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Jeff Sessions, Attorney General of the United States  
U.S. Department of Justice  
950 Pennsylvania Avenue, NW  
Washington, DC 20530-0001

Re: Wells Fargo consumer financial fraud cases

Dear Attorney General Sessions,

The purpose of my letter and declaration below is to alert you to a very serious failing of government to protect the public interest, and ask that you not abandon the Department of Justice (DoJ)'s effort to protect the public interest by holding federal agencies and corporate defendants to account when they threaten the nation's safety, health, and financial security. The public's faith in government is at a historic low, and as a former federal investigator I too have lost faith in the ability of government to produce equal justice under law. Please prove us all wrong.

Recently, I was advised the DoJ is concluding its investigation of Wells Fargo consumer financial fraud cases without taking action. As a federal investigator involved in three of those cases, there was every reason to believe the DoJ and its Grand Jury would find reason to pursue not only the investigation of Wells Fargo, but to expand that investigation to include the Occupational Safety and Health Administration (OSHA), whose Whistleblower Protection Program (WBPP) played a significant role in concealing that fraud for several years. For reasons cited below, I strongly urge the DOJ to reconsider and reopen the investigation and look more broadly at the critical role federal agencies played in enabling the fraud to continue for years and engulf millions of Wells Fargo customers, and thousands of Wells Fargo employees.

Please consider the remainder of this letter as a Declaration under penalty of perjury, attesting the following statements are true and correct to the best of my memory and belief:

From July 17, 2010, to May 5, 2015, I was a Regional Investigator with the Department of Labor/Occupational Safety and Health Administration's Whistleblower Protection Program, I worked in OSHA's Region IX office in San Francisco, and have direct, personal knowledge of OSHA's management of three Wells Fargo consumer fraud

complaints filed in 2010 and 2011. These three complaints, filed by Ms. Yesina Guitron, Ms. Judy Klosek, and Ms. Claudia Ponce de Leon, all alleged Wells Fargo was generating fraudulent customer accounts. At the time I was given the first two Wells Fargo accounts in November 2010, OSHA had not provided me any training in the investigation of financial fraud cases filed under whistleblower provisions of the Sarbanes-Oxley Act (SOX). These investigations required knowledge I didn't have at the time, and I only later discovered the multiple violations of law, policy, and practice by OSHA they represented. As noted below, these included:

- Both complaints had been filed with OSHA and docketed for investigation on May 11, 2010, and the complaints were identical, alleging the complainants had been terminated in retaliation for reporting the fraudulent manipulation of customer deposit accounts by Wells Fargo.
- Wells Fargo was notified of the complaints shortly thereafter, but no investigator had been assigned to the cases, as was required by OSHA's Whistleblower Investigations Manual (WIM), which provides the policy and practice guidelines for the Program. Rather, the complaints were retained by Region IX's Regional Supervisory Investigator (RSI) for almost six months, until the RSI gave them to me in November 2010 with an order to close the cases.
- Prior to transferring the investigations to me, no interview had been conducted with either Ms. Guitron or Ms. Klosek. As I later learned, this was a violation of law as well as a breach of the protocols found in the WIM, which clearly intend that an early interview be conducted with complainants to expedite case management and complete an investigation within 60 days, as required by SOX.
- The letter notifying Wells Fargo of the complaints allowed the company the option to file a response within 20 days from the date of receipt. That 20-day window of opportunity ran out in late June 2010 without a response by the company. Yet, OSHA took no further action. As I would later learn, the WIM directed that if a company failed to respond to a complaint, the investigation would be resolved based on evidence provided by the complainants. In this case, if the complainants had been interviewed, that likely would have been a merit finding. If OSHA had made a merit finding, it would have required OSHA to issue an order to Wells Fargo to immediately reinstate Ms. Guitron and Ms. Klosek, and pay them back pay and benefits, and forward notice to the Securities and Exchange Commission of OSHA's findings of merit.
- On July 7, 2010, Timothy N. Grubb, Senior Counsel of Wells Fargo, called and spoke to someone in OSHA Region IX, asking for an extension of time to respond to the complaints. While the phone call was logged, as required by the WIM, there was no report about the substance of the call, which violated WIM protocols. Further, the request was untimely according to WIM protocols, and OSHA by the time of the request already should have been in the process of issuing a merit finding. Even if the request was deemed timely, WIM protocols allowed OSHA only to grant a 10-day extension, which would have expired on July 17, 2010. As Wells Fargo failed to provide any response, WIM protocols should have triggered OSHA to issue a likely merit finding and order for the immediate reinstatement of the complainants before the end of July 2010.

- On November 17, 2010, shortly after these two cases were assigned to me, I authored a letter to Mr. Grubb, noting his July 7, 2010, telephone conversation with OSHA and asking for a response within 10 days. Mr. Grubb didn't respond to the letter, but on November 24, 2010, I received a phone call from a Mr. Baldwin J. Lee, a San Francisco attorney who advised me the complaints were being withdrawn in favor of a federal court complaint. Mr. Lee didn't disclose he was representing Wells Fargo, rather than the complainants, and forwarded a legal pleading regarding a federal court case filed by complaints. Based on that conversation and document, I authored withdrawal Final Investigative Reports (FIR) for both complains, and gave them to the Region IX RSI without contacting either Ms. Guitron or Ms. Klosek. I would later learn WIM protocols require an interview with complainants to confirm their desire to withdraw their OSHA complaints, and to advise them that a withdrawal would terminate the OSHA investigation and extinguish their rights to appeal to OSHA.
- After submitted my draft FIRs, there was no further discussion of them with the RSI. As I would later learn, the RSI is tasked with reviewing these documents and discussing them with the investigator to ensure they met legal and WIM standards. Then, if the RSI and investigator agreed on the outcome, the RSI and the investigator would sign the FIR's to confirm their agreement. In this case, there was no meeting, I never signed either of the FIRs, and the investigations were closed by the RSI.

The mismanagement of these two Wells Fargo complaints in 2010 was not an isolated incident. Rather, the pattern of failing to timely assign investigators, interview complainants, and apply statutory time limits to company responses and completing investigations repeated itself in many other cases, including a subsequent Wells Fargo case (Ponce de Leon), which I briefly managed in early 2012. In many cases, OSHA either failed to interview complainants, or failed to conduct credible investigations. In some cases, OSHA slow walked investigations for years, apparently for the purpose of denying a merit finding. In others, OSHA encouraged to investigators to short-circuit investigations and close cases for the purpose of improving OSHA's statistics. Then, during a 2014 staff meeting, the Region IX RSI advised investigators entire classes of complaints should be closed without investigations, including SOX complaints, because OSHA's national Office of Whistleblower Protection, wanted to clear a backlog of cases. All of these actions and failures to act involved violations of law, rules, and regulations, which OSHA apparently doesn't feel itself bound.

This pattern of OSHA mismanagement extends well beyond SOX cases to include other cases involving major corporations and complaints where preliminary reinstatement of qualifying whistleblowers is at issue. These cases raise concerns about a broad spectrum of safety, health, and financial security involving: trucking (Surface Transportation Assistance Act), railroads (Federal Railroad Safety Act), sea transport (Seaman's Protection Act), air carriers (Wendell H. Ford Aviation Investment and Reform Act for the 21st Century), pipeline safety and security (Pipeline Safety Improvement Act), transit systems (National Transit Systems Security Act), consumer product safety (Consumer Product Safety Improvement Act), health care (Affordable Care Act), consumer financial

protection (Consumer Financial Protection Act of 2010), consumer investment protection (Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010), and food safety (FDA Food Safety Modernization Act). Failing to respect the requirements of the law under any one statute presents a serious risk to the public interest. Failing to respect the law under thirteen statutes covering a full range of safety and health issues is potentially catastrophic.

It's unconscionable that senior Agency bureaucrats are allowed to effectively legislate away protection for whistleblowers and the public. Ms. Guitron's request to OSHA to reopen her investigation was denied earlier this year, and hundreds, if not thousands of other Wells Fargo employees who attempted to find justice through OSHA's Whistleblower Protection Program have been betrayed by indifference, if not outright hostility to their claims by OSHA managers. This is a denial of fundamental due process and equal justice under law, and should not be allowed to stand.

In January 2015, I made a formal disclosure of these problems to the Office of Special Counsel (OSC), which has to date failed to investigate. In April 2016, after being terminated from OSHA in the context of publicly disclosing a culture of corruption in OSHA's management of the WBPP, I filed a complaint with the OSC, which to date the OSC has similarly failed to address. Thus, it appears that the culture of corruption which I first saw in OSHA extends to the OSC, leaving federal whistleblowers no better off than the private sector whistleblowers who receive no protection by OSHA. We cannot have a credible system for protecting the nation's safety, health, and financial security without having a credible system to protect those who report risks, mismanagement and abuse of authority. As the chief law enforcement officer, only you and the DoJ can do that.

Respectfully,

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Darrell Whitman, (former) Regional Investigator

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August 4, 2017