

1 Jahan C. Sagafi (Cal. Bar No. 224887)
2 Rachel Dempsey (Cal. Bar No. 310424)
3 OUTTEN & GOLDEN LLP
4 One California Street, 12th Floor
5 San Francisco, California 94111
6 Telephone: (415) 638-8800
7 Facsimile: (415) 638-8810
8 jsagafi@outtengolden.com
9 rdempsey@outtengolden.com

7 Ossai Miazad*
8 Michael N. Litrownik*
9 685 Third Avenue, 25th Floor
10 New York, NY 10017
11 Telephone: (212) 245-1000
12 Facsimile: (646) 509-2060
13 om@outtengolden.com
14 mlitrownik@outtengolden.com

12 *Attorneys for Plaintiff and the Proposed Class*

14 UNITED STATES DISTRICT COURT
15 NORTHERN DISTRICT OF CALIFORNIA
16 SAN FRANCISCO DIVISION

17 EDUARDO PEÑA, individually and on behalf
18 of all others similarly situated,

18 Plaintiff,

19 v.

20 WELLS FARGO BANK, N.A.,

21 Defendant.

**COMPLAINT FOR VIOLATIONS OF
42 U.S.C. § 1981 AND THE EQUAL
CREDIT OPPORTUNITY ACT, 15 U.S.C.
§ 1691, et seq.**

CLASS ACTION

DEMAND FOR JURY TRIAL

1 Plaintiff Eduardo Peña (“Plaintiff”), individually and on behalf of all others similarly situated, by
2 his attorneys, brings the following allegations against Defendant Wells Fargo Bank, N.A. (“Wells
3 Fargo” or “Defendant”):

4 **INTRODUCTION AND SUMMARY OF CLAIM**

5 1. Plaintiff brings this case against Wells Fargo for unlawful alienage discrimination in
6 violation of the Civil Rights Act of 1866, as codified by 42 U.S.C. § 1981 (“Section 1981”), and for
7 failure to provide him written notice of his credit denial with an accurate statement of the reasons for the
8 denial in violation of the Equal Credit Opportunity Act, 15 U.S.C. § 1691, *et seq.* (“ECOA”).

9 2. Wells Fargo’s auto loan line of business, as a matter of policy, treats non-United States
10 citizens who reside in the United States and hold Deferred Action for Childhood Arrivals (“DACA”)
11 status as categorically ineligible for auto loans even where such DACA applicants have valid Social
12 Security numbers and federal work authorization and regardless of their creditworthiness and ability to
13 satisfy the bank’s auto loan underwriting criteria. Wells Fargo’s policy of denying aliens with DACA
14 status the opportunity to contract for credit is discriminatory and unlawful under Section 1981.

15 3. In addition, Wells Fargo fails to provide DACA recipients who are denied auto loans a
16 written notice of adverse action with an accurate statement of the reasons for their denial, in violation of
17 ECOA.

18 4. Wells Fargo’s discriminatory auto loan policies are of a piece with the bank’s broader
19 discriminatory consumer lending policies. Plaintiff is similarly ineligible for a Wells Fargo student
20 loan, unsecured credit card, personal loan, and small business loan due to his status under DACA.¹

21 5. Wells Fargo has a long history of credit discrimination claims against it. Seven years
22 ago, the bank settled a lending discrimination case brought by the Department of Justice for \$175
23 million.² The same year, the bank paid Tennessee towns \$432 million to settle lending discrimination
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25 ¹ Dena Aubin, *Immigrants denied credit by Wells Fargo may sue bank, judge says*, Reuters
26 (August 4, 2017), <https://www.reuters.com/article/us-wells-fargo-immigration/immigrants-denied-credit-by-wells-fargo-may-sue-bank-judge-says-idUSKBN1AK1VK>.

27 ² Rick Rothacker and David Ingram, *Wells Fargo to pay \$175 million in race discrimination*
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1 claims.³ More recently, the cities of Oakland, Sacramento, and Philadelphia separately sued the bank
 2 for steering African American and Hispanic borrowers into high-cost loans even though they qualified
 3 for loans on less onerous terms.⁴

4 6. The discrimination claims against Wells Fargo have extended outside the lending realm.
 5 Two years ago, the bank paid out \$35.5 million to settle a class action lawsuit alleging that it
 6 discriminated against African-American financial advisors.⁵

7 PARTIES

8 *Plaintiff Eduardo Peña*

9 7. Plaintiff Eduardo Peña is a resident of Berwyn, Illinois. He is employed as a tax
 10 manager.

11 8. Mr. Peña was born in Mexico and obtained status under DACA along with a Social
 12 Security number and federal work authorization in or around 2012. He has since renewed his DACA
 13 status approximately three times.

14 *Defendant*

15 9. Wells Fargo is an American multinational banking and financial services company
 16 headquartered in San Francisco, California. It is the fourth largest bank in the United States.

17 10. Wells Fargo Bank, N.A. is a South Dakota corporation authorized to do business in this
 18 state.

19 _____
 20 *probe*, *Reuters* (July 12, 2012), <https://www.reuters.com/article/us-wells-lending-settlement/wells-fargo-to-pay-175-million-in-race-discrimination-probe-idUSBRE86B0V220120712>.

21 ³ Rick Rothacker, *Wells Fargo Settles Discriminatory Lending Suit, Pays Tennessee Towns*
 22 *Memphis, Shelby \$432 Million*, *Huffington Post* (May 29, 2012),
https://www.huffpost.com/entry/wells-fargo-discriminatory-lending_n_1554533.

23 ⁴ Ben Lane, *Sacramento sues Wells Fargo over lending discrimination*, *HousingWire* (Feb. 28,
 24 2018), [https://www.housingwire.com/articles/42637-sacramento-sues-wells-fargo-over-lending-](https://www.housingwire.com/articles/42637-sacramento-sues-wells-fargo-over-lending-discrimination)
 25 [discrimination](https://www.housingwire.com/articles/42637-sacramento-sues-wells-fargo-over-lending-discrimination); Ben Lane, *Federal court: Wells Fargo must face Oakland's mortgage discrimination*
 26 *lawsuit*, *HousingWire* (July 19, 2018), [https://www.housingwire.com/articles/43718-federal-court-wells-](https://www.housingwire.com/articles/43718-federal-court-wells-fargo-must-face-oaklands-mortgage-discrimination-lawsuit)
 27 [fargo-must-face-oaklands-mortgage-discrimination-lawsuit](https://www.housingwire.com/articles/43718-federal-court-wells-fargo-must-face-oaklands-mortgage-discrimination-lawsuit).

28 ⁵ Mason Braswell, *Wells Fargo Advisors to Pay \$35.5 Million to Settle Race Discrimination Suit*,
 29 *AdvisorHub* (Jan. 3, 2017), [https://advisorhub.com/wells-fargo-advisors-pay-35-5-million-settle-race-](https://advisorhub.com/wells-fargo-advisors-pay-35-5-million-settle-race-discrimination-suit/)
 30 [discrimination-suit/](https://advisorhub.com/wells-fargo-advisors-pay-35-5-million-settle-race-discrimination-suit/).

1 11. Wells Fargo Bank, N.A. is a national bank and the primary United States operating
2 subsidiary of Wells Fargo.

3 12. Wells Fargo Bank, N.A. offers consumers a range of financial and credit products,
4 including private student loans, credit cards, small business loans and credit products, personal loans,
5 auto loans, and home mortgages.

6 13. Wells Fargo Bank, N.A., by soliciting, conducting, and transacting business in the state
7 of California, engages in continuous, permanent, and substantial activity within the state.

8 14. Wells Fargo Bank, N.A. is not a federal enclave and therefore is subject to Plaintiffs'
9 Section 1981 claim.

10 **JURISDICTION AND VENUE**

11 15. This Court has subject matter jurisdiction over Plaintiffs' Section 1981 and ECOA claims
12 pursuant to 28 U.S.C. § 1331. This Court also has subject matter jurisdiction over Plaintiff's ECOA
13 claims pursuant to 15 U.S.C. § 1691e(f).

14 16. This Court is empowered to issue a declaratory judgment pursuant to 28 U.S.C. §§ 2201
15 and 2202.

16 17. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b)(2) because a substantial
17 part of the events or omissions giving rise to the claims occurred in this district and Wells Fargo
18 conducts business within this district.

19 18. Intradistrict assignment: Pursuant to N.D. Cal. Local Rules 3-2(c) and (d), intradistrict
20 assignment to the San Francisco Division is proper because a substantial part of the events which give
21 rise to the claims asserted herein occurred at Wells Fargo's headquarters located in San Francisco
22 County.

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BACKGROUND

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19. On June 15, 2012, President Obama announced that the Department of Homeland Security (“DHS”) would no longer remove certain young immigrants under its authority to grant deferred action as embodied in DACA.

20. DACA’s purpose, according to President Obama, was to “[stop] expel[ling] talented young people, who . . . [have] been raised as Americans; understand themselves to be part of this country . . . [and] who want to staff our labs, or start new businesses, or defend our country.”⁶

21. DACA is a form of deferred action, a discretionary grant of authorized stay by the federal government. Deferred action granted through DACA is valid for two years and is subject to renewal thereafter.

22. DACA mandates that persons who are granted deferred action will be eligible to obtain an Employment Authorization Document (an “EAD” or “federal work permit”) and a Social Security number. In other words, those granted deferred action and in possession of an EAD are legally authorized to work in the United States and can prove their identity.

23. Over 800,000 individuals have been initially approved for DACA status in the United States, around 80% of whom were born in Mexico.⁷

24. There is no federal or state law or regulation that restricts banks from providing financial products to customers because the customer is an alien. Under federal law, alienage is merely one factor among many used to verify enough information to confirm the true identity of the customer.

25. For instance, the Federal Financial Institutions Examination Council (“FFIEC”) provides uniform principles and standards to offer guidance for federal regulators. The FFIEC annually publishes

⁶ President Obama, Remarks by the President on Immigration (June 15, 2012), *available at* <http://www.whitehouse.gov/the-press-office/2012/06/15/remarks-president-immigration> (last visited July 16, 2019).

⁷ USCIS, Approximate Active DACA Recipients: Country of Birth As of February 28, 2019, *available at* https://www.uscis.gov/sites/default/files/USCIS/Resources/Reports%20and%20Studies/Immigration%20Forms%20Data/All%20Form%20Types/DACA/2_Approximate_Active_DACA_Recipients_Demographics_-_Feb_28_2019.pdf (last visited July 16, 2019).

1 the Bank Secrecy Act/Anti-Money Laundering Examination Manual for Money Services, which
 2 contains a compliance program called the Customer Identification Program (“CIP”), as required by
 3 section 326 of the USA PATRIOT Act, 31 U.S.C. § 5318. Pursuant to CIP, institutions providing
 4 financial services, including banks, must have a written policy in place to enable them to form a
 5 reasonable belief that they know the true identity of each customer. The goal behind this requirement is
 6 to prevent the funding of terrorism both inside and outside of the United States.⁸

7 26. According to the Bank Secrecy Act/Anti-Money Laundering Examination Manual, a
 8 bank’s CIP must contain account-opening procedures detailing the identifying information that must be
 9 obtained from each customer. At a minimum, the bank must obtain the following information from each
 10 customer before opening an account: 1) name, 2) date of birth, 3) address, and 4) identification number
 11 (e.g., Social Security number, taxpayer identification number or an alien identification number).⁹

12 27. The bank’s procedure must also describe when it will use documents, non-documentary
 13 methods, or a combination of both. Federal banking agencies expect that banks will review an
 14 unexpired government-issued form of identification from most customers. The identification must
 15 include evidence of the customer’s nationality or residence and bear a photograph or similar
 16 safeguard.¹⁰

17 28. Compliance with the CIP is to ensure that a bank verify enough information to form a
 18 reasonable belief that it knows the true identity of the customer.¹¹

22 ⁸ See 12 C.F.R. § 208.63(b), § 211.5(m), § 211.24(j) (Board of Governors of the Federal Reserve
 23 System); 12 C.F.R. § 326.8(b) (Federal Deposit Insurance Corporation); 12 C.F.R. § 748.2(b) (National
 24 Credit Union Administration); 12 C.F.R. § 21.21 (Office of the Comptroller of the Currency); 12 C.F.R.
 § 563.177(b) (Office of Thrift Supervision); and 31 C.F.R. § 103.121 (FinCEN).

25 ⁹ Fed. Fin. Inst. Examination Council, Bank Secrecy Act/Anti-Money Laundering Examination
 26 Manual, Regulatory Requirements, Customer Identification Program (2010), *available at*
<https://bsaaml.ffiec.gov/manual/RegulatoryRequirements/01> (last visited July 16, 2019).

27 ¹⁰ *Id.*

¹¹ *Id.*

1 29. “Opening an account” and a financial services “customer” for purposes of the Bank
2 Secrecy Act/Anti Money Laundering Examination Manual for Money Services includes an individual
3 who has applied for a loan application.¹²

4 **STATEMENT OF FACTS**

5 **Plaintiff Peña**

6 30. Mr. Peña is a DACA recipient with an Employment Authorization Document (an EAD or
7 federal work permit) and a valid Social Security number.

8 31. In or around November 2018, Mr. Peña submitted an online application for an auto loan
9 through the Wells Fargo website because he and his wife wanted to purchase a second car. When the
10 online application requested that he enter his citizenship status, Mr. Peña selected the option for non-
11 resident alien.

12 32. After Mr. Peña submitted his application, he received a phone call from a Wells Fargo
13 representative to process the loan. The Wells Fargo representative provided him with additional
14 paperwork to complete and asked him for a copy of his Social Security card. When Mr. Peña provided
15 his Social Security card, the Wells Fargo representative asked him for a copy of his work permit. When
16 he provided his work permit, the representative told him he was ineligible for the loan because his
17 DACA status expired within the loan period. Mr. Peña explained that his status would be renewed and
18 that work authorization under DACA is for two-year periods. The representative told Mr. Peña that he
19 could not be approved for an auto loan.

20 33. Wells Fargo did not consider Mr. Peña’s actual creditworthiness for the auto loan or his
21 ability to meet its underwriting criteria for the loan.

22 34. Wells Fargo conducted a hard credit check on Mr. Peña’s credit as a part of his
23 application. His credit score was 748. This hard credit check resulted in a derogatory mark on Mr.
24 Peña’s credit report.

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¹² *Id.*

1 35. Mr. Peña then requested that Wells Fargo send him a written explanation for his auto
2 loan denial, but never received one that accurately stated the reason for his denial of credit.

3 36. Mr. Peña suffered harm as a result of Wells Fargo’s denial of his auto loan application
4 and failure to provide him with an accurate written explanation for the denial.

5 **Wells Fargo’s Policies Are Unlawful and Harm Plaintiff**

6 37. Wells Fargo’s policy of making Plaintiff ineligible to contract for credit because Plaintiff
7 is neither a U.S. citizen nor permanent resident is a violation of 42 U.S.C. § 1981.

8 38. Wells Fargo’s failure to provide Plaintiff with a written notice of adverse action with an
9 accurate statement of the reasons for his denial of credit is a violation of 15 U.S.C. § 1591 and 12 C.F.R.
10 § 1002.9(a).

11 39. There is an actual and substantial controversy between Plaintiff and Wells Fargo.

12 **CLASS ACTION ALLEGATIONS**

13 40. Plaintiff brings his class allegations under Fed. R. Civ. P. 23(a), (b)(2), and (b)(3) on
14 behalf of two nationwide classes, each consisting of all non-United States citizens who resided in the
15 United States and held DACA status at the time they applied for a Wells Fargo auto loan (“DACA
16 Residents”) from July 16, 2017 through the date of final judgment in this action (“Covered Period”).

17 41. Plaintiff brings class allegations under Fed. R. Civ. P. 23(a), (b)(2), and (b)(3) on behalf
18 of DACA Residents in the Covered Period who were declined an auto loan by Wells Fargo (the “Section
19 1981 Class”).

20 42. Plaintiff also brings class allegations under Fed. R. Civ. P. 23(a), (b)(2), and (b)(3) on
21 behalf of DACA Residents in the Covered Period who were declined an auto loan by Wells Fargo and
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1 did not receive a written notice of adverse action with an accurate statement of the reasons for the denial
2 (the “ECOA Class”).

3 43. Plaintiff is a member of both the Section 1981 Class and ECOA Class (collectively,
4 “Class Members”).

5 44. Class Members are so numerous that joinder of all of them is impracticable. Wells Fargo
6 has offices throughout the United States and is one of the largest auto lenders in the country, and over
7 800,000 individuals have been approved for DACA status since 2012.

8 45. There are questions of law and fact common to each Class, and these questions
9 predominate over any questions affecting only individual members. Common questions include, among
10 others: (1) whether Wells Fargo maintains policies that make Plaintiff and Class Members ineligible for
11 auto loans due to Plaintiff’s and Class Members’ alienage; (2) whether Wells Fargo’s policies as set
12 forth above deprive Plaintiff and Class Members of the right to contract in violation of Section 1981; (3)
13 whether Wells Fargo has failed to provide Class Members with written explanations of the accurate
14 reasons for their denial of credit in violation of ECOA; (4) whether Plaintiff and Class Members
15 suffered harm by reason of Wells Fargo’s unlawful policies; (5) whether Plaintiff and Class Members
16 are entitled to punitive damages or any other type of damages; (6) whether Plaintiff and Class Members
17 are entitled to equitable and injunctive relief, and if so, what equitable and injunctive relief is warranted;
18 and (7) the scope of a resulting permanent injunction.

19 46. Plaintiff’s claims are typical of the claims of the Class Members: (1) Plaintiff was within
20 the jurisdiction of the United States and held DACA status; (2) Plaintiff applied to Wells Fargo for an
21 auto loan; (3) Plaintiff was declined credit because he did not meet Wells Fargo’s citizenship
22 requirements; and (4) Plaintiff did not receive a written notice stating the accurate reasons for his denial
23 of credit. Each of these claims is substantially shared by every Class Member. Each of the claims arises
24 from the same course of conduct by Wells Fargo, and the relief sought is common.

25 47. Plaintiff will fairly and adequately represent and protect the interests of the Class
26 Members. Plaintiff has no conflict with any Class Member. Plaintiff is committed to the goal of having
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1 Wells Fargo change its business practices to stop discriminating against Plaintiff and others who hold
2 DACA status and to ensure Wells Fargo's compliance with ECOA's written notification requirement.

3 48. Plaintiff has retained counsel competent and experienced in complex lending
4 discrimination class actions.

5 49. The universe of people affected by Wells Fargo's unlawful policies is ascertainable
6 through Wells Fargo's company records, logs, and data and therefore the proposed class is ascertainable.

7 50. Class certification is appropriate pursuant to Fed. R. Civ. P. 23(b)(2) because Wells
8 Fargo has acted and/or refused to act on grounds generally applicable to the Class, making appropriate
9 declaratory, equitable, and injunctive relief with respect to Plaintiff and the Class Members as a whole.
10 Wells Fargo makes Class Members ineligible for auto loans due to their alienage and Wells Fargo also
11 fails to provide Class Members with accurate written notice as to the reasons for their auto loan denials.
12 The Class Members are entitled to declaratory, equitable, and injunctive relief to end Wells Fargo's
13 common, unfair, and discriminatory policies.

14 51. Class certification is also appropriate pursuant to Fed. R. Civ. P. 23(b)(3) because
15 common questions of fact and law predominate over any questions affecting only individual Class
16 Members, and because a class action is superior to other available methods for the fair and efficient
17 adjudication of this litigation since joinder of all members is impracticable. The Class Members have
18 been damaged and are entitled to recovery because of Wells Fargo's common, unfair, and
19 discriminatory policies and unlawful practices. Damages are capable of measurement on a classwide
20 basis. The propriety and amount of punitive and other damages are based on Wells Fargo's conduct,
21 making these issues common to Class Members. Plaintiffs and the Class Members will rely on common
22 evidence to resolve their legal and factual questions, including the applicable auto loan credit and
23 underwriting policies and any auto loan policies and practices regarding the sending, or not, of written
24 explanations of the accurate reasons for denial of credit. There are no pending actions raising similar
25 claims. Wells Fargo engages in continuous, permanent, and substantial activity in California. There
26 will be no undue difficulty in the management of this litigation as a class action

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FIRST CLAIM FOR RELIEF
Alienage Discrimination
(42 U.S.C. § 1981)

52. Plaintiff incorporates by reference the allegations in all preceding paragraphs.

53. Plaintiff brings this claim on his own behalf and on behalf of the Section 1981 Class.

54. Plaintiff is a person within the jurisdiction of the United States.

55. Plaintiff is an alien with DACA status.

56. Plaintiff has the right to make and enforce contracts in the United States and is entitled to the full and equal benefits of the law.

57. Wells Fargo intentionally discriminated against Plaintiff and the Section 1981 Class on the basis of alienage by denying them the opportunity to contract for credit.

58. Wells Fargo's intentional discrimination against Plaintiff and the Section 1981 Class interfered with their right to make and enforce contracts for credit.

59. Wells Fargo's policies of denying credit based on Plaintiff's and the Section 1981 Class Members' alienage harmed them and constitutes unlawful alienage discrimination in the making and enforcing of contracts in violation of 42 U.S.C. § 1981.

60. Plaintiff and the Section 1981 Class have no plain, adequate, or complete remedy at law to redress the wrongs alleged herein, and the injunctive and equitable relief sought in this action is the only means of securing complete and adequate relief. Plaintiff and the Class Members are now suffering, and will continue to suffer, irreparable injury from Wells Fargo's discriminatory acts and omissions.

SECOND CLAIM FOR RELIEF
Failure to Provide Written Notice of Reason for Denial
(15 U.S.C. § 1691 and 12 C.F.R. § 1002.9(a))

61. Plaintiff incorporates by reference the allegations in all preceding paragraphs.

62. Plaintiff brings this claim on his own behalf and on behalf of the ECOA Class.

63. Plaintiff is a person within the jurisdiction of the United States.

64. Plaintiff is an alien with DACA status.

1 77. Such other and further legal and equitable relief as this Court deems necessary, just, and
2 proper.

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4 Dated: San Francisco, California
July 16, 2019

Respectfully submitted,

5 By: /s/ Jahan C. Sagafi
6 **OUTTEN & GOLDEN LLP**

7 Jahan C. Sagafi (Cal. Bar No. 224887)
8 Rachel Dempsey (Cal. Bar No. 310424)
9 One California Street, 12th Floor
10 San Francisco, California 94111
11 Telephone: (415) 638-8800
12 Facsimile: (415) 638-8810
13 jsagafi@outtengolden.com
14 rdempsey@outtengolden.com

15 Ossai Miazad*
16 Michael N. Litrownik*
17 685 Third Avenue, 25th Floor
18 New York, NY 10017
19 Telephone: (212) 245-1000
20 Facsimile: (646) 509-2060
21 om@outtengolden.com
22 mlitrownik@outtengolden.com

*to seek *pro hac vice* admission

Attorneys for Plaintiffs and the proposed Class