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8
9 IN THE UNITED STATES DISTRICT COURT
10 FOR THE EASTERN DISTRICT OF CALIFORNIA

11 WELLS FARGO BANK, N.A., and WELLS)
12 FARGO HOME MORTGAGE, INC.,)

13 Plaintiffs,)

14 vs.)

15)
16 DEMETRIOS A. BOUTRIS, in his official)
17 capacity as Commissioner of the California)
Department of Corporations,)

18 Defendant.)

Civil Action No. S-03-0157 GEB JFM
DECLARATION OF PATRICIA R. SPEIGHT
IN SUPPORT OF DEFENDANT’S
OPPOSITION TO PLAINTIFFS’ MOTION
FOR PRELIMINARY INJUNCTION

Hearing Date: March 10, 2003
Time: 9:00 a.m.
Location: Courtroom 10

Hearing Requested

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21 I, PATRICIA R. SPEIGHT, declare as follows:

22 1. I make the following statements based on personal knowledge. If called as a witness, I
23 could and would competently testify as follows.

24 2. I am employed by the California Department of Corporations (“Department”) as a
25 Senior Examiner in the Financial Services Division and assigned to the California Residential
26 Mortgage Lending Act (“CRMLA”) (California Financial code Section 50000 et. seq.). I make this
27 declaration in my official capacity and not otherwise.
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1 3. I have been a Senior Examiner for the CRMLA since August 1995. My duties include
2 supervising field examiners assigned to the CRMLA, including the planning, assigning, directing
3 and reviewing of examiner work papers. I am also responsible for the preparation of reports of
4 regulatory examinations to licensees, memoranda to Department staff members, and correspondence
5 to the public. I also advise Department management of problems found during regulatory
6 examinations, and make recommendations for referral for appropriate action. I am familiar with the
7 Department's procedure for maintaining documents and business records pertaining to CMRLA
8 licensees. I have access to, and am required to maintain on behalf of the Department, all public and
9 confidential documents pertaining to CRMLA licensee regulatory examinations, including examiner
10 work papers and all correspondence related to such regulatory examinations. I am an official
11 custodian for these records.

12 4. Wells Fargo Home Mortgage, Inc. ("WFHMI") has submitted to all regulatory
13 examinations scheduled by the Commissioner, and responded to all correspondence of the
14 Commissioner concerning these regulatory examinations. WFHMI had paid the Department for all
15 examinations billed to date.

16 5. On April 17, 2001, the Department commenced a regulatory examination of the books
17 and records of WFHMI. The regulatory examination disclosed, among other items, that WFHMI
18 was overcharging per diem interest in violation of California Financial Code section 50204(o) and
19 was understating finance charges in violation of the Truth In Lending Act in many of the loans
20 reviewed by the Department. I sent a letter to WFHMI in December 2001 detailing the findings of
21 the regulatory examination. A true and correct copy of my letter to WFHMI dated December 18,
22 2001 is attached and incorporated as Exhibit 1. A follow-up examination to the April 2001
23 regulatory examination was commenced at WFHMI in April 2002.

24 6. On February 19, 2002, I received a response dated February 18, 2002 from WFHMI to
25 my December 18, 2001 letter. In that correspondence, WFHMI questioned the per diem overcharges
26 found in calendar year 2000 loans, but agreed to issue a refund on the overcharged loans from
27 calendar year 2001. WFHMI also questioned the necessity to perform a global review of loans made
28 during 2000 and 2001 because it did not view the per diem issue as systemic. WFHMI also agreed

1 to issue refunds to borrowers in nine of the ten loans found by the Department to contain finance
2 charge understatements. A true and correct copy of the February 18, 2002 letter from WFHMI is
3 attached and incorporated as Exhibit 2.

4 7. On February 27, 2002, a further letter was sent to WFHMI regarding outstanding issues
5 related to the April 2001 regulatory examination, which included per diem interest overcharges and
6 the TILA finance charge understating issues. A true and correct copy of the Department's February
7 27, 2002 letter to WFHMI is attached and incorporated as Exhibit 3.

8 8. On March 22, 2002, the Department received a response dated March 18, 2002 from
9 WFHMI responding to the Department's February 27, 2002 letter. In that correspondence, WFHMI
10 agreed to conduct an audit regarding the issue of understating finance charges on loan files from
11 December 6, 1999 through January 31, 2001; the date WFHMI believed it had implemented
12 procedures to correct the understating. However, WFHMI only agreed to review a sample of 100
13 loans on the issue of per diem overcharges. A true and correct copy of the March 18, 2002 letter
14 from WFHMI is attached and incorporated as Exhibit 4.

15 9. On August 5, 2002, the Department received a response from WFHMI dated August 1,
16 2002, wherein WFHMI questioned the validity of California Financial Code § 50204(o) based upon
17 Section 501(a)(1) of the Depository Institutions Deregulation and Monetary Control Act of 1980
18 ("DIDMCA"). WFHMI did not otherwise contest the Department's jurisdiction over it. A true and
19 correct copy of the WFHMI August 1, 2002 letter is attached to the Declaration of DiAun M. Burns
20 filed herewith.

21 10. On August 30, 2002, the Department received a further response from WFHMI dated
22 August 28, 2002, wherein WFHMI questioned the Department's findings with respect to TILA.
23 This correspondence from WFHMI was limited to the TILA issues. A true and correct copy of the
24 WFHMI August 28, 2002 letter is attached to the Declaration of DiAun M. Burns filed herewith.

25 11. The regulatory examination of WFHMI commenced on December 6, 1999 found only
26 one loan out of fifteen loans reviewed in which WFHMI charged more than one day prior to
27 recordation of the deed of trust. Further, out of the fifteen loans reviewed, eight loans had no per
28 diem interest charged prior to recordation.

1 12. I have reviewed the declarations filed by WFHMI in support of its Motion for
2 Preliminary Injunction. The Wissinger declaration states that the audit demanded by the California
3 Corporations Commissioner regarding per diem interest overcharges, and TILA finance charge
4 understatements will require a manual review of all loans made during 2001 and 2002 at a cost of
5 \$60.00 per file. I have reviewed numerous filings made by WFHMI with the Department, and it is
6 my belief from those filings that WFHMI has sufficient information in its computer database
7 regarding its loans to allow a computer software program to be created to perform the per diem
8 interest audit. Thus, dispensing with any need for manual review on the per diem interest issue. The
9 only pertinent information that might be missing from the database is the date of recordation of the
10 deed of trust. This information can easily be obtained from LEXIS NEXIS or a similar system, but
11 would have to be done on an individual basis. I personally looked up recordings on another
12 company on February 18, 2003, and it took me approximately 2 ½ minutes per loan. The audit on
13 the finance charge understatements would require a manual review of each loan. However, WFHMI
14 was willing to conduct a review of its loans files from December 6, 1999 through January 31, 2001
15 as noted in its March 18, 2002 letter attached hereto as Exhibit 4. The review for the TILA issue
16 agreed to by WFHMI, could easily include a review on the per diem interest issue.

17 13. The Wissinger declaration further states that WFHMI has been subject to multiple
18 examinations by the Office of the Comptroller of the Currency (“OCC”) since it became a subsidiary
19 of Wells Fargo Bank on December 1, 1999. The Department has performed two regulatory
20 examinations of WFHMI since December 1, 1999. The first regulatory examination of WFHMI
21 after December 1, 1999 was commenced on December 6, 1999, and the second regulatory
22 examination was commenced on April 17, 2001. As part of the Department’s examination
23 procedures, the Department requests the most recent audit reports from any government agency. In
24 response to this request, WFHMI provided the Department with examination reports from the states
25 of Maine, Pennsylvania and Rhode Island. The Department has never been provided with any report
26 from the OCC.

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I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed at Los Angeles, California this _____ day of February 2003.

PATRICIA R. SPEIGHT
Declarant