

FILED

OCT 06 2009

PATRICK E. DUFFY, CLERK

By DEPUTY CLERK, HELENA

BRENDA LINDLIEF HALL
REYNOLDS, MOTL AND SHERWOOD, PLLP
401 North Last Chance Gulch
Helena, MT 59601
(406) 442-3261 (telephone)
(406) 443-7794 (fax)
bllh@rmslaw.net

Attorney for Plaintiffs

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
HELENA DIVISION

JENNIFER FINSTAD, MICHELLE
JONES, MERIDITH MCWILLIAMS,
LORI ELLIOTT, KELSEY GEORGE
and GEORGIA ARNOLD,

Plaintiffs,

vs.

WELLS FARGO & COMPANY, and
WELLS FARGO BANK, NA,

Defendants.

CAUSE NO. CV-09-46-CCL

**AMENDED COMPLAINT
AND DEMAND FOR JURY TRIAL**

COME NOW, Jennifer Finstad, Michelle Jones, Meridith McWilliams, Lori Elliott, Kelsey George, and Georgia Arnold, by and through their counsel, and for their Complaint allege and state as follows:

I. PARTIES

1. Defendant Wells Fargo Bank, N.A., is a South Dakota Corporation with offices located in Helena, Lewis and Clark County, Montana.

2. Plaintiffs Jennifer Finstad, Michelle Jones, Meridith McWilliams, Lori Elliott, Kelsey George, and Georgia Arnold (hereinafter Plaintiffs) are residents of Lewis and Clark County, Montana.

3. The incidents complained of in this matter occurred in Lewis and Clark County, Montana.

II. FACTUAL ALLEGATIONS

4. The preceding paragraphs are realleged as though set out in full hereunder.

5. Plaintiff Jennifer Finstad began working for Wells Fargo Bank, N.A. (Wells Fargo) at the Helena East Branch in Helena, Montana in approximately November 2007. At the time of hiring, Finstad was a teller, but she was promoted to a customer service sales representative.

6. Plaintiff Michelle Jones began working for Wells Fargo at the Helena East Branch in Helena, Montana in approximately October 2006. At the time of hiring, Jones was a teller, she was then promoted to lead teller in about July 2007.

7. Plaintiff Meridith McWilliams began working for Wells Fargo at the Helena East Branch in Helena, Montana in approximately August 2007. At the time of hiring, McWilliams was a teller, and she was then promoted to lead teller.

8. Plaintiff Lori Elliott began working for Wells Fargo Bank at the Helena East Branch in Helena, Montana in approximately March 2007. At the time of hiring, Elliott was a teller, she was then promoted to lead teller, and then to the position of personal banker on approximately January 1, 2008.

9. Plaintiff Kelsey George began working for Wells Fargo at the Helena East Branch in Helena, Montana in approximately August 2007. At the time of hiring, George was a teller, she was then promoted to lead teller and vault teller.

10. Plaintiff Georgia Arnold began working for Wells Fargo Bank, N.A. (Wells Fargo) at the Helena East Branch in Helena, Montana in approximately August 2005. At the time of hiring, Arnold was a teller, she was then promoted to lead teller, then service manager, and then a personal banker.

11. Between about June 20 and June 23, 2008, Plaintiffs were all terminated from their employment at Wells Fargo. Laura Nixon, a teller, was also fired. It is Plaintiffs' understanding that the branch manager, Christy Reiss, quit before she too was fired.

12. No men were fired to the best of Plaintiffs' knowledge.

13. In the days prior to being terminated, Plaintiffs were individually called to the Wells Fargo Downtown branch and escorted into a windowless basement room, seated on a chair in the middle of the room, and interrogated by two men whom they had never seen before.

14. The interrogations were terrifying for Plaintiffs, and they were treated like criminals. Prior to the interrogations, Plaintiffs were never informed that they had done anything wrong and they were not told the reason why they were being summoned to the downtown office.

15. During the interrogations, Plaintiffs were informed that the way they were reordering debit cards was “gaming,” and that it was unethical. Plaintiffs were then forced to sign a confession stating that they knew that what they did was unethical, even though they did not knowingly participate in any gaming or unethical conduct.

16. Plaintiffs were all instructed by their supervisor, the branch manager, and/or Wells Fargo as to how to order replacement debit cards, and they were only doing as they were instructed. The branch manager would print out lists of Wells Fargo customers who had debit cards but had not activated them and they were instructed to contact to them and ask if they would like to order a new debit card.

17. Plaintiffs did not know that the way they were taught to order replacement debit cards was considered “gaming.” Their supervisor was in charge

of their training, and she was the person in the chain of command whose instructions they were supposed to follow.

18. During Plaintiffs' employment at Wells Fargo, they were all given promotions and were never reprimanded, either verbally or in writing, or given any warnings of any kind regarding their conduct or performance as employees or about "gaming" and the way they were ordering replacement debit cards.

19. Plaintiffs were never warned about "gaming," and were never given any opportunity to correct the way they were ordering replacement debit cards. Instead, Wells Fargo simply interrogated them, treated them like criminals, and terminated them.

20. Plaintiff, Georgia Arnold, became suspicious of their store manager/supervisor and the way she and/or Wells Fargo was having them reorder debit cards, among other things. Arnold therefore made an anonymous complaint online to the Wells Fargo ethics hotline via computer about the way they were being instructed to reorder debit cards. Arnold made the complaint anonymously because she did not want the store manager/supervisor to know it was her and potentially lose her job over it. Arnold was also uncertain whether what they were doing was in fact unethical or against public policy, but she believed that the way they were trained to reorder debit cards along with other high-pressure sales tactics was not in their customers best interests and was a violation of public policy.

Arnold did not tell her co-workers about her call to the ethics hotline because she was not certain that the way their supervisor was having them reorder debit cards was unethical or against public policy. After making the anonymous complaint to the ethics hotline, Arnold sent an email to Randy Riley, the Helena Wells Fargo Vice President, telling him that she had made the complaint in an attempt to get to the truth while protecting all of the employees at the East Branch.

21. Arnold's ethics hotline complaint was the catalyst that set the investigation into the East Branch in motion, and ultimately led to all of the Plaintiffs being terminated with actual malice and actual fraud for Arnold's ethics/public policy violation complaint.

22. After being interrogated, but prior to formally being terminated, Plaintiffs all looked at the Wells Fargo website and saw that their positions were posted for hiring.

23. A male employee was hired at the East Branch just before Plaintiffs were terminated. Even though he was trained how to reorder debit cards by the terminated employees and was reordering debit cards the same way they were, to the best of Plaintiffs' knowledge and belief, he was not interrogated or terminated.

24. After Plaintiffs were terminated, approximately 5 (five) men were hired at various Wells Fargo Branches in Helena and employees were transferred

between branches in what Plaintiffs believe was an attempt to cover up the termination of so many women.

25. After Plaintiffs were terminated, a male store manager was hired at the East Branch, a male banker was hired, and a male teller was hired and transferred to the East Branch. To the best of Plaintiffs' knowledge and belief, at least six (6) males were hired during the time that the East Branch was being investigated and following their termination.

26. Plaintiffs Finstad and Jones were pregnant at the time they were terminated, and all of the women with the exception of Meridith McWilliams have small children.

27. The interrogations themselves were extremely emotionally distressful for the Plaintiffs, having been interrogated individually by two strange men in a windowless basement room with very little furniture and having to sit in a chair with nothing, such as a desk, in between them and the men interrogating them.

28. Being terminated without warning or any opportunity for retraining or to correct the way they were ordering replacement debit cards was also very emotionally distressing for Plaintiffs.

29. Plaintiffs lost their jobs, and their health, vision, and dental insurance and other benefits as a result of being terminated by Wells Fargo.

**COUNT I—SEX DISCRIMINATION
UNDER THE MONTANA HUMAN RIGHTS ACT**

30. The preceding paragraphs are realleged as though set forth in full hereunder.

31. Wells Fargo discriminated against Plaintiffs, all women, by terminating them without giving them any warnings, further training in the correct way to reorder debit cards, and without providing them any opportunity to correct the way they were reordering debit cards.

32. To the best of Plaintiffs' knowledge and belief, no men were taken to the windowless basement room in the Wells Fargo downtown branch and interrogated by men whom they had never seen before and no men were forced to make and or sign confessions of unethical conduct.

33. To the best of Plaintiffs' knowledge and belief, no men were fired, even though at least one male employee at the Helena East Branch was ordering debit cards the same way Plaintiffs were ordering them.

34. Wells Fargo's hiring of five men to replace them is sex discrimination, and as such violates the Montana Human Rights Act, §§ 49-1-101 *et seq.*

35. Wells Fargo's interrogation and firing of only women, while not interrogating male employees and retraining male employees and allowing them to

keep their jobs, is disparate treatment based on sex, and as such violates the Montana Human Rights Act, §§ 49-1-101 *et seq.*

36. Plaintiffs have exhausted their administrative remedies in that they each filed complaints with the Montana Human Rights Bureau and the EEOC, and the Human Rights Bureau conducted and concluded its investigation and issued Plaintiffs right to sue letters.

37. Plaintiffs are entitled to damages as allowed under the Montana Human Rights Act, §§ 49-1-101, *et seq.*, MCA.

**COUNT II—SEX DISCRIMINATION
UNDER THE CIVIL RIGHTS ACT OF 1964**

38. The preceding paragraphs are realleged as though set forth in full hereunder.

39. Wells Fargo intentionally discriminated against Plaintiffs by terminating them without giving them any warnings, further training in the correct way to reorder debit cards, and without providing them any opportunity to correct the way they were reordering debit cards.

40. To the best of Plaintiffs' knowledge and belief, no men were taken to the windowless basement room in the Wells Fargo downtown branch and interrogated by men whom they had never seen before, and no men were forced to make and or sign confessions of unethical conduct.

41. To the best of Plaintiffs' knowledge and belief, no men were fired, even though at least one male employee at the Helena East Branch was ordering debit cards the same way Plaintiffs were ordering them.

42. Wells Fargo's hiring of at least five men to replace them is sex discrimination, and as such violates Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e *et seq.*

43. Wells Fargo's interrogation and firing of only women, while not interrogating male employees and retraining male employees and allowing them to keep their jobs, is disparate treatment based on sex, and as such violates Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e *et seq.*

44. Plaintiffs have exhausted their administrative remedies in that they each filed complaints with the Montana Human Rights Bureau and the EEOC, and they were issued right to sue letters.

45. Plaintiffs are entitled to damages as allowed under Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e *et seq.*, including, but not limited to, compensatory damages, emotional distress damages, punitive damages, and attorney fees and costs.

COUNT III—WRONGFUL DISCHARGE

46. The preceding paragraphs are realleged as though set forth in full hereunder.

47. Wells Fargo's termination of Plaintiffs despite that Plaintiffs were following their supervisor's instructions, and the failure to provide them any warnings or an opportunity to correct the way they were taught to reorder debit cards constitutes wrongful discharge in violation of the Montana Wrongful Discharge Act, § 39-2-901 *et seq.*, MCA.

48. Wells Fargo's discharge of Plaintiffs was not for good cause, Plaintiffs had completed their probationary periods of employment, and in terminating Plaintiffs, Wells Fargo violated the express provisions of its own written personnel policy requiring employees to do as instructed by their supervisors.

49. Wells Fargo wrongfully discharged Plaintiffs for Plaintiffs' having reported public policy violations and for refusing to violate public policy, and such discharge was done with actual fraud and actual malice, in violation of § 39-2-904(1)(a). Although Georgia Arnold is the employee who called the ethics hotline with concerns, all of the Plaintiffs were discharged based on Arnold's ethics hotline complaint to report a public policy violation, and they were forced to sign confessions stating that they knew they were acting unethically or against public policy when in fact they were simply following their supervisor's and/or Wells Fargo's own policies and procedures .

50. All Plaintiffs were wrongfully discharged with actual malice for Arnold having reported the public policy violation via the ethics hotline.

51. All Plaintiffs were wrongfully discharged with actual fraud as a result of Arnold having reported the public policy violation via the ethics hotline as follows: (1) Wells Fargo represented to Plaintiffs during the interrogations that the way Plaintiffs were reordering debit cards was “gaming” and was against Wells Fargo’s policy, when in fact Plaintiffs were only doing as they were instructed/trained by their supervisor and/or Wells Fargo and as their supervisor may have been trained by Wells Fargo; (2) Wells Fargo knew that Plaintiffs were only doing as they were instructed by their supervisor and/or Wells Fargo, and Wells Fargo knew, based on Georgia Arnold’s ethics hotline complaint and based on the statements from Plaintiffs during their interrogations, that it was falsely accusing Plaintiffs of “gaming” and unethical behavior, and that in fact Plaintiffs had concerns about the Wells Fargo’s high pressure sales tactics and the high-pressure way they were instructed to reorder debit cards; (3) Wells Fargo’s false accusations regarding Plaintiffs’ conduct being “gaming” and unethical was material and provided the grounds to wrongfully terminate Plaintiffs; (4) Wells Fargo knew that Plaintiffs were not intentionally “gaming” and that they were only doing as instructed and trained by their supervisor and/or Wells Fargo; (5) Wells Fargo intended, through its harsh interrogations of the women by two strange men

in the windowless basement room, to force Plaintiffs into signing confessions stating they knew that they were “gaming” and otherwise acting unethically, and Wells Fargo intended that such confessions would be used to terminate Plaintiffs’ employment; (6) Plaintiffs did not know that Arnolds’ ethics hotline complaint of public policy violations would be used to terminate Plaintiffs, and they did not know that by signing confessions after their interrogations that the falsely induced confessions would be used to terminate Plaintiffs; (7) Plaintiffs believed that by cooperating during the interrogations and that by signing the confessions, their employment at Wells Fargo would be protected; (8) Plaintiffs had the right to rely upon their supervisor’s and Wells Fargo’s instruction and training and the representations made by Wells Fargo before and during the interrogations; and (9) as a direct and proximate result of Wells Fargo’s material misrepresentations made to Plaintiffs’ during their interrogations, and as a direct and proximate result of Wells Fargo’s high-pressure sales requirements and Wells Fargo’s training of Plaintiffs’ and their supervisor, and as a direct and proximate result of the supposedly protected use of the ethics hotline, Plaintiffs were terminated from their employment and suffered lost wages and benefits.

52. Plaintiffs exhausted their remedies by pursuing the Wells Fargo Dispute Resolution Procedure.

53. Plaintiffs are entitled to damages for wrongful discharge as provided in §39-2-905(1)-(2), MCA.

WHEREFORE, Plaintiffs respectfully request that the Court enter judgment under each count in their favor and award damages including:

1. Damages for lost wages and benefits;
2. Damages for emotional distress;
3. Punitive damages;
4. Attorney fees and costs of bringing this action; and
5. Such other and further relief as the Court deems just and

proper.

DEMAND FOR JURY TRIAL

COME NOW Plaintiffs Jennifer Finstad, Michelle Jones, Meridith McWilliams, Lori Elliott, Kelsey George, and Georgia Arnold and request a jury trial on all issues in this matter.

DATED this 23rd day of September, 2009.

BY: /s/ Brenda Lindlief Hall
Brenda Lindlief Hall
REYNOLDS, MOTL AND SHERWOOD, PLLP
Attorney for Plaintiffs