

1 Keith D. Cable, Esq., CA SBN 170055

CABLE LAW, APC

2 501 Parkshore Drive, Suite 500

Folsom, CA 95630

3 Telephone: (916) 608-7995

4 Facsimile: (916) 608-7986

5 Attorney for Plaintiff

A.B. CONCRETE COATING INC.

RECEIVED
DEC 27 2019
Superior Court of California
County of Placer

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA

9 COUNTY OF PLACER

10 A.B. CONCRETE COATING INC.,)

11 Plaintiff,)

12 vs.)

13)
14 WELLS FARGO BANK, NATIONAL)
ASSOCIATION; and DOES 1-50, inclusive,)

15 Defendants.)

Case No.:

**COMPLAINT FOR DAMAGES,
DECLARATORY, AND
INJUNCTIVE RELIEF**

**[AMOUNT DEMANDED EXCEEDS
\$25,000]**

DEMAND FOR JURY TRIAL

16 **COMPLAINT**

17 Plaintiff A.B. CONCRETE COATING INC. complains of Defendant WELLS
18 FARGO BANK, NATIONAL ASSOCIATION and DOES 1-50, inclusive, and each of
19 them, and alleges as follows:

20 1. At all times referenced herein, Plaintiff A.B. CONCRETE COATING INC.
21 was a California corporation duly organized and existing under the laws of the State of
22

1 California with its principal place of business in the City of Auburn, County of Placer,
2 State of California.

3 2. At all relevant times referenced herein, Defendant WELLS FARGO BANK,
4 NATIONAL ASSOCIATION ("WELLS FARGO") and DOES 1-25, and each of them, was
5 and is a nationwide banking association providing commercial banking services
6 throughout the United States and is a member of the Federal Deposit Insurance
7 Corporation (FDIC).

8 3. Plaintiff is unaware of the true names and capacities of defendants sued
9 herein as DOES 1-50, inclusive, and therefore sues these defendants by such fictitious
10 names. Plaintiff will seek leave to amend the Complaint to allege their true names and
11 capacities when those names have been ascertained.

12 4. Defendant DOES 1-50, and each of them, at all times herein mentioned,
13 were the agents and employees of their co-defendants and in doing the things hereinafter
14 alleged were acting within the course and scope of such agency and with the permission,
15 consent, knowledge, and ratification of their co-defendants.

16 **JURISDICTION, VENUE AND ADMINISTRATIVE REQUIREMENTS**

17 5. Plaintiff hereby adopts and incorporates by reference paragraphs 1 through
18 4, inclusive, and repleads the allegations contained therein as though fully set forth
19 herein.

20 6. Venue is proper in Placer County in accordance with California Code of Civil
21 Procedure § 395(a).

1 **GENERAL ALLEGATIONS**

2 7. Plaintiff hereby adopts and incorporates by reference paragraphs 1 through
3 6, inclusive, and repleads the allegations contained therein as though fully set forth
4 herein.

5 8. On or about December 31, 2018, Plaintiff A.B. CONCRETE COATING
6 INC. discovered that Amber Clark, a former volunteer bookkeeper, had been writing
7 company checks to herself, forging the signature of company owner, Brian Fenno, and
8 then cashing the checks at various at various WELLS FARGO branch bank locations IN
9 Placer County. In all, Amber Clark cashed forged company checks totaling
50 \$482,244.76.

11 9. On or about December 31, 2018, Plaintiff A.B. CONCRETE COATING
12 INC.'s investigation further revealed that a large number of forged checks were also
13 made payable to Kai Clark, the husband of Amber Clark, totaling \$32,939.66. On
14 information and belief, Plaintiff A.B. CONCRETE COATING INC. alleges that Amber
15 Clark made the checks payable to Kai Clark and that Kai Clark then forged Mr. Fenno's
16 signature before cashing the same at various WELLS FARGO branch bank locations in
17 Placer County.

18 10. In or around the first week of January 2019, Plaintiff A.B. CONCRETE
19 COATING INC. contacted Defendant WELLS FARGO BANK, NATIONAL
50 ASSOCIATION and DOES 1-50, and each of them, and notified it of the forged checks,
21 pursuant to California Commercial Code § 4406. Defendant WELLS FARGO BANK,
22 NATIONAL ASSOCIATION and DOES 1-50, and each of them, subsequently

1 responded to Plaintiff's notice by stating that Plaintiff should pursue the Clark's for
2 reimbursement.

3 **FIRST CAUSE OF ACTION**
4 **(CONVERSION – CALIFORNIA COMMERCIAL CODE § 3420)**
5 **(Against all defendants)**

6 11. Plaintiff hereby adopts and incorporates by reference paragraphs 1
7 through 10, inclusive, and repleads the allegations contained therein as though fully set
8 forth herein.

9 12. At all times herein mentioned, Plaintiff A.B. CONCRETE COATING INC.
10 was the owner of, and remains entitled to possession of, its corporate funds totaling
11 \$515,184.42.

12 13. As the collecting bank, Defendant WELLS FARGO BANK, NATIONAL
13 ASSOCIATION and DOES 1-50, and each of them, is strictly liable for the conversion
14 by deposit or payment based on a forged endorsement, pursuant to California
15 Commercial Code § 3420 and Uniform Commercial Code § 3420.

16 14. As a result of the conversion by Defendant WELLS FARGO BANK,
17 NATIONAL ASSOCIATION and DOES 1-50, and each of them, Plaintiff A.B.
18 CONCRETE COATING INC. has been damaged in the amount of \$515,184.42.

19 15. The conversion by Defendant WELLS FARGO BANK, NATIONAL
20 ASSOCIATION and DOES 1-50, and each of them, was done with malice toward
21 Plaintiff A.B. CONCRETE COATING INC. and with an intent to injure and damage it,
22 and which did injure and damage it. As such, Plaintiff A.B. CONCRETE COATING INC.

1 is entitled to recover punitive damages against Defendant WELLS FARGO BANK,
2 NATIONAL ASSOCIATION, and DOES 1-50, and each of them, according to proof.

3 **SECOND CAUSE OF ACTION**
4 **(FRAUD)**
5 **(Against all defendants)**

6 16. Plaintiff hereby adopts and incorporates by reference paragraphs 1
7 through 15, inclusive, and repleads the allegations contained therein as though fully set
8 forth herein.

9 17. Defendant WELLS FARGO BANK, NATIONAL ASSOCIATION and DOES
10 1-50, and each of them, fraudulently, and without authority, allowed the Clark's to
11 repeatedly negotiate and cash corporate checks from Plaintiff A.B. CONCRETE
12 COATING INC. containing forged signatures and endorsements. Based on the large
13 volume of forged checks that Defendant WELLS FARGO BANK, NATIONAL
14 ASSOCIATION and DOES 1-50, and each of them, allowed to be cashed and
15 negotiated, Defendant WELLS FARGO BANK, NATIONAL ASSOCIATION and DOES
16 1-50, and each of them, had actual and/or constructive knowledge of the Clark's
17 ongoing nefarious, fraudulent, and illegal activities, and was complicit and illegally
18 profited from same to the detriment of Plaintiff A.B. CONCRETE COATING INC.

19 18. By virtue of the fraud perpetrated by Defendant WELLS FARGO BANK,
20 NATIONAL ASSOCIATION and DOES 1-50, and each of them, Plaintiff has suffered
21 damages in the amount of \$515,184.42.

22 19. The fraud committed by Defendant WELLS FARGO BANK, NATIONAL
ASSOCIATION and DOES 1-50, and each of them, was done with malice toward

1 Plaintiff A.B. CONCRETE COATING INC. and with an intent to injure and damage it,
2 and which did injure and damage it. As such, Plaintiff A.B. CONCRETE COATING INC.
3 is entitled to recover punitive damages against Defendant WELLS FARGO BANK,
4 NATIONAL ASSOCIATION and DOES 1-50, and each of them, according to proof.

5 **THIRD CAUSE OF ACTION**
6 **(BREACH OF CONTRACT)**
7 **(Against all defendants)**

8 20. Plaintiff hereby adopts and incorporates by reference paragraphs 1
9 through 19, inclusive, and repleads the allegations contained therein as though fully set
10 forth herein.

11 21. Plaintiff A.B. CONCRETE COATING INC. and Defendant WELLS FARGO
12 BANK, NATIONAL ASSOCIATION and DOES 1-50, and each of them, entered into a
13 written agreement wherein Defendant WELLS FARGO BANK, NATIONAL
14 ASSOCIATION and DOES 1-50, and each of them, promised, among other things, to
15 act responsibly in handling, maintaining, and overseeing the business banking accounts
16 of Plaintiff A.B. CONCRETE COATING INC.

17 22. Defendant WELLS FARGO BANK, NATIONAL ASSOCIATION and DOES
18 1-50, and each of them, breached said written agreement with Plaintiff A.B.
19 CONCRETE COATING INC. by allowing the Clark's to freely cash and negotiate
20 corporate checks from Plaintiff A.B. CONCRETE COATING INC. containing forged
21 signatures and endorsements.

22 23. Plaintiff A.B. CONCRETE COATING INC. has performed all duties,
conditions, and obligations which were required of it under the written agreement with

1 Defendant WELLS FARGO BANK, NATIONAL ASSOCIATION and DOES 1-50, and
2 each of them.

3 24. By reason of the aforementioned breach by Defendant WELLS FARGO
4 BANK, NATIONAL ASSOCIATION and DOES 1-50, and each of them, as herein
5 alleged, Plaintiff has suffered damages in the in the amount of \$515,184.42.

6 **FOURTH CAUSE OF ACTION**
7 **(CONSTRUCTIVE TRUST)**
8 **(Against all defendants)**

9 25. Plaintiff hereby adopts and incorporates by reference paragraphs 1
10 through 24, inclusive, and repleads the allegations contained therein as though fully set
11 forth herein.

12 26. As a proximate result of the wrongful, fraudulent, and illegal conduct of
13 Defendant WELLS FARGO BANK, NATIONAL ASSOCIATION and DOES 1-50, and
14 each of them, as alleged herein, Plaintiff A.B. CONCRETE COATING INC. has been
15 damaged in the amount of \$515,184.42. Defendant WELLS FARGO BANK, NATIONAL
16 ASSOCIATION and DOES 1-50, and each of them, have no legal or equitable right,
17 claim, or interest in the corporate funds wrongfully, fraudulently, and illegally obtained
18 from Plaintiff A.B. CONCRETE COATING INC.

19 27. By reason of the wrongful, fraudulent, and illegal manner in which
20 Defendant WELLS FARGO BANK, NATIONAL ASSOCIATION and DOES 1-50, and
21 each of them, obtained and/or converted the corporate funds from Plaintiff A.B.
22 CONCRETE COATING INC., Defendant WELLS FARGO BANK, NATIONAL
ASSOCIATION and DOES 1-50, and each of them, are involuntary trustees holding

1 said property, funds, and interest derived therefrom in constructive trust for Plaintiff A.B.
2 CONCRETE COATING INC. with the duty to convey the same to Plaintiff A.B.
3 CONCRETE COATING INC. forthwith, pursuant to California Civil Code §§ 2223 and
4 2224.

5 **FIFTH CAUSE OF ACTION**
6 **(BREACH OF FIDUCIARY DUTY)**
7 **(Against all defendants)**

8 28. Plaintiff hereby adopts and incorporates by reference paragraphs 1
9 through 27, inclusive, and repleads the allegations contained therein as though fully set
10 forth herein.

11 29. Defendant WELLS FARGO BANK, NATIONAL ASSOCIATION and DOES
12 1-50, and each of them, were, at all times material herein, primarily responsible for the
13 management, operation, and control of Plaintiff's bank accounts. As such, Defendant
14 WELLS FARGO BANK, NATIONAL ASSOCIATION and DOES 1-50, and each of them,
15 were in a position of trust as it relates to Plaintiff's bank accounts and monies it had on
16 deposit. As a result, Defendant WELLS FARGO BANK, NATIONAL ASSOCIATION and
17 DOES 1-10, and each of them, owed, and at all times material herein owed, a fiduciary
18 duty to Plaintiff.

19 30. Defendant WELLS FARGO BANK, NATIONAL ASSOCIATION and DOES
20 1-50, and each of them, breached its fiduciary duty owed to Plaintiff by, among other
21 things, allowing Amber Clark and Kai Clark to freely negotiate and cash business
22 checks containing forged signatures and endorsements thereby converting corporate
funds totaling \$515,184.42 for their own use, as described herein.

1 FARGO BANK, NATIONAL ASSOCIATION and DOES 1-50, and each of them. Plaintiff
2 A.B. CONCRETE COATING INC. desires a judicial determination of its rights and
3 remedies, and the obligations of Defendant WELLS FARGO BANK, NATIONAL
4 ASSOCIATION and DOES 1-50, and each of them, in a declaration as to whether, and
5 to what extent, the conduct of Defendant WELLS FARGO BANK, NATIONAL
6 ASSOCIATION and DOES 1-50, and each of them, should result in an order requiring,
7 among other things, that a pre-judgment attachment be issued and that Defendant
8 WELLS FARGO BANK, NATIONAL ASSOCIATION and DOES 1-50, and each of them,
9 hold the stolen and converted corporate funds totaling \$515,184.42 as constructive
10 trustees for the benefit of Plaintiff A.B. CONCRETE COATING INC.

11 36. Such a declaration is necessary and appropriate at this time in order that
12 Plaintiff A.B. CONCRETE COATING INC. may ascertain its rights moving forward. Such
13 a declaration is also necessary and appropriate to prevent further harm, damage, or
14 infringement of the rights of Plaintiff A.B. CONCRETE COATING INC.

15 **SEVENTH CAUSE OF ACTION**
16 **(PRELIMINARY AND PERMANENT INJUNCTIVE RELIEF)**
17 **(Against all defendants)**

18 37. Plaintiff hereby adopts and incorporates by reference paragraphs 1
19 through 36, inclusive, and repleads the allegations contained therein as though fully set
20 forth herein.

21 38. Defendant WELLS FARGO BANK, NATIONAL ASSOCIATION and DOES
22 1-50, and each of them, wrongfully, fraudulently, and illegally converted corporate funds
of Plaintiff A.B. CONCRETE COATING INC. in the amount of \$515,184.42.

1 43. Defendant WELLS FARGO BANK, NATIONAL ASSOCIATION and DOES
2 1-50, and each of them, were and remain responsible for injury occasioned by another
3 as a result of their lack of ordinary care in the management of their persons, agents, and
4 employees. By engaging in the acts herein alleged, either directly or on the basis of
5 *respondeat superior*, Defendant WELLS FARGO BANK, NATIONAL ASSOCIATION and
6 DOES 1-50, and each of them, negligently breached said duties of due care owed to
7 Plaintiff A.B. CONCRETE COATING INC.

8 44. The negligence of Defendant WELLS FARGO BANK, NATIONAL
9 ASSOCIATION and DOES 1-50, and each of them, has, and continues to be, a
10 substantial factor in causing injury and damages to Plaintiff A.B. CONCRETE COATING
11 INC.

12 45. As an actual and proximate result of the negligent acts by Defendant
13 WELLS FARGO BANK, NATIONAL ASSOCIATION and DOES 1-50, and each of them,
14 as herein described, Plaintiff A.B. CONCRETE COATING INC. has suffered, and
15 continues to suffer, injuries and damages, as herein alleged.

16 **RELIEF REQUESTED:**

17 Plaintiff prays that this Court award the following relief:

- 18 1. For economic damages of no less than \$515,184.42;
- 19 2. For non-economic damages, according to proof;
- 20 3. For punitive damages, according to proof;
- 21 5. For declaratory relief that Defendant and DOES 1-50 hold Plaintiff's
22 corporate funds as constructive trustees for the benefit of Plaintiff;

