

FILED
OFFICE OF THE CITY CLERK
OAKLAND

2017 MAR -8 PM 12:47

Attempts to get a response from Oakland City Administrator Sabrina Landreth:

Strike Debt Bay Area sent our initial email on October 25, 2016. On the same day, we put a certified letter into the U.S. Mail.

----- Forwarded message -----

From: **Strike Debt** <strike.debt.bay.area@gmail.com>

Date: **Tue, Oct 25, 2016** at 10:50 AM

Subject: Request that the City of Oakland debar Wells Fargo Bank

To: cityadministrator@oaklandnet.com

Cc: ACampbellWashington@oaklandnet.com, AMargusee@oaklandnet.com,
clchen@oaklandnet.com, dkalb@oaklandnet.com

Dear City Administrator Landreth and members of the Oakland City Council Finance Committee:

Attached please find our detailed request that the City debar Wells Fargo Bank. As we state in our letter, we believe this action should be taken before the election, so that Wells Fargo is not eligible to participate in any bond funding if bond measures pass in early November.

Thank you for your consideration.

We received the return receipt for the physical letter on October 27, 2016.

Getting no response, we re-sent the document by email on December 20, 2016

Debbie Notkin <kith@spicejar.org> **12/20/16**

to cityadministrator@oaklandnet.com

Dear People,

On October 25, 2016, ten Oakland residents, including myself, sent you the enclosed letter, which we sent from Strike Debt Bay Area's email box, and also by certified mail, return receipt requested. The post office tells me the letter was delivered on October 27.

As I understand the law, you are required to respond to this promptly. I have just gone through the last several weeks of City Administrator reports from your website, and found no mention. Please let me know what you are doing on this issue, which has only gotten more urgent in the intervening weeks. You

can reach me at this email address or at 510 418-0627.

On February 14, I called the City Administrator's office and spoke to Doris, who could find no record of the letter. She advised me to send email to "cityadministratorsoffice@oaklandnet.com, an address not listed on the oaklandnet website. I did that.

Debbie Notkin <kith@spicejar.org> Feb 14 (13 days ago)

to **cityadministratorsoffice@oaklandnet.com**

Dear People,

The attached letter was originally sent on October 25, 2016, and resent (as below) on December 20. The first time, it was also sent in hard copy by certified mail. Both times, the email address was the one on Oakland's website: cityadministrator@oaklandnet.net .

We have received no response, and know of no action that has been taken. I just spoke with Doris in your office, who advised me of this different email address.

Especially in light of Seattle's and Davis's recent decisions to divest from Wells Fargo, we look forward to a prompt response from Oakland.

That email address resulted in two autoresponses saying that delivery was delayed, followed by this message on February 17

There was a problem delivering your message to **cityadministratorsoffice@oaklandnet.net**. See the technical details below.

The recipient server did not accept our requests to connect. Learn more at <https://support.google.com/mail/answer/7720> [oaklandnet.net 176.74.176.187: generic::failed_precondition: connect error (0): error]

Since three emails to two separate addresses have failed, and a certified letter received no response, I am requesting attention from the Rules Committee.

Respectfully yours,

Debbie Notkin
kith@spicejar.org
510 418-0627

REQUEST THAT THE CITY OF OAKLAND DEBAR WELLS FARGO BANK

TO: The City Administrator of the City of Oakland, via email and certified mail

CC: Dan Kalb, Chair, Oakland City Council Finance Committee
Vice Mayor Annie Campbell Washington, Member, Finance Committee
City Council President Lynette Gibson-McElhaney, Member, Finance Committee
Abel Guillen, Member, Finance Committee (all committee members via email)

FROM: Oakland residents listed below

DATE: October 25, 2016

Dear City Administrator Sabrina Landreth:

The Municipal Code of the City of Oakland (Chapter 2.12, Debarment Program) states:

Information concerning the existence of a cause for debarment from any source shall be promptly investigated, reported, and referred to the City Administrator for consideration.¹

Under that statute, this is a formal request to the City of Oakland and the Oakland City Council by Oakland residents for investigation of a cause for debarment of Wells Fargo, reasons stated herein. Wells Fargo has approximately twelve branches (including a commercial branch) in Oakland, and numerous additional ATMs. The request is made with the interests of the City of Oakland, all Oakland residents and customers of Wells Fargo Bank's Oakland branches in mind.

Our request for debarment is based on the following sample causes from the Municipal Code²:

H. Debarment by any other governmental agency for the period imposed by that agency; and

S. Commission of an egregious act or unlawful offense which indicates a lack of business integrity or business honesty; and

V. Commission of any act or omission which negatively reflects on the contractor's quality, fitness or capacity to perform a contract with the City or any other public entity, or which negatively reflects on same including, but not limited to, deficiencies in on-going contracts, false certifications or statements, fraud in performance or billing or lack of financial or technical resources;

With specific regard to the City's right to debar Wells Fargo Bank from future bond business with the City, we cite City Attorney Barbara Parker's letter to City Administrator Santana,

¹ Section 2.12.040

² Section 2.12.050

dated July 10, 2012 (attached). That letter, which addresses the City's authority to exclude Goldman Sachs from future contracts, is directly applicable to the Wells Fargo issues. The City Attorney states, in part:

Federal and state securities laws do not prohibit the City from excluding Goldman Sachs from future bond business. Goldman Sachs could be excluded from future City Contracts by following the administrative procedures set forth in the Oakland Municipal Code, if grounds for debarment are found to exist.

Ms. Parker goes on to state that "transactions with underwriters, bonding companies, marketing agents, accountants, consultants, and investment bankers" are "related transactions" under Oakland's Debarment Ordinance; thus Wells Fargo (as with Goldman Sachs) is subject to the Debarment Ordinance.

It is in this context that we respectfully present the following case for the debarment of Wells Fargo Bank. For the City's convenience, we present this in the form set forth in the Municipal Code for debarment documentation³:

1. The specific respondent against whom the action is proposed is Wells Fargo Bank.
2. The reasons for proposing the debarment are that Wells Fargo Bank is a fraudulent and felonious actor which has been amply demonstrated to put its own profits ahead of the rights of its employees, its customers, and the public.
3. A short narrative:

From as early as 2005 through as late as mid-2015, Wells Fargo Bank is known to have opened more than two million fraudulent bank accounts and over half a million fraudulent credit card accounts, resulting in hundreds of millions of dollars in direct income to the bank from individuals who never even knew their accounts existed.⁴ Over five thousand lower-level employees have been fired for creating these transactions; however, much evidence exists that they were required to participate in the fraud to keep their jobs, and that the scheme was at the very least known to, and quite probably endorsed and encouraged by, the highest-level officers and directors of the bank. Separate and apart from the fraud perpetrated on customers, Wells Fargo's treatment of employees forced to be accomplices in the scandal constitutes substantial and unacceptable unfair labor practices, and may have been a direct response to a legal movement to unionize such workers.⁵

³ Section 2.12.040.C

⁴ see for example money.cnn.com/2016/09/08/investing/wells-fargo-created-phony-accounts-bank-fees/ . Evidence for dating the fraudulent practice back to 2005 can be found in the link at Footnote 6 below.

⁵ <http://prospect.org/article/first-and-foremost-wells-fargo-scandal-about-workers>

During the period when false accounts were being opened, employees reported the fraud through Wells Fargo's designated channels for reporting malfeasance and were ignored.⁶ It is worth noting that while this fraud was being perpetrated on customers, Wells Fargo (along with most other major U.S. banks) also engaged in fraudulent and deceptive subprime mortgage practices, for which they have been separately cited and fined \$1.2 billion.⁷ Recently, Wells Fargo has also agreed to settle a case with the Department of Justice for illegally repossessing more than 400 vehicles of American service personnel, over the period from 2008 to 2015.⁸

Chief Executive Officer John Stumpf has resigned from his position following contentious U.S. Senate hearings on the fraudulent and deceptive accounts scandal.⁹ He has been replaced by Tim Sloan, former Chief Financial Officer and Chief Operating Officer of the bank. The head of the division where the fraud was centered reported to Mr. Sloan from November of 2015 until she left the bank in September of 2016. Sloan's long ties to the organization hardly inspire confidence that the bank has suddenly changed its values. Mr. Stumpf retired with all his benefits and faces no charges.

If Oakland elects to debar Wells Fargo, it will be in extremely good company. Public entities that have cut back on relationships with or ceased to do business with Wells Fargo in the wake of the scandal include

the state of California¹⁰

the state of Massachusetts¹¹

the state of Illinois¹²

our neighboring California counties of Santa Clara¹³ and Santa Cruz¹⁴, and numerous large cities including Chicago¹⁵ and Seattle¹⁶. Wells Fargo's home city of San Francisco

⁶ <http://fortune.com/2016/10/12/wells-fargo-fake-accounts-scandal/>

⁷ <http://www.reuters.com/article/us-wellsfargo-housing-idUSKCN0VC1KO>

⁸ <http://www.bloomberg.com/news/articles/2016-09-29/wells-fargo-troubles-mount-with-penalty-for-soldiers-car-loans>

⁹ For the Senate hearings, see <https://www.washingtonpost.com/news/on-leadership/wp/2016/09/20/you-should-resign-elizabeth-warren-excoriates-wells-fargo-ceo-john-stumpf/>. For evidence that the fraud was known, see <http://fortune.com/2016/10/12/wells-fargo-fake-accounts-scandal/>. For Stumpf's resignation, see: <http://www.bloomberg.com/news/articles/2016-10-12/wells-fargo-ceo-stumpf-steps-down-in-fallout-from-fake-accounts>

¹⁰ <http://www.latimes.com/business/la-fi-wells-chiang-20160928-snap-story.html>

¹¹ <http://www.bloomberg.com/news/articles/2016-10-18/massachusetts-becomes-latest-state-to-penalize-wells-fargo>

¹² <http://www.bloomberg.com/news/articles/2016-09-30/illinois-to-suspend-wells-fargo-from-bond-investing-work>

¹³ http://sccgov.iqm2.com/Citizens/Detail_Legifile.aspx?Frame=SplitView&MeetingID=7201&MediaPosition=9001.108&ID=83611&CssClass

¹⁴ <http://www.kion546.com/news/santa-cruz-county/santa-cruz-county-bans-wells-fargo-for-a-year/108583218>

has taken some actions and is contemplating further penalties¹⁷, and the East Bay Municipal Utilities District is considering taking action¹⁸.

The California State Attorney General's office is opening an investigation against Wells Fargo for criminal identity theft in connection with opening accounts without customers' knowledge.¹⁹ The Better Business Bureau has "de-accredited" Wells Fargo for violating the BBB Standards of Trust.²⁰

4. We recommend that the City debar Wells Fargo for five years, which is the maximum time period permitted under the Debarment Ordinance. We feel that the longest possible debarment period is appropriate given the bank's twelve locations in Oakland and thus, by inference, the number of Oakland residents who have been personally harmed by the bank's actions.
5. Most supporting documentation is in the links in our footnotes. All links were accessed and active as of October 23, 2016. The City Attorney's letter referenced above is attached as additional supporting documentation.

In conclusion, Wells Fargo is demonstrably guilty of multiple types of fraud on customers, inevitably including its customers in Oakland. The City Administrator is required by the Municipal Code as cited above to promptly conduct any necessary additional investigation, and to report and make a decision. In addition, we hereby request the City Administrator to invoke Section 2.12.040.E and temporarily suspend Wells Fargo while making this determination. Since municipal bonds are under consideration in the November election, which takes place in just

¹⁵ <http://www.bloomberg.com/news/articles/2016-10-03/chicago-to-pull-25-million-from-wells-fargo-because-of-scandal>

¹⁶ <http://www.seattletimes.com/seattle-news/politics/seattle-drops-wells-fargo-from-bond-deal-to-protest-bank-fraud/>

¹⁷ <http://www.bizjournals.com/sanfrancisco/news/2016/09/23/wells-fargo-bank-scandal-clawbacks-wfc.html>

¹⁸ http://www.ebmud.com/files/5614/7708/3759/102516_AGENDA-Regular_Business_Meeting.pdf

¹⁹ <http://www.latimes.com/business/la-fi-wells-fargo-harris-20161018-snap-story.html>

²⁰ <http://boingboing.net/2016/10/20/better-business-bureau-yanks-w.html>

over two weeks, prompt action is required to ensure that Wells Fargo does not have the opportunity to bid on these bonds if authorization for issuing them passes.

Thank you for your consideration,

Ed Biow, Oakland resident District 2

Lora Jo Foo, Oakland resident District 4

David Gassman, Oakland resident District 3

Susan Harman, Oakland resident District 5

Saied Karamooz, Oakland resident District 3

Michael Kaufman, Oakland resident District 4

Carolyn Norr, Oakland resident District 2

Deborah Notkin, Oakland resident District 1

Margaret Rossoff, Oakland resident District 1

Susan Schacher, Oakland resident District 4

CITY OF OAKLAND



ONE FRANK H. OGAWA PLAZA • 6TH FLOOR • OAKLAND, CALIFORNIA 94612

Office of the City Attorney
Barbara Parker
City Attorney

(510) 238-3601
FAX: (510) 238-6500
TDD: (510) 839-6451

LEGAL OPINION

July 10, 2012

Dear City Administrator Santana:

Subject: City's Authority to Exclude Goldman Sachs from Future Contracts with the City

I. Introduction

At the meeting of the June 26, 2012 Finance Committee, the Committee considered a resolution recommended by staff seeking Council authorization to negotiate termination of the City's Swap with Goldman Sachs below the market rate at terms more favorable to the City than those provided in the agreement between Goldman and the City. The Committee requested and the City Attorney's Office provided a confidential legal opinion outlining the legal issues related to the proposed action and the strategies available to the City. On July 3, 2012, the City Council adopted an amended resolution.

Your office has asked that the City Attorney's Office address the issues but in a form disclosable to the public, which does not disadvantage the City by revealing strategies to Goldman Sachs and others.

II. Question

Can the City of Oakland bar Goldman Sachs from contracting with the City in the future?

III. Summary Conclusions

Federal and state securities laws do not prohibit the City from excluding Goldman Sachs from future bond business. Goldman Sachs could be excluded from future City Contracts by following the administrative procedures set forth in the Oakland Municipal Code, if grounds for

debarment are found to exist.¹ Exclusion of a business from government contracts implicates a liberty interest protected by due process under the U.S. and California constitutions. Chapter 2.12 of the Oakland Municipal Code contains the Debarment Program, which includes the City's procedures for debarment of contractors. If the City follows the administrative procedures set forth in Chapter 2.12 and finds grounds for debarment, the business could be barred from contracting with the City for up to five years. More than twenty-four grounds for debarment are set forth in OMC section 2.12.050. To justify exclusion from City contracts, debarment would be supported by evidence establishing wrongful conduct or violations of a public contract or program, which can include wrongful acts relating to contracts with or debarment by other public agencies.

IV. Background

A. Debarment under OMC Chapter 2.12

Businesses have a constitutionally protected right, known as a "liberty interest", to be considered for government contracts. Before a business can be debarred, suspended or otherwise prohibited from contracting with the City, it must be afforded due process rights, including notice of the charges against it, an opportunity rebut the charges, and a fair hearing in a meaningful time and manner. U.S. Constitution, 5th and 14th Amendments; California Constitution, Article I, §§7, 15; Southern Cal. Underground Contractors, Inc. v. City of San Diego, 108 Cal.App.4th 533, 542-543 (2003); Golden Day Schools, Inc. v State Dept. of Education, 83 Cal.App.4th 695, 711 (2000). Government entities meet these requirements through the adoption of debarment procedures.

In 2009, the City Council enacted the Debarment Program, contained in OMC, Chapter 2.12, establishing an administrative process to disqualify or exclude businesses from consideration for City contracts for a range of offences and conduct. Further, debarment by one jurisdiction has far reaching consequences as debarred businesses are usually automatically prohibited from being considered for contracts in any other federal, state or local jurisdictions that have enacted debarment procedures by operation of their legislation.

The list of designated grounds for debarment under the City's debarment ordinance is extensive, including in part, collusion in obtaining contract or payment, submission of false information in response to an request for bids or quotes or in response to a solicitation or request for qualifications or proposals, submission of false claims as defined by state or federal law, judgment against the contractor establishing a violation of any civil or criminal law against any government entity relevant to the contractor's ability perform under a City contract, intentional failure to perform a City contract, fraud, violation of federal or state antitrust statutes, embezzlement, theft, forgery, bribery, making false statements, submitting false information,

¹ A July 3, 2012, letter submitted by advocates, from the law firm Altschuler Berzon subsequently supports the City Attorney's Office's position regarding debarment.

attempting to commit a fraud against the City, receiving stolen property, making false claims to any public entity, obstructing justice, fraudulently obtaining public funds, and many more. Debarment can be based on evidence of such wrongful acts relating to a contractor's dealings with or debarment by any other public agency. (OMC 2.12.050 (A) through (V)) Finally, grounds for debarment exist for "[a]ny other cause of so serious or compelling a nature that it affects the present responsibility of a contractor." (OMC 2.12.050(W))

1. Goldman Sachs is a Contractor Covered by the Debarment Program.

The Debarment Ordinance applies to contractors that participate in both covered and related transactions. (OMC 2.12.020) A covered transaction is "application for or participation in a City contracting policy program, activity, contract or related transaction, regardless of type, amount or source of funding." (OMC 2.12.010) Related transaction are "directly related to a covered transaction, which assists the participant in executing a covered transaction, regardless of the extent of the influence on or substantive control over the covered transaction by the person performing the related transaction." Related transactions expressly include transactions with underwriters, bonding companies, marketing agents, accountants, consultants, and investment bankers. (OMC 2.12.010) Goldman Sachs is an underwriter and investment banker subject to the Debarment Ordinance.

V. Analysis

A. Debarment Procedure

1. Following investigation and review of the facts, the City Administrator decides whether to initiate debarment proceedings.

Under the Debarment Program, the City Administrator decides whether or not to proceed with a debarment action. (2.12.040(B)) The debarment process begins with an investigation. (2.12.040(A).) Information suggesting cause for debarment is investigated, reported and referred to the City Administrator for consideration. Basic documentation (including the reasons for proposing debarment, the facts and evidence supporting the need to debar, a recommended time period for debarment, and supporting documentation) is developed. (OMC 2.12.040(C)) After consideration, the City Administrator may issue a notice of proposed debarment at least 90 days prior to the noticed debarment hearing. (2.12.040(B), 2.12.060(A))²

² If she determines at the time notice is given that adequate evidence supports debarment and it is in the public interest, the City Administrator may temporarily suspend a contractor pending a final decision by the Debarment Hearing Board. (OMC 2.12.020(E)).

2. The decision regarding debarment is made by the Debarment Hearing Board following a hearing.

The Debarment Hearing Board consists of three members appointed by the City Administrator to conduct hearings, receive evidence and make the final decisions regarding debarment. Alternatively, at her sole discretion, the City Administrator may appoint a retired judge to conduct the debarment hearing. (OMC 2.12.100)

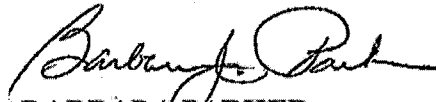
3. The maximum period of debarment is 5 years.

Under the Debarment Ordinance, the maximum period of debarment is 5 years. OMC section 2.12.170 provides: "Debarments shall be for a period commensurate with the seriousness of the respondent's conduct, up to a maximum of five years."

VI. Conclusion

Goldman Sachs can be prohibited from contracting with the City for up to five years if grounds for debarment are established through an administrative debarment proceeding pursuant to the Debarment Ordinance.

Respectfully submitted,


BARBARA PARKER
City Attorney

Attorney Assigned:
Kathleen Salem-Boyd
992154

cc: President Reid and Members of the Council