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9 UNITED STATES DISTRICT COURT
10 FOR THE NORTHERN DISTRICT OF CALIFORNIA

11 UNITED STATES OF AMERICA,)

12 Plaintiff,)

13 v.)

Civil Action No. *CD-98-RHS*

14 WELLS FARGO BANK, NATIONAL)
15 ASSOCIATION;)
16 WELLS FARGO & COMPANY;)
17 FIRST WESTERN BANK & TRUST)
18 COMPANY; and)
19 WORLDAMERICA INVESTORS CORP.,)

Filed: *January 17, 1992*

20 Defendants.)

21 COMPLAINT

22 The United States of America, plaintiff, by its
23 attorneys, acting under the direction of the Attorney
24 General of the United States, brings this civil action
25 to obtain equitable relief against the above-named
26 defendants, and complains and alleges as follows:

27 I

28 JURISDICTION AND VENUE

29 1. This complaint is filed and this action is
30 instituted under Section 15 of the Act of Congress of
31 October 15, 1914, as amended (15 U.S.C. § 25), commonly
32 known as the Clayton Act, in order to prevent and restrain

1 the violation by the defendants, as hereinafter alleged, of
2 Section 7 of the Clayton Act, as amended (15 U.S.C. § 18).

3 2. Each of the defendants transacts business and
4 is found within the Northern District of California.

5 II

6 THE DEFENDANTS

7 3. Wells Fargo Bank, National Association (herein-
8 after referred to as "Wells Fargo") is made a defendant
9 herein. Wells Fargo is a banking association organized
10 under the laws of the United States of America and maintains
11 its principal place of business in San Francisco,
12 California.

13 4. Wells Fargo & Company is made a defendant herein.
14 Wells Fargo & Company is a bank holding company organized
15 under the laws of the State of California and maintains its
16 principal place of business in San Francisco, California.
17 Wells Fargo & Company controls the operations of Wells
18 Fargo and directly or indirectly owns substantially all
19 of the bank's capital stock.

20 5. First Western Bank & Trust Company (hereinafter
21 referred to as "First Western") is made a defendant herein.
22 First Western is a banking association organized under the
23 laws of the State of California with its principal place of
24 business in Los Angeles, California.

25 6. Worldamerica Investors Corp. is made a defendant
26 herein. Worldamerica Investors Corp. is a bank holding
27 company organized under the laws of the State of California
28 and maintains its principal place of business in Oakland,
29 California. Worldamerica Investors Corp. controls the
30 operations of First Western and directly or indirectly owns
31 substantially all of the bank's capital stock.

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III

DEFINITIONS

7. As used in this complaint:

(a) the term "correspondent banking services" refers to those services offered by commercial banks, usually larger banks in major financial centers, to other commercial banks, usually smaller banks or banks in other states, which enable the smaller banks or out-of-state banks, in effect, to avail themselves and their customers of all or nearly all of the services offered by the large banks in the state to their own customers; and

(b) the term "commercial and industrial loans" refers to all loans made by commercial banks to business enterprises for commercial and industrial purposes, secured and unsecured, except those secured by real estate.

IV

TRADE AND COMMERCE

8. Commercial banks fill an essential and unique role in the nation's economy. Their principal functions are the acceptance of deposits for safe keeping and convenience in making payments by check, the granting of loans or advances of funds to individuals and business firms, and the creation through demand deposits of net additions to the supply of money. Most money payments in the United States are made through checks drawn against demand deposits, and the creation and holding of such deposits is a function peculiar to commercial banks and one which makes them to a great extent the administrators of the nation's check payment system. Through the making of loans to individuals and business firms, commercial banks supply a significant part of the credit requirements of the nation's economy. Commercial banks also accept time deposits from various types of depositors and provide a wide variety of other

1 financial services, including personal and corporate trust
2 accounts, the collection of drafts, bills and other
3 commercial instruments, the acceptance of bills of exchange,
4 the issuance of letters of credit, the sale of cashier's
5 checks and drafts on correspondent banks, the purchase
6 and sale of securities for customers, the sale of foreign
7 exchange, and the renting of safety deposit boxes. This
8 combination of services is unduplicated by other financial
9 institutions.

10 9. Customers of Wells Fargo and First Western have
11 regularly utilized interstate communications, including
12 the mails, telephone and telegraph, to carry on their
13 business with, apply for and obtain the services provided
14 by these banks. Wells Fargo and First Western have
15 regularly utilized interstate communications, including,
16 the mails, telephone and telegraph, to conduct business
17 with customers and with other banks located in states other
18 than California. Wells Fargo and First Western are engaged
19 in interstate commerce.

20 10. Wells Fargo is the third largest commercial bank
21 in California and the eleventh largest commercial bank in
22 the nation. It presently operates approximately 293 banking
23 offices, located throughout the State of California. As
24 of December 31, 1970, Wells Fargo had total assets of
25 about \$6.2 billion, total deposits of approximately \$5.3
26 billion (including IPC demand deposits of about \$1.9 billion)
27 and net loans and discounts of about \$3.7 billion. Wells
28 Fargo holds about 10 percent of the deposits held by all
29 commercial banks in California.

30 11. First Western is the eighth largest commercial
31 bank in California and the 64th largest commercial bank
32 in the nation. It presently operates approximately 96

1 banking offices, located throughout the State of California.
2 As of December 31, 1970, First Western had total assets of
3 about \$1.1 billion, total deposits of approximately \$902
4 million (including IPC demand deposits of about \$347 million)
5 and net loans and discounts of about \$611 million. First
6 Western holds about 1.8 percent of the deposits held by all
7 commercial banks in California.

8 12. The State of California is the largest state in
9 the nation in population and one of the wealthiest in terms
10 of per capita personal income. It is heavily industrialized,
11 but also contains an extensive agricultural industry. It
12 has also been one of the fastest growing states in the nation.
13 California's population grew from approximately 15.7 million
14 to 19.7 million persons between 1960 and 1970, a population
15 growth rate of 25.3 percent during that period. It ranks
16 fifth in the nation in per capita personal income.

17 13. Commercial banking in California, including many
18 local banking markets therein, is highly concentrated. There
19 are 152 banks competing with the defendant banks in the State
20 of California. Only six others, however, can be said to be
21 statewide competitors. These eight large statewide commercial
22 banks tend to establish their banking policies on a statewide
23 basis and are competitively responsive primarily to changes in
24 banking policy by other statewide competitors.

25 14. As of June 30, 1970, the five largest commercial
26 banks in California, including Wells Fargo, held about 79.4
27 percent of all commercial bank deposits in the state, while
28 the eight largest commercial banks, including Wells Fargo
29 and First Western, held approximately 88.4 percent of such
30 deposits. If the proposed merger of Wells Fargo and First
31 Western is consummated, the five largest banks would hold
32 about 81.2 percent and the eight largest would hold

1 approximately 89.3 percent of all deposits held by California
2 banks. The resulting bank would hold about 12 percent of all
3 such deposits.

4 15. Wells Fargo and First Western operate competing
5 banking offices in 18 counties in California: Alameda,
6 Butte, Contra Costa, Fresno, Plumas, Sacramento, San Francisco,
7 San Mateo, Santa Clara, Salinas, Stanislaus, Yorba, Los
8 Angeles, Orange, Kern, Ventura, Santa Barbara and Tulare.
9 These counties include most of the standard metropolitan
10 statistical areas in the state and the great bulk of the
11 population of California. Wells Fargo and First Western
12 are significant competitors of each other and of other
13 commercial banks in each of the above counties, as well
14 as in local banking markets therein. Wells Fargo and First
15 Western hold market shares in these counties ranging from
16 about 14.8 percent and 15.9 percent, respectively, of all
17 deposits in Plumas County to approximately .9 percent and
18 1.9 percent, respectively, of all deposits in Los Angeles
19 County. Commercial banking in each of the above counties,
20 as well as in local banking markets therein, reflects the
21 high statewide level of commercial banking concentration.

22 16. Correspondent banking in California is highly
23 concentrated. As of June 30, 1971, eight banks supplied
24 substantially all of such services to smaller banks located
25 in California and to banks located outside the state with
26 customers requiring banking services in California. These
27 eight banks held over 97 percent of the domestic interbank
28 deposits in California.

29 17. As of the same date, Wells Fargo was the fifth
30 largest supplier of correspondent banking services in
31 California with about 9.2 percent of all domestic interbank
32

1 deposits and First Western was the eight largest with about
2 2.7 percent of such deposits. If the proposed merger of
3 Wells Fargo and First Western is consummated, Wells Fargo
4 will become the third largest bank in California in terms
5 of correspondent services with about 11.9 percent of
6 domestic interbank deposits in California.

7 18. Commercial and industrial loans made by commercial
8 banks serve an important function in the economy of Cali-
9 fornia, particularly to small and intermediate sized
10 businesses. Small and intermediate sized businesses are
11 dependent on commercial banks for loans with which to
12 organize and conduct their business operations. No other
13 financial institution offers a reasonable alternative to
14 such bank loans for these borrowers. Commercial and
15 industrial lending in California is highly concentrated. As
16 of June 30, 1971, Wells Fargo had approximately \$1.4 billion
17 outstanding in commercial and industrial loans and First
18 Western had about \$185 million outstanding in such loans.
19 Together they hold a substantial share of all commercial
20 and industrial loans to small and intermediate sized
21 borrowers in the State of California.

22 19. California banking law permits commercial banks
23 to branch de novo throughout the state. First Western
24 maintains a substantial market position in many counties
25 and local banking markets in California where Wells Fargo
26 does not presently maintain an office. Wells Fargo maintains
27 a substantial market position in many counties and local
28 banking markets in California where First Western does not
29 presently maintain an office.

30 20. Wells Fargo has the capability and incentive to
31 expand into areas of California where it does not presently
32 compete by de novo branching or by acquisition of smaller

1 banks operating in those areas.

2 21. First Western has the capability and incentive
3 to expand into areas of California where it does not
4 presently compete by de novo branching or by acquisition of
5 smaller banks operating in those areas.

6 V

7 VIOLATION

8 22. On or about October 14, 1971, defendants Wells
9 Fargo and First Western entered into an agreement, joined
10 in by defendants Wells Fargo & Company and Worldamerica
11 Investors Corp., which, if consummated, will result in the
12 consolidation of Wells Fargo and First Western under the
13 charter of Wells Fargo and with the title of Wells Fargo
14 Bank, National Association. The Comptroller of the Currency
15 approved the proposed consolidation on December 20, 1971.

16 23. The effect of the merger of Wells Fargo and First
17 Western, pursuant to the agreement described in paragraph
18 22 above, may be substantially to lessen competition or to
19 tend to create a monopoly in violation of Section 7 of the
20 Clayton Act in the following ways, among others:

21 (a) actual competition between Wells Fargo and
22 First Western in the State of California and in local banking
23 markets therein will be permanently eliminated;

24 (b) concentration in commercial banking in the
25 State of California and in local banking markets therein
26 will be significantly increased;

27 (c) Wells Fargo will be eliminated as a potential
28 substantial competitive factor in those banking markets
29 where it does not presently operate banking offices in
30 competition with those of First Western;

31 (d) First Western will be eliminated as a potential
32 substantial competitive factor in those banking markets where

1 it does not presently operate banking offices in competition
2 with those of Wells Fargo;

3 (e) competition between Wells Fargo and First
4 Western in furnishing correspondent banking services to
5 smaller California banks and to banks outside the State of
6 California will be permanently eliminated;

7
8 (f) concentration in the supplying of correspond-
9 ent banking services to smaller California banks and to
10 banks outside the State of California will be significantly
11 increased;

12 (g) competition between Wells Fargo and First
13 Western in commercial and industrial lending to small
14 and intermediate sized businesses in California will be
15 permanently eliminated;

16 (h) concentration in the supplying of commercial
17 and industrial loans to small and intermediate sized busi-
18 nesses in California will be significantly increased; and

19 (i) mergers and consolidations between other
20 leading banks in California may be fostered, resulting in
21 the concentration of banking resources in the state to a
22 more extensive degree than is already present, thereby
23 reducing diversity in banking choices and promoting parallel
24 policies among leading banks in local markets.

25 PRAYER

26 WHEREFORE, plaintiff prays:

27 1. That the merger agreement described in paragraph 22
28 of this complaint be adjudged to be unlawful and in viola-
29 tion of Section 7 of the Clayton Act.


30 2. That defendants and all persons acting on their
31 behalf be enjoined from carrying out the aforesaid agreement
32 of merger, or any similar plan or agreement, the effect of

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which would be to merge, consolidate or in any way combine the banking businesses of said defendants.


3. That plaintiff have such other and further relief as the Court may deem just and proper.

4. That plaintiff recover the costs of this action.



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