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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

20 CHIROU M. SOLA, on Behalf of Herself and
21 All Others Similarly Situated,

21 Plaintiff,

22 vs.

23 WASHINGTON MUTUAL BANK, FA,

24 Defendant.

) CASE NO. _____

) **CLASS ACTION**

) **FIRST AMENDED CLASS ACTION**
) **COMPLAINT FOR: (1) VIOLATIONS OF**
) **THE TRUTH IN LENDING ACT, 15 U.S.C.**
) **§§ 1601 ET SEQ.; (2) VIOLATIONS OF**
) **THE HOME OWNERS' LOAN ACT, 12**
) **U.S.C. §§ 1461 ET SEQ.; (3) VIOLATIONS**
) **OF THE WASHINGTON STATE UNFAIR**
) **BUSINESS PRACTICES STATUTE, RCW**
) **19.86.020; (4) FRAUD BY OMISSION: and**
) **(5) UNJUST ENRICHMENT**

) **DEMAND FOR JURY TRIAL**

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PRELIMINARY STATEMENT

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This is a class action brought by a bank customer against a bank that extended credit to its customers in the form of “overdraft protection.” The bank failed to comply with applicable consumer protections including appropriate disclosures designed to inform the consumers of the true cost of the credit extended to them by the bank’s overdraft protection plan. Plaintiff seeks statutory damages under the Truth In Lending Act (“TILA”), 15 U.S.C. §§ 1601 et seq., together with the Federal Reserve Board’s implementing Regulation Z, 12 C.F.R. § 226, and under the Home Owners’ Loan Act (“HOLA”), 12 U.S.C. §§ 1461 et seq. Plaintiff additionally seeks damages and injunctive relief under the Washington State unfair business practices statute, RCW 19.86.020, and damages and restitution pursuant to Washington State common law. Plaintiff also seeks relief for a class of similarly situated bank customers affected by the bank’s practices.

JURISDICTION AND VENUE

1. Jurisdiction is conferred on this Court by 15 U.S.C. § 1640(e) and 28 U.S.C. §§ 1331 and 1367.
2. Venue lies in this District pursuant to 28 U.S.C. § 1391(b).

PARTIES

3. Plaintiff Chirou M. Sola (“Plaintiff” or “Ms. Sola”) is an individual who resides in West Covina, California.

4. Defendant Washington Mutual Bank, FA (“WAMU”) is a federal savings association with its principal place of business at 1201 Third Avenue, Seattle, Washington. WAMU does business throughout the State of California and in every other state in the country, as well as in the District of Columbia. WAMU’s business includes extending credit to bank customers through “overdraft protection.”

FACTUAL ALLEGATIONS

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5. Beginning in or about 2001, WAMU adopted and implemented a so-called “Overdraft Protection” feature for its new and existing deposit accounts. According to uniform promotional materials WAMU created and disseminated, WAMU represented as follows under the heading “our services”:

Overdraft Protection

Don’t worry, we’ll cover you. We have three options available:

- Overdraft Limit¹ — Automatic protection provided to all new checking accounts. Up to your limit, we’ll pay your checks — saving you time, money and embarrassment.

6. The footnote to the “Overdraft Limit” feature states: “¹ Subject to Overdraft Charge and you must bring your account to a positive balance immediately.” The two other options set forth under the heading “**Overdraft Protection**” were not “automatic” for all new checking accounts and required customers to either apply for a “line of credit with either Interest Checking or Gold Checking” or arrange to “Link your Money Market or Statement Savings account to provide overdraft protection.” In other words, the “Overdraft Limit” option was the default feature for overdraft protection for all new WAMU checking accounts unless the customer affirmatively chose a different option. Although the default option described in WAMU’s promotional materials said WAMU would “pay your checks,” in fact and in uniform practice WAMU also paid all overdrawn items, including debit purchases and ATM withdrawals.

7. Under the default option, WAMU expressly agreed and represented in writing that it would “cover” all overdrawn items (checks, debit purchases and ATM withdrawals) within the assigned “limit” for the customer’s account. WAMU represented by its promotional materials that it was agreeing as a matter of contract to be legally obligated to pay all overdraft items up to the “limit” assigned to the account. WAMU typically set the limit at \$1,000 for such “protection” on new

1 accounts.

2 8. The default “Overdraft Protection” option differed from previous
3 courtesy practices by WAMU because the promotional materials portrayed the
4 option not as a “courtesy” in which WAMU retained the option of paying or not
5 paying the overdrawn item but as a legal obligation in which WAMU assured
6 customers: “Don’t worry, we’ll cover you.” In fact, WAMU promised that
7 “Automatic protection” would be provided “to all new checking accounts” up to the
8 “limit” assigned to the account.

9 9. This language, as used by WAMU, represented to the reasonable
10 consumer that WAMU no longer retained the option of not paying a particular
11 overdraft item that was within the limit assigned to the account. The two phrases,
12 “Don’t worry, we’ll cover you” and “Automatic protection,” conveyed and
13 represented to reasonable consumers that they could expect all overdrawn items
14 within their account’s limit to be automatically paid by WAMU.

15 10. In exchange for this promise of “automatic protection” and coverage of
16 overdrafts within the account’s limit, consumers in turn agreed to an “Overdraft
17 Charge” and to “bring [the] account to a positive balance immediately.” WAMU did
18 not define what it meant by “immediately.”

19 11. Despite this portrayal by WAMU of an automatic legal obligation to
20 pay all overdrawn items within the account’s limit, account statements WAMU
21 subsequently provided to customers included the following confusing and
22 contradictory statement: “THE FEE FOR EACH OVERDRAWN ITEM,
23 WHETHER PAID OR RETURNED, IS \$21.00.” On information and belief,
24 WAMU intended this language to convey or imply, misleadingly, that WAMU
25 retained the option of rejecting payment of any particular overdraft item. To the
26 extent WAMU intended to retain such an option, however, it’s promotional
27 materials stating “Don’t worry, we’ll cover you;” and “Automatic protection . . .
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1 we'll pay your checks," were and are objectively deceptive and misleading because
2 they misrepresent the true nature of the legal obligation WAMU was offering and
3 undertaking as a result of the formation of the deposit account contract. To the
4 extent WAMU intended to accept the legal obligation of advancing funds up to the
5 account's limit to cover overdraft items in exchange for a fee, it was then agreeing in
6 writing to extend credit to each such customer and each such customer, in turn, was
7 agreeing to become indebted to WAMU to repay that credit and the fee by bringing
8 the account current.

9 12. WAMU's default option is, therefore, either deceptively portrayed to
10 consumers if WAMU did not accept the legal obligation of paying overdrafts as
11 promised, or WAMU has agreed in writing to extend credit but has failed to provide
12 the Annual Percentage Rate cost of credit necessary to enable a consumer to
13 intelligently shop for such credit and choose among alternative sources of such
14 credit.

15 13. WAMU has distinguished the "overdraft protection" feature of its
16 accounts from traditional "courtesy" coverage of overdrafts in order to obtain a
17 marketing advantage over competitors and to convey a sense of "protection,"
18 reliability and "automatic" coverage to customers who are shopping for checking
19 account services. In doing so, WAMU has undermined the ability of consumers to
20 shop for credit among competitors, because it has confounded a penalty charge
21 imposed based on non-sufficient funds regardless of whether the overdrawn item is
22 paid with a use-of-funds charge that is imposed because the overdrawn item has
23 been paid. In other words, WAMU has encouraged consumers to overdraw their
24 accounts as a source of funds even though there are many other, less expensive
25 sources of credit. By failing to disclose the true cost of the overdraft credit, WAMU
26 has made comparison shopping for such credit difficult if not impossible.

27 14. The deceptive nature of WAMU's Overdraft Protection service is
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1 reflected in a comparison of the options themselves. WAMU has differentiated the
2 automatic “Overdraft Limit” option from the “Overdraft Line of Credit” option to
3 make it appear to a reasonable consumer that the “Overdraft Line of Credit” option
4 is more expensive. Footnote 2 to the “Overdraft Line of Credit” represents that this
5 option is “Subject to an Advance Fee *and* Interest Charges.” (Emphasis added). On
6 information and belief, the “Advance Fee” is the same amount as the “Overdraft
7 Charge” for the default option. So, the second Overdraft Protection option imposes
8 two charges whereas the first, default option imposes only one. Even though both
9 options automatically advance money to a customer’s account to cover overdrafts,
10 only the second option discloses an Annual Percentage Rate (“APR”) that would
11 apply to the overdraft advance. By portraying the two options together in this
12 manner, WAMU deceptively encourages customers to accept the default option
13 rather than the “Line of Credit” option. With the line of credit option, however,
14 customers could choose to take one large advance to cover all overdraft items and
15 thereby avoid multiple Overdraft Charges. With the default option, by contrast, a
16 customer is charged a separate Overdraft Charge of \$21 for each item that overdraws
17 the account, regardless of the size of the overdraft. Thus, although both options
18 advance funds and extend credit to customers to cover overdrafts, in practice
19 WAMU has received greater compensation from the default option than from the
20 “Line of Credit” option even though its promotional materials portray the Line of
21 Credit option as if it were more expensive for consumers. Because WAMU does not
22 disclose an effective APR for the default option, consumers lack sufficient
23 information to determine which option is most cost-effective, which explains why
24 WAMU has profited more from the default option than from the Line of Credit
25 option.

26 15. The automatic feature of the default option is particularly oppressive for
27 ATM withdrawals and debit card purchases. Although WAMU’s promotional
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1 materials only mention “checks,” WAMU has in fact applied the default option
2 automatically to all withdrawal items, including ATM withdrawals and debit
3 purchases. When a WAMU customer undertakes to withdraw cash from an ATM,
4 nothing advises the customer that the account will be overdrawn and an overdraft
5 charge imposed. It is not until the customer receives a monthly statement that the
6 overdraft charge is disclosed. So, at the time of withdrawal, the customer is
7 deprived of the option of deciding whether to overdraw the account, to use a
8 different account, to use a credit card, to transfer funds, or to delay the withdrawal.
9 The very fact that money has been advanced based on the ATM request often
10 misleads customers into believing sufficient funds are in the account when, in fact,
11 they are not. The same is true for debit purchases.

12 16. Ms. Sola’s experiences with the WAMU default option are typical of
13 the experiences of other customers of WAMU and indeed the members of the Class.
14 Ms. Sola has a checking account at WAMU. Ms. Sola’s account has an “overdraft
15 limit” of \$1,000.00. A true and correct copy of Ms. Sola’s statement of account for
16 the month of December, 2002 (with her home address and account number redacted
17 for privacy purposes) is attached hereto as Exhibit “A,” and incorporated herein by
18 reference.

19 17. The promotional materials applicable to Ms. Sola’s account are
20 attached as Exhibit “B” and contain the representations and descriptions set forth
21 above.

22 18. Ms. Sola’s statement of account for December, 2002, recites: “the fee
23 for each overdrawn item, whether paid or returned, is \$21.00.” *See* Exhibit “A”
24 hereto. In the month of December, 2002, WAMU assessed three separate “overdraft
25 charges” against Ms. Sola’s account, each in the amount of \$21.00, pursuant to the
26 “overdraft limit” it placed on Ms. Sola’s account.

27 19. Two of the “overdraft charges” were imposed on December 31, 2002,
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1 New Year's Eve. These "overdraft charges" were imposed because earlier that day,
2 Ms. Sola had requested two separate ATM withdrawals, one for \$20 and another for
3 \$40. On that very same day, Ms. Sola's payroll check in the amount of \$1,578 was
4 directly deposited into her account. It appears from her statement, however, that
5 WAMU posted the deposit sometime after Ms. Sola had withdrawn funds from the
6 ATM machines. So, for her first ATM withdrawal of \$20, Ms. Sola was charged an
7 overdraft charge of \$21; and for her second withdrawal of \$40 she was charged an
8 overdraft charge of \$21. Had Ms. Sola known that WAMU had not yet posted her
9 directly deposited pay, she would not have withdrawn such amounts from the ATM
10 machines. She would have either waited or made one withdrawal so as to avoid the
11 second overdraft charge.

12 20. The statutory definition of "credit," 15 U.S.C. § 1602(e), includes the
13 right "to incur debt and defer its payment." By using its funds to pay Ms. Sola's
14 overdrafts and then requiring Ms. Sola to repay them, WAMU granted Ms. Sola the
15 right to "incur debt and defer its payment" pursuant to TILA, 15 U.S.C. § 1602(e).
16 WAMU thus extended "credit" to Ms. Sola pursuant to TILA through the "overdraft
17 limit" feature of Ms. Sola's checking account.

18 21. The statutory definition of "creditor," 15 U.S.C. § 1602(f), refers to a
19 person who extends "credit" "for which the payment of a finance charge is or may
20 be required." The statutory definition of "finance charge," 15 U.S.C. § 1605(a),
21 includes any charge "payable directly or indirectly by the person to whom the credit
22 is extended, and imposed directly or indirectly by the creditor as an incident to the
23 extension of credit." By assessing "overdraft charges" against Ms. Sola's account,
24 WAMU assessed "finance charges" pursuant to TILA, 15 U.S.C. § 1605(a).
25 Accordingly, WAMU acted as a "creditor" pursuant to TILA. 15 U.S.C. § 1602(f).

26 22. WAMU's extension of credit to Ms. Sola through the "overdraft limit"
27 feature of Ms. Sola's checking account makes this feature subject to the special
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1 federal consumer protections of TILA pursuant to 15 U.S.C. § 1602(a) and 12
2 C.F.R. § 226.1(c).

3 23. When extending credit through its “overdraft limit” feature to
4 customers like Ms. Sola, WAMU is required to provide customers with conspicuous
5 disclosures about certain terms of the transaction pursuant to 15 U.S.C. §§ 1631-32
6 and 12 C.F.R. § 226.5 *et seq.* In addition, WAMU’s solicitations to consumers with
7 respect to such credit must clearly and conspicuously disclose the actual legal
8 obligations of the parties intended to result from the agreement.

9 24. The cost of credit WAMU extended to Ms. Sola through its “overdraft
10 limit” feature was very high, likely in excess of an annual percentage rate of 100%.
11 Under TILA, WAMU was required to disclose this cost of credit to Ms. Sola.
12 WAMU also was required to disclose in the solicitations the true nature of the legal
13 obligation it was undertaking as a result of the agreement. However, WAMU failed
14 to make these disclosures, as required by law, to Ms. Sola.

15 25. WAMU has stretched the fair meaning of the Federal Reserve Board’s
16 Commentary under the regulations promulgated pursuant to TILA to obtain a
17 marketing advantage over competitors to the detriment of consumers. The
18 Commentary to Section 226.4(b)(2) explains that “A checking or transaction account
19 charge imposed in connection with a credit feature is a finance charge under section
20 226.4(b)(2) to the extent the charge exceeds the charge for a similar account without
21 a credit feature.” The fundamental assumption underlying this Commentary is that
22 the APR cost of credit has been disclosed already with regard to the “credit feature,”
23 thereby allowing for comparison-shopping. A transaction or “Advance Fee” charge
24 imposed on an account such as WAMU’s second “Line of Credit” option would not
25 be a “finance charge,” therefore, if it was in the same amount as the charge imposed
26 on an account without a credit feature. Thus, the Commentary focuses disclosure on
27 the critical shopping characteristic, the APR, for the credit feature.

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1 26. While this Commentary may apply to the “Advance Fee” aspect of
2 WAMU’s second “Line of Credit” option because that option discloses the APR
3 applicable to the “Line of Credit,” it does not address whether WAMU’s “Overdraft
4 Charge” under its default agreement to pay overdrawn items up to the account’s
5 limit is a finance charge or whether the written default agreement to pay such
6 overdrawn items constitutes an “extension of credit” within the meaning of TILA
7 and the HOLA. Here, the credit feature is the written default agreement, for which
8 WAMU has not disclosed the APR. The Official Staff Commentary to Regulation
9 Z, § 226.4(c)(3), states: “Charges imposed by a financial institution for paying items
10 that overdraw an account [are not finance charges], unless the payment of such items
11 and the imposition of the charge were previously agreed upon in writing.”
12 (Emphasis added). Because WAMU agreed in its written solicitations to “cover” the
13 overdrafts and to collect the Overdraft Charge, the Overdraft Charge is a “finance
14 charge” pursuant to this Commentary.

15 27. From the perspective of a reasonable consumer, the failure to disclose
16 the Overdraft Charge as an Annual Percentage Rate has operated to obscure the true
17 cost of credit by making it appear (incorrectly) that WAMU’s “Line of Credit”
18 option is more expensive than the default “Overdraft Limit” option. If, for example,
19 WAMU disclosed to a reasonable consumer that the “Overdraft Limit” option would
20 result in an effective APR of 7,665% for a \$100 overdraft for one day, the “Line of
21 Credit” option would clearly be superior and suggest a more cost effective
22 alternative for consumers. By not disclosing the APR for the “Overdraft Limit,”
23 WAMU has undermined the remedial provisions and disclosure requirements of the
24 TILA.

25 28. WAMU’s failure to make disclosures such as the APR and the true
26 nature of its “legal obligation” to pay overdrafts within the account’s limit is a
27 failure to make “material disclosures” as defined by TILA, 15 U.S.C. § 1602(u), thus
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1 giving rise to civil liability for damages pursuant to TILA, 15 U.S.C. § 1640.

2 29. Regardless of whether WAMU’s “Overdraft Charge” is a “finance
3 charge” within the meaning of TILA, it is nonetheless an interest charge imposed for
4 WAMU’s extension of credit. Unlike the case of a bounced check where a
5 consumer remains indebted to the Payee, for ATM withdrawals and even debit
6 purchases the consumer becomes indebted to WAMU directly. As a matter of
7 federal banking law, overdraft charges are “interest” even if they may not be finance
8 charges within the meaning of TILA. See 12 C.F.R. § 560.110 (“The term ‘interest’
9 as used in 12 U.S.C. 1463(g) includes . . . among other things, the following fees
10 connected with credit extension or availability: numeric periodic rates, late fees, not
11 sufficient funds (NSF) fees, overlimit fees, annual fees, cash advance fees, and
12 membership fees.”). Therefore, even if WAMU’s “Overdraft Charge” is not a
13 finance charge because of the absence of a written agreement to extend credit (which
14 Plaintiff disputes), the Overdraft Charge is nevertheless interest because it is a fee
15 “connected with credit extension or availability.” See id.

16 30. For each of the Overdraft Charges it collected, WAMU charged Ms.
17 Sola a rate of interest for the cost of the credit it extended higher than the rate of
18 interest permitted both by HOLA, 12 U.S.C. §1461(g)(1), and by the Washington
19 State usury law it incorporates, RCW 19.52.010. WAMU’s charging and receiving
20 of this excessive rate of interest is a violation of HOLA, thus giving rise to civil
21 liability for damages pursuant to HOLA, 12 U.S.C. § 1463(g)(2).

22 31. WAMU failed to make required disclosures to Ms. Sola regarding the
23 cost of the credit it extended to her and the actual scope of the legal obligation it was
24 offering as a matter of contract. WAMU’s failure is an unfair or deceptive act or
25 practice under RCW 19.86.020, thus giving rise to civil liability for damages
26 pursuant to RCW 19.86.020. Additionally, WAMU’s violations of TILA and
27 HOLA are per se violations of RCW 19.86.020, thus giving rise to civil liability for
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1 damages pursuant to RCW 19.86.020. These claims are not preempted by HOLA or
2 the regulations thereunder because they concern the misrepresentation or omission
3 of the offered contractual legal obligation, such as the “rate of interest” and the
4 obligation to pay overdrawn items, that are consistent with the purposes of 12 C.F.R.
5 § 560.2 and are a matter of state contract laws.

6 32. WAMU omitted material facts in the written materials it sent to Ms.
7 Sola regarding the cost of credit it extended to her. WAMU’s omissions constitute
8 fraud by omission, thus giving rise to civil liability for damages pursuant to the
9 common law of Washington State.

10 33. WAMU’s retention of the amounts it collected from Ms. Sola in the
11 form of “overdraft charges” constitutes unjust enrichment of WAMU under the
12 common law of Washington State. WAMU is accordingly not entitled to retain
13 these monies, and must return them to Ms. Sola. Alternatively, equity requires
14 WAMU to disgorge the monies it collected in the form of “overdraft charges.”

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16 **CLASS ACTION ALLEGATIONS**

17 34. Plaintiff brings this action on behalf of herself and a Class and Subclass
18 of all other persons similarly situated pursuant to Fed. R. Civ. P. 23.

19 35. The Class consists of:

20 All persons in the United States against whose accounts WAMU assessed
21 “overdraft charges” pursuant to the “overdraft limit” feature of the accounts
22 as described in written solicitations and agreements WAMU delivered after
23 2001.

24 Excluded from the Class are WAMU; any parent, subsidiary, or affiliate of
25 WAMU or any employees, officers, or directors of WAMU; legal
26 representatives, successors, or assigns of WAMU; and any justice, judge or
27 magistrate judge of the United States who may hear the case, and all
28 persons related to any such judicial officer, as defined in 28 U.S.C. §
455(b).

36. The Subclass consists of:

1 All persons in the United States against whose accounts WAMU assessed
2 “overdraft charges” pursuant to the “overdraft limit” feature of the accounts
3 as described in written solicitations and agreements WAMU delivered after
4 2001 for overdrawn items resulting from an ATM withdrawal or a debit
5 purchase.

6 Excluded from the Subclass are WAMU; any parent, subsidiary, or affiliate
7 of WAMU or any employees, officers, or directors of WAMU; legal
8 representatives, successors, or assigns of WAMU; and any justice, judge or
9 magistrate judge of the United States who may hear the case, and all
10 persons related to any such judicial officer, as defined in 28 U.S.C. §
11 455(b).

12 37. There are questions of law and fact that are common to all members of
13 the Class and Subclass, which questions predominate over any question affecting
14 only individual Class or Subclass members. The principal common issues are:

- 15 a. whether WAMU’s “overdraft limit” feature constitutes the
16 extension of credit within the meaning of applicable laws and
17 regulations;
- 18 b. whether WAMU violated TILA by failing to make the mandated
19 disclosures;
- 20 c. whether Class members have a right to damages by virtue of
21 WAMU’s failure to comply with TILA;
- 22 d. whether WAMU violated HOLA by charging and receiving interest
23 at a rate higher than that permitted by HOLA and by the
24 Washington State law it incorporates;
- 25 e. whether Class members have a right to damages by virtue of
26 WAMU’s failure to comply with HOLA;
- 27 f. whether WAMU violated the Washington State unfair business
28 practices statute;
- g. whether Class members have a right to damages by virtue of
WAMU’s violation of the Washington State unfair business
practices statute;
- h. whether Class members have a right to damages by virtue of
WAMU’s omissions of material fact regarding the cost of the credit
it extended to Class members;

- 1 i. whether WAMU, in justice and equity, must return to the Class
2 members the amounts of the “overdraft charges” it collected from
3 them.

4 38. The only individual questions concern the identification of Class
5 members and the computation of damages to be awarded each Class member and
6 can be determined by a ministerial examination of the relevant files. Notice can be
7 provided to the Class by various means of communication, including WAMU’s
8 computerized databases of customer records.

9 39. Plaintiff’s claims are typical of the claims of the Class and Subclass
10 members. All are based on the same legal and remedial theories.

11 40. Plaintiff will fairly and adequately protect the interest of all Class
12 Subclass members in the prosecution of this Action and in the administration of all
13 matters relating to claims stated herein. She is similarly situated with, and has
14 suffered similar injuries as, the members of the Class and Subclass she seeks to
15 represent. Plaintiff has retained counsel experienced in handling class action
16 lawsuits involving United States federal law claims and consumer law. Neither
17 Plaintiff nor her counsel has any interest which might cause them not to vigorously
18 pursue this action.

19 41. A class action is superior to other available methods for the fair and
20 efficient adjudication of the controversy, in that:

- 21 a. the losses suffered by the Class and Subclass members are such that
22 prosecution of individual actions is impractical or economically
23 unfeasible;
24 b. by contrast, the profits obtained by WAMU as a result of its
25 unlawful practices are substantial;
26 c. in the absence of the class action device, Plaintiff and the Class
27 would be left without a remedy for the wrongful acts alleged, and
28 WAMU will be unjustly enriched;
 d. the prosecution of separate lawsuits by individual members of the
 Class would create the risk of inconsistent adjudications with

1 respect to individual Class members, which would establish
2 incompatible standards of conduct for WAMU, making
3 concentration of the litigation concerning this matter in this Court
4 desirable;

5 e. the claims of the representative Plaintiff are typical of the claims of
6 the Class; and

7 f. no unusual difficulties are likely to be encountered in the
8 management of this action as a class action.

9 42. The Class (and Subclass) is so numerous as to make it impracticable to
10 join all members of the Class as Plaintiffs. Based upon the investigation of counsel,
11 the number of Class members is estimated to be in excess of 100,000 persons.

12 **FIRST CAUSE OF ACTION**

13 **(Violation of the Truth In Lending Act, 15 U.S.C. § 1601 et seq.)**

14 43. Plaintiff repeats and realleges all paragraphs above as if set forth fully
15 herein.

16 44. Because the transactions described herein are covered by TILA,
17 WAMU was required to make the disclosures required under TILA.

18 45. WAMU failed to comply with the disclosure requirements of TILA in
19 the case of Ms. Sola and each Class member.

20 46. By failing to provide disclosures under TILA, WAMU hid the fact that
21 TILA applies to the “overdraft limit” feature of its accounts from Ms. Sola and the
22 Class members.

23 47. Ms. Sola and each Class member is entitled to the full measure of
24 remedies available pursuant to TILA, including, but not limited to, damages.

25 **SECOND CAUSE OF ACTION**

26 **(Violation of the Home Owners Loan Act, 12 U.S.C. § 1461 et seq.)**

27 48. Plaintiff repeats and realleges all paragraphs above as if set forth fully
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1 herein.

2 49. Under HOLA, WAMU was only permitted to charge interest on its
3 extension of credit pursuant to the “overdraft limit” feature of its accounts at a rate
4 of not more than 1% in excess of the discount rate on 90-day commercial paper in
5 effect at the Federal Reserve Bank in the Federal Reserve district in which WAMU
6 is located, or at the 12% rate allowed by RCW 19.52.010, whichever is greater.

7 50. WAMU charged and received a rate of interest well in excess of the
8 rates referenced in HOLA and RCW 19.52.010 to Ms. Sola and the members of the
9 Class in connection with the “overdraft limit” feature of its accounts.

10 51. Ms. Sola and the members of the Class are entitled to the full measure
11 of remedies available pursuant to HOLA, including, but not limited to, damages.

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THIRD CAUSE OF ACTION

(Violation of the Washington State Unfair Business

Practices Statute, RCW 19.86.020)

52. Plaintiff repeats and realleges all paragraphs above as if set forth fully
herein.

53. WAMU extended credit to Ms. Sola through its “overdraft limit”
feature without disclosing to Ms. Sola the cost of the credit or the true nature of the
legal obligation WAMU was offering and agreeing to accept as a result of the
deposit contract.

54. WAMU’s failure to disclose the cost of credit or the true nature of its
legal obligation is an unfair and deceptive act or practice occurring within WAMU’s
business that caused injury to Ms. Sola and the members of the Class, and that
affects the public interest. Additionally, WAMU’s violations of TILA and HOLA
are per se violations of RCW 19.86.020.

55. Ms. Sola and each Class member is entitled to the full measure of

1 remedies available pursuant to RCW 19.86.020, including, but not limited to,
2 damages.

3 56. Ms. Sola and the members of the Class are entitled to an injunction
4 pursuant to RCW 19.86.020 preventing WAMU from assessing additional
5 “overdraft charges” against their accounts in the absence of full disclosure to them
6 of the cost of credit and/or the true nature of WAMU’s legal obligation. Ms. Sola
7 and the members of the Class are additionally entitled to an award of their
8 reasonable attorneys’ fees and costs.

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10 **FOURTH CAUSE OF ACTION**

11 **(Fraud by Omission)**

12 57. Plaintiff repeats and realleges all paragraphs above as if set forth fully
13 herein.

14 58. In the written materials it sent to Ms. Sola and the members of the
15 Class, WAMU, with the intent to deceive or with reckless disregard for the truth,
16 omitted material facts, as set forth above, regarding the cost of the credit it extended
17 to Ms. Sola and the members of the Class and the legal obligation WAMU was
18 offering and agreeing to. Unaware of such material facts because of WAMU’s
19 omissions, Ms. Sola and the members of the Class incurred “overdraft charges”
20 against their accounts.

21 59. Ms. Sola and the members of the Class are entitled to recover the full
22 amount of damages sustained as a result of WAMU’s omissions, in an amount to be
23 proved at trial.

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1 **FIFTH CAUSE OF ACTION**

2 **(Unjust Enrichment)**

3 60. Plaintiff repeats and realleges all paragraphs above as if set forth fully
4 herein.

5 61. By retaining the amounts it collected from Ms. Sola and the members
6 of the Class in the form of “overdraft charges,” WAMU is retaining money which in
7 justice and equity belongs to Ms. Sola and the members of the Class. WAMU has
8 accordingly been unjustly enriched in these amounts, and must return them to Ms.
9 Sola and the members of the Class. Alternatively, WAMU must disgorge all of the
10 amounts of the overdraft charges it unjustly collected from Ms. Sola and the
11 members of the Class.

12 **PRAYER FOR RELIEF**

13 WHEREFORE, Plaintiff, on behalf of herself and all others similarly situated,
14 prays for the following relief:

- 15 1. An order certifying that this action is properly brought and may
16 be maintained as a class action under Rule 23 of the Federal
17 Rules of Civil Procedure, that Plaintiff be appointed as Class
18 Representative, and that Plaintiff’s counsel be appointed Class
19 Counsel;
- 20 2. Damages pursuant to 15 U.S.C. § 1640;
- 21 3. Damages pursuant to 12 U.S.C. § 1463(g)(2);
- 22 4. Damages pursuant to RCW 19.86.020;
- 23 5. Damages for fraud by omission;
- 24 6. Restitution or disgorgement of the amounts by which WAMU
25 has been unjustly enriched;
- 26 7. An injunction preventing WAMU from continuing the unlawful
27 conduct alleged herein;
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- 8. An award of reasonable attorneys' fees and costs;
- 9. Such other relief at law or equity as this Court may deem just and proper.

DATED: October 15, 2003

Respectfully submitted,
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