Michael Fuller, Oregon Bar No. 09357
Lead Attorney for Plaintiff
Eric Olsen, Oregon Bar No. 783261
David Johnson, Oregon Bar No. 123553
Of Attorneys for Plaintiff
OlsenDaines, P.C.
US Bancorp Tower
111 SW 5th Ave., 31st Fl.
Portland, Oregon 97204
michael@underdoglawyer.com
Direct 503-201-4570

Christina Stephenson, Oregon Bar No. 102287
Of Attorneys for Plaintiff
Stephenson Law, LLC

Robert Le, Oregon Bar No. 094167
Of Attorneys for Plaintiff
The Law Office of Robert Le

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF OREGON

PORTLAND DIVISION

UNITED STATES OF AMERICA EX REL. DUKE TRAN, Plaintiff-Relator, v. **WELLS FARGO BANK, N.A.,** Defendant.	Case No. 3:15-cv-979 **COMPLAINT** **The Family and Medical Leave Act** **The Oregon Family Leave Act** **ORS 659A.199** **ORS 659A.030** **The False Claims Act** **Filed Under Seal** **Demand for Jury Trial**

1.

SUMMARY OF CASE

Duke Tran was a humble, hardworking family man, who had overcome many obstacles to establish himself in the banking industry. Tran was honest and forthright. He had worked at Wells Fargo for over 10 years as a model employee in its home equity department.

In 2014, Tran began to ask questions after stumbling upon a secret Wells Fargo policy that he felt compromised his personal ethics and violated the laws governing mortgage servicing. *See, e.g.,* Exhibit 1 – Wells Fargo Internal Policy Email.

Wells Fargo's internal policy required its employees to unfairly deceive its customers, and the United States, as to the quality of Wells Fargo's loan documents, in violation of American common law, the Dodd-Frank Act, and Oregon's Unfair Trade Practices Act.

When Tran continued to express concerns about its secret policy, Wells Fargo began a campaign designed to discredit Tran and ultimately force him out of the company. Wells Fargo illegally retaliated against Tran throughout 2014 and wrongfully terminated his employment on November 12, 2014.

Now, having no other choice to make things right, Tran files this complaint to recover fair compensation for Wells Fargo's retaliation and wrongful termination. Tran also seeks to take back over $1.4 billion on behalf of the American taxpayers; paid by the United States on account of Wells Fargo's unfair deceptive mortgages practices.

By filing this complaint, Tran exposes Wells Fargo's secret internal policy to the public for the first time.

OlsenDaines, P.C.
US Bancorp Tower
111 SW 5th Ave., 31st Fl.
Portland, Oregon 97204
Direct 503-201-4570

2.

NATURE OF THE ACTION

Plaintiff-relator Mr. Duke Tran ("Tran") brings this action against defendant Wells Fargo Bank, N.A. ("Wells Fargo") for violation of the Family and Medical Leave Act, 29 U.S.C. § 2601 *et seq.* ("FMLA"), the Oregon Family Leave Act, ORS 659A.183 ("OFLA"), ORS 659A.199, ORS 659A.030, and the False Claims Act, 31 U.S.C. § 3729 *et seq.*, and 31 U.S.C. § 3730(h).

3.

JURISDICTION AND THE PARTIES

This Court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1367 because Tran's claims under the FMLA and False Claims Act arise under federal law, and Tran's claims arising under state law form part of the same case and controversy and all claims arise from the same nucleus of operative facts. This Court also has jurisdiction over this action pursuant to 28 U.S.C. § 1332 because true diversity of the parties exists and the amount in controversy exceeds $75,000 including actual damages, punitive damages, civil penalties, reasonable attorney fees and costs.

4.

Tran was a citizen of the United States and an individual person residing in Oregon at all times material.

OlsenDaines, P.C.
US Bancorp Tower
111 SW 5th Ave., 31st Fl.
Portland, Oregon 97204
Direct 503-201-4570

5.

Wells Fargo was a citizen of South Dakota and a national association bank at all times material.

6.

The District of Oregon is the proper venue for this action pursuant to 28 U.S.C. § 1391 because Wells Fargo employed Tran in Oregon, a substantial part of the events or omissions giving rise to Tran's claims occurred in Oregon, Wells Fargo maintains offices in Oregon, Wells Fargo can be found in Oregon, Wells Fargo transacts business in Oregon, and Wells Fargo's presentation of its Servicer Participation Agreement ("SPA") and claims to the United States in connection with the Home Affordable Modification Program ("HAMP") were continuous and systematic, and involved customers who resided in Oregon.

7.

FACTUAL ALLEGATIONS

Wells Fargo hired Tran on or around February 16, 2004 as a Collector 2 at its call center in Vancouver, Washington. Tran was successful in this role and promoted to a Collector 3. Throughout Tran's time with Wells Fargo he had a strong performance and he received several pay raises.

8.

In or around November of 2012, Wells Fargo transferred its collections department, including Tran, from Vancouver, Washington to Beaverton, Oregon. Thereafter, Tran applied to transfer to a different department within the company.

OlsenDaines, P.C.
US Bancorp Tower
111 SW 5th Ave., 31st Fl.
Portland, Oregon 97204
Direct 503-201-4570

9.

On or around March 10, 2013, Tran transferred to the position of Home Equity Customer Service Specialist 4 in the home equity department.

10.

In his position as Customer Service Specialist 4, Tran was supervised by Sam Alshehri until approximately December of 2013. In or around December of 2013, Peter LeDonne ("LeDonne"), the Loan Document Specialist Supervisor, became Tran's supervisor.

11.

Wells Fargo employed at least 50 individuals within a 75-mile radius of Tran's workplace and employed at least 25 employees in the state of Oregon, at all times material.

12.

At all material times, Tran was supervised by Wells Fargo's employees or agents and Tran relied on the actual or apparent authority of Wells Fargo's employees, supervisors, and management to act for Wells Fargo.

13.

LeDonne supervised a unit in the home equity department that consisted of about 14 employees in Beaverton, and his department supervised another unit in Des Moines, Iowa. Tran's job within this unit was to address telephone questions and complaints from customers with Wells Fargo home mortgages.

OlsenDaines, P.C.
US Bancorp Tower
111 SW 5th Ave., 31st Fl.
Portland, Oregon 97204
Direct 503-201-4570

14.

Most calls that Tran received involved customers who had received letters from Wells Fargo indicating their mortgage balloon payments were due within 90 days, and that if they did not pay, their accounts would be referred to collections for foreclosure. When Wells Fargo received calls from customers with balloon payments due, its policy was to offer its customers financial products to avoid foreclosure, including HAMP loan modifications.

15.

In or around December of 2013, Tran received the first of what would be many similar phone calls. A husband and wife with an alleged balloon mortgage payment due called Wells Fargo and spoke with Tran. When Tran looked in the Clipper system for their loan contract he realized it was missing or nonexistent, and reported this to them.

16.

Tran promptly reported the issue with the customers to his supervisor and others within Wells Fargo. The next day, Tran received multiple emails from Wells Fargo headquarters that the loan documents were missing and that the company did not have the customers' contract. Despite this, Wells Fargo directed Tran to deceive the customers and treat the loan like a balloon payment was due.

17.

Tran was uncomfortable with this directive and reported to his supervisor that he believed it would be unethical and illegal for him to mislead customers. Tran also told his supervisor,

OlsenDaines, P.C.
US Bancorp Tower
111 SW 5th Ave., 31st Fl.
Portland, Oregon 97204
Direct 503-201-4570

LeDonne, that he had already told the customers that the loan documents were missing. LeDonne said he would meet with his managers and get back to Tran on what to do.

18.

The next day, LeDonne met with Tran and berated Tran for telling the customers the truth about their loan documents. LeDonne told Tran that Tran's job was in jeopardy and that Tran had placed Wells Fargo at risk by providing this information to the customers. LeDonne went on to say that Janice Norris ("Norris") and Vice President Lending Manager, Debbie Clausen ("Clausen") had directed that Tran have no more contact with these customers.

19.

From then on, Tran received many more calls from customers whose loan documents were missing or nonexistent. Tran began to notice many of the loans with missing documents had been acquired by Wells Fargo from First Union or Sun Trust Bank. As he was directed, whenever customers called in and Wells Fargo's loan documents were missing, Tran sent the matter to a supervisor.

20.

On or around March 4, 2014, Tran received a call from a co-worker from Iowa. The co-worker asked Tran about the customers Tran told that Wells Fargo had no loan documents for their loan. The customers had called for an update on their loan. Tran reported that he had referred the customers to his supervisors. Tran then asked his team lead, Heather Stone ("Stone"), about the issue. Stone told Tran that she planned to follow-up with the customers but it appeared they had hired an attorney.

OlsenDaines, P.C.
US Bancorp Tower
111 SW 5th Ave., 31st Fl.
Portland, Oregon 97204
Direct 503-201-4570

21.

Later that same day, Tran was called in to meet with his supervisor, LeDonne. When Tran walked into his office, LeDonne immediately blew up at him. LeDonne told Tran, "See, I told you before that we'll get sued and now they've hired an attorney!" LeDonne threatened Tran that he would be fired if he ever told another customer the truth about missing or nonexistent loan documents.

22.

On or around April 21, 2014, Tran received an email about a Wells Fargo internal policy stating that when Wells Fargo has lost loan documents, especially those securing a home, employees are to not share this information with customers under any circumstance.

23.

Tran was immediately uncomfortable with this secret internal policy and went to LeDonne to discuss it. Tran stressed that it was not right or legal to lie to customers. LeDonne cut Tran off and told him that the policy directive came from his boss, Kimberly Thrush ("Thrush"), and senior management.

24.

In May and June of 2014 Tran noticed LeDonne was treating him worse than other employees. LeDonne was cold to Tran and would not help him when he had questions.

25.

On or around June 20, 2014, Tran requested two days off to care for his son, who had a serious health condition. LeDonne denied Tran's request because he had training on the

OlsenDaines, P.C.
US Bancorp Tower
111 SW 5th Ave., 31st Fl.
Portland, Oregon 97204
Direct 503-201-4570

requested days. Tran argued that his son needed him but LeDonne told Tran he would be written up if he did not come to work. Ultimately Tran's leave was designated as protected OFLA leave by human resources but LeDonne was still furious with Tran. LeDonne told Tran that the next time Tran did this he would be fired. Tran tried to explain but LeDonne cut him off. LeDonne told Tran, who is Vietnamese, "You and your damn Asian accent. I never understand you!" Tran was shocked and hurt by LeDonne's racist comment. LeDonne did not apologize, and instead stormed off, leaving Tran stunned and worried for his job.

26.

On or around July 22, 2014, LeDonne told Tran he needed to meet with the Lending Manager, Thrush. Tran met with Thrush and was presented a "Memo of Understanding." The document appeared to be disciplinary and stated that Tran would be disciplined if he failed to attend the next scheduled training. Tran refused to sign the memo and explained his absence from the last training was legally protected. Tran then told Thrush that he was going to report this incident to human resources because he felt it was discriminatory.

27.

On or around July 23, 2014, Tran complained to human resources about discrimination by LeDonne. Among other things, Tran referenced LeDonne's racist comment regarding his accent. Tran spoke to two different human resources representatives about his concerns regarding LeDonne. Tran also shared that he feared he would be retaliated against because of his complaints of illegal activity.

OlsenDaines, P.C.
US Bancorp Tower
111 SW 5th Ave., 31st Fl.
Portland, Oregon 97204
Direct 503-201-4570

28.

Tran received no resolution to his discrimination complaint; instead, on or around August 26, 2014, Tran was called into a meeting with LeDonne. In the meeting LeDonne issued Tran an "Informal Warning" stating that his performance scores in June, July and August were below 95%. LeDonne said that Tran's calls had been reviewed by a quality assurance manager and it has been concluded that Tran was performing at 94% accuracy. Tran was skeptical and asked LeDonne if he could review the data from which this conclusion was reached. LeDonne became angry and told Tran that if he did not sign the warning then he would be subject to additional discipline.

29.

On or around August 28, 2014, Tran contacted an even higher manager, Senior Vice President of Home Lending Portfolio Operations Management, Alan Rose ("Rose"). Tran reported to Rose about LeDonne's illegal behavior. Rose told Tran he would handle Tran's complaints when he returned from vacation in September. In the meantime, Tran also contacted Clausen and human resources to continue to express his concerns about the work environment.

30.

Tran did not hear anything back from Rose, Clausen, or human resources. Instead, on or around September 9, 2014, Thrush and LeDonne called Tran in for a meeting. Both managers told Tran that he needed to sign the warning from LeDonne. Tran told Thrush and LeDonne that he had contacted Rose, Clausen, and human resources and was waiting to hear back from them. Thrush and LeDonne were visibly upset by this revelation and told Tran that his complaints to

OlsenDaines, P.C.
US Bancorp Tower
111 SW 5th Ave., 31st Fl.
Portland, Oregon 97204
Direct 503-201-4570

these managers were unnecessary. They then asked what Tran had reported and Tran told them that it was private. Tran then requested to return to work and they agreed.

31.

On or around September 24, 2014, Tran was allowed to listen to the calls that were the basis of his warning. Tran and LeDonne listened together and at the end LeDonne agreed that Tran's performance was higher than the required 95%. In the face of this irrefutable evidence, LeDonne agreed to withdraw the warning, and LeDonne admitted fault.

32.

The next day, on or around September 25, 2014, Tran met with Rose and Clausen. Tran shared with them the conclusion that his previous warning was baseless. Tran reported that he felt as though he was being discriminated against by LeDonne. Tran also explained he feared further retaliation as a result of his reports of illegal activity and he wanted to transfer to a new supervisor.

33.

Rose responded to Tran's report by discouraging Tran from complaining to him and human resources. Rose told Tran his complaints distracted them all from doing their work. Rose told Tran that time is money and Tran was costing the company money by bringing forward his complaints. Rose then ended the meeting by telling Tran that if he focused on his job everything would work out.

OlsenDaines, P.C.
US Bancorp Tower
111 SW 5th Ave., 31st Fl.
Portland, Oregon 97204
Direct 503-201-4570

34.

On or around September 29, 2014, Clausen asked Tran if he planned to try to transfer to another position within Wells Fargo and Tran replied that he did.

35.

On or around October 8, 2014, Tran arrived at work to find his computer disassembled. Tran asked a co-worked what happened and the co-worker said LeDonne and Thrush had taken the computer apart for an unknown reason. Tran tried to ask LeDonne about the computer but LeDonne just told Tran to go away. Tran put his computer back together and returned to work.

36.

Over the next several weeks Tran applied to internal positions throughout Wells Fargo. On or around November 4, 2014, Tran requested time off to attend a second interview with Wells Fargo's home preservation department. LeDonne attempted to interfere with Tran's ability to get the position by denying Tran's request for time off. However, Tran had human resources intervene and was able to attend the interview.

37.

On or around November 12, 2014, Tran had a second interview with another unit within Wells Fargo. The interview was for the same day and LeDonne again refused Tran's request for time off for the interview. Before Tran was able to resolve the issue again LeDonne called Tran in to discuss a customer call. LeDonne told Tran he was being investigated for "misbehavior" in that he did not say "hello" to a customer at the onset of the call. Tran asked to hear the phone call

OlsenDaines, P.C.
US Bancorp Tower
111 SW 5th Ave., 31st Fl.
Portland, Oregon 97204
Direct 503-201-4570

but LeDonne refused. LeDonne told Tran they would meet with the rest of the management team at the end of the day.

38.

Later that day, Tran was called into a meeting with LeDonne, Thrush, and Norris. LeDonne told Tran that based on the misbehavior they discussed earlier, Wells Fargo was terminating his employment. LeDonne then stood up and told Tran he needed to escort him out of the building.

39.

After Tran left the building he called human resources and asked why he had been terminated. The human resources representative told Tran that LeDonne reported he was terminated for “call avoidance.”

40.

Tran was again skeptical, as he had never avoided a call. In addition, he did not believe that he had engaged in the misbehavior of not saying “hello” to a customer. Further, Tran’s termination was not conducted in accordance with Wells Fargo’s customary progressive discipline procedure.

41.

Wells Fargo’s behavior as alleged above constituted a systematic campaign designed to discredit Tran and force him out of the company. Wells Fargo ultimately retaliated against Tran by wrongfully terminating his employment after he questioned its internal policy of fraudulently deceiving its customers.

OlsenDaines, P.C.
US Bancorp Tower
111 SW 5th Ave., 31st Fl.
Portland, Oregon 97204
Direct 503-201-4570

42.

Wells Fargo's policy of unfair deception negatively affected not only its employees and customers but also the American taxpayers. From 2009 until March 31, 2015, the United States paid out over $1.4 billion in HAMP incentives based on Wells Fargo loan modification applications. As of the date of this complaint, Wells Fargo has completed more than a million mortgage modifications through HAMP. Of the $1.4 billion paid based on Wells Fargo applications, only a relatively small fraction ($246,871,173.00) went to Wells Fargo's customers. The largest portions went directly to corporate investors ($825,776,921.00) and Wells Fargo ($359,151,497.00).

43.

Many of Wells Fargo's HAMP modifications, including some of the loans Tran was involved with, were based on materially false representations made by Wells Fargo about the quality of its mortgage loan documents.

44.

Wells Fargo fraudulently used the HAMP modification process to turn incomplete loan files into enforceable mortgages. Wells Fargo intentionally misled its customers and the United States by failing to disclose known material defects in its loan documents. Specifically, Wells Fargo's secret internal policy involved deceiving customers and the United States when Wells Fargo knew or suspected its loan files were missing documents.

OlsenDaines, P.C.
US Bancorp Tower
111 SW 5th Ave., 31st Fl.
Portland, Oregon 97204
Direct 503-201-4570

45.

The United States would not have paid any of the $1.4 billion in Wells Fargo HAMP incentives had it known of Wells Fargo's secret internal policy when Wells Fargo applied to participate as a servicer in HAMP back in 2009. Wells Fargo entered its SPA in 2009 with intent to illegally profit by unfairly deceiving its customers and the Untied States about the quality of its loan documents.

46.

Similarly, the United States would not have paid HAMP incentives on any of the Wells Fargo modification applications had it known Wells Fargo was using the HAMP process to turn unenforceable documents into enforceable documents, or that Wells Fargo was intentionally concealing that its loan files were missing necessary loan documents.

47.

Wells Fargo's secret internal policy proves it knew its representations to its customers and the United States were false when Wells Fargo made the representations. Specifically, Wells Fargo's internal policy email that Tran has made public for the first time in this complaint proves Wells Fargo's misrepresentations were not isolated incidents but a pattern and practice of unfair deception, in knowing violation of American common law, the Dodd-Frank Act, and the Oregon Unfair Trade Practices Act, ORS 646.608(1)(u), by reference to OAR 137-020-0805, which prohibits bad faith mortgage servicing practices. Wells Fargo is a "mortgage loan servicer" as that term is defined at OAR 137-020-0800.

OlsenDaines, P.C.
US Bancorp Tower
111 SW 5th Ave., 31st Fl.
Portland, Oregon 97204
Direct 503-201-4570

48.

On July 30, 2008, Congress enacted The Housing and Economic Recovery Act of 2008 (the "Recovery Act"), creating the Federal Housing Finance Agency (the "FHFA"). The FHFA was created in part to supervise mortgage servicers like Wells Fargo. The Recovery Act also gave the United States Treasury (the "Treasury") the authority to advance funds for the purpose of stabilizing the domestic housing market. The Recovery Act raised the Treasury's debt ceiling by $800 billion, to a total of $10.7 trillion.

49.

On September 6, 2008, about a month after the FHFA was created, the financial crisis worsened, and Fannie Mae and Freddie Mac entered receivership. On October 8, 2008, Congress enacted The Emergency Economic Stabilization Act of 2008 (the "Stabilization Act"), which authorized the Troubled Asset Relief Program ("TARP").

50.

Pursuant to sections 101 and 109 of the Stabilization Act, the Treasury established the Making Home Affordable ("MHA") program and other programs to stabilize the housing market by facilitating the modification of home mortgages and other loss mitigation options. These programs included HAMP, which reduced mortgage payments to affordable levels for qualifying borrowers and provided incentive payments to corporate investors and mortgage servicers like Wells Fargo.

OlsenDaines, P.C.
US Bancorp Tower
111 SW 5th Ave., 31st Fl.
Portland, Oregon 97204
Direct 503-201-4570

51.

To participate in HAMP, Wells Fargo entered an SPA with the Treasury in 2009, and later updated its SPA in 2010. Wells Fargo's SPA provided incentive payments to Wells Fargo and its corporate investors to modify mortgage loans under various MHA loss mitigation programs. Wells Fargo's participation in HAMP required that its loan documents, including its notes, mortgages, trust deeds, and other security documents, be fully enforceable. Wells Fargo's SPA, and individual Wells Fargo HAMP applications, constituted the presentment of a claim for the purposes of the False Claims Act.

52.

Wells Fargo acquired First Union in 2001, and several other banks through its fire sale acquisition of Wachovia in late 2008, including South Trust (acquired by Wachovia in 2004), Western Financial (acquired by Wachovia in 2006), Golden West Financial (acquired by Wachovia in 2006), and World Savings Bank (acquired by Wachovia in 2007). Upon inspecting its recently-acquired mortgage loan portfolios in 2009, Wells Fargo became aware various loan files had missing or incomplete mortgage documents and otherwise legally unenforceable security documents. Wells Fargo knew that these unenforceable mortgage documents did not qualify for HAMP modifications pursuant to its SPA but Wells Fargo, pursuant to its secret internal policy, caused customers to apply for HAMP modifications regardless. From 2009 to the date of this complaint, Wells Fargo illegally profited by taking HAMP incentives, and causing HAMP incentives to be paid, on non-qualifying loans, and encouraged customers to apply for HAMP modifications on non-qualifying loans, some of which Wells Fargo knew had

OlsenDaines, P.C.
US Bancorp Tower
111 SW 5th Ave., 31st Fl.
Portland, Oregon 97204
Direct 503-201-4570

incomplete, missing, forged or improper security documents, without telling the customers or the United States the truth about the quality of its loan document files.

53.

Prior to the filing of this complaint, there has been no "public disclosure," as that term is used in 31 U.S.C. § 3730(e)(4)(A), of the allegations or transactions upon which this action is based that involve Wells Fargo's internal policy to unfairly deceive its customers or the United States. Tran is the "original source" of this information and proof of Wells Fargo's secret internal policy, as that term is used in 31 U.S.C. § 3730(e)(4)(B).

54.

All administrative prerequisites to filing this action have been timely satisfied. Pursuant to 31 U.S.C. § 3730(b), contemporaneous to filing this complaint in camera under seal, and serving this complaint on the United States, Tran intends to disclose all material evidence and information in his possession to the United States, with notice that the evidence and information could require segregation from documents available to the public. Contemporaneous to the eventual service of this complaint on Wells Fargo, Tran intends all copies of any Wells Fargo documents to be returned to Wells Fargo.

55.

This complaint is based upon Tran's personal knowledge as to his behavior, and upon information and belief as to the behavior of others. At all times prior to filing this complaint, Tran possessed no original Wells Fargo documents. Prior to his wrongful termination from Wells Fargo, and before retaining counsel, Tran copied certain Wells Fargo documents on one isolated

OlsenDaines, P.C.
US Bancorp Tower
111 SW 5th Ave., 31st Fl.
Portland, Oregon 97204
Direct 503-201-4570

occasion, to preserve evidence for the United States. Any Wells Fargo documents disclosed to the United States or returned to Wells Fargo were quarantined from Tran's counsel, and were solely handled by an independent third-party litigation support services company. The litigation support company did not review or otherwise obtain any information from any copies of Wells Fargo documents. Other than the single one-paragraph secret internal policy email sent to Tran from his supervisor at Wells Fargo, attached as Exhibit 1, at no time did counsel for Tran ever review or possess any original Wells Fargo documents or copies of any Wells Fargo documents. As of the date of this complaint, neither Tran or his counsel possess any original Wells Fargo documents. Other than Exhibit 1, at no time has Tran's counsel learned of any information from Wells Fargo documents that may be considered confidential. At no time has Tran or Tran's counsel ever learned of any Wells Fargo information that might be considered privileged or trade secret.

56.

As a direct and proximate result of Wells Fargo's illegal retaliation and wrongful termination as alleged in this complaint, Tran suffered economic loss including and not limited to back pay, front pay, lost retirement benefits, lost insurance benefits, damage to career, and expenses.

57.

As a direct and proximate result of Wells Fargo's illegal retaliation and wrongful termination as alleged in this complaint, Tran suffered emotional harm including and not limited to embarrassment, anxiety, depression, lack of confidence in the banking system, low self-

OlsenDaines, P.C.
US Bancorp Tower
111 SW 5th Ave., 31st Fl.
Portland, Oregon 97204
Direct 503-201-4570

esteem, inability to sleep, lack of enjoyment of activities, upset stomach, anger, frustration, hopelessness, and other negative emotions consistent with wrongful termination.

58.

Wells Fargo should pay punitive damages in accordance with the harm it caused Tran, in an amount that will deter it from breaking the law in the future. Wells Fargo is a national financial services company, providing banking, insurance, investments, mortgage, and consumer and commercial finance services through more than 8,700 locations. Wells Fargo maintains an office in Beaverton, Oregon, where Tran worked. Wells Fargo Bank, N.A.'s parent company, Wells Fargo & Co. is worth over $280 billion. Upon discovery of information that Wells Fargo & Co., or other Wells Fargo related entities are proper parties in interest in this action, Tran intends to amend this complaint to substitute or add defendants.

59.

As a direct and proximate result of Wells Fargo's illegal retaliation and wrongful termination as alleged in this complaint, Tran incurred attorney fees and costs.

OlsenDaines, P.C.
US Bancorp Tower
111 SW 5th Ave., 31st Fl.
Portland, Oregon 97204
Direct 503-201-4570

60.

CAUSES OF ACTION

CLAIM ONE

The Family and Medical Leave Act

Medical Leave Interference, Discrimination and Retaliation

29 U.S.C. § 2601 *et seq.*

Tran re-alleges all of the above paragraphs by reference.

61.

Wells Fargo's behavior as alleged above violated the FMLA because it interfered with, discriminated, and retaliated against Tran for utilizing his protected medical leave by attempting to discipline, harass, and by eventually terminating Tran.

62.

Tran had been employed by Wells Fargo for 12 months and had performed at least 1,250 hours of service for Wells Fargo during the preceding 12 month period, at all times material.

63.

Tran's son suffered from a serious health condition at all times material.

64.

Tran utilized and attempted to utilize leave that was protected under the FMLA.

65.

Wells Fargo's behavior as alleged above violated 29 U.S.C. § 2601 *et seq.*, causing Tran to suffer damages.

OlsenDaines, P.C.
US Bancorp Tower
111 SW 5th Ave., 31st Fl.
Portland, Oregon 97204
Direct 503-201-4570

66.

As a result of Wells Fargo's violation of the FMLA, Tran has incurred and continues to incur economic damages in an amount to be proven at trial. Tran will continue to have lost income and benefits in the future.

67.

Wells Fargo acted willfully and with knowledge that its actions were in violation of FMLA and with reckless disregard of whether it was violating the FMLA, entitling Tran to liquidated damages for Wells Fargo's violation of his FMLA rights in an amount equal to the sum of Tran's lost wages and benefits, plus prejudgment interest pursuant to 29 U.S.C. § 2617(a)(1)(A)(iii), and reasonable attorney fees and costs pursuant to § 2617(a)(3).

68.

CLAIM TWO

The Oregon Family Leave Act

Interference, Discrimination and Retaliation

ORS 659A.183

Tran re-alleges all of the above paragraphs by reference.

69.

Tran worked for a period of at least 180 calendar days immediately preceding his OFLA-qualifying leave, and worked on average at least 25 hours per week at all times material.

70.

Tran's son suffered from a serious health condition at all times material.

OlsenDaines, P.C.
US Bancorp Tower
111 SW 5th Ave., 31st Fl.
Portland, Oregon 97204
Direct 503-201-4570

71.

Tran utilized and attempted to utilize leave that was protected under the OFLA.

72.

As alleged above, Wells Fargo denied, interfered with, discriminated and retaliated against Tran for utilizing protected medical leave by taking adverse employment actions against Tran, including attempting to discipline him, harassing, and ultimately terminating him.

73.

As a result of Wells Fargo's violation of the OFLA, Tran has incurred and continues to incur economic damages in an amount to be proven at trial. Tran will continue to have lost income and benefits in the future.

74.

Pursuant to ORS 20.107 and ORS 659A.885, Tran is entitled to recover actual damages, punitive damages, reasonable attorney fees, and costs.

75.

CLAIM THREE

Whistleblower Retaliation

ORS 659A.199

Tran re-alleges all of the above paragraphs by reference.

76.

Wells Fargo's behavior as alleged above violated ORS 659A.199 because it retaliated against Tran in the terms and conditions of his employment by terminating him in substantial

OlsenDaines, P.C.
US Bancorp Tower
111 SW 5th Ave., 31st Fl.
Portland, Oregon 97204
Direct 503-201-4570

part because he opposed and reported in good faith information he believed to be illegal behavior and in violation of state and federal law governing mortgage servicing.

77.

Wells Fargo’s violation of ORS 659A.199 directly and proximately caused Tran economic loss and emotional harm as alleged above, in amounts to be decided by the jury.

78.

Wells Fargo’s behavior as alleged above was willful, malicious, and done with reckless indifference to Tran’s state-protected rights, and Wells Fargo should be assessed punitive damages in an amount to be determined by the jury.

79.

Pursuant to ORS 20.107 and ORS 659A.885, Tran is entitled to recover actual damages, punitive damages, reasonable attorney fees, and costs.

80.

CLAIM FOUR

Race and National Origin Discrimination and Harassment

ORS 659A.030(a) and (b)

Tran re-alleges all of the above paragraphs by reference.

81.

Wells Fargo’s behavior as alleged above violated ORS 659A.030(a) and (b) because Wells Fargo treated Tran adversely with respect to compensation and other terms of employment

OlsenDaines, P.C.
US Bancorp Tower
111 SW 5th Ave., 31st Fl.
Portland, Oregon 97204
Direct 503-201-4570

by discharging Tran, and Tran's race and national origin were substantial factors in Wells Fargo's adverse treatment.

82.

Wells Fargo's violation of ORS 659A.030 directly and proximately caused Tran economic loss and emotional harm as alleged above, in amounts to be decided by the jury.

83.

Wells Fargo's behavior as alleged above was willful, malicious, and done with reckless indifference to Tran's state-protected rights, and Wells Fargo should be assessed punitive damages in an amount to be determined by the jury.

84.

Pursuant to ORS 20.107 and ORS 659A.885, Tran is entitled to recover actual damages, punitive damages, reasonable attorney fees, and costs.

85.

CLAIM FIVE

Retaliation

ORS 659A.030(f)

86.

Tran re-alleges all of the above paragraphs by reference.

87.

Wells Fargo's behavior as alleged above violated ORS 659A.030(f) because it treated Tran adversely with respect to compensation and other terms of employment by discharging

OlsenDaines, P.C.
US Bancorp Tower
111 SW 5th Ave., 31st Fl.
Portland, Oregon 97204
Direct 503-201-4570

Tran, and Wells Fargo subjected Tran to retaliation based on his opposing unlawful practices, including and not limited to racial harassment and discrimination, national origin harassment and discrimination, and fraud, and Tran's opposition of unlawful practices was a substantial factor in Wells Fargo's adverse treatment.

88.

Wells Fargo's violation of ORS 659A.030 directly and proximately caused Tran economic loss and emotional harm as alleged above, in amounts to be decided by the jury.

89.

Wells Fargo's behavior as alleged above was willful, malicious, and done with reckless indifference to Tran's state-protected rights, and Wells Fargo should be assessed punitive damages in an amount to be determined by the jury.

90.

Pursuant to ORS 20.107 and ORS 659A.885, Tran is entitled to recover actual damages, punitive damages, reasonable attorney fees, and costs.

OlsenDaines, P.C.
US Bancorp Tower
111 SW 5th Ave., 31st Fl.
Portland, Oregon 97204
Direct 503-201-4570

91.

CLAIM SIX

Wrongful Discharge in Violation of Public Policy

Tran re-alleges all of the above paragraphs by reference.

92.

At all materials times, the public policy of Oregon prohibited an employer from retaliating against an employee for opposing or reporting in good faith what he believed to be illegal behavior and policies in violation of state and federal law governing mortgage servicing.

93.

This public policy is embodied in the common law, statutes, and regulations of the State of Oregon and the United States including, but not limited to ORS 659A.030, ORS 659A.199, ORS 659A.233, OAR 839-005-0000 *et seq.* and OAR 839-010-0000 *et seq.*, the FMLA, and the OFLA.

94.

Wells Fargo, acting through its agents and employees, violated the above public policies by retaliating against Tran for opposing and making good faith complaints about unlawful behavior.

95.

Wells Fargo's discharge of Tran was taken in retaliation for Tran's pursuit and exercise of his rights, which are of important public interest.

OlsenDaines, P.C.
US Bancorp Tower
111 SW 5th Ave., 31st Fl.
Portland, Oregon 97204
Direct 503-201-4570

96.

Wells Fargo's wrongful retaliation and discharge directly and proximately caused Tran economic loss and emotional harm as alleged above, in amounts to be decided by the jury.

97.

Wells Fargo's behavior as alleged above was willful, malicious, and done with reckless indifference to Tran's state-protected rights, and Wells Fargo should be assessed punitive damages in an amount to be determined by the jury.

98.

As a result of Wells Fargo's behavior as alleged above, Tran is entitled to recover actual damages, punitive damages, and pursuant to ORS 20.107, reasonable attorney fees, and costs.

99.

CLAIM SEVEN

False Claims Act

31 U.S.C. § 3729 *et seq.*

Tran re-alleges all of the above paragraphs by reference.

100.

Wells Fargo's behavior as alleged above violated the False Claims Act because Wells Fargo knowingly, and in deliberate ignorance and reckless disregard for the truth, intentionally made false representations about the quality of its mortgage loan documents to the United States, and Wells Fargo intentionally presented claims, including its SPA and individual Wells Fargo HAMP applications, and encouraged its customers to present claims under HAMP, that Wells

OlsenDaines, P.C.
US Bancorp Tower
111 SW 5th Ave., 31st Fl.
Portland, Oregon 97204
Direct 503-201-4570

Fargo knew contained false representations about the quality of Wells Fargo's loan documents to the United States, and which were capable of influencing the United States, and did actually materially influence and cause the United States to pay over $1.4 billion in HAMP incentives that it otherwise would not have paid, from 2009 to the date of this complaint.

101.

Pursuant to 31 U.S.C. § 3729 *et seq.*, Tran is entitled to recover civil penalties and damages on behalf of the United States, and pursuant to 31 U.S.C. § 3730(h), Tran is entitled to recover all relief necessary, including maximum damages, attorney fees, and costs, caused by Wells Fargo's violation of the False Claims Act and subsequent retaliatory actions.

102.

DEMAND FOR JURY TRIAL.

WHEREFORE, after an order determining that Wells Fargo violated the Medical Leave Act, the Oregon Family Leave Act, ORS 659A.199, ORS 659A.030, and the False Claims Act, Tran seeks judgment in his favor against Wells Fargo for the following:

A. For a permanent injunction prohibiting Wells Fargo from retaliating against other employees who refuse to lie to customers about the quality of its loan documents;

B. Actual damages including economic losses and emotional harm caused by Wells Fargo's illegal retaliation and wrongful termination, in amounts to be decided by the jury;

OlsenDaines, P.C.
US Bancorp Tower
111 SW 5th Ave., 31st Fl.
Portland, Oregon 97204
Direct 503-201-4570

C. Punitive damages in relation to the harm Wells Fargo caused Tran, in an amount to be decided by the jury that will deter Wells Fargo from breaking the law in the future;

D. Reasonable attorney fees and costs in an amount to be decided by the Court after trial;

E. For a permanent injunction prohibiting Wells Fargo from continuing to unfairly deceive its customers and the United States about the quality of its loan documents, and for maximum damages, civil penalties, costs, attorney fees, and expenses available under 31 U.S.C. § 3729 *et seq.* and 31 U.S.C. § 3730(h); and

F. Any other equitable relief this Court may determine to be fair and just.

DATED: June 4, 2015

RESPECTFULLY FILED,

s/ Michael Fuller

Michael Fuller, Oregon Bar No. 09357
Lead Attorney for Plaintiff
OlsenDaines, P.C.
US Bancorp Tower
111 SW 5th Ave., 31st Fl.
Portland, Oregon 97204
michael@underdoglawyer.com
Direct 503-201-4570

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF OREGON

PORTLAND DIVISION

UNITED STATES OF AMERICA EX REL. DUKE TRAN,

Plaintiff-Relator,

v.

WELLS FARGO BANK, N.A.,

Defendant.

Case No. 3:15-cv-979

EXHIBIT COVER PAGE

Exhibit 1

OlsenDaines, P.C.
US Bancorp Tower
111 SW 5th Ave., 31st Fl.
Portland, Oregon 97204
Direct 503-201-4570

Tran, Duke

From: Dieter, Christopher
Sent: Tuesday, April 29, 2014 10:47 AM
To: Tran, Duke
Subject: RE: Reminder!

Follow Up Flag: Follow up
Flag Status: Flagged

Categories: Red Category

Chris Dieter

NMLSR # 1078290
Customer Service Representative
Customer Specialty Services

Wells Fargo Home Equity | 18700 NW Walker Road #92 | Beaverton , OR 97006-2950
MAC P6051-01A
Tel 877-221-1608 | Fax 866-238 6879

Christopher.Dieter@wellsfargo.com

From: Moreland, Caz
Sent: Monday, April 21, 2014 11:54 AM
To: Boyer, Jonathon R.; Dieter, Christopher; Figueroa-jaimes, Eliana; Francis, Jessica; Hager, Kathleen R.; Hughes, Stephanie; Lattion, Tammy L.; Mcguire, Marci A.; Palumbo, Janice L.; Peebles, Tyler D.; Phosavang, Sammy; Simantel, Mishe M.; Stone, Elijah B.; Tran, Duke
Cc: Ledonne, Peter
Subject: Reminder!

Hi Guys just a reminder,

Please remember when you come across a situation where we have a lost contract, deed, any type of document, really, but especially when it relates to securing a property, we are not to share that with the customer. It's ok to say that we need to do further research or something similar (and then escalate the situation to a leader), but if we find in the notes (or elsewhere) that we have a property where we don't have a security document on file, that is not something we would share with the customer under any circumstance.

Thank you