

IN THE COURT OF THE ELEVENTH JUDICIAL CIRCUIT  
IN AND FOR DADE COUNTY, FLORIDA

ISABEL GOMEZ  
on behalf of herself and all other  
similarly situated individuals;

Plaintiff,

v.

WELLS FARGO BANK, N.A., successor in  
interest through merger to WACHOVIA  
BANK, N.A., a national banking association;  
and WELLS FARGO & CO., a Delaware  
corporation,

Defendants.

Case no.

11-06227 CA 25

CLASS REPRESENTATION

JURY TRIAL DEMANDED

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DADE COUNTY FLORIDA

TERESA SANCHEZ

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**CLASS ACTION COMPLAINT**

**INTRODUCTION**

1. At a time when mortgages regularly go into default and interest rates are at an all time low, banks look at Overdraft Fees as an essential source of profit. For this reason, banks take every opportunity to charge their own customers Overdraft Fees.

2. The garnishment process can be rewarding for banks. When they restrain an account, they collect a range of fees -- for imposing the freeze, for the resulting bounced checks, or for short-term loans to prevent bounced checks. WELLS FARGO knowingly and intentionally engages in illegal debt collection and exploitation of vulnerable adults by seizing exempt funds to pay for alleged legal processing services. Specifically, WELLS FARGO deducts from the garnished accounts a \$100 "Legal Order Processing Fee" and it charges "Overdraft/Unavailable Funds Fees" for every transaction on the garnished accounts during the pendency of the garnishment. (Hereinafter these fees are collectively referred to as WELLS

FARGO's "Garnishment Fees"). Unlike most other situations, the effective date of a garnishment order is often unknown to the account holder. As a result, the funds in the account are frozen without notice and any checks that may be outstanding at that time of garnishment will bounce, thereby creating multiple Overdraft Fees. A single garnishment often creates hundreds of dollars in revenue for the bank in addition to the \$100 Legal Order Processing Fee that WELLS FARGO takes first from the funds in the account.

3. The multiple fees generated by garnishment hit the account holder at the same time that whatever funds were in the account are frozen. Therefore, the account holder is focused on how they are going to pay their rent, car payment, and electric bill, as opposed to analyzing the legal nature of each Overdraft Fee charged by their own bank as a result of the garnishment.

4. WELLS FARGO takes advantage of the financial turmoil created by garnishment and targets its weakest customers at a time when they are most vulnerable by mixing legitimate Overdraft Fees with bogus Overdraft Fees in order to generate additional profit for itself.

5. In addition to charging garnished account holders a \$35 Overdraft Fee for each outstanding draft or withdrawal, WELLS FARGO also charges its customers an Overdraft Fee each time that money is **deposited** into a garnished account. Through this class action lawsuit, Plaintiff on her own behalf and on behalf of the Plaintiff Class, asserts that Overdraft Fees cannot be lawfully charged by WELLS FARGO when funds are deposited into a garnished account. Plaintiff seeks a refund of all Overdraft Fees collected by WELLS FARGO for deposits made into Class members' garnished accounts during the relevant class period.

#### **PARTIES**

6. Plaintiff, ISABEL GOMEZ, is an individual consumer who, at all times relevant to this action, resided in the City of Miami, Dade County, Florida. At all times relevant to the

allegations herein, Plaintiff has had a deposit account with WELLS FARGO BANK, N.A.

7. WELLS FARGO BANK, N.A.(hereinafter “WELLS FARGO BANK”), as successor in interest through merger to WACHOVIA, is a national bank, subject to the National Bank Act, 12 U.S.C. § 1 *et seq.*, and regulations promulgated by the Office of the Comptroller of the Currency. Its headquarters are located in Sioux Falls, South Dakota. WELLS FARGO BANK is a wholly owned subsidiary of WELLS FARGO & COMPANY. WELLS FARGO BANK regularly and systematically conducts business throughout the state of Florida, including in this district. Among other things, WELLS FARGO BANK is engaged in the business of providing retail banking services to millions of consumers, including Plaintiff and members of the putative class.

8. WELLS FARGO & COMPANY (hereinafter “WELLS FARGO CO.”) is a corporation organized and registered under the laws of Delaware, and is a financial holding company and bank holding company registered under the Bank Holding Company Act of 1956, as amended. WELLS FARGO CO.’s principal executive offices are located in San Francisco, California. WELLS FARGO BANK is the primary subsidiary of WELLS FARGO CO. On December 31, 2009, WELLS FARGO & COMPANY completed its merger with Wachovia Corporation. Effective March 20, 2010, WACHOVIA BANK, N.A. merged with and into WELLS FARGO BANK. (Hereinafter, WELLS FARGO AND WELLS FARGO CO. will be collectively referred to as “WELLS FARGO.”)

#### **JURISDICTION AND VENUE**

9. This is a consumer class action for injunctive relief, declaratory judgment, and for aggregate damages which exceed \$15,000.00.

10. This Court has jurisdiction of the claims set forth in this Complaint pursuant to § 26.012, Florida Statutes.

11. Venue is proper in Dade County pursuant to § 47.051, Florida Statutes., and because a substantial part of the events or omissions giving rise to the claims asserted herein occurred and continue to occur in this district.

12. This case is properly in this Court notwithstanding provisions in the Deposit Account Agreement at issue that seeks to require arbitration of all disputes between the bank and its customers and to prohibit its customers from bringing claims against the bank as a representative or on behalf of a class. Those provisions are procedurally and substantively unconscionable and unenforceable.

**ALLEGATIONS COMMON TO ALL CAUSES OF ACTION**

13. Garnishment is the process by which a third-party judgment creditor can attach funds that are in the possession of third parties, such as banks or employers. With unemployment rates near ten percent nationally, it is no surprise that there has been a huge increase in garnishment proceedings since the recession began. Banks have jumped on the garnishment bandwagon as another opportunity to increase fee revenues. Because banks have control and possession of the accounts, they get to take their garnishment fees out of the account before turning any remaining funds over to the judgment creditor.

14. When WELLS FARGO receives a garnishment order for an account in one of its branches, it freezes the funds in the garnished account. Such funds are taken from the account and held for the benefit of the third-party judgment creditor.

15. WELLS FARGO charges its account holders a \$35 Overdraft Fee for each check drafted on the account post garnishment.

16. WELLS FARGO also charges its account holders a \$35 Overdraft Fee for each deposit of funds into the garnished account during the garnishment period. In essence, it appears

that WELLS FARGO treats the garnishment order as if were an outstanding draft on the account. WELLS FARGO charges the account holder a \$35 Overdraft Fee for each **deposit** made into the garnished account unless the amount of the deposit is enough to pay the entire underlying judgment.

16. According to WELLS FARGO's Deposit Agreement (Exhibit A), Overdraft fees can only be charged when the account holder drafts or withdraws funds from the account in an amount greater than the available balance. Garnishment Orders only require the bank to hold the funds that are in its possession at the time of garnishment. There is no legal obligation to seek more or to treat the garnishment as some form of outstanding draft on the account. Thus, there is no legal justification for WELLS FARGO charging Overdraft Fees for deposits made into garnished accounts.

**FACTS PERTINENT TO PLAINTIFF ISABEL GOMEZ**

17. After Plaintiff's account was garnished, WELLS FARGO charged her a \$35 Overdraft Fee each time she had funds electronically deposited into her account. Because Plaintiff had funds automatically deposited into the account on four occasions, WELLS FARGO charged Plaintiff four \$35 Overdraft Fees totaling \$140.00.

18. A breakdown of Plaintiff's WELLS FARGO deposit account after the garnishment order is as follows:

Date	Deposit	Withdrawal	Bank Fees Taken	Balance
6/2/2010				58.86
	157.00 (Unemployment benefits)			215.86
	25.00 (Unemployment Benefits)			240.86
			-58.86 (Legal order Processing Fee)	182.00
			-35.00 (Overdraft	147.00

			Fee)	
6/3/2010		-105.86 (Funds Garnished)		41.14
			-41.14 (Legal Order Processing Fee)	0
			-35.00 (Overdraft Fee)	-35.00
			-35.00 (Overdraft Fee)	-70.00
6/9/2010	759.00 (Social Security Funds Deposit)			689.00
6/10/2010		-689.00 (Funds Garnished)		0
			-35.00 (Overdraft/ Unavailable Funds Fee)	-35.00
7/16/2010	52.06 (Payroll)			17.06

19. Accordingly, from funds deposited in Ms. Gomez's account, WELLS FARGO deducted \$140.00 in Overdraft Fees. Critically, there were no outstanding checks or withdrawals by Ms. Gomez during the garnishment period which could have triggered the Overdraft Fees.

**CLASS ACTION ALLEGATIONS**

20. Pursuant to Florida Rules of Civil Procedure, 1.220(b)(2) and (b)(3), Plaintiff brings this action for herself and on behalf of all other persons similarly situated. The class of similarly situated persons Plaintiff seeks to represent (hereafter the "Plaintiff Class" or "National Class") is comprised of:

All WELLS FARGO customers in the United States who, during the relevant time period, had checking or savings accounts with WELLS FARGO, had the account garnished and had Overdraft Fees taken by WELLS FARGO for deposits made into the account during the garnishment period.

21. Plaintiff is unable to state the exact number of members of the Plaintiff Class because that information is solely in the possession of WELLS FARGO. Plaintiff believes that the Plaintiff Class exceeds several hundred thousand customers and is therefore so numerous that

joinder of all members would be impracticable. The exact size of the National Class and the identity of the members thereof, are readily ascertainable from the business records of WELLS FARGO.

22. Questions of law or fact common to the Plaintiff Class exist that predominate over questions affecting only individual members, including, *inter alia*, the following:

a) Whether WELLS FARGO has knowingly and willfully collected Overdraft Fees from its deposit customers when funds are deposited into a garnished account.

b) Whether WELLS FARGO's Deposit Agreement permits it to charge account holders Overdraft Fees for deposits made into accounts after a garnishment order has been entered.

c) Whether WELLS FARGO breached the terms of its Deposit Agreement with Plaintiff and the Plaintiff Class by charging Overdraft Fees for deposits made into garnished accounts.

d) Whether Plaintiff and other members of the Plaintiff Class are entitled to injunctive relief and restitution.

23. The claims asserted by the named Plaintiff in this action are typical of the claims of the members of the Plaintiff Class as defined above. The claims arise from the same course of conduct by WELLS FARGO charging Overdraft Fees each time a deposit is made into garnished account.

24. The named Plaintiff herein will fairly and adequately represent and protect the interests of the members of the Plaintiff Class. Plaintiff has retained counsel competent and experienced in both consumer protection and class action litigation.

25. A class action is superior to other methods for the fair and efficient adjudication

of this controversy, because the economic damages suffered by each individual class member will be relatively modest, compared to the expense and burden of individual litigation. Furthermore, by definition the class consists of individuals who have limited resources as evidenced by the garnishment of their bank accounts. It would be impracticable for each class member to seek redress individually for the wrongful conduct alleged herein. There will be no difficulty in the management of this litigation as a class action as the legal issues affect standardized conduct by WELLS FARGO.

**FIRST CLAIM FOR RELIEF**  
**Breach of Contract and Breach of the Covenant of Good Faith and Fair Dealing**  
**(On Behalf of the National Class)**

26. Plaintiff repeats and realleges paragraphs 1 through 25 above as if alleged herein.

27. Plaintiff and Defendant entered into a contract as embodied in its Deposit Agreement and Disclosures for Personal Accounts (“Deposit Agreement”), which is attached hereto as Exhibit A.

28. Pursuant to its Deposit Agreement, Defendant is permitted to charge an Overdraft Fee only when the customer takes some action to charge against the account such as writing a check, making an ATM cash withdrawal or Card purchase for an amount that exceeds the balance.

29. When a bank receives a notice of garnishment, the amount of the underlying judgment does not constitute an item being tendered for payment by the account holder. Accordingly, the underlying judgment cannot be viewed by the bank like an outstanding check or draft.

30. A garnishee is only liable for tangible or intangible personal property of the defendant which is in the garnishee’s possession or control at the time of service of the writ of garnishment. The bank is never liable or required to hold any sums over and above the funds in



its possession during the garnishment period.

31. As stated above, WELLS FARGO has a common practice and procedure of charging its customers an Overdraft Fee each time funds are Deposited into a garnished account.

32. WELLS FARGO charged Plaintiff a \$35.00 Overdraft Fee each time Plaintiff deposited funds into her WELLS FARGO account during the garnishment period. These fees are charged despite the fact that there were no outstanding checks, ATM charges or withdrawals that would trigger the Overdraft Fees under WELLS FARGO's Deposit Agreement.

33. Such fees violate the express terms of the Deposit Agreement as there are no drafts or other items tendered for payment in an amount greater than the available funds in the account.

34. Plaintiff and members of the Plaintiff Class has performed all, or substantially all, of the obligations imposed on them under the Deposit Agreement.

35. Plaintiff and members of the Plaintiff Class have sustained damages as a result of WELLS FARGO's breach of the contract for each \$35 Overdraft Fee charged on a garnished account in connection with a deposit of funds into that account.

**SECOND CLAIM FOR RELIEF**  
**Unjust Enrichment**  
**(On Behalf of the National Class)**

36. Plaintiff repeats and realleges paragraphs 1 through 25 above as if alleged herein.

37. As a result of the acts of the Defendant described herein, Defendant has been unjustly enriched at the direct expense of the Plaintiff and members of the class.

38. Defendant has retained the benefits of its unlawful conduct although due demand has been made for the return hereof.

39. Plaintiff seeks disgorgement from Defendant and return to Plaintiff and to the National Class all sums unjustly seized, obtained, ensued by Defendant through its unlawful charging of Overdraft Fees in connection with deposits made into garnished accounts.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff, on behalf of herself and the Class she seeks to represent, demand a jury trial on all claims so triable, and demand judgment as follows:

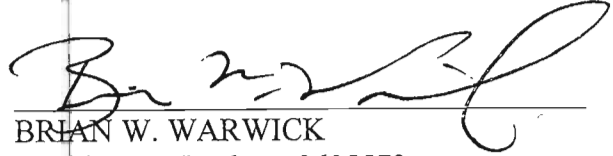
1. That this Court certify this case as a Class Action pursuant to Florida Rules of Civil Procedure, Rules 1.220(b)(2) and (b)(3);
2. That this Court find and declare that WELLS FARGO's acts and practices as described herein to be unlawful;
3. That WELLS FARGO be preliminarily and permanently enjoined from charging overdraft fees on garnishments under its current policies and from engaging in the wrongful, unfair, and unconscionable practices alleged herein.
4. That WELLS FARGO be ordered to make restitution of all improperly collected overdraft fees paid to WELLS FARGO by Plaintiff and the Class, as a result of the wrongs alleged herein, within the applicable statutes of limitations, in an amount to be determined at trial;
3. Disgorgement of the ill-gotten gains derived by WELLS FARGO from its misconduct;
4. Actual damages in an amount according to proof;
5. Punitive and exemplary damages;
6. Pre-judgment interest at the maximum rate permitted by applicable law;
7. Costs and disbursements incurred by Plaintiff in connection with this action,

including reasonable attorneys' fees pursuant to applicable law; and

8. Such other relief as this Court deems just and proper.

Dated: February 22, 2011.

Respectfully submitted,



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