

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

COUNTY OF COOK,)	
)	Case No. 14-cv-9548
Plaintiff,)	
v.)	Hon. Gary Feinerman
)	
WELLS FARGO & CO., et al.,)	
)	
Defendants.)	

**PLAINTIFF’S MOTION TO COMPEL THE
PRODUCTION OF DOCUMENTS**

Plaintiff County of Cook (“Plaintiff”), respectfully moves this Honorable Court to compel discovery from Defendants Wells Fargo & Co, Wells Fargo Financial, Inc., Wells Fargo Bank, N.A., and Wells Fargo “John Doe” Corps. 1-375 (collectively, “Wells Fargo”). In support of this motion to compel, Plaintiff avers the following:

I. BACKGROUND

The County served Wells Fargo with its First Interrogatories on July 24, 2018, its First Request for the Production of Documents on July 24, 2018, and its Second Request for the Production of Documents on March 12, 2019 (together, the “Requests”). Wells Fargo responded on September 7, 2018, August 23, 2018, and September 25, 2019, respectively. In its responses, Wells Fargo asserted numerous general and specific objections, refused to search for documents responsive to many of the Requests, and refused to answer all of the interrogatories. In addition to the outright refusal to respond to Plaintiff’s discovery requests and produce various types of relevant information (including certain categories of email and other electronically stored information), Wells Fargo unilaterally decided to ignore Plaintiff’s definitions and the language of the Requests, thereby improperly limiting the scope of its responses.

At issue in this motion is Wells Fargo's impermissible limiting of its search for documents relating to violations of multiple laws to violations of the Federal Housing Act ("FHA") only. In the "General Objections" section of the Wells Fargo Defendants' Responses and Objections to Plaintiff's Second Request for the Production of Documents, Defendants state:

Defendants specifically object to any discovery concerning the coverage, impact, or effect of any laws other than the Fair Housing Act, 42 U.S.C. § 3605 et seq. (the "FHA"), including without limitation the Equal Credit Opportunity Act (the "ECOA") and the Real Estate Settlement Procedures Act ("RESPA"); any laws referenced in Defendants' Responses are specifically limited to the FHA.

Exhibit B. This general objection is incorporated into Wells Fargo's responses to Requests 16, 18, 19, 20, 21, 23, 25, 37, 38, 39, 75, 76, 79, 86, and 95. *Id.*

In addition, in the Wells Fargo Defendants' Responses and Objections to Plaintiff's First Request for the Production of Documents, Wells Fargo objected to "Plaintiff's definition of 'Community Reinvestment Act Residential Mortgage Lending Operations ['CRA']' as overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence" Exhibit C at 9. Resting on this objection, Wells Fargo has refused to search for documents that relate to violations of the CRA. *Id.* Wells Fargo's first objection to Plaintiff's definitions is incorporated into its responses to Requests 24, 25, 26, 28, 29, 30, 31, 32, 33, 34, 35, and 36.

Since the Requests were served, the Parties have met and conferred numerous times regarding Defendants' objections and refusals, including their unilateral limiting of their searches to documents involving the FHA and no other laws. Despite these efforts, the Parties have been unable to resolve all of their disagreements.¹

¹ Plaintiff's Rule 37.2 Statement of Efforts to Reach an Accord is attached hereto as Exhibit A.

II. ARGUMENT

A. Legal Standard

“The federal discovery rules are to be construed broadly and liberally.” *Farris v. Kohlrus*, No. 17 Civ. 3279 (TSH), 2019 U.S. Dist. LEXIS 13783, at *9 (C.D. Ill. 2019). Under Rule 26(b)(1), the “[p]arties may obtain discovery regarding any nonprivileged matter that is relevant to any party’s claim or defense and proportional to the needs of the case, considering the importance of the issues at stake in the action, the amount in controversy, the parties’ relative access to relevant information, the parties’ resources, the importance of the discovery in resolving the issues, and whether the burden or expense of the proposed discovery outweighs its likely benefit.” *FDIC v. Crowe Horwath LLP*, No. 17 Civ. 4384 (EEC), 2018 U.S. Dist. LEXIS 105880, at *6 (N.D. Ill. 2018). Information is relevant “if there is any possibility that the information sought may be relevant to the subject matter of the action.” *Belcastro v. United Airlines, Inc.*, No. 17 Civ. 1682 (JC), 2019 U.S. Dist. LEXIS 65847, at *7 (N.D. Ill. 2019) (citing *Wiginton v. CB Richard Ellis, Inc.*, 229 F.R.D. 568, 577 (N.D. Ill. 2004) (“If relevance is in doubt, courts should err on the side of permissive discovery.”)). Additionally, “[c]ourts commonly look unfavorably upon significant restrictions placed upon the discovery process.” *Charvat v. Valente*, 82 F. Supp. 3d 713, 717 (N.D. Ill. 2015); *see also Rubin v. Islamic Republic of Iran*, 349 F. Supp. 2d 1108, 1111 (N.D. Ill. 2004) (same).

“A party may file a motion to compel under Federal Rule of Civil Procedure 37 whenever another party fails to respond to a discovery request or when its response is insufficient.” *Belcastro*, 2019 U.S. Dist. LEXIS 65847, at *6; *see also Meyer v. S. Pac. Lines*, 199 F.R.D. 610, 611 (N.D. Ill. 2001) (“A party may file a motion to compel discovery under Rule 37 of the Federal Rules of Civil Procedure (‘FRCP’) when another party fails to respond to a discovery request, or when the party’s response is evasive or incomplete.”). “Courts have broad discretion” in ruling on motions

to compel “and do so by adopting a liberal interpretation of the discovery rules.” *Belcastro*, 2019 U.S. Dist. LEXIS 65847, at *6. Importantly, “[t]he party opposing discovery has the burden of proving that the requested discovery should be disallowed.” *Id.* at *7.

B. Wells Fargo’s Improper Limitation of its Production to Violations of the Fair Housing Act

Plaintiff’s FHA claims arise from Defendants’ conduct which violated fair housing and fair lending laws, including the FHA, ECOA, CRA, and RESPA. The fact that Plaintiff has not alleged claims under each separate act is of no moment, as the acts all prohibit discrimination relating to housing and/or the provision of credit. The FHA, 42 U.S.C. 3601 *et seq.*, prohibits discrimination by banks and other lending institutions, on the basis of race or color, religion, sex, and national origin (among other things). ECOA, 15 U.S.C. 1691 *et seq.*, prohibits lenders from discouraging credit applicants or denying them credit because of color, religion, national origin, and sex (among other things). It also prohibits lenders from imposing different terms and/or conditions, like a higher interest rate, on a loan based on an applicant’s race, color, religion, national origin, or sex. RESPA, 12 U.S.C. §§ 2601–2617, was enacted to protect home buyers. Among other things, RESPA, which is a federal consumer protection law overseen by the Consumer Financial Protection Bureau, protects homeowners against abuses in connection with the servicing of their home loans. The CRA, 12 U.S.C. § 2901, *et seq.*, was enacted in large part to prevent discrimination in the form of redlining.

Contrary to Wells Fargo’s objections, Defendants’ compliance with ECOA is clearly relevant to whether they violated the FHA because Plaintiff has alleged that Defendants’ loans to minorities were on less favorable terms than their loans to Caucasian borrowers. Defendants’ compliance with RESPA is also relevant because RESPA and FHA violations are inter-related. *See Wells Fargo Bank, N.A. v. Chang*, No. 11 Civ. 3020 (NLS), 2012 U.S. Dist. LEXIS 201171,

at *4–5 (S.D. Cal. Aug. 17, 2012) (citing 12 U.S.C. § 2601) (“Congress enacted RESPA to protect consumers from inflated prices in the home purchasing process, to increase the supply of information available to mortgage consumers about the cost of home loans in advance of settlement, and to eliminate abusive practices such as kickbacks, referral fees, and unearned fees.”).

Likewise, Wells Fargo’s objection to discovery on the basis that it concerns the coverage, impact, or effect of the CRA is baseless. Defendants’ compliance with the CRA is relevant to Plaintiff’s claims not only because the CRA prohibits discrimination and redlining, but also because the CRA has data collection, reporting, and record retention requirements that bear directly on the issues in this case. “Reverse redlining has been held to violate the FHA and the CRA.” *Assocs. Home Equity Servs., Inc. v. Troup*, 343 N.J. Super. 254, 268 (Super. Ct. App. Div. 2001). Tellingly, Defendants’ own fair lending policies and practices require Defendants to comply with all applicable fair lending laws and regulations, which include the FHA, ECOA, RESPA, and CRA. And, perhaps even more tellingly, during the March 15, 2019 deposition of Stephanie Couser, counsel for Wells Fargo asked Ms. Couser multiple questions about her role as a CRA Officer. *See, e.g.*, Exhibit D at 11:7–29:3.

Despite the obvious overlap and aligned goals of the FHA, ECOA, CRA, and RESPA, Defendants unilaterally and unreasonably restrict the scope of their production to documents concerning only compliance with, or violations of, the FHA, claiming that other fair lending laws and regulations are not relevant to Plaintiff’s claims.² This refusal encompasses Plaintiff’s Request for documents demonstrating compliance with, or violation of, the fair housing and fair lending

² Wells Fargo has stated it will produce documents relating to the violation of laws other than the FHA to the extent the documents also relate to the FHA.

laws in marketing, originating, and/or servicing 1-4 family residential home loans and/or home equity line of credit products (No. 86.) as well as Plaintiff's Requests for documents relating to various aspects of marketing (Nos. 12, 25, 94, 95). Documents evidencing Defendants' violations of the ECOA, CRA, and RESPA are clearly relevant to Plaintiff's claims because they prove Defendants' liability for violating the FHA, even if such documents do not explicitly reference the FHA. *See Belcastro*, 2019 U.S. Dist. LEXIS 65847, at *7 ("As this broad standard suggests, discovery is not restricted to the narrow scope of a legal claim."); *Nammari v. Town of Winfield*, No. 07 Civ. 306 (APR), 2010 U.S. Dist. LEXIS 30760, at *4 (N.D. Ind. Mar. 29, 2010) ("For discovery purposes, relevancy is construed broadly to encompass any matter that bears on, or that reasonably could lead to other matter[s] that could bear on, any issue that is or may be in the case.").

III. CONCLUSION

The County requests that the Court grant this motion to compel, rejecting each of Defendants' objections addressed herein and order Defendants to produce all documents they seek to withhold pursuant to their objections identified herein.

Dated: October 28, 2019

By: /s/ James M. Evangelista

**KIMBERLY M. FOXX,
STATE'S ATTORNEY FOR COOK
COUNTY**

James M. Evangelista
jim@ewlawllc.com
David J. Worley
david@ewlawllc.com
Kristi Stahnke McGregor
kristi@ewlawllc.com
Evangelista Worley, LLC
8100A Roswell Road
Suite 100

Atlanta, GA 30350
(404) 205-8400

Special Assistant State's Attorneys

Sanford P. Dumain (*pro hac vice*)
Peggy J. Wedgworth (*pro hac vice*)
Jennifer S. Czeisler (*pro hac vice*)
J. Birt Reynolds (*pro hac vice*)
Roy Shimon (*pro hac vice*)
Dolgora D. Dorzhieva (*pro hac vice*)
Ezra Salami (*pro hac vice*)
Milberg Phillips Grossman LLP
One Pennsylvania Plaza, 19th Floor
New York, NY 10119
Phone: (212) 594-5300

Additional Counsel

CERTIFICATE OF SERVICE

I hereby certify that on this day I served the above and foregoing PLAINTIFF'S MOTION TO COMPEL THE PRODUCTION OF DOCUMENTS on all parties by causing a true and correct copy to be filed with the court's electronic filing system, which should automatically send a copy to all counsel of record.

Dated: October 28, 2019

/s/ James M. Evangelista
James M. Evangelista