

25 83. Through the conduct alleged above, Defendants wrongfully exercised control and took
26 possession of Ms. Palma's and the class members' personal property.

27 84. Ms. Palma and the class members owned and had a right to possess the funds in their
28 depository accounts held by Wells Fargo.

1 85. Defendants substantially interfered with Ms. Palma's and the class members' property by
2 knowingly and intentionally taking possession of funds belonging to Ms. Palma and the
3 class members, thereby preventing Ms. Palma and the class members from having access
4 to these funds.

5 86. Defendants further substantially interfered with Ms. Palma's and the class members'
6 property by refusing to return the funds upon request.

7 87. Ms. Palma and the class members did not consent to Defendants exercising control and
8 taking possession of their funds.

9 88. Ms. Palma and the class members were harmed by Defendants' conduct alleged herein.

10 89. Defendants' wrongfully exercising control and taking possession of Ms. Palma's and the
11 class members' funds, and refusing to return the funds on demand, was a substantial
12 factor in causing the harm.

13 90. Ms. Palma and the class members are entitled to recover damages from Defendants in an
14 amount to be proven at trial.

15
16 **FOURTH CAUSE OF ACTION**

17 **Civil Theft, Penal Code § 496**

18 **(Plaintiff on behalf of herself and the Class against all Defendants)**

19 91. California Penal Code § 496 subjects those who commit theft or extortion to a civil cause
20 of action brought by a person injured by the theft or extortion.

21 92. Ms. Palma, on behalf of herself and the class, brings the fourth cause of action against
22 Defendants under California Penal Code § 496(c).

23 93. Ms. Palma realleges and incorporates by reference paragraphs 1 – 53 set forth above.

24 94. Defendants obtained funds belonging to Ms. Palma and the class members in a manner
25 constituting theft by unlawfully exercising possession and taking control over those funds
26 without a legal basis and without Ms. Palma's and class members' consent.

27 95. Defendants obtained funds belonging to Ms. Palma and the class members in a manner
28 constituting theft by fraudulently appropriating funds which had been entrusted to Wells

1 Fargo.

2 96. Defendants knew that Ms. Palma's and class members' property had been taken
3 unlawfully and without their consent. Defendants nonetheless withheld Ms. Palma's and
4 class members' property from them.

5 97. Ms. Palma and the class members were injured by Defendants' actions alleged herein.

6 98. Pursuant to California Penal Code § 496(c), Ms. Palma and the class members are
7 entitled to an award of three times their actual damages to be proven at trial, costs of suit,
8 and reasonable attorneys' fees.

9 **FIFTH CAUSE OF ACTION**
10 **Unfair Competition Law, Business & Professions Code § 17200**
(Plaintiff on behalf of herself and the Class against all Defendants)

11 99. Ms. Palma, on behalf of herself and the class, brings the fifth cause of action against
12 Defendants under the California Unfair Competition Law ("UCL"), Business
13 & Professions Code § 17200.

14 100. Ms. Palma realleges and incorporates by reference paragraphs 1 – 53 set forth above.

15 101. Wells Fargo credit card accounts and Wells Fargo bank accounts are "consumer financial
16 products or services" as that term is defined in 12 U.S.C. § 5481(5).

17 102. Defendants are "covered persons" as defined in 12 U.S.C. § 5481(6) because they engage
18 in offering consumer financial products and services, including the checking and saving
19 accounts and credit card accounts used by Ms. Palma and the class members, and/or
20 because they act as affiliates and service providers to covered persons.

21 103. Federal law prohibits covered persons from engaging in any unfair, deceptive, or abusive
22 acts or practices with respect to a consumer financial product or service. 12 U.S.C.
23 § 5531(a).

24 104. Defendants' actions alleged herein constitute unfair acts and practices that have caused
25 Ms. Palma and class members substantial injuries that were not reasonably avoidable by
26 them. These injuries were not outweighed by countervailing benefits to consumers or to
27 competition. Defendants' actions alleged herein are substantially injurious to consumers,
28

- 1 offend public policy, and are immoral, unethical, oppressive, and unscrupulous, as the
2 gravity of the conduct outweighs any alleged benefits attributable to the conduct.
- 3 105. Defendants' actions alleged herein constitute deceptive acts and practices because they
4 include material misrepresentations and omissions likely to mislead. Namely, Defendants
5 represent that Wells Fargo's unilateral seizure of funds is authorized by law when it is
6 not.
- 7 106. Defendants' actions alleged herein constitute abusive acts and practices because they
8 took unreasonable advantage of Ms. Palma's and class members' inability to protect their
9 interests while using consumer financial products or services. Namely, Defendants took
10 unreasonable advantage of Ms. Palma's and class members' inability to prevent
11 Defendants from withdrawing funds from their accounts.
- 12 107. Defendants' actions alleged herein constitute fraudulent acts and practices because they
13 involve false and misleading representations and omissions likely to deceive reasonable
14 consumers. Namely, Defendants represent that Wells Fargo has the legal authority to
15 unilaterally withdraw funds from deposit accounts and apply those funds to credit card
16 accounts when it does not.
- 17 108. Defendants' actions alleged herein are unlawful because they violate numerous additional
18 provisions of law, as set forth herein, including:
- 19 a) The Truth in Lending Act, 15 U.S.C. § 1666h, and Regulation Z, 12 C.F.R.
20 § 1026.12;
- 21 b) The Rosenthal Fair Debt Collections Practices Act, Civil Code § 1788.17
22 (incorporating 15 U.S.C. §§ 1692d, 1692e, 1692f);
- 23 c) Penal Code § 496.
- 24 109. Defendants' actions alleged herein constitute unlawful, unfair, and fraudulent business
25 practices in violation of the UCL.
- 26 110. Ms. Palma and class members have lost money as a result of Defendants' actions.
- 27 111. As a result of Wells Fargo's violations of the UCL, Ms. Palma and class members are
28

1 entitled to injunctive relief and other equitable relief in order to remedy past harms and
2 prevent future damages for which there is no adequate remedy at law.

3 112. Ms. Palma and the class seek an injunction to prevent Wells Fargo from violating the
4 UCL as to their accounts in the future.

5 113. In addition, Ms. Palma and the class seek a public injunction to prevent Wells Fargo from
6 continuing its unlawful practice of withdrawing funds from deposit accounts to apply as
7 payments toward credit card accounts in violation of federal and state law toward the
8 general public of potential future customers and current customers.

9 **PRAYER FOR RELIEF**

10 WHEREFORE, Plaintiff and the class pray that judgment be entered against each

11 Defendant as follows:

12 a) For an order enjoining Defendants from continuing their unlawful practice of offsetting
13 consumer credit accounts using funds Wells Fargo holds on deposit as to the general public of its
14 potential customers and current customers;

15 b) For an order certifying a Class of persons as set forth herein for the claims asserted
16 herein;

17 c) For an order appointing the Plaintiff as Class Representative of the Class;

18 d) For an order appointing the Plaintiff's counsel as class counsel for the Class;

19 e) For an order enjoining Defendants from continuing its unlawful practices as to Ms. Palma
20 and the class members' accounts;

21 f) For actual damages;

22 g) For statutory damages;

23 h) For punitive damages;

24 i) For prejudgment interest at the maximum legal rate;

25 j) For an award of attorneys' fees, costs, and expenses incurred in the investigation, filing,
26 and prosecution of this action; and

27 k) For such other and further relief as this Court shall deem just and proper.

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TRIAL BY JURY IS DEMANDED

Plaintiff hereby requests a trial by jury of all claims that can be so tried.

Respectfully submitted,

Dated: March 26, 2024

By: 
Daniel "Sparky" Abraham, Esq.
JUBILEE LEGAL
Scott C. Borison, Esq.
Attorneys for Plaintiff HELEN PALMA

ELECTRONICALLY STORED INFORMATION REQUEST

This notice is to demand that you preserve all documents, tangible things and electronically stored information (“ESI”) potentially relevant to any issues in the above-entitled matter. This specifically includes, but is not limited to, all information pertaining to the above matter, including specifically all recordings of any telephone communication between your company and Plaintiff.

As used in this request, “you” and “your” or “your client” refers to your organizations, and its predecessors, successors in interest, assignees, parents, subsidiaries, divisions or affiliates, and their respective officers, directors, employees, servants, agents, attorneys, and accountants.

Much of the information subject to disclosure or responsive to discovery is stored on your client’s current and former computer systems and other media and devices (such as: personal digital assistants, voice-messaging systems, online repositories and cell phones).

Electronically stored information (“ESI”) should be afforded the broadest possible definition and includes (for example and not as an exclusive list) potentially relevant information whether electronically, magnetically or optically stored.

This preservation obligation extends beyond ESI in yours or your client’s care, possession or custody and includes ESI in the custody of others that is subject to your client’s direction or control. You must notify any current or former agent, attorney, employee, custodian or contractor in possession of potentially relevant ESI to preserve such ESI to the full extent of your client’s obligation to do so, and you must try to secure their compliance.

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Daniel "Sparky" Abraham (SBN 299193) Jubilee Legal, 300 E. Esplanade Dr. Suite 900, Oxnard, CA 93036 TELEPHONE NO.: 805-946-0386 FAX NO.: 805-620-7834 EMAIL ADDRESS: sparky@jubilee.legal ATTORNEY FOR (Name): Helen Palma	FOR COURT USE ONLY ELECTRONICALLY FILED Superior Court of California, County of San Francisco 02/02/2024 Clerk of the Court BY: DAEJA ROGERS Deputy Clerk
SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN FRANCISCO STREET ADDRESS: 400 McAllister St. MAILING ADDRESS: 400 McAllister St. CITY AND ZIP CODE: San Francisco, CA 94102 BRANCH NAME: Civic Center Courthouse	
CASE NAME: Helen Palma v. Wells Fargo Bank, National Association, et al.	
CIVIL CASE COVER SHEET <input checked="" type="checkbox"/> Unlimited (Amount demanded exceeds \$35,000) <input type="checkbox"/> Limited (Amount demanded is \$35,000 or less)	Complex Case Designation <input type="checkbox"/> Counter <input type="checkbox"/> Joinder Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)
	CASE NUMBER: CGC-24-612124 JUDGE: DEPT.:

Items 1-6 below must be completed (see instructions on page 2).

1. Check one box below for the case type that best describes this case:

Auto Tort <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (46) Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort <input type="checkbox"/> Asbestos (04) <input type="checkbox"/> Product liability (24) <input type="checkbox"/> Medical malpractice (45) <input type="checkbox"/> Other PI/PD/WD (23) Non-PI/PD/WD (Other) Tort <input checked="" type="checkbox"/> Business tort/unfair business practice (07) <input type="checkbox"/> Civil rights (08) <input type="checkbox"/> Defamation (13) <input type="checkbox"/> Fraud (16) <input type="checkbox"/> Intellectual property (19) <input type="checkbox"/> Professional negligence (25) <input type="checkbox"/> Other non-PI/PD/WD tort (35) Employment <input type="checkbox"/> Wrongful termination (36) <input type="checkbox"/> Other employment (15)	Contract <input type="checkbox"/> Breach of contract/warranty (06) <input type="checkbox"/> Rule 3.740 collections (09) <input type="checkbox"/> Other collections (09) <input type="checkbox"/> Insurance coverage (18) <input type="checkbox"/> Other contract (37) Real Property <input type="checkbox"/> Eminent domain/Inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (26) Unlawful Detainer <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38) Judicial Review <input type="checkbox"/> Asset forfeiture (05) <input type="checkbox"/> Petition re: arbitration award (11) <input type="checkbox"/> Writ of mandate (02) <input type="checkbox"/> Other judicial review (39)	Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403) <input type="checkbox"/> Antitrust/Trade regulation (03) <input type="checkbox"/> Construction defect (10) <input type="checkbox"/> Mass tort (40) <input type="checkbox"/> Securities litigation (28) <input type="checkbox"/> Environmental/Toxic tort (30) <input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41) Enforcement of Judgment <input type="checkbox"/> Enforcement of judgment (20) Miscellaneous Civil Complaint <input type="checkbox"/> RICO (27) <input type="checkbox"/> Other complaint (not specified above) (42) Miscellaneous Civil Petition <input type="checkbox"/> Partnership and corporate governance (21) <input type="checkbox"/> Other petition (not specified above) (43)
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2. This case is is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:

a. <input type="checkbox"/> Large number of separately represented parties b. <input checked="" type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve c. <input checked="" type="checkbox"/> Substantial amount of documentary evidence	d. <input type="checkbox"/> Large number of witnesses e. <input type="checkbox"/> Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court f. <input type="checkbox"/> Substantial postjudgment judicial supervision
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3. Remedies sought (check all that apply): a. monetary b. nonmonetary; declaratory or injunctive relief c. punitive

4. Number of causes of action (specify): 5

5. This case is is not a class action suit.

6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: February 2, 2024
 Daniel "Sparky" Abraham

(TYPE OR PRINT NAME)

(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

Page 1 of 2

INSTRUCTIONS ON HOW TO COMPLETE THE COVER SHEET

To Plaintiffs and Others Filing First Papers. If you are filing a first paper (for example, a complaint) in a civil case, you **must** complete and file, along with your first paper, the *Civil Case Cover Sheet* contained on page 1. This information will be used to compile statistics about the types and numbers of cases filed. You must complete items 1 through 6 on the sheet. In item 1, you must check **one** box for the case type that best describes the case. If the case fits both a general and a more specific type of case listed in item 1, check the more specific one. If the case has multiple causes of action, check the box that best indicates the **primary** cause of action. To assist you in completing the sheet, examples of the cases that belong under each case type in item 1 are provided below. A cover sheet must be filed only with your initial paper. Failure to file a cover sheet with the first paper filed in a civil case may subject a party, its counsel, or both to sanctions under rules 2.30 and 3.220 of the California Rules of Court.

To Parties in Rule 3.740 Collections Cases. A "collections case" under rule 3.740 is defined as an action for recovery of money owed in a sum stated to be certain that is not more than \$25,000, exclusive of interest and attorney's fees, arising from a transaction in which property, services, or money was acquired on credit. A collections case does not include an action seeking the following: (1) tort damages, (2) punitive damages, (3) recovery of real property, (4) recovery of personal property, or (5) a prejudgment writ of attachment. The identification of a case as a rule 3.740 collections case on this form means that it will be exempt from the general time-for-service requirements and case management rules, unless a defendant files a responsive pleading. A rule 3.740 collections case will be subject to the requirements for service and obtaining a judgment in rule 3.740.

To Parties in Complex Cases. In complex cases only, parties must also use the *Civil Case Cover Sheet* to designate whether the case is complex. If a plaintiff believes the case is complex under rule 3.400 of the California Rules of Court, this must be indicated by completing the appropriate boxes in items 1 and 2. If a plaintiff designates a case as complex, the cover sheet must be served with the complaint on all parties to the action. A defendant may file and serve no later than the time of its first appearance a joinder in the plaintiff's designation, a counter-designation that the case is not complex, or, if the plaintiff has made no designation, a designation that the case is complex.

CASE TYPES AND EXAMPLES**Auto Tort**

Auto (22)—Personal Injury/Property Damage/Wrongful Death
Uninsured Motorist (46) (*if the case involves an uninsured motorist claim subject to arbitration, check this item instead of Auto*)

Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort

Asbestos (04)
Asbestos Property Damage
Asbestos Personal Injury/Wrongful Death
Product Liability (*not asbestos or toxic/environmental*) (24)
Medical Malpractice (45)
Medical Malpractice—Physicians & Surgeons
Other Professional Health Care Malpractice
Other PI/PD/WD (23)
Premises Liability (e.g., slip and fall)
Intentional Bodily Injury/PD/WD (e.g., assault, vandalism)
Intentional Infliction of Emotional Distress
Negligent Infliction of Emotional Distress
Other PI/PD/WD

Non-PI/PD/WD (Other) Tort

Business Tort/Unfair Business Practice (07)
Civil Rights (e.g., discrimination, false arrest) (*not civil harassment*) (08)
Defamation (e.g., slander, libel) (13)
Fraud (16)
Intellectual Property (19)
Professional Negligence (25)
Legal Malpractice
Other Professional Malpractice (*not medical or legal*)
Other Non-PI/PD/WD Tort (35)

Employment

Wrongful Termination (36)
Other Employment (15)

Contract

Breach of Contract/Warranty (06)
Breach of Rental/Lease
Contract (*not unlawful detainer or wrongful eviction*)
Contract/Warranty Breach—Seller Plaintiff (*not fraud or negligence*)
Negligent Breach of Contract/Warranty
Other Breach of Contract/Warranty
Collections (e.g., money owed, open book accounts) (09)
Collection Case—Seller Plaintiff
Other Promissory Note/Collections Case
Insurance Coverage (*not provisionally complex*) (18)
Auto Subrogation
Other Coverage
Other Contract (37)
Contractual Fraud
Other Contract Dispute

Real Property

Eminent Domain/Inverse Condemnation (14)
Wrongful Eviction (33)
Other Real Property (e.g., quiet title) (26)
Writ of Possession of Real Property
Mortgage Foreclosure
Quiet Title
Other Real Property (*not eminent domain, landlord/tenant, or foreclosure*)

Unlawful Detainer

Commercial (31)
Residential (32)
Drugs (38) (*if the case involves illegal drugs, check this item; otherwise, report as Commercial or Residential*)

Judicial Review

Asset Forfeiture (05)
Petition Re: Arbitration Award (11)
Writ of Mandate (02)
Writ—Administrative Mandamus
Writ—Mandamus on Limited Court Case Matter
Writ—Other Limited Court Case Review
Other Judicial Review (39)
Review of Health Officer Order
Notice of Appeal—Labor Commissioner Appeals

Provisionally Complex Civil Litigation (Cal. Rules of Court Rules 3.400–3.403)

Antitrust/Trade Regulation (03)
Construction Defect (10)
Claims Involving Mass Tort (40)
Securities Litigation (28)
Environmental/Toxic Tort (30)
Insurance Coverage Claims (*arising from provisionally complex case type listed above*) (41)

Enforcement of Judgment

Enforcement of Judgment (20)
Abstract of Judgment (Out of County)
Confession of Judgment (*non-domestic relations*)
Sister State Judgment
Administrative Agency Award (*not unpaid taxes*)
Petition/Certification of Entry of Judgment on Unpaid Taxes
Other Enforcement of Judgment Case

Miscellaneous Civil Complaint

RICO (27)
Other Complaint (*not specified above*) (42)
Declaratory Relief Only
Injunctive Relief Only (*non-harassment*)
Mechanics Lien
Other Commercial Complaint Case (*non-tort/non-complex*)
Other Civil Complaint (*non-tort/non-complex*)

Miscellaneous Civil Petition

Partnership and Corporate Governance (21)
Other Petition (*not specified above*) (43)
Civil Harassment
Workplace Violence
Elder/Dependent Adult Abuse
Election Contest
Petition for Name Change
Petition for Relief From Late Claim
Other Civil Petition



Superior Court of California, County of San Francisco Alternative Dispute Resolution Information Package



The plaintiff must serve a copy of the ADR Information Package on each defendant along with the complaint. Cross-complainants must serve a copy of the ADR Information Package on any new parties to the action together with the cross-complaint. (CRC 3.221(c).)

WHAT IS ADR?

Alternative Dispute Resolution (ADR) is the term used to describe the various options available for settling a dispute without a trial. There are many different ADR processes, the most common forms of which are mediation, arbitration and settlement conferences. In ADR, trained, impartial people decide disputes or help parties decide disputes themselves. They can help parties resolve disputes without having to go to trial.

WHY CHOOSE ADR?

It is the policy of the Superior Court that every long cause, non-criminal, non-juvenile case should participate either in an early settlement conference, mediation, arbitration, early neutral evaluation or some other alternative dispute resolution process prior to trial. (Local Rule 4.)

ADR can have a number of advantages over traditional litigation:

- **ADR can save time.** A dispute often can be resolved in a matter of months, even weeks, through ADR, while a lawsuit can take years.
- **ADR can save money,** including court costs, attorney fees, and expert fees.
- **ADR encourages participation.** The parties may have more opportunities to tell their story than in court and may have more control over the outcome of the case.
- **ADR is more satisfying.** For all the above reasons, many people participating in ADR have reported a high degree of satisfaction.

****Electing to participate in an ADR process does not stop the time period to respond to a complaint or cross-complaint****

WHAT ARE THE ADR OPTIONS?

The San Francisco Superior Court offers different types of ADR processes for general civil matters. The programs are described below:

1) MANDATORY SETTLEMENT CONFERENCES

Settlement conferences are appropriate in any case where settlement is an option. The goal of settlement conferences is to provide participants an opportunity to reach a mutually acceptable settlement that resolves all or part of a dispute. Mandatory settlement conferences are ordered by the court and are often held near the date a case is set for trial, although they may be held earlier if appropriate. A party may elect to apply to the Presiding Judge for a specially set mandatory settlement conference by filing an ex parte application. See Local Rule 5.0 for further instructions. Upon approval by the Presiding Judge, the court will schedule the conference and assign a settlement conference officer.

2) MEDIATION

Mediation is a voluntary, flexible, and confidential process in which a neutral third party facilitates negotiations. The goal of mediation is to reach a mutually satisfactory agreement that resolves all or part of a dispute after exploring the interests, needs, and priorities of the parties in light of relevant evidence and the law.

(A) MEDIATION SERVICES OF THE BAR ASSOCIATION OF SAN FRANCISCO (BASF), in cooperation with the Superior Court, is designed to help civil litigants resolve disputes before they incur substantial costs in litigation. While it is best to utilize the program at the outset of litigation, parties may use the program at any time while a case is pending. Experienced professional mediators work with parties to arrive at a mutually agreeable solution. The mediators provide one hour of preparation time and the first two hours of mediation time. Mediation time beyond that is charged at the mediator's hourly rate. BASF pre-screens all mediators based upon strict educational and experience requirements. Parties can select their mediator from the panels at www.sfbar.org/mediation or BASF can assist with mediator selection. BASF staff handles conflict checks and full case management. The success rate for the program is 67% and the satisfaction rate is 99%. BASF charges an administrative fee of \$295 per party. The hourly mediator fee beyond the first three hours will vary depending on the mediator selected. Waivers of the fee are available to those who qualify. For more information, call 415-982-1600 or email adr@sfbar.org.

(B) JUDICIAL MEDIATION PROGRAM provides mediation with a San Francisco Superior Court judge for civil cases, which include but are not limited to, personal injury, construction defect, employment, professional malpractice, insurance coverage, toxic torts and industrial accidents. Parties may utilize this program at any time throughout the litigation process. Parties interested in judicial mediation should file a Stipulation to Judicial Mediation indicating a joint request for inclusion in the program. A preference for a specific judge may be indicated. The court will coordinate assignment of cases for the program. There is no charge. Information about the Judicial Mediation Program may be found by visiting the ADR page on the court's website: www.sfsuperiorcourt.org/divisions/civil/dispute-resolution

(C) PRIVATE MEDIATION: Although not currently a part of the court's ADR program, parties may select any private mediator of their choice. The selection and coordination of private mediation is the responsibility of the parties. Parties may find mediators and organizations on the Internet. The cost of private mediation will vary depending on the mediator selected.

(D) COMMUNITY BOARDS MEDIATION SERVICES: Mediation services are offered by Community Boards (CB), a nonprofit resolution center, under the Dispute Resolution Programs Act. CB utilizes a three-person panel mediation process in which mediators work as a team to assist the parties in reaching a shared solution. To the extent possible, mediators are selected to reflect the demographics of the disputants. CB has a success rate of 85% for parties reaching a resolution and a consumer satisfaction rate of 99%. The fee is \$45-\$100 to open a case, and an hourly rate of \$180 for complex cases. Reduction and waiver of the fee are available. For more information, call 415-920-3820 or visit communityboards.org.

3) ARBITRATION

An arbitrator is a neutral attorney who presides at a hearing where the parties present evidence through exhibits and testimony. The arbitrator applies the law to the facts of the case and makes an award based upon the merits of the case.

(A) JUDICIAL ARBITRATION

When the court orders a case to arbitration it is called "judicial arbitration". The goal of arbitration is to provide parties with an adjudication that is earlier, faster, less formal, and usually less expensive than a trial. Pursuant to CCP 1141.11, all civil actions in which the amount in controversy is \$50,000 or less, and no party seeks equitable relief, shall be ordered to arbitration. (Upon stipulation of all parties, other civil matters may be submitted to judicial arbitration.) An arbitrator is chosen from the court's arbitration panel. Arbitrations are generally held between 7 and 9 months after a complaint has been filed. Judicial arbitration is not binding unless all parties agree to be bound by the arbitrator's decision. Any party may request a trial within 60 days after the arbitrator's award has been filed. Local Rule 4.1 allows for mediation in lieu of judicial arbitration, so long as the parties file a stipulation to mediate after being assigned to judicial arbitration. There is no cost to the parties for judicial arbitration.

(B) PRIVATE ARBITRATION

Although not currently a part of the court's ADR program, civil disputes may also be resolved through private arbitration. Here, the parties voluntarily consent to arbitration. If all parties agree, private arbitration may be binding and the parties give up the right to judicial review of the arbitrator's decision. In private arbitration, the parties select a private arbitrator and are responsible for paying the arbitrator's fees.

HOW DO I PARTICIPATE IN ADR?

Litigants may elect to participate in ADR at any point in a case. General civil cases may voluntarily enter into the court's or court-affiliated ADR programs by any of the following means:

- Filing a Stipulation to ADR: Complete and file the Stipulation form (attached to this packet and available on the court's website); or
- Indicating your ADR preferences on the Case Management Statement (available on the court's website); or
- Contacting the court's ADR Department (see below), the Bar Association of San Francisco's ADR Services, or Community Boards.

For more information about ADR programs or dispute resolution alternatives, contact:

Superior Court Alternative Dispute Resolution
400 McAllister Street, Room 103-A, San Francisco, CA 94102
adrcoordinator@sftc.org

Or, visit the court's ADR page at www.sfsuperiorcourt.org/divisions/civil/dispute-resolution

TO PARTICIPATE IN ANY OF THE COURT'S ADR PROGRAMS, PLEASE COMPLETE AND FILE THE ATTACHED STIPULATION TO ADR AND SUBMIT IT TO THE COURT. YOU MUST ALSO CONTACT BASF OR COMMUNITY BOARDS TO ENROLL IN THEIR LISTED PROGRAMS. THE COURT DOES NOT FORWARD COPIES OF STIPULATIONS TO BASF OR COMMUNITY BOARDS.

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name and address) TELEPHONE NO.: ATTORNEY FOR (Name):	FOR COURT USE ONLY
SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN FRANCISCO 400 McAllister Street San Francisco, CA 94102-4514	
PLAINTIFF/PETITIONER: DEFENDANT/RESPONDENT:	
STIPULATION TO ALTERNATIVE DISPUTE RESOLUTION (ADR)	CASE NUMBER: _____ DEPARTMENT 610

1) The parties hereby stipulate that this action shall be submitted to the following ADR process:

- Mediation Services of the Bar Association of San Francisco (BASF)** - Experienced professional mediators, screened and approved, provide one hour of preparation and the first two hours of mediation time for a BASF administrative fee of \$295 per party. Mediation time beyond that is charged at the mediator's hourly rate. Waivers of the administrative fee are available to those who qualify. BASF assists parties with mediator selection, conflicts checks and full case management. www.sfbar.org/mediation
- Mediation Services of Community Boards (CB)** – Service in conjunction with DRPA, CB provides case development and one three-hour mediation session. Additional sessions may be scheduled. The cost is \$45-\$100 to open a case, and an hourly rate of \$180 for complex cases. Reduction and waiver of the fee are available to those who qualify. communityboards.org
- Private Mediation** - Mediators and ADR provider organizations charge by the hour or by the day, current market rates. ADR organizations may also charge an administrative fee. Parties may find experienced mediators and organizations on the Internet.
- Judicial Arbitration** - Non-binding arbitration is available to cases in which the amount in controversy is \$50,000 or less and no equitable relief is sought. The court appoints a pre-screened arbitrator who will issue an award. There is no fee for this program. www.sfsuperiorcourt.org/divisions/civil/dispute-resolution
- Judicial Mediation** - The Judicial Mediation program offers mediation in civil litigation with a San Francisco Superior Court judge familiar with the area of the law that is the subject of the controversy. There is no fee for this program. www.sfsuperiorcourt.org/divisions/civil/dispute-resolution

Judge Requested (see list of Judges currently participating in the program): _____

Date range requested for Judicial Mediation (from the filing of stipulation to Judicial Mediation):

- 30-90 days 90-120 days Other (please specify) _____

Other ADR process (describe) _____

2) The parties agree that the ADR Process shall be completed by (date): _____

3) Plaintiff(s) and Defendant(s) further agree as follows:

Name of Party Stipulating

Name of Party Stipulating

Name of Party or Attorney Executing Stipulation

Name of Party or Attorney Executing Stipulation

Signature of Party or Attorney

Signature of Party or Attorney

- Plaintiff Defendant Cross-defendant

- Plaintiff Defendant Cross-defendant

Dated: _____

Dated: _____

Additional signature(s) attached

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name and address) TELEPHONE NO.: ATTORNEY FOR (Name):	FOR COURT USE ONLY
SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN FRANCISCO 400 McAllister Street San Francisco, CA 94102-4514	
PLAINTIFF/PETITIONER: DEFENDANT/RESPONDENT:	
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Judge Requested (see list of Judges currently participating in the program): _____

Date range requested for Judicial Mediation (from the filing of stipulation to Judicial Mediation):

- 30-90 days 90-120 days Other (please specify) _____

Other ADR process (describe) _____

2) The parties agree that the ADR Process shall be completed by (date): _____

3) Plaintiff(s) and Defendant(s) further agree as follows:

Name of Party Stipulating

Name of Party Stipulating

Name of Party or Attorney Executing Stipulation

Name of Party or Attorney Executing Stipulation

Signature of Party or Attorney

Signature of Party or Attorney

- Plaintiff Defendant Cross-defendant

- Plaintiff Defendant Cross-defendant

Dated: _____

Dated: _____

Additional signature(s) attached