Borrowing While Black: The Case of Wells Fargo

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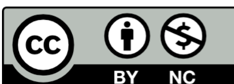

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Introduction

Amid the turmoil of the subprime mortgage crisis, one question lurking beneath the surface of the national debate over its causes is the role of race. On January 27, 2011, the Financial Crisis Inquiry Commission (FCIC) released their *Final Report on the Causes of the Financial Crisis* (FCIC Report). Congress established the FCIC to "examine the causes of the current financial and economic crisis in the United States" and "to expose the facts, identify responsibility, unravel myths, and help us understand how the crisis could have be avoided. [1] As noted in a recent *Temple Law Review* article, "at no point in its 600-plus pages does the [FCIC] report explicitly recognize the devastating impact that subprime lending practices has—and continues to have—on the African American community."[2]

The hypothesis that mortgage outcomes reflects "race" not "risk" is supported by a growing body of empirical evidence revealing that Wells Fargo, the nation's largest mortgage lenders and a recipient of $25 billion in TARP government bailout money. Lawsuits launched against Wells Fargo in Baltimore, Chicago, Memphis, as well as one of the largest class action lawsuits in history, representing more than one million African

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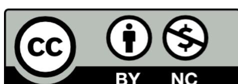
[1] The FCIC "statutory instruction set out 22 specific topics for inquiry and called for the examination of the collapse of major financial institutions that failed or would have failed if not for exceptional assistance from the government." The Commission also examined the roles of policy makers and regulators. In the course of the FCIC investigation, over 700 witnesses were interviewed and 19 days of hearings in communities across the country hard hit by the crisis were held, see *Financial Crisis Inquiry Commission Release Report on the Causes of the Financial Crisis*, Media Advisory, January 27, 2001, available at www.fcic.gov

[2] *A Racial Financial Crisis: Rethinking the Theory of Reverse Redlining to Combat Predatory Lending under the Fair Housing Act* , (Temple Law Review , Volume 83), available at http://templelaw.tenintenclients.com/wp-content/uploads/2011/11/nier.pdf



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American and Hispanic borrowers, cast new light on how Wells Fargo's systemic pattern of discretionary pricing polices, misaligned markets and profit incentives are reversing hard fought civil rights gains and neighborhood revival efforts. [3] During discovery phase of the class action lawsuit, for example, Howell E. Jackson, the James S. Reid, Jr., Professor of Law at Harvard Law School, conducted the most rigorous empirical analysis of Wells Fargo lending practices.

Based on Professor Jackson's analysis, "African American and Hispanic borrowers, in the aggregate, are obligated to pay $560 million more for their Wells Fargo loans than similarly situated Whites over just five years of their loans" and nearly $2 billion more than White borrowers over the full term of the mortgage.[4] On July 20, 2011, after conducting an examination of Wells Fargo loan files, the Board of Governors of the Federal Reserve System assessed Well Fargo a record $85 million fine for accusations of

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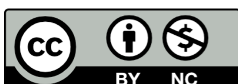
[3] For reviews see, Center for Responsible Lending, *A Review of Wells Fargo's Subprime Lending*, CRL Issue Paper, April 2004, available at, http://www.responsiblelending.org/mortgage-lending/research-analysis/ip004-Wells_Fargo-0404.pdf; and The National People's Action Report*, The Truth About Wells Fargo: Racial Disparities in Lending Practices*, March 2009, available at, http://www.npa-us.org/downloads/truthaboutwellsfargo.pdf ; and Alan M. White, Subprime Mortgage and Discrimination Lending: Borrowing While Black: Applying Fair Lending Laws to Risk-Based Mortgage Pricing, available at https://litigation-essentials.lexisnexis.com/webcd/app?action=DocumentDisplay&crawlid=1&doctype=cite&docid=60+S.C.+L.+Rev.+677&srctype=smi&srcid=3B15&key=07b288271cbf8bf131a928410fc609c2

[4] Factors Professor Jackson regression analysis controlled for included "loans-to-value ratios, credit scores, loan amounts, loan purposes, occupancy status, documentation type, debt-to-income ratios and whether or not a prepayment penalty was charged. For details of regression analysis see see United Sates District Court Northern District of California, *In re Wells Fargo Mortgage Lending Practices Litigation, Class Certification Report of Howell E. Jackson*, available at, http://www.nclc.org/images/pdf/litigation/class-cert-howell-jackson.pdf



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mortgage steering.[5] Despite its robustness, similar to the FCIC Final Report, the Federal Reserve does not directly address the issues of race or distinguish the distressing impact of Wells Fargo lending practices on African American borrowers and neighborhoods.

Most recently, on July 12, 2012, the DOJ announced a $175 million resolution with Wells Fargo. According to the DOJ, Wells Fargo's abusive mortgage lending has become an increasing problem, exacerbating the loss of equity in homes and causing an increase in the number of foreclosures.[6] The DOJ noted the while the marketplace appears to operate effectively for conventional mortgages, too many African American homeowners found themselves victims of mortgage brokers who provide loans with unnecessarily high costs and terms that are unnecessary to secure repayment of the loans. For example,

> *"Highly qualified prime retail and wholesale applicants for Wells Fargo residential mortgage loans were more than four times as likely to receive a subprime loan if they were African-American and more than three times as likely if they were Hispanic than if they were white. Conversely, during the same time period, borrowers with less favorable credit qualifications were more likely to receive prime loans if they were white than borrowers who were African-American or Hispanic."*[7]

State Attorney General Offices vs. Wells Fargo

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[5] The investigation involved home mortgage allocation, between January 1, 2004 to September 2008, primarily in Wells Faro locations in Florida, New York, Pennsylvania, Tennessee, Texas and New Mexico. The Board of Governors of the Federal Reserve System, *In the Matter of Wells Fargo & Company and Wells Fargo Financial, Inc*., Docket No. 11-094-B-HC1 (Order to Cease and Desist and Order of Assessment of a Civil Money Penalty Issues upon Consent), p. 2-5, available at, http://www.federalreserve.gov/newsevents/press/enforcement/enf20110720a1.pdf

[6] *United States of America v. Wells Fargo Bank, NA*, available at http://www.clearinghouse.net/chDocs/public/FH-DC-0005-0003.pdf

[7] Id, at 2

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On April of 2005, the New York State Attorney General's office conducted an analysis of several major national banks operating in the state of New York and found significant racial disparity that violated state civil rights laws. In the case of Wells Fargo, African American borrowers are three times more likely to receive higher-cost subprime mortgage products. Attorney General Eliot Spitzer sent letters "in lieu of issuing formal subpoenas" requesting additional information from Wells Fargo concerning their mortgage operation and lending data from all subsidiaries. Attorney General Spitzer claimed authority to demand the requested information under the New York State Executive Law. [8] Wells Fargo refused to provide non-public information and sought a permanent injunction against the New York AG office.

The Clearing House Association, a bank trade organization, filed a lawsuit on behalf of Wells Fargo, and three additional national banks to block the request for additional lending information.[9] In support of Wells Fargo's complaint, the Office of the Comptroller of the Currency (OCC) filed a separate lawsuit to enjoin New York Attorney General Eliot Spitzer investigation of Wells Fargo lending practices.[10] According to the OCC complaint, the National Bank Act identifies the OCC as the "exclusive enforcer of

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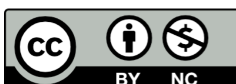
[8] N.Y. Executive Law (Section 296-a) broadly prohibits creditors from discrimination on the basis of race, sex, national origin, or other protected grounds.

[9] The three additional national banks were Citigroup, HSBC Bank USA, and J.P. Morgan Chase Bank. See, Clearing House Ass'n v Spitzer No. 05-CV-5629 (SHS) (S.D.N.Y. October 12, 2005), available at, http://www.theclearinghouse.org/docs/001276.pdf

[10] *Office of the Comptroller of the Currency v. Eliot Spitzer, in his official capacity as Attorney General for the State of New York* (Complaint for Declaratory Relief, Preliminary Injunction, and Permanent Injunction), available at, http://www.occ.gov/topics/laws-regulations/litigation/leg-proc-other-occ-vs-spitzer-2005b.pdf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all federal and non-preempted state laws" and as having "exclusive powers of visitation" over national banks such as Wells Fargo.[11]

In a sweeping loss for the New York AG office, the U.S. District Court for the Southern District of New York ruled that the OCC was correct in asserting that federal law prevents states from enforcing non-pre-empted state laws.[12] In a separate opinion, the District Court granted Wells Fargo and the other plaintiff's in *Clearing House v. Spitzer* similar relief. [13] The Supreme Court reiterated OCC regulatory authority over state mortgage lending enforcement in *Watters v. Wachovia*. [14] In *Barnett Bank v. Nelson*, the Supreme Court affirmed that, under the Supremacy Clause, a state law cannot "stand as an obstacle," "prevent" or "significantly interfere" with the exercise of a Federal power granted a national bank by statute or regulation. [15] Courts persistently ruled that federal law preempted state efforts to curb abusive lending.

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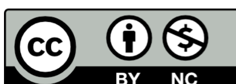
[11] See, OCC, Vistorial Powers Final Rule, Question and Answers, January 7, 2004, available at, http://www.occ.gov/static/news-issuances/news-releases/2004/2004-3eVisitorialruleQNAs.pdf

[12] The decision permanently enjoined Attorney General Spitzer from issuing subpoenas or "enforcing any activities against Wells Fargo or their operating subsidiaries," or "any further usurpation of the OCC's exclusive authority to supervise and examine national banks or their operating subsidiaries." See, United States District Court Southern District, Office of the Comptroller of the Currency v. Eliot Spitzer, available at, http://www.theclearinghouse.org/docs/001277.pdf

[13] Clearing House Ass'n v Spitzer No. 05-CV-5629 (SHS) (S.D.N.Y. October 12, 2005), available at, http://www.theclearinghouse.org/docs/001276.pdf

[14] *Watters v. Wachovia Bank, N.A.,* 550 U.S. 1, 127 S. Ct. 1559 (2007), for review and impact, see Elizabeth R. Schiltz, "Damming the Watters: Channeling the Power of Federal Preemption of State Consumer Bank Laws," Florida State University Law Review (vol. 35:893), available at, http://www.law.fsu.edu/journals/lawreview/downloads/354/schiltz.pdf

[15] *Barnett Bank v. Nelson*, 517 U.S. 25, 32 (1996), available at, http://www.supremecourt.gov/opinions/06pdf/05-1342.pdf



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The City of Cleveland v. Wells Fargo

In the first lawsuit against Wells Fargo, filed under Ohio "public nuisance" law, the city of Cleveland sought to recover compensation from Wells Fargo and other defendants totaling millions in municipal expenditures and diminished tax revenues caused by predatory and discriminatory lending policies. [16] The lawsuit describes Cleveland as "the epicenter of a mortgage foreclosure crisis." As foreclosures, "seeming overnight", claimed entire streets, blocks, and neighborhoods. [17] Wells Fargo responded by filing a motion to dismiss on grounds that Article IV of the United States Constitution, the National Bank Act, and Ohio state law preempted Cleveland's lawsuit. [18]

The U.S. District Court for Northern District of Ohio granted the motion to dismiss on four independent grounds. First, the city of Cleveland lawsuit is "preempted by Ohio Revised Code that forbids municipalities from engaging in mortgage regulation. Second, the court ruled that Ohio's economic loss rule barred Cleveland's claim for damages. Third, the court held that subprime lending is legal. Therefore, such lending cannot form the basis of a public nuisance claim. Finally, the court held that the city fail

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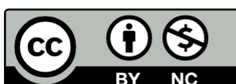
[16] Under Ohio common law, a "public nuisance" is an unreasonable interference with rights common to the public interest. The term "unreasonable interference" are acts that significantly interfere with public health, safety, peace, comfort, or convenience, or conduct that is of a continuing nature or one which has produced a permanent or long-lasting effect upon the public right, and effect of which the actor is aware or should be aware. *City of Cincinnati v. Beretta U.S.A. Corp., 768 N.E.2d 1136, 1141, 95 Ohio St. 3d 416, 419 (2002)*, available at, http://www.vpc.org/graphics/cincin.pdf

[17] *City of Cleveland v. J.P. Morgan Chase* (Case no. cv-08-668608), available at, http://www.pbs.org/moyers/journal/07182008/Foreclosure_Doc.pdf

[18] Ibid, Doc. No. 202- Wells Fargo Bank N.A. and Wells Fargo Asset Securities Corporation.



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to demonstrate that Wells Fargo's conduct was the proximate cause of the city of Cleveland's alleged damages." [19]

The United States Court of Appeals affirmed the district court decision by determining that "the injuries that Cleveland alleges could have been caused by many other factors unconnected" to Wells Fargo conduct. [20] According to the written opinion, the alleged harms, "neglect of property, starting fires, looting, and dealing drugs", are "completely distinct from the asserted misconduct" the "financing of subprime loans."[21] The court noted that individual homeowners whom are "not necessarily immediate victims, are closer in the alleged chain of causation than Cleveland" and would be "considerable easier to calculate" if the lawsuit were limited to "damages suffered by property owners in a specific neighborhood" where the court "could more readily ascertain how many foreclosures occurred and what caused them."[22] For these reasons, "even when viewing the assertions in a light most favorable to Cleveland, the connection between the alleged harm and the alleged misconduct is too indirect to warrant recovery."[23]

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[19] United State District Court Northern District of Ohio Eastern Division, *City of Cleveland v. Ameriquest Mortgage Securities, Inc., et al*., available at, http://blog.cleveland.com/cityhall_impact/2009/05/ClevelandForeclosureDismissal.pdf, at 36.

[20] *City of Cleveland v. Ameriquest Mortgage Securities, Inc et al*., United States Court of Appeals, For the Sixth Circuit, no. 09-3608. Appeal from the United States District Court for the Northern District of Ohio at Cleveland, No. 08-00139 available at, ftp://www.ca6.uscourts.gov/opinions.pdf/10a0222p-06.pdf , at 12.

[21] Id

[22] Id. at 14

[23] Id. at 15

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Although Cleveland failed in its attempt to use public nuisance law to hold Wells Fargo accountable, the lawsuit gained national attention for exposing the link between subprime lending and mortgage foreclosures. For example, research conducted by Case Western Reserve University's Center in Urban Poverty and Community Development tracked the performance of mortgages originated in 2005 and 2006. According to the research, "subprime loans are by far the most common starting point on the pathway to foreclosure. In the case of Wells Fargo, over twenty percent of their subprime mortgages resulted in foreclosure, representing nearly 9 percent of all high cost subprime foreclosed loans during the study period.[24]

Case of Baltimore v. Wells Fargo Bank

In a first of a kind lawsuit by a municipality against a major mortgage lender, the City of Baltimore legal actions against Wells Fargo began on January 8, 2008. Brought under provisions of the Fair Housing Act, the lawsuit sought "redress for injuries causes by Wells Fargo's patterns or practices of illegal and discriminatory mortgage lending," as well as, "Wells Fargo's unlawful, irresponsible, unfair, deceptive, and discriminatory lending practices." [25] Specifically,

Reverse redlining by Wells Fargo has the effect and purpose of placing vulnerable underserved borrowers in loans they cannot afford. Reverse redlining maximizes Wells Fargo's short-term profit without regards to the borrower's best interest, the borrower's

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[24] Case Western Reserve University Center on Urban Poverty and Community, *Pathways to Foreclosure: A longitudinal Study of Mortgage Loans: Cleveland and Cuyahoga County, 2005-2008*, available at http://blog.case.edu/msass/2008/06/23/Pathways_to_foreclosure_6_23.pdf, see Table (2) and (3).

[25] Mayor and City Council of Baltimore v. Wells Fargo Bank, N.A., et al., 631 F. Supp 702, 703-04 (D. Md. July 2, 2009)

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ability to repay, or the financial health of underserved minority neighborhoods. Wells Fargo averts any significant risk to itself selling the loans on the secondary market shortly after originating them.

The fact that Wells Fargo's foreclosures are so disproportionately concentrated in African American neighborhoods is not the product of chance events. To the contrary, it reflects and is fully consistent with Wells Fargo's practices of targeting African American neighborhoods and customers for discriminatory practices and predatory pricing and products.[26]

Wells Fargo whistle-blower Elizabeth M. Jacobson, a white loan officer who worked at Wells Fargo for nine years and a top producing subprime loan officer nationally, said she "received many awards from Wells Fargo for originating a very high volume of subprime loans." According to Jacobson's affidavit:

"Because of the high volume of subprime loans that I made and the length of time that I worked at Wells Fargo, I learned all of the 'ins and outs' of the subprime loan process at the company... The commission and referral system at Wells Fargo was set up in a way that made it more profitable for a loan officer to refer a prime customer for a subprime loan than make the prime loan directly to the customer. The commission and fee structure gave [prime mortgage loan officers] a financial incentive to refer the loan to a subprime loan officer…When I got referrals, it was my job to figure out how to get the customers into a subprime loans…My pay was based on the volume of loans that I completed. It was in my financial interest to figure out how to qualify referrals for subprime loans. Moreover, in order to keep my job, I had to make a set number of subprime loans per month." [27]

Jacobson testified that Wells Fargo intentionally enticed African American borrowers into high cost mortgage products by focusing on African American churches. She recounted details of a conference call strategy session for the black church:

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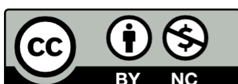
[26] Id. at 50

[27] Relief and Damages, Mayor and City Council of Baltimore v. Wells Fargo Bank, N.A. (Declaration of Elizabeth M. Jacobson), p. 3-4, available at, http://www.relmanlaw.com/docs/Baltimore-Declarations.pdf



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On that call we were told that we 'have to be of color' to come to the presentation. The idea was that since the churchgoers were black Wells Fargo wanted the loan officers to be black. I was told that I could attend only if I 'carried someone's bag.' The point was clear to me: Well Fargo wanted black potential borrowers talking to black loan officers

[Wells Fargo's "Emerging Markets Unit"] specifically targeted black churches. Wells Fargo had a program that provided a donation of $350 to the non-profit of the borrower's choice for every loan the borrower took out with Wells Fargo. Wells Fargo hoped to sell the African American pastor or church leaders on the program because Wells Fargo believed that African American church leaders had a lot of influence over their ministry, and in this way would convince the congregation to take out subprime loans with Wells Fargo. Subprime loan officers did not market or target white churches for subprime loans. When it came to marketing, any reference to 'church' or 'churches' was understood as a code for African American or black churches. [28]

Jacobson told *the New York Times*, she and her fellow loan officers at Wells Fargo "saw the black community as fertile ground for subprime mortgages, as working class blacks were hungry to be part of the nation's home owning mania." Jacobson said that she made over $700,000 one year and that Well Fargo flew her and other subprime officers to resorts across the country as a bonus and reward for their subprime lending volumes. [29] In a radio interview with host Amy Goodman and Juan Gonzalez of *Democracy Now*, Jacobson further explains how for a decade, Wells Fargo systematically singling out African Americans churches in Baltimore and suburban Maryland for high interest mortgages.[30]

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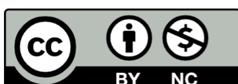
[28] Id

[29] Michael Powell , *New York Times*, June 6, 2009, , "Bank Accused of Pushing Mortgage Deals on Black," available at, http://www.nytimes.com/2009/06/07/us/07baltimore.html?pagewanted=all

[30] Democracy Now, *Former Wells Fargo Subprime Loan Officer: Bank Targeted Black Churches as part of Predatory Subprime Lending Scheme*, available at, http://www.democracynow.org/2009/8/28/former_wells_fargo_subprime_loan_officer



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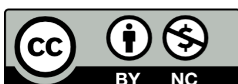
Under penalty of perjury, Tony Paschal, who is African American, signed an affidavit outlining meticulous allegations of racial steering. The former loan officer describes how Wells Fargo's "Affinity Marketing Group" section consisted entirely of African American employees specifically for the purposes of targeting members of African American churches for high cost mortgage products. [31] According to Paschal, "[Wells Fargo subprime unit] *targeted zip codes in Washington, D.C. east of the Anacostia River, Prince George's County, Maryland and the City of Baltimore with predominantly African American populations.*"[32]

As part of their marketing plan, Paschal explained how Wells Fargo utilized a computer function that permitted employees to customize marketing materials to target African Americans neighborhoods. *For example, if a Wells Fargo loan officer anywhere in the United States wanted to send a flyer to consumers in an African American neighborhood soliciting subprime loans, he could access software on his computer that would print out a flyer to* ***persons speaking the language of "African American***.*"* [33] According to Paschal, "because Well Fargo made higher profit on subprime loans, the company put 'bounties' on African American borrowers. By this I mean that loan officers received cash incentives to aggressively market subprime loans in African American

[31] Relief and Damages, Mayor and City Council of Baltimore v. Wells Fargo Bank, N.A. (Declaration of Tony Paschal), available at, http://www.relmanlaw.com/docs/Baltimore-Declarations.pdf

[32] Id.

[33] Id. For review of "African American language" software screen see, **(Exhibit A)**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communities."[34]

Paschal said he heard Wells Fargo employees on "*several occasions mimic and make fun of"* African American borrowers by using racial slurs. Derogatory stereotypes included Wells Fargo employees referring to subprime mortgage made in African American neighborhoods as "***ghetto loans***" and African American borrowers as "***those people have bad credit," "those people don't pay their bills***," and "***mud people***."[35] In one extreme instance of how Wells Fargo management "tolerated a culture of discrimination," Paschal provided documented evidence of how he complained by email to his branch manger, an Executive Vice President and two Human relations officers about "***the use of the word "[N-word***]" and other "***racial slurs"*** by Wells Fargo employees. [36]

When Paschal complained about the use of "the N-word," and descriptions of African Americans living in "***hoods***" and "***slums***," the branch manager, a white male, told him "*he had use the slurs in a humorous was, just as the African American comedian Dave Chapelle did on television and thought that [Paschal] would find the use of these terms humorous."*[37] The Executive Vice President response to Paschal email agreed that racial epithets were unacceptable but questioned why he was raising the issue with him. Despite Paschal complaints, Wells Fargo promoted the branch manager who used the "N-

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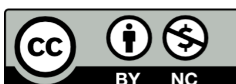
[34] Id

[35] Id.

[36] Id. For review of Paschal's e-mail exchange with branch manager see, **Exhibit B**.

[37] Id.



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word." [38]

Wells Fargo filed a Motion to Dismiss, challenging the city's standing on grounds that the complaint "failed to state a cognizable FHA violation under either a disparate treatment or disparate impact theory." The City of Baltimore filed an Amended Complaint, with statistical evidence of racial disparities, alleging that Wells Fargo lending practices "led to a disproportionately high rate of foreclosure in the City's African American communities, causing an increase in abandoned and vacant homes in those areas, which in turn has allegedly caused financial harm to the City." [39] Wells Fargo filed another Motion to Dismiss the Amended Complaint. United States District Judge J. Frederick ruled that "the City's allegations in the Amended Complaint of a causal connection between Wells Fargo's alleged misconduct and the damages the City claims is not plausible.[40] Using the city's empirical analysis, Judge Motz noted, "Wells Fargo is responsible for only a negligible portion of the City's vacant housing stock." Therefore, "this fact alone demonstrates the implausibility of any alleged causal connection between Wells Fargo's alleged reverse redlining activities and the generalized type of damages claimed by the City."[41]

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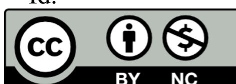
[38] Id. For review of Paschal's e-mail exchange with Wells Fargo Executive Vice President see, **Exhibit C**.

[39] Judge J. Frederick Motz, opinion, *Mayor and City of Baltimore v. Wells Fargo Bank, NA and Wells Fargo Financial Leasing Inc.,* Civil No. JFM 1:08 CV-00062, www.mdd.uscourts.gov/Opinions/Opinions/WellsFargo06jan.pdf

[40] Id. at 4

[41] Id.



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Motz concluded, “It may be entirely reasonable to posit-as the City’s allegations amply support-that unscrupulous lenders took advantage of inner city residents living in a dysfunctional environment to induce them to make loan they could not afford. It does not follow, however, that it is reasonable to infer-as the City argues-that the unscrupulous lender themselves created the dysfunctional environment they exploited.”[42] Judge Moz ruled: “If the City desires to pursue a more limited claim, such as a claim for specific damages allegedly suffered by the City in regard to specific houses that became vacant allegedly because of Wells Fargo’s lending activities or a claim for damages allegedly caused to a specific neighborhood in which Wells Fargo made enough allegedly improper loans.”[43]

On September 14, 2010, United States District Judge J. Frederick Motz issued his opinion on Wells Fargo’s motion to dismiss the city of Baltimore’s amended claim for specific damages.[44] Judge Motz ruled that “in order to show standing, the city must establish that there was a causal connection between the injuries it claims and Wells Fargo’s conduct of which it complains.”[45] According to his ruling, the city, once again, failed to establish this causal connection. Judge Motz analysis of the case persuaded him that “theoretically the city does have a viable claim, if it can prove property specific

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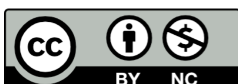
[42] Id at 5

[43] Id. at 6

[44] Chambers of J. Frederick Motz, United States District Judge, September 14, 2010, Memo to Counsel RE: Major and City of Baltimore v. Wells Fargo, et al, Civil No. JFM-08-62, available at, http://buckleysandler.com/uploads/36/doc/Opinion-Baltimore_v_Wells_Fargo-91410.pdf

[45] Id at 1



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injuries inflicted upon it at properties that would not have been vacant but for improper loans made by Wells Fargo."[46]

In response, the city of Baltimore narrowed their complaint to "specific properties that became vacant because of Wells Fargo's illegal lending activities."[47] This third amended complaint sought "injunctive relief and damages for the injuries caused by foreclosures that are the direct "result of Wells Fargo's unlawful, irresponsible, unfair, deceptive, and discriminatory lending practices." As well as, damages for lost property tax revenue from "sub-neighborhoods" defined as "historically stable working- and –middle –class" African American neighborhoods. According to the amended lawsuit, "Wells Fargo foreclosures are so disproportionately concentrated in these sub-neighborhoods, which are approximately two blocks by two blocks, that they have had a significant, deleterious, and quantifiable effect on the values of other homes in the same sub-neighborhoods."[48]

On April 22, 2011, Judge Motz ruled on Wells Fargo's motion to dismiss the Baltimore amended lawsuit. [49] The issue "at the hear of the motion", Judge Motz said, "is whether the city has plausibly alleged that the properties in question would not have

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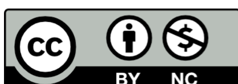
[46] Id at 2

[47] *Mayor and City Council of Baltimore v. Wells Fargo Bank, N.A. and Wells Fargo Financial Leasing, Inc*., United States District Court for the District of Maryland Baltimore Division (case 1:08-cv-00062-JFM), p. 2, available at http://www.relmanlaw.com/docs/Baltimore-Complaint.pdf

[48] Id at 5

[49] *Mayor and City of Baltimore v. Wells Fargo, N.A., et a*l., In the United States District Court for the District of Maryland (Civil case No. JFM-08-02), available at, http://www.relmanlaw.com/docs/Baltimore-Order.pdf



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become vacant but for the allegedly improper loans made by Wells Fargo.[50] The amended complaint outlined three occurrences where Wells Fargo lending practice caused vacancies that would not have transpired. First, "Wells Fargo deliberately steered African-Americans borrowers who qualified for prime loans into more onerous subprime loans. Second, the city claimed this practice "caused foreclosures and eventual vacancies in properties that otherwise would have remained occupied had borrowers been given prime loans. Finally, Wells Fargo approved unqualified African-American borrowers for refinance or home equity loans when "Wells Fargo knew or should have know that these borrowers would be unable to make the required monthly payments. Consequently, if not for Wells Fargo, "the subject properties would not have become vacant and would have remained occupied."[51]

Judge Motz ruled that the amended complaint "clearly provide the missing causal link between Wells Fargo's alleged steering and the vacant properties identified by the City. Furthermore, "by limiting its allegation to those situations involving borrowers who were already owning and occupying their homes, the city again successfully fills the gap between its claimed injuries and Wells Fargo's alleged conduct. He determined that the city of Baltimore has provided "an in-debt explanation of how targeting homeowners with predatory refinance and home equity loans of the type allegedly made by Wells Fargo can create vacancies in homes that would otherwise be occupied." The city has also shown that "Wells Fargo has engaged in at least some practices at properties located in Baltimore's African American neighborhoods which are the subject of this lawsuit."

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[50] Id. at 5

[51] Id. at 6-7

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Thus, “contrary to Wells Fargo’s argument that the City’s allegations depend on mere ‘guesses’ or ‘speculation,’ it is apparent that the causal chain is in fact grounded on contact with real borrowers and analysis of hard data.” [52] The Court denied the motion to dismiss, granting the City of Baltimore standing to pursue its lawsuit against Wells Fargo.

Case of Memphis and Shelby County v. Wells Fargo

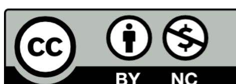
In April of 2010, the city of Memphis and Shelby County filed suit, seeking injunctive relief and damages for injuries caused by Well Fargo’s discretionary pricing policies. [53] According to the complaint, Wells Fargo’s compensation structure and lack of internal controls resulted in “delinquency, default and foreclosure for many borrowers” that “should have been, clearly foreseeable to Wells Fargo at the time the loans were made.”[54] The lawsuit alleged that these practices violated the Tennessee Consumer Protection Act by “intentionally and knowingly” deceiving “Memphis and Shelby County, borrowers, and in particular African American borrowers and borrowers residing in Memphis’ and Shelby County African American neighborhoods.”[55] Plaintiffs also claimed that Wells Fargo engaged in a pattern or practice of targeting African American neighborhoods for deceptive, predatory or otherwise unfair lending practices in violation

[52] Id. at 8-11

[53] *City of Memphis and Shelby County v. Wells Fargo Bank, N.A. et. al.*, In the United States District Court for the Western District of Tennessee Western Division (Case No. 2:09-cv-02857x-STA-dkv), available at, http://www.relmanlaw.com/docs/WellsFargoComplaint.pdf

[54] Ibid, pp. 53-54.

[55] Ibid, pp. 78-79.



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of the Fair Housing Act.

Statistical evidence revealed a Wells Fargo "pattern and practice" of mortgage lending causing "an excessive and disproportionately high number of foreclosures in African American neighborhoods." Wells Fargo mortgages in a predominantly African American neighborhood in Shelby County are almost seven times more likely to result in foreclosure as one in a predominantly white neighborhood. In Memphis, it is 5.3 times more likely to result in foreclosure.[56] Empirical data further suggests that victims of Wells Fargo deceptive practices were often vulnerable elderly female African American homeowners and virtually all of the mortgage refinancing offered were "3/27" and "2/28" adjustable rate mortgages with artificially low teaser rates, which would rise every six months after the initial rate expired. [57] Analogous to Baltimore, the City of Memphis and Shelby County revised their complaint by producing "empirical quantification" of damages suffered as a result of vacancies resulting from "specific" Wells Fargo's foreclosures, including detailed records of police and fire calls, housing code enforcement, and other legal action taken for each Wells Fargo foreclosed and vacant property in Memphis and Shelby County. [58]

Several former employees with knowledge of Well Fargo's business practices

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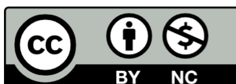
[56] Ibid, pp. 24-28.

[57] Written Statement of Webb A. Brewer, Counsel for Plaintiffs in City of Memphis v. Wells Fargo, Before the House Judiciary Committee Subcommittee on Commercial and Administrative Law, Field Briefing on Home Foreclosures in Memphis, Cecil C. Humphrey's School of Law University of Memphis, Memphis Tennessee, July 19, 2010, available at, http://judiciary.house.gov/hearings/pdf/Brewer100719.pdf

[58] City of Memphis and Shelby County v. Wells Fargo National Bank, N.A., et al (First Amended Complaint for Declaratory and Injunctive Relief and Damages), available at, http://www.relmanlaw.com/docs/Memphis-Order.pdf



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gave declarations "under penalty of perjury" providing devastating corroboration of reverse redlining and racial steering. Camille Thomas worked as a loan processor at four different locations in Memphis. She was responsible for the paperwork for all mortgages in her office and was familiar with the entire origination approval process and underwriting guidelines. Based on her declaration, elderly African Americans borrowers "*were thought to be particularly vulnerable and were frequently targeted for subprime loans with high interest rates.* She knew of "*one instance where an elderly African American woman could not qualify for a subprime loan that a credit manager wanted to put her into, so the credit manager convinced here to transfer the property to her son so the subprime loan could be made in the son's name.*[59]

Thomas affirmed Wells Fargo employees "*generally assumed that African American customers were less sophisticated and intelligent and could be manipulated more easily into a subprime loan with expenses terms than white customer*." This led to an environment, she said, "*in which unethical practices were condoned and encouraged.*" According to Thomas, "*this was possible to do because the underwriting rules gave the managers lots of discretion that allowed them to engage in predatory practices. I know this happen, because I processed the paperwork and saw the loan files*.[60]

Thomas testified how Wells Fargo employees used "*lots of schemes used to steer African-American customers into subprime loans*." She documented instances where

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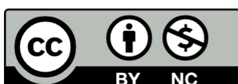
[59] *City of Memphis and Shelby County v. Wells Fargo Bank, N.A. et. al*., In the United States District Court for the Western District of Tennessee Western Division, (Attachment D: Declaration of Camille Thomas), available at, http://www.relmanlaw.com/docs/Declarations-Memphis.pdf, at 2-3

[60] Id.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African-American borrowers were steered into "teaser rate" loans without informing the borrower that the loan had an adjustable rate, loan officers manipulating loan-to-value ("LTV") calculations in order to qualify borrowers for loans, and falsified loan files to inflate income to meet debt-to-income ("DTI") requirements. On one occasion, Thomas objected to a falsification of income documents. Her branch manager told here "*we gotta do what we gotta do.*" Managers, she said, "*went so far as to lie to borrowers about whether their house would become the collateral for a debt consolidation.*"[61]

A former Wells Fargo credit manager, Doris Dancy, depicted the "*way management pressured us to do unethical things was as aggressive as a wolf.*"[62]
She stated under oath "*my job was to find as many potential borrowers for Wells Fargo as possible. I spent almost all of my time calling people from a list of "leads" provided to me. Most (eighty percent or more) of the leads on the lists I was given were African American. I know this both from meeting these individuals, and from talking with them on the telephone. The people on the list of leads did not represent a random cross-section of the people who lived in the area around the branch office, because our office was located in an area where a lot of white people lived.*"[63]

Based on her declaration, Wells Fargo employees "*were supposed to try and refinance these individuals into new, expensive subprime loans with high interest rates and lots of fees and cost. The way we were told to sell these loans was to explain that we*

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[61] Id. at 4-6

[62] *City of Memphis and Shelby County v. Wells Fargo Bank, N.A. et. al.*, In the United States District Court for the Western District of Tennessee Western Division, (Attachment A: Declaration of Doris Dancy), available at, http://www.relmanlaw.com/docs/Declarations-Memphis.pdf

[63] Id. at 2

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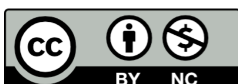
were eliminating the customer's old debts by consolidating their existing debts into one new one. This was not really true—we were not getting rid of the customer's existing debts; we were actually just giving them a new more expensive loan that put their hose at risk."[64] She adds that Wells Fargo had "*no compassion for these individuals who came to us trusting our advice*." She portrayed Wells Fargo's method of mortgage refinancing as "*unethical and dirty practice" because they knew "it was going to cause folks to lose their homes*." After only six months of working for Wells Fargo, she left Wells Fargo in her words "*to find different employment where I could feel good about what I was doing." "I would shake my head in disbelief and ask myself. How could this happen? She explains that the practices were so bad that she "hated to go to work," and found herself "crying at the end of the day.*" [65]

Michael Simpson worked for Wells Fargo from 2002 until 2008, as a credit manager and later promoted to branch manager. Simpson declared,

"*Around the time I was promoted to branch manager, I began to fell a lot of pressure from managers above me to participate in what I thought were unethical lending practices. I resisted this pressure as best I could, and in many instances refused to engage in practices that I thought were wrong. I know that others in the company went along*

[64] Id.

[65] Id. at 3-4



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with what the management wanted and participated in what I considered were unethical and deceptive lending activities."[66]

Simpson put in plain words how managers were instructed to focus on borrowers whom Wells Fargo had information about the value of their house: *From the time I came to Wells Fargo until about 2007, the company targeted customers in the 500 to 600 FICO range for "draft checks." These checks that were mailed directly to customers, and once cashed, became a loan at rates as high as 29%. Cashing the check allowed us to identify the individual. We would then target these individuals for refinance loans at new, marginally lower subprime rates. These refinance loans would use the borrower house as collateral for the loan and put the house at risk if the borrower could not make the payment on the loan. I know of instances where individuals other than the intended recipient cashed the check, leaving the unknowing addressee of the check on the line for the high interest loan.* [67]

Simpson exposed a "completely results driven" work culture with an attitude that "the ends justified the means." Simpson said, he was "constantly butting heads" with his district manager about aggrieve and deceptive practices he objected to. Yet the district manager "*still pressured us to engage in the most aggressive loan practices and threatened employees with their jobs if they did not do things his way. The bonus was lucrative, so there was plenty of financial incentive to engage in high pressure and*

[66] *City of Memphis and Shelby County v. Wells Fargo Bank, N.A. et. al*., In the United States District Court for the Western District of Tennessee Western Division, (Attachment B: Declaration of Michael Simpson), available at, http://www.relmanlaw.com/docs/Declarations-Memphis.pdf , at 2

[67] Id. at 5

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deceptive sales practice, even if one knew they were wrong." Before leaving, Simpson sent a lengthy email to Wells Fargo upper management discussing many of the concerns that he raised with his district manager.[68]

Mario Taylor worked at three different Wells Fargo locations in Memphis. Taylor affirmed that mailing "draft checks" and solicitation of "cold call list of leads" to customers were the starting points for Wells Fargo's racial steering and predatory lending practices in Memphis. African Americans, many of whom already had loans with Wells Fargo, comprised the majority of leads. Taylor did not "*know exactly how Wells Fargo came up with the lead."* He assumed that *"Wells Fargo targeted African Americans for these subprime loan"* because Wells Fargo employees *" prevailing attitude was that African Americans customers weren't savvy enough to know they were getting a bad loan, so we would have a better chance of convincing them to apply for high-cost, subprime loan.* To reach monthly quotas, according to Taylor, Wells Fargo credit managers were "*instructed to make as many as 35 calls an hour and to call the same borrower multiple times each day*." [69]

Wells Fargo loan officers worked to persuade their "leads" to consolidate existing debts, including credit cards, student loans, and car loans, into new high-cost subprime mortgages. Taylor asserted that his branch manager "*wanted us to get as many people to apply for loans as possible, regardless of whether they were qualified for the loan or*

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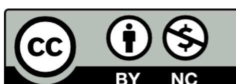
[68] Id. at 6

[69] *City of Memphis and Shelby County v. Wells Fargo Bank, N.A. et. al*., In the United States District Court for the Western District of Tennessee Western Division, (Attachment C: Declaration of Mario Taylor), available at, http://www.relmanlaw.com/docs/Declarations-Memphis.pdf, at 2



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could pay back the loan." His manager told him "*just get the documents from them so we can send the deal up.' This meant that many individuals got high priced, subprime loans when they never should have gotten a loan. In some instances customers were given higher priced subprime loans when they could have qualified for a lower priced loan. Many people were taken advantage of just to satisfy the branch manager's insistence on reaching monthly quotas.*"[70] The borrower's existing debt did not place their homes at risk of foreclosure. However, the new Wells Fargo consolidated refinance subprime mortgage product used the borrower's home as collateral, which placed them in a position to lose their homes should they default.

On May 4, 2011, Judge S. Thomas Anderson issued a decision on Wells Fargo's motion to dismiss. Wells Fargo contended that any "causal connection between reverse redlining and any disparate impact on African American borrowers" is "too attenuated" because it ignores the "impact of socio-economic disparities between black and whites in Memphis and Shelby County." [71] Judge Anderson wrote, by focusing on properties "where allegedly predatory Wells Fargo loans actually resulted in foreclosures and vacancies," the Plaintiffs have "set forth the factual predicated of their claim" that Wells Fargo lending practices had a disparate impact on African Americans in Memphis and Shelby County.[72]

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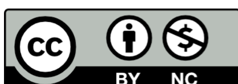
[70] Id. at 3

[71] *City of Memphis and Shelby County v. Wells Fargo Bank, N.A. et. al*., In the United States District Court for the Western District of Tennessee Western Division (Order Denying Defendants Motion to Dismiss), available at, http://www.relmanlaw.com/docs/Memphis-Order.pdf , at 24

[72] Id. at 29



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Therefore, according to Judge Anderson, Memphis and Shelby County lawsuit "contains sufficient allegations to establish standing to pursue claims for violations pursuant to the Fair Housing Act and Tennessee Consumer Protection Act."[73] Attorneys representing the Plaintiffs and Wells Fargo began the discovery phase of the trail and possible settlement talks.[74]

The Case of Illinois v. Wells Fargo

On June 29, 2009, the Supreme Court held, in *Cuomo v Clearing House*, that federal preemption "could not be used to, in effect, shield national lending institutions from states' efforts to enforce their own fair-lending laws." [75] Heartened by the Supreme Court decision, on July 31, 2009, Illinois Attorney General Lisa Madigan became the first state attorney to sue a national lender for a "pattern and practice" of racial steering and reverse redlining. Madigan stated that *Cuomo v. Clearing House* "green-lighted" her decision to file this first of a kind lawsuit against Wells Fargo."[76] Illinois AG Madigan brought the lawsuit under provisions of the Illinois Human Rights Act, Illinois Fairness in

[73] Id. at 32

[74] Amos Maki, "Wells Fargo, city of Memphis in settlement talks." *The Commercial Appeal*, August 29, 2011, available at, http://www.commercialappeal.com/news/2011/aug/29/wells-fargo-city-memphis-settlement-talks/?print=1

[75] Supreme Court of the United States, *Cuomo, Attorney General of New York v. Clearing House Association, L.L.C et al* (Syllabus), available at, http://www.supremecourt.gov/opinions/08pdf/08-453.pdf

[76] Testimony of Illinois Attorney General Lisa Madigan, Testimony before the Financial Crisis Inquiry Commission, January 14, 2010: Hearings on "The Causes and Current State of the Financial Crisis, available at, http://illinoisattorneygeneral.gov/pressroom/2010_01/AGMadiganFCICWrittenTestimony.pdf

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Lending Act, Illinois Consumer Fraud and Deceptive Business Practices Act, and the Illinois Uniform Deceptive Trade Practices Act.

AG Madigan cited evidence "that something is very wrong with Wells Fargo's mortgage lending and "strongly suggest that the predictor of whether a borrower would receive a high cost home loan from Wells Fargo was race, not income." She adds, "*As a result of its discriminatory and illegal mortgage lending practices, Wells Fargo transformed our cities' predominately African-American and Latino neighborhoods into ground zero for subprime lending. By targeting African-American's for the sale of its highest-cost and riskiest loans, Wells Fargo drained wealth from families and neighborhoods and added to the stockpile of boarded-up homes that are an open invitation to criminals.*"[77]

As cited in the complaint, Wells Fargo "engaged in illegal discrimination by steering African Americans, Latinos and residents of predominantly African American and Latino neighborhoods into high cost subprime or riskier mortgage loans while White borrowers with similar incomes received lower cost or less risky mortgage loans." [78]

Of particular note, Wells Fargo targeted African Americans for higher cost mortgage products by conducting "wealth building seminars." These seminars, held in predominantly African American neighborhoods across the country, featured keynote

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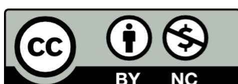
[77] Illinois Attorney General Lisa Madigan, Press Release, *Madigan Sues Wells Fargo for Discriminatory and Deceptive Mortgage Lending Practices, Illinois Attorney General Alleges Lenders Steered African-Americans, Latinos into Subprime Loans*, available at, http://www.ag.state.il.us/pressroom/2009_07/20090731.html

[78] The People of the State of Illinois v. Wells Fargo Bank, N.A. and Wells Fargo Financial Illinois Inc., no. 09CH26434, available at http://www.nclc.org/images/pdf/unreported/Wells_Fargo_Illnois.pdf, at 16



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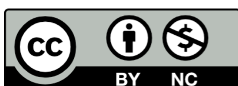
addresses given by two well known African Americans, financial author Kelvin Boston and television personality Tavis Smiley. Based on the recollection of Keith Corbett, executive vice president of the Center for Responsible Lending, reported in the *Washington Independent.* Mr. Smiley "would charge up the audience—and rattle the Wells Fargo executives in attendance—by launching into a story about how he hated banks, and how they used to refuse to lend him money for his real estate project" and how "people should be thinking about some real estate."[79] The seminars drew standing room only African American crowds with numerous Wells Fargo representatives on hand to meet one-on-one with potential borrowers.

Through high-pressure solicitation, loan officers used these seminars as a marketing tool to confuse borrowers as to which division of Wells Fargo was originating the mortgage. Borrowers often believed they were doing business with Wells Fargo Home Mortgage, which offered mainly prime loans, when in fact they were dealing with Wells Fargo Financial, an originator of mainly adjustable rate subprime mortgages. Mr. Boston said he and Mr. Smiley had conducted about 15 seminars over a period of about two years, but declined to say how much they were paid. Describing his role as "a small player in the seminars, giving an opening talk before Smiley went on," Mr. Boston said that neither he nor Mr. Smiley ever mentioned or discussed subprime loans.

[79] Washington Independent, "Suit Alleges Trusted Blacks Drew Minorities to High-Rate Loans," available at http://washingtonindependent.com/59633/suit-alleges-trusted-black-figures-drew-minorities-to-high-rate-loans#



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"Basically we were just speakers for hire." Mr. Boston did concede that in hindsight, "Were we probably used? We probably were."[80]

Boston said he quit doing the seminars after his contract expired in 2007. Smiley, Boston said, continued to work with Wells Fargo, particularly on his annual State of the Black Union symposiums. Based on C-SPAN footage of the State of the Black Union held in February of 2009, Smiley praised Wells Fargo for its generosity by saying "This conference is free this year because of Wells Fargo. Give them some love."[81] Thereafter, Smiley posted a statement on his website announcing that he was no longer conducting business with Wells Fargo. In this economic climate, Smiley wrote, "*we continue to be reminded every day that there is no perfect company.*"[82] He said his "*partnership with Wells Fargo focuses on building personal wealth, which for most Americans begins with buying a house. Given the fact that Wells Fargo has been an industry leader, they have partnered with many African American and Latino national civil rights organizations on various community initiatives*."[83]

Wells Fargo, for example, sponsored the officially launch of the publication, *The Foreclosure Workbook: The Complete Guide to Understanding Foreclosure and Saving*

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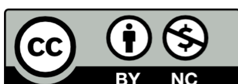
[80] Id

[81] See, "Tavis Smiley Issues New Statement on Wells Fargo" Washington Independent, September 22, 2009, available at, http://washingtonindependent.com/60458/tavis-smiley-issues-new-statement-on-wells-fargo . Also see, Highlights of State of the Black Union, available at, http://www.c-span.org/Events/Tavis-Smiley-quotState-of-the-Black-Unionquot/12995/

[82] For review of Mr. Smiley statement regarding Wells Fargo see, http://www.the-savvy-sista.com/2009/09/tavis-smiley-responds-to-wells-fargo.html

[83] Id.



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Your Home, during the 2009 State of the Black Union symposium hosted by Smiley.[84] Later that year, on November 5, 2009, the National Urban League held its 53rd Annual Equal Opportunity Day Awards Dinner to reward "*individuals and corporations that demonstrate a commitment to equal opportunity and exhibit leadership for the cause of equal rights*."[85] The Awards Dinner chairperson was John G. Stumpf, the President and CEO of Wells Fargo. During the event, the National Urban League announced that it had entered a three-year, multi-million dollar partnership with Wells Fargo.

> *"This partnership complements the National Urban League's outreach efforts to help homeowners in distress to remain in their homes and ultimately build viable communities," said Marc Morial, president and CEO of the National Urban League. Stumf added that "Wells Fargo's vision has long been to help customers succeed financially by helping them achieve and sustain homeownership. We believe in doing what is right for our customers and that includes working with them when they encounter financial challenges or other hardships that made it difficult for them to afford their homes."*[86]

In 2007, the NAACP filed a landmark lawsuit against Wells Fargo, and several other lenders, alleging "systematic, institutionalized racism in subprime home mortgage lending. It is time for these lenders to be held accountable," said NAACP President and Chief Executive Benjamin Todd Jealous. "We look forward to forcing real change and

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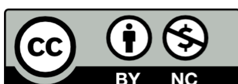
[84] National Urban League, News Release, Wells Fargo and National Urban League Publish New Foreclosure Prevention Workbook, available at, http://www.nul.org/content/wells-fargo-and-national-urban-league-publish-new-foreclosure-prevention-workbook-0

[85] National Urban League, News Release, available at, http://www.nul.org/content/national-urban-league-honors-retired-general-colin-l-powell-humanitarian-award

[86] Wells Fargo, News Release, November 5, 2009. National Urban League and Wells Fargo Launch National Initiative to Address Pressing Needs in the African American Community: Three Year Partnership to Begin with Focus on Sustainable Housing and Community Stabilization, available at, https://www.wellsfargo.com/press/2009/20091105_UrbanLeague



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real relief through this lawsuit." At the time, Wells Fargo officials called the allegations "totally unfounded and reckless." [87] Less than a year later, the NAACP dismissed their lawsuit against Wells Fargo releasing the following statement:

Wells Fargo and the NAACP have agreed to work constructively on ways to improve fair credit access, sustainable homeownership and financial literacy for community of color and other historically disadvantaged communities. At the heart of this agreement is Wells Fargo's endorsement of the NAACP's "Banking Principles on Fairness and Lending," which advance practices that ensure all borrowers get the highest quality credit vehicle appropriate for their circumstance and that guard against racial discrimination in lending.[88]

Wells Fargo admitted "no wrong doing or discriminatory lending practices." Jon Campbell, head of Wells Fargo's Social Responsibility Group said that Wells Fargo's lending polices would not immediately change as a direct result of the agreement. "But now we can look at ourselves through their lens." He said. "Will there be tweaks? We hope so." [89] As part of the settlement, Wells Fargo agreed to support the NAACP

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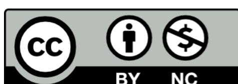
[87] See, NAACP Files Landmark Lawsuit Today Against Wells Fargo and HSBC, available at, http://www.naacp.org/press/entry/naacp-files-landmark-lawsuit-today-against-wells-fargo-and-hsbc

[88] NAACP Dismisses Lawsuit Against Wells Fargo. Press Release, April 8, 2010, available at, http://www.kbklawyers.com/releases/pr_naacpfargo.pdf

[89] Bob Tedechi, "Bias Accord as Harbinger," New York Times, April 23, 2010, available at http://www.nytimes.com/2010/04/25/realestate/25mort.html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Financial Freedom Center. [90] During the opening ceremony of the Center, Wells Fargo representative Campbell said that the mortgage industry "as a whole, probably did not behave very well, and was certainly a contributor to the recession and the loss of many homes. We want to rebuild trust that Wells Fargo is doing everything possible to keep people who can afford their homes to stay in them." NAACP President and CEO Benjamin Jealous stressed, "Wells Fargo has stepped forward to said, "we can go further, frankly, than any court can force us to go." [91] In addition to the Financial Center, Wells Fargo committed to donating $12.5 million ($ 2.5 million annually for the next five years) to fund other NAACP initiatives.

Notwithstanding Wells Fargo's embrace by national civil rights organizations, on the same day that the NAACP dismissed their lawsuit, the cities of Baltimore and Memphis filed amended complaints against Wells Fargo. "Our purpose in bringing this lawsuit remains the same as it always has been," said Baltimore's Solicitor George Nilson. "*We intend to expose Wells Fargo's illegal, discriminatory practices to the light of day in a court of law. We want to make sure Wells Fargo reforms its lending practices, and takes specific, constructive steps to assist the City in repairing the damage caused by*

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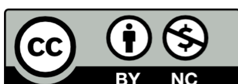
[90] The goal of the NAACP Financial Freedom Center was to "influence change in the banking industry, prevent unfair mortgage lending practices, protect the community against predatory and improve fair credit access. See, NAACP, Economic Program Update, May 2011, available at, http://naacp.3cdn.net/3de1c0d7de778ef78f_qim6y7cv1.pdf

[91] Washington Post, Wells Fargo, NAACP Open Financial Literacy Center, April 4, 2011, available at, http://www.washingtonpost.com/business/economy/wells-fargo-naacp-open-financial-literacy-center/2011/04/04/AFPXksfC_story.html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the many unnecessary foreclosures its irresponsible practices caused.[92] Solicitor Nilson added, "*I don't doubt that the people we talked to at Wells believe they behave extraordinarily well these days. I have a sense they really want to do better, but we are just no prepared to say: "Forget about what happened before*."[93]

Given testimony before Congress, Memphis Mayor A.C. Wharton Jr. explained the motivations behind his city continued legal efforts against Wells Fargo. *When the housing bubble broke, predatory lenders left Memphis and Shelby with the ruins of their destructive practices—hundreds of vacant and foreclosed properties that now cost the city of Memphis, Shelby County and its residents dearly in terms of repair, redressing code violations, and lost tax revenue. Wells Fargo is one of the worst of these lenders. At a minimum, we wanted lenders like Wells Fargo to know that they cannot come into our community, exploit our citizens, City and County, cause enormous damage, and skate free with their ill-gotten profit.[94]*

Wells Fargo Class-Action Lawsuit

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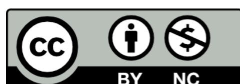
[92] Baltimore City News & Press Release, City of Baltimore Files Second Amended Complaint Against Wells Fargo, available at, http://www.baltimorecity.gov/OfficeoftheMayor/NewsPressReleases/tabid/66/ID/295/City_of_Baltimore_Files_Second_Amended_Complaint_against_Wells_Fargo.aspx

[93]Jonathan Stempel, Baltimore, Memphis file new Wells Fargo lawsuits, April 8, 2010, available at http://www.reuters.com/article/2010/04/08/us-wellsfargo-lending-lawsuit-idUSTRE63734720100408

[94] Testimony of A.C. Wharton Jr., Mayor of the City of Memphis, before the Subcommittee on the Constitution, Civil Rights, and Civil Liberties, Committee on the Judiciary, U.S. House of Representatives, April 29, 2010. Combating Predatory Lending Under the Fair Housing Act, available at, http://judiciary.house.gov/hearings/pdf/Wharton100429.pdf



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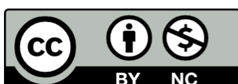
In one of the largest case action lawsuits in history, more than one million African American and Hispanic borrowers challenged the discriminatory impact of Wells Fargo discretionary pricing practices. [95] During the discovery phase, Howell E. Jackson, the James S. Reid, Jr., Professor of Law at Harvard Law School, performed regression analysis on "virtually every aspect" of Wells Fargo objective credit characteristics. Based on his analysis, "African American and Hispanic borrowers, in the aggregate, are obligated to pay $560 million more for their Wells Fargo loans than similarly situated Whites over just five years of their loans" and nearly $2 billion more than White borrowers over the full term of the mortgage.[96] Plaintiffs asserted that since "objective business-justified difference are controlled for in the statistical models, there is no explanation for the price disparities other than the discriminatory impact of the discretionary elements of Wells Fargo's pricing system.[97]

On September 6, 2011, United States District Court Judge Maxine M. Chesney ruled on the multidistrict litigation against Wells Fargo consolidating several cases from across the country. In considering the motion for class certification, Judge Chesney cited

[95] United States District Court Northern District of California, *In re: Wells Fargo Mortgage Lending Practices Litigation*, Plaintiffs' Notice of Motion, Motion for Class Certification and Memorandum of Points and Authorities in Support Thereof, available at, http://securities.stanford.edu/1042/WFC_01/2010716_r03x_0901376.pdf

[96] Factors Professor Jackson regression analysis controlled for included "loans-to-value ratios, credit scores, loan amounts, loan purposes, occupancy status, documentation type, debt-to-income ratios and whether or not a prepayment penalty was charged. For details of regression analysis, see United Sates District Court Northern District of California, *In re Wells Fargo Mortgage Lending Practices Litigation, Class Certification Report of Howell E. Jackson*, available at, http://www.nclc.org/images/pdf/litigation/class-cert-howell-jackson.pdf

[97] United States District Court Northern District of California, *In re: Wells Fargo Mortgage Lending Practices Litigation,* at 2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the elements of "commonality" necessary for class certification under the Supreme Court landmark ruling in *Wal-Mart Stores, Inc. v. Duke*.[98] As explained in Dukes, she writes,

"*To establish commonality, the plaintiff must demonstrate that his claim and the claims of the class he seeks to represent depend upon a common contention, which common contention is of such a nature that it is capable of classwide resolutions—which means that determination of its truth or falsity will resolve an issue that is central to the validity of each one of the claims in one stroke*."[99]

Rejecting the class certification motion, she writes,

"Here, plaintiffs in support of their argument that commonality can be established with respect to the challenged discretionary policy, rely on a statistical analysis performed by Howell E. Jackson, who opines that a regression analysis he performed demonstrates the 'disparate impact' of Wells Fargo's Discretionary Pricing Policy." [However], "evidence that a policy of discretion produces a disparity is insufficient, by itself, to establish commonality." In this instance, plaintiffs allege the loan officer and mortgage brokers were given the discretion to add, with respect to any given mortgage loan, 'unchecked…Plaintiffs fail, however, to offer any evidence to show a common mode of exercising such discretion…How the numerous potential difference among prospective borrowers, both as to their stated goals and needs as well as their individual circumstances, such as creditworthiness, may bear on the determinations made by the many loans officers and brokers across the country cannot, at least on the showing made here, be determined on a class-wide basis. [100]

For certification as a class, she concludes, "merely showing that defendant's policy of discretion has produced an overall race-based disparity does not suffice." Therefore, "plaintiffs have failed to make the requisite showing for class certification and

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[98] In *Wal-Mart Stores, Inc. v. Duke* over one million female plaintiffs from across the country alleged that Wal-Mart managers exercise their discretion over pay and promotions disproportionately in favor of men. The question before the court was whether the female employees could proceed as a class. A divided, 5-4, Supreme Court threw out the lawsuit ruling that the Wal-Mart female employees did not shared "common issues of law or fact" to qualify as a class. Case summary available at, http://www.supremecourt.gov/opinions/10pdf/10-277.pdf

[99] In the United State District Court for the Northern District of California, In re Wells Fargo Residential Mortgage Lending Discrimination Litigation, Order Denying Plaintiffs' Motion for Class Certification: Denying Defendant's Motion to Exclude: Vacating September 9, 2011 Hearing; scheduling November 4, 2011 Status Conference, available at http://www.workplaceclassaction.com/wells%20fargo.pdf , at 4

[100] Id. at 5

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accordingly, the motion for class certification will be denied." [101]

Citing Judge Chesney ruling in the Wells Fargo case, the U.S. District Court Western District Court of Kentucky at Louisville denied a similar Motion for Class Certification, for a class defined as "all African American and Hispanic borrowers", against Countrywide Financial. Judge John Heyburn wrote that "Although certification of this type of class was more debatable pre-*Wal-Mart*, similar to the Wells Fargo decision, "here, even accepting Plaintiffs statistical analysis, they have not "identified a common mode of exercising discretion to support commonality." Furthermore, "the idea that thousands of loan officers around the country would exercise their discretion in a similarly discriminatory fashion as to each purported class member defies belief."[102]

The courts substantial reliance on the *Duke* "commonality" clause has effectively eliminated the practicality of plaintiff driven class actions. In *Memphis v. Wells Fargo*, the court outlined the "burden-shifting framework" necessary for a violate claim. First, a plaintiff must make *a prima facie* case of discrimination by "identifying and challenging a specific housing practice in question has caused the adverse effect in question. If the plaintiff establishes a *prima facie* case, the burden shifts to the defendant to offer a "legitimate business reason" for the challenge practice. In cases of racial steering, or disparate treatment, an African American plaintiff must establish they received a mortgage on "grossly unfavorable terms" and white applicants received mortgage on

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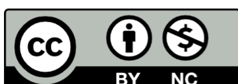
[101] Id. at 7-8

[102] See, In re: Countrywide Financial Mortgage Lending Practices Litigation, Memorandum Opinion and Order, available at, http://www.workplaceclassaction.com/Countrywide.pdf



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“significantly more favorable terms.[103] In cases of reverse redlining, the courts developed a four-part test to assess plaintiffs’ claim, the so-called “*Matthews test*.”[104] Due to asymmetric information, however, plaintiffs typically lack the indispensable wherewithal to conduct the extensive statistical analysis necessary to bring a *prima facie case* of racial steering or reverse redlining.

Federal Reserve Board of Governors v Wells Fargo

Wells Fargo discretionary pricing policies have not just been a concern for the legal community. On August 26, 2009, the Federal Reserve Board issued sweeping revisions prohibiting financial institutions, from “directing or steering” borrowers into high-cost mortgage products. The final rule, effective on April 1, 2011, prohibits lenders from “engaging in a pattern or practice of lending without considering borrowers’ ability to repay the loans from sources other than the home’s value” or “paying mortgage brokers yield spread premiums.” [105]As part of a robust regulatory enforcement undertaking, the Federal Reserve conducted several targeted reviews investigating

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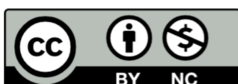
[103] For review see, Raymond H.Brescia, Subprime Communities: Reverse Redlining, The Fair Housing Act and Emerging Issues in Litigation Regarding the Subprime Mortgage Crisis, available at, http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1337729

[104] The plaintiff must show: (1) that they are members of a protected class; (2) that they applied and were qualified for a conventional mortgage; (3) that they received a higher cost loan; and (4) that the lender continued to give conventional mortgages to similarly qualified on better terms. *Matthews v. New Century Mortgage* 185 F. Supp. 2d 874 (S.D. Ohio), available at, http://www.povertylaw.org/poverty-law-library/case/53600/53690

[105] Federal Reserve System, Regulation Z Final Rule: Docket No. R-1366, available at, http://edocket.access.gpo.gov/2010/pdf/2010-22161.pdf



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possible mortgage pricing discrimination or mortgage steering.[106]

After such an examination of Wells Fargo's consumer lending operations, the Board of Governors of the Federal Reserve System issued an "Order to Cease and Desist" assessing Wells Fargo with a $85 million civil penalty. [107] This amount represents the largest fine ever imposed against a major mortgage lender and the first by a federal regulatory agency for mortgage steering and reverse redlining. The Federal Reserve discovered instances where borrowers "who may have qualified for a prime refinance mortgage loans" were nevertheless sold higher cost mortgage products. In other cases, "to meet sales performance standards and receive incentive compensation" loan officers "altered or falsified loan documents. Finally, "borrowers were not advised that the may have qualified for prime priced loans or that it was generally more advantageous for the salesperson to sell a nonprime, rather than a prime loan." [108]

The Federal Reserve concluded that Wells Fargo's "internal controls related to performance standards and compensation programs", were not adequate to detect and prevent discretionary lending practices resulting in "unsafe or unsound banking practices, unfair or deceptive acts or practices. As part of the settlement agreement, Wells Fargo

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[106] For review of Federal Reserve fair lending enforcement efforts, see Board of Governor Elizabeth A. Duke, Enforcement of Financial Consumer Protection Laws, Before the Committee on Financial Services, U.S. House of Representatives, Washington D.C., March 20, 2009, available at, http://www.federalreserve.gov/newsevents/testimony/duke20090320a.htm

[107] The Board of Governors of the Federal Reserve System, *In the Matter of Wells Fargo & Company and Wells Fargo Financial, Inc*., Docket No. 11-094-B-HC1 (Order to Cease and Desist and Order of Assessment of a Civil Money Penalty Issues upon Consent), available at, http://www.federalreserve.gov/newsevents/press/enforcement/enf20110720a1.pdf

[108] Id. at 2-5

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arranged to implement provisions designed to ensure that incentive compensation and performance management practices avoid fraudulent, unfair or deceptive acts and practices. A screening" of borrowers who should have be considered for prime mortgages but received higher cost subprime mortgage products instead, and a "initial screening" of borrowers who qualified for Wells Fargo prime mortgages but received a higher cost Wells Fargo Financial subprime mortgage instead.[109]

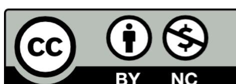
Wells Fargo, without acknowledging any admission to lending discrimination, also agreed to provide remedial compensation to borrowers negatively impact by their policies. The Federal Reserve estimated the number of eligible borrowers for remedial compensation to be between about 3,700 to possibly more than 10,000. Each borrower will receive between $1,000 and $20,000, but some eligible borrowers could receive less and other more, depending on their particular circumstances.[110] Despite its robustness, however, the Federal Reserve investigation does not directly address the issues of race or distinguish the disparate impact of Wells Fargo lending practices on African American borrowers and neighborhoods.

Department of Justice v. Wells Fargo

Early in his administration, President Obama established an interagency Financial Fraud Enforcement Task Force to deal with both existing and emerging issues in the face

[109]Id. at 10-20.

[110] Id. at 6



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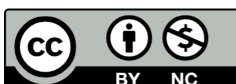
of the extraordinary events of the financial crisis. As part of an expansion of the Civil Rights Division, the DOJ created a new Fair Lending Unit, spotlighting it efforts on mortgage steering, reverse redlining, and discretionary pricing policies. [111] Assistant Attorney General Thomas E. Perez, head of the Fair Lending Unit, explained we "will use every tool" in their arsenal to combat lending discrimination. This includes the use of disparate impact theory "which is a critical tool in our law enforcement arsenal, a tool that has been accepted unanimously by the courts, and a tool that the career staff was discouraged from using" in cases for many years.[112]

In the largest residential fair lending settlement in history, the DOJ reached a $335 million agreement with Countywide Home Loans. To resolve the complaint, Bank of America, the parent company of Countrywide, agreed to pay restitution and penalties to 200,000 identified African American and Hispanic borrowers who were victims of discriminatory conduct, including more than 10,000 African-American or Hispanic borrowers who – despite the fact that they qualified for prime loans – were steered into subprime loans. [113] During the announcement of the settlement, Attorney General Eric Holders said, "today's settlement makes clear that today's Justice Department – and our

[111] The Division hired a Special Counsel for Fair Lending, a senior position in the Office of the Assistant Attorney General, to ensure that fair lending issues receive immediate attention and high priority. The Unit is comprised of three economists, a math statistician and 20 additional staff members who devoted a significant portion of their time to fair lending cases. See, Assistant Attorney General Thomas E. Peres Testifies Before the House Subcommittee on the Constitution, Civil Rights and Civil Liberties, April 29, 2010, available at www.justice.gov/crt/speeches/2010/crt-speech-100429.html

[112] Thomas E. Perez, Remarks delivered at Howard University School of Law, Clarence Clyde Ferguson, Jr. Civil Rights in 2011 and Beyond, available at http://www.law.howard.edu/1437

[113] Department of Justice News Release, December 21, 2011, Justice Department Reaches $335 Million Settlement to Resolve Allegations of Lending Discrimination by Countrywide Financial Corporation, available at, http://www.justice.gov/opa/pr/2011/December/11-ag-1694.html



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law enforcement and government partners – will not hesitate to move aggressively in holding lenders – including the nation's largest – accountable for discrimination and financial misconduct. We are committed to protecting the sacred rights, and best interests, of the American people – and to ensuring equal opportunity through the vigorous enforcement of our civil rights laws." [114]

Most recently, on July 12, 2012, the DOJ announced a $175 million resolution with Wells Fargo, the largest mortgage lender in the country. The case prosecuted by the Fair Lending Unit, in conjunction with the U.S. Attorney's Office for the District of Columbia, alleged that, between 2004 and 2008, Wells Fargo's abusive mortgage lending has become an increasing problem, exacerbating the loss of equity in homes and causing an increase in the number of foreclosures.[115] While the marketplace appears to operate effectively for conventional mortgages, too many African American homeowners found themselves victims of mortgage brokers who provide loans with unnecessarily high costs and terms that are unnecessary to secure repayment of the loans. For example,

> *"Highly qualified prime retail and wholesale applicants for Wells Fargo residential mortgage loans were more than four times as likely to receive a subprime loan if they were African-American and more than three times as likely if they were Hispanic than if they were white. Conversely, during the same time period, borrowers with less favorable credit qualifications were more likely to receive prime loans if they were white than borrowers who were African-American or Hispanic."*[116]

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[114] Attorney General Eric Holder Speaks at the Countrywide Financial Corporation Settlement Announcement, available at, http://www.justice.gov/iso/opa/ag/speeches/2011/ag-speech-1112211.html

[115] *United States of America v. Wells Fargo Bank, NA*, available at http://www.clearinghouse.net/chDocs/public/FH-DC-0005-0003.pdf

[116] Id, at 2

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In conducting their investigation of systemic mortgage steering, the DOJ determined that Wells Fargo's unfair practices principally have an effect on borrowers who are African-American and Hispanic demonstrating a disparate impact because subprime mortgages generally carried higher up front fees, prepayment penalties and adjustable interest rates with low introduction rate with significant increases after two or three years. For African-American borrowers steered into Wells Fargo subprime mortgage products, "the economic burdens and risks, including the increased risk of delinquency or foreclosure, were particularly high."[117] Overall,

"Statistical analyses of loan data for prime and subprime wholesale loans originated by Wells Fargo for the period of 2004 to 2008 demonstrate that, measured on a nationwide basis, the odds that an African-American borrowers who obtained a wholesale loan from Wells Fargo would receive a subprime loan rather than a prime loans were approximately 8.3 times as high as the odds for a white borrower. For the same period, the odds that an African-American borrowers who obtained a retail loan from Wells Fargo would receive a subprime loan rather than a prime loan were approximately 5.6 times as high as the odds for a white borrower. This demonstrates a pattern of statistically significant difference between African-American and white borrowers with respect to their product placement by Wells Fargo. These statistically significant disparities existed in numerous geographic markets across the nation as well."[118]

Wells Fargo internal documents revealed that discretionary mortgage lending policies and practices were "not justified by business necessity or legitimate business interests." According to the complaint:

"Senior Wells Fargo officials were aware of the numerous tactics that subprime originator employed to keep loans in the subprime division, and that a significant percentage of borrowers were receiving loans when they could have qualified for prime loans. Wells Fargo did not act to adequately compensate borrowers who were victims of

[117] Id, at 5

[118] Id, at 15

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discrimination nor did it take effective action to change its policies or practices to eliminate the discrimination."[119]

Wells Fargo also adopted loan pricing and origination policies that while "facially-neutral" had a disparate impact. Case in point, subjective pricing policies and compensation system, based on a yield spread premium (YSP), resulted in the steering of Wells Fargo African-American borrowers into subprime mortgage products without regard to whether the customer qualified for a conventional mortgage. As explained by the DOJ, Wells Fargo made money based on the interest rates and fees it charged to borrowers and the premiums it earned from investors to whom it sold the bulk of its loans.

"*The YSP is derived from the present dollar value of the difference between the credit risk-determined par interest rate a wholesale lender such as Wells Fargo would have accepted on a particular loan and the interest rate a mortgage broker actually obtained for Wells Fargo. Wells Fargo benefitted financially from the loan it made at interest rates above the par rate set by the rate sheets. For those loans that it sold or securitized, higher interest rates meant sales at prices higher than it otherwise would have obtained; for loans it retained, higher interest rates meant more interest income over time."*[120]

Supporting the sword declarations of former employees in the Baltimore and Memphis cases, the DOJ discovered that"

"Wells Fargo had knowledge that the unguided and subjective discretion it granted to mortgage brokers in its wholesale pricing policies and practices was being exercised in a manner that discriminated against African-American and Hispanic borrowers, but continued to implement its policies and practices with that knowledge. Wells Fargo did not take effective action to change the broker fee policies and practices to eliminate fully their discriminatory impact. Well Fargo did not act to identify or

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[119] Id, at 4

[120] Id, at 23

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compensate any individual borrowers who were victims of its discriminatory wholesale pricing policies and practices."[121]

On July 12, 2012, in the second largest fair-lending settlement in history, Wells Fargo and the DOJ entered into a Consent Order to settle the complaint that Wells Fargo "engaged in a pattern or practice of discrimination on the basis of race and national origin in residential mortgage lending."[122] In entering into the Order, Wells Fargo "not only denies that it discriminated unlawfully, but affirmatively asserts that it has treated all of its customers without regard to race or national origin, and that its business practices have promoted and achieved fairness across all borrower groups."[123] A Wells Fargo press release added it "takes pride in serving the home ownership needs of all of our customers, and we are fully committed to fair and responsible lending. " Furthermore, Wells Fargo "is settling this matter solely for the purpose of avoiding contested litigation with the DOJ, and to instead devote its resources to continuing to provide fair credit services and choices to eligible consumers, and important and meaningful assistance to borrowers in distressed U.S. real estate markets."[124]

Taking a differing position, a DOJ press release states "the department's action makes clear that we will hold financial institutions accountable, including some of the

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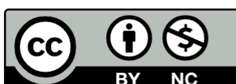
[121] Id, at 31

[122] *United States of America v. Wells Fargo Bank* (Consent Order), available at, http://www.clearinghouse.net/chDocs/public/FH-DC-0005-0003.pdf

[123] Id, at 3-4

[124] Wells Fargo Press Release, Wells Fargo Announces Settlement with U.S. Department of Justice Regarding Mortgages, July 12, 2012, available at, https://www.wellsfargo.com/press/2012/20120712_WellsFargoAnnouncesSettlment



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nation's largest, for lending discrimination."[125] Thomas E. Perez, Assistant Attorney General for the Civil Rights Division added, "By reaching a settlement in this case, African-American and Hispanic wholesale borrowers who received subprime loans when they should have received prime loans or who paid more for their loans will get swift and meaningful relief."[126] He said the practices amounted to a "racial surtax," where "All too frequently, Wells Fargo's African-American and Latino borrowers had no idea they could have gotten a better deal—no idea that white borrowers with similar credit would pay less."[127]

The settlement provides $125 million in compensation for wholesale borrowers who were steered into subprime mortgages or who paid higher fees and rates than white borrowers because of their race or national origin. The Order requires Wells Fargo to conduct an internal review of its retail mortgage lending in order to compensate African-American and Hispanic retail borrowers who were steered into subprime loans when similarly qualified white retail borrowers received prime loans. Compensation paid to any retail borrowers identified in the review process will be in addition to the $125 million to compensate wholesale borrowers who were victims of discrimination. Wells Fargo will also provide $50 million in direct down payment assistance to borrowers in communities around the country where the department identified large numbers of discrimination

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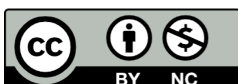
[125] Department of Justice Press Release, "Justice Department Reaches Settlement with Wells Fargo Resulting in More Than $175 Million in Relief for Homeowners to Resolve Fair Lending Claims," available at http://www.justice.gov/opa/pr/2012/July/12-dag-869.html

[126] Id.

[127] The New York Times, July 12, 2012, "Wells Fargo Will Settle Mortgage Bias Charges," available at, http://www.nytimes.com/2012/07/13/business/wells-fargo-to-settle-mortgage-discrimination-charges.html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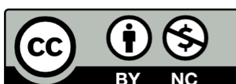
victims and which were hard hit by the housing crisis.

Conclusion

As this case study of Well Fargo illustrates, the relegation of the role of race as a tangential cause neglects an essential characteristic of the financial crisis story. African American borrowers steered into Wells Fargo higher priced mortgage products, particularly those with adjustable-rates, have found themselves in foreclosure, others face the threat of losing their homes and many more have seen the equity in their homes evaporate. The highest numbers of Wells Fargo subprime foreclosures, by far, are in neighborhoods where African Americans comprised a majority of the residents. So many homes have been abandoned that the entire neighborhoods have fallen apart as tax revenues diminish, public services are slash, schools are closed and homes as ransacked for copper piping or taken over by gangs, drugs and other types of criminal activity. Housing prices are on a downward spiral and has resulted in misery and anxiety for million of households.

The DOJ settlement resolves pending litigation filed by the State of Illinois that alleged illegal discrimination by Wells Fargo in its lending practices against African-American and Latino homeowners. Attorney General Lisa Madigan announced in a press release. “Today’s settlement holds Wells Fargo accountable and requires the bank to invest in and help revitalize the same communities it helped to destroy.”[128] She adds,

[128] Press Release, July 12, 2012, “Madigan, U.S. DOJ Reach $175 Million Settlement with Wells Fargo over Discriminatory Lending,” available at, http://illinoisattorneygeneral.gov/pressroom/2012_07/20120712.html



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"Wells Fargo's discriminatory lending practices were illegal. They helped destroy a generation of wealth in African-American and Latino communities in the Chicago metro area." The settlement provides for at least $15 million in restitution to Illinois borrowers. Wells Fargo borrowers steered into subprime mortgages or charged higher fees than white borrowers will receive an estimated $8 million in relief in cash payments. An additional $7 million will fund down payment assistance for Illinois borrowers. A final provision provides for an independent administrator who will contract identified borrowers and distribute compensation payments.[129]

Wells Fargo separately entered into a collaborative agreement with the City of Baltimore in which the city will dismiss the lawsuit it initially filed against Wells Fargo in January 2008. Under the terms of the agreement, Wells Fargo will provide $4.5 million of the $50 million for community improvement programs to the City of Baltimore, and will grant the City of Baltimore $3 million in additional funds for local priority housing and foreclosure-related initiatives. Wells Fargo also has set a five-year $425 million home-mortgage lending goal for the Baltimore area. "This collaborative agreement allows Baltimore to move forward and focus our efforts on growing the city," said Mayor Rawlings-Blake.[130]

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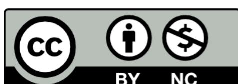
[129] Id

[130] Press Release July 12, 2012, Stephanie Rawlings-Blake, Mayor Baltimore City, "Mayor Rawlings-Blake, Department of Justice Announce Settlement With Wells Fargo to Resolve Fair Lending Claims," available at, http://www.baltimorecity.gov/OfficeoftheMayor/NewsMedia/tabid/66/ID/3132/Mayor_Rawlings-Blake_Department_of_Justice_Announce_Settlement_with_Wells_Fargo_to_Resolve_Fair_Lending_Claims.aspx



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On May 29, 2012, Wells Fargo reached a similar $7.5 million agreement with Memphis and Shelby County to end its lawsuit. In return for the case dismissal, Wells Fargo agreed to establish a five-year $425 million lending goal of for the city and county, including grants totaling $4.5 million for mortgage down payment and home renovation assistance; $125 million in home purchase lending to low- and moderate-income borrowers; and $3 million to advance local initiatives and increasing financial literacy.[131] "The condition of the local housing market continues to challenge Memphis and Shelby County significantly, as unoccupied homes and excessive housing inventory weigh heavily on communities," Memphis Mayor A.C. Wharton said in the Wells Fargo press release. "We are pleased to announce this collaborative partnership to get more of these houses reoccupied and increase neighborhood stability."[132]

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[131] Wells Fargo News Release, Millions of Dollars Headed to Memphis and Shelby County to Help Recovery from Housing Crisis Following Lawsuit Dismissal, Wells Fargo to Launch New Program to Support Homeownership, Homebuyer Education, Economic Development, available at, https://www.wellsfargo.com/press/2012/20120529_MillionsofDollarsHeadedtoMemphis

[132] Id

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