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7 Wells Fargo Bank, N.A.

8
9 UNITED STATES DISTRICT COURT
10 NORTHERN DISTRICT OF CALIFORNIA

11
12 LATASHA McLAUGHLIN, on behalf of herself
and all others similarly situated,

13 Plaintiff,

14 vs.

15
16 WELLS FARGO BANK, N.A., d/b/a WELLS
FARGO HOME MORTGAGE,

17 Defendant.
18

No.: 3:15-cv-02904-WHA

**DEFENDANT WELLS FARGO BANK,
N.A.'S ANSWER AND AFFIRMATIVE
DEFENSES TO PLAINTIFF'S
COMPLAINT**

Honorable William Alsup

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ANSWER TO CLASS ACTION COMPLAINT

Defendant Wells Fargo Bank, N.A., answers plaintiff Latasha McLaughlin’s (“Plaintiff”) complaint and asserts affirmative defenses as follows. Wells Fargo generally denies each and every allegation of the Complaint except such as are expressly admitted herein.

NATURE OF THE ACTION

1. Paragraph 1 of the Complaint contains conclusions of law to which no response is required. To the extent a response may be required, Wells Fargo denies the allegations of this Paragraph.

2. Paragraph 2 of the Complaint contains conclusions of law to which no response is required. To the extent a response may be required, Wells Fargo admits that the property insurance claim funds held by Wells Fargo in restricted escrow were not listed on the payoff statement provided to Plaintiff. Wells Fargo otherwise denies the allegations of this Paragraph.

3. Paragraph 3 of the Complaint contains conclusions of law to which no response is required. To the extent a response may be required, Wells Fargo denies the allegations of this Paragraph.

PARTIES

4. In response to Paragraph 4 of the Complaint, Wells Fargo is without sufficient knowledge or information to form a belief as to the truth of the allegations and, accordingly, denies the allegations.

5. In response to Paragraph 5 of the Complaint, Wells Fargo admits it is the principal subsidiary of Wells Fargo & Company and holds a substantial portion of its assets. Wells Fargo admits its principal place of business is in San Francisco, California and that it is headquartered in Sioux Falls, South Dakota.

6. In response to Paragraph 6 of the Complaint, Wells Fargo denies the allegations of this Paragraph. Wells Fargo is the successor by merger to Wells Fargo Home Mortgage, Inc..

7. Paragraph 7 of the Complaint contains conclusions of law to which no response is required. To the extent a response may be required, Wells Fargo denies the allegations of this

1 Paragraph.

2 8. In response to Paragraph 8 of the Complaint, Wells Fargo admits the allegations of
3 this Paragraph.

4 **JURISDICTION AND VENUE**

5 9. In response to Paragraph 9 of the Complaint, Wells Fargo admits the allegations of
6 this Paragraph.

7 10. In response to Paragraph 10 of the Complaint, Wells Fargo admits the allegations of
8 this Paragraph.

9 **INTRADISTRICT ASSIGNMENT**

10 11. In response to Paragraph 11 of the Complaint, Wells Fargo denies the allegation that
11 “a substantial part of the misconduct which gave rise to the claim occurred in the City and County of
12 San Francisco” but Wells Fargo does not dispute assignment in San Francisco is proper.

13 **THE TRUTH IN LENDING ACT (“TILA”) AND REGULATION Z**

14 12. Paragraph 12 of the Complaint contains conclusions of law to which no response is
15 required. To the extent a response may be required, Wells Fargo denies the allegations of this
16 Paragraph.

17 13. Paragraph 13 of the Complaint contains conclusions of law to which no response is
18 required. To the extent a response may be required, Wells Fargo denies the allegations of this
19 Paragraph.

20 14. Paragraph 14 of the Complaint contains conclusions of law to which no response is
21 required. To the extent a response may be required, Wells Fargo denies the allegations of this
22 Paragraph.

23 15. Paragraph 15 of the Complaint contains conclusions of law to which no response is
24 required. To the extent a response may be required, Wells Fargo denies the allegations of this
25 Paragraph.

26 16. Paragraph 16 of the Complaint contains conclusions of law to which no response is
27 required. To the extent a response may be required, Wells Fargo denies the allegations of this
28 Paragraph.

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1 17. Paragraph 17 of the Complaint contains conclusions of law to which no response is
2 required. To the extent a response may be required, Wells Fargo denies the allegations of this
3 Paragraph.

4 18. Paragraph 18 of the Complaint contains conclusions of law to which no response is
5 required. To the extent a response may be required, Wells Fargo denies the allegations of this
6 Paragraph.

7 19. Paragraph 19 of the Complaint contains conclusions of law to which no response is
8 required. To the extent a response may be required, Wells Fargo denies the allegations of this
9 Paragraph.

10 20. Paragraph 20 of the Complaint contains conclusions of law to which no response is
11 required. To the extent a response may be required, Wells Fargo denies the allegations of this
12 Paragraph.

13 21. Paragraph 21 of the Complaint contains conclusions of law to which no response is
14 required. To the extent a response may be required, Wells Fargo denies the allegations of this
15 Paragraph.

16 22. Paragraph 22 of the Complaint contains conclusions of law to which no response is
17 required. To the extent a response may be required, Wells Fargo denies the allegations of this
18 Paragraph.

19 23. Paragraph 23 of the Complaint contains conclusions of law to which no response is
20 required. To the extent a response may be required, Wells Fargo denies the allegations of this
21 Paragraph.

22 24. Paragraph 24 of the Complaint contains conclusions of law to which no response is
23 required. To the extent a response may be required, Wells Fargo denies the allegations of this
24 Paragraph.

25 25. Paragraph 25 of the Complaint contains conclusions of law to which no response is
26 required. To the extent a response may be required, Wells Fargo denies the allegations of this
27 Paragraph.

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FACTUAL ALLEGATIONS

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2 26. In response to Paragraph 26 of the Complaint, Wells Fargo admits the existence of
3 the Deed of Trust, which is in writing and speaks for itself.

4 27. In response to Paragraph 27 of the Complaint, Wells Fargo admits the existence of
5 the Deed of Trust, which is in writing and speaks for itself.

6 28. In response to Paragraph 28 of the Complaint, Wells Fargo admits the existence of
7 the Deed of Trust, which is in writing and speaks for itself.

8 29. The allegations set forth in Paragraph 29 of the Complaint purport to characterize the
9 contents of the Deed of Trust, which is in writing and speaks for itself. Further, Paragraph 29 of the
10 Complaint contains conclusions of law to which no response is required. To the extent a response
11 may be required, Wells Fargo denies the allegations of this Paragraph.

12 30. Paragraph 30 of the Complaint contains conclusions of law to which no response is
13 required. To the extent a response may be required, Wells Fargo denies the allegations of this
14 Paragraph.

15 31. In response to Paragraph 31 of the Complaint, Wells Fargo is without sufficient
16 knowledge or information to form a belief as to the truth of the allegations and, accordingly, denies
17 the allegations.

18 32. In response to Paragraph 32 of the Complaint, Wells Fargo admits the allegations of
19 this Paragraph.

20 33. In response to Paragraph 33 of the Complaint, Wells Fargo admits it was named a
21 payee on insurance checks and that such checks were deposited. Wells Fargo is otherwise without
22 sufficient knowledge or information to form a belief as to the truth of the allegations and,
23 accordingly, denies the allegations.

24 34. In response to Paragraph 34 of the Complaint, Wells Fargo admits it held \$16,490.35
25 in insurance funds at the time the Complaint was filed, but denies it still holds those funds. All
26 property insurance funds associated with Plaintiff's loan were disbursed in October 2015, with a
27 portion paid to Plaintiff's contractor, a portion applied to the loan arrears and a portion paid directly
28 to Plaintiff. Wells Fargo otherwise denies the allegations of this Paragraph.

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1 35. In response to Paragraph 35 of the Complaint, Wells Fargo admits that, as of April
2 16, 2015, the arrearages on Plaintiff's loan were less than the amount of property insurance claim
3 funds held in restricted escrow. Wells Fargo otherwise denies the allegations of this Paragraph.

4 36. In response to Paragraph 36 of the Complaint, Wells Fargo admits that, at times,
5 Plaintiff's account has been in arrears and that has resulted in communications with foreclosure
6 counsel.

7 37. In response to Paragraph 37 of the Complaint, Wells Fargo denies Plaintiff sent a
8 valid or qualified written request, but admits that Wells Fargo sent two payoff statements to Plaintiff
9 dated March 2, 2015 and April 1, 2015.

10 38. In response to Paragraph 38 of the Complaint, Wells Fargo admits it provided a
11 payoff statement dated April 1, 2015 of the total outstanding balance due on Plaintiff's mortgage
12 account. The allegations set forth in Paragraph 38 of the Complaint purport to characterize the
13 contents of a document, which is in writing and speaks for itself.

14 39. In response to Paragraph 39 of the Complaint, Wells Fargo admits it provided a
15 payoff statement dated April 1, 2015 of the total outstanding balance due on Plaintiff's mortgage
16 account and that the statement did not detail property insurance funds held by Wells Fargo.
17 Paragraph 39 of the Complaint otherwise contains conclusions of law to which no response is
18 required. To the extent a response may be required, Wells Fargo denies the allegations of this
19 Paragraph.

20 40. In response to Paragraph 40 of the Complaint, Wells Fargo denies the allegations of
21 this Paragraph.

22 41. The allegations set forth in Paragraph 41 of the Complaint purport to characterize the
23 contents of a document, which is in writing and speaks for itself. Paragraph 41 of the Complaint
24 otherwise contains conclusions of law to which no response is required. To the extent a response
25 may be required, Wells Fargo denies the allegations of this Paragraph.

26 42. The allegations set forth in Paragraph 42 of the Complaint purport to characterize the
27 contents of documents, which are in writing and speak for themselves. Paragraph 42 of the
28 Complaint otherwise contains conclusions of law to which no response is required. To the extent a

1 response may be required, Wells Fargo denies the allegations of this Paragraph.

2 43. The allegations set forth in Paragraph 43 of the Complaint purport to characterize the
3 contents of a document, which is in writing and speaks for itself. Paragraph 43 of the Complaint
4 otherwise contains conclusions of law to which no response is required. To the extent a response
5 may be required, Wells Fargo denies the allegations of this Paragraph.

6 44. In response to Paragraph 44 of the Complaint, Well Fargo admits Plaintiff's 2015
7 loan modification application was denied. Wells Fargo otherwise denies the allegations of this
8 Paragraph.

9 45. The allegations set forth in Paragraph 45 of the Complaint purport to characterize the
10 contents of a document, which is in writing and speaks for itself. Paragraph 45 of the Complaint
11 otherwise contains conclusions of law to which no response is required. To the extent a response
12 may be required, Wells Fargo denies the allegations.

13 **CLASS ALLEGATIONS**

14 46. In response to Paragraph 46 of the Complaint, Wells Fargo admits only that Plaintiff
15 purports to bring a putative class action. Wells Fargo denies the remaining allegations set forth in
16 this Paragraph and specifically denies that class treatment is warranted.

17 47. In response to Paragraph 47 of the Complaint, Wells Fargo admits only that it has
18 branches in the state of Tennessee and services mortgage loans. Wells Fargo lacks knowledge or
19 information sufficient to respond to the allegations this Paragraph regarding a "news release," and,
20 accordingly, denies the allegations. Wells Fargo otherwise denies the allegations set forth in this
21 Paragraph and specifically denies that class treatment is warranted.

22 48. In response to Paragraph 48 of the Complaint, Wells Fargo denies the allegations set
23 forth in this Paragraph and specifically denies that class treatment is warranted. Paragraph 48 of the
24 Complaint otherwise contains conclusions of law to which no response is required.

25 49. In response to Paragraph 49 of the Complaint, Wells Fargo lacks knowledge or
26 information sufficient to respond to the allegations this Paragraph, and, accordingly, denies the
27 allegations. Paragraph 49 of the Complaint otherwise contains conclusions of law to which no
28 response is required.

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1 50. In response to Paragraph 50 of the Complaint, Wells Fargo denies the allegations set
2 forth in this Paragraph and specifically denies that class treatment is warranted under Rule 23(b)(2).
3 Paragraph 50 of the Complaint. This Paragraph otherwise contains conclusions of law to which no
4 response is required.

5 51. In response to Paragraph 51 of the Complaint, Wells Fargo denies the allegations set
6 forth in this Paragraph and specifically denies that class treatment is warranted. Paragraph 51 of the
7 Complaint otherwise contains conclusions of law to which no response is required.

8 52. In response to Paragraph 52 of the Complaint, Wells Fargo denies the allegations set
9 forth in this Paragraph and specifically denies that class treatment is warranted. Paragraph 52 of the
10 Complaint otherwise contains conclusions of law to which no response is required.

11 53. Paragraph 53 of the Complaint contains conclusions of law to which no response is
12 required. To the extent a response may be required, Wells Fargo denies the allegations of this
13 Paragraph.

14 54. In response to Paragraph 54 of the Complaint, Wells Fargo denies the allegations set
15 forth in this Paragraph and specifically denies that class treatment is warranted. Paragraph 54 of the
16 Complaint otherwise contains conclusions of law to which no response is required.

17 **COUNT I**

18 55. Paragraph 55 of the Complaint is an incorporation paragraph to which no response is
19 required. To the extent a response may be required, Wells Fargo incorporates herein by reference the
20 responses from the preceding Paragraphs as if the same were set forth here in full.

21 56. In response to Paragraph 56 of the Complaint, Wells Fargo denies the allegations set
22 forth in this Paragraph. Paragraph 56 of the Complaint otherwise contains conclusions of law to
23 which no response is required.

24 57. Paragraph 57 of the Complaint contains conclusions of law to which no response is
25 required. To the extent a response may be required, Wells Fargo denies the allegations of this
26 Paragraph.

27 58. Paragraph 58 of the Complaint contains conclusions of law to which no response is
28 required. To the extent a response may be required, Wells Fargo is without sufficient knowledge or

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1 information to form a belief as to the truth of the allegations and, accordingly, denies the allegations.

2 59. Paragraph 59 of the Complaint contains conclusions of law to which no response is
3 required. To the extent a response may be required, Wells Fargo is without sufficient knowledge or
4 information to form a belief as to the truth of the allegations and, accordingly, denies the allegations.

5 60. Paragraph 60 of the Complaint contains conclusions of law to which no response is
6 required. To the extent a response may be required, Wells Fargo is without sufficient knowledge or
7 information to form a belief as to the truth of the allegations and, accordingly, denies the allegations.

8 61. In response to Paragraph 61 of the Complaint, Wells Fargo admits that Plaintiff was
9 in foreclosure at the time the April 1, 2015 payoff statement was issued. Wells Fargo denies that the
10 April 1, 2015 payoff statement was deceptive or overstated the amount required to pay off Plaintiff's
11 loan balance and denies that it failed to apprise Plaintiff of the existence of the insurance proceeds.
12 Wells Fargo is otherwise without sufficient knowledge or information to form a belief as to the truth
13 of the allegations and, accordingly, denies the allegations.

14 **PRAYER FOR RELIEF**

15 No response to the Prayer for Relief is required. To the extent a response may be required,
16 Wells Fargo denies that Plaintiff or the putative class are entitled to any relief.

17 **AFFIRMATIVE DEFENSES**

18 **FIRST AFFIRMATIVE DEFENSE**

19 Plaintiff has not suffered an injury-in-fact and lacks standing.

20 **SECOND AFFIRMATIVE DEFENSE**

21 Plaintiff's claim is barred, in whole or in part, because Wells Fargo acted in accordance with
22 all applicable laws.

23 **THIRD AFFIRMATIVE DEFENSE**

24 Plaintiff's claim is barred, in whole or in part, because Wells Fargo acted good faith
25 compliance with TILA. 15 U.S.C. § 1640(f).

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1 WHEREFORE, Wells Fargo requests that the Court dismiss Plaintiff's Complaint with
2 prejudice, and grant such other further relief as the Court deems just and proper.

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4 DATED: March 29, 2016

REED SMITH LLP

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6 By: /s/ Ashley L. Shively

Ashley L. Shively
Attorneys for Defendant
Wells Fargo Bank, N.A.

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