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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF KING

KATHERINE HAMMER; and JAMES
KENNEDY, on behalf of themselves and
others similarly situated,

Plaintiffs,

v.

WELLS FARGO HOME MORTGAGE,
INC., a foreign corporation,

Defendant.

No.

COMPLAINT FOR VIOLATIONS OF
THE CONSUMER PROTECTION ACT
AND UNJUST ENRICHMENT

CLASS ACTION PURSUANT TO CR
23(b)(2) OR 23(b)(3)

I. INTRODUCTION

1. Plaintiffs Katherine Hammer and James Kennedy, on behalf of themselves and the class of all those similarly situated, as identified below, bring this action for violation of Washington’s Consumer Protection Act (RCW 19.86), unjust enrichment, statutory penalties and injunctive relief under Washington State law against defendant Wells Fargo Home Mortgage, Inc. and in support thereof state the following upon information and belief:

II. JURISDICTION AND VENUE

- 2. Plaintiff Katherine Hammer is a resident of Vancouver, Washington.
- 3. Plaintiff James Kennedy is a resident of Tacoma, Washington.

1 4. Defendant Wells Fargo Home Mortgage, Inc. ("Wells Fargo") transacts or
2 transacted business within the State of Washington and, at all times relevant hereto, had and
3 has continuous, systematic contacts in and with the State of Washington.

4 5. Defendant does or did business in King County, Washington, and some of the
5 acts and transactions that are alleged took place in King County.

6 6. This Court has jurisdiction over the parties and the subject matter of this
7 lawsuit.

8 7. Venue is proper in King County Superior Court.

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10 **III. FACTUAL ALLEGATIONS**

11 8. Defendant is a corporation organized under the laws of California with its
12 principal offices in Des Moines, Iowa. Defendant is or was an originator and a servicer of
13 home loans.

14 9. Plaintiffs and class members obtained home loans from defendant in
15 connection with the purchase or refinance of residential real property in Washington, or
16 defendant obtained the servicing rights to Plaintiffs' and class members' home loans
17 originated by other lenders. Defendant was the servicer of Plaintiffs' and the class members'
18 loans at the time they were paid off and at the time payoff amounts were requested by or on
19 behalf of Plaintiffs and class members in order to pay off their loans.

20 10. As part of the transactions to obtain the loans, Plaintiffs and class members
21 signed Promissory Notes for the amounts of the loans and agreed to secure the Promissory
22 Notes by signing Deeds of Trust for the benefit of the lenders.

23 11. Plaintiff Katherine Hammer signed a Deed of Trust on or about March 18,
24 2002, pertaining to her residential real property in Vancouver, Washington. The Deed of
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1 Trust secured a Promissory Note signed by Ms. Hammer in favor of Wells Fargo.

2 Paragraph 23 of the Deed of Trust, under the section entitled "Reconveyance," provided:

3 Upon payment of all sums secured by this Security Instrument, Lender shall
4 request Trustee to reconvey the Property and shall surrender this Security
5 Instrument and all notes evidencing debt secured by this Security Instrument
6 to Trustee. Trustee shall reconvey the Property without warranty to the
7 person or persons legally entitled to it. Such person or persons shall pay any
8 recordation costs and the Trustee's fee for preparing the reconveyance.

9 12. Plaintiff James Kennedy signed a Deed of Trust on or about July 14, 2003,
10 pertaining to his residential real property in Tacoma, Washington. The Deed of Trust
11 secured a Promissory Note signed by Mr. Kennedy in favor of Wells Fargo. The Deed of
12 Trust contained the same Paragraph 23 as in Ms. Hammer's Deed of Trust described in
13 paragraph 11 above.

14 13. In or about May 2008, Ms. Hammer decided to sell the property subject to the
15 Deed of Trust referred to above in Paragraph 11.

16 14. In order to sell this property, Ms. Hammer was required to pay off the loan
17 and needed to know the amount owed thereon.

18 15. On May 5, 2008, Wells Fargo provided a Payoff Statement for Ms. Hammer's
19 loan via facsimile transmission. The May 5, 2008 Payoff Statement included a "Fax Fee" of
20 \$10 which was identified as part of the "Total Amount Due."

21 16. In or about July 2007, Mr. Kennedy decided to refinance the property subject
22 to the Deed of Trust referred to above in Paragraph 12.

23 17. In order to refinance this property, Mr. Kennedy was required to pay off the
24 loan and needed to know the amount owed thereon.
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1 18. On July 9, 2007, Wells Fargo provided a Payoff Statement for Mr. Kennedy's
2 loan via facsimile transmission. The July 9, 2007 Payoff Statement included a "Fax Fee" of
3 \$10 which was identified as part of the "Total Amount Due."

4 19. Plaintiffs each paid the "Fax Fee" of \$10 in response to the Payoff Statements
5 provided for their loans. Neither Payoff Statement included any explanation or disclaimer
6 that payment of this fee was not required to secure release of Plaintiffs' mortgages and
7 reconveyance of their Deeds of Trust, even though payment of such fee is not required to
8 secure such release and reconveyance.

9 20. Wells Fargo engaged in similar practices and transactions with members of
10 the class, as described herein.

11 21. Plaintiffs' Deeds of Trust each contain a provision requiring them to give
12 written notice of, and the opportunity to resolve, any complaints they have concerning Wells
13 Fargo's actions under the Deed of Trust or alleging that Wells Fargo breached any provision
14 of, or any duty owed by reason of, the Deed of Trust. Such provision is invalid as being
15 against public policy and is both procedurally and substantively unconscionable. However,
16 without acknowledging the validity of the provisions, Plaintiffs provided Wells Fargo the
17 required written notice and opportunity to take corrective action by letters sent on
18 December 7, 2010. Wells Fargo has not taken corrective action in response to these written
19 notices.
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23 IV. CLASS ALLEGATIONS

24 22. Plaintiffs seek to represent a class consisting of all persons who, within the
25 applicable statute of limitations, paid off loans to defendant and were charged "Fax Fees" or
26 similarly denominated fees, which they paid to or for the benefit of defendant in connection

1 with paying off a loan secured by a Deed of Trust on real property in the state of Washington
2 where the Deed of Trust contained the following or substantially similar language:

3 Upon payment of all sums secured by this Security Instrument, Lender shall
4 request Trustee to reconvey the Property and shall surrender this Security
5 Instrument and all notes evidencing debt secured by this Security Instrument
6 to Trustee. Trustee shall reconvey the Property without warranty to the
person or persons legally entitled to it. Such person or persons shall pay any
recordation costs and the Trustee's fee for preparing the reconveyance.

7 Plaintiffs bring this action on behalf of themselves and all other persons similarly situated
8 pursuant to Superior Court Civil Rule 23(b)(2) or, alternatively, Civil Rule 23(b)(3). The
9 class that Plaintiffs seek to represent is composed of potentially thousands of individuals.

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11 23. Joinder of all members of the class as defined herein is impractical.

12 24. There are common issues of law and fact affecting the class with respect to
13 application of the law pertaining to Plaintiffs' Consumer Protection Act and unjust
14 enrichment claims and the determination of restitution and damages because of defendant's
15 conduct.

16 25. Plaintiffs' claims alleging violations of the Consumer Protection Act and
17 unjust enrichment are typical of the claims of the class since Plaintiffs and all class members
18 sustained damages arising from defendant's wrongful conduct in violation of law as stated in
19 this Complaint.

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21 26. Plaintiffs will fairly and adequately protect the interests of the class and have
22 claims typical of the claims of all members of the class. Plaintiffs do not have interests that
23 are antagonistic to or in conflict with those of the members of the class that Plaintiffs seek to
24 represent.

1 27. The interests of the class are adequately represented by Plaintiffs and their
2 counsel. Plaintiffs have retained counsel competent and experienced in class and consumer
3 litigation.

4 28. This action seeks to enjoin the practices at issue and obtain equitable
5 restitution of fees illegally collected and incidental damages.

6 29. This action is also maintainable as a class action because the questions of law
7 and fact common to the members of the class predominate over any questions affecting only
8 individual members and because a class action is superior to other available methods for the
9 fair and efficient adjudication of the controversy. Specifically, all four of the criteria set
10 forth in CR 23(b)(3) have been satisfied in this case. First, the members of the class have
11 little, if any, interest in individually controlling the prosecution of separate actions. Second,
12 Plaintiffs' counsel is not aware of any other litigation concerning the controversy already
13 commenced by members of the class. Third, it is desirable to concentrate the litigation of
14 these claims in this forum given the judicial resources already expended in this matter and
15 the relationship of defendant to the State of Washington. Fourth, few difficulties likely
16 would be encountered in the management of the class action.

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19 **V. FIRST CAUSE OF ACTION: VIOLATION OF**
20 **THE CONSUMER PROTECTION ACT, RCW CHAPTER 19.86,**
21 **WITH RESPECT TO FACSIMILE FEE**

22 30. Defendant's practice of including facsimile fees as part of the Total Amount
23 Due on its loan Payoff Statements without any explanation or disclaimer that payment of
24 such fees is not necessary to secure release and/or reconveyance of borrowers' mortgages or
25 deeds of trust constitutes an unfair and deceptive act and practice, which is unlawful and in
26 violation of the Consumer Protection Act of Washington, RCW Chapter 19.86.

1 31. Defendant's inclusion of the facsimile fees as part of the Total Amount Due
2 on the Payoff Statements has the capacity to deceive reasonable consumers into believing
3 that they must pay these fees – that they are, in fact, required to pay these fees – before
4 defendant will release their mortgages or reconvey their Deeds of Trust. Therefore, these
5 practices are unfair and deceptive under the Consumer Protection Act.
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7 32. Pursuant to RCW 19.86.090, Plaintiffs and the class seek an injunction against
8 defendant to enjoin further violations of the practices alleged herein together with equitable
9 restitution, incidental damages, costs of suit and reasonable attorney's fees. Plaintiffs and the
10 class also seek an award of exemplary damages in the amount of three times the amount of
11 restitution paid.
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13 **VI. SECOND CAUSE OF ACTION:
14 UNJUST ENRICHMENT**

15 33. By charging Plaintiffs and the class, and by retaining the facsimile fees
16 described herein in paragraphs 15, 18 and 19, defendant was unjustly enriched, for which
17 unjust enrichment Plaintiffs and the class are entitled to recover judgment.
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19 **RELIEF SOUGHT**

20 WHEREFORE, Plaintiffs request relief as follows:

21 A. That the Court certify the identified class pursuant to Civil Rule 23(b)(2) or
22 23(b)(3) with Plaintiffs as the class representatives and undersigned counsel as class counsel;

23 B. That the Court enter a judgment in favor of Plaintiffs and the class against
24 defendant on their class claims, directing equitable restitution of fees illegally collected and
25 awarding damages, including exemplary damages pursuant to RCW 19.86.090;
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1 C. That the Court enter an injunction permanently forbidding defendant from
2 committing the practices alleged herein in the future or declare the same unlawful and award
3 incidental damages;

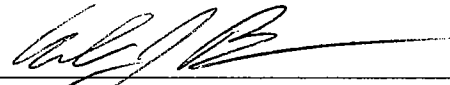
4 D. That the Court award Plaintiffs and the class their costs, including reasonable
5 attorneys' fees pursuant to RCW 19.86.090;

6 E. For pre-judgment interest at the highest allowable rate on all liquidated sums,
7 and post-judgment interest on the entire judgment amount awarded at the highest allowable
8 rate; and
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10 F. That the Court award such other and further relief that the Court deems just
11 and equitable.

12 DATED this 27th day of January, 2011.

13 SCHROETER, GOLDMARK & BENDER

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