

United States Senate

WASHINGTON, DC 20510

September 22, 2016

Secretary Tom Perez
Department of Labor
200 Constitution Ave NW
Washington DC 20210

Administrator David Weil
Wage and Hour Division
Department of Labor
200 Constitution Ave NW
Washington DC 20210

Dear Secretary Perez and Administrator Weil:

We write to ask you to open an investigation into whether Wells Fargo has violated the Fair Labor Standards Act (FLSA) with respect to its account executives, bank tellers, branch managers, and customer service representatives.

As you know, earlier this month, the Consumer Financial Protection Bureau (CFPB) entered into a consent order with Wells Fargo.¹ The consent order notes that Wells Fargo associates opened as many as 1.5 million unauthorized deposit accounts and submitted over 560,000 fraudulent credit card applications during the period in question.² As a result of these actions, the CFPB and its partner entities fined Wells Fargo a combined \$185 million for their actions – the CFPB’s \$100 million portion of this fine is the largest in the agency’s history.³

In addition to this vast consumer fraud, according to the CFPB, the investigation of Wells Fargo also uncovered a workplace characterized by stringent sales quotas and aggressive incentives imposed on its employees, and staggering neglect by management of the obvious consequences to consumers of those quotas and incentives.⁴ As CFPB Director Richard Cordray

¹ Consumer Financial Protection Bureau, “Consumer Financial Protection Bureau Fines Wells Fargo \$100 Million for Widespread Illegal Practice of Secretly Opening Unauthorized Accounts (press release)” (September 8, 2016) (online at <http://www.consumerfinance.gov/about-us/newsroom/consumer-financial-protection-bureau-fines-wells-fargo-100-million-widespread-illegal-practice-secretly-opening-unauthorized-accounts/>).

² Consumer Financial Protection Bureau, *Administrative Proceeding 2016-CFPB-0015: Consent Order in the Matter of Wells Fargo Bank, N.A.* (September 8, 2016) (online at http://files.consumerfinance.gov/f/documents/092016_cfpb_WFBconsentorder.pdf).

³ Consumer Financial Protection Bureau, “Consumer Financial Protection Bureau Fines Wells Fargo \$100 Million” for Widespread Illegal Practice of Secretly Opening Unauthorized Accounts (press release)” (September 8, 2016) (online at <http://www.consumerfinance.gov/about-us/newsroom/consumer-financial-protection-bureau-fines-wells-fargo-100-million-widespread-illegal-practice-secretly-opening-unauthorized-accounts/>).

⁴ Emily Glazer, “How Wells Fargo’s High-Pressure Sales Culture Spiraled Out of Control,” *Wall Street Journal* (September 16, 2016) (online at <http://www.wsj.com/articles/how-wells-fargos-high-pressure-sales-culture-spiraled-out-of-control-1474053044>).

said in his press call announcing the consent order, “Wells Fargo built an incentive-compensation program that made it possible for its employees to pursue underhanded sales practices, and it appears that the bank did not monitor the program carefully.”⁵

There is no excuse for participating in fraudulent conduct, and it is entirely appropriate for those Wells Fargo employees implicated in this illegal scheme to be held accountable to the full extent of the law. But the suggestion last week by Chief Executive John Stumpf that “[t]here was no incentive to do bad things” at Wells Fargo⁶ – a company that fired 5,300 employees over five years due to improper selling but made little effort to change its policies⁷ – does not appear to be grounded in reality. In the wake of the CFPB’s announcement, dozens of former and current Wells Fargo employees have come forward to describe the lengths they went to in order to meet the bank’s aggressive sales quotas.⁸ When quotas weren’t met, employees faced threats of termination; mandated hours of unpaid overtime; harassment; and other forms of retaliation.⁹ For years Wells Fargo employees have described a management culture characterized by “mental abuse,” being forced to work overtime “for what felt like after-school detention” during the week and on weekends, and being “severely chastised and embarrassed in front of 60-plus managers.”¹⁰

A June 2016 report from the National Employment Law Project, “Banking on the Hard Sell,”¹¹ documents the pervasiveness of these kinds of practices across the industry. Even in this context, however, Wells Fargo stands out, given allegations that the bank repeatedly violated wage and hour provisions in the FLSA by denying employees overtime pay for hours worked in excess of 40 hours a week. These complaints go back as far as 1999 and cut across many of the different business groups within Wells Fargo, including the insurance, mortgage, and retail banking groups. For example:

⁵ Richard Cordray, “Prepared Remarks of Richard Cordray Director of the Consumer Financial Protection Bureau on the Wells Fargo Enforcement Action” (September 8, 2016) (online at <http://www.consumerfinance.gov/about-us/newsroom/prepared-remarks-richard-cordray-director-consumer-financial-protection-bureau-wells-fargo-enforcement-action-press-call/>).

⁶ Emily Glazer and Christina Rexrode, “Wells Fargo CEO Defends Bank Culture, Lays Blame with Bad Employees,” *Wall Street Journal* (September 13, 2016) (online at <http://www.wsj.com/articles/wells-fargo-ceo-defends-bank-culture-lays-blame-with-bad-employees-1473784452>).

⁷ Consumer Financial Protection Bureau, *Administrative Proceeding 2016-CFPB-0015: Consent Order in the Matter of Wells Fargo Bank, N.A.* (September 8, 2016) (online at http://files.consumerfinance.gov/f/documents/092016_cfpb_WFBconsentorder.pdf).

⁸ Matt Egan, “Workers tell Wells Fargo horror stories,” *Time* (September 9, 2016) (online at <http://money.cnn.com/2016/09/09/investing/wells-fargo-phony-accounts-culture/>).

⁹ Matt Egan, “Workers tell Wells Fargo horror stories,” *Time* (September 9, 2016) (online at <http://money.cnn.com/2016/09/09/investing/wells-fargo-phony-accounts-culture/>); James Rufus Koren, “Wells Fargo settled over its bogus accounts, but it still faces a fight from customers and ex-employees,” *Los Angeles Times* (September 10, 2016) (online at <http://www.latimes.com/business/la-fi-wells-lawsuits-20160909-snap-story.html>); Anastasia Christman, “Banking on the Hard Sell: Low Wages and Aggressive Sales Metrics Put Bank Workers and Customers at Risk,” *National Employment Law Project* (June 2016) (online at <http://www.nelp.org/content/uploads/NELP-Report-Banking-on-the-Hard-Sell.pdf>).

¹⁰ E. Scott Reckard, “Wells Fargo’s pressure-cooker sales culture comes at a cost,” *Los Angeles Times* (December 21, 2013) (online at <http://www.latimes.com/business/la-fi-wells-fargo-sale-pressure-20131222-story.html>).

¹¹ Anastasia Christman, “Banking on the Hard Sell: Low Wages and Aggressive Sales Metrics Put Bank Workers and Customers at Risk,” *National Employment Law Project* (June 2016) (online at <http://www.nelp.org/content/uploads/NELP-Report-Banking-on-the-Hard-Sell.pdf>).

- Just last month, a former Wells Fargo employee filed a class-action lawsuit in a U.S. district court in Pennsylvania alleging that the bank violated the FLSA in failing to pay account executives overtime wages for hours worked in excess of 40 hours per week.¹²
- In 2014, employees filed a case against Wells Fargo claiming wrongful termination and failure to pay overtime.¹³
- In July of 2013, account executives for Wells Fargo Insurance Services filed a complaint alleging that the company had violated the FLSA in denying them overtime pay and improperly misclassifying them as overtime exempt.¹⁴
- Also in 2013, five Wells Fargo branch managers in California filed lawsuits alleging the bank's failure to pay overtime and wrongful misclassification.¹⁵
- In August of 2011, Wells loan officers filed a complaint against the bank for misclassification and failure to pay overtime going back to 2008.¹⁶ In this suit, the plaintiffs argued that they worked so many hours above 40 that their take-home pay per hour frequently fell below the state's minimum wage.¹⁷
- In 2008, several of the bank's technical support workers alleged they were misclassified under federal and state labor laws and as a result, didn't receive the overtime compensation they were owed. In a news report on this case, it was reported that more than a dozen similar suits were filed that year in 7 different states.¹⁸
- In 2003, five current and former bank tellers at Wells Fargo filed a complaint against the bank for overtime violations going back to 1999.¹⁹

In light of these allegations, recent media accounts of possible wage and hour violations by current and former employees, and the staggering findings of the CFPB investigation, we ask

¹² Louie Torres, "Former employee says bank didn't pay overtime," *Penn Record* (August 22, 2016) (online at <http://pennrecord.com/stories/510999469-former-employee-says-bank-didn-t-pay-proper-overtime>).

¹³ James Rufus Koren (with the Los Angeles Times), "Wells Fargo still faces lawsuits from customers, ex-employees," *Santa Cruz Sentinel* (September 10, 2016) (online at <http://www.santacruzsentinel.com/article/NE/20160910/NEWS/160919974>).

¹⁴ Overtime Pay Laws Resource Center, "\$2 Million Settles Wells Fargo Overtime Lawsuit" (May 12, 2015) (online at <http://www.overtimepaylaws.org/2-million-settles-wells-fargo-overtime-lawsuit/>).

¹⁵ E. Scott Reckard, "Wells Fargo's pressure-cooker sales culture comes at a cost," *Los Angeles Times* (December 21, 2013) (online at <http://www.latimes.com/business/la-fi-wells-fargo-sale-pressure-20131222-story.html>).

¹⁶ Top Class Actions, "Wells Fargo Loan Officer Underpaid Overtime Class Action Settlement" (October 22, 2015) (online at <https://topclassactions.com/lawsuit-settlements/closed-settlements/210771-wells-fargo-loan-officer-unpaid-overtime-class-action-settlement/>).

¹⁷ Chicago Overtime Law Center, "Wells Fargo Settles Overtime Class Action for Mortgage Consultants" (December 29, 2015) (online at <http://www.chicagovertime.com/2015/12/1514.html>).

¹⁸ Shannon Henson, "Tech Workers File FLSA Suit Against Wells Fargo," *Law360* (May 30, 2008) (online at <http://www.law360.com/articles/57871/tech-workers-file-flsa-suit-against-wells-fargo>).

¹⁹ E. Scott Reckard, "Wells Tellers File Lawsuit Alleging Unpaid Wages," *Los Angeles Times* (November 8, 2003) (online at <http://articles.latimes.com/2003/nov/08/business/fi-wells8>).

that you open an investigation into potential violations of the Fair Labor Standards Act by Wells Fargo.

Any such investigation should include a comprehensive inquiry into whether Wells Fargo aggressively skirted overtime laws – failing to pay overtime to bank tellers and associates who stayed late or came in on weekends to meet their sales quotas, or misclassifying salaried bank associates as overtime-exempt to avoid paying the overtime guaranteed to them by the FLSA. Such allegations are especially worrisome on the eve of the December 1, 2016 implementation of the Department’s updated overtime regulations.²⁰ It is critical that the Department investigate Wells Fargo now to ensure that the bank is not poised to skirt the forthcoming rule.

The Wage & Hour Division’s investigation is needed especially in this instance because of the bank’s current strategy of paying settlements without admitting wrongdoing²¹, and then making no changes to its compensation practices. Despite multiple nationwide and regional class actions that have been settled for millions of dollars over the last several years, Wells Fargo persists in its unlawful practices according to the newest employee accounts – and even the massive CFPB settlement does not include an admission of guilt.²²

Last year, Wells Fargo Chief Executive John Stumpf earned \$19.3 million,²³ and the executive who oversaw the account opening frauds, Carrie Tolstedt, is taking home as much as \$125 million as she retires.²⁴ Such executives literally have millions of reasons to peddle the fanciful notion that the company’s culture, policy and practices played no role in encouraging thousands of Wells Fargo employees to drive up customer numbers by any means necessary. Nonetheless, the emerging portrait of the company’s actual behavior suggests potential widespread exploitation of its own workforce in order to facilitate the widespread exploitation of its customer base. Particularly when one considers that the median wage for a bank teller is about \$12 an hour,²⁵ it is the obligation of the Wage and Hour Division to ensure that every Wells employee that has struggled to do the right thing in the face of such exploitation has been fully paid for every hour of work.

²⁰ U.S. Department of Labor, Wage and Hour Division, “Final Rule: Overtime” (May 18, 2016) (online at <https://www.dol.gov/WHD/overtime/final2016/>).

²¹ See, for example, Overtime Pay Laws Resource Center, “\$2 Million Settles Wells Fargo Overtime Lawsuit” (May 12, 2015) (online at <http://www.overtimepaylaws.org/2-million-settles-wells-fargo-overtime-lawsuit/>).

²² Michael Corkery, “Wells Fargo Offers Regrets, but Doesn’t Admit Misconduct,” *New York Times* (September 9, 2016) (online at <http://www.nytimes.com/2016/09/10/business/dealbook/wells-fargo-apologizes-but-doesnt-admit-misconduct.html>).

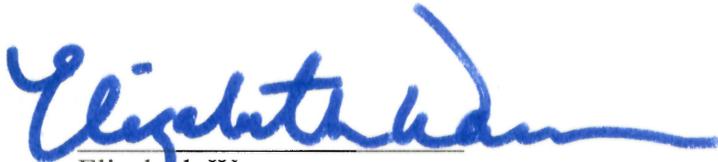
²³ Dakin Campbell, “Wells Fargo Leaves CEO Stumpf’s Pay Unchanged at \$19.3 Million,” *Bloomberg* (March 17, 2015) (online at <http://www.bloomberg.com/news/articles/2015-03-17/wells-fargo-leaves-ceo-stumpf-s-pay-unchanged-at-19-3-million>).

²⁴ Bill Chappell, “Wells Fargo Unit’s Leader Departs With \$125M After Bank Incurs Record Fine,” *National Public Radio* (September 13, 2016) (online at <http://www.npr.org/sections/thetwo-way/2016/09/13/493791920/wells-fargo-units-leader-departs-with-125-million-after-group-incurs-record-fine>).

²⁵ Anastasia Christman, “Banking on the Hard Sell: Low Wages and Aggressive Sales Metrics Put Bank Workers and Customers at Risk,” *National Employment Law Project* (June 2016) (online at <http://www.nelp.org/content/uploads/NELP-Report-Banking-on-the-Hard-Sell.pdf>).

Thank you for looking into this matter. Please contact our staffs if you have any additional questions about my request.

Sincerely,



Elizabeth Warren
United States Senator



Sherrod Brown
United States Senator



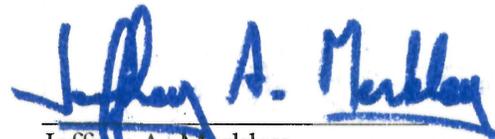
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Mazie K. Hirono
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