

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

**JIN NAKAMURA and
THOMAS TAVTIGIAN, JR.,
on behalf of themselves and
all others similarly situated.**)
)
)
)
Plaintiffs,)

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

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

SECOND AMENDED CLASS ACTION COMPLAINT

Plaintiffs Jin Nakamura and Thomas Tavgigian, Jr., through their undersigned counsel, state and allege as follows:

NATURE OF THE CASE

1. This is a case about a bank’s willful disregard of the rights of soldiers who have put their lives on the line to preserve the rights and freedoms of our Republic. Wells Fargo intentionally cut corners to put its profits ahead of people, as Wells Fargo 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

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

3. In fact, the Department of Justice’s investigation into Wells Fargo revealed a long running pattern and practice of unlawful repossessions. Indeed, the Office of the Comptroller of the Currency (“OCC”) described Wells Fargo’s actions as “part of a pattern of misconduct.”²

4. Plaintiffs Jin Nakamura (“Jin”) and Thomas Tavgian, Jr. (“Thomas”) are American heroes whose cars were unlawfully repossessed by Wells Fargo while they were in active military service.

5. Wells Fargo repossessed Jin and Thomas’ cars without court orders while they were deployed overseas in Iraq.

6. It is for situations precisely like this that Congress enacted the Servicemembers Civil Relief Act, 50 U.S.C. § 3901, et seq., (“SCRA”). The SCRA was designed “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).

7. The law is clear and has been for some time: banks like Wells Fargo cannot repossess an active duty servicemember’s vehicle without a court order. There is no defense to Wells Fargo’s “pattern” of widespread and habitual “misconduct.”

8. Wells Fargo’s clear liability for victimizing Jin, Thomas, and all other similarly situated servicemembers makes this case an ideal class action.

PARTIES

9. Plaintiff Jin Nakamura is a resident of Kansas and is stationed at Fort Riley, Kansas.

² <https://www.occ.gov/static/enforcement-actions/ea2016-082.pdf> (last visited December 7, 2017).

10. Plaintiff Thomas Tavgigian, Jr. is a resident of Kansas and resides in Manhattan, Kansas.

11. Defendant Wells Fargo Bank, National Association d/b/a Wells Fargo Dealer Services, Inc. (“Defendant” or “Wells Fargo”) is a South Dakota bank.³ Wells Fargo is controlled by its parent corporation, Wells Fargo & Co., which is based in San Francisco, California. Wells Fargo’s motor vehicle operations are located at 23 Pasteur, Irvine, California 92618. Defendant has already been served in this action.

JURISDICTION AND VENUE

12. 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 DEPARTMENT OF JUSTICE SUES WELLS FARGO

13. 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.).

14. The DOJ alleged that from January 1, 2008 through July 1, 2015, Wells Fargo illegally repossessed 413 motor vehicles from servicemembers while they were in a period of military service.

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

³ To the extent that other Wells Fargo affiliates are involved, and Wells Fargo as the parent does not assume responsibility for them, Plaintiffs and the Class reserve the right to add the affiliates.

16. The DOJ's investigation was sparked by a complaint from 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.

17. Wells Fargo repossessed the 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.

18. Before filing its complaint, the DOJ investigated Wells Fargo's motor vehicle repossessions between January 1, 2008 and July 1, 2015.

19. The DOJ investigation identified 413 motor vehicle repossession that were in violation of the SCRA.

20. On September 29, 2016, Wells Fargo entered into a Consent Judgment with the DOJ. Wells Fargo disputed the legality of only 31 of the 413 repossessions, conceding that the vast majority of the repossessions were indeed in violation of the SCRA.⁴

21. However, Wells Fargo failed, neglected, or refused to identify hundreds of servicemembers whose vehicles were repossessed *during* the DOJ investigation period from January 1, 2008, to June 30, 2015.

22. In fact, these additional unlawful repossessions were not identified until this case was filed and Wells Fargo was forced to re-examine its records. Had this lawsuit not been filed, these unlawful repossessions likely would never have been revealed.

⁴ On the same day, Wells Fargo entered into a Consent Order for a Civil Money Penalty and a Consent Cease and Desist Order with the OCC. The OCC found that Wells Fargo violated the SCRA between 2007 and 2016 by failing to obtain court orders prior to repossession servicemembers' vehicles. The OCC orders may be accessed at <https://www.occ.gov/static/enforcement-actions/ea2016-081.pdf> (last visited December 7, 2017) and <https://occ.treas.gov/news-issuances/news-releases/2016/nr-occ-2016-119.html> (last visited December 7, 2017).

23. Additionally, this lawsuit has caused Wells Fargo to identify hundreds of unlawful repossessions that occurred before and after the DOJ investigation period. Had this lawsuit not been filed, Wells Fargo would not have identified these unlawful repossessions, and the claims of these servicemembers would have been swept under the rug.

**WELLS FARGO SOLICITS RELEASES FROM SERVICEMEMBERS BEFORE
INFORMING THEM OF THIS CASE**

24. Plaintiff Jin Nakamura filed this case as an individual action on April 10, 2017.

25. On June 20, 2017, the Parties held their rule 26(f) conference. During that conference, Plaintiff informed Wells Fargo of his intent to amend his claims to pursue a class action.

26. On July 9, 2017, Plaintiff moved for leave to amend his Complaint to add class action allegations.

27. Wells Fargo opposed the amendment on the basis that there were not enough unlawful repossessions to warrant a class action because Wells Fargo had already obtained settlements for most of the unlawful repossessions identified in the Consent Judgment.

28. Specifically, Wells Fargo represented to the Court that the class would consist of “only 48 Service Members” and that “this number [would] continue to diminish.” (Doc. 16).⁵

29. On or about August 31, 2017, Wells Fargo withdrew its opposition to Plaintiff pursuing this case as a class action because it had suddenly “identified additional consumer auto accounts that may be subject to remediation and may fall within Plaintiff’s proposed Class Definition.” (Doc. 18).

⁵ The putative class could only shrink through death (which is, unfortunately, a distinct possibility for active duty servicemembers) or if Wells Fargo obtained releases. It is now clear that Wells Fargo intended the latter.

30. Unbeknownst to this Court and Plaintiff, that very same day, Wells Fargo mailed a letter to each servicemember it had identified as having a potential SCRA claim.

31. Wells Fargo did not identify those servicemembers until this case was filed. Had this lawsuit not been filed, Wells Fargo most likely never would have identified those servicemembers.

32. Wells Fargo mailed the August 2017 letter to servicemembers whose vehicles were repossessed during the DOJ Investigation period from January 1, 2008 - June 30, 2015, but who were not identified during the DOJ Investigation, as well as to servicemembers whose vehicles were repossessed before January 1, 2008 or after June 30, 2015, and, thus, who were not subject to the DOJ Investigation.

33. In the letter, Wells Fargo solicited these servicemembers to settle and release their SCRA claims, without consulting the Court, and without informing the servicemembers of the existence of this case and their rights hereunder.

34. The letter was intentionally misleading: Wells Fargo knew the servicemembers had rights under this case that could be affected by executing its release, but Wells Fargo did not inform the servicemembers of the existence of this case.

35. Without being fully informed of their rights, many servicemembers executed Wells Fargo's release.

36. On or about October 19, 2017, again without consulting the Court, Wells Fargo again solicited by mail the servicemembers to settle and release their SCRA claims. For the first time, Wells Fargo at least informed the servicemembers of this lawsuit.

37. On or about November 13, 2017, in an apparent attempt to wash the stench from its August 2017 letter, Wells Fargo mailed a third letter informing servicemembers that it would let them out of their releases so they could recover additional relief under this case.

38. To do this, though, Wells Fargo required the servicemembers to execute and return a document indicating their intent to withdraw their releases and to participate in this case. The letter informed servicemembers that they would not be required to return the settlement funds they had already received. But the damage had already been done—the string of confusing letters left many servicemembers unsure of their rights or who they could trust.

39. Servicemembers who already received their settlement checks are hesitant to withdraw their releases because they worry that Wells Fargo will make them return the money—money which in most cases has already been spent on mortgage payments, rent, medical bills, and all of the other everyday expenses faced by servicemembers and civilians alike. These servicemembers were willing to take Wells Fargo's money, but, understandably, they are not willing to take its word.

40. Wells Fargo could have simply waived the releases it improperly solicited from the servicemembers, but instead it attempted to erect an unnecessary administrative roadblock to servicemembers recovering additional relief to which they are entitled under the law.

41. Plaintiffs bring this case to recover for themselves and for their fellow servicemembers for the full extent of their injuries as provided for under state and federal law. Wells Fargo didn't just take their cars—it ruined their credit, caused bankruptcies, triggered severe emotional distress among a population that is already vulnerable to emotional distress, and cost them untold sums of money. Plaintiffs and their fellow servicemembers put their lives on the line

for their country, and they were wronged by Wells Fargo. Now they are counting on Wells Fargo to make it right. This case will make Wells Fargo make it right.

PLAINTIFF JIN NAKAMURA

42. 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.

43. At the time, Jin owned a 2006 Nissan Altima (“the Altima”), which he had purchased while he was not in military service and for which he obtained financing through Wells Fargo.

44. 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.

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

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

47. 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.

48. At some point in early 2011, Wells Fargo repossessed Jin’s Altima. The Altima was at Jin’s home in Utah when it was repossessed.⁶

⁶ Jin believes the repossession occurred in February 2011, but he is unsure of the exact date as he was deployed overseas at the time.

49. Wells Fargo did not conduct a search on the Department of Defense Manpower Data Center (“DMDC”), which would have provided a quick and *free* method of verifying Jin’s military status.

50. Prior to the completion of the repossession, Wells Fargo and/or its agent(s) spoke with at least three different people who indicated that Jin was overseas in the military. On each occasion, Wells Fargo made the conscious choice not to conduct a DMDC search—or any research at all—to confirm Jin’s military status before repossessing the Altima.

51. In light of the information Wells Fargo received from at least three different sources, Wells Fargo had actual notice that Jin was on active duty at the time of the repossession.

52. 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.

53. No court order was obtained before the car was repossessed.

54. By the time Jin was able to call Wells Fargo, his Altima had already been sold by Wells Fargo. Nevertheless, Jin called multiple times to try to resolve things

55. Jin first attempted to call Wells Fargo at around 8pm or 9pm Iraqi time, and spent the next several hours attempting to get through to a live human being. Hours later, he was able to speak to someone and actually attempted to invoke his rights under the SCRA. Wells Fargo ignored his attempt, and demanded payment, telling Jin that the Altima had already been sold and the impact to his credit would be worse if he did not pay. This was at approximately 2am or 3am

Iraqi time, when Jin was scheduled to leave on an approximately seven or eight day mission that morning at about 6am.

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

57. 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.

58. 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.

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

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

61. 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.

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

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

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

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

66. 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.

67. 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.

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

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

70. The letter Jin received from Wells Fargo provided a number for Jin to call: 1-888-753-3042. That number corresponds to what Wells Fargo calls its “SCRA Center of Excellence.” Ironically, Wells Fargo failed to provide anything near excellence. On one such phone call, Jin was transferred to the Wells Fargo Office of the President who opened an “investigation” which was assigned the case number 118039411. Wells Fargo told Jin that an “analyst” would get back to him.

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

72. 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.

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

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

75. 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.

76. 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.

PLAINTIFF THOMAS TAVTIGIAN

77. Thomas joined the Kansas Army National Guard in 2001. He previously served decades in the Army.

78. Thomas was deployed to Iraq for 15 months from 2004 to 2005. Two years later, Thomas was again called upon to serve his country. He received his orders to report for active duty in November 2007.

79. At the time, Thomas owned a 2006 Ford F-150. Thomas purchased the F-150 for approximately \$30,000 while he was not in a period of military service and obtained financing through Wells Fargo.

80. Wells Fargo repossessed the F-150 in December 2007, just weeks after Thomas was deployed to Iraq.

81. Wells Fargo did not obtain a Court Order before repossessing the F-150.

82. Wells Fargo sold the F-150 for only \$15,800.00 on or about December 28, 2007, and promptly began attempting to collect the remaining balance on the loan—approximately \$18,000, including the costs of the illegal repossession—from him and his wife, Claudia.

83. Claudia repeatedly informed Wells Fargo that her husband was fighting overseas, but Wells Fargo persisted in its efforts to collect the balance of the loan from her. In one letter, Wells Fargo even suggested that she use her tax refund to pay off the loan.

84. In August 2008, Thomas was seriously injured while on a routine patrol in Iraq when the Humvee he was riding in ran over an IED. The results were devastating:



Above: Thomas' Humvee after striking an improvised explosive device ("IED") on a routine patrol in Iraq in August 2008.

85. Over the course of the next few years Thomas went through more than 17 surgeries to repair the injuries he sustained as a result of the IED blast. He was also diagnosed with PTSD. Thomas was later awarded a Bronze Star and Purple Heart for his service.

86. Despite that Thomas was in and out of a string of hospitals during this time and Claudia had repeatedly informed Wells Fargo of Thomas' military status, Wells Fargo persisted in its efforts to collect on the loan.

87. Claudia made payments on the loan until March 2012, at which point she and Tom could no longer afford to continue paying.

88. Once Thomas had recovered enough to be able to drive again, he was forced to buy another truck—a used one, because he could not afford a new truck.

89. Wells Fargo reported the repossession and loan delinquency to the credit reporting bureaus, ruining his credit.

90. As a result, Thomas has been unable to obtain and will continue to be unable to obtain financing (or financing at a reasonable rate) unless and until Wells Fargo fixes and repairs the damage to his credit.

91. Thomas received Wells Fargo's August 2017 letter in which Wells Fargo solicited a settlement from Thomas without advising him of the existence of this class action case and his rights thereunder.

92. On or about October 11, 2017, Thomas accepted Wells Fargo's settlement offer and executed a release without knowledge of this class action case or his rights hereunder.

93. Thomas received Wells Fargo's November 2017 letter, and subsequently withdrew his release so that he could pursue relief for the full extent of his injuries, and those of hundreds of others of similarly-affected servicemembers, in this case.

CLASS ACTION ALLEGATIONS

94. Plaintiffs propose the following nationwide Class:

All servicemembers who, before the servicemember entered military service, paid a deposit or installment on loan originated, acquired, and/or serviced by Defendant, and whose motor vehicle subject to the loan was repossessed by Defendant while the servicemember was in military service without a court order authorizing the repossession between January 1, 2000 and the date this Class is certified by the Court.

Excluded from the Class are: (1) the judge(s) to whom this case is assigned and any immediate family members thereof.

95. 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).

96. For the purposes of the Class Definition, Defendant shall refer to Wells Fargo Bank, N.A., d/b/a Wells Fargo Dealer Services, Inc., and its parent company Wells Fargo & Company, or any of their subsidiaries, predecessors, acquired companies, or successor entities.

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

98. Numerosity and Ascertainability. The members of the proposed Class are so numerous that individual joinder of all members is impracticable. Plaintiffs are informed and believe the number of people who would be members is in excess of 100. The precise number of class members and their addresses are unknown to Plaintiffs; however, this information is readily available from Wells Fargo’s records. Lists which contain this information have already been compiled in accordance with the Consent Judgment discussed above. Further, the class definition

is crafted using exclusively objective questions to determine membership, making the class ascertainable.

99. 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 Plaintiffs and the other Class Members was in violation of the SCRA;
- b. Whether Wells Fargo intentionally, willfully, wantonly, recklessly, and/or maliciously failed to maintain and/or execute reasonable procedures designed to prevent the unauthorized repossession of Plaintiffs' and the other Class Members' motor vehicles;
- c. Whether Wells Fargo engaged in a pattern and practice of repossessing servicemembers vehicles without authorization and/or illegally;
- d. Whether Wells Fargo engaged in a pattern and practice of failing to investigate whether or not a motor vehicle belonged to Plaintiffs and the other Class Members that was in a period of military service (as defined by the SCRA) prior to repossessing the subject vehicle;
- e. 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 Plaintiffs and the other Class Members that was in a period of military service (as defined by the SCRA) prior to repossessing the subject vehicle;
- f. Whether Plaintiffs and the Class Members are entitled to recovery of actual and/or statutory damages;
- g. Whether Plaintiffs and the Class Members are entitled to the recovery of punitive damages;
- h. Whether Plaintiffs and the Class Members are entitled to the recovery of their costs and reasonable attorneys' fees.

100. Typicality. The named Plaintiffs' claims are typical of the claims of the absent members of the proposed Class because, among other things, Plaintiffs' vehicles were repossessed by Wells Fargo while they were on Active Duty and without a Court Order.

101. Adequacy of Representation. Plaintiffs are adequate representatives of the proposed Class because their interests do not conflict with the interests of the Class they seek to represent. Additionally, Plaintiffs have retained counsel competent and experienced in complex consumer class action litigation. Plaintiffs intend to prosecute this action vigorously, ensuring that the interests of the Class will be fairly and adequately protected.

102. 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.

103. Superiority. A class action is superior to all other available means for the fair and efficient adjudication of Plaintiffs' 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

104. Plaintiffs incorporate by reference all facts and allegations contained in the foregoing paragraphs as though fully laid out herein.

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

106. 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).

107. 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).

108. There are no other exceptions.

109. Plaintiffs’ vehicles were the collateral used to secure the loans they obtained from Wells Fargo to purchase their vehicles.

110. Plaintiffs paid a deposit and/or installment before they were in a term of “military service.”

111. Wells Fargo repossessed Plaintiffs’ vehicles while they were in a period of “military service.”

112. At the time of the repossessions, Wells Fargo did not have a Court Order permitting it to repossess Plaintiffs’ vehicles.

113. Wells Fargo’s repossessions of Plaintiffs’ vehicles were in violation of 50 U.S.C. § 3952(a)(1).

114. Plaintiffs are “person[s] aggrieved” pursuant to 50 U.S.C. § 4041(b)(2) and have suffered damages as a result of Wells Fargo’s conduct.

115. Plaintiffs are authorized to recover their actual damages, punitive damages, costs and attorneys’ fees, and equitable relief pursuant to 50 U.S.C. § 4042. Plaintiffs and the absent

class members' damages include the personal property contained inside their vehicles which Wells Fargo sold off and/or threw away.

116. Plaintiffs are also authorized by 50 U.S.C. § 3952(c)(1) to recover all payments they made to Wells Fargo on their vehicles.

117. As set forth above and pled in more detail below, Wells Fargo has engaged in a pattern or practice of violation Section 3952(a)(1) of the SCRA by repossessing the motor vehicles of SCRA-protected servicemembers without court order in violation of 50 U.S.C. § 3952(a)(1). Wells Fargo's conduct was intentional, willful, and taken in disregard for the rights of servicemembers.

118. Wells Fargo conducted repossessions even when it had evidence in its own records suggesting that a borrower could be an SCRA-protected servicemember. For example, Jin's loan application clearly indicated that he was employed by the Army.

119. The Department of Defense provides lenders, and others required to comply with the SCRA, an automated database run by the Defense Manpower Data Center ("DMDC database"), to check whether their customers are SCRA-protected servicemembers. Until at least December 2011, Wells Fargo's written policies did not require it to check the DMDC database, or taken any other measures to determine customers' military statuses, prior to repossessing their vehicles without court orders. Even after December 2011, when the policies began requiring a DMDC database check, Wells Fargo continued to engage in repossessions that violated the SCRA.

COUNT TWO:
VIOLATIONS OF THE UTAH CONSUMER SALES PRACTICES ACT

120. Plaintiffs incorporate by reference all facts and allegations contained in the foregoing paragraphs as though fully laid out herein.

121. 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.

122. Jin is a “person” as defined by the UCSPA. U.C.A. § 13-11-3(5)

123. Wells Fargo is a “supplier” as defined by the UCSPA, in that it is a person (here, an association or other legal entity) who regularly solicits, engages in, or enforces consumer transactions. U.C.A. § 13-11-3(6).

124. Jin’s purchase and financing of the Altima was a “consumer transaction” as defined by the UCSPA, in that it was the sale of goods to a person which was primarily for personal, family, and/or household purposes. U.C.A. § 13-11-3(2).

125. Wells Fargo’s repossession of the Altima was also a “consumer transaction” as defined by the UCSPA. U.C.A. § 13-11-3(2)(b).

126. 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).⁷

127. 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;

⁷ 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.

- 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.

128. 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;
- 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.

129. 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).

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

COUNT THREE:
STATE CONSUMER PROTECTION STATUTES

131. Plaintiffs incorporate by reference all facts and allegations contained in the foregoing paragraphs as though fully laid out herein.

132. As more fully set forth above, Wells Fargo engaged in a pattern and practice of:

- a. Repossessing SCRA-protected servicemembers' vehicles without prior court authorization;
 - b. Attempting to collect deficiency balances remaining on servicemembers' loans after the unlawful repossessions, each such attempt being a separate and distinct violation;
 - c. Falsely representing that it was entitled to collect the costs of the unlawful repossessions which were included in the deficiency balances; and
 - d. Soliciting the release and settlement of servicemembers' claims (pursuant to the Consent Judgment) without advising servicemembers of this class action case and their rights thereunder, which resulted in misleading communications that caused servicemembers to execute releases based on incomplete information regarding this lawsuit.
133. Wells Fargo's conduct constitutes deceptive and unconscionable acts in violation of the consumer protection statute of each state in which a Class servicemember resides, including, but not limited to, the following statutes:
- a. Ala. Code §§ 8-19-1, *et seq.*;
 - b. Alaska Stat. §§ 45.50.471, *et seq.*;
 - c. Ariz. Rev. Stat. §§ 44-1521, *et seq.*;
 - d. Ark. Code Ann. §§ 4-88-101, *et seq.*;
 - e. Cal. Civ. Code §§ 1750, *et seq.*;
 - f. Cal. Bus. & Prof. Code §§ 17200, *et seq.*;
 - g. Col. Rev. Stat. §§ 6-1-101, *et seq.*;
 - h. Conn. Gen. Stat. §§ 42-110A, *et seq.*;
 - i. 6 Del. Code §§ 2513, *et seq.*;
 - j. D.C. Code §§ 28-3901, *et seq.*;
 - k. Fla. Stat. §§ 501.201, *et seq.*;
 - l. Ga. Code Ann. §§ 10-1-390, *et seq.*;

- m. Ga. Code Ann. §§ 10-1-370, *et seq.*;
- n. Haw. Rev. Stat. §§ 480, *et seq.*;
- o. Idaho Code §§ 48-601, *et seq.*;
- p. 815 ILCS 505/1, *et seq.*;
- q. Ind. Code §§ 24-5-.05-3, *et seq.*;
- r. Ky. Rev. Stat. §§ 367.110, *et seq.*;
- s. La. Rev. Stat. §§ 51:1401, *et seq.*;
- t. 5 M.R.S.A §§ 205-A, *et seq.*;
- u. 5 M.R.S.A. §§ 1211, *et seq.*;
- v. Md. Code Com. Law §§ 13-101, *et seq.*;
- w. Mass. Gen. Law. Ch. 93a §§ 1, *et seq.*;
- x. Mich. Comp. Laws §§ 445.903, *et seq.*;
- y. Minn. Stat. §§ 325D.43, *et seq.*, 325F.67, *et seq.*, and 325F.68, *et seq.*;
- z. Miss. Code Ann. § 75-24-1, *et seq.*;
- aa. Mo. Rev. Stat. §§ 407.010, *et seq.*;
- bb. Mont. Code Ann. §§ 30-14-101, *et seq.*;
- cc. Neb. Rev. Stat. §§ 59-1601, *et seq.*;
- dd. Nev. Rev. Stat. §§ 598.0903, *et seq.*;
- ee. N.H. Rev. Stat. Ann. § 358-a:1, *et seq.*;
- ff. N.J. Stat. Ann. §§ 56:8-1, *et seq.*;
- gg. N.M. Stat. Ann. §§ 57-12-1, *et seq.*;
- hh. N.Y. Gen. Bus. Law §§ 349, *et seq.*;
- ii. N.C. Gen Stat. §§ 75-1.1, *et seq.*;

- jj. N.D. Cent. Code, §§ 51-12-01, *et seq.* and 51-15-01 *et seq.*;
- kk. Ohio Rev. Code Ann. § 1345.01, *et seq.*;
- ll. Ohio Rev. Code §§ 4165.01, *et seq.*;
- mm. Okla. Stat. Tit. 15 §§ 751, *et seq.*;
- nn. Or. Rev. Stat. §§ 646.605, *et seq.*;
- oo. 73 Pa. Stat. §§ 201-1, *et seq.*;
- pp. R.I. Gen. Laws §§ 6-13.1-1 *et seq.*;
- qq. S.C. Code Ann. §§ 39-5-10, *et seq.*;
- rr. S.D. Codified Laws §§ 37-24-1, *et seq.*;
- ss. Tenn. Code Ann. §§ 47-18-101, *et seq.*;
- tt. Tex. Bus & Com. Code §§ 17.41, *et seq.*;
- uu. Utah Code Ann. §§ 13-11-1, *et seq.*;
- vv. Vt. Stat. Ann. Tit. 9 §§ 2451, *et seq.*;
- ww. Va. Code Ann. §§ 59.1-196, *et seq.*;
- xx. Wash. Rev. Code §§ 19.86.010, *et seq.*;
- yy. W. Va. Code §§ 46A-6-101, *et seq.*;
- zz. Wis. Stat. §§ 100.18, *et seq.*; and
- aaa. Wyo. Stat. §§ 40-12-101, *et seq.*

134. The Class servicemembers are entitled to recover their actual damages, civil penalties for each violation, their costs and reasonable attorneys' fees as provided by the consumer protection statutes in each state in which a Class Servicemember resides, and/or any other damages allowed by law.

COUNT FOUR:
CREDIT DEFAMATION

135. Plaintiffs incorporate by reference all facts and allegations contained in the foregoing paragraphs as though fully laid out herein.

136. Wells Fargo reported the repossession of Jin and Thomas' vehicle to one or more of the three major credit bureaus (Equifax, Experian, and Trans Union).

137. Because Wells Fargo had unlawfully conducted those repossessions, this were false reports.

138. Wells Fargo also reported collections actions taken after the repossessions. Because those collections actions were also unlawful, they too were false reports.

139. As a result of these false reports, Jin and Thomas' credit ratings were lowered.

140. Wells Fargo's foregoing actions and omissions, including but not limited to reporting the unlawful repossessions and resulting collections actions to the credit reporting bureaus, constitute credit defamation.

141. Wells Fargo's foregoing actions and omissions were intentional and/or malicious, as is evidenced by, *inter alia*, Wells Fargo's false representation to Jin that if he paid off the loan, Wells Fargo would not ding his credit.

142. As a result of Wells Fargo's intentional and/or malicious credit defamation, Plaintiffs and the Class have suffered and continue to suffer actual damages, including without limitation credit denials, out-of-pocket expenses, detriment to their credit ratings, lost opportunities to receive credit, damage to reputations, worry, distress, frustration, embarrassment, and humiliation.

DEMAND FOR JURY TRIAL

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

PLACE OF TRIAL

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

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, on behalf of themselves and all Class Members whom they seek to represent, pray for the following relief:

- a. An Order certifying the Class as requested herein, designating Plaintiffs as Class Representatives and appointing Plaintiffs' counsel as Lead Counsel for the Class;
- b. Judgment entered in favor of Plaintiffs 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, all actual damages, statutory damages for each and every violation, and punitive damages;
- c. An Order requiring Defendant to request that all three (3) major credit bureaus delete trade lines for accounts belonging to Plaintiffs and the Class Members attributable specifically to the wrongful repossessions;
- d. An Order requiring Defendant to abandon, and to indemnify Plaintiffs and the Class Members against any-third party's pursuing, any claim for deficiency that was remaining on the SCRA-protected loan after repossession;
- e. Pre- and post-judgment interest at the maximum rate permitted by applicable law;
- f. All costs incurred in connection with this action, including reasonable attorneys' fees; and
- g. Such other relief, at law or in equity, as this Court deems just and proper.

Respectfully submitted,

/s/ Bryce B. Bell

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