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19 United States of America

20 UNITED STATES DISTRICT COURT  
21 FOR THE CENTRAL DISTRICT OF CALIFORNIA

22 UNITED STATES OF AMERICA,

23 Plaintiff

24 v.

25 WELLS FARGO BANK, N.A.  
d/b/a  
26 WELLS FARGO DEALER SERVICES

27 Defendant.  
28

No. CV 2:16-07336

**CONSENT ORDER**

1 **CONSENT ORDER**

2 **I. INTRODUCTION**

- 3 1. This Consent Order resolves the allegations contained in the United States’  
4 Complaint that Defendant Wells Fargo Bank, N.A., d/b/a Wells Fargo Dealer  
5 Services (“Wells Fargo”) violated the Servicemembers Civil Relief Act  
6 (“SCRA”), 50 U.S.C. § 3901, *et seq.*, when, according to the allegations, it  
7 engaged in a pattern or practice of repossessing motor vehicles from “SCRA-  
8 protected servicemembers”<sup>1</sup> without court orders from at least January 1,  
9 2008 through July 1, 2015.
- 10 2. Defendant is a national bank whose motor vehicle lending operations are  
11 located at 23 Pasteur in Irvine, California, in the Central District of  
12 California.
- 13 3. This Order covers all loans or deficiency balances originated, acquired,  
14 and/or serviced by Defendant, its parent Wells Fargo & Company, or any of  
15 their subsidiaries, predecessors, acquired companies, or successor entities.  
16 For purposes of this Order, loans are defined to include retail installment  
17 contracts for motor vehicles.
- 18 4. Wells Fargo has cooperated fully with the United States’ investigation in this  
19 matter and had taken steps to ensure its compliance with the SCRA, prior to  
20 this investigation. Wells Fargo established a centralized SCRA Center of  
21 Excellence that focuses specifically on SCRA compliance. The SCRA  
22 Center of Excellence employs a proactive approach to identifying  
23 servicemembers for SCRA protection. Wells Fargo initiated such efforts in  
24 the second quarter of 2014 with a full-scale review of its portfolio for SCRA  
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<sup>1</sup> For purposes of this Consent Order, the term “SCRA-protected servicemember”  
28 includes servicemembers as defined in 50 U.S.C. § 3911(1) and (2).

1 compliance. In addition, Wells Fargo previously and voluntarily commenced  
2 efforts to compensate any affected borrowers.

3 5. The parties agree that the Court has jurisdiction over the subject matter of this  
4 case pursuant to 28 U.S.C. § 1331, 28 U.S.C. § 1345, and 50 U.S.C. § 4041.

5 6. The parties agree that, to avoid costly and protracted litigation, the claims  
6 against Defendant should be resolved without further proceedings or an  
7 evidentiary hearing. Therefore, as indicated by the signatures appearing  
8 below, the United States and Defendant agree to the entry of this Order. Such  
9 agreement comes without the taking of proof and does not constitute evidence  
10 or findings against or an admission of any party regarding any issue of law or  
11 fact alleged in the Complaint. Defendant neither admits nor denies any of the  
12 allegations in the United States' Complaint.

13 7. The effective date of this Order will be the date on which it is approved and  
14 entered by the Court.

15 //

16 **It is hereby ORDERED, ADJUDGED and DECREED:**

17 **II. REMEDIAL PROVISIONS<sup>2</sup>**

18 8. Defendant and its affiliates or subsidiaries, and its officers, employees,  
19 agents, and representatives (including contractors and vendors that conduct  
20 repossessions on behalf of Defendant) shall comply fully with all relevant  
21 provisions of the SCRA prohibiting the repossession of motor vehicles of  
22 SCRA-protected servicemembers without a court order, while the  
23 servicemember is in military service<sup>3</sup>, provided the servicemember paid a  
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25 <sup>2</sup> Nothing in this Consent Order shall preclude Defendant from offering greater  
26 protections to servicemembers than those afforded by the Consent Order or the SCRA.

27 <sup>3</sup> For purposes of this Consent Order, the term "military service" is defined by 50  
28 U.S.C. § 3911(2).

1 deposit on the motor vehicle or installment on the loan while not in military  
2 service.<sup>4</sup>

3 **III. COMPLIANCE WITH THE SCRA**  
4 **AND SCRA POLICIES AND PROCEDURES**

- 5 9. Within sixty (60) calendar days of the effective date of this Order, Defendant  
6 shall continue to develop SCRA Policies and Procedures for Motor Vehicle  
7 Repossessions in compliance with Section 3952(a) of the SCRA, 50 U.S.C. §  
8 3952(a).<sup>5</sup> These policies and procedures must include provisions that ensure:
- 9 a. In addition to any other reviews Defendant may perform to assess  
10 eligibility under the SCRA, (i) between two (2) and five (5) business  
11 days before it refers a motor vehicle loan for repossession; (ii)  
12 between two (2) and five (5) business days after it (or its agents,  
13 including contractors and vendors that conduct repossessions on  
14 behalf of Defendant) obtains possession of the motor vehicle; and  
15 (iii) between two (2) and five (5) business days before it (or its  
16 agents, including contractors and vendors that conduct repossessions  
17 on behalf of Defendant) disposes of the motor vehicle, Defendant will  
18 determine whether borrowers are servicemembers in military service  
19 who paid a deposit on the motor vehicle or installment on the loan  
20 while not in military service by: (1) reviewing any military service  
21 information (including orders) it has received from borrowers and (2)

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23 <sup>4</sup> 50 U.S.C. § 3917 grants additional periods of protection for reservists ordered to  
24 report for military service and persons ordered to report for induction. Therefore, for  
25 purposes of this Consent Order, periods of protection granted by 50 U.S.C. § 3917 shall  
26 be considered “military service” at the time of repossession, but shall not be considered  
“military service” at the time of payment of a deposit on the motor vehicle or installment  
on the loan.

27 <sup>5</sup> Because Defendant’s motor vehicle lending contracts do not obtain a security  
28 interest in the nature of a mortgage, which are subject to the requirements of Section  
3953 of the SCRA, this Consent Order is limited to compliance with Section 3952(a) of  
the SCRA, which covers installment contracts.

1 searching the Department of Defense Manpower Data Center  
2 database (“DMDC”) for evidence of SCRA eligibility by either (a)  
3 last name and social security number or (b) last name and date of  
4 birth.

5 b. If Defendant is informed via military service information received  
6 from a borrower, or via the periodic electronic check of the DMDC  
7 described above, that the borrower is a servicemember in military  
8 service who paid a deposit on the motor vehicle or installment on the  
9 loan while not in military service, it may refer the loan for  
10 repossession or conduct the repossession itself only after obtaining a  
11 court order.

12 c. If Defendant discovers, after obtaining possession but before  
13 disposing of the motor vehicle, that the borrower is a servicemember  
14 in military service who paid a deposit on the motor vehicle or  
15 installment on the loan while not in military service, Defendant shall  
16 attempt to contact the borrower and offer to arrange to return the  
17 vehicle as soon as possible, but within no later than seventy-two (72)  
18 hours, and shall reverse on the borrower’s account all of the charges  
19 resulting from the repossession. Defendant shall also correct any  
20 negative credit reporting related to the repossession. If Defendant  
21 cannot make contact with the borrower within seventy-two (72)  
22 hours, Defendant shall cause the vehicle to be returned to the location  
23 where possession was taken, unless: (1) return to such location  
24 presents a significant risk of damage to the vehicle; (2) return to such  
25 location presents a significant risk that the vehicle will be  
26 impounded; (3) the borrower has previously informed Defendant that  
27 the vehicle has been abandoned; or (4) the vehicle was recovered  
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1 under circumstances suggesting that the vehicle had been abandoned.  
2 If the vehicle is not returned to the borrower within seventy-two (72)  
3 hours, Defendant shall make 3 additional attempts to reach the  
4 borrower based upon contact information in its files, and return the  
5 vehicle as soon as possible, but within no later than seventy-two (72)  
6 hours, of a borrower's request for return, without charging storage  
7 fees. The vehicle may only be sold or otherwise disposed of only  
8 after the contact attempts referenced in this subparagraph have been  
9 made.

10 d. If Defendant pursues a repossession action in court and the borrower  
11 fails to answer the action, Defendant will file an affidavit of military  
12 service with the court as required by Section 3931(b)(1) of the  
13 SCRA, 50 U.S.C. § 3931(b)(1). Before seeking entry of default,  
14 Defendant will search the DMDC and review information in its  
15 possession or control to determine if the borrower is SCRA-  
16 protected. If Defendant learns that the borrower is SCRA-protected,  
17 Defendant will: (1) file an affidavit stating that "the defendant is in  
18 military service" before seeking default judgment; and (2) attach the  
19 most recent military status report from the DMDC or a copy of the  
20 military orders or other documentation to the affidavit.

21 e. Defendant may only rely on a servicemember's waiver of rights  
22 under Section 3952(a) of the SCRA if it obtains a written agreement  
23 as provided in Section 3918 of the SCRA, 50 U.S.C. § 3918. If  
24 Defendant makes an unsolicited initiation of the waiver process with  
25 the servicemember, it must do so at least thirty (30) calendar days in  
26 advance of any anticipated repossession by sending a notice and a  
27 copy of the proposed waiver to the servicemember. To the extent  
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1 Defendant exercises this right, Defendant shall use a notice that  
2 prominently incorporates the language and layout of the form  
3 attached as Exhibit A. If the servicemember initiates the waiver  
4 process by offering to voluntarily surrender the vehicle or indicating  
5 an intent to abandon the vehicle, Defendant must provide a copy of  
6 the notice of the type described in Exhibit A and may obtain  
7 possession of the vehicle at any point after receiving a signed waiver.

8 f. Defendant may take possession of a motor vehicle that has been  
9 impounded by a non-related third-party or abandoned<sup>6</sup> upon receiving  
10 notice of the impoundment or abandonment even when the borrower  
11 is a servicemember in military service who paid a deposit on the  
12 motor vehicle or installment on the loan while not in military service.  
13 Defendant must, however, provide notice to the servicemember that it  
14 has taken possession and inform the servicemember of the rights and  
15 protections under the SCRA, using a notice that prominently  
16 incorporates the language and layout of the form attached as Exhibit  
17 A. Defendant may dispose of the vehicle only after such notice and  
18 any notice required by state law have been provided and at least thirty  
19 (30) calendar days have passed.

20 10. Within sixty (60) calendar days of the effective date of this Order, Defendant  
21 shall continue to develop SCRA Policies and Procedures for Providing SCRA  
22 Relief in its motor vehicle lending line of business. This includes, but is not  
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<sup>6</sup> To be considered “abandoned” under this Order, the motor vehicle must have  
27 been left someplace other than the servicemember’s residence or residential parking  
28 area, with indications of no intent to retrieve it.

1 limited to, policies regarding reducing interest rates under Section 3937.<sup>7</sup>

2 The Policies and Procedures shall contain the following provisions:

- 3 a. Defendant shall accept servicemembers' notice of military status  
4 pursuant to the SCRA (including provisions of the SCRA that require  
5 notice in order to receive relief) made via facsimile, United States  
6 Postal Service First Class Mail (postage pre-paid), overnight mail, or  
7 electronically.
- 8 b. Defendant shall designate customer service representatives who have  
9 been specifically trained on the protections of the SCRA and who are  
10 responsible for the intake of and response to servicemembers'  
11 inquiries regarding the SCRA. Defendant shall ensure that it has a  
12 designated telephone number, and electronic mail address, at which  
13 servicemembers may reach the designated SCRA customer service  
14 representatives, who will address questions or concerns regarding  
15 relief pursuant to the SCRA. Defendant shall also include a page on  
16 its website detailing eligibility for, and relief provided by, the SCRA,  
17 and providing the designated telephone number and electronic mail  
18 address to obtain SCRA relief, or raise questions or concerns  
19 regarding such relief.
- 20 c. When Defendant receives notice from a servicemember of military  
21 status pursuant to the SCRA, within sixty (60) calendar days, it shall  
22 review all the servicemember's loans, regardless of type of  
23 obligation, even if it is outside the motor vehicle lending line of  
24 business, and it shall determine the servicemember's eligibility for all  
25 forms of relief pursuant to the SCRA on all loans. If the

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27 <sup>7</sup> The SCRA Policies and Procedures for Providing SCRA Relief need not include  
28 early termination of leases under Section 3955 so long as Defendant is not the business  
of leasing motor vehicles.

1 servicemember is determined to be eligible, the relief will be applied  
2 retroactively to the first day of eligibility.

3 d. Within twenty (20) business days after determining a  
4 servicemember's eligibility for relief pursuant to the SCRA,  
5 Defendant shall notify the servicemember in writing<sup>8</sup> of its  
6 determination. If Defendant grants relief, Defendant shall notify the  
7 servicemember in writing of the specific terms of the relief provided.  
8 If Defendant denies relief, Defendant shall also notify the  
9 servicemember in writing of the reason(s) for the denial, and it shall  
10 ensure that such servicemember is given an opportunity to provide  
11 additional documentation or information to establish eligibility for  
12 relief pursuant to the SCRA.

13 e. With respect to forms of relief for which the SCRA requires  
14 provision of military orders, in the event that a servicemember fails to  
15 provide a copy of military orders entitling him or her to the relief,  
16 Defendant shall search the DMDC to confirm eligibility. If the  
17 DMDC records provide dates of service that confirm eligibility,  
18 Defendant shall provide the relief required by the SCRA for the dates  
19 indicated by the DMDC and shall notify the servicemember that the  
20 servicemember may submit additional documentation to establish  
21 eligibility dates if the servicemember disagrees with the dates  
22 provided by the DMDC. If the DMDC records do not confirm  
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24 <sup>8</sup> For all written notices to servicemembers required by the Consent Order,  
25 Defendant shall use either: (1) the email address or mailing address chosen by the  
26 borrower as the primary means of communication either by previous election or in the  
27 most recent communication with the Defendant; or (2) if, no primary means of  
28 communication has been chosen, the mailing and e-mail address listed in the  
servicemember's most recent communication with Defendant, in addition to the  
servicemember's current mailing address in Defendant's servicing records (if different).

1 eligibility, Defendant may deny the relief if it informs the  
2 servicemember in writing that he or she is not eligible for the relief  
3 unless he or she provides a copy of documents establishing military  
4 service. Such documents will include any document prepared  
5 exclusively by a branch of the military, the Department of Defense,  
6 or a borrower's commanding officer that indicates that the borrower  
7 is on active duty (e.g., active duty orders, change of station orders,  
8 DD-214 forms, letters from commanding officers, etc.). Defendant  
9 shall request this additional information before making a final  
10 determination that the servicemember is not eligible for relief.

11 f. Defendant shall accept military orders without requiring a specific  
12 end date for the period of military service. Defendant also shall  
13 accept military orders without requiring the specification of the date  
14 upon which the servicemember first entered active duty for this  
15 period of service.

16 g. Defendant shall provide SCRA relief beginning on the earliest  
17 eligible date provided in the orders or by the DMDC. However, if the  
18 earliest date provided indicates that the servicemember was on active  
19 duty at the time of loan origination, Defendant shall notify the  
20 servicemember that he or she has been declined for the protection,  
21 but shall provide the servicemember a reasonable opportunity to  
22 provide documentation showing that the servicemember was not on  
23 active duty at the time of loan origination.

24 h. Defendant shall be permitted to discontinue relief granted pursuant to  
25 the SCRA only after Defendant searches the DMDC and the DMDC  
26 reports that the servicemember is not in military service (or in any  
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1 SCRA-protected period after the termination of military service).<sup>9</sup>  
2 Defendant shall notify the servicemember in writing of the  
3 discontinuation, and it shall ensure that such servicemember is given  
4 an opportunity to provide additional documentation or information to  
5 reestablish eligibility for relief pursuant to the SCRA. Defendant  
6 may choose to provide relief for a longer period than is required by  
7 this subparagraph.

8 i. The Policies and Procedures required by this Paragraph do not excuse  
9 Defendant from providing, or allow Defendant to delay providing,  
10 forms of relief for which the SCRA does not require a notification  
11 from a servicemember. For example, the Policies and Procedures  
12 required by this Paragraph do not affect the timing requirement of  
13 Paragraph 9.

14 11. No later than sixty (60) calendar days after the effective date of this Order,  
15 Defendant shall provide a copy of the proposed SCRA Policies and  
16 Procedures required under Paragraphs 9 and 10 to counsel for the United  
17 States.<sup>10</sup> The United States shall respond to Defendant's proposed SCRA  
18 Policies and Procedures within forty-five (45) calendar days of receipt. If the  
19 United States objects to any part of Defendant's SCRA Policies and  
20 Procedures, the parties shall confer to resolve their differences. If the parties  
21 cannot resolve their differences after good faith efforts to do so, either party  
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23 <sup>9</sup> In the case where an SCRA-protected servicemember provides Defendant with  
24 valid military orders that include an end date of military service inconsistent with that  
25 appearing in the DMDC, Defendant may only discontinue the relief after the latter of the  
26 two end dates has expired or it obtains confirmation from the borrower that he or she has  
ended military service.

27 <sup>10</sup> All materials required by this Consent Order to be sent to counsel for the United  
28 States shall be sent by commercial overnight delivery addressed as follows: Chief,  
Housing and Civil Enforcement Section, Civil Rights Division, U.S. Department of  
Justice, 1800 G Street, N.W., 7<sup>th</sup> Floor, Washington, DC 20006, Attn: DJ 216-12C-2.

1 may bring the dispute to this Court for resolution. Defendant shall begin the  
2 process of implementing the SCRA Policies and Procedures within ten (10)  
3 calendar days of approval by the United States or the Court.

- 4 12. If, at any time during the term of this Order, Defendant proposes to materially  
5 change its SCRA Policies and Procedures described herein, it shall first  
6 provide a copy of the proposed changes to counsel for the United States. If  
7 the United States does not deliver written objections to Defendant within  
8 forty-five (45) calendar days of receiving the proposed changes, the changes  
9 may be implemented. If the United States makes any objections to the  
10 proposed changes within the forty-five (45)-day period, the specific changes  
11 to which the United States objects shall not be implemented until the  
12 objections are resolved pursuant to the process described in Paragraph 11.

#### 13 **IV. TRAINING**

- 14 13. Defendant shall provide additional SCRA compliance training to any  
15 employees who: (a) provide customer service to servicemembers in  
16 connection with the servicing of motor vehicle loans, (b) have significant  
17 involvement in servicing motor vehicle loans, including the ability to reduce  
18 interest rates or terminate motor vehicle leases for servicemembers as  
19 contemplated by the terms of the SCRA, or (c) have significant involvement  
20 in repossessions of motor vehicles, (hereinafter together “covered  
21 employees”) within forty-five (45) calendar days after Defendant’s training  
22 program is approved by the United States or the Court pursuant to Paragraph  
23 15. Defendant shall provide to each covered employee: (a) training on the  
24 terms of the SCRA specific to the employee’s responsibilities associated with  
25 that employee’s position; (b) training on the terms of Defendant’s SCRA  
26 Policies and Procedures (both those required pursuant to Paragraph 9 and 10,  
27 and all others adopted by Defendant) specific to the employee’s  
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1 responsibilities associated with that employee's position; (c) training on the  
2 terms of this Order specific to the employee's responsibilities associated with  
3 that employee's position and his or her responsibilities and obligations under  
4 the SCRA; and (d) the contact information for the SCRA customer service  
5 representatives described in Paragraph 10(b). Defendant shall also follow  
6 these training procedures for all of their employees who subsequently become  
7 covered employees within thirty (30) calendar days of their hiring, promotion  
8 or transfer.

9 14. During the term of this Order, Defendant shall continue to provide annual  
10 SCRA training, with the same content as described in Paragraph 13, to  
11 covered employees with respect to their responsibilities and obligations under  
12 the SCRA, the SCRA Policies and Procedures and the terms of this Order.

13 15. Within forty-five (45) calendar days of the United States' approval of the  
14 SCRA Policies and Procedures pursuant to Paragraphs 9 and 10, Defendant  
15 shall provide to the United States the curriculum, instructions, and any  
16 written material included in the training required by Paragraphs 13 and 14.  
17 These materials may incorporate SCRA compliance training offered on or  
18 before the effective date of this Order. The United States shall have forty-  
19 five (45) calendar days from receipt of these documents to raise any  
20 objections to Defendant's training materials, and, if it raises any, the parties  
21 shall confer to resolve their differences. In the event they are unable to do so,  
22 either party may bring the dispute to this Court for resolution.

23 16. The covered employees may undergo the training required by Paragraphs 13  
24 and 14 via live training, computer-based training, web-based training, or via  
25 interactive digital media. If the training is conducted in any format other than  
26 live training, Defendant shall ensure that covered employees have the  
27 opportunity to have their questions answered by a company contact that  
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1 Defendant identifies as having SCRA expertise within two (2) business days  
2 of the training. The training must require the covered employees to verify  
3 their participation. If the training is conducted in any format other than live  
4 training, the training must require that covered employees demonstrate  
5 proficiency. Any expenses associated with the training program required by  
6 Paragraphs 13 and 14 shall be borne by Defendant.

- 7 17. Defendant shall certify in writing to counsel for the United States that covered  
8 employees successfully completed the training required by Paragraphs 13 and  
9 14 and that said employees received the Consent Order and the SCRA  
10 Policies and Procedures specific to the employee's responsibilities associated  
11 with the loan being serviced. Additionally, Defendant shall maintain a list of  
12 all covered employees who successfully completed the training required by  
13 Paragraphs 13 and 14. For the duration of this Order, copies of this list shall  
14 be provided to the United States upon request.

15 **V. COMPENSATION**

- 16 18. Defendant will deposit in an interest-bearing escrow account the sum of  
17 \$4,130,000 to fund the compensation payments required by Paragraph 22.  
18 Title to this account will be in the name of "Wells Fargo Bank, N.A. d/b/a  
19 Wells Fargo Dealer Services for the benefit of affected persons pursuant to  
20 Order of the Court in Civil Action No. [XXX]". Defendant will provide  
21 written verification of the deposit to the United States within fifteen (15)  
22 calendar days of the effective date of this Order. Any interest that accrues  
23 will become part of the Settlement Fund and be used and disposed of as set  
24 forth herein. If the compensation payments required by Paragraph 22 total  
25 more than \$4,130,000, Defendant will deposit into the escrow account all  
26 necessary additional funds to make payments before the deadlines established  
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1 by Paragraph 27. Any taxes, costs, or other fees related to the escrow account  
2 shall be paid by Defendant.

3 19. In the event Defendant determines that there are additional repossession  
4 accounts that were not in compliance with the SCRA, Defendant will  
5 undertake remedial compensation actions on those accounts while this Order  
6 is in effect and in a similar manner as outlined in this Order.

7 20. The United States has determined that Defendant conducted 413 motor  
8 vehicle repossessions between January 1, 2008 and July 1, 2015 that were not  
9 in compliance with the SCRA; Defendant maintains that 31 of these were not  
10 violations of the SCRA, however Defendant has agreed to remediate these 31  
11 repossessions in the interest of compromise. The United States has  
12 previously provided the list of these repossessions to Defendant.

13 21. Within thirty (30) calendar days of the effective date of this Order, Defendant  
14 shall provide to the United States an electronically searchable list of all its  
15 repossessions between July 2, 2015 and the effective date of this Order. The  
16 United States shall run this list through the DMDC and undertake any  
17 independent investigation it deems appropriate to identify any additional  
18 repossessions that were not in compliance with the SCRA. The United States  
19 shall provide Defendant with the list of additional repossessions that were not  
20 in compliance with SCRA within thirty (30) calendar days of receiving  
21 Defendant's complete repossession list. In the event Defendant objects to the  
22 United States' list, Defendant shall be afforded thirty (30) calendar days to  
23 produce evidence of compliance to the United States. After considering in  
24 good faith all evidence produced by Defendant, the United States shall make  
25 a final determination of the additional repossessions that were not in  
26 compliance with the SCRA within thirty (30) calendar day of Defendant's  
27 production of evidence.  
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- 1           22. For each non-SCRA compliant repossession identified pursuant to Paragraphs  
2           20 and 21, Defendant shall provide the following compensation:
- 3           a. an amount of \$10,000;
  - 4           b. any lost equity in the repossessed motor vehicle, as calculated by:  
5           subtracting any outstanding principal, interest, and other amounts  
6           owing by the borrowers (excluding any fees associated with  
7           repossession), plus any liens at the time of repossession and any  
8           disbursements made to the servicemember or a third party other than  
9           a lien holder from the proceeds of the repossession sale (exclusive of  
10          any fees associated with the repossession) from the retail value of the  
11          motor vehicle at the time of repossession as identified in the National  
12          Automobile Dealers Association (“NADA”) Guide; and
  - 13          c. interest accrued on this lost equity, calculated from the date of the  
14          repossession sale until the date payment is issued, at the rate set forth  
15          in 28 U.S.C. § 1961.

16           Defendant shall provide the United States with all records used to make the  
17           payment calculations described in this Paragraph for the United States’  
18           review and approval.

- 19          23. The amounts described in Paragraph 22(a) shall be paid entirely to the  
20          servicemember-borrower on the note securing the motor vehicle. Defendant  
21          may require the servicemember-borrower to sign the Declaration at Exhibit  
22          B-1 and/or the Release at Exhibit B-2. Defendant may require any non-  
23          servicemember co-borrowers to sign the Release at Exhibit B-2. The  
24          amounts described in Paragraph 22(b) and (c) shall be distributed equally  
25          among all borrowers (including non-servicemember borrowers) on the title to  
26          the motor vehicle who sign the Declaration at Exhibit B-1, if required, and  
27          the Release at Exhibit B-2. In cases where Defendant has already taken  
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1 remedial actions with respect to a repossession identified pursuant to  
2 Paragraphs 20 and 21, the United States shall consider such remedial actions  
3 and adjust the compensation to be awarded.<sup>11</sup>

4 24. Within sixty (60) calendar days of the effective date of this Order, Defendant  
5 shall submit a plan (“Remediation Plan”) to provide for the administration of  
6 borrower compensation. Pursuant to the Remediation Plan, Defendant shall  
7 conduct the activities set forth in Paragraphs 24-28. The terms of the  
8 Remediation Plan shall be subject to the non-objection of the United States.  
9 Defendant shall bear all costs and expenses of implementing the Remediation  
10 Plan. The Remediation Plan shall require Defendant to work cooperatively  
11 with the United States in the conduct of its activities, including reporting  
12 regularly to and providing all reasonably requested information to the United  
13 States.

14 25. Defendant, as part of its Remediation Plan, shall establish, and maintain  
15 throughout the contract period, cost-free means for affected servicemembers  
16 to contact it, including an electronic mail address, a website, and a toll-free  
17 telephone number.

18 26. For non-SCRA compliant repossessions identified pursuant to Paragraph 20,  
19 Defendant shall, to the extent it has not already, notify each identified  
20 servicemember by letter (using wording mutually agreeable to Defendant and  
21 the United States) within sixty (60) calendar days of the effective date of this  
22 Order. After the United States’ determination, as provided in Paragraph 21,  
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24  
25 <sup>11</sup> In determining the amount of compensation due to any servicemember or co-  
26 borrower pursuant to Paragraph 22, the United States will credit any monetary  
27 compensation or other remediation efforts, including returning the motor vehicle to the  
28 borrower, already provided to any servicemember or co-borrower for alleged compliance  
issues pursuant to Section 3952 of the SCRA and arising from the same motor vehicle  
loan.

1 Defendant shall notify each identified servicemember by letter (using  
2 wording mutually agreeable to Defendant and the United States) within forty-  
3 five (45) calendar days of the United States' determination. For  
4 repossessions where money is due to a non-servicemember borrower pursuant  
5 to Paragraph 22, Defendant shall notify each identified non-servicemember  
6 borrower by letter (using wording mutually agreeable to Defendant and the  
7 United States) within fifteen (15) calendar days of receiving the Declaration,  
8 if required, and Release from the servicemember-borrower. Defendant shall  
9 provide the United States with samples of all letters, and receive the United  
10 States' approval of the sample letters, before mailing any letter required by  
11 this Paragraph, and all letters mailed pursuant to this Paragraph shall be  
12 accompanied by the Declaration at Exhibit B-1, if required, and the Release  
13 at Exhibit B-2. The Remediation Plan shall set forth effective methods to  
14 make contact with, and obtain a response from, each identified  
15 servicemember and non-servicemember borrower.

16 27. Defendant shall issue and mail compensation checks no later than twenty-one  
17 (21) calendar days after receipt of a signed declaration, if required, and  
18 release. Defendant shall skip trace and redeliver any payment that is returned  
19 to Defendant as undeliverable, or that is not deposited or cashed within six  
20 (6) months.

21 28. Defendant shall for a period of two (2) years following the effective date of  
22 this Order provide the United States with a monthly accounting of all  
23 declarations, if required, and releases received, checks issued (including  
24 copies of issued checks), and notifications without responses or that were  
25 returned as undeliverable. Defendant shall report any uncashed checks in  
26 accordance with state unclaimed property laws.  
27  
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- 1           29. Any money not distributed from the escrow account, including accrued  
2 interest, within two (2) years of the date the initial notifications are sent to  
3 persons eligible for the compensation payments required by Paragraph 22  
4 will be distributed to one or more charitable organizations that assist  
5 servicemembers. Recipient(s) of such funds must not be related to  
6 Defendant. Before selecting the organization(s), Defendant will obtain a  
7 proposal from the organization(s) on how the funds will be used consistent  
8 with furthering the goals of the SCRA, submit such proposal to the United  
9 States, and consult with and obtain the non-objection of the United States.  
10 The United States and Defendant may request modification of the proposal  
11 before approving the organization(s). The parties will thereafter seek  
12 approval from the Court to distribute the remaining funds to the qualified  
13 organization(s). Defendant will require each recipient to submit to Defendant  
14 and the United States a detailed report on how funds are utilized within one  
15 (1) year after the funds are distributed, and every year thereafter until the  
16 funds are exhausted.
- 17           30. Defendant will be entitled to a set-off, or any other reduction, of the amount  
18 of compensation payments required by Paragraph 22 because of any debts  
19 owed by the recipient, only in the calculation of lost equity as provided by  
20 Paragraph 22(b). Defendant also will make payments notwithstanding any  
21 release of legal claims, arbitration agreement, or loan modification previously  
22 signed by any such recipient.
- 23           31. In the event that the United States has reason to believe that Defendant is not  
24 materially complying with the terms of the Remediation Plan, Defendant  
25 shall present for review and determination of non-objection a course of action  
26 to effectuate material compliance with the Remediation Plan. The United  
27 States shall make a determination of non-objection to the course of action or  
28

1 direct Defendant to revise it. In the event that the United States directs  
2 revisions, Defendant shall make the revisions and resubmit the course of  
3 action to the United States within thirty (30) days. Upon notification that the  
4 United States has made a determination of non-objection, Defendant shall  
5 implement the course of action. If the parties cannot resolve differences with  
6 regard to the revised course of action after good faith efforts to do so, either  
7 party may bring the dispute to this Court for resolution. No individual may  
8 obtain review by the Court or the parties of the identifications made, and  
9 payments disbursed, pursuant to Paragraphs 20-28.

#### 10 **VI. OTHER RELIEF**

- 11 32. Concurrent with providing financial compensation to the servicemember-  
12 borrower, Defendant must request that all three (3) major credit bureaus  
13 delete trade lines for accounts belonging to the servicemember(s) and any co-  
14 borrower(s) attributable specifically to the wrongful repossessions. Further,  
15 Defendant shall abandon, and must indemnify the servicemember and his or  
16 her co-borrower(s) against any third-party's pursuing, any claim for  
17 deficiency that was remaining on the SCRA-protected loan after a  
18 repossession, where the repossession was allegedly completed in violation of  
19 the SCRA by Defendant.
- 20 33. Every quarter for a period of two (2) years following the effective date of this  
21 Order, Defendant shall provide the United States with an accounting of all  
22 credit entries repaired.

#### 23 **VII. CIVIL PENALTY**

- 24 34. Within thirty (30) calendar days of the effective date of this Order, Defendant  
25 shall pay a total of Sixty Thousand Dollars (\$60,000) to the United States  
26 Treasury as a civil penalty pursuant to 50 U.S.C. § 4041(b)(3) and 28 C.F.R.  
27 85.3(b)(4), to vindicate the public interest. The payment shall be in the form  
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1 of an electronic funds transfer pursuant to written instructions to be provided  
2 by the United States.

3 **VIII. ADDITIONAL REPORTING AND RECORD-KEEPING REQUIREMENTS**

4 35. For the duration of this Order, Defendant shall retain all records relating to its  
5 obligations hereunder, including its records with respect to all loans for which  
6 a servicemember has sought SCRA relief, whether that relief was granted by  
7 Defendant, all records involving repossessions, and all records relating to  
8 compliance activities as set forth herein. The United States shall have the  
9 right to review and copy any such records, including electronic data, upon  
10 reasonable request during the term of this Order.

11 36. During the term of this Order, Defendant shall notify counsel for the United  
12 States in writing every six (6) months of receipt of any SCRA or military-  
13 related complaint by the motor vehicle lending line of business. Defendant  
14 shall provide a copy of any written complaints with the notifications.  
15 Defendant will incorporate into its SCRA Policies and Procedures a  
16 requirement that all customer service personnel, upon receiving any oral  
17 SCRA complaint, shall notify individuals designated and trained to receive  
18 SCRA complaints pursuant to Paragraph 10(b). Whether regarding a written  
19 or oral SCRA complaint, the notification to the United States shall include  
20 the full details of the complaint, including the complainant's name, address,  
21 and telephone number, and the full details of all actions Defendant took to  
22 resolve the complaint. Defendant shall also promptly provide the United  
23 States all information it may request concerning any such complaint. If the  
24 United States raises any objections to Defendant's actions, the parties shall  
25 meet and confer to consider appropriate steps to address the concerns raised  
26 by the United States' review. If the parties are unable to come to an  
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1 agreement regarding such objections or concerns, either party may bring the  
2 dispute to this Court for resolution.

3 **IX. SCOPE OF CONSENT ORDER**

4 37. The provisions of this Order shall apply to Defendant, its parent Wells Fargo  
5 & Company, and any of their subsidiaries, predecessors, acquired companies,  
6 or successor entities. It shall also apply to the officers, employees, agents,  
7 representatives, assigns, successors-in-interest, and all persons and entities in  
8 active concert or participation with all of those entities, including with respect  
9 to any loans they acquired from January 1, 2008 to the effective date of this  
10 Order.

11 38. In the event that Defendant is acquired by or merges with another entity,  
12 Defendant shall, as a condition of such acquisition or merger, obtain the  
13 written agreement of the acquiring or surviving entity to be bound by any  
14 obligations remaining under this Order for the remaining term of this Order.

15 39. This Order does not release claims for practices not addressed in the  
16 Complaint's allegations, and it does not resolve and release claims other than  
17 those under Section 3952(a) of the SCRA. This Order does not release any  
18 claims that may be held or are currently under investigation by any federal  
19 agency, or any claims that may be pursued for actions that may be taken by  
20 any executive agency established by 12 U.S.C. § 5491 or the appropriate  
21 Federal Banking Agency (FBA), as defined in 12 U.S.C. § 1813(q), against  
22 Defendant, Wells Fargo & Company, any of their affiliated entities, and/or  
23 any their institution-affiliated parties, as defined by 12 U.S.C. § 1818 or any  
24 other statute or regulation.

25 40. Nothing in this Order will excuse Defendant's compliance with any currently  
26 or subsequently effective provision of law or order of a regulator with  
27 authority over Defendant that imposes additional obligations on it.  
28

1 41. The parties agree that, as of the effective date of this Order, litigation is not  
2 “reasonably foreseeable” concerning the matters described above. To the  
3 extent that either party previously implemented a litigation hold to preserve  
4 documents, electronically stored information (ESI), or things related to the  
5 matters described above, the party is no longer required to maintain such  
6 litigation hold. Nothing in this Paragraph relieves either party of any other  
7 obligations imposed by this Order.

8 **X. MODIFICATIONS, ATTORNEY’S FEES AND COSTS, AND REMEDIES**  
9 **FOR NON-COMPLIANCE**

10 42. Any time limits for performance imposed by this Order may be extended by  
11 the mutual written agreement of the parties.

12 43. The parties shall be responsible for their own attorney’s fees and court costs,  
13 except as provided for in Paragraph 45.

14 44. The parties shall endeavor in good faith to resolve informally any differences  
15 regarding the interpretation of and compliance with this Order prior to  
16 bringing such matters to the Court for resolution. However, in the event the  
17 United States contends that there has been a failure by Defendant, whether  
18 willful or otherwise, to perform in a timely manner any act required by this  
19 Order or otherwise comply with any provision thereof, the United States may  
20 move the Court to impose any remedy authorized by law or equity, including,  
21 but not limited to, an order requiring the performance of such act or deeming  
22 such act to have been performed, and an award of any damages, costs, and  
23 attorney’s fees which may have been occasioned by Defendant’s violation or  
24 failure to perform.

25 **XI. RETENTION OF JURISDICTION**

26 45. As described in Paragraph 4, for the past two and one-half years, Defendant  
27 has been engaged in large-scale voluntary SCRA compliance efforts. This  
28

1 Order shall be in effect for an additional period of two and one-half years  
2 from its date of entry. The Court shall retain jurisdiction for the duration of  
3 this Order to enforce its terms, after which time this case shall be dismissed  
4 with prejudice. The United States may move the Court to extend the duration  
5 of this Order in the interests of justice.

6  
7 SO ORDERED, this \_\_\_ day of \_\_\_\_\_, 2016.

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10 UNITED STATES DISTRICT JUDGE  
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1 The undersigned hereby apply for and consent to the entry of the Order:

2 For the United States of America:

3 EILEEN M. DECKER  
4 United States Attorney

LORETTA E. LYNCH  
Attorney General

5 DOROTHY A. SCHOUTEN  
6 Assistant United States Attorney  
7 Chief, Civil Division

VANITA GUPTA  
Principal Deputy  
Assistant Attorney General  
Civil Rights Division

8 /s/ Joanna Hull  
9 JOANNA HULL  
10 Assistant United States Attorney  
11 Chief, Civil Rights Section

/s/ Sameena Shina Majeed  
SAMEENA SHINA MAJEED  
Chief, Housing and Civil Enforcement  
Section

12 /s/ Elizabeth A. Singer  
ELIZABETH A. SINGER  
13 Director, U.S. Attorneys' Fair Housing  
14 Program

15 /s/ Daniel P. Mosteller  
16 NICOLE M. SIEGEL  
17 DANIEL P. MOSTELLER  
18 Trial Attorneys

1 For Defendant Wells Fargo Bank, N.A., d/b/a Wells Fargo Dealer Services:

2  
3 /s/ Erin J. Illman

4 ERIN J. ILLMAN (CA No. 238262)  
5 BRADLEY ARANT BOULT CUMMINGS LLP  
6 214 N. Tyron Street, Suite 3700  
7 Charlotte, NC 28202  
8 Phone: (704) 338-6123  
9 Fax: (704) 332-8858  
10 eillman@bradley.com

11 ROBERT R. MADDOX  
12 KEITH S. ANDERSON  
13 ALISON C. SMITH  
14 BRADLEY ARANT BOULT CUMMINGS LLP  
15 One Federal Place  
16 1819 Fifth Avenue North  
17 Birmingham, AL 35203  
18 Phone: (205) 521-8000  
19 Fax: (205) 521-8800  
20 rmaddox@bradley.com  
21 kanderson@bradley.com  
22 acsmith@bradley.com  
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24  
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28

1 The undersigned hereby apply for and consent to the entry of the Order:

2 For the United States of America:

3 EILEEN M. DECKER  
4 United States Attorney

LORETTA E. LYNCH  
Attorney General

5 DOROTHY A. SCHOUTEN  
6 Assistant United States Attorney  
7 Chief, Civil Division

VANITA GUPTA  
Principal Deputy  
Assistant Attorney General  
Civil Rights Division

8 /s/ Joanna Hull  
9 JOANNA HULL  
10 Assistant United States Attorney  
11 Chief, Civil Rights Section

Sameena Shina Majeed  
12 SAMEENA SHINA MAJEED  
13 Chief, Housing and Civil Enforcement  
14 Section

Elizabeth A. Singer  
15 ELIZABETH A. SINGER  
16 Director, U.S. Attorneys' Fair Housing  
17 Program

Daniel P. Mosteller  
18 NICOLE M. SIEGEL  
19 DANIEL P. MOSTELLER  
20 Trial Attorneys

1 For Defendant Wells Fargo Bank, N.A., d/b/a Wells Fargo Dealer Services:

2  
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1 **EXHIBIT A**

2

3 **IMPORTANT NOTICE AFFECTING MILITARY SERVICEMEMBERS**

4

5 **RIGHTS AND PROTECTIONS AFFORDED UNDER THE SERVICEMEMBERS**

6

7 **CIVIL RELIEF ACT**

8

9 Attached to this notice you will find a waiver of rights and protections that may be

10 applicable to you and your dependents pursuant to the Servicemembers Civil Relief Act,

11 50 U.S.C. § 3901, et seq. (the “SCRA”). The SCRA provides military personnel and

12 their dependents with a wide range of legal and financial protections. Among other

13 benefits and protections, the SCRA:

- 14
- 15 • Prohibits the repossession of a servicemember’s motor vehicle without a court
  - 16 order, as long as a deposit or at least one installment payment was made while
  - 17 the borrower was not in military service.
  - 18 • Upon notice by the servicemember, imposes a 6% maximum rate of interest
  - 19 that may be charged during military service on loans incurred before the
  - 20 servicemember began his or her current military service.

21 If you choose to sign the attached waiver, Wells Fargo will have the option to proceed

22 with a repossession of your motor vehicle without the protections of the SCRA. If you

23 do not sign this waiver, Wells Fargo will be required to obtain a court order to repossess

24 if you took out your loan and made a down payment on the motor vehicle, or at least one

25 payment on the loan, when you were not in military service. You may be able to seek a

26 postponement of the repossession. Additionally, if Wells Fargo takes you to court to

1 repossess your motor vehicle, the court may take steps to ensure that a judgment is not  
2 entered against you if you are unable to appear.

3 **Before waiving these important statutory rights, you should consult an attorney**  
4 **regarding how best to exercise your rights or whether it is in your interest to waive**  
5 **these rights under the conditions offered by Wells Fargo.**

6 **For More Information:**

- 7 • **CONSULT AN ATTORNEY:** To fully understand your rights under the law,  
8 and before waiving your rights, you should consult an attorney.
- 9 • **JAG / LEGAL ASSISTANCE:** Servicemembers and their dependents with  
10 questions about the SCRA should contact their unit's Judge Advocate, or their  
11 installation's Legal Assistance Officer. A military legal assistance office  
12 locator for all branches of the Armed Forces is available at  
13 <http://legalassistance.law.af.mil/content/locator.php>.
- 14 • **MILITARY ONESOURCE:** "Military OneSource" is the U.S. Department of  
15 Defense's information resource. Go to <http://www.militaryonesource.com>.

**EXHIBIT B-1**

**DECLARATION**

I, [INSERT NAME], do hereby declare and state as follows:

1. I owned a vehicle obtained through a loan with Wells Fargo, Loan Number [LOAN NUMBER] that was repossessed.
2. I obtained the loan on or about [LOAN FUNDING DATE].
3. On or about [REPOSSESSION DATE], I WAS either:
  - i. on a covered period of military service; OR
  - ii. a member of a reserve component (Reserves or National Guard) and had received orders to report for a covered period of military service.
4. Please consider the following additional information in support of this

Declaration:

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I confirm that the foregoing is true and correct.

Executed this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

SIGNATURE: \_\_\_\_\_

PRINT NAME: \_\_\_\_\_

1 **APPENDIX REGARDING MILITARY SERVICE**

2 As used in this Declaration, a “covered period of military service” is any of the  
3 following:

- 4 a) Full-time active duty with the armed forces of the United States (Army, Navy,  
5 Air Force, Marine Corps, or Coast Guard);  
6 b) A period of active service with the National Guard: i) authorized by the  
7 President or the Secretary of Defense; ii) longer than thirty (30) consecutive  
8 days; iii) under orders issued under Section 502(f) of Title 32 of the United  
9 States Code; and iv) for the purpose of responding to a national emergency  
10 declared by the President and supported by federal funds;  
11 c) Active service as a commissioned officer of the Public Health Service or the  
12 National Oceanic and Atmospheric Administration; or  
13 d) A period of time during which I was a servicemember absent from duty on  
14 account of sickness, wounds, leave, or other lawful cause.

15 If you have any additional questions about whether your service constitutes a  
16 “covered period of military service” for purposes of this declaration, please contact the  
17 Department of Justice at 202-514-4713 and reference the Wells Fargo SCRA motor  
18 vehicle case.

**EXHIBIT B-2**

**SETTLEMENT AND GENERAL RELEASE AGREEMENT**

In consideration for Wells Fargo Bank, N.A., d/b/a Wells Fargo Dealer Services' payment to me of \$[AMOUNT], I, [BORROWER'S NAME], hereby release and forever discharge all claims, arising prior to the date of this Agreement, related to alleged violations of Section 3952(a) of the Servicemembers Civil Relief Act in the repossession and sale of a [VEHICLE; VIN \_\_\_\_\_] that I may have against Wells Fargo and all related entities, parents, predecessors, successors, subsidiaries, and affiliates and all of its past and present directors, officers, agents, managers, supervisors, shareholders, and employees and its heirs, executors, administrators, successors or assigns.

The parties represent and warrant to each other, that the parties specifically understand and agree that the parties' settlement and compromise claims and disputes regarding the retail installment contract and the vehicle is a compromise of disputed claims and that the existence of this Agreement or any payment made hereunder shall not be construed as an admission of liability of the allegations, claims or contentions of any party, and that there are no covenants, promises, undertakings or understanding between the parties outside of this Agreement except as specifically set forth herein.

Executed this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

SIGNATURE: \_\_\_\_\_

PRINT NAME: \_\_\_\_\_

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