

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS
AT TOPEKA**

**JIN NAKAMURA, individually and on
behalf of all others similarly situated.**)

Plaintiff,)

Case No. 5:17-cv-04029-DDC-GEB

v.)

**WELLS FARGO BANK,
NATIONAL ASSOCIATION
d/b/a WELLS FARGO DEALER
SERVICES, INC.**)

Defendant.)

FIRST AMENDED CLASS ACTION COMPLAINT

Plaintiff Jin Nakamura, through his undersigned counsel, states and alleges as follows:

NATURE OF THE CASE

1. This is a case about a bank ignoring the rights of soldiers who have put their lives on the line to preserve the rights and freedoms of our Republic. This is a case about a bank’s reckless (and potentially willful) disregard of the laws protecting servicemembers. This is a case about a bank intentionally cutting corners to put profits ahead of people, as this particular institution has been proven to do time and time again.

2. In 2016, an investigation by the Department of Justice uncovered that Wells Fargo “unlawfully repossessed hundreds of servicemembers’ cars without proper process.”¹

3. In fact, the Department of Justice’s investigation into Wells Fargo revealed that it engaged in a pattern and practice of unlawful repossessions spanning more than seven years.

¹ <https://www.justice.gov/opa/pr/justice-department-reaches-4-million-settlement-wells-fargo-dealer-services-illegally>

4. Now, in recent filings with this Court, Wells Fargo has admitted that it “*has identified additional consumer auto accounts that may be subject to remediation*”. See Doc. 18 (emphasis added).

5. Plaintiff Jin Nakamura (“Jin”) was one such servicemember who became a victim of Wells Fargo’s illegal pattern and practice of wrongfully repossessing motor vehicles.

6. In 2011, while Jin was deployed overseas in the military, Defendant repossessed his car without a Court order, which held many of Jin’s possessions along with some equipment that was issued to Jin by the United States Army.

7. By the time Jin learned of the repossession, Defendant had already sold his car and, upon information and belief, also sold all of Jin’s personal possessions in the car including his winter military gear.

8. To make matters worse, Jin had not willfully defaulted on his loan. To the best of Jin’s recollection, he had established a direct debit so that his payments would continue to be made on time prior to his deployment.

9. Upon information and belief, Wells Fargo, for reasons presently unknown to Jin, stopped accepting those direct debit payments, repossessed Jin’s car, and then sold the car—all without a Court Order.

10. Wells Fargo never afforded him the opportunity to fix the problem.

11. It is for situations precisely like this that Congress enacted the Servicemembers Civil Relief Act, 50 U.S.C. § 3901, et seq., (“SCRA”). Congress expressly stated that one of the purposes of the SCRA was “to provide for the temporary suspension of judicial and administrative proceedings and transactions that may adversely affect the civil rights of servicemembers during their military service.” 50 U.S.C. § 3902(2).

12. The law is clear and has been for some time; banks like Wells Fargo have no defense to repossessing an active duty soldier's car without a Court Order.

13. Wells Fargo's clear liability for victimizing Jin and all other similarly situated soldiers makes this is an ideal class action. Jin, on behalf of himself and the other soldiers victimized by Wells Fargo, pursues this case to make sure Wells Fargo starts to follow the law.

PARTIES

14. Plaintiff Jin Nakamura is a current resident of Kansas and is currently stationed at Fort Riley, Kansas.

15. Defendant Wells Fargo Bank, National Association d/b/a Wells Fargo Dealer Services, Inc. ("Defendant" or "Wells Fargo") is a South Dakota bank. Wells Fargo's motor vehicle operations are located in at 23 Pasteur in Irvine, California. Defendant has already been served in this action.

JURISDICTION AND VENUE

16. Jurisdiction and venue in the United States District Court for the District of Kansas are proper pursuant to 28 U.S.C. §§ 1331, 1332, 1367(a), and 1391(b)(2). Defendant has already admitted that jurisdiction and venue in this Court are proper.

FACTS COMMON TO ALL COUNTS

THE DOJ CONSENT ORDER AND WELLS FARGO'S CULTURE OF FRAUD

17. In late 2016, Wells Fargo was sued by the United States of America, via the Department of Justice (the "DOJ") in Case No. 2:16-cv-07336 (C.D. Cal.).

18. In its Complaint, the DOJ alleged that from January 1, 2008 through July 1, 2015, Wells Fargo had illegally repossessed 413 motor vehicles from servicemembers while they were in a period of military service.

19. The DOJ Complaint alleged that the repossessions were illegal because Wells Fargo had failed to obtain a court order before repossessing the vehicles.

20. The genesis of the DOJ Investigation and Complaint involved a member of the United States Army National Guard who was ordered to report for active duty military service and was subsequently deployed to Afghanistan.

21. Wells Fargo repossessed that servicemember's vehicle without a court order approximately two weeks after he had been ordered to report for active duty, but before he had been deployed overseas.

22. Before filing the Complaint, the DOJ conducted an investigation of "all of [Wells Fargo's] motor vehicle repossessions between January 1, 2008 and July 1, 2015."

23. As a result of that investigation, the Department of Justice concluded that at least four hundred motor vehicles had been unlawfully repossessed by Wells Fargo in violation of the Servicemembers Civil Relief Act.

24. On September 29, 2016, Wells Fargo entered into a Consent Judgment with the DOJ. In that Consent Judgment, Wells Fargo disputed the legality of only a very small percentage of the total repossessions, conceding that the bulk of the 400+ repossessions were indeed in violation of the SCRA.

25. Wells Fargo signed the Consent Order, which forced it to "neither admit[] nor den[y]" the allegations raised by the DOJ. Given the reality that corporate tortfeasors usually deny the allegations outright, this was a notable confession by Wells Fargo, who is the poster child for bank fraud against consumers. As the New York Times reported earlier this year, Wells Fargo was hammered by regulators and the public for opening as many as two million fraudulent

customer accounts; this came as no surprise to many, as Wells Fargo is known within the industry for its “aggressive” culture.²

26. Bloomberg reported that Wells Fargo was fined \$185 million for a series of intentional frauds committed against two millions consumers, and concluded in reaction to Wells Fargo’s misconduct: “Eventually we will all stop reading and writing articles about Why No Senior Executives at Big Banks Went to Prison for the Financial Crisis, but that time isn’t quite yet.”³

27. Such evidence will be admissible in this case to show the ongoing, deliberate, and habitual culture of fraud orchestrated and deployed by Wells Fargo against Americans.

PLAINTIFF JIN NAKAMURA

28. In June 2010, Jin was called up to Active Duty with the United States Army under Title 10, and was deployed overseas. Specifically, Jin was called upon to serve in Operation Iraqi Freedom.

29. At the time, Jin owned a 2006 Nissan Altima (“the Altima”), which had been financed through Wells Fargo.

30. To the best of Jin’s recollection, before he was deployed overseas, he set up an auto-pay with Wells Fargo so that he could continue making his payments on the Altima on time.

31. For reasons presently unknown to Jin, Wells Fargo stopped accepting Jin’s automatic payments at some point after he was deployed.

² Michael Corkery, *Wells Fargo Struggling in Aftermath of Fraud Scandal*, The New York Times, Jan. 13, 2017, available at: <https://www.nytimes.com/2017/01/13/business/dealbook/wells-fargo-earnings-report.html>

³ Matt Levine, *Wells Fargo Opened a Couple Million Fake Accounts*, Bloomberg.com, Sept. 9, 2016, available at: <https://www.bloomberg.com/view/articles/2016-09-09/wells-fargo-opened-a-couple-million-fake-accounts>

32. Jin did not receive any notice from Wells Fargo that his automatic payments had stopped and/or were no longer being accepted.

33. Upon information and belief, Wells Fargo never did issue any such notice to Jin prior to repossessing the vehicle; however, Wells Fargo did manage to report this account negatively on Jin's credit report.

34. At some point in early 2011—upon information and belief, in February 2011—Wells Fargo repossessed Jin's Altima. The Altima was at Jin's home in Utah when it was repossessed.

35. Shortly thereafter, Jin became aware that his Altima was repossessed by examining his credit report which showed the Wells Fargo account to be delinquent, showing a deficiency balance and/or showing up as some type of "repossession". This was the first time Jin became aware that his payments were not being made and/or accepted, and that the vehicle had been repossessed by Wells Fargo.

36. No Court Order was obtained before the car was repossessed.

37. By the time Jin was able to call Wells Fargo, his Altima had already been sold by Wells Fargo.

38. Jin thereafter paid off what he thought was the outstanding balance on his loan—approximately \$4,600.00—so as to prevent any damage to his credit, intending to work on resolving the remaining issues after he returned from deployment.

39. Because his car was repossessed and he had no other means of transportation, he was forced to rent a car for approximately one month upon his return stateside until he was able to settle back in and buy another car.

40. Jin paid \$4,000.00 for a used 2002 Nissan Maxima (“the Maxima”). The Maxima also needed approximately \$1,600.00 in maintenance, which Jin also paid.

41. Approximately a month after the purchase, the Maxima began to experience problems with the transmission, which cost Jin another \$2,000.00 for repairs.

42. Had Wells Fargo never repossessed Jin’s Altima, Jin would not have incurred these costs, which total approximately \$7,600.00.

43. In addition, Jin had numerous items stored in his Altima at the time it was repossessed. These items include, but are not limited to, the following:

- a. Numerous pieces of paperwork, including the loan paperwork for the Altima;
- b. TA-50, which is military equipment/gear issued by the Army and which Jin is and will be financially responsible for when he is discharged;
- c. His winter uniform;
- d. Other items of equipment which were not needed during his deployment overseas; and,
- e. Various other pieces of personal property.

44. Upon his return from deployment, Jin was diagnosed with Post Traumatic Stress Disorder.

45. Jin has sought treatment for his PTSD through the VA.

46. Jin again contacted Wells Fargo in an attempt to resolve matters, in the hopes of getting his personal property and military-issued equipment back.

47. However, Wells Fargo placed Jin on hold for an extended duration.

48. The anger Jin felt towards Wells Fargo as a result of the repossession and being placed on hold exacerbated his PTSD. Therefore, Jin hung up.

49. However, in September 2016, Jin saw a report from CNN saying that Wells Fargo had illegally repossessed over 400 vehicles from U.S. Service members, without complying with the SCRA.

50. Shortly thereafter, Wells Fargo sent Jin a letter offering to settle this claim for approximately \$10,000.00.

51. As his direct monetary damages alone easily exceeded this figure (even excluding interest and other damages), Jin felt that this figure was grossly inadequate.

STATUTE OF LIMITATIONS

52. The SCRA tolls the statute of limitations for all claims, regardless of the basis of the claim, for the period of a servicemember's "military service." 50 U.S.C. § 3936(a).

53. At all times relevant, Jin has been a "servicemember" as that term is defined by 50 U.S.C. §3911(1), 10 U.S.C. §101(a)(5), and 50 U.S.C. §3917(a).

54. For the purposes of the Servicemembers Civil Relief Act, a period of "military service" begins when the servicemember receives their orders, even if they do not have to report for active duty until a later date.

55. Jin was on Active Duty with the United States Army, as defined by 10 U.S.C. §101(d)(1) from approximately June 16, 2010 until approximately July 5, 2011. During this time, Jin served in Operation Iraqi Freedom.

56. Jin's claims arose in early 2011—upon information and belief, in January 2011.

57. Prior to his transfer to the United States Army, Jin was a servicemember in the United States Army National Guard.

58. The United States Army National Guard is a "reserve component" as that term is defined by 10 U.S.C. §101(c).

59. Pursuant to 50 U.S.C. §3917(a), Jin is and was afforded the protections of 50 U.S.C. §3931 through §3959 during the periods in which he has been ordered to report for military service with the United States Army.

60. Jin's claims arose in early 2011—upon information and belief, in January 2011.

61. On or about July 5, 2011, Jin's Active Duty status ceased, and he was transferred back to the United States Army National Guard.

62. Therefore, the statute of limitations on Jin's claims would not have begun to run until approximately July 5, 2011, the date his "military service" ended.

63. From approximately July 5, 2011 through December 24, 2012, Jin was not in a period of "military service."

64. On or about December 24, 2012, Jin was transferred back to the United States Army and has been serving on Active Duty, as that term is defined by 10 U.S.C. § 101(d)(1) since.

65. Therefore, beginning on or about December 24, 2012, Jin was again afforded the protections of 50 U.S.C. §3931 through §3959, as he once again entered a period of "military service."

66. At that point, in the light least favorable to Jin, 538 days had run on the statute of limitations on his claims.

67. The statute of limitations on Jin's claims was paused on or about December 24, 2012, and has not yet resumed, as he remains on Active Duty pursuant to 10 U.S.C. §101(d)(1) and 50 U.S.C. §3917(a).

68. A one-year statute of limitations is considered to grant 365 days before expiration.

69. Each of Jin's claims has a statute of limitations in excess of two years (or 730 days), and, therefore, none of the statute of limitations on any of Jin's claims have expired.

EMOTIONAL DISTRESS

70. As a result of the repossession of his Altima, Jin has experienced emotional distress.

71. Jin's emotional distress includes, but is not limited to: anger, anxiety, disbelief, fear, embarrassment, frustration, humiliation, insomnia, irritability, nausea, nightmares, panic attacks, sleep loss, and worry.

72. Jin began to experience these feelings immediately after he learned of the repossession of his Altima, while he was still deployed on Active Duty.

73. In addition to the above-described emotional distress, Jin felt confused, experienced a loss of concentration, and felt that his job was affected negatively.

74. A soldier's credit rating is extremely important to his or her ability to continue to serve in the armed forces. A default on a loan can be considered a security risk, and all soldiers in the military are aware of the importance of a clean credit history.

75. Jin feared that Wells Fargo's actions could affect his ability to serve in the military and his security clearances and, thus, have a negative effect on his military career.

CLASS ACTION ALLEGATIONS

76. Plaintiff proposes that he represent the following nationwide Class:

All servicemembers who, during the Class Period, had a motor vehicle repossessed by Defendant without a Court Order authorizing that repossession.

77. For the purposes of the Class Definition, the term “Class Period” shall refer to the period beginning on January 1, 2005 and continuing through the date this Class is ultimately certified, inclusive.

78. For the purposes of the Class Definition, the term “servicemembers” shall bear meaning as that term is defined by 50 U.S.C. §3911(1), 10 U.S.C. §101(d)(1), and shall also include those persons who are afforded the protections of the Servicemembers Civil Relief Act by 50 U.S.C. §3917(a).

79. The term “subject vehicles” shall hereinafter refer to the motor vehicles which were repossessed, as identified by the Class Definition.

80. Plaintiff proposes that the following persons shall be excluded from the proposed Class: (1) Wells Fargo Bank, National Association, along with its parents, subsidiaries, and any affiliated business entities; (2) governmental entities; (3) the judge(s) to whom this case is assigned and any immediate family members thereof; (4) Plaintiff’s counsel; and (5) all persons who have previously settled these claims against Wells Fargo.

81. Numerosity and Ascertainability. The members of the proposed Class are so numerous that individual joinder of all members is impracticable. The precise number of class members and their addresses are unknown to Plaintiff; however, this information would be readily available from Wells Fargo’s records. Upon information and belief, lists which contain this information have already been compiled in accordance with the Consent Order discussed *supra*. Further, each of the class definitions is crafted using exclusively objective questions to determine membership, making the class ascertainable.

82. Commonality and Predominance. This action involves numerous common questions of law and/or fact that predominate over any questions which may affect only

individual class members. Additionally, the evidence used to answer these common questions would likewise be common. These common questions include, but are not limited to:

- a. Whether Wells Fargo's failure to obtain a court order before repossessing the subject vehicles belonging to Plaintiff and the other Class Members was in violation of the SCRA;
- b. Whether Wells Fargo willfully, recklessly, maliciously, and/or negligently failed to maintain and/or execute reasonable procedures designed to prevent the unauthorized repossession of Plaintiff's and the other Class Members' motor vehicles;
- c. Whether Wells Fargo owed a duty to Plaintiff and the other class members to maintain and/or execute reasonable procedures designed to prevent the unauthorized repossession of Plaintiff's and the other Class Members' motor vehicles;
- d. Whether Wells Fargo breached its duty to exercise reasonable care to Plaintiff and the other class members to maintain and/or execute reasonable procedures designed to prevent the unauthorized repossession of Plaintiff's and the other Class Members' motor vehicles;
- e. Whether Wells Fargo was negligent in repossessing motor vehicles that belonged to Plaintiff and other Class Members of the class while they were in a period of military service (as defined in the SCRA);
- f. Whether Wells Fargo engaged in a pattern and practice of repossessing servicemembers vehicles without authorization and/or illegally;
- g. Whether Wells Fargo engaged in a pattern and practice of failing to investigate whether or not a motor vehicle belonged to Plaintiff and the other Class Members that was in a period of military service (as defined by the SCRA) prior to repossessing the subject vehicle;
- h. Whether Wells Fargo engaged in a pattern and practice of ignoring the results of any investigation Wells Fargo did perform as to whether or not a motor vehicle belonged to Plaintiff and the other Class Members that was in a period of military service (as defined by the SCRA) prior to repossessing the subject vehicle;
- i. Whether Wells Fargo has violated the terms of the Consent Order it entered into with the Department of Justice on October 4, 2016 in Case No. 2:16-cv-07336-JFW-PLA;
- j. Whether Plaintiff and the Class Members are entitled to recovery of actual and/or statutory damages;

- k. Whether Plaintiff and the Class Members are entitled to the recovery of punitive damages;
- l. Whether Plaintiff and the Class Members are entitled to the recovery of their costs and reasonable attorneys' fees.

83. Typicality. The named Plaintiff's claims are typical of the claims of the absent members of the proposed Class because, among other things, Plaintiff's vehicle was repossessed by Wells Fargo while he was on Active Duty and without a Court Order.

84. Adequacy of Representation. Plaintiff is an adequate representative of the proposed Class because his interests do not conflict with the interests of the Class he seeks to represent. Additionally, Plaintiff has retained counsel competent and experienced in complex consumer class action litigation. Plaintiff intends to prosecute this action vigorously, ensuring that the interests of the Class will be fairly and adequately protected.

85. This case can properly be maintained as a class action pursuant to Fed. R. Civ. P. 23(b)(3) because the common questions of law and/or fact predominate over the individual questions and because a class action is superior to all other available means for the fair and efficient adjudication of the claims.

86. Superiority. A class action is superior to all other available means for the fair and efficient adjudication of Plaintiff's and the Class member's claims. Because of the relatively modest size of each individual Class member's claims, few, if any, Class members could afford to seek legal redress for the wrongs complained of herein on an individual basis. Absent a Class Action, the members of the proposed Classes would not be likely to recover, or would not likely have the chance to recover, damages and/or restitution, such that Wells Fargo would be permitted to retain the proceeds of its unlawful conduct.

COUNT ONE:
VIOLATIONS OF THE SERVICEMEMBERS CIVIL RELIEF ACT

87. Plaintiff incorporates by reference all facts and allegations contained in the foregoing paragraphs as though fully laid out herein.

88. The SCRA provides protections to servicemembers while they are in a term of “military service.”

89. Among the protections the SCRA provides is that it prohibits the repossession of a servicemembers’ collateral *even if they have defaulted on the underlying loan* while they are in a period of “military service.” 50 U.S.C. § 3952(a)(1).

90. The one exception to this rule is that a creditor may repossess a servicemember’s vehicle while they are in a period of “military service” *only* if they have a court order. 50 U.S.C. § 3952(a)(1).

91. There are no other exceptions.

92. Jin was in a period of “military service” from June 16, 2010 through July 5, 2011.

93. In early 2011—upon information and belief, approximately February 2011—Defendant repossessed Jin’s Altima.

94. Jin’s car was the collateral used to secure the loan Jin took out to purchase the Altima.

95. At the time of the repossession, Defendant did not have a Court Order permitting it to repossess Jin’s Altima.

96. Defendant’s repossession of the Altima was, therefore, in violation of 50 U.S.C. § 3952(a)(1).

97. Jin is authorized by 50 U.S.C. § 3952(c)(1) to recover all of the payments he made to Wells Fargo on the Altima.

98. Jin is also authorized to recover his actual damages, punitive damages, costs and attorneys fees, and equitable relief by 50 U.S.C. § 4042.

99. In this case, Jin's actual damages include, but are not limited to, the value of the Altima, the cost of the rental car Jin was forced to rent upon his return from deployment, the cost of the Maxima Jin was forced to purchase after his Altima was repossessed, the cost of the repairs Jin was forced to make to the Maxima, the personal property contained in the Altima at the time it was sold, and Jin's emotional distress.

100. Wells Fargo's conduct, as pled in more detail above, was intentional, willful, wanton, reckless, fraudulent, and/or with malice.

COUNT TWO:
CONVERSION

101. Plaintiff incorporates by reference all facts and allegations contained in the foregoing paragraphs as though fully laid out herein.

102. Because Wells Fargo did not have a Court Order permitting it to repossess the Altima, Jin was the rightful owner of the Altima at all times relevant.

103. Jin was also the rightful owner and/or possessor of the personal property located within the Altima.

104. In or about February 2011, Wells Fargo repossessed the Altima and later sold the same. This constituted the assumption and/or exercise of the right of ownership over the Altima.

105. Wells Fargo's repossession of the Altima and subsequent sale of the same was to the exclusion of Jin's right of ownership over the Altima and over the personal property located within the Altima.

106. Wells Fargo has not conveyed to Jin the proceeds of the sale of the Altima, nor has it conveyed to Jin the proceeds of the sale of the various items of personal property located within the Altima at the time it was sold.

107. As a direct and proximate result of Wells Fargo's repossession and subsequent sale of the Altima, Jin has been damaged.

108. In this case, Jin's actual damages include, but are not limited to, the value of the Altima, the cost of the rental car Jin was forced to rent upon his return from deployment, the cost of the Maxima Jin was forced to purchase after his Altima was repossessed, the cost of the repairs Jin was forced to make to the Maxima, the personal property contained in the Altima at the time it was sold, and Jin's emotional distress.

109. Defendant's conduct, as alleged herein, was intentional, willful, wanton, reckless, fraudulent, and/or with malice, thereby entitling Jin to the recovery of punitive damages.

COUNT THREE:
VIOLATIONS OF THE UTAH CONSUMER SALES PRACTICES ACT

110. Jin incorporates by reference all facts and allegations contained in the foregoing paragraphs as though fully laid out herein.

111. The Utah Consumer Sales Practices Act ("UCSPA"), U.C.A. § 13-11-1 *et seq.*, "shall be construed liberally" to "protect consumers from suppliers who commit deceptive and unconscionable sales practices." U.C.A. § 13-11-2.

112. Jin is a "person" as defined by the UCSPA.

113. Wells Fargo is a "supplier" as defined by the UCSPA.

114. Jin's purchase and financing of the Altima was a "consumer transaction" as defined by the UCSPA.

115. Wells Fargo's repossession of the Altima was also a "consumer transaction" as defined by the UCSPA.

116. The UCSPA prohibits deceptive and/or unconscionable acts and/or practices by a supplier whether they happen before, during, or after the transaction. U.C.A. § 13-11-4(1); 13-11-5(1).⁴

117. Wells Fargo's violations of the UCSPA's prohibition on deceptive acts and practices include, but are not limited to, the following:

- a. Terminating Jin's auto-pay without providing him notice of any kind;
- b. Refusing to continue to accept Jin's auto-pay payments while he was out of the country on Active Duty Military Service;
- c. Repossessing Jin's Altima without providing him a meaningful opportunity to cure his default;
- d. Repossessing Jin's Altima without a court order;
- e. Selling Jin's Altima without providing him a meaningful opportunity to cure his default;
- f. Selling all of Jin's personal belongings (including military gear) along with the Altima; and,
- g. Engaging in a pattern of conduct which, when taken in its totality, is and was deceptive.

118. Wells Fargo's violation of the UCSPA's prohibition on unconscionable acts and practices include, but are not limited to, the following:

- a. Terminating Jin's auto-pay without providing him notice of any kind;
- b. Refusing to continue to accept Jin's automatic payments while he was out of the country on Active Duty Military Service;

⁴ The UCSPA, § 13-11-4 and 13-11-5 are remarkably similar in wording to the Kansas Consumer Protection Act, K.S.A. 50-626, 50-627.

- c. Repossessing Jin's Altima without providing him a meaningful opportunity to cure his default;
- d. Repossessing Jin's Altima without a court order;
- e. Selling Jin's Altima before giving him a meaningful opportunity to cure his default;
- f. Selling all of Jin's personal belongings (including Military gear) along with the Altima; and,
- g. Engaging in a pattern of conduct which, when taken in its totality, was unconscionable.

119. Jin is authorized to recover the greater of his actual damages or a \$2,000.00 civil penalty, plus his court costs by § 13-11-19(2).

120. Jin is further authorized to recover his reasonable attorneys fees by § 13-11-19(5).

121. Jin incorporates by reference all facts and allegations contained in the foregoing paragraphs as though fully laid out herein.

COUNT FOUR:
NEGLIGENCE

122. Jin incorporates by reference all facts and allegations contained in the foregoing paragraphs as though fully laid out herein.

123. Wells Fargo owed a duty to Plaintiff and the Class Members to, among other things, maintain and/or execute reasonable procedures designed to prevent the unauthorized repossession of Plaintiff's and the other Class Members' motor vehicles.

124. Wells Fargo breached its duty by failing to exercise reasonable care by failing to maintain and/or execute reasonable procedures designed to prevent the unauthorized repossession of Plaintiff's and the other Class Members' motor vehicles.

125. It was reasonably foreseeable that Wells Fargo's failure to exercise reasonable care in maintaining and/or executing reasonable procedures designed to prevent the unauthorized

repossession of Plaintiff's and the other Class Members' motor vehicles would result in harm and other damages to the Plaintiff and the Class Members.

126. Plaintiff and the other Class Members suffered, may continue to suffer, as a direct and/or proximate result of Wells Fargo's failure to exercise reasonable care in maintaining and/or executing reasonable procedures designed to prevent the unauthorized repossession of the subject vehicles in the form of loss of use of the subject vehicles, lost personal property contained in the subject vehicles, additional fees and costs charged by Wells Fargo for the towing, storage, fuel, etc. relating to the repossession, additional fees imposed by Wells Fargo, negative credit reporting, deficiency balances, costs of alternative transportation, and other emotional distress related to Wells Fargo's negligence.

127. Wells Fargo's wrongful actions and/or inactions and the resulting unauthorized repossessions constituted negligence at common law.

128. As a result of Wells Fargo's negligence, Plaintiff and the Class Members are entitled to compensation.

DEMAND FOR JURY TRIAL

127. Plaintiff hereby demands a jury trial on all issues so triable pursuant to Federal Rule of Civil Procedure 38(b).

PLACE OF TRIAL

128. Plaintiff designates Topeka, Kansas as the place of trial.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, on behalf of himself and all Class Members whom he seeks to represent, prays for the following relief:

- a. An Order certifying the Class as requested herein, designating Plaintiff as Class Representative and appointing Plaintiff's counsel as Lead Counsel

for the Class;

- b. Judgment entered in favor of Plaintiff and all Class Members and against Defendant in an amount that is fair and reasonable as determined by the jury at trial, including, but not limited to, actual damages, statutory damages and punitive damages;
- c. Pre- and post-judgment interest at the maximum rate permitted by applicable law;
- d. All costs incurred in connection with this action; and
- e. Such other relief, at law or in equity, as this Court deems just and proper.

Dated: September 15, 2017

Respectfully submitted,

/s/ Bryce B. Bell

Bryce B. Bell KS#20866

Mark W. Schmitz KS#27538

BELL LAW, LLC

2600 Grand Blvd., Suite 580

Kansas City, Missouri 64108

T: 816-886-8206

F: 816-817-8500

Bryce@BellLawKC.com

MS@BellLawKC.com

A. Scott Waddell KS#20955

WADDELL LAW FIRM LLC

2600 Grand Blvd., Suite 580

Kansas City, Missouri 64108

T: 816-914-5365

F: 816-817-8500

scott@aswlawfirm.com

Rex A. Sharp KS #12350

Ryan C. Hudson KS #22986

REX A. SHARP, P.A.

5301 W. 75th Street

Prairie Village, KS 66208

T: 913-901-0505

F: 913-901-0419 Fax

rsharp@midwest-law.com

rhudson@midwest-law.com

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and accurate copy of the foregoing document was filed with the Court's e-Filing system and thereby served upon all attorneys of record on September 15, 2017.

/s/ Bryce B. Bell