



November 26, 2008

Daniel Fisher  
3390 Tracy Drive  
Santa Clara, CA 95051

RE: Wells Fargo & Co., et al. / Fisher / 9-3290-07-024

Mr. Fisher:

This is to advise you that we have completed our investigation of the above-referenced complaint filed by you (Complainant) against Wells Fargo & Co., former Regional President Fred Bertoldo, former Branch Manager Suzanne Bui, and Licensed Banker Diana Sun (collectively referred to as Respondents, or Wells Fargo) on February 5, 2007 under the employee protection provisions of Section 806 of the Corporate and Criminal Fraud Accountability Act of 2002, Title VIII of the Sarbanes-Oxley Act of 2002, 18 U.S.C. §1514A (SOX). In brief, you alleged that Respondents transferred you to another branch in retaliation for informing senior management that Ms. Sun was engaging in fraudulent transactions in violation of Securities and Exchange Commission (SEC) and National Association of Securities Dealers (NASD) regulations, among other regulations.

Following an investigation by a duly authorized investigator, the Secretary of Labor, acting through her agent, the Regional Administrator for the Occupational Safety and Health Administration (OSHA), Region IX, finds that there is reasonable cause to believe that Wells Fargo violated SOX and issues the following findings and order:

### **Secretary's Findings**

On February 5, 2007, Complainant filed a complaint with the Secretary of Labor alleging that Respondent discriminated against him in violation of SOX. As this complaint was filed within 90 days of the alleged adverse action, it is deemed timely.

Wells Fargo & Co. is a company within the meaning of 18 U.S.C. §1514A in that it is a company with a class of securities registered under Section 12 of the Securities Exchange Act of 1934 (15 U.S.C. 78l) and is required to file reports under Section 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78o(d)).

Wells Fargo Bank Investments, LLC and Wells Fargo Bank, N.A. are subsidiaries of Wells Fargo & Co. Complainant is employed as a financial consultant under Wells Fargo Bank Investments, LLC. OSHA applies the integrated employer test in determining whether subsidiaries of a covered employer should be viewed as one enterprise for statutory coverage purposes. OSHA finds that Wells Fargo Bank Investments, LLC, Wells Fargo Bank, N.A., and Wells Fargo & Co. constitute an integrated employer and are therefore covered under SOX. Mr.

Bertoldo, Ms. Bui, and Ms. Sun are or were employed under Wells Fargo Bank, N.A. and are thus covered respondents under SOX.

On March 29, 1994, Complainant was hired by Wells Fargo as a bank teller. On April 1, 1995, Complainant accepted a position as a Financial Consultant Associate at Wells Fargo's branch office located at 10260 South deAnza Boulevard, Cupertino, CA 95014 (the Legacy branch). On August 5, 2002, Complainant became a Financial Consultant at the Legacy branch.

In April 2005, Ms. Sun began working at the Legacy branch as a banker. In January 2006, Ms. Sun became a licensed banker. Since April 2005, Ms. Sun regularly interacted with Complainant, who mentored Ms. Sun as well as other licensed bankers. Ms. Sun was one of the Legacy branch's top performers.

Prior to and continuing through late 2006, Complainant was regarded as a highly effective and adroit financial consultant both in his job performance and coworker relations. Complainant was equally well received by Mr. Bertoldo. For example, when the two first met in June 2006, Mr. Bertoldo was impressed that Complainant was so comfortable working with bankers, which Mr. Bertoldo felt was unique for a financial consultant. On June 26, 2006, Mr. Bertoldo personally invited Complainant to speak at a strategic planning session to help licensed bankers with their performance. During the session, Mr. Bertoldo called Complainant an "ideal partner."

During the evening of December 13, 2006, Complainant was the guest speaker at a Wells Fargo "town hall" meeting for potential licensed bankers. District Manager Mike Kogelis described Complainant as a "model partner," discussed how Complainant coached, mentored, and helped licensed bankers, and used the Legacy branch as an example all branches should mirror.

Despite management's high regard for Complainant's professional success and coworker partnering, Complainant exhibited serious conduct issues management knew about for many months prior to and continuing through late 2006 but largely ignored. For example, management, including Mr. Bertoldo, Mr. Kogelis, Mr. James, Senior Regional Sales Manager Mark Webster, Sales Development Manager Gina Drisko, Human Resource Consultant Karen Swafford, Human Resource Manager Martha Niland, and Region President Mike Billeci, was aware of Complainant's obscene, profane, and offensive comments, inappropriate and unprofessional behavior, and excessive drinking at company events prior to and continuing through late 2006.

Although management knew about Complainant's inappropriate conduct, Complainant only received disciplinary action during his career on three occasions, two of which were counseling memos that threatened no disciplinary consequences. On June 17, 2002, Complainant was issued a final written warning by then manager Mr. Webster regarding sending and receiving inappropriate email messages containing explicit sexual content.

On June 5, 2006, Mr. James also counseled Complainant to "kill the negative caustic attitude and foul language via emails. It is unprofessional and inappropriate and not a good way to get my support. All emails are discoverable, so be careful what you put in them."

In mid 2006, Mr. James learned that Complainant had used profanity and made unprofessional comments at a work-sponsored event where a coworker's guest had lost her jacket. Complainant escalated the situation by sending the coworker an email in which he wrote "what is it that you would like ME to do?" Mr. James escalated Complainant's email to Mr. Bertoldo. On June 27, 2006, Mr. James emailed Complainant that he found Complainant's email out of line and wrote

“There have been other moments in the past that have created an impression that is not always a positive one.”

Prior to and continuing through late 2006, management, including Ms. Drisko, Director of Sales Rob Chaykin, Mr. Bertoldo, and Mr. Kogelis, also knew for many months that Complainant exhibited serious coworker partnering problems but took no corrective action.

Beginning in mid to late 2006, Complainant and a coworker began hearing complaints from about a dozen of Ms. Sun’s clients that they felt pushed into certain accounts they neither needed nor understood. The typical scenario was as follows: a customer would come to the bank with their money invested in a checking or savings account. Ms. Sun would inform the customer that he or she could get a better rate of return by opening a WellsTrade account.<sup>1</sup> With the customer’s consent, Ms. Sun then closed the customer’s checking or savings account and referred the customer to WellsTrade to open a money market account.

Alarmed, Complainant began discussing the issue in early December 2006 with Compliance Manager Paul Katerndahl, who promised Complainant would not be chastised for bringing up his concerns. Complainant, the coworker, and Mr. Katerndahl had never previously witnessed this type of sales activity. Mr. Katerndahl reported Complainant’s concerns to John Duggan, Complainant’s supervisor at the time, Mr. James, Mr. Chaykin, and Ms. Drisko.

On December 11, 2006, Complainant and Ms. Bui, Ms. Sun’s direct supervisor, and Ms. Sun discussed in detail approximately 18 of Ms. Sun’s sales where she referred clients to WellsTrade. According to Ms. Sun, she suggested that customers open a WellsTrade account versus moving their money into a money market account outside of Wells Fargo. Ms. Sun said that she properly profiled the customers based on their needs and that the customers knew that WellsTrade was a self-directed account and were ecstatic she introduced to them WellsTrade. Ms. Sun reluctantly participated in and was defensive during the meeting. Complainant did not threaten Ms. Sun during the meeting. Ms. Sun was upset because she felt Complainant tried to scare her and unfairly singled her out.

On the evening of December 12, 2006, at an awards dinner honoring Ms. Sun as a top performer, Ms. Sun was still upset. She complained to Mr. Bertoldo regarding Complainant’s allegations the previous day and that Complainant had contacted Mr. Katerndahl regarding her sales activities. Mr. Bertoldo looked upset and concerned but told her to relax.

On the morning of December 13, 2006, Mr. Bertoldo contacted Mr. James and said that Ms. Sun was upset that Complainant had reported her sales practices to Mr. Katerndahl. Mr. Bertoldo said that any compliance issue should be looked into but that Complainant was not handling the situation appropriately by sharing information with individuals who did not have a “need to know.”

At 3:05pm that day, Complainant sent a draft email to Mr. James detailing his concerns regarding Ms. Sun’s sales activities. At the time, Mr. James felt Complainant’s email was appropriate because it was only directed to Mr. James and Complainant had already brought his concerns to Mr. Katerndahl. Mr. James sent the draft email to Mr. Chaykin.

At 3:31pm, after finalizing the draft email, Complainant sent Mr. Bertoldo, Ms. Drisko, Mr.

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<sup>1</sup> WellsTrade is the equivalent of Wells Fargo’s “E-trade,” in which customers can buy or sell securities or other products themselves. Although Wellstrade is affiliated with Wells Fargo, it is treated as a separate company.

Duggan, Ms. Bui, Mr. Kogelis, Mr. Chaykin, and Mr. James an email entitled “Diana sun sales activities.” Complainant alleged that Ms. Sun was “selling away”<sup>2</sup> and engaged in “gaming”<sup>3</sup> by inappropriately referring customers to WellsTrade solely to receive commission.

Complainant’s coworker and Mr. Katerndahl agreed with Complainant’s concerns when he sent his email. In a March 29, 2007 memo, which Mr. Katerndahl drafted as a result of Complainant’s concerns, Mr. Katerndahl confirmed that Ms. Sun had indeed improperly engaged in “selling away” and placed clients in unsuitable investments. Moreover, on March 22, 2007, Wells Fargo specifically sought to restrict the type of sales activity Complainant had reported Ms. Sun engaged in.

Furthermore, evidence shows that Ms. Sun’s sales activity was motivated by personal profit. In early summer 2006, Ms. Sun was overheard touting the profit potential of opening WellsTrade accounts. Mr. Chaykin also informed Mr. Katerndahl that licensed bankers could get more compensation by referring a money market account to WellsTrade.

By reporting his concerns to several managers, Complainant strictly adhered to Wells Fargo’s own *Code of Ethics* (the Code). According to the Code, a team member must “report any conflicts of interest or other suspected violations of the Code to [his/her] supervisor or others in a position to effect solutions.” The managers Complainant addressed were either his supervisor<sup>4</sup> or were in a position to effect solutions.<sup>5</sup>

Management immediately reacted negatively due to the number of managers Complainant addressed on his email. For example, Mr. Bertoldo, who already felt Complainant was not handling the situation correctly after Ms. Sun complained about Complainant’s allegations the previous night, was bewildered, upset about the e-mail’s context, and felt it was “grossly wrong.” Considering the recipients of the email, Mr. Bertoldo felt Ms. Sun’s reputation could be tainted if Complainant’s allegations proved untrue.

Mr. James, who had no concerns when he read an earlier draft of the email, now felt Complainant had taken things “a little too far” by sending the email to “everyone.” Mr. James felt the email was very pointed, accusatory, one-sided, and violated Wells Fargo’s team member policy. Mr. James believed the email had caused a rift.

Mike Kogelis believed that Complainant did not handle the situation correctly. A few days after Complainant sent his email, Mr. Kogelis said to Ms. Bui, “can you believe everybody got copied on this?”

In order to defend herself and protect her name, Ms. Sun emailed Ms. Swafford on the evening of December 14, 2006 alleging that Complainant created a hostile work environment by unfairly targeting her. Ms. Sun included examples of profane and vulgar language Complainant used while at work. Ms. Swafford promptly forwarded Ms. Sun’s concerns to Mr. Bertoldo.

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<sup>2</sup> “Selling away” refers to making recommendations away from the firm or firm’s partners where the bank cannot review trades.

<sup>3</sup> According to Wells Fargo’s *Code of Ethics*, “gaming” refers to “making inappropriate or invalid sales referrals to meet sales goals or receive credit under a sales program.”

<sup>4</sup> Mr. Duggan was Complainant’s immediate supervisor and Mr. James worked in a supervisory capacity above Mr. Duggan.

<sup>5</sup> Ms. Bui was Ms. Sun’s supervisor, Mr. Kogelis was Ms. Bui’s supervisor, Mr. Bertoldo was Mr. Kogelis’s supervisor, and Ms. Drisko and Mr. Chaykin regularly worked with licensed bankers.

While several of Ms. Sun's allegations were later verified, many of her claims were exaggerated, false, or misleading. Ms. Bui, who was Ms. Sun's supervisor and at the time personally close to Ms. Sun, was surprised that Ms. Sun had never shared several of the incidents she cited in her email, including allegations that Complainant was hostile, threatening, used every opportunity to attack her, and used his position in a supervisory capacity to scrutinize her work. Ms. Sun had only mentioned to Ms. Bui in the past that she did not like working with Complainant.

On December 15, 2007, Mr. Kogelis reported to Mr. Bertoldo that Ms. Sun did not come to work because she could not be near Complainant. Mr. Bertoldo instructed Mr. Kogelis to determine if Ms. Sun's allegations were correct. Mr. Kogelis traveled to the Legacy branch and spoke with three licensed bankers, who confirmed that Complainant made inappropriate, rude and vulgar comments.

After Mr. Kogelis reported his findings to Mr. Bertoldo, the latter contacted Mr. Billeci for advice. During the call, Mr. Bertoldo mentioned Complainant's concerns regarding Ms. Sun. Mr. Bertoldo mentioned Mr. Kogelis's findings and that Ms. Sun was considering leaving the company. Mr. Billeci felt that the branch appeared to be in turmoil and suggested that Wells Fargo separate Complainant and Ms. Sun while it conducted an investigation into Ms. Sun's allegations.

As a result, Mr. Bertoldo made the decision that morning to temporarily move Complainant to the San Jose Hub branch (the Hub) while Wells Fargo investigated Ms. Sun's concerns. Ms. Sun was not similarly removed because, unlike Complainant, there were no vacancies in other branches in which to temporarily place her.

Complainant's transfer immediately affected his referral compensation, which is based on the number of referrals he receives. While Complainant received 45% of referrals in the Legacy branch in 2006, he only received 3% of referrals from the Legacy branch in the first half of 2007. Mr. James and a coworker confirmed that Complainant's referrals decreased dramatically when he was moved to the Hub.

Complainant's reputation was also damaged as a result of the transfer. One week after Complainant had been moved to the Hub, rumors spread in the Legacy branch that Complainant had been removed for wrongdoing. In January 2007, licensed bankers informed Ms. Bui that they believed Complainant had attempted to get Ms. Sun in trouble and were therefore uncomfortable working with him. Ms. Bui believed that licensed bankers did not want to be in Ms. Sun's situation and were more skeptical of working with Complainant.

On December 15, 2006, Karen Swafford, on behalf of Wells Fargo, commenced an investigation into Ms. Sun's claims concerning Complainant.

As Ms. Swafford conducted the internal investigation, upper management did not favor Complainant returning to the Legacy branch. In the latter half of December 2006, Mr. Bertoldo told Ms. Niland that he did not want Complainant to come back to any store in his region, but would support whatever recommendation was made. In late January 2007, Mr. Kogelis informed Mr. Bertoldo that the Legacy branch was so dysfunctional its employees would resent Complainant returning to the branch.

Based on interviews with numerous employees and management, Ms. Swafford determined that Complainant made inappropriate and vulgar comments, made employees uncomfortable, exhibited abusive behavior, was arrogant and acted like a bully, did not act as a team player, and

there was animosity between Complainant and the branch. Prior to Ms. Swafford's conclusion of her findings, Mr. Bertoldo also shared her interim findings with Mr. Billeci.

On February 1, 2007, Wells Fargo also commenced an investigation into Complainant's claim that he was retaliated against by Wells Fargo when he reported on Ms. Sun's sales activities. This investigation was headed by Human Resource Consultant Imma Lacayo.

In early to mid February 2007, Ms. Niland reported Ms. Swafford's findings to Mr. Billeci. On February 13, 2007, a few days after hearing the results of the investigation, Mr. Billeci determined that Complainant's relationship at the Legacy branch was "irretrievably broken" due to Complainant's history of poor partnering, lack of professionalism, use of inappropriate language, bullying, and consumption of alcohol at business events. As a result, Mr. Billeci decided to permanently ban Complainant from sitting in the Legacy branch.

However, Complainant remained in the Hub until Ms. Lacayo concluded her investigation on April 3, 2007. Even if Ms. Lacayo had determined that Complainant had been retaliated against, Mr. Billeci would still have banned Complainant from the Legacy branch.

On April 11, 2007, Complainant was offered work in the Almaden Valley branch (Almaden), where he could visit the Legacy branch to meet clients and vice versa.

Complainant's referral compensation continued to be affected. Only one of three licensed bankers in the Almaden branch regularly referred clients to Complainant. On April 27, 2007, Complainant learned that his production was much lower for the first quarter of 2007 (7.3%), compared to the other two Financial Consultants on his team (20% and 72.7%). As a result, Complainant's payout was much lower (16.3%) compared to the other two Financial Consultants on his team (20.9% and 62.3%).

On June 16, 2008, the other two Financial Consultants on Complainant's team were moved from the Legacy branch to a new location (the "New Cupertino" branch). Complainant presently sits two days each week in the New Cupertino branch, two days in the Almaden branch, and the remaining day in either location. Complainant and his team now cover the Almaden branch, New Cupertino branch, and serve ongoing relationships that were developed at the Legacy branch. A sole Financial Consultant outside of Complainant's financial consultant team now sits in the Legacy branch.

Complainant engaged in protected activity when he sent his December 13, 2006 email to several managers alleging that Ms. Sun was "selling away" and engaged in "gaming" by inappropriately referring them to WellsTrade in an effort to earn commission. The SEC prosecutes suitability issues under rule 10(b)(5), the general anti-fraud provision.<sup>6</sup> The SEC also prosecutes "selling away" under 10(b)(5) and Section 17(a) of the Securities Act of 1933.<sup>7</sup>

Complainant had a reasonable belief that Ms. Sun had violated SEC rules or regulations when he

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<sup>6</sup> The SEC provides the following guidance on its website regarding suitability: "When your broker recommends that you buy or sell a particular security, your broker must have a reasonable basis for believing that the recommendation is suitable for you. In making this assessment, your broker must consider your risk tolerance, other security holdings, financial situation (income and net worth) financial needs, and investment objectives." Moreover, the Financial Industry Regulatory Authority (FINRA) provides a similar suitability rule in Rule 2310(a), while the New York Stock Exchange (NYSE) addresses suitability under Rule 405.

<sup>7</sup> The SEC also specifically advises against "selling away" in a 2004 Staff Legal Bulletin. FINRA also recommends against "selling away" under Rules 3030 and 3040.

reported Ms. Sun's unlawful activity. On March 29, 2007, Mr. Katerndahl confirmed that Ms. Sun had indeed engaged in "selling away" and recommended unsuitable investments. In fact, Wells Fargo specifically sought to restrict the same sales activities Complainant reported on March 22, 2007. A coworker and Mr. Katerndahl confirmed that their concerns aligned with Complainant's regarding Ms. Sun's sales activity when they read the email in which Complainant raised his concerns.

Upper management, including Mr. Bertoldo and Mike Billeci, knew of Complainant's concerns prior to any adverse action being taken. Mr. Bertoldo was sent the email directly and made the decision to temporarily move Complainant from the Legacy branch two days after Complainant raised his concerns. Mr. Billeci, who made the decision to permanently ban Complainant from the Legacy branch on February 13, 2007, first learned of Complainant's concerns regarding Ms. Sun directly from Mr. Bertoldo on December 15, 2006. Mr. Bertoldo also participated in subsequent discussions with Mr. Billeci that led Mr. Billeci to ultimately ban Complainant from the Legacy branch.

Complainant suffered an adverse action when he was removed from the Legacy branch and placed in the Hub on December 15, 2006. Complainant further suffered an adverse action when Mr. Billeci decided to permanently ban Complainant from the Legacy branch on February 13, 2007 and Complainant was placed in the Almaden Valley branch on April 11, 2007. Complainant's referrals and thus gross pay decreased as a result, as discussed above.

Moreover, a reasonable worker would be dissuaded from bringing up similar concerns to management. After Complainant sent his email to management, rumors spread in the Legacy branch that Complainant was pulled out for doing something wrong and licensed bankers were wary of working with Complainant for fear they would get in trouble. Complainant's reputation was also damaged as a result of his forced and sudden removal, as discussed above.

Nexus is shown through temporal proximity, animus, and disparate treatment. Regarding temporal proximity, Mr. Bertoldo temporarily removed Complainant from the Legacy branch two days after he sent his email to management while Wells Fargo investigated Ms. Sun's allegations. Mr. Billeci permanently removed Complainant from the Legacy branch two months after Complainant sent his email to management. Complainant had worked in the Legacy branch for approximately ten years without major incident prior to engaging in protected activity. There is no evidence that, but for his protected activity, Complainant would have been removed.

Regarding animus, upper management collectively believed that Complainant had done the wrong thing by engaging in protected activity, despite the fact that Complainant had adhered to Wells Fargo's own Code by sending his email, as discussed above.

Several managers, including Mr. Bertoldo, Mr. Chaykin, Ms. Drisko, and Mr. James knew of Complainant concerns about Ms. Sun's sales activities before he sent his email. However, no disciplinary action was taken until Complainant sent his email. Complainant emailed Mr. James a draft copy of the email, which Mr. James felt was appropriate at the time (but later felt was inappropriate given Complainant's choice of audience). Mr. Katerndahl informed Mr. Chaykin and Ms. Drisko of Complainant's concerns prior to Complainant sending the email. Mr. Bertoldo was annoyed that Complainant was questioning Ms. Sun's sales activities the night before Complainant sent his email, but took no disciplinary action at the time.

Moreover, upper management, and particularly Mr. Bertoldo, had reason to be angry at Complainant for engaging in protected activity because Ms. Sun was a top producer in Mr.

Bertoldo's region and a great contributor to the success of the Legacy branch. As Mr. James stated to Complainant after he sent his email, this was not the first time Wells Fargo had taken steps to protect an employee with questionable sales activity rather than protect the company or its customers.

Lastly, there is evidence of disparate treatment. Although Complainant was permanently removed due to profanity, coworker issues, and alcoholism, other employees used profanity at work, licensed bankers in general complain that Financial Consultants do not follow up with clients and close sales quickly enough, and other employees drink in excess at business events. However, with the exception of one employee who was terminated for drinking too much alcohol at client events, such employees were not similarly disciplined.

While Wells Fargo learned of new examples of Complainant's poor behavior and coworker problems from Ms. Sun's allegations, Ms. Swafford's ensuing internal investigation, and information upper management independently learned during Ms. Swafford's investigation, upper management knew for a long period that Complainant exhibited such unprofessional behavior and had coworker issues but lauded Complainant as an ideal employee rather than take substantive disciplinary action. In fact, Complainant was described as a model partner one day before Ms. Sun brought up her concerns about Complainant.

The Agency's investigation revealed significant concerns regarding the timing and motives of Ms. Sun's actions as well as her veracity in general. Weighing the facts surrounding Ms. Sun's complaints, we find that Ms. Sun's complaints arose out of a desire to defend herself against Complainant's allegations. Had Complainant never engaged in protected activity, Ms. Sun would never have sent her email accusing Complainant of creating a hostile work environment. Several of the incidents Ms. Sun reported happened months before her email, and had such incidents truly been intimidating, it would have been reasonable for Ms. Sun to have reported them at the time to Ms. Bui, her supervisor and friend. Furthermore, parts of her email are incorrect or exaggerated. Ms. Sun's motivation to deflect criticism from herself is further evidenced by her threats to report compliance manager Mr. Katerndahl to management if he insinuated that she was lying regarding her sales activity, a stance Mr. Katerndahl felt was odd.

Respondents' determination that Complainant's relationship at the Legacy branch was "irretrievably broken" is equally not well founded. The evidence shows that licensed bankers at the Legacy branch did not want to work with Complainant after he engaged in protected activity because they were afraid he might similarly blow the whistle on their sales activities, as required by Wells Fargo's own Code.

Wells Fargo was willing to tolerate Complainant's inappropriate behavior and coworker problems until he engaged in protected activity. However, upper management became outraged that Complainant, who had followed the requirements of Wells Fargo's Code, legitimately blew the whistle on the unlawful sales practices of one of the top licensed bankers in the Region. Thereafter, Wells Fargo sought to transfer Complainant from the Legacy branch. In fact, upper management wanted to permanently remove Complainant from the Legacy branch before Ms. Swafford had even ended her investigation.

A preponderance of the evidence indicates that Complainant's protected activity was a contributing factor in the adverse action taken against him. Accordingly, OSHA finds that there is reasonable cause to believe that Wells Fargo violated SOX. OSHA hereby orders the following to remedy the violation:

## Order

1. Upon receipt of this Secretary's Finding and Order, Wells Fargo shall immediately reassign Complainant, as a financial consultant, to the Legacy branch, located at 10260 South deAnza Boulevard, Cupertino, CA 95014.
2. Wells Fargo shall expunge Complainant's personnel file of any reference to the job transfers and any reference to the incidents that Wells Fargo purported to have used as a basis for the discharge. Wells Fargo shall provide Complainant with a complete copy of his personnel file upon completion of this expungement.
3. Wells Fargo shall pay Complainant back wages and bonuses from December 16, 2006 until the date upon which Wells Fargo makes Complainant a bona fide offer of reassignment to his former position in the Legacy branch. Complainant's monthly back wages shall be calculated using his average monthly earnings during the period December 1, 2005 through November 30, 2006, less interim earnings. For each additional year beginning December 16, 2007, Wells Fargo shall increase the monthly amount by 22%, to reflect Complainant's projected annual increases. Wells Fargo shall pay Complainant interest on the back wages and bonuses in accordance with 26 U.S.C. 6621.
4. Wells Fargo shall pay Complainant compensatory damages for damage of reputation in the amount of \$25,000.00
5. Wells Fargo shall post immediately the attached "Notice to Employees" (the Notice) in a conspicuous place in all California branches, including all places where notices for employees are customarily posted, and maintain the Notice for a period of at least 180 consecutive days from the date of posting. The Notice shall be signed by a responsible Wells Fargo official and the date of actual posting shall be shown thereon.
6. Wells Fargo shall not retaliate or discriminate against Complainant in any manner for instituting or causing to be instituted any proceeding under or related to SOX.

Respondents and Complainant have 30 days from the receipt of these Findings to file objections and to request a hearing before an Administrative Law Judge (ALJ). If no objections are filed, these Findings will become final and not subject to court review. Objections must be filed in writing with:

Chief Docket Clerk  
USDOL-Office of Administrative Law Judges  
800 K Street NW, Suite 400  
Washington, D.C. 20001-8002  
(202) 693-7542, Fax (202) 693-7365

With copies to:

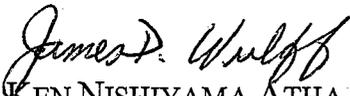
Respondents

OSHA Regional Administrator, Region IX  
90 7<sup>th</sup> Street, Suite 18100  
San Francisco, CA 94103

Department of Labor, Associate Solicitor  
Division of Fair Labor Standards  
200 Constitution Avenue NW, N2716  
Washington, D.C. 20210

In addition, please be advised that the U.S. Department of Labor generally does not represent any party in the hearing; rather, each party presents his or her own case. The hearing is an adversarial proceeding before an ALJ, in which the parties are allowed an opportunity to present their evidence *de novo* for the record. The ALJ who conducts the hearing will issue a decision based on the evidence, arguments, and testimony presented by the parties. Review of the ALJ's decision may be sought from the Administrative Review Board, to which the Secretary of Labor has delegated responsibility for issuing final agency decisions under SOX. A copy of this letter has been sent to the Chief Administrative Law Judge along with a copy of your complaint. The rules and procedures for the handling of SOX cases can be found in Title 29, Code of Federal Regulations Part 1980, and may be obtained at [www.osha.gov](http://www.osha.gov).

Sincerely,

  
for KEN NISHIYAMA ATHA  
Regional Administrator

cc: Lisa Carvahlo, Esq.  
Jonathan Klein, Esq.  
Chief Administrative Law Judge, USDOL  
Deputy Director, Division of Enforcement, Securities & Exchange Commission  
Associate Solicitor, Fair Labor Standards, USDOL



# NOTICE TO EMPLOYEES

## PURSUANT TO AN ORDER BY THE U.S. DEPARTMENT OF LABOR, OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION:

**WELLS FARGO & CO.** (Wells Fargo) has been ordered to make whole one employee who was found to have been retaliated against for exercising his rights under Section 806 of the Corporate and Criminal Fraud Accountability Act, Title VII of the Sarbanes-Oxley Act of 2002, 18 U.S.C. §1514A (SOX).

### **PURSUANT TO THAT ORDER, WELLS FARGO AGREES THAT NEITHER WELLS FARGO NOR ANY OF ITS SUBSIDIARIES WILL:**

1. Discharge or in any manner retaliate against any employee because such employee has engaged in any activity, filed any complaint or instituted or caused to be instituted any proceeding under or related to the employee protection provisions of SOX, or has testified or is about to testify in any such proceeding or because of the exercise by such employee on behalf of himself/herself or others of any right afforded by SOX.
2. Discharge, demote, suspend, threaten, harass, or in any other manner retaliate against an employee because such employee provided information, caused information to be provided, or otherwise assisted in an investigation regarding any conduct which the employee reasonably believes constitutes a violation of 18 U.S.C. section 1341 (mail fraud), 1343 (wire fraud), 1344 (bank fraud), or 1348 (securities fraud), any rule or regulation of the Securities and Exchange Commission, or any provision of Federal law relating to fraud against shareholders.
3. Harass, intimidate or retaliate against employees because such employees contacted, spoke with, or cooperated with Occupational Safety and Health Administration (OSHA) officials or other government officials during the course of an investigation.

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Wells Fargo & Co.

Date

**THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE. THIS NOTICE MUST REMAIN POSTED IN A CONSPICUOUS PLACE FOR AT LEAST 180 DAYS AND MUST BE NOT ALTERED, DEFACED, OR COVERED BY OTHER MATERIAL.**