**UNITED STATES DISTRICT COURT**
**NORTHERN DISTRICT OF ILLINOIS**
**EASTERN DIVISION**

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| COUNTY OF COOK, | ) | |
| | ) | Case No. 1:14-cv-09548 |
| Plaintiff, | ) | |
| | ) | Hon. Gary Feinerman |
| v. | ) | |
| | ) | |
| | ) | |
| WELLS FARGO & CO., et al., | ) | |
| | ) | |
| Defendants. | ) | |

**DEFENDANTS' CORRECTED MOTION TO COMPEL COOK COUNTY TO ANSWER INTERROGATORIES CALLING FOR THE IDENTIFICATION OF THE LOANS THAT THE COUNTY CONTENDS ARE "DISCRIMINATORY" AND THE REASONS WHY THE COUNTY SO CONTENDS FOR EACH SUCH LOAN**

Defendants Wells Fargo & Co., Wells Fargo Financial, Inc., and Wells Fargo Bank, N.A (collectively, "Wells Fargo" or "Defendants"), by their attorneys, respectfully move this Court pursuant to Fed. R. Civ. P. 33 for entry of an order compelling Plaintiff Cook County to answer Interrogatory Nos. 3, 4, 5, 25, 26 and 27. This Motion seeks to compel the County to answer interrogatories regarding the most critical facts at issue in this case—an identification of loans that the County contends are discriminatory and the factual basis for the claim of discrimination on a loan-by-loan basis. The County has steadfastly refused to identify ***any*** allegedly unlawful loans, and there is no good faith basis for its refusal. Fact discovery ends on May 5, 2020, and the County's obstruction is prejudicing Defendants' ability to develop their defenses.

## I. FACTUAL BACKGROUND AND SUMMARY OF ISSUE PRESENTED

This case has now been pending for over five years, and the parties have been in discovery for nearly two years, but the County has still failed to identify even a single incident of unlawful conduct that violated the Fair Housing Act ("FHA"). It is remarkable for a civil rights case to have

proceeded to this stage without the identification of any allegedly discriminatory act beyond rhetoric and accusatory labels. Indeed, to file an administrative complaint of FHA discrimination with the Department of Housing and Urban Development, complainants must state "[w]here did the alleged act of discrimination occur" and must "provide the address."[1] There is no excuse for the County's refusal to tell Defendants what loans this case is about and what it claims Defendants did wrong regarding each loan so identified.

In its original interrogatory answers, the County protested that it could not identify the loans at issue until Wells Fargo produced loan data. But this excuse no longer holds water. The County requested and Defendants produced expansive loan data that is unprecedented in its scope and volume. Specifically, on November 5, 2019, Defendants produced data dating back to 2003 that corresponds to more than 430,000 loans in the loan pool defined by this Court (*see* Dkt. No. 202) (the "Loan Pool"), some of which were originated by Wells Fargo, but many others that were merely serviced by Wells Fargo. This November 5, 2019 production included the borrower race and ethnicity data in Defendants' possession for the loans in the Loan Pool.[2] The County has had this data for nearly four months, yet has still refused to identify the loans it believes reflect unlawful discrimination and the factual basis for each such loan.

The County's most recent excuse for refusing to identify allegedly discriminatory loans is that "of 430,000 loans, roughly half don't have race and ethnicity data" and "it's very critical that [Defendants] go back and get and make sure they've given us all of their race and ethnicity data." (Hr'g Tr. at 40:1-10 (Feb. 3, 2020), excerpts from which are attached hereto as Exhibit A.) The

[1] U.S. DEP'T OF HOUS. & URBAN DEV., *Housing Discrimination Complaint Form* at 5, *available at* https://www.hud.gov/sites/documents/DOC_12150.PDF.

[2] On December 5, 2019, Defendants voluntarily produced additional data corresponding to approximately 12,000 loans in the Loan Pool that might be useful in conducting a fair lending or fair servicing analysis.

County states this is the "key issue" preventing it from identifying the loans it contends are discriminatory. (*Id*. at 40:1.) This excuse is spurious and the County should be required to identify promptly the allegedly unlawful loans for several reasons:

- ***First***, contrary to the County's suggestion, Defendants have produced all of the race and ethnicity data corresponding to the loans in the Loan Pool in their possession, and Defendants have no more race or ethnicity data to produce. No race or ethnicity information has been withheld, and there is no race or ethnicity data "missing" from the production.
- ***Second***, the County was well aware, when it demanded such an expansive Loan Pool, that Defendants would not have any data regarding the borrower race and national origin information corresponding to a substantial portion of the loans falling under the broad definition the County insisted upon. This reality does not prevent the County from identifying any loans it believes violated the FHA based on the race and ethnicity data corresponding to over 216,000 loans that Defendants had in their possession and produced.
- ***Third***, to the extent the County may seek to delay answering these critical interrogatories so the County can pursue a wild goose chase for race and ethnicity data from other lenders that very well may not even exist given statutory retention periods, this Court should not permit such delay especially given the County's inexcusable dilatory conduct and because the County has not even left the starting gate with respect to initiating such a chase.
- ***Fourth***, more importantly, additional race and ethnicity information, even if obtainable from other lenders, would not advance the County's claim of unlawful discrimination against Defendants.

There is no justification for the County to continue to delay its identification of the loans it believes are discriminatory and the reasons on a loan-by-loan basis. Defendants have been prejudiced by

the County's failure to do so because they have been required to focus their entire discovery on the County's generalized allegations of injury, and have not had an opportunity to develop defenses to the County's serious assertions of FHA discrimination. Fact discovery ends on May 5, 2020, and this obstruction can go on no longer. The Court should order the County to fully respond to Interrogatory Nos. 3, 4, 5, 25, 26 and 27 within 14 days.

## II. INTERROGATORIES AT ISSUE

Defendants have served several interrogatories requesting that the County (a) identify the loans it claims are at issue in this case, and (b) describe why the County claims each such loan identified is discriminatory. These interrogatories are set forth in full below, along with a summary of the County's response. Interrogatories 3 through 5 were served on August 22, 2018 and Interrogatories 25- 26 were served on June 10, 2019.

- **Interrogatory No. 3:** Identify all loans that You contend were part of, affected by, or evidence Wells Fargo's alleged "equity stripping scheme."

In response to this interrogatory, the County directed Defendants to examine unidentified "documents being produced," claiming "the burden of deriving or ascertaining the answer will be substantially the same for either party." (Cook County's First Am. Resp. and Objections to Defs.' Second Set of Interrogatories at 6 (served April 8, 2019), attached hereto as Exhibit B.) The County has failed to provide a complete answer to Interrogatory No. 3 that identifies the loans that it contends evidence the purported "equity stripping scheme."

- **Interrogatory No. 4:** With respect to each loan You identify in response to Interrogatory No. 3, identify the specific acts of discrimination committed by Wells Fargo that You contend caused Your injury.

- **Interrogatory No. 5:** With respect to each loan You identify in response to Interrogatory No. 3, identify the specific acts that You contend were the proximate cause of Your injury.

In response to Interrogatories 4 and 5, the County objected that the interrogatories were "premature, in that Plaintiff's identification of the loans for which Plaintiff is seeking to recover

damages are dependent on the completion of other discovery in this matter, including, for example, the production of documents and information that the Court ordered Defendants to produce on October 31, 2018"—*i.e.*, the loan data. (Exhibit B at 7 (Interrogatory No. 4), and 10 (Interrogatory No. 5).) The County further stated that "for each of the loans identified in response to Interrogatory 3" (although no loans are identified in response to Interrogatory 3) the specific acts of discrimination "are those that comprise Wells Fargo's discriminatory equity stripping scheme." (*Id.* at 8 (Interrogatory No. 4); *see also id.* at 11 (answering Interrogatory No. 5 by stating "Plaintiff states, see response to interrogatory no. 4").) The County then summarized the allegations of the complaint in several bullet points. The County did not identify any conduct regarding any particular loan it contends was discriminatory or proximately caused it injury.

- **Interrogatory No. 25**: Identify all loans that You contend were the subject of discriminatory origination practices by Wells Fargo.
- **Interrogatory No. 26:** Identify all loans that You contend were the subject of discriminatory servicing practices by Wells Fargo.
- **Interrogatory No. 27:** Identify all loans that You contend were foreclosed upon as a result of Wells Fargo's purportedly discriminatory practices.

  In response to Interrogatories 25-27, the County answered, in substance:

  > Subject to, and without waiving the foregoing, Plaintiff states that, within a reasonable period after Defendants produce their complete loan origination, servicing, and foreclosure data and Plaintiff's completion of the analysis of such data, Plaintiff will provide Defendants with a list of residential mortgage loans that Plaintiff contends were the subject of discriminatory origination practices by Defendants.

(Cook County's First Am. Resp. and Objections to Defs.' Third Set of Interrogatories (served Oct. 30, 2019) at 43 (Interrogatory No. 25), attached hereto as Exhibit C; *see also id.* at 44 (responding that Interrogatory Nos. 26 and 27 are "premature").) Wells Fargo produced its loan data nearly four months ago on November 5, 2020, and while the County promised to provide a list identifying

loans the County believes were the subject of allegedly discriminatory origination practices, servicing practices, and foreclosure practices, it has since refused to provide such a list.

## III. THE COUNTY MUST IDENTIFY THE LOANS IT CONTENDS VIOLATED THE FHA, AS WELL AS THE REASONS WHY FOR EACH LOAN SO IDENTIFIED

The time for the County's generalized aspersions about "the mortgage loans [Wells Fargo] discriminatorily originated and/or serviced" is over. (*See, e.g.*, Pl.'s Supp. Reply Mem. of Law in Opp'n to Defs.' Mot. to Compel (Jan. 29, 2020), Dkt. No. 308 at 9.) The County received Wells Fargo's loan data months ago, yet has still failed to identify a single "discriminatory" loan, let alone the reasons the County believes any loan violated the FHA.

The County does not, and cannot, argue that the interrogatories at issue in this Motion seek irrelevant information or that it would be too burdensome to provide complete and fulsome responses. Indeed, these are the most important interrogatories in the case, and go directly to the heart of the County's FHA claim. Absent an order from this Court, the County will not commit to a deadline by which it will identify the allegedly discriminatory loans and the reasons. The justifications offered by the County for its failure to meet its obligations in discovery are pretextual. The County's refusal to answer these foundational interrogatories represents an obvious effort to obstruct Wells Fargo's ability to develop its defenses, and with fact discovery ending on May 5, 2020, this refusal is prejudicing Wells Fargo.

### A. Defendants Have Produced All Race and National Origin Data Corresponding to the Loans in the Loan Pool in Their Possession, and the County has the Data It Needs to Identify the Loans at Issue in this Lawsuit

On November 5, 2019, Defendants produced the data in their possession regarding the race and national origin of the borrowers who received the loans in the Loan Pool. This fact has been stated to the County both verbally and in writing. At the February 3, 2020 hearing before this Court, counsel for Defendants again confirmed:

- "We've produced the race and ethnicity data that Wells Fargo has in its possession, custody and control for all of the loans in the loan pool for which we have it." (Ex. A at 40:25-41:2.)
- "[T]here is no more race data in Wells Fargo's possession custody or control to produce. All of the race data that we have has been produced." (*Id.* at 41:12-14.)

Defendants produced race and ethnicity information for 216,870 loans out of the 430,402 loans in the Loan Pool. Defendants do not possess race and ethnicity data for the remaining 213,532 loans in the Loan Pool (for the reasons, well known to the County, explained in Section III.B, *infra*).

The County has the race and ethnicity data it needs to identify the loans it believes are "discriminatory" and its reasons. To start, the 216,870 loans for which Wells Fargo produced race and ethnicity data represent a gigantic Loan Pool that is more than sufficiently large to analyze for discrimination. The Court properly asked the County at the February 3 hearing: "Is there anything stopping you from telling the defendants of the loans for which you have race and ethnicity data, how many of them are discriminatory?" (*Id.* at 44:10-12.) The County responded: "[I]f I'm missing a big chunk of loans, it throws off the entire statistical analysis because I don't know whether to include them or not to include them." (*Id*. at 44:16-18.) The response is nonsensical. It is not Defendants' responsibility to tell the County how to conduct an analysis, but the Supreme Court has found a pool of as few as 77 individuals large enough to conduct statistical testing for discrimination. *See Ricci v. DeStefano*, 557 U.S. 557, 566, 586–87 (2009). The County has the same data that Defendants have regarding the race and ethnicity of borrowers who received the loans in the Loan Pool, and it should proceed with whatever analysis it deems appropriate in the context of the available information.

Further, the County's track record in the parallel Bank of America action pending before Judge Bucklo confirms beyond a doubt that the County should be able to identify the allegedly discriminatory loans at issue ***now***, notwithstanding identical complaints about race and ethnicity data that Bank of America did not possess and did not produce. As recently as September 2019 the County filed a motion asserting that "113,195" loans in the Bank of America loan pool "are missing" race and ethnicity data. (Pl.'s Mot. to Compel Defs.' Production of Loan Data, *Cnty. of Cook v. Bank of Am. Corp., et al.*, No. 1:14-02280 (N.D. Ill. Sept. 16, 2019), Dkt. No. 337 at 10.) Yet, the record confirms that by May 2019—four months ***before*** the County filed its motion complaining about supposedly missing race and ethnicity data—the County had ***already*** "produced a list of loans originated by Countrywide where discrimination in origination took place" and the Court set a two-week deadline for the County to "produce the Countrywide loans where discrimination allegedly took place in the servicing of loans." (Order, *Cnty. of Cook v. Bank of Am. Corp., et al.*, No. 1:14-02280 (N.D. Ill. May 1, 2019), Dkt. No. 290 at 1.) The County was required to and did identify the loans it believes are at issue in the Bank of America case, and it should make those identifications here too.

### B. The County was Well Aware—At the Time It Demanded Such an Expansive Loan Pool—that Defendants Would Not Have Borrower Race or National Origin Data Corresponding to a Substantial Portion of the Loans Under the Broad Definition

At the hearing before this Court on February 3, 2020, counsel for the County said that the "key issue" preventing the County from identifying discriminatory loans is that "of 430,000 loans roughly half don't have race and ethnicity data." (Ex. A at 40:1-2.) The County has been well aware since September 2018—at which time it demanded such an expansive Loan Pool—that Defendants would not have any data regarding the borrower race and national origin information corresponding to a substantial portion of the loans falling under the definition the County insisted

upon. That conclusion is obvious to anyone with a basic understanding of the operation of the Home Mortgage Disclosure Act ("HMDA") and the standard method of operation in the mortgage lending industry.[3] Unsurprisingly, for these very same reasons Bank of America did not possess race or national origin information for 113,000 loans, and the County has nevertheless identified the loans it believes are at issue in that parallel case.

Based on the County's demand—"after much pulling of teeth" to even understand its position—the Court defined the Loan Pool for purposes of discovery as follows: "loans that Defendants (1) originated, purchased, ***or*** otherwise acquired, ***and*** (2) securitized, sold ***or*** serviced" dating back to "January 1, 2003." (Dkt. No 202 at 1 (original emphasis).) More than a year before Wells Fargo produced its data, it explained that race and ethnicity data would not be available for certain types of loans if the Loan Pool was defined in the expansive manner the County demanded:

> To start, financial institutions are only required to collect borrower race and ethnicity information at the loan origination stage. Home Mortgage Disclosure Act, 12 U.S.C. §2801 *et seq, and implemented by* 12 C.F.R. § 203 *et seq.* Thus, Wells Fargo generally does not possess any borrower race or ethnicity information for loans that Wells Fargo did not originate but simply serviced. Without such demographic information, Wells Fargo could not have discriminated against borrowers in processing loan modification requests or making foreclosure determinations.
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> Second, Wells Fargo is not required to collect or report borrower race and ethnicity data corresponding to second-lien HELOCs. As Wells Fargo explained in the conferral process, Wells Fargo generally does not have any race information corresponding to HELOCs.

(Defs.' Mem. in Supp. of Mot. for Protective Order (Aug. 28, 2018), Dkt. No. 181 at 9, 13.)[4]

[3] HMDA's implementing regulation, Regulation C, was transferred to 12 C.F.R. pt. 1003 in 2018, and in 2019 a significant expansion of the loans covered by HMDA took effect. Although some of the provisions cited herein have been amended, the operative regulations for the time period at issue are as they appeared in 12 C.F.R. pt. 203 (2017).

[4] The County further stated its recognition, at the hearing before this Court on May 15, 2018, that "[w]e're going to be missing things" because of the long reach-back of the period for collecting data, *i.e.*, back as far as 2003. (Hr'g Tr. at 20:2-3 (May 15, 2018), excerpts from which are attached hereto as Exhibit D.) The County appeared to concede that data for earlier years might not be as

Given this background, the County has no reasonable basis for expressing surprise that the Loan Pool contains many loans as to which race and ethnicity information was never populated in Wells Fargo's systems because they were not HMDA-reportable by Wells Fargo, and thus Wells Fargo did not collect and does not possess race or ethnicity data. Most prominently, this includes home equity lines of credit ("HELOCs") and home equity loans for purposes other than home improvement (*see* 12 C.F.R. § 203.4(c)(3) (optional, not required, for lender to report race and ethnicity data)), and loans that Wells Fargo purchased or acquired (*i.e.*, did not originate). *See id.* § 203.4(b)(2) (optional, not required, for purchaser to report race and ethnicity information); *see also id.* § 203.4(d)(5)-(6) (financial institutions shall not report purchasing only of servicing rights or loans acquired as part of a merger or acquisition). The County's continued complaints about race and ethnicity data that Wells Fargo does not possess demonstrate a fundamental lack of familiarity with the mortgage industry, HMDA, and fair lending analyses.

And for loans from 2003 or earlier that were still being serviced as of January 1, 2003 such that they fall within the Loan Pool, Wells Fargo no longer has any race and ethnicity information that was collected and reported pursuant to HMDA. Wells Fargo collected and reported race and ethnicity information to the federal government yearly, and was under no obligation to retain the data. In 2003, HMDA required (and still requires today) that an institution "retain a copy" of its

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fulsome as data for more recent years. That point has been proven accurate as some data (beyond race and ethnicity) is no longer available for loans in the Loan Pool, which includes loans that originated in some cases in the 1990s and earlier, and loans that have been inactive for over a decade. The search for data corresponding to an expansive Loan Pool over an expansive time period, where many loans were originated and have been inactive for over a decade, imposed significant burdens on Defendants, and the Court sought to somewhat balance the burden by stating: "The civil rules don't require the defendants to nicely package the data that's produced to the plaintiff"; rather, "[y]ou give the data to the plaintiff, and you say to the plaintiff, 'You make sense of this. We're not going to collate it for you … you don't have to put everything together for the plaintiff. You just say, 'Here's your data.'" (*Id.* at 14:3-4, 15:9-19.)

LAR submission containing the race data the institution as required to collect and report "for a period of not less than three years." 12 C.F.R. § 203.5(a). Thus, HMDA required only that the information concerning loans from 2003 and earlier be retained until 2006 at the latest—*i.e.*, 8 years before the County's lawsuit was even filed. The County's own delay in waiting until November 28, 2014 to file this case is to blame.

### C. The Court Should Not Permit the County to Delay Identifying the Loans at Issue So It can Initiate a Wild Goose Chase for Race and Ethnicity Data from Other Lenders that May Not Even Exist

At the February 3, 2020 hearing the County conceded that Wells Fargo "may not have the origination data" about the borrower's race and ethnicity if "the loan was originated by [some other institution] and Wells Fargo's only function is acting as a servicer." (Ex. A at 42:21-25.) However, the County speculated that it may try and "go and get [race and ethnicity data] by subpoena." (*Id.* at 43:2.) The Court should not allow the County to delay identifying the loans it believes are discriminatory and the factual basis for its identification of each such loan so the County can begin a wild goose chase for race and ethnicity data from other lenders. Allowing such a chase would derail the Scheduling Order in this matter that closes fact discovery on May 5, 2020. (*See* Dkt. No. 238.) Moreover, the chase is highly likely to be futile and, even if successful, would not advance the County goal of proving unlawful discrimination.

As an initial matter, no amount of chasing could ever result in collection of race and ethnicity information for loans in the Loan Pool from 2003 and prior, many of which date back to the 1990s and even earlier. (*See supra* at Section III-B.) This accounts for 128,512 loans in the Loan Pool where race and ethnicity information is not populated.

Further, at the February 3, 2020 hearing the County wrongly suggested that for loans that were not HMDA-reportable, Wells Fargo nevertheless "would be able to identify" the entity "who

originated the loan." (Ex. A at 42:25-43:1.) The loan data provided by Wells Fargo reveals, in appropriate circumstances, the institution from which Wells Fargo acquired a loan.[5] But that does not mean that the institution from which Wells Fargo acquired the loan was necessarily the institution that originated the loan such that it collected and reported the borrower's race information pursuant to HMDA. Wells Fargo does not have that information for acquired loans, of which there are 72,436 loans in the Loan Pool where race and ethnicity information is not populated. While it is possible that the same entity from which Wells Fargo acquired a loan also originated the loan, in many circumstances, that may not be true, and even more delay would result if the County sought to issue subpoenas to even more entities that the initial subpoena recipients identify.

Even if Wells Fargo had data identifying the originating institution for acquired loans (which it does not), it is highly likely that efforts to subpoena additional data would fail. The turmoil in the mortgage lending industry over the period of time stretching back to January 1, 2003 resulted in numerous lenders closing shop for several reasons, including mergers, acquisitions, and outright failures, and in many situations there may be no existing entity to subpoena. Even if there was an entity to subpoena, it is highly likely that many of the subpoenaed lenders would no longer possess the data for the same reasons that Wells Fargo does not have data for loans from 2003 and earlier—namely, that HMDA only requires retention for three years. *See* 12 C.F.R. § 203.5(a).

Moreover, the County's threat to use "whatever other means we need" to obtain race and ethnicity data is simply another ruse to obstruct discovery on the very foundation of the case. (Ex. A at 50:25.) The County has had Wells Fargo's loan data for nearly four months and has not issued a single subpoena to another lender. Issuing such subpoenas, adjudicating the likely objections and

[5] The loan data includes fields that provide the "Acquisition_ID" and "Acquisition_Name."

motions to quash of third party lenders, and searching for responsive information would take considerable time and would prevent the parties from completing fact discovery. The County's own delay in beginning its proposed third-party subpoena goose chase with the information available to it is another reason the Court should nip this in the bud, and direct the County to provide the facts at the heart of this case now. Not surprisingly, in spite of similar complaints about unavailable race and ethnicity information, the County identified the allegedly "discriminatory" loans in its parallel case against Bank of America without issuing a single subpoena to a third-party lender. (*See supra* at 8.)

### D. Additional Race and Ethnicity Information would Not Advance the County's Claim of Unlawful Discrimination

The County has argued for additional information on race and ethnicity merely for some vague concept of ***completeness***, but it has yet to articulate how this additional information would advance its claim of unlawful discrimination. It is unfathomable that the County could accuse the Defendants of discrimination if the Defendants themselves did not know the race or ethnicity of the borrowers. Yet, the County's statements at the February 3 hearing indicate that it intends to lump together in one statistical analysis the loans for which race and ethnicity data was available and the loans for which race and ethnicity data was not available. (Ex. A at 44:16-17 ("I'm missing a big chunk of loans, it throws off the entire statistical analysis . . .").) Differences in treatment cannot be measured by including situations in which the race and ethnicity of the borrowers was not known to Defendants.[6] This is not a circumstance in which turning over another stone might reveal discrimination that is not demonstrable from the data already available.

[6] Implicit in the County's request is an untenable assumption that Defendants might discriminate unlawfully in situations in which they do not know the race or ethnicity of the borrower even if Defendants do not discriminate unlawfully when they do know the borrowers' race or ethnicity.

### E. The County's Delay in Identifying the Loans at Issue and the Reasons Why the County Believes Each Loan Violated the FHA Is Prejudicing Wells Fargo

The County's identification of the loans it believes are "discriminatory," and the factual support for such a contention on a loan-by-loan basis, is critical to the ability of Defendants to develop their defenses. Such identifications are usually the first step in analyzing any FHA complaint. But the County continues to hide the facts, assuming that it even has any to produce. Defendants are substantially prejudiced by the County's refusal to make these case-critical identifications because they have not been able to begin reviewing the loans to develop defenses as to why they do not give rise to FHA liability. Wells Fargo has had to shoot at ghosts in rebutting the County's conclusions and labels. The County's refusal is also depriving Defendants of the ability to take any follow-up discovery that may be necessary relating to the loans identified. Throughout this litigation, the County has repeatedly insisted that it cannot and will not produce documents relevant to the County's alleged injuries and damages until after the County has identified the properties securing loans it believes violated the Fair Housing Act. Fact discovery closes on May 5, 2020, and this must end.

The County's obstruction is an obvious attempt to sandbag Wells Fargo. Rather than identify the facts at the heart of this case, the County seeks to embroil the parties and the Court in litigation over tangential and peripheral discovery disputes. The County's efforts to delay the appropriate shift in focus to the merits of this lawsuit and whether the County has any evidence of FHA violations suggests what other courts have found to be true in other similar FHA cases that have reached summary judgment: no such evidence exists.

## IV. CERTIFICATION PURSUANT TO FED. R. CIV. P. 37(a)(1)

Pursuant to Rule 37(a)(1) of the Federal Rules of Civil Procedure and Local Rule 37.2, counsel for Wells Fargo hereby certifies that they have conferred with counsel for the County in a

good-faith effort to resolve by agreement the issues raised in this Motion. Specifically, counsel for Wells Fargo and the County exchanged numerous letters regarding Wells Fargo's requests seeking the County's identification of the loans that the County believes are discriminatory and the reasons the County holds its belief as to each loan so identified. (*See* letters dated November 14, 2019, December 27, 2019, January 3, 2020, January 14, 2020, January 18, 2020, January 22, 2020, and January 27, 2020, copies of which are attached as Group Exhibit E.) The parties conferred telephonically in good faith regarding their respective positions on the issues in the foregoing motions but were unable to reach agreement on two occasions: (1) on December 19, 2020 from 11:30 a.m. to 2:15 p.m. CT; in attendance were Abram Moore, Olivia Kelman, Nicole Mueller, and Lanette Martin in Chicago and Miami on behalf of Defendants and Kristi Stahnke McGregor, James Evangelista, Birt Reynolds, Leigh Smith, Jennifer Czeisler, and Kimberly Parker in unknown locations on behalf of Plaintiff; and (2) on February 14, 2020 from 11 a.m. to 12:15 p.m.; in attendance were Paul Hancock, Abram Moore, Olivia Kelman, Nicole Mueller, Lanette Martin, and Nelson Hua in Miami and Chicago on behalf of Defendants and Kristi Stahnke McGregor, James Evangelista, Birt Reynolds, Jennifer Czeisler, and Kimberly Parker in unknown locations on behalf of Plaintiff.

## V. CONCLUSION

Absent an order from this Court to identify promptly the loans it believes to be discriminatory and the reasons for the assertions, the County will continue the game of delay. For the reasons set forth herein, Defendants respectfully request that the Court order the County to fully answer Interrogatory Nos. 3, 4, 5, 25, 26, and 27, within fourteen (14) days of the date of the order and to grant such other relief as the Court finds just and equitable.

Dated: March 3, 2020

Respectfully submitted,

WELLS FARGO & CO., WELLS FARGO FINANCIAL, INC., AND WELLS FARGO BANK, N.A

By: */s/ Abram I. Moore*

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**CERTIFICATE OF SERVICE**

I hereby certify that on March 3, 2020, I caused a true and correct copy of the foregoing to be served upon counsel of record as of this date by filing same through the ECF system.

*/s/ Abram I. Moore*