UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
BALTIMORE DIVISION

MAYOR AND CITY COUNCIL OF BALTIMORE, Plaintiff,	)	
v.	)	No. 1:08-cv-00062-BEL
WELLS FARGO BANK, N.A.	)	
and	)	
WELLS FARGO FINANCIAL LEASING, INC., Defendants.	)	

PLAINTIFF MAYOR AND CITY COUNCIL OF BALTIMORE'S MOTION TO RECONSIDER THE NEED FOR THE JUNE 29, 2009 EVIDENTIARY HEARING

John P. Relman, MD Fed. Bar No. 11482
Bradley H. Blower, MD Fed. Bar No. 07641
Glenn Schlactus, *pro hac vice*
RELMAN & DANE, PLLC
1225 19th Street NW, Suite 600
Washington, DC 20036
(202) 728-1888
(202) 728-0848 (fax)
jrelman@relmanlaw.com
bblower@relmanlaw.com
gschlactus@relmanlaw.com

George Nilson, City Solicitor,
MD Fed. Bar No. 01123
Suzanne Sangree, Chief Solicitor,
MD Fed. Bar No. 26130
City Hall
100 N. Holliday Street
Baltimore, Maryland 21202
(410) 396-3297
(410) 659-4077 (fax)
George.Nilson@baltimorecity.gov
Suzanne.Sangree@baltimorecity.gov

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INTRODUCTION

Plaintiff Mayor and City Council of Baltimore ("Baltimore" or "City") respectfully requests that the Court reconsider the need for the evidentiary hearing on Defendants Wells Fargo Bank, N.A. and Wells Fargo Financial Leasing, Inc.'s (collectively, "Wells Fargo") motion to dismiss, scheduled for June 29, 2009, in light of the sworn declarations submitted with this filing and the First Amended Complaint that Plaintiff is filing today. Evidence submitted with this motion fully and sufficiently responds to each of the potential concerns that led the Court to schedule the evidentiary hearing and leaves no doubt that the motion to dismiss lacks merit.

The evidence contained in the declarations is direct and powerful. First, it goes to the heart of Baltimore's claims of reverse redlining and demonstrates in detail how Wells Fargo used discretion in pricing and financial incentives to encourage its employees to target African-American neighborhoods in Baltimore for deceptive, high priced loans that resulted in unnecessary foreclosures. In graphic terms, the declarations describe first-hand how Wells Fargo employees specifically targeted zip codes in Baltimore and nearby areas that are African-American for subprime mortgage loans; targeted African-American churches and their congregations in Baltimore for subprime loans, but did not target white churches; selected African-American employees to solicit subprime business from African-American audiences and communities, and actually refused to let white employees make presentations to African-American audiences; drafted subprime marketing materials on the basis of race by using software to "translate" the materials into what Wells Fargo literally defined as the "language" of "African American;" referred to subprime loans located in minority communities as "ghetto loans;" referred to minority customers as "mud people," "niggers," those with "bad credit" and those who "don't pay their bills;" and generally fostered a discriminatory culture that was tolerated by management. *See infra* at 12-14.

Second, these declarations also make clear precisely how Wells Fargo employees used the discretion they were afforded under Wells Fargo rules to steer borrowers who qualified for prime loans into subprime loans. Wells Fargo employees steered borrowers who qualified for prime and Federal Housing Administration ("FHA") loans into much more costly subprime loans; gave loan officers broad discretion and large financial incentives to steer customers into subprime products with increased interest rates, points, and fees that put, in one declarant's words, a "bounty" on African Americans targeted for subprime loans; deceived customers in order to give them subprime loans by, for example, telling them not to put any down payment on a property or not to submit full documentation for their loan, which would cause the loans to "flip" from prime to subprime; deceived African-American borrowers by telling them their interest rates were locked, when in fact they were not and could be reduced; and deceived African Americans about the full range of more advantageous products that were available to them and that they qualified for. *See* Ex. 1 ("Paschal Decl."); Ex. 2 ("Jacobson Decl.").[1] In light of the routine use of these practices, Wells Fargo subprime lenders joked morbidly among themselves that they were "riding the stagecoach to Hell." Jacobson Decl. ¶ 31. *See infra* at 14-19.

Third, based on the limited discovery with respect to the Wells Fargo foreclosures themselves allowed by the Court to date, the declarations and evidence demonstrate that the majority of Wells Fargo foreclosed properties have been vacant and are located in

[1] Tony Paschal and Elizabeth Jacobson, as described in greater detail in their declarations and below, were longtime Wells Fargo loan officers until 2007.

African-American neighborhoods of Baltimore. Specifically, the evidence shows that:

- more than half of the Baltimore properties subject to a foreclosure on a Wells Fargo loan between 2005 and 2008 were vacant after the loan was originated;

- 71% of these vacancies were in neighborhoods that are predominantly (*i.e.*, over 60%) African-American;

- 107 of the properties are currently vacant, of which 69% are in predominantly African-American neighborhoods while only 16% are in predominantly white neighborhoods;

- the vacancies have led directly to squatting, loitering, crime, rat infestation, burst pipes, and a corresponding increase in the need for costly municipal responses in the form of other municipal services and police and fire response; and

- the vacancies have led directly to neighborhood deterioration, which reduces property tax revenue.

See Ex. 3 ("Goldstein Decl."); Ex. 4 ("R. Faison Decl."); Ex. 5 ("S. Faison Decl."); Ex. 6 ("Porter Decl."); Ex. 7 ("Ross Decl.").[2] *See infra* at 19-23.

This evidence, and much more, is incorporated in the First Amended Complaint that the City is submitting today and fully answers each of the questions raised by the Court for consideration at an evidentiary hearing. It shows that the City has been injured, that Wells Fargo has targeted African Americans, that Wells Fargo employees have discretion to select loan products and terms and have used their discretion to the detriment of African Americans, and that Wells Fargo's policies and practices employ subjective and discretionary underwriting practices that have disparately impacted African Americans and that clearly support the type of discriminatory impact claim recognized by the courts. *See* Mem. to Counsel (Mar. 6, 2009) (Doc. No. 58) (questions identified by Court for evidentiary hearing); *Miller v. Countrywide*

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[2] Dr. Ira Goldstein is an expert on foreclosures. Richard and Stephen Faison live next door to a vacant property that was the subject of a Wells Fargo foreclosure. Lisa Porter and Bridget Ross live a few houses down from other vacant properties that were also the subject of Wells Fargo foreclosures.

Bank, N.A., 571 F. Supp. 2d 251 (D. Mass. 2008) (denying motion to dismiss disparate impact claim based on discretion in mortgage lending). The evidence should put to rest any lingering doubts the Court may have about the sufficiency of Baltimore's allegations and their factual bases.

This evidence not only fully answers the questions raised by the Court, but more importantly it also makes clear as a matter of law why proceeding with an evidentiary hearing at this point represents an unnecessary delay to the commencement of discovery for no justifiable purpose. This is true for two basic reasons. First, as already discussed, even without the benefit of compelled interrogatories, document requests, depositions, or any of the other traditional methods of discovery, Baltimore has put forward specific, supported, factual allegations that are more than sufficient to meet the appropriate pleading standards and fully address the issues raised by the Court. Thus, if the purpose of the hearing is to determine if the City has alleged sufficient factual evidence, through sworn testimony, to support its legal claims, that objective has clearly already been accomplished through this filing and does not require an additional contested evidentiary hearing.

Second, in light of the evidence submitted this date and incorporated in the new amended complaint, the only purpose served by holding a contested evidentiary hearing at this point would be to conduct a "mini-trial" on the evidence. But there is no basis under the law for substituting the role of the jury for a mini-trial conducted by the Court on a motion to dismiss where the allegations as pled are supported by detailed factual allegations. To the contrary, Fourth Circuit precedent makes clear that the facts presented by Baltimore must be taken as true at this stage of the case and any material factual disputes may only be resolved later at trial by the jury. *See, e.g., Presley v. City of Charlottesville,* 464 F.3d 480, 483 (4th Cir. 2006).

The declarations submitted with this motion make clear the degree to which the City would be prejudiced by conducting a contested evidentiary hearing at this stage. Ms. Jacobson, a Wells Fargo subprime loan officer who was one of the Company's top producers, states that if compelled to testify, many Wells Fargo employees would corroborate her testimony, but are reluctant to come forward voluntarily for fear of retaliation, reprisal or other actions that could adversely affect their future careers in the lending industry. Jacobson Decl. ¶ 35. In the absence of compelled testimony – to date there has been no production of names of witnesses with knowledge of the allegations in the complaint; no production of documents that speak to issues in the complaint, such as underwriting guidelines, pricing sheets, corroborating memos, complaints of discrimination, or loan files; and no compelled depositions of witnesses with knowledge – there is no way that a contested evidentiary hearing at this stage offers a semblance of fairness or can assist the Court in a meaningful way in determining the ultimate truth of the allegations. Indeed, it is for this very reason that the discovery process exists.

The loan files represent a case in point. Both Mr. Paschal and Ms. Jacobson state that data contained in Wells Fargo's loan files support the testimony that they give. Indeed, Ms. Jacobson states that "if I had access to Wells Fargo's loan files right now and could review these files, I could point out exactly which of these customers who got a subprime loan could have qualified for a prime loan." Jacobson Decl. ¶ 9. In the absence of discovery that requires production of those files and permits a full and fair review of the data contained in those files, a contested evidentiary hearing which Wells Fargo would undoubtedly seek to use to assess the credibility of Ms. Jacobson's testimony cannot possibly be a fair or meaningful exercise.

Under these circumstances, holding an evidentiary hearing at this point serves no useful purpose. It cannot substitute for a proper and fair hearing on the merits – that is something that can only take place before a jury and after there has been a proper opportunity for discovery – and cannot alter the legal precedent making clear that where, as here, the factual allegations as pled support the legal claims asserted, the facts must be accepted as true and the motion to dismiss denied. Rather than delay the commencement of discovery, Baltimore respectfully suggests that the most efficient use of judicial resources would be to reconsider the need for an evidentiary hearing in light of the declarations and evidence that have been submitted with this motion, and permit the parties to move directly to discovery on all of the allegations contained in the complaint without the need for any further hearings.[3]

All of the facts and evidence described in and attached to this motion are now incorporated in Baltimore's First Amended Complaint, which it has filed today as of right. Accordingly, if there were any issues regarding the adequacy of Baltimore's original complaint (which the City strongly denies), they have been dispensed with. Without doubt, the First Amended Complaint provides detailed factual allegations that are by no means conclusory or generalized. It is more than sufficient to support standing and to state a claim under the appropriate standards.

Accordingly, Baltimore respectfully submits that the Court should reconsider the need for an evidentiary hearing and should direct the parties to promptly proceed with merits discovery with respect to all claims in the case. The City has submitted evidence to answer the Court's questions but has not been afforded the discovery that is a necessary precondition for a contested

[3] It is clear that Wells Fargo intends the hearing to be a mini-trial in which the Court makes credibility determinations and otherwise resolves any conflicting evidence. Wells Fargo has informed the City that it believes the hearing should involve live testimony and that the parties should be permitted to depose every witness in advance of the hearing, in part "to fully explore any potential bias or prejudice of witnesses." The only reason for such procedures would be to conduct a contested mini-trial, not a hearing on a motion to dismiss under a standard of review appropriate under Rule 12. For the reasons summarized above and set forth in detail *infra*, in the absence of discovery, this would serve no useful purpose. The hearing could not possibly be a fair or meaningful exercise.

evidentiary hearing. A hearing at this stage would therefore be of no moment and should await the completion of discovery.

BACKGROUND OF THE PENDING MOTION TO DISMISS

Baltimore commenced this case by filing a detailed complaint alleging that Wells Fargo has violated the federal Fair Housing Act by targeting predatory lending practices against African Americans and residents of African-American neighborhoods in Baltimore since at least 2000. *E.g.*, Compl. ¶¶ 3-6. The City further alleges that Wells Fargo's unlawful conduct has resulted in unnecessary foreclosures in African-American neighborhoods that have caused it tens of millions of dollars in direct and empirically quantifiable harm. *See id.* ¶¶ 67-70.

Wells Fargo responded to the complaint by filing a motion to dismiss pursuant to Rules 12(b)(1) and 12(b)(6). *See* Defs.' Mot. to Dismiss the Compl. (Mar. 21, 2008) (Doc. No. 10) ("MTD"). The Rule 12(b)(1) portion of the motion to dismiss asserts that the Court lacks subject matter jurisdiction because Baltimore purportedly has not suffered an injury caused by Wells Fargo's actions and, therefore, lacks standing. *See id.* at 1. Wells Fargo asserts that it is making both a factual and facial challenge to standing. *See* Reply Mem. in Supp. of Defs.' Mot. to Dismiss the Compl. (June 19, 2008) (Doc. No. 18) ("MTD Reply") at 9. The Rule 12(b)(6) portion of the motion asserts that the complaint fails to state a claim upon which relief may be granted. *See* MTD at 1-2. The Court has held three hearings on the motion.

After the second hearing, the Court ordered the parties to produce very limited data about Wells Fargo's loans in Baltimore that were the subject of a foreclosure action filed between 2005 and 2008. *See* Mem. to Counsel (Feb. 20, 2009) (Doc. No. 48), *as modified by* Stip. (Feb. 27, 2009) (Doc. No. 55). The purpose of this limited production was to aid the Court in determining whether Baltimore has standing. *See* Tr. (Jan. 28, 2009) ("Jan. 28 Hearing") at 122; Tr. (Feb. 20,

2009) ("Feb. 20 Hearing") at 30. The Court specifically rejected Wells Fargo's request that it order Baltimore to produce at the same time information about "any administrative cost incurred by the City with respect to having to deal with these properties," such as the costs of increased police burdens. Feb. 20 Hearing at 21-22.

The data has now been produced by the parties. It includes, for example, the borrower's race, whether the loan was fixed or adjustable, and whether the loan was for a purchase or refinance. The data does not include, however, underwriting criteria such as credit scores, loan-to-value ratio, debt-to-income ratio, borrower employment, borrower assets, and many other factors routinely used by lenders to evaluate mortgage applications and maintained in their loan files.

The Court scheduled a third hearing for March 4, 2009, to consider the possibility of discovery regarding the discretion given to Wells Fargo's loan originators. *See* Mem. to Counsel (Feb. 20, 2009) (Doc. No. 49); Mem. to Counsel (Feb. 23, 2009) (Doc. No. 50). Baltimore submitted a detailed letter in advance of the hearing describing the kind of discovery that would be necessary to address this subject properly. *See* Letter from John P. Relman to Hon. Benson E. Legg (Mar. 3, 2009) (Doc. No. 56). At the hearing, however, the Court stated its "intention to table" any such discovery. *See* Tr. (Mar. 4, 2009) ("Mar. 4 Hearing") at 5. Thus, Baltimore has not been permitted interrogatories, document requests, or depositions regarding the foreclosure properties or any aspect of Wells Fargo's lending policies and practices. Likewise, Baltimore has not been afforded any opportunity to identify potential witnesses who have worked for Wells Fargo. As demonstrated below, the evidence that Baltimore has gathered without the aid of discovery or any other compulsory process strongly indicates that more witnesses will come forward once required to and that the additional evidence adduced through discovery will corroborate the evidence that Baltimore is submitting today in support of its motion.

Instead of allowing any other discovery, the Court stated at the third hearing that it "need[s] to find out whether there is enough evidence there of a claim before we go conduct [] discovery." *Id.* at 7. To that end, the Court scheduled an evidentiary hearing for June 29, 2009. *See id.* at 4; Mem. to Counsel (Mar. 6, 2009) (Doc. No. 58). The Court informed the parties on March 6, 2009, that at the hearing it "will hear argument and receive evidence" on four "dispositive questions" and additional subparts pertaining largely to evidence of damages, targeting, disparate impact, and discretion. Mem. to Counsel (Mar. 6, 2009) (Doc. No. 58) at 1-2 (footnote omitted). Specifically, the Court asked:

> 1. Whether the City has Article III standing in light of the results of the now-ongoing standing/damages discovery?
>
> 2. What evidence the City has to support its claim that Wells Fargo targeted (i.e., intentionally discriminated against) black borrowers in the City.
>
> 3. Whether the City adequately states a claim for disparate impact? In this case, the second element of a claim for disparate impact would require the City to establish that black borrowers received materially less favorable loan terms than <u>similarly situated</u> white borrowers . . . .
>
> 4. What evidence does the City have in support of its generalized claim that Wells Fargo employees, with or without authorization, engaged in subjective or discretionary pricing that disadvantaged black borrowers or added subjective or discretionary fees to loans issued to black borrowers?

EVIDENCE IN SUPPORT OF BALTIMORE'S ALLEGATIONS

The Court has asked for evidence regarding four elements of Baltimore's complaint and Baltimore is now providing seven declarations that address these issues. The declarations are also attached to the First Amended Complaint submitted by Baltimore today, which it is entitled to file as of right. *See* Pl.'s Mot. to File its First Am. Compl. (June 1, 2009). The declarations are therefore part of the complaint and do not cause the motion to be converted to a Rule 56 summary judgment motion. *See, e.g.*, *Schultz v. Braga*, 290 F. Supp. 2d 637, 651 n.8 (D. Md. 2003). In addition, the First Amended Complaint adds ten studies demonstrating that reverse redlining in African-American communities is an observable fact.

I. TWO OF THE DECLARATIONS THAT SUPPORT THIS MOTION ARE FROM FORMER WELLS FARGO LOAN OFFICERS WITH EXTENSIVE KNOWLEDGE OF DEFENDANTS' SUBPRIME LENDING PRACTICES

Two of the declarations submitted by Baltimore with this motion are from former Wells Fargo employees, Elizabeth Jacobson and Tony Paschal. Both have extensive direct knowledge of Wells Fargo's local subprime lending practices.

Jacobson worked for Wells Fargo as a loan officer and then a sales manager from August 1998 until December 2007. Jacobson Decl. ¶ 2. She "worked directly with loan applicants to make subprime loans." *Id.* ¶ 3. She made the loans in a geographic area called "Region 12" that includes Baltimore, Prince George's County, Northern Virginia, and other places. *Id.* "Much of [her] business came from referrals from Wells Fargo loan officers who were on the prime side of the business," known as "A reps." *Id.* Many of the customers referred to Jacobson by A reps lived in Prince George's County or Baltimore, and a large majority of her customers were African Americans. *Id.* ¶ 26.

Jacobson was one Wells Fargo's most successful subprime loan officers in the country. *Id.* ¶ 4. "In 2004 [she] made more subprime loans than any other loan officer at Wells Fargo anywhere in the country" and she "was always one of the top three Wells Fargo subprime loan producers in the country." *Id.* Jacobson completed approximately $50 million in subprime loans per year between 2003 and 2007. *Id.* ¶ 5. This translates into about 180 loans per year. *Id.* Because she made so many subprime loans and worked at Wells Fargo for so long, Jacobson "learned all of the 'ins and outs' of the subprime loan process at the company." *Id.* ¶ 7. Jacobson is white. First Am. Compl. ¶ 62.

Tony Paschal, like Jacobson, has extensive experience in mortgage lending at Wells Fargo. He was a Wells Fargo loan officer from September 1997 to September 2007 (with a hiatus of approximately 2½ years beginning in June 1999) in the Sales and Marketing section in Annandale, Virginia. Paschal Decl. ¶¶ 2-3, 6. His job was to solicit Wells Fargo borrowers to refinance their home mortgage with a prime or FHA loan.[4] *Id.* ¶¶ 3, 7.

Paschal worked on the same floor as the Mortgage Resource division, "which is known by the acronym MORE and exclusively originated higher interest subprime loans." *Id.* ¶ 7. When borrowers did not qualify for prime or FHA loans, Paschal referred them to MORE. *Id*. He "communicated with [the MORE employees] every day." *Id.* Paschal is African-American. *Id.* ¶ 4.

II. WELLS FARGO TARGETS AFRICAN AMERICANS

The declarations from Tony Paschal and Elizabeth Jacobson demonstrate the lengths to which Wells Fargo has gone to target Baltimore's African Americans and neighborhoods that are predominantly African-American.

Paschal states that MORE employees in his office "targeted minority consumers for both purchase and refinance subprime loans," Paschal Decl. ¶ 8, and Jacobson confirms that "Wells Fargo Home Mortgage [an unincorporated division of Wells Fargo Bank, N.A.] tried to market subprime loans to African Americans in Baltimore," Jacobson Decl. ¶ 27. "The MORE division 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."

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[4] "FHA loans . . . offered lower interest rates that are closer to prime rates" than subprime rates. Paschal Decl. ¶ 23.

Paschal Decl. ¶ 8; *see also id.* ¶ 10. "Subprime managers joked that Prince George's County was the 'subprime capitol of Maryland.'" Jacobson Decl. ¶ 26. At the same time, Wells Fargo refrained from targeting whites for subprime loans; Paschal "heard employees in the MORE division comment that Howard County was not good for subprime loans because it has a predominantly White population." Paschal Decl. ¶ 8.

Wells Fargo targeted African Americans in a variety of ways. One way was by directly sending marketing materials to zip codes with predominantly African-American populations. *Id.* ¶¶ 8, 10. It even tailored its subprime marketing materials on the basis of race. It devised software to print out subprime promotional materials in different so-called languages, one of which was "African American." *Id.* ¶ 11. A computer screen shot from 2006 showing this option is attached to Paschal's declaration. *Id.* at Ex. A. Wells Fargo did not remove the "African American" language option until Paschal complained. *Id.* ¶ 11.

Another "strategy used to target African-American customers [in Baltimore] was to focus on African-American churches." Jacobson Decl. ¶ 27. Like their lack of interest in targeting white areas such as Howard County, "[s]ubprime 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 code for African-American or black churches." *Id.* ¶ 30.

Wells Fargo combined its strategy of targeting African-American churches with another strategy – making sure that African-American employees were the face of the company for African-American audiences and customers. Jacobson was told by managers that she could not attend presentations at Baltimore's African-Americans churches because she is not "of color;" later she was told she could go if she "carried someone's bag." Jacobson Decl. ¶ 28. She was likewise told that she was "'too white' to appear before the [virtually all black] audience" at a "wealth building seminar" in Greenbelt designed to market subprime loans. *Id.* ¶ 29. Jacobson "complained to several higher ranking managers . . . . [but] the company did not respond to [her] complaints and no action was taken." *Id.* Likewise, a unit in Silver Spring hired an African-American employee for the specific purpose of targeting African-American churches and their members for subprime loans. Paschal Decl. ¶ 12. Paschal further confirms that Wells Fargo "us[ed] minority subprime loan officers to solicit loans in [the minority] communities" it targeted. *Id.* ¶ 10. It "hired African-American loan officers exclusively from other subprime lenders," and "[i]n the Annandale office, all the MORE loan officers were African-American, even though their two managers were White." *Id.* ¶ 12.

Wells Fargo's employees targeted African Americans and other minorities for subprime loans because they held derogatory stereotypes about minorities. This fostered a discriminatory culture, which management tolerated. Paschal "heard MORE employees on several occasions mimic and make fun of their minority customers by using racial slurs. They referred to subprime loans made in minority communities as 'ghetto loans' and minority customers as 'those people have bad credit,' 'those people don't pay their bills,' and 'mud people.'" Paschal Decl. ¶ 8. Paschal's branch manager Dave Zoldak used the racial slur "nigger" at the office and spoke "about how African Americans lived in 'hoods' and 'slums.'" *Id.* ¶ 16. Paschal complained, yet Wells Fargo promoted Zoldak to area manager. *Id.*

III. WELLS FARGO STEERS PEOPLE WHO QUALIFY FOR PRIME MORTGAGES INTO SUBPRIME MORTGAGES AND ENGAGES IN OTHER ABUSIVE SUBPRIME PRACTICES

A. Steering by Wells Fargo

Jacobson and Paschal also confirm that Wells Fargo regularly steered borrowers who qualified for prime and FHA loans into costly subprime loans. Paschal states that "I had access to Wells Fargo customers' loan records and application files for my work in the Sales and Marketing Division and regularly saw minority customers who had good credit scores and credit characteristics in subprime loans who should have qualified for prime or FHA loans." Paschal Decl. ¶ 12. He and others in his section were explicitly instructed by management to refer borrowers to the subprime unit even though they could have qualified for more desirable prime or FHA loans with additional time or assistance from him. *Id.* ¶ 9. He was even "reprimanded . . . for placing too many customers in FHA loans, when the company wanted me to refer them to a subprime loan officer . . . so that the company could make a greater profit on the loan." *Id.* ¶ 19.

Jacobson similarly states that "many of the referrals I received [from A reps] could qualify for a prime loan," but that "[w]hen I got the referrals, it was my job to figure out how to get the customer into a subprime loan." Jacobson Decl. ¶ 9. She adds that "[i]f I had access to Wells Fargo's loan files right now and could review these files, I could point out exactly which of these customers who got a subprime loan could have qualified for a prime loan." *Id.*

B. <u>Financial Incentives That Induce Wells Fargo Employees to Steer Borrowers</u>

The reason loan officers steered people with better credit into subprime loans is that Wells Fargo gave them large financial incentives to do so. The pay of subprime loan officers was "based on commissions and fees," which "were based on the size of the loan and the interest rate." Jacobson Decl. ¶ 6. Because "Wells Fargo charged higher interest rates and fees not only on its 2/28 and 3/27 subprime loans, but also on its subprime fixed-rate loans, than it did for prime loans," *id.* ¶ 22, it was more lucrative to originate subprime loans. This compensation system and the incentives it created allowed Jacobson to "gross[] more than $700,000 in sales commissions [in 2004]" and "more than $550,000 in commissions and pay" the following year.

Id. ¶ 6. Wells Fargo likewise lavished expensive trips and gifts on successful subprime loan officers, even as foreclosures increased in recent years. *Id.* ¶ 32. This was part of a culture at Wells Fargo that focused exclusively on making the most money possible from a loan and not on putting borrowers in loans that were appropriate for them. *Id.*

Paschal confirms how the compensation system operates to the detriment of minorities:

> Because Wells Fargo made a higher profit on subprime loans, the company put "bounties" on minority borrowers. By this I mean that loan officers received cash incentives to aggressively market subprime loans in minority communities. If a loan officer referred a borrower who should have qualified for a prime loan to a subprime loan, the loan officer would receive a bonus. Loan officers were able to do this because they had the discretion to decide which loan products to offer and to determine the interest rate and fees charged to the borrower. Since loan officers made more money when they charged higher interest rates and fees to borrowers, there was a great financial incentive to put as many minority borrowers as possible into subprime loans and to charge these borrowers higher rates and fees. I knew many loan officers who made more than $600,000 a year and a few who made more than $ 1 million.

Paschal Decl. ¶ 13.

As summarized by Jacobson, "[t]here was always a big financial incentive to make a subprime loan wherever one could." Jacobson Decl. ¶ 24.

C. <u>Broad Discretion That Allows Wells Fargo Employees to Steer Borrowers</u>

As Paschal's statement above indicates, loan officers were able to steer people with prime credit into subprime loans because Wells Fargo gave them broad discretion. Jacobson explains that Wells Fargo's "underwriting guidelines and pricing rules for prime and subprime loans . . . . [provided] more than enough discretion to allow A reps to steer prime loan customers to subprime loan officers like me. Likewise, the guidelines gave me enough discretion to figure out how to qualify most of the referrals for a subprime loan once I received the referral." Jacobson Decl. ¶ 11. This included "discretion to decide which subprime loan products to offer the applicant" "[o]nce I received a referral from an A rep." *Id.* ¶ 13.

Jacobson describes in detail the unscrupulous ways in which Wells Fargo loan officers used their discretion to get away with steering people with prime credit into subprime loans, beginning with A reps:

> In many cases A reps used their discretion to steer prime loan customers to subprime loan officers by telling the customer, for example, that this was the only way for the loan to be processed quickly; that there would be less paperwork of documentation requirements; or that they would not have to put any money down. Customers were not told about the added costs, or advised about what was in their best interest.

Jacobson Decl. ¶ 12. With the referrals in hand, the subprime loan officers then took advantage of their discretion "to qualify the A rep referrals for subprime loans."

> One way was to tell customers not to put any money down on the loan and borrow the entire amount, even if they could afford a big enough down payment to qualify for a prime loan. As soon as the loan was submitted without a down payment, it would "flip" from prime to subprime and a subprime loan officer would be able to get the loan qualified as a subprime loan. Another technique would be to tell the customer that the only way to get the loan closed quickly would be to submit it as a subprime loan. A third technique would be to put a person into a "stated income" loan, even if they had a W-2 statement that verified their income. By doing this, the loan was flipped from a prime to a subprime loan. I know that through some of these techniques borrowers with credit scores as high as 780 were steered into expensive subprime loans with as many as four points, even though they could have qualified for a prime loan.

Id. ¶ 17; *see also id.* ¶¶ 15 ("If, for example, a customer had a high credit score that would make them a good candidate for a prime loan, it was a simple matter to get them qualified for a subprime loan by telling the underwriting department that the customer did not want to provide documentation for the loan, had no source or seasoned assets, or needed to get the loan closed quickly."), 16. Paschal likewise explains that:

> Wells Fargo's loan officers also discriminated against minority refinance applicants by encouraging them to take out more cash from their home equity. By taking out more cash, the borrower would unwittingly increase the commission the loan officer received on the loan, while at the same time eliminating his ability to qualify for a prime or FHA loan. By encouraging the borrower to take out

> more cash, the loan officer knowingly increased the borrower's risk of foreclosure because of the higher loan amount.

Paschal Decl. ¶ 14.

Some loan officers went even further and falsified loan applications in order to put people with prime credit into subprime loans or to make subprime loans to borrowers who did not actually qualify for a loan. Jacobson Decl. ¶ 18. Jacobson states that "I was aware of A reps who would 'cut and paste' the credit report of a borrower who had already qualified for a loan into the file of an applicant who would not have qualified for a Wells Fargo subprime loan because of his or her credit history. I was also aware of subprime loan officers who would cut and paste W-2 forms." *Id.* She "reported this conduct to management and was not aware of any action that was taken to correct the problem." *Id.* It is predictable that these kinds of practices will result in foreclosures.

In 2004 Wells Fargo responded to public criticism by creating "filters" that were supposed to prevent the steering of prime customers into subprime loans. Jacobson Decl. ¶ 19, Paschal Decl. ¶ 18. It was widely understood that the filters were ineffective. *Id.* Loan officers learned many ways to work around the filters by using the broad discretion that Wells Fargo gave them. *Id.* Senior managers knew that loan officers were using these techniques and eventually made certain changes in response, but the loan officers continued to easily undermine the filters. Jacobson Decl. ¶ 20. The filters were also ineffective because Wells Fargo did not create disincentives to steering prime customers into subprime loans. Paschal Decl. ¶ 18. To the contrary, employees continued to have substantial financial incentives to engage in such steering, *id*, and management knew that these practices continued.

D. Other Abusive Subprime Lending Practices By Wells Fargo

Like the discretion and financial incentives loan officers had to put people who qualified for better loans into subprime loans instead, loan officers had discretion and financial incentives to originate the costliest subprime loans. "Subprime loan officers had discretion to decide what interest, points and fees to charge a borrower." Jacobson Decl. ¶ 22. And increasing the cost of a subprime loan would increase the loan officer's commission. *Id.* ¶ 24.

Paschal further explains how this discretion within the universe of subprime loans was used to harm minorities:

> Wells Fargo also discriminated against minority loan applicants by advising them that the interest rate on their loan was "locked", when in fact, Wells Fargo had the ability to lower the interest rate for the applicant if the market rates dropped prior to the loan closing. I believe this was deceptive and discriminatory, particularly since Wells Fargo loan officers lowered interest rates for White loan applicants when market rates dropped after the application but prior to a loan closing. Even though I complained about this differential treatment of minorities to the branch manager, Jennifer Bowman, Wells Fargo did nothing to change the practice.

Paschal Decl. ¶ 5. Wells Fargo also "discriminated against minority loan applicants by not offering them its better or newer products which had lower fixed interest rates and fees." *Id.* ¶ 14.

Loan officers also deceived subprime borrowers about onerous prepayment penalties associated with their loans. *Id.* ¶ 15. The prepayment penalties typically made it difficult for borrowers to refinance into new and better loans, but loan officers were encouraged by Wells Fargo trainers not to tell applicants about them. *Id*. When the subject was raised, loan officers told borrowers that prepayment penalties could be waived, even though they could not be, or otherwise downplayed their significance. Jacobson Decl. ¶ 13.

With Wells Fargo engaged in so many abusive lending practices, Jacobson and her colleagues "morbidly joked that we were 'riding the stagecoach to Hell.'" *Id.* ¶ 31. Jacobson believes that "many current and former Wells Fargo employees" would corroborate her testimony if compelled to testify, but that they "may well be reluctant to come forward voluntarily to tell what they know for fear of retaliation, reprisal or other actions that could adversely affect their future careers in the lending industry." *Id.* ¶ 35.

IV. INJURY TO BALTIMORE

Baltimore is also submitting declarations from Dr. Ira J. Goldstein, an expert on foreclosures and foreclosure-related research who formerly served as HUD's Director of Fair Housing and Equal Opportunity for the Mid-Atlantic Region, and from Baltimore residents who live close to some of the properties that Wells Fargo has foreclosed on in African-American parts of the City. These declarations illustrate some of the ways that Baltimore has been directly injured by the foreclosures resulting from Wells Fargo's unlawful acts.

Goldstein analyzed the limited data that the Court directed the parties to produce. The data concerns 379 Baltimore properties that were the subject of a foreclosure action filed between 2005 and 2008 on a Wells Fargo loan.[5] Goldstein Decl. ¶ 7.

Goldstein found that 222 of the Wells Fargo foreclosure properties, or 59% of them, were vacant after the Wells Fargo loan was originated. This is a very large number of vacancies. He also found that the vacancies are disproportionately located in African-American neighborhoods; 157 of them (71%) are located in neighborhoods that are predominantly (*i.e.*, over 60%) African-American. *Id.* ¶ 9. The concentration of these vacant properties in predominantly African-American areas is reflected on a map attached to Goldstein's declaration. *Id.* at Attach. 3. Moreover, 107 of the 222 properties are currently vacant, of which 69% are in predominantly

[5] The Court did not require production of parallel data for foreclosures between 2000 and 2004 in light of Wells Fargo's representations regarding its practice of archiving pre-2005 data.

African-American neighborhoods while only 16% are in predominantly white neighborhoods.[6] *Id.* ¶ 10.

Vacant properties cause particularly significant injuries to the City. *E.g.*, First Am. Compl. ¶¶ 19-20, 111, 114-118. Vacancies cause, among other harms, squatters, increased risk of crime and fire, and infrastructure damage such as burst water pipes and broken windows. *Id.* ¶ 111. Expensive responses by the City are required to address these harms. *Id.* Vacancies likewise cause especially significant declines in property values and, therefore, in property tax revenues collected by the City. *Id.*

The declarations from Stephen Faison, Richard Faison, Lisa Porter, and Bridget Ross demonstrate, in concrete and graphic terms, that the City suffers these types of significant injuries as a direct result of vacancies. *See* R. Faison Decl.; S. Faison Decl.; Porter Decl.; Ross Decl. These Baltimore residents highlight the kinds of harm that vacancies compel the City to respond to with costly resources, including resources for police and other municipal services, and how vacancies degrade neighborhoods and thereby harm property values and property tax revenues. *Id.* The Faisons, Porter, and Ross live next door to or a few houses away from homes that are among the 107 currently vacant Wells Fargo foreclosed properties and in neighborhoods that are over 80% African-American.[7] *Id.*; Goldstein Decl. ¶ 15. They describe how the vacant properties have caused the quality of their blocks to decline due to crime, squatters, trash,

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[6] Goldstein also confirms that all of Wells Fargo's foreclosures in Baltimore continue to follow a stark racial pattern. He found that 63% of the 379 properties are in predominantly African-American neighborhoods, but only 12% are in neighborhoods that are less than 20% African-American. Goldstein Decl. ¶ 8. Wells Fargo's overall lending in Baltimore is not racially concentrated in this manner, however; data for 2004 through 2007 released by Wells Fargo pursuant to the Home Mortgage Disclosure Act shows that Wells Fargo made 38.7% of its mortgage loans in Baltimore in predominantly African-American neighborhoods and 32.2% in neighborhoods that are less than 20% African-American (2008 data has not yet been released). *Id.* ¶ 14.

[7] The Faisons live next door to 2520 Shirley Avenue. Porter lives a few houses from 801 Arnold Court. Ross lives two doors down from 500 North Clinton Street.

loitering, rats, burst pipes, and more. These are direct consequences of the Wells Fargo vacancies.

For example, Richard Faison has had to call the police several times because of loiterers who hang out and drink at the vacant Wells Fargo foreclosed property next door to him, which was recently boarded up. R. Faison Decl. ¶¶ 3, 5. He also had to call the City to turn off the water and cap a pipe at the vacant house when the pipe burst. *Id.* ¶ 7. Richard and Stephen Faison both confirm that the vacant house is in serious disrepair and that it has created a rat infestation because loiterers and squatters let trash accumulate. R. Faison Decl. ¶ 4, 6, 8, 9; S. Faison Decl. ¶¶ 5-8. They cannot even hang clothing to dry in their backyard because loiterers steal it. S. Faison Decl. ¶ 8. Stephen Faison no longer feels safe when he goes to work early in the morning because of strangers who loiter and sleep at the vacant house next to his. S. Faison Decl. ¶ 5.

The vacant Wells Fargo foreclosed property a few houses from Lisa Porter's home is also in disrepair. Porter Decl. ¶ 4, 6. Trash is scattered in the yard, the grass is not cut, and rats have become an increasing problem since it became vacant. *Id.* ¶¶ 4-5.

Bridget Ross and her neighbors had to call the City to come and board up the vacant Wells Fargo foreclosure property two doors down from her home. Ross Decl. ¶ 5. Vagrants stayed at the house until it was boarded. *Id.* ¶ 3. It is in disrepair, with a broken door and broken windows and large amounts of trash in the yard, and has also become a source of many rats. *Id.* ¶¶ 3, 6, 7. People have stolen plumbing from the vacant property. *Id.* ¶ 4. Ross has been trying unsuccessfully to sell her house for two years but the nearby vacant Wells Fargo foreclosure property has made her home lose value and has made it less desirable to potential purchasers. *Id.* ¶ 9.

These declarations demonstrate that, as the Court suggested at the January 28, 2009 hearing, the City is harmed by vacancies stemming from Wells Fargo's foreclosures. *See* Jan. 28 Hearing at 106, 111-12. They confirm that vacancies cause neighborhoods to deteriorate, which reduces property values, and cause an increased demand for costly City services. These residents demonstrate that, to respond to the problems caused by the vacancies, the City must devote additional funds to policing, removing trash, boarding up properties, repairing infrastructure such as burst pipes, fire protection, and more. The declarations thus corroborate studies discussed in the complaint finding that large measurable foreclosure-related injuries to city governments occur when homes are left vacant. *See* W. Apgar, M. Duda & R. Gorey, *The Municipal Costs of Foreclosures: A Chicago Case Study* (Feb. 27, 2005) at 23; Anne B. Shlay & Gordon Whitman, *Research for Democracy: Linking Community Organizing and Research to Leverage Blight Policy* (2004) at 161-62. The concentration of vacancies in Baltimore's African-American neighborhoods therefore establishes that the City has been injured by Wells Fargo's challenged practices.

This evidence likewise confirms that the types of injuries suffered by the City establish standing to bring a Fair Housing Act claim under Supreme Court and other precedent. *See, e.g.*, *Gladstone, Realtors v. Village of Bellwood*, 441 U.S. 91, 110-11 (1979) (upholding municipal standing; "reduction in property values directly injures a municipality by diminishing its tax base"); *City of Chicago v. Matchmaker Real Estate Sales Ctr., Inc.*, 982 F.2d 1086, 1095 (7th Cir. 1992) (standing established by "increased burden on the City in the form of increased crime and an erosion of the tax base").

V. STUDIES CONFIRMING REVERSE REDLINING IN SUBPRIME LENDING

Baltimore is also submitting eight empirical studies of subprime mortgage lending that account for the kind of data on underwriting criteria that, in this case, can only be corroborated with Wells Fargo's loan files. *See* First Am. Compl. ¶¶ 31-32, 34-40, 46, 48 & Attachs. C-D, F-K. This includes data on credit scores, loan-to-value ratios, debt-to-income ratios, and more. *Id.*[8]

These studies, after controlling for legitimate non-racial underwriting factors, conclude that there are large disparities based on race in subprime mortgage lending. *Id.* ¶ 36. They thereby demonstrate that subprime lending and the predatory practices often associated with subprime lending are targeted at African Americans and African-American neighborhoods. *Id.* ¶ 30. One of the studies focused exclusively on Baltimore. *Id.* ¶ 46 (allegations based on findings of Abt Associates, *Using Credit Scores to Analyze High-Cost Lending in Central City Neighborhoods* (2008)). At least one of the other studies included Wells Fargo loans. *Id.* ¶ 37. The studies show that many African Americans and residents of African-American neighborhoods are steered into subprime mortgages despite qualifying for prime credit. They further show that there are substantial disparities based on race in the terms and conditions of the subprime loans given to African Americans and residents of African-American neighborhoods. *Id.* ¶¶ 31-40.

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[8] These studies are attached to and discussed in the First Amended Complaint, submitted today. *See* First. Am. Compl. ¶¶ 31-32, 34-40, 46, 48 & Attachs. C-D, F-K. They are not also attached to the instant motion to avoid the duplicative submission of lengthy documents. The studies (which were not included with the initial complaint) are: Abt Associates, *Using Credit Scores to Analyze High-Cost Lending in Central City Neighborhoods* (2008); Howell E. Jackson & Jeremy Berry, "Kickbacks or Compensation: The Case of Yield Spread Premiums" (2002); Center for Responsible Lending, *Unfair Lending: The Effect of Race and Ethnicity on the Price of Subprime Mortgages* (2006); Center for Responsible Lending, *Borrowers in High Minority Areas More Likely to Receive Prepayment Penalties on Subprime Loans* (2005); National Community Reinvestment Coalition, *The Broken Credit System: Discrimination and Unequal Access to Affordable Loans by Race and Age – Subprime Lending in Ten Large Metropolitan Areas* (2003); Calvin Bradford, Center for Community Change, *Risk or Race? Racial Disparities and the Subprime Refinance Market* (2002); James H. Carr and Lopa Kolluri, Fannie Mae Foundation, *Predatory Lending: An Overview* (2001); HUD, *Unequal Burden: Income and Racial Disparities in Subprime Lending in America* (2000).

The studies, in conjunction with the Center for Responsible Lending's 2004 report on Wells Fargo's predatory practices discussed in the original complaint (Compl. ¶ 41; First Am. Compl. ¶ 55) and the declarations submitted with this motion describing exactly how Wells Fargo has targeted African Americans in Baltimore, provide compelling factual support for the allegations made by the City in this case.

ARGUMENT

As Baltimore has previously stated, its original complaint and written and oral submissions on the motion to dismiss require the denial of the motion without any further hearing. The Court has nonetheless asked for supporting evidence with respect to certain questions and the City is now providing it through its First Amended Complaint. By any measure, Baltimore's amended complaint and supporting evidence satisfactorily respond to the Court's questions and require that the motion to dismiss be denied. The June 29 evidentiary hearing would, accordingly, serve no point and the Court should reconsider the need for it.

Moreover, there is no legal basis for an evidentiary hearing at this early stage of the case and the City would be prejudiced if the Court now requires it to support its claims with additional evidence. Rule 12(b)(6) motions and Rule 12(b)(1) motions raising facial challenges to standing must be adjudicated on the basis of the complaint especially when, as here, the plaintiff has been denied a reasonable opportunity for discovery. Baltimore's amended complaint, including the evidence incorporated within it, is more than adequate to defeat the motion to dismiss. An evidentiary hearing would, accordingly, serve no valid purpose. An evidentiary hearing would instead effectively serve as a mini-trial in which Wells Fargo attempts to challenge the City's evidence and the credibility of its witnesses and asks the Court to usurp the role of the jury by resolving disputed issues of fact. In addition to being procedurally defective, such a hearing would be prejudicial because Baltimore has not been permitted to take any discovery to corroborate the declarations of its witnesses. To avoid such prejudice, a motion to dismiss may not be converted to an evidence-based motion or hearing without a reasonable opportunity for discovery. *See, e.g.*, *Gay v. Wall*, 761 F.2d 175, 177-78 (4th Cir. 1985). That opportunity has not been afforded here.

For example, Baltimore must be afforded the opportunity to review Wells Fargo's loan files (among other documents) through discovery before being required to substantiate its allegations with additional proof. Jacobson and Paschal both state that the loan files would buttress their testimony that Wells Fargo steered minorities who qualified for better loans into subprime loans. Jacobson Decl. ¶ 9; Paschal Decl. ¶ 12. It would be fundamentally unfair, and contrary to the rules of procedure, for the Court to permit Wells Fargo to challenge Jacobson's and Paschal's credibility and their testimony about steering at an evidentiary hearing without permitting Baltimore to adduce corroborating evidence through discovery.

In addition, Wells Fargo's factual challenge under Rule 12(b)(1) may not be decided now because the facts at issue are intertwined with the merits of the claims. The factual issues must instead be reserved for resolution at the merits stage of the case. *See, e.g.*, *White Tail Park, Inc. v. Stroube*, 413 F.3d 451, 260-61 (4th Cir. 2005).

If the Court nevertheless proceeds with the evidentiary hearing, it must review the evidence under a standard equivalent to the one routinely applied to motions to dismiss. That standard would preclude the Court from weighing the evidence presented and instead require it to accept as true the evidence that favors Baltimore's position and to accept as true the inferences that can fairly be drawn in Baltimore's favor from that evidence.

I. THE NEED FOR THE HEARING SHOULD BE RECONSIDERED BECAUSE BALTIMORE'S NEW EVIDENCE SATISFACTORILY ANSWERS THE COURT'S QUESTIONS

A. The Evidence Shows That Baltimore Has Standing

The Court's first question is whether the limited discovery it ordered shows that the City has standing. It does.

In discussing damages, the Court said that "the big issue is, are they vacant or not?" Jan. 28 Hearing at 106; *see also id.* ("Are they vacant or not? That's the significant issue."). The Court suggested that if the properties were vacant, it would not be difficult to see that the City has been injured and has standing. *See id.* at 106, 111-12.

Dr. Goldstein's analysis of the limited discovery shows that 222 of the 379 foreclosure properties were vacant after the loan was originated and that 107 are currently vacant. It further shows that, of the 222, 71% are in census tracts that are predominantly African-American. Of the 107, 69% are in predominantly African-American tracts while only 16% are in predominantly white tracts.

The declarations from Baltimore residents Stephen Faison, Richard Faison, Lisa Porter, and Bridget Ross confirm that the harm to neighborhoods and drain on City resources from vacancies is real and substantial, and that the City's allegation that foreclosure-related vacancies harm property values and property tax revenue is, at the very least, credible. The significance of vacancies as a cause of the City's injury is likewise demonstrated by the Apgar and Shlay studies discussed in the original complaint.

Goldstein's declaration also demonstrates the fallacy of Wells Fargo's contention that, by implementing the state tax lien statute, Baltimore has caused its own injuries. (The Court explained that the second reason for the limited discovery was to address this contention. Feb.

20 Hearing at 22, 27.) The data shows that any effect of the tax lien system on the Wells Fargo foreclosures is negligible. Only 34% of the 379 properties were included in a tax lien sale between 2005 and 2008 and the median tax arrearage was less than $1,000. Goldstein Decl. ¶ 13. Wells Fargo's median mortgage in Baltimore between 2005 and 2007 (the last year for which data is available) was $112,000, rendering the tax arrearages generally inconsequential by comparison. *Id*. The tax lien data thus demonstrates that, even if Baltimore was responsible for the system of tax lien sales – which it is not, as the City has previously shown – the harm suffered by Baltimore as a result of the foreclosures on Wells Fargo loans could not be deemed self-inflicted for purposes of standing analysis.

Thus, the limited data production ordered by the Court demonstrates that Baltimore has Article III standing.

B. The Evidence Shows That Wells Fargo Targeted African Americans in Baltimore

The second issue raised by the Court is whether the City has evidence that Wells Fargo targeted African Americans. The declarations of Elizabeth Jacobson and Tony Paschal are ample evidence that Wells Fargo has indeed aggressively targeted its abusive subprime lending practices at African Americans in Baltimore. The declarations show that Wells Fargo has done so in a number of ways, including with practices that the Court has already identified as indicative of racial targeting. *See* Mem. to Counsel for Baltimore (Feb. 18, 2009) (Doc. No. 46) at question 2 (employee admissions of targeting, targeting direct mail to African-American neighborhoods, employing a predominantly African-American sales force to target African Americans).

The declarations show that, among other things, Wells Fargo:

- targeted direct mail marketing materials to zip codes in Baltimore and surrounding areas with large African-American populations;
- treated "African American" as a language into which it translated its marketing materials;
- targeted African-American churches but not white churches in Baltimore;
- intentionally used African-American employees to promote subprime loans at events attended by predominantly African-American audiences in Baltimore and the nearby area;
- employed a predominantly African-American sales force in a special subprime division to target African-American customers; and
- viewed areas with large African-American populations as the best to target for subprime mortgages because African Americans were seen as people who lack good credit and fail to pay their bills.

Jacobson Decl. ¶¶ 26-30; Paschal Decl. ¶¶ 8, 10-12. To Wells Fargo, African Americans and other minorities were "mud people" ripe for targeting with abusive subprime lending practices. Paschal Decl. ¶ 8.

C. <u>The Evidence Shows That Baltimore States a Disparate Impact Claim</u>

The Court's third question, which has six subparts, is whether the City adequately states a disparate impact claim. The subparts go primarily to whether the City is comparing borrowers who are similarly situated but for their race.

Baltimore alleges that African Americans are disproportionately the recipients of materially less favorable loans from Wells Fargo than whites, and that the discrepancy cannot be explained by non-racial criteria. The evidence now submitted by the City in support shows, *inter alia*, that Well Fargo loan officers and management used their discretion to target African Americans to be steered into subprime loans in Baltimore regardless of their ability to qualify for prime loans. As the court in *Miller v. Countrywide Bank, N.A.*, 571 F. Supp. 2d 251, 258-59 (D.

Mass. 2008), held on parallel allegations – but without any evidence at all – this is more than enough to state a disparate impact claim and defeat a motion to dismiss. The defendants in *Miller* "claim[ed] that because Plaintiffs do not expressly allege that African-Americans receive higher rates than *similarly situated* whites, the claim must fail." *Id.* at 258 (emphasis in original). The court rejected this argument:

> In effect, defendants' challenge goes to questions of proof rather than the adequacy of the pleading. Plaintiffs may well be unable to prove that race-rather than objective criteria of creditworthiness that may correlate with race-accounts for any disparate impact in Countrywide's pricing of its loans. However, that is a question for a later stage in this proceeding.

Id. at 259. Accordingly, Baltimore's evidence is more than enough to support its allegations and demonstrate that it has properly stated a disparate impact claim.

Moreover, Baltimore's testimonial evidence demonstrates that when it has access to Wells Fargo's loan files through discovery, it will be able to submit more precise proof to the Court identifying the particular loans that were the result of discretionary steering by loan officers. Jacobson Decl. ¶ 9 ("If I had access to Wells Fargo's loan files right now and could review these files, I could point out exactly which of these customers who got a subprime loan could have qualified for a prime loan."); Paschal Decl. ¶ 12. At this stage of the case, however, the City cannot conduct this more precise evidentiary analysis or a corresponding statistical analysis that controls for legitimate non-racial underwriting factors because it has been denied the necessary discovery.[9] But more importantly for a motion to dismiss, the testimonial evidence establishes the "plausibility" of the City's allegation that the discretion given Wells

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[9] Indeed, the Court lists fourteen examples of underwriting criteria in its questions, but only three are even potentially available to Baltimore without discovery. Baltimore asked the Court to permit discovery of information needed to conduct a preliminary statistical disparate impact analysis, but its request was denied. *See* Letter from John P. Relman to Hon. Benson E. Legg (Mar. 3, 2009) (Doc. No. 56); Mar. 4 Hearing at 5.

Fargo employees resulted in less advantageous loans for African Americans. *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 564 (2007). It is, accordingly, sufficient to state a claim. *Id.*

Baltimore's statistical evidence further demonstrates that the City properly supports and states a disparate impact claim under *Twombly*. The currently available data shows stark racial disparities in, among other things, the likelihood that a Wells Fargo loan in Baltimore will result in foreclosure and the likelihood that it will have a high interest rate. Goldstein Decl. ¶¶ 11-12. This data is buttressed by studies incorporated in the amended complaint that control for the kind of information found in loan files. *See* First. Am. Compl. ¶¶ 31-32, 34-40, 46. The studies demonstrate that African Americans are steered into subprime loans more frequently than similarly situated whites and receive more disadvantageous loan terms than similarly situated whites. *See id.*

Collectively, the testimonial evidence from Jacobson and Paschal, the Wells Fargo-specific data, and the studies more than support the allegation that African Americans in Baltimore receive materially less favorable mortgages from Wells Fargo than similarly situated whites.[10] The allegation must therefore be taken as true and construed in the City's favor, *see, e.g., Schweikert v. Bank of America, N.A.*, 521 F.3d 285, 288 (4th Cir. 2008); *Anderson v. Sara Lee Corp.*, 508 F.3d 181, 188 (4th Cir. 2007), and is not in any way conclusory, *see Ashcroft v. Iqbal*, 129 S. Ct. 1937, 2009 WL 1361536, at *14 (May 18, 2009) (bare formulaic recitation of elements is conclusory).[11]

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[10] The City also submitted evidence with its original complaint demonstrating that Wells Fargo's pricing policies have a disparate impact on the basis of race. *See* Compl. ¶¶ 50-52 & Attach. A.

[11] The Court also asked whether the nationwide collapse of the subprime mortgage market undermines Baltimore's argument. Mem. to Counsel (Mar. 6, 2009) (Doc. No. 58) at question 3(c). It does not. The collapse of the housing market, not the subprime market, is what is important here. While housing prices were rising, the effects of the abusive lending practices targeted by Wells Fargo on the basis of race were masked. First Am. Compl. ¶ 27. Borrowers who could not repay their mortgages had options other than foreclosure; they could refinance or sell the property for enough money to pay off the Wells Fargo loan. But those other options have largely

D. The Evidence Shows That Wells Fargo Employees Used Their Discretion to Disadvantage African Americans in Baltimore

The Court's fourth question is whether Baltimore has evidence that Wells Fargo employees used discretion to disadvantage African American borrowers. As with targeting, the Jacobson and Paschal declarations provide ample evidence that they did.

Jacobson and Paschal explain that Wells Fargo employees had broad discretion to decide what type of loan to give a borrower and to set the terms of each loan, and that they aggressively used this discretion to the detriment of the people they targeted for subprime mortgages, *i.e.*, African Americans and residents of African-American neighborhoods. Jacobson Decl.; Paschal Decl. Wells Fargo employees used their discretion to steer people who qualified for prime credit into subprime loans; to give subprime loans to people who did not qualify for them and/or would not be able to pay them after the expiration of a teaser rate; to increase the cost of loans without providing corresponding benefits; to falsify loan applications; and to deceive people about prepayment penalties. *Id.* These abusive subprime practices operated to disadvantage African Americans because that is the very population at which they were targeted. *Id.*

* * *

In sum, the questions that the Court has set for consideration at the evidentiary hearing are all answered by the evidence submitted herewith, and are all answered in Baltimore's favor. The motion to dismiss should therefore be denied on the basis of this evidence and the hearing should be reconsidered because its purpose has already been accomplished.

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disappeared with the collapse of the housing market and foreclosure has too frequently become unavoidable. The harm inflicted on Baltimore by Wells Fargo's practices has, accordingly, been heightened as the housing market has declined.

II. THERE IS NO LEGAL BASIS FOR THE EVIDENTIARY HEARING

Even if Baltimore were not submitting sufficient new evidence with this motion and its amended complaint, the evidentiary hearing would have to be reconsidered because there is no legal basis for it. In the face of a detailed complaint, rich in factual allegations that support the claims alleged, the Court may not subject Baltimore to a contested evidentiary hearing without any real discovery. *See, e.g.*, *Gay v. Wall*, 761 F.2d 175, 177-78 (4th Cir. 1985). That is, however, exactly what the contemplated June 29 hearing would do.

A. <u>Rule 12(b)(6) and the Facial Challenge Under Rule 12(b)(1)</u>

On a motion to dismiss under Rule 12(b)(6), it is well-established that all of the allegations of the complaint must be accepted as true. *See, e.g.*, *Anderson v. Sara Lee Corp.*, 508 F.3d 181, 188 (4th Cir. 2007). The court must also "construe the factual allegations of the complaint in the light most favorable to the plaintiff," *Schweikert v. Bank of America, N.A.*, 521 F.3d 285, 288 (4th Cir. 2008) (internal quotation marks and citation omitted), and must "presume that general allegations embrace those specific facts that are necessary to support the claim," *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 561 (1992) (citation, brackets, and quotation marks omitted). The court must "draw[] all reasonable factual inferences from th[e allegations] in the plaintiff's favor . . . ." *Edwards v. City of Goldsboro*, 178 F.3d 231, 244 (4th Cir. 1999). The same rules apply to a facial challenge to the sufficiency of a complaint under Rule 12(b)(1). *See, e.g.*, *Adams v. Bain*, 697 F.2d 1213, 1219 (4th Cir. 1982); *see also Warth v. Seldin*, 422 U.S. 490, 501 (1975) ("For purposes of ruling on a motion to dismiss for want of standing, both the trial and reviewing courts must accept as true all material allegations of the complaint, and must construe the complaint in favor of the complaining party.") (citation omitted).

There is no place within this standard of review for the taking or weighing of evidence. "The purpose of a Rule 12(b)(6) motion is to test the sufficiency of a complaint; 'importantly, a Rule 12(b)(6) motion does not resolve contests surrounding the facts, the merits of a claim, or the applicability of defenses.'" *Edwards*, 178 F.3d at 243 (quoting *Republican Party v. Martin*, 980 F.2d 943, 952 (4th Cir. 1992)) (brackets omitted); *Presley v. City of Charlottesville*, 464 F.3d 480, 483 (4th Cir. 2006) (same).

The only circumstance in which a court may consider evidence in the course of applying the Rule 12(b)(6) standard of review is when the motion is converted into a motion for summary judgment under Rule 56. Indeed, if a court under Rule 12(b)(6) considers "matters outside the pleadings," the motion automatically converts to a Rule 56 motion and the Court must apply the stricter evidence-based standard of review applicable on summary judgment. *See* Rule 12(d).

A court may only follow that approach in very limited circumstances, however. As Rules 12(e) and 56(f) both require, a court must first afford the plaintiff a reasonable opportunity to pursue discovery before converting a Rule 12 motion and subjecting the plaintiff to the summary judgment standard. *See, e.g., Johnson v. RAC Corp.*, 491 F.2d 510, 513-15 (4th Cir. 1974) (Rule 12); *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 250 n.5 (1986) (Rule 56); *Harrods Ltd. v. Sixty Internet Domain Names*, 302 F.3d 214, 247 (4th Cir. 2002) (reversing District Court's grant of summary judgment; "And summary judgment prior to discovery can be particularly inappropriate when a case involves complex factual questions about intent and motive."). If that opportunity is denied, conversion of the motion to dismiss into one for summary judgment is an abuse of discretion. *See Gay v. Wall*, 761 F.2d 175, 177-78 (4th Cir. 1985). In *Gay*, the District Court had treated a motion to dismiss as one for summary judgment and granted it. *See id.* at 176. Even though discovery had commenced – which is not the case here – the plaintiff had not yet had a "reasonable opportunity" for discovery. *Id.* at 177. The Fourth Circuit reversed. *Id.* at 178.[12]

Reflecting the very limited discretion given courts to apply an evidentiary standard in lieu of the Rule 12(b)(6) standard, the Third Circuit has stated, quoting the Seventh Circuit, that "[i]t is a first principle of federal civil procedure that litigants 'are entitled to discovery before being put to their proof.'" *Alston v. Parker*, 363 F.3d 229, 233 n.6 (3d Cir. 2004) (quoting *Bennett v. Schmidt*, 153 F.3d 516, 519 (7th Cir. 1998)). The Third Circuit added that the "need for discovery before testing a complaint for factual sufficiency is particularly acute for civil rights plaintiffs, who often face informational disadvantages." *Id.* The Fourth Circuit applies a parallel rule. *See Edwards*, 178 F.3d at 244 ("when . . . a Rule 12(b)(6) motion is testing the sufficiency of a civil rights complaint, we must be especially solicitous of the wrongs alleged") (internal quotation marks and citation omitted); *Presley*, 464 F.3d at 483 (same).

The Third and Seventh Circuit's statements both came in the context of reversing trial courts that had granted motions to dismiss civil rights cases under Rule 12(b)(6). Both Circuits ruled that the trial courts had subjected the complaints to impermissibly heightened pleading requirements by requiring the plaintiffs to plead with great factual specificity and particularity. *Alston*, 363 F.3d at 230, 232-34; *Bennett*, 153 F.3d at 518-19. As the Third Circuit stated, "a fact-pleading requirement for civil rights complaints has been rejected by the Supreme Court in no uncertain terms." *Alston*, 363 F.3d at 233 (citing *Leatherman v. Tarrant County Narcotics Intelligence & Coordination Unit*, 507 U.S. 163, 168 (1993)). It added that "recently, in

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12 *See also Johnson*, 491 F.2d at 513-15 (reversing District Court that based decision granting motion to dismiss on evidence; "plaintiff should have been afforded an opportunity . . . to employ discovery, in order to counter, if he could, the facts set forth in the defendant's affidavit or to establish a factual basis for his action against the defendant; and this is especially so since the facts on which the defendant predicates its motion in this respect lie peculiarly within the knowledge of the defendant."); *Moret v. Harvey*, 381 F. Supp. 2d 458, 463-64 (D. Md. 2005) (refusing to convert motion to dismiss into summary judgment motion because plaintiff had not been afforded a reasonable opportunity for discovery); *Jordan v. Washington Mut. Bank*, 211 F. Supp. 2d 670, 673-74 (D. Md. 2002) (same).

Swierkiewicz v. Sorema N.A., 534 U.S. 506, 513 (2002), the Court reaffirmed its holding in *Leatherman* . . . ." *Id.* And in *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 569-70 & n.14 (2007), the Supreme Court reaffirmed *Swierkiewicz.*[13]

Here, the Court has already denied Baltimore's request for discovery. *See* Letter from John P. Relman to Hon. Benson E. Legg (Mar. 3, 2009) (Doc. No. 56); Mar. 4 Hearing at 5 (stating Court's "intention to table" discovery). Indeed, the evidentiary hearing has been scheduled for the purpose of determining whether to permit discovery to commence. *Id.* at 7. (the Court "need[s] to find out whether there is enough evidence there of a claim before we go conduct [] discovery").

Thus, Baltimore has not been able to obtain documents through discovery to corroborate the declarations from Elizabeth Jacobson and Tony Paschal or any of the allegations in its complaint. This includes loan files, which are the most accurate source of borrowers' credit scores, credit histories, loan-to-value ratios, debt-to-income ratios, employment histories, and information about other legitimate underwriting factors, and which Jacobson and Paschal have testified they would use to show that minorities were steered into subprime loans even though they qualified for prime or FHA loans. Indeed, these witnesses specifically state in their declarations that the data in Wells Fargo's loan files supports their testimony. Jacobson Decl. ¶ 9; Paschal Decl. ¶ 12. The documents that Baltimore has not been able to obtain because it has been denied discovery also include, among others, underwriting guidelines, pricing sheets, memos, and other complaints of discrimination, all of which are likely to corroborate the evidence submitted by Baltimore today and the City's allegations. Nor has Baltimore been able

[13] Furthermore, all nine Justices in *Ashcroft v. Iqbal*, 129 S. Ct. 1937, 2009 WL 1361536 (May 18, 2009), agreed that *Twombly* only requires a complaint to allege enough facts to show that a claim is plausible, not probable. *Id.* at *12 (majority); *id.* at *22-23 (dissent).

to identify or depose other witnesses through discovery, even though Jacobson clearly states that many other witnesses will confirm her description of Wells Fargo's abusive subprime practices in Baltimore but are likely fearful of coming forward. Jacobson Decl. ¶ 35. The only Wells Fargo employees that the City has been able to discuss this case with are former employees who have come forward voluntarily.[14]

A contested evidentiary hearing in the absence of these types of discovery would be fundamentally unfair and prejudicial to the City and would not meaningfully assist the Court in evaluating the sufficiency of Baltimore's allegations. Baltimore's evidence and the credibility of its witnesses would be challenged at the hearing, yet the City would not have had the opportunity to buttress its evidence and the credibility of its witnesses through the discovery process. All plaintiffs are entitled to this opportunity as long they present allegations that plausibly suggest a right to relief. By presenting both detailed allegations and evidence in support of its claim, Baltimore has clearly demonstrated its entitlement to discovery and it would be prejudiced if it is now required to face an evidentiary hearing before discovery has commenced.

With basic and essential discovery yet to be allowed, the Court may not convert the motion to dismiss into a motion for summary judgment and may not review the motion under an evidence-based standard. The Court must instead apply the Rule 12(b)(6) standard, which mandates acceptance of the allegations of the complaint as true and precludes the consideration and weighing of evidence through an evidentiary hearing. To instead put Baltimore to its proof at this early, pre-discovery stage would be highly prejudicial and constitute reversible error.

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[14] Discovery required by Baltimore is described in Baltimore's March 3, 2009 letter to the Court (Doc. No. 56) and in its Rule 56(f) declaration submitted herewith. *See* Ex. 8.

B. <u>Factual Challenge Under Rule 12(b)(1)</u>

Nor may Wells Fargo's factual challenge to standing be addressed through an evidentiary hearing. "[W]here the jurisdictional facts [challenged under Rule 12(b)(1)] are intertwined with the facts central to the merits of the dispute," a court may not "weigh[] the evidence to determine its jurisdiction" and "the entire factual dispute is appropriately resolved only by a proceeding on the merits." *Adams v. Bain*, 697 F.2d 1213, 1219 (4th Cir. 1982) (reversing dismissal for lack of jurisdiction under Rule 12(b)(1) because jurisdictional facts were intertwined with merits facts); *see Williamson v. Tucker*, 645 F.2d 404, 415 (5th Cir. 1981) (same) ("[T]he proper course of action for the district court . . . is to find that jurisdiction exists and deal with the objection as a direct attack on the merits of the Plaintiff's case. The Supreme Court has made it clear that in that situation no purpose is served by indirectly arguing the merits in the context of federal jurisdiction.") (footnote omitted). That is precisely the case here.[15]

This strict limitation on the propriety of adjudicating a factual challenge under Rule 12(b)(1) is even the basis of a Fourth Circuit case relied on by Defendants. *See White Tail Park, Inc. v. Stroube*, 413 F.3d 451 (4th Cir. 2005), *cited in* MTD Reply at 9. In *White Tail*, an organization asserted that it was injured by a state statute that impaired its ability to disseminate its message about social values in violation of the First Amendment. *See id.* at 461. The district court dismissed the organization for lack of standing under Rule 12(b)(1) based on the court's view that the statute did not outright prohibit the organization from advancing its views. *See id.* at 460. The Fourth Circuit reversed and criticized the district court for "veer[ing] from a standing analysis to a merits inquiry." *Id.* The organization would ultimately have to prove each

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[15] *Valentin v. Hospital Bella Vista*, 254 F.3d 358, 362-64 (1st Cir. 2001), is an example of the kind of factual challenge under Rule 12(b)(1) that is not intertwined with the merits of the case. There, the defendant challenged the truth of plaintiff's allegation that she was a Florida resident in support of her invocation of diversity jurisdiction.

element of its case, including the existence and degree of injury, but at the pleading stage it only needed to allege the type of injury that gives a plaintiff "a sufficiently 'personal stake' in the lawsuit to justify the invocation of federal court jurisdiction." *Id.* at 461 (citation omitted).

Wells Fargo's Rule 12(b)(1) factual challenge to Baltimore's standing parallels the challenge to standing addressed in *White Tail*. In *White Tail*, the plaintiff organization alleged that the purportedly unlawful conduct (the state statute) caused it to suffer an injury (impairment of its ability to spread its message). Here, Baltimore alleges that reverse redlining by Wells Fargo causes it to suffer several types of financial harm. Baltimore must ultimately prove this in order to prove liability under the Fair Housing Act, just as the organization in *White Tail* ultimately needed to prove that it was injured by the state statute. But as the Fourth Circuit held, the facts involved in this particular type of jurisdictional challenge overlap with the facts involved in the merits of the case, and the Court may not conduct a merits inquiry at this early stage in the guise of addressing the jurisdictional argument.

Indeed, the way in which Wells Fargo challenges Baltimore's standing emphasizes how intertwined its standing challenge is with the merits of the City's lawsuit. Wells Fargo asserts that (1) something other than its own actions may have caused the City's injuries because of how third parties have reacted to the foreclosures and because of how the City has implemented the State of Maryland's tax lien statute, and (2) the City might not have been injured by the foreclosures in the first place because the tax revenue from any particular home might have been the same anyway under the cap governing how much the property tax on certain homes can rise each year. These factual contentions are plainly defenses to liability and thus part of the merits phase.[16]

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[16] An analogy to a simple tort case may be helpful. (The Supreme Court explained in *Meyer v. Holley*, 537 U.S. 280, 285 (2003), that a Fair Housing Act claim is "in effect, a tort action.") Assume that pedestrian A sues B

Accordingly, under directly applicable and controlling Fourth Circuit precedent, the Court must defer the resolution of these factual issues until the merits phase of the case and may not resolve them now under Rule 12(b)(1) through an evidentiary hearing or otherwise.

III. IF THE COURT NONETHELESS HOLDS AN EVIDENTIARY HEARING, IT MUST APPLY A STANDARD OF REVIEW EQUIVALENT TO THE RULE 12(b)(6) STANDARD

Should the Court, notwithstanding the arguments set forth above, proceed with the evidentiary hearing on June 29, Baltimore submits that the standard of review applied to the evidence received at the hearing must be one that parallels the Rule 12(b)(6) standard. In light of the unusual nature of the hearing scheduled by the Court, there does not appear to be law explicitly setting forth a proper standard of review. Any standard stricter than the Rule 12(b)(6) standard, however, would be tantamount to assessing the sufficiency of the evidence and/or weighing the evidence to make factual determinations. As explained above, a court may not engage in either exercise on a Rule 12(b)(6) motion or on a facial challenge under Rule 12(b)(1), and Wells Fargo's factual challenge under Rule 12(b)(1) may not be considered until the merits phase of the case. Thus, if the evidentiary hearing goes forward, the Court must accept Baltimore's evidence as true and give Baltimore the benefit of all inferences that can reasonably be drawn from that evidence.

CONCLUSION

For the reasons set forth above, and in Baltimore's prior written and oral presentations to the Court with respect to Wells Fargo's motion to dismiss, Baltimore respectfully submits that the evidentiary hearing scheduled for June 29, 2009, should be reconsidered; that the motion to

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alleging that he was injured when B drove a car into him. Assume further that B argues that C is really responsible for causing A's injuries because C pushed A into oncoming traffic. The existence and role of the alleged push is a merits defense, whether or not it also implicates standing's causation prong. And if B argued that A was not actually harmed, that would also be a merits defense.

dismiss should be denied in its entirety; that the Court should set a schedule for discovery and trial; and that the Court should permit discovery to commence.

In the alternative, Baltimore respectfully submits that the Court should apply a standard of review to the evidence submitted at the evidentiary hearing that is equivalent to the Rule 12(b)(6) standard of review.

June 1, 2009

Respectfully submitted,

/s/ John P. Relman

John P. Relman, MD Fed. Bar No. 11482
Bradley H. Blower, MD Fed. Bar No. 07641
Glenn Schlactus, *pro hac vice*
RELMAN & DANE, PLLC
1225 19th Street NW, Suite 600
Washington, DC 20036
(202) 728-1888
(202) 728-0848 (fax)
jrelman@relmanlaw.com
bblower@relmanlaw.com
gschlactus@relmanlaw.com

Special Assistant City Solicitors and Attorneys for Plaintiff

George Nilson, City Solicitor, MD Fed. Bar No. 01123
Suzanne Sangree, Chief Solicitor, MD Fed. Bar No. 26130
City Hall
100 N. Holliday Street
Baltimore, Maryland 21202
(410) 396-3297
(410) 659-4077 (fax)
George.Nilson@baltimorecity.gov
Suzanne.Sangree@baltimorecity.gov

Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I certify that the foregoing documents, including Plaintiff's Motion to Reconsider the Need for the June 29, 2009 Evidentiary Hearing and all associated documents filed therewith, will be sent via Electronic Case Filing System (ECF) to all registered participants and paper copies will be sent by first class mail to those indicated as non-registered participants as of June 1, 2009.

/s/ Bradley Blower
Bradley Blower

Dated: June 1, 2009

EXHIBIT 1

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
BALTIMORE DIVISION

MAYOR AND CITY COUNCIL OF BALTIMORE, Plaintiff, v. WELLS FARGO BANK, N.A. and WELLS FARGO FINANCIAL LEASING, INC., Defendants.	)	No. 1:08-cv-00062-BEL

1. I, Tony Paschal, hereby attest that I am over the age of 18 years and that I am competent to testify with respect to the matter below.

2. Between September, 1997 and September, 2007, during two separate periods of employment and for a total of eight years, I worked as a home mortgage consultant, or loan officer, in the Annandale, Virginia office of Wells Fargo Home Mortgage ("Wells Fargo").

3. My first period of employment with Wells Fargo was from September, 1997 to June, 1999. I was initially hired by Norwest Mortgage which merged with Wells Fargo in the middle of 1998. As a loan officer in Wells Fargo's Sales and Marketing section, my duties included contacting existing Wells Fargo borrowers in forty-eight (48) states to solicit them to refinance their home mortgage loan. Other Wells Fargo loan

officers also referred to me mortgage loan applicants that they were unable to qualify for "prime" loans because the applicants had blemished credit. I worked with these applicants to see if they would qualify for a prime conventional loan or a Federal Housing Administration ("FHA") loan. As loans insured by the federal government, FHA loans have interest rates that are a little higher than the prime rate, but are significantly less expensive than subprime loans.

4. I also worked during much of this period as a Community Development Representative. In this capacity, I contacted and worked with community groups with the goal of expanding Wells Fargo's business, particularly in minority communities. I am African American.

5. In June, 1999, I left Wells Fargo to take a position with Ardent Communication, a telecommunications business. I left Wells Fargo for two reasons. First, I was uncomfortable with how Wells Fargo treated its minority employees and customers. Wells Fargo's managers were almost entirely White and there was little to no opportunity for advancement for minorities. Wells Fargo also discriminated against minority loan applicants by advising them that the interest rate on their loan was "locked", when in fact, Wells Fargo had the ability to lower the interest rate for the applicant if the market rates dropped prior to the loan closing. I believe this was deceptive and discriminatory, particularly since Wells Fargo loan officers lowered interest rates for White loan applicants when market rates dropped after the application but prior to a loan closing. Even though I complained about this differential treatment of minorities to the branch manager, Jennifer Bowman, Wells Fargo did nothing to change

the practice. I also left Wells Fargo because Ardent Communications offered me a higher salary and more opportunities as a minority employee for advancement.

6. After Ardent Communications went out of business, in November 2001, I returned to work as a loan officer in the Sales and Marketing section of Wells Fargo's Annandale, Virginia office. Although I still had concerns about Wells Fargo's treatment of minority employees and customers, I thought that because there was a new branch manager, Dave Margeson, in the Annandale office, the working environment may have improved.

7. By the time I returned to Wells Fargo, the company was targeting existing customers for refinance loans to a much greater extent than it had during my first period of employment. As during my first period of employment, I contacted existing Wells Fargo borrowers nationally to solicit them to refinance their loans into a prime or FHA loan. When the borrower did not qualify for those loans, I would refer the borrower to the Mortgage Resource division, which is known by the acronym MORE and exclusively originates higher interest rate subprime loans. The employees working for MORE were located on the same floor as I was and I communicated with them every day.

8. In addition to taking referrals from other loan officers, MORE employees in the Annandale office targeted minority consumers for both purchase and refinance subprime loans. The MORE division 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. I heard employees in the MORE division comment that Howard County was not good for subprime loans because it has a predominantly White population. I also heard MORE employees on several occasions

mimic and make fun of their minority customers by using racial slurs. They referred to subprime loans made in minority communities as "ghetto loans" and minority customers as "those people have bad credit," "those people don't pay their bills," and "mud people."

9. In 2002, Dave Johnson, a former colleague with whom I had worked at Wells Fargo in 1997 and 1998, asked me if I could help him return to Wells Fargo. Mr. Johnson left Wells Fargo in 1998 to work at another mortgage lender. I spoke with Dave Margeson, my branch manager, and suggested that he hire Dave Johnson. Wells Fargo hired Mr. Johnson as a manager in the MORE division. Although I had also applied for a management position, Wells Fargo hired Mr. Johnson, who is White, instead of promoting me. I believe that Wells Fargo did not promote me for two reasons. First, Wells Fargo's management culture was White. Mr. Margeson is White and so is his immediate supervisor, area manager John Goulding. Indeed, I know of only one Wells Fargo African-American manager. Second, Wells Fargo management knew that I treated Wells Fargo customers well by offering to refinance them to prime and FHA loans when they qualified for those products. Wells Fargo management did not believe that I was doing enough to promote the subprime business, which was far more profitable because of the higher interest rates and fees. John Goulding told me that I was not doing enough to promote subprime loans and managers told me and others in the Sales and Marketing section that if we could not initially qualify a borrower for an FHA loan, we should refer them to the MORE division for a subprime loan even if with additional time or assistance the borrower would qualify a prime or an FHA loan.

10. Wells Fargo promoted its subprime business by targeting subprime loans to minorities. It did so in two ways, first, by sending marketing materials to minority

communities; second, by using minority subprime loan officers to solicit loans in those same communities. Wells Fargo targeted marketing materials to zip codes with predominantly minority populations. Wells Fargo's Annandale office targeted African American zip codes in Washington, D.C., Prince George's Country and Baltimore.

11. Wells Fargo even had software to generate marketing materials to minorities. 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." I discovered this practice and attach a screen shot from my computer as an illustration of how a Wells Fargo employee could generate a flyer targeting African Americans. The document attached as Exhibit A is a true and accurate copy of the screen shot I printed on January 17, 2006. Only after I complained about this practice, did Wells Fargo agree to remove the African American option from the menu of languages.

12. Wells Fargo also marketed subprime loans to minorities by hiring minority employees to solicit these higher cost loans. Wells Fargo hired African-American loan officers exclusively from other subprime lenders. In the Annandale office, all the MORE loan officers were African-American, even though their two managers were White. In Silver Spring, Maryland, Wells Fargo had an "Affinity Group Marketing" section which consisted entirely of African-American employees. The Affinity Group targeted African-American churches and their members for loans. The Affinity Group Marketing section also hired an African-American employee specifically for the purpose of targeting African-American churches. Because the MORE group only had authority to make

subprime loans, they regularly originated subprime loans to African Americans and other minority borrowers who could have qualified for a lower cost prime loan or FHA loan. I had access to Wells Fargo customers' loan records and application files for my work in the Sales and Marketing division and regularly saw minority customers who had good credit scores and credit characteristics in subprime loans who should have qualified for prime or FHA loans.

13. Because Wells Fargo made a higher profit on subprime loans, the company put "bounties" on minority borrowers. By this I mean that loan officers received cash incentives to aggressively market subprime loans in minority communities. If a loan officer referred a borrower who should have qualified for a prime loan to a subprime loan, the loan officer would receive a bonus. Loan officers were able to do this because they had the discretion to decide which loan products to offer and to determine the interest rate and fees charged to the borrower. Since loan officers made more money when they charged higher interest rates and fees to borrowers, there was a great financial incentive to put as many minority borrowers as possible into subprime loans and to charge these borrowers higher rates and fees. I knew many loan officers who made more than $600,000 a year and a few who made more than $ 1 million.

14. Wells Fargo discriminated against minority loan applicants by not offering them its better or newer products which had lower fixed interest rates and fees. Instead, Wells Fargo offered its higher cost loan products, including its adjustable rate mortgage (ARM) loans to minority applicants. Wells Fargo's loan officers also discriminated against minority refinance applicants by encouraging them to take out more cash from their home equity. By taking out more cash, the borrower would unwittingly increase the

commission the loan officer received on the loan, while at the same time eliminating his ability to qualify for a prime or FHA loan. By encouraging the borrower to take out more cash, the loan officer knowingly increased the borrower's risk of foreclosure because of the higher loan amount.

15. In trainings, Wells Fargo loan officers were encouraged to omit pertinent information about a subprime loan in talks with applicants because discussing loan terms could cost a loan officer a sale. For example, it was implied in trainings that Wells Fargo loan officers should not mention that subprime loans included a prepayment penalty if the borrower paid off or refinanced his loan before the prepayment penalty period ended or that the monthly payments on ARM loans would substantially increase. When an applicant asked a loan officer about prepayment penalties or monthly payment increases, the loan officer would tell the applicant not to worry because Wells Fargo would later be able to refinance him into a prime or an FHA loan.

16. Wells Fargo's management also tolerated a culture of discrimination. In addition to being almost entirely White, the company promoted at least one manager who used racial slurs. Dave Zoldak, who succeeded Dave Margeson as my branch manager in 2005, used the word "nigger" at the office. Although Wells Fargo knew Mr. Zoldak used racial slurs, it promoted him to area manager after I complained about his discriminatory comments. On October 21, 2005, I complained by email to Mr. Zoldak directly about his use of the word "nigger" and speaking about how African Americans lived in "'hoods" and "slums." Mr. Zoldak replied that he had used the slurs in a humorous way, just as the African-American comedian Dave Chapelle did on television and thought that I would find the use of these terms humorous. I attach as Exhibit B a true and accurate

copy of my October 21, 2005 email to Mr. Zoldak and his response later the same day. On December 9, 2005, I complained by email to Joe Rogers, an Executive Vice President, and two Human relations employees at Wells Fargo about the use of the word "nigger" and other slurs by Wells Fargo employees. I also verbally informed Mr. Rogers's of Mr. Zoldak's racial slurs, including the use of the word "nigger." Although Mr. Rogers agreed with me by email that racial epithets were unacceptable, he questioned why I was raising the issue with him. I attach as Exhibit C a true and accurate copy of my December 9, 2005 email to Mr. Rogers and others, and his December 12, 2005 response. Despite these complaints, Wells Fargo promoted Mr. Zoldak.

17. Even the underwriting of subprime loans fostered their discriminatory impact on minorities. The subprime underwriting group was located in a different city than the prime underwriting group. The subprime underwriters were located initially in Baton Rouge, Louisiana and later Ft. Mill, South Carolina. Subprime loan officers with MORE and elsewhere within Wells Fargo pressured underwriters to approve subprime loans.

18. In late 2004 and early 2005, in response to the complaints of discrimination by such groups as ACORN (the Association of Community Organizations for Reform Now) and the Center for Responsible Lending, Wells Fargo implemented so-called "filters" in their lending programs that purportedly would discourage loan officers from steering minorities to subprime loans. Wells Fargo implemented these filters for public consumption only and not to actually restrict discriminatory practices. The filters were ineffective because they did not have any "teeth" (no punishment for violating) and because they were easy for loan officers to circumvent. I do not believe these filters had

any impact on steering because subprime loan officers continued to receive large financial incentives for making subprime loans to minority borrowers and were encouraged by their managers to do so because these loans were profitable. These filters also did not have an impact on steering because, notwithstanding any written rules, loan officers had discretion to make decisions about products and pricing.

19. Wells Fargo ultimately fired me in September, 2007 asserting that my loan production was low. My loan production was lower than many other loan officers because I tried to do the right thing by Wells Fargo customers by putting them in loans they could afford. If a customer did not qualify for a loan or could not afford an estimated monthly payment, I did not originate the loan. I was verbally reprimanded by John Goulding, my indirect supervisor, for placing too many customers in FHA loans, when the company wanted me to refer them to a subprime loan officer, for example in the MORE group, so that the company could make a greater profit on the loan.

I hereby declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

EXECUTED WITHIN THE UNITED STATES ON: April 9, 2009

BY: ______________________
Tony Paschal

Exhibit A

Search for Items

Standard Search (* You must at least select a Type of Item or enter a Subject)

* What Type Of Item Are You Looking For?	Fast Flyer
* What Subject Are You Looking For?	
Personalized	Yes, Personalized
Strategy	Special Programs
Language	African American
Item Size	--Select One--
Item Color	--Select One--
Audience	--Select One--
Product / Program / Feature	--Select One--
High Trust Sales and Marketing	--Select One--
SALE ITEMS	--Select One--

Search

Searching Hints

Here are some helpful searching hints tl
you find the items you're looking for.

> For the fastest results, if you know the
number, enter it in the Quick Search secl

> For best results using Standard Searct
minimum, select a Type of Item AND a St
such as "FAST Flyer - Consumer" and "F
Homebuyer".

> For more targeted results, also include
search criteria as appropriate, such as si
language, etc. At a minimum, you must :
either a Type of Item or enter a Subject.

Quick Search (Use This When You Know the Item ID)

Item ID (do not include NMFL#, etc.)

Search

Custom Requests

For custom design requests, click on the button below. Please note that custom requests are not tracked as orders through Easy O
should contact Ad Services directly at 515-213-4000 or by email at adservices@wellsfargo.com for questions regarding custom requ

Custom Requests/Reviews

Exhibit B

Paschal, Tony

From: Zoldak, David
Sent: Friday, October 21, 2005 8:47 AM
To: Paschal, Tony
Subject: RE: Workflow

I'm only trying to provide you options to help lessen an obviously frustrating situation. I would rather suggest as many resources I know of to help you be proactive with your loans instead of making excuses to let these loans go to the wayside. As far as the rest of your comments are concerned, I believe you are referring to our many rehashings of the Dave Shappel(spelling) show...which, I assumed you enjoyed. If something I said had ever offended you, I'm sorry. They next time I say something that you feel is offensive to you or anyone, I would encourage you to address it at that time. I would like you to focus on working with me and our team in Ohio to resolve your loan problems instead of wasting your time and energy in some other direction.

David J. Zoldak
Branch Manager
Wells Fargo Home Mortgage
MAC M8602-031
7620 Little River Turnpike, Ste. 300
Annandale, VA 22003
703.333.5555 Tel
866.333.5540 ext. 5555 Toll Free
703.333.5590 Fax
david.zoldak@wellsfargo.com

From: Paschal, Tony
Sent: Friday, October 21, 2005 6:49 AM
To: Zoldak, David
Subject: Workflow
Importance: High

As soon as my email functionality is restored I will forward the email I sent to Ms. Noble over a week ago informing her about my computer situation. If I were able to access the information she has been requesting in her email, (cell phone numbers, work numbers, etc) I would have used loan status not LIS to get that information. Since neither of those systems has been available on a consistent basis for the past two weeks, and since loans in apptaker are reciprocally linked to loan status, getting back to Ms. Noble has been difficult at best. I feel her emails have been returned in a timely fashion, however if this situation is being approached as Shirley Temple and Bill (Bojangles) Robinson we have a problem. Speaking of problems, since you were comfortable enough to use a quote in front of me several months ago using the word "nigger" you'll understand when I say that I am nobody's "nigger" and I do not live in anyone's "hood" and I am not from anyone's slums. If you have any questions feel free to contact me. Thank's

Tony Paschal
Home Mortgage Consultant
Wells Fargo Home Mortgage
M8602-031
7620 Little River Turnpike Suite 300
Annandale, Virginia 22003
703.333.5549 Office
866.333.5540 ext.5549 Toll Free

Exhibit C

Paschal, Tony

From: Rogers, Joe
Sent: Monday, December 12, 2005 10:34 AM
To: Paschal, Tony
Cc: White, Julie M. - HR; Williams, Mark S (HR)
Subject: RE:

Tony,

I believe all on this chain would agree with you. My question is one of context. What prompts you to ask that question at this time. While I would want to send an across the board agreement, questions like yours below, could be an example of the use of this word. In other words, indicating a totally unacceptable practice.

Joe Rogers
Ph: (410) 872-1935

-----Original Message-----
From: Paschal, Tony
Sent: Friday, December 09, 2005 4:03 PM
To: Rogers, Joe
Cc: White, Julie M. - HR; Williams, Mark S (HR)
Subject:
Importance: High

Is there any time when it is appropriate to use the word "Nigger" in the workplace? Is it ever appropriate to reference where an African American employee and his family live as the "slums" or the "hood"? This word is so vile and filthy that our email system will not allow it to leave our own network. After reading every employee handbook since Wells Fargo Home Mortgage was Norwest Mortgage, I cannot find any instance where any racial epithet is allowed at Wells Fargo. At least that what the handbook says.

Tony Paschal
Home Mortgage Consultant
Wells Fargo Home Mortgage
M8602-031
7620 Little River Turnpike Suite 300
Annandale, Virginia 22003
703.333.5549 Office
866.333.5540 ext.5549 Toll Free
703.333.5590 Fax
tony.paschal@wellsfargo.com

EXHIBIT 2

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
BALTIMORE DIVISION

MAYOR AND CITY COUNCIL OF BALTIMORE, Plaintiff, v. WELLS FARGO BANK, N.A. and WELLS FARGO FINANCIAL LEASING, INC., Defendants.	No. 1:08-cv-00062-BEL

DECLARATION OF ELIZABETH M. JACOBSON

1. I, Elizabeth M. Jacobson, hereby attest that I am over the age of eighteen and I am competent to testify with respect to the matter below.

2. In 1998, I was hired by Wells Fargo Home Mortgage as a "Home Mortgage Consultant" or loan officer. I worked for Wells Fargo Home Mortgage ("Wells Fargo") until December, 2007. After a period of time, I was promoted to Sales Manager.

3. For much of the time that I worked for Wells Fargo my office was located in Federalsburg, Maryland. I worked directly with loan applicants to make subprime loans. The geographic area that I covered was known as Region 12. This area included Northern Virginia, Baltimore, and Prince George's County, among other places. Much of my business came from referrals from Wells Fargo loan officers who were on the prime

emj

side of the business. That means that they dealt with prime loan customers. These loan officers were known as "A reps." Many of these referrals came to me over the telephone from the A reps. Once I got the referrals, I would work directly with the loan customer to get them a subprime loan.

4. I was very successful in making subprime loans. I received many awards from Wells Fargo for originating a very high volume of subprime loans. For several years I was the top subprime loan officer at the company. In 2004 I made more subprime loans than any other loan officer at Wells Fargo anywhere in the country. I was always one of the top three Wells Fargo subprime loan producers in the country.

5. Between 2003 and 2007 I completed approximately $50 million in subprime loans per year. This translated to about 180 loans per year.

6. My pay was based on commissions and fees I got from making these loans. Fees and commissions were based on the size of the loan and the interest rate. In 2004, I grossed more than $700,000 in sales commissions. In 2005 I grossed more than $550,000 in commissions and pay. I was happy to remain a sales manager and not move any higher up at Wells Fargo because I could make more money working directly with customers to originate loans.

7. 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. I used this knowledge to find ways to qualify customers for subprime loans.

8. 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 the A rep a financial incentive to refer the loan to a subprime loan officer. Initially, subprime loan officers had to give 40% of the commission to the A rep who made the referral; later on A reps received 50 basis points of the available commission. Because commissions were higher on the more expensive subprime loans, in most situations the A rep made more money if he or she referred or steered the loan to a successful subprime loan officer like me. A reps knew about my success in qualifying customers for subprime loans; as a result, I received hundreds of referrals.

9. When I got the referrals, it was my job to figure out how to get the customer into a subprime loan. I knew that many of the referrals I received could qualify for a prime loan. If I had access to Wells Fargo's loan files right now and could review these files, I could point out exactly which of these customers who got a subprime loan could have qualified for a prime loan.

10. Because I worked on the subprime side of the business, once I got the referral the only loan products that I could offer the customer were 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.

11. Wells Fargo, like any other mortgage company, had written underwriting guidelines and pricing rules for prime and subprime loans. There was, however, more than enough discretion to allow A reps to steer prime loan customers to subprime loan officers like me. Likewise, the guidelines gave me enough discretion to figure out how to qualify most of the referrals for a subprime loan once I received the referral.

12. In many cases A reps used their discretion to steer prime loan customers to subprime loan officers by telling the customer, for example, that this was the only way for the loan to be processed quickly; that there would be less paperwork or documentation requirements; or that they would not have to put any money down. Customers were not told about the added costs, or advised about what was in their best interest.

13. Once I received a referral from an A rep, I had discretion to decide which subprime loan products to offer the applicant. Most of the subprime loans I made were 2/28s. A 2/28 loan allowed the borrower to pay a lower fixed rate of interest for the first two years of the loan (the "teaser rate") and then the interest would reset periodically with the market for the remaining 28 years of the loan. These loans typically included a prepayment penalty for two or three years which ultimately made it more difficult for the borrower to refinance later out of the loan. For those loans where the prepayment penalty extended beyond the teaser rate period, the borrower would be unable to refinance her loan even after her interest rate re-set because she could not afford to pay the prepayment penalty. I know that some loan officers encouraged customers to apply for these loans by telling them that they should not worry about the pre-payment penalty because it could be waived. This was not true – the pre-payment penalty could not be waived.

14. According to company policy, we were not supposed to solicit 2/28 customers for re-finance loans for two years after we made a 2/28 subprime loan. Wells Fargo reneged on that promise; my area manager told his subprime loan officers to ignore this rule and go ahead and solicit 2/28 customers within the two year period, even though this violated our agreement with secondary market investors. The result was that Wells

Fargo was able to cash in on the pre-payment penalty by convincing the subprime customer to re-finance his or her 2/28 loan within the initial two year period. I complained to senior managers about this practice. I am not aware of any corrective action that was taken.

15. In addition to 2/28 loans, we had at least three types of low or no document subprime loan products that we marketed to customers: (1) "stated income" loans; (2) no income, no asset loans; and (3) no ratio loans. Stated income loans were ones in which the customer did not have to show what his or her income was with verifying documentation, but could merely say he or she made a certain amount of money. No income, no asset loans did not require the customer to list any employment. For a no ratio loan, the loan officer only had to put down the borrower's job title and did not have to list any income or debt-to-income ratio. Although the underwriting guidelines with respect to these products changed from time to time, loan officers always had discretion to use different compensating factors to get the customer into one of these subprime loan products. If, for example, a customer had a high credit score that would make them a good candidate for a prime loan, it was a simple matter to get them qualified for a subprime loan by telling the underwriting department that the customer did not want to provide documentation for the loan, had no source or seasoned assets, or needed to get the loan closed quickly.

16. Wells Fargo loan officers encouraged loan applicants to apply for stated income loans, no income – no asset loans, and no ratio loans because these loans had higher interest rates and fees and would allow the loan officer to receive a higher commission. Wells Fargo qualified borrowers for subprime loans by underwriting all

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adjustable rate mortgage (ARM) loans, including 2/28 loans, with the assumption that the borrower would pay the teaser rate for the full life of the loan even though this lower rate only applied during the first two or three years of the loan. Wells Fargo also did not require subprime borrowers to escrow for taxes and insurance and most subprime borrowers did not.

17. There were various techniques that were used to qualify the A rep referrals for subprime loans. Each of the techniques involved taking advantage of the discretion we had in applying the underwriting guidelines. One way was to tell customers not to put any money down on the loan and borrow the entire amount, even if they could afford a big enough down payment to qualify for a prime loan. As soon as the loan was submitted without a down payment, it would "flip" from prime to subprime and a subprime loan officer would be able to get the loan qualified as a subprime loan. Another technique would be to tell the customer that the only way to get the loan closed quickly would be to submit it as a subprime loan. A third technique would be to put a person into a "stated income" loan, even if they had a W-2 statement that verified their income. By doing this, the loan was flipped from a prime to a subprime loan. I know that through some of these techniques borrowers with credit scores as high as 780 were steered into expensive subprime loans with as many as four points, even though they could have qualified for a prime loan.

18. I also know that there were some loan officers who did more than just use the discretion that the system allowed to get customers into subprime loans. Some A reps actually falsified the loan applications in order to steer prime borrowers to subprime loan officers. These were loan applicants who either should not have been given loans or who

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qualified for a prime loan. One means of falsifying loan applications that I learned of involved cutting and pasting credit reports from one applicant to another. I was aware of A reps who would "cut and paste" the credit report of a borrower who had already qualified for a loan into the file of an applicant who would not have qualified for a Wells Fargo subprime loan because of his or her credit history. I was also aware of subprime loan officers who would cut and paste W-2 forms. This deception by the subprime loan officer would artificially increase the creditworthiness of the applicant so that Wells Fargo's underwriters would approve the loan. I reported this conduct to management and was not aware of any action that was taken to correct the problem.

19. Prior to 2004, Wells Fargo did not make any effort to determine if subprime loans were being made to customers who qualified for prime loans. In 2004 a "filter" was put in place that was supposedly to help keep subprime loans from being made to prime customers. The filter did not work, and everyone knew it. There were lots of ways for loan officers to get around the filter because of the discretion that we had. If a subprime loan was flagged by the filter as one that had gone to a customer who qualified for a prime loan, the loan officer would simply give the underwriting department one of a set of stock responses, such as "the customer has no assets," or the customer's assets were not "sourced and seasoned." ("Sourced and seasoned" refers to verification of where the money comes from for the down payment and whether it has been in the customer's bank account long enough). These responses were widely used, and as soon as they were given to the underwriter, he or she would just override the filter and approve the subprime loan.

20. High ranking Wells Fargo managers knew that this practice was going on, because after about a year of these standby explanations being given, underwriters in the underwriting department were told to call the customers directly rather than contact the loan officer who was working with the customer. The loan officers quickly figured out how to work around this by warning customers that underwriters might call them and then coaching the customers about what to say. For example, customers were told that they should just tell the underwriter that they did not have much in the way of assets or documentation for their income, because otherwise the underwriter would deny their loan or force them to fill out additional paperwork to document their financials. The point was to get the customer to say whatever would allow them to qualify for a subprime loan, even if it was not true. The customers went along with this because they thought it would expedite the process of getting them the loan that they had been told was the right one for them.

21. Underwriters, like loan officers, had a financial incentive to approve subprime loans than, even if the customer could qualify for a prime loan, because they too got paid more if a subprime loan went through.

22. Wells Fargo charged higher interest rates and fees not only on its 2/28 and 3/27 subprime loans, but also on its subprime fixed-rate loans, than it did for prime loans. Subprime loan officers had discretion to decide what interest, points and fees to charge a borrower. For example, for approximately the first five years that I worked at Wells Fargo, I could charge as many points on a loan as I decided. Pricing sheets included different "add-ons" or fees that might be added to the price of the loan depending on the circumstances of the loan.

23. Federal Housing Administration (FHA) loans, like other government-insured loans, offered lower interest rates that are closer to prime rates. Subprime loan officers were required to have a subprime borrower sign a "Benefit to Borrower" Statement that stated that the borrower may qualify for a government-insured loan, but did not want it because it was too much paperwork. In fact, subprime loan officers were never trained in how to make FHA or government-insured loans. We asked for this training, but Wells Fargo refused to provide it.

24. For most of my employment, Wells Fargo did not restrict or regulate the fees that loan officers could charge. Only in 2007 did Wells Fargo begin to regulate and set the amount of fees such as processing fees and underwriting fees. Despite this regulation, subprime loan officers still had discretion to determine which fees to include as costs to the borrower and had a financial incentive to add fees because doing so increased their commission. There was always a big financial incentive to make a subprime loan wherever one could.

25. Once the subprime loan transaction with the customer was closed and we and Wells Fargo received our fees, closing costs and commissions, the loans were sold on the secondary market. This meant that Wells Fargo was no longer exposed to any risk of default or delinquency in payment on these subprime loans. In many cases, Wells Fargo continued to service these same subprime loans, and was paid a fee for doing that, but to my knowledge that did not expose the company to any risk beyond the first three months if the loans went bad. The risk of default rested with the companies that bought the loans from Wells Fargo, such as Fannie, Freddie, and Wall Street investment banks.

26. Many of the customers who were referred to me by A reps came from Prince George's County. Some came from Baltimore. I would estimate that a large majority of my customers were African American. Subprime managers joked that Prince George's County was the "subprime capitol of Maryland." I remember managers saying that they felt "so lucky to have P.G. County because it is the subprime capitol of Maryland."

27. I know that Wells Fargo Home Mortgage tried to market subprime loans to African Americans in Baltimore. I am aware from my own personal experience that one strategy used to target African-American customers was to focus on African-American churches. The 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 leader 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.

28. I remember being part of a conference call that took place in 2005 where Wells Fargo sales managers discussed the idea of going into black churches in Baltimore to do presentations about our subprime products. Everybody on that call was a subprime loan officer. Two of the individuals on the call were branch managers. 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: Wells Fargo wanted black potential borrowers talking to black loan officers.

29. Wells Fargo also targeted African Americans through special events in African-American communities called "wealth building" seminars. At some point in 2005 before the conference call discussed above, I remember preparing to participate in a wealth building seminar that was to be held in Greenbelt, Maryland. It was understood that the audience would be virtually all black. The point of the seminar was to get people to buy houses using Wells Fargo loans. At the seminar, the plan was to talk to attendees about "alternative lending." This was code language for subprime lending, but we were not supposed to use the word "subprime." I was supposed to be a speaker at this seminar, but was told by the Emerging Markets manager that I was "too white" to appear before the audience. I was offended by these statements and complained to several higher ranking managers about what had been said. The company did not respond to my complaints and no action was taken.

30. 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.

31. I complained many times about what I thought were unethical or possibly predatory loan practices that Wells Fargo was engaged in. Managers never took any action to respond to my concerns. In my office we morbidly joked that we were "riding the stagecoach to Hell."

32. The culture at Wells Fargo was focused solely on making as much money as possible. Even as foreclosures were increasing in recent years, the company continued

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to lavish expensive trips and gifts on successful subprime loan officers. I attended all expense paid trips to Cancun, Orlando, Palm Springs, Vancouver and the Bahamas where we were entertained by Aerosmith, the Beach Boys, the Eagles, Cheryl Crow, Elton John, Jimmy Buffett and James Taylor. When we would return to our rooms at night we would find gifts of artwork, crystal platters, steak of the month club memberships and IPODs left for us.

33. Although I did not work in the part of the company known as Wells Fargo Financial ("Financial"), I am aware that Financial did mainly re-finances, not home purchase loans. Many of Financial's loans were extremely high priced with lots of points and fees. Wells Fargo management did not allow loan officers to solicit customers with high-priced Wells Fargo Financial loans for purposes of refinancing, even though this would have been in the borrower's best interest.

34. I left Wells Fargo in December 2007 because at that time the subprime market was contracting and I was getting fewer referrals. I wanted to move from Federalsburg to Easton, Maryland, but Wells Fargo said it wasn't opening any new offices. I gave my notice to the company at that point.

35. There are many other current and former Wells Fargo employees who have knowledge of the practices that I have discussed in this Declaration and, if compelled to testify, would, I believe, agree with what I have said. Many current and former Wells Fargo employees may well be reluctant to come forward voluntarily to tell what they know for fear of retaliation, reprisal or other actions that could adversely affect their future careers in the lending industry.

I hereby declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information, and belief.

EXECUTED WITHIN THE UNITED STATES ON: April 20, 2009

BY:______________________________
Elizabeth M. Jacobson

EXHIBIT 3

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
BALTIMORE DIVISION

MAYOR AND CITY COUNCIL OF BALTIMORE, Plaintiff, v. WELLS FARGO BANK, N.A. and WELLS FARGO FINANCIAL LEASING, INC., Defendants.	No. 1:08-cv-00062-BEL

DECLARATION OF IRA J. GOLDSTEIN

I, Ira J. Goldstein, hereby state as follows:

I am over the age of eighteen and am competent to make this Declaration. I have personal knowledge of the matters set forth below.

1. I hold a Ph.D. in Sociology from Temple University granted in 1986. My current position is that of Director of Policy and Information Services ("Policy") at an organization called The Reinvestment Fund ("TRF").

2. TRF is a Philadelphia-based community development financial institution whose mission is to alleviate poverty by building assets, wealth and opportunity for low- and moderate-

income communities and persons. TRF accomplishes its mission through the strategic use of capital, knowledge and market innovation.[1]

3. I am also a Guest Lecturer at the University of Pennsylvania where, for the last 20 years, I have taught an undergraduate course in statistics and research methods for the Urban Studies Program. For the last 5 years, I also have taught a graduate seminar in the uses of data and research methods to study issues related to urban redevelopment and blight; this course is offered in both the Urban Studies Program and the Department of City and Regional Planning.

4. In my position as Director of Policy for TRF, I am responsible for a number of grant and contract-related research projects. Among those projects have been a study of mortgage foreclosures in Baltimore for the Goldseker Foundation and other studies of mortgage foreclosures and predatory lending, including predatory lending in the City of Philadelphia under a grant funded by the Ford Foundation.

5. I also provided litigation support to the U.S. Attorney for the Eastern District of Pennsylvania on his predatory lending initiative and currently provide support to the Pennsylvania Human Relations Commission.

6. Prior to holding my position at TRF, I served at the United States Department of Housing and Urban Development ("HUD") as Director of Fair Housing and Equal Opportunity for the federal Mid-Atlantic Region, which includes Maryland. Among other duties, I was responsible for directing enforcement of the federal Fair Housing Act. At HUD, I developed analytical tools to measure racial disparities in mortgage lending. My publications include a number of articles, book chapters, and a book. In 2004, I wrote a paper presented at the Harvard University Joint Center for Housing Studies entitled "Bringing Subprime Mortgages to Market

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[1] A complete description of TRF can be found at its website: www.trfund.com.

and the Effects on Lower-Income Borrowers."[2] I also coauthored a book, released in 2008 by Temple University Press, titled Restructuring the Philadelphia Region: Metropolitan Divisions and Inequality with Carolyn Adams, David Bartelt and David Elesh. I was recently appointed to a three-year term on the Federal Reserve Board's Consumer Advisory Council. My complete resume is attached as Attachment 1.

7. I have reviewed the data submitted by Mayor and City Council of Baltimore ("Baltimore") to the Court on April 6, 2009, and the data submitted by Wells Fargo Bank, N.A. and Wells Fargo Financial Leasing, Inc. (collectively, "Wells Fargo") to Baltimore on that date. I have been informed that, pursuant to the Court's Order, both sets of data concern properties that have been the subject of a foreclosure on a Wells Fargo loan between January 1, 2005, and December 31, 2008.

8. Based on my review of the data I have determined that the parties identified 379 properties subject to a Wells Fargo foreclosure filing. My colleague at TRF, Al Parker, precisely geocoded 374 to the census tract and block group. Geocoding is a process by which an address is translated into a set of spatial coordinates, which can then be identified with standard Census geographies. In the case where an address is incomplete or inaccurate, geocoding fails to occur; that was the case in five properties subject to a Wells Fargo foreclosure filing. Of those 374 geocoded properties, 203 (54.3%) are located in census tracts that are more than 80% African-American and 34 (9.1%) are located in census tracts that are between 60% and 80% African-American. Forty-five (12.0%) are located in tracts that are less than 20% African-American. The map attached as Attachment 2 reflects the locations of the 374 properties and the percentage of the population of each census tract in Baltimore that is African-American. The map

[2] A copy of the paper can be found at http://www.jchs.harvard.edu/publications/finance/babc/babc_04-7.pdf.

demonstrates that the foreclosures are disproportionately located in census tracts with high African-American concentrations.

9. There is sufficient data on 375 of the 379 properties to determine whether they were vacant after the Wells Fargo loan was originated. The determination of vacancy was set forth in the data that I received, and described in paragraph 7 above. After reviewing data provided by Wells Fargo on the date of origination of the loans subject to the foreclosure filing along with data from other publicly available data sources referencing loan origination information, I determined that 222 of the 375 properties (59.2%) were in fact vacant after the Wells Fargo loan was originated. Mr. Parker then geocoded these 222 addresses and we determined that 132 (59.5%) are located in census tracts that are more than 80% African-American and 25 (11.3%) are located in census tracts that are between 60% and 80% African-American. The map attached as Attachment 3 reflects the locations of the 222 properties and the percentage of the population of each census tract in Baltimore that is African-American. The map demonstrates that the vacancies are disproportionately located in census tracts with high African-American concentrations.

10. The data I reviewed identified 107 of the properties as currently vacant. I determined that 69% of these are in neighborhoods that are at least 60% African-American while 16% are in neighborhoods that are at least 60% white.

11. I have also reviewed the data on the 379 properties in conjunction with data on Wells Fargo loan originations made public pursuant to the Home Mortgage Disclosure Act (HMDA) to determine the likelihood that a Wells Fargo loan in Baltimore has resulted in foreclosure. I have determined that 4.82% of Wells Fargo loans in neighborhoods that are more

than 60% African American have resulted in foreclosure, while 1.63% of its loans in neighborhoods that are over 60% White have resulted in foreclosure.

12. By analyzing HMDA data for the period 2004 through 2007 (the last year for which HMDA is available), I have also determined that Wells Fargo's high-cost loans in Baltimore are disproportionately located in neighborhoods that are more than 60% African American. The disparity is reflected on the map attached hereto as Attachment 4.

13. I have also determined based on my review of the data indicating the presence and amount of a tax lien, that 127 of the 379 Wells Fargo foreclosure properties (33.5%) were the subject of a tax lien sale between 2005 and 2008 after origination of the Wells Fargo loan, and that the median value of the tax lien for these 127 properties was $925.14. I have reviewed data released by Wells Fargo pursuant to the HMDA and determined that the median Wells Fargo mortgage loan in Baltimore between 2005 and 2007 (the 2008 HMDA data file is not yet available) was $112,000. Based on my years of experience working with municipalities, real estate attorneys and housing counselors, I do not believe that tax liens of the size at issue here are likely to play a significant role in causing borrowers to default on mortgages of this size.

14. Based on my review of HMDA data covering the years 2004 through 2007 reported by Wells Fargo, Wells Fargo made 38.7% of its mortgage loans in Baltimore in neighborhoods that are more than 60% African-American and 32.2% of its mortgage loans in neighborhoods that are less than 20% African-American.

15. I have been asked to identify the location and racial composition of the census tract/block group within which the following three properties are located:

500 N. Clinton Street, Baltimore, MD: Census tract/block group 2610.01
81.25% Black (2007 Claritas estimate)

2520 Shirley Avenue, Baltimore, MD: Census tract/block group 1513.02
95.14% Black (2007 Claritas estimate)

801 Arnold Court, Baltimore, MD: Census tract/block group 704.03
97.37% Black (2007 Claritas estimate)

I hereby declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

EXECUTED WITHIN THE UNITED STATES ON: May 29, 2009

BY:____________________________________
Ira J. Goldstein

Attachment #1

Resume: Ira J. Goldstein

Resume

Name: Ira J. Goldstein

Address: 7203 Lincoln Drive
Philadelphia, PA 19119

Telephone: (215) 242-4824 (H) (215) 574-5827 (O)

E:Mail: Iralin@verizon.net (H)
Ira.goldstein@trfund.com (O)

Education: Ph.D. Sociology, Temple University (1/86) The Wrong Side of the Tracts: A Study of Residential Segregation in Philadelphia, 1930-1980
M.A. Sociology, Temple University (8/82)
B.A. Sociology, Temple University (5/79)

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"Mortgage Foreclosures In Baltimore, MD." Presented at the Baltimore Homeownership Preservation Conference. October, 2006.

"Mortgage Foreclosures and Predatory Lending In Philadelphia." Presented at the American Bar Association's National Legal Aid and Defender Association Conference. July, 2006.

"One Industry's Risk is Another Community's Loss: The Impact of Clustered Mortgage Foreclosures on Neighborhood Property Values in Philadelphia." Presented at the Federal Reserve Bank of Philadelphia's Reinventing Older Communities: People, Places, Markets. March, 2006.

"Approaches Used By Non-Auditors To Investigate and Report Complex Public Issues." Presented at the National Conference of State Legislators – National Legislative Program Evaluation Society. October, 2005.

"A Study of Mortgage Foreclosure Activity in Pennsylvania, 2000-2003." Presented at the Federal Reserve Board's Consumer Advisory Council. March, 2005.

"Reflections on the American Dream; Experiences in Pennsylvania." Presented at the FNMA Annual Conference on Fair Lending." September, 2004.

"Maintaining Economic Gains: Partnerships To Protect Low Income Families From Predatory Lending." Presented at the American Public Human Services Association Family and Economic Success Forum. May, 2004.

"Recent Subprime Analyses; Foreclosures and Race." Presented at the National Fair Housing and Fair Lending Research and Policy Forum. March, 2004.

"Does Predatory Lending Disproportionately Affect Protected Classes Under the Fair Housing Act: The Latest Research." Presented at the John Marshall Law School Fair Housing Legal Support Center Symposium on Fair Housing and Predatory Lending Law. September, 2003.

"The Disproportional Incidence of Subprime and Predatory Lending on Protected Classes: New Data." Presented at the National Consumer Law Center Symposium on Market Failures & Predatory Lending. May, 2003.

"Predatory Lending: Overview and Policy Implications for Human Rights Agencies." Presented at the 54th Annual Conference of the International Association of Human Rights Agencies. July, 2002.

"Leveraging Change: Gauging the Impacts of Neighborhood Investment" with David Bartelt. Presented at the Annual Meeting of the American Sociological Association, 2002.

"Predatory Lending: From the Kitchen Table to Wall Street." Presented at regional forums of Freddie Mac's Don't Borrow Trouble in TX, NY, and CA, 2002-2003.

Methods for Identifying Lenders for Systemic Investigation Under the Fair Housing Act." Presented at the Home Mortgage Lending and Discrimination Research and Enforcement Conference, Washington, D.C., 1993.

"Proving Disinvestment: The CRA Experience" (with Anne Shlay). Presented at the Annual Meetings of the American Sociological Association, Pittsburgh, 1992.

"Mortgage Lending Patterns in Philadelphia, 1987 - 1989." A speech delivered to the Philadelphia Commission on Human Relations' "Making Home Ownership a Reality - Not Just A Dream" Conference, Philadelphia, 1991.

"Mortgage Redlining in Philadelphia - An Empirical Analysis." A speech delivered to the Philadelphia Finance Association, Philadelphia, 1990.

"An Overview of Mortgage Redlining; Background, Data, Research Methods and Conclusions." A speech delivered at the HUD Region III FHAP Training Conference, Philadelphia, 1990.

"The Role of Statistics In the Proof of Housing Discrimination." A Speech delivered at the HUD Region III FHAP Training Conference, Philadelphia, 1990.

"Homelessness in Philadelphia." Public testimony delivered at the Affordable Housing Forum, University of Pennsylvania, Philadelphia, 1989.

"Homelessness in Philadelphia: Roots, Realities and Resolutions" (with Phyllis Ryan and David Bartelt). Presented at the Annual Meetings of the Society for the Study of Social Problems, Berkeley, 1989.

"Philadelphia's Ignored Homeless - Unemployed Minority Males." A speech delivered at the Annual Meeting of Philadelphia Committee for the Homeless, Philadelphia, 1989.

"Why Should There Be Intergroup Harmony?" A speech delivered at the Bi-annual Meeting of the Alliance for Intergroup Harmony, Philadelphia, 1989.

"The Role of Academics in CRA." A speech delivered at the U.S. Department of Housing and Urban Development Region III Fair Housing and Equal Opportunity Conference, Baltimore, 1989.

"GDI: A Gentrification/Displacement Detection System." Presented at the Annual Meetings of the American Sociological Association, Chicago, 1987.

"The Persistent Significance of Race; A City/Suburb Comparison of Mortgage Lending in the Philadelphia Metropolitan Area." Presented at the Annual Meetings of the Eastern Sociological Society, Boston, 1987.

"The Ecology of Health and Education Outcomes: An Analysis of Philadelphia Public Elementary Schools." Presented at the Brown II Commemorative Program, School District of Philadelphia, 1987.

"The Ecology of Educational Outcomes" (with William Yancey and Leo Rigsby). Presented at the Brown II Commemorative Program, School District of Philadelphia, 1986.

"Political Integration and Residential Segregation; A Case Study of Philadelphia Voter Turnout" (with Patrick Feeney). Presented at the Annual Meetings of the American Sociological Association, Washington, 1985.

"Neighborhoods and Schools: 30 Years of Urban Change" (with William Yancey). Presented at the Brown II Commemorative Program, School District of Philadelphia, Philadelphia, 1985.

"The Political Economy of Residential Segregation: A Study of Philadelphia Neighborhoods." Presented at the 15th Annual Meetings of the Urban Affairs Association, Norfolk, 1985.

"See No Evil, Speak No Evil: The New Right, The Civil Rights Commission and 1984" (with Patrick Feeney). Presented at the Annual Meetings of the American Sociological Association, San Antonio, 1984.

"Projects, Blacks, and Public Policy: The Historical Ecology of Public Housing in Philadelphia" (with William Yancey). Presented at the Annual Meetings of the American Sociological Association, Detroit, 1983.

"Social Indicators of Four Types of Homicide" (with Margaret Zahn). Presented at the 8th Annual World Congress of Social Psychiatry, Paris, 1982.

Teaching Experience:

University of Pennsylvania:

Introduction to Urban Research
Information, Public Policy and Distressed Cities
City Limits: The Impact of Urban Public Policy

Temple University:

Introduction to Sociology
Undergraduate Statistics
Society and Personality
Urban Affairs – Discrimination in Housing

Research/Employment Experience:

June 1999 to present:
Director, Policy and Information Services, The Reinvestment Fund

The Reinvestment Fund (TRF) is a regional community development financial institution that uses capital and technical expertise to build wealth and create economic opportunity for low wealth communities and low and moderate income individuals. TRF accomplishes its mission through its financial support of affordable housing development, charter schools, community facilities, commercial real estate, small businesses, and workforce development programs. Policy and Information Services ("Policy") is an office within TRF that designs and conducts research that evaluates TRF's progress toward meeting its goals with regard to the social impact of its investments. Policy also conducts research that relates to public policy issues that impact upon our core market constituency. This research supports the development of new policy to be introduced into the public forum for debate and implementation. Policy is also responsible for obtaining and administering grant-funded and contract research that relates to the Fund's core mission. A sampling of TRF's Policy government past and preset clients includes, but is not limited to: Pennsylvania Department of Banking, Pennsylvania Housing Finance Agency, City of Philadelphia, New Jersey Housing and Mortgage Finance Agency, New Jersey Department of Community Affairs, Federal Reserve Bank of Philadelphia, City of Baltimore, Delaware Department of Banking, School District of Philadelphia.

January 1998 to June 1999:
Director, Mid-Atlantic Hub, Office of Fair Housing and Equal Opportunity, U.S. Department of Housing and Urban Development, Pennsylvania State Office

The Hub Director is the highest ranking fair housing position in HUD's Mid-Atlantic area. My jurisdiction included the states of Pennsylvania, Delaware, Maryland, Virginia, West Virginia and the District of Columbia. I was responsible for directing the investigation and resolution of fair housing cases under several statutes, including the Federal Fair Housing Act. Where state or local agencies exist that offer rights and remedies that are "substantially equivalent" to the those afforded by HUD and the Fair Housing Act, I was responsible for insuring that these agencies processed cases of discrimination in a manner that is consistent with the dictates of the law. Under current delegations of authority, with the concurrence of Regional Counsel, I was responsible for deciding whether there was factual evidence sufficient to render a determination that one (or more) statutes have been violated. I managed a staff of approximately 30 people in the PA State Office; another 20 people around the Mid-Atlantic reported to me as well. I reported directly to the Assistant Secretary and General Deputy Assistant Secretary. This position required frequent travel and public appearances. I spoke publicly before trade groups (e.g., Mortgage Bankers Association, Maryland Multi-Family Housing Organization) fair housing organizations, and had frequent contact with elected and appointed public officials (e.g., mayors, senators, governors, council members, solicitors). Finally, Congress makes available a pool of funds that are subject of an annual competition among groups involved in fair housing advocacy and enforcement. On several occasions, I was called upon by the Assistant Secretary to contribute to the decisions on granting these funds.

The management portion of this job entailed working with the union and staff to insure a working environment that is free of social and/or structural impediments to productivity. From February 1995 until January of 1998, the official date for position changes resulting from HUD's *Management 2020*, the position I held was that of Fair Housing Enforcement Center (FHEC) Director. The responsibility of the position as Hub Director completely subsumed that of the: (a) FHEC Director; (b) what was formerly known as the Program Operations and Compliance Center (POCC) Director; (c) all of the Directors of the HUD/FHEO Offices within the Mid-Atlantic.

June 1991 to January 1998:

Chief, Systemic Investigations Branch, U.S. Department of Housing and Urban Development, Philadelphia Regional Office

In this position I was responsible for enforcing the federal Fair Housing Act through investigation of housing discrimination complaints. The Systemic Investigations Branch investigates complaints of housing discrimination which have many victims, or the nature of the discrimination is such that it is reflective of a pattern or practice of institutional discrimination. As Chief, I was also responsible for conducting Secretary Initiated complaints, an enforcement tool new to the 1988 Amendments of the Fair Housing Act. This position required that I introduce to HUD's Fair Housing and Equal Opportunity Office the science of data and statistical analysis to the investigation of housing discrimination complaints. I developed and was the first in the country to receive Assistant Secretary approval to initiate a Secretary Initiated investigation of discrimination in mortgage lending in Philadelphia. The position included a full complement of administrative responsibilities. I supervised a staff of eight professional investigators and "outstanding scholar" interns.

For the last year that I held this position, I was detailed to the headquarters office in Washington, D.C. There, I worked in the Office of Regulatory Initiatives and Federal Coordination on a Task Force on Fair Lending that was constituted with representatives of all of the financial regulatory agencies as well as the Departments of Housing and Urban Development and Justice. Also, I was involved in developing a regulation to support the Fair Housing Act's prohibitions against mortgage lending discrimination. While on detail, together with a colleague, we developed a computer based system that produced reports using Home Mortgage Disclosure Act and Census data to be used by investigators across the country in the investigation of mortgage lending discrimination complaints.

August 1988 to June 1991:

Associate Director, Institute for Public Policy Studies (IPPS)

This position requires full administrative responsibility for departmental functions including staffing and budget. The acquisition and administration of departmental research and grants/contracts is an essential component. In this capacity, the Associate Director acts as liaison between funding sources, researchers, and university officials. The Associate Director is also responsible for carrying out empirically based policy research, and creating a forum in which policy researchers from a variety of backgrounds may meet and exchange ideas on issues of contemporary public policy importance. In 1989, IPPS became a Research Affiliate of the Pennsylvania State Data Center; the Associate Director is responsible for coordination of all related activities.

Professional Activities and Awards:

Recipient of the Consumer Credit Counseling Service of Delaware Valley's Peter F. Iacovini Credit to Greater Philadelphia Community Award

Committee Member, Pennsylvania Housing Advisory Committee (Gubernatorial Appointment)

Member, Federal Reserve Board Consumer Advisory Council (2009-2011)

Member, Research Advisory Group, Center for Responsible Lending

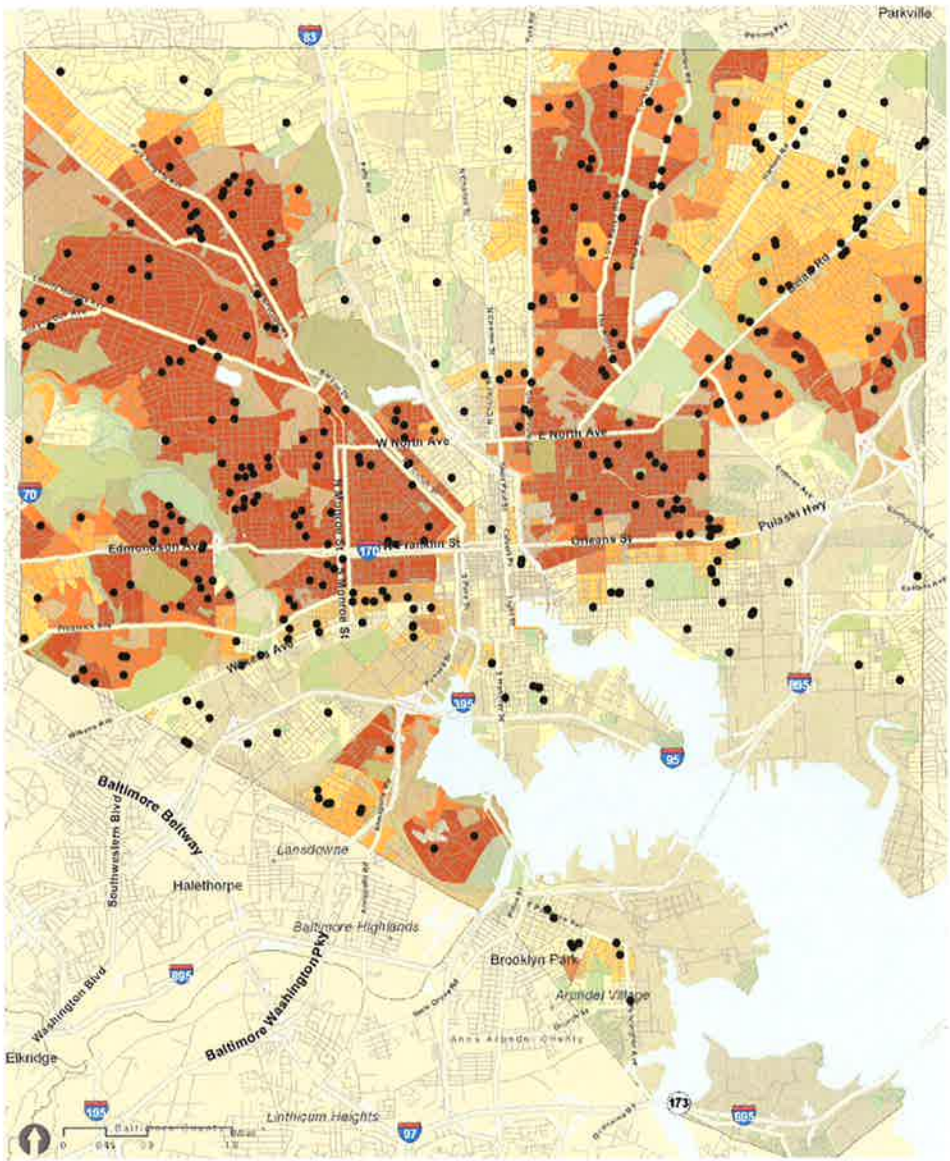
Referee, Urban Affairs Quarterly

Referee, Journal of Urban Affairs

Referee, Law and Social Policy

References Available Upon Request

Attachment #2

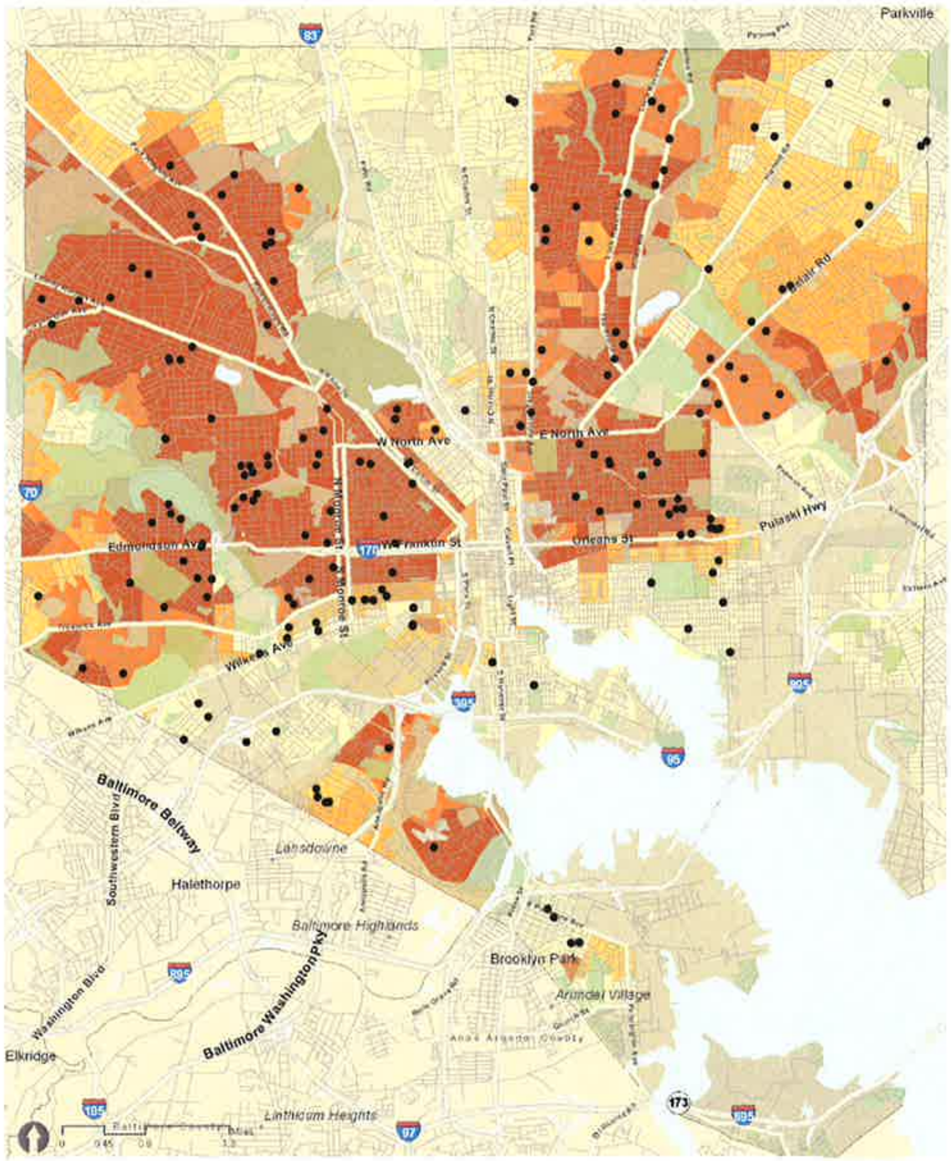


• Wells Foreclosure Filings 2005 - 2008

Percent of Owner Occupied Housing Units that Are African American 2005

- 20% or Less
- 20.1% - 40%
- 40.1% - 60%
- 60.1% - 80%
- Over 80%
- Non Residential

Attachment #3

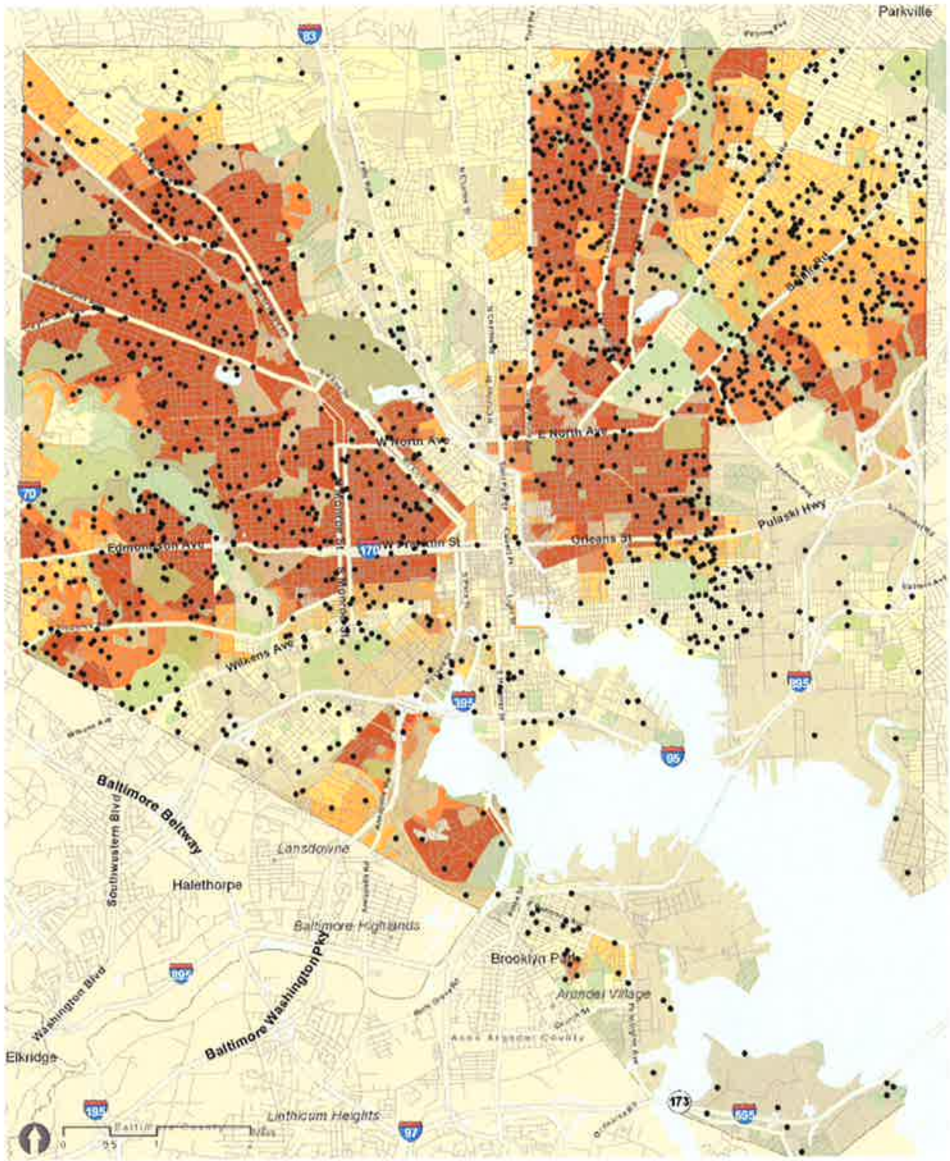


• Wells Foreclosure Filings 2005 - 2008 that were Vacant Post-Origination

Percent of Owner Occupied Housing Units that Are African American 2005

- 20% or Less
- 20.1% - 40%
- 40.1% - 60%
- 60.1% - 80%
- Over 80%
- Non Residential

Attachment #4



Percent of Owner Occupied Housing Units that Are African American 2005

- 20% or Less
- 20.1% - 40%
- 40.1% - 60%
- 60.1% - 80%
- Over 80%
- Non Residential

Wells Fargo High Cost Purchase and Refinance Loan Originations 2004-2007

1 Dot = 1 Loan; Not Actual Address

EXHIBIT 4

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
BALTIMORE DIVISION

MAYOR AND CITY COUNCIL OF BALTIMORE, Plaintiff, v. WELLS FARGO BANK, N.A. and WELLS FARGO FINANCIAL LEASING, INC., Defendants.	No. 1:08-cv-00062-BEL

1. I, Richard Faison, hereby attest that I am over the age of 18 years and that I am competent to testify with respect to the matter below.

2. I reside at 2522 Shirley Avenue, Baltimore, MD 21215. I own my home, which is a row house located in northwestern Baltimore. I have lived in my home for more than 24 years.

3. My home is adjacent to another row house located at 2520 Shirley Avenue, Baltimore, Maryland 21215 ("the Property"), which is vacant and was recently boarded up in February, 2009.

4. The Property has caused problems for me and my family. For example, because the Property is rat infested, rats from the Property have come into our home and chewed holes in the walls. We have had to make repairs to those walls to try to keep the

rats out. Rats have come into both our basement and our kitchen from the Property. I had to put down one of my dogs because it got rabies from the rats.

5. Strangers go into the Property at all hours. I have called 911 on a few occasions because strangers are hanging out at the Property drinking. I also believe that people use the Property as a place to take drugs. Police have come to the Property at least twice because of the strangers who loiter there.

6. The Property has not been very well cared for. There is often trash on the front porch which attracts rats. A neighbor of mine who lives at 2518 Shirley Avenue, Brian Jefferson, has cut the grass in front of the Property on numerous occasions because it is so high and makes the whole block look bad.

7. There was also water buildup at the Property because the pipes burst. To prevent damage to my house, we had to call the City of Baltimore to come turn off the water and cap the pipes.

8. I know from viewing the inside of the Property that it is in bad structural condition because the floor and supports appear to be rotten. I am concerned that there may be additional damage to my home because of the condition of the Property. I am also concerned that the Property is a fire hazard. The Property has deteriorated even more over the last year.

9. The Property also has termite damage and I have to make repairs to my house to replace boards that have been damaged by termites.

10. The Property has hurt our neighborhood. People do not want to live in

my neighborhood because of the condition of the Property. I do not know who to get in touch with about the Property. I would like somebody responsible for the Property to repair it so that my neighbors and I no longer suffer from the problems described above.

I hereby declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information, and belief.

EXECUTED WITHIN THE UNITED STATES ON: May 15, 2009

BY: Richard Faison
Richard Faison

EXHIBIT 5

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
BALTIMORE DIVISION

MAYOR AND CITY COUNCIL OF BALTIMORE, Plaintiff, v. WELLS FARGO BANK, N.A. and WELLS FARGO FINANCIAL LEASING, INC., Defendants.	)	No. 1:08-cv-00062-BEL

1. I, Stephen Faison, hereby attest that I am over the age of 18 years and that I am competent to testify with respect to the matter below.

2. I reside at 2522 Shirley Avenue, Baltimore, MD 21215. I own my home, which is a row house located in northwestern Baltimore. I have lived in my home for more than 24 years.

3. My home is adjacent to another row house located at 2520 Shirley Avenue, Baltimore, Maryland 21215 ("the Property"), which is vacant and was recently boarded up in February, 2009.

4. The Property has caused problems for me and my family. Although I work during the day, I am at home at night. I live in my home with my father, Richard Faison, my mother, Denise Faison, and my brother, Devon Faison.

5. I leave for work in the morning at 5 a.m. I am worried each morning because there are strangers that loiter and sleep at the Property. I am concerned that someone may try to attack me. I have seen people drinking there both inside the Property and coming out of the Property. I also believe that people there are getting high on drugs.

6. There is also a smell that comes from the basement of the Property where trash has accumulated. I have seen trash in the basement of the Property that includes leftover food, plywood and old construction material. I have also seen an old gas stove in the Property and I am concerned that it could cause a fire

7. We also have had problems with the Property because of rats and termites that have spread from the Property and caused damage to our house. I have had to repair the walls in our basement and kitchen because of the damage. My dog, Redman, also got rabies from the rats that came over from the Property and I had to put him down in November, 2008.

8. People in our neighborhood talk all the time about the Property. We are bothered that the Property is in such bad shape. The Property also prevents me from fully enjoying my home. I cannot put my dogs out in the yard because I am concerned about the rats. We also cannot eat in our backyard because of the rats. My family cannot even hang clothing out to dry in our backyard because people who are loitering at the Property will steal it. We call this "clothes line shopping."

I hereby declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information, and belief.

EXECUTED WITHIN THE UNITED STATES ON: May 15, 2009

BY: Stephen Faison
Stephen Faison

EXHIBIT 6

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
BALTIMORE DIVISION

MAYOR AND CITY COUNCIL OF BALTIMORE, Plaintiff,	)	
v.	)	No. 1:08-cv-00062-BEL
WELLS FARGO BANK, N.A.	)	
and	)	
WELLS FARGO FINANCIAL LEASING, INC., Defendants.	)	

1. I, Lisa Porter, hereby attest that I am over the age of 18 years and that I am competent to testify with respect to the matter below.

2. I reside at 807 Arnold Court, Baltimore, MD 21205. I own my home, which is a row house located in East Baltimore. I have lived here since 1974.

3. My home is a few doors down from another row house located at 801 Arnold Court, Baltimore, Maryland 21205 ("the Property"), which has been vacant for at least a year.

4. Since becoming vacant, the Property has not been well maintained. It is a dumping ground for trash. There is usually trash scattered in both the front and back yard of the Property. The grass is also high around the Property. I would like the person who owns the Property to maintain it until someone can move in and take care of it.

5. Since the Property became vacant, I have also had an increased problem with rats in and around my home. Part of the inside of the Property' was "gutted" after it became vacant and this drove the rats to other homes nearby, including mine. When my grandchildren come to play in my front yard, they have to be careful not to step on or be bitten by the rats. I worry about their safety because of the rat infestation.

6. The Property also detracts from the appearance of my block. It has made my neighborhood a less attractive place to live.

I hereby declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information, and belief.

EXECUTED WITHIN THE UNITED STATES ON: May 18, 2009

BY:________________________________

Lisa Porter

EXHIBIT 7

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
BALTIMORE DIVISION

MAYOR AND CITY COUNCIL OF BALTIMORE, Plaintiff, v. WELLS FARGO BANK, N.A. and WELLS FARGO FINANCIAL LEASING, INC., Defendants.	No. 1:08-cv-00062-BEL

1. I, Bridget Ross, hereby attest that I am over the age of 18 years and that I am competent to testify with respect to the matter below.

2. I reside at 504 North Clinton, Baltimore, MD 21205. I own my home, which is a row house located in East Baltimore. I have lived in my home since 1995.

3. My home is two doors down from another row house located at 500 North Clinton, Baltimore, Maryland 21205 ("the Property"), which has been vacant for at least two years. After the Property became vacant, it was not boarded up for some time. During this period, people broke into the Property and vagrants stayed there. I noticed that the door was broken as well as some windows.

4. After becoming vacant, people stole plumbing from the Property. My neighbor Randy Taylor, who lives in a row house at 502 North Clinton, which is located

between the Property and my home, told me that he looked inside the Property after it became vacant and found that pipes were missing from the home and water was running from broken pipes inside the Property towards his home. Since the Property became vacant, my basement has flooded on more than one occasion on the side closest to the Property. Mr. Taylor told me that his basement has been flooded as well by water coming from the Property.

5. I called the City of Baltimore to complain about the Property. My neighbors told me they called the City as well to complain and within a few weeks the City boarded up the Property.

6. The Property has not been well maintained since becoming vacant. There is usually a large pile of garbage in the backyard and garbage scattered around the front yard. My neighbors and I sometimes clean up the front yard. The City has also come by to collect trash dumped in both the front and back yard of the Property.

7. I have noticed an increase in the rats around my home since the Property became vacant. There are rat holes in my backyard. I called the City to complain about the rats. In response to my call, the City took steps to exterminate the rats in and around my home, but there is still a rat problem on my block because of the garbage people dump in and around the Property.

8. I am concerned that the Property will become a drug house and increase crime in my neighborhood. I am also worried that children in the neighborhood could be injured if they play in or near the Property. The Property is already a hazard to the neighborhood.

9. The value of my home has gone down because of the Property. I have been unsuccessfully trying to sell my home for two years. I believe that having the vacant Property located so close to my home has made it difficult, if not impossible, for me to sell my home.

I hereby declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information, and belief.

EXECUTED WITHIN THE UNITED STATES ON: May 25, 2009

BY: Bridgett J Ross

Bridget Ross

EXHIBIT 8

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
BALTIMORE DIVISION

MAYOR AND CITY COUNCIL OF BALTIMORE, Plaintiff,	
v.	No. 1:08-cv-00062-BEL
WELLS FARGO BANK, N.A. and WELLS FARGO FINANCIAL LEASING, INC., Defendants.	

RULE 56(f) DECLARATION OF BRADLEY H. BLOWER

I, Bradley H. Blower, hereby state as follows:

1. I am an attorney with Relman & Dane, PLLC. I represent Plaintiff Mayor and City Council of Baltimore ("Baltimore" or "City") in the above-captioned matter. I have personal knowledge of the matters set forth below.

2. I submit this declaration pursuant to Federal Rule of Civil Procedure 56(f) in support of Baltimore's Motion to Reconsider the Need for the June 29, 2009 Evidentiary Hearing.

3. To the extent the Court converts the pending motion to dismiss filed by Defendants Wells Fargo Bank, N.A. and Wells Fargo Financial Leasing, Inc. (collectively "Wells Fargo") to a motion for summary judgment under Federal Rule of Civil Procedure 56, the motion should be denied because a full and fair opportunity for discovery is essential for

Baltimore to justify its opposition. A full and fair opportunity for discovery will allow Baltimore to adduce facts to corroborate the evidence it has already submitted to the Court and to amass additional evidence in support of its claims.

4. Baltimore has requested the opportunity to take limited preliminary discovery but its request was denied. *See* Letter from John P. Relman to Hon. Benson E. Legg (Mar. 3, 2009) (Doc. No. 56) (requesting discovery); Tr. (Mar. 4, 2009) at 5 (stating Court's "intention to table" discovery).

5. With respect to the pending motion to dismiss, the Court has directed Baltimore to make an evidentiary showing that:

a. it has been injured by the challenged acts and has standing;

b. "Wells Fargo targeted (i.e. intentionally discriminated against) black borrowers in the City;"

c. in support of its disparate impact claim, that "Wells Fargo underwrote loans to black borrowers in Baltimore City that were 'unfair' or based on 'improper' criteria" and "[a]fter controlling for non-race criteria . . . that black borrowers received materially less favorable loan terms than similarly situated white borrowers;" and

d. "Wells Fargo employees, with or without authorization, engaged in subjective or discretionary pricing that disadvantaged black borrowers or added subjective or discretionary fees to loans issued to black borrowers."

Order (Mar. 6, 2009) (Doc. 58).

6. Baltimore is today submitting substantial evidence that responds to each of these issues. The evidence is attached to the First Amended Complaint and to the Motion to Reconsider the Need for the June 29, 2009 Evidentiary Hearing. The evidence was adduced without Baltimore having had the opportunity to serve any discovery requests or to take any depositions.

7. A full and fair opportunity for discovery requires the opportunity for Baltimore to take discovery regarding each of the channels through which Wells Fargo makes loans in Baltimore. This includes, but may not be limited to:

a. Wells Fargo Home Mortgage. This is a division of defendant Wells Fargo Bank, N.A. that operated as a separate company until 2004. *See* Compl. ¶ 9. It employs people to make loans through retail offices. It continued to operate in the same capacity after 2004, but technically became part of defendant Wells Fargo Bank, N.A.

b. Wells Fargo Financial Leasing, Inc. Plaintiff understands that, in Baltimore, this defendant focuses on both home purchase and refinance mortgage loans.

c. Independent brokers. Brokers deliver loan applications to Wells Fargo through what is known as the wholesale channel and Wells Fargo decides whether to approve and originate the loans. Wells Fargo participates in the pricing of these loans and sets many of the terms under which the brokers may offer Wells Fargo loans and products.

d. Correspondent lending. Wells Fargo purchases loans through this channel that have been originated by other lenders.

Plaintiff requires discovery as to each loan origination channel because different loan origination channels typically operate under different rules and procedures. Accordingly, to determine whether and to what degree Defendants' loan originators have engaged in the activities that are the subject of the Court's inquiries, Plaintiff should be permitted to have discovery that encompasses each of Wells Fargo's channels.

8. A full and fair opportunity for discovery also includes, with respect to each channel, discovery regarding policy and underwriting manuals and guidelines used for mortgage lending in Baltimore since 2000. These manuals typically identify any and all rules that apply to the underwriting process. In addition to policies regarding interest rates, fees, and discretion, these documents typically cover guidelines, rules, and policies as they relate to important credit and loan characteristics that affect whether an applicant will receive a loan, and at what price.

These guidelines, rules and, policies discuss such things as debt-to-income and loan-to-value ratios, credit scores (also known as FICO scores), cash reserves, whether and what type of past credit blemishes (such as late payments on a prior mortgage or a credit card) may be permitted, employment history, and the like. These are just some of the potential areas where discretion can have a major impact on the outcome of a loan application and the price that an applicant may pay and where discretion may be used to target certain populations. Lenders frequently modify their manuals and guidelines more than once a year, so it is important that there be access to the different versions of these manuals and guidelines as they have evolved over the relevant time period.

9. A full and fair opportunity for discovery also includes discovery regarding Wells Fargo's pricing materials, such as pricing sheets, guidelines, and pricing matrices. These materials may indicate, among other relevant matters, whether Wells Fargo has given loan originators discretion to charge add-ons and give discounts. Pricing materials also change on a regular basis with market fluctuations; thus here, too, Baltimore must be able to see how these materials have evolved over the time period in question with respect to each of the business channels that made loans in Baltimore.

10. A full and fair opportunity for discovery also includes discovery enabling Baltimore to identify, and then depose, individuals who have had responsibility for establishing and implementing underwriting rules, policies, guidelines, and pricing and to identify the loan originators who have worked in each channel since 2000 and have been involved in the day-to-day process of actually making loans. This is necessary to corroborate and expand upon the declarations already submitted by Baltimore, which describe how Wells Fargo's loan officers have implemented and manipulated company rules and policies with the purpose and effect of

targeting minorities and minority neighborhoods for abusive subprime lending practices, such as steering people who qualify for better loans into subprime loans and increasing the costliness of subprime loans without any benefit to the borrower.

11. A full and fair opportunity for discovery also includes discovery enabling Baltimore to identify, and then depose, individuals who have had responsibility for establishing and implementing marketing and outreach policies and programs with respect to subprime lending in Baltimore. This is necessary to corroborate and expand upon the declarations already submitted by Baltimore, which describe how Wells Fargo targeted its subprime marketing efforts at African-American neighborhoods and institutions but did not target such efforts at white neighborhoods or institutions.

12. A full and fair opportunity for discovery also includes discovery of loan files to determine what actually happened in practice and to test the testimony of policymakers and loan originators. This is essential because even if Wells Fargo's written underwriting policies appeared not to permit the practices that are the subject of the Court's inquiries, the loan files would clearly document whether loan officers or other Wells Fargo employees nonetheless used their discretion to target and harm African Americans and residents of African-American neighborhoods. If, for example, the loan files show that borrowers received higher priced loans than they qualified for, there could be no doubt that regardless of what written policies say or what management executives testify to about what is supposed to be done, in the real world the people who actually made Wells Fargo loans used their discretion, whether authorized or not, to the detriment of borrowers. The loan files must also be the subject of discovery to permit Baltimore to prepare a statistical analysis that controls for legitimate non-racial underwriting criteria to substantiate the intentional targeting of Wells Fargo customers on the basis of race and

the disparate impact that Wells Fargo's policies have on people who are similarly situated but for their race.

13. The discovery outlined above is not exhaustive. At this stage of the case, before discovery has begun, it would not be possible to describe exactly every element of discovery needed to address in full the matters identified by the Court because those matters are broad and reach the heart of Plaintiff's case. Plaintiff therefore also requires the opportunity to take discovery that is related to the subjects outlined above and to follow-up on matters that are adduced in response to initial discovery.

14. If the Court were to convert the motion to dismiss to a summary judgment motion and find that the evidence submitted by the City today is insufficient to require the denial of summary judgment, then the discovery outlined above would be essential to justifying the City's opposition. The reason Baltimore has not taken this discovery to date is that discovery has not commenced in this case and Baltimore's request for preliminary discovery was denied. Thus, to the extent the evidence already submitted by Baltimore is found insufficient, Baltimore must have full and fair discovery to justify its opposition to summary judgment in favor of Defendants.

I hereby declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

EXECUTED WITHIN THE UNITED STATES ON: June 1, 2009

BY: Bradley H. Blower

Bradley H. Blower

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
BALTIMORE DIVISION

MAYOR AND CITY COUNCIL OF BALTIMORE,	)	
Plaintiff,	)	
v.	)	No. 1:08-cv-00062-BEL
WELLS FARGO BANK, N.A.	)	
and	)	
WELLS FARGO FINANCIAL LEASING, INC.,	)	
Defendants.	)	

[PROPOSED] ORDER

The Court having considered Plaintiff Mayor and City Council of Baltimore's Motion to Reconsider the Need for the June 29, 2009 Evidentiary Hearing, any brief submitted in opposition to the motion and any reply brief in support, and any oral argument heard on the motion, and having found that there is good cause for the relief requested, it is HEREBY ORDERED that that motion is GRANTED, and that:

1. The evidentiary hearing on Defendants' motion to dismiss previously scheduled for June 29, 2009, shall not be held; and that

2. Defendants' motion to dismiss is denied in full.

SO ORDERED.

_______________, 2009

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Hon. Benson Everett Legg
Chief United States District Judge