



4. Defendant 21st Century Mediation LLC (“21st Century”) is a Texas limited liability corporation, with a principal place of business located at 3010 Lyndon B. Johnson Freeway, Suite 1200, Dallas, Texas 75234.

5. Plaintiffs are informed, believe and thereon allege that at all times relevant hereto Defendant Wages was the agent, affiliate, officer, director, manager, principal, alter ego, and/or employee of Defendant 21st Century and was at all times acting within the scope of such agency, affiliation, alter-ego relationship and/or employment; and that each Defendant actively participated in or subsequently ratified and adopted, or both, each and all of the acts and conduct alleged herein with full knowledge of all the surrounding facts and circumstances, including full knowledge of each and every violation of Plaintiffs’ rights alleged herein and of the damages that Plaintiffs suffered as a result thereof.

#### **JURISDICTION AND VENUE**

6. This is an action for infringement of federally registered trademarks arising under the Lanham Act, 15 U.S.C. § 1114, *et seq.*, for unfair competition arising under the Lanham Act, 15 U.S.C. § 1125(a), and for common law trademark violations, unfair competition, and unjust enrichment.

7. This Court has original jurisdiction over this action under 28 U.S.C. §§ 1331, 1338(a), and 1338(b) and supplemental jurisdiction over the state law claims. Venue is proper in this district pursuant to § 1391(b) and (c).

#### **BACKGROUND**

8. Wells Fargo and WFHM are, and for decades have been, engaged in providing quality banking and financial services to the public under numerous well-known service marks, trade names, and trademarks, including but not limited to, the famous WELLS FARGO® mark.

9. Wells Fargo is the registered owner of the mark WELLS FARGO®. The WELLS FARGO® mark is registered with the United States Patent and Trademark Office as Registration Nos. 779,187; 1,131,103; 1,136,497; 1,138,966; 1,167,626; 1,181,279; 1,274,680; 2,555,996; 2,555,997; 2,561,807; 2,597,836; 2,617,850; 2,688,407; 2,694,042; 2,800,535; 2,808,874;

2,810,815; 2,810,816; and 3,626,451 for a wide variety of goods and services. The WELLS FARGO® mark has been continuously used since the dates stated in the registrations. True and correct copies of Plaintiffs' WELLS FARGO® registrations are attached hereto as **Exhibit A**. Each of these registrations is valid and enforceable. Pursuant to 15 U.S.C. § 1065, Wells Fargo's rights in many of these registrations are incontestable.

10. WFHM is the registered owner of the mark WELLS FARGO HOME MORTGAGE®. The WELLS FARGO HOME MORTGAGE® mark is registered with the United States Patent and Trademark Office as Registration Nos. 2,658,789 and 2,584,451. The WELLS FARGO HOME MORTGAGE® mark has been used continuously since the dates stated in each registration. True and correct copies of these registrations are attached hereto as **Exhibit B**. Each of these registrations is valid and enforceable. Pursuant to 15 U.S.C. § 1065, WFHM's rights in these registrations are incontestable.

11. Wells Fargo is the registered owner of the red and gold WELLS FARGO® box logo which is registered with the United States Patent and Trademark Office as Registration Nos. 2,526,696; 2,680,835; 2,690,610; 2,690,612; 2,697,633; 2,680,854; 2,683,387; 2,802,581; 2,810,817; 2,810,818; 2,810,819; and 3,810,870 for a wide variety of goods and services. The WELLS FARGO® box logo has been continuously used since the dates stated in the registrations. True and correct copies of these registrations are attached hereto as **Exhibit C**. Pursuant to 15 U.S.C. § 1065, Wells Fargo's rights in many of these registrations are incontestable.

12. The WELLS FARGO® mark, the WELLS FARGO HOME MORTGAGE® mark, and the WELLS FARGO® box logo are known throughout the United States as identifying Plaintiffs as a source of, *inter alia*, quality banking and financial services. Plaintiffs spend millions of dollars each year on advertising featuring their marks.

13. The WELLS FARGO® mark, the WELLS FARGO HOME MORTGAGE® mark, and the WELLS FARGO® box logo are of great and incalculable value to Plaintiffs, are highly distinctive and arbitrary, and have become associated in the public mind with, *inter alia*,

banking and financial products and services of the highest quality and reputation originating with Plaintiffs.

14. Plaintiffs' extensive use in interstate commerce of the WELLS FARGO® mark, the WELLS FARGO HOME MORTGAGE® mark, and the WELLS FARGO® box logo in the United States has caused the public and members of the banking and financial services trade to associate goods and services bearing the WELLS FARGO® mark, the WELLS FARGO HOME MORTGAGE® mark, and the WELLS FARGO® box logo with Plaintiffs and Plaintiffs alone.

15. Plaintiffs closely control the use and reproduction of the WELLS FARGO® mark, the WELLS FARGO HOME MORTGAGE® mark, and the WELLS FARGO® box logo to ensure that all of their current and potential customers can rely upon those marks as signifying, *inter alia*, quality banking and financial services.

16. Plaintiffs' substantial investment in and use of their marks has helped Plaintiffs realize substantial revenue from their banking and financial services business.

#### **DEFENDANTS' ILLEGAL ACTIONS**

17. After Defendants prominently used and promoted the WELLS FARGO® mark, the WELLS FARGO HOME MORTGAGE® mark, and the WELLS FARGO® box logo in solicitations, Plaintiffs received complaints regarding a fraudulent mortgage loan letter which, on its face, appeared to originate from Plaintiffs. This fraudulent letter is designed to convey the false and misleading impression that the recipient is eligible for a home mortgage loan modification with Plaintiffs so that the recipient will receive assistance with their mortgage and retain their home. A true and correct copy of this letter is attached hereto as **Exhibit D**. Plaintiffs did not create or mail this letter, nor did they authorize Defendants to do so.

18. On May 6, 2011, counsel for Plaintiffs sent Defendants a letter demanding that Defendants cease using the WELLS FARGO® mark in connection with false and misleading letters to consumers of mortgage services. A true and correct copy of this letter is attached hereto as **Exhibit E**.

19. All of Defendants' statements and uses of Plaintiffs' trademarks, including the WELLS FARGO® mark, are made without the approval of Plaintiffs and, on information and belief, are designed to intentionally deceive consumers as to the relationship between Plaintiffs and Defendants.

20. Defendants have no affiliation, association, or connection whatsoever with Plaintiffs. Plaintiffs do not sponsor, approve, or authorize any of Defendants' activities, including their creation and distribution of letters to consumers of mortgage services. The solicitation attached as Exhibit D does not originate from Plaintiffs or any affiliate of Plaintiffs.

21. Defendants' use of the WELLS FARGO® mark is likely to cause confusion or cause the public to falsely believe that Plaintiffs are in some way affiliated or connected with Defendants' activities related to the solicitations.

22. Defendants' unauthorized use of the WELLS FARGO® mark has caused and is causing Plaintiffs irreparable harm. It is impossible to know how many persons have been confused by Defendants' unauthorized use of the WELLS FARGO® mark or who have been deceived to believe that Plaintiffs authorized, sponsored, or approved of Defendants' use or that Defendants are affiliated or connected in any way with Plaintiffs.

23. Defendants' unauthorized use of the WELLS FARGO® mark caused and continues to cause irreparable damage to the reputation and goodwill of Plaintiffs, which have no control over Defendants' activities.

24. Actual confusion has occurred as a result of Defendants' actions.

25. Defendants have engaged in the conduct described above willfully, intentionally, knowingly, maliciously, wantonly, oppressively, and in reckless disregard of the obvious and inevitable injurious consequences of its conduct. On information and belief, Defendants have a bad-faith intent to trade on and profit from Plaintiffs' goodwill and reputation and to confuse and mislead the public.

**FIRST CLAIM FOR RELIEF**

**Violation of Lanham Act for Intentional Infringement  
15 U.S.C. § 1114(1)**

26. Plaintiffs re-allege and incorporate by reference the allegations set forth above in paragraphs 1 through 25.

27. Defendants willfully, knowingly, and intentionally used in interstate commerce the WELLS FARGO® mark without Plaintiffs' consent or authorization.

28. Defendants' infringement of the WELLS FARGO® mark is likely to cause confusion, or to cause mistake, or to deceive the consuming public in violation of section 32 of the Lanham Act (15 U.S.C. § 1114(1)).

29. Defendants' unlawful acts have caused and continue to cause Plaintiffs to suffer damages, including the loss of sales and profits Plaintiffs would have made but for Defendants' acts, in an amount to be proved at trial. Defendants' unlawful acts have caused and continue to cause irreparable injury to the integrity of Plaintiffs' marks and to Plaintiffs' business reputation and goodwill.

30. Plaintiffs' remedies at law cannot adequately compensate them for the ongoing injuries threatened by Defendants' continuing conduct. Unless Defendants are restrained and enjoined through the issuance of an injunction, Defendants will continue to commit unlawful acts, causing Plaintiffs to suffer further irreparable injury.

31. Because Defendants' infringement is intentional, Plaintiffs are entitled to treble damages and reasonable attorneys' fees under 15 U.S.C. § 1117.

**SECOND CLAIM FOR RELIEF**

**Violation of Lanham Act for False Designation of Origin  
15 U.S.C. § 1125(a)**

32. Plaintiffs re-allege and incorporate by reference the allegations set forth above in paragraphs 1 through 31.

33. Defendants' unauthorized use of the WELLS FARGO® mark to identify their goods and services is likely to cause confusion, to cause mistake, or to deceive the consuming public as to the origin, sponsorship, or approval of defendants' commercial activities and products by Plaintiffs.

34. Defendants' acts constitute false designation of origin, source, or sponsorship and false or misleading descriptions and representations in violation of section 43 of the Lanham Act (15 U.S.C. § 1125(a)). Such acts by the Defendants were knowing, willful, and intentional.

35. Plaintiffs' remedies at law cannot adequately compensate them for the ongoing injuries threatened by Defendants' continuing conduct. Unless Defendants are restrained and enjoined through the issuance of an injunction, they will continue to commit unlawful acts, causing Plaintiffs to suffer further irreparable injury.

36. Because Defendants' infringement is intentional, Plaintiffs are entitled to treble damages and reasonable attorneys' fees under 15 U.S.C. § 1117.

### **THIRD CLAIM FOR RELIEF**

#### **Violation of Texas Anti-Dilution Statute Tex. Bus. & Com. Code § 16.29**

37. Plaintiffs re-allege and incorporate by reference the allegations set forth above in paragraphs 1 through 36.

38. Defendants' acts complained of herein constitute dilution of the distinctive quality of Plaintiffs' marks in violation of the Texas Anti-Dilution Statute, Tex. Bus. & Com. Code § 16.29.

### **FOURTH CLAIM FOR RELIEF**

#### **Common Law Trademark Infringement**

39. Plaintiffs re-allege and incorporate by reference the allegations set forth above in paragraphs 1 through 38.

40. Defendants' acts complained of herein constitute trademark infringement under the common law of Texas.

**FIFTH CLAIM FOR RELIEF**

**Common Law Unfair Competition**

41. Plaintiffs re-allege and incorporate by reference the allegations set forth above in paragraphs 1 through 40.

42. Defendants' acts complained of herein constitute unfair competition in violation of the common law of Texas.

**SIXTH CLAIM FOR RELIEF**

**Unjust enrichment**

43. Plaintiffs re-allege and incorporate by reference the allegations set forth above in paragraphs 1 through 42.

44. Defendants' acts alleged herein constitute unjust enrichment of Defendants at Plaintiffs' expense.

**PRAYER FOR RELIEF**

**WHEREFORE**, Plaintiffs respectfully pray for judgment against Defendants as follows:

A. That the Court grant preliminary and permanent injunctive relief against Defendants, their agents, servants, employees, attorneys, successors, licensees, and assigns, and anyone acting in concert or privity with Defendants, jointly and severally:

- (1) from using the WELLS FARGO® mark, WELLS FARGO HOME MORTGAGE® mark, and WELLS FARGO® box logo or any other similar term or terms likely to cause confusion therewith, in connection with the advertisement, marketing, distribution, sale or offer for sale of its goods and/or services;
- (2) from unfairly competing with Plaintiffs;
- (3) from using any other trademark, service mark, trade name, corporate name, word or symbol or doing any other acts likely to induce the belief that Defendants' commercial activities, products, services, or businesses are Plaintiffs' commercial



activities, products, services or business or that Defendants are in any way authorized or sponsored by or connected, endorsed, or associated with Plaintiffs or with Plaintiffs' commercial activities, products, services or business; and

- (4) with such injunction include a provision directing Defendants to file with the Court and serve on Plaintiffs within thirty (30) days after the service on Defendants of such injunction a report in writing under oath setting forth in detail the manner and form in which Defendants have complied with the injunction;

B. That the Court order Defendants to deliver to the Court for impoundment and destruction any and all letters, advertising, circulars, price lists, signs, banners, business stationery, prints, packages, labels, containers, freights, cartons, receptacles, wrappers, art work, and other materials in their possession or custody or under their control that infringe Plaintiffs' WELLS FARGO® mark, WELLS FARGO HOME MORTGAGE® mark, or WELLS FARGO® box logo and any other of Plaintiffs' trademarks, service marks, or trade names;

C. That the Court award treble damages to Plaintiffs, together with costs, interest and attorneys' fees as permitted by 15 U.S.C. § 1117(a);

D. That the Court award Plaintiffs such sum or sums as the Court may find to be just pursuant to 15 U.S.C. § 1117(a);

E. That the Court award Plaintiffs their costs and attorneys' fees in prosecuting this action; and

F. That the Court award Plaintiffs such other relief as it deems just and proper.

Dated: June 28, 2012

**ANDREWS KURTH LLP**

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**ATTORNEYS FOR PLAINTIFFS  
WELLS FARGO & COMPANY AND  
WELLS FARGO HOME MORTGAGE,  
A DIVISION OF WELLS FARGO BANK, N.A.**