II. “Lions Hunting Zebras”: The Wells Fargo Fake Accounts Scandal and its Aftermath

On September 8, 2016, the Consumer Financial Protection Bureau (CFPB) announced that it had issued a consent order (Order) against Wells Fargo Bank, NA (Bank or Wells Fargo).\footnote{See Consumer Financial Protection Bureau Fines Wells Fargo $100 Million for Widespread Illegal Practice of Secretly Opening Unauthorized Accounts, Consumer Fin. Protection Bureau (Sept. 8, 2016), http://www.consumerfinance.gov/about-us/newsroom/consumer-financial-protection-bureau-fines-wells-fargo-100-million-widespread-illegal-practice-secretly-opening-unauthorized-accounts/ [http://perma.cc/E83E-FPUT] [hereinafter CFPB Announcement]. See generally Wells Fargo Bank, N.A., CFPB No. 2016-CFPB-0015 (2016).} The Order effectively settled a lawsuit brought by the City of Los Angeles in 2015 after allegations arose that Wells Fargo employees were engaging in illegitimate sales practices.\footnote{See Andrew Khouri & Jim Puzzanghera, After L.A. Lawsuit, Wells Fargo Customers Express Anger Over Bank’s Practices, L.A. Times (May 6, 2015), http://www.latimes.com/business/la-fi-wells-fargo-20150506-story.html [https://perma.cc/D7B2-YGRQ] (alleging that “the bank’s high-pressure sales culture set unrealistic quotas, spurring employees to engage in fraudulent conduct to keep their jobs and boost the company’s profits”); Wells Fargo Will Pay $190 Million to Settle Customer Fraud Case, CNBC (Sept. 8, 2016), http://www.cnbc.com/2016/09/08/wells-fargo-reaches-185m-settlement-to-settle-secret-account-fraud-case.html [https://perma.cc/26FH-6LR5] (“The bank said that the deal this week settles the ‘allegations that some of its retail customers received products and services that they did not request.’”).} The Order found that Wells Fargo engaged in a number of unfair, deceptive, or abusive acts and practices (UDAAPs), including opening deposit accounts, applying for credit accounts, and issuing debit cards, all without customer authorization.\footnote{Wells Fargo Bank, N.A., CFPB No. 2016-CFPB-0015 (2016).} As part of the Order, Wells Fargo was to pay $185 million, including $100 million in damages directly to the CFPB.\footnote{CFPB Announcement, supra note 1.} This was “the largest penalty the CFPB has ever imposed.”\footnote{Id.} This article explores the Wells Fargo scandal, the CFPB’s order, and the impacts both will have on the banking industry. Section A discusses the origins of the CFPB, and provides a brief explanation of the UDAAP standards applied in the Wells Fargo case. Section B explains the sales practices carried out by Wells Fargo employees...
and the resulting Order against Wells Fargo. Section C analyzes the immediate fallout from the Order, including the Order’s effect on the Bank, subsequent investigations by government agencies, and private lawsuits. Finally, Section D considers the broader effect the Order has on the banking industry.

### A. The Consumer Financial Protection Bureau

The CFPB was created as part of the Dodd Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank),\(^\text{143}\) which was enacted in 2010 in large part as a response to the 2008 financial crisis.\(^\text{144}\) The CFPB’s stated purpose is to “implement and, where applicable, enforce Federal consumer financial law consistently for the purpose of ensuring that all consumers have access to markets for consumer financial products and services and that markets for consumer financial products and services are fair, transparent, and competitive.”\(^\text{145}\) The CFPB has direct supervision over insured financial entities with over $10 billion in assets.\(^\text{146}\)

In addition to its supervisory authority, the CFPB is authorized to investigate violations of consumer protection laws, which include Title X of Dodd-Frank,\(^\text{147}\) along with a list of other “enumerated consumer laws.”\(^\text{148}\) These investigations may be carried out solely by the CFPB or jointly with other agencies or parties.\(^\text{149}\) The CFPB is also authorized to bring both administrative proceedings and civil actions.\(^\text{150}\) In such proceedings, the CFPB may seek a number of different remedies, both at law and in equity.\(^\text{151}\)

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\(^{145}\) § 5511(a).

\(^{146}\) *Id.*


\(^{148}\) 12 U.S.C. § 5511(c) (2012) (describing the primary functions of the CFPB); §§ 5481(12), (14) (defining “enumerated consumer laws” and “federal consumer financial law”).

\(^{149}\) § 5562(a)(1).

\(^{150}\) §§ 5563–64.

\(^{151}\) § 5565(a).
1. UDAAPs

Title X prohibits UDAAPs in connection with consumer financial products and services. There are separate legal standards for what constitutes an unfair, deceptive, or abusive practice, and a violation of one can be found absent violations of the others.

An act or practice is “unfair” if: (1) it “causes or is likely to cause substantial injury to consumers,” (2) the injury is “not reasonably avoidable by consumers,” and (3) the “injury is not outweighed by countervailing benefits to consumers or to competition.” Generally speaking, the “substantial injury” consumers suffer is financial in nature. An injury can be “substantial” if it “causes a small amount of harm to a large number of people.” The CFPB acknowledges that “consumers cannot avoid injury if they are coerced into purchasing unwanted products or services or if a transaction occurs without their knowledge or consent.” Finally, a finding of an unfair act or practice requires the act or practice to cause a net injury (i.e., the injury caused by the action is not outweighed by the benefit of the action).

An act or practice is considered “deceptive” when: “(1) The representation, omission, act or practice misleads or is likely to mislead a consumer; (2) The consumer’s interpretation of the representation, omission, act, or practice is reasonable under the circumstances; and (3) The misleading representation, omission, act, or practice is material.” Typical examples of deceptive acts or practices include misrepresentations and inadequate disclosures.

Finally, an abusive act or practice is one that “materially interferes with the ability of a consumer to understand a term or condition of a consumer financial product or service.” Generally, an

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152 § 5531.
154 § 5531(c).
155 CFPB MANUAL, supra note 16, at UDAAP 2.
156 Id.
157 Id.
158 Id.
159 Id. at UDAAP 5.
160 Id. at UDAAP 7–8.
abusive act or practice “takes unreasonable advantage of” a consumer’s limited financial knowledge, experience, or trust. The CFPB manual contains no clarifications on what constitutes “unreasonable advantage.”

B. Wells Fargo

Wells Fargo was founded in 1852, primarily to serve the western United States. As of the third quarter of 2016, when the Order was issued, Wells Fargo ranked third in bank size, measured by deposits among all FDIC-insured institutions. At the time, Wells Fargo had $1.9 trillion in assets under supervision, and had a business relationship with one third of American households. Industry experts have noted that the Bank is a “profit-making machine,” primarily due to an “aggressive sales culture.” This aggressive culture is at the heart of Wells Fargo’s accounts scandal and the resulting Order.

162 See § 5531(d)(2) (explaining that an abusive act or practice “takes unreasonable advantage of (A) a lack of understanding on the part of the consumer of the material risks, costs or conditions of a product or service; (B) the inability of the consumer to protect the interests of the consumer in selecting or using a consumer financial product or service; or (C) the reasonable reliance by the consumer on a covered person to act in the interests of the consumer.”).
163 See generally CFPB Manual, supra note 16.
165 Wells Fargo, Wells Fargo Today: 3rd Quarter 2016 Quarterly Fact Sheet 2 (2016) https://www08.wellsfargomedia.com/assets/pdf/about/corporate/wells-fargo-today.pdf [https://perma.cc/BRP4-UVXU] (announcing that Wells Fargo was third in total deposits).
166 Id. at 2–3.
1. The Violations

“The analogy I use was that it was like lions hunting zebras . . . . They would look for the weakest, the ones that would put up the least resistance.”

Wells Fargo had always sought to “distinguish itself in the marketplace as a leader” in what is known as cross selling. Cross selling, the so-called “Holy Grail” of banking, entails expanding a customer’s relationship through the sales of multiple accounts or services. Former Wells Fargo CEO John Stumpf claimed that Wells Fargo’s “goal is to have as deep a relationship as we can with . . . households.” Wells Fargo saw cross selling as a way to promote trust in the bank. In an effort to further their cross selling strategy, Wells Fargo employees were encouraged to sign customers up for as many as eight separate financial products, with the Bank claiming that “eight is great.” While more accounts may have promoted a greater relationship of trust between Wells Fargo and their customers, more accounts also meant more fees for the bank.

170 CFPB Announcement, supra note 1.
173 Id.
175 Diana Novak Jones, Chicago Suspends Wells Fargo From City Business For A Year, LAW360 (Oct. 5, 2016, 6:49 PM), https://www.law360.com/ar-
In an effort to incentivize employees to cross-sell products, Wells Fargo “based a portion of employees’ compensation on the number of accounts” they sold.\textsuperscript{176} This compensation program was the ultimate impetus of the Wells Fargo scandal.\textsuperscript{177} Some commentators believe that, at its heart, the scandal was never an attempt to defraud Wells Fargo customers of their hard-earned money, but rather an effort by employees to exploit the Bank’s poorly monitored incentive compensation program.\textsuperscript{178}

From January 1, 2011 to September 8, 2016, the CFPB estimated that Wells Fargo employees opened roughly 1.5 million deposit accounts that may not have been authorized by customers.\textsuperscript{179} Additionally, Wells Fargo employees applied for approximately 565,000 potentially unauthorized credit cards, issued debit cards without customer’s “knowledge or consent,” and enrolled customers in online banking without their knowledge.\textsuperscript{180} In some cases, employees would use email addresses such as “noname@wellsfargo.com” to open fraudulent accounts.\textsuperscript{181} In others, Wells Fargo employees would create PIN numbers for customer debit cards without the customers’ knowledge.\textsuperscript{182} The practice of assigning fake PIN numbers extended beyond debit cards, as Wells Fargo employees would also assign fake PIN numbers, such as “0000,” to enroll customers in online banking.\textsuperscript{183} Further, employees engaged in a practice called sandbagging, where

\textsuperscript{176} See Corkery, supra note 30.

\textsuperscript{177} See, e.g., Evan Weinberger, \textit{Wells Fargo Fraud Exposes Soft Spot In Bank Supervision}, \textit{LAW360} (Sept. 16, 2016, 8:27 PM), https://www.law360.com/articles/839996/wells-fargo-fraud-exposes-soft-spot-in-bank-supervision [https://perma.cc/8PHF-V7YN] (“‘It’s an interesting case because, as I see it, it’s not a scheme devised to defraud customers of money, per se. It’s like an internal fraud used to game the incentive structure,’ said David Gibbons, a senior adviser at Alvarez & Marsal and a former top OCC official.”).

\textsuperscript{178} Wells Fargo Bank, N.A., CFPB No. 2016-CFPB-0015, ¶ 16 (2016).

\textsuperscript{179} Id. ¶ 23

\textsuperscript{180} Weinberger, supra note 41.

\textsuperscript{181} CFPB Announcement, supra note 1.

legitimate customer account openings would be delayed so as to fall under a new sales reporting period for the employee.\(^\text{184}\) Other employees would falsely inform customers that certain banking services had to be purchased in bundles with other banking services.\(^\text{185}\) All the while, Wells Fargo “continued to promote and monetarily reward” these employees, and “rewarded its managers and senior executives with millions in bonuses.”\(^\text{186}\)

While the opening of fraudulent accounts alone was a significant issue, employees would often engage in the prohibited practice of simulated funding.\(^\text{187}\) Employees needed to engage in simulated funding in efforts to earn their commission on the accounts, since the account needed to be “funded shortly after opening” in order to qualify.\(^\text{188}\) This practice of simulated funding for fraudulently opened accounts led employees to withdraw customers’ money from their legitimate accounts to fund the fraudulently opened ones.\(^\text{189}\) Without the money in their legitimate accounts, customers would sometimes be charged overdraft or insufficient funds fees.\(^\text{190}\) Customers with fraudulently opened credit cards also incurred various fees and charges.\(^\text{191}\) These led customers to unknowingly “spend money on monthly service payments for accounts they did not want, jeopardizing their credit scores and forcing them to fight with debt collection agencies for fees charged on unauthorized accounts.”\(^\text{192}\) Evidence after the scandal suggested that Wells Fargo employees would take advantage of especially vulnerable populations, including Native Americans, Mexicans, the elderly, and college students.\(^\text{193}\)

2. The Consent Order

As a condition of the Order, Wells Fargo neither admitted nor denied any of the findings of fact or conclusions of the CFPB,
but nevertheless consented to take the remedial actions.\textsuperscript{194} The CFPB assessed whether each type of fraud constituted a UDAAP of any type.\textsuperscript{195} Ultimately, the CFPB found that: (1) the unauthorized deposit accounts and credit cards, as well as simulated funding, constituted both an unfair and abusive act and practice; (2) the unauthorized enrollment in online banking services constituted an abusive act and practice; and (3) the unauthorized debit cards and associated PINs constituted an abusive act and practice.\textsuperscript{196}

The penalties levied against Wells Fargo included both financial penalties and the institution of a compliance plan.\textsuperscript{197} In total, Wells Fargo had to pay $185 million, including a $100 million civil penalty to the CFPB.\textsuperscript{198} Wells Fargo cannot claim any tax deductions, write-offs, or benefits by virtue of paying the penalty.\textsuperscript{199} Additionally, Wells Fargo is not allowed to argue in any subsequent proceeding based on the scandal that it is entitled to a penalty offset in a later case due to the civil penalty paid to the CFPB.\textsuperscript{200} In any case where Wells Fargo nevertheless receives such a penalty offset, they must “notify the [CFPB], and pay the amount of the [p]enalty [o]ffset to the U.S. Treasury.”\textsuperscript{201}

In addition to the monetary penalties, the CFPB required Wells Fargo to establish a fund for the purpose of providing redress to those customers affected by the scandal.\textsuperscript{202} This included an obligation to “refund all affected consumers the sum of all monthly maintenance fees, nonsufficient fund fees, overdraft charges, and other fees they paid because of the creation of the unauthorized accounts.”\textsuperscript{203} As of the fourth quarter of 2016, Wells Fargo had already returned around

\textsuperscript{194}Wells Fargo Bank, N.A. CFPB No. 2016-CFPB-0015, ¶ 2 (2016).
\textsuperscript{195}See id. ¶¶ 16–37 (analyzing individually, the unauthorized deposit accounts and simulated funding, the unauthorized credit cards, the unauthorized enrollment for online banking services, and the unauthorized debit cards).
\textsuperscript{196}Id.
\textsuperscript{197}Id.
\textsuperscript{198}CFPB Announcement, supra note 1.
\textsuperscript{199}Wells Fargo Bank, N.A. CFPB No. 2016-CFPB-0015, ¶ 60 (2016).
\textsuperscript{200}Id. ¶ 61.
\textsuperscript{201}Id.
\textsuperscript{202}See id. ¶ 49 (“Within 10 days of the Effective Date, Respondent must reserve or deposit into a segregated deposit account an amount not less than $5 million, for the purpose of providing redress to Affected Consumers as required by this Section.”).
\textsuperscript{203}CFPB Announcement, supra note 1.
$3.2 million to customers. Additionally, the Bank established a free mediation program for affected customers.

Finally, the Order included a series of provisions related to the implementation of an independent review and a compliance plan for Wells Fargo’s future. As a condition of the Order, Wells Fargo was obligated to retain an independent consultant to conduct a review of the Bank’s sales practices within the Community Bank Regional Bank Branch Network. Wells Fargo is required to correct any deficiencies identified in the independent review. Finally, the CFPB’s Regional Director retains the right to object to or modify anything contained in the compliance plan. In response, Wells Fargo has hired two outside consultants: the first to meet the aforementioned requirements under the Order, and the second to review company-wide sales practices. In April 2017, Wells Fargo released the results of the sales practices investigation report, conducted by Shearman & Sterling, which identified “sales misconduct” dating back to at least 2002.

C. The Fallout

1. Effect on Wells Fargo

As news of the scandal broke, Wells Fargo began to suffer financially and through the loss of its leadership. Former CEO John


Stumpf resigned on October 12, 2016 in the wake of numerous claims that he shirked his responsibilities in allowing such events to occur.\(^{213}\) As part of his resignation, Stumpf “agreed to forfeit $41 million in unvested equity awards,” give up his 2016 bonus, and waive a severance package.\(^{214}\) In April 2017, Wells Fargo announced that they had “clawed back an additional $28 million” from Stumpf.\(^{215}\) Stumpf was replaced by Tim Sloan as CEO of Wells Fargo, and Stephen Sanger as the board of director’s chairman, effectively splitting Stumpf’s former role.\(^{216}\) While many felt as though Stumpf’s resignation was a necessary step in the remediation of the Wells Fargo name, others felt as though simply resigning was not enough.\(^{217}\) In addition to Stumpf leaving the Bank, Wells Fargo fired upwards of 5,300 employees who were involved in the scandal, reduced top management’s 2016 bonuses

\(^{213}\) E.g., id. (“Mr. Stumpf bears direct responsibility for failing to stop this fraud from proliferating under his leadership.”); Weinberger, supra note 37 (“It’s just beyond credibility that somebody up the food chain either didn’t order this, condone this or turn a blind eye to this . . . .”); see Evan Weinberger, Stumpf’s Departure Won’t Ease Pressure On Wells Fargo, Law360 (Oct. 13, 2016, 5:33 PM), https://www.law360.com/articles/851052/stumpf-s-departure-wont-ease-pressure-on-wells-fargo [https://perma.cc/QHB5-W327] (“I have decided it is best for the company that I step aside.”).


\(^{217}\) See, e.g., Lowrey, supra note 77 (lamenting that “[a] bank teller would face criminal charges and a prison sentence for stealing a handful of $20s from the cash drawer. A bank CEO should not be able to oversee a massive fraud and simply walk away to enjoy his millions in retirement.”).
by $32 million, and cancelled $47 million of stock options held by the former head of the community bank division.218

Wells Fargo also made permanent changes to its employee compensation system.219 In September 2016, Wells Fargo announced that it “would eliminate all of the product and sales goals in its retail banking unit starting in January,” and later moved that date up to October 1, 2016.220 Now, “employees will be judged on customer feedback, product usage and the performance of their team, and branch goals rather than individual product sales . . . .”221 Finally, the Bank raised the minimum wage for approximately 26,000 branch employees from $13.50 to $17 per hour.222

The scandal also significantly impacted Wells Fargo’s bottom line.223 The changes to the monitoring and compliance program required by the Order alone could cost the Bank “tens of millions of dollars.”224 Furthermore, a survey suggested that Wells Fargo “could lose as much as $212 billion in deposits and $8 billion in revenue” in the year and a half following the scandal.225 This loss would represent a 17 percent decrease in deposits and a 9 percent decrease in revenue.226 Approximately 14 percent of customers responding to the survey stated that they had “decided to bank elsewhere.”227 Consulting firm Cg42 claimed in the worst-case scenario as many as 30 percent of

219 See Greene, supra note 76.
220 Id.; House Hearing, supra note 35, at 5.
221 Weinberger, supra note 67.
222 Id.
224 Weinberger, supra note 79.
225 Shen, supra note 86.
226 Id.
227 Id.
Wells Fargo customers could leave the bank. These concerns began to materialize almost immediately after the scandal was announced. Wells Fargo’s expense ratio, a measure of a bank’s expenses divided by its revenue, was an abnormally high 61 percent.

2. Government Response

Prior to resigning, John Stumpf was called to Capitol Hill to testify on behalf of Wells Fargo before both the Senate and the House of Representatives. In his testimony, Stumpf apologized, discussed certain employee compensation policies, and explained some of the steps Wells Fargo had taken to rectify the scandal. In response, many congressmen called for Stump’s resignation. Others called for a criminal probe into Wells Fargo executives. One congresswoman, 

228 Id.
229 See Corkery, supra note 30 (describing that in the fourth quarter of 2016, “new credit card applications were down 43 percent” from a year ago, “new checking account openings fell 40 percent” from a year ago, “[t]eller transactions fell 6 percent”, and “customer interactions with the bankers in the branches declined 14 percent”).
230 See id.
231 See generally House Hearing, supra note 35; An Examination of Wells Fargo’s Unauthorized Accounts and the Regulatory Response Before the S. Comm. on Banking, Hous., and Urban Affairs, 114th Cong. (2016) (testimony of John Stumpf, Chairman & Chief Executive Officer, Wells Fargo), http://www.banking.senate.gov/public/_cache/files/18312ce0-5590-4677-b1ab-981b03d1cbbb/3B18AA6E3A96E50C446E2F601B-854CF1.092016-stumpf-testimony.pdf [https://perma.cc/K5LT-MVY6] [hereinafter Senate Hearing]
232 See House Hearing, supra note 35, at 1 (“I am going to explain this morning what happened and what we have done about it. But first, I want to apologize to all Wells Fargo customers.”); Senate Hearing, supra note 94, at 1.
234 See, e.g., John Kennedy, Senate Dems Call For Criminal Probe Of Wells Fargo Execs, LAW360 (Oct. 5, 2016, 10:22 PM), https://www.law360.com/articles/848781/senate-dems-call-for-criminal-probe-of-wells-fargo-exec [https://perma.cc/Q3Z4-EG2U] (“Senate Democrats on Wednesday called for a criminal probe of Wells Fargo executives after revelations that thousands of accounts were opened without consumers’ permission, urging the
Maxine Waters, “the ranking Democrat on the House Financial Services Committee, said she is drafting legislation to break up Wells Fargo and potentially other banks.”

In addition to the hearings before Congress, separate investigations have been opened by various government agencies. Wells Fargo revealed in a filing with the Securities and Exchange Commission that it is under investigation by the agency. The Financial Industry Regulatory Authority (FINRA) has asked former employees to come forward if they believe that Wells Fargo wrongfully fired them for trying to act as a whistleblower by reporting events related to the Order. The Department of Labor is conducting a “top-to-bottom” review of Wells Fargo to ascertain whether the Bank violated labor laws “by forcing employees to work unpaid overtime to meet the aggressive sales quotas.” Moreover, at least three U.S. Attorney’s Offices have opened investigations. Finally, the Office of the Comptroller of the Currency (OCC) is continuing its investigation despite its involvement in the Order.

In addition to federal government agencies, at least two states have opened independent investigations into Wells Fargo. Then-

U.S. Department of Justice to follow through on its year-old promise to strengthen its pursuit of individual corporate wrongdoing.

See Weinberger, supra note 76 (claiming that “[i]t is unclear how such legislation would work, and with Congress out of session prior to November’s election, it is unclear when any bill will be introduced”).

See O’Sullivan, supra note 81.


Weinberger, supra note 76.

California Attorney General Kamala Harris “launched an investigation into whether the bank committed felony identity theft.” \(^{243}\) Harris served a search warrant on October 5, 2016 for information and communications regarding the fraudulent accounts. \(^{244}\) Furthermore, Illinois has launched an audit to determine if Wells Fargo was “holding onto fees charged to customers who didn’t know that bank employees were opening accounts on their behalf.” \(^{245}\)

Finally, a number of states and cities have taken steps to sanction Wells Fargo in one way or another. California was the first to announce that the state would suspend its relationship with the Bank for “one year to sanction the bank for opening millions of unauthorized customer accounts.” \(^{246}\) In the announcement, California State Treasurer John Chiang made it clear that the state’s sanctions could “‘escalate to a complete termination’” of their relationship with Wells Fargo, depending on Wells Fargo’s compliance with the Order. \(^{247}\) In addition, Chiang noted that he was communicating with the California Public Employees’ Retirement System and the California State Teachers’ Retirement System, who collectively hold more than $2.3 billion in Wells Fargo fixed-income securities. \(^{248}\) After California, four other states, Massachusetts, Illinois, Pennsylvania, and Ohio, followed suit, each suspending Wells Fargo from doing any business with the state for a period of one year. \(^{249}\) Both Massachusetts and Illinois have also counts [https://perma.cc/2QEL-2HXF]; O’Sullivan, supra note 81.

\(^{242}\) O’Sullivan, supra note 81.

\(^{244}\) Greene, supra note 105.

\(^{245}\) Corso, supra note 105.


\(^{247}\) Id.

\(^{248}\) Id.

\(^{249}\) See Corso, supra note 105 (“Wells Fargo will be blocked for at least a year from handling any portion of Illinois’ $1 trillion in investment activity . . . .”); John Kennedy, Mass. Bars Wells Fargo As Bond Underwriter For 1 Year, Law360 (Oct. 19, 2016, 1:54 PM), https://www.law360.com/articles/853136/mass-bars-wells-fargo-as-bond-underwriter-for-1-year [https://perma.cc/LE4P-NC8F] [hereinafter Kennedy, Mass.] (“Massachusetts has
begun to look into existent contracts with Wells Fargo. Additionally, the Chicago City Council passed a similar ban. San Francisco removed Wells Fargo from “a list of banks where the city recommends low-income residents open bank accounts.” Going one step further, New York Governor Andrew Cuomo included a proposal in his State of the State address to ban “bad actors” who commit frauds akin to those at Wells Fargo from the banking and insurance industries.

3. Private Actions

In addition to the responses by various government and state agencies, a number of private actions have been filed around the country. Wells Fargo customers have filed at least ten separate class actions. In these cases, Wells Fargo has gone to great lengths to move the cases to arbitration, causing multiple legislators to respond become the latest state to ban Wells Fargo from underwriting its bonds .

250 See Corso, supra note 105; Kennedy, Mass., supra note 112.
251 See Jones, supra note 38 (“The ban, which lasts 12 months, prevents the city’s chief financial officer, comptroller, treasurer and other officials from using the bank as a municipal depository, bond underwriter, loan or redevelopment agreement trustee, broker or financial adviser, according to the ordinance. It was passed unanimously . . . .”).
254 O’Sullivan, supra note 81.
255 In re Wells Fargo Fraudulent Account Opening Litigation, MDL No. 2766, 1 & n.1 (J.P.M.L. Apr. 5, 2017).
by attempting to prevent such cases from being arbitrated.\textsuperscript{256} In March 2017, Wells Fargo reached a settlement in one of the class action cases.\textsuperscript{257} On the basis of that settlement, the U.S. Judicial Panel on Multidistrict Litigation denied an order to centralize eight of the ten cases on the grounds that such centralization could impact the class-wide settlement.\textsuperscript{258} In April 2017, Wells Fargo announced that they had expanded the prior settlement to a current total amount of $142 million.\textsuperscript{259} In addition, at least two other cases have been filed on behalf of former Wells Fargo employees.\textsuperscript{260} One case is seeking $2.6 billion and was filed in Los Angeles County Superior Court “on behalf of the bank’s California workers who were allegedly fired or demoted

\textsuperscript{256} E.g., H.R. 6423, 114th Cong. (2016) (attempting to ban arbitration in cases of fraud, including Wells Fargo); S. 349, 114th Cong. (2016) (attempting to ban arbitration in cases of fraud, including Wells Fargo); S.B. No. 33, 2017 Leg. (Cal. 2016) (“This bill would prohibit a person from requiring a waiver of a legal right that arises as a result of fraud, identity theft, and any other act related to the wrongful use of personal identifying information as a condition of entering into a contract for the provision of goods or services.”); see Evan Weinberger, \textit{Dems Offer Bill To Bar Arbitration On Wells Fake Accounts}, Law360 (Dec. 1, 2016, 5:13 PM), https://www.law360.com/articles/868166/dems-offer-bill-to-bar-arbitration-on-wells-fake-accounts [https://perma.cc/EG7V-MQ3C] (“But Wells Fargo has moved to block those suits, claiming that the arbitration clauses in place on the accounts those customers, who already had existing Wells accounts before the fraudulent ones were created, mandated arbitration.”).

\textsuperscript{257} \textit{In re Wells Fargo}, MDL No. 2766 at 1.


\textsuperscript{259} \textit{Wells Fargo Expands Settlement}, supra note 120.

for refusing to participate” in the scandal.261 Finally, at least one class action has been filed on behalf of Wells Fargo investors.262

D. Long Term Consequences

At the time of the Order’s announcement, the CFPB made it clear that the Order should serve as a warning to all financial institutions.263 Shortly after the Order’s announcement, Richard Cordray, Director of the CFPB, told reporters, “I believe we’re putting the entire industry on notice.”264 The CFPB took its warning one step further by releasing a compliance bulletin on November 28, 2016, which targeted incentive-based compensation.265 In the bulletin, the CFPB notes that “[d]espite their potential benefits, incentive programs can pose risks to consumers, especially when they create an unrealistic culture of high-pressure targets.”266 The bulletin references behaviors found in the Wells Fargo scandal in a number of places, including the claim that “[s]ales goals may encourage employees, either directly or indirectly, to open accounts or enroll consumers in services without

263 CFPB Announcement, supra note 1.
266 Id.
their knowledge or consent.”267 The CFPB instructed that incentive-based compensation structures, while not completely barred, need to be handled properly in order to avoid potential violations of consumer protection laws.268 The compliance bulletin echoes sentiments expressed by Cordray that the CFPB will be stepping up its reviews of other banks.269

Both the CFPB and OCC have already reached out to some of Wells Fargo’s main competitors, seeking information related to their cross selling practices.270 While Wells Fargo’s competitors claim that their sales practices are materially different, “employees at other banks say that such sales quotas are common.”271 In addition, FINRA has asked the broker-dealers it regulates to provide them with information about their cross selling platforms.272 Some believe that the scrutiny will not end with financial institutions and may spread to other industries, further broadening the fallout from the scandal.273

267 Id. at 2.
268 See id. at 3.
269 Weinberger, supra note 127.
270 See O’Sullivan, supra note 81; Evan Weinberger, Federal Regulators Open Review Of Bank Sales Practices, Law360 (Oct. 25, 2016, 4:40 PM), https://www.law360.com/articles/855483/federal-regulators-open-review-of-bank-sales-practices [https://perma.cc/4NW7-MYZA] (“[E]xecutives at banks including JPMorgan Chase & Co. and Bank of America Corp. have publicly said on earnings calls and in other venues that their sales cultures were different and that they did not expect to see problems similar to those at Wells Fargo in their banks.”).
272 Germaine, supra note 101.
273 See Brad Karp et al., CFPB Sets Demanding Standard For Incentive Programs, Law360 (Dec. 9, 2016, 11:42 AM), https://www.law360.com/articles/868564/cfpb-sets-demanding-standard-for-incentive-programs [https://perma.cc/G4RY-W54M] (“The recent attention on this issue could well cause the U.S. Department of Justice, the Federal Trade Commission, state attorneys general and other industry regulators to focus on sales and other incentives in consumer-facing businesses as potential progenitors of legal violations.”).
E. Conclusion

While public condemnation of Wells Fargo began to spread not long after the Order was published, many were also quick to praise the efforts of the CFPB.274 With increased calls for the CFPB to be eliminated or fundamentally altered, the Wells Fargo case serves as a justification for its continued existence.275 While the ultimate fallout from the Wells Fargo case may take years to unravel, it is clear that the Wells Fargo fake accounts scandal will remain a big “win” not just for the CFPB, but for consumers everywhere.

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274 See, e.g., ICBA Statement on Wells Fargo Fine for Illegal Sales Practices, Indep. Community Bankers Ass’n (Sept. 9, 2016), http://www.icba.org/news-events/news-details/2016/09/09/icba-statement-on-wells-fargo-fine-for-illegal-sales-practices [https://perma.cc/7VNR-LRMQ] (“This is yet another example of the industry inequality that plagues our nation’s banking system, favors the largest and riskiest financial institutions, puts taxpayers and everyday consumers at risk, and creates widespread market imbalance. Unfortunately for community banks and the millions of Americans harmed by Wells Fargo’s spurious conduct, this settlement is too little, too late.”); Valenti, supra note 134 (“What the scandal has made clear, however, is that public enforcement through the Consumer Financial Protection Bureau is working . . . .”).
275 Id. (“Preventing the next Wells Fargo demands both a strong, independent CFPB and an end to mandatory consumer arbitration.”); Weinberger, supra note 41 (“We need to look no further than just last week to see why we need a strong Consumer Financial Protection Bureau.”).
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