

UNITED STATES OF AMERICA
DEPARTMENT OF THE TREASURY
COMPTROLLER OF THE CURRENCY

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In the Matter of:)	
)	
Wells Fargo Bank, National Association)	AA-EC-2015-13
Sioux Falls, South Dakota)	
_____)	

CONSENT ORDER FOR A CIVIL MONEY PENALTY

The Comptroller of the Currency of the United States of America (“Comptroller”), through his national bank examiners and other staff of the Office of the Comptroller of the Currency (“OCC”), has conducted examinations of Wells Fargo Bank, National Association, Sioux Falls, South Dakota (“Wells Fargo” or “Bank”). The OCC has identified deficiencies in the Bank’s practices that resulted in violations of Section 5 of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. § 45(a)(1), related to billing and marketing practices with regard to identity protection and debt cancellation products, and has informed the Bank of the findings resulting from the examinations.

The Bank, by and through its duly elected and acting Board of Directors (“Board”), has executed a Stipulation and Consent to the Issuance of an Order for a Civil Money Penalty, dated June 3, 2015, that is accepted by the Comptroller (“Stipulation”). By this Stipulation, which is incorporated herein by reference, the Bank has consented to the issuance of an Order for a Civil Money Penalty (“Order”) by the Comptroller.

ARTICLE I

COMPTROLLER’S FINDINGS

The Comptroller finds, and the Bank neither admits nor denies, the following:

- (1) Since April 2004, the Bank and an identity protection product vendor, on behalf

of the Bank, have marketed and sold Identity Theft Protection, an identity protection product, to Bank customers. Identity Theft Protection included credit monitoring services.

(2) Since May 2009, the Bank and an identity protection product vendor, on behalf of the Bank, have marketed and sold Enhanced Identity Theft Protection, an identity protection product, to Bank customers. Enhanced Identity Theft Protection included credit monitoring and credit report retrieval services.

(3) Between at least January 2004 and May 2007, the Bank and identity protection product vendors, on behalf of the Bank, marketed and sold PrivacyGuard, Privacy Advantage, and/or My Privacy Matters, separate identity protection products, to Bank customers. These products included credit monitoring services.

(4) Wells Fargo's identity protection product vendors continued to service existing Privacy Advantage and My Privacy Matters customers until July 2014 and existing PrivacyGuard customers until December 2014, at which time Wells Fargo terminated these three identity protection products.

(5) Between April 2005 and December 2010, Wachovia Bank, National Association, Charlotte, North Carolina ("Wachovia"), and identity protection product vendors, on behalf of Wachovia, marketed and sold Identity Guard, an identity protection product, to Wachovia customers. Between November 2008 and March 2009, Wachovia, and identity protection product vendors, on behalf of Wachovia, marketed and sold iWatch Pro, a separate identity protection product, to Wachovia customers. Both of Wachovia's identity protection products included credit monitoring.

(6) Wells Fargo's parent bank holding company acquired Wachovia, and Wachovia was merged with and into Wells Fargo in March 2010. Wells Fargo assumed all of Wachovia's liabilities as part of this merger.

(7) Wells Fargo's identity protection product vendors continued to service existing iWatch Pro customers until August 2013 and existing Identity Guard customers until December 2013, at which time Wells Fargo terminated these two identity protection products.

(8) Bank customers who enrolled in the Identity Theft Protection, Enhanced Identity Theft Protection, PrivacyGuard, Privacy Advantage, and My Privacy Matters products, and the Wachovia customers who enrolled in the Identity Guard and iWatch Pro products (collectively, the "Identity Protection Products"), were required to provide sufficient personal verification information and consent before their credit bureau reports could be accessed. Customers of the Identity Protection Products were provided the materials necessary to submit this information and consent. Customers could not receive the credit monitoring services of the Identity Protection Products in which they were enrolled until the information and consent was submitted. For some Wells Fargo customers, the vendor failed to establish credit monitoring, or failed to maintain credit monitoring without interruption, after submission of the information and consent. For some Wells Fargo customers, the vendor failed to ensure that electronic benefit notifications were successfully delivered to the customer. For some Wachovia customers, the vendor initiated billing prior to verification of the customers' information and consent and establishment of credit monitoring, and for other Wachovia customers, the vendor initiated billing prior to the customers' submission of the information and consent.

(9) From April 2004 to May 2014, the Bank, through its identity protection product vendor, billed some Identity Theft Protection and Enhanced Identity Theft Protection customers for the full fee of the products, even though those customers were not receiving all of the credit monitoring services of the products.

(10) From April 2004 to May 2014, the Bank retained a portion of the fees paid by the Identity Theft Protection and Enhanced Identity Theft Protection customers, including fees

paid by the customers who were not receiving the credit monitoring services.

(11) Between at least January 2004 and July or December 2014 (depending upon the product), the Bank, through its identity protection product vendors, billed some PrivacyGuard, Privacy Advantage, and My Privacy Matters customers for the full fee of the products, even though those customers were not receiving all of the credit monitoring services of the products.

(12) Between at least January 2004 and July or December 2014 (depending upon the product), the Bank retained a portion of the fees paid by the PrivacyGuard, Privacy Advantage, and My Privacy Matters customers, including fees paid by the customers who were not receiving the credit monitoring services.

(13) Between April 2005 and August or December 2013 (depending upon the product), Wachovia and Wells Fargo, through its identity protection product vendors, billed some Identity Guard and iWatch Pro customers for the full fee of the products, even though those customers were not receiving all of the credit monitoring services of the products.

(14) Between April 2005 and August or December 2013 (depending upon the product), Wachovia and Wells Fargo retained a portion of the fees paid by the Identity Guard and iWatch Pro customers, including fees paid by the customers who were not receiving the credit monitoring services.

(15) By reason of the foregoing billing practices for the Identity Protection Products as described in Paragraphs (1) to (5) and (7) to (14) of this Article, the Bank engaged in unfair practices in violation of Section 5 of the FTC Act, 15 U.S.C. § 45(a)(1).

(16) The Bank's violations of Section 5 of the FTC Act caused substantial consumer injury.

(17) From March 2012 to October 2013, the Bank, through its identity protection product vendors, informed customers during telemarketing calls that Enhanced Identity Theft

Protection was the only one of the Bank's identity protection products that offered the ability to access product benefits electronically. In fact, customers could access the benefits of both Identity Theft Protection and Enhanced Identity Theft Protection electronically.

(18) Some Bank customers purchased the more expensive Enhanced Identity Theft Protection instead of the less expensive Identity Theft Protection solely to access the product's benefits online.

(19) By reason of the foregoing marketing practice for its Identity Protection Products as described in Paragraphs (17) and (18) of this Article, the Bank engaged in a deceptive practice in violation of Section 5 of the FTC Act, 15 U.S.C. § 45(a)(1).

(20) Since August 2005, the Bank has marketed and sold Credit Defense Platinum, a debt cancellation product, to Bank credit card customers. Credit Defense Platinum includes cancellation of some or all of a customer's credit card balance upon the occurrence of certain qualifying events. The Bank's debt cancellation product vendor is responsible for approving and directing payment of such benefits. When benefits are approved, credit card payments are not cancelled. Rather, the customer continues to be billed monthly, and the debt cancellation product vendor directs payment of the Credit Defense Platinum benefit to cover all or a portion of the credit card's minimum payment due.

(21) From August 2005 through November 2013, the debt cancellation product vendor directed recurring Credit Defense Platinum benefit payments to post on the same day of each month without regard to when customers' monthly payments were due. As a result, some Bank credit card customers were charged recurring late fees because the day on which the vendor directed recurring benefit payments to post was later in the billing cycle than the day on which those customers' payments were due.

(22) By reason of the foregoing billing practices for the Credit Defense Platinum

product as described in Paragraphs (20) and (21) of this Article, the Bank engaged in an unfair practice in violation of Section 5 of the FTC Act, 15 U.S.C. § 45(a)(1).

(23) The Bank's violation of Section 5 of the FTC Act caused substantial consumer injury.

(24) Since August 2005, the Bank has marketed Credit Defense Platinum as having a "risk-free review period" of thirty (30) days, during which the Bank would credit any product fees imposed on an account if the customer decided to cancel his or her enrollment in the product.

(25) From August 2005 through November 2012, some customers were not credited for Credit Defense Platinum product fees imposed upon their accounts despite cancelling their enrollments within the 30-day "risk-free review period," contrary to the Bank's marketing of the product.

(26) By reason of the foregoing marketing practice for its debt cancellation product as described in Paragraphs (24) and (25) of this Article, the Bank engaged in a deceptive practice in violation of Section 5 of the FTC Act, 15 U.S.C. § 45(a)(1).

(27) The Bank's violations of Section 5 of the FTC Act discussed in Paragraphs (1) through (26) of this Article are part of a pattern of misconduct that resulted in financial gain to the Bank.

ARTICLE II

ORDER FOR A CIVIL MONEY PENALTY

Pursuant to the authority vested in him by the Federal Deposit Insurance Act, 12 U.S.C. § 1818(i), the Comptroller orders, and the Bank consents to the following:

(1) The Bank shall make payment of a civil money penalty in the total amount of four million dollars (\$4,000,000), which shall be paid upon the execution of this Order:

- (a) If a check is the selected method of payment, the check shall be made payable to the Treasurer of the United States and shall be delivered to:

Comptroller of the Currency, P.O. Box 979012, St. Louis, Missouri
63197-9000.
- (b) If a wire transfer is the selected method of payment, it shall be sent in accordance with instructions provided by the Comptroller.
- (c) The docket number of this case (AA-EC-2015-13) shall be entered on the payment document or wire confirmation and a photocopy of the payment document or confirmation of the wire transfer shall be sent immediately, by overnight delivery, to the Director of Enforcement and Compliance, Office of the Comptroller of the Currency, 400 7th Street, S.W., Washington, D.C. 20219.

(2) This Order shall be enforceable to the same extent and in the same manner as an effective and outstanding order that has been issued and has become final pursuant to 12 U.S.C. § 1818(h) and (i).

ARTICLE III

OTHER PROVISIONS

(1) This Order is intended to be, and shall be construed to be, a final order issued pursuant to 12 U.S.C. § 1818(i)(2), and expressly does not form, and may not be construed to form, a contract binding on the Comptroller or the United States.

(2) This Order constitutes a settlement of the civil money penalty proceeding against the Bank contemplated by the Comptroller, based on the practices and violations described in the Comptroller's Findings set forth in Article I of this Order. The Comptroller releases and discharges the Bank from all potential liability for a civil money penalty that has been or might

have been asserted by the Comptroller based on the practices and violations described in Article I of this Order, to the extent known to the Comptroller as of the effective date of this Order. Nothing in the Stipulation or this Order, however, shall prevent the Comptroller from:

- (a) instituting enforcement actions, other than a civil money penalty, against the Bank based on the findings set forth in Article I of this Order;
- (b) instituting enforcement actions against the Bank based on any other findings;
- (c) instituting enforcement actions against the Bank's institution-affiliated parties based on the findings set forth in Article I of this Order, or any other findings; or
- (d) utilizing the findings set forth in Article I of this Order in future enforcement actions against the Bank or its institution-affiliated parties to establish a pattern or the continuation of a pattern.

Further, nothing in the Stipulation or this Order shall affect any right of the Comptroller to determine and ensure compliance with the terms and provisions of the Stipulation or this Order.

(3) The terms of this Order, including this paragraph, are not subject to amendment or modification by any extraneous expression, prior agreements, or prior arrangements between the parties, whether oral or written.

IT IS SO ORDERED, this 3 day of June 2015.

s/Ron A. Pasch
Ron A. Pasch
Deputy Comptroller
Large Bank Supervision

**UNITED STATES OF AMERICA
DEPARTMENT OF THE TREASURY
COMPTROLLER OF THE CURRENCY**

In the Matter of:

Wells Fargo Bank, National Association
Sioux Falls, South Dakota

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AA-EC-2015-13

**STIPULATION AND CONSENT TO THE ISSUANCE
OF AN ORDER FOR A CIVIL MONEY PENALTY**

WHEREAS, the Comptroller of the Currency of the United States of America (“Comptroller”), based upon information derived from the exercise of his regulatory and supervisory responsibilities, intends to initiate a civil money penalty proceeding against Wells Fargo Bank, National Association, Sioux Falls, South Dakota (“Wells Fargo” or “Bank”), pursuant to 12 U.S.C. § 1818(i), for the Bank’s violations of Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45(a)(1), related to billing and marketing practices with regard to identity protection and debt cancellation products;

WHEREAS, in the interest of cooperation and to avoid additional costs associated with administrative and judicial proceedings with respect to the above matter, the Bank, through its duly elected and acting Board of Directors (the “Board”), has agreed to execute this Stipulation and Consent to the Issuance of an Order for a Civil Money Penalty (“Stipulation”), that is accepted by the Comptroller, through his duly authorized representative;

NOW, THEREFORE, in consideration of the above premises, it is stipulated by the Bank that:

ARTICLE I

JURISDICTION

(1) The Bank is a national banking association chartered and examined by the Comptroller pursuant to the National Bank Act of 1864, as amended, 12 U.S.C. § 1 *et seq.*

(2) The Comptroller is the “appropriate Federal banking agency” regarding the Bank pursuant to 12 U.S.C. §§ 1813(q) and 1818(i).

(3) The Bank is an “insured depository institution” within the meaning of 12 U.S.C. §§ 1813(c)(2) and 1818(i).

ARTICLE II

CONSENT

(1) The Bank, without admitting or denying any wrongdoing, consents and agrees to issuance of the accompanying Consent Order for a Civil Money Penalty (“Consent Order”) by the Comptroller.

(2) The terms and provisions of the Consent Order apply to Wells Fargo and all of its subsidiaries, even though those subsidiaries are not named as parties to the Consent Order.

(3) The Bank consents and agrees that the Consent Order shall be deemed an “order issued with the consent of the depository institution” pursuant to 12 U.S.C. § 1818(h)(2), and consents and agrees that the Consent Order shall become effective upon its execution by the Comptroller through his authorized representative, and shall be fully enforceable by the Comptroller pursuant to 12 U.S.C. § 1818(i).

(4) Notwithstanding the absence of mutuality of obligation, or of consideration, or of a contract, the Comptroller may enforce any of the commitments or obligations herein

undertaken by the Bank under his supervisory powers, including 12 U.S.C. § 1818(i), and not as a matter of contract law. The Bank expressly acknowledges that neither the Bank nor the Comptroller has any intention to enter into a contract.

(5) The Bank declares that no separate promise or inducement of any kind has been made by the Comptroller, or by his agents or employees, to cause or induce the Bank to consent to the issuance of the Consent Order and/or execute this Stipulation.

(6) The Bank expressly acknowledges that no officer or employee of the Comptroller has statutory or other authority to bind the United States, the United States Treasury Department, the Comptroller, or any other federal bank regulatory agency or entity, or any officer or employee of any of those entities to a contract affecting the Comptroller's exercise of his supervisory responsibilities.

(7) The Consent Order constitutes a settlement of the civil money penalty proceeding against the Bank contemplated by the Comptroller, based on the practices and violations described in the Comptroller's Findings set forth in Article I of the Consent Order. The Comptroller releases and discharges the Bank from all potential liability for a civil money penalty that has been or might have been asserted by the Comptroller based on the practices and violations described in Article I of the Consent Order, to the extent known to the Comptroller as of the effective date of the Consent Order. Nothing in this Stipulation or the Consent Order, however, shall prevent the Comptroller from:

- (a) instituting enforcement actions, other than a civil money penalty, against the Bank based on the findings set forth in Article I of the Consent Order;
- (b) instituting enforcement actions against the Bank based on any other findings;

- (c) instituting enforcement actions against the Bank's institution-affiliated parties based on the findings set forth in Article I of the Consent Order, or any other findings; or
- (d) utilizing the findings set forth in Article I of the Consent Order in future enforcement actions against the Bank or its institution-affiliated parties to establish a pattern or the continuation of a pattern.

Further, nothing in this Stipulation or the Consent Order shall affect any right of the Comptroller to determine and ensure compliance with the terms and provisions of this Stipulation or the Consent Order.

ARTICLE III

WAIVERS

- (1) The Bank, by executing this Stipulation and consenting to the Consent Order, waives:
 - (a) any and all rights to the issuance of a Notice of Charges pursuant to 12 U.S.C. § 1818(i);
 - (b) any and all procedural rights available in connection with the issuance of the Consent Order;
 - (c) any and all rights to a hearing and a final agency decision pursuant to 12 U.S.C. § 1818(h) and (i), and 12 C.F.R. Part 19;
 - (d) any and all rights to seek any type of administrative or judicial review of the Consent Order;
 - (e) any and all claims for fees, costs, or expenses against the Comptroller, or any of his agents or employees, related in any way to this enforcement

matter or the Consent Order, whether arising under common law or under the terms of any statute, including, but not limited to, the Equal Access to Justice Act, 5 U.S.C. § 504 and 28 U.S.C. § 2412;

- (f) any and all rights to assert this proceeding, this Stipulation, consent to the issuance of the Consent Order, and/or the issuance of the Consent Order, as the basis for a claim of double jeopardy in any pending or future proceeding brought by the United States Department of Justice or any other governmental entity; and
- (g) any and all rights to challenge or contest the validity of the Consent Order.

ARTICLE IV

CLOSING

(1) The provisions of this Stipulation and the Consent Order shall not inhibit, estop, bar, or otherwise prevent the Comptroller from taking any other action affecting the Bank if, at any time, he deems it appropriate to do so to fulfill the responsibilities placed upon him by the several laws of the United States of America.

(2) Nothing in this Stipulation or the Consent Order shall preclude any proceedings brought by the Comptroller to enforce the terms of the Consent Order, and nothing in this Stipulation or the Consent Order constitutes, nor shall the Bank contend that it constitutes, a release, discharge, compromise, settlement, dismissal, or resolution of any actions, or in any way affects any actions that may be or have been brought by any other representative of the United States or an agency thereof, including, without limitation, the United States Department of Justice.

(3) The terms of this Stipulation, including this paragraph, and of the Consent Order are not subject to amendment or modification by any extraneous expression, prior agreements or prior arrangements between the parties, whether oral or written.

IN TESTIMONY WHEREOF, the undersigned, as the duly elected and acting Board of Directors of Wells Fargo Bank, National Association, Sioux Falls, South Dakota, have hereunto set their hands on behalf of the Bank.

s/ Lloyd H. Dean _____ May 15, 2015
Lloyd H. Dean _____ Date

s/ Enrique Hernandez, Jr. _____ May 14, 2015
Enrique Hernandez, Jr. _____ Date

s/ Cynthia H. Milligan _____ May 13, 2015
Cynthia H. Milligan _____ Date

s/ James H. Quigley _____ 5/12/15
James H. Quigley _____ Date

s/ Judith M. Runstad _____ 5/13/15
Judith M. Runstad _____ Date

s/ Stephen W. Sanger _____ 5-8-15
Stephen W. Sanger _____ Date

s/ John G. Stumpf _____ May 11, 2015
John G. Stumpf _____ Date

Accepted by:
THE COMPTROLLER OF THE CURRENCY THE COMPTROLLER OF THE CURRENCY

By: s/ Ron A. Pasch _____ June 3, 2015
Ron A. Pasch _____ Date
Deputy Comptroller
Large Bank Supervision