

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MINNESOTA

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THE CITY OF FARMINGTON  
HILLS EMPLOYEES  
RETIREMENT SYSTEM AND THE  
BOARD OF TRUSTEES OF THE  
ARIZONA STATE CARPENTERS  
PENSION TRUST FUND AND THE  
ARIZONA STATE CARPENTERS  
DEFINED CONTRIBUTION  
TRUST FUND, Individually and on  
Behalf of All Others Similarly  
Situated,

Court File No. 0:10-cv-04372-DWF/JJG

**CLASS ACTION COMPLAINT**

**JURY TRIAL DEMANDED**

Plaintiffs,

vs.

WELLS FARGO BANK, N.A.,

Defendant.

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**SECOND AMENDED CLASS ACTION COMPLAINT  
AND JURY TRIAL DEMAND**

Plaintiffs The City of Farmington Hills Employees Retirement System (“City of Farmington Hills”) and the Board of Trustees of the Arizona State Carpenters Pension Trust Fund and the Arizona State Carpenters Defined Contribution Trust Fund, (“Carpenters”), (together, “Plaintiffs”) file this Second Amended Class Action Complaint against Defendant Wells Fargo Bank, N.A. (“Wells Fargo” or “Defendant”), on behalf of participants in Wells Fargo’s securities lending program who were damaged thereby (the “Class”), based upon information and belief and the investigation of their counsel, alleges and states as follows:

## INTRODUCTION

1. Plaintiffs bring this action against Wells Fargo to recover losses they and other similarly situated parties incurred through participation in Defendant's securities lending program.

2. In the financial community, securities lending or stock lending refers to the lending of securities by one party to another. The terms of the loan will be governed by a "Securities Lending Agreement," under which the borrower provides the lender with collateral, in the form of cash, government securities, or a letter of credit of value equal to or greater than the loaned securities.

3. As payment for the loan, the parties negotiate a fee, quoted as an annualized percentage of the value of the loaned securities. If the agreed form of collateral is cash, then the fee may be quoted as a "rebate," meaning that the lender will earn all of the interest which accrues on the cash collateral, and will "rebate" an agreed rate of interest to the borrower.

4. In essence, investors, in exchange for a fee, contract with Wells Fargo to safeguard their securities. Wells Fargo, in turn, lends its clients' securities to third parties.

5. Plaintiffs were parties to substantially similar securities lending agreements ("SLAs") with Wells Fargo. Pursuant to the SLAs, Wells Fargo loaned securities owned by Plaintiffs to third-party borrowers in return for cash collateral. Then, Wells Fargo invested, at its sole discretion, the cash collateral in order to earn an investment return in excess of the rebate paid to the third-party borrowers. In return, Defendant received as

compensation a percentage of the revenues generated for each Class member. Defendant referred to these activities as its “Securities Lending Program.”

6. Problems arise, however, when a custodian like Wells Fargo elects to place its clients’ cash in risky investments since institutional investors want a secure investment vehicle as to not risk their capital.

7. Cognizant of this, Wells Fargo touted this business as a highly secure way for its institutional clients to maximize portfolio returns and offset fees. Furthermore, Wells Fargo agreed that it would act as an investment fiduciary, discharge its duties solely in the interest of the participants and act with the duties of care, skill, prudence and diligence.

8. Given this, at all times relevant hereto, Wells Fargo was a fiduciary of Plaintiffs because it exercised authority and/or control with respect to the management of the assets entered into the securities lending program.

9. Wells Fargo ultimately invested the collateral into risky and illiquid securities that have declined greatly in value and were purchased by the Defendant in violation of its fiduciary duties.

10. Thus, Wells Fargo is liable for these losses because it served as a “fiduciary” on behalf of the Plaintiffs. As a fiduciary, Wells Fargo was required to discharge its obligations with respect to the Plaintiffs: (a) solely in the interest of Plaintiffs; (b) for the exclusive purpose of providing benefits to the Plaintiffs; (c) with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use in the conduct

of an enterprise of a like character and with like aims; and (d) in accordance with all applicable documents and instruments.

11. These fiduciary duties are commonly referred to as the duties of loyalty, exclusive purpose and prudence.

12. Furthermore, because the funds invested for the Plaintiffs consisted of collateral that must be returned to borrowers upon repayment of the underlying securities loans, the SLAs required Wells Fargo to, *inter alia*: (a) safeguard principal; (b) maintain adequate liquidity; and (c) discharge its duties with respect to the investment of the collateral with care, skill, prudence, and diligence.

13. Wells Fargo's actions, specifically investing Plaintiffs' assets in risky investments, constituted a breach of its: (a) fiduciary and common law duties; (b) the duties and obligations under the Employees Retirement Income Security Act ("ERISA"), 29 U.S.C § 1001 *et seq.*; (c) contractual obligations; and (d) duties as set forth in the SLA. As a direct result of Wells Fargo's breaches, Plaintiffs suffered significant losses.

### **PARTIES**

14. Plaintiff The City of Farmington Hills Employees Retirement System is based in Oakland County, Michigan.

15. Plaintiff Board of Trustees of the Arizona State Carpenters Pension Trust Fund and the Arizona State Carpenters Defined Contribution Trust Fund, is the trustee of these two employee pension benefit plans within the meaning of Section 3(2) of the Employee Retirement Security Act of 1974, as amended, 29 U.S.C. § 1001, *et. seq.* ("ERISA"). The pension plans are based in Phoenix, Arizona.

16. Defendant Wells Fargo Bank, N.A., a Delaware corporation, is a nationwide, diversified, community-based financial services company with \$1.2 trillion in assets. Founded in 1852 and headquartered in San Francisco, Wells Fargo provides banking, insurance, investments, mortgage, and consumer and commercial finance through more than 10,000 banking stores, 12,000 ATMs, the Internet, and other distribution channels across North America and internationally. With more than 278,000 team members, Wells Fargo serves one in three households in America.

### **JURISDICTION AND VENUE**

17. Jurisdiction is proper in this District pursuant to Minn. Stat. §§ 484.01, Subd. 1(1) and 543.19.

18. Venue is proper in Hennepin County pursuant to Minn. Stat. § 542.09 because, among other things, Wells Fargo has an office, resident agent, and business agent in this District and the causes of action, or some part, thereof, arose in this District. In addition, Wells Fargo's securities lending agreement provides that the "Agreement and all transactions hereunder shall be governed by, interpreted, construed and enforced in accordance with the laws of the State of Minnesota."

### **RELEVANT FACTS**

19. Plaintiffs bring this action on behalf of themselves and the Class, and Carpenters also brings this action on behalf of itself and as a class representative of all ERISA entities that were decertified by the Court, against Wells Fargo to recover losses they and the Class incurred through participation in Defendant's securities lending program.

## **I. Securities Lending Programs**

20. For decades, banks and other financial institutions have offered securities lending programs to provide their clients with a nominally extra return for agreeing to lend their securities to brokers.

21. The securities lending programs are generally described as adhering to extremely conservative risk-management programs. As a result, many institutional investors-including corporations, pension funds, public funds and entities, insurance companies, mutual funds, and foundations and endowments-have participated in securities lending programs for many years.

22. "Securities lending" is the practice of lending of securities owned by one party to another party ("the borrower") for reasons such as market making, hedging and arbitrage. In cases such as this one, the process is facilitated by a financial institution such as Wells Fargo. The financial institution lends its customers' securities out to third parties, which in exchange provide collateral to the financial institution. The financial institution in turn invests all of its clients' collateral in a collective pool and splits the revenue with the customer. Traditionally, the reinvestment income has been used by security lending participants to offset the expenses of maintaining its portfolio, including custodial costs and brokerage commissions. The investment of collateral through the Securities Lending Program was focused on preservation of capital and liquidity to ensure that the cash collateral could be returned to the investors upon the termination of the securities loans.

23. The terms of the loan are governed by a "Securities Lending Agreement," which requires that the borrower provide the lender with collateral in the form of cash, government securities or a letter of credit of value equal to or greater than the loaned securities. Each Class Member, including the City of Farmington Hills Employees Retirement System and the Arizona State Carpenters Pension Trust Fund and the Arizona State Carpenters Defined Contribution Trust Fund, was a party to a substantially similar securities lending agreement with Wells Fargo (each a "Securities Lending Agreement").

## **II. Wells Fargo's Securities Lending Program**

24. Wells Fargo began its securities lending program in 1982. By approximately 2006, the Wells Fargo program reached \$23 billion in loaned securities.

25. Wells Fargo marketed its securities lending program to institutional clients as a way to earn incrementally higher returns on securities that they already earned. Wells Fargo claimed that it would hold its clients' securities in their custodial accounts and make temporary loans of these securities to brokers, who would borrow them to support their trading activities, such as short sales and option contracts. To protect Wells Fargo's clients in this lending program, the brokers would post collateral, which was primarily cash, worth at least 102% of the value of the loaned securities.

26. To induce institutional clients into lending out their securities, Wells Fargo assured clients that they would be acting as their agent and fiduciary, which imposed upon the Defendant various duties, including the duty to act in the utmost good faith and the duty to invest prudently. Additionally, Wells Fargo assured its clients, including

Plaintiffs, that they would have the right to recall their loaned securities at any time and for any reason on short notice.

27. In its capacity as a lending agent for the Class, Wells Fargo further acknowledged its fiduciary responsibility to always put its clients' interests first. Additionally, in the Securities Lending Agreement, Wells Fargo accepted the fiduciary responsibility to act as an agent for purposes of securities lending. Wells Fargo's responsibilities as agent include, but are not limited to: entering into loan agreements with borrowers of securities, consummating loans to borrowers, and taking possession of cash collateral from borrowers and investing that collateral.

28. Wells Fargo further assured the institutional investors that it would invest the cash collateral received from the brokers in conservative, safe and liquid investments, which Wells Fargo represented as "short-term money market instruments," which purportedly would allow Wells Fargo to pay back promptly the institutional participants in the securities lending program requesting that their securities be returned.

29. Money market instruments are short term, highly liquid, easily converted to cash, and relatively risk free.

### **III. Wells Fargo's Conduct After Plaintiffs Entered Their Securities Lending Program And Plaintiffs' Injuries As A Result Of This Relationship**

30. After Plaintiffs decided to participate in Wells Fargo's securities lending program, Wells Fargo knowingly and purposely failed to abide by the promises it made to induce the City of Farmington Hills and Carpenters to participate in the program.

31. While it assured and promised Plaintiffs that it would only invest in money market instruments, Wells Fargo invested a substantial portion of the collateral in

extremely risky securities. Additionally, Wells Fargo invested in highly illiquid securities, including but not limited to structured investment vehicles (“SIVs”), asset-backed securities, and mortgage-backed securities, described in more detail below.

**1. Structured Investment Vehicles (“SIVs”)**

32. SIVs are complex investments that have been called "some of the most confusing, opaque and illiquid debt investments ever devised."

33. Typically, SIVs are off-shore companies created by banks and other investment firms. SIVs borrow money by issuing short-term securities, usually commercial paper, at low interest rates. The SIVs then lend money by buying long-term assets at higher interest rates. The SIVs make a profit off the spread between the two interest rates.

34. Because SIVs borrow short-term but invest long-term, their debt frequently becomes due before the underlying assets mature. To survive, SIVs need a constant infusion of new short-term refinancing, at favorable rates. By their very nature, therefore, SIVs have a built in illiquidity risk.

35. SIVs do not file with the SEC and are not required to publicly disclose audited financial statements. Another peculiarity of SIVs is that the sponsoring banks often kept them off their balance sheets.

36. Ultimately, the mortgage crisis caused a liquidity crunch in the short-term commercial paper market, and by the beginning of 2008, the market was almost completely illiquid. This caused a crisis among SIVs.

37. To make matters worse, there was increased concern at the same time about the quality of the asset pools backing the SIVs. In fact, SIVs are among the largest buyers of pools of mortgages and other complex securities. Thus, when the infusion of short-term financing disappeared, SIVs could not obtain new financing to support their long-term debt and could not sell off the underlying pools of distressed assets.

38. Notwithstanding the inherent risks, Wells Fargo heavily invested cash collateral from the securities lending program in SIVs. In fact, by February 2008, almost one-quarter of the total assets of two of the Funds were in SIVs.

39. Two of the SIVs that Wells Fargo invested heavily in included the Cheyne Finance SIV and the Stanfield Victoria SIV. The Cheyne Finance SIV - controlled by the London-based Cheyne Capital - entered into receivership in late 2007 and ultimately defaulted on its debts. The Stanfield Victoria SIV - a Cayman-Islands based fund - defaulted on its debts in January 2008 and is now in receivership as well.

40. Currently, Wells Fargo's remaining investments in SIVs are largely illiquid, with limited or no short-term financing.

## **2. Asset-Backed Securities ("ABS") and Mortgage-Backed Securities ("MBS")**

41. Wells Fargo also invested heavily in asset-backed and mortgage-backed securities, which are another complex, structured financial product that is typically created by pooling a large number of assets and issuing medium-term or long-term bonds backed by these asset pools.

42. For example, hundreds or thousands of home mortgages - many of them with subprime loans extended to borrowers with troubled credit - were bundled in a security pool, and bonds backed by this pool were sold to investors. Oftentimes, there would be virtually no due diligence or verification of data as to the soundness of the underlying loans.

43. In theory, an ABS or MBS transformed relatively illiquid, individual financial assets (such as home mortgages) into more liquid, tradable market instruments. However, with the problems in the mortgage market, the current ABS and MBS markets have become increasingly troubled and illiquid.

### **3. Corporate Bonds**

44. Wells Fargo also invested securities lending collateral in corporate bonds. There are many types of corporate bonds, offering a wide range of safety and liquidity. Wells Fargo's bond investments included numerous unsafe and illiquid corporate bonds. These include devalued bonds issued by Bear Stearns, Lehman Brothers, Merrill Lynch, Morgan Stanley, and SLM Corp.

45. Wells Fargo also classified SIVs as corporate bonds in its collateral investment pools. This even further concealed the true nature of a complex and risky investment.

### **CLASS ACTION ALLEGATIONS**

46. Plaintiffs bring this action as a class action pursuant to Federal Rule of Civil Procedure 23(a) and (b)(3) on behalf of a Class, consisting of all those who participated in Wells Fargo's securities lending program and who were damaged thereby.

Excluded from the Class is the Defendant entity and its subsidiaries, the officers and directors of the Company, at all relevant times, members of their immediate families and their legal representatives, heirs, successors or assigns and any entity in which Defendant have or had a controlling interest.

47. Plaintiffs' claims are typical of the claims of the members of the Class as all members of the Class are similarly affected by Defendant's wrongful conduct in violation of the state and federal law that is complained of herein.

48. Plaintiffs will fairly and adequately protect the interests of the members of the Class and have retained counsel competent and experienced in class, securities and commercial litigation.

49. Common questions of law and fact exist as to all members of the Class and predominate over any questions solely affecting individual members of the Class. Among the questions of law and fact common to the Class are:

(a) Whether the federal and state laws were violated by Defendant's acts as alleged herein;

(b) Whether corporate practices performed by Defendant constituted unfair and fraudulent business practices under certain state commercial protection statutes; and

(c) To what extent the members of the Class have sustained damages and the proper measure of damages.

50. A class action is superior to all other available methods for the fair and efficient adjudication of this controversy since joinder of all members is impracticable.

Furthermore, as the damages suffered by individual Class members may be relatively small, the expense and burden of individual litigation makes it impossible for members of the Class to individually redress the wrongs done to them. There will be no difficulty in the management of this action as a class action.

## **CLAIMS FOR RELIEF**

### **COUNT I**

#### **Breach of Fiduciary Duty**

51. Plaintiffs restate and incorporate the allegations contained in each paragraph above as though fully set forth herein.

52. Wells Fargo undertook to act as an agent and fiduciary for the Plaintiffs and each member of the Class.

53. At all relevant times, as alleged above, Defendant owed fiduciary duties to the Plaintiffs and the Class.

54. Because of the fiduciary duty owed to the Plaintiffs and the Class, Defendant was required – contractually, by virtue of common law and pursuant to ERISA – to ensure that all investments of collateral were consistent with the conservative investment guidelines established for the portfolio, including the diversification requirements, and also required to continuously monitor all such investments to ensure that such investments remained prudent throughout the period of the investment. Defendant was obligated to act solely in the interests of the Plaintiffs and the Class, for the exclusive purpose of providing benefits to them, and with the care, skill, prudence

and diligence that a prudent person acting in a like capacity would have in a similar situation.

55. Thus, if the investment became imprudent due to its excessive risk and/or the inadequate level of diversification within the portfolio or for any other reason, Defendant was obligated to take action to protect the assets of Plaintiffs and the Class.

56. Defendant breached its fiduciary duties, including the duty to prudently and loyally manage the assets. As described herein, Defendant failed to adequately protect the Plaintiffs and the Class from the inevitable losses that they knew or should have known would ensue, due to Defendant's imprudent management of the assets of Plaintiffs and the Class.

57. Defendant breached the fiduciary duties it owed to the Plaintiffs and the Class by, *inter alia*: (a) failing to timely engage independent fiduciaries who could make independent judgments concerning the high-risk investments; (b) imprudently investing the collateral received by the Plaintiff in inappropriate and unsuitable investments for the investment of the cash collateral; (c) failing to properly monitor the investments, which if prudently done, would have revealed excessive risks in the investing strategy; (d) imprudently maintaining the investments in risky financial vehicles; (e) imprudently maintaining investments in risky financial vehicles after becoming aware of warnings concerning these types of investments; and (f) by otherwise disloyally placing its own interests above the interests of the City of Farmington Hills and Carpenters, and the Class.

58. As a direct and proximate result of the breaches of fiduciary duties alleged herein, Plaintiffs and the Class sustained substantial losses. Accordingly, Plaintiffs and the Class seek relief from Wells Fargo.

## **COUNT II**

### **Breach of Contract**

59. Plaintiffs restate and incorporate the allegations contained in each paragraph above as though fully set forth herein.

60. Plaintiffs and the Class had contracts with Wells Fargo relating to the securities lending program.

61. Plaintiffs and the members of the Class had performed their obligations under the contract.

62. Wells Fargo materially breached its contract with Plaintiffs and other Class members in numerous ways, including, without limitation: (a) failing to invest the cash collateral in accordance with the SLAs; (b) failing to invest the cash collateral in “short-term money market instruments”; (c) failing to divest collateral investments after Wells Fargo knew, or reasonably should have known, that the investments were unsafe, risky, and/or illiquid; (d) failing to adhere to liquidity requirements in the investment of the cash collateral; (e) failing to calculate the collateral investments in accordance with the Investment Company Act of 1940 and at “current market value”; (f) concealing its misconduct from members of the Class; and (g) acting in bad faith, with negligence, gross negligence, willful misconduct, fraud and/or reckless disregard of its duties.

63. As a direct and proximate consequence of Wells Fargo's material breaches of contract, Plaintiffs and other members of the Class suffered damages and are entitled, among other things, to recover their damages and obtain a Court Order directing the immediate return of the securities of the Class members returned to them.

### **COUNT III**

#### **Violation of Minnesota Prevention of Consumer Fraud Act - Minn. Stat. § 325F.69**

64. Plaintiffs restate and incorporate the allegations contained in each paragraph above as though fully set forth herein and further alleges as follows:

65. Wells Fargo used fraud, false promises, false pretenses, misrepresentations, misleading statements, and/or deceptive practices in connection with the sale of its securities lending program, including, without limitation, selling its services and intangibles, including but not limited to its representations in regards to the safety of principal and the liquidity of collateral investments, as alleged herein.

66. Wells Fargo intended that Plaintiffs rely on those false promises, false pretenses, misrepresentations, misleading statements, and/or deceptive practices in connection with the securities lending program.

67. Wells Fargo's securities lending program constitutes an investment contract, and it sold that contract to the Plaintiffs and the Class.

68. By reason of the conduct alleged herein, Wells Fargo violated the provisions of Minn. Stat. § 325F.69, Subd. 1.

69. Plaintiffs have been damaged and injured by, on account of, and as a direct, proximate and foreseeable result of Wells Fargo's violations of this statute in an amount

to be determined at trial. Plaintiffs are not required to plead or prove that individual class members have been injured by means of evidence of individual reliance, and does not so plead here.

70. Wells Fargo's violations of the law have also harmed the public. Wells Fargo's actions in violation of Minn. Stat. § 325F.69, including but not limited to fraud and deceptive practices, which practices were aimed at the investing public at large, and the successful prosecution of which advances state interests, even if the group of persons benefitting from monetary relief obtained through the lawsuit is small, which in this case it is not. There is a strong public interest in preventing fraud and deceptive practices in financial markets and the result of a successful investigation in this action into Wells Fargo's unlawful conduct regarding its securities lending program would be available to law enforcement officers. Moreover, preventing investment institutions from defrauding pension funds and similarly situated entities would benefit the financial markets, the economy, and people's retirement funds. Thus, the claims and relief sought herein would benefit the public.

71. By reason of such violations and pursuant to Minn. Stat. § 8.31, Subd. 3a and § 325F.69, Plaintiffs demand compensatory damages, attorneys' fees and costs, injunctive and equitable relief, and other remedies as determined by the Court pursuant to Minn. Stat. § 8.31, Subd. 3a and § 325F.68 *et seq.*

## COUNT IV

### **Unlawful Trade Practices - Minn. Stat. § 325D.13**

72. Plaintiffs restate and incorporate the allegations contained in each paragraph above as though fully set forth herein and further alleges as follows:

73. Wells Fargo, in connection with the sale of its securities lending program as previously alleged herein, knowingly misrepresented, directly and/or indirectly, the true nature and actual quality of the securities lending program, as well as the collateral investments that it made, which is alleged herein and, more generally, through its representations in regard to the safety of principal and liquidity of collateral investments, violating Minn. Stat. § 325D.13.

74. Plaintiffs have been damaged and injured by, on account of, and as a direct, proximate and foreseeable result of Wells Fargo's violations of this statute in an amount to be determined at trial. Plaintiffs are not required to plead or prove that individual class members have been injured by means of evidence of individual reliance, and does not so plead here.

75. Wells Fargo's violations of the law also have harmed the public. Wells Fargo's actions in violation of Minn. Stat. § 325D.13, including but not limited to fraud and deceptive practices relating to the financial markets, which practices were aimed at the investing public at large, and the successful prosecution of which advances state interests, even if the group of persons benefitting from monetary relief obtained through the lawsuit is small, which in this case it is not. Our nation's financial markets are in turmoil, due in part to unscrupulous conduct by financial institutions. There is a

substantial public interest in preventing fraud and deceptive practices in financial markets and the result of a successful investigation in this action into Wells Fargo's unlawful conduct regarding its securities lending program would be available to law enforcement officers. The Minnesota Legislature has specifically determined, through Minn. Stat. § 325D.09, that the practices prohibited by Minn. Stat. § 325D.13, *inter alia*, misled consumers and that "the public policy of the state requires, and that the general welfare of the state will be benefitted by the suppression of the trade practices" defined within the statute.

76. By reason of such violations and pursuant to Minn. Stat. § 8.31, Subd. 3a and § 325D.13 and § 325D.15, Plaintiffs demand compensatory damages, attorneys' fees and costs, injunctive and equitable relief, and other remedies as determined by the Court pursuant to Minn. Stat. § 8.31, Subd. 3a and § 325D.09 *et seq.*

## COUNT V

### **Deceptive Trade Practices - Minn. Stat. § 325D.44**

77. Plaintiffs restate and incorporate the allegations contained in each paragraph above as though fully set forth herein and further alleges as follows:

78. Wells Fargo represented that the services it provided to participants in regards to the securities lending program and the collateral investments had, or have, characteristics, uses, and/or benefits that they did/do not have, violating Minn. Stat. § 325D.44, Subd. 1(5).

79. Wells Fargo represented that the services it provided to participants in regards to the securities lending program and the collateral investments were, or are, of a

particular standard, quality, and/or grade that they did/do not possess, violating Minn. Stat. § 325D.44, Subd. 1(7).

80. Wells Fargo advertised its services related to the securities lending program and the collateral investments with the intent not to sell them as advertised, violating Minn. Stat. § 325D.44, Subd. 1(9).

81. Wells Fargo engaged in other conduct relating to the services it provided to participants in the securities lending program and relating to the collateral investments which similarly created a likelihood of confusion or misunderstanding, violating Minn. Stat. § 325D.44, Subd. 1(13).

82. Wells Fargo's violations of the law also have harmed the public. Wells Fargo's actions in violation of Minn. Stat. § 325D.44, including but not limited to fraud and deceptive practices relating to the financial markets, implicate consumer protection concerns and harm the public, which practices were aimed at the investing public at large, and the successful prosecution of which advances state interests, even if the group of persons benefitting from monetary relief obtained through the lawsuit is small, which in this case it is not. Our nation's financial markets are in turmoil, due in part to unscrupulous conduct by financial institutions. There is a substantial public interest in preventing fraud and deceptive practices in financial markets and the result of a successful investigation in this action into Wells Fargo's unlawful conduct regarding its securities lending program would be available to law enforcement officers. Thus, the claims and relief sought herein would benefit the public.

83. Wells Fargo willfully engaged in the conduct in violation of Minn. Stat. § 325D.44, knowing it to be deceptive.

84. Plaintiffs have been damaged and injured by, on account of, and as a direct, proximate and foreseeable result of Wells Fargo's violations of this statute in an amount to be determined at trial. Plaintiffs are not required to plead or prove that individual class members have been injured by means of evidence of individual reliance, and does not so plead here.

85. By reason of such violations and pursuant to Minn. Stat. § 8.31, Subd. 3a and § 325D.44 and § 325D.45, Plaintiffs demand compensatory damages, attorneys' fees and costs, injunctive and equitable relief, and other remedies as determined by the Court pursuant to Minn. Stat. § 8.31, Subd. 3a and § 325D.45. Minn. Stat. § 325D.44 is, by title and on its face, a law of Minnesota respecting "unfair" and "other unlawful practices in business, commerce, or trade" and is a law "against false or fraudulent advertising." Minn. Stat. §8.31, subd. 1.

## **COUNT VI**

### **Civil Theft - Minn. Stat. § 604.14**

86. Plaintiffs restate and incorporate the allegations contained in each paragraph above as though fully set forth herein and further alleges as follows:

87. Wells Fargo intentionally committed acts that constitute stealing personal property, violating Minn. Stat. § 604.13, Subd. 1, including but not limited to:

(a) Wells Fargo obtained and/or deprived the securities of the Plaintiffs and the Class by swindling, trick, artifice, device, or any other means;

(b) Wells Fargo converted the securities of the Plaintiffs and of the Class;

(c) Wells Fargo intentionally and without claim of right took, used, transferred or retained possession of the securities of the Plaintiffs and the Class without consent and with the intent to exercise temporary control, and the control exercised manifested an indifference to the rights of the securities of the Plaintiffs and the Class;

(d) Wells Fargo intentionally and without claim of right took, used, transferred or retained possession of the securities of the Plaintiffs and the Class without consent and with the intent to exercise temporary control, and Wells Fargo intended to restore the assets of the Plaintiffs and the Class on the condition that Plaintiffs and the Class make compensation to Wells Fargo;

(e) Wells Fargo, with or without having a legal interest in the securities of the Plaintiffs and the Class, intentionally and without consent, took the property out of the possession of the Plaintiffs and the Class and/or deprived Plaintiffs and the Class of their property with the intent to exercise temporary control over these securities, even though Plaintiffs and the Class had a superior right of possession. Moreover, the control exercised by Wells Fargo manifested an indifference to the rights of the Plaintiffs and the Class;

(f) Wells Fargo, with or without having a legal interest in the securities of the Plaintiffs and the Class, intentionally and without consent, took the property out of the possession of the Plaintiffs and the Class and/or deprived Plaintiffs and

the Class of their property with the intent to exercise temporary control over these securities, even though Plaintiffs and the Class had a superior right of possession, and Wells Fargo intended to restore the securities of the Plaintiffs and the Class only on the condition that Plaintiffs and the Class make compensation to Wells Fargo;

(g) Wells Fargo obtained possession or custody of the securities of the Plaintiffs and the Class and/or deprived the Class and the Plaintiffs of their securities by intentionally deceiving them with false representations and fraudulent nondisclosures that Wells Fargo knew were false and made with the intent to defraud, and which did defraud the Plaintiffs and the Class.

88. As a direct and proximate result of such conduct, Plaintiffs and the Class have suffered damages as alleged herein.

89. As a direct and proximate consequence of Wells Fargo's civil theft of the personal property of the Class and the Plaintiffs, the Class and Plaintiffs are entitled to recover the value of the securities when stolen plus punitive damages of up to 100% of their value when they were stolen under Minn. Stat. § 604.14, Subd. 1.

### **PUNITIVE DAMAGES**

90. Pursuant to Minn. Stat. §§ 549.191 and 549.20 and this Court's Order allowing amendment to assert this claim, Plaintiffs allege that the actions of Defendant Wells Fargo constitute deliberate disregard for the rights of Plaintiffs and the Class, entitling Plaintiffs and the Class to an award of punitive damages, except as to those claims asserted under ERISA by Plaintiffs.

**JURY DEMAND**

91. Plaintiffs demand a trial by jury as to all issues so triable.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs respectfully request that this Court enter judgment in Plaintiffs' favor that:

- A. Declaration that Defendant has breached its duties to the Plaintiffs and the Class;
- B. An Order compelling the Defendant to make good to Plaintiffs and the Class all losses suffered by both as the result of Defendant's breaches of their fiduciary duties, including losses to Plaintiffs and the Class resulting from imprudent investment of the assets of the Plaintiffs and the Class, and to restore to the Class and Plaintiffs all profits Defendant made through use of their assets, and to restore to the Class and the Plaintiffs all profits which these parties would have made if the Defendant had fulfilled its fiduciary and other legal obligations;
- C. Imposition of a Constructive Trust on any amount by which Defendant was unjustly enriched at the expense of the Plaintiffs and the Class as a result of breaches of fiduciary duty and violations of contract law;
- D. Actual damages in the amount of any losses the Plaintiffs or the Class suffered;
- E. An Order awarding costs and interests;
- F. An Order awarding attorneys' fees and interest;

- G. An Order awarding Plaintiffs and the Class punitive damage as a result of Wells Fargo's deliberate disregarding of Plaintiffs and the Class's rights, except as to those claims asserted under ERISA by Plaintiffs; and
- H. An Order for equitable restitution and other appropriate equitable or legal relief against Defendant.

Dated: October 11, 2013

Respectfully Submitted,

GLANCY BINKOW & GOLDBERG LLP

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**CERTIFICATE OF SERVICE**

On October 11, 2013, I caused to be served the following by posting such document electronically to the ECF website of the United States District Court for the District of Minnesota:

**SECOND AMENDED CLASS ACTION COMPLAINT  
AND JURY TRIAL DEMAND**

on registered parties listed on the court's website who are electronically served herewith.

There are no non-ECF registered users in this action.

I certify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on October 11, 2013, at Los Angeles, California.

*s/ Peter A. Binkow*

Peter A. Binkow

## Mailing Information for a Case 0:10-cv-04372-DWF-JJG

### Electronic Mail Notice List

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- (No manual recipients)