23-6785

No._____

IN THE
SUPREME COURT OF THE UNITED STATES

RALEIGH ROGERS, petitioner

V.

WELLS FARGO BANK, NATIONAL ASSOCIATION, respondent

ON PETITION FOR A WRIT OF CERTIORARI TO
THE SUPREME COURT OF NORTH CAROLINA

PETITION FOR WRIT OF CERTIORARI

RALEIGH ROGERS
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Petitioner

QUESTION PRESENTED

1. Is it Substantial Harm to the Public to allow the Defendant in a **Rule 23(b)(3)** "opt-out" class actions to withhold contact information it maintains in its possession from the Court empowered to adjudicate the class action until after the 150-day "opt-out" period has expired?

CORPORATE DISCLOSURE STATEMENT

Wells Fargo Bank is a subsidiary of Wells Fargo & Company. No publicly owned company owns 10% or more of Wells Fargo & Company stock

PREVIOUS PROCEEDINGS

RALEIGH ROGERS V. WELLS FARGO (**Case 18cvs1528**), **14 December 2018**, Caldwell County Superior Court, NC, **Judicial 25A**.Removed to Federal Court by Wells Fargo.

RALEIGH ROGERS V. WELLS FARGO (**Case 5:19-cv-6-RJC**), United States District Court of Western District of North Carolina, Statesville Division. Decided **3 May 2021**. Unpublished

RALEIGH ROGERS V. WELLS FARGO, (**Case 5:19-cv-6-RJC**), United States Court of Appeals for the Fourth Circuit. Decided **19 November 2021**. Unpublished.

RALEIGH ROGERS V. WELLS FARGO, (**No. 21-7688**), Supreme Court of the United States. Denied on **31 May 2022**.

RALEIGH ROGERS, PRO SE V. WELLS FARGO, NATIONAL ASSOCIATION (**Case 20cvs619**), **26 May 2020**, Caldwell County Superior

Court, NC, Judicial 25A. Refilled as **20cvs1241** when Wells Fargo denied it had been served.

RALEIGH ROGERS, PRO SE V. WELLS FARGO, NATIONAL ASSOCIATION (**20cvs1241**), **28 October 2020**, Caldwell County Superior Court, NC, **Judicial 25A**. Decided **19 September 2022**.

RALEIGH ROGERS, PRO SE V. WELLS FARGO, NATIONAL ASSOCIATION (**COA22-978**), **5 December 2022**, North Carolina's Court of Appeals. Decided **6 June 2023**. Unpublished

RALEIGH ROGERS, PRO SE V. WELLS FARGO, NATIONAL ASSOCIATION (**126P23**), **15 June 2023**, Supreme Court of North Carolina. CONSTITUTIONAL QUESTION dismissed **18 October 2023**, PETITION FOR DISCRETIONARY REVIEW denied, **12 December 2023**.

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[1] **Aristotle**, Politics * Poetics, trans. Benjamin Jewett, Regius Professor of Greek, Oxford College (Norwalk, Easton Press, 1979) pg. 177

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RULE

(vi) the time and manner for requesting exclusion; and,

(vii) the binding effect of a class judgment on members under **Rule 23(c)(3)**.

STATUTES AND REGULATION

75D-8(g). Available RICO civil remedies.

Any party is entitled to a jury trial in any action brought under this chapter.

"The right of trial by jury as declared by the Constitution or statutes of North Carolina shall be preserved to the parties inviolate."[2]

"The Supreme Court of North Carolina has consistently held that the Article I right to a trial by jury applies 'where the prerogative existed by statute'. **Kiser v. Kiser, 325 N.C. 507, 385 S.E.2d 487 (1989)**."[3]

75D-9. **Period of limitation as to civil proceedings under this chapter.**

Notwithstanding any other provision of law, a civil action or proceeding under this Chapter may be commenced within five years after the conduct in violation of a provision of this Chapter terminates or the claim for relief accrues, whichever is later. If a civil action is brought by the State for forfeiture or to prevent any violation of the Chapter, then the running of this period of limitations with respect to any innocent person's claim for relief which is based upon any matter complained of in such action by the State, shall be suspended during the pendency of the action by the State and for two years thereafter.

§ 75-16. Civil action by person injured; treble damage.

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[2] N.C. R. Civ. P. 38

[3] Knight, Rebecca B., District Court Judge, 28th Judicial District, The Right to a Jury Trial in Civil Actions in North Carolina, May 2007, p.13.

If any person shall be injured or the business of any person, firm or corporation shall be broken up, destroyed or injured by reason of any act or thing done by any other person, firm or corporation in violation of the provisions of this Chapter, such person, firm or corporation so injured shall have a right of action on account of such injury done, and if damages are assessed in such case judgment shall be rendered in favor of the plaintiff and against the defendant for treble the amount fixed by the verdict.

OPINION BELOW

The unpublished Opinion of the North Carolina Court of Appeals, filed **6 June 2023**, is included as Appendix 5. (APP 27-33) The Order from the Supreme Court of North Carolina dismissing and denying Plaintiff-Appellant's Appeal on **18 October 2023** is included as Appendix 6. (APP 35-36)

JURISDICTION

This Court has jurisdiction of this petition to review judgment of the North Carolina Supreme Court under **Art. III, §§ 1,2**;

The North Carolina Supreme Court had subject matter jurisdiction under **N.C.G.S. § 7A-30** and **N.C. G.S. § 7A-31**.

STATEMENT OF THE CASE

But for crimes committed by Wells Fargo, Raleigh Rogers v. Wells Fargo would not exist. It all began when Wells Fargo opened an account in my name on **17 December 2013**. (APP 2-4) Unlike the millions of other victims the financial predator had defrauded across the country,[1] I had never had a checking (or savings) account with Wells Fargo. I did not know that the account even existed until Wells Fargo sent me a letter threatening to "remit" the debt the account was in "arrears" to a collection agency—Wells Fargo had been making charges to the unknown account—unless I paid the debt. When I carried the threatening letter to the local branch, tendering it to the branch manager, and hypothesizing that it must have been computer error (because I never had had a checking (or savings) account with Wells Fargo), the

[1] OCC Report Wells Fargo #N20-001 (P 28). According to independent auditor PricewaterhouseCoopers (PwC) Wells Fargo opened 'as many as 3.5 million' unauthorized accounts in 39 states and the District of Columbia.

branch manager assured me she would take care of it. However, despite her assurance, I soon began receiving calls from collection agencies (and scammers), because Wells Fargo, as threatened, had filed the manufactured debt with a collection agency (for "non-collection of funds"), destroying my credit. I wrote many letters to Wells Fargo and made many calls, being placed on hold for hours (as I was transferred from department to department) until my phone would run out of energy.

Because I was afraid I would be unable to obtain a continuous supply of expensive ($150,000/year) and medically necessary medication—I have Multiple Sclerosis—with a trillion-dollar bank falsifying my bank records, I spoke with doctors, lawyers, Medicaid, Medicare, Social Security Disability (SSDI), and eventually, with the National Multiple Sclerosis Society (NMSS). While SSDI said it would be three years before I could have a hearing (due to the wait list), the NMSS explained it would provide MS medication for free to anyone who had no healthcare and no property. In order to mitigate my losses and qualify for the expensive and medically necessary MS Medication from the NMSS, I dropped the healthcare I had carried for decades, gifted my property away, and moved into a homeless shelter, LEOS, in downtown Lenoir. You can not carry anything with you into a homeless shelter but the clothes on your back. Fifty years of my life was gone in a heartbeat. (Not just the law, but the equities in this case are staggering.)

Because I had to give away all my assets in order to qualify for

medication from the NMSS, I could not afford legal representation, and local law firms explained they could not afford to challenge a trillion-dollar bank in court, even though they thought my case warranted litigation.

After exhaustive research in the local library, I sued Wells Fargo under North Carolina's **RICO** statutes. **RICO** was best for me, not only because the five-year Statute of Limitations (**§ 75D-9**) afforded me more time to prepare, but also, because **RICO** included a private cause of action in North Carolina (**§ 75-16**), as well as, statutory entitlement to a jury trial. (**75D-8(g)**)

I filed my first Complaint against Wells Fargo in State Court on **14 December 2018,** Captioned RALEIGH ROGERS V. WELLS FARGO (**Case 18cvs1528**) (APP 6-13), three days before the **RICO** five-year Statute of Limitations was set to expire. Wells Fargo removed **Case 18cvs1528** to Federal Court, where it was renumbered **Case 5:19-cv-6-RJC**.

In my Complaint, I included one sentence that I did not know was false at the time I had filed the Complaint. I wrote: "Plaintiff was subsequently offered an opportunity to join the ongoing Wells Fargo unauthorized account settlement". In the subsequent sentence, I wrote ; "Plaintiff did not join the ongoing Wells Fargo unauthorized account settlement". But, the harm was done. The false sentence I had included in my Complaint was predicated on the fact that Wells Fargo, in a letter dated **2 November 2018**, had included a check for $25 and referenced the **Jabbari** class action for the first time. (APP 16) Wells Fargo did not mention that the "opt-out" period had expired six

months earlier (e.g., **14 May 2018**). Nor did Wells Fargo ever admit the account it had opened in my name was unauthorized. To the contrary, in a letter dated **8 February 2017**, written in response to my repeated inquiries, Wells Fargo assured me: ". . . we confirmed that the account ending in 3928 was opened according to appropriate guidelines" (APP 15), which explains why California's **Ninth Circuit** never contacted me despite the fact that Wells Fargo had maintained my contact information in its possession throughout **Jabbari**. (APP 2,15,16)

> **JABBARI** was a **Rule 23(b)(3)** class action. **Rule 23(2)(B)** stipulates:
>
> For any class certified under **Rule 23(b)(3)**, the court must direct to class members the best notice that is practicable under the circumstances, ***including individual notice to all members who can be identified through reasonable effort***. (Emphasis added.)
> **Rule 23(2)(B)**

The **Jabbari** final ruling states: "this action meets all the prerequisites of **Rule 23(a)** and the requirements of **Rule 23(b)(3)**"[2] Besides the letter from Wells Fargo dated **8 February 2017**, which denies the account Wells Fargo had opened in my name was unauthorized (APP 15), further proof that I never was a party to **Jabbari** is that the **Ninth Circuit** never contacted me, never sent me Service of Process; never sent me a notice that identified the nature of the action; never: defined the certified class; listed class claims, issues, and defenses; explained that a class member may enter an appearance through an attorney if the member so desires; explained that the

[2] Jabbari v. Wells Fargo, Case No. 15-cv-02159-VC at 3 (N.D. Cal. June 14, 2018)

court will exclude from the class any member who requests exclusion; defined the time and manner for requesting exclusion; or extrapolated on the binding effect of a class judgment on members under **Rule 23(c)(3)**. Had I been a **Jabbari** member, **Rule 23(2)(B)** would have applied.

Furthermore, North Carolina State Law (case and statutory) protects citizens of North Carolina from "service by publication" if the perpetrator of the crime has the victim's contact information in its possession:

STANDARDS OF REVIEW:

> "[A] party is required to use 'contact information which he [has] *in his possession'* to obtain information about a defendant's location or to otherwise facilitate service by means other than publication."[3]
>
> "Failure to do so will render service by publication defective."[4]
>
> "A party that cannot with due diligence be served by personal delivery, registered or certified mail, or by a designated delivery service authorized pursuant to **26 U.S.C. § 7502(f)(2)** may be served by publication." **Rule 4(j1)**

Because Wells Fargo maintained my contact information in its possession throughout **Jabbari** (APP 2,15,16), service by publication "is in derogation of the common law"; therefore, statutes authorizing service by publication are "strictly construed."[5] Had I been a party to **Jabbari**, Wells Fargo would have been required to turn my contact information over to the **Ninth Circuit** under North Carolina state law, and the **Ninth Circuit** would have been

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[3] *Chen v. Zou*, 244 N.C. App. 14, 780 S.E.2d 571 (2015)

[4] *Ibid.*

[5] *Sink v. Easter*, 284 N.C. 555, 560 (1974)

required to notify me under Federal Law.

To iterate, the reason I mistakenly wrote in my Complaint that I had been offered an opportunity to join the class action (but had chosen not to join) is Wells Fargo had included the $25 check in its letter dated **2 November 2018** (APP 16), six months after the **Jabbari** opt-out period had expired. I never cashed the check, because I feared cashing the check would make me a party to the class action Wells Fargo had mentioned in the letter it had mailed to me. By voiding the check, I thought I had "opted out" of the class action, even though, at the time, I did not know the term-of-art "opt-out" even existed, because I had not been provided the required information by the **Ninth Circuit**.

If I was a member of the **Jabbari** class, then the statement by the **Ninth Circuit** that: "this action meets all the prerequisites of **Rule 23(a)** and the requirements of **Rule 23(b)(3)**"[6] is false. If I was not a member of the **Jabbari** class, the preclusive effect of *res judicata* does not apply to me, and the lower Court ruling should be overturned.

After I realized that Wells Fargo had not mentioned **Jabbari** until after the 150-day "opt-out" period had expired (and that I had never received **Rule 23 Notification** from the **Ninth Circuit**), I refilled in state court (e.g., RALEIGH ROGERS, PRO SE V. WELLS FARGO, NATIONAL

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[6] *Id.* Jabbari

ASSOCIATION **20cvs1241**) (APP 18-25), leaving out my mistaken statement that I had been offered an opportunity to join the **Jabbari** class action.

ARGUMENT

> It is Substantial Harm to the Public to allow the Defendant in a **Rule 23(b)(3)** "opt-out" class actions to withhold contact information it maintains in its possession from the Court empowered to adjudicate the class action until after the 150-day "opt-out" period has expired.

Allowing the lower Court Ruling to stand will create a roadmap for financial predators to avoid accountability in **Rule 23(b)(3)** "opt-out" class actions. Specifically, a financial predator could identify victims by contact information it maintains in its possession, then withhold that contact information from the court empowered to adjudicate the class action, selectively culling out the most outrageously injured victims from the class. For example, disabled Plaintiff-Appellant, Raleigh Rogers, was forced to drop the healthcare he had carried for decades and move into a homeless shelter in order to mitigate his losses and obtain expensive ($150,000/year) and medically necessary MS medication from the National Multiple Sclerosis Society after Wells Fargo destroyed his credit. (Now, taxpayers must pay the cost of Wells Fargo's crime.)

Plaintiff-Appellant was never served **Rule 23(2)(B) Notification** by the **Ninth Circuit**, because Defendant-Appellee withheld Plaintiff-Appellant's contact information from the **Ninth Circuit** until after the **Jabbari** "opt-out" period had expired and the final ruling in **Jabbari** had

been granted. After the 150-day "opt-out" period had expired, Wells Fargo used the contact information it had in its possession in an attempt to shoehorn Plaintiff-Appellant into the **Jabbari** class by sending Plaintiff-Appellant a check for $25, and mentioning **Jabbari** for the first time. (APP 16) **Rule 23(2)(B)** requires members who can be identified with reasonable effort be notified by ***the Court*** (e.g., the **Ninth Circuit**), not by the perpetrator of the crime (e.g., Wells Fargo), and that members be notified before the 150-day "opt-out" period begins, not some before the "opt-out" period begins and others after the "opt-out" period expires at the arbitrary discretion of the perpetrator of the crime.

Also, North Carolina law protecting its citizens from service by publication when the victim's contact information is possessed by the perpetrator of the crime would be obviated.

> In all well-attempted governments there is nothing that should be more jealously maintained than the spirit of obedience to law, more especially in small matters; for transgression creeps in unperceived and at last ruins the state, just as small expenses in time eats up a fortune.[7]

CONCLUSION

Because of the Substantial Harm to the Public of allowing the Defendant in a **Rule 23(b)(3)** "opt-out" class actions to avoid accountability by withholding contact information it maintains in its possession from the

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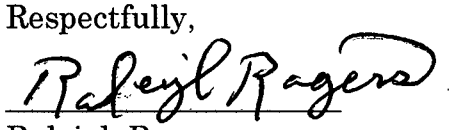
[7] **Aristotle**, Politics * Poetics, trans. Benjamin Jewett, Regius Professor of Greek, Oxford College (Norwalk, Easton Press, 1979) pg. 177

Court empowered to adjudicate the class action (and not just because the lower Court ruling is confuted by the facts), the Petitioner request the issuance of a *Writ of Certiorari* to the United States Supreme Court.

Respectfully,



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