

1 **HAGENS BERMAN SOBOL SHAPIRO LLP**

2 Robert B. Carey #011186
3 Donald Andrew St. John #024556
4 2425 East Camelback Road, Suite 650
5 Phoenix, Arizona 85016
6 Telephone: (602) 840-5900
7 Facsimile: (602) 840-3012
8 E-Mail: rcarey@hbsslaw.com
9 andy@hbsslaw.com

7 **HAGENS BERMAN SOBOL SHAPIRO LLP**

8 Steve W. Berman WSBA #12536
9 Tom Loeser WSBA #38701
10 Genessa Stout WSBA #38410
11 1301 Fifth Avenue, Suite 2900
12 Seattle, Washington 98101
13 Telephone: (206) 623-7292
14 Facsimile: (206) 623-0594
15 E-Mail: steve@hbsslaw.com
16 toml@hbsslaw.com
17 genessa@hbsslaw.com

15 *Attorneys for Plaintiffs*

16 UNITED STATES DISTRICT COURT
17 DISTRICT OF ARIZONA

18 GRANT A. GOMEZ and LANIE L.
19 GOMEZ, on behalf of themselves and all
20 others similarly situated,

21 Plaintiffs,

22 vs.

23 WELLS FARGO BANK, N.A. and
24 VALUATION INFORMATION
25 TECHNOLOGY, LLC, d/b/a RELS
26 VALUATION,

27 Defendants.

No.

CLASS ACTION COMPLAINT
(Violations of 18 U.S.C. § 1962; 12
U.S.C. § 2607; Cal. Bus. & Prof. Code
§ 17200, *et seq.*; Unjust Enrichment;
Breach of Fiduciary Duty)

DEMAND FOR JURY TRIAL

TABLE OF CONTENTS

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

	<u>PAGE</u>
I. INTRODUCTION.....	1
II. JURISDICTION AND VENUE.....	3
III. PARTIES.....	3
A. Plaintiffs	3
B. Defendants.....	3
IV. FACTUAL ALLEGATIONS.....	4
A. Wells Fargo	4
B. The National Appraisal Market.....	5
C. Wells Fargo Corrupts the Appraisal System.....	5
1. The Blacklisting of Honest Appraisers	5
D. The Inflated Appraisal Fee Scheme	6
E. The Gomezes' Refinanced Mortgage Transaction was Subject to the Inflated Appraisal Fee Scheme	8
F. Federal Regulation Under RESPA.....	10
V. TOLLING OF THE STATUTE OF LIMITATIONS	13
A. Equitable Estoppel.....	15
B. Equitable Tolling.....	16
VI. CLASS ACTION ALLEGATIONS.....	17
A. Class Definition.....	17
B. Numerosity	17
C. Commonality	17
D. Typicality	18
E. Adequacy.....	18
F. The Prerequisites to Maintaining a Class Action for Injunctive Relief are Readily Apparent.....	18
G. Common Questions Predominate, and the Class Action Device is Superior	19

1 VII. CLAIMS FOR RELIEF..... 19

2 COUNT I Violation of 18 U.S.C. § 1962(c)(d)..... 19

3 A. The Enterprises..... 20

4 1. The Wells Fargo Appraisal Enterprise..... 20

5 2. Alternative Enterprise Allegations: The Wells Fargo Enterprise ... 21

6 B. The Defendants’ Use of the U.S. Mails and Interstate Wire Facilities 22

7 C. Conduct of the RICO Enterprises’ Affairs..... 23

8 D. The Defendants’ Pattern of Racketeering Activity 24

9 E. Damages Caused by the Defendants’ Scheme 24

10 COUNT II VIOLATIONS OF REAL ESTATE SETTLEMENT PROCEDURES

11 ACT AGAINST DEFENDANT RELS VALUATION 12 U.S.C. § 2607(b) 25

12 COUNT III VIOLATIONS OF REAL ESTATE SETTLEMENT PROCEDURES

13 ACT 12 U.S.C. §§ 2607(a), (c) 26

14 COUNT IV UNJUST ENRICHMENT AGAINST DEFENDANT RELS

15 VALUATION 26

16 COUNT V BREACH OF FIDUCIARY DUTY AGAINST DEFENDANT WELLS

17 FARGO (On Behalf of the Broker Subclass)..... 27

18 COUNT VI VIOLATION OF CALIFORNIA UNFAIR COMPETITION LAW

19 AGAINST WELLS FARGO (Cal. Bus. & Prof. Code § 17200, *et seq.*) 28

20 PRAYER FOR RELIEF 31

21 JURY TRIAL DEMANDED 32

20
21
22
23
24
25
26
27
28

1 Plaintiffs, Grant A. Gomez and Lanie L. Gomez, by their attorneys, on behalf of
2 themselves and all others similarly situated, demand a trial by jury, and complain as
3 follows:

4 I. INTRODUCTION

5 1. This action arises from a scheme (“The Inflated Appraisal Fee Scheme” or
6 “Scheme”) between Wells Fargo Bank N.A. (“Wells Fargo”) and Rels Valuation to profit
7 from imposing marked-up appraisal fees on Wells Fargo borrowers and controlling the
8 appraisal process and results. The Scheme works as follows:

9 a. Wells Fargo is one of the largest lenders in the United States for
10 home loans. On many of the loans it underwrites, Wells Fargo requires the borrower to
11 have the property appraised by its affiliate, Rels Valuation.

12 b. Wells Fargo benefits from requiring borrowers to use Rels Valuation
13 both through the profits rolled up to Wells Fargo’s and Rels Valuation’s common parent,
14 and because Wells Fargo gains control of the appraisal process and is able to influence
15 the appraised values assigned to properties on which it is lending.

16 c. Rels Valuation hires an outside appraiser to perform the actual
17 appraisal.

18 d. Relying on its market power derived from its parent Wells Fargo,
19 Rels Valuation demands and appraisers agree to undertake appraisals and to charge Rels
20 Valuation an amount for appraisal services far under the prevailing market rate for
21 appraisals.

22 e. At the closing, the HUD-1 settlement statement presented to the
23 borrower lists as a charge an appraisal fee paid to Rels Valuation that is vastly in excess
24 of the charge incurred by Rels Valuation, in some cases twice as much. There is no
25 disclosure to the borrower of the fact that the actual cost of the appraisal is far less than
26 presented on the closing statement and that the bulk of the fee is simply a markup by Rels
27 Valuation – a fee for no services rendered.
28

1 2. Due to Wells Fargo's market power and the high volume of loans it
2 underwrites, tens of thousands if not hundreds of thousands of borrowers have been
3 victims of this Scheme. If one assumes 100,000 occurrences per year with an inflated fee
4 of \$200 per occurrence, this netted Wells Fargo/Rels Valuation an additional \$20 million
5 per year. Over time this netted Defendants over a hundred million in phony and unearned
6 fees.

7 3. The Scheme works because of: (1) Wells Fargo's insistence that Rels
8 Valuation be the appraisal firm that conducts the appraisal on the borrower's loan; and
9 (2) the secret agreement between Wells Fargo and Rels Valuation to mark up the actual
10 cost of the appraisal and to have the actual appraisal done by a third-party at a fraction of
11 the cost listed on HUD-1. If Wells Fargo did not insist on Rels Valuation's exclusivity,
12 an independent appraiser would charge Wells Fargo the actual cost of the appraisal and
13 Wells Fargo, through its affiliate Rels Valuation, would be unable to skim off hundreds
14 of dollars for no work.

15 4. Plaintiffs and putative Class members are harmed from the Scheme:
16 (1) because they end up paying both the actual cost of their appraisal – the fee the
17 appraiser charged to Rels Valuation – plus the mark-up for no services rendered tacked
18 on by Rels Valuation; and (2) because Wells Fargo, through Rels Valuation, influences
19 the result of the appraisals so that Plaintiffs and Class members do not get the benefit
20 they pay for – an appraisal that accurately reflects the value of the property. Wells Fargo
21 and Rels Valuation benefit from the Scheme through the increase in appraisal business
22 steered to Rels Valuation and the ill-gotten gains rolled up to both companies' parent
23 corporation, Wells Fargo & Co. Through the Inflated Appraisal Scheme, Wells Fargo
24 and Rels Valuation violate the federal Racketeering Influenced and Corrupt Practice Act,
25 the Real Estate Settlement Procedures Act ("RESPA") and state law. In addition, Wells
26 Fargo, when acting as the mortgage broker for Class members' transactions, violates its
27 fiduciary duty to its customers by earning and secret profits on appraisals for itself and its
28 subsidiary, Rels Valuation.

II. JURISDICTION AND VENUE

1
2 5. This Court has subject-matter jurisdiction over this class action pursuant to
3 the Class Action Fairness Act of 2005, which confers federal jurisdiction over class
4 actions where, as here, “any member of a class of plaintiffs is a citizen of a State different
5 from any Defendants” and the aggregated amount in controversy exceeds five million
6 dollars (\$5,000,000). *See* 28 U.S.C. §§ 1332(d)(2) and (6). This Court has personal
7 jurisdiction over the parties because Plaintiffs submit to the jurisdiction of the Court and
8 Defendants systematically and continually conduct business throughout the State of
9 Arizona.

10 6. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1391(b) and (c).
11 Many of the acts and transactions giving rise to the violations of law complained of
12 herein occurred in this District.

13 7. Much of Defendants’ activities and operations have been performed in this
14 District, and Defendants maintain many offices in this District. Wells Fargo has over 25
15 offices in the State of Arizona and conducts operations out of the Wells Fargo Plaza at
16 100 West Washington Street. Rels Valuation hires dozens of appraisers in the State of
17 Arizona.

III. PARTIES

A. Plaintiffs

19
20 8. Plaintiffs Grant A. Gomez and Lanie L. Gomez (the “Gomezes”) are a
21 married couple residing within the State of Arizona. During the Class Period the
22 Gomezes refinanced their home located in Scottsdale, Arizona with a mortgage from
23 Wells Fargo.

B. Defendants

24
25 9. Defendant Wells Fargo Bank, N.A. (“Wells Fargo”) is a national banking
26 association chartered in Sioux Falls, South Dakota. It is headquartered in San Francisco,
27 California. Wells Fargo provides residential mortgages through its division Wells Fargo
28 Home Mortgage.

1 14. Wells Fargo’s wholesale lending channel has underwritten and funded
2 mortgage loans sourced by mortgage loan brokers and other financial intermediaries.

3 **B. The National Appraisal Market**

4 15. With the real estate boom of 2000-2006, the number of transactions in real
5 estate (purchases and refinances) increased significantly. To service the drastic increase
6 in transactions, the number of real estate related service providers also grew
7 tremendously. For example, the number of Realtors in the United States grew from
8 750,000 in 2000 to over 1.3 million in 2006.¹ Likewise Wells Fargo’s fleet of corporate
9 and affiliated mortgage brokers grew as did the number of property appraisers.

10 16. With the growing number of appraisers and increased competition in the
11 appraisal marketplace, the environment was ripe for a market force such as Wells Fargo
12 to exert its will on appraisers, forcing “independent” appraisers to lower the amounts they
13 charged on Wells Fargo loans, while all the while Wells Fargo maintained market rates to
14 its borrowers and kept the excess, all for no additional services rendered.

15 17. Wells Fargo required Plaintiffs and Class members to use Rels Valuation
16 both to reap the significant profits derived from the appraisals on Wells Fargo loans and
17 to control the appraisal process and guarantee that Wells Fargo could close whatever
18 loans it wanted to, irrespective of the actual market values of the properties on which it
19 was lending.

20 **C. Wells Fargo Corrupts the Appraisal System**

21 **1. The Blacklisting of Honest Appraisers**

22 18. Part of Wells Fargo’s Scheme to increase market share and to make as
23 many loans as possible involved the corruption of the appraisal process. Wells Fargo
24 needed appraisals that supported the loans it wished to make, irrespective of the actual
25 values of the properties being appraised.
26
27

28 _____
¹ <http://bubblemeter.blogspot.com/2008/04/realtors-leaving-nar-at-fast-clip.html>.

1 19. To accomplish this objective, Wells Fargo, directly and in conjunction with
2 Rels Valuation, has engaged in a pattern and practice of pressuring appraisers to write an
3 appraisal designed to have the loan underwritten even if the appraisal violates USPAP.²
4 In other words, Wells Fargo is more interested in having the property pass appraisal than
5 it is in determining whether an appraisal is fair and accurate and prepared in accordance
6 with industry standards. If an appraiser does not “play ball” and produce a report
7 affirming the property value or parameters that Wells Fargo expects or wants, it places
8 the appraiser on its “Field Review List,” or some other list of exclusion (“Exclusion
9 List”).

10 20. The Field Review List or Exclusion List is a Wells Fargo database
11 containing the names of appraisers whose reports Wells Fargo will not accept.

12 21. Rels Valuation is a “captive” puppet of Wells Fargo, either by virtue of
13 ownership by a common parent or economic power as its largest client, such that Rels
14 Valuation knows what Wells Fargo wants to accomplish with its blacklist and facilitates
15 Wells Fargo’s Scheme by attacking the appraisals of persons on the list and undercutting
16 valuations, whether warranted or not.

17 **D. The Inflated Appraisal Fee Scheme**

18 22. Not content to increase profits solely from the widespread abuse of good
19 lending practices, and confident in their market power to force their will upon most
20 appraisers, Wells Fargo and Rels Valuation set out to use their combined market power to
21 illegally squeeze additional monies out of home buyers, and have implemented the
22 Inflated Appraisal Fee Scheme.

23 23. Pursuant to the Scheme, Wells Fargo sends to prospective borrowers a
24 Good Faith Estimate detailing an offered loan. In the Good Faith Estimate, Wells Fargo
25 tells the borrower that it requires “an appraisal from an appraiser we select from our
26 approved list.” Wells Fargo then designates the specified appraiser as Rels Valuation.
27

28 _____
² “USPAP” stands for Uniform Standard of Professional Appraisal Practice.

1 24. For most real estate settlement service providers, RESPA forbids one
2 company from requiring the use of another company as this would inherently invite
3 pricing abuse by the required provider to the benefit of itself and the requiring provider –
4 all at the expense of the home buyer. However, RESPA has an exception for lenders,
5 such as Wells Fargo, to permit them to require a specific appraiser, ostensibly because the
6 purpose of the appraisal is supposed to be to protect the lender and thus the lender should
7 be incentivized to get a fair and accurate appraisal. For Wells Fargo, however, the
8 required use exception in RESPA became merely a loophole in the regulation through
9 which it could squeeze extra profits from unknowing and unsuspecting home buyers.

10 25. As part of the Scheme, Rels Valuation then contacts independent appraisers
11 to perform the appraisal and insists that the appraisals be performed at a very low rate.

12 26. Due to its economic clout, and as part of the Scheme, Rels Valuation
13 informs appraisers that if they wish to perform appraisals for Wells Fargo loans, they
14 must agree to a reduced fee that is far below the market rates that the appraiser had been
15 charging. If the appraiser does not agree he or she is removed from the approved
16 appraiser list and/or placed on an Exclusionary List. In addition, appraisers who have
17 already been placed on an Exclusionary List are told that they can only be removed from
18 the Exclusionary List if they agree to become a Rels Valuation approved appraiser, which
19 in turn requires them to perform appraisals for Rels Valuation and Wells Fargo at much
20 lower than market rates.

21 27. When the loan is closed however, Rels Valuation does not pass on the
22 reduced appraisal fees to the home buyer. Instead, it inflates the appraisal fee and
23 represents to borrowers that the appraisal cost is far in excess of the actual cost of the
24 appraisal. There is no disclosure of this markup to the borrower and Rels Valuation
25 performs no additional appraisal services beyond merely forwarding the appraisal to
26 Wells Fargo or the escrow provider for the transaction.

27 28. While the exception to RESPA's required use prohibition allows Wells
28 Fargo to require the use of Rels Valuation, under other RESPA provisions, due to the

1 relationship between Wells Fargo and Rels Valuation, Wells Fargo is required to provide
2 an “Affiliated Business Arrangement” (“ABA”) disclosure to its customers. The ABA
3 disclosure must note “the existence of such an arrangement to the person being referred
4 and, in connection with such referral, [the customer must be] provided a written estimate
5 of the charge or range of charges generally made by the provider to which the person is
6 referred ... at or before the time of the referral....” 12 U.S.C. § 2607.

7 29. While some Wells Fargo customers are told of the affiliated relationship
8 between Wells Fargo and Rels Valuation, none know – or have any reason to suspect –
9 that the appraisal fee set forth on the HUD-1 Settlement Statement is actually far in
10 excess of the actual charge the appraiser made for his appraisal.

11 30. As a *quid pro quo* exchange for the referral from Wells Fargo to Rels
12 Valuation, Rels Valuation gives Wells Fargo visibility into the appraisal process and
13 substantial control over the outcome of the appraisal. This benefit is a “thing of value” as
14 defined in RESPA and is utilized by Wells Fargo to control and maximize its ability to
15 control the mortgage lending process. Even when Wells Fargo makes the RESPA
16 required ABA Disclosures, it nonetheless violates RESPA’s prohibition on referral fees
17 because it gets a thing of value – *i.e.*, control of the appraisal process and outcome –
18 beyond merely the return on its parent’s ownership interest in Rels Valuation.

19 **E. The Gomezes Refinanced Mortgage Transaction was Subject to the Inflated**
20 **Appraisal Fee Scheme**

21 31. In March 2007, the Gomezes took out a mortgage on their residence in
22 Scottsdale, Arizona through Wells Fargo.

23 32. The Gomezes’ transaction was a loan for \$288,000. This loan was a
24 “federally related mortgage loan” as defined in RESPA.

25 33. An initial packet of loan disclosure documents was sent via mail by Wells
26 Fargo to the Gomezes on or about February 22, 2007.

27 34. As part of the Scheme, Wells Fargo required the Gomezes to have their
28 home appraised through Rels Valuation.

1 35. In the HUD-1 Good Faith Estimate dated February 22, 2007, Wells Fargo
2 disclosed that it had a business relationship with Rels Valuation and claimed that the
3 estimated charges for Rels appraisal work was \$50- \$650. This statement was false in
4 that Defendants knew the exact amount Rels would charge and that the actual cost of the
5 appraisal would be under \$300.

6 36. In the same document, Wells Fargo disclosed that it requires use of either
7 Lenders Service, Inc. or Rels Valuation for the appraisal. In the Gomezes' case it was
8 Rels.

9 37. The actual closing statement that the Gomezes received at closing discloses
10 that an appraisal fee of \$495 was paid to Rels Valuation.

11 38. In fact Rels Valuation does not appraise properties and did not appraise the
12 Gomezes' property. Instead, Rels Valuation hired an appraiser on its approved list. Rels
13 Valuation required the appraiser to charge \$200 or less and Rels Valuation skimmed the
14 difference between the amount disclosed at closing, \$495, and the amount incurred by
15 Rels Valuation of \$200 or less.

16 39. On information and believe Rels Valuation has implemented a nationwide
17 scheme whereby Rels Valuation will only hire appraisers who will accept \$250 or less on
18 an appraisal, and the Rels Valuation bills Wells Fargo for an amount that exceeds \$350.

19 40. On information and belief, Rels Valuation paid an independent appraiser a
20 fraction of the appraisal fee it collected from the Gomezes and kept the marked-up
21 portion of the fee.

22 41. On information and belief, Rels Valuation Appraisal performed no work
23 and provided no services toward completion of the Gomezes' appraisal.

24 42. On information and belief, Wells Fargo was able to dictate and control the
25 outcome of the Gomezes' appraisal through its affiliated relationship with Rels
26 Valuation.

27
28

1 **F. Federal Regulation Under RESPA**

2 43. The Real Estate Settlement Procedures Act of 1974 (“RESPA”) was
3 enacted to protect consumers from “unnecessarily high settlement charges caused by
4 certain abusive practices” in mortgage lending. *See* 12 U.S.C. § 2601(a).

5 44. Section eight of RESPA prohibits kickbacks and unearned fees. It provides
6 in relevant part to this Complaint as follows:

7 (a) Business Referrals. No person shall give and no person
8 shall accept any fee, kickback, or thing of value pursuant to
9 any agreement or understanding, oral or otherwise, that
10 business incident to or part of a real estate settlement service
involving a federally related mortgage loan shall be referred
to any person.

11 (b) Splitting charges. No person shall give and no person shall
12 accept any portion, split, or percentage of any charge made or
13 received for the rendering of a real estate settlement service in
connection with a transaction involving a federally related
mortgage loan other than for services actually performed.

14 (c) Fees, salaries, compensation, or other payments. Nothing
15 in this section shall be construed as prohibiting ..., (2) the
16 payment to any person of a bona fide salary or compensation
17 or other payment for goods or facilities actually furnished or
18 for services actually performed...(4) affiliated business
19 arrangements so long as (A) a disclosure is made of the
20 existence of such an arrangement to the person being referred
21 and, in connection with such referral, such person is provided
22 a written estimate of the charge or range of charges generally
made by the provider to which the person is referred...at or
before the time of the referral...; (B) such person is not
required to use any particular provider of settlement services,
and (C) the only thing of value that is received from the
arrangement, other than the payments permitted under this
subsection, is a return on the ownership interest or franchise
relationship...

23 (d) Penalties for violations...

24 ...

25
26 (2) Any person or persons who violate the prohibitions or
27 limitations of this section shall be jointly and severally liable
28 to the person or persons charged for the settlement service
involved in the violation in an amount equal to three times the
amount of any charge paid for such settlement service.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

....

(5) In any private action brought pursuant to this subsection, the court may award to the prevailing party the court costs of the action together with reasonable attorneys' fees.

12 U.S.C. § 2607.

45. RESPA confers on the Secretary of the Department of Housing and Urban Development ("HUD") the authority to prescribe rules and regulations to achieve the statute's purposes. See 12 U.S.C. § 2617(a). The relevant regulation adopted by HUD is known as Regulation X and sets forth in relevant part:

§ 3500.14 Prohibition against kickbacks and unearned fees.

(a) Section 8 violation. Any violation of this section is a violation of section 8 of RESPA (12 U.S.C. 2607) and is subject to enforcement as such under § 3500.19.

(b) No referral fees. No person shall give and no person shall accept any fee, kickback or other thing of value pursuant to any agreement or understanding, oral or otherwise that business incident to or part of a settlement service involving a federally related mortgage loan shall be referred to any person. Any referral of a settlement service is not a compensable service, except as set forth in § 3500.15(g)(1). A business entity (whether or not in an affiliate relationship) may not pay any other business entity or the employees of any other business entity for the referral of settlement service business.

(c) No split of charges except for actual services performed. No person shall give and no person shall accept any portion, split, or percentage of any charge made or received for the rendering of a settlement service in connection with a transaction involving a federally related mortgage loan other than for services actually performed. A charge by a person for which no or nominal services are performed or for which duplicative fees are charged is an unearned fee and violates this section. The source of the payment does not determine whether or not a service is compensable. Nor may the prohibitions of this Part be avoided by creating an arrangement wherein the purchaser of services splits the fee.

...

24 C.F.R. § 3500.14.

1 46. RESPA requires that a settlement service provider disclose any affiliated
2 business arrangement with any other service provider to whom business is referred.

3 RESPA defines “affiliated business arrangement” as:

4 An arrangement in which (A) a person who is in a position to
5 refer business incident to or a part of a real estate settlement
6 service involving a federally related mortgage loan, or an
7 associate of such person, has either an affiliate relationship
8 with or a direct or beneficial ownership interest of more than
9 1 percent in a provider of settlement services; and (B) either
10 of such persons directly or indirectly refers such business to
11 that provider or affirmatively influences the selection of that
12 provider.

13 24 C.F.R. § 3500.15(b)(1); 12 U.S.C. § 2602(7).

14 47. Defendants Wells Fargo and Rels Valuation have an affiliated business
15 arrangement as such term is defined in RESPA.

16 48. The appraisal services provided by independent appraisers and the appraisal
17 fees charged by Rels Valuation and Wells Fargo are settlement services and fees subject
18 to RESPA regulation.

19 49. Under RESPA, Wells Fargo can only refer settlement service to Rels
20 Valuation if “disclosure is made of the existence of such an arrangement to the person
21 being referred and, in connection with such referral, such person is provided a written
22 estimate of the charge or range of charges generally made by the provider to which the
23 person is referred...at or before the time of the referral...”

24 50. Even where an affiliated business arrangement is disclosed, RESPA only
25 permits a referral when the only thing of value received for the referral is the referrer’s
26 normal return on their investment in the affiliated company. Thus, even when disclosed,
27 Wells Fargo and Rels Valuation violate RESPA when Wells Fargo refers appraisal
28 business to Rels Valuation because Rels Valuation gives Wells Fargo visibility into and
control of the appraisal process, which is a thing of value under RESPA.

1 **V. TOLLING OF THE STATUTE OF LIMITATIONS**

2 51. Plaintiffs’ RESPA claims are subject to both equitable estoppel, stemming
3 from Defendants knowingly and fraudulently concealing the facts alleged herein, and
4 equitable tolling, stemming from Plaintiffs’ inability to obtain vital information
5 underlying their claims. Defendants are estopped from relying upon a statute of
6 limitations defense because they purposefully concealed the true cost of the appraisals
7 used in Plaintiffs’ transaction and, therefore concealed that these true costs were marked-
8 up by Rels Valuation for no additional services rendered. In addition, Defendants
9 concealed their affiliation and concealed – on an ongoing basis distinct from the Scheme
10 – that they were using their market power to force appraisers to charge Defendants less
11 than Defendants were, in turn, charging to Plaintiffs for no additional services rendered.
12 Separate and apart from Defendants’ acts of concealment, any applicable statutes of
13 limitation are properly tolled because Plaintiffs did not know and could not have learned
14 the true facts underlying their claims until shortly before filing their Complaint.

15 52. Rels actually take steps to affirmatively conceal the Scheme. On its
16 website it lists fees for appraisal of typical properties for each state, ranging from \$300 to
17 \$420. A consumer who wanted to find information about the Rels appraisal fee in his or
18 her area could with some extraordinary effort obtain this information, which is false as
19 the actual fee is far less.

20 53. The fee schedule states:

21 **For Typical Properties up to \$500k in value**
22 **Full Interior**

23

<u>State</u>	<u>1004/1073</u>
AK	Quote
AL	\$350
AR	\$360
AZ	\$350
CA	\$340
CO	\$360

24
25
26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

<u>State</u>	<u>1004/1073</u>
CT	\$315
DC	\$340
DE	\$330
FL	\$325
GA	\$330
HI	Quote
IA	\$340
ID	\$425
IL	\$325
IN	\$325
KS	\$360
KY	\$300
LA	\$340
MA	\$340
MD	\$325
ME	\$330
MI	\$310
MN	\$325
MO	\$325
MS	\$340
MT	\$440
NC	\$330
ND	\$425
NE	\$400
NH	\$345
NJ	\$325
NM	\$400
NV	\$350
NY	\$325
OH	\$315
OK	\$360
OR	\$415
PA	\$325
RI	\$315
SC	\$340

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

<u>State</u>	<u>1004/1073</u>
SD	\$420
TN	\$340
TX	\$360
UT	\$360
VA	\$340
VT	\$360
WA	\$425
WI	\$315
WV	\$300
WY	\$410

54. In fact the truth is that in each state Rels pays roughly one half of the published fee to an appraiser but charges the borrower the fee listed above or more.

A. Equitable Estoppel

55. Defendants are estopped by their own fraudulent concealment from asserting the statute of limitations as an affirmative defense against Plaintiffs' claims.

56. Rels Valuation created the perception that it was charging appraisal fees for actual services rendered. Rels Valuation concealed from Plaintiffs and the Class the true third-party costs of the appraisal fees that it charged. Rels Valuation concealed that it was marking-up the appraisal fee charges and charging fees for no services rendered.

57. Where Wells Fargo acted as the loan broker, Plaintiffs and the Class members reasonably relied on Wells Fargo's fiduciary and agency obligations to disclose the true nature of the fees and charges that were made in connection with their loans. Plaintiffs and the Class members reasonably relied on Wells Fargo's fiduciary and agency obligations to disclose that Wells Fargo was requiring the use of its affiliate, Rels Valuation, and that Rels Valuation was making a secret profit by forcing appraisers to charge fees to Rels Valuation that were far under the appraisal fees that Rels Valuation was charging to Plaintiffs and the Class.

58. Defendants had actual or constructive knowledge that their conduct was deceptive, in that they consciously concealed the schemes set forth herein, including their

1 affiliated nature and their receipt of unearned settlement service fees for no services
2 rendered. These practices were in derogation of RESPA and Defendants' fiduciary and
3 agency duties.

4 59. The purposes of the statutes of limitations period are satisfied because
5 Defendants cannot claim prejudice due to a late filing where Plaintiffs filed suit promptly
6 upon discovering the facts essential to their claims, described herein, which Defendants
7 knowingly concealed.

8 **B. Equitable Tolling**

9 60. Plaintiffs and members of the Class were or have been unable to obtain
10 vital information bearing on their claims absent any fault or lack of diligence on their
11 part. As further set forth below, Plaintiffs were not on inquiry notice of Defendants'
12 wrongdoing and had no duty to initiate an investigation of any nature because the charges
13 on their HUD-1 Settlement Statements appeared to be legitimate. Plaintiffs did not have
14 any reason to know of the RESPA violations or injuries described herein and did not and
15 could not have known of Defendants' violations of fiduciary and agency duties or unjust
16 enrichment.

17 61. Plaintiffs were relieved of any duty to investigate because they reasonably
18 and justifiably relied on Wells Fargo to fulfill its fiduciary and agency duties. Even
19 assuming there had been some indication of wrongdoing (which there was not), and
20 Plaintiffs had attempted to investigate, such investigation would have been futile because
21 it would not have uncovered the true, unlawful nature of Defendants' profiteering
22 schemes alleged herein.

23 62. Plaintiffs and members of the Class did not discover and could not have
24 discovered, despite all due diligence, that: (1) Wells Fargo and Rels Valuation were
25 exerting their market power to force appraisers to charge to Rels Valuation fees
26 substantially under market rates; (2) Rels Valuation was marking up these independent
27 appraisal fees while performing no work toward completion of the appraisals; and (3) for
28 Plaintiffs and many Class members, that Wells Fargo and Rels Valuation were affiliates.

1 Plaintiffs' claims were thus equitably tolled until they discovered the true facts
2 underlying their claims shortly before the filing of the Complaint.

3 VI. CLASS ACTION ALLEGATIONS

4 A. Class Definition

5 63. Plaintiffs bring this action on behalf of themselves and on behalf of the
6 following proposed Class and Subclasses:

7 All persons involved in a residential real estate transaction
8 who paid an appraisal fee for the appraisal of their property
9 where Wells Fargo was the lender and Rels Valuation was the
required appraiser.

10 Wells Fargo Broker Subclass

11 All Class members for whom Wells Fargo acted as the loan
12 broker in their transaction and who paid an appraisal fee for
13 the appraisal of their residential property where Wells Fargo
was the lender and Rels Valuation was the required appraiser.

14 B. Numerosity

15 64. The Class is so numerous that joinder of all members is impracticable.
16 Class members number in the hundreds of thousands. The precise number of Class
17 members and their addresses are unknown to the Plaintiffs, but can be obtained from
18 Defendants' records.

19 C. Commonality

20 65. There are questions of law or fact common to the Class, including at least
21 the following:

- 22 (a) Whether Defendants created and implemented the Scheme at issue;
- 23 (b) Whether Defendants used the wires and mails to further the Scheme;
- 24 (c) Whether Defendants violated RICO, RESPA and state law;
- 25 (d) Whether the statute of limitation for Plaintiffs' RESPA claims
26 should be properly tolled;
- 27
- 28

1 (e) Whether Defendants should be estopped from relying on the statute
2 of limitation for Plaintiffs' RESPA claims;

3 (f) Whether Defendants' wrongful conduct resulted in economic
4 damage to Plaintiffs and members of the Class, and the amount of said damages;
5 and

6 (g) What relief should be imposed in favor of the Plaintiffs and the
7 Class.

8 **D. Typicality**

9 66. Plaintiffs' claims are typical of the claims of the other members of the
10 Class. Plaintiffs have the same interests in this matter as all other members of the Class,
11 and their claims are substantially identical to and typical of the claims of all members of
12 the Class. Plaintiffs do not have interests antagonistic to or in conflict with those of the
13 other members of the Class.

14 **E. Adequacy**

15 67. Plaintiffs are committed to pursuing this action and have retained
16 competent counsel experienced in class actions. Plaintiffs will fairly and adequately
17 represent the interests of the Class members.

18 **F. The Prerequisites to Maintaining a Class Action for Injunctive Relief are**
19 **Readily Apparent**

20 68. The prerequisites to maintaining a class action for injunctive relief exist:

21 a. If injunctive relief is not granted, great harm and irreparable injury
22 to Plaintiffs and the members of the Class will continue; and

23 b. Plaintiffs and the members of the Class have no adequate remedy at
24 law for the injuries which are threatened to recur, in that, absent action from this Court,
25 Defendants will continue to violate RICO, RESPA and state law, and cause damage.

26 69. The prosecution of separate actions by members of the Class would create a
27 risk of establishing incompatible standards of conduct for Defendants – for example, one
28 court might decide that the challenged actions are illegal and enjoin them, while another

1 court might decide that those same actions are not illegal. Individual actions may, as a
2 practical matter, be dispositive of the interests of the Class.

3 70. Defendants' actions are generally applicable to the Class as a whole, and
4 Plaintiffs seek, *inter alia*, equitable remedies with respect to the Class as a whole.

5 **G. Common Questions Predominate, and the Class Action Device is Superior**

6 71. The common questions of law and fact enumerated above predominate over
7 questions affecting only individual members of the Class, and a class action is the
8 superior method for fair and efficient adjudication of the controversy. The likelihood that
9 individual members of the Class will prosecute separate actions is remote due to the time
10 and expense necessary to conduct such litigation. To Plaintiffs' knowledge, no similar
11 litigation is currently pending by other members of the Class. Plaintiffs' counsel, highly
12 experienced in class actions, foresee little difficulty in the management of this case as a
13 class action.

14 **VII. CLAIMS FOR RELIEF**

15 **COUNT I**

16 **Violation of 18 U.S.C. § 1962(C)(D)**

17 72. Plaintiffs, on behalf of themselves and all others similarly situated, reallege
18 and incorporate herein by reference each of the allegations contained in the preceding
19 paragraphs of this Complaint.

20 73. This cause of action, which alleges violations of Section 1962(c) of RICO,
21 18 U.S.C. § 1962(c), is asserted against the Defendants on behalf of the Class.

22 74. Plaintiffs, each Class member, and each Defendant is a "person," as that
23 term is defined in 18 U.S.C. § 1961(3).

24 75. At all relevant times, in violation of 18 U.S.C. § 1962(c), Defendants
25 conducted the affairs of certain association-in-fact enterprises identified herein, the
26 affairs of which affected interstate commerce through a pattern of racketeering activity,
27 and engaged in a conspiracy in violation of 1962(d).
28

1 **A. The Enterprises**

2 **1. The Wells Fargo Appraisal Enterprise**

3 76. The RICO “enterprise” is an association-in-fact entitled the “Wells Fargo
4 Appraisal Enterprise” consisting of: (1) Wells Fargo, including its Rels Valuation loan
5 closing services subsidiaries, (2) other mortgage brokers not named as defendants herein
6 who have contracts with Wells Fargo pursuant to which they sell, arrange, promote, or
7 otherwise assist Wells Fargo in directing borrowers into loans issued by Wells Fargo, and
8 (3) appraisers who conducted the actual appraisal. The Enterprise is an ongoing and
9 continuing business organization consisting of both corporations and individuals that are
10 and have been associated for the common or shared purposes of providing appraisals on
11 real estate transactions in which Wells Fargo is the mortgage lender.

12 77. The Wells Fargo Appraisal Enterprise is an ongoing organization that
13 engages in, and whose activities affect, interstate commerce.

14 78. While all Defendants participate in and are members and part of the Wells
15 Fargo Appraisal Enterprise, they also have an existence separate and distinct from the
16 enterprise.

17 79. In order to inflate appraisal fees, Defendants need a system that allows
18 them to do so. The Wells Fargo Appraisal Enterprise provides Defendants with that
19 system and ability, and their control of and participation in it is necessary for the
20 successful operation of their Scheme. Furthermore, the participation by the Rels
21 Valuation affiliates in the Wells Fargo Appraisal Enterprise allows the enterprise to
22 function more effectively, given that many of the functions provided by these entities,
23 such as appraisals, would normally be conducted by independent entities. Rels
24 Valuation’s participation in the enterprise allows the normal checks and balances within
25 the mortgage process to be eliminated, permitting Defendants to advance their Scheme
26 and conceal the fraudulent activity they have been engaging in.

27 80. The Defendants control and operate the Wells Fargo Appraisal Enterprise
28 as follows: (a) Wells Fargo tells a borrower through the Good Faith Estimate that Rels

1 Valuation must perform the appraisal; (b) Rels Valuation then hires an independent
2 appraiser to do the actual work; (c) Rels Valuation tells the appraiser that if he or she
3 wishes to do business with Rels Valuation they must perform the appraisal at a rate that is
4 less than market rates for such services; (d) Rels Valuation then marks up that reduced
5 rate and keeps the excess as its profits; and (e) Wells Fargo receives a thing of value in
6 exchange for referring its appraisal business by controlling the loan appraisal process and
7 values, and through the common ownership of Wells Fargo and Rels Valuation by Wells
8 Fargo & Co.

9 81. The Wells Fargo Appraisal Enterprise has an ascertainable structure
10 separate and apart from the pattern of racketeering activity in which Defendants engage.

11 **2. Alternative Enterprise Allegations: The Wells Fargo Enterprise**

12 82. Plaintiffs, the Class members and Defendants are all “persons” within the
13 meaning of 18 U.S.C. § 1961(3).

14 83. Based upon Plaintiffs’ current knowledge, the following persons constitute
15 a group of individuals associated in fact that will be referred to herein as the “Wells
16 Fargo Enterprise”: (1) Wells Fargo and (2) Wells Fargo’s affiliates, including its Rels
17 Valuation.

18 84. The Wells Fargo Enterprise is an ongoing organization that engages in, and
19 whose activities affect, interstate commerce.

20 85. While all Defendants participate in and are members and part of the Wells
21 Fargo Enterprise, they also have an existence separate and distinct from the enterprise.

22 86. The Wells Fargo Enterprise has an ascertainable structure separate and
23 apart from the pattern of racketeering activity in which Defendants engage.

24 87. The Enterprises have a systemic linkage because there are contractual
25 relationships, financial ties, and continuing coordination of activities between Wells
26 Fargo, Rels Valuation and appraisers. There is a common communication network by
27 which Wells Fargo and brokers and appraisers shared and continued to share information
28 on a regular basis throughout the Class Period. Typically this communication occurred

1 by use of the wires and mails in which Wells Fargo, Rels Valuation, brokers and
2 appraisers exchanged information about properties and appraisers. Wells Fargo, Rels
3 Valuation and the brokers functioned as a continuing unit for the purposes of the Scheme.

4 88. The foregoing evidences that all Defendants are willing participants in the
5 Enterprises; had a common purpose and interest in the establishment and operations of
6 the foregoing Scheme; and agreed to a structure wherein Rels Valuation, the brokers, and
7 Wells Fargo would implement the Scheme.

8 **B. The Defendants' Use of the U.S. Mails and Interstate Wire Facilities**

9 89. The Enterprises engaged in and affected interstate commerce because they
10 engaged in the following activities across state boundaries: the exclusion of appraisers
11 unwilling to participate in the Scheme; the origination of mortgages by brokers in one
12 state for borrowers in other states; and the transmission and receipt of documents and
13 information between Wells Fargo and Rels Valuation offices, and between loan brokers
14 and borrowers in diverse states.

15 90. During the Class Period, Defendants' illegal conduct and wrongful
16 practices were carried out by an array of employees, working across state boundaries,
17 who necessarily relied upon frequent transfers of documents, information, products and
18 funds by the U.S. mails and interstate wire facilities.

19 91. The nature and pervasiveness of the Scheme, which was orchestrated out of
20 Wells Fargo's and Rels Valuation's offices, necessarily required those offices to
21 communicate directly and frequently with brokers by the U.S. mails and by interstate
22 wire facilities.

23 92. Many of the precise dates of Defendants' uses of the U.S. mails and
24 interstate wire facilities (and corresponding RICO predicate acts of mail and wire fraud)
25 have been hidden and cannot be alleged without access to these Defendants' books and
26 records. However, Plaintiffs can ascertain when and how their transaction involved the
27 mail and wire facilities and can generally describe the occasions on which the RICO
28

1 predicate acts of mail fraud and wire fraud occurred, and how those acts were in
2 furtherance of the Scheme. Plaintiffs describe this below.

3 93. Defendants' use of the U.S. mails and interstate wire facilities to perpetrate
4 the scheme involved thousands of communications throughout the Class Period including
5 telephone, email and U.S. Mail communications to borrowers and appraisers; the
6 transmission by email and/or U.S. mail of appraisals prepared by appraisers and the use
7 of fraudulent HUD-1 forms to complete transactions. In addition to these RICO predicate
8 acts, it was foreseeable to each Defendant that it would communicate with borrowers and
9 appraisers by the U.S. mails and by interstate wire facilities. Further, each Defendant
10 has, in furtherance of the Scheme, communicated through use of the U.S. mails and by
11 interstate wire facilities with their various local offices or divisions.

12 94. Specifically Defendants perpetrated their Scheme against Plaintiffs through
13 interstate mail and wire facilities by sending documents from California, Texas, and
14 potentially other states, to Plaintiffs in Arizona. Defendants utilized the U.S. Mail,
15 Federal Express, and United Parcel Service, and email to send loan documents, appraisal
16 reports, billing statements, and other related documents to Plaintiffs. For example, on or
17 about February 22, 2007, Wells Fargo sent a loan disclosure packet to the Gomezes via
18 mail or e-mail. On or about February 22, 2007, Wells Fargo sent good faith estimates to
19 the Gomezes.

20 **C. Conduct of the RICO Enterprises' Affairs**

21 95. During the Class Period, Defendants have exerted control over the
22 Enterprises and, in violation of Section 1962(c) of RICO, Defendants have conducted or
23 participated in the conduct of the affairs of those RICO Enterprises, directly or indirectly
24 by controlling which appraisals it would accept to qualify a loan. The brokers accepted
25 Defendants' control over appraiser choice so that the brokers would get the loan
26 approved and receive their commission on the origination of the loan. Rels Valuation
27 followed Wells Fargo's directives, as to implementation.
28

1 96. The Enterprises had a hierarchical decision-making structure headed by
2 Wells Fargo.

3 **D. The Defendants’ Pattern of Racketeering Activity**

4 97. Each of the Defendants conducted and participated in the affairs of the
5 above-referenced Enterprises through a pattern of racketeering activity, including acts
6 that are indictable under 18 U.S.C. § 1341, relating to mail fraud, and 18 U.S.C. § 1343,
7 relating to wire fraud. Defendants’ pattern of racketeering likely involved thousands of
8 separate instances of use of the U.S. mails or interstate wire facilities in furtherance of
9 their Scheme. Each of these fraudulent mailings and interstate wire transmissions
10 constitutes a “racketeering activity” within the meaning of 18 U.S.C. § 1961(1)(B).
11 Collectively, these violations constitute a “pattern of racketeering activity,” within the
12 meaning of 18 U.S.C. § 1961(5), in which Defendants intended to defraud Plaintiffs, the
13 members of the Class and other intended victims.

14 98. Defendants’ racketeering activities amounted to a common course of
15 conduct, with similar pattern and purpose, intended to exclude impartial and objective
16 appraisers, that is, Plaintiffs and members of the Class. Each separate use of the U.S.
17 mails and/or interstate wire facilities employed by Defendants was related, had similar
18 intended purposes, involved similar participants and methods of execution, and had the
19 same results affecting the same victims, including Plaintiffs and members of the Class.
20 Each Defendant has engaged in the pattern of racketeering activity for the purpose of
21 conducting the ongoing business affairs of the Enterprises.

22 **E. Damages Caused by the Defendants’ Scheme**

23 99. Defendants’ violations of federal law and their pattern of racketeering
24 activity have directly and proximately caused Plaintiffs and members of the Class to be
25 injured in their business or property because Plaintiffs and members of the Class have
26 lost a substantial amount of money by virtue of the Scheme, including but not limited to,
27 the profits Rels Valuation skimmed through the Scheme and losses flowing from the
28 corrupted appraisals made on Plaintiffs’ and Class members’ properties.

1 **COUNT III**

2 **VIOLATIONS OF REAL ESTATE SETTLEMENT PROCEDURES ACT**
3 **12 U.S.C. §§ 2607(a), (c)**

4 108. Plaintiffs reallege and incorporate by reference the preceding allegations.

5 109. For Plaintiffs and each Class member, Defendants provided settlement
6 services involving a federally-related mortgage loan.

7 110. In connection with Plaintiffs' and each Class members' transaction,
8 Defendant Wells Fargo accepted and Defendant Rels Valuation gave a thing of value –
9 *i.e.*, control over the appraisal process and results – pursuant to an agreement that
10 business incident to or part of a settlement service involving a federally related mortgage
11 loan – *i.e.*, appraisal services – would be referred to Rels Valuation by Wells Fargo.
12 Because Wells Fargo received a benefit from its referral to Rels Valuation beyond merely
13 the return on its parent's common ownership, RESPA's safe-harbor provision for
14 affiliated business arrangements is inapplicable to the Wells Fargo-Rels Valuation
15 referral agreement. As a result, Wells Fargo and Rels Valuation have referred real estate
16 settlement services in violation of 12 U.S.C. § 2607(a) and Regulation X, 24 C.F.R.
17 § 3500.14.

18 111. Under 12 U.S.C. § 2607(d)(2), Plaintiffs and the Class are entitled to
19 statutory damages for Defendants' violations of 12 U.S.C. § 2607(a) in an amount equal
20 to three times the appraisal fees charged and involved in Defendants' violations.

21 112. Under 12 U.S.C. § 2607(d)(5), Plaintiffs and the Class are entitled to the
22 court costs of the action together with reasonable attorney's fees.

23 **COUNT IV**

24 **UNJUST ENRICHMENT**
25 **AGAINST DEFENDANT RELS VALUATION**

26 113. Plaintiffs reallege and incorporate by reference the preceding allegations.

27 114. As a result of Rels Valuation's practice of marking up third-party
28 appraisers' fees and charging a fee when it performs no appraisal services, Defendant
Rels Valuation has received a benefit from Plaintiffs and the Class in the form of the

1 appraisal fees Plaintiffs and the Class paid to Rels Valuation, which fees were unearned
2 and unreasonable and made for no additional or nominal settlement services and made in
3 violation of federal and state law.

4 115. Rels Valuation is aware of their receipt of the above-described benefits.

5 116. Rels Valuation received the above-described benefits to the detriment of
6 Plaintiffs and each of the other members of the Class.

7 117. Rels Valuation continues to retain the above-described benefits to the
8 detriment of Plaintiffs and the Class.

9 118. As a result of Rels Valuation's unjust enrichment, Plaintiffs and the
10 respective Class have sustained damages in an amount to be determined at trial and seek
11 full disgorgement and restitution of Rels Valuation's enrichment, benefits, and ill-gotten
12 gains acquired as a result of the unlawful or wrongful conduct alleged above.

13 119. Further, Plaintiffs and the Class, individually and on behalf of the public,
14 seek restitution and disgorgement of profits realized by Rels Valuation as a result of their
15 unfair, unlawful and/or deceptive practices.

16 COUNT V

17 **BREACH OF FIDUCIARY DUTY** 18 **AGAINST DEFENDANT WELLS FARGO** 19 **(On Behalf of the Broker Subclass)**

20 120. Plaintiffs reallege and incorporate by reference the preceding allegations.

21 121. While acting as a broker, Defendant Wells Fargo has a fiduciary duty to
22 borrowers. The fiduciary duty includes the obligation to act with scrupulous honesty and
23 to refrain from self-dealing.

24 122. A relationship of trust and reliance existed between Wells Fargo in its role
25 as a loan broker and the borrower. Thus, Wells Fargo owed borrowers the duties of
26 utmost care, honesty, loyalty, including the duty to disclose all material facts.

27 123. As to members of the Broker Subclass, Wells Fargo breached its fiduciary
28 duties to Plaintiffs and members of the Broker Subclass by engaging in
misrepresentations and self-dealing, including the Scheme and specifically: (a) requiring

1 borrowers to use Rels Valuation knowing that Rels Valuation was charging appraisal fees
2 that were marked-up and not incurred and/or not for services actually rendered;
3 (b) referring appraisals to Rels Valuation without making an accurate RESPA ABA
4 disclosure; and (c) controlling and manipulating the appraisal process and outcome such
5 that borrowers appraisals did not accurately reflect the values of the underlying properties.

6 124. Defendant Wells Fargo's breaches of its fiduciary duties have directly and
7 proximately caused damage to Plaintiffs and members of the Broker Subclass in an
8 amount to be determined at trial.

9 **COUNT VI**

10 **VIOLATION OF CALIFORNIA UNFAIR COMPETITION**
11 **LAW AGAINST WELLS FARGO**
12 **(Cal. Bus. & Prof. Code § 17200, *et seq.*)**

13 125. Plaintiffs reallege and incorporate by reference the preceding allegations.

14 126. Through the Scheme, Defendants have (1) directly and indirectly employed
15 a scheme, device and artifice to defraud and mislead borrowers and defraud any person;
16 (2) directly and indirectly engaged in an unfair and deceptive act toward a person;
17 (3) directly and indirectly obtained property by fraud and misrepresentation; and
18 (4) knowingly made published and disseminated false, deceptive and misleading
19 information.

20 127. Defendant Wells Fargo is a resident of the State of California. On
21 information and belief, the actions and underlying decisions of Defendants alleged herein
22 emanated from and occurred within the State of California. California law applies to the
23 claims of Plaintiffs and all Class members. Wells Fargo planned and implemented its
24 wrongful scheme in California and many of the wrongful acts emanated from Wells
25 Fargo's California offices. In addition, the largest concentration of Class members reside
26 in California and the documents involving Plaintiffs were prepared in California and sent
27 to Plaintiffs from California. Therefore, it is reasonable and appropriate to apply
28 California law to Defendant's acts throughout the United States.

1 128. Wells Fargo has engaged and continues to engage in the Scheme. Wells
2 Fargo's acts and practices as described herein constitute unlawful, fraudulent and/or
3 unfair business acts and practices. As such, its conduct violates Cal. Bus. & Prof. Code
4 § 17200, *et seq.* ("UCL").

5 129. Wells Fargo's conduct described herein constitutes an unlawful business
6 practice within the meaning of Cal. Bus. & Prof. Code § 17200, *et seq.*, in that the
7 conduct violates RESPA, RICO and the common law of unjust enrichment. Specifically,
8 as alleged herein, Wells Fargo has:

9 a. Violated 18 U.S.C. § 1962(c) by conducting the affairs of certain
10 association-in-fact enterprises identified herein, the affairs of which affected interstate
11 commerce through a pattern of racketeering activity, and engaged in a conspiracy in
12 violation of 18 U.S.C. § 1962(d).

13 b. Violated 12 U.S.C. § 2607(a)-(c), Regulation X, 24 C.F.R.
14 § 3500.14, and 24 C.F.R. § 3500.2 by referring appraisal settlement services business to
15 Rels Valuation (1) in exchange for control over the appraisal process and values assigned
16 through Rels Valuation appraisals; and (2) without making accurate ABA disclosures
17 required by RESPA;

18 c. Violated 12 U.S.C. § 2607(b) and Regulation X, 24 C.F.R.
19 § 3500.14 by charging marked-up appraisal fees that vastly exceed the true costs of the
20 appraisals actually charged to Rels Valuation by third-party appraisers, thus engaging and
21 continuing to engage in the practice of receiving a portion, split and percentage of a fee
22 for no services rendered; and

23 d. Violated the common law governing unjust enrichment by receiving
24 a benefit from Plaintiffs and the Class in the form of the marked-up appraisal fees, which
25 fees were unearned and unreasonable, not for services actually performed and made in
26 violation of federal and state law.

27 130. Wells Fargo's conduct as described herein violates not only the unlawful
28 prong of the UCL, but also constitutes a violation of the UCL's "unfair" prong,

1 independent of the other causes of action asserted herein. Wells Fargo's conduct offends
2 public policy and is immoral, unethical, oppressive, unscrupulous and substantially
3 injurious to consumers. Any justification for Wells Fargo's practices is outweighed by
4 the consequences and harm to Plaintiffs and the Class.

5 131. Wells Fargo's conduct as described herein also violates the "deceptive"
6 prong of the UCL, independent of the other causes of action asserted herein. Defendants
7 acted deceptively in the following manner:

8 a. Wells Fargo had a duty under RESPA to (1) disclose their affiliated
9 relationship; and (2) provide a written estimate of the charge or range of charges
10 generally made by Rels Valuation. Defendants deceptively failed to make these required
11 disclosures.

12 b. Wells Fargo participates in a scheme whereby Rels Valuation
13 deceives consumers and members of Class by falsely charging Plaintiffs and Class
14 members appraisal fees far in excess of the actual fees charged by the third-party
15 appraisers who performed the actual appraisals.

16 132. Plaintiffs and the Class have suffered injury in fact and have lost money or
17 property as a result of Wells Fargo's unlawful, unfair and/or deceptive business practices.
18 Each of Wells Fargo's omissions was material to Plaintiffs and the Class in entering into
19 the transaction with Wells Fargo and Plaintiffs and the Class relied on Wells Fargo's
20 false and misleading misrepresentations in entering into the transactions at issue.

21 133. The above-described unlawful, unfair and/or deceptive business practices
22 present an ongoing threat of continuing injury to Plaintiffs, the Class and the general
23 public. Among other things, Plaintiffs, the Class and the general public continue to be
24 financially disadvantaged by such conduct. Such wrongful conduct is continuing and,
25 unless Wells Fargo is restrained, it will continue to engage in such conduct.

26 134. Pursuant to Cal. Bus. & Prof. Code § 17203, Plaintiffs and the Class,
27 individually and on behalf of the public, seek an order of this Court enjoining Wells
28 Fargo from continuing its unfair, unlawful, and/or deceptive business acts or practices in

1 the State of California and elsewhere. The public, Plaintiffs and the Class will be
2 irreparably harmed if such an order is not granted.

3 135. Further, Plaintiffs and the Class, individually and on behalf of the public,
4 seek restitution and disgorgement of profits realized by Wells Fargo as a result of their
5 unfair, unlawful and/or deceptive practices.

6 **PRAYER FOR RELIEF**

7 WHEREFORE, Plaintiffs demand judgment as follows:

8 A. For an order declaring that this action may be maintained as a class action
9 pursuant to Federal Rules of Civil Procedure Rule 23, and for an order certifying this case
10 as a class action and appointing Plaintiffs as representatives of the Class;

11 B. For an order awarding compensatory damages on behalf of Plaintiffs and
12 the Class in an amount to be proven at trial;

13 C. For judgment for Plaintiffs and the Class on their claims in an amount to be
14 proven at trial, for compensatory damages caused by Defendants' unfair or deceptive
15 practices; along with exemplary damages to each class member for each violation;

16 D. For judgment for Plaintiffs and the Class on their RICO and RESPA
17 claims, in an amount to be proven at trial, for three times the amount of the appraisal fees
18 paid to Defendants by Plaintiffs and the Class;

19 E. For restitution of all improperly collected charges and interest, and the
20 imposition of an equitable constructive trust over all such amounts for the benefit of
21 Plaintiffs and members of the Class;

22 F. For an accounting of all credits, disbursements and charges and other
23 benefits associated with Plaintiffs' and Class members' real estate transactions;

24 G. For pre-judgment and post-judgment interest as provided for by law or
25 allowed in equity;

26 H. For an order awarding Plaintiffs and the Class their attorneys' fees and
27 costs; and

28 I. Such other and further relief as may appear necessary and appropriate.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

JURY TRIAL DEMANDED

Pursuant to Fed. R. Civ. P. 38, Plaintiffs demand a trial by jury of the claims alleged herein.

RESPECTFULLY SUBMITTED this 30th day of January, 2009.

HAGENS BERMAN SOBOL SHAPIRO LLP

By s/Robert B. Carey
Robert B. Carey
Donald Andrew St. John
2425 East Camelback Road, Suite 650
Phoenix, Arizona 85016

Steve W. Berman
Thomas E. Loeser
Genessa Stout
HAGENS BERMAN SOBOL SHAPIRO LLP
1301 Fifth Avenue, Suite 2900
Seattle, Washington 98101

Attorneys for Plaintiffs and the Proposed Class