



# Racial Valuation Bias 2.0: An Attorney's UPDATED Perspective

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FRANKLIN  
GREENSWAG  
CHANNON  
& CAPILLA, LLC

Craig M. Capilla  
Franklin, Greenswag, Channon & Capilla, LLC  
181 Waukegan Road, Suite 205  
Northfield, IL 60093  
847-701-2250 (P)  
847-501-5390 (F)  
[ccapilla@fgclaw.com](mailto:ccapilla@fgclaw.com)

# TATE-AUSTIN v. MILLER

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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

TENISHA TATE-AUSTIN; PAUL  
AUSTIN; and FAIR HOUSING  
ADVOCATES OF NORTHERN  
CALIFORNIA,  
  
Plaintiffs,  
  
v.  
JANETTE C. MILLER; MILLER AND  
PEROTTI REAL ESTATE APPRAISALS,  
INC., AMC LINKS LLC;  
Defendants.

Case No. 3:21-cv-09319 MMC

**FIRST AMENDED COMPLAINT FOR  
INJUNCTIVE, DECLARATORY, AND  
MONETARY RELIEF; JURY TRIAL  
DEMAND**

# TATE-AUSTIN v. MILLER (cont'd)

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15           22.     Through the 1970s, textbooks used to educate and train appraisers contained explicit  
16 instructions that (1) housing appraisals must start with an appraisal of the neighborhood, and (2)  
17 racially segregated, white neighborhoods were “desirable” neighborhoods. Houses located in  
18 predominantly white areas were assumed to be of the highest and best value, while houses located  
19 in predominantly non-white areas, or areas of diverse races, were assumed to be undesirable and of  
20 lower value. For example, the influential textbook written by Frederick Babcock in 1924 states that  
21 “the habits, character, the race . . . of the people are the ultimate factors of real estate value.”<sup>9</sup>  
22 Babcock went on to become a founding member of the American Institute of Real Estate Appraisers  
23 (“AIREA”) and a head of underwriting for the Federal Housing Administration.<sup>10</sup>  
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# TATE-AUSTIN v. MILLER (cont'd)

24           60. Pursuant to professional standards and practice, Miller should have selected comps  
25 outside of Marin City with features that were more closely analogous to the Pacheco Street House,  
26 but failed to do so because the racial demographics of surrounding areas were different – *i.e.*, whiter  
27 -- than Marin City's. Sausalito and Mill Valley, for example, are adjacent areas that have hundreds  
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FIRST AMENDED COMPLAINT – CASE NO. 3:21-cv-09319 MMC

[Case 3:21-cv-09319-MMC](#) [Document 43](#) [Filed 05/06/22](#) [Page 17 of 28](#)

1 of single-family home sales every year, with many properties that would have presented appropriate  
2 comparisons for the Miller Report. Many would have proven more comparable than the comps  
3 selected by Miller if race had not been a consideration.



# CONNOLLY/MOTT v. LANHAM

UNITED STATES DISTRICT COURT  
DISTRICT OF MARYLAND

Nathan Connolly and Shani Mott,

Plaintiffs,

v.

Shane Lanham, 20/20 Valuations, LLC, and  
loanDepot.com, LLC,

Defendants.

Civil Action No. 1:22-cv-02048-SAG

**FIRST AMENDED COMPLAINT AND JURY DEMAND**



# CONNOLLY/MOTT v. LANHAM (cont'd)

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## **C. Defendant Lanham's Appraisal Was Flawed and Racially Discriminatory**

53. To appraise Plaintiffs' home, Defendant Lanham used the sales comparison approach. In this common appraisal method, an appraiser assesses the value of a home by identifying recent sales prices of similar homes in the area, called "comparables" or "comps." The rationale underlying this approach is that the sales prices of comparable properties from the same neighborhood from a similar time period are considered the best indicator of value. However, it simultaneously presents significant fair lending risks, as appraisers have broad discretion in selecting comps and establishing neighborhood boundaries, which opens the door for discrimination.



# CONNOLLY/MOTT v. LANHAM (cont'd)

*a. Defendant Lanham Improperly Limited the Geographic Area from Which He Drew Comparables*

55. Lanham blatantly violated professional appraisal standards by improperly limiting the geographical area from which he considered properties to compare to the Churchwardens Home. He did not pull comps from throughout Homeland, but instead limited his search to houses north of Northern Parkway. Defendant Lanham thereby limited his search to about 16% of the total land area of Homeland. This excluded over 80 potential comps of the almost 100 available, leaving him to choose from only fifteen. Ultimately, Lanham chose and considered three comps that were north of Northern Parkway (L1, L2, and L3 in the map below), and one of those comps (Comparable #2 or L2 in the map below) was located outside of Homeland proper, in a majority-Black census block.



# CONNOLLY/MOTT v. LANHAM (cont'd)

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i. **Reconsideration of Value Practices and Policies**

4. loanDepot shall communicate clearly to applicants that they have a right to request an ROV. loanDepot shall, in clear and plain language, inform applicants about how to request an ROV, the process by which loanDepot handles ROV requests, who will review an ROV request, and the standards that trigger a second appraisal. This language shall be prominently featured in communications with applicants wherever practicable and appropriate. Applicants shall receive a copy of the appraisal as soon as practicable after loanDepot receives it to ensure an adequate opportunity to prepare an ROV request as needed.

5. loanDepot shall maintain timelines and protocols for regularly communicating the status of ROV requests and results to applicants. If an ROV request is denied or the valuation is unchanged, loanDepot shall explain the reasons in writing, including how the supporting information submitted by the applicant was considered.

ii. **Internal Review of Appraisals**

17. loanDepot shall review appraisals internally for indicia of discrimination and flag appraisals if such indicia are present. At minimum, appraisals shall be flagged when: (i) an undervalue flag is present from GSEs (e.g., Fannie Mae); or (ii) the appraisal contains Coded Words. When there are indicia of discrimination, loanDepot shall agree to order a second



# In re Wells Fargo Mortgage

7 UNITED STATES DISTRICT COURT  
8 NORTHERN DISTRICT OF CALIFORNIA  
9 SAN FRANCISCO DIVISION

11 *In re Wells Fargo Mortgage*  
12 *Discrimination Litigation.*

Case No. 3:22-cv-00990-JD  
Honorable James Donato

13 **AMENDED AND CONSOLIDATED**  
14 **CLASS ACTION COMPLAINT**  
15 **FOR:**

- 16 **1. VIOLATION OF THE EQUAL**  
17 **CREDIT OPPORTUNITY ACT,**  
18 **15 U.S.C. § 1691, ET SEQ.**  
19 **2. RACE DISCRIMINATION IN**  
20 **VIOLATION OF THE FAIR**  
21 **HOUSING ACT OF 1968, 42**  
22 **U.S.C. § 3601, ET SEQ.**  
23 **3. RACE DISCRIMINATION IN**  
24 **VIOLATION OF 42 U.S.C. § 1981**  
25 **4. VIOLATION OF THE UNRUH**  
**CIVIL RIGHTS ACT,**  
**CALIFORNIA CIVIL CODE § 51**  
**5. VIOLATION OF THE**  
**CALIFORNIA UNFAIR**  
**COMPETITION LAW**

DEMAND FOR JURY TRIAL

1 Plaintiffs Aaron Braxton, Paul Martin, Gia Gray, Bryan Brown, Elretha  
2 Perkins, Christopher Williams, Ifeoma Ebo and Terah Kuykendall-Montoya,  
3 individually and as representatives of a nationwide class of similarly situated  
4 applicants for original purchase mortgage, refinance and other home mortgage loans  
5 (collectively, “Plaintiffs” or the “Class”), allege as follows:

# In re Wells Fargo Mortgage (cont'd)

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7           9.       With respect to refinancing, Wells Fargo *denied the applications of*  
8 *over 50%* of the Black applicants seeking to refinance in 2020, and *denied the*  
9 *applications of just under 50%* of the Black applicants seeking to refinance in 2021.  
10 No other major lending institution refused to refinance the homes of Black  
11 applicants at such stunning rates.

12           10.       Wells Fargo was the only major lender in the United States that  
13 approved a smaller share of refinancing applications from Black homeowners in  
14 2020 than it had in 2010.<sup>3</sup> That year, while Wells Fargo approved 71% of the  
15 residential refinancing applications submitted by white Americans, it approved only  
16 **47%** of residential refinance applications submitted by Black applicants, **53%** of  
17 residential refinancing applications submitted by applicants identified as Hispanic  
18 and/or Latino, and **67%** of residential refinancing applications submitted by Asian  
19 American applicants. When compared to other lenders, which had approval rates of  
20 **71%, 79%, and 85%**, respectively, for the same racial groups, Wells Fargo's  
21 statistics are stark. This clear disparity in outcomes is especially significant in light




# In re Wells Fargo Mortgage (cont'd)

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7           111.    ***Uncorrected and Racially Biased Appraisals.*** Wells Fargo also  
8 considers uncorrected historical and current appraisal data from geographically  
9 differentiated locations in its refinance evaluation process. Race-stratified  
10 differentials in appraisal data are well known to Wells Fargo and others in the  
11 banking industry. Indeed, according to a March 23, 2022 report in *The Washington*  
12 *Post* citing Brookings Institution data, “homes in Black neighborhoods” (which, as  
13 already discussed, Wells Fargo identifies) routinely appraise at “23 percent less, on  
14 average, than those in comparable White neighborhoods – despite having similar  
15 neighborhood and property characteristics and amenities.”<sup>54</sup> Freddie Mac has  
16 similarly “found that 12.5 percent of appraisals for home purchases in Black  
17 neighborhoods and 15.4 percent in Latino neighborhoods came in below the contract  
18 price, compared with 7.4 percent of appraisals in white neighborhoods.”<sup>55</sup> The  
19 below-market appraisals intentionally skew the loan-to-value calculations against  
20 Black homeowners and prospective homeowners and serve as a tool for racial  
21 discrimination.



# HUD Claims



**U.S. Department of Housing and Urban Development**  
Midwest Region Office, Region V  
Ralph H. Metcalfe Federal Building  
77 West Jackson Boulevard, Room 2101  
Chicago, Illinois 60604

July 28, 2021

[REDACTED]

Dear Respondent:

Subject: Housing Discrimination Complaint  
[REDACTED]  
Inquiry No.: [REDACTED]  
HUD File No.: [REDACTED]

We have received a formal complaint alleging that you have engaged in one or more discriminatory housing practices under the Federal Fair Housing Law, 42 U.S.C. Sections 3601-3619. We are required by statute to send you a copy of the complaint.

We are enclosing a copy of the complaint for you. The alleged discriminatory practices are identified in this complaint. We have made no determination as to whether the complaint against you has merit.

The purpose of this letter is to inform you of: 1) the rights you have in responding to this complaint, 2) the rights each complainant has, and 3) the steps the U.S. Department of Housing and Urban Development (the Department) will take to determine whether the complaint has merit.

In order to ensure that the Department informs you properly of the law's requirements, this notification letter contains language required by the law. A similar letter is used to notify all parties whenever a formal complaint has been filed with the Department under the Federal Fair Housing Law.

We are governed by federal law, which sets out what steps we must take when a formal complaint is filed. The law also includes steps that you can take to answer or refute the allegations of this complaint.

Under federal law, any answer from you to this complaint can be filed within 10 calendar days of your receipt of this letter or receipt of a letter notifying you of any amendments to this complaint.



# HUD Claims (cont'd)

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4	Property Address	Date of Appraisal	Appraisal Value	Name of Lender Requesting Appraisal	Loan Number	Refinance loan or purchase mortgage?	Type of Dwelling (single-family home/detached dwelling, condominium unit, townhome, etc.)	Refinance Loan Amount	Contract Price	AMC Name
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# FNMA Unacceptable Appraisal Practices

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## Unacceptable Appraisal Practices

The following are examples of unacceptable appraisal practices:

- development of or reporting an opinion of market value that is not supportable by market data or is misleading;
- development of a valuation conclusion based either partially or completely on the sex, race, color, religion, disability, national origin, familial status, or including a reference to any protected class of either the prospective owners or occupants of the subject property or the present owners or occupants of the properties in the vicinity of the subject property;
- use of unsupported assumptions, interjections of personal opinion, or perceptions about factors in the valuation process and the use of subjective terminology, including, but not limited to:
  - "pride of ownership," "no pride of ownership," and "lack of pride of ownership";
  - "poor neighborhood";
  - "good neighborhood";
  - "crime-ridden area";
  - "desirable neighborhood or location"; or
  - "undesirable neighborhood or location";

- development of a valuation conclusion based on factors that local, state, or federal law designate as discriminatory, and thus, prohibited;
- misrepresentation of the physical characteristics of the subject property, improvements, or comparable sales;
- failure to comment on negative factors with respect to the subject neighborhood, the subject property, or proximity of the subject property to adverse influences;
- failure to adequately analyze and report any current contract of sale, option, offering, or listing of the subject property and the prior sales of the subject property and the comparable sales;
- selection and use of inappropriate comparable sales;
- failure to use comparable sales that are the most locationally and physically similar to the subject property;
- creation of comparable sales by combining vacant land sales with the contract purchase price of a home that has been built or will be built on the land;
- failure to personally inspect the exterior of the comparable property when required by the scope of work in the appraisal report;
- use of adjustments to comparable sales that do not reflect market reaction to the differences between the subject property and the comparable sales;

# FNMA Unacceptable Appraisal Practices (cont'd)

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- use of unsupported assumptions, interjections of personal opinion, or perceptions about factors in the valuation process and the use of subjective terminology, including, but not limited to:
  - "pride of ownership," "no pride of ownership," and "lack of pride of ownership";
  - "poor neighborhood";
  - "good neighborhood";
  - "crime" (and its variants);
  - "desirable neighborhood or location"; or
  - "undesirable neighborhood or location";

## Miscellaneous Update(s)

**B4-1.1-04, Unacceptable Appraisal Practices:** Added "crime rate or related data" and "crime (and its variants)" as examples to the list of unacceptable appraisal practices.





Craig Capilla is a trial lawyer, concentrating his practice in a wide range of civil litigation, including professional liability and commercial claims. He has successfully defended residential and commercial appraisers and appraisal firms accused of negligence or improper activity in their valuation services. Craig has also represented numerous licensed professionals in state licensing matters including real estate brokers, real estate appraisers, and medical doctors, process servers, mortgage loan originators and brokers. He has represented clients in both state and federal lawsuits and has appeared in various judicial circuits across Illinois and in Wisconsin. He has also assisted professionals with licensing proceedings and regulatory investigations in Iowa, Minnesota, Michigan, Colorado, California, Florida, South Carolina, Oklahoma, Kansas, Pennsylvania, Georgia, Texas, Idaho, Delaware, Maryland, Nevada, and Missouri.

Craig earned a B.A. from the University of Michigan in 2004, majoring in History and Political Science. He then earned a Juris Doctor from the DePaul University College of Law in 2007. Craig is authorized to practice law in Illinois, Wisconsin, and is a member of the trial bar of the United States District Court for the Northern District of Illinois, and is also admitted to practice before the United States district Court for the Eastern District of Wisconsin, Northern District of Indiana, Western District of Michigan, and the United States Court of Appeals, Seventh Circuit.

Craig can be reached at [ccapilla@fgcclaw.com](mailto:ccapilla@fgcclaw.com) or by phone at 847-701-2250.