

**UNITED STATES OF AMERICA
CONSUMER FINANCIAL PROTECTION BUREAU**

ADMINISTRATIVE PROCEEDING

File No. 2015-CFPB-\$\$\$&

In the Matter of:

WELLS FARGO BANK, N.A.

CONSENT ORDER

The Consumer Financial Protection Bureau (Bureau) has reviewed the participation of loan officers employed by Wells Fargo Bank, N.A. (Respondent, as defined below) in a scheme involving Genuine Title, LLC, to exchange marketing services for referrals of settlement-service business in connection with consumers' home-mortgage transactions, and has found that such practices violate Section 8(a) of the Real Estate Settlement Procedures Act, 12 U.S.C. § 2607(a) ("RESPA") and Section 1036(a)(1)(A) of the Consumer Financial Protection Act of 2010 ("CFPA"), 12 U.S.C. § 5536(a)(1)(A). Under Sections 1053 and 1055 of CFPA, 12 U.S.C. §§ 5563, 5565, the Bureau issues this Consent Order (Consent Order).

**I
Jurisdiction**

1. The Bureau has jurisdiction over this matter under Sections 1053 and 1055 of the CFPA, 12 U.S.C. §§ 5563, 5565.

II Stipulation

2. Respondent has executed a “Stipulation and Consent to the Issuance of a Consent Order,” dated January 22, 2015 (Stipulation), which is incorporated by reference and is accepted by the Bureau. By this Stipulation, Respondent has consented to the issuance of this Consent Order by the Bureau under Sections 1053 and 1055 of the CFPA, 12 U.S.C. §§ 5563 and 5565, without admitting or denying any of the findings of fact or conclusions of law, except that Respondent admits the facts necessary to establish the Bureau’s jurisdiction over Respondent and the subject matter of this action.

III Definitions

3. The following definitions apply to this Consent Order:
 - a. “Complaint” means the complaint against Respondent and other defendants filed by the Bureau in the United States District Court for the District of Maryland on January 22, 2015 and attached to this Consent Order as Exhibit A.
 - b. “Respondent” means Wells Fargo Bank, N.A. and its successors and assigns.
 - c. “Effective Date” means the date on which this Order is issued.

IV Bureau Findings and Conclusions

4. The Bureau finds the facts to be as alleged in the Complaint, and concludes that Respondent committed the violations of law alleged in the Complaint.

ORDER

V

Conduct Provisions

IT IS ORDERED under Sections 1053 and 1055 of the CFPB, that:

5. Respondent shall not give and Respondent shall not accept any fee, kickback, or thing of value pursuant to any agreement or understanding, oral or otherwise, that business incident to or a part of a real estate settlement service involving a federally related mortgage loan shall be referred to any person.

VI

Order Distribution and Acknowledgment

IT IS FURTHER ORDERED that,

6. Within 30 days of the Effective Date, Respondent must deliver a copy of this Order to each of Respondent's board members and executive officers, as well as to all management personnel within its retail sales mortgage origination business down to the level of Home Mortgage Consultant.
7. For 5 years from the Effective Date, Respondent must deliver a copy of this Order to board members and executive officers, as well as to any future management personnel within its retail sales mortgage origination business down to the level of Home Mortgage Consultant.
8. Respondent must secure a signed and dated statement acknowledging receipt of a copy of this Order, ensuring that any electronic signatures comply with the requirements of the E-Sign Act, 15 U.S.C. § 7001 *et seq.*, within 30 days of delivery, from all persons receiving a copy of this Order under this Section.

VII

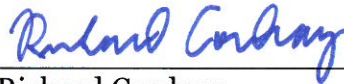
Administrative Provisions

9. This Consent Order is intended to be, and will be construed as, a final Consent Order issued under Section 1053 of the CFPA, 12 U.S.C. § 5563, and expressly does not form, and may not be construed to form, a contract binding the Bureau or the United States.
10. This Consent Order will terminate 5 years from the Effective Date or 5 years from the most recent date that the Bureau initiates an action alleging any violation of this Consent Order by Respondent. If such action is dismissed or the relevant adjudicative body rules that Respondent did not violate any provision of this Consent Order, and the dismissal or ruling is either not appealed or upheld on appeal, then this Consent Order will terminate as though the action had never been filed. This Consent Order will remain effective and enforceable until such time, except to the extent that any provisions of this Consent Order have been amended, suspended, waived, or terminated in writing by the Bureau or its designated agent.
11. Calculation of time limitations will run from the Effective Date and be based on calendar days, unless otherwise noted.
12. The provisions of this Consent Order will be enforceable by the Bureau. For any violation of this Consent Order, the Bureau may impose the maximum amount of civil money penalties allowed under section 1055(c) of the CFPA, 12 U.S.C. § 5565(c). In connection with any attempt by the Bureau to enforce this Consent Order in federal district court, the Bureau may serve Respondent wherever

Respondent may be found and Respondent may not contest that court's personal jurisdiction over Respondent.

13. Nothing in this Consent Order or the accompanying Stipulation may be construed as allowing Respondent, its Board, officers, or employees to violate any law, rule, or regulation.

IT IS SO ORDERED, this 22nd day of January, 2015.



Richard Cordray
Director
Consumer Financial Protection Bureau

Exhibit A

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
BALTIMORE DIVISION

CONSUMER FINANCIAL
PROTECTION BUREAU
1700 G Street NW
Washington, D.C. 20552

STATE OF MARYLAND, Office of
the Attorney General of Maryland,
Consumer Protection Division
200 St. Paul Place, 16th Floor
Baltimore, MD 21202
Baltimore County

Plaintiffs,

v.

WELLS FARGO BANK, N.A.
464 California Street
San Francisco, CA 94104

JPMORGAN CHASE BANK, N.A.
270 Park Avenue
New York City, NY 10017

ELAINE OLIPHANT COHEN
2100 Heritage Drive
Baltimore, MD 21209
Baltimore County

TODD COHEN
2100 Heritage Drive
Baltimore, MD 21209
Baltimore County

Defendants.

Case No.

COMPLAINT

Plaintiffs, the Consumer Financial Protection Bureau (“Bureau”) and the State of Maryland’s Office of the Attorney General’s Consumer Protection Division (“CPD”), allege as follows:

INTRODUCTION

1. The Bureau and the CPD bring this action against Wells Fargo Bank, N.A. (“Wells Fargo”), JPMorgan Chase Bank, N.A. (“Chase”), Elaine Oliphant Cohen, and Todd Cohen (collectively, “Defendants”) to address Defendants’ participation in an illegal scheme to exchange money or marketing services for referrals of settlement-service business in connection with consumers’ home-mortgage transactions.

2. The Real Estate Settlement Procedures Act (“RESPA”) prohibits giving or accepting a “fee, kickback, or thing of value” in exchange for a referral of business related to a real-estate-settlement service, including services ordinarily provided by title companies, such as title searches, title examinations, the provision of title certificates, and title insurance. 12 U.S.C. § 2607(a).

3. A now-defunct Maryland title company, Genuine Title, LLC, from 2009 through 2013 provided marketing services to loan officers from Wells Fargo, Chase, and another financial institution (“Unnamed Financial Institution”). The marketing services that Genuine Title provided assisted these loan officers in generating business and increased the number of loans that Wells Fargo, Chase, and Unnamed Financial Institution originated or refinanced.

4. Under agreements or understandings between Genuine Title and the loan officers, the loan officers exercised their ability to influence consumers in settlement transactions to use Genuine Title for settlement services.

5. Genuine Title also paid loan officers for referrals of business. Todd Cohen, a loan officer who worked at several financial institutions, including Wells Fargo and Unnamed Financial Institution,

referred business to Genuine Title in exchange for marketing services provided by Genuine Title. In addition to receiving the marketing services, Genuine Title made cash payments of tens of thousands of dollars to Todd Cohen's wife, Elaine Oliphant Cohen.

JURISDICTION AND VENUE

6. This Court has subject-matter jurisdiction over this action because the action is "brought under Federal consumer financial law," 12 U.S.C. § 5565(a)(1), presents a federal question, 28 U.S.C. § 1331, and is brought by an agency of the United States, 28 U.S.C. § 1345. This Court has supplemental jurisdiction over the state law claims because those claims are so related to the federal claims that they form part of the same case or controversy. 12 U.S.C. § 1367(a).

7. Venue is proper in this district because a substantial amount of the transactions, acts, practices, and courses of conduct at issue occurred within this district, Wells Fargo and Chase maintain offices and do business in this district, and Cohen and Oliphant Cohen reside in this district. 28 U.S.C. § 1391(b), (c); 12 U.S.C. § 5564(f); 12 U.S.C. § 2614.

PARTIES

8. The Bureau is an agency of the United States charged with regulating the offering and providing of consumer-financial products and services under "Federal consumer financial laws," 12 U.S.C. § 5491(a), including RESPA and the Consumer Financial Protection Act of 2010 ("CFPA"). 12 U.S.C. § 5481(12)(M), (14). The Bureau has independent litigating authority, 12 U.S.C. § 5564(a)-(b), including the authority to enforce RESPA and the CFPA. 12 U.S.C. § 2607(d)(4).

9. The CPD enforces regulatory and consumer-protection laws, including the Maryland Consumer Protection Act., Md. Code Ann., Com. Law §§ 13-101 through 13-501 (2013 Repl. Vol.) (“CPA”).

10. Defendant Wells Fargo is the main operating subsidiary of the holding company Wells Fargo & Company. Wells Fargo Home Mortgage is a division of Wells Fargo Bank, N.A. and is a licensed mortgage lender. Wells Fargo offers and provides real-estate-settlement services to consumers primarily for personal, family, or household purposes, including but not limited to the origination of federally related mortgage loans by the taking of loan applications, loan processing, and the underwriting and funding of loans. *See* 12 U.S.C. § 2602(3). Wells Fargo is therefore a “covered person” under the CFPA. 12 U.S.C. § 5481(6), (15)(A)(iii). Wells Fargo is also a “merchant” under CPA § 13-101(g) because it offers or makes consumer credit available to consumers.

11. Defendant Chase is an operating subsidiary of the holding company JPMorgan Chase & Company. Chase offers and provides real-estate-settlement services to consumers primarily for personal, family, or household purposes, including but not limited to the origination of federally related mortgage loans by the taking of loan applications, loan processing, and the underwriting and funding of loans. *See* 12 U.S.C. § 2602(3). Chase is therefore a “covered person” under the CFPA. 12 U.S.C. § 5481(6), (15)(A)(iii). Chase is also a “merchant” under CPA § 13-101(g) because it offers or makes consumer credit available to consumers.

12. Defendant Todd Cohen was a loan officer for Wells Fargo and Unnamed Financial Institution. While employed by Wells Fargo and Unnamed Financial Institution, in connection with originating federally related mortgage loans to consumers primarily for personal, family, or household purposes, Todd Cohen provided “real estate settlement services,” including but not

limited to the taking of loan applications and loan processing. *See* 12 U.S.C. § 2603(3). Therefore, Todd Cohen was a “covered person” under the CFPB. 12 U.S.C. § 5481(6), (15)(A)(iii). Todd Cohen is also a “merchant” under CPA § 13-101(g) because he offered or made consumer credit available to consumers.

13. Defendant Elaine Oliphant Cohen is married to Todd Cohen.

FACTS

A. Genuine Title provided valuable marketing services to loan officers in exchange for referrals of business.

14. Genuine Title provided services in connection with real-estate settlements. Genuine Title’s services included title searches, title examinations, the provision of title certificates and title insurance, and the handling of the processing and closing, or settlement, of real-estate transactions. The majority of Genuine Title’s settlement services were for refinance transactions.

15. A consumer refinancing a mortgage ordinarily does not have a preferred title company; instead, a consumer typically relies on the loan officer processing the mortgage to recommend a title company. From 2009 through 2013, Genuine Title engaged in a scheme in which it provided marketing services to loan officers and, in exchange, the loan officers referred settlement-service business for federally related mortgages to Genuine Title by recommending Genuine Title to borrowers (the “Marketing Services Scheme”).

16. Through the Marketing Services Scheme, Genuine Title and the loan officers involved in the scheme took advantage of a hot mortgage refinancing market and very low interest rates. Genuine Title provided substantial amounts of marketing services to loan officers as part of the scheme, and it resulted in referrals of business on a large number of loans to Genuine Title, as described below.

17. Loan officers typically are paid by commission. Through the Marketing Services Scheme, Genuine Title offered loan officers valuable services to increase the amount of business they generated, and thus the commissions they would earn. The scheme was also intended to increase the amount of business generated by the participating loan officers and, through referrals, to increase Genuine Title's profits.

18. Through the Marketing Services Scheme, Genuine Title provided and paid for a variety of marketing services to loan officers. For example, Genuine Title purchased marketing leads – data on consumers likely to refinance a mortgage – from a third-party vendor and provided the leads to loan officers at Wells Fargo and Chase. In exchange, the loan officers referred loans for closing to Genuine Title.

19. For other loan officers, Genuine Title provided additional marketing services. For these loan officers, Genuine Title not only analyzed and purchased leads from a third-party vendor, it also paid for marketing letters directed to the consumer leads to be printed, folded, stuffed into envelopes, and mailed.

20. Although different loan officers worked out slightly different arrangements with Genuine Title, loan officers participating in the Marketing Services Scheme did not pay for the full cost of the leads, the printing and processing of the marketing materials, or the cost of postage to mail the materials to the leads.

B. Wells Fargo loan officers participated in the Marketing Services Scheme.

21. More than 100 loan officers from at least 18 Wells Fargo branches participated in the Marketing Services Scheme. Genuine Title provided marketing services to these loan officers under

agreements or understandings that the loan officers would, in exchange, refer real-estate closings to Genuine Title.

22. Genuine Title provided Wells Fargo loan officers marketing leads that it had analyzed and purchased from a third-party vendor. The loan officers, in turn, submitted the leads to Wells Fargo's advertising department for approval.

23. When submitting the leads to the advertising department, the loan officers also submitted an additional form required by Wells Fargo's internal procedures, known as a List Services Request ("LSR") form. The form required the loan officer to identify the source of the leads and the preapproved marketing letter the loan officer intended to use. Through the LSR form the loan officers informed Wells Fargo that the leads were obtained from Genuine Title.

24. Once Wells Fargo's advertising department approved the list of leads and the loan officer's marketing letter, the loan officer provided the marketing letter and Wells Fargo-branded stationery and envelopes to Genuine Title. Genuine Title then caused the leads to be "merged" with the marketing letter, printed onto Wells Fargo stationery, and folded and inserted into envelopes.

25. In some cases, Genuine Title then returned the ready-to-mail letters to the loan officer and the loan officer used the postage machine in his or her Wells Fargo branch. In other instances, Genuine Title paid for first-class postage for the letters.

26. Some Wells Fargo branch managers were aware that loan officers at their branches were receiving marketing services from Genuine Title. For example, one branch manager knew that marketing materials for loan officers at his branch were paid for by Genuine Title because some loan officers told him of the arrangement directly, because he reviewed LSR forms identifying Genuine Title as the source of the leads submitted by the loan officers, and because the branch manager, at the request of the loan officers,

ordered the Wells Fargo-branded stationery and envelopes that the loan officers used for the mailers created by Genuine Title.

27. Eventually this branch manager told the loan officers there that they could no longer use the postage machine because the branch no longer wanted the expense of funding the mailers. The branch manager did not tell the loan officers to discontinue accepting Genuine Title's assistance, and the loan officers continued to submit leads to the advertising department and to order Wells Fargo stationery through the branch manager.

28. When the loan officers at this branch no longer had access to the branch postage machine, Genuine Title began paying for the cost of postage as well as the other costs of preparing the mailers.

29. Genuine Title and participating Wells Fargo loan officers knew that the Marketing Services Scheme violated applicable laws. In October 2011, a Genuine Title employee emailed one of the printing and mailing companies used by Genuine Title for the Marketing Services Scheme and wrote,

I need you to provide me with some invoices that we will ultimately not use. This is so our clients have records. The true invoices will be sent to [Genuine Title] and we will still pay on Friday's [sic]. Please just put their names in the BILL TO: Section. They will not actually be paying the invoice to you, as [Genuine Title] will do that.

Later that same day, the same Genuine Title employee again emailed the mailing-and-printing company and wrote,

Can we also have "Invoices" for [certain loan officers] Printed, Stuffed, Folded & Posted for 500 each? They would be individual "Fake" invoices for the job you did for them last week. You did a few jobs for them, so we just need fake invoices BILLED TO: [certain loan officers] stating that you Printed, Folded, Stuffed, Posted & Mailed 500 for each.

30. In December 2012, Wells Fargo was named as a defendant in a proposed class action. The action alleged that:

Genuine Title and others offered Wells Fargo ... something of great value ...: leads for new mortgage business. These leads consisted of individuals whom title companies, including Genuine Title, had reason to believe were in the market for mortgage loans.

To sweeten the deal for [Wells Fargo] ... title companies including Genuine Title also “sold” those valuable leads to the banks for less than their fair market value as part of an understanding or agreement that, in return, Wells Fargo ... would refer title/closing business to title companies including Genuine Title.

31. Despite having multiple warnings of the illegal arrangements between its loan officers and Genuine Title – including a federal lawsuit alleging the existence of such agreements – Wells Fargo took no action to stop the Marketing Services Scheme.

32. From 2009 through 2013, Wells Fargo loan officers participating in the Marketing Services Scheme referred to Genuine Title settlement-service business on thousands of loans.

33. Wells Fargo did not have an adequate system in place to identify violations of RESPA resulting from the Marketing Services Scheme.

C. Chase loan officers participated in the Marketing Services Scheme.

34. The Marketing Services Scheme also operated at Chase. Genuine Title purchased leads from a third-party vendor and caused marketing materials branded with Chase’s logo and the loan officer’s contact information to be printed and mailed to the leads from the vendor. In addition to purchasing the leads, Genuine Title paid for the cost of the printing and postage.

35. Loan officers at three Chase branches received marketing services paid for or subsidized by Genuine Title.

36. From 2010 through 2013, six Chase loan officers participating in the Marketing Services Scheme referred settlement-service business to Genuine Title on nearly 200 loans.

37. Chase did not have an adequate system in place to identify violations of RESPA resulting from the Marketing Services Scheme.

D. While Todd Cohen worked for Wells Fargo, he participated in the Marketing Services Scheme.

38. From April 2009 to August 2010, Todd Cohen worked for Wells Fargo as a loan officer.

39. Todd Cohen participated in the Marketing Services Scheme while working at Wells Fargo.

40. In exchange for valuable marketing services, Todd Cohen referred Wells Fargo borrowers to Genuine Title for settlement services.

41. Wells Fargo did not have an adequate system in place to identify Todd Cohen's participation in the Marketing Services Scheme.

42. In addition to Todd Cohen's participation in the Marketing Services Scheme, Genuine Title also made cash payments to Todd Cohen for Wells Fargo loans he referred to Genuine Title for settlement services.

43. Genuine Title did not pay Todd Cohen directly. Instead, to disguise the payments and make them appear more "compliant," Genuine Title paid Todd Cohen's wife, Elaine Oliphant Cohen.

E. Todd Cohen engaged in similar conduct while he worked at Unnamed Financial Institution.

44. In August 2010, Todd Cohen left his job at Wells Fargo, and in February 2011 he began working at Unnamed Financial Institution as a loan officer.

45. As he had done at Wells Fargo, Todd Cohen participated in the Marketing Services Scheme at Unnamed Financial Institution.

46. While Todd Cohen was employed at Unnamed Financial Institution, Genuine Title paid cash payments to Elaine Oliphant Cohen for loans from Unnamed Financial Institution that Todd Cohen referred to Genuine Title for settlement services.

47. Before the Bureau initiated the investigation underlying this Complaint, Unnamed Financial Institution became aware that Todd Cohen was using unauthorized marketing materials and conducted its own thorough investigation. Following its investigation, Unnamed Financial Institution recognized that Todd Cohen's participation in the scheme may violate RESPA and, in April 2012, terminated Todd Cohen's employment.

CAUSES OF ACTION

**Count I: Violations of RESPA
(By the Bureau against All Defendants)**

48. The allegations in paragraphs 1-47 are incorporated by reference.

49. Wells Fargo, Chase, Todd Cohen, and Elaine Oliphant Cohen gave and received fees, kickbacks, or things of value under agreements or understandings that business incident to or a part of a real-estate-settlement service involving federally related mortgage loans would be referred to Genuine Title, in violation of RESPA, 12 U.S.C. § 2607(a).

**Count II: Violations of the CFPA
(By the Bureau against Wells Fargo, Chase, and Todd Cohen)**

50. The allegations in paragraphs 1-47 are incorporated by reference.

51. Wells Fargo's, Chase's and Cohen's RESPA violations, described in Count I, constitute violations of § 1036 of the CFPA. 12 U.S.C. § 5536(a)(1)(A).

**Count III: Violations of the CPA
(By the CPD against Wells Fargo, Chase, and Todd Cohen)**

52. The allegations in paragraphs 1-47 are incorporated by reference.

53. Wells Fargo, Chase, and Todd Cohen participated in the Marketing Services Scheme and made implicit representations in any such scheme. Participation in the Marketing Services Scheme constitutes a false or misleading statement of material fact which has the capacity, tendency, or effect of deceiving or misleading consumers and constitutes an unfair and deceptive trade practices as defined by §§ 13-301(1) of the CPA and is prohibited under § 13-303 of the CPA.

54. Wells Fargo, Chase, and Todd Cohen's failure to disclose to consumers that they were participating in the Marketing Services Scheme constitutes the omission of a material fact which deceives or tends to deceive consumers and constitutes an unfair or deceptive trade practice, as defined by § 13-301(3) of the CPA and is prohibited under § 13-303 of the CPA.

55. Wells Fargo, Chase, and Todd Cohen's failure to advise consumers that in offering and selling mortgage services they were violating RESPA constitutes the omission of a material fact which deceives or tends to deceive consumers and constitutes an unfair or deceptive trade practice, as defined by § 13-301(3) of the CPA and is prohibited under § 13-303 of the CPA.

56. Wells Fargo, Chase, and Todd Cohen's practices are unfair because they have caused and are likely to cause substantial injury to consumers, which consumers cannot reasonably avoid.

The injuries that consumers have suffered as a result of the Marketing Services Scheme are not offset by any benefit to consumers or to competition.

57. Wells Fargo, Chase, and Todd Cohen's unfair and deceptive trade practices as described herein have been numerous and ongoing.

DEMAND FOR RELIEF

Plaintiffs request that the Court, as permitted by 12 U.S.C. § 5565 and 12 U.S.C. § 2607:

- a. permanently enjoin Defendants from giving or receiving money or any thing of value pursuant to an understanding that any real-estate-settlement service business will be referred to any person;
- b. permanently enjoin Defendants from engaging in unfair or deceptive trade practices, including but not limited to violations of the CPA, as permitted by § 13-406 of the CPA;
- c. award damages or other monetary relief against Defendants;
- d. order Defendants to pay redress to consumers, as permitted by § 13-406 of the CPA;
- e. order disgorgement of ill-gotten revenues by Defendants;
- f. impose civil money penalties on Defendants under the CFPA;
- g. impose civil money penalties on Defendants under the CPA, as permitted by § 13-410 of the CPA;
- h. order Defendants to pay the Bureau's costs incurred in connection with prosecuting this action;
- i. order Defendants to pay the CPD's costs incurred in connection with prosecuting this action, as permitted by § 13-409 of the CPA; and
- j. award additional relief as the Court may determine to be just and proper.

Respectfully submitted,

ANTHONY ALEXIS

Enforcement Director

JEFFREY PAUL EHRlich

Deputy Enforcement Director

JOHN C. WELLS

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/s/

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For the Consumer Financial Protection Bureau

DANIEL L. BARNETT

Deputy Attorney General of Maryland

/s/

(signed by Genessa Stout with permission of Jeffrey S. Evans)

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