Nos. 15-1111 & 15-1112

IN THE
Supreme Court of the United States

BANK OF AMERICA CORP., *et al.*,
Petitioners,
v.
CITY OF MIAMI,
Respondent.

WELLS FARGO & CO., *et al.*,
Petitioners,
v.
CITY OF MIAMI,
Respondent.

On Writs of Certiorari to the United States
Court of Appeals for the Eleventh Circuit

JOINT APPENDIX

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PETITIONS FOR WRITS OF CERTIORARI FILED: MARCH 4, 2016
CERTIORARI GRANTED: JUNE 28, 2016

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The following opinions and orders have been omitted in printing the joint appendix because they appear on the following pages in the appendix to Wells Fargo's petition for certiorari in No. 15-1112:

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA

No. 1:13-cv-24506

CITY OF MIAMI,
a Florida municipal corporation,
Plaintiff,
v.

BANK OF AMERICA CORP., ET AL.,
Defendants.

DOCKET ENTRIES

Date	#	Docket Text
12/13/2013	1	COMPLAINT *City of Miami* against All Defendants. Filing fees $ 400.00 receipt number 113C-6310671, filed by City of Miami. (Attachments: # 1 Civil Cover Sheet)(Harke, Lance) (Entered: 12/13/2013)
		* * *
02/28/2014	33	MOTION to Dismiss for Lack of Jurisdiction 1 Complaint , MOTION TO DISMISS 1 Complaint FOR FAILURE TO STATE A CLAIM - *Defendants Motion to Dismiss Complaint Pursuant to Fed. R. Civ. P. 12(b)(1) and 12(b)(6) and Supporting Memorandum of Law* (Responses due by 3/17/2014) by Bank of America Corporation, Bank

Date	#	Docket Text
		of America, N.A., Countrywide Bank, FSB, Countrywide Financial Corporation, Countrywide Home Loans. (Attachments: # 1 Exhibit 1 - Complaint, United States v. Countrywide Fin. Corp., No. 11-10540 (C.D. Cal. Dec. 21, 2011), # 2 Exhibit 2 - Sealed Declaration of Katherine Cacho, # 3 Exhibit 3 - Report of Timothy J.Riddiough, Ph.D, # 4 Exhibit 4 - Report of Marsha J. Courchane, # 5 Exhibit 5 - City of Miami Meeting Minutes (May 14, 2009), # 6 Exhibit 6 - Complaint, City of Miami v. Citigroup, Inc., No. 13-24510 (S.D. Fla.), # 7 Exhibit 7 - Complaint, City of Miami v. Wells Fargo & Co., No. 13-cv-24508 (S.D. Fla.), # 8 Exhibit 8 - Map showing locations of properties identified in Citi of Miami lawsuits, # 9 Exhibit 9 - City of Miami FY 2009 Annual Budget (excerpts), # 10 Exhibit 10 -City of Miami Legislation Resolution, File No. 09-00492 (May 5, 2009)) (Carver, Christopher) (Attachment 2 replaced on 3/5/2014) (nc). Modified docket text on 3/5/2014 (nc). (Entered: 02/28/2014)
02/28/2014	34	UNOPPOSED MOTION for Leave to File Declaration of Katherine Cacho Under Seal by Bank of America Corporation, et al.

Date	#	Docket Text
		(Attachments: # 1 Text of Proposed Order)(nc) (Entered: 03/03/2014)
03/05/2014	35	ORDER granting 34 Motion to File Documents Under Seal. Filings are to remain sealed until one year after the closing of the case. Signed by Judge Robin S. Rosenbaum on 3/5/2014. (tpl) (Entered: 03/05/2014)
		* * *
03/17/2014	37	RESPONSE in Opposition re 33 MOTION to Dismiss for Lack of Jurisdiction 1 Complaint MOTION TO DISMISS 1 Complaint FOR FAILURE TO STATE A CLAIM — *Defendants Motion to Dismiss Complaint Pursuant to Fed. R. Civ. P. 12(b)(1) and 12(b)(6) and Supporting Memorandum of Law PLAINTIFF'S OPPOSITION TO DEFENDANTS' MOTION TO DISMISS* filed by City of Miami. (Attachments: # 1 Declaration of Elaine T. Byszewski in Support of Plaintiff's Opposition to Defendants' Motion to Dismiss)(Harke, Lance) (Entered: 03/17/2014)
03/17/2014	38	AFFIDAVIT in Opposition re 33 MOTION to Dismiss for Lack of Jurisdiction 1 Complaint MOTION TO DISMISS 1 Complaint FOR FAILURE TO STATE A CLAIM -- *Defendants Motion to Dismiss Complaint Pursuant to Fed. R. Civ.*

Date	#	Docket Text
		P. 12(b)(1) and 12(b)(6) and Supporting Memorandum of Law Declaration of Elaine T. Byszewski in Support of Plaintiff's Opposition to Defendants' Motion to Dismiss filed by City of Miami. (Attachments: # 1 Exhibit Exhibit A to Declaration of Elaine T. Byszewski in Support of Plaintiff's Opposition to Defendants' Motion to Dismiss)(Harke, Lance) (Entered: 03/17/2014)
		* * *
03/27/2014	41	REPLY to Response to Motion re 33 MOTION to Dismiss for Lack of Jurisdiction 1 Complaint MOTION TO DISMISS 1 Complaint FOR FAILURE TO STATE A CLAIM -- *Defendants Motion to Dismiss Complaint Pursuant to Fed. R. Civ. P. 12(b)(1) and 12(b)(6) and Supporting Memorandum of Law* filed by Bank of America Corporation, Bank of America, N.A., Countrywide Bank, FSB, Countrywide Financial Corporation, Countrywide Home Loans. (Carver, Christopher) (Entered: 03/27/2014)
		* * *
04/07/2014	46	Plaintiff's MOTION for Leave to File *ONE-PAGE OPPOSITION TO NEW ARGUMENT IN DEFENDANTS' REPLY BRIEF, OR*

Date	#	Docket Text
		ALTERNATIVELY, FOR THE COURT TO DISREGARD IT by City of Miami. (Attachments: # 1 Exhibit PLAINTIFF'S OPPOSITION TO NEW ARGUMENT IN DEFENDANTS' REPLY IN SUPPORT OF MOTION TO DISMISS, # 2 Text of Proposed Order PROPOSED ORDER GRANTING PLAINTIFF'S MOTION FOR LEAVE TO FILE ONE-PAGE OPPOSITION TO NEW ARGUMENT IN DEFENDANTS' REPLY BRIEF OR, ALTERNATIVELY, FOR THE COURT TO DISREGARD IT)(Harke, Lance) (Entered: 04/07/2014)
04/08/2014	47	PAPERLESS ORDER granting 46 Plaintiff's Motion for Leave to File One-Page Opposition to New Argument in Reply Brief. *Clerks Notice: Filer must separately re-file the one-page sur-reply pursuant to Local Rule 15.1, unless otherwise ordered by the Judge.* Signed by Judge Robin S. Rosenbaum on 4/8/2014. (kms) (Entered: 04/08/2014)
04/08/2014	48	RESPONSE/REPLY to 41 Reply to Response to Motion, by City of Miami. (Harke, Lance) (Entered: 04/08/2014)

Date	#	Docket Text
		* * *
05/20/2014	51	CLERKS NOTICE REASSIGNING CASE pursuant to Administrative Order 2014-48. Case reassigned to Judge William P. Dimitrouleas for all further proceedings. Judge Robin S. Rosenbaum no longer assigned to case. (mb) (Entered: 05/20/2014)
		* * *
05/29/2014	56	Notice of Supplemental Authority re 37 Response in Opposition to Motion,, by City of Miami (Attachments: # 1 Exhibit A - Order (City of Los Angeles v. Wells Fargo & Co.))(Harke, Lance) (Entered: 05/29/2014)
06/03/2014	57	MOTION for Hearing re 33 MOTION to Dismiss for Lack of Jurisdiction 1 Complaint MOTION TO DISMISS 1 Complaint FOR FAILURE TO STATE A CLAIM *by Countrywide Bank, FSB, Countrywide Financial Corporation, Bank of America, N.A., Bank of America Corporation, Countrywide Home Loans (Carver, Christopher) Modified to convert document to a motion on 6/4/2014 (tpl). (Entered: 06/03/2014)*
		* * *
06/04/2014	59	ORDER granting 57 Motion for Hearing. Hearing is set for

Date	#	Docket Text
		06/20/2014 on 33 Motion to Dismiss. Signed by Judge William P. Dimitrouleas on 6/4/2014. (tpl) (Entered: 06/04/2014)
06/04/2014		Set Hearing as to 33 MOTION to Dismiss for Lack of Jurisdiction 1 Complaint. Motion Hearing set for 6/20/2014 10:30 AM in Fort Lauderdale Division before Judge William P. Dimitrouleas per DE 59 Order. (tpl) (Entered: 06/04/2014)
		* * *
06/09/2014	61	Notice of Supplemental Authority re 37 Response in Opposition to Motion,, by City of Miami (Attachments: # 1 Exhibit Exhibit A)(Harke, Lance) (Entered: 06/09/2014)
06/11/2014	62	ORDER Rescheduling Hearing (Time Change Only) on Motion 33 MOTION to Dismiss for Lack of Jurisdiction 1 Complaint MOTION TO DISMISS 1 Complaint FOR FAILURE TO STATE A CLAIM : Motion Hearing reset for 6/20/2014 10:00 AM in Fort Lauderdale Division before Judge William P. Dimitrouleas. Signed by Judge William P. Dimitrouleas on 6/11/2014. (ls) (Entered: 06/11/2014)
06/13/2014	63	Notice of Supplemental Authority re 37 Response in Opposition to

Date	#	Docket Text
		Motion,, by City of Miami (Attachments: # 1 Exhibit Exhibit A)(Harke, Lance) (Entered: 06/13/2014)
06/20/2014	65	Minute Entry for proceedings held before Judge William P. Dimitrouleas: Motion Hearing held on 6/20/2014 re 33 MOTION to Dismiss for Lack of Jurisdiction 1 Complaint MOTION TO DISMISS 1 Complaint FOR FAILURE TO STATE A CLAIM -- *Defendants Motion to Dismiss Complaint Pursuant to Fed. R. Civ. P. 12(b)(1) and 12(b)(6) and Supporting Memorandum of Law* filed by Countrywide Home Loans, Bank of America Corporation, Countrywide Bank, FSB, Countrywide Financial Corporation, Bank of America, N.A.. Argument heard. Written Order to enter. Court Reporter: Francine Salopek, 954-769-5657 / Francine Salopek@flsd.uscourts.gov (kc) (Entered: 06/24/2014)
06/24/2014	64	Notice of Supplemental Authority re 33 MOTION to Dismiss for Lack of Jurisdiction 1 Complaint MOTION TO DISMISS 1 Complaint FOR FAILURE TO STATE A CLAIM — *Defendants Motion to Dismiss Complaint Pursuant to Fed. R. Civ. P. 12(b)(1) and 12(b)(6) and*

Date	#	Docket Text
		Supporting Memorandum of Law by Countrywide Bank, FSB, Countrywide Financial Corporation, Bank of America, N.A., Bank of America Corporation, Countrywide Home Loans (Attachments: # 1 Exhibit A - Hillcrest Property, LLC v. Pasco County, No. 1312383, 2014 WL 2748192 (11th Cir. June 18, 2014))(Carver, Christopher) (Entered: 06/24/2014)
06/25/2014	66	MOTION for Leave to File *PLAINTIFF'S RESPONSE TO NOTICE OF SUPPLEMENTAL AUTHORITY IN SUPPORT OF DEFENDANTS' MOTION TO DISMISS PURSUANT TO RULE 12(B)(1) AND RULE 12(B)(6)* by City of Miami. (Attachments: # 1 Exhibit Plaintiff's Response to Notice of Supplemental Authority in Support of Defendants' Motion to Dismiss Pursuant to Rule 12(b)(1) and Rule 12(b)(6), # 2 Text of Proposed Order)(Harke, Lance) (Entered: 06/25/2014)
		* * *
06/27/2014	68	ORDER granting 66 Motion for Leave to File One-Page Response to Notice of Supplemental Authority. *Clerks Notice: Filer must separately re-file the amended pleading pursuant to Local Rule 15.1, unless*

Date	#	Docket Text
		otherwise ordered by the Judge. Signed by Judge William P. Dimitrouleas on 6/27/2014. (tpl) (Entered: 06/30/2014)
06/30/2014	69	RESPONSE/REPLY to 64 Notice of Supplemental Authority,, *PLAINTIFF'S RESPONSE TO NOTICE OF SUPPLEMENTAL A UTHORITY IN SUPPORT OF DEFENDANTS' MOTION TO DISMISS PURSUANT TO RULE 12(B)(1) AND RULE 12(B)(6)* by City of Miami. (Harke, Lance) (Entered: 06/30/2014)
07/02/2014	70	TRANSCRIPT of Motion Hearing held on 6-20-14 before Judge William P. Dimitrouleas, 1-43 pages, Court Reporter: Francine Salopek, 954-769-5657 / Francine_Salopek@flsd.uscourts.gov. Transcript may be viewed at the court public terminal or purchased by contacting the Court Reporter Francine Salopek before the deadline for Release of Transcript Restriction. After that date it may be obtained through the Court Reporter Francine Salopek or PACER. Redaction Request due 7/28/2014. Redacted Transcript Deadline set for 8/7/2014. Release of Transcript Restriction set for 10/3/2014. (fs) (Entered: 07/02/2014)

Date	#	Docket Text
07/08/2014	71	ORDER granting 33 Motion to Dismiss. Count I is DISMISSED WITH PREJUDICE. Count II is DISMISSED WITHOUT PREJUDICE. Signed by Judge William P. Dimitrouleas on 7/8/2014. (tpl) (Entered: 07/09/2014)
07/21/2014	72	MOTION for Reconsideration , MOTION for Leave to File *First Amended Complaint* by City of Miami. (Attachments: # 1 Exhibit A - First Amended Complaint)(Harke, Lance). Added MOTION for Leave to File on 7/22/2014 (tp). (Entered: 07/21/2014)
		* * *
08/07/2014	74	RESPONSE in Opposition re 72 MOTION for Reconsideration MOTION for Leave to File *First Amended Complaint -- Defendants' Opposition to Motion for Reconsideration and Leave to File First Amended Complaint* filed by Bank of America Corporation, Bank of America, N.A., Countrywide Bank, FSB, Countrywide Financial Corporation, Countrywide Home Loans. (Attachments: # 1 Exhibit 1 - Redline, # 2 Exhibit 2 - 650 NW 50th St Redacted, # 3 Exhibit 3 - 4125 NW 10th Ave Redacted, # 4 Exhibit 4- 748 NW 29th Ter. Unit A _Redacted, # 5 Exhibit 5 - 1869 SW

Date	#	Docket Text
		12th St._Redacted, # 6 Exhibit 6 - 2396 SW 20th St Redacted, # 7 Exhibit 7 - 800 N. Miami Ave Redacted, # 8 Exhibit 8 - 2201 SW 23rd Ter., Miami, FL 33145 _Redacted, # 9 Exhibit 9 - Declaration of Edward Cherkezian)(Carver, Christopher) (Entered: 08/07/2014)
08/18/2014	75	RESPONSE/REPLY to 72 MOTION for Reconsideration MOTION for Leave to File *First Amended Complaint* by City of Miami. (Harke, Lance) (Entered: 08/18/2014)
09/08/2014	76	ORDER denying 72 Motion for Reconsideration ; denying 72 Motion for Leave to File First Amended Complaint. Signed by Judge William P. Dimitrouleas on 9/8/2014. (tpl) (Entered: 09/09/2014)
09/16/2014	77	FINAL ORDER OF DISMISSAL. Signed by Judge William P. Dimitrouleas on 9/16/2014. (tpl) **NOTICE: If there are sealed documents in this case, they may be unsealed after 1 year or as directed by Court Order, unless they have been designated to be permanently sealed. See Local Rule 5.4 and Administrative Order 2014-69.** (Entered: 09/17/2014)

Date	#	Docket Text
10/07/2014	78	Notice of Appeal as to 77 Order Dismissing Case, by City of Miami. Filing fee $ 505.00 receipt number 113C-7136149. Within fourteen days of the filing date of a Notice of Appeal, the appellant must complete the Eleventh Circuit Transcript Order Form regardless of whether transcripts are being ordered [Pursuant to FRAP 10(b)]. For information go to our FLSD website under Transcript Information. (Harke, Lance) (Entered: 10/07/2014)
10/08/2014		Transmission of Notice of Appeal and Docket, Order Sheet to US Court of Appeals re 78 Notice of Appeal. Notice has been electronically mailed. (mc) (Entered: 10/08/2014)
10/09/2014	79	Acknowledgment of Receipt of NOA from USCA re 78 Notice of Appeal, filed by City of Miami. Date received by USCA: 10/8/2014. USCA Case Number: 14-14543-CC. (mc) (Entered: 10/09/2014)
02/10/2015	80	Pursuant to F.R.A.P. 11(c), the Clerk of the District Court for the Southern District of Florida certifies that the record is complete for purposes of this appeal re: 78 Notice of Appeal, Appeal No. 14-14543-CC. The entire record on appeal is

Date	#	Docket Text
		available electronically. (mc) (Entered: 02/10/2015)
05/12/2015	81	ORDER of USCA Joint motion to consolidate appeals 14-14543, 14-14544 and 14-14706 for the purposes of oral argument is hereby GRANTED; (55 in 1:13-cv-24508-WPD) Notice of Appeal, filed by City of Miami, (72 in 1:13-cv-24510-WPD) Notice of Appeal, filed by CITY OF MIAMI, (78 in 1:13-cv-24506-WPD) Notice of Appeal, filed by City of Miami. (mc) (Entered: 05/12/2015)
11/13/2015	82	MANDATE of USCA the judgment of the district court is AFFIRMED in part, REVERSED in part, and REMANDED for further proceedings consistent with this opinion; re 78 Notice of Appeal, filed by City of Miami ; Date Issued: 11/13/2015 ; USCA Case Number: 14-14543-CC (mc) (Entered: 11/13/2015)
11/16/2015	83	ORDER Setting Deadline to File Amended Complaint. Amended Complaint due by 11/30/2015. Defendants shall then respond to the operative complaint on or before 12/14/2015. Signed by Judge William P. Dimitrouleas on 11/16/2015. (jua) (Entered: 11/16/2015)

Date	#	Docket Text
11/30/2015	84	Second AMENDED COMPLAINT *for Violations of the Federal Fair Housing Act* against Bank of America Corporation, Bank of America, N.A., Countrywide Bank, FSB, Countrywide Financial Corporation, Countrywide Home Loans, filed by City of Miami.(Harke, Lance) (Entered: 11/30/2015)
		* * *
12/14/2015	86	MOTION TO DISMISS 84 Amended Complaint, FOR FAILURE TO STATE A CLAIM (Responses due by 12/31/2015), MOTION for Hearing re 84 Amended Complaint, -- *Defendants' Motion to Dismiss Plaintiff's Second Amended Complaint and Supporting Memorandum of Law, and Request for Hearing* by Bank of America Corporation, Bank of America, N.A., Countrywide Bank, FSB, Countrywide Financial Corporation, Countrywide Home Loans. (Carver, Christopher) (Entered: 12/14/2015)
12/22/2015	87	Joint MOTION for Extension of Time to File Response/Reply/Answer -- *Joint Motion to Extend Briefing Deadlines for Defendants' Motion to Dismiss Plaintiffs Second Amended Complaint* by Bank of America Corporation, Bank of America, N.A.,

Date	#	Docket Text
		Countrywide Bank, FSB, Countrywide Financial Corporation, Countrywide Home Loans. (Attachments: # 1 Exhibit A - (proposed) Order Granting Joint Motion to Extend Briefing Deadlines)(Carver, Christopher) (Entered: 12/22/2015)
12/23/2015	89	ORDER granting 87 Motion for Extension of Time to File Response/Reply to Motion. Re: 86 MOTION TO DISMISS 84 Amended Complaint, FOR FAILURE TO STATE A CLAIM MOTION for Hearing re 84 Amended Complaint, -- *Defendants' Motion to Dismiss Plaintiff's Second Amended Complaint and Supporting Memorandum of Law, and Request for Hearing* filed by Countrywide Home Loans, Bank of America Corporation, Countrywide Bank, FSB, Countrywide Financial Corporation, Bank of America, N.A.. Responses due by 1/20/2016 Replies due by 2/5/2016. Signed by Judge William P. Dimitrouleas on 12/23/2015. (cbr) (Entered: 12/28/2015) * * *
01/20/2016	90	RESPONSE in Opposition re 86 MOTION TO DISMISS 84 Amended Complaint, FOR FAILURE TO

Date	#	Docket Text
		STATE A CLAIM MOTION for Hearing re 84 Amended Complaint, — *Defendants' Motion to Dismiss Plaintiffs Second Amended Complaint and Supporting Memorandum of Law, and Request for Hearing* filed by City of Miami. Replies due by 2/1/2016. (Harke, Lance) (Entered: 01/20/2016)
02/05/2016	91	REPLY to Response to Motion re 86 MOTION TO DISMISS 84 Amended Complaint, FOR FAILURE TO STATE A CLAIM MOTION for Hearing re 84 Amended Complaint, — *Defendants' Motion to Dismiss Plaintiffs Second Amended Complaint and Supporting Memorandum of Law, and Request for Hearing* filed by Bank of America Corporation, Bank of America, N.A., Countrywide Bank, FSB, Countrywide Financial Corporation, Countrywide Home Loans. (Carver, Christopher) (Entered: 02/05/2016)
02/11/2016	92	ORDER granting 86 Motion for Hearing. hearing on Defendants= Motion to Dismiss set for 3/11/2016 10:00 AM in Fort Lauderdale Division before Judge William P. Dimitrouleas. Signed by Judge William P. Dimitrouleas on 2/11/2016. (jas) (Entered: 02/12/2016)

Date	#	Docket Text
		* * *
03/11/2016	96	Minute Entry for proceedings held before Judge William P. Dimitrouleas: Motion Hearing held on 3/11/2016 re 86 MOTION TO DISMISS 84 Amended Complaint, FOR FAILURE TO STATE A CLAIM MOTION for Hearing re 84 Amended Complaint, — *Defendants' Motion to Dismiss Plaintiffs Second Amended Complaint and Supporting Memorandum of Law, and Request for Hearing* filed by Countrywide Home Loans, Bank of America Corporation, Countrywide Bank, FSB, Countrywide Financial Corporation, Bank of America, N.A. Oral argument heard. Written Order to enter. Court Reporter: Francine Salopek, 954-769-5657 / Francine Salopek@flsd.uscourts.gov (kc) (Entered: 03/11/2016)
		* * *
03/17/2016	98	ORDER GRANTING MOTION TO DISMISS SECOND AMENDED COMPLAINT re 86 Motion to Dismiss for Failure to State a Claim. Amended Pleadings due by 4/15/2016. Signed by Judge William P. Dimitrouleas on 3/17/2016. (jas) (Entered: 03/17/2016)
04/07/2016	99	TRANSCRIPT of Motion Hearing held on 3-11-16 before Judge

Date	#	Docket Text
		William P. Dimitrouleas, Volume Number 1 of 1, 1-67 pages, Court Reporter: Francine Salopek, 954-769-5657 / Francine_Salopek@flsd.uscourts.gov. Transcript may be viewed at the court public terminal or purchased by contacting the Court Reporter Francine Salopek before the deadline for Release of Transcript Restriction. After that date it may be obtained through the Court Reporter Francine Salopek or PACER. Redaction Request due 5/2/2016. Redacted Transcript Deadline set for 5/12/2016. Release of Transcript Restriction set for 7/11/2016. (fs) (Entered: 04/07/2016)
		* * *
04/29/2016	102	Third AMENDED COMPLAINT *FOR VIOLATIONS OF THE FEDERAL FAIR HOUSING ACT* against Bank of America, N.A., Countrywide Bank, FSB filed in response to Order Granting Motion for Leave, filed by City of Miami.(Harke, Lance) (Entered: 04/29/2016)
05/16/2016	103	MOTION TO DISMISS and Request for Hearing 102 Amended Complaint FOR FAILURE TO STATE A CLAIM - *Defendants' Motion to Dismiss Third Amended*

Date	#	Docket Text
		Complaint with Prejudice and Request for Hearing by Bank of America, N.A., Countrywide Bank, FSB. Responses due by 6/3/2016 (Attachments: # 1 Exhibit Redline of SAC and TAC, # 2 Exhibit Cobb Cty. v. Bank of Am. Corp., No. 15-4081, slip op. (N.D. Ga. May 2, 2016))(Carver, Christopher). Added MOTION for Hearing on 5/17/2016 (cbr). (Entered: 05/16/2016)
		* * *
06/10/2016	112	RESPONSE in Opposition re 103 MOTION TO DISMISS 102 Amended Complaint FOR FAILURE TO STATE A CLAIM *Defendants' Motion to Dismiss Third Amended Complaint with Prejudice and Request for Hearing* MOTION for Hearing filed by City of Miami. Attorney D. Porpoise Evans added to party City of Miami(pty:pla). Replies due by 6/20/2016. (Evans, D.) (Entered: 06/10/2016)
		* * *
06/28/2016	124	REPLY to Response to Motion re 103 MOTION TO DISMISS 102 Amended Complaint FOR FAILURE TO STATE A CLAIM *Defendants' Motion to Dismiss Third Amended Complaint with Prejudice and Request for Hearing* MOTION for Hearing filed by Bank of America,

Date	#	Docket Text
		N.A., Countrywide Bank, FSB. (Carver, Christopher) (Entered: 06/28/2016)
07/05/2016	125	ANSWER and Affirmative Defenses to Amended Complaint with Jury Demand -- *Defendant's Answer and Affirmative Defenses to Plaintiffs Third Amended Complaint for Violations of the Federal Fair Housing Act* by Bank of America Corporation, Countrywide Bank, FSB. (Carver, Christopher) (Entered: 07/05/2016)
07/06/2016	126	ORDER TO SHOW CAUSE WHY THIS CASE SHOULD NOT BE STAYED PENDING THE SUPREME COURTS DISPOSITION OF MATTERS NOW BEFORE THE COURT Show Cause Response due by 7/18/2016. Signed by Judge William P. Dimitrouleas on 7/6/2016. (lrz) (Entered: 07/06/2016)
07/06/2016	127	RESPONSE TO ORDER TO SHOW CAUSE re 126 Order to Show Cause by Countrywide Bank, FSB, Bank of America, N.A.. (Carver, Christopher) (Entered: 07/06/2016)
07/13/2016	128	ORDER STAYING CASE PENDING THE SUPREME COURT'S DISPOSITION OF MATTERS NOW BEFORE THE COURT. This action is hereby STAYED. The Clerk is

Date	#	Docket Text
		DIRECTED to administratively close this case and deny without prejudice as moot any pending motions. Signed by Judge William P. Dimitrouleas on 7/13/2016. (mc) **NOTICE: If there are sealed documents in this case, they may be unsealed after 1 year or as directed by Court Order, unless they have been designated to be permanently sealed. See Local Rule 5.4 and Administrative Order 2014-69.** (Entered: 07/14/2016)

* * *

UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 14-14543

CITY OF MIAMI,
a Florida municipal corporation,
Plaintiff – Appellant,
v.

BANK OF AMERICA CORP., ET AL.,
Defendants – Appellees.

DOCKET ENTRIES

Date	Docket Text
10/08/2014	CIVIL APPEAL DOCKETED. Notice of appeal filed by Appellant City of Miami on 10/07/2014. Fee Status: Fee Paid. No hearings to be transcribed. The appellant brief is due on or before 11/17/2014. The appendix is due no later than 7 days from the filing of the appellant's brief.
	* * *
12/08/2014	Appellant's brief filed by City of Miami. (ECF: Robert Peck)
12/08/2014	Appendix filed [3 VOLUMES] by Appellant City of Miami. (ECF: Robert Peck)
	* * *

Date	Docket Text
12/15/2014	*MOTION to file amicus brief pursuant to FRAP 29(a) filed by Elizabeth Brancart for Nat. Fair Housing Alliance, Ctr for Fair Hsg, Inc., Central Ala. Fair Hsg Ctr, Inc., Fair Hsg Ctr of the Greater Palm Beaches, Inc., Fair Hsg Ctr of No. Ala., Fair Hsg Continuum, Inc., HOPE, Metro Fair Hsg Serv. & SCC Fair Hsg. [7346758-1]* (ECF: Elizabeth Brancart) * * *
12/24/2014	RESPONSE to Motion for leave to file amicus brief [7346758-2] filed by Attorney Christopher Stephen Carver for Appellees Countrywide Home Loans, BAC, CFC, Bank of America, N.A. and Countrywide Bank, FSB. (ECF: Christopher Carver)
12/31/2014	Reply to Response to Motion for Leave to Proceed as an Amicus filed by Elizabeth Brancart on behalf of Movants NFHA, The Ctr. for Fair Hsg., Cent. Ala. FHC, FHC of the Grtr. Palm Beaches, FHC of No. Ala., Fair Hsg. Continuum, Inc., Hsg. Opp. Project for Excellence, Metro Fair Hsg. Services & Savannah-Chatham Cnty FHC. (ECF: Elizabeth Brancart)
01/14/2015	ORDER: The motion of the National Fair Housing Alliance, Center for

Date	Docket Text
	Fair Housing, Inc., Central Alabama Fair Housing Center, Inc., Fair Housing Center of the Greater Palm Beaches, Inc., Fair Housing Center of Northern Alabama, Fair Housing Continuum, Inc., Housing Opportunities Project for Excellence, Inc., Metro Fair Housing Services, Inc. and Savannah-Chatham County Fair Housing Council, Inc. for leave to file a brief as amici curiae in support of Appellant and reversal is GRANTED. [7346758-2] (AJ)
01/14/2015	Amicus Brief filed by Amicus Curium Center for Fair Housing, Inc., Central Alabama Fair Housing Center, Fair Housing Center of Greater Palm Beaches, Inc., Fair Housing Center of Northern Alabama, Fair Housing Continuum, Inc., Housing Opportunities Project for Excellence, Inc., Metro Fair Housing Services, Inc., National Fair Housing Alliance and Savannah-Chatham County Fair Housing Council, Inc.. Service date: 12/15/2014 by email to Attorneys for Appellant and Appellees.
02/02/2015	Appellee's Brief filed by Appellees BAC, Bank of America, N.A., Countrywide Bank, FSB, CFC and Countrywide Home Loans. (ECF: Christopher Carver)

Date	Docket Text
02/02/2015	Supplemental Appendix [1 VOLUMES] filed by Appellees BAC, Bank of America, N.A., Countrywide Bank, FSB, CFC and Countrywide Home Loans. (ECF: Christopher Carver) * * *
02/09/2015	Amicus Brief as of right or by consent of the parties filed by Robert M. Brochin for Mortgage Bankers Association. (ECF: Robert Brochin) * * *
02/27/2015	Reply Brief filed by Appellant City of Miami. (ECF: Robert Peck) * * *
04/01/2015	*TIME SENSITIVE MOTION to Schedule Related Appeals for Same Oral Argument Date filed by City of Miami. Joint Stipulation of Parties. [7431980-1]* (ECF: Robert Peck) * * *
04/02/2015	ORDER: Motion filed by Appellant City of Miami to scheduled related appeals for same oral argument is GRANTED. ENTERED FOR THE COURT-BY DIRECTION [7431980-2] * * *
04/03/2015	Supplemental Authority filed by Appellant City of Miami. (ECF: Robert Peck)

Date	Docket Text
	* * *
05/15/2015	Supplemental Authority filed by Appellees BAC, Bank of America, N.A., Countrywide Bank, FSB, CFC and Countrywide Home Loans. (ECF: Thomas Hefferon)
05/18/2015	Response to Supplemental Authority (28J) filed by Appellant City of Miami. (ECF: Robert Peck)
05/19/2015	Oral argument held. Oral Argument participants were Robert S. Peck for Appellant City of Miami and Thomas Hefferon for Appellees Countrywide Home Loans, BAC, CFC, Bank of America, N.A. and Countrywide Bank, FSB in 14-14543, Attorney Paul Francis Hancock for Appellees Wells Fargo Bank, N.A. and Wells Fargo Bank & Co. in 14-14544, Attorney Stephen Joseph Kane for Appellees CitiMortgage, Inc., Citibank, N.A., CAC, Citi Holdings,Inc. and CitiCorp Trust Bank, FSB in 14-14706. [14-14543, 14-14544, 14-14706]
	* * *
07/09/2015	Supplemental Authority filed by Appellees BAC, Bank of America, N.A., Countrywide Bank, FSB, CFC and Countrywide Home Loans. (ECF: Thomas Hefferon)

Date	Docket Text
07/14/2015	Response to Supplemental Authority (28J) filed by Appellant City of Miami. (ECF: Robert Peck)
07/23/2015	Supplemental Authority filed by Appellees BAC, Bank of America, N.A., Countrywide Bank, FSB, CFC and Countrywide Home Loans. (ECF: Thomas Hefferon)
07/24/2015	Response to Supplemental Authority (28J) filed by Appellant City of Miami. (ECF: Robert Peck)
09/01/2015	Opinion issued by court as to Appellant City of Miami. Decision: Affirmed in part, Reversed in part, and Remanded. Opinion type: Published. Opinion method: Signed. The opinion is also available through the Court's Opinions page at this link http://www.ca11.uscourts.gov/opinions.
09/01/2015	Judgment entered as to Appellant City of Miami.
09/22/2015	Petition for rehearing en banc (with panel rehearing) filed by Appellee Bank of America, N.A.. (ECF: Christopher Carver)
11/04/2015	ORDER: The Petition(s) for Rehearing are DENIED and no Judge in regular active service on the Court having requested that the Court be polled, the Petition(s) for

Date	Docket Text
	Rehearing En Banc are DENIED. [7617297-1]
11/13/2015	Mandate issued as to Appellant City of Miami.
02/01/2016	Extension for filing certiorari GRANTED by U.S. Supreme Court as to Appellee BAC in 14-14543 [14-14543, 14-14544]
03/04/2016	Notice of Writ of Certiorari filed as to Appellant City of Miami. SC# 15-1111.
04/07/2016	Checked status of ceritorari 15-1111 filed as to Appellee Bank of America, N.A. - Pending.
06/03/2016	Checked status of ceritorari 15-1111 filed as to Appellee BAC - Pending.
06/28/2016	Writ of Certiorari filed as to Appellee BAC is GRANTED. SC# 15-1111.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO: ____________________

CITY OF MIAMI, a Florida
municipal Corporation,

Plaintiff,

v.

BANK OF AMERICA
CORPORATION; BANK OF
AMERICA, N.A.;
COUNTRYWIDE FINANCIAL
CORPORATION;
COUNTRYWIDE HOME
LOANS; and COUNTRYWIDE
BANK, FSB,

DEMAND FOR
JURY TRIAL

Defendants.

____/

COMPLAINT
FOR VIOLATIONS OF THE FEDERAL FAIR HOUSING ACT

[Table of Contents omitted]

I. NATURE OF THE ACTION

1. It is axiomatic that banks should not make discriminatory loans. Banks must extend credit to minorities on equal terms as they do to other similarly situated borrowers. Banks should not target minority neighborhoods for loans that discriminate nor make loans to minorities on terms that are worse than those offered to whites with similar credit characteristics. When Banks engage in such discriminatory conduct, the misconduct has profound financial consequences for the cities in which mortgaged properties exist, and Banks should be responsible for those financial consequences. Banks should reimburse the City for lost tax revenues due to discriminatory lending. And Banks should pay the costs of repairing and maintaining properties that go into foreclosure due to discriminatory lending. This lawsuit arises because BoA breached these legally mandated obligations and foreseeably injured the City of Miami.

A. BoA Has Engaged in a Continuing Pattern of Discriminatory Mortgage Lending Practices in Miami Resulting in Foreclosures

2. This suit is brought pursuant to the Fair Housing Act of 1968 ("FHA"), as amended, 42 U.S.C. §§ 3601, *et seq.,* by the City of Miami ("Miami" or "City") to seek redress for injuries caused by Bank of America's[1] ("BoA/Countrywide," "BoA" or "the Bank")

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[1] Defendants collectively are referred to as "BoA," including: Bank of America Corporation, Bank of America, N.A., Countrywide Financial Corporation, Countrywide Home Loans,

pattern or practice of illegal and discriminatory mortgage lending. Specifically, Miami seeks injunctive relief and damages for the injuries caused by foreclosures on BoA's loans in minority neighborhoods and to minority borrowers that are the result of the Bank's unlawful and discriminatory lending practices. The unlawful conduct alleged herein consists of both intentional discrimination and disparate impact discrimination.

3. The State of Florida in general, and the City of Miami in particular, have been devastated by the foreclosure crisis. As of October 2013, Florida has the country's highest foreclosure rate, and Miami has the highest foreclosure rate among the 20 largest metropolitan statistical areas in the country.[2] Moreover, Florida is by far the leading state in the country with regard to owner-vacated or "Zombie" foreclosures.[3]

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and Countrywide Bank, FSB. Plaintiff alleges that Defendants are also liable for residential home loans and lending operations acquired from, and/or sold by or through, Countrywide Bank, N.A., FirstFranklin Corporation, Grand Harbor Mortgage, John Laing Homes, Nexstar Financial Corporation, and Treasury Bank National Association.

[2] RealtyTrac, *Scheduled Judicial Foreclosure Auctions Increase Annually for 16th Straight Month, Foreclosure Starts Up Monthly for Second Straight Month, Big Jumps in FL, IL, CO,* (Nov. 14, 2013) *(available at* http://www.realtytrac.com/content/foreclosure-market-report/october-2013-us-foreclosure-market-report-7934).

[3] RealtyTrac, *Q1 2013 Foreclosure Inventory Update,* pg. 5 *(available at* http://www.realtytrac.com/images/reportimages/RealtyTrac Foreclosure Inventory Analysis_Q1_2013.pdf).

4. The foreclosure crisis in Florida resulted in such drastic consequences that the Florida Supreme Court established a Task Force to recommend "policies, procedures, strategies, and methods for easing the backlog of pending residential mortgage foreclosure cases while protecting the rights of parties."[4]

5. BoA has engaged in a continuous pattern and practice of mortgage discrimination in Miami since at least 2004 by imposing different terms or conditions on a discriminatory and legally prohibited basis. In order to maximize profits at the expense of the City of Miami and minority borrowers, BoA adapted its unlawful discrimination to changing market conditions. This unlawful pattern and practice is continuing through the present and has not terminated. Therefore, the operative statute of limitations governing actions brought pursuant to the Federal Fair Housing Act has not commenced to run.

6. The pattern and practice of lending discrimination engaged in by BoA consists of traditional redlining[5] and reverse redlining,[6] both of which have been deemed to violate the FHA by federal courts throughout the country. BoA engaged

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[4] Florida Supreme Court Task Force On Residential Mortgage Foreclosure Cases, *Final Report And Recommendations* (August 17, 2009) *(available at* www.floridasupremecourt.org/.../Filed_08-17-2009_Foreclosure_Final_).

[5] Redlining is the practice of denying credit to particular neighborhoods based on race.

[6] Reverse redlining is the practice of flooding a minority community with exploitative loan products.

in redlining, and continues to engage in said conduct, by refusing to extend mortgage credit to minority borrowers in Miami on equal terms as to non-minority borrowers. BoA engaged in reverse redlining, and continues to engage in said conduct, by extending mortgage credit on predatory terms to minority borrowers in minority neighborhoods in Miami on the basis of the race or ethnicity of its residents. Federal Reserve Chairman Ben Bernanke recently acknowledged these twin evils of mortgage discrimination, and explained that both types of mortgage discrimination "continue to have particular significance to mortgage markets."[7]

7. Major banks such as BoA have a long history of engaging in redlining throughout Miami. That practice began to change in the late 1990s, when BoA adapted to changing market conditions, and began to flood historically underserved minority communities with mortgage loans that consisted of a variety of high cost and abusive mortgage loan products with predatory terms as compared to the mortgage loans issued to white borrowers (reverse redlining).

8. BoA's discriminatory lending practices have the purpose and effect of placing vulnerable, underserved borrowers in loans they cannot afford. Reverse redlining maximizes BoA's profit without regard to the borrower's best interest, the borrower's ability to repay, or the financial health of

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[7] Remarks by Federal Reserve Chairman Ben Bernanke at the Operation HOPE Global Financial Dignity Summit, Atlanta, Georgia at pg. 10 (November 15, 2012) *(available at* www.federalreserve.gov/newsevents/speech/bernanke20121115a.htm).

underserved minority neighborhoods. Moreover, BoA has averted any significant risk to itself by selling the vast majority of mortgage loans it originates or purchases on the secondary market (collectively "BoA Loans").

9. Between 1996-2006, one category of discriminatory loan products -subprime loans - grew throughout the country from $97 billion to $640 billion. These loans were frequently targeted to minorities. Upon information and belief, the lack of accessible credit resulting from BoA's previous pattern and practice of redlining in the minority communities in Miami created conditions whereby the Bank could easily target and exploit the underserved minority communities who, due to traditional redlining, had been denied credit.

10. Therefore, following several years of issuing abusive, subprime mortgage loans throughout the minority communities of Miami, commencing in or around 2007, BoA once again adapted to changing market conditions, while continuing its pattern and practice of issuing a variety of discriminatory loan products. Simultaneously, Miami and other communities throughout the country experienced a curtailment of mortgage credit issued to minority borrowers.[8] BoA is one of the largest mortgage lenders doing business in Miami and its policies and

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[8] Center for Responsible Lending, *The State of Lending in America & its Impact on U.S. Households* (2012) *(available at* http://www.responsiblelending.org/state-of-lending/State-of-Lending-report-1.pdf); Harvard School of Public Health, *Home Purchase Loan Denial Rate By Race/Ethnicity* (2010) (available at http://diversitydata.sph.harvard.edu/Data/Rankings/Show.aspx?ind=9).

practices contributed to this problem. In other words, BoA not only refused to extend credit to minority borrowers when compared to white borrowers, but when the Bank did extend credit, it did so on predatory terms. This combination of reverse redlining and redlining and represents a continuing and unbroken pattern and practice of mortgage lending discrimination in Miami that still exists today.

11. BoA's pattern and practice of *reverse redlining* has caused an excessive and disproportionately high number of foreclosures on the BoA Loans it has made in the minority neighborhoods of Miami. Foreclosures on loans originated by BoA are concentrated in these neighborhoods. *A loan in a predominantly minority neighborhood is 5.857 times more likely to result in foreclosure than is a loan in a neighborhood with a majority of white residents.*

12. BoA's pattern and practice of *traditional redlining* has also caused an excessive and disproportionately high number of foreclosures in the minority neighborhoods of Miami. These foreclosures often occur when a minority borrower who previously received a predatory loan sought to refinance the loan, only to discover that BoA refused to extend credit at all, or on terms equal to those offered when refinancing similar loans issued to white borrowers. The inevitable result of the combination of issuing a predatory loan, and then refusing to refinance the loan, was foreclosure.

13. BoA would have had comparable foreclosure rates in minority and white communities if it was properly and uniformly applying responsible underwriting practices in both areas. BoA possesses

sophisticated underwriting technology and data that allows it to predict with precision the likelihood of delinquency, default, or foreclosure. The fact that BoA's foreclosures are so disproportionately concentrated in minority neighborhoods is not the product of random events. To the contrary, it reflects and is fully consistent with BoA's practice of targeting minority neighborhoods and customers for discriminatory practices and predatory pricing and products. It also reflects and is consistent with BoA's practice of failing to underwrite minority borrowers' applications properly, and of putting these borrowers, into loans which (1) have more onerous terms than loans given to similarly situated white borrowers, and (2) the borrowers cannot afford, leading to foreclosures.

14. The Bank's predatory and discriminatory lending practices are evidenced by confidential witness statements provided by former employees of BoA (discussed further herein). For example:

(a) "They [the less savvy minority borrower] didn't know anything about it [negative amortization loans]. The white American educated [borrower] knew what those loans were and what they were going to do, and they stayed away from them. . . . [The less savvy minority borrower] didn't realize the negative amortization consequences down the road for them that would make it that much harder to refinance with no equity."

(b) Borrowers "couldn't afford ["interest-only" and "pick-a-payment" loans]. Half the time they couldn't even afford the [full] interest on those homes."

(c) "There's no money in [Community Reinvestment Act] loans for [the Bank]" so the Bank didn't encourage loan officers to make CRA loans.

(d) Back-end premiums [the difference between the borrower's loan rate and the rate the bank pays for it] were "non-disclosed", which often eluded less educated, minority borrowers.

15. The reports of these witnesses are confirmed when Miami data on BoA loans is examined. Such an examination reveals a widespread practice of discrimination. For example, a regression analysis that controls for credit history and other factors demonstrates that an African-American BoA borrower is 1.581 times more likely to receive a predatory loan than is a white borrower and a Latino borrower is 2.087 times more likely to receive such a loan. The regression analysis confirms that African-Americans with FICO scores over 660 are 1.533 times more likely to receive a predatory BoA loan than is a white borrower, and a Latino borrower is 2.137 times more likely to receive such a loan.

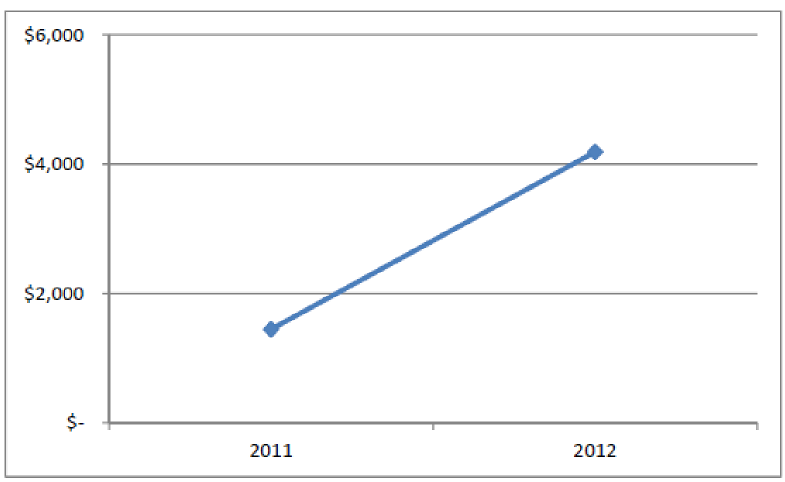
16. According to a Justice Department complaint, BoA's Countrywide subsidiary: (i) had charged upwards of 200,000 minority homeowners higher interest rates and fees than white borrowers who were similarly qualified, with similar credit ratings; (ii) had failed to offer minority homeowners conventional mortgages for which they qualified and which they would have been offered, were they white; and (iii) systematically pushed minority borrowers into exploitative mortgages with higher rates and fees. Many of the victims were in Florida. To settle the complaint, Bank of America agreed to

pay $335 million in restitution and penalties to the 200,000 identified minority victims - without compensation, restitution, or penalties to the City of Miami.

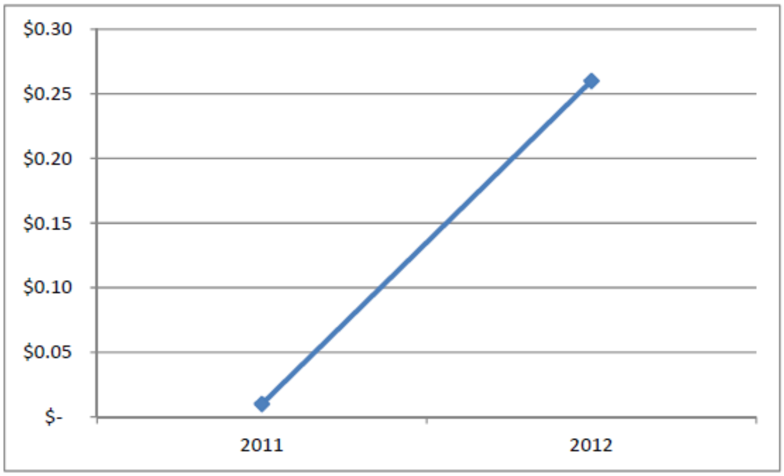
17. In or about June 2011, BoA settled charges with the Federal Trade Commission alleging that Countrywide had charged excessive fees to homeowners for property maintenance when they went into default, and added illegitimate charges to what the homeowners owed. To settle the FTC complaint, Bank of America paid $107 million to the FTC for distribution to homeowner victims (again without compensation to the City of Miami).

18. The past several years have been highly profitable for BoA. The following charts illustrate these results.

Net Income (millions)



Earnings per share



19. The Bank's discriminatory practices and resulting foreclosures in the City's minority neighborhoods have inflicted significant, direct, and continuing financial harm to the City. Since 2008, banks have foreclosed on approximately 1.8 million homes in Florida, and BoA is responsible for a significant number of these foreclosures.

20. In this action the City seeks damages based on reduced property tax revenues based on (a) the decreased value of the vacant properties themselves, and (b) the decreased value of properties surrounding the vacant properties. In addition, the City seeks damages based on the expenditure of municipal services that will be required to remedy the blight and unsafe and dangerous conditions which exist at vacant properties that were foreclosed as a result of BoA's illegal lending practices.

21. Because of the multitude of analytic tools available to BoA to determine the likelihood that a

particular mortgage loan would result in default by the borrower, as well as the existence of various studies, reports, and other pertinent literature specifically addressing the connection between mortgage loans and foreclosures, it was foreseeable that BoA knew, or should have known, that a predatory or high risk loan issued to an African-American or Hispanic in certain neighborhoods in Miami would result in default and subsequent foreclosure. Moreover, because BoA maintains numerous branch offices throughout Miami, and has knowledge of the specific address for each loan it issued, it was foreseeable that BoA knew, or should have known, of the condition of foreclosed properties corresponding to loans that it issued in Miami regardless of whether it serviced the loan or subsequently sold the servicing rights to a third party.

22. According to Federal Reserve Chairman Bernanke, "foreclosures can inflict economic damage beyond the personal suffering and dislocation that accompany them. Foreclosed properties that sit vacant for months (or years) often deteriorate from neglect, adversely affecting not only the value of the individual property but the values of nearby homes as well. Concentrations of foreclosures have been shown to do serious damage to neighborhoods and communities, reducing tax bases and leading to increased vandalism and crime. Thus, the overall effect of the foreclosure wave, especially when concentrated in lower-income and minority areas, is broader than its effects on individual homeowners.[9]

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[9] Bernanke, *supra* n.7 at pg. 4.

23. The discriminatory lending practices at issue herein have resulted in what many leading commentators describe as the "greatest loss of wealth for people of color in modern US history." It is well-established that poverty and unemployment rates for minorities exceed those of whites, and therefore, home equity represents a disproportionately high percentage of the overall wealth for minorities.[10] As Federal Reserve Chairman Bernanke recently explained, as a result of the housing crisis, "most or all of the hard-won gains in homeownership made by low-income and minority communities in the past 15 years or so have been reversed."[11] The resulting impact of these practices represents "nothing short of the preeminent civil rights issue of our time, erasing, as it has, a generation of hard fought wealth accumulation among African-Americans."[12]

II. PARTIES

24. Plaintiff City of Miami is a Florida municipal corporation. The City is authorized by the City Commission to institute suit to recover damages suffered by the City as described herein.

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[10] Robert Schwemm and Jeffrey Taren, *Discretionary Pricing, Mortgage Discrimination, and the Fair Housing Act,* 45 HARVARD CIVIL RIGHTS-CIVIL LIBERTIES LAW REV., 375, 382 (2010).

[11] Bernanke, *supra* n.7 at pg. 3.

[12] Charles Nier III and Maureen St. Cyr, A Racial Financial Crisis: Rethinking the Theory of Reverse Redlining to Combat Predatory Lending Under the Fair Housing Act, 83 TEMPLE LAW REV. 941, 942 (2011).

25. Bank of America, N.A. is organized as a national banking association under the laws of the United States. Upon information and belief, its corporate headquarters are located in Charlotte, North Carolina. It maintains multiple offices in the State of Florida, including in the City of Miami, for the purposes of soliciting applications for and making residential mortgage loans and engaging in other business activities.

26. During the period of time relevant to the events at issue in this Complaint through July 1, 2008, Defendant Countrywide Financial Corporation ("CFC") was a Delaware-incorporated financial holding company or savings and loan holding company with its principal business office in Calabasas, California. CFC created, authorized, and/or ratified the lending-related policies and practices at issue in this Complaint that its divisions and subsidiaries implemented.

27. On July 1, 2008, Bank of America Corporation ("BAC"), a Delaware-incorporated financial holding company, acquired ownership of CFC, including all of its subsidiary business entities. Since that acquisition, CFC has remained a Delaware-incorporated company with its principal business office in Calabasas, California, as a direct, wholly-owned subsidiary of BAC.

28. Defendant Countrywide Home Loans, Inc. ("CHL") is a New York-incorporated wholly-owned subsidiary of CFC with its principal business office in Calabasas, California. Prior to 2008, CHL funded the majority of CFC's nationwide residential mortgage loan origination activity. For the loans it

funded under the Countrywide name, CHL was the named lender on the promissory notes for those loans. CHL became a wholly-owned indirect subsidiary of BAC on or about July 1, 2008, as a result of BAC's acquisition of CFC.

29. Countrywide Bank ("CWB") was originally chartered as a national bank subject to supervision by the Office of the Comptroller of the Currency, and was a subsidiary of financial holding company CFC. CWB was headquartered in Alexandria, Virginia, until February, 2009. As a financial holding company, CFC, together with its subsidiary CHL, was supervised by the Board of Governors of the Federal Reserve System. On or about March 12, 2007, CWB changed its charter to that of a federal savings association, and CFC became a savings and loan holding company. Those changes caused CWB, CFC, and CHL to become subject to supervision by the Office of Thrift Supervision.

30. During 2006, CFC began the process of transitioning the funding of its residential loan originations from CHL to CWB. For those loans funded through CWB under the Countrywide name, CWB was the named lender on the promissory notes for those loans. As of January 1, 2008, CWB funded substantially all nationwide residential loan origination activity using the Countrywide name. For those loans funded by either CHL or CWB, CFC used the same loan origination policies and procedures that it had created, authorized, or ratified, and the same employees and mortgage brokers. Throughout this Complaint, CFC, CWB, and CHL are referred to collectively as "Countrywide."

31. Even after BAC's purchase of CFC on July 1, 2008, CWB continued its banking and mortgage lending operations as a direct subsidiary of CFC, using the same loan origination policies and procedures, until approximately November 7, 2008. At that time, BAC engaged in a series of corporate transactions that ended CWB's status as a subsidiary of CFC and made CWB a direct subsidiary of BAC.

32. On April 23, 2009, the Office of the Comptroller of the Currency approved CWB's request to convert its charter back to that of a national bank and the request by Bank of America, N.A. to then immediately acquire CWB by merger. These transactions were executed on April 27, 2009, as a result of which CWB ceased to exist. Bank of America, N.A. was the surviving institution resulting from this merger. Thus, Bank of America, N.A. is the successor in interest to CWB.

33. The Defendants in this action are, or were at all relevant times, subject to Federal laws governing fair lending, including the FHA and the regulations promulgated thereunder. The FHA prohibits financial institutions from discriminating on the basis of, inter alia, race, color, or national origin in their residential real estate-related lending transactions.

34. The Defendants in this action are or were businesses that engage in residential real estate-related transactions in the City of Miami within the meaning of the FHA, 42 U.S.C. § 3605.

35. Based on information reported pursuant to the Home Mortgage Disclosure Act, in addition to loans

that Defendants originated directly, Defendants are responsible for residential home loans acquired from, and/or sold by or through, Merrill Lynch Bank & Trust FSB, Merrill Lynch Credit Corp., and First Franklin Financial Corp.

36. Upon information and belief, Plaintiff alleges that each of the Defendants was and is an agent of the other Defendants. Each Defendant, in acting or omitting to act as alleged in this Complaint, was acting in the course and scope of its actual or apparent authority pursuant to such agencies, and/or the alleged acts or omissions of each Defendant as agent were subsequently ratified and adopted by each agent as principal. Each Defendant, in acting or omitting to act as alleged in this Complaint, was acting through its agents, and is liable on the basis of the acts and omissions of its agents.

III. REFERRALS FROM BANK REGULATORY AGENCIES

37. In 2006, Federal Reserve System Examiners initiated a fair lending review of CHL's mortgage pricing practices. As a result of that review, the Federal Reserve Board ("FRB") determined that it had "reason to believe that Countrywide Home Loans engaged in a pattern or practice of discrimination based on race and ethnicity in violation of Section 701(a) of the Equal Credit Opportunity Act and the Fair Housing Act."

38. Following its determination described in Paragraph 37, and pursuant to 15 U.S.C. § 1691e(g), the FRB referred the matter to the Department of Justice on March 5, 2007. Countrywide agreed that various statutes of limitations for any cause of action

that could be brought against Countrywide pursuant to the FRB referral would be tolled from March 22, 2007 through December 22, 2011.

39. In early 2008, the Office of Thrift Supervision ("OTS") conducted an examination of the operations of Countrywide, including its compliance with applicable fair lending laws and regulations. As a result of that examination, the OTS determined that it had "a 'reason to believe' that Countrywide has displayed a 'pattern or practice' of discriminating against minority loan applicants in the pricing of home loans and against married couples concerning the terms and condition of home loans."

40. Following its determination described in Paragraph 39, and pursuant to 15 U.S.C. § 1691e(g), the OTS referred the matter to the Department of Justice on June 27, 2008. Countrywide agreed that various statutes of limitations for any cause of action that could be brought against Countrywide pursuant to the OTS referral would be tolled from July 1, 2009 through December 22, 2011.

41. Based on the FRB and OTS referrals, the Department of Justice engaged in a lengthy investigation of Countrywide's lending policies, practices, and procedures, including reviewing millions of Countrywide loans originated between 2004 and 2008. The investigation led to the Justice Department's complaint against Countrywide for discriminatory lending practices affecting upwards of 200,000 minority homeowners (saddling them with higher interest rates and fees than white borrowers who were similarly qualified, with similar credit ratings).

IV. JURISDICTION AND VENUE

42. This Court has jurisdiction over this matter pursuant to 42 U.S.C. § 3613 and 28 U.S.C. §§ 1331, 1343, because the claims alleged herein arise under the laws of the United States.

43. Venue is proper in this district under 28 U.S.C. § 1391(b) because Bank of America, N.A., BAC, and Countrywide all conduct business in this district and a substantial part of the events and omissions giving rise to the claims occurred in this district.

V. FACTUAL BACKGROUND

A. Background Regarding Discriminatory Loan Practices, Reverse Redlining, and Redlining

44. Prior to the emergence of subprime lending, most mortgage lenders made only "prime" loans. Prime lending offered uniformly priced loans to borrowers with good credit, but individuals with lower credit were not eligible for prime loans.

45. Subprime lending developed and began growing rapidly in the mid-1990s as a result of technological innovations in risk-based pricing and in response to the demand for credit by borrowers who were denied prime credit by traditional lenders. Advances in automated underwriting allowed lenders to predict with improved accuracy the likelihood that a borrower with lower credit will successfully repay a loan. These innovations gave lenders the ability to adjust the price of loans to match the different risks presented by borrowers whose credit records did not meet prime standards. Lenders found that they could now accurately price loans to reflect the risks presented by a particular

borrower. When done responsibly, this made credit available much more broadly than had been the case with prime lending.

46. Responsible subprime lending has opened the door to homeownership to many people, especially low- to moderate-income and minority consumers, who otherwise would have been denied mortgages. At the same time, however, subprime lending has created opportunities for unscrupulous lenders to target minorities and engage in discriminatory, irresponsible lending practices that result in loans that borrowers cannot afford. This, in turn, leads directly to defaults and foreclosures.

47. Enticed by the prospect of profits resulting from exorbitant origination fees, points, and related pricing schemes, some irresponsible subprime lenders took advantage of a rapidly rising real estate market to convince borrowers to enter into discriminatory loans that had unfair terms that they could not afford. Often this was accomplished with the help of deceptive practices and promises to refinance at a later date. These abusive subprime lenders did not worry about the consequences of default or foreclosure to their business because, once made, a significant number of the loans were sold on the secondary market.

48. As the subprime market grew, the opportunities for abusive practices grew with it.[13] As

[13] United States Department of Housing and Urban Development Office of Policy Development and Research, Report to Congress on the Root Causes of the Foreclosure Crisis, (2010) at 52 ("While many factors have undoubtedly contributed to the recent rise in foreclosures, as discussed earlier, no small part of the increase stems from recent

a consequence, the federal government has found that abusive and predatory practices "are concentrated in the subprime mortgage market."[14] These practices, which in recent years have become the target of prosecutors, legislators, and regulators, include the following:

a. Placing borrowers in subprime loans even though they qualify for prime or conventional loans on better terms.

b. Failing to prudently underwrite hybrid adjustable rate mortgages (ARMs), such as 2/28s and 3/27s.[15] After the borrower pays a low "teaser rate" for the first two or three years, the interest rate on these loans resets to a much higher rate that can continue to rise based on market conditions. Subprime lenders often underwrite these loans based only on consideration of whether the borrower can make payments during the initial teaser rate period, without regard to the sharply higher payments that will be required for the remainder of a loan's 30-year

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increases in abusive forms of subprime lending") *(available at* http://www.huduser.org/portal/Publications/PDF/Foreclosure_09.pdf).

[14] United States Department of Housing & Urban Development and United States Department of the Treasury, Curbing Predatory Home Mortgage Lending (2000) at 1 *(available at* http://www.huduser.org/Publications/pdf/treasrpt.pdf) ("HUD/Treasury Report").

[15] In a 2/28 ARM, the "2" represents the number of years the mortgage will be fixed over the term of the loan, while the "28" represents the number of years the interest rate paid on the mortgage will be variable. Similarly, in a 3/27 ARM, the interest rate is fixed for three years and variable for the remaining 27-year amortization.

term. Irresponsible lenders aggressively market the low monthly payment that the borrower will pay during the teaser rate period, misleading borrowers into believing that they can afford that same low monthly payment for the entire 30-year term of the loan, or that they can refinance their loan before the teaser rate period expires.

c. Failing to prudently underwrite refinance loans, where borrowers substitute unaffordable mortgage loans for existing mortgages that they are well-suited for and that allow them to build equity. Such refinanced loans strip much or even all of that equity by charging substantial new fees, often hiding the fact that the high settlement costs of the new loan are also being financed. Lenders that aggressively market the ability of the borrower to pay off existing credit card and other debts by refinancing all of their debt into one mortgage loan mislead borrowers into believing that there is a benefit to debt consolidation, while obscuring the predictable fact that that the borrower will not be able to repay the new loan. The refinanced loans are themselves often refinanced repeatedly with ever-increasing fees and higher interest rates, and with ever-decreasing equity, as borrowers seek to stave off foreclosure.

d. Allowing mortgage brokers to charge “yield spread premiums” for qualifying a borrower for an interest rate that is higher than the rate the borrower qualifies for and can actually afford.

e. Failing to underwrite loans based on traditional underwriting criteria such as debt-to-income ratio, loan-to-value ratio, FICO score, and work history. These criteria ensure that a borrower is obtaining a loan that he or she has the resources and assets to repay, and ignoring these criteria results in many loans that bear no relation to borrowers' ability to repay them. This allows the lender to make a quick profit from the origination, but sets the borrower up for default and foreclosure.

f. Requiring substantial prepayment penalties that prevent borrowers whose credit has improved from refinancing their subprime loan to a prime loan. Prepayment penalties not only preclude borrowers from refinancing to a more affordable loan, but reduce the borrowers' equity when a subprime lender convinces borrowers to needlessly refinance one subprime loan with another.

g. Charging excessive points and fees that are not associated with any increased benefits for the borrower.

49. The problem of predatory practices in subprime mortgage lending is particularly acute in minority communities because of "reverse redlining." As used by Congress and the courts, the term "reverse redlining" refers to the practice of targeting residents in certain geographic areas for credit on unfair terms due to the racial or ethnic composition of the area. This is in contrast to "redlining," which is the practice of denying *prime* credit to specific geographic areas because of the racial or ethnic composition of the area. Both practices have repeatedly been held to violate the Federal Fair Housing Act.

50. Following the onset of the subprime mortgage crisis, and after years of issuing abusive home loans

in minority neighborhoods, the big bank lenders began to limit the issuance of mortgage credit to minority borrowers *(i.e.*, refusing to refinance predatory loans). At the same time, when the big banks did extend credit, they continued to do so on predatory terms.

VI. BOA/COUNTRYWIDE ENGAGED IN DISCRIMINATORY LENDING PRACTICES

A. Specific Allegations Regarding BoA's Countrywide Subsidiary

1. Mortgage loan channels and loan types.

51. Between January 2004 and December 2008, Countrywide originated residential loans nationwide through both a retail channel and a wholesale channel.

52. Between 2004 and 2008, Countrywide's retail and wholesale divisions operated in virtually all geographical markets in the United States, including several hundred metropolitan areas ("MSAs"), including specifically the Miami MSA.

53. Between in at least January 2004 and August 2007, Countrywide originated virtually every type of loan product that was available in the residential lending market, several hundred products in all. Among others, these products included: (a) traditional prime loans (least risky); (b) subprime loans (most risky), typically designed for borrowers with credit scores or other credit characteristics deemed too weak to qualify for prime loans; and (c) "Alt-A" loans (risk level between prime and subprime loans), with application requirements or payment terms less restrictive than traditional prime loan

terms or requirements, such as interest-only or negative amortization terms, reduced documentation requirements, or balloon payments. Subsequent to origination, Countrywide sold or securitized for sale the bulk of the loans it originated in the secondary market, either to government-sponsored entities Fannie Mae and Freddie Mac, or to private investors.

2. Retail Lending Pricing.

54. Between 2004 and 2008, Countrywide charged more than 100,000 Hispanic and African-American borrowers higher fees and costs than non-Hispanic White retail borrowers, not based on their creditworthiness or other objective criteria related to borrower risk, but because of their race or national origin. It was Countrywide's business practice to allow its employees who originated loans through its retail channel to vary a loan's interest rate and other fees from the price initially set based on a borrower's objective credit-related factors. As a result of Countrywide's discriminatory retail pricing practices, a Hispanic or African-American borrower paid, on average, hundreds of dollars more for a Countrywide loan.

55. Countrywide's retail channel consisted of two primary divisions. The larger, the Consumer Markets Division ("CMD"), originated Countrywide's non-subprime residential loan products. Countrywide employed retail loan officers and other employees at each CMD branch and call center to solicit applications for, and originate residential loans to, individual loan applicants.

56. Beginning prior to January 2004 and continuing through at least December 2008,

Countrywide utilized a two-tier decision-making process to set the interest rates and other terms and conditions of retail loans it originated. The first step involved setting the credit risk-based prices on a daily basis for Countrywide's various home mortgage loan products, including interest rates, loan origination fees, and discount points. In this step, Countrywide accounted for numerous objective credit-related characteristics of applicants by setting a variety of prices for each of the different loan products that reflected its assessment of individual applicant creditworthiness, as well as the current market rate of interest and the price it could obtain from the sale of such a loan to investors. These prices, referred to as par or base prices, were communicated through rate sheets, which were available electronically to its retail mortgage loan officers and other retail lending employees. Individual loan applicants did not have access to these rate sheets.

57. As the second step in determining the final price it would charge an applicant for a loan, Countrywide allowed its retail mortgage loan officers, and other employees who participated in the loan origination process, to increase the loan price charged to borrowers over the rate sheet prices set by Countrywide, up to certain caps; this pricing increase was labeled an overage. Countrywide also allowed these same employees to decrease the loan price charged to borrowers below the stated rate sheet prices; this pricing decrease was labeled a shortage. Countrywide further allowed those employees to alter the standard fees it charged in connection with processing a loan application and the standard

allocation of closing costs between Countrywide and the borrower. Employees made these pricing adjustments in a subjective manner, unrelated to factors associated with an individual applicant's credit risk. Countrywide provided no written guidance to its retail loan officers or other employees about the criteria they should consider in adjusting risk-based prices during the time period at issue. It did not establish an operational system for the documentation and supervisory review of their adjustments prior to loan origination.

58. During the time period at issue, Countrywide loan officer compensation was affected by the loan officers' decisions with respect to pricing overages and shortages, as well as other factors, such as volume of loans originated. Loan officers could obtain increased compensation for overages, and could have their total compensation potentially decreased for shortages. Countrywide's compensation policy thus provided an incentive for its loan officers in making pricing adjustments to maximize overages and, when offering shortages, to minimize their amount.

59. Countrywide regularly calculated a Net Pricing Exception ("NPE") for each retail loan it funded, subsequent to origination. The NPE approximates the amount, positive or negative, by which the total cost of a loan to a borrower differs from the total cost of that loan had it closed at the rate sheet price, with the borrower paying standard fees and with standard allocation of closing costs between the borrower and Countrywide. A positive NPE was an overage, and a negative NPE was a shortage.

60. For each residential loan that Countrywide retail mortgage loan officers originated, information about each borrower's race and national origin and the amount of overage or shortage paid was available to, and was known by, Countrywide.

3. Wholesale Lending Mortgage Broker Fees.

61. Between 2004 and 2008, Countrywide charged more than 100,000 Hispanic and African-American wholesale borrowers higher fees and costs than non-Hispanic White wholesale borrowers, not based on their creditworthiness or other objective criteria related to borrower risk, but because of their race or national origin. It was Countrywide's business practice to allow its mortgage brokers who generated loan applications through its wholesale channel to vary a loan's interest rate and other fees from the price set based on a borrower's objective credit-related factors. As a result of Countrywide's discriminatory practices, a Hispanic or African-American borrower paid, on average, hundreds of dollars more for a Countrywide loan.

62. Prior to January 2004, and continuing through at least December 2008, Countrywide originated and funded residential loans of all types, including both subprime and non-subprime loans, through its Wholesale Lending Division ("WLD"). Applications for these loans were brought to Countrywide during those years by mortgage brokers throughout the United States who had entered into contracts with Countrywide for the purpose of bringing loan applications to it for origination and funding.

63. Countrywide's relationship with the mortgage brokers who brought loans to it was governed throughout the time period at issue by its standard Wholesale Broker Agreement ("WBA"). The WBA, while revised from time to time, consistently contained extensive provisions (a) mandating that a broker act in compliance with all Countrywide policies, (b) requiring submission to Countrywide of the full details of all compensation a broker received for each Countrywide loan, (c) specifying that the decision whether to fund a loan application was Countrywide's alone, and (d) permitting Countrywide to obtain any information with respect to a broker's business operations.

64. Countrywide was directly and extensively involved in setting the complete, final terms and conditions of wholesale loan applications generated by mortgage brokers that Countrywide approved and originated. Countrywide employed wholesale account executives who worked with mortgage brokers in submitting loan applications to Countrywide, and it employed underwriters to determine whether and on what terms to approve and fund wholesale loan applications. At the time of originating each loan, Countrywide was fully informed of those terms and conditions, including the fees it passed along to brokers, and it incorporated those terms and conditions into the wholesale loans it originated.

65. Prior to January 2004 and until December 2008, Countrywide set terms and conditions, including interest rates, on a daily basis for its various home mortgage loan products available through its wholesale loan channel. Countrywide accounted for numerous applicant credit risk

characteristics by setting a range of prices for each of the different loan products it offered that reflected applicant creditworthiness. It communicated these loan product prices to its brokers through rate sheets updated daily. Individual loan applicants did not have access to these rate sheets.

66. Under its WBA, Countrywide authorized brokers to inform prospective borrowers of the terms and conditions under which a Countrywide residential loan product was available. Countrywide did not require the mortgage brokers to inform a prospective borrower of all available loan products for which he or she qualified, of the lowest interest rates and fees for a specific loan product, or of specific loan products best designed to serve the interests expressed by the applicant.

67. Between 2004 and 2008, Countrywide operated between 39 and 52 WLD branch offices and several regional centers, and employed wholesale account executives to work with mortgage brokers in originating loans, which included assisting the brokers in setting the terms and conditions of loan applications and approvals.

68. Mortgage brokers who supplied Countrywide with loan applications that Countrywide funded were compensated in two ways. One was through a yield spread premium ("YSP"), an amount paid by Countrywide to the brokers based on the extent to which the interest rate charged on a loan exceeded the base, or par, rate for that loan to a borrower with particular credit risk characteristics fixed by Countrywide and listed on its rate sheets. The YSP is derived from the present dollar value of the

difference between the credit risk-determined par interest rate a wholesale lender such as Countrywide would have accepted on a particular loan and the interest rate a mortgage broker actually obtained for Countrywide. Countrywide benefitted financially from the loans it made at interest rates above the par rates set by its rate sheets. For those loans that it sold or securitized, higher interest rates meant sales at prices higher than it otherwise would have obtained; for loans it retained, higher interest rates meant more interest income over time for it. The second way brokers were compensated was through direct fees. Countrywide directed its closing agents to pay these direct fees to brokers out of borrowers' funds at the loan closing. Taken together, these two forms of compensation are referred to in this Complaint as "total broker fees."

69. During the time period at issue, Countrywide was fully informed of all broker fees to be charged with respect to each individual residential loan application presented to it. Countrywide included fees from the broker's application package in the calculations it made to prepare various closing documents, including the HUD-I Form, an itemized statement of receipts and expenditures in connection with a residential loan closing, and the Truth in Lending Act Disclosure Statement. Countrywide also included these fees in its instructions on how to distribute funds at closing. Total broker fees raised the annual percentage rate ("APR") charged on a loan, and could increase the note interest rate and the total amount borrowed.

70. Between at least January 2004 and December 2008, Countrywide's policies and practices

established a two-step process for the pricing of wholesale loans that it originated similar to that used in its retail division. The first step was to establish a base or par rate for a particular type of loan for an applicant with specified credit risk characteristics.

71. Countrywide's second step of pricing wholesale loans permitted mortgage brokers to set the amount of total broker fees charged to individual borrowers, unrelated to an applicant's credit risk characteristics.

72. Total broker fees for an average subprime loan were notably higher than total broker fees on a similarly-sized non-subprime loan. Other than certain broker fee caps, Countrywide did not establish any objective criteria, or provide guidelines, instructions, or procedures to be followed by brokers (a) in setting the amount of direct fees they should charge or (b) in determining to charge an interest rate for a loan above that set by its rate sheet, which in turn determined the amount of YSP Countrywide would pay the broker. Mortgage brokers exercised this fee pricing discretion Countrywide gave them, untethered to any objective credit characteristics, on every loan they brought to Countrywide for origination and funding. Countrywide affirmed or ratified these discretionary fee pricing decisions for all the brokered loans it originated and funded. Each year during this time period when Countrywide had in place higher fee caps for subprime than prime loans, Countrywide's mortgage brokers charged higher average total fees for subprime loan applications than for non-subprime loan applications, measured on a nationwide basis.

73. Countrywide's compensation policy and practice created a financial incentive for mortgage brokers to submit subprime loans to Countrywide for origination rather than other types of residential loan products.

74. For each residential loan application obtained by mortgage brokers and subsequently funded by Countrywide, information about each borrower's race and national origin and the amount and types of broker fees paid was available to, and was known by, Countrywide.

4. Wholesale Lending Product Placement.

75. Between 2004 and 2007, Countrywide placed more than 10,000 Hispanic and African-American wholesale borrowers into subprime loans even though non-Hispanic White wholesale borrowers who had similar credit qualifications were placed into prime loans. As a result of being placed into an illegal discriminatory loan, a Hispanic or African-American borrower paid, on average, thousands of dollars more for a Countrywide loan. It was Countrywide's business practice to allow its mortgage brokers and employees to place a wholesale loan applicant in a subprime loan even when the applicant qualified for a prime loan according to Countrywide's underwriting practices.

76. Countrywide also gave mortgage brokers discretion to request exceptions to underwriting guidelines, and Countrywide's employees had discretion to grant these exceptions. These policies and practices resulted in the placement of Hispanic and African-American borrowers into discriminatory

loans (based on criteria other than strict adherence to its published underwriting guidelines), when similarly-situated non-Hispanic White borrowers were placed into prime loans, both on a nationwide basis and in dozens of geographic markets across the country (including Miami), where Countrywide originated a large volume of wholesale loans. Between at least January 2004 and August 2007, Countrywide attempted to implement a system that would "flag" subprime loan applicants eligible to be "uplifted" to a non-subprime loan product. This system flagged thousands of Hispanic and African-American loans. However, this pre-origination "uplift" system only required that notification of potential uplift eligibility be given to brokers, and neither required the brokers to inform applicants of this fact, nor obligated the brokers to take any other specific action with respect to identified applicants. Moreover, this "uplift" system did not accurately correspond to Countrywide's actual underwriting practices for non-subprime loan products that treated published underwriting guidelines as merely advisory, and widely granted exceptions. As a result, the system both failed to identify a large proportion of applicants who received a subprime loan whose qualifications were similar to those of applicants who received non-subprime loan products, and resulted in few "flagged" applicants receiving a non-subprime loan.

B. BoA/Countrywide's Conduct Had a Disparate Impact on Minority Borrowers in Violation of the Fair Housing Act

1. Discriminatory lending results in a disproportionate number of foreclosures in minority areas.

77. Foreclosures are on the rise in many of the nation's most vulnerable neighborhoods, particularly those with substantial concentrations of minority households. The increase appears to stem from the presence of (1) subprime lending in these communities and (2) continuing discriminatory lending practices *(e.g.,* steering minorities into loan products with more onerous terms.

78. A seminal report on foreclosure activity by Mark Duda and William Apgar documents the negative impact that rising foreclosures have on low-income and low-wealth minority communities, using Chicago as a case study. Mr. Apgar is a Senior Scholar at the Joint Center for Housing Studies of Harvard University, and a Lecturer on Public Policy at Harvard's John F. Kennedy School of Government. He previously served as the Assistant Secretary for Housing/Federal Housing Commissioner at the U.S. Department of Housing and Urban Development, and also Chaired the Federal Housing Finance Board. Mr. Apgar holds a Ph.D. in Economics from Harvard University. Mr. Duda is a Research Fellow at the Joint Center for Housing Studies. The Apgar-Duda report has continually been cited by subsequent governmental, public sector, and private sector reports due to its clarity and thoroughness

with respect to the negative impact foreclosures have on lower-income and minority neighborhoods.[16]

79. This significant report highlights the foreseeability of foreclosures arising from predatory lending practices and their attendant harm, demonstrating that such foreclosures impose significant and predictable costs on borrowers, municipal governments, and neighboring homeowners.

80. Another report, by the Center for Responsible Lending, uses a national dataset to show that the foreclosure rate for low- and moderate-income African-Americans is approximately 1.8 times higher than it is for low- and moderate-income non-Hispanic whites. The gap is smaller for Latinos, especially among low-income households, but even among low-income Latinos the foreclosure rate is 1.2 times that of low-income whites. Racial and ethnic disparities in foreclosure rates cannot be explained by income, since disparities persist even among higher-income groups. For example: approximately 10 percent of higher-income African-American borrowers and 15 percent of higher-income Latino borrowers have lost their homes to foreclosure, compared with 4.6 percent of higher income non-Hispanic white borrowers. Overall, low- and moderate-income African-Americans and middle- and higher-income

[16] *See* W. Apgar, M. Duda & R. Gorey, *The Municipal Costs of Foreclosures: A Chicago Case Study* (2005) *(available at* http://www.nw.org/network/neighborworksProgs/foreclosuresolutions/documents/2005Apgar-DudaStudy-FullVersion.pdf).

Latinos have experienced the highest foreclosure rates.[17]

81. Nearly 20 percent of loans in high-minority neighborhoods have been foreclosed upon or are seriously delinquent, with significant implications for the long-term economic viability of these communities.[18]

2. Minority neighborhoods are disproportionate recipients of predatory loans.

82. There is a substantial body of empirical evidence demonstrating the prevalence of reverse redlining in the subprime mortgage market. These studies show that, even after controlling for creditworthiness and other legitimate underwriting factors, subprime loans and the predatory practices often associated with subprime lending are disproportionately targeted at minority neighborhoods.[19]

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[17] Center for Responsible Lending, *Lost Ground, 2011: Disparities in Mortgage Lending and Foreclosures* (2011) *(available at* www.responsiblelending.org/-mortgage-lending /research-analysis/Lost-Ground-2011.pdf).

[18] *Id.*

[19] *See* Abt Associates, *Using Credit Scores to Analyze High-Cost Lending in Central City Neighborhoods* (2008); Center for Responsible Lending, *Lost Ground, 2011: Disparities in Mortgage Lending and Foreclosures* (2011) (*available at* www.responsiblelending.org/mortgage-lending/research-analysis/Lost-Ground--2011.pdf); Center for Responsible Lending, *Unfair Lending: The Effect of Race and Ethnicity on the Price of Subprime Mortgages* (2006) (available at http://www.responsiblelending.org/mortgage-lending/research-analysis/rr011-Unfair_Lending-0506.pdf); Finance and

83. In general, as recently observed by the Federal Reserve in December 2012, both African-American and Hispanic borrowers were far more likely (in fact, nearly twice more likely) to obtain higher priced loans than were white borrowers. These relationships hold both for home-purchase and refinance lending and for non-conventional loans. These differences are reduced, but not eliminated, after controlling for lender and borrower characteristics. "Over the years, analyses of HMDA data have consistently found substantial differences in the incidence of higher-priced lending across racial and ethnic lines, differences that cannot be fully explained by factors included in the HMDA data."[20]

84. African-Americans and Hispanics were much more likely to receive subprime loans and loans with features that are associated with higher foreclosures, specifically prepayment penalties and hybrid or option ARMs. These disparities were evident even comparing borrowers within the same credit score

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Economics Discussion Series Divisions of Research & Statistics and Monetary Affairs Federal Reserve Board, Washington, D.C, *Subprime Mortgages: What, Where, and to Whom?* (2008) (available at http://www.nber.org/papers/w14083.pdf?new_window=1); C. Reid and E. Laderman, Federal Reserve Bank of San Francisco, *The Untold Costs of Subprime Lending: Examining the Links among Higher-Priced Lending, Foreclosures and Race in California*, Presented at Brandeis University (2009) (available at http://iasp.brandeis.edu/pdfs/Author/reid-carolin/The%20Untold%20Costs%20of%20Subprime%20Lending%203.pdf).

[20] Federal Reserve Bulletin, *The Mortgage Market in 2011: Highlights from the Data Reported under the Home Mortgage Disclosure Act* (Dec. 2012) (available at http://www.federalreserve.gov/pubs/bulletin/2012/PDF/2011_HMDA.pdf).

ranges. In fact, the disparities were especially pronounced for borrowers with higher credit scores. For example, among borrowers with a FICO score of over 660 (indicating good credit), African-Americans and Latinos received a high interest rate loan more than three times as often as white borrowers.[21]

85. In addition to receiving a higher proportion of higher-rate loans, African-Americans and Latinos also were much more likely to receive loans with other risky features, such as hybrid and option ARMs and prepayment penalties. Disparities in the incidence of these features are evident across all segments of the credit spectrum.[22]

86. Since 2008, as the data discussed below makes clear, there has been a shift in the types of loans issued - and not issued - by the Bank. For example, the Bank shifted from offering new subprime loans toward issuing more Home Equity Lines of Credit (HELOCs) and higher cost loans including, but not limited to, FHA/VA loans.[23] FHA and VA government loans are characterized as higher risk loans because (a) they are typically more expensive for a borrower than conventional loans and include fees and costs not associated with conventional loans, and (2) several of the government loan programs permit

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[21] Center for Responsible Lending, *Lost Ground, 2011, supra,* n.17.

[22] *Id.*

[23] While FHA/VA loans are not inherently predatory, these loans have higher risk features such as higher fees and higher interest rates. When banks target minorities for FHA/VA loans and issue more of them to minorities, they are acting in a discriminatory manner.

negative amortization.[24] At the same time, in the last several years, the Bank tightened lending requirements in a manner that drastically limited the ability of minority borrowers to refinance or otherwise modify the subprime loans previously issued by the Bank.

87. At the same time that conventional credit has contracted over the past five years, FHA lending has expanded dramatically. During the subprime boom, FHA lending fell as subprime lenders targeted minority communities. Now, with little or no subprime lending, and conventional credit restricted, FHA lending has shot up. Overall, the share of loans with government backing went from 5% in 2005 to 26.6% in 2010.[25]

88. For African-Americans, the share of mortgages used to purchase a home and backed by a government program increased to almost 80% in 2010; for Latinos the share increased to 73%. But for whites, the share increased to only 49%. At present, most minority borrowers cannot gain access to the conventional mortgage market, and instead, are relegated to more expensive FHA loans.[26] As discussed above, these government loans often have higher interest, fees, and costs than conventional loans.

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[24] See, e.g., California Reinvestment Coalition, et al., *Paying More for the American Dream VI, Racial Disparities in FHA/VA Lending,* (July 2012); www.fha.com/fha_loan_types; www.benefits.va.gov/homeloans.

[25] Center for Responsible Lending, *supra,* n.8.

[26] Id.

C. BoA/Countrywide Intentionally Discriminated Against Minority Borrowers in Violation of the Fair Housing Act Throughout the Time Period 2004-2012 as Demonstrated by Former Bank Employees

89. Confidential Witnesses ("CWs") are former BoA/Countrywide employees responsible for making and/or underwriting loans on behalf of the Bank in the greater Miami region. CWs describe how the Bank has targeted minorities and residents of minority neighborhoods in and around Miami for predatory lending practices.

90. CW1 was a mortgage loan officer with BoA from 2008 to 2010; she worked in the Bank's Miami-Dade County mortgage lending center in 2010.

91. CW2 was a mortgage loan officer for BoA from 2011 to 2013. Part of his time as a BoA loan officer was spent working in a Miami Beach branch. CW2's job involved writing new mortgages, refinancing mortgages, and helping customers obtain loans through the federal Home Affordable Refinance Program.

92. CW3 was a mortgage loan officer for BoA in Florida from 2005 to 2008; he worked on loans throughout the Miami area.

1. BoA/Countrywide targets minorities for predatory loan terms.

93. According to CW2, a large percentage of the people who wanted to refinance because they were struggling to pay the note on a negative amortization loan were minorities who were not savvy financially. "They (the less savvy minority borrower) didn't know

anything about it," he said. "The white American educated (borrower) knew what those loans were and what they were going to do, and they stayed away from them." CW2, who has had his mortgage broker's license for over 25 years, said he believed BoA targeted less savvy minorities for these types of onerous loans.

94. CW2 added that "most people just knew about or wanted to pay that minimum (monthly payment) only. They're in a house and have a roof over their head and didn't realize the negative amortization consequences down the road for them that would make it that much harder to refinance with no equity."

95. CW3 said that most of the borrowers he dealt with in the Miami area were minorities. He explained that "interest-only" and "pick-a-payment" loans were popular in Miami, and he understood that borrowers were approved for such loans based on repayment of interest payments alone - not interest and principal. In CW3's experience, few of the borrowers were able to pay down the loan principal on these loans along with the interest every month. "After four or five years, that's how everything went the way it did," he said. "They couldn't afford it. Half the time they couldn't even afford the (full) interest on those homes." BoA/Countrywide paid its employees more for steering minorities into predatory loans.

96. The confidential witness statements demonstrate that BoA/Countrywide incentivized employees to steer minority borrowers into predatory loans.

97. According to CW1, the most beneficial type of loan for low-income buyers was the CRA loan, which allowed borrowers to obtain large grants for the down payments and closing costs. CRA loans were designed in part to discourage redlining. But, as CW1 explained, "there's no money in those loans for [the Bank]" so the Bank didn't encourage loan officers to make CRA loans.

98. At BoA, the CRA loan process was slow, complicated and labor-intensive. Notably, BoA paid loan officers less commissions on CRA loans than it paid on FHA and other government loans, CW1 said. In effect, BoA incentivized loan officers to put low-income borrowers into less advantageous FHA loans over CRA loans. The Bank did so by paying higher commissions for the FHA loans—CW1 said loan officers received an extra 15 percent in commission on FHA loans compared to CRA loans. CW1 added that minorities missed out on opportunities to get into a CRA loan through BoA.

99. CW3 explained that BoA loan officers earned origination fees and back-end premiums (the difference between the borrower's loan rate and the rate the bank pays for it). He said the back-end premiums were not disclosed to borrowers. He added that loan officers were allowed to charge up to 3 points on the front-end at origination plus up to 5 or 6 points on the back-end. According to CW3, this often eluded less educated, minority borrowers.

2. BoA/Countrywide underwrites teaser rate loans that borrowers cannot afford.

100. BoA/Countrywide originated loans with low teaser rates (e.g., "pick-your-payment" loans,

negative amortization loans, etc.), marketed to borrowers from predominantly minority neighborhoods in Miami. Unless properly underwritten, such loans are destined to fail.

101. BoA/Countrywide does not properly underwrite these loans when made to minorities and in minority neighborhoods. BoA/Countrywide does not adequately consider the borrowers' ability to repay these loans, especially after the teaser rate expires and the interest rate increases. The fact that these loans would result in delinquency, default, and foreclosure for many borrowers was, or should have been, clearly foreseeable to BoA/Countrywide at the time the loans were made.

102. The confidential witness statements of CW2 and CW3 support that BoA/Countrywide underwrote these loans as if the teaser rate will apply for the full life of the loan instead of considering the borrowers' ability to repay the loan after the teaser rate expires.

103. The use of negative amortization loans, pick-a-payment notes, and/or other teaser-rate adjustable loans in the manner described above is consistent with the practice of reverse redlining, has subjected minority borrowers to unfair and deceptive loan terms, and has contributed significantly to the high rate of foreclosure found in the minority neighborhoods of Miami.

3. BoA induced foreclosures by failing to offer refinancing or loan modifications to minority customers on fair terms, and otherwise limiting equal access to fair credit.

104. CW2 explained that, in the 2011-2013 timeframe, BoA did not offer regular refinancing to

persons with mortgages at over 80% of the value of the house. Consequently, Boa refused to refinance many of the teaser loans (e.g., negative amortization loans) that it previously marketed to borrowers. CW2 said many of the people in this situation were facing the high likelihood of losing their homes, and many of them were minorities in Miami, both Hispanics and African-Americans.

105. In this manner, BoA induced foreclosures by failing to offer refinancing or loan modifications to minority customers on fair terms - which constitutes a particularly egregious form of redlining, given that minority borrowers sought refinancing or loan modifications with respect to bad loans that the Bank previously made to them.

D. Minorities in Fact Receive Predatory Loan Terms from BoA/Countrywide

106. As discussed herein, BoA/Countrywide's *predatory* loans include: high-cost loans *(i.e.,* loans with an interest rate that was at least three percentage points above a federally-established benchmark), subprime loans, interest-only loans, balloon payment loans, loans with prepayment penalties, negative amortization loans, no documentation loans, and/or ARM loans with teaser rates *(i.e.,* lifetime maximum rate > initial rate + 6%).

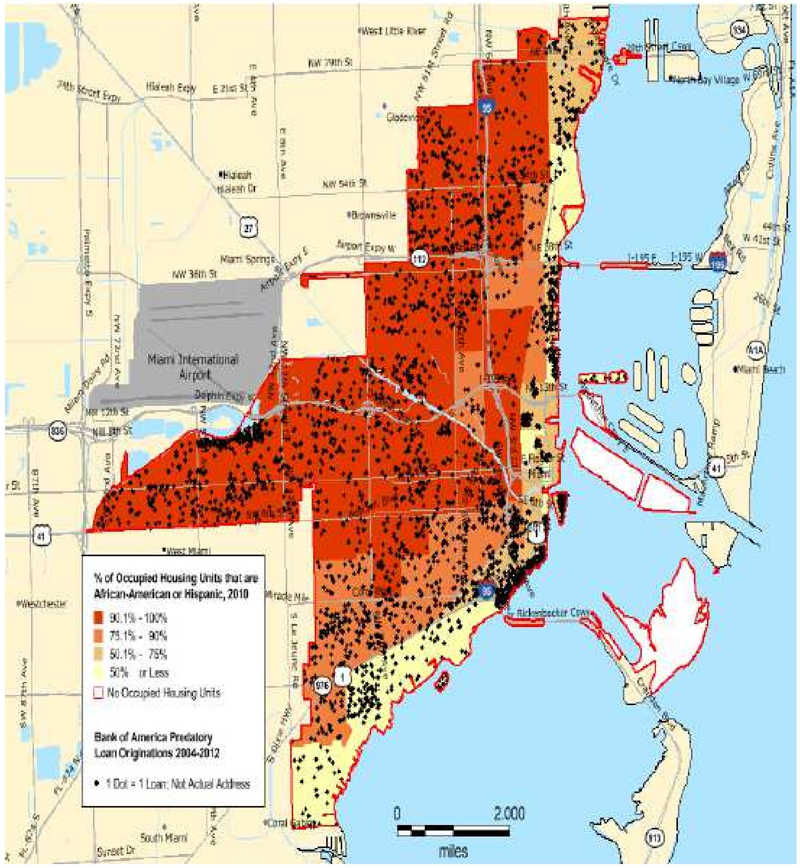
107. Data reported by the Bank and available through public databases shows that in 2004-2012, 21.9% of loans made by BoA/Countrywide to African-American and Latino customers in Miami were high-cost, but only 8.9% of loans made to white customers

in Miami were high-cost.[27] This data demonstrates a pattern of statistically significant differences in the product placement for high cost loans between minority and white borrowers.[28]

108. The following map of BoA/Countrywide predatory loans originated in Miami between 2004-2012 illustrates the geographic distribution of predatory loans in African-American and Latino neighborhoods and white neighborhoods in Miami. This map demonstrates that BoA/Countrywide's predatory loans are disproportionately located in minority neighborhoods.

[27] As alleged throughout the complaint, all references to the date range 2004-2012 are intended to include the time period up to and including December 31, 2012.

[28] Statistical significance is a measure of probability that an observed outcome would not have occurred by chance. As used in this Complaint, an outcome is statistically significant if the probability that it could have occurred by chance is less than 10%.



109. The fact that predatory loans involving all of BoA/Countrywide's loan products are more heavily concentrated in minority neighborhoods in Miami is consistent with the practice of reverse redlining and, upon information and belief, has contributed significantly to the disproportionately high rates of foreclosure in minority communities in Miami.

E. Minorities in Miami Receive Such Predatory Loan Terms from BoA/Countrywide Regardless of Creditworthiness

110. According to *Discretionary Pricing, Mortgage Discrimination, and the Fair Housing Act,* 45 HARVARD CIVIL RIGHTS-CIVIL LIBERTIES LAW REV. 375, 398 (2010), several studies dating back to 2000 have established that minority borrowers were charged higher interest rates/fees than similar creditworthy white borrowers.

111. Likewise, according to *A Racial Financial Crisis,* 83 TEMPLE LAW REV. 941, 947, 949 (2011), one study concluded that "even after controlling for underwriting variables, African-American borrowers were 6.1% to 34.3% more likely than whites to receive a higher rate subprime mortgage during the subprime boom." And another study found that significant loan pricing disparity exists among low risk borrowers - African-American borrowers were 65% more likely to receive a subprime home purchase loan than similar creditworthy white borrowers, and 124% more likely to receive a subprime refinance loan.

112. Similarly, the Center for Responsible Lending's November 2011 report, *Lost Ground, 2011: Disparities in Mortgage Lending and Foreclosures,* stated that "racial and ethnic differences in foreclosure rates persist even after accounting for differences in borrower incomes." Further, the Center stated it is "particularly troublesome" that minorities received riskier loans "even within [similar] credit ranges." For example, among

borrowers having FICO scores above 660, the incidence of higher rate loans among various groups was as follows: whites - 6.2%; African-American - 21.4% (3.5 times white rate); and Latino - 19.3% (3.1 times white rate).

113. Moreover, data reported by the Bank and available through both public and private databases shows that minorities in Miami received predatory loan terms from BoA/Countrywide more frequently than white borrowers, regardless of creditworthiness.

114. A regression analysis of this data controlling for borrower race and objective risk characteristics such as credit history, loan to value ratio, and the ratio of loan amount to income demonstrates that from 2004-2012, an African-American borrower was 1.581 times more likely to receive a predatory loan as was a white borrower possessing similar underwriting and borrower characteristics. The regression analysis further demonstrates that the odds that a Latino borrower would receive a predatory loan were 2.087 times greater than that of a white borrower possessing similar underwriting and borrower characteristics. These odds ratios demonstrate a pattern of statistically significant differences between African-American and white borrowers, and between Latino and white borrowers.

115. The regression analysis also shows that these disparities persist when comparing only borrowers with FICO scores above 660. An African-American borrower with a FICO score above 660 was 1.533 times more likely to receive a predatory loan as was a white borrower with similar underwriting and borrower characteristics. A Latino borrower with a

FICO score above 660 was 2.137 times more likely to receive a predatory loan as was a white borrower with similar underwriting and borrower characteristics. These odds ratios demonstrate a pattern of statistically significant differences between African-American and white borrowers, and between Latino and white borrowers.

116. A similar regression analysis taking into account the racial makeup of the borrower's neighborhood rather than the individual borrower's race shows that borrowers in heavily minority neighborhoods in Miami were more likely to receive predatory loans than borrowers in heavily white neighborhoods. For example, a borrower in a heavily minority census tract (census tract consisting of at least 90% African-American or Latino households) was 1.585 times more likely to receive a predatory loan as was a borrower with similar characteristics in a non-minority neighborhood (census tract with at least 50% white households). These odds ratios demonstrate a pattern of statistically significant differences between African-American and white borrowers, and between Latino and white borrowers.

117. This data also establishes that BoA/Countrywide disproportionately issued loans with higher risk features including government loans (FHA/VA) and other high cost loans to African-American and Latino borrowers in Miami from 2008-2012. A regression analysis, controlling for borrower race and objective risk characteristics such as ratio of loan amount to income, demonstrates that an African-American borrower was 5.388 times more likely to receive one of these loans with higher risk features than was a white borrower possessing

similar borrower and underwriting characteristics. The regression analysis further demonstrates that a Latino borrower was 1.685 times more likely to receive one of these loans with higher risk features than was a white borrower possessing similar borrower and underwriting characteristics. These odds ratios demonstrate a pattern of statistically significant differences between African-American and white borrowers, and between Latino and white borrowers.

118. Thus, the disparities are not the result of, or otherwise explained by, legitimate non-racial underwriting criteria.

F. BoA/Countrywide's Targeting of Minorities who in fact Receive Predatory Loan Terms Regardless of Creditworthiness Causes Foreclosures

1. Data shows that BoA/Countrywide's foreclosures are disproportionately located in minority neighborhoods in Miami.

119. BoA/Countrywide has intentionally targeted predatory practices at African-American and Latino neighborhoods and residents. The predatory practices include charging excessively high interest rates and fees that are not justified by borrowers' creditworthiness; providing teaser rate loans with bogus refinance opportunities; requiring large prepayment penalties while deliberately misleading borrowers about the penalties; refusing to refinance or modify predatory loans; and more.

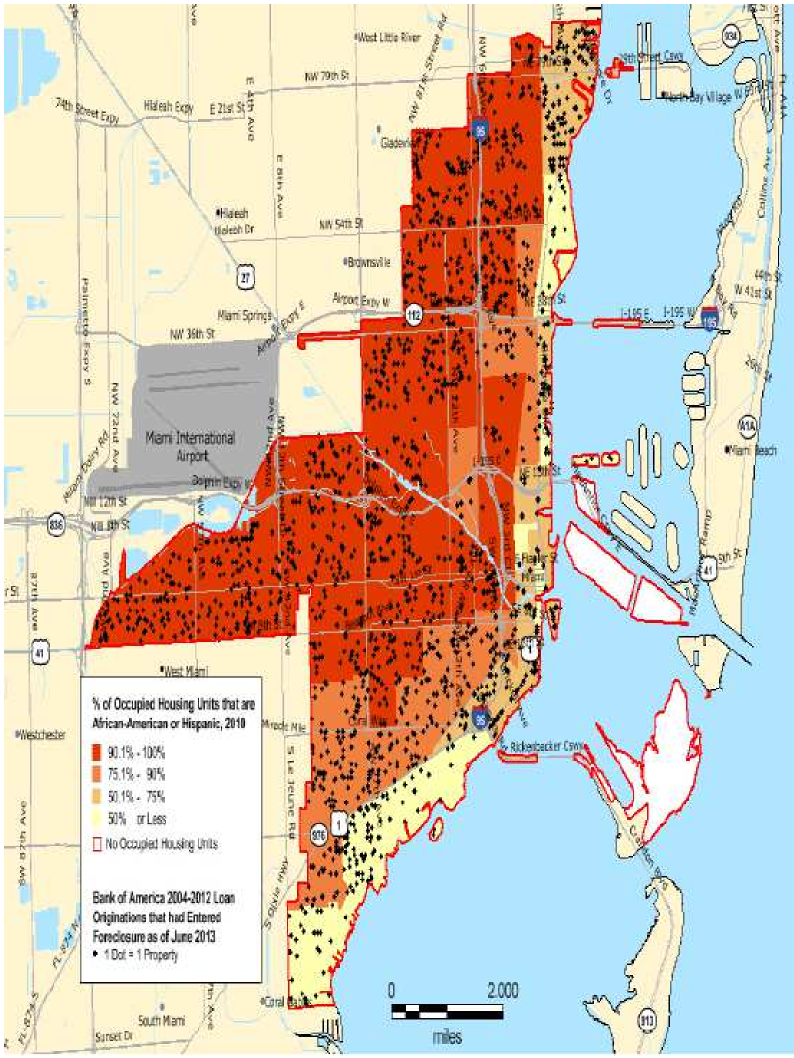
120. Far from being a responsible provider of much-needed credit in minority communities, BoA/Countrywide is a leading cause of stagnation

and decline in African-American and Latino neighborhoods where its foreclosures are concentrated. Specifically, since at least 2000, its foreclosures have been concentrated in neighborhoods with African-American or Latino populations exceeding 75%.

121. Although 53.3% of BoA/Countrywide's loan originations in Miami from 2004 to 2012 were in census tracts that are at least 75% African-American or Latino, 62.5% of loan originations that had entered foreclosure by June 2013 were in those census tracts. Similarly, while 84.7% of BoA/Countrywide's loan originations in Miami from 2004 to 2012 occurred in census tracts that are at least 50% African-American or Latino, 95.7% of BoA/Countrywide's loan originations that had entered foreclosure by June 2013 were in those census tracts. Moreover, while 15.3% of BoA/Countrywide's loan originations in Miami from 2004 to 2012 occurred in census tracts that were less than 50% African-American or Latino, only 4.3% of BoA/Countrywide's loan originations that had entered foreclosure by June 2013 were in those census tracts. This data demonstrates a pattern of statistically significant differences between African-American and white borrowers, and between Latino and white borrowers.

122. The following map represents the concentration of BoA/Countrywide's loan originations from 2004 through 2012 that had entered foreclosure by February 2013 in African-American and Latino neighborhoods. In addition to the disproportionate distribution of BoA/Countrywide foreclosures in African-American and Latino neighborhoods,

disparate rates of foreclosure based on race further demonstrate BoA/Countrywide's failure to follow responsible underwriting practices in minority neighborhoods. While 32.8% of BoA/Countrywide's loans in predominantly (greater than 90%) African-American or Latino neighborhoods result in foreclosure, the same is true for only 7.7% of its loans in non-minority (greater than 50%) neighborhoods. In other words, a BoA/Countrywide loan in a predominantly African-American or Latino neighborhood is 5.857 times more likely to result in foreclosure as is a BoA/Countrywide loan in a non-minority neighborhood. These odds ratios demonstrate a pattern of statistically significant differences between African-American and white borrowers, and between Latino and white borrowers.



123. Thus, BoA/Countrywide's discretionary lending policies and pattern or practice of targeting of minorities, who in fact receive predatory loan terms regardless of creditworthiness, have caused and continue to cause foreclosures in Miami.

2. Data shows that BoA/Countrywide's loans to minorities result in especially quick foreclosures.

124. A comparison of the time from origination to foreclosure of BoA/Countrywide's loans originated in Miami from 2004 to 2012 shows a marked disparity with respect to the speed with which loans to African-Americans and Latinos and whites move into foreclosure. The average time to foreclosure for African-American borrowers is 3.144 years, and for Latino borrowers is 3.090 years. By comparison, the average time to foreclosure for white borrowers is 3.448 years. These statistically significant disparities demonstrate that BoA/Countrywide aggressively moved minority borrowers into foreclosure as compared with how the Bank handled foreclosures for white borrowers.

125. This disparity in time to foreclosure is further evidence that BoA/Countrywide is engaged in lending practices consistent with reverse redlining. The disparity in time to foreclosure demonstrates that BoA/Countrywide is engaged in irresponsible underwriting in African-American and Latino communities that does not serve the best interests of borrowers. If BoA/Countrywide were applying the same underwriting practices in African-American and Latino neighborhoods and white neighborhoods in Miami, there would not be a significant difference in time to foreclosure. Were BoA/Countrywide underwriting borrowers in both communities with equal care and attention to proper underwriting practices, borrowers in African-American and Latino communities would not find themselves in financial straits significantly sooner during the lives of their

loans than do borrowers in white communities. The faster time to foreclosure in African-American and Latino neighborhoods is consistent with underwriting practices in minority communities that are less concerned with determining a borrower's ability to pay and qualifications for the loan than they are in maximizing short-term profit.

126. The HUD/Treasury Report confirms that time to foreclosure is an important indicator of predatory practices: "[t]he speed with which the subprime loans in these communities have gone to foreclosure suggests that some lenders may be making mortgage loans to borrowers who did not have the ability to repay those loans at the time of origination."[29]

3. Data shows that the discriminatory loan terms cause the foreclosures.

127. BoA/Countrywide's discriminatory lending practices cause foreclosures and vacancies in minority communities in Miami.

128. Steering borrowers into loans that are less advantageous than loans for which they qualify, including steering borrowers who qualify for prime loans into subprime loans, can cause foreclosures because the borrowers are required to make higher loan payments. The difference between what a borrower who is steered in this manner must pay and the lower amount for which the borrower qualified can cause the borrower to be unable to make payments on the mortgage. In such instances, the borrower would have continued to make

[29] HUD/Treasury Report at 25.

payments on the mortgage and remained in possession of the premises had BoA/Countrywide made the loan without improperly steering the borrower into a subprime, or less advantageous loan. Steering borrowers in this manner, therefore, causes foreclosures and vacancies.

129. Giving a loan to an applicant who does not qualify for the loan, especially a refinance or home equity loan, can also cause foreclosures and vacancies. Some homeowners live in properties that he or she owns subject to no mortgage. Other homeowners live in properties with modest mortgages that he or she can comfortably afford to pay. Where a lender, such as BoA/Countrywide, solicits such a homeowner to take out a home equity loan on their property, or alternatively, to refinance an existing loan into a larger loan without proper underwriting to assure that the borrower can make the monthly payments for the new, larger loan, the result is likely to be that the borrower will be unable to make payments on the mortgage. This is particularly true where the borrower is refinanced from a fixed rate loan into an adjustable rate loan that the lender knows the borrower cannot afford, should interest rates rise. In some instances the lender may refinance the borrower into a new loan that the lender knows the borrower cannot sustain, given the borrower's present debt obligations and financial resources. In such circumstances, the likely result of such practices is to cause homeowners who are otherwise occupying properties without a mortgage, or comfortably making payments on a modest existing mortgage, to be unable to make payments on a new, unaffordable loan. This, in turn,

causes foreclosures and vacancies. If these unaffordable refinance and home equity loans had not been made, the subject properties would not have become vacant.

130. A regression analysis of loans issued BoA/Countrywide in Miami from 2004-2012, controlling for objective risk characteristics such as credit history, loan to value ratio, and the ratio of loan amount to income, demonstrates that a predatory loan is 1.721 times more likely to result in foreclosure than is a non-predatory loan.

131. The regression analysis also demonstrates that a predatory loan made to an African-American borrower was 2.744 times more likely to result in foreclosure than was a non-predatory loan made to a white borrower with similar borrower and underwriting characteristics. A predatory loan made to a Latino borrower was 2.861 times more likely as a non-predatory loan made to a white borrower with similar risk characteristics to result in foreclosure. These odds ratios demonstrate a pattern of statistically significant differences between African-American and white borrowers, and between Latino and white borrowers.

132. A regression analysis of loans with higher risk features including government loans (FHA/VA) and other high cost loans issued by BoA/Countrywide in Miami from 2008-2012, controlling for borrower race and objective risk characteristics such as ratio of loan amount to income, demonstrates that these loans are 1.855 times more likely as loans without these risk features to result in foreclosure. These odds ratios demonstrate a pattern of statistically

significant differences between African-American and white borrowers, and between Latino and white borrowers.

VII. INJURY TO MIAMI CAUSED BY BOA/COUNTRYWIDE'S DISCRIMINATORY LOAN PRACTICES

133. Miami has suffered financial injuries as a direct result of BoA's pattern or practice of reverse redlining and the resulting disproportionately high rate of foreclosure on BoA loans to African-Americans and Latinos in minority neighborhoods in Miami. Miami seeks redress for these injuries. The City does not seek redress in this action for injuries resulting from foreclosures on mortgages originated by lenders other than BoA.

134. BoA continues to engage in the discriminatory pattern or practice described herein with similar and continuing deleterious consequences to the City.

135. The City seeks damages based on reduced property tax revenues based on (a) the decreased value of the vacant properties themselves, and (b) the decreased value of properties surrounding the vacant properties. In addition, the City seeks damages based on municipal services that it provided and still must provide to remedy blight and unsafe and dangerous conditions which exist at properties that were foreclosed as a result of BoA's illegal lending practices.

A. Miami has been Injured by a Reduction in Property Tax Revenues from Foreclosures Caused by Discriminatory Loans Issued by BoA

136. When a home falls into foreclosure, it affects the property value of the foreclosed home as well as the values of other homes in the neighborhood. These decreased property values in turn reduce property tax revenues to the City.

137. As property values drop, Miami communities could lose millions in property tax revenues from the decreased value of the foreclosed homes themselves and those in the surrounding neighborhoods.

1. The decreased value of the properties foreclosed by BoA result in reduced property tax revenues.

138. Homes in foreclosure tend to experience a substantial decline in value (e.g., 28%).[30]

139. A portion of this lost home value is attributable to homes foreclosed as a result of BoA's discriminatory loan practices.

140. The decreased property values of foreclosed homes in turn reduce property tax revenues to the City and constitute damages suffered by Miami.

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[30] Campbell, John Y., Stefano Giglio, and Parag Pathak, National Bureau of Economic Research, NBER Working Paper Series, "*Forced Sales and House Prices*" (2009) *(available at* http://www.nber.org/papers/w14866.pdf?new_window=1).

2. The decreased value of properties in the neighborhoods surrounding foreclosed properties results in reduced property tax revenues.

141. BoA foreclosure properties and the problems associated with them likewise cause especially significant declines in surrounding property values because the neighborhoods become less desirable. This in turn reduces the property tax revenues collected by Miami.

142. Property tax losses suffered by Miami as a result of vacancies resulting from BoA's foreclosures are fully capable of empirical quantification.

143. Routinely maintained property tax and other data allow for the precise calculation of the property tax revenues lost by the City as a direct result of particular BoA foreclosures. Using a well-established statistical regression technique that focuses on effects on neighboring properties, the City can isolate the lost property value attributable to BoA foreclosures and vacancies from losses attributable to other causes, such as neighborhood conditions. This technique, known as Hedonic regression, when applied to housing markets, isolates the factors that contribute to the value of a property by studying thousands of housing transactions. Those factors include the size of a home, the number of bedrooms and bathrooms, whether the neighborhood is safe, whether neighboring properties are well-maintained, and more. Hedonic analysis determines the contribution of each of these house and neighborhood characteristics to the value of a home.

144. The number of foreclosures in a neighborhood is one of the neighborhood traits that Hedonic analysis can examine. Hedonic analysis allows for the calculation of the impact on a property's value of the first foreclosure in close proximity (e.g., ⅛ or ¼ of a mile), the average impact of subsequent foreclosures, and the impact of the last foreclosure.

145. Foreclosures attributable to BoA in minority neighborhoods in Miami can be analyzed through Hedonic regression to calculate the resulting loss in the property values of nearby homes. This loss can be distinguished from any loss attributable to non-BoA foreclosures or other causes. The loss in property value in minority neighborhoods in Miami attributable to BoA's unlawful acts and consequent foreclosures can be used to calculate the City's corresponding loss in property tax revenues.

146. Various studies establish that Hedonic regression can be used for this purpose. A study published by the Fannie Mae Foundation, using Chicago as an example, determined that each foreclosure is responsible for an average decline of approximately 1.1% in the value of each single-family home within an eighth of a mile.[31]

147. Other studies have focused on the impact of abandoned homes on surrounding property values. A study in Philadelphia, for example, found that each home within 150 feet of an abandoned home declined

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[31] See Dan Immergluck & Geoff Smith, The External Costs of Foreclosure: The Impact of Single-Family Mortgage Foreclosures on Property Values, 17 HOUSING POLICY DEBATE 57 (2006) at 69.

in value by an average of $7,627; homes within 150 to 299 feet declined in value by $6,810; and homes within 300 to 449 feet declined in value by $3,542.[32]

148. These studies highlight the foreseeability of tax related harm to the City as the result of foreclosures arising from discriminatory loans.

149. And most recently, a Los Angeles study reported, "[i]t is conservatively estimated that each foreclosed property will cause the value of neighboring homes within an eighth of a mile to drop 0.9%." Thus, "[i]n Los Angeles, impacted homeowners could experience property devaluation of $53 billion."[33] This decreased property value of neighboring homes in turn reduces property tax revenues to the City.

150. Application of such Hedonic regression methodology to data regularly maintained by Miami can be used to quantify precisely the property tax injury to the City caused by BoA's discriminatory lending practices and resulting foreclosures in minority neighborhoods.

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[32] See Anne B. Shlay & Gordon Whitman, *Research for Democracy: Linking Community Organizing and Research to Leverage Blight Policy*, at 21 (2004).

[33] The Alliance of Californians for Community Empowerment and the California Reinvestment Coalition, *The Wall Street Wrecking Ball: What Foreclosures are Costing Los Angeles Neighborhoods,* at 3 (2011) ("Cost to Los Angeles Report").

B. Miami Is Injured Because It Provided and Still Must Provide Costly Municipal Services for Foreclosure Properties in Minority Neighborhoods as a Direct Result of Discriminatory Loans Originated or Purchased by BoA

151. BoA foreclosure properties cause direct costs to the City because the City is required to provide increased municipal services at these properties. These services would not have been necessary if the properties had not been foreclosed upon.

152. For example, the City's Police Department has sent, and will continue to send personnel and police vehicles to BoA foreclosure properties to respond to a variety of problems, including increased vagrancy, criminal activity, and threats to public health and safety that arise at these properties because of their foreclosure status. Because violent crime has generally been found to increase due to foreclosures, the Miami PD must respond to calls reporting suspicious activity at foreclosure properties and perform ongoing investigations involving criminal activity, including gang activity, at these properties.

153. Likewise, the Miami Fire Department has sent, and will continue to send personnel and resources to BoA foreclosure properties to respond to a variety of fire-related problems that arise at these properties because of their foreclosure status.

154. The Miami Building Department and Code Enforcement/Code Compliance Departments have devoted, and will continue to devote personnel time and out-of-pocket funds to perform a number of tasks

that arise at these properties because of their foreclosure status. These include, but are not limited to the following: (a) inspect and issue permitting violations in contravention of Florida statutes 553 and the Florida Building Code; (b) inspect and issue violations of the Miami City Code and Florida statutes 162; (c) condemn and demolish vacant structures deemed an imminent hazard to public safety.

155. The City frequently hires independent contractors to perform certain services, including, but not limited to, (i) removing excess vegetation at vacant properties, (ii) hauling away trash and debris at vacant properties, (iii) boarding vacant property from casual entry, (iv) putting up fencing to secure vacant properties, (v) painting and removing graffiti at vacant properties. Occasionally, some of these services are performed by the City's General Services Administration Department. .

156. The Miami City Attorney's Office has devoted, and will continue to devote personnel time and out-of-pocket resources perform a number of tasks that arise at these properties because of their foreclosure status. These include, but are not limited to the following: (a) prosecuting code enforcement cases; (b) preserving the City's lien rights at judicial foreclosure proceedings; and (c) pursuing court ordered injunctions involving a myriad of potential problems at foreclosure properties.

157. The City is required to administer and fund the Unsafe Structures Board, which was formerly under the jurisdiction of Miami-Dade County.

158. As described in the *Cost to Los Angeles* Report, "[l]ocal government agencies have to spend money and staff time on blighted foreclosed properties, providing maintenance, inspections, trash removal, increased public safety calls, and other code enforcement services .... Responding to these needs is a gargantuan task that involves multiple agencies and multiple levels of local government."[34]

159. Moreover, as discussed above, the Apgar-Duda report underscores the foreseeability of municipal costs as the result of foreclosures arising from discriminatory loans.

VIII. SAMPLE FORECLOSURE PROPERTIES IN THE CITY OF MIAMI

160. Plaintiff has preliminarily identified three thousand three hundred and twenty-six (3,326) discriminatory loans issued by BoA in Miami between 2004-2012 that resulted in foreclosure.[35] The City has already incurred, or will incur in the future, damages corresponding to each of these properties. A sample of property addresses corresponding to these foreclosures is set forth below:

1111 NW 65th St., 33150

1073 NW 64th St., 33150

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[34] *Id*.

[35] Plaintiff anticipates that it will be able to identify more foreclosures resulting from the issuance of discriminatory loans during this time period with the benefit of discovery. This conclusion derives from the fact that because of certain reporting limitations, the publicly-available mortgage loan databases utilized by Plaintiff are not as comprehensive as the mortgage loan databases maintained by, and in the possession of, an issuing bank.

597 NW 69th St., 33127

1557 NW 66th St., 33147

253 NW 73rd St., 33150

7200 SW 5th St., 33144

3635 NW 14th St., 33125

2728 NW 23rd Ct., 33142

1671 NW 36th Ave., 33125

4321 NW 11th Ct., 33127

IX. STATUTE OF LIMITATIONS AND CONTINUING VIOLATIONS DOCTRINE

161. As alleged herein, Defendant BoA/Countrywide has engaged in a continuous pattern and practice of mortgage discrimination in Miami since at least 2004 by imposing different terms or conditions on a discriminatory and legally prohibited basis. In order to maximize profits at the expense of the City of Miami and minority borrowers, BoA/Countrywide adapted its unlawful discrimination to changing market conditions. This unlawful pattern and practice conduct is continuing through the present and has not terminated. Therefore, the operative statute of limitations governing actions brought pursuant to the Federal Fair Housing Act has not commenced to run.

X. CLAIMS FOR RELIEF

FIRST CLAIM FOR RELIEF
(Violation of the Federal Fair Housing Act, 42 U.S.C. §§ 3601, *et seq.)*

162. Plaintiff repeats and incorporates by reference all allegations contained in the preceding paragraphs as if fully set forth herein.

163. BoA/Countrywide's acts, policies, and practices as described constitute intentional discrimination on the basis of race. BoA/Countrywide has intentionally targeted residents of predominantly African-American and Latino neighborhoods in Miami for different treatment than residents of predominantly white neighborhoods in Miami with respect to mortgage lending. BoA/Countrywide has intentionally targeted residents of these neighborhoods for high-cost loans without regard to their credit qualifications and without regard to whether they qualify for more advantageous loans, including prime loans. BoA/Countrywide has intentionally targeted residents of these neighborhoods for increased interest rates, points, and fees, and for other disadvantageous loan terms including, but not limited to, adjustable rates, prepayment penalties, and balloon payments. BoA/Countrywide has intentionally targeted residents of these neighborhoods for unfair and deceptive lending practices in connection with marketing and underwriting mortgage loans.

164. BoA/Countrywide's acts, policies, and practices have had an adverse and disproportionate impact on African-Americans and Latinos and residents of predominantly African-American and Latino neighborhoods in Miami as compared to similarly situated whites and residents of predominantly white neighborhoods in Miami. This adverse and disproportionate impact is the direct result of BoA/Countrywide's policies of providing discretion to loan officers and others responsible for mortgage lending; failing to monitor this discretion

to ensure that borrowers were being placed in loan products on a nondiscriminatory basis when BoA/Countrywide had notice of widespread product placement disparities based on race and national origin; giving loan officers and others responsible for mortgage lending large financial incentives to issue loans to African-Americans and Latinos that are costlier than better loans for which they qualify; otherwise encouraging and directing loan officers and others responsible for mortgage lending to steer borrowers into high-cost loans or loans with adjustable rates, prepayment penalties, or balloon payments without regard for whether they qualify for better loans, including but not limited to prime loans; and setting interest rate caps. These policies have caused African-Americans and Latinos and residents of predominantly African-American and Latino neighborhoods in Miami to receive mortgage loans from BoA/Countrywide that have materially less favorable terms than mortgage loans given by BoA/Countrywide to similarly situated whites and residents of predominantly white neighborhoods in Miami, and that are materially more likely to result in foreclosure.

165. BoA/Countrywide's residential lending-related acts, policies, and practices constitute reverse redlining and violate the Fair Housing Act as:

(a) Discrimination on the basis of race and national origin in making available, or in the terms and conditions of, residential real estate-related transactions, in violation of 42 U.S.C. § 3605(a); and

(b) Discrimination on the basis of race and national origin in the terms, conditions, or privileges of sale of a dwelling, in violation of 42 U.S.C. § 3604(b).

166. BoA/Countrywide's policies or practices are not justified by business necessity or legitimate business interests.

167. BoA/Countrywide's policies and practices are continuing.

168. The City is an aggrieved person as defined by 42 U.S.C. § 3602(i) and has suffered damages as a result of BoA/Countrywide's conduct.

169. The City's damages include lost tax revenues and the need to provide increased municipal services. The loss of tax revenues at specific foreclosure sites and at closely neighboring properties in predominantly minority neighborhoods of the City was a foreseeable consequence that was fairly traceable to BoA's discriminatory lending. Likewise, the need to provide increased municipal services at blighted foreclosure sites in predominantly minority neighborhoods of the City was a foreseeable consequence that was fairly traceable to BoA's discriminatory lending.

170. BoA/Countrywide's policies and practices, as described herein, had the purpose and effect of discriminating on the basis of race or national origin. These policies and practices were intentional, willful, or implemented with reckless disregard for the rights of African-American and Latino borrowers.

SECOND CLAIM FOR RELIEF
(Common Law Claim For Unjust Enrichment Based On Florida Law)

171. Plaintiff repeats and incorporates by reference paragraphs 1 - 161 as if fully set forth herein.

172. Defendants have received and utilized benefits derived from a variety of municipal services, including police and fire protection, as well as zoning ordinances, tax laws, and other laws and services that have enabled Defendants to operate and profit within the City of Miami.

173. Defendants are aware of and have taken advantage of the services and laws provided by the City of Miami to further their businesses.

174. As a direct and proximate result of Defendants' predatory lending practices, Defendants have been enriched at the City's expense by utilizing benefits conferred by the City and, rather than engaging in lawful lending practices, practicing unlawful lending practices that have both denied the City revenues it had properly expected through property and other tax payments and by costing the City additional monies for services it would not have had to provide in the neighborhoods affected by foreclosures due to predatory lending, absent the Defendants' unlawful activities. Defendants have failed to remit those wrongfully obtained benefits or reimburse the City for its costs improperly caused by Defendants, and retention of the benefits by Defendants would be unjust without payment.

175. In addition, to its detriment the City has paid for the Defendants' externalities, or Defendants'

costs of harm caused by its mortgage lending discrimination, in circumstances where Defendants are and have been aware of this obvious benefit and retention of such benefit would be unjust.

DEMAND FOR JURY TRIAL

Pursuant to Fed. R. Civ. P. 38(b), the City demands a trial by jury on all issues so triable.

PRAYER FOR RELIEF

WHEREFORE, the City respectfully prays that the Court grant it the following relief:

A. Enter a declaratory judgment that the foregoing acts, policies, and practices of BoA/Countrywide violate 42 U.S.C. §§ 3604 and 3605;

B. Enter a permanent injunction enjoining BoA/Countrywide and its directors, officers, agents, and employees from continuing the discriminatory conduct described herein, and directing BoA/Countrywide and its directors, officers, agents, and employees to take all affirmative steps necessary to remedy the effects of the discriminatory conduct described herein and to prevent additional instances of such conduct or similar conduct from occurring in the future, pursuant to 42 U.S.C. § 3613(c)(1);

C. Award compensatory damages to the City of Miami in an amount to be determined by the jury that would fully compensate the City for its injuries caused by the conduct of BoA/Countrywide alleged herein, pursuant to 42 U.S.C. § 3613(c)(1);

D. Award punitive damages to the City in an amount to be determined by the jury that would punish BoA/Countrywide for the willful, wanton and reckless conduct alleged herein, and that would effectively deter similar conduct in the future, pursuant to 42 U.S.C. § 3613(c)(1);

E. Award the City its reasonable attorneys' fees and costs, pursuant to 42 U.S.C. § 3613(c)(2);

F. Require payment of pre-judgment interest on monetary damages; and

G. Order such other relief as this Court deems just and equitable.

Dated: December 13, 2013 Respectfully submitted,

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. 13-CV-24506-RSR/PMH

CITY OF MIAMI, a Florida municipal
Corporation,

Plaintiff,

v.

BANK OF AMERICA CORPORATION;
BANK OF AMERICA, N.A.;
COUNTRYWIDE FINANCIAL
CORPORATION; COUNTRYWIDE
HOME LOANS; and COUNTRYWIDE
BANK, FSB,

Defendants.

REPORT OF TIMOTHY J. RIDDIOUGH, Ph.D.

FEBRUARY 28, 2014

[Table of Contents omitted]

I. INTRODUCTION

A. Qualifications

1. I am the E.J. Plesko chaired Professor in the Department of Real Estate and Urban Land Economics at the University of Wisconsin - Madison School of Business. I was the Director of the James A. Graaskamp Center for Real Estate from 2004 to 2009. I am currently the Director of the Applied Real Estate Investment Program at the University of Wisconsin. Prior to 2001, I was a tenured professor at the Massachusetts Institute of Technology. I am a founding fellow at the Real Estate Research Institute, a fellow of the Homer Hoyt Institute of Advanced Studies, and am on the editorial board of several scholarly real estate publications. I was also the President of the American Real Estate and Urban Economics Association in 2012.

2. I received a Ph.D. in Real Estate in 1991 from the University of Wisconsin-Madison. I also received a M.S. in Finance in 1984 and a B.B.A. in Quantitative Analysis in 1981 from the University of Wisconsin-Madison.

3. For much of my academic career I have focused on the mortgage lending and securities markets. More broadly, I have published papers and given numerous speeches relating to financial intermediation, investment theory, option pricing, mortgage- and asset-backed securitization, law and economics, and regulation - all as they apply to real estate issues. Prior to returning to school to pursue a Ph.D., I worked for four years as the finance manager of a private mortgage insurance company.

A copy of my curriculum vitae is attached as **Appendix A** to this report, and a list of cases in which I have provided testimony in the preceding four years is attached as **Appendix B**.

B. Background

4. In its complaint, the City of Miami (the "City") alleges that Bank of America Corporation, Bank of America, N.A., Countrywide Financial Corporation, Countrywide Home Loans, and Countrywide Bank, FSB (collectively, "Defendants") engaged in lending discrimination consisting of *reverse redlining*, which generally involves charging higher financing prices to minority borrowers than would be charged to non-minority borrowers with comparable credit. The City contends this alleged practice resulted in a disproportionate number of foreclosures and vacant properties in minority neighborhoods, which allegedly caused a reduction in property tax revenues and an increase in the cost of municipal services in the minority neighborhoods.[1]

5. As discussed below, numerous intervening factors unrelated to Defendants' alleged wrongdoing contributed to the housing bubble and its subsequent collapse, as well as the increase in foreclosures.

II. ANALYSIS AND OPINIONS

6. From the late 1990s through early 2006, the U.S. housing market experienced tremendous growth in home prices. From 1945 through the end of 1999, home prices in the U.S. grew at an average annual rate of approximately 4.9 percent; from 2000 through

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[1] Complaint for Violations of the Federal Fair Housing Act dated December 13, 2013, (the "Complaint").

the end of 2005, home prices grew at more than twice that rate, an average of 11.3 percent per year.[2] *See* **Exhibit 1**. In Miami, the rate was even higher. *See* **Exhibit 2**. Similarly, from the end of World War II through the early 1990s, appreciation of home prices only slightly outpaced the rate of inflation; from the mid-1990s through the mid-2000s, however, home prices grew at several times the rate of inflation. *See* **Exhibit 3**.

A. Factors Contributing to the Increase in Home Prices and Expansion of Mortgage Lending

7. Numerous policy and macroeconomic factors converged to produce this unprecedented home price growth, including tax and regulatory policies designed to encourage homeownership, as well as governmental policies that encouraged — even mandated — lending to low-income households. At the same time, historically low interest rates combined with low levels of unemployment to heighten consumer confidence. That confidence led to an increased willingness to spend and to take on significant new debt.

8. Below, I discuss a few of the more prominent factors that contributed to home price appreciation

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[2] The home price statistics quoted in this report and the data used to develop the accompanying exhibits were generally derived from Case-Shiller Home Price Indices, available at <http://us.spindices.com/index-family/real-estate/sp-case-shiller>, or data available at Robert J. Shiller's website <http://irrationalexuberance.com/>. Other home price indices generally followed similar trends.

and the growth of the mortgage market in the late 1990s and early 2000s.

1. Governmental Policies and Regulation

9. The federal government has long pursued policies in support of expanded homeownership. A key example is the Tax Reform Act of 1986 (the "TRA"), which extended taxpayers' right to deduct mortgage interest and — perhaps more importantly — eliminated the deduction of interest on other types of consumer loans. By making mortgage debt a bargain relative to other consumer loans, the TRA stimulated demand not only for standard mortgages but also for loans backed by owners' accumulated equity in their homes.[3] The benefit to residential mortgage borrowers is substantial; Congress estimates that taxpayer savings from the mortgage interest deduction totaled more than $735 billion from 2000 to 2009.[4]

10. The Government has also encouraged — even required — lenders to serve a broader population of borrowers. The landmark Community Reinvestment Act of 1977 (the "CRA"), for example, mandated federally insured banking institutions to "help meet

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[3] *See, e.g.*, Kenneth Temkin, Jennifer E. H. Johnson, and Diane Levy, "Subprime Markets, the Role of GSEs, and Risk-Based Pricing," The Urban Institute, March 2002, p. 8: "[The Act] provided an incentive for homeowners to take home equity loans and use the proceeds to pay off consumer debt, which usually has higher interest rates than home equity debt."

[4] Joint Committee on Taxation, "Background Information on Tax Expenditure Analysis and Historical Survey of Tax Expenditure Estimates," February 28, 2011, tables 6-7. Property tax deductions and capital gains exclusions also contribute to the tax advantages of home ownership.

the credit needs of the communities in which they operate, including low- and moderate-income neighborhoods, consistent with safe and sound banking operations."[5] Because neighborhoods with high concentrations of minority residents are relatively more likely to have lower average incomes, a connection can be drawn between minority lending and the CRA.[6]

11. In 1993, Congress passed the Federal Housing Enterprises Financial Safety and Soundness Act,[7] pursuant to which the U.S. Department of Housing and Urban Development ("HUD") directed the two government-sponsored enterprises (or "GSEs"), Fannie Mae and Freddie Mac, to increase their efforts to support affordable housing. A specific focus of the act was to "assist primary lenders [in making] housing credit available in areas with concentrations of low-income and minority families," and to "assist

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[5] Federal Financial Institutions Examination Council, "Community Reinvestment Act: Background and Purpose," <http://www.ffiec.gov/CRA/history.htm> (accessed November 8, 2013). *See also* Robert B. Avery, Paul S. Calem, and Glenn B. Canner, "The Effects of the Community Reinvestment Act on Local Communities," Board of Governors of the Federal Reserve System, Division of Research and Statistics, March 20, 2003, p. 1.

[6] Robert B. Avery, Paul S. Calem, and Glenn B. Canner, "The Effects of the Community Reinvestment Act on Local Communities," Board of Governors of the Federal Reserve System, Division of Research and Statistics, March 20, 2003, p. 8. Although the CRA did not address race or ethnicity directly, compliance with fair-lending laws was among the factors considered in CRA evaluations. *Id.*

[7] Federal Housing Enterprises Financial Safety and Soundness Act of 1992, 12 U.S.C. § 4501 et seq.

insured depository institutions [in meeting] their obligations under the [CRA]."[8] HUD initially required Fannie Mae and Freddie Mac to ensure that at least 30 percent of the mortgages they purchased were made to low- and moderate-income families;[9] by 2008, the target had risen to 56 percent.[10] Separate goals were set for underserved areas and "special affordable households."[11] The GSEs' pursuit of HUD's affordable housing goals has been cited as one factor contributing to gains among low-income

[8] *Id*., § 4565(b).

[9] Ira G. Peppercorn, Statement Before the House Subcommittee on Capital Markets, Securities and Government Sponsored Enterprises, Committee on Banking and Financial Services, July 30, 1998, <http://democrats.financialservices.house.gov/banking/73098hud.shtml> (accessed November 25, 2013). The initial 30 percent goal was set by Congress. *Id*.

[10] U.S. Department of Housing and Urban Development, Overview of the Enterprises' Housing Goal Performance, 2001-08, August 2009, p. 4, available at <http://www.fhfa.gov/webfiles/15465/ Overview%20of%202001-2008%20Goal%20Performance.pdf> (accessed November 1, 2013).

[11] U.S. Department of Housing and Urban Development, Overview of the GSEs' Housing Goal Performance, 1993-2001, July 2002, p. 2, available at <http://www.huduser.org/datasets/GSE/gse2001.pdf> (accessed November 1, 2013); and U.S. Department of Housing and Urban Development, Overview of the Enterprises' Housing Goal Performance, 2001-08, August 2009, p. 4, available at <http://www.fhfa.gov/webfiles/15465/Overview%20of%202001-2008%20Goal%20Performance.pdf> (accessed November 1, 2013). "Special Affordable" households were defined as households with income less than or equal to 60 percent of area median income or located in a low-income area and having income less than or equal to 80 percent of area median income. *Id*.

and minority families in the mortgage market during the late 1990s and early 2000s.[12]

12. The housing goals ultimately led Fannie Mae and Freddie Mac to expand the range of acceptable mortgage loan products as well as to liberalize underwriting standards on the loans they purchased. In its 2000 Report to Congress, the Office of Federal Housing Enterprise Oversight ("OFHEO") described the changes:

> In an effort to increase the volume of mortgages they purchase, Fannie Mae and Freddie Mac have expanded the range of loans they buy. Both Enterprises have introduced new products such as low-downpayment and reverse mortgages. Fannie Mae and Freddie Mac have also purchased loans that they previously deemed to pose an unacceptable level of credit risk, including some subprime mortgages.[13]

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[12] *See, e.g.*, Harold L. Bunce, "The GSEs' Funding of Affordable Loans: A 2004-05 Update," U.S. Department of Housing and Urban Development, Office of Policy Development and Research, June 2007, p. 7.

[13] Office of Federal Housing Enterprise Oversight, 2000 Report to Congress, June 15, 2000, p. 13, available at <http://www.fhfa.gov/webfiles/1212/AR2000.pdf> (accessed December 17, 2013). Moreover, OFHEO explicitly acknowledged the risks associated with these changes:

> The next national downturn will be the first major test of the changes in credit risk management and new loan products introduced by Fannie Mae and Freddie Mac in the 1990s. A recession could be accompanied by higher interest rates, stagnant household incomes, rising consumer debt burdens, higher unemployment, and a stagnant or declining stock market. Such conditions could reduce the demand for housing,

These actions contributed directly and indirectly (through Fannie Mae's and Freddie Mac's purchases of both mortgage loans and private-label mortgage-backed securities) to the expansion of non-prime lending and the proliferation of alternative loan products designed to meet the credit needs of traditionally non-prime borrowers.[14]

2. Low Interest Rates

13. Following the collapse of the Internet bubble in 2000 and the terrorist attacks of 9/11, and with growing concern about the possibility of deflation, the Federal Open Market Committee of the Federal Reserve set progressively lower targets for the

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dampen or reverse home price appreciation, and increase delinquency and foreclosure rates and mortgage credit losses.

Id., p. 18.

[14] *Prime* generally refers to borrowers with good credit and the loans and rates available to them. *Non-prime* and *subprime* refer to borrowers of lesser credit quality. Alternative loan types, such as low- and no-documentation loans, negative-amortizing loans, and option ARMs, though available to prime borrowers, are often associated with non-prime lending. For a further discussion of the use of these terms, *see, e.g*., Yuliya Demyanyk and Otto Van Hemert, "Understanding the Subprime Mortgage Crisis," *The Review of Financial Studies*, vol. 24, no. 6 (2011), p. 1853; and Standard & Poor's, "U.S. Residential Subprime Mortgage Criteria," 1999, pp. 9-10.

The proliferation of alternative mortgage types also helped meet the affordability requirements, cash flow needs and risk tolerances of a range of borrowers. Low- and no-documentation loans, for example, may have been appealing to borrowers with difficult to document income or assets, such as the self-employed. Adjustable-rate mortgages may extend affordability in higher cost areas. *See, e.g*., Michael Fratantoni, et al., "Housing and Mortgage Markets: An Analysis," Mortgage Bankers Association, September 6, 2005, pp. 7, 47-48, 50.

federal funds rate.[15] The low funds rate contributed downward pressure to already low mortgage rates, driving the rate on traditional 30-year fixed-rate mortgages to historic lows. *See* **Exhibit 4**. Low mortgage rates reduce the cost of borrowing, making homes more affordable and expanding the number of eligible borrowers.[16]

14. Increased foreign investment in U.S. securities added further downward pressure on interest rates.[17] China, for example, reportedly increased its total holdings of U.S. Treasury securities and agency paper (bonds issued by governmental agencies such as Fannie Mae and Freddie Mac) from $181 billion in June 2002 to $1.2 trillion in June 2008.[18] The share of all U.S. Treasuries held by Asian investors grew from 15 percent in 2000 to 32 percent in 2006.[19]

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[15] The federal funds rate is a baseline interest rate that influences most lending activity, including mortgage lending. *See* Board of Governors of the Federal Reserve System, Federal Open Market Committee, "About the FOMC," <http://www.federalreserve.gov/monetarypolicy/fomc.htm> (accessed November 8, 2013). *See* Janet L. Yellen, "A View of the Economic Crisis and the Federal Reserve's Response," FRBSF Economic Letter 2009-22, July 6, 2009, pp. 1-2.

[16] The sharp decline in mortgage rates also led many borrowers to refinance existing mortgages. *See* **Exhibit 5**.

[17] *See, e.g.*, Janet L. Yellen, "A View of the Economic Crisis and the Federal Reserve's Response," FRBSF Economic Letter 2009-22, July 6, 2009, p. 1.

[18] Wayne M. Morrison and Marc Labonte, "China's Holdings of U.S. Securities: Implications for the U.S. Economy," CRS Report for Congress, July 30, 2009, pp. 3-4.

[19] Ashok Bardhan and Dwight Jaffee, "The Impact of Global Capital Flows and Foreign Financing on U.S. Mortgage and Treasury Interest Rates," The Research Institute for Housing

Foreign investors also increased their holdings of mortgage-related securities, particularly during the years 2003-2006.[20] The increased demand for mortgage securities (and therefore the underlying mortgages) provided liquidity to the market, adding further downward pressure on mortgage rates and contributing to the boom in the mortgage and financial markets.[21] One author estimates that foreign investment in U.S. debt securities may have kept mortgage rates as much as approximately one percentage point lower than would otherwise have been expected.[22]

15. The effect of the low mortgage rates on the mortgage and housing industries was profound. One study attributes approximately 20 percent of the rise in U.S. home prices between 1996 and 2006 to the effect of lower real interest rates.[23]

3. Increased Investor Activity in the Housing Market Also Contributed to

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America of the Mortgage Bankers Association, June 12, 2007, pp. 8-9.

[20] Inside Mortgage Finance, The 2012 Mortgage Market Statistical Annual CD-ROM, Volume 2D.

[21] For a discussion of these trends, *see, e.g.*, Markus K. Brunnermeier, "Deciphering the Liquidity and Credit Crunch 2007-2008," *Journal of Economic Perspectives*, vol. 23, no. 1 (Winter 2009), pp. 77-100.

[22] Ashok Bardhan, "The Yin and Yang of US Debt," *Yale Global Online*, April 4, 2008.

[23] Edward Glaeser, Joshua Gottlieb and Joseph Gyourko, "Can Cheap Credit Explain the Housing Boom," National Bureau of Economic Research, Working Paper 16230 (July 2010).

Increased Housing Demand and Home Price Appreciation.

16. Another factor that contributed to increased housing demand and home price appreciation during this period was the growing role of investors in the housing market, including buyers hoping to resell their homes quickly at a profit, as well as those purchasing second homes or vacation homes.[24] The percentage of first-lien mortgages used for the purpose of purchasing non-owner-occupied, one- to four-family homes increased from 7.8 percent in 1998 to 16.3 percent in 2005. In Florida, the increases were even more pronounced, climbing from 12.8 percent to 29.5 percent over the same period. *See* **Exhibit 6**.[25]

17. Several authors have found that the increased activity of investors contributed to the overall rise in home prices during this period.[26] As one study explained, such buyers can "significantly affect a market's net supply or vacancy."[27] Most home buyers

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[24] Such homes are referred to collectively as *non-owner-occupied homes*.

[25] In fact, Florida had one of the highest rates of loans made to non-owner-occupants in the U.S. *See, e.g.*, HMDA Data Files 2005, available at <http://www.metrotrends.org/natdata/hmda/>.

[26] *See, e.g.*, William C. Wheaton and Gleb Nechayev, "The 1998-2005 Housing 'Bubble' and the Current "Correction": What's Different This Time?," *Journal of Real Estate Research*, vol. 30, no. 1 (2008), pp. 1-26; and Breck Robinson and Richard Todd, "The Role of Non-Owner-Occupied Homes in the Current Housing and Foreclosure Cycle," Federal Reserve Bank of Richmond, Working Paper 10-11 (May 2010).

[27] William C. Wheaton and Gleb Nechayev, "The 1998-2005 Housing 'Bubble' and the Current 'Correction': What's

move from one house to another, hence each transaction has little impact on overall market vacancy; a purchase by a second-home buyer or investor contributes directly to a reduction in vacancy, putting upward pressure on prices.[28]

4. Low Unemployment and High Consumer Confidence

18. In 2002, the U.S. economy pulled out of a brief recession, and through 2007 grew at an average annual rate of approximately three percent. *See* **Exhibit 7**. Unemployment fell from 6.3 percent in June 2003 to 4.4 percent in May 2007. *See* **Exhibit 8**. With an improving economy, consumers grew increasingly optimistic. The Consumer Confidence Index, a barometer of consumer perceptions of the health of the U.S. economy, improved from a low of 68 in March 2003, following the recession, to 110 in February 2007. *See* **Exhibit 9**.

19. Low unemployment, high consumer confidence, and appreciating home prices translated into a willingness on the part of consumers to increase spending and to take on mortgage debt. Among other things, the sharp decline in mortgage interest rates led many borrowers to refinance existing mortgages, often "cashing out" some or all of the accumulated equity in their homes. Freddie Mac estimates that homeowners cashed out approximately $823 billion in home equity between 2005 and 2007. *See* **Exhibit 10**. Consumers' ability

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Different This Time?," *Journal of Real Estate Research*, vol. 30, no. 1 (2008), p. 16.

[28] *Id.*, pp. 16-17.

to extract home equity during this period was an important contributor to robust consumer spending and heightened consumer confidence.[29] Two key indicators, personal consumption expenditures and durable goods orders, both exhibited strong growth between 2003 and 2007. *See* **Exhibit 11**.

B. Factors Contributing to Home Price Declines

20. As the U.S. saw a historically significant run-up in housing prices in the early to mid-2000s, it also experienced a historically significant collapse in housing prices in the later 2000s. In early 2006, the steady increase in home prices stalled, as uncertainty about the direction of the housing market took hold. In 2007, prices began to fall sharply. From April 2007 to May 2009, home prices across the U.S. fell by nearly a third. Prices that had in aggregate fallen only once on a year-over-year basis since the end of World War II would fall in six consecutive years, from 2006 through 2011.[30]

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[29] For further discussion of the uses of home equity withdrawal, *see, e.g.*, Vladimir Klyuev and Paul Mills, "Is Housing Wealth an ATM? The Relationship Between Household Wealth, Home Equity Withdrawal, and Savings Rates," International Monetary Fund, IMF Working Paper WP/06/162 (June 2006).

[30] Based on data compiled by Robert J. Shiller, available at <http://irrationalexuberance.com/> (accessed

November 4, 2013), as shown at **Exhibit 12**. Other indices, such as the OFHEO purchase-only index, may lead to somewhat different conclusions. Regardless, the home price decline observed from 2006-2011 was the longest and deepest decline since at least the 1930s.

21. The factors contributing to the contraction of the housing market and the decline in home prices were numerous and mutually reinforcing: Higher prices and higher interest rates led to a softening of demand for homes; falling demand, coupled with excess supply, put downward pressure on home prices; falling prices led to negative equity, which limited the ability of homeowners to refinance existing loans. As the economy soured and unemployment soared, defaults and foreclosures increased.

22. In the sections that follow, I discuss a few of the factors most commonly cited as contributing to the collapse in home prices.

1. Home Prices and Interest Rates

23. An unavoidable consequence of the dramatic rise in home prices was that some potential buyers would be left behind. In mid-2006, the Housing Affordability Index, a measure of the relationship between home prices and median household income, reached its lowest level in at least 16 years.[31] First-time homebuyers were hardest hit; the First-Time Homebuyer Affordability Index, which measures the percentage of all U.S. households that can afford an entry-level home, fell 19 points from early 2004 through mid-2006, suggesting that the very buyers who had been the focus of governmental policy and lender efforts to increase homeownership were being

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[31] *See* National Association of Realtors, First-Time Homebuyer Affordability for the United States 1989-current.

driven from the market by the sharp increase in prices.[32]

24. At the same time, driven in part by actions of the Federal Reserve, home mortgage interest rates began to climb. Beginning in mid-2004, following gains in GDP growth and employment, and in an effort to stave off a perceived threat of inflation, the Fed began steadily increasing the targeted federal funds rate from its historically low rate of one percent.[33] By mid-2006, the federal funds rate had reached 5.25 percent, its highest level in more than five years. *See* **Exhibit 4**. The Fed's actions put upward pressure on mortgage rates; the rate on conventional 30-year mortgages, which had fallen to as low as 5.23 percent in mid-2003 (and stayed below 6.0 percent through most of 2004 and 2005), climbed to 6.76 percent by mid-2006. *See* **Exhibit 13**.

2. Excess Supply

25. Not surprisingly, as demand for homes increased in the late 1990s and early 2000s, the home-building industry responded by accelerating new-home construction. Annualized housing starts in the U.S., having hovered in the range of

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[32] *Id*. Both the Housing Affordability Index and the First-Time Homebuyer Affordability Index fail to consider the effect of new mortgage products or changes in lending standards on housing affordability.

[33] The Federal Reserve Board, Minutes of the Federal Open Market Committee, June 29-30, 2004, <http://www.federalreserve.gov/fomc/minutes/20040630.htm> (accessed November 25, 2013): "Recent developments, notably the persistence of solid gains in output and employment along with indications of some increase in inflation, were seen as warranting a first step in the process of removing policy accommodation."

approximately 1.0 million to 1.4 million starts from 1999 to 2002, accelerated in 2003, reaching a peak of more than 1.8 million starts in January 2006. *See* **Exhibit 14**. By the end of the boom, however, new-home construction had outpaced demand. From the third quarter of 2004 to the first quarter of 2007, the national vacancy rate for single-family homes — the percentage of single-family homes for sale that are unoccupied — grew from 1.7 percent to 2.8 percent, suggesting a rather sudden and significant mismatch between supply and demand. Prior to the crisis, the rate had never risen above 2.0 percent. *See* **Exhibit 15**. Rising vacancy rates typically lead to downward pressure on home prices, as sellers with vacant homes would be motivated to cut prices to meet continuing mortgage obligations or to minimize carrying costs.[34]

26. A particular problem in Miami was the rapid construction of condominiums designed to meet the demands of both foreign and domestic investors.[35] (As discussed above, Florida had one of the highest rates of loans made to non-owner-occupants in the U.S.) Some studies have reported that more than half of the condominiums built or converted during the housing bubble were vacant during the crisis, and that a significant portion of foreclosures during

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[34] *See, e.g.*, Vladimir Klyuev, "What Goes Up Must Come Down? House Price Dynamics in the United States," IMF Working Paper No. 08/187 (July 2008), p. 11.

[35] *See, e.g.*, Douglas Hanks, "In condo boom, some veterans see reminders of recent bust," *Miami Herald*, October 29, 2013 <http://www.miamiherald.com/2013/10/29/3718992/in-condo-boom-some-veterans-see.html> (accessed February 25, 2014).

that period were condominiums.[36] Indeed, some studies have concluded that the oversupply of such properties contributed to the downward pressure on prices.[37]

3. The Exit of Investors

27. As noted above, investors in non-owner-occupied residential real estate (second homes and homes purchased for investment) found the market increasingly attractive while home prices climbed in the early 2000s. In 2006, however, that trend reversed. The percentage of new mortgage loans used to purchase non-owner-occupied homes fell from more than 16 percent in 2005 to less than 11 percent in 2009.[38] As the increase was sharper in Florida, so was the decline, with the percentage of such loans falling from a peak of 29.5 percent in 2005 to just 18.4 percent in 2009. *See* **Exhibit 6**. Numerous studies have found that default rates are higher on mortgages made to non-owner-occupants than on mortgages to owner-occupants.[39] Indeed, in Florida, the foreclosure rates on mortgage loans made to non-

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[36] *See, e.g.*, Li Yanmei and Huston John Gibson, "Opportunities for the United States condominium foreclosure market to provide amenable affordable housing options: The case of Tampa/Hillsborough, Flo," *Urban Challenge*, vol. 24, no. 1 (2013), p. 93.

[37] *Id.*, p. 91.

[38] HMDA Data Files 1997-2010, available at <http://www.metrotrends.org/natdata/hmda/>.

[39] *See, e.g.*, Breck L. Robinson and Richard M. Todd, "The Role of Non-Owner-Occupied Homes in the Current Housing and Foreclosure Cycle," The Federal Reserve Bank of Richmond, Working Paper No. 10-11 (May 2010), p. 6 (citing at least six such studies).

owner-occupants was higher than foreclosure rates on mortgages to owner-occupants in each of the years 2005 through 2007.[40]

4. Access to Capital

28. As home prices declined and defaults increased, the market for mortgage-related securities collapsed, depriving the mortgage origination market from needed capital. In 2006, S&P announced downgrades affecting approximately one percent of its outstanding RMBS ratings, which in one year approximately equaled the percentage of downgrades as in the preceding five years.[41] In 2007, S&P downgraded nearly 16 percent of its outstanding RMBS ratings, and in 2009 more than 70 percent.[42]

29. In the third quarter of 2007, the RMBS market collapsed. The volume of new non-agency RMBS issuances fell from $259 billion in the second quarter of 2007 to $124 billion in the third quarter,

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[40] *Id*., p. 7 and Figure 5. At least one member of the Miami City Commission, in discussing prospective litigation against lenders related to reverse redlining, acknowledged that it wasn't his intent to protect housing speculators: "Now I know that some of these foreclosures are people that went out there and speculated and went out and bought homes and they were going to flip those. I don't protect those . . . ." City of Miami City Commission, Meeting Minutes, May 14, 2009, p. 66.

[41] Robert B. Pollsen and Ernestine Warner, "Transition Study: U.S. RMBS Upgrades Are Down And Downgrades Are Up In 2006," Standard & Poor's, January 26, 2007, Table 5, pp. 8-9, and pp. 53-61.

[42] Erkan Erturk, et al., "Default Study: Global Structured Finance Default Study — 1978-2009: Downgrades Accelerate In 2009 Due To Criteria Changes And Credit Performance," Standard & Poor's, March 22, 2010, Table 5, p. 18.

and to just $53 billion in the fourth quarter.[43] The collapse was not limited to a single type or category of RMBS; all categories contracted significantly.[44] Access to capital drives the mortgage-lending industry; without it, loan originations must fall.

5. The Great Recession

30. On the heels of the collapse in home prices came the Great Recession, which at 18 months was the longest recession since the Great Depression of the 1930s.[45] Factors contributing to the recession were wide-ranging. Some economists have argued that the rise in household leverage from 2002 to 2006 was at the root of the economic downturn.[46] Others have found that financial disruptions and heightened uncertainty, together with the oil shocks of 2007¬2008, contributed to the crisis.[47] Many have suggested that poorly designed monetary and fiscal policies enacted in response to early stages of the financial crisis contributed significantly to the

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[43] Inside Mortgage Finance, The 2009 Mortgage Market Statistical Annual CD-ROM, Volume 2B.

[44] Id.

[45] The National Bureau of Economic Research, US Business Cycle Expansions and Contractions, <http://nber.org/cycles/cyclesmain.html> (accessed November 8, 2013).

[46] *See, e.g.*, Atif Mian and Amir Sufi, The Great Recession: Lessons from Microeconomic Data, *The American Economic Review*, vol. 100, no. 2 (May 2010), p. 55.

[47] *See, e.g.*, James H. Stock and Mark W. Watson, "Disentangling the Channels of the 2007-2009 Recession, NBER Working Paper 18094 (May 2010), p. 31.

recession by distorting incentives and increasing uncertainty.[48]

31. Over the course of the recession, real gross domestic product ("GDP") contracted by approximately 4.3 percent. *See* **Exhibit 7**. With the contraction came significant job losses. By the fourth quarter of 2009, unemployment in the U.S. had more than doubled, from 4.4 percent in May 2007 to 10.0 percent — a net loss of more than 7 million jobs.[49] *See* **Exhibit 8**. In Miami-Dade County, unemployment reached 13.3 percent in August 2010.[50] Job losses contributed not only to increased delinquency and defaults, but also to falling demand in the housing market, which reinforced the downward spiral.

32. Minority neighborhoods were particularly vulnerable. A recent study by Stanford researchers found that "[c]ommunities with greater concentrations of minority and immigrant residents were also particularly hard hit by the recession, with the largest increases in unemployment occurring in

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[48] *See, e.g.*, Joseph E. Stiglitz, "Interpreting the Causes of the Great Recession of 2008," BIS Conference presentation, Basel, June 2009.

[49] The number of unemployed persons in the civilian labor force averaged 7.1 million in 2007 and 14.3 million in 2009. U.S. Bureau of Labor Statistics, Labor Force Statistics from the Current Population Survey, available at <http://www.bls.gov/web/empsit/cpseea01.htm> (accessed November 8, 2013).

[50] U.S. Bureau of Labor Statistics, Local Area Unemployment Statistics (LAUCN120860000000003), available at <http://www.bls.gov/> (accessed February 24, 2014).

these neighborhoods."[51] The study noted that communities in Florida (among others) "fared particularly poorly in the recession . . . ."[52]

C. Factors Contributing to the Increase in Default and Foreclosure

33. As prices fell and the economy worsened, delinquencies soared. From mid-2005 to late 2009, serious delinquencies (delinquencies of 90 days or more, plus foreclosure inventory) on nonprime mortgages increased more than five times, and on prime mortgages approximately ten times. *See* **Exhibit 16**.

34. These difficult conditions were not limited to the residential mortgage market. For example, 30-day delinquencies on commercial real estate loans increased almost nine-fold between 2006 and 2009 while prices on commercial real estate fell nearly a quarter. *See* **Exhibit 17**. Delinquencies on other

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[51] Ann Owens and Robert Sampson, "Community Well-Being and the Great Recession," Recession Trends, Stanford Center on Poverty and Inequality, May 2013, pp. 5-6.

[52] Ann Owens and Robert Sampson, "Community Well-Being and the Great Recession," Recession Trends, Stanford Center on Poverty and Inequality, May 2013, p. 3.

See also City of Miami Annual Budget, Fiscal Year 2009, Message from The City Manager, p. 15: "The City of Miami, like many municipalities throughout the State, is feeling the impact of a difficult economy."

City of Miami Adopted Budget, Fiscal Year 2013-14, Five-Year Financial Forecast, pp. 287-288: "The 2009 crash in the housing and financial markets resulted in significant declines in City revenues. . . . South Florida was among the regions hardest hit by the housing market crash in 2009."

consumer loans, such as credit cards, increased as well. *See* **Exhibit 18**.

35. A number of studies (discussed below) have concluded that the principal driver of the increase in default and foreclosure was the unexpected and dramatic decline in home prices. In the rising home-price environment of 2000 to early 2006, increased home values had given borrowers a growing equity cushion against which they could borrow (or which allowed them to sell their homes if the payments became unsustainable). As prices declined, however, that cushion disappeared. The collapse in home prices left millions of homeowners owing more on their mortgage loans than their homes were worth. By the end of 2009, approximately 24 percent of all mortgaged properties in the U.S. were underwater, including 48 percent of all mortgaged properties in Florida.[53]

36. Default is typically precipitated by a *trigger event*, such as a loss of employment; a reduction in work hours or pay; divorce; or unexpected healthcare costs.[54] Indeed, the probability of default is highest when adverse events occur to a borrower with

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[53] First American CoreLogic, "Underwater Mortgages On the Rise According to First American CoreLogic Q4 2009 Negative Equity Data," February 23, 2010.

[54] I understand that borrowers on five of the properties at issue reported a number of reasons for their inability to make payments, including job loss, a drop in income, healthcare expenses, costly home and car repairs, and other personal reasons. *See* Cacho Declaration, ¶¶ 5-9.

In addition to trigger events, other personal factors, such as high levels of debt, including credit card debt, investment losses and bankruptcy, can contribute to default.

limited or negative equity.[55] A borrower with significant accumulated equity generally has both viable alternatives (e.g., a sale of the home) and a reduced incentive to default. Borrowers with limited or negative equity may lack the option to refinance or sell the home when faced with an unexpected loss of income or increased expenses, making them particularly susceptible to such shocks.

37. The City alleges that the increase in defaults and foreclosures led to declining home prices and thus lower tax revenues.[56] In fact, the reverse may be more accurate. Numerous empirical studies have concluded that the primary driver of the increase in defaults was the steep and unanticipated decline in home prices:

> As shown by numerous academic studies . . . a necessary condition for large numbers of borrowers to default is for house prices to fall below the value of the underlying mortgages. . . . [T]he academic literature shows that the primary condition is a decline in house price. **Indeed, it was not until home prices in**

[55] *See, e.g.*, Kerry D. Vandell, "How Ruthless Is Mortgage Default? A Review and Synthesis of the Evidence, *Journal of Housing Research*, vol. 6, no. 2 (1995), p. 256; and Christopher L. Foote, Kristopher Gerardi, and Paul S. Willen, "Negative Equity and Foreclosure: Theory and Evidence," Federal Reserve Bank of Boston, Public Policy Discussion Papers No. 08-3, June 5, 2008, p. 3.

[56] I note that the City must distinguish between the effect of the losses it attributes to Defendant's actions from the losses it attributes to the actions of other mortgage lenders whose loans resulted in foreclosures. Presumably, any foreclosures resulting from such loans, at least under the City's theory, would also have had an effect on tax revenues and municipal costs.

certain markets, notably California, Florida, Arizona, and Nevada, began to fall that subprime defaults became substantial.[57]

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[57] Richard J. Buttimer, Jr., "The financial crisis: imperfect markets and imperfect regulation," *Journal of Financial Economic Policy*, vol. 3, no. 1 (2011), p. 17 (emphasis added) (citing James F. Epperson, et al., "Pricing default risk on mortgages," *AREUEA Journal*, vol. 13, no. 3 (1985), pp. 261-72; Jimmy E. Hilliard, James B. Kau, and V. Carlos Slawson Jr., "Valuing prepay and default in a fixed-rate mortgage: a bivariate binomial options pricing technique," *Real Estate Economics*, vol. 26, no. 3 (1998), pp. 431-68; and Brent W. Ambrose and Richard J. Buttimer, "Embedded options in the mortgage contract," *The Journal of Real Estate Finance & Economics*, vol. 21, no. 2 (2000), pp. 95-112).

See also, e.g., Yuliya Demyanyk and Otto Van Hemert, "Understanding the Subprime Mortgage Crisis," *The Review of Financial Studies*, vol. 24, no. 6 (2011); and Kristopher Gerardi, Adam Hale Shapiro, and Paul S. Willen, "Decomposing the Foreclosure Crisis: House Price Depreciation versus Bad Underwriting," Federal Reserve Bank of Atlanta Working Paper 2009-25 (September 2009).

Demyanyk and Van Hemert report that house price was the only variable in their model that showed a substantial impact on likelihood of default for vintage 2006 and 2007 loans. They find that this effect was more pronounced in areas, such as Miami, that experience larger-than-average house price declines. Even after controlling for borrower and loan characteristics and macroeconomic factors, Demyanyk and Van Hemert find an increased likelihood of delinquency in low and middle-income areas. They attribute this observation of higher loan delinquencies to government programs intended to increase lending in low- and middle-income areas. Yuliya Demyanyk and Otto Van Hemert, "Understanding the Subprime Mortgage Crisis," *The Review of Financial Studies*, vol. 24, no. 6 (2011), pp. 1850, 1853.

38. The City's foreclosure theory also fails to account for other factors that may have affected the rate of foreclosure, including the actions of participants in the secondary mortgage market. Most mortgage loans were securitized. Securitized loans were and still are managed by third-party mortgage servicers, who ultimately decide whether to foreclose on the delinquent loan or to modify its terms. (Of course, other, non-securitized loans may also be sold or transferred to loan servicers, who may exercise similar control.) Servicer actions can be constrained, however, by servicing agreements signed at issuance of the mortgage trust. In other words, the interests of the security investors, issuers, and servicers—the latter of whose actions are restricted by previously established pooling and servicing agreements—may affect foreclosure

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Gerardi, Shapiro, and Willen find "that had prices not fallen, we would simply not have had a major foreclosure crisis, regardless of whether lenders had lowered underwriting standards in 2003 and 2004. By contrast, the observed fall in prices would have generated a substantial increase in foreclosures, even if lenders had retained the underwriting standards that prevailed in 2002." Kristopher Gerardi, Adam Hale Shapiro, and Paul S. Willen, "Decomposing the Foreclosure Crisis: House Price Depreciation versus Bad Underwriting," Federal Reserve Bank of Atlanta Working Paper 2009-25 (September 2009), p. 1.

See also Christopher Mayer, Karen Pence, and Shane M. Sherlund, "The Rise in Mortgage Defaults," *Journal of Economic Perspectives*, vol. 23, no. 1 (Winter 2009); and Kristopher Gerardi, et al., "Making Sense of the Subprime Crisis," Federal Reserve Bank of Atlanta Working Paper 2009-2 (February 2009).

decisions for reasons unrelated to the alleged actions of Defendants.[58]

D. The County's Collection of Property Tax Revenue

39. Not only are foreclosures and property values affected by the macroeconomic and individual circumstances described above, but any reduction in property tax revenue collected by the City is also due, in part, to legislative and constitutional reforms enacted in 2007 and after.

40. For example, in 2007, the state legislature passed a bill that limited property tax revenue growth for future years by capping the millage (tax) rate, which "resulted in a reduction in property tax revenues and related expenditures of $31,623,040" in the first year of implementation.[59]

41. Then again in 2008, Florida voters passed a constitutional amendment also geared toward reducing the amount of tax paid by property owners. Among other initiatives, the reform authorized an

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[58] *See, e.g.*, Christopher L. Foote, et al., "Reducing Foreclosures," Federal Reserve Bank of Boston Public Policy Discussion Papers, No. 09-2, April 8, 2009, p. 21.

[59] *See* Office of Strategic Planning, Budgeting, and Performance, City of Miami Adopted Budget, Fiscal Year 2008, p. 20, available at <http://www.miamigov.com/Budget/pages/budget_books/fy08_book.pdf> (accessed Feb. 26, 2014) (concluding that tax reform legislation imposed "the lowest operating millage rate in over 20 years and resulted in a reduction in property tax revenues and related expenditures of $31,623,040."); *see also* The Florida Senate, Issue Brief 2012-207, Property Tax Update, September 2011, p. 2, available at <http://www.flsenate.gov/PublishedContent/Session/2012/InterimReports/2012-207ft.pdf> (accessed Feb. 26, 2014).

additional $25,000 homestead exemption[60] and allowed many property owners to keep their property tax limits when they moved to a new property.[61]

42. In its 2009 fiscal year budget report, the City of Miami discussed at length the dramatic effect of these changes on the City's tax revenue.[62] The Mayor stated that "as a direct result of the statewide tax reform, our City's gross taxable value for the current year declined by $1.2 billion, and this factor alone has represented an almost $10 million savings to the taxpayers in Miami, and of course ,a [sic] loss of revenues to the City in the same amount."[63]

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[60] *See* Fla. Const. Art. VII, sec. 6(a). Additional homestead exemption applies for all levies other than school district levies.

[61] *See* Fla. Const. Art. VII, sec. 4(d)(8)(a) ("A person who establishes a new homestead as of January 1, 2009, or January 1 of any subsequent year, and who has received a homestead exemption pursuant to Section 6 of this Article as of January 1 of either of the two years immediately preceding the establishment of the new homestead is entitled to have the new homestead assessed *at less than just value*.") (emphasis added).

[62] City of Miami Annual Budget, Fiscal Year 2009, available at <http://www.miamigov.com/Budget/pages/ budget_books/ FY09_Book.pdf>.

[63] City of Miami Annual Budget, Fiscal Year 2009, Message from the Mayor, p. 11, available at <http://www.miamigov.com/ Budget/pages/budget_books/FY09_Book.pdf>: "During the past couple of years, we have been faced with tax reform at the state level, decreasing assessed and taxable values due to the declining housing market, as well as a general decline in the national economy. [¶] In fact, as a direct result of the statewide tax reform, our City's gross taxable value for the current year declined by $1.2 billion, and this factor alone has represented an almost $10 million savings to the taxpayers in Miami, and of course ,a [sic] loss of revenues to the City in the same amount. [¶] And just like all of us individually in our private lives, rising

fuel prices are having a huge effect on our operations, requiring us to budget an additional $5 million in fuel and utility services for the coming year."

See also City of Miami Annual Budget, Fiscal Year 2009, Message from the City Manager, p. 15, available at <http://www.miamigov.com/Budget/pages/budget_books/FY09_Book.pdf>: "Recently approved State legislation along with a constitutional amendment passed by Florida voters, lowered the City's taxable values while establishing controls on its millage rate. . . . The impact these limitations will have on the City is included in this budget. Taxable values increased only 1.6% compared to 14.5% in the 2008 budget. However, the millage rate recommended in this budget also required City officials to understand the impact property taxes were having on Miami residents and become more creative in managing government. This is why this budget was developed with a millage rate of 7.6740 mills. This rate will limit the increase in property tax revenues without increasing property taxes paid by City residential homeowners."

See also City of Miami Annual Budget, Fiscal Year 2009, 5-Year Forecast, p. 101, available at <http://www.miamigov.com/Budget/pages/budget_books/FY09_Book.pdf>:
"Amendment 1 reduced the City's current year gross taxable value by $1.19 billion and will result in an estimated $8.7 million in property tax revenues not collected on the FY'09 proposed operating millage rate. Additionally, the taxable value of an average homestead property dropped by an average 6.22% as result of a slow housing market, increase in foreclosures, and the additional exemptions (additional $25,000 homestead exemption on property values exceeding $75,000, saves our homes portability, and $25,000 exemption on personal property) provided under amendment 1. This millage rate will result in an average reduction in homestead residential property taxes paid to the City of Miami of $16 dollars per unit and will require the City to reduce its general operation by an estimated $35 million in FY'09. For FY'10 - FY'14, non-homesteaded properties will have a 10% assessment cap of its annual growth."

E. Foreclosures in the City of Miami During the Relevant Time Period

43. I was asked by counsel for Defendants to determine the number of completed foreclosures in the City of Miami, as a whole and in certain zip codes, from 2004 to 2011. The foreclosure data are presented in Exhibit 19. I collected these data from CoreLogic, a company that, among other things, maintains databases tracking certain real property events, including foreclosures.

F. The County's Tax Lien Sales

44. Many of the foreclosures in Miami may have been the result of the County's own actions. Since 1985, the County has generated revenue through sales of property tax liens—a process that can ultimately lead to foreclosure if the liens remain unpaid.

City of Miami Annual Budget, Fiscal Year 2009, Message from the City Manager, p. 15, available at <http://www.miamigov.com/Budget/pages/budget_books/FY09_Book.pdf>:
"The City of Miami, like many municipalities throughout the State, is feeling the impact of a difficult economy. Recently approved property tax legislation, rising fuel prices, and increases in utility costs continue to impact every person, family, and business in the City. This is why my focus in developing this year's budget was to consider these impacts and provide a City budget, which limits the increase in the costs of year-to-year municipal services, without compromising the services Miami residents have come to expect and deserve.

"The biggest challenge in achieving this focus was due to limitations passed in the collection of property tax revenues. Recently approved State legislation along with a constitutional amendment passed by Florida voters, lowered the City's taxable values while establishing controls on its millage rate."

45. In Miami-Dade County, property taxes become delinquent if unpaid on April 1st of the year following the year of assessment. State law provides for collection of unpaid property taxes through the sale of interest-bearing tax certificates.[64] Each tax certificate represents a first lien against a specific parcel for unpaid taxes, plus interest and related costs.[65]

46. Florida statute 197.432, first passed in 1985, requires the tax collector to sell tax certificates on properties with outstanding taxes via auction.[66] The face value of the certificates on which potential buyers bid includes "unpaid real estate taxes, charge for delinquency (3% on the unpaid tax amount for April and May), Tax Collector's commission (5% of the unpaid tax amount), June interest (1.5%), advertising and cost of sale-related charges."[67] Proceeds from such sales are disseminated to the taxing authorities for "essential services" that benefit

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[64] Miami-Dade County, Florida, Comprehensive Annual Financial Report For the Fiscal Year Ended September 30, 2012, Finance Department <http://www.miamidade.gov/finance/library/CAFR/2012/CAFR2012-complete.pdf> (accessed February 24, 2014).

[65] Title XIV, Chapter 197, 197.102 Definitions.

[66] Title XIV, Chapter 197, 197.432 Sale of tax certificates for unpaid taxes; Miami-Dade County, Tax Certificate Sales-General Information <http://www.miamidade.gov/taxcollector/property-tax-certificate-sales.asp> (accessed February 24, 2014).

[67] Miami-Dade County, Welcome to the 2013 Tax Certificate Sale Information <http://www.miamidade.gov/ taxcollector/property-tax-certificate-info.asp> (accessed February 24, 2014).

the County.[68] In 2013, the County sold a total of 7,041 tax certificates for properties located in Miami.[69]

47. The holder of a tax certificate may not initiate direct contact with the owner of the property to encourage or demand payment until two years have elapsed from the issuance of the tax certificate.[70] After the two-year period, however, the tax certificate holder may submit a tax deed application if the lien has not been paid.[71] Following submission of a deed application, the deed may be sold in a public auction.[72] From 2006 to present,

[68] Miami-Dade County, Welcome to the 2013 Tax Certificate Sale <http://www.miamidade.gov/taxcollector/ property-tax-certificate-welcome.asp> (accessed February 24, 2014).

[69] Miami-Dade County, Tax Collector, Report: Public-Certificates Sold 2013 available at https://www.miamidade.county-taxes.com/public/reports/real_ estate (accessed February 27, 2014).

[70] Miami-Dade County, 2013 Tax Certificate Sale Information <http://www.miamidade.gov/taxcollector/property-tax-certificate-info.asp> (accessed February 24, 2014).

[71] Miami-Dade County, Tax Certificate Sales-General Information <http://www.miamidade.gov/taxcollector/ property-tax-certificate-sales.asp> (accessed February 24, 2014); Title XIV, Chapter 197, 197.502 Application for obtaining tax deed by holder of tax sale certificate; fees.

[72] Miami-Dade Clerk of Courts, Tax Deed Sale Process <https://www.miamidade.realforeclose.com/INDEX.CFM?ZACTION=HOME&ZMETHOD=TAXDEED> (accessed February 24, 2014). Tax deed sales in Miami-Dade have transitioned to an online system as of May 7, 2013 (Reuters, Miami-Dade County Clerk of Court's Office Begins Online Tax Deed Sales, May 20, 2013 < http://www.reuters.com/article/2013/05/20/fl-dade-county-tax-deeds-idUSnBw206033a+100+BSW20130520> (accessed February 24, 2014).

approximately 350 tax deeds on Miami properties were sold at public auction as a result of unpaid tax liens.[73]

48. These tax deed sales support the conclusion that other factors, unrelated to Defendants' actions, contributed to increased foreclosures in Miami.

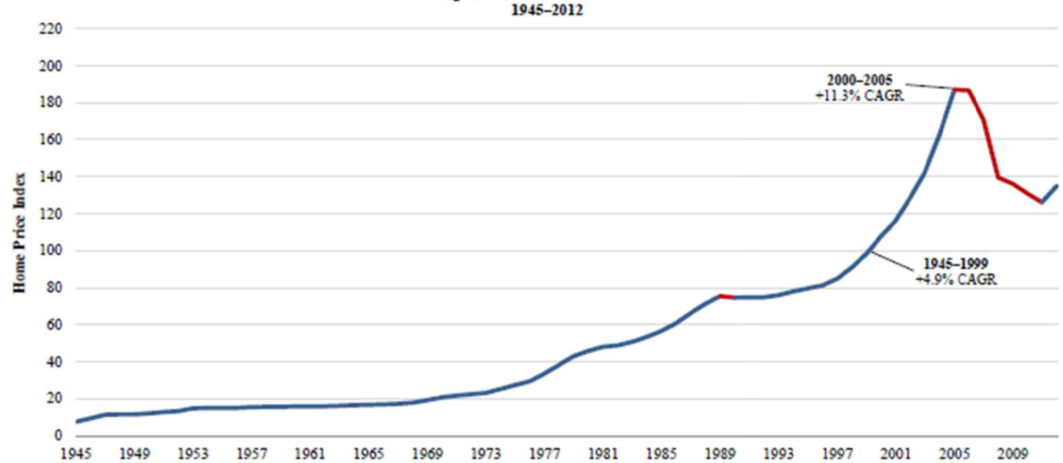
I declare under penalty of perjury under the law of the United States of America that the foregoing is true and correct.

Signed this 28th day of February, 2014, at Madison, Wisconsin.

Timothy J. Riddiough, Ph.D.
Timothy J. Riddiough, Ph.D.

[73] Miami-Dade County, Tax Collector, Report: Public-Closed Deeds available at https://www.miamidade.county-taxes.com/public/reports/real_estate (accessed February 27, 2014).

Exhibit 1
Composite Home Price Index
1945–2012



Notes:
[1] The composite home price index was constructed by linking four independent price series (Robert J. Shiller, *Irrational Exuberance*, 2nd ed. (New York: Broadway Books, 2005), pp. 234-235):

[a] 1945–52: Simple average of median home prices in five cities: Chicago, Los Angeles, New Orleans, New York, and Washington, D.C. The annual series was constructed from prices advertised in newspapers, "collecting approximately thirty prices for each city and year," except for Washington, D.C. 1934-48 prices which came from "a median price series from E.M. Fisher, *Urban Real Estate Markets: Characteristics and Financing* (New York: National Bureau of Economic Research, 1951)" (Robert J. Shiller, *Irrational Exuberance*, 2nd ed. (New York: Broadway Books, 2005), p. 234).

[b] 1953–74: Quarterly index constructed from the home purchase component of the U.S. Consumer Price Index (CPI), using U.S. Bureau of Labor Statistics home price data. Original data are quarterly; fourth quarter values are used.

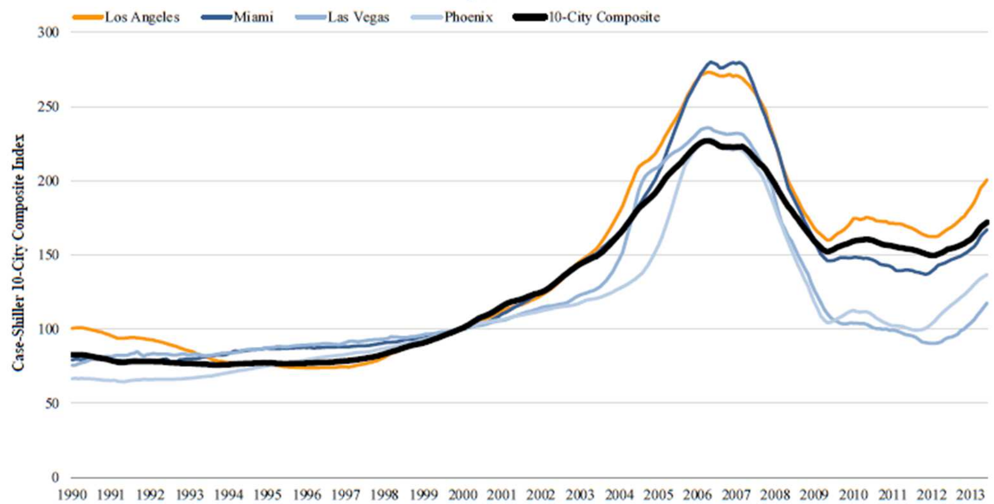
[c] 1975–86: U.S. Price Index published by the Federal Housing Finance Agency. Original data are quarterly; fourth quarter values are used.

[d] 1987–2012: S&P/Case-Shiller National Home Price Index, not seasonally adjusted. Original data are quarterly; fourth quarter values are used.

[2] The index is shown in nominal terms.
[3] Year-over-year declines are indicated in red.
[4] The compound annual growth rate (CAGR) is the year-over-year growth rate over the specified period.

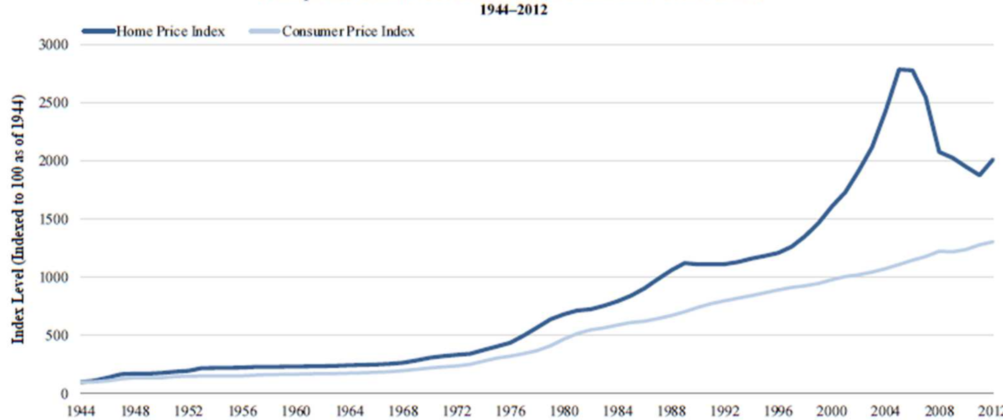
Source:
Based on data compiled by Robert J. Shiller, available at <http://irrationalexuberance.com/> (accessed November 4, 2013).

Exhibit 2
S&P/Case-Shiller 10-City Composite Home Price Index
with Select Cities
January 1990 – June 2013



Notes:
[1] The S&P/Case-Shiller 10-City Composite Home Price Index tracks monthly changes in the value of the residential real estate market in 10 metropolitan regions (Boston, Chicago, Denver, Las Vegas, Los Angeles, Miami, New York, San Diego, San Francisco, and Washington, DC). The Case-Shiller indices use a value-weighted repeat sales pricing technique to measure changes in housing markets, calculated monthly using a 3-month rolling average (S&P Dow Jones Indices, "S&P/Case-Shiller Home Price Indices Methodology," May 2013, available at <http://www.spindices.com/documents/methodologies/methodology-sp-cs-home-price-indices.pdf> (accessed November 22, 2013)).
[2] Data are seasonally adjusted.
Source:
S&P/Case-Shiller Home Price Indices, available at <http://www.spindices.com/index-family/real-estate/sp-case-shiller> (accessed November 1, 2013).

Exhibit 3
Composite Home Price Index and Consumer Price Index
1944–2012



Notes:

[1] The composite home price index was constructed by linking four independent price series (Robert J. Shiller, *Irrational Exuberance*, 2nd ed. (New York: Broadway Books, 2005), pp. 234-235):

[a] 1945–52: Simple average of median home prices in five cities: Chicago, Los Angeles, New Orleans, New York, and Washington, D.C. The annual series was constructed from prices advertised in newspapers, "collecting approximately thirty prices for each city and year," except for Washington, D.C. 1934-48 prices which came from "a median price series from E.M. Fisher, *Urban Real Estate Markets: Characteristics and Financing* (New York: National Bureau of Economic Research, 1951)" (Robert J. Shiller, *Irrational Exuberance*, 2nd ed. (New York: Broadway Books, 2005), p. 234).

[b] 1953–74: Quarterly index constructed from the home purchase component of the U.S. Consumer Price Index (CPI), using U.S. Bureau of Labor Statistics home price data. Original data are quarterly; fourth quarter values are used.

[c] 1975–86: U.S. Price Index published by the Federal Housing Finance Agency. Original data are quarterly; fourth quarter values are used.

[d] 1987–2012: S&P/Case-Shiller National Home Price Index, not seasonally adjusted. Original data are quarterly; fourth quarter values are used.

[2] Home Price Index is shown in nominal terms.

[3] Consumer Price Index data are not seasonally adjusted U.S. city average values.

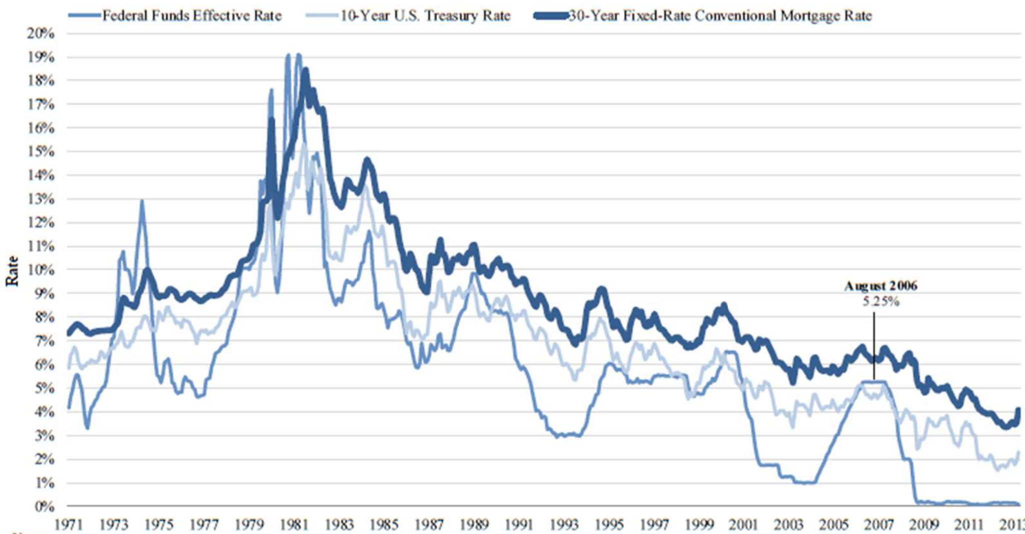
[4] Both series are indexed to 100 as of 1944.

Sources:

[A] Based on data compiled by Robert J. Shiller, available at <http://irrationalexuberance.com/> (accessed November 4, 2013).

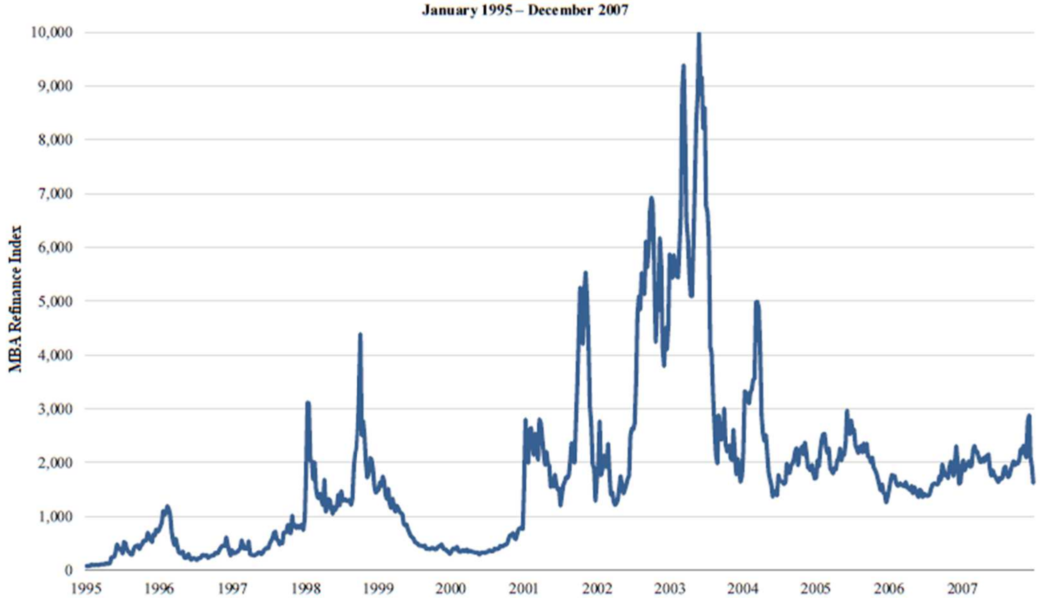
[B] U.S. Bureau of Labor Statistics, Consumer Price Index - All Urban Consumers (CUUR0000AA0), available at <http://data.bls.gov/> (accessed February 6, 2014).

Exhibit 4
Federal Funds Effective Rate, 10-Year U.S. Treasury Rate, and 30-Year Fixed-Rate Conventional Mortgage Rate
April 1971 – June 2013



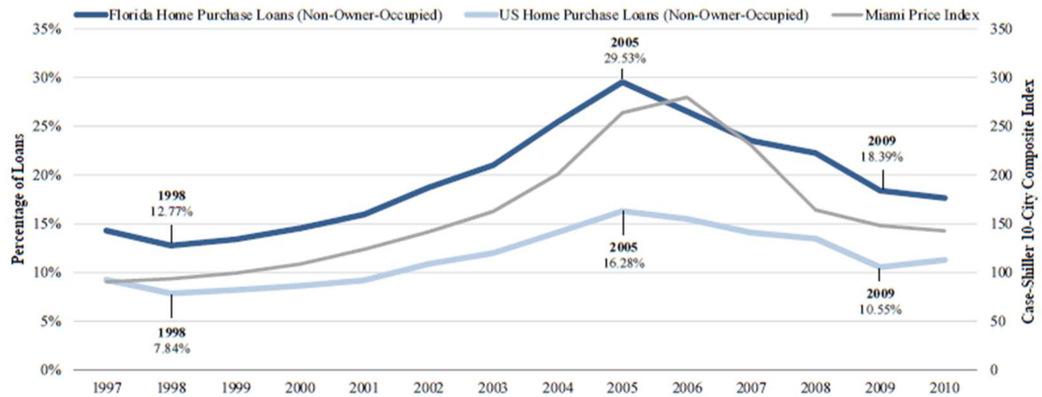
Notes:
[1] Market yield on U.S. Treasury securities at 10-year constant maturity is quoted on an investment basis.
[2] The 30-year, fixed-rate conventional mortgage rate, sourced from Freddie Mac's Primary Mortgage Market Survey, is based on a weekly survey of lenders' first-lien prime conventional conforming mortgages with a loan-to-value of 80 percent (Freddie Mac, About the Primary Mortgage Market Survey (PMMS), <http://www.freddiemac.com/pmms/abtpmms.htm> (accessed October 31, 2013)).
Source:
Board of Governors of the Federal Reserve System, Table H.15 Selected Interest Rates, available at <http://www.federalreserve.gov/releases/h15/data.htm> (accessed November 1, 2013).

Exhibit 5
MBA Refinance Index
January 1995 – December 2007



Note:
The MBA Refinance Index is a measure of the number of government and conventional refinance applications submitted each week (Mortgage Bankers Association, "MBA's Weekly Applications Survey: Leading Indicators from a Leading Source," available at <http://www.mortgagebankers.org/files/Research/HistoricalWAS/WASMethodology.pdf> (accessed December 11, 2013)).
Source:
Bloomberg (MBAVREFI) (accessed December 17, 2013).

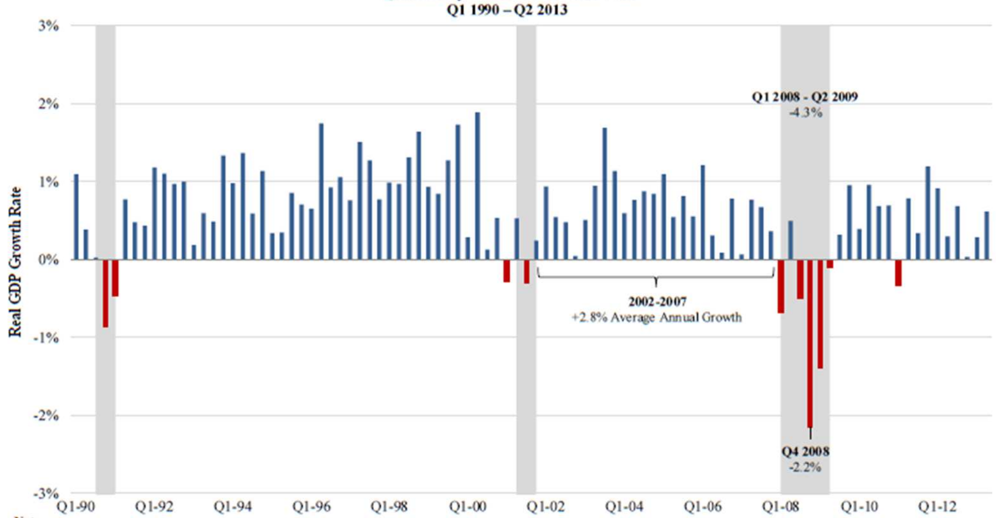
Exhibit 6
Percentage of Loans for Purchase of Non-Owner-Occupied Homes in Florida and S&P/Case-Shiller Home Price Indices
1997–2010



Notes:
[1] The chart depicts the percentage of home purchase mortgage originations to individuals and institutions for one- to four-family dwellings and manufactured homes that are not owner-occupied or for which owner status is not applicable (DataPlace, "Pct. purchase loans for 1 to 4 fam. units that are not owner-occ.," <http://www.dataplace.org/metadata?cid=115485> (accessed November 22, 2013)).
[2] Occupancy categorization within HMDA data files "[f]or purchased loans, use code 1 (owner-occupied as a principal dwelling) unless the loan documents or application indicate that the property will not be owner-occupied as a principal residence" (Federal Financial Institutions Examination Council, HMDA Glossary, <http://www.ffiec.gov/hmda/glossary.htm> (accessed November 25, 2013)).
[3] The S&P/Case-Shiller 10-City Composite Home Price Index tracks monthly changes in the value of the residential real estate market in 10 metropolitan regions (Boston, Chicago, Denver, Las Vegas, Los Angeles, Miami, New York, San Diego, San Francisco, and Washington, DC). The Case-Shiller indices use a value-weighted repeat sales pricing technique to measure changes in housing markets, calculated monthly using a 3-month rolling average (S&P Dow Jones Indices, "S&P/Case-Shiller Home Price Indices Methodology," May 2013, available at <http://www.spindices.com/documents/methodologies/methodology-sp-cs-home-price-indices.pdf> (accessed November 22, 2013)).
[4] The S&P/Case-Shiller 10-City Composite Home Price Index and Miami Price Index are seasonally adjusted. Data represent the value of the index at year-end.

Sources:
[A] HMDA Data Files 1997-2010 (developed by the Urban Institute to support DataPlace <www.dataplace.org>), available at <http://www.metrotrends.org/natdata/hmda/> (accessed November 1, 2013). The data are licensed under the Open Database License <http:/www.metrotrends.org/natdata/ODbL.cfm>.
[B] S&P/Case-Shiller Home Price Indices, available at <http://www.spindices.com/index-family/real-estate/sp-case-shiller> (accessed November 1, 2013).

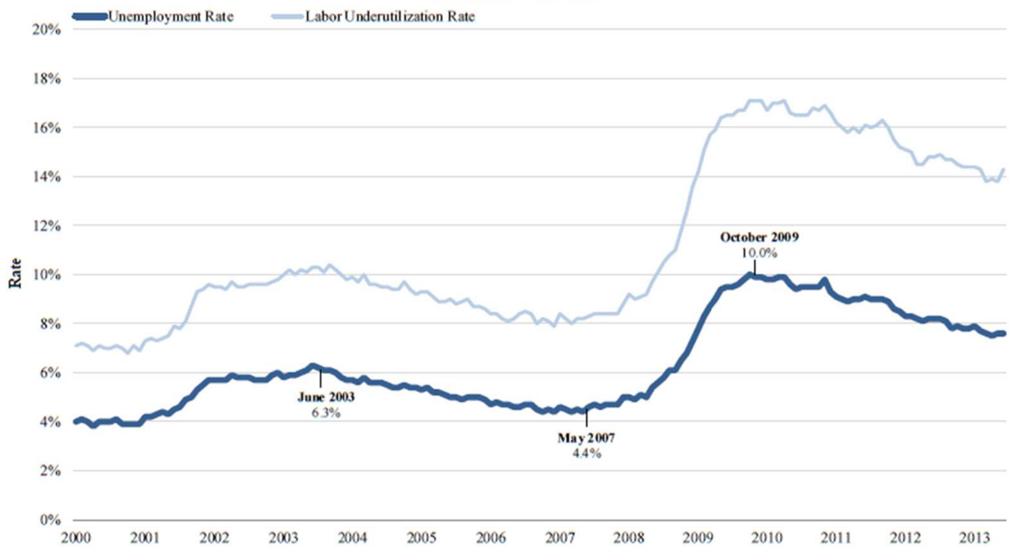
Exhibit 7
Quarterly Real GDP Growth
Q1 1990 – Q2 2013



Notes:
[1] GDP data are seasonally adjusted.
[2] Periods of negative GDP growth are indicated in red.
[3] Gray shading indicates U.S. recessions (as defined by the National Bureau of Economic Research: The NBER does not define a recession in terms of two consecutive quarters of decline in real GDP. Rather, a recession is a significant decline in economic activity spread across the economy, lasting more than a few months, normally visible in real GDP, real income, employment, industrial production, and wholesale-retail sales).
[4] GDP data percent change is recorded as of the beginning of each quarter, as reported by the Federal Reserve Bank of St. Louis.

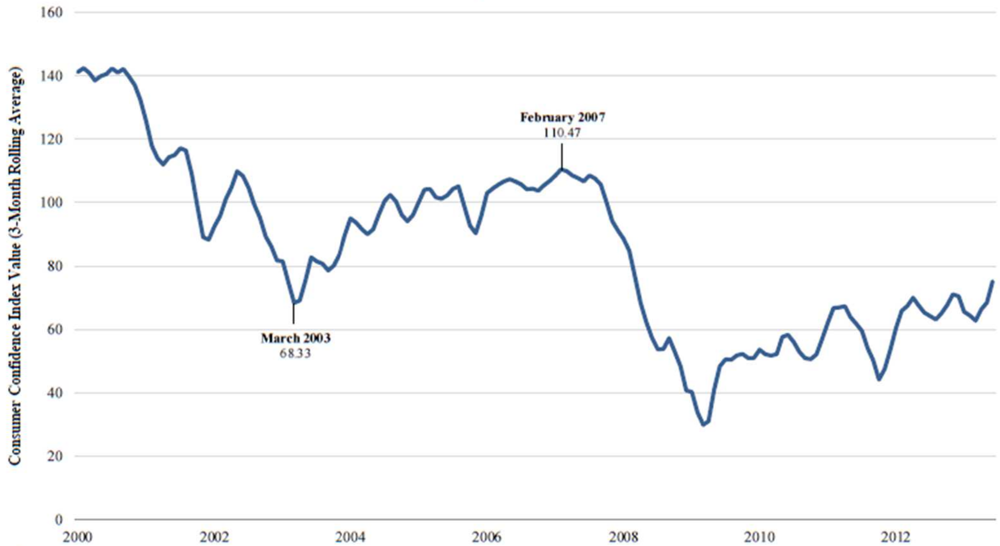
Sources:
[A] Federal Reserve Bank of St. Louis, Economic Research, Real Gross Domestic Product (GDPC1), available at <http://research.stlouisfed.org/fred2/series/GDPC1?cid=106> (accessed November 1, 2013).
[B] The National Bureau of Economic Research, U.S. Business Cycle Expansions and Contractions, <http://www.nber.org/cycles.html> (accessed November 8, 2013).

Exhibit 8
Unemployment and Labor Underutilization Rates
January 2000 – June 2013



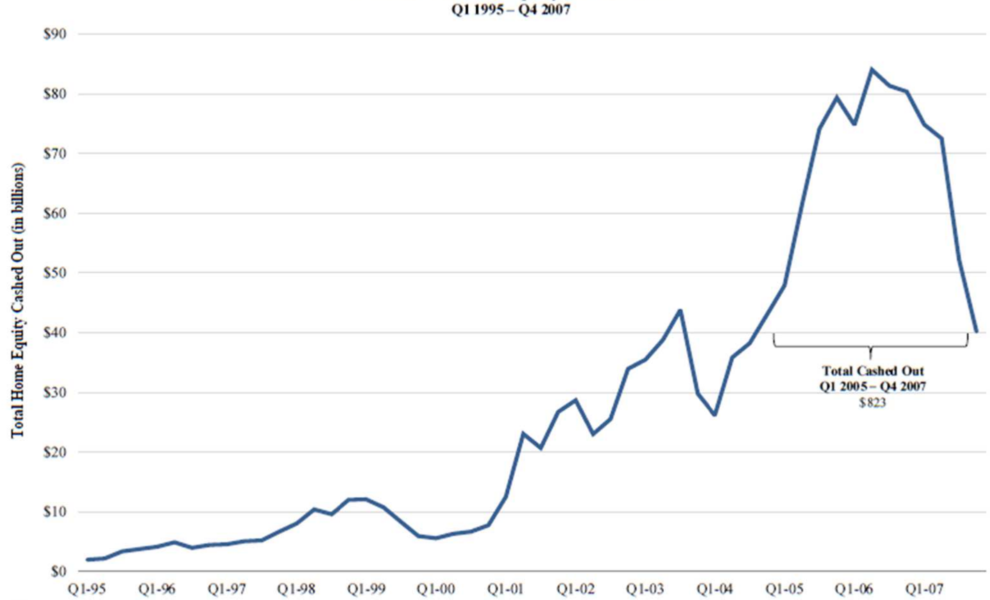
Notes:
[1] Unemployment and labor underutilization rates are seasonally adjusted.
[2] The BLS's labor underutilization rate (U-6) is defined as "total unemployed, plus all marginally attached workers, plus total employed part time for economic reasons, as a percent of the civilian labor force plus all marginally attached workers" (U.S. Bureau of Labor Statistics, Alternative Measures of Labor Underutilization for States, Fourth Quarter of 2012 through Third Quarter of 2013 Averages, <http://www.bls.gov/lau/stalt.htm> (accessed November 22, 2013)).
Source:
U.S. Bureau of Labor Statistics, Labor Force Statistics from the Current Population Survey (LNS13327709; LNS14000000), available at <http://data.bls.gov/> (accessed November 7, 2013).

Exhibit 9
Consumer Confidence Index (3-Month Rolling Average)
January 2000 – June 2013



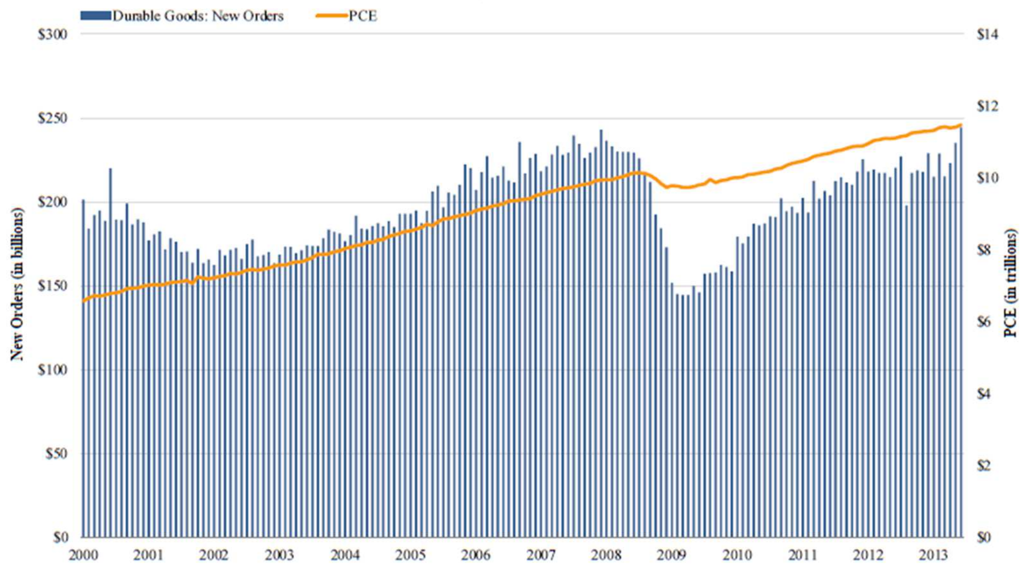
Notes:
[1] The Consumer Confidence Index ("CCI") is released each month by the Conference Board. Based on a survey of U.S. households, the CCI is designed to gauge the level of confidence of the average consumer in current economic conditions (The Conference Board, "Consumer Confidence Survey Technical Note," February 2011, available at <http://www.conference-board.org/pdf_free/press/TechnicalPDF_4134_1298367128.pdf> (accessed November 22, 2013)).
[2] Data are seasonally adjusted.
Source:
Bloomberg (CONCCONF) (accessed December 10, 2013).

Exhibit 10
Volume of Home Equity Cashed Out
Q1 1995 – Q4 2007



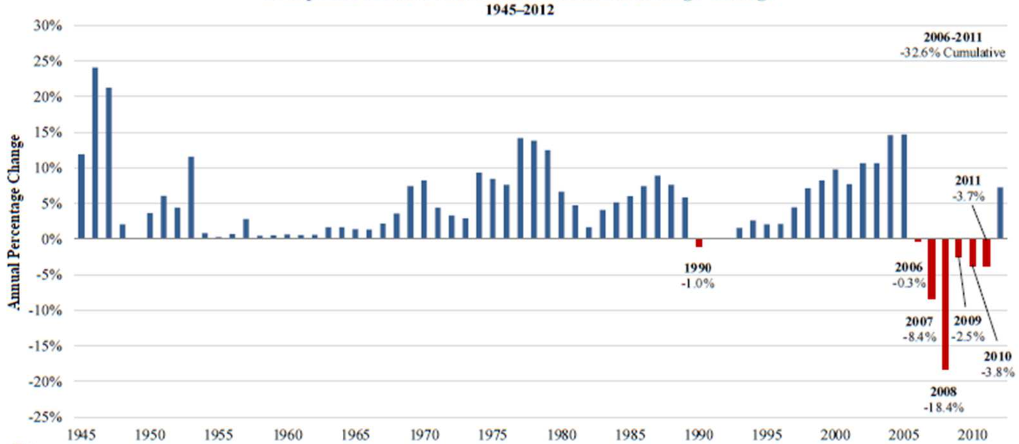
Note:
The above chart tracks the estimated dollar volume of equity extracted through the refinancing of prime, first-lien conventional mortgages. The estimate does not include equity extracted through the refinancing of FHA and VA loans or loans originated in the subprime market.
Source:
Freddie Mac, Refinance Activities Reports: Cash Out Volume Quarterly, available at <http://www.freddiemac.com/news/finance/refi_archives.htm> (accessed December 17, 2013).

Exhibit 11
Durable Goods New Orders and Personal Consumption Expenditures (PCE)
January 2000 – June 2013



Note:
Data are seasonally adjusted.
Sources:
[A] U.S. Census Bureau, Manufacturers' Shipments, Inventories, and Orders: Durable Goods U.S. Total, available at <http://www.census.gov/> (accessed November 3, 2013).
[B] Federal Reserve Bank of St. Louis, Economic Research, Personal Consumption Expenditures (PCE), available at <http://research.stlouisfed.org/fred2/series/PCE> (accessed November 3, 2013).

Exhibit 12
Composite Home Price Index Annual Percentage Change
1945–2012



Notes:

[1] The composite home price index was constructed by linking four independent price series (Robert J. Shiller, *Irrational Exuberance*, 2nd ed. (New York: Broadway Books, 2005), pp. 234-235):

[a] 1945–52: Simple average of median home prices in five cities: Chicago, Los Angeles, New Orleans, New York, and Washington, D.C. The annual series was constructed from prices advertised in newspapers, "collecting approximately thirty prices for each city and year," except for Washington, D.C. 1934-48 prices which came from "a median price series from E.M. Fisher, *Urban Real Estate Markets: Characteristics and Financing* (New York: National Bureau of Economic Research, 1951)" (Robert J. Shiller, *Irrational Exuberance*, 2nd ed. (New York: Broadway Books, 2005), p. 234).

[b] 1953–74: Quarterly index constructed from the home purchase component of the U.S. Consumer Price Index (CPI), using U.S. Bureau of Labor Statistics home price data. Original data are quarterly; fourth quarter values are used.

[c] 1975–86: U.S. Price Index published by the Federal Housing Finance Agency. Original data are quarterly; fourth quarter values are used.

[d] 1987–2012: S&P/Case-Shiller National Home Price Index, not seasonally adjusted. Original data are quarterly; fourth quarter values are used.

[2] The index is shown in nominal terms.

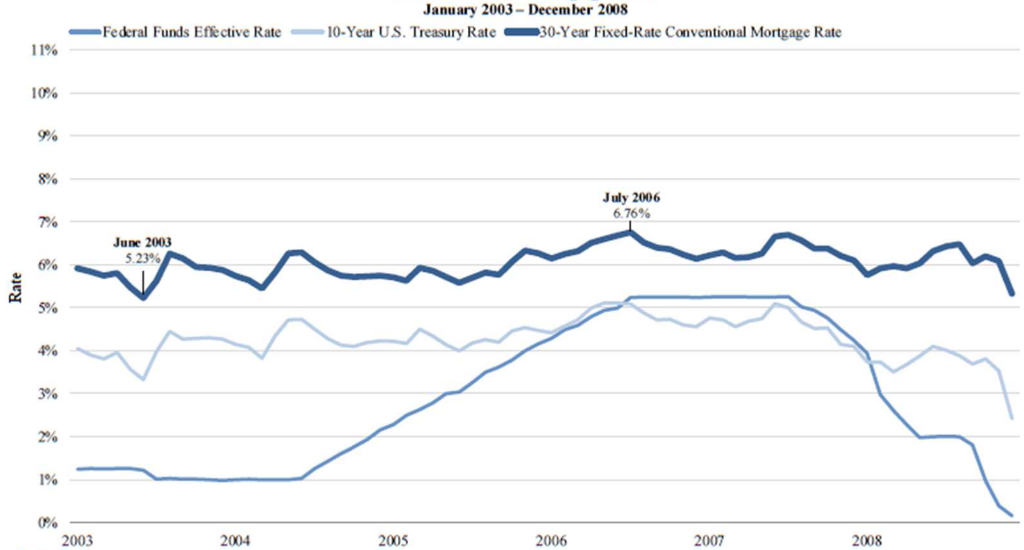
[3] Year-over-year declines are indicated in red.

[4] The compound annual growth rate (CAGR) is the year-over-year growth rate over the specified period.

Source:

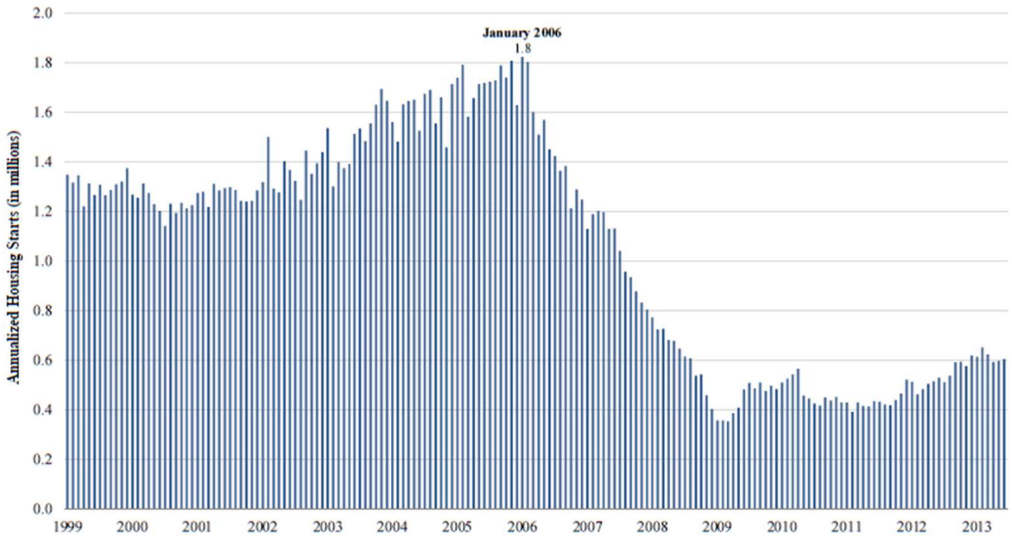
Based on data compiled by Robert J. Shiller, available at <http://irrationalexuberance.com/> (accessed November 4, 2013).

Exhibit 13
Federal Funds Effective Rate, 10-Year U.S. Treasury Rate, and 30-Year Fixed-Rate Conventional Mortgage Rate
January 2003 – December 2008



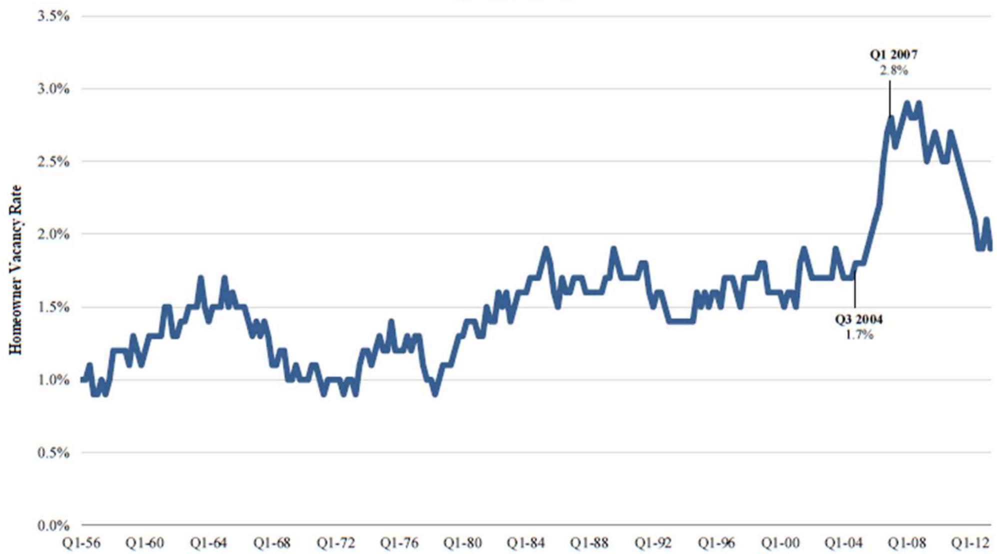
Notes:
[1] Market yield on U.S. Treasury securities at 10-year constant maturity is quoted on an investment basis.
[2] The 30-year, fixed-rate conventional mortgage rate, sourced from Freddie Mac's Primary Mortgage Market Survey, is based on a weekly survey of lenders' first-lien prime conventional conforming mortgages with a loan-to-value of 80 percent (Freddie Mac, About the Primary Mortgage Market Survey (PMMS), <http://www.freddiemac.com/pmms/abtpmms.htm> (accessed October 31, 2013)).
Source:
Board of Governors of the Federal Reserve System, Table H.15 Selected Interest Rates, available at <http://www.federalreserve.gov/releases/h15/data.htm> (accessed November 1, 2013).

Exhibit 14
Annualized Housing Starts
January 1999 – June 2013



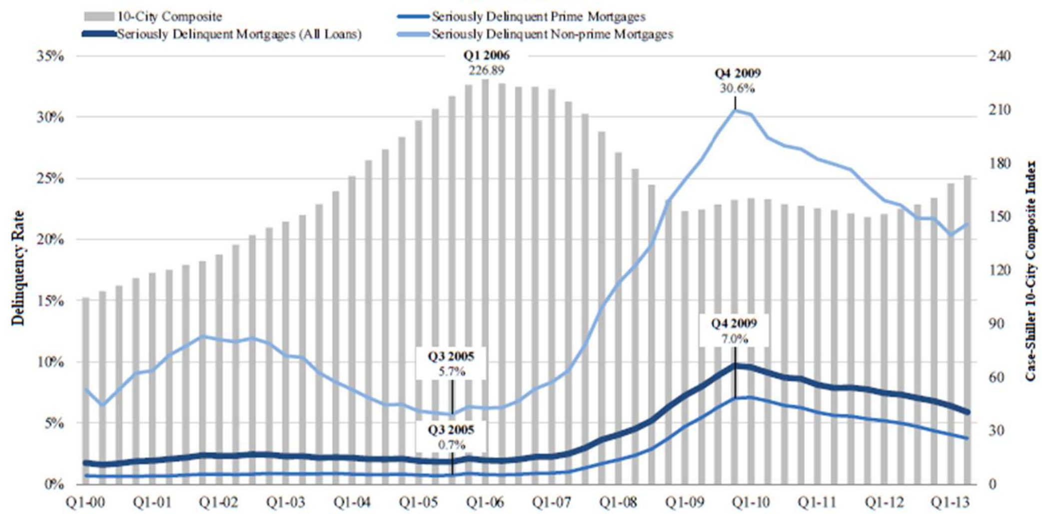
Notes:
[1] Annualized housing starts, tracked by the U.S. Census Bureau, are an estimate of the number of single-unit residential properties on which construction has begun in the U.S. "A housing unit, as defined for purposes of these data, is a house, an apartment, a group of rooms, or a single room intended for occupancy as separate living quarters" (U.S. Census Bureau, New Residential Construction: Definitions, <http://www.census.gov/construction/nrc/definitions/#h> (accessed November 22, 2013)).
[2] Annualized housing starts are seasonally adjusted.
Source:
U.S. Census Bureau, New Residential Construction Historical Data, New Housing Units: Started, available at <http://www.census.gov/construction/nrc/historical_data/> (accessed November 3, 2013).

Exhibit 15
U.S. Homeowner Vacancy Rate
Q1 1956 – Q2 2013



Note:
Homeowner vacancy rate is defined as the proportion of housing units on the market (not including rental properties) that are vacant. Vacant homes typically represent completed but unoccupied units, non-primary residences, or existing homes that are vacated but unsold (U.S. Census Bureau, Housing Vacancies and Homeownership (CPS/HVS): First Quarter 2013, available at <http://www.census.gov/housing/hvs/files/qtr113/q113def.html> (accessed November 22, 2013)).
Source:
U.S. Census Bureau, Housing Vacancies and Homeownership (CPS/HVS), Quarterly Homeowner Vacancy Rates: 1956 to Present, available at <www.census.gov/housing/hvs/data/histtab2.xls> (accessed November 6, 2013).

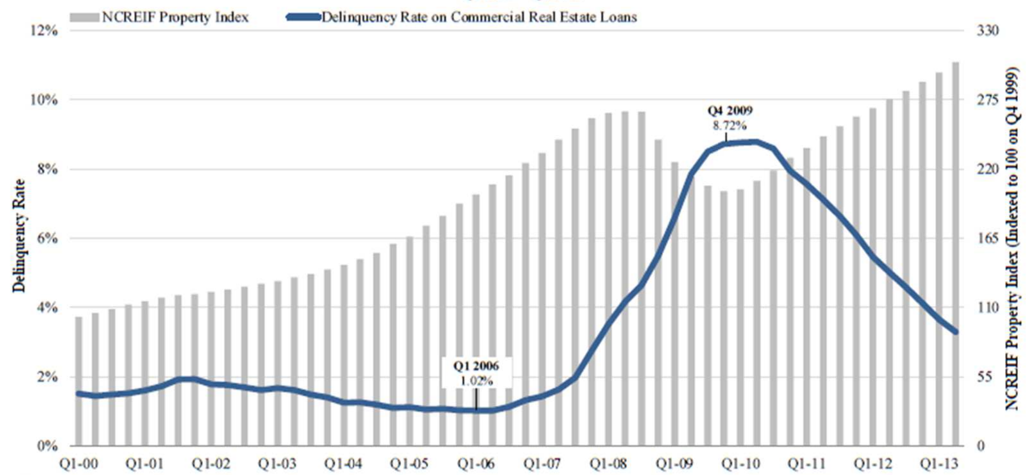
Exhibit 16
U.S. Seriously Delinquent Rates and S&P/Case-Shiller 10-City Composite Home Price Index
Q1 2000 – Q2 2013



Notes:
[1] "The seriously delinquent rate is the non-seasonally adjusted (NSA) percentage of loans that are 90+ days delinquent or in the process of foreclosure" (Mortgage Bankers Association, "National Delinquency Survey: Facts," available at <http://www.mbaa.org/files/Research/Flyers/NDSFAQ.pdf> (accessed November 12, 2013)).
[2] The Case-Shiller Index is seasonally adjusted.
[3] National Delinquency Survey data are not seasonally adjusted and exclude FHA/VA loans.

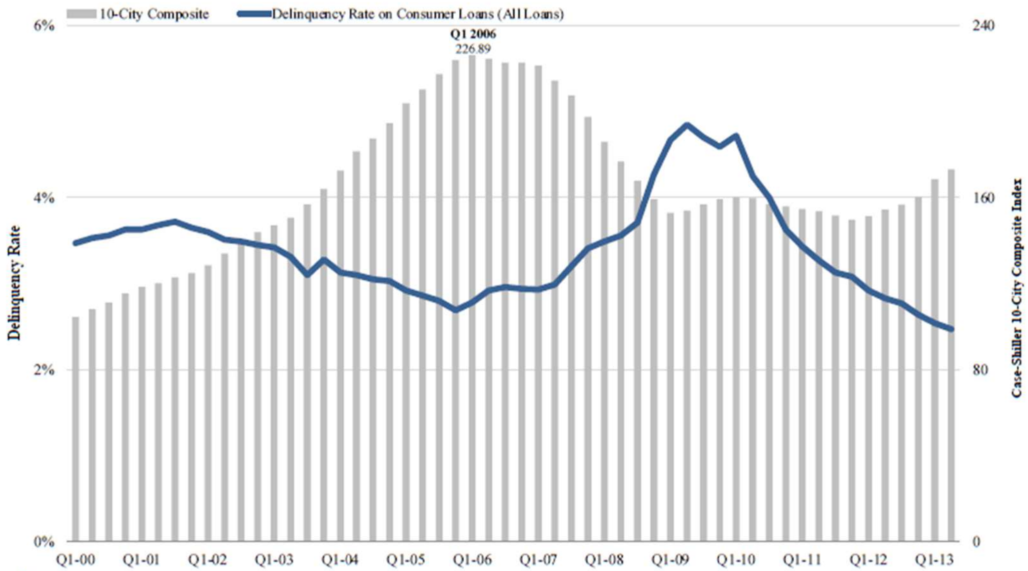
Sources:
[A] Mortgage Bankers Association, National Delinquency Survey, 2013, downloaded through Haver Analytics at <http://www.haver.com/our_data.html> (accessed November 12, 2013).
[B] S&P/Case-Shiller Home Price Indices, available at <http://www.spindices.com/index-family/real-estate/sp-case-shiller> (accessed November 1, 2013).

Exhibit 17
30-Day Commercial Real Estate Loan Delinquency Rates and NCREIF National Property Index
Q1 2000 – Q2 2013



Notes:
[1] Delinquency Rate on Commercial Real Estate Loans (booked in domestic offices) exclude farmland. Data are seasonally adjusted.
[2] "Commercial real estate loans include construction and land development loans, loans secured by multifamily residences, and loans secured by nonfarm, nonresidential real estate" (Board of Governors of the Federal Reserve System, Charge-off and Delinquency Rates on Loans and Leases at Commercial Banks, <http://www.federalreserve.gov/releases/chargeoff/delallsa.htm> (accessed November 22, 2013)).
[3] The NCREIF National Property Index measures the total rate of return of a large pool of individual commercial real estate properties acquired in the private market for investment purposes. Data are indexed to 100 as of Q4 1999.
Sources:
[A] Board of Governors of the Federal Reserve System, Charge-off and Delinquency Rates on Loans and Leases at Commercial Banks, available at <http://www.federalreserve.gov/releases/chargeoff/delallsa.htm> (accessed November 22, 2013).
[B] National Council of Real Estate Investment Fiduciaries, NCREIF Property Index Returns, <http://www.ncreif.org/property-index-returns.aspx> (accessed November 22, 2013).

Exhibit 18
30-Day Consumer Loans and S&P/Case-Shiller 10-City Composite Home Price Index
Q1 2000 – Q2 2013



Note:
Data are seasonally adjusted.
Sources:
[A] Board of Governors of the Federal Reserve System, Charge-off and Delinquency Rates on Loans and Leases at Commercial Banks, available at <http://www.federalreserve.gov/releases/chargeoff/delallsa.htm> (accessed November 22, 2013).
[B] S&P/Case-Shiller Home Price Indices, available at <http://www.spindices.com/index-family/real-estate/sp-case-shiller> (accessed November 1, 2013).

Exhibit 19
Completed Foreclosures in the City of Miami
2004-2011

Zip Code	2004	2005	2006	2007	2008	2009	2010	2011	Total
All Miami zip codes	531	273	269	1,198	2,342	2,467	4,623	2,252	13,955
33125	15	6	5	46	125	183	254	203	837
33127	66	32	16	57	124	114	177	57	643
33142	144	54	43	106	183	176	307	100	1,113
33144	6	2	2	32	56	62	81	45	286
33147	110	60	35	103	196	177	294	136	1,111
33150	56	29	29	63	144	122	191	80	714

Note:
CoreLogic defines Completed Foreclosures as "the number of properties sold at a public auction sale. These are where the lender conducts an auction sale and either 1) accepts a bid where the proceeds are used to repay the debt owed, or 2) takes legal possession of the property."
Sources:
[A] CoreLogic.
[B] City of Miami, Commission Districts and Zip Codes, January 24, 2014, available at <http://www.miamigov.com/planning/images/maps/COMMISSION-DISTRICT-11X17-1-24-14-and-zip-codes.pdf>.
[C] Complaint.

Report of Marsha J. Courchane

City of Miami, Plaintiff, v. Bank of America Corporation, et al., Defendants

U.S. District Court, Southern District of Florida, Case 1:13-cv-24506-ROSENBAUM/HUNT

February 28, 2014

[Table of Contents omitted]

1. Qualifications

1. My name is Marsha J. Courchane. I am a Vice President at Charles River Associates and the Practice Leader of the Financial Economics Practice. Since 1994, I have been extensively involved in research and analyses pertaining to residential mortgage markets. I worked at the Office of the Comptroller of the Currency ("OCC") for five years, from 1994 to 1999, during which time, among other duties, I developed and reviewed statistical models that were used to evaluate residential mortgage underwriting decisions and the pricing of mortgage credit to determine whether the models met professional standards in statistics and econometrics. Much of my work at the OCC pertained to fair lending compliance examinations of national banks regulated by the OCC.

2. I also previously worked for Freddie Mac, one of the two largest government-sponsored enterprises ("GSEs") that purchase mortgages and mortgage securities in secondary mortgage markets. During my employment at Freddie Mac, from 1999 to 2003, I had several areas of expertise, including serving as Director of Financial Strategy and Research. I provided policy related research to Freddie Mac and worked with academic experts to research topics in secondary mortgage markets. I also directed the group that provided fair lending oversight for Freddie Mac.

3. I also have consulted for many financial institutions, including institutions with mortgage lending operations. Part of my consulting work

involves preparing financial institutions for examinations by federal banking regulators including review of underwriting, pricing, and loss mitigation and servicing of loans held in portfolio by the lender. My work has also involved developing and reviewing statistical models pertaining to the availability and pricing of credit in residential mortgage markets. As part of this work, I regularly review mortgage loan files and am familiar with the documentation used in originating, pricing and closing mortgage loans.

4. I hold a Ph.D., M.A. and B.A. in Economics from Northwestern University and am also a Counselor of Real Estate ("CRE"). My fields of study include, among others, real estate finance, mortgage lending, and consumer credit. My research publications have appeared or have been accepted for publication in a number of leading peer-reviewed journals, including Applied Economics, the Atlantic Economic Journal, the International Real Estate Review, the Journal of Economics and Business, the Journal of Real Estate Research, the Housing Policy Debate, the Journal of Housing Economics, the Journal of Real Estate Finance and Economics, Property Management, and Real Estate Economics. I am on the editorial boards of the Journal of Real Estate Research, the Journal of Housing Research, the Journal of Real Estate Literature and the International Journal of Housing Markets and Analysis.

5. I am the Executive Vice President of the American Real Estate and Urban Economics Association, the premier academic organization for real estate economics and finance scholars. I served

on the Board of Directors of the American Real Estate Society through 2013. I am also a Fellow of the Homer Hoyt/Weimer Advanced Studies Institute, which fosters academic scholarship to improve decision-making in real estate and land economics. My current CV is attached hereto as Appendix 3.

6. In forming my opinions herein, I relied upon materials provided by Counsel, the additional sources listed in Appendix 2, and on my education, training, academic research, and professional industry experience in the field of mortgage lending. I reserve the right to supplement and/or amend this report as I continue to analyze additional data or Reports received from Counsel and if additional information or data become available to me.

2. Subject of the Report

7. I understand the City of Miami has filed a lawsuit claiming that various Bank of America and Countrywide entities ("Bank of America/CW") engaged in lending discrimination by allegedly both providing credit on "predatory terms" (reverse redlining), and, later, by curtailing the issuance of mortgage credit to minorities (redlining).[1] The City alleges that this behavior "caused an excessive and disproportionately high number of foreclosures on the BoA loans it has made in the minority neighborhoods of Miami,"[2] which allegedly led to lost tax revenues and an increase in the cost of City services to minority communities.[3] In this report, I

[1] "Complaint for Violation of the Federal Fair Housing Act," December 13, 2013 ¶¶ 2, 6, 10.

[2] *Id.* At ¶11 at 4.

[3] *Id.* at ¶20 at 8.

examine some of the City's claims in the context of the relevant economic and historic background, academic research on relevant topics, and applicable publicly-available data.

3. Causes of Foreclosure

8. I understand that part of the City's argument is that specific loan products or terms can be identified as the cause of foreclosures on those loans. I believe this argument is unrealistically narrow in that there are both macro-economic and borrower-specific factors that must be considered in any determination of the cause of foreclosures. Specifically, the City's argument ignores the extensive body of existing academic research and data showing that foreclosure rates are affected by changes in macroeconomic conditions such as declining home prices, and that individual foreclosures are frequently triggered by borrowers' personal circumstances, such as job loss; both of which are unconnected to the borrower's loan product type or terms and can and do affect borrowers generally.

3.1 Home Price Declines

9. Research has consistently shown that a main economic factor that directly leads to foreclosure, regardless of loan product, is declining home prices.[4]

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[4] The Journal of Housing Policy and Management provided a Point/Counterpoint article that reflected the views of prominent housing economists summarizing the causes of foreclosure. "Point/Counterpoint, 2011," Journal of Policy Analysis and Management, 30:2, 381-400, 2011. Gerardi, Willen and Ross, concluded: "In our opinions, the foreclosure crisis that began in the subprime mortgage market in mid-2007 was a direct consequence of the slowdown and decline in house price

Borrowers who have become delinquent or face adverse financial circumstances, and might otherwise choose to sell their homes, have difficulty doing so because their unpaid mortgage balances exceed the value of their home (i.e. negative equity).[5] Similarly, borrowers with insufficient equity are unable to address their financial needs by refinancing their mortgages to obtain a lower interest rate or get cash out to cover expenses during a period of financial difficulty. Indeed, during the years of rapid house price appreciation, especially in 2004 and the years following, borrowers across all loan products increasingly accessed the equity in their home by taking out cash out refinances.[6] After home prices began to decline, there was an even more significant decline in cash out refinances, largely caused by the decline in home equity (see Chart A1 in Appendix 1).

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appreciation that began in late 2006 in most areas of the country." See also Calomiris, Longhofer and Miles, 2013, Real Estate Economics, 709 - 746. Calomiris, Longhofer and Miles use quarterly state level data to examine the relationship between house prices and foreclosures, while controlling for economic conditions. They find that the impact of house prices on foreclosures is much larger than the reverse, and reflects the reactions of both homeowners and lenders to declining house prices.

[5] *See Mayer*, Pence and Sherlund, 2009, *Journal of Economic Perspectives*, 23:1, at 27 - 50 (finding evidence to suggest that the lack of homeowner equity and housing price declines appeared to be the most immediate contributors to the rise in mortgage defaults).

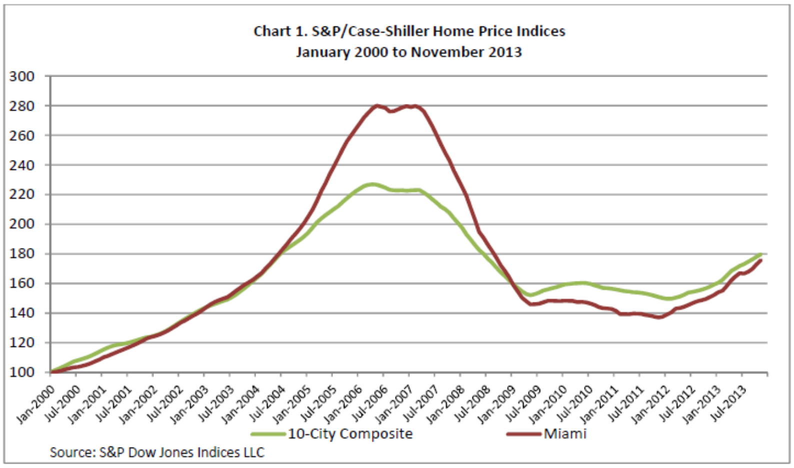
[6] Gerardi, Ross and Willen at 382; Information for Chart A1 comes from Freddie Mac, *Cash-Out Refinance Report*, Q4:2013, available at: http://www.freddiemac.com/finance/refi_archives.html, last accessed February 18, 2014.

10. The decline in home prices thus left many borrowers with no sale or refinance options. In some instances borrowers in this negative equity situation chose to default, as they had larger balances outstanding on their mortgages than the homes were worth. [7]

11. The importance of home values to foreclosure rates is particularly acute in this case because Miami experienced a cataclysmic home price decline between May 2006 and November 2011. The S&P Case Shiller Home Price Index, which measures the price of residential housing, peaked in May 2006 in Miami, at an index value of 279.90, falling to a low of 137.03 in November 2011. As shown in the below chart, home prices have not recovered and the index was at only 175.78 in November 2013, considerably below the peak (see Chart 1).

This represents a historically significant decline in home prices in the Miami area that necessarily affected the prevalence of foreclosures.

[7] Bradley, Cutts and Liu, 2014, Real Estate Economics at 23, estimate that for the approximately 400,000 first lien loans that were at least 60 days delinquent in November 2012, 31,000 - 58,000 or from 7.75 -14.5 percent of the defaults were strategic - borrowers who could make payments but who choose not to do so.



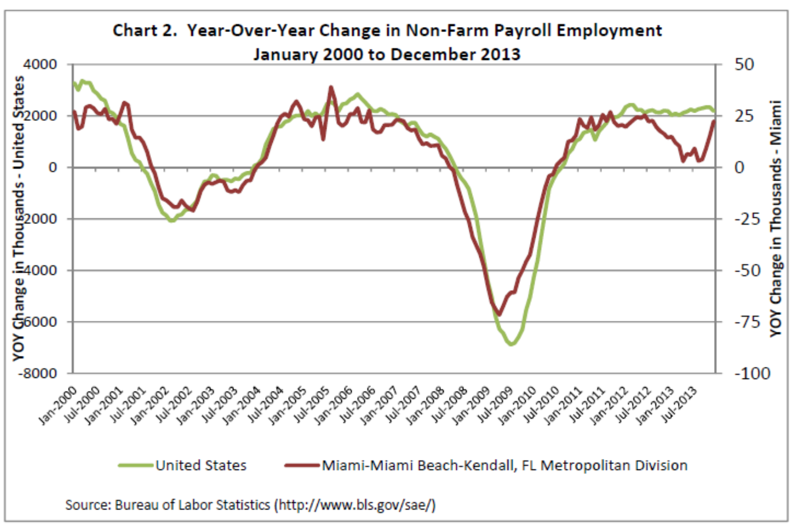
3.2 Borrower Hardship

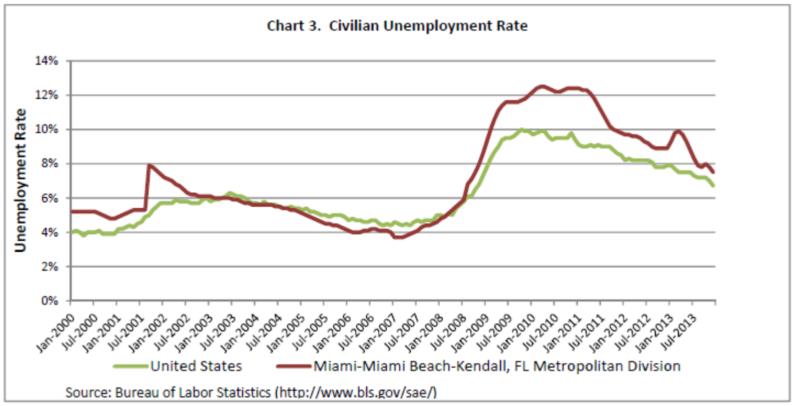
Borrower-specific life events that arise after a loan is originated, such as those involving financial distress or hardship, are also often the cause of borrower default and, eventually, foreclosures, rather than specific loan products or terms.

A. Loss of Income and Unemployment

13. One of the most significant causes of default and foreclosures, across all loan products, is income curtailment and unemployment. Borrowers who lose employment or income, particularly those with declining home equity and/or comparatively less availability of financial resources, may have few options other than to become delinquent on their mortgages. This is particularly true in economic conditions such as those present in Miami during the relevant time period, where a significant decline in employment rates frequently prevented borrowers who lost jobs from finding other work.

14. Beginning in 2007, the labor market conditions in Miami progressively worsened up through 2010, and even since then have not fully recovered. Non-Farm Payroll Employment, a statistic which represents the total number of paid U.S. workers (excluding certain businesses, such as government and farm employees), peaked in August 2007, with negative year-over-year changes from April 2008 through June 2010 (see Chart 2). In addition, civilian unemployment rates began to increase from 3.7 percent in March 2007, to a peak of 12.5 reached in March 2010 and maintained through November 2010. Markets by December 2013 have still not fully recovered from the increased unemployment from March 2007 through 2010 (see Chart 3).





15. Adverse labor market conditions may also exacerbate home price declines. Demand for housing generally declines when employment and income fall, in part because workers will try to leave the area to search for alternative employment.[8] Thus, during the economic crisis, many borrowers were not only experiencing difficulty paying their mortgages due to adverse labor market conditions, but, on a macroeconomic level, those labor market conditions were also contributing to a decline in their home prices, which in turn limited borrowers' sale or refinance options. Academic research has shown that this kind of cycle is not as acute for borrowers who lose their jobs, but experience increases in the value of their homes. Such borrowers still find it easier to sell their houses rather than default on their mortgages. [9] This confluence of soaring

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[8] See Valletta (2013) for research that focuses on the interactions between unemployment, local economic conditions, and house prices.

[9] See Mayer, Pence and Sherlund (2009) identify a correlation between economic distress and higher defaults. They did not

unemployment and declining home values helped contribute to the increased foreclosure rates experienced by home owners in Miami and most other parts of the country.

B. Self-Reported Reasons for Borrower Hardships

16. The significance of borrower-specific financial hardships as a cause of default and foreclosures is further evidenced by the highly personal reasons many borrowers gave as the cause of their difficulty in making their mortgage payments during the subject time period. In 2009, the U.S. Treasury Department introduced the Home Affordable Modification Program ("HAMP), in order to provide a consistent methodology for borrowers in financial distress to obtain loan modifications.[10] As part of the

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find that the mortgage product features associated with non-prime or subprime lending such as rate resets, prepayment penalties, or negative amortization provisions were significant contributors at that time to the defaults because borrowers who experienced problems with these provisions could refinance into other mortgages. Only when house prices declined, did refinancing opportunities become limited. Op Cit., Mayer, Pence and Sherlund, 2009 at 45 and 48.

See also "Counterpoint," Been, Chan, Ellen and Madar (concluding that negative equity combined with extended unemployment is the main cause of default).

[10] See http://www.makinghomeaffordable.gov/pages/default.aspx?gclid=CPng1L2bwrwCFYtV4godi3oAvA, last accessed February 10, 2014. There were many loan modification programs available with the largest, HAMP, originally available to homeowners who were owner-occupiers with particular levels of debt-to-income and who had defaulted or were at imminent risk of default. The programs have been expanded over time, now applying to those who have second homes, and those with government loans.

program, borrowers often reported the reason(s) for the difficulty they were having in making their mortgage payments. Significantly, the single most frequently declared reason why borrowers, regardless of race or ethnicity, were in need of loan modifications was curtailment of income. In fact, for those applicants who did report hardship reasons, curtailment of income was the most important for 57.5 percent of homeowners seeking a HAMP modification (*see* Table A1, Appendix 1).[11]

17. The self-reported reasons for seeking HAMP assistance also reveal other highly personal reasons for payment difficulty that do not correspond to loan products or terms. These include death or illness of the borrower or members of the borrower's family, marital difficulties, excessive obligations, job transfer, and unemployment (see Table A1, Appendix 1).

4. Foreclosures Occurred Across the Loan Market, Regardless of Loan Type

18. Relevant market data from the period in question confirms that as a result of the downturn in the housing market and economy generally, foreclosures increased across the mortgage market, including for prime loans.

19. An analysis of the loan performance data in the portfolio of 30-year fixed rate loans purchased by both Fannie Mae and Freddie Mac demonstrate that

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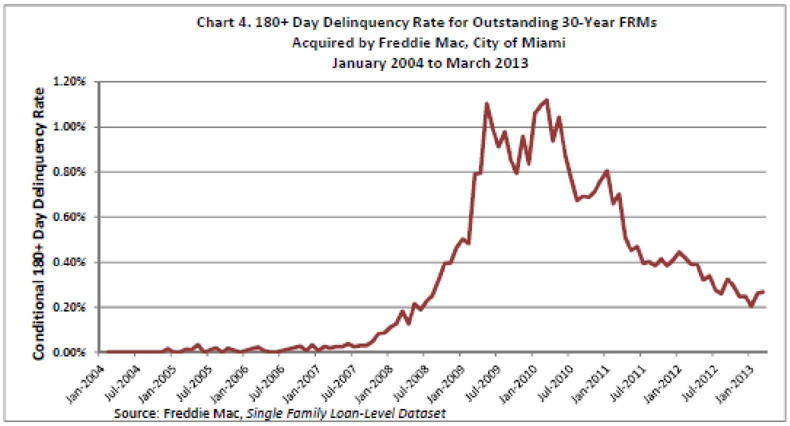
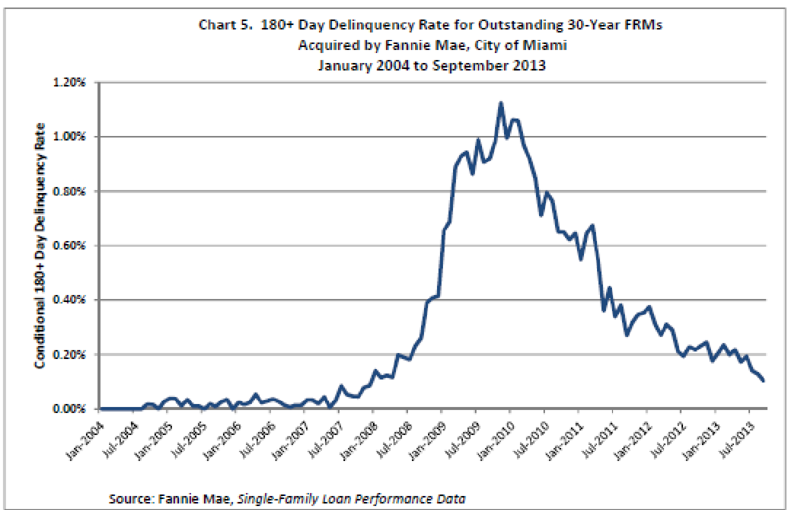
[11] See http://www.makinghomeaffordable.gov/get-assistance/request-modification/Documents/Request%20Form%20(Request%20for%20Modification%20and%20Affidavit).pdf for a copy of the hardship affidavit submitted by borrowers to HAMP.

delinquency rates in the Miami area rose across all loan products, regardless of whether the product included the features about which the City complains. The "prime" loan market is often defined to include those loans to credit worthy borrowers that Fannie and Freddie are willing to purchase on the secondary market. The performance of Fannie and Freddie's portfolios of 30 year fixed rate mortgage loans is thus a reliable indication of the overall performance of conventional, prime loans during the time period in question.[12] Charts 4 and 5 present the delinquency rates for the portfolios of loans originated in the City of Miami purchased by both Freddie (Chart 4) and Fannie (Chart 5) from 2004 through 2013. As the charts demonstrate, the delinquency rates (i.e. payments more than 180 days past due) for these "prime" loans began to rise during the latter half of 2007 and continued to rise into 2010. Clearly, it was not just non-prime loans or loans with certain credit features that experienced increased delinquency since 2007. Rather, delinquency rates in Miami rose across the board.

[12] Conventional loans are those that are not originated in the government insured market which includes Federal Housing Administration ("FHA") or Veteran's Administration ("VA") loans.





20. This is further evidenced by Charts 6 (Freddie Mac) and 7 (Fannie Mae), which provide the cumulative delinquency rates for loans that were ever more than 180 days delinquent. Looking at loans originated in 2007 as an example, a total of 41.9 percent of Freddie Mac loans of that vintage, and 55.6 percent of Fannie Mae loans of that vintage went more than 180 days delinquent.

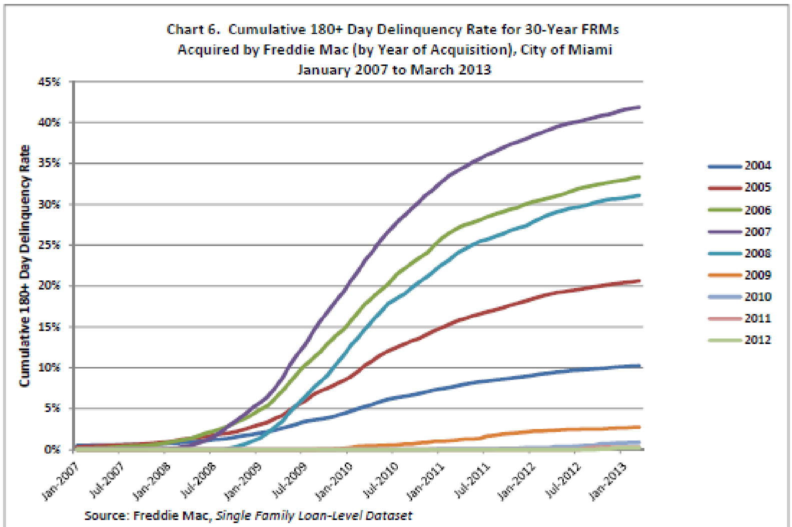


Chart 6. Cumulative 180+ Day Delinquency Rate for 30-Year FRMs Acquired by Freddie Mac (by Year of Acquisition), City of Miami January 2007 to March 2013

Source: Freddie Mac, *Single Family Loan-Level Dataset*

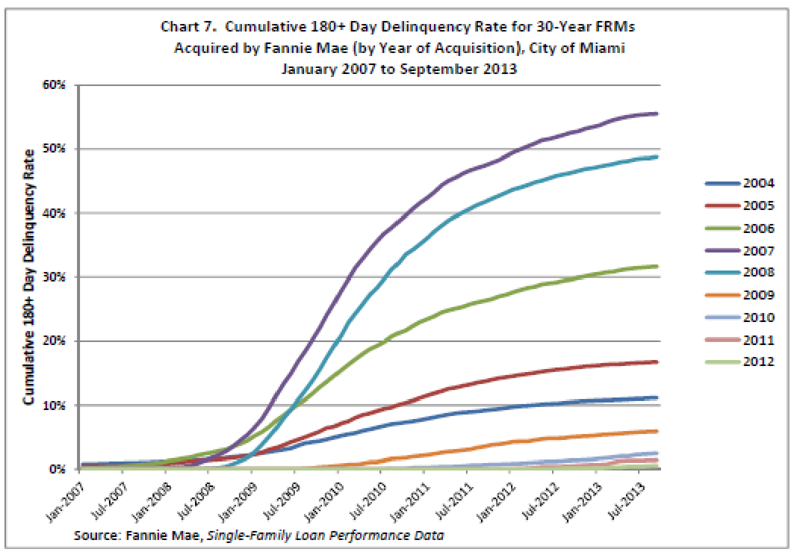


Chart 7. Cumulative 180+ Day Delinquency Rate for 30-Year FRMs Acquired by Fannie Mae (by Year of Acquisition), City of Miami January 2007 to September 2013

Source: Fannie Mae, *Single-Family Loan Performance Data*

5. Analysis of Home Mortgage Disclosure Act Data

5.1 Bank of America/CW Market Share

21. The City's Complaint also fails to account for Bank of America's and Countrywide's relevant market shares of originations and the fact that Bank of America and Countrywide were only two of the hundreds (or more) lenders in the City of Miami.[13] Reporting pursuant to the Home Mortgage Disclosure Act ("HMDA") provides relevant data demonstrating that the overwhelming share of mortgage loans during the relevant time period were originated by other lenders in the Miami market. HMDA requires lenders to report to the federal government information on all loans originated in a given year, including information on originator, loan amount, geographic location (state, county, and Census tract), race/ethnicity of borrower and income of borrower, among other variables. Tables A2 to Table A6 in Appendix 1 below summarize the combined data regarding loan origination activity for Bank of America and Countrywide, as compared to all other lenders, by race and ethnicity of the borrower.[14] There are two obvious findings from this data.

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[13] The number of lenders who originated loans in the Miami area over the relevant time period varied from 451 lenders in 2005 to 202 lenders in 2011 (See publicly available HMDA data for 2004 to 2011, available at www.ffiec.gov).

[14] The tables include all loan originations in Miami and in geographies with properties noted in the Complaint, and use two thresholds for minority: either majority minority (50 percent or more minorities in a tract) or predominantly minority (80 percent or more minority in the tract). When Countrywide's originations alone are reported, information for other lenders is provided for both the period 2004 -2007 (the years Countrywide was separated from Bank of America) and 2004 - 2011.

22. First, the vast majority of loan originations in the neighborhoods in question during 2004 - 2011 were by lenders other than Bank of America and Countrywide. Focusing specifically on those zip codes for which properties were included in the Complaint,[15] over 2004 - 2011, Bank of America/CW had just a 11.18% percent market share (see Table A3, Appendix 1). This means that even in the neighborhoods selectively identified by the City as their best representative examples, the mortgage market was overwhelmingly dominated by loans originated by *other lenders*.

23. Second, Bank of America and Countrywide do not have a disproportionately high number of loans to minorities in Miami. In my analysis of HMDA data for the period from 2004 - 2011, I find that that Bank of America/CW had only a 13.36 percent share of the loans in majority minority tracts (minority tract percentage greater than or equal to 50) or a 12.88 percent share of the loans in higher minority tracts (when minority tract percentage is defined to be greater than or equal to 80) (see Table A2, Appendix 1). These percentages are in line with Bank of America and Countrywide's overall market share for all loans during the relevant period and thus do not support the notion that these entities, when compared to other lenders active in the marketplace, were selectively targeting minorities for loans in the City of Miami.

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[15] The Complaint area is defined as any Census tract in or on the border of the City of Miami which also overlaps one of the ten zip-codes identified in the Complaint.

5.2 Market Share of "Higher Priced" Loans

24. The HMDA data also indicates that Bank of America and Countrywide did not originate a disproportionately high volume of "higher priced" loans during the relevant time period. The HMDA data includes information on a loan's "rate spread," which can be used as an indicator of whether or not loans are deemed to be higher priced. This categorization results from a determination of whether or not the annual percentage rate on a given loan is (i) more than three percentage points above comparable Treasury or market prime interest rates (for first lien loans), or (ii) more than five percentage points above these indices for subordinate lien loans.[16] Analysis of the HMDA data shows that the combined originations of Bank of America and Countrywide had a comparatively lower percentage of higher priced loans (i.e. loans that were above the rate spread reporting threshold in HMDA) compared to other lenders in the Miami marketplace.

25. From 2004 to 2011, only 18.6 percent of Bank of America and Countrywide loans in majority minority tracts were above the threshold, compared to 34.97 percent of other lenders' loans being above the threshold (*see* Table A4, Appendix 1). This disparity also holds true even in higher percentage minority tracts. At the 80 percent or more minority

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[16] See Federal Financial Institutions Examination Council, A Guide to HMDA Reporting: Getting it Right, available annually at www.ffiec.gov; last accessed February 10, 2014. The comparable interest rate series changed for loans originated in 2009. See http://www.ffiec.gov/ratespread/newcalchelp.aspx for the differences.

threshold, Bank of America and Countrywide had 23.19 percent of their loans above the rate spread threshold, while for other lenders this percentage was 40.90 percent (*see* Table A5, Appendix 1).

26. Focusing specifically on those zip codes for which properties were included in the Complaint, just 29.40 percent of the 3,320 Bank of America and Countrywide originations in the Complaint area tracts were "higher priced" as defined by having annual percentage rates above the rate spread threshold. Other lenders, by contrast, originated 49.29 percent of their loans in these areas with APRs above the rate spread threshold (see Table A6, Appendix 1).

27. In addition, the HMDA data must be viewed in the context of the unique composition of the borrower population in Miami. The City's allegations that Bank of America/Countrywide targeted minority areas fails to account for the fact that almost every tract in Miami is a majority minority tract. In other words, there are almost no tracts in Miami where a lender can lend where the percentage of minority borrowers is not greater than or equal to 50%. As demonstrated in Table 1, there is no tract in Miami that is less than 20% minority and only 4 tracts that are between 20-50% minority. By contrast, 76 of the 80 census tracts in Miami (or 95%) have a minority percentage greater than or equal to 50%, and 68 (or 85%) have a minority percentage greater than or equal to 80%.

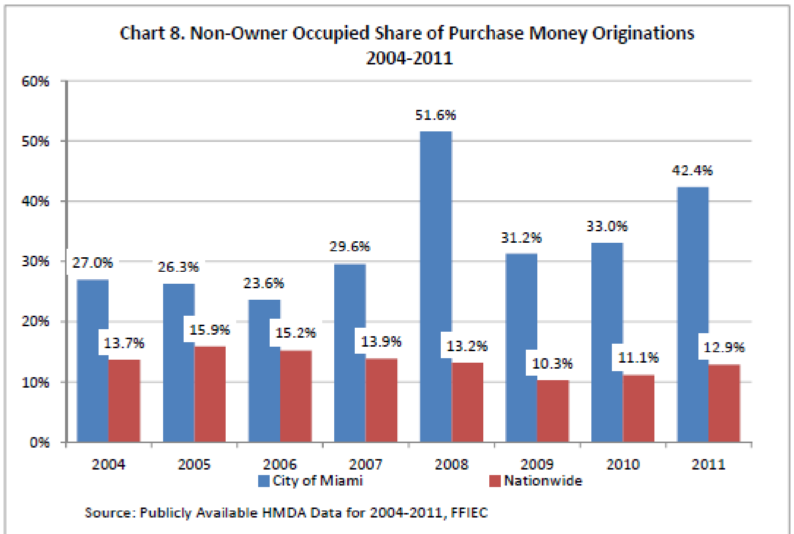
Table 1. Distribution of Census Tracts by Minority Population Percentage City of Miami	
Census Tract Minority Population Percentage	# of Census Tracts
Minority % < 20	0
20 ≤ Minority % < 50	4
50 ≤ Minority % < 80	8
Minority % ≥ 80	68
All	80

Note: Tracts with a reported population of zero per 2000 census data are not included. Source: 2000 Census Data

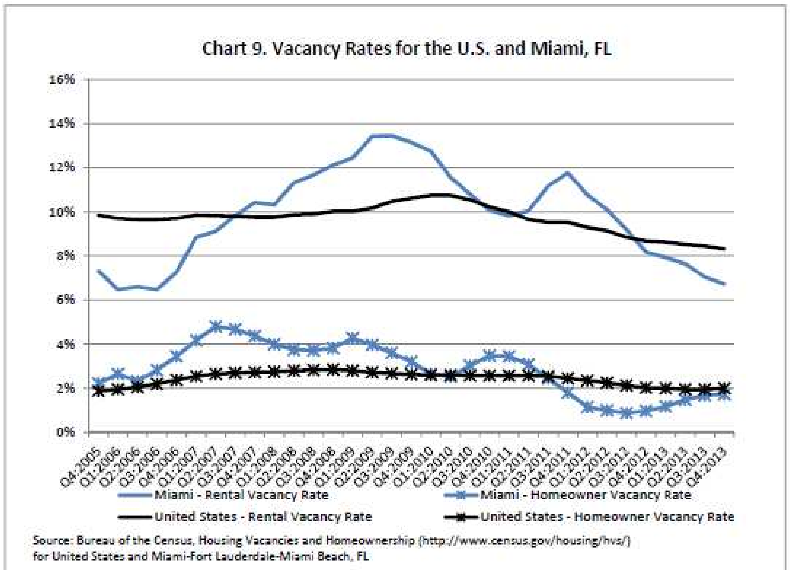
5.3 Market Share of "Non-Owner Occupied" Loans and Vacancy Rates

28. The City of Miami, relative to the rest of the United States, had significantly larger shares of mortgages originated for non-owners (see Chart 8). During 2004 to 2011, 29.2% of all home loans originated to purchase a home in the City of Miami were for investment or secondary home purchases, i.e. not to owner-occupants, compared to 13.9% nationwide. In 2008 an astounding 51.6% of all purchase money home loans in the City of Miami were to non-owner occupants, which was almost 4 times the national average of 13.2%. As investors are less likely to hold properties than are home owners when home prices fall and borrowers owe more than the home is worth, this can lead to increased foreclosures. In addition, investors hold properties for rental purposes rather than for their own occupancy, and vacancy rates on rental properties significantly exceed those on owner occupied homes. As a result, when the market soured and home prices

declined, these properties were the most likely to default, be abandoned and wind up either vacant or foreclosed or both.



29. Chart 9 demonstrates the higher vacancy rates for rental as compared to owner-occupied properties from 2005 - 2013. Between 2005 and 2013 rental properties in Miami were on average 3.5 times more likely to be vacant than owner-occupied properties. The rental vacancy rate in Miami reached a peak of 15.8 percent in the second quarter of 2009. The homeowner vacancy rate in Miami reached its peak of 5.6 percent a few months earlier in the first quarter of 2009. Both of these exceed the rates observed for the entire United States. The U.S. rental vacancy rate was 11.1 percent at its peak in the third quarter of 2009 and the U.S. homeowner vacancy rate was at its maximum value of 2.9 percent in the fourth quarter of 2008.



I declare under penalty of perjury under the law of the United States of America that the foregoing is true and correct.

Signed this 28th day of February, 2014, at London, England

****

London, England

Marsha J. Courchane

Marsha J. Courchane

February 28, 2014

Appendix 1. Charts and Tables

Chart A1. Cash Out Refinance Transactions

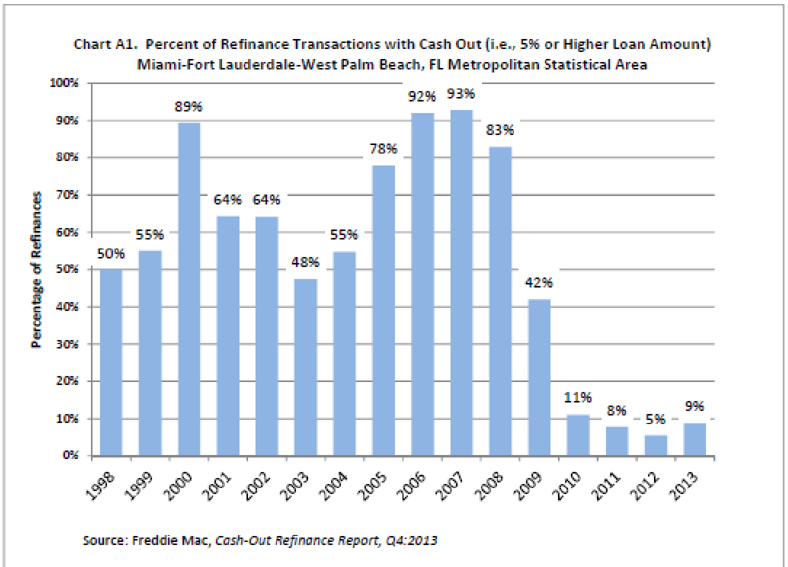


Table A1. HAMP Hardship Reasons

Table A1. Distribution of Reported Hardship Reason by Borrower Race/Ethnicity Among HAMP Modifications Miami-Fort Lauderdale-Miami Beach, FL										
	Asian		African American		Hispanic		Non-Hispanic White		All	
Hardship Reason	#	%	#	%	#	%	#	%	#	%
Death of borrower	13	0.9%	165	0.9%	257	0.7%	365	0.8%	858	0.8%
Illness of borrower	30	2.1%	557	3.0%	750	2.1%	1,138	2.5%	2,661	2.4%
Illness of family member	16	1.1%	191	1.0%	315	0.9%	455	1.0%	988	0.9%
Death of family member	9	0.6%	187	1.0%	178	0.5%	263	0.6%	705	0.6%
Marital difficulties	20	1.4%	311	1.6%	696	2.0%	882	1.9%	1,995	1.8%
Curtailment of income	844	58.2%	10,816	57.3%	21,109	60.3 %	27,429	59.4%	62,683	57.5%
Excessive obligation	122	8.4%	1,819	9.6%	2,744	7.8%	3,727	8.1%	10,295	9.5%
Abandonment of property	0	0.0%	2	0.0%	5	0.0%	5	0.0%	12	0.0%
Distant job transfer	0	0.0%	4	0.0%	10	0.0%	12	0.0%	24	0.0%
Property problem	0	0.0%	16	0.1%	29	0.1%	45	0.1%	86	0.1%
Inability to sell	1	0.1%	5	0.0%	10	0.0%	24	0.1%	39	0.0%
Inability to rent	0	0.0%	15	0.1%	31	0.1%	40	0.1%	88	0.1%
Military service	0	0.0%	5	0.0%	12	0.0%	17	0.0%	37	0.0%
Other	259	17.9%	3,200	16.9%	5,611	16.0 %	7,468	16.2%	18,415	16.9%
Unemployment	78	5.4%	953	5.0%	2,094	6.0%	2,686	5.8%	6,106	5.6%
Business failure	24	1.7%	114	0.6%	311	0.9%	424	0.9%	923	0.8%
Casualty Loss	0	0.0%	10	0.1%	24	0.1%	39	0.1%	92	0.1%
Energy costs	2	0.1%	15	0.1%	13	0.0%	20	0.0%	71	0.1%
Servicing problems	2	0.1%	54	0.3%	84	0.2%	129	0.3%	299	0.3%
Payment adjustment	13	0.9%	182	1.0%	224	0.6%	312	0.7%	879	0.8%
Payment dispute	1	0.1%	50	0.3%	101	0.3%	142	0.3%	349	0.3%
Transfer of ownership pending	0	0.0%	2	0.0%	4	0.0%	11	0.0%	21	0.0%
Fraud	0	0.0%	19	0.1%	26	0.1%	63	0.1%	127	0.1%
Unable to contact	16	1.1%	180	1.0%	324	0.9%	438	0.9%	1,133	1.0%
Incarceration	0	0.0%	8	0.0%	18	0.1%	18	0.0%	37	0.0%
All	1,450	100	18,880	100	34,980	100	46,152	100	108,923	100

Table A2. HMDA Originations, Bank of America/CW and Other Lenders, Miami

Table A2. Bank of America and Countrywide Originations - City of Miami - 2004 to 2011 Number of Originated Loans						
	Bank of America / Countrywide			Other Lenders		
Census Tract Minority Population Percent (Type of Tract)	Volume	% of Own Loans in Tract Type	Own Loans as a % of All Loans in Tract Type	Volume	% of Own Loans in Tract Type	Own Loans as a % of All Loans in Tract Type
Minority % ≥ 50	10,934	87.95%	13.36%	70,891	89.16%	86.64%
Minority % < 50	1,498	12.05%	14.81%	8,620	10.84%	85.19%
Minority % ≥ 80	7,003	56.33%	12.88%	47,364	59.57%	87.12%
Minority % < 80	5,429	43.67%	14.45%	32,147	40.43%	85.55%
All	12,432	100.00%	13.52%	79,511	100.00%	86.48%

Table A3. HMDA Origs., Bank of America/CW and Other Lenders, Complaint Areas, Miami

Table A3. Bank of America and Countrywide Originations Complaint Areas of City of Miami - 2004 to 2011 Number of Originated Loans						
	Bank of America / Countrywide			Other Lenders		
Census Tract Minority Population Percent (Type of Tract)	Volume	% of Own Loans in Tract Type	Own Loans as a % of All Loans in Tract Type	Volume	% of Own Loans in Tract Type	Own Loans as a % of All Loans in Tract Type
Minority % ≥ 50	3,320	100.00%	11.18%	26,363	100.00%	88.82%
Minority % < 50	0	0.00%	.	0	0.00%	.
Minority % ≥ 80	3,314	99.82%	11.20%	26,286	99.71%	88.80%
Minority % < 80	6	0.18%	7.23%	77	0.29%	92.77%
All	3,320	100.00%	11.18%	26,363	100.00%	88.82%

Table A4. Bank of America/CW and Other Lenders, Rate Spread Reportable Loans, City of Miami, Minority % ≥ 50

Table A4. Bank of America and Countrywide Originations - City of Miami Number of Originated Loans and Rate Spread Loans - 2004 to 2011							
		Bank of America / Countrywide			Other Lenders		
Time Period	Census Tract Minority Population Percent (Type of Tract)	Volume	Volume with Reported Rate Spread	% with Reported Rate Spread	Volume	Volume with Reported Rate Spread	% with Reported Rate Spread
2004	Minority % ≥ 50	1,715	203	11.84%	13,924	3,439	24.70%
	Minority % < 50	315	6	1.90%	2,060	158	7.67%
	All	2,030	209	10.30%	15,984	3,597	22.50%
2005	Minority % ≥ 50	2,200	354	16.09%	16,923	7,385	43.64%
	Minority % < 50	298	18	6.04%	1,993	410	20.57%
	All	2,498	372	14.89%	18,916	7,795	41.21%
2006	Minority % ≥ 50	2,697	850	31.52%	17,936	9,359	52.18%
	Minority % < 50	281	37	13.17%	1,552	476	30.67%
	All	2,978	887	29.79%	19,488	9,835	50.47%
2007	Minority % ≥ 50	2,316	516	22.28%	10,378	3,496	33.69%
	Minority % < 50	240	26	10.83%	885	157	17.74%
	All	2,556	542	21.21%	11,263	3,653	32.43%
2008	Minority % ≥ 50	1,164	58	4.98%	5,068	674	13.30%
	Minority % < 50	147	4	2.72%	546	30	5.49%
	All	1,311	62	4.73%	5,614	704	12.54%
2009	Minority % ≥ 50	475	45	9.47%	1,937	144	7.43%
	Minority % < 50	102	0	0.00%	446	10	2.24%
	All	577	45	7.80%	2,383	154	6.46%
2010	Minority % ≥ 50	214	6	2.80%	2,213	167	7.55%
	Minority % < 50	60	1	1.67%	540	14	2.59%
	All	274	7	2.55%	2,753	181	6.57%
2011	Minority % ≥ 50	153	2	1.31%	2,512	126	5.02%
	Minority % < 50	55	2	3.64%	598	15	2.51%
	All	208	4	1.92%	3,110	141	4.53%
All	Minority % ≥ 50	10,934	2,034	18.60%	70,891	24,790	34.97%
	Minority % < 50	1,498	94	6.28%	8,620	1,270	14.73%
	All	12,432	2,128	17.12%	79,511	26,060	32.78%

Table A5. Bank of America/CW and Other Lenders, Rate Spread Reportable Loans, City of Miami, Minority % ≥ 80

Table A5. Bank of America and Countrywide Originations - City of Miami
Number of Originated and Rate Spread Loans - 2004 to 2011

Time Period	Census Tract Minority Population Percent (Type of Tract)	Bank of America / Countrywide			Other Lenders		
		Volume	Volume with Reported Rate Spread	% with Reported Rate Spread	Volume	Volume with Reported Rate Spread	% with Reported Rate Spread
2004	Minority % ≥ 80	1,148	183	15.94%	9,562	2,993	31.30%
	Minority % < 80	882	26	2.95%	6,422	604	9.41%
	All	2,030	209	10.30%	15,984	3,597	22.50%
2005	Minority % ≥ 80	1,228	276	22.48%	10,661	5,646	52.96%
	Minority % < 80	1,270	96	7.56%	8,255	2,149	26.03%
	All	2,498	372	14.89%	18,916	7,795	41.21%
2006	Minority % ≥ 80	1,926	682	35.41%	12,807	7,126	55.64%
	Minority % < 80	1,052	205	19.49%	6,681	2,709	40.55%
	All	2,978	887	29.79%	19,488	9,835	50.47%
2007	Minority % ≥ 80	1,628	407	25.00%	7,746	2,837	36.63%
	Minority % < 80	928	135	14.55%	3,517	816	23.20%
	All	2,556	542	21.21%	11,263	3,653	32.43%
2008	Minority % ≥ 80	629	41	6.52%	2,795	437	15.64%
	Minority % < 80	682	21	3.08%	2,819	267	9.47%
	All	1,311	62	4.73%	5,614	704	12.54%
2009	Minority % ≥ 80	249	27	10.84%	1,186	116	9.78%
	Minority % < 80	328	18	5.49%	1,197	38	3.17%
	All	577	45	7.80%	2,383	154	6.46%
2010	Minority % ≥ 80	122	6	4.92%	1,230	126	10.24%
	Minority % < 80	152	1	0.66%	1,523	55	3.61%
	All	274	7	2.55%	2,753	181	6.57%
2011	Minority % ≥ 80	73	2	2.74%	1,377	91	6.61%
	Minority % < 80	135	2	1.48%	1,733	50	2.89%
	All	208	4	1.92%	3,110	141	4.53%
All	Minority % ≥ 80	7,003	1,624	23.19%	47,364	19,372	40.90%
	Minority % < 80	5,429	504	9.28%	32,147	6,688	20.80%
	All	12,432	2,128	17.12%	79,511	26,060	32.78%

Table A6. Bank of America/CW and Other Lenders, Rate Spread Reportable Loans, Complaint Areas of Miami

Table A6. Bank of America and Countrywide Originations - City of Miami Complaint Areas of City of Miami - 2004 to 2011 Number of Rate Spread Reportable Loans						
	Bank of America / Countrywide			Other Lenders		
Census Tract Minority Population Percent (Type of Tract)	Volume	Volume with Reported Rate Spread	% with Reported Rate Spread	Volume	Volume with Reported Rate Spread	% with Reported Rate Spread
Minority % ≥ 50	3,320	976	29.40%	26,363	12,994	49.29%
Minority % < 50	0	0	.	0	0	.
Minority % ≥ 80	3,314	976	29.45%	26,286	12,952	49.27%
Minority % < 80	6	0	0.00%	77	42	54.55%
All	3,320	976	29.40%	26,363	12,994	49.29%

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO: **13-cv-24506-DIMITROULEAS/SNOW**

CITY OF MIAMI, a Florida
municipal Corporation,

Plaintiff,

DEMAND FOR
JURY TRIAL

v.

BANK OF AMERICA
CORPORATION; BANK OF
AMERICA, N.A.;
COUNTRYWIDE FINANCIAL
CORPORATION;
COUNTRYWIDE HOME
LOANS; and COUNTRYWIDE
BANK, FSB,

Defendants.

_____________________________________/

EXHIBIT A TO THE CITY'S MOTION FOR RECONSIDERATION AND LEAVE TO FILE FIRST AMENDED COMPLAINT

[PROPOSED] FIRST AMENDED COMPLAINT FOR VIOLATIONS OF THE FEDERAL FAIR HOUSING ACT

[Table of Contents omitted]

I. NATURE OF THE ACTION

1. It is axiomatic that banks should not make discriminatory loans. Banks must extend credit to minorities on equal terms as they do to other similarly situated borrowers. Banks should not target minority neighborhoods for loans that discriminate nor make loans to minorities on terms that are worse than those offered to whites with similar credit characteristics. When Banks engage in such discriminatory conduct, it has profound non-economic and economic consequences for the cities in which mortgaged properties exist, and Banks should be responsible for those consequences. BoA's conduct has harmed the residents of Miami and impaired the City's strong, longstanding and active commitment to open, integrated residential housing patterns and its attendant benefits of creating a stable community that increases professional opportunities and the quality of life in the City. Additionally, BoA's conduct has caused the City to lose property tax revenues and required the City to pay the costs of repairing and maintaining properties that go into foreclosure due to discriminatory lending. This lawsuit arises because BoA breached these legally mandated obligations and foreseeably injured the City of Miami.

A. BoA Has Engaged in a Continuing Pattern of Discriminatory Mortgage Lending Practices in Miami Resulting in Foreclosures.

2. This suit is brought pursuant to the Fair Housing Act of 1968 ("FHA"), as amended, 42

U.S.C. §§ 3601, et seq., by the City of Miami ("Miami" or "City") to seek redress for injuries caused by Bank of America's[1] ("BoA" or "the Bank") pattern or practice of illegal and discriminatory mortgage lending. Specifically, Miami seeks injunctive relief and damages for the injuries caused by foreclosures on BoA's loans in minority neighborhoods and to minority borrowers that are the result of the Bank's unlawful and discriminatory lending practices. The unlawful conduct alleged herein consists of both intentional discrimination and disparate impact discrimination.

3. The State of Florida in general, and the City of Miami in particular, have been devastated by the foreclosure crisis. As of October 2013, Florida has the country's highest foreclosure rate, and Miami has the highest foreclosure rate among the 20 largest metropolitan statistical areas in the country.[2] Moreover, Florida is by far the leading state in the country with regard to owner-vacated or "Zombie"

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[1] Defendants collectively are referred to as "BoA," including: Bank of America Corporation, Bank of America, N.A., Countrywide Financial Corporation, Countrywide Home Loans, and Countrywide Bank, FSB. Plaintiff alleges that Defendants are also liable for residential home loans and lending operations acquired from, and/or sold by or through, Countrywide Bank, N.A., First Franklin Corporation, Grand Harbor Mortgage, John Laing Homes, Nexstar Financial Corporation, and Treasury Bank National Association.

[2] RealtyTrac, *Scheduled Judicial Foreclosure Auctions Increase Annually for 16th Straight Month, Foreclosure Starts Up Monthly for Second Straight Month, Big Jumps in FL, IL, CO*, (Nov. 14, 2013) (*available at* http://www.realtytrac.com/content/foreclosure-market-report/october-2013-us-foreclosure-market-report-7934).

foreclosures.[3] Since 2008, banks have foreclosed on approximately 1.8 million homes in Florida. BoA's discriminatory conduct is responsible for a significant number of these foreclosures.

4. The foreclosure crisis in Florida resulted in such drastic consequences that the Florida Supreme Court established a Task Force to recommend "policies, procedures, strategies, and methods for easing the backlog of pending residential mortgage foreclosure cases while protecting the rights of parties."[4]

5. BoA has engaged in a continuous pattern and practice of mortgage discrimination in Miami since at least 2004 by imposing different terms or conditions on a discriminatory and legally prohibited basis. In order to maximize profits at the expense of the City of Miami and minority borrowers, BoA adapted its unlawful discrimination to changing market conditions. This unlawful pattern and practice is continuing through the present and has not terminated. Therefore, the operative statute of limitations governing actions brought pursuant to the Federal Fair Housing Act has not commenced to run.

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[3] RealtyTrac, Q1 2013 *Foreclosure Inventory Update*, pg. 5 (*available at* http://www.realtytrac.com/images/reportimages/RealtyTrac_Foreclosure_Inventory_Analysis_Q 1_2013.pdf).

[4] Florida Supreme Court Task Force On Residential Mortgage Foreclosure Cases, *Final Report And Recommendations* (August 17, 2009) (*available at* www.floridasupremecourt.org/.../Filed_08-17-2009_Foreclosure_Final_).

6. The pattern and practice of lending discrimination engaged in by BoA consists of traditional redlining[5] and reverse redlining,[6] both of which have been deemed to violate the FHA by federal courts throughout the country. BoA engaged in redlining, and continues to engage in said conduct, by refusing to extend mortgage credit to minority borrowers in Miami on equal terms as to non-minority borrowers. BoA engaged in reverse redlining, and continues to engage in said conduct, by extending mortgage credit on predatory terms to minority borrowers in minority neighborhoods in Miami on the basis of the race or ethnicity of its residents. Federal Reserve Chairman Ben Bernanke recently acknowledged these twin evils of mortgage discrimination, and explained that both types of mortgage discrimination "continue to have particular significance to mortgage markets."[7]

7. Major banks such as BoA have a long history of engaging in redlining throughout Miami. That practice began to change in the late 1990s, when BoA adapted to changing market conditions, and began to flood historically underserved minority communities with mortgage loans that consisted of a variety of high cost and abusive mortgage loan

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[5] Redlining is the practice of denying credit to particular neighborhoods based on race.

[6] Reverse redlining is the practice of flooding a minority community with exploitative loan products.

[7] Remarks by Federal Reserve Chairman Ben Bernanke at the Operation HOPE Global Financial Dignity Summit, Atlanta, Georgia at pg. 10 (November 15, 2012) (*available at* www.federalreserve.gov/newsevents/speech/bernanke20121115a.htm).

products with predatory terms as compared to the mortgage loans issued to white borrowers (reverse redlining).

8. BoA's discriminatory lending practices have the purpose and effect of placing vulnerable, underserved borrowers in loans they cannot afford. Reverse redlining maximizes BoA's profit without regard to the borrower's best interest, the borrower's ability to repay, or the financial health of underserved minority neighborhoods. Moreover, BoA has averted any significant risk to itself by selling the vast majority of mortgage loans it originates or purchases on the secondary market (collectively "BoA Loans").

9. Between 1996-2006, one category of discriminatory loan products - subprime loans - grew throughout the country from $97 billion to $640 billion. These loans were frequently targeted to minorities. Upon information and belief, the lack of accessible credit resulting from BoA's previous pattern and practice of redlining in the minority communities in Miami created conditions whereby the Bank could easily target and exploit the underserved minority communities who, due to traditional redlining, had been denied credit.

10. Therefore, following several years of issuing abusive, subprime mortgage loans throughout the minority communities of Miami, commencing in or around 2007, BoA once again adapted to changing market conditions, while continuing its pattern and practice of issuing a variety of discriminatory loan products. Simultaneously, Miami and other communities

throughout the country experienced a curtailment of mortgage credit issued to minority borrowers.[8] BoA is one of the largest mortgage lenders doing business in Miami and its policies and practices contributed to this problem. In other words, BoA not only refused to extend credit to minority borrowers when compared to white borrowers, but when the Bank did extend credit, it did so on predatory terms. This combination of reverse redlining and redlining and represents a continuing and unbroken pattern and practice of mortgage lending discrimination in Miami that still exists today.

11. BoA's pattern and practice of *reverse redlining* has caused an excessive and disproportionately high number of foreclosures on the BoA Loans it has made in the minority neighborhoods of Miami. Foreclosures on loans originated by BoA are concentrated in these neighborhoods. *A loan in a predominantly minority neighborhood is 5.857 times more likely to result in foreclosure than is a loan in a neighborhood with a majority of white residents.*

12. BoA's pattern and practice of traditional redlining has also caused an excessive and disproportionately high number of foreclosures in the minority neighborhoods of Miami. These foreclosures often occur when a minority borrower

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[8] Center for Responsible Lending, *The State of Lending in America & its Impact on U.S. Households* (2012) (*available at* http://www.responsiblelending.org/state-of-lending/State-of-Lending-report-1.pdf); Harvard School of Public Health, *Home Purchase Loan Denial Rate By Race/Ethnicity* (2010) (*available at* http://diversitydata.sph.harvard.edu/ Data/Rankings/Show.aspx?ind=9).

who previously received a predatory loan sought to refinance the loan, only to discover that BoA refused to extend credit at all, or on terms equal to those offered when refinancing similar loans issued to white borrowers. The inevitable result of the combination of issuing a predatory loan, and then refusing to refinance the loan, was foreclosure.

13. BoA would have had comparable foreclosure rates in minority and white communities if it was properly and uniformly applying responsible underwriting practices in both areas. BoA possesses sophisticated underwriting technology and data that allows it to predict with precision the likelihood of delinquency, default, or foreclosure. The fact that BoA's foreclosures are so disproportionately concentrated in minority neighborhoods is not the product of random events. To the contrary, it reflects and is fully consistent with BoA's practice of targeting minority neighborhoods and customers for discriminatory practices and predatory pricing and products. It also reflects and is consistent with BoA's practice of failing to underwrite minority borrowers' applications properly, and of putting these borrowers, into loans which (1) have more onerous terms than loans given to similarly situated white borrowers, and (2) the borrowers cannot afford, leading to foreclosures.

14. The Bank's predatory and discriminatory lending practices are evidenced by confidential witness statements provided by former employees of BoA (discussed further herein). For example:

a) "They [the less savvy minority borrower] didn't know anything about it [negative amortization loans]. The white American educated [borrower] knew what those loans were and what they were going to do, and they stayed away from them. . . . [The less savvy minority borrower] didn't realize the negative amortization consequences down the road for them that would make it that much harder to refinance with no equity."

b) Borrowers "couldn't afford ["interest-only" and "pick-a-payment" loans]. Half the time they couldn't even afford the [full] interest on those homes."

c) "There's no money in [Community Reinvestment Act] loans for [the Bank]" so the Bank didn't encourage loan officers to make CRA loans.

d) Back-end premiums [the difference between the borrower's loan rate and the rate the bank pays for it] were "non-disclosed", which often eluded less educated, minority borrowers.

15. The reports of these witnesses are confirmed when Miami data on BoA loans is examined. Such an examination reveals a widespread practice of discrimination. For example, a regression analysis that controls for credit history and other factors demonstrates that an African-American BoA borrower is 1.581 times more likely to receive a predatory loan than is a white borrower and a Latino borrower is 2.087 times more likely to receive such a loan. The regression analysis

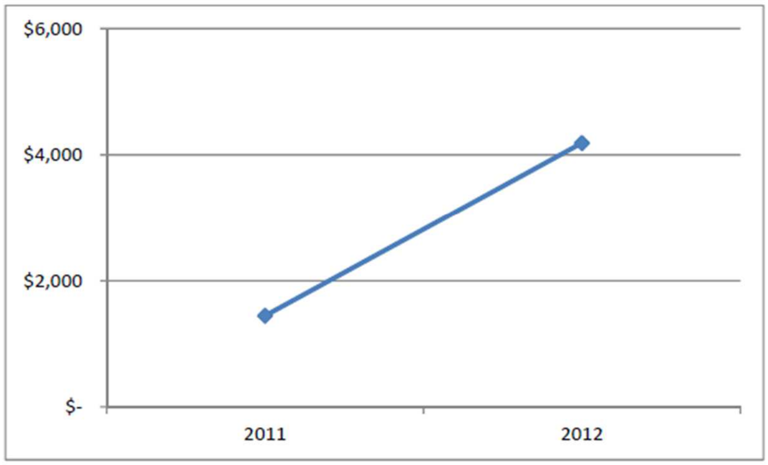
confirms that African-Americans with FICO scores over 660 are 1.533 times more likely to receive a predatory BoA loan than is a white borrower, and a Latino borrower is 2.137 times more likely to receive such a loan.

16. According to a Justice Department complaint, BoA's Countrywide subsidiary: (i) had charged upwards of 200,000 minority homeowners higher interest rates and fees than white borrowers who were similarly qualified, with similar credit ratings; (ii) had failed to offer minority homeowners conventional mortgages for which they qualified and which they would have been offered, were they white; and (iii) systematically pushed minority borrowers into exploitative mortgages with higher rates and fees. Many of the victims were in Florida. To settle the complaint, Bank of America agreed to pay $335 million in restitution and penalties to the 200,000 identified minority victims - without compensation, restitution, or penalties to the City of Miami.

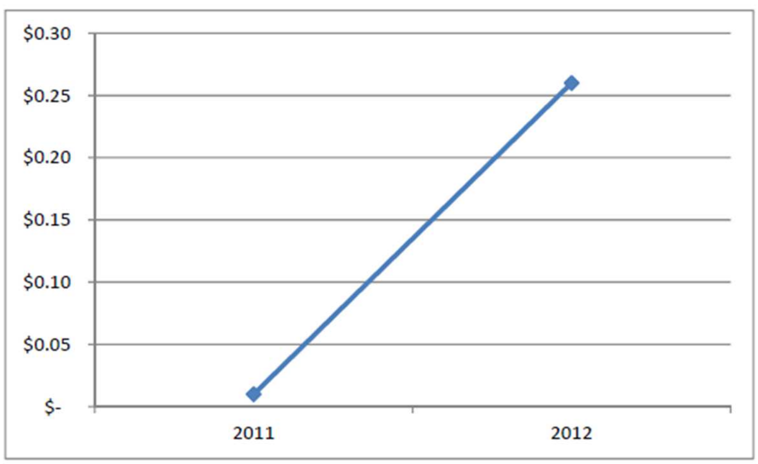
17. In or about June 2011, BoA settled charges with the Federal Trade Commission alleging that Countrywide had charged excessive fees to homeowners for property maintenance when they went into default, and added illegitimate charges to what the homeowners owed. To settle the FTC complaint, Bank of America paid $107 million to the FTC for distribution to homeowner victims (again without compensation to the City of Miami).

18. The past several years have been highly profitable for BoA. The following charts illustrate these results.

Net Income (millions)



Earnings per share



19. BoA's discriminatory practices and resulting foreclosures in the City's minority neighborhoods have inflicted significant, direct, and continuing non-economic and economic harm to the City, while at the same time undermining the City's interests in integrated housing.

20. Because of the multitude of analytic tools available to BoA to determine the likelihood that a particular mortgage loan would result in default by the borrower, as well as the existence of various studies, reports, and other pertinent literature specifically addressing the connection between mortgage loans and foreclosures, it was foreseeable that BoA knew, or should have known, that a predatory or high risk loan issued to an African-American or Hispanic in certain neighborhoods in Miami would result in default and subsequent foreclosure. Moreover, because BoA maintains numerous branch offices throughout Miami, and has knowledge of the specific address for each loan it issued, it was foreseeable that BoA knew, or should have known, of the condition of foreclosed properties corresponding to loans that it issued in Miami regardless of whether it serviced the loan or subsequently sold the servicing rights to a third party.

21. According to Federal Reserve Chairman Bernanke, "foreclosures can inflict economic damage beyond the personal suffering and dislocation that accompany them. Foreclosed properties that sit vacant for months (or years) often deteriorate from neglect, adversely affecting not only the value of the individual property but the values of nearby homes as well. Concentrations of foreclosures have been shown to do serious damage to neighborhoods and communities, reducing tax bases and leading to increased vandalism and crime. Thus, the overall effect of the foreclosure wave, especially when

concentrated in lower-income and minority areas, is broader than its effects on individual homeowners.[9]

22. The discriminatory lending practices at issue herein have resulted in what many leading commentators describe as the "greatest loss of wealth for people of color in modern US history." It is well-established that poverty and unemployment rates for minorities exceed those of whites, and therefore, home equity represents a disproportionately high percentage of the overall wealth for minorities.[10] Federal Reserve Chairman Bernanke recently explained that as a result of the housing crisis, "most or all of the hard-won gains in homeownership made by low-income and minority communities in the past 15 years or so have been reversed."[11] The resulting impact of these practices represents "nothing short of the preeminent civil rights issue of our time, erasing, as it has, a generation of hard fought wealth accumulation among African-Americans."[12]

II. PARTIES

23. Plaintiff City of Miami is a Florida municipal corporation. The City has maintained

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[9] Bernanke, *supra* n.7 at pg. 4.

[10] Robert Schwemm and Jeffrey Taren, *Discretionary Pricing, Mortgage Discrimination, and the Fair Housing Act*, 45 HARVARD CIVIL RIGHTS-CIVIL LIBERTIES LAW REV., 375, 382 (2010).

[11] Bernanke, *supra* n.7 at pg. 3.

[12] Charles Nier III and Maureen St. Cyr, *A Racial Financial Crisis: Rethinking the Theory of Reverse Redlining to Combat Predatory Lending Under the Fair Housing Act,* 83 TEMPLE LAW REV. 941, 942 (2011).

an active and longstanding interest in the quality of life and the professional opportunities that attend an integrated community. One way that the City has furthered these interests is through its Department of Community and Economic Development, which is charged with responsibility for operating the City's fair housing program, reducing illegal housing discrimination, monitoring and investigating fair housing complaints, supporting fair housing litigation, and conducting research and studies to identify and address fair housing impediments as a means of improving the overall quality of life in the city. The City is authorized by the City Commission to institute suit to recover damages suffered by the City as described herein.

24. Bank of America, N.A. is organized as a national banking association under the laws of the United States. Upon information and belief, its corporate headquarters are located in Charlotte, North Carolina. It maintains multiple offices in the State of Florida, including in the City of Miami, for the purposes of soliciting applications for and making residential mortgage loans and engaging in other business activities.

25. During the period of time relevant to the events at issue in this Complaint through July 1, 2008, Defendant Countrywide Financial Corporation ("CFC") was a Delaware-incorporated financial holding company or savings and loan holding company with its principal business office in Calabasas, California. CFC created, authorized, and/or ratified the lending-related policies and

practices at issue in this Complaint that its divisions and subsidiaries implemented.

26. On July 1, 2008, Bank of America Corporation ("BAC"), a Delaware-incorporated financial holding company, acquired ownership of CFC, including all of its subsidiary business entities. Since that acquisition, CFC has remained a Delaware-incorporated company with its principal business office in Calabasas, California, as a direct, wholly-owned subsidiary of BAC.

27. Defendant Countrywide Home Loans, Inc. ("CHL") is a New York-incorporated wholly-owned subsidiary of CFC with its principal business office in Calabasas, California. Prior to 2008, CHL funded the majority of CFC's nationwide residential mortgage loan origination activity. For the loans it funded under the Countrywide name, CHL was the named lender on the promissory notes for those loans. CHL became a wholly-owned indirect subsidiary of BAC on or about July 1, 2008, as a result of BAC's acquisition of CFC.

28. Countrywide Bank ("CWB") was originally chartered as a national bank subject to supervision by the Office of the Comptroller of the Currency, and was a subsidiary of financial holding company CFC. CWB was headquartered in Alexandria, Virginia, until February, 2009. As a financial holding company, CFC, together with its subsidiary CHL, was supervised by the Board of Governors of the Federal Reserve System. On or about March 12, 2007, CWB changed its charter to that of a federal savings association, and CFC

became a savings and loan holding company. Those changes caused CWB, CFC, and CHL to become subject to supervision by the Office of Thrift Supervision.

29. During 2006, CFC began the process of transitioning the funding of its residential loan originations from CHL to CWB. For those loans funded through CWB under the Countrywide name, CWB was the named lender on the promissory notes for those loans. As of January 1, 2008, CWB funded substantially all nationwide residential loan origination activity using the Countrywide name. For those loans funded by either CHL or CWB, CFC used the same loan origination policies and procedures that it had created, authorized, or ratified, and the same employees and mortgage brokers. Throughout this Complaint, CFC, CWB, and CHL are referred to collectively as "Countrywide."

30. Even after BAC's purchase of CFC on July 1, 2008, CWB continued its banking and mortgage lending operations as a direct subsidiary of CFC, using the same loan origination policies and procedures, until approximately November 7, 2008. At that time, BAC engaged in a series of corporate transactions that ended CWB's status as a subsidiary of CFC and made CWB a direct subsidiary of BAC.

31. On April 23, 2009, the Office of the Comptroller of the Currency approved CWB's request to convert its charter back to that of a national bank and the request by Bank of America, N.A. to then immediately acquire CWB by merger.

These transactions were executed on April 27, 2009, as a result of which CWB ceased to exist. Bank of America, N.A. was the surviving institution resulting from this merger. Thus, Bank of America, N.A. is the successor in interest to CWB.

32. The Defendants in this action are, or were at all relevant times, subject to Federal laws governing fair lending, including the FHA and the regulations promulgated thereunder. The FHA prohibits financial institutions from discriminating on the basis of, inter alia, race, color, or national origin in their residential real estate-related lending transactions.

33. The Defendants in this action are or were businesses that engage in residential real estate-related transactions in the City of Miami within the meaning of the FHA, 42 U.S.C. § 3605.

34. Based on information reported pursuant to the Home Mortgage Disclosure Act, in addition to loans that Defendants originated directly, Defendants are responsible for residential home loans acquired from, and/or sold by or through, Merrill Lynch Bank & Trust FSB, Merrill Lynch Credit Corp., and First Franklin Financial Corp.

35. Upon information and belief, Plaintiff alleges that each of the Defendants was and is an agent of the other Defendants. Each Defendant, in acting or omitting to act as alleged in this Complaint, was acting in the course and scope of its actual or apparent authority pursuant to such agencies, and/or the alleged acts or omissions of each Defendant as agent were subsequently

ratified and adopted by each agent as principal. Each Defendant, in acting or omitting to act as alleged in this Complaint, was acting through its agents, and is liable on the basis of the acts and omissions of its agents.

III. REFERRALS FROM BANK REGULATORY AGENCIES

36. In 2006, Federal Reserve System Examiners initiated a fair lending review of CHL's mortgage pricing practices. As a result of that review, the Federal Reserve Board ("FRB") determined that it had "reason to believe that Countrywide Home Loans engaged in a pattern or practice of discrimination based on race and ethnicity in violation of Section 701(a) of the Equal Credit Opportunity Act and the Fair Housing Act."

37. Following its determination described in Paragraph 37, and pursuant to 15 U.S.C. § 1691e(g), the FRB referred the matter to the Department of Justice on March 5, 2007. Countrywide agreed that various statutes of limitations for any cause of action that could be brought against Countrywide pursuant to the FRB referral would be tolled from March 22, 2007 through December 22, 2011.

38. In early 2008, the Office of Thrift Supervision ("OTS") conducted an examination of the operations of Countrywide, including its compliance with applicable fair lending laws and regulations. As a result of that examination, the OTS determined that it had "a 'reason to believe' that Countrywide has displayed a 'pattern or practice' of discriminating against minority loan applicants in the pricing of

home loans and against married couples concerning the terms and condition of home loans."

39. Following its determination described in Paragraph 39, and pursuant to 15 U.S.C. § 1691e(g), the OTS referred the matter to the Department of Justice on June 27, 2008. Countrywide agreed that various statutes of limitations for any cause of action that could be brought against Countrywide pursuant to the OTS referral would be tolled from July 1, 2009 through December 22, 2011.

40. Based on the FRB and OTS referrals, the Department of Justice engaged in a lengthy investigation of Countrywide's lending policies, practices, and procedures, including reviewing millions of Countrywide loans originated between 2004 and 2008. The investigation led to the Justice Department's complaint against Countrywide for discriminatory lending practices affecting upwards of 200,000 minority homeowners (saddling them with higher interest rates and fees than white borrowers who were similarly qualified, with similar credit ratings).

IV. JURISDICTION AND VENUE

41. This Court has jurisdiction over this matter pursuant to 42 U.S.C. § 3613 and 28 U.S.C. §§ 1331, 1343, because the claims alleged herein arise under the laws of the United States.

42. Venue is proper in this district under 28 U.S.C. § 1391(b) because Bank of America, N.A., BAC, and Countrywide all conduct business in this district and a substantial part of the events and omissions giving rise to the claims occurred in this district.

V. FACTUAL BACKGROUND

A. Background Regarding Discriminatory Loan Practices, Reverse Redlining, and Redlining.

43. Prior to the emergence of subprime lending, most mortgage lenders made only "prime" loans. Prime lending offered uniformly priced loans to borrowers with good credit, but individuals with lower credit were not eligible for prime loans.

44. Subprime lending developed and began growing rapidly in the mid-1990s as a result of technological innovations in risk-based pricing and in response to the demand for credit by borrowers who were denied prime credit by traditional lenders. Advances in automated underwriting allowed lenders to predict with improved accuracy the likelihood that a borrower with lower credit will successfully repay a loan. These innovations gave lenders the ability to adjust the price of loans to match the different risks presented by borrowers whose credit records did not meet prime standards. Lenders found that they could now accurately price loans to reflect the risks presented by a particular borrower. When done responsibly, this made credit available much more broadly than had been the case with prime lending.

45. Responsible subprime lending has opened the door to homeownership to many people, especially low- to moderate-income and minority consumers, who otherwise would have been denied mortgages. At the same time, however, subprime lending has created opportunities for unscrupulous lenders to target minorities and engage in

discriminatory, irresponsible lending practices that result in loans that borrowers cannot afford. This, in turn, leads directly to defaults and foreclosures.

46. Enticed by the prospect of profits resulting from exorbitant origination fees, points, and related pricing schemes, some irresponsible subprime lenders took advantage of a rapidly rising real estate market to convince borrowers to enter into discriminatory loans that had unfair terms that they could not afford. Often this was accomplished with the help of deceptive practices and promises to refinance at a later date. These abusive subprime lenders did not worry about the consequences of default or foreclosure to their business because, once made, a significant number of the loans were sold on the secondary market.

47. As the subprime market grew, the opportunities for abusive practices grew with it.[13] As a consequence, the federal government has found that abusive and predatory practices "are concentrated in the subprime mortgage market."[14]

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[13] United States Department of Housing and Urban Development Office of Policy Development and Research, Report to Congress on the Root Causes of the Foreclosure Crisis, (2010) at 52 ("While many factors have undoubtedly contributed to the recent rise in foreclosures, as discussed earlier, no small part of the increase stems from recent increases in abusive forms of subprime lending") (*available at* http://www.huduser.org/portal/Publications/PDF/ Foreclosure_09.pdf).

[14] United States Department of Housing & Urban Development and United States Department of the Treasury, Curbing Predatory Home Mortgage Lending (2000) at 1 (*available at* http://www.huduser.org/Publications/pdf/treasrpt.pdf) ("HUD/Treasury Report").

These practices, which in recent years have become the target of prosecutors, legislators, and regulators, include the following:

a. Placing borrowers in subprime loans even though they qualify for prime or conventional loans on better terms.

b. Failing to prudently underwrite hybrid adjustable rate mortgages (ARMs), such as 2/28s and 3/27s.[15] After the borrower pays a low "teaser rate" for the first two or three years, the interest rate on these loans resets to a much higher rate that can continue to rise based on market conditions. Subprime lenders often underwrite these loans based only on consideration of whether the borrower can make payments during the initial teaser rate period, without regard to the sharply higher payments that will be required for the remainder of a loan's 30-year term. Irresponsible lenders aggressively market the low monthly payment that the borrower will pay during the teaser rate period, misleading borrowers into believing that they can afford that same low monthly payment for the entire 30-year term of the loan, or that they can refinance their loan before the teaser rate period expires.

c. Failing to prudently underwrite refinance loans, where borrowers substitute

[15] In a 2/28 ARM, the "2" represents the number of years the mortgage will be fixed over the term of the loan, while the "28" represents the number of years the interest rate paid on the mortgage will be variable. Similarly, in a 3/27 ARM, the interest rate is fixed for three years and variable for the remaining 27-year amortization.

unaffordable mortgage loans for existing mortgages that they are well-suited for and that allow them to build equity. Such refinanced loans strip much or even all of that equity by charging substantial new fees, often hiding the fact that the high settlement costs of the new loan are also being financed. Lenders that aggressively market the ability of the borrower to pay off existing credit card and other debts by refinancing all of their debt into one mortgage loan mislead borrowers into believing that there is a benefit to debt consolidation, while obscuring the predictable fact that that the borrower will not be able to repay the new loan. The refinanced loans are themselves often refinanced repeatedly with ever-increasing fees and higher interest rates, and with ever-decreasing equity, as borrowers seek to stave off foreclosure.

d. Allowing mortgage brokers to charge "yield spread premiums" for qualifying a borrower for an interest rate that is higher than the rate the borrower qualifies for and can actually afford.

e. Failing to underwrite loans based on traditional underwriting criteria such as debt-to-income ratio, loan-to-value ratio, FICO score, and work history. These criteria ensure that a borrower is obtaining a loan that he or she has the resources and assets to repay, and ignoring these criteria results in many loans that bear no relation to borrowers' ability to repay them. This allows the lender to make a quick profit from the origination, but sets the borrower up for default and foreclosure.

f. Requiring substantial prepayment penalties that prevent borrowers whose credit has improved from refinancing their subprime loan to a prime loan. Prepayment penalties not only preclude borrowers from refinancing to a more affordable loan, but reduce the borrowers' equity when a subprime lender convinces borrowers to needlessly refinance one subprime loan with another.

g. Charging excessive points and fees that are not associated with any increased benefits for the borrower.

48. The problem of predatory practices in mortgage lending is particularly acute in minority communities because of "reverse redlining." As used by Congress and the courts, the term "reverse redlining" refers to the practice of targeting residents in certain geographic areas for credit on unfair terms due to the racial or ethnic composition of the area. This is in contrast to "redlining," which is the practice of denying *prime* credit to specific geographic areas because of the racial or ethnic composition of the area. Both practices have repeatedly been held to violate the Federal Fair Housing Act.

49. Following the onset of the subprime mortgage crisis, and after years of issuing abusive home loans in minority neighborhoods, the big bank lenders began to limit the issuance of mortgage credit to minority borrowers (*i.e.*, refusing to refinance predatory loans). At the same time, when the big banks did extend credit, they continued to do so on predatory terms.

VI. BOA ENGAGED IN DISCRIMINATORY LENDING PRACTICES.

A. BoA's Conduct Had a Disparate Impact on Minority Borrowers in Violation of the Fair Housing Act.

1. Discriminatory lending results in a disproportionate number of foreclosures in minority areas.

50. Foreclosures are on the rise in many of the nation's most vulnerable neighborhoods, particularly those with substantial concentrations of minority households. The increase appears to stem from the presence of (1) subprime lending in these communities and (2) continuing discriminatory lending practices (*e.g*., steering minorities into loan products with more onerous terms.

51. A seminal report on foreclosure activity by Mark Duda and William Apgar documents the negative impact that rising foreclosures have on low-income and low-wealth minority communities, using Chicago as a case study.[16] Mr. Apgar is a Senior Scholar at the Joint Center for Housing Studies of Harvard University, and a Lecturer on Public Policy at Harvard's John F. Kennedy School of Government. He previously served as the Assistant Secretary for Housing/Federal Housing Commissioner at the U.S. Department of Housing and Urban Development, and also Chaired the Federal Housing Finance Board. Mr. Apgar holds a Ph.D. in Economics from

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[16] This report, and others cited in the First Amended Complaint, further corroborate the allegations specifically pertaining to the City of Miami.

Harvard University. Mr. Duda is a Research Fellow at the Joint Center for Housing Studies. The Apgar-Duda report has continually been cited by subsequent governmental, public sector, and private sector reports due to its clarity and thoroughness with respect to the negative impact foreclosures have on lower-income and minority neighborhoods.[17]

52. This significant report highlights the foreseeability of foreclosures arising from predatory lending practices and their attendant harm, demonstrating that such foreclosures impose significant and predictable costs on borrowers, municipal governments, and neighboring homeowners.

53. Another report, by the Center for Responsible Lending, uses a national dataset to show that the foreclosure rate for low- and moderate-income African-Americans is approximately 1.8 times higher than it is for low- and moderate-income non-Hispanic whites. The gap is smaller for Latinos, especially among low-income households, but even among low-income Latinos the foreclosure rate is 1.2 times that of low-income whites. Racial and ethnic disparities in foreclosure rates cannot be explained by income, since disparities persist even among higher-income groups. For example: approximately 10 percent of higher-income African-American borrowers and 15 percent of higher-income Latino borrowers have lost their homes to foreclosure,

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[17] *See* W. Apgar, M. Duda & R. Gorey, *The Municipal Costs of Foreclosures: A Chicago Case Study* (2005) (*available at* http://www.nw.org/network/neighborworksProgs/ foreclosure solutions/documents/2005Apgar-DudaStudy- FullVersion.pdf).

compared with 4.6 percent of higher income non-Hispanic white borrowers. Overall, low- and moderate-income African-Americans and middle- and higher-income Latinos have experienced the highest foreclosure rates.[18]

54. Nearly 20 percent of loans in high-minority neighborhoods have been foreclosed upon or are seriously delinquent, with significant implications for the long-term economic viability of these communities.[19]

2. Minority neighborhoods are disproportionate recipients of predatory loans.

55. There is a substantial body of empirical evidence demonstrating the prevalence of reverse redlining in the subprime mortgage market. These studies show that, even after controlling for creditworthiness and other legitimate underwriting factors, subprime loans and the predatory practices often associated with subprime lending are disproportionately targeted at minority neighborhoods.[20]

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[18] Center for Responsible Lending, Lost Ground, 2011: *Disparities in Mortgage Lending and Foreclosures* (2011) (*available at* www.responsiblelending.org/mortgage-lending/research--analysis/*Lost-Ground-2011*.pdf).

[19] *Id.*

[20] *See* Abt Associates, *Using Credit Scores to Analyze High-Cost Lending in Central City Neighborhoods* (2008); Center for Responsible Lending, *Lost Ground, 2011: Disparities in Mortgage Lending and Foreclosures* (2011) (*available at* www.responsiblelending.org/-mortgage-lending/research-analysis/*Lost-Ground-2011*.pdf); Center for Responsible Lending, *Unfair Lending: The Effect of Race and Ethnicity on*

56. In general, as recently observed by the Federal Reserve in December 2012, both African-American and Hispanic borrowers were far more likely (in fact, nearly twice more likely) to obtain higher priced loans than were white borrowers. These relationships hold both for home-purchase and refinance lending and for non-conventional loans. These differences are reduced, but not eliminated, after controlling for lender and borrower characteristics. "Over the years, analyses of HMDA data have consistently found substantial differences in the incidence of higher-priced lending across racial and ethnic lines, differences that cannot be fully explained by factors included in the HMDA data."[21]

57. African-Americans and Hispanics were much more likely to receive subprime loans and loans with features that are associated with higher foreclosures, specifically prepayment penalties and

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the Price of Subprime Mortgages (2006) (*available at* http://www.responsiblelending.org/mortgage-lending/research-analysis/rr011-Unfair_Lending-0506.pdf); Finance and Economics Discussion Series Divisions of Research & Statistics and Monetary Affairs Federal Reserve Board, Washington, D.C, *Subprime Mortgages: What, Where, and to Whom?* (2008) (*available at* http://www.nber.org/papers/ w14083.pdf?new_ window=1); C. Reid and E. Laderman, Federal Reserve Bank of San Francisco, *The Untold Costs of Subprime Lending: Examining the Links among Higher-Priced Lending, Foreclosures and Race in California*, Presented at Brandeis University (2009) (*available at* http://iasp.brandeis.edu/pdfs/ Author/reid-carolin/The%20Untold%20Costs%20of%20 Subprime %20Lending%203.pdf).

[21] Federal Reserve Bulletin, *The Mortgage Market in 2011: Highlights from the Data Reported under the Home Mortgage Disclosure Act* (Dec. 2012) (*available at* http://www. federalreserve.gov/pubs/bulletin/2012/PDF/2011_HMDA.pdf).

hybrid or option ARMs. These disparities were evident even comparing borrowers within the same credit score ranges. In fact, the disparities were especially pronounced for borrowers with higher credit scores. For example, among borrowers with a FICO score of over 660 (indicating good credit), African-Americans and Latinos received a high interest rate loan more than three times as often as white borrowers.[22]

58. In addition to receiving a higher proportion of higher-rate loans, African-Americans and Latinos also were much more likely to receive loans with other risky features, such as hybrid and option ARMs and prepayment penalties. Disparities in the incidence of these features are evident across all segments of the credit spectrum.[23]

59. Since 2008, as the data discussed below makes clear, there has been a shift in the types of loans issued - and not issued - by the Bank both in Miami and throughout the country. For example, the Bank shifted from offering new subprime loans toward issuing more Home Equity Lines of Credit ("HELOCs") and higher cost loans including, but not limited to, FHA/VA loans.[24] FHA and VA government loans are characterized as higher risk

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[22] Center for Responsible Lending, *Lost Ground, 2011, supra*, n.17.

[23] *Id.*

[24] While FHA/VA loans are not inherently predatory, these loans have higher risk features such as higher fees and higher interest rates. When banks target minorities for FHA/VA loans and issue more of them to minorities, they are acting in a discriminatory manner.

loans because (a) they are typically more expensive for a borrower than conventional loans and include fees and costs not associated with conventional loans, and (2) several of the government loan programs permit negative amortization.[25] At the same time, in the last several years, the Bank tightened lending requirements in a manner that drastically limited the ability of minority borrowers to refinance or otherwise modify the subprime loans previously issued by the Bank.

60. At the same time that conventional credit has contracted over the past five years, FHA lending has expanded dramatically. During the subprime boom, FHA lending fell as subprime lenders targeted minority communities. Now, with little or no subprime lending, and conventional credit restricted, FHA lending has shot up. Overall, the share of loans with government backing went from 5% in 2005 to 26.6% in 2010.[26]

61. For African-Americans, the share of mortgages used to purchase a home and backed by a government program increased to almost 80% in 2010; for Latinos the share increased to 73%. But for whites, the share increased to only 49%. At present, most minority borrowers cannot gain access to the conventional mortgage market, and instead, are relegated to more expensive FHA loans.[27] As

[25] *See*, *e.g.*, California Reinvestment Coalition, et al., *Paying More for the American Dream VI, Racial Disparities in FHA/VA Lending*, (July 2012); www.fha.com/fha_loan_types; www.benefits.va.gov/homeloans.

[26] Center for Responsible Lending, *supra*, n.8.

[27] *Id.*

discussed above, these government loans often have higher interest, fees, and costs than conventional loans.

B. BoA Intentionally Discriminated Against Minority Borrowers in Violation of the Fair Housing Act Throughout the Time Period 2004-2012 as Demonstrated by Former Bank Employees.

62. Confidential Witnesses ("CWs") are former BoA employees responsible for making and/or underwriting loans on behalf of the Bank in the greater Miami region. CWs describe how the Bank has targeted minorities and residents of minority neighborhoods in and around Miami for predatory lending practices.

63. CW1 was a mortgage loan officer with BoA from 2008 to 2010; she worked in the Bank's Miami-Dade County mortgage lending center in 2010.

64. CW2 was a mortgage loan officer for BoA from 2011 to 2013. Part of his time as a BoA loan officer was spent working in a Miami Beach branch. CW2's job involved writing new mortgages, refinancing mortgages, and helping customers obtain loans through the federal Home Affordable Refinance Program.

65. CW3 was a mortgage loan officer for BoA in Florida from 2005 to 2008; he worked on loans throughout the Miami area.

1. BoA targets minorities for predatory loan terms.

66. According to CW2, a large percentage of the people who wanted to refinance because they were struggling to pay the note on a negative amortization loan were minorities who were not savvy financially. "They (the less savvy minority borrower) didn't know anything about it," he said. "The white American educated (borrower) knew what those loans were and what they were going to do, and they stayed away from them." CW2, who has had his mortgage broker's license for over 25 years, said he believed BoA targeted less savvy minorities for these types of onerous loans.

67. CW2 added that "most people just knew about or wanted to pay that minimum (monthly payment) only. They're in a house and have a roof over their head and didn't realize the negative amortization consequences down the road for them that would make it that much harder to refinance with no equity."

68. CW3 said that most of the borrowers he dealt with in the Miami area were minorities. He explained that "interest-only" and "pick-a-payment" loans were popular in Miami, and he understood that borrowers were approved for such loans based on repayment of interest payments alone - not interest and principal. In CW3's experience, few of the borrowers were able to pay down the loan principal on these loans along with the interest every month. "After four or five years, that's how everything went the way it did," he said. "They couldn't afford it. Half the time they couldn't even afford the (full) interest on those homes." BoA paid its employees more for steering minorities into predatory loans.

69. The confidential witness statements demonstrate that BoA incentivized employees to steer minority borrowers into predatory loans.

70. According to CW1, the most beneficial type of loan for low-income buyers was the CRA loan, which allowed borrowers to obtain large grants for the down payments and closing costs. CRA loans were designed in part to discourage redlining. But, as CW1 explained, "there's no money in those loans for [the Bank]" so the Bank didn't encourage loan officers to make CRA loans.

71. At BoA, the CRA loan process was slow, complicated and labor-intensive. Notably, BoA paid loan officers less commissions on CRA loans than it paid on FHA and other government loans, CW1 said. In effect, BoA incentivized loan officers to put low-income borrowers into less advantageous FHA loans over CRA loans. The Bank did so by paying higher commissions for the FHA loans—CW1 said loan officers received an extra 15 percent in commission on FHA loans compared to CRA loans. CW1 added that minorities missed out on opportunities to get into a CRA loan through BoA.

72. CW3 explained that BoA loan officers earned origination fees and back-end premiums (the difference between the borrower's loan rate and the rate the bank pays for it). He said the back-end premiums were not disclosed to borrowers. He added that loan officers were allowed to charge up to 3 points on the front-end at origination plus up to 5 or 6 points on the back-end. According to CW3, this often eluded less educated, minority borrowers.

2. BoA underwrites teaser rate loans that borrowers cannot afford.

73. BoA originated loans with low teaser rates (e.g., "pick-your-payment" loans, negative amortization loans, etc.), marketed to borrowers from predominantly minority neighborhoods in Miami. Unless properly underwritten, such loans are destined to fail.

74. BoA does not properly underwrite these loans when made to minorities and in minority neighborhoods. BoA does not adequately consider the borrowers' ability to repay these loans, especially after the teaser rate expires and the interest rate increases. The fact that these loans would result in delinquency, default, and foreclosure for many borrowers was, or should have been, clearly foreseeable to BoA at the time the loans were made.

75. The confidential witness statements of CW2 and CW3 support that BoA underwrote these loans as if the teaser rate will apply for the full life of the loan instead of considering the borrowers' ability to repay the loan after the teaser rate expires.

76. The use of negative amortization loans, pick-a-payment notes, and/or other teaser-rate adjustable loans in the manner described above is consistent with the practice of reverse redlining, has subjected minority borrowers to unfair and deceptive loan terms, and has contributed significantly to the high rate of foreclosure found in the minority neighborhoods of Miami.

3. BoA induced foreclosures by failing to offer refinancing or loan modifications to

minority customers on fair terms, and otherwise limiting equal access to fair credit.

77. CW2 explained that, in the 2011-2013 timeframe, BoA did not offer regular refinancing to persons with mortgages at over 80% of the value of the house. Consequently, Boa refused to refinance many of the teaser loans (e.g., negative amortization loans) that it previously marketed to borrowers. CW2 said many of the people in this situation were facing the high likelihood of losing their homes, and many of them were minorities in Miami, both Hispanics and African-Americans.

78. In this manner, BoA induced foreclosures by failing to offer refinancing or loan modifications to minority customers on fair terms - which constitutes a particularly egregious form of redlining, given that minority borrowers sought refinancing or loan modifications with respect to bad loans that the Bank previously made to them.

C. Minorities in Miami Receive Predatory Loan Terms from BoA Regardless of Creditworthiness.

79. As discussed herein, BoA's *predatory* loans include: high-cost loans (*i.e.*, loans with an interest rate that was at least three percentage points above a federally-established benchmark), subprime loans, interest-only loans, balloon payment loans, loans with prepayment penalties, negative amortization loans, no documentation loans, and/or ARM loans with teaser rates (*i.e.*, lifetime maximum rate > initial rate + 6%).

80. Data reported by the Bank and available through both public and private databases

shows that minorities in Miami received predatory loan terms from BoA more frequently than white borrowers, regardless of creditworthiness.

81. A regression analysis of this data controlling for borrower race and objective risk characteristics such as credit history, loan to value ratio, and the ratio of loan amount to income demonstrates that from 2004-2012, an African-American borrower was 1.581 times more likely to receive a predatory loan as was a white borrower possessing similar underwriting and borrower characteristics.[28] The regression analysis further demonstrates that the odds that a Latino borrower would receive a predatory loan were 2.087 times greater than that of a white borrower possessing similar underwriting and borrower characteristics. These odds ratios demonstrate a pattern of statistically significant differences between African-American and white borrowers, and between Latino and white borrowers.[29]

82. This regression analysis also shows that these disparities persist when comparing only borrowers with FICO scores above 660. An African-American borrower with a FICO score above 660 was 1.533 times more likely to receive a predatory loan as was a white borrower with similar underwriting and

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[28] As alleged throughout the complaint, all references to the date range 2004-2012 are intended to include the time period up to and including December 31, 2012.

[29] Statistical significance is a measure of probability that an observed outcome would not have occurred by chance. As used in this Complaint, an outcome is statistically significant if the probability that it could have occurred by chance is less than 10%.

borrower characteristics. A Latino borrower with a FICO score above 660 was 2.137 times more likely to receive a predatory loan as was a white borrower with similar underwriting and borrower characteristics. These odds ratios demonstrate a pattern of statistically significant differences between African-American and white borrowers, and between Latino and white borrowers.

83. A similar regression analysis taking into account the racial makeup of the borrower's neighborhood rather than the individual borrower's race shows that borrowers in heavily minority neighborhoods in Miami were more likely to receive predatory loans than borrowers in heavily white neighborhoods. For example, a borrower in a heavily minority census tract (census tract consisting of at least 90% African-American or Latino households) was 1.585 times more likely to receive a predatory loan as was a borrower with similar characteristics in a non-minority neighborhood (census tract with at least 50% white households). These odds ratios demonstrate a pattern of statistically significant differences between African-American and white borrowers, and between Latino and white borrowers.

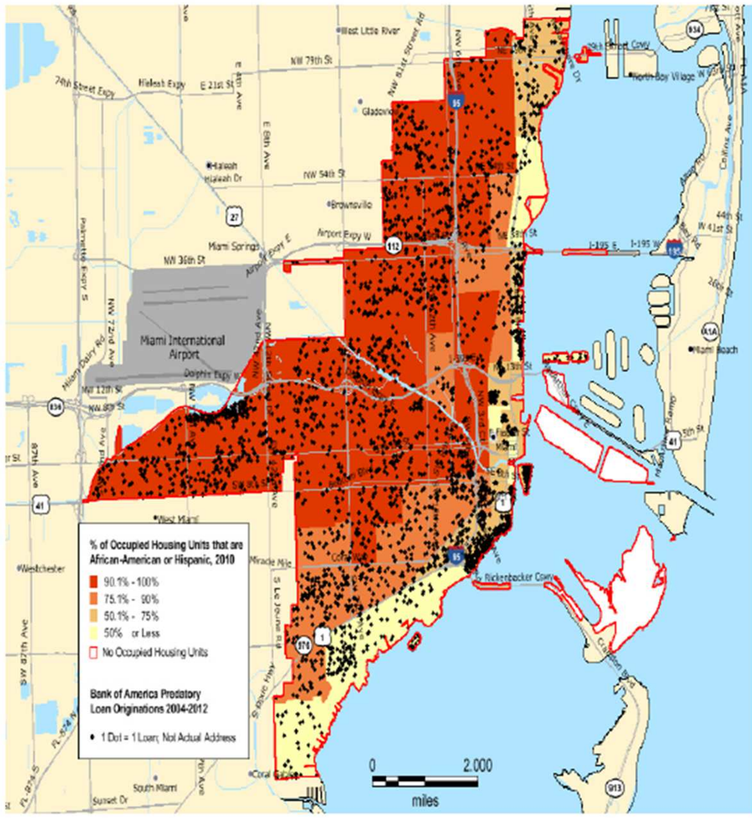
84. This data also establishes that BoA disproportionately issued loans with higher risk features including government loans (FHA/VA) and other high cost loans to African-American and Latino borrowers in Miami from 2008-2012. A regression analysis, controlling for borrower race and objective risk characteristics such as ratio of loan amount to income, demonstrates that an African-American borrower was 5.388 times more likely to receive one of these loans with higher risk features than was a

white borrower possessing similar borrower and underwriting characteristics. The regression analysis further demonstrates that a Latino borrower was 1.685 times more likely to receive one of these loans with higher risk features than was a white borrower possessing similar borrower and underwriting characteristics. These odds ratios demonstrate a pattern of statistically significant differences between African-American and white borrowers, and between Latino and white borrowers.

85. Additionally, data reported by the Bank and available through public databases shows that in 2004-2012, 21.9% of loans made by BoA to African-American and Latino customers in Miami were high-cost, but only 8.9% of loans made to white customers in Miami were high-cost. This data demonstrates a pattern of statistically significant differences in the product placement for high cost loans between minority and white borrowers.

86. Thus, the disparities in Miami are not the result of, or otherwise explained by, legitimate non-racial underwriting criteria.

87. The following map of BoA predatory loans originated in Miami between 2004-2012 illustrates the geographic distribution of predatory loans in African-American and Latino neighborhoods and white neighborhoods in Miami. This map demonstrates that BoA's predatory loans are disproportionately located in minority neighborhoods.



88. The fact that predatory loans involving all of BoA's loan products are more heavily concentrated in minority neighborhoods in Miami is consistent with the practice of reverse redlining and, upon information and belief, has contributed significantly to the disproportionately high rates of foreclosure in minority communities in Miami.

D. Miami's Data Analysis is Corroborated By Additional Studies/Reports.

89. According to *Discretionary Pricing, Mortgage Discrimination, and the Fair Housing Act*, 45 HARVARD CIVIL RIGHTS-CIVIL LIBERTIES

LAW REV. 375, 398 (2010), several studies dating back to 2000 have established that minority borrowers were charged higher interest rates/fees than similar creditworthy white borrowers.

90. Likewise, according to *A Racial Financial Crisis*, 83 TEMPLE LAW REV. 941, 947, 949 (2011), one study concluded that "even after controlling for underwriting variables, African-American borrowers were 6.1% to 34.3% more likely than whites to receive a higher rate subprime mortgage during the subprime boom." And another study found that significant loan pricing disparity exists among low risk borrowers - African-American borrowers were 65% more likely to receive a subprime home purchase loan than similar creditworthy white borrowers, and 124% more likely to receive a subprime refinance loan.

91. Similarly, the Center for Responsible Lending's November 2011 report, *Lost Ground, 2011: Disparities in Mortgage Lending and Foreclosures*, stated that "racial and ethnic differences in foreclosure rates persist even after accounting for differences in borrower incomes." Further, the Center stated it is "particularly troublesome" that minorities received riskier loans "even within [similar] credit ranges." For example, among borrowers having FICO scores above 660, the incidence of higher rate loans among various groups was as follows: whites - 6.2%; African-American - 21.4% (3.5 times white rate); and Latino - 19.3% (3.1 times white rate).

E. BoA's Targeting of Minorities who in fact Receive Predatory Loan Terms Regardless of Creditworthiness Causes Foreclosures.

1. Data shows that BoA's foreclosures are disproportionately located in minority neighborhoods in Miami.

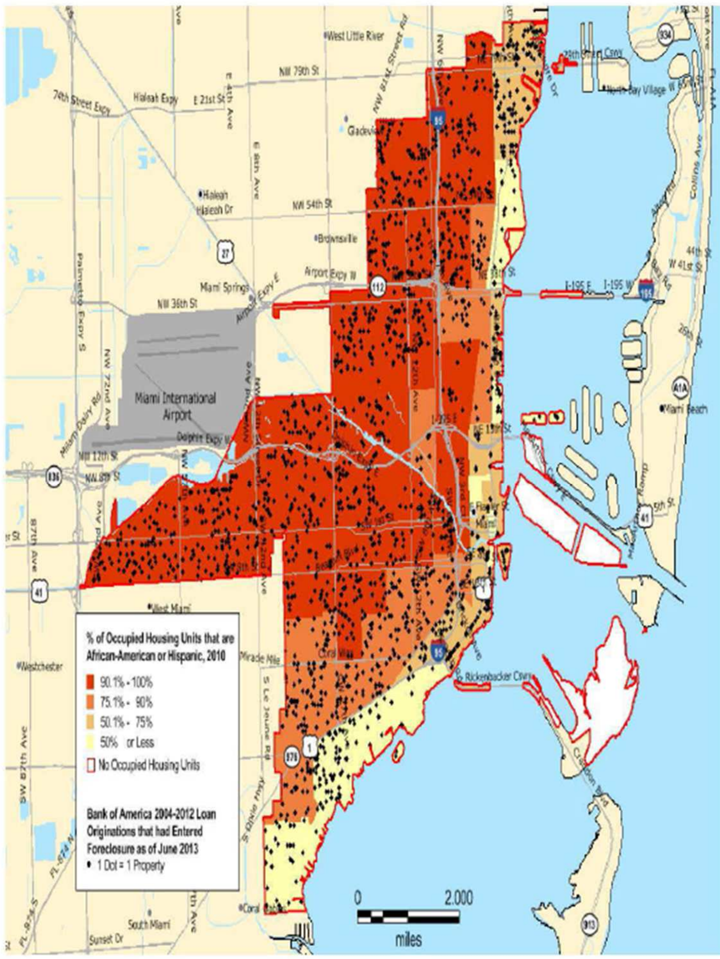
92. BoA has intentionally targeted predatory practices at African-American and Latino neighborhoods and residents. The predatory practices include charging excessively high interest rates and fees that are not justified by borrowers' creditworthiness; providing teaser rate loans with bogus refinance opportunities; requiring large prepayment penalties while deliberately misleading borrowers about the penalties; refusing to refinance or modify predatory loans; and more.

93. Far from being a responsible provider of much-needed credit in minority communities, BoA is a leading cause of stagnation and decline in African-American and Latino neighborhoods where its foreclosures are concentrated. Specifically, since at least 2000, its foreclosures have been concentrated in neighborhoods with African-American or Latino populations exceeding 75%.

94. Although 53.3% of BoA's loan originations in Miami from 2004 to 2012 were in census tracts that are at least 75% African-American or Latino, 62.5% of loan originations that had entered foreclosure by June 2013 were in those census tracts. Similarly, while 84.7% of BoA's loan originations in Miami from 2004 to 2012 occurred in census tracts that are at least 50% African-American

or Latino, 95.7% of BoA's loan originations that had entered foreclosure by June 2013 were in those census tracts. Moreover, while 15.3% of BoA's loan originations in Miami from 2004 to 2012 occurred in census tracts that were less than 50% African-American or Latino, only 4.3% of BoA's loan originations that had entered foreclosure by June 2013 were in those census tracts. This data demonstrates a pattern of statistically significant differences between African-American and white borrowers, and between Latino and white borrowers.

95. The following map represents the concentration of BoA's loan originations from 2004 through 2012 that had entered foreclosure by February 2013 in African-American and Latino neighborhoods. In addition to the disproportionate distribution of BoA foreclosures in African-American and Latino neighborhoods, disparate rates of foreclosure based on race further demonstrate BoA's failure to follow responsible underwriting practices in minority neighborhoods. While 32.8% of BoA's loans in predominantly (greater than 90%) African-American or Latino neighborhoods result in foreclosure, the same is true for only 7.7% of its loans in non-minority (greater than 50%) neighborhoods. In other words, a BoA loan in a predominantly African-American or Latino neighborhood is 5.857 times more likely to result in foreclosure as is a BoA loan in a non-minority neighborhood. These odds ratios demonstrate a pattern of statistically significant differences between African-American and white borrowers, and between Latino and white borrowers.



96. Thus, BoA's discretionary lending policies and pattern or practice of targeting of minorities, who in fact receive predatory loan terms regardless of creditworthiness, have caused and continue to cause foreclosures in Miami.

2. Data shows that BoA's loans to minorities result in especially quick foreclosures in Miami.

97. A comparison of the time from origination to foreclosure of BoA's loans originated in Miami from 2004 to 2012 shows a marked disparity with respect to the speed with which loans to African-Americans and Latinos and whites move into foreclosure. The average time to foreclosure for African-American borrowers is 3.144 years, and for Latino borrowers is 3.090 years. By comparison, the average time to foreclosure for white borrowers is 3.448 years. These statistically significant disparities demonstrate that BoA aggressively moved minority borrowers into foreclosure as compared with how the Bank handled foreclosures for white borrowers.

98. This disparity in time to foreclosure is further evidence that BoA is engaged in lending practices consistent with reverse redlining. The disparity in time to foreclosure demonstrates that BoA is engaged in irresponsible underwriting in African-American and Latino communities that does not serve the best interests of borrowers. If BoA were applying the same underwriting practices in African-American and Latino neighborhoods and white neighborhoods in Miami, there would not be a significant difference in time to foreclosure. Were BoA underwriting borrowers in both communities with equal care and attention to proper underwriting practices, borrowers in African-American and Latino communities would not find themselves in financial straits significantly sooner during the lives of their loans than do borrowers in white communities. The

faster time to foreclosure in African-American and Latino neighborhoods is consistent with underwriting practices in minority communities that are less concerned with determining a borrower's ability to pay and qualifications for the loan than they are in maximizing short-term profit.

99. The HUD/Treasury Report confirms that time to foreclosure is an important indicator of predatory practices: "[t]he speed with which the subprime loans in these communities have gone to foreclosure suggests that some lenders may be making mortgage loans to borrowers who did not have the ability to repay those loans at the time of origination."[30]

3. Data shows that the discriminatory loan terms cause the foreclosures in Miami.

100. BoA's discriminatory lending practices cause foreclosures and vacancies in minority communities in Miami.

101. Steering borrowers into loans that are less advantageous than loans for which they qualify, including steering borrowers who qualify for prime loans into subprime loans, can cause foreclosures because the borrowers are required to make higher loan payments. The difference between what a borrower who is steered in this manner must pay and the lower amount for which the borrower qualified can cause the borrower to be unable to make payments on the mortgage. In such instances, the borrower would have continued to make payments on the mortgage and remained in

[30] HUD/Treasury Report at 25.

possession of the premises had BoA made the loan without improperly steering the borrower into a subprime, or less advantageous loan. Steering borrowers in this manner, therefore, causes foreclosures and vacancies.

102. Giving a loan to an applicant who does not qualify for the loan, especially a refinance or home equity loan, can also cause foreclosures and vacancies. Some homeowners live in properties that he or she owns subject to no mortgage. Other homeowners live in properties with modest mortgages that he or she can comfortably afford to pay. Where a lender, such as BoA, solicits such a homeowner to take out a home equity loan on their property, or alternatively, to refinance an existing loan into a larger loan without proper underwriting to assure that the borrower can make the monthly payments for the new, larger loan, the result is likely to be that the borrower will be unable to make payments on the mortgage. This is particularly true where the borrower is refinanced from a fixed rate loan into an adjustable rate loan that the lender knows the borrower cannot afford, should interest rates rise. In some instances the lender may refinance the borrower into a new loan that the lender knows the borrower cannot sustain, given the borrower's present debt obligations and financial resources. In such circumstances, the likely result of such practices is to cause homeowners who are otherwise occupying properties without a mortgage, or comfortably making payments on a modest existing mortgage, to be unable to make payments on a new, unaffordable loan. This, in turn, causes foreclosures and vacancies. If these unaffordable

refinance and home equity loans had not been made, the subject properties would not have become vacant.

103. A regression analysis of loans issued BoA in Miami from 2004-2012, controlling for objective risk characteristics such as credit history, loan to value ratio, and the ratio of loan amount to income, demonstrates that a predatory loan is 1.721 times more likely to result in foreclosure than is a non-predatory loan.

104. The regression analysis also demonstrates that a predatory loan made to an African-American borrower was 2.744 times more likely to result in foreclosure than was a non-predatory loan made to a white borrower with similar borrower and underwriting characteristics. A predatory loan made to a Latino borrower was 2.861 times more likely as a non-predatory loan made to a white borrower with similar risk characteristics to result in foreclosure. These odds ratios demonstrate a pattern of statistically significant differences between African-American and white borrowers, and between Latino and white borrowers.

105. A regression analysis of loans with higher risk features including government loans (FHA/VA) and other high cost loans issued by BoA in Miami from 2008-2012, controlling for borrower race and objective risk characteristics such as ratio of loan amount to income, demonstrates that these loans are 1.855 times more likely as loans without these risk features to result in foreclosure. These odds ratios demonstrate a pattern of statistically significant differences between African-American

and white borrowers, and between Latino and white borrowers.

VII. INJURY TO MIAMI CAUSED BY BOA'S DISCRIMINATORY LOAN PRACTICES

106. Miami has suffered both non-economic and economic injuries as a direct result of BoA's pattern or practice of reverse redlining and the resulting disproportionately high rate of foreclosure on BoA loans to African-Americans and Latinos in minority neighborhoods in Miami. Miami seeks redress for these injuries. The City does not seek redress in this action for injuries resulting from foreclosures on mortgages originated by lenders other than BoA.

107. BoA continues to engage in the discriminatory pattern or practice described herein with similar and continuing deleterious consequences to the City.

108. Through the use of expert evidence and analytic tools such as Hedonic regression, Miami is capable of establishing that the Bank's discriminatory lending practices were the cause of the resulting injuries alleged herein in a manner that excludes other potential causes.

A. Non-Economic Injuries

109. BoA's conduct has adversely impacted the racial composition of the City and impaired the City's goals to assure racial integration and desegregation and the social and professional benefits of living in an integrated society.

110. The Bank's predatory lending conduct frustrates the City's longstanding and active interest

in promoting fair housing and securing the benefits of an integrated community, which is the purpose and mission of the Miami's Department of Community & Economic Development. The Department, which has responsibility for operating the City's fair housing program, is designed to "affirmatively further fair housing objectives of Title VI of the Civil Rights Act of 1964, Title VIII of the Civil Rights Act of 1968, as amended, and other relevant federal, state, and local housing laws." In discharging that responsibility, the Department "actively works to reduce illegal housing discrimination. The City promotes equal housing opportunity through education and training, monitoring and investigating fair housing complaints utilizing techniques to support fair housing litigation, and conducts research and studies to identify and address fair housing impediments."[31] The Bank's discriminatory lending practices directly interferes with the City's ability to achieve these important objectives.

B. Economic Injuries

111. The City has suffered economic injury based upon reduced property tax revenues resulting from (a) the decreased value of the vacant properties themselves, and (b) the decreased value of properties surrounding the vacant properties. In addition, the City has suffered economic injury resulting from the cost of municipal services that it provided and still must provide to remedy blight and unsafe and dangerous conditions which exist at properties that

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[31] http://www.miamigov.com/communitydevelopment/pages/housing/FairHousing.asp.

were foreclosed as a result of BoA's illegal lending practices.

1. Miami Has Been Injured by a Reduction in Property Tax Revenues from Foreclosures Caused by Discriminatory Loans Issued by BoA.

112. When a home falls into foreclosure, it affects the property value of the foreclosed home as well as the values of other homes in the neighborhood. These decreased property values in turn reduce property tax revenues to the City.

113. As property values drop, Miami communities could lose millions in property tax revenues from the decreased value of the foreclosed homes themselves and those in the surrounding neighborhoods.

114. Homes in foreclosure tend to experience a substantial decline in value relative to those not in foreclosure (e.g., 28%).[32] The relative decline in property values can be measured by a number of objective criteria, including the well-established Case-Shiller Home Price Index for the Miami Metropolitan Statistical Area.

115. A portion of this lost home value is attributable to homes foreclosed as a result of BoA's discriminatory loan practices.

116. The decreased property values of foreclosed homes in turn reduce property tax

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[32] Campbell, John Y., Stefano Giglio, and Parag Pathak, National Bureau of Economic Research, NBER Working Paper Series, "*Forced Sales and House Prices*" (2009) (*available at* http://www.nber.org/papers/w14866.pdf?new_window=1).

revenues to the City and constitute damages suffered by Miami.

117. BoA foreclosure properties and the problems associated with them likewise cause especially significant declines in surrounding property values because the neighborhoods become less desirable. This in turn reduces the property tax revenues collected by Miami.

118. Property tax losses suffered by Miami as a result of vacancies resulting from BoA's foreclosures are fully capable of empirical quantification.

119. Routinely maintained property tax and other data allow for the precise calculation of the property tax revenues lost by the City as a direct result of particular BoA foreclosures. Using a well-established statistical regression technique that focuses on effects on neighboring properties, the City can isolate the lost property value attributable to BoA foreclosures and vacancies from losses attributable to other causes, such as neighborhood conditions. This technique, known as Hedonic regression, when applied to housing markets, isolates the factors that contribute to the value of a property by studying thousands of housing transactions. Those factors include the size of a home, the number of bedrooms and bathrooms, whether the neighborhood is safe, whether neighboring properties are well-maintained, and more. Hedonic analysis determines the contribution of each of these house and neighborhood characteristics to the value of a home.

120. The number of foreclosures in a neighborhood is one of the neighborhood traits that Hedonic analysis can examine. Hedonic analysis allows for the calculation of the impact on a property's value of the first foreclosure in close proximity (e.g., ⅛ or ¼ of a mile), the average impact of subsequent foreclosures, and the impact of the last foreclosure.

121. Foreclosures attributable to BoA in minority neighborhoods in Miami can be analyzed through Hedonic regression to calculate the resulting loss in the property values of nearby homes. This loss can be distinguished from any loss attributable to non-BoA foreclosures or other causes. The loss in property value in minority neighborhoods in Miami attributable to BoA's unlawful acts and consequent foreclosures can be used to calculate the City's corresponding loss in property tax revenues.

122. Various studies establish that Hedonic regression can be used for this purpose. A study published by the Fannie Mae Foundation, using Chicago as an example, determined that each foreclosure is responsible for an average decline of approximately 1.1% in the value of each single-family home within an eighth of a mile.[33]

123. Other studies have focused on the impact of abandoned homes on surrounding property values. A study in Philadelphia, for example, found that each home within 150 feet of an abandoned

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[33] *See* Dan Immergluck & Geoff Smith, *The External Costs of Foreclosure: The Impact of Single-Family Mortgage Foreclosures on Property Values*, 17 HOUSING POLICY DEBATE 57 (2006) at 69.

home declined in value by an average of $7,627; homes within 150 to 299 feet declined in value by $6,810; and homes within 300 to 449 feet declined in value by $3,542.[34]

124. These studies highlight the foreseeability of tax related harm to the City as the result of foreclosures arising from discriminatory loans.

125. And most recently, a Los Angeles study reported, "[i]t is conservatively estimated that each foreclosed property will cause the value of neighboring homes within an eighth of a mile to drop 0.9%." Thus, "[i]n Los Angeles, impacted homeowners could experience property devaluation of $53 billion."[35] This decreased property value of neighboring homes in turn reduces property tax revenues to the City.

126. Application of such Hedonic regression methodology to data regularly maintained by Miami can be used to quantify precisely the property tax injury to the City caused by BoA's discriminatory lending practices and resulting foreclosures in minority neighborhoods.

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[34] *See* Anne B. Shlay & Gordon Whitman, *Research for Democracy: Linking Community Organizing and Research to Leverage Blight Policy*, at 21 (2004).

[35] The Alliance of Californians for Community Empowerment and the California Reinvestment Coalition, The Wall Street Wrecking Ball: *What Foreclosures are Costing Los Angeles Neighborhoods*, at 3 (2011) ("Cost to Los Angeles Report").

2. Miami Is Injured Because It Provided and Still Must Provide Costly Municipal Services for Foreclosure Properties in Minority Neighborhoods as a Direct Result of Discriminatory Loans Originated or Purchased by BoA.

127. BoA foreclosure properties cause direct costs to the City because the City is required to provide increased municipal services at these properties. These services would not have been necessary if the properties had not been foreclosed upon. Moreover, these foreclosures resulting from BoA's unlawful conduct have contributed to the necessity for the City to divert essential municipal services that would have been utilized for other purposes to promote the health, welfare, and safety of its residents.

128. For example, the City's Police Department has sent, and will continue to send personnel and police vehicles to BoA foreclosure properties to respond to a variety of problems, including increased vagrancy, criminal activity, and threats to public health and safety that arise at these properties because of their foreclosure status. Because violent crime has generally been found to increase due to foreclosures, the Miami PD must respond to calls reporting suspicious activity at foreclosure properties and perform ongoing investigations involving criminal activity, including gang activity, at these properties.

129. Likewise, the Miami Fire Department has sent, and will continue to send personnel and resources to BoA foreclosure properties to respond to

a variety of fire-related problems that arise at these properties because of their foreclosure status.

130. The Miami Building Department and Code Enforcement/Code Compliance Departments have devoted, and will continue to devote personnel time and out-of-pocket funds to perform a number of tasks that arise at these properties because of their foreclosure status. These include, but are not limited to the following: (a) inspect and issue permitting violations in contravention of Florida statutes 553 and the Florida Building Code; (b) inspect and issue violations of the Miami City Code and Florida statutes 162; (c) condemn and demolish vacant structures deemed an imminent hazard to public safety.

131. The City frequently hires independent contractors to perform certain services, including, but not limited to, (i) removing excess vegetation at vacant properties, (ii) hauling away trash and debris at vacant properties, (iii) boarding vacant property from casual entry, (iv) putting up fencing to secure vacant properties, (v) painting and removing graffiti at vacant properties. Occasionally, some of these services are performed by the City's General Services Administration Department.

132. The Miami City Attorney's Office has devoted, and will continue to devote personnel time and out-of-pocket resources perform a number of tasks that arise at these properties because of their foreclosure status. These include, but are not limited to the following: (a) prosecuting code enforcement cases; (b) preserving the City's lien rights at judicial foreclosure proceedings; and (c) pursuing court

ordered injunctions involving a myriad of potential problems at foreclosure properties.

133. The City is required to administer and fund the Unsafe Structures Board, which was formerly under the jurisdiction of Miami-Dade County.

134. As described in the Cost to Los Angeles Report, "[l]ocal government agencies have to spend money and staff time on blighted foreclosed properties, providing maintenance, inspections, trash removal, increased public safety calls, and other code enforcement services .... Responding to these needs is a gargantuan task that involves multiple agencies and multiple levels of local government."[36]

135. Moreover, as discussed above, the Apgar-Duda report underscores the foreseeability of municipal costs as the result of foreclosures arising from discriminatory loans. The foreseeability of these costs applies to any city in the country, including Miami.

VIII. SAMPLE PROPERTIES IN THE CITY OF MIAMI

A. Foreclosures

136. Plaintiff has preliminarily identified three thousand three hundred and twenty-six (3,326) discriminatory loans issued by BoA in Miami between 2004-2012 that resulted in foreclosure.[37]

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[36] *Id.*

[37] Plaintiff anticipates that it will be able to identify more foreclosures resulting from the issuance of discriminatory loans during this time period with the benefit of discovery. This conclusion derives from the fact that because of certain

The City has already incurred, or will incur in the future, damages corresponding to each of these properties. A sample of property addresses corresponding to these foreclosures is set forth below:

1. Foreclosures Corresponding to Loans Originated Subsequent to 2008 That Are Unrelated to Conduct Perpetrated by Countrywide.

240 NW 67th Ave., 33126

1320 NW 35th St., 33142

1476 NW 57th St., 33142

1842 NW 43rd St., 33142

950 SW 2nd St. # 16, 33130

2. Foreclosures Corresponding to Loans Originated Prior to 2008.

1073 NW 64th St., 33150

253 NW 73rd St., 33150

2728 NW 23rd Ct., 33142

B. Predatory Loans Issued Subsequent to December 13, 2011.

137. BoA has continued to issue discriminatory loans in Miami subsequent to December 13, 2011. A sample of property addresses corresponding to the issuance of these loans is set forth below. Based upon the experts' analysis in this case to date, coupled with their analysis in previous

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reporting limitations, the publicly-available mortgage loan databases utilized by Plaintiff are not as comprehensive as the mortgage loan databases maintained by, and in the possession of, an issuing bank.

predatory lending cases, they are aware that a percentage of these predatory loans originated subsequent to December 13, 2011 will eventually enter the foreclosure process, thereby damaging the City.

650 NW 50th St., 33127

4125 NW 10th Ave., 33127

748 NW 29th Ter. Unit A, 33127

1869 SW 12th St., 33135

800 N. Miami Ave. Unit E-1005, 33136

2396 20th St., 33145

2201 SW 23rd Ter., 33145

IX. STATUTE OF LIMITATIONS AND CONTINUING VIOLATIONS DOCTRINE

138. As alleged herein, Defendant BoA has engaged in a continuous pattern and practice of mortgage discrimination in Miami since at least 2004 by imposing different terms or conditions on a discriminatory and legally prohibited basis. In order to maximize profits at the expense of the City of Miami and minority borrowers, BoA adapted its unlawful discrimination to changing market conditions and originated predatory mortgages in accordance with the various specific practices referenced herein. This unlawful pattern and practice of discriminatory conduct and the specific practices referenced herein is continuing through the present and have not terminated. Therefore, the operative statute of limitations governing actions brought pursuant to the Federal Fair Housing Act has not commenced to run.

IX. CLAIMS FOR RELIEF

FIRST CLAIM FOR RELIEF

(Violation of the Federal Fair Housing Act, 42 U.S.C. §§ 3601, et seq.)

139. Plaintiff repeats and incorporates by reference all allegations contained in the preceding paragraphs as if fully set forth herein.

140. BoA's acts, policies, and practices as described constitute intentional discrimination on the basis of race. BoA has intentionally targeted residents of predominantly African-American and Latino neighborhoods in Miami for different treatment than residents of predominantly white neighborhoods in Miami with respect to mortgage lending. BoA has intentionally targeted residents of these neighborhoods for high-cost loans without regard to their credit qualifications and without regard to whether they qualify for more advantageous loans, including prime loans. BoA has intentionally targeted residents of these neighborhoods for increased interest rates, points, and fees, and for other disadvantageous loan terms including, but not limited to, adjustable rates, prepayment penalties, and balloon payments. BoA has intentionally targeted residents of these neighborhoods for unfair and deceptive lending practices in connection with marketing and underwriting mortgage loans.

141. BoA's acts, policies, and practices have had an adverse and disproportionate impact on African-Americans and Latinos and residents of predominantly African-American and Latino neighborhoods in Miami as compared to similarly

situated whites and residents of predominantly white neighborhoods in Miami. This adverse and disproportionate impact is the direct result of BoA's policies of providing discretion to loan officers and others responsible for mortgage lending; failing to monitor this discretion to ensure that borrowers were being placed in loan products on a nondiscriminatory basis when BoA had notice of widespread product placement disparities based on race and national origin; giving loan officers and others responsible for mortgage lending large financial incentives to issue loans to African-Americans and Latinos that are costlier than better loans for which they qualify; otherwise encouraging and directing loan officers and others responsible for mortgage lending to steer borrowers into high-cost loans or loans with adjustable rates, prepayment penalties, or balloon payments without regard for whether they qualify for better loans, including but not limited to prime loans; and setting interest rate caps. These policies have caused African-Americans and Latinos and residents of predominantly African-American and Latino neighborhoods in Miami to receive mortgage loans from BoA that have materially less favorable terms than mortgage loans given by BoA to similarly situated whites and residents of predominantly white neighborhoods in Miami, and that are materially more likely to result in foreclosure.

142. BoA's residential lending-related acts, policies, and practices constitute reverse redlining and violate the Fair Housing Act as:

a) Discrimination on the basis of race and national origin in making available, or in the terms and conditions of, residential real estate-related transactions, in violation of 42 U.S.C. § 3605(a); and

b) Discrimination on the basis of race and national origin in the terms, conditions, or privileges of sale of a dwelling, in violation of 42 U.S.C. § 3604(b).

143. BoA's policies or practices are not justified by business necessity or legitimate business interests.

144. BoA's policies and practices are continuing.

145. The City is an aggrieved person as defined by 42 U.S.C. § 3602(i) and has suffered damages as a result of BoA's conduct.

146. The City's damages include lost tax revenues and the need to provide increased municipal services. The loss of tax revenues at specific foreclosure sites and at closely neighboring properties in predominantly minority neighborhoods of the City was a foreseeable consequence that was fairly traceable to BoA's discriminatory lending. Likewise, the need to provide increased municipal services at blighted foreclosure sites in predominantly minority neighborhoods of the City was a foreseeable consequence that was fairly traceable to BoA's discriminatory lending.

147. BoA's policies and practices, as described herein, had the purpose and effect of discriminating on the basis of race or national origin. These policies and practices were intentional, willful, or implemented with reckless disregard for the rights of African-American and Latino borrowers.

SECOND CLAIM FOR RELIEF

(Common Law Claim For Unjust Enrichment Based On Florida Law)

148. Plaintiff repeats and incorporates by reference paragraphs 1 - 138 as if fully set forth herein.

149. Defendants have received and utilized benefits derived from a variety of municipal services, including police and fire protection, as well as zoning ordinances, tax laws, and other laws and services that have enabled Defendants to operate and profit within the City of Miami while engaging in a lengthy pattern and practice of unlawful activity. Defendants are not legally entitled to the benefits of these services to the extent they were utilized to further the unlawful conduct alleged herein.

150. Defendants are aware of and have taken advantage of the services and laws provided by the City of Miami to further their unlawful businesses practices.

151. As a direct and proximate result of Defendants' predatory lending practices, Defendants have been enriched at the City's expense by utilizing benefits conferred by the City and, rather than engaging in lawful lending practices, practicing unlawful lending practices that have both denied the City revenues it had properly expected through property and other tax payments and by costing the City additional monies for services it would not have had to provide in the neighborhoods affected by foreclosures due to predatory lending, absent the Defendants' unlawful activities. Additionally, by foreclosing on the properties for which BoA issued

predatory loans, the City expended otherwise unnecessary externalities to protect the properties acquired by Defendants in foreclosure, including, at a minimum, increased police protection. Defendants were specially benefitted as the new owners of these properties. Defendants have failed to remit those wrongfully obtained benefits or reimburse the City for its costs improperly caused by Defendants, and retention of the benefits by Defendants would be unjust without payment.

152. In addition, to its detriment the City has paid for the Defendants' externalities, or Defendants' costs of harm caused by its mortgage lending discrimination, in circumstances where Defendants are and have been aware of this obvious benefit and retention of such benefit would be unjust.

DEMAND FOR JURY TRIAL

Pursuant to Fed. R. Civ. P. 38(b), the City demands a trial by jury on all issues so triable.

PRAYER FOR RELIEF

WHEREFORE, the City respectfully prays that the Court grant it the following relief:

A. Enter a declaratory judgment that the foregoing acts, policies, and practices of BoA violate 42 U.S.C. §§ 3604 and 3605;

B. Enter a permanent injunction enjoining BoA and its directors, officers, agents, and employees from continuing the discriminatory conduct described herein, and directing BoA and its directors, officers, agents, and employees to take all affirmative steps necessary to remedy the effects of the discriminatory conduct described herein and to prevent additional instances of such conduct or similar conduct from occurring in the future, pursuant to 42 U.S.C. § 3613(c)(1);

C. Award compensatory damages to the City of Miami in an amount to be determined by the jury that would fully compensate the City for its injuries caused by the conduct of BoA alleged herein, pursuant to 42 U.S.C. § 3613(c)(1);

D. Award punitive damages to the City in an amount to be determined by the jury that would punish BoA for the willful, wanton and reckless conduct alleged herein, and that would effectively deter similar conduct in the future, pursuant to 42 U.S.C. § 3613(c)(1);

E. Award the City its reasonable attorneys' fees and costs, pursuant to 42 U.S.C. § 3613(c)(2);

F. Require payment of pre-judgment interest on monetary damages; and

G. Order such other relief as this Court deems just and equitable.

Date: July 21, 2014 Respectfully submitted,

/s/Lance A. Harke

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Attorneys for Plaintiff

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA

No. 1:13-cv-24508

CITY OF MIAMI,
a Florida municipal corporation,

Plaintiff,

v.

WELLS FARGO & CO.,

WELLS FARGO BANK, N.A.,

Defendants.

DOCKET ENTRIES

Date	#	Docket Text
12/13/2013	1	COMPLAINT *CITY OF MIAMI* against All Defendants. Filing fees $ 400.00 receipt number 113C¬6310923, filed by CITY OF MIAMI. (Attachments: # 1 Civil Cover Sheet) (Harke, Lance) (Entered: 12/13/2013)
		* * *
03/18/2014	31	MOTION TO DISMISS 1 Complaint FOR FAILURE TO STATE A CLAIM *and for Lack of Jurisdiction and Supporting Memorandum of Law* by Wells Fargo & Co., Wells Fargo Bank, N.A. Responses due by 4/4/2014

Date	#	Docket Text
		(Attachments: # 1 Exhibit Exhibit A - Declaration of Paul F. Hancock in Support of Defendants' Motion to Dismiss, # 2 Exhibit Exhibit 1 to Declaration of Paul F. Hancock, # 3 Exhibit Exhibit 2 to Declaration of Paul F. Hancock) (Hancock, Paul) (Entered: 03/18/2014)
03/18/2014	32	MOTION for Hearing re 31 MOTION TO DISMISS 1 Complaint FOR FAILURE TO STATE A CLAIM *and for Lack of Jurisdiction and Supporting Memorandum of Law* by Wells Fargo & Co., Wells Fargo Bank, N.A. (Hancock, Paul) (Entered: 03/18/2014)
03/19/2014	33	ORDER DENYING 32 Defendants' Request for Oral Argument on Their Motion to Dismiss. In the event the Court needs clarification of the issues presented, the Court will order oral arguments sua sponte. This entry constitutes the ENDORSED ORDER in its entirety. Signed by Judge Joan A. Lenard on 3/19/2014. (gie) (Entered: 03/19/2014)

* * *

Date	#	Docket Text
04/04/2014	39	RESPONSE in Opposition re 31 MOTION TO DISMISS 1 Complaint FOR FAILURE TO STATE A CLAIM *and for Lack of Jurisdiction and Supporting Memorandum of Law* filed by City of Miami. (Attachments: # 1 Affidavit DECLARATION OF ELAINE T. BYSZEWSKI IN SUPPORT OF PLAINTIFF'S OPPOSITION TO DEFENDANTS' MOTION TO DISMISS, # 2 Exhibit EXHIBIT A TO DECLARATION OF ELAINE T. BYSZEWSKI IN SUPPORT OF PLAINTIFF'S OPPOSITION TO DEFENDANTS' MOTION TO DISMISS) (Harke, Lance) (Entered: 04/04/2014)
04/14/2014	40	REPLY to Response to Motion re 31 MOTION TO DISMISS 1 Complaint FOR FAILURE TO STATE A CLAIM *and for Lack of Jurisdiction and Supporting Memorandum of Law* filed by Wells Fargo & Co., Wells Fargo Bank, N.A. (Attachments: # 1 Exhibit A) (Hancock, Paul) (Entered: 04/14/2014)
05/29/2014	41	Notice of Supplemental Authority re 39 Response in Opposition to Motion, by City of Miami (Attachments: # 1 Exhibit A -

Date	#	Docket Text
		Order (City of Los Angeles v. Wells Fargo & Co.) (Harke, Lance) (Entered: 05/29/2014)
06/09/2014	42	Notice of Supplemental Authority re 39 Response in Opposition to Motion, by City of Miami (Attachments: # 1 Exhibit Exhibit A) (Harke, Lance) (Entered: 06/09/2014)
		* * *
06/13/2014	44	Notice of Supplemental Authority re 39 Response in Opposition to Motion, by City of Miami (Attachments: # 1 Exhibit Exhibit A) (Harke, Lance) (Entered: 06/13/2014)
		* * *
06/20/2014	47	Unopposed MOTION for Hearing re 31 MOTION TO DISMISS 1 Complaint FOR FAILURE TO STATE A CLAIM *and for Lack of Jurisdiction and Supporting Memorandum of Law Renewed Request for Oral Argument* by Wells Fargo & Co., Wells Fargo Bank, N.A. (Hancock, Paul) (Entered: 06/20/2014)
		* * *
07/09/2014	49	ORDER denying as moot 47 Motion for Hearing; granting 31 Motion to Dismiss Signed by Judge William P. Dimitrouleas on

Date	#	Docket Text
		7/9/2014. (cqs) Modified text per chambers on 7/9/2014 (mno). (Entered: 07/09/2014)
07/21/2014	50	MOTION for Reconsideration re 49 Order on Motion for Hearing, Order on Motion to Dismiss for Failure to State a Claim, MOTION for Leave to File First Amended Complaint by City of Miami. (Attachments: # 1 Exhibit A - First Amended Complaint) (Harke, Lance) (Entered: 07/21/2014)
08/07/2014	51	RESPONSE in Opposition re 50 MOTION for Reconsideration re 49 Order on Motion for Hearing, Order on Motion to Dismiss for Failure to State a Claim MOTION for Leave to File First Amended Complaint filed by Wells Fargo & Co., Wells Fargo Bank, N.A. (Attachments: # 1 Exhibit A, # 2 Exhibit B) (Licko, Carol) (Entered: 08/07/2014)
08/18/2014	52	RESPONSE/REPLY to 50 MOTION for Reconsideration re 49 Order on Motion for Hearing, Order on Motion to Dismiss for Failure to State a Claim MOTION for Leave to File First Amended Complaint by City of Miami. (Harke, Lance) (Entered: 08/18/2014)

Date	#	Docket Text
09/09/2014	53	ORDER denying 50 Motion for Reconsideration. (Amended Pleadings due by 9/15/2014.) Signed by Judge William P. Dimitrouleas on 9/8/2014. (cqs) (Entered: 09/09/2014)
09/16/2014	54	FINAL ORDER OF DISMISSAL. Signed by Judge William P. Dimitrouleas on 9/16/2014. (cqs)
10/07/2014	55	Notice of Appeal as to 54 Order Dismissing Case, by City of Miami. Filing fee $ 505.00 receipt number 113C-7136132. Within fourteen days of the filing date of a Notice of Appeal, the appellant must complete the Eleventh Circuit Transcript Order Form regardless of whether transcripts are being ordered [Pursuant to FRAP 10(b)]. For information go to our FLSD website under Transcript Information. (Harke, Lance) (Entered: 10/07/2014)
10/08/2014		Transmission of Notice of Appeal, Order and Docket Sheet to US Court of Appeals re 55 Notice of Appeal. Notice has been electronically mailed. (mc) (Entered: 10/08/2014)
10/14/2014	56	Acknowledgment of Receipt of NOA from USCA re 55 Notice of Appeal, filed by City of Miami. Date received by USCA: 10/8/2014.

Date	#	Docket Text
		USCA Case Number: 14-14544-BB. (amb) (Entered: 10/14/2014)
02/05/2015	57	Pursuant to F.R.A.P. 11(c), the Clerk of the District Court for the Southern District of Florida certifies that the record is complete for purposes of this appeal re: 55 Notice of Appeal, Appeal No. 14-14544-BB. The entire record on appeal is available electronically. (mc) (Entered: 02/05/2015)
05/12/2015	58	ORDER of USCA Joint motion to consolidate appeals 14-14543, 14-14544 and 14-14706 for the purposes of oral argument is hereby GRANTED; (55 in 1:13-cv-24508-WPD) Notice of Appeal, filed by City of Miami, (72 in 1:13-cv-24510-WPD) Notice of Appeal, filed by CITY OF MIAMI, (78 in 1:13-cv-24506-WPD) Notice of Appeal, filed by City of Miami. (mc) (Entered: 05/12/2015)
11/13/2015	59	MANDATE of USCA the judgment of the district court is AFFIRMED in part, REVERSED in part, and REMANDED for further proceedings consistent with this opinion re 55 Notice of Appeal, filed by City of Miami; Date Issued: 11/13/2015; USCA Case

Date	#	Docket Text
		Number: 14-14544-BB (mc) (Entered: 11/13/2015)
		* * *
11/30/2015	61	Second AMENDED COMPLAINT *for Violations of the Federal Fair Housing Act* against Wells Fargo & Co., Wells Fargo Bank, N.A., filed by City of Miami. (Harke, Lance) (Entered: 11/30/2015)
		* * *
12/14/2015	64	MOTION to Dismiss 61 Amended Complaint by Wells Fargo & Co., Wells Fargo Bank, N.A. Responses due by 12/31/2015 (Attachments: # 1 Exhibit A - Declaration of Carol A. Licko) (Licko, Carol) (Entered: 12/14/2015)
		* * *
01/15/2016	67	RESPONSE in Opposition re 64 MOTION to Dismiss 61 Amended Complaint filed by City of Miami. Replies due by 1/25/2016. (Harke, Lance) (Entered: 01/15/2016)
01/29/2016	68	REPLY in Support re 64 MOTION to Dismiss 61 Amended Complaint filed by Wells Fargo & Co., Wells Fargo Bank, N.A. (Licko, Carol) Modified title text on 2/1/2016 (asl). (Entered: 01/29/2016)
02/29/2016	69	MOTION for Hearing re 64 MOTION to Dismiss 61 Amended Complaint by Wells Fargo & Co.,

Date	#	Docket Text
		Wells Fargo Bank, N.A. (Licko, Carol) (Entered: 02/29/2016)
03/01/2016	70	ORDER Granting 69 REQUEST FOR ORAL ARGUMENT. Hearing on Defendant's 64 Motion to Dismiss set for 3/11/2016 at 10:00 AM in Fort Lauderdale Division before Judge William P. Dimitrouleas. Signed by Judge William P. Dimitrouleas on 3/1/2016. (srd) Modified on to reflect link 3/3/2016 (mr1). (Entered: 03/02/2016)
		* * *
03/11/2016	75	Minute Entry for proceedings held before Judge William P. Dimitrouleas: Motion Hearing held on 3/11/2016 re 64 MOTION to Dismiss 61 Amended Complaint filed by Wells Fargo Bank, N.A., Wells Fargo & Co. Oral argument heard. Written order to enter. Court Reporter: Francine_ Salopek, 954-769-5657 / Francine_Salopek@flsd.uscourts.gov (kc) (Entered: 03/11/2016)
		* * *
03/17/2016	77	ORDER Granting 64 Motion to Dismiss SECOND AMENDED COMPLAINT. Amended Complaint due by 4/15/2016. Signed by Judge William

Date	#	Docket Text
		P. Dimitrouleas on 3/17/2016. (srd) (Entered: 03/17/2016)
		* * *
04/29/2016	80	Third AMENDED COMPLAINT *FOR VIOLATIONS OF THE FEDERAL FAIR HOUSING ACT* against Wells Fargo & Co., Wells Fargo Bank, N.A. filed in response to Order Granting Motion for Leave, filed by City of Miami. (Harke, Lance) (Entered: 04/29/2016)
		* * *
05/24/2016	83	MOTION to Dismiss 80 Amended Complaint *Wells Fargo's Motion to Dismiss With Prejudice The City's Third Amended Complaint and Request for Hearing* by Wells Fargo & Co., Wells Fargo Bank, N.A.. Responses due by 6/10/2016 (Attachments: # 1 Exhibit Exhibit 1, # 2 Exhibit Exhibit 2, # 3 Exhibit Exhibit 3, # 4 Exhibit Exhibit 4) (Licko, Carol) (Entered: 05/24/2016)
		* * *
06/10/2016	87	RESPONSE in Opposition re 83 MOTION to Dismiss 80 Amended Complaint *Wells Fargo's Motion to Dismiss With Prejudice The City's Third Amended Complaint and Request for Hearing* filed by City

Date	#	Docket Text
		of Miami. Attorney D. Porpoise Evans added to party City of Miami (pty:pla). Replies due by 6/20/2016. (Evans, D.) (Entered: 06/10/2016)
		* * *
06/20/2016	96	REPLY to Response to Motion re 83 MOTION to Dismiss 80 Amended Complaint *Wells Fargo's Motion to Dismiss With Prejudice The City's Third Amended Complaint and Request for Hearing* filed by Wells Fargo & Co., Wells Fargo Bank, N.A. (Licko, Carol) (Entered: 06/20/2016)
		* * *
06/29/2016	100	ANSWER and Affirmative Defenses to Amended Complaint by Wells Fargo & Co., Wells Fargo Bank, N.A. (Licko, Carol) (Entered: 06/29/2016)
06/30/2016	101	Unopposed MOTION to Stay *Further Proceedings Pending The Supreme Court's Disposition Of Matters Now Before The Court* by Wells Fargo & Co., Wells Fargo Bank, N.A. Responses due by 7/18/2016 (Attachments: # 1 Exhibit 1, # 2 Exhibit 2) (Licko, Carol) (Entered: 06/30/2016)
07/13/2016	102	ORDER STAYING CASE Case

Date	#	Docket Text
		Administratively Closed Motions terminated: 83 MOTION to Dismiss 80 Amended Complaint *Wells Fargo's Motion to Dismiss With Prejudice The City's Third Amended Complaint and Request for Hearing* filed by Wells Fargo Bank, N.A., Wells Fargo & Co., 101 Unopposed MOTION to Stay *Further Proceedings Pending The Supreme Court's Disposition Of Matters Now Before The Court* filed by Wells Fargo Bank, N.A., Wells Fargo & Co. Signed by Judge William P. Dimitrouleas on 7/13/2016. (ots)

UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 14-14544

CITY OF MIAMI,
a Florida municipal corporation,

Plaintiff - Appellant,

v.

WELLS FARGO & CO.,
WELLS FARGO BANK, N.A.

Defendant - Appellees.

DOCKET ENTRIES

Date	Docket Text
10/08/2014	CIVIL APPEAL DOCKETED. Notice of appeal filed by Appellant City of Miami on 10/07/2014. Fee Status: Fee Paid. No hearings to be transcribed. The appellants brief is due on or before 11/17/2014. The appendix is due no later than 7 days from the filing of the appellant's brief. Awaiting Appellant's CIP Due on 11/03/2014 as to Appellant City of Miami
	* * *
12/08/2014	Appellant's brief filed by City of Miami. (ECF: Robert Peck)
12/08/2014	Appendix filed [2 VOLUMES] by Appellant City of Miami. (ECF: Robert

Date	Docket Text
	Peck)
	* * *
02/02/2015	Appellee's Brief filed by Appellees Wells Fargo Bank & Co. and Wells Fargo Bank, N.A. (ECF: Carol Licko)
	* * *
02/27/2015	Reply Brief filed by Appellant City of Miami. (ECF: Robert Peck)
	* * *
05/19/2015	Oral argument held. Oral Argument participants were Robert S. Peck for Appellant City of Miami and Thomas Hefferon for Appellees Countrywide Home Loans, BAC, CFC, Bank of America, N.A. and Countrywide Bank, FSB in 14-14543, Attorney Paul Francis Hancock for Appellees Wells Fargo Bank, N.A. and Wells Fargo Bank & Co. in 14-14544, Attorney Stephen Joseph Kane for Appellees CitiMortgage, Inc., Citibank, N.A., C^C, Citi Holdings, Inc. and CitiCorp Trust Bank, FSB in 14-14706. [14-14543, 14-14544, 14-14706]
	* * *
09/01/2015	Opinion issued by court as to Appellant City of Miami. Decision: Affirmed in part, Reversed in part, and Remanded. Opinion type: Published. Opinion method: Signed. The opinion is also available through the Court's Opinions

Date	Docket Text
	page at this link http://www.ca11.uscourts.gov/opinions.
09/01/2015	Judgment entered as to Appellant City of Miami.
	* * *
09/21/2015	Petition for panel rehearing only filed by Appellees Wells Fargo Bank & Co. and Wells Fargo Bank, N.A. (ECF: Carol Licko)
11/05/2015	ORDER: Petition for panel rehearing only filed by Appellees Wells Fargo Bank, N.A. and Wells Fargo Bank & Co. is DENIED. [7618308-1]
11/13/2015	Mandate issued as to Appellant City of Miami.

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. _______

CITY OF MIAMI,
a Florida municipal corporation,

Plaintiff,

v.

WELLS FARGO & CO., and
WELLS FARGO BANK, N.A.,

Defendants.

Filed: December 13, 2013

DEMAND FOR JURY TRIAL

COMPLAINT
FOR VIOLATIONS OF THE FEDERAL FAIR HOUSING ACT

[Table of Contents omitted]

I. NATURE OF THE ACTION

1. It is axiomatic that banks should not make discriminatory loans. Banks must extend credit to minorities on equal terms as they do to other similarly situated borrowers. Banks should not target minority neighborhoods for loans that discriminate nor make loans to minorities on terms that are worse than those offered to whites with

similar credit characteristics. When Banks engage in such discriminatory conduct, the misconduct has profound financial consequences for the cities in which mortgaged properties exist, and Banks should be responsible for those financial consequences. Banks should reimburse the City for lost tax revenues due to discriminatory lending. And banks should pay the costs of repairing and maintaining properties that go into foreclosure due to discriminatory lending. This lawsuit arises because Wells Fargo breached these legally mandated obligations and foreseeably injured the City of Miami.

A. Wells Fargo Has Engaged in a Continuing Pattern of Discriminatory Mortgage Lending Practices in Miami Resulting in Foreclosures

2. This suit is brought pursuant to the Fair Housing Act of 1968 ("FHA"), as amended, 42 U.S.C. §§ 3601, *et seq.*, by the City of Miami ("Miami" or "City") to seek redress for injuries caused by Wells Fargo's[1] ("Wells Fargo" or "the Bank") pattern or practice of illegal and discriminatory mortgage lending. Specifically, Miami seeks injunctive relief and damages for the injuries caused by foreclosures

[1] Defendants collectively are referred to as "Wells Fargo," including: Wells Fargo & Co., and Wells Fargo Bank, N.A. Plaintiff alleges that Defendants are also liable for residential home loans and lending operations acquired from, and/or sold by or through, AM Mortgage Network DBA Vertice, American Mortgage, Amencan Mortgage Network, American Mortgage Network DBA Vertice, Wachovia Mortgage, Wachovia Mortgage, FSB, World Savings Bank, and World Savings Bank, FSB.

on Wells Fargo's loans in minority neighborhoods and to minority borrowers that are the result of Wells Fargo's unlawful and discriminatory lending practices. The unlawful conduct alleged herein consists of both intentional discrimination and disparate impact discrimination.

3. The State of Florida in general, and the City of Miami in particular, have been devastated by the foreclosure crisis. As of October 2013, Florida has the country's highest foreclosure rate, and Miami has the highest foreclosure rate among the 20 largest metropolitan statistical areas in the country.[2] Moreover, Florida is by far the leading state in the country with regard to owner-vacated or "Zombie" foreclosures.[3]

4. The foreclosure crisis in Florida resulted in such drastic consequences that the Florida Supreme Court established a Task Force to recommend "policies, procedures, strategies, and methods for easing the backlog of pending residential mortgage foreclosure cases while protecting the rights of parties."[4]

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[2] RealtyTrac, *Scheduled Judicial Foreclosure Auctions Increase Annually for 16th Straight Month, Foreclosure Starts Up Monthly for Second Straight Month, Big Jumps in FL, IL, CO*, (Nov. 14, 2013) (*available at* http://www.realtytrac.com/content/foreclosure-market-report/october-2013-us-foreclosure-market-report-7934).

[3] RealtyTrac, *Q12013 Foreclosure Inventory Update*, pg. 5 (*available at* http://www.realtytrac.com/images/reportimages/RealtyTrac Foreclosure Inventory_A narysis_Q1_2013.pdf).

[4] Florida Supreme Court Task Force On Residential Mortgage Foreclosure Cases, *Final Report And Recommendations* (August

5. Wells Fargo has engaged in a continuous pattern and practice of mortgage discrimination in Miami since at least 2004 by imposing different terms or conditions on a discriminatory and legally prohibited basis. In order to maximize profits at the expense of the City of Miami and minority borrowers, Wells Fargo adapted its unlawful discrimination to changing market conditions. This unlawful pattern and practice is continuing through the present and has not terminated. Therefore, the operative statute of limitations governing actions brought pursuant to the Federal Fair Housing Act has not commenced to run.

6. The pattern and practice of lending discrimination engaged in by Wells Fargo consists of traditional redlining[5] and reverse redlining,[6] both of which have been deemed to violate the FHA by federal courts throughout the country. Wells Fargo engaged in redlining, and continues to engage in said conduct, by refusing to extend mortgage credit to minority borrowers in Miami on equal terms as to non-minority borrowers. Wells Fargo engaged in reverse redlining, and continues to engage in said conduct, by extending mortgage credit on predatory terms to minority borrowers in minority neighborhoods in Miami on the basis of the race, or ethnicity of its residents. Federal Reserve Chairman

17, 2009) (*available at* www.floridasupremecourt.org/.../ Filed_08-17-2009_ Foreclosure _Final_).

[5] Redlining is the practice of denying credit to particular neighborhoods based on race.

[6] Reverse redlining is the practice of flooding a minority community with exploitative loan products.

Ben Bernanke recently acknowledged these twin evils of mortgage discrimination and explained that both types of mortgage discrimination "continue to have particular significance to mortgage markets."[7]

7. Major banks such as Wells Fargo have a long history of engaging in redlining throughout Miami. That practice began to change in the late 1990s, when Wells Fargo adapted to changing market conditions and began to flood historically underserved minority communities with mortgage loans that consisted of a variety of high cost and abusive mortgage loan products with predatory terms as compared to the mortgage loans issued to similarly-situated white borrowers (reverse redlining).

8. Wells Fargo's discriminatory lending practices have the purpose and effect of placing vulnerable, underserved borrowers in loans they cannot afford. Reverse redlining maximizes Wells Fargo's profit without regard to the borrower's best interest, the borrower's ability to repay, or the financial health of underserved minority neighborhoods. Moreover, Wells Fargo has averted any significant risk to itself by selling the vast majority of mortgage loans it originates or purchases on the secondary market (collectively "Wells Fargo Loans").

9. Between 1996-2006, one category of discriminatory loan products - subprime loans - grew

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[7] Remarks by Federal Reserve Chairman Ben Bernanke at the Operation HOPE Global Financial Dignity Summit, Atlanta, Georgia at pg. 10 (November 15, 2012) (*available at* www.federalreserve.govinewsevents/speethThernanke20121115 a.htm).

throughout the country from $97 billion to $640 billion. These loans were frequently targeted to minorities. Upon information and belief, the lack of accessible credit resulting from Wells Fargo's previous pattern and practice of redlining in the minority communities in Miami created conditions whereby the Bank could easily target and exploit the underserved minority communities who due to traditional redlining had been denied credit.

10. Thereafter, following several years of issuing abusive, subprime mortgage loans throughout the minority communities of Miami, commencing in or around 2007, Wells Fargo once again adapted to changing market conditions while continuing its pattern and practice of issuing a variety of discriminatory loan products. Simultaneously, Miami and other communities throughout the country experienced a curtailment of mortgage credit issued to minority borrowers.[8] Wells Fargo is one of the largest mortgage lenders doing business in Miami and its policies and practices contributed to this problem. In other words, Wells Fargo not only refused to extend credit to minority borrowers when compared to white borrowers, but when the Bank did extend credit, it did so on predatory terms. This combination of reverse redlining and redlining represents a continuing and unbroken pattern and

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[8] Center for Responsible Lending, *The State of Lending in America & its Impact on U.S. Households* (2012) (*available at* http://www.responsiblelending.org/state-of-lending/State-of-Lending-report-1.pdf); Harvard School of Public Health, *Home Purchase Loan Denial Rate By Race/Ethnicity* (2010) (available at http://diversitydata.sph.harvard.edu/Data/Rankings/Show.aspx?ind=9).

practice of mortgage lending discrimination in Miami that still exists today.

11. Wells Fargo's pattern and practice of *reverse redlining* has caused an excessive and disproportionately high number of foreclosures on the Wells Fargo Loans it has made in the minority neighborhoods of Miami. Foreclosures on loans originated by Wells Fargo are concentrated in these neighborhoods. *A loan in a predominantly minority neighborhood is 6.975 times more likely to result in foreclosure than is a loan in a neighborhood with a majority of white residents.*

12. Wells Fargo's pattern and practice of *traditional redlining* has also caused an excessive and disproportionately high number of foreclosures in the minority neighborhoods of Miami. These foreclosures often occur when a minority borrower who previously received a predatory loan sought to refinance the loan, only to discover that Wells Fargo refused to extend credit at all, or on equal terms as refinancing similar loans issued to white borrowers. The inevitable result of the combination of issuing a predatory loan, and then refusing to refinance the loan, was foreclosure.

13. Wells Fargo would have had comparable foreclosure rates in minority and white communities if it was properly and uniformly applying responsible underwriting practices in both areas. Wells Fargo possesses sophisticated underwriting technology and data that allows it to predict with precision the likelihood of delinquency, default or foreclosure. The fact that Wells Fargo's foreclosures are so disproportionately concentrated in minority neighborhoods is not the product of random events.

To the contrary, it reflects and is fully consistent with Wells Fargo's practice of targeting minority neighborhoods and customers for discriminatory practices and predatory pricing and products. It also reflects and is consistent with Wells Fargo's practice of failing to underwrite minority borrowers' applications properly and of putting these borrowers into loans which (1) have more onerous terms than loans given to similarly situated white borrowers and (2) the borrowers cannot afford, leading to foreclosures.

14. The Bank's predatory and discriminatory lending practices are evidenced by information from confidential witness statements provided by former employees of Wells Fargo (discussed further herein). For example:

(a) Manager of Bank's subprime unit that targeted African-Americans told witness that she was "too white" to appear before the audience at a seminar.

(b) "If a guy told you he made $3000, you'd put in $5000" into the underwriting software program. There was no "backstop" system at the Bank to prevent it. Loan officers were "putting people in homes that they didn't qualify for. Obviously, it would put them in a bad predicament."

(c) After the market crashed in or around 2008, "[m]inorities had a harder time verifying the documentation."

(d) "I always said that a Rodriguez in the last name was treated differently than a

Smith. . .[T]he one with Smith would get [the loan] and the one with Rodriguez wouldn't."

(e) "It was common knowledge that, to avoid problems, loans from one office were sent to another office to make both look more balanced. We needed to put some white loans in that community and some black loans in this community because [otherwise] we'll get some sh#% from the Fed."

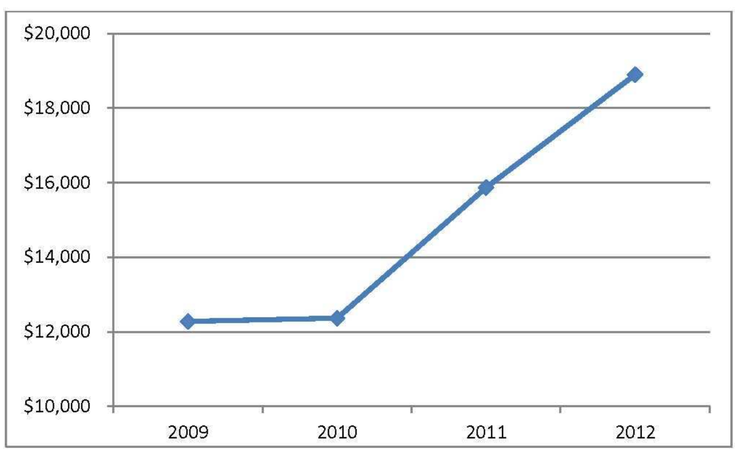
15. The reports of these witnesses are confirmed when the Miami data on Wells Fargo loans is examined. Such an examination reveals a widespread practice of discrimination. For example, a regression analysis that controls for credit history and other factors demonstrates that an African-American Wells Fargo borrower was 4.321 times more likely to receive a predatory loan as a white borrower and a Latino borrower 1.576 times more likely. The regression analysis confirms that African-Americans with FICO scores over 660 are 2.572 times more likely to receive a predatory Wells Fargo loan as a white borrower, and a Latino borrower 1.875 times more likely.

16. To date, successful discriminatory lending actions alleging conduct similar to that alleged herein have been brought against Wells Fargo by the City of Baltimore, the City of Memphis, the Department of Justice, and the Federal Reserve Bank. The Federal Reserve levied an $85 million penalty against Wells Fargo, representing the largest penalty it has assessed in a consumer protection enforcement action.

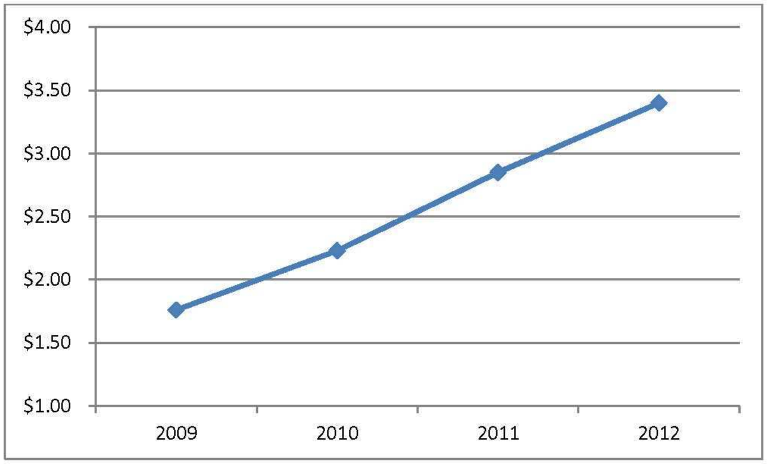
17. The Department of Justice's Civil Rights Division determined that mortgage brokers who generated loan applications through Wells Fargo's wholesale channel, and were granted broad pricing discretion by Wells Fargo, had charged higher fees and rates to tens of thousands of minority borrowers across the country than they had to white borrowers who posed the same credit risk — selling what Wells Fargo employees in Baltimore referred to as "ghetto loans."

18. The past several years have been highly profitable for Wells Fargo. According to a January 11, 2013, press release, the Bank generated a record amount of (i) net income ($18.9 billion) and (ii) diluted earnings per share ($3.36). The following charts illustrate these results.

Net Income (millions)



Earnings per share



19. The $19 billion that the Bank reported as profit in 2012 is more than double the annual profit that it reported during the boom years of 2003-2007. During the crisis years of 2009-2012, Wells Fargo reported a combined $59 billion in profits, while millions lost their homes.

20. At the same time that Wells Fargo achieved record financial success, the Bank's discriminatory practices and resulting foreclosures in the City's minority neighborhoods have inflicted significant, direct, and continuing financial harm to the City. Since 2008, banks have foreclosed on approximately 1.8 million homes in Florida, and Wells Fargo is responsible for a significant number of these foreclosures.

21. In this action the City seeks damages due to reduced property tax revenues based on (a) the decreased value of the vacant properties themselves, and (b) the decreased value of properties surrounding the vacant properties. In addition, the City seeks

damages based on the expenditure of municipal services that will be required to remedy the blight and unsafe and dangerous conditions which exist at vacant properties that were foreclosed as a result of Wells Fargo's illegal lending practices.

22. Because of the multitude of analytic tools available to Wells Fargo to determine the likelihood that a particular mortgage loan would result in default by the borrower, as well as the existence of various studies, reports, and other pertinent literature specifically addressing the connection between mortgage loans and foreclosures, it was foreseeable that Wells Fargo knew, or should have known, that a predatory or high risk loan issued to an African-American or Hispanic in certain neighborhoods in Miami would result in default and subsequent foreclosure. Moreover, because Wells Fargo maintains numerous branch offices throughout Miami and has knowledge of the specific address for each loan it issued, it was foreseeable that Wells Fargo knew, or should have known of the condition of foreclosed properties corresponding to loans that it issued in Miami regardless of whether it serviced the loan or subsequently sold the servicing rights to a third party.

23. According to Federal Reserve Chairman Bernanke, "foreclosures can inflict economic damage beyond the personal suffering and dislocation that accompany them. Foreclosed properties that sit vacant for months (or years) often deteriorate from neglect, adversely affecting not only the value of the individual property but the values of nearby homes as well. Concentrations of foreclosures have been shown to do serious damage to neighborhoods and

communities, reducing tax bases and leading to increased vandalism and crime. Thus, the overall effect of the foreclosure wave, especially when concentrated in lower-income and minority areas, is broader than its effects on individual homeowners."[9]

24. The discriminatory lending practices at issue herein have resulted in what many leading commentators describe as the "greatest loss of wealth for people of color in modern US history." It is well-established that poverty and unemployment rates for minorities exceed those of whites, and therefore, home equity represents a disproportionately high percentage of the overall wealth for minorities.[10] As Federal Reserve Chairman Bernanke recently explained, as a result of the housing crisis, "most or all of the hard-won gains in homeownership made by low-income and minority communities in the past 15 years or so have been reversed."[11] The resulting impact of these practices represents "nothing short of the preeminent civil rights issue of our time, erasing, as it has, a generation of hard fought wealth accumulation among African-Americans."[12]

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[9] Bernanke, *supra* n.7 at p. 4.

[10] Robert Schwemm and Jeffrey Taren, *Discretionary Pricing, Mortgage Discrimination, and the Fair Housing Act*, 45 HARVARD CIVIL RIGHTS CIVIL LIBERTIES LAW REV. 375, 382 (2010).

[11] Bernanke, *supra* n.7 at p. 3.

[12] Charles Nier III and Maureen St. Cyr, *A Racial Financial Crisis: Rethinking the Theory of Reverse Redlining to Combat Predatory Lending Under the Fair Housing Act*, 83 TEMPLE LAW REVIEW 941, 942 (2011).

II. PARTIES

25. Plaintiff City of Miami is a Florida municipal corporation.. The City is authorized by the City Commission to institute suit to recover damages suffered by the City as described herein.

26. Wells Fargo & Company is a nationwide, diversified, financial services company. Upon information and belief, its corporate headquarters are located in San Francisco, California. It is the parent company of Wells Fargo Bank, N.A.

27. Wells Fargo Bank, N.A. is organized as a national banking association under the laws of the United States. Upon information and belief, its corporate headquarters are located in South Dakota. It maintains multiple offices in the State of Florida for the purposes of soliciting applications for and making residential mortgage loans and engaging in other business activities.

28. The Defendants in this action are, or were at all relevant times, subject to Federal laws governing fair lending, including the FHA and the regulations promulgated under each of those laws. The FHA prohibits financial institutions from discriminating on the basis of, *inter alia*, race, color, or national origin in their residential real estate-related lending transactions.

29. The Defendants in this action are or were businesses that engage in residential real estate-related transactions in the City of Miami within the meaning of the FHA, 42 U.S.C. § 3605.

30. Based on information reported pursuant to the Home Mortgage Disclosure Act, in addition to loans that Defendants originated directly, Defendants are

responsible for residential home loans acquired from, and/or sold by or through, Wells Fargo Financial, Wells Fargo Funding, Inc., Wachovia Mortgage, FSB, Wachovia Bank, N.A., Wachovia Mortgage Co., World Savings Bank, FSB, American Mortgage Network, Inc., and Home Services Lending, LLC.

31. Upon information and belief, Plaintiff alleges that each of the Defendants was and is an agent of the other Defendants. Each Defendant, in acting or omitting to act as alleged in this Complaint, was acting in the course and scope of its actual or apparent authority pursuant to such agencies, and/or the alleged acts or omissions of each Defendant as agent were subsequently ratified and adopted by each agent as principal. Each Defendant, in acting or omitting to act as alleged in this Complaint, was acting through its agents, and is liable on the basis of the acts and omissions of its agents.

III. JURISDICTION AND VENUE

32. This Court has jurisdiction over this matter pursuant to 42 U.S.C. § 3613 and 28 U.S.C. §§ 1331, 1343, because the claims alleged herein arise under the laws of the United States.

33. Venue is proper in this district under 28 U.S.C. § 1391(b) because Wells Fargo conducts business in this district and a substantial part of the events and omissions giving rise to the claims occurred in this district.

IV. FACTUAL BACKGROUND

A. Background Regarding Discriminatory Loan Practices, Reverse Redlining, and Redlining

34. Prior to the emergence of subprime lending, most mortgage lenders made only "prime" loans. Prime lending offered uniformly priced loans to borrowers with good credit, but individuals with lower credit were not eligible for prime loans.

35. Subprime lending developed and began growing rapidly in the mid-1990s as a result of technological innovations in risk-based pricing and in response to the demand for credit by borrowers who were denied prime credit by traditional lenders. Advances in automated underwriting allowed lenders to predict with improved accuracy the likelihood that a borrower with lower credit will successfully repay a loan. These innovations gave lenders the ability to adjust the price of loans to match the different risks presented by borrowers whose credit records did not meet prime standards. Lenders found that they could now accurately price loans to reflect the risks presented by a particular borrower. When done responsibly, this made credit available much more broadly than had been the case with prime lending.

36. Responsible subprime lending has opened the door to home ownership to many people, especially low- to moderate-income and minority consumers, who otherwise would have been denied mortgages. At the same time, however, subprime lending has created opportunities for unscrupulous lenders to target minorities and engage in discriminatory,

irresponsible lending practices that result in loans that borrowers cannot afford. This, in turn, leads directly to defaults and foreclosures.

37. Enticed by the prospect of profits resulting from exorbitant origination fees, points, and related pricing schemes, some irresponsible lenders took advantage of a rapidly rising real estate market to convince borrowers to enter into discriminatory loans that had unfair terms that they could not afford. Often this was accomplished with the help of deceptive practices and promises to refinance at a later date. These abusive lenders did not worry about the consequences of default or foreclosure to their business because, once made, a significant amount of the loans were sold on the secondary market.

38. As the subprime market grew, the opportunities for abusive practices grew with it.[13] As a consequence, the federal government has found that abusive and predatory practices "are concentrated in the subprime mortgage market."[14]

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[13] United States Department of Housing and Urban Development Office of Policy Development and Research, Report to Congress on the Root Causes of the Foreclosure Crisis, (2010) at 52 ("While many factors have undoubtedly contributed to the recent rise in Foreclosures, as discussed earlier, no small part of the increase stems from recent increases in abusive forms of subprime lending") (*available at* http://www.huduser.org/portal/Publications/PDF/Foreclosure_09.pdf).

[14] United States Department of Housing & Urban Development and United States Department of the Treasury, Curbing Predatory Home Mortgage Lending (2000) at 1 (*available at* http://www.huduser.org/Publications/pdf/treasrpt.pdf) ("HUD/Treasury Report").

These practices, which in recent years have become the target of prosecutors, legislators, and regulators, include the following:

a. Placing borrowers in subprime loans even though they qualify for prime loans on better terms.

b. Failing to prudently underwrite hybrid adjustable rate mortgages (ARMs), such as 2/28s and 3/27s.[15] After the borrower pays a low "teaser rate" for the first two or three years, the interest rate on these loans resets to a much higher rate that can continue to rise based on market conditions. Subprime lenders often underwrite these loans based only on consideration of whether the borrower can make payments during the initial teaser rate period, without regard to the sharply higher payments that will be required for the remainder of a loan's 30-year term. Irresponsible lenders aggressively market the low monthly payment that the borrower will pay during the teaser rate period, misleading borrowers into believing that they can afford that same low monthly payment for the entire 30-year term of the loan, or that they can refinance their loan before the teaser rate period expires.

c. Failing to prudently underwrite refinance loans, where borrowers substitute unaffordable mortgage loans for existing mortgages that they are well-suited for and that allow them to build equity.

[15] In a 2/28 ARM, the "2" represents the number of years the mortgage will be fixed over the term of the loan, while the "28" represents the number of years the interest rate paid on the mortgage will be variable. Similarly, in a 3/27 ARM, the interest rate is fixed for three years and variable for the remaining 27-year amortization.

Such refinanced loans strip much or even all of that equity by charging substantial new fees, often hiding the fact that the high settlement costs of the new loan are also being financed. Lenders that aggressively market the ability of the borrower to pay off existing credit card and other debts by refinancing all of their debt into one mortgage loan mislead borrowers into believing that there is a benefit to debt consolidation, while obscuring the predictable fact that the borrower will not be able to repay the new loan. The refinanced loans are themselves often refinanced repeatedly with ever-increasing fees and higher interest rates, and with ever-decreasing equity, as borrowers seek to stave off foreclosure.

d. Allowing mortgage brokers to charge "yield spread premiums" for qualifying a borrower for an interest rate that is higher than the rate the borrower qualifies for and can actually afford.

e. Failing to underwrite loans based on traditional underwriting criteria such as debt-to-income ratio, loan-to-value ratio, FICO score, and work history. These criteria ensure that a borrower is obtaining a loan that he or she has the resources and assets to repay, and ignoring these criteria results in many loans that bear no relation to borrowers' ability to repay them. This allows the lender to make a quick profit from the origination, but sets the borrower up for default and foreclosure.

f. Requiring substantial prepayment penalties that prevent borrowers whose credit has improved from refinancing their subprime loan to a prime loan. Prepayment penalties not only preclude borrowers from refinancing to a more affordable loan, but reduce the borrowers' equity when a subprime lender convinces borrowers to needlessly refinance one subprime loan with another.

g. Charging excessive points and fees that are not associated with any increased benefits for the borrower.

39. The problem of predatory practices in subprime mortgage lending is particularly acute in minority communities because of "reverse redlining." As used by Congress and the courts, the term "reverse redlining" refers to the practice of targeting residents in certain geographic areas for credit on unfair terms due to the racial or ethnic composition of the area. This is in contrast to "redlining," which is the practice of denying *equal* credit opportunities to specific geographic areas because of the racial or ethnic composition of the area. Both practices have repeatedly been held to violate the Federal Fair Housing Act.

40. Following the onset of the subprime mortgage crisis, and after years of issuing abusive home loans in minority neighborhoods, the big bank lenders began to limit the issuance of mortgage credit to minority borrowers (*i.e.,* refusing to refinance predatory loans). At the same time, when the big banks did extend credit, they continued to do so on predatory terms.

V. WELLS FARGO ENGAGED IN DISCRIMINATORY LENDING PRACTICES

A. Wells Fargo Permits and Promotes Discriminatory Lending

1. Wells Fargo's mortgage loan channels.

41. Between 2004 and at least 2008, Wells Fargo originated retail residential home mortgage loans and purchased loans in numerous geographic markets in the United States, including several hundred metropolitan areas ("MSAs"), and specifically, the Miami MSA.

42. During all or part of this time period, Wells Fargo Home Mortgage was divided into two major divisions – Retail (National Consumer Lending) and Institutional Lending ("IL"), of which Wells Fargo Wholesale Lending was a business line. Within the retail channel, Wells Fargo had "Distributed Retail" and "Centralized Retail" lines. The Distributed Retail line operated as a traditional retail channel that had face-to-face contact with customers in branch offices and originated both prime and subprime loans. The subprime division of the Distributed Retail line was known as the Mortgage Resources ("MoRe") division; in early 2005, its name was changed to Home Credit Solutions ("HCS"). Loan officers within the Distributed Retail line were assigned to either the prime or MoRe/HCS divisions. Until the two divisions were merged in 2008, no retail loan officer originated both prime and subprime loans. The Centralized Retail line primarily handled prime loan products and operated through telephone calls and internet applications.

Wells Fargo referred to both prime and subprime loan officers in its Distributed Retail and Centralized Retail lines as "Home Mortgage Consultants" or "HMCs." The same prime pricing policies applied to both the Centralized and Distributed Retail lines.

43. Through its retail and wholesale channels, Wells Fargo originated virtually every type of loan product that was available in the residential lending market. Among others, these products included: (a) traditional prime loans (least risky); (b) subprime loans (most risky) typically designed for borrowers with credit scores or other credit characteristics deemed too weak to qualify for prime loans; and (c) "Alt-A" loans (risk level between prime and subprime loans) with application requirements or payment terms less restrictive than traditional prime loan terms or requirements, such as interest-only terms, reduced documentation requirements, or balloon payments. Subsequent to origination, Wells Fargo sold or securitized for sale the bulk of the loans it originated in the secondary market, either to government-sponsored entities Fannie Mae and Freddie Mac or to private investors.

44. Since 2008, as the data discussed below makes clear, there has been a shift in the types of loans issued – and not issued – by the Bank. For example, the Bank shifted from offering new subprime loans toward issuing more Home Equity Lines of Credit ("HELOCs") and higher cost loans including, but not limited to, FHA/VA loans.[16] FHA and VA

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[16] While FHA/VA loans are not inherently predatory, these loans have higher risk features such as higher fees and higher interest rates. When banks target minorities for FHA/VA loans

government loans are characterized as higher risk loans because (1) they are typically more expensive for a borrower than conventional loans and include fees and costs not associated with conventional loans, and (2) several of the government loan programs permit negative amortization.[17] At the same time, in the last several years, the Bank tightened lending requirements in a manner that drastically limited the ability of minority borrowers to refinance or otherwise modify the subprime loans previously issued by the Bank.

45. Wells Fargo applied its pricing policies on a nationwide basis, though the rate sheets followed certain state-specific requirements.

2. Product Placement.

46. Wells Fargo placed African-American and Hispanic borrowers into predatory loans (*e.g.*, subprime, burdensome HELOCs, more onerous/expensive terms, higher costs, etc.) even though white borrowers who had similar credit qualifications were placed into prime loans. As a result of being placed into an illegal discriminatory loan, an African-American or Hispanic borrower paid, on average, up to tens of thousands of dollars more for a Wells Fargo loan, and was subject to possible pre-payment penalties, increased risk or credit problems, default, and foreclosure, as well as

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and issue more of them to minorities, they are acting in a discriminatory manner.

[17] California Reinvestment Coalition, et al., *Paying More for the American Dream VI, Racial Disparities in FHA/VA Lending*, (July 2012); www.fha.com/fha_loan_types; www.benefits.va.gov/homeloans.

the emotional distress that accompanies such economic pressures. It was Wells Fargo's business practice to allow its HMCs and mortgage brokers to place an applicant in a discriminatory loan even when the applicant qualified for a prime loan according to Wells Fargo's underwriting guidelines. Wells Fargo also gave its HMC's and mortgage brokers originating Wells Fargo loans discretion to request and grant exceptions to underwriting guidelines. These policies and practices resulted in the placement of African-American and Hispanic borrowers into predatory loans, when similarly-situated white borrowers were placed into prime loans, both on a nationwide basis and in dozens of geographic markets across the country (including Miami) where Wells Fargo originated a large volume of loans.

47. Wells Fargo's fair lending monitoring efforts were sufficient to put it on notice of widespread product placement disparities based on race and national origin. Wells Fargo did not act to determine the full scope of these product placement disparities, nor did it take prompt and effective action to eliminate those disparities. As described in further detail below, at certain times relevant to this action, Wells Fargo had in place a system, called the "A-Paper Filter" or the "Enhanced Care Filter," whose stated purpose was ensuring that all prime-eligible borrowers were referred to the Bank's prime division. The A-Paper Filter was highly susceptible to manipulation because individual non-prime loan originators were responsible for entering a borrower's information into the Filter. Further, internal Wells Fargo officers indicate that senior

Wells Fargo officers were aware that the Bank's compensation structure incentivized loan originators to manipulate the data they entered into the A-Paper Filter in order to keep prime-eligible borrowers within the subprime division. Senior Wells Fargo officers were aware that this manipulation was in fact occurring on a systematic basis, but failed to take appropriate corrective action.

48. Wells Fargo published underwriting guidelines that purported to establish the objective criteria an applicant had to meet in order to qualify for a particular type of loan product. These underwriting guidelines were available to Wells Fargo's underwriters, as well as its third-party loan originators who had entered into contracts with Wells Fargo to enable them to select loan products for individual borrowers with differing credit-related characteristics (*i.e.,* purchases made via Wells Fargo's wholesale channel). These underwriting guidelines were intended to be used, for example, to determine whether a loan applicant qualified for a prime loan product, a referral from the prime division to the subprime division, a subprime loan product, referral to an FHA/VA loan or other special loan product, or for no Wells Fargo loan product at all.

49. Loan terms and conditions, including prices, generally are most favorable for a borrower with a prime loan product, and least favorable for a borrower with a subprime loan product, which often included terms such as initial short-term teaser interest rates that suddenly rise to produce substantially increased and potentially unaffordable payments after two to three years, substantial pre-

payment penalties, balloon payments, higher fees, and longer underwriting times.

50. In mortgage lending commission structures, loan officers typically receive commissions in terms of "basis points," with one basis point being equivalent to 0.01% of the loan amount. From 2004 to 2005, for example, Wells Fargo's subprime HMCs earned between 95 and 180 basis points, depending on loan amount and monthly origination volume, for originating a subprime loan. From 2006 to 2007, subprime HMCs earned between 75 and 175 basis points, depending on loan amount and monthly origination volume, for originating a subprime loan. From 2004 to 2007, a subprime HMC earned only 50 basis points for referring a prime-eligible borrower to the prime division. Accordingly, a subprime HMC lost between 25 and 130 basis points for referring a prime-eligible borrower to the prime division rather than originating the loan as subprime. This policy and practice created a financial incentive for HMCs to originate loans as subprime rather than prime, even when the applicant could have qualified for a prime loan.

51. Wells Fargo's cap on the amount of total compensation that a mortgage broker could receive on an individual loan also varied, in part, based on whether the loan was a subprime product or a prime product. From 2004 through at least 2007, total broker compensation for prime loans was capped at 4.5% (450 basis points) of the loan amount. However, total broker compensation for subprime loans was capped at 500 basis points, giving brokers a financial incentive to originate a subprime loan where possible. The higher cap means, for example,

that a broker originating a $300,000 loan could make $1,500 more by originating the loan as subprime rather than prime.

52. Wells Fargo's compensation structure provided a strong incentive for HMCs and wholesale mortgage brokers to originate a loan, as subprime, even if the borrower could qualify for a more favorable prime loan. This compensation structure, combined with the substantial discretion that subprime loan originators had to qualify prime-eligible borrowers for subprime loans, resulted in discrimination on the basis of race and national origin against African-American and Hispanic borrowers.

53. For each residential loan that Wells Fargo's HMCs and mortgage brokers originated from at least 2004, information about each borrower's race and national origin was known by or available to Wells Fargo.

54. Subprime loan originators had the ability to enter incorrect information into the A-Paper Filter to prevent a borrower from being identified as prime-eligible, thereby ensuring that the loan would remain in the subprime division. The incorrect information included, but was not limited to: (1) stating a reduced income in order to make a borrower's debt-to-income ratio ("DTI") appear higher than it actually was; (2) omitting assets to create the appearance that a borrower had no reserves; and (3) misstating the borrower's length of employment. The A-Paper Filter was not capable of identifying situations wherein information was entered into the Filter incorrectly for purposes of ensuring that a loan could remain in the subprime channel.

55. Subprime loan originators were not prohibited from encouraging prime-eligible borrowers to take steps that would disqualify them from receiving prime loans, including, but not limited to, the following: (1) encouraging borrowers to forego providing income and/or asset documentation; and (2) encouraging borrowers to take out additional cash or forego making a down payment, thereby increasing the borrower's loan-to-value ratio ("LTV"). Internal Wells Fargo documents indicate that Wells Fargo senior managers were aware that loan originators were encouraging borrowers to take these and other steps adverse to borrowers' interests on a systematic basis. Notably, the A-Paper Filter was not able to identify situations wherein prime-eligible borrowers were encouraged by loan originators to take steps that would disqualify them from receiving prime loans.

56. Internal Wells Fargo audits of the A-Paper Filter identified multiple problems. These audits indicated that data inputted into the Filter was often inconsistent with the information contained in the loan files, and that many loans were originated as subprime although no subprime qualifiers existed in the loan files.

57. For each subprime loan that had a prepayment penalty, an interest-only feature, or reduced documentation, Wells Fargo required borrowers to sign a disclosure form, called the "Product/Feature Selection Disclosure." This form purported to explain how these features impacted the borrower's financing and to explain that the borrower was receiving a subprime loan, and required the borrower to confirm that a Wells Fargo

loan originator had discussed all available Wells Fargo home mortgage options with the borrower.

58. This disclosure form was not effective in preventing loan originators from steering borrowers to the subprime division. Wells Fargo subprime loan originators often failed to discuss all available loan options with borrowers before having them sign the disclosure form. Further, Wells Fargo subprime loan originators were not required to inform prime-eligible customers who received a subprime loan that they did in fact qualify for a more favorable loan. Rather, Wells Fargo required all subprime borrowers to sign the Product/Feature Selection Disclosure, without specific knowledge as to whether they were in fact prime-eligible.

3. Wholesale mortgage broker fees.

59. Wells Fargo charged African-American wholesale borrowers higher fees and costs than white borrowers, not based on their creditworthiness or other objective criteria related to borrower risk, but because of their race. Similarly, Wells Fargo charged Hispanic wholesale borrowers higher fees and costs than white borrowers, not based on their creditworthiness or other objective criteria related to borrower risk, but because of their national origin. It was Wells Fargo's business practice to allow its mortgage brokers who generated loan applications through its wholesale channel to vary a loan's interest rate and other fees from the price set based on a borrower's objective credit-related factors. This unguided and subjective pricing discretion resulted in African-American and Hispanic borrowers paying

more than white borrowers with similar credit characteristics.

60. Wells Fargo's wholesale pricing monitoring efforts, while inadequate to remedy discriminatory practices against African-American and Hispanic borrowers, were sufficient to put it on notice of widespread pricing disparities based on race and national origin. Even when Wells Fargo had reason to know there were disparities, however, Wells Fargo did not act to determine the full scope of these wholesale pricing disparities, nor did it take prompt and effective action to eliminate those disparities.

61. From at least 2004, Wells Fargo originated and funded residential loans of all types through its Wholesale Lending Division ("WLD"). Applications for these loans were brought to Wells Fargo by mortgage brokers throughout the United States who entered into contracts with Wells Fargo for the purpose of bringing loan applications to it for origination and funding.

62. Wells Fargo required prospective brokers to submit a document entitled "Intent to Act as a Broker," and to enter into a Broker Origination Agreement in order to be approved as a Wells Fargo broker. According to Wells Fargo, the process of obtaining and maintaining approved broker status involved its careful analysis of the broker's financial condition; experience level; operational scope and operational methodology; and thorough consideration of the broker's organization, staff, organization principals, licensing, agency standing, and regulatory approvals based upon documents and information provided by the broker.

63. Wells Fargo's brokers were required to adhere to the provisions set forth in its Wholesale Lending Broker Origination Guide, and Wells Fargo's contracts with brokers required representations and warranties that they would comply with applicable federal, state, and local laws and regulations, including fair lending requirements. Wells Fargo required its brokers to attest that all mortgage loans submitted conformed to the Bank's applicable requirements and to all of the guidelines for a particular loan program.

64. Wells Fargo authorized brokers to inform prospective borrowers of the terms and conditions under which a Wells Fargo residential loan product was available. Wells Fargo did not require the mortgage brokers to inform a prospective borrower of all available loan products for which he or she qualified, of the lowest interest rates and fees for a specific loan product, or of specific loan products best designed to serve the interests expressed by the applicant. Upon receipt of a completed loan application from a broker, Wells Fargo evaluated the proposed loan using its underwriting guidelines and determined whether to originate and fund the loan.

65. Wells Fargo was directly and extensively involved in setting the complete, final terms and conditions of wholesale loan applications generated by mortgage brokers that Wells Fargo approved and originated. At the time of originating each loan, Wells Fargo was fully informed of the loan terms and conditions, including the fees it passed along to brokers, and it incorporated those terms and conditions into the wholesale loans it originated.

66. From at least 2004, Wells Fargo's policies and practices established a two-step process for the pricing of wholesale loans that it originated. The first step was to establish a base or par rate for a particular type of loan for an applicant with specified credit risk characteristics. In this step, Wells Fargo accounted for numerous objective credit-related characteristics of applicants by setting a variety of prices for each of the different loan products that reflected its assessment of individual applicant creditworthiness, as well as the current market rate of interest and price it could obtain for the sale of such a loan from investors.

67. From at least 2004, Wells Fargo set terms and conditions, including interest rates, for its various home mortgage loan products available through its wholesale loan channel. Wells Fargo accounted for numerous applicant credit risk characteristics by setting a range of prices for each of the different loan products it offered that reflected applicant creditworthiness. It communicated these loan product prices to its brokers through rate sheets. Wells Fargo made prime rate sheets available to brokers on a daily basis via email or the "Brokers First" website that communicated the effective date, time, and product pricing that was released with a specific price change. The rate sheets also established price caps that limited the level of broker compensation. According to Wells Fargo's Wholesale Pricing Policy, price changes were initiated by Wells Fargo's Capital Markets Group as a result of rate movements, or by the Wholesale Pricing Group to adjust profit expectations or alter competitive

position. Wells Fargo distributed its Traditional Nonprime rate sheets once a week.

68. Wells Fargo's second step of pricing wholesale loans permitted mortgage brokers to set the amount of broker fees charged to individual borrowers, unrelated to an applicant's credit risk characteristics. Mortgage brokers who supplied Wells Fargo with loan applications that Wells Fargo funded were compensated in two ways. One was through a yield spread premium ("YSP"), an amount paid by Wells Fargo to the brokers based on the extent to which the interest rate charged on a loan exceeded the base or par rate for that loan to a borrower with particular credit risk characteristics fixed by Wells Fargo and listed on its rate sheets. The YSP is derived from the present dollar value of the difference between the credit risk-determined par interest rate a wholesale lender such as Wells Fargo would have accepted on a particular loan and the interest rate a mortgage broker actually obtained for Wells Fargo. Wells Fargo benefitted financially from the loans it made at interest rates above the par rates set by its rate sheets. For those loans that it sold or securitized, higher interest rates meant sales at prices higher than it otherwise would have obtained; for loans it retained, higher interest rates meant more interest income over time. The second way brokers were compensated was through direct fees and origination fees charged to the borrower. Wells Fargo directed its closing agents to pay direct fees to brokers out of borrowers' funds at the loan closing. Taken together, these two forms of compensation are referred to in this Complaint as "total broker fees."

69. Wells Fargo had written policies placing a ceiling on total broker fees. From 2004 through at least 2009, the maximum total broker fee that a broker could earn from originating a prime Wells Fargo loan was 4.5% of the total loan amount. From 2004 through 2007, the maximum total broker fee that a broker could earn from originating a subprime Wells Fargo loan was 5.0% of the total loan amount. Wells Fargo stopped originating subprime loans from its wholesale channel in July 2007. Wells Fargo *also* permitted pricing exceptions for reasons wholly unrelated to creditworthiness, such as customer service issues or competitive reasons, and required approval based on the amount of the exception (*e.g.,* exceptions over $2,000 required Vice President approval).

70. According to Wells Fargo's stated policy, screening for broker compensation caps was automated within the origination system to prevent users from generating closing documents if broker compensation exceeded the caps. Wells Fargo maintained this pricing policy through at least April 2009.

71. Other than these caps, Wells Fargo did not establish any objective criteria, or provide guidelines, instructions, or procedures to be followed by brokers (a) in setting the amount of direct fees they should charge or (b) in determining to charge an interest rate for a loan above that set by its rate sheet, which in turn determined the amount of YSP that Wells Fargo would pay the broker. Mortgage brokers exercised this pricing discretion that Wells Fargo gave them untethered to any objective credit characteristics, on every loan they brought to Wells

Fargo for origination and funding. Wells Fargo affirmed or ratified these discretionary pricing decisions for all the brokered loans it originated and funded.

72. From 2004 to at least 2009, Wells Fargo was fully informed of all broker fees to be charged with respect to each individual residential loan application presented to it. Wells Fargo also required brokers to disclose to the borrower all compensation and all other fees expected to be received by the broker in connection with the mortgage loan. Wells Fargo required brokers to disclose their fees on the Good Faith Estimate, the HUD-1, and other disclosures as applicable. Total broker fees raised the annual percentage rate charged on a loan, and could increase the note interest rate and the total amount borrowed.

73. For each residential loan application obtained by mortgage brokers and subsequently funded by Wells Fargo, information about each borrower's race and national origin and the amount and types of broker fees paid was available to and was known by Wells Fargo. Wells Fargo was required to collect, maintain, and report data with respect to certain loan terms and borrower information for residential loans, including the race and national origin of each wholesale residential loan borrower, pursuant to HDMA. 12 U.S.C. § 2803.

B. Wells Fargo's Conduct Had a Disparate Impact on Minority Borrowers in Violation of the Fair Housing Act

1. Discriminatory lending results in a disproportionate number of foreclosures in minority areas.

74. Foreclosures are on the rise in many of the nation's most vulnerable neighborhoods, particularly those with substantial concentrations of minority households. The increase appears to stem from the presence of (1) subprime lending in these communities and (2) continuing discriminatory lending practices (*e.g.*, steering minorities into loan products with more onerous terms).

75. A seminal report on foreclosure activity by Mark Duda and William Apgar documents the negative impact that rising foreclosures have on low-income and low-wealth minority communities, using Chicago as a case study. Mr. Apgar is a Senior Scholar at the Joint Center for Housing Studies of Harvard University, and a Lecturer on Public Policy at Harvard's John F. Kennedy School of Government. He previously served as the Assistant Secretary for Housing/Federal Housing Commissioner at the U.S. Department of Housing and Urban Development, and also Chaired the Federal Housing Finance Board. Mr. Apgar holds a Ph.D. in Economics from Harvard University. Mr. Duda is a Research Fellow at the Joint Center for Housing Studies. The Apgar-Duda report has continually been cited by subsequent governmental, public sector, and private sector reports due to its clarity and thoroughness

with respect to the negative impact foreclosures have on lower-income and minority neighborhoods.[18]

76. This significant report highlights the foreseeability of foreclosures arising from predatory lending practices and their attendant harm, demonstrating that such foreclosures impose significant and predictable costs on borrowers, municipal governments, and neighboring homeowners.

77. Another report, by the Center for Responsible Lending, uses a national dataset to show that the foreclosure rate for low- and moderate-income African-Americans is approximately 1.8 times higher than it is for low- and moderate-income non-Hispanic whites. The gap is smaller for Latinos, especially among low-income households, but even among low-income Latinos the foreclosure rate is 1.2 times that of low-income whites. Racial and ethnic disparities in foreclosure rates cannot be explained by income, since disparities persist even among higher-income groups. For example: approximately 10 percent of higher-income African-American borrowers and 15 percent of higher-income Latino borrowers have lost their home to foreclosure, compared with 4.6 percent of higher income non-Hispanic white borrowers. Overall, low- and moderate-income African-

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[18] *See* W. Apgar, M. Duda & R. Gorey, *The Municipal Costs of Foreclosures: A Chicago Case Study* (2005) (*available at* http://Www.nw.org/networldneighborworksProgs/foreclosuresolutions/documents/2005 Apgar-DudaStudy- FullVersion.pdf).

Americans and middle- and higher-income Latinos have experienced the highest foreclosure rates.[19]

78. Nearly 20 percent of loans in high-minority neighborhoods have been foreclosed upon or are seriously delinquent, with significant implications for the long-term economic viability of these communities.[20]

2. Minority neighborhoods are disproportionate recipients of predatory loans.

79. There is a substantial body of empirical evidence demonstrating the prevalence of reverse redlining in the subprime mortgage market. These studies show that, even after controlling for creditworthiness and other legitimate underwriting factors, subprime loans and the predatory practices often associated with subprime lending are disproportionately targeted at minority neighborhoods.[21]

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[19] Center for Responsible Lending, *Lost Ground, 2011: Disparities in Mortgage Lending and Foreclosures* (2011) (*available at* www.responsiblelending.org/-mortgage-lending/ research-analysis/*Lost-Ground*-2011.pdf).

[20] *Id.*

[21] *See* Abt Associates, *Using Credit Scores to Analyze High-Cost Lending in Central City Neighborhoods* (2008); Center for Resonsible Lending, *Lost Ground, 2011: Disparities in Mortgage Lending and Foreclosures* (2011) (*available at* www.-responsiblelending.org/mortgage-lending/research-analysis/*Lost-Ground-2011*.pdf); Center for Responsible Lending, *Unfair Lending: The Effect of Race and Ethnicity on the Price of Subprime Mortgages* (2006) (*available at* http://www.responsiblelending.org/mortgage-lending/research-analysis/rr011-*Unfair_Lending*-0506.pdf); Finance and

80. In general, as recently observed by the Federal Reserve in December 2012, both African-American and Hispanic borrowers were far more likely (in fact, nearly twice more likely) to obtain higher-priced loans than were white borrowers. These relationships hold both for home-purchase and refinance lending and for non-conventional loans. These differences are reduced, but not eliminated, after controlling for lender and borrower characteristics. "Over the years, analyses of HMDA data have consistently found substantial differences in the incidence of higher-priced lending across racial and ethnic lines, differences that cannot be fully explained by factors included in the HMDA data."[22]

81. African-Americans and Hispanics were much more likely to receive subprime loans and loans with features that are associated with higher foreclosures, specifically prepayment penalties and hybrid or

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Economics Discussion Series Divisions of Research & Statistics and Monetary Affairs Federal Reserve Board, Washington, D.C, *Subprime Mortgages: What, Where, and to Whom?* (2008) (available at http://www.nber.org/papers/w14083 .pdf?new_window=1); C. Reid and E. Laderman, Federal Reserve Bank of San Francisco, *The Untold Costs of Subprime Lending: Examining the Links among Higher-Priced Lending, Foreclosures and Race in California*, Presented at Brandeis University (2009) (*available at* http://iasp.brandeis.edu/pdfs/Author/reid-carolin/ The%20Untold%20Costs%20of%20Subprime%20Lending%203. pdf).

[22] Federal Reserve Bulletin, *The Mortgage Market in 2011: Highlights from the Data Reported under the Home Mortgage Disclosure Act* (Dec. 2012) (*available at* http://www.federalreserve.gov/pubs/bulletin/2012/PDF/2011_ HMDA.pdf).

option ARMs. These disparities were evident even comparing borrowers within the same credit score ranges. In fact, the disparities were especially pronounced for borrowers with higher credit scores. For example, among borrowers with a FICO score of over 660 (indicating good credit), African-Americans and Latinos received a high interest rate loan more than three times as often as white borrowers.[23]

82. In addition to receiving a higher proportion of higher-rate loans, African-Americans and Latinos also were much more likely to receive loans with other risky features, such as hybrid and option ARMs and prepayment penalties. Disparities in the incidence of these features are evident across all segments of the credit spectrum.

83. At the same time that conventional credit has contracted over the past five years, FHA lending has expanded dramatically. During the subprime boom, FHA lending fell as subprime lenders targeted minority communities. Now, with little or no subprime lending, and conventional credit restricted, FHA lending has shot up. Overall, the share of loans with government backing went from 5% in 2005 to 26.6% in 2010.[24]

84. For African-Americans, the share of mortgages used to purchase a home and backed by a government program increased to almost 80% in 2010; for Latinos the share increased to 73%. But for whites, the share increased to only 49%. At present, most minority borrowers cannot gain access to the

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[23] Center for Responsible Lending, *Lost Ground*, 2011, *supra* n.19.

[24] Center for Responsible Lending, *supra*, n.8.

conventional mortgage market, and instead, are relegated to more expensive FHA loans.[25] As discussed above, these government loans often have higher interest, fees, and costs than conventional loans.

3. Statistical analyses conducted by the United States Department of Justice of data for loans originated by Wells Fargo showed a disparate impact on minority borrowers.

a. Minority borrowers were more likely than whites to receive subprime loans.

85. Statistical analyses conducted by the United States Department of Justice of loan data for prime and subprime wholesale loans originated by Wells Fargo just for the time period of 2004 to 2008 demonstrate that, measured on a nationwide basis after controlling for major risk-based factors relevant to determining loan product placement, including credit history, LTV, and DTI, African-American and Hispanic borrowers remained more likely to receive subprime loans from 2004 to 2008 than similarly-situated whites. This demonstrates a pattern of statistically significant differences between African-American and white borrowers with respect to their product placement by Wells Fargo. These statistically significant disparities existed in numerous geographic markets across the nation as well.

86. For the combined time period of 2004 to 2008, nationwide, the odds that an African-American

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[25] *Id.*

borrower who obtained a wholesale loan from Wells Fargo would receive a subprime loan rather than a prime loan were approximately 2.9 times as high as the odds for a similarly situated white borrower, after accounting for the same factors. For the same time period, the odds that an African-American borrower who obtained a retail loan from Wells Fargo would receive a subprime loan rather than a prime loan were approximately 2.0 times as high as the odds for a similarly-situated white borrower, after accounting for the same factors. These odds ratios demonstrate a pattern of statistically significant differences between African-American and white borrowers with respect to their product placement by Wells Fargo, even after accounting for objective credit qualifications.

87. For the combined time period of 2004 to 2008, nationwide, the odds that a Hispanic borrower who obtained a wholesale loan from Wells Fargo would receive a subprime loan instead of a prime loan were approximately 1.8 times as high as the odds for a similarly-situated white borrower, after accounting for the same factors. During the same time period, the odds that a Hispanic borrower would receive a subprime retail loan rather than a prime retail loan wore approximately 1.3 times as high as the odds for a similarly-situated white borrower, after accounting for the same factors. These odds ratios demonstrate a pattern of statistically significant differences between Hispanic and white borrowers with respect to their product placement by Wells Fargo, even after accounting for objective credit qualifications.

88. The disparate placement of both African-Americans and Hispanic borrowers whom Wells

Fargo determined had the credit characteristics to qualify for a home mortgage loan into subprime loan products, when compared to similarly-situated white borrowers, resulted from the implementation and interaction of Wells Fargo's policies and practices that: (a) permitted Wells Fargo subprime loan originators to place an applicant in a subprime loan product even if the applicant could qualify for a prime loan product; (b) provided a financial incentive to Wells Fargo subprime loan originators to place loan applicants in subprime loan products; (c) did not require Wells Fargo subprime loan originators to justify or document the reasons for placing an applicant in a subprime loan product even if the applicant could qualify for a prime loan product; (d) did not require Wells Fargo subprime loan originators to notify subprime loan applicants when they did in fact qualify for a more favorable loan product; and (e) failed to monitor these discretionary practices to ensure that borrowers were being placed in loan products on a nondiscriminatory basis.

89. Wells Fargo's policies or practices were not justified by business necessity or legitimate business interests. There were less discriminatory alternatives available to Wells Fargo that would have achieved the same business goals as these policies and practices.

90. As early as 2005, Wells Fargo's senior officers had knowledge that its lending policies and practices resulted in the placement of prime-qualified minority applicants in subprime rather than prime loan products and that its A-Paper Filter was ineffective. For example, an internal Wells Fargo document from 2005 sent from a Wells Fargo Vice President of

Retail Underwriting, National Programs to a number of senior and executive vice presidents revealed concerns about A-Paper Filter manipulation and listed various tactics that subprime originators routinely employed to keep loans in the subprime division, rather than sending them to the prime channel. Another internal Wells Fargo document from 2005 concluded that loans were being originated as subprime, even though the borrowers had prime characteristics. Nonetheless, Wells Fargo continued to implement those policies and practices and did not take effective action to change the discriminatory policies or practices to eliminate their discriminatory impact. Nor did it act to identify or compensate the individual borrowers who were victims of its discriminatory product placement policies or practices.

b. Minority borrowers were more likely than white borrowers to pay higher broker fees and costs.

91. Statistical analyses of data kept by Wells Fargo on its wholesale loans between 2004 and 2008 demonstrate statistically significant discriminatory pricing disparities in both prime and subprime loans based on both race (African-American) and national origin (Hispanic). These disparities existed both at the national level and in numerous geographic markets across the country.

92. Measured on a nationwide basis in each year between 2004 and 2008, Wells Fargo charged African-American borrowers whom Wells Fargo determined had the credit characteristics to qualify for a home mortgage loan more in total broker fees

for prime wholesale loans than white borrowers. The annual total broker fee disparities ranged up to 78 basis points, and they are statistically significant.

93. Measured on a nationwide basis, in each year between 2004 and 2008, Wells Fargo charged Hispanic borrowers whom Wells Fargo determined had the credit characteristics to qualify for a home mortgage loan more in total broker fees for prime wholesale loans than white borrowers. The annual total broker fee disparities ranged up to 55 basis points, and they are statistically significant.

94. Measured on a nationwide basis in each year between 2004 and 2007, Wells Fargo charged African-American borrowers whom Wells Fargo determined had the credit characteristics to qualify for a home mortgage loan more in total broker fees for subprime wholesale loans than white borrowers. The annual total broker fee disparities ranged up to 53 basis points, and they are statistically significant.

95. In setting the terms and conditions for its wholesale loans, including interest rates, Wells Fargo accounted for individual borrowers' differences in credit risk characteristics by setting the prices shown on its rate sheets for each loan product for borrowers with specified credit qualifications. These adjustments based on credit risk characteristics were separate from and did not control for either component of the total broker fees - the interest rate deviations that Wells Fargo's policy allowed mortgage brokers to make from the par prices, which already fully accounted for borrower risk according to Wells Fargo's own standards, nor the amount of brokers' direct fees that were driven by a borrower's

credit risk factors. The race and national origin total broker fee disparities described above are not adjusted for borrowers' credit risk characteristics; Wells Fargo reviewed these broker fees and then authorized its brokers to charge them to borrowers in the loans it originated and funded.

96. The statistically significant race and national origin-based disparities in broker fees for African-Americans and Hispanics resulted from the implementation and interaction of Wells Fargo's policies and practices that: (a) included pricing terms based on the subjective and unguided discretion of brokers in setting broker fees not based on borrower risk in the terms and conditions of loans that Wells Fargo originated after par rates had been established by reference to credit risk characteristics; (b) created a financial incentive for brokers to charge interest rates above the par rates that Wells Fargo had set; (c) did not require mortgage brokers to justify or document the reasons for the amount of broker fees not based on borrower risk; and (d) failed to adequately monitor for and fully remedy the effects of racial and ethnic disparities in those broker fees. Broker fees specifically measure the pricing variation caused by the subjective and unguided pricing adjustments not based on borrower risk. Wells Fargo continued to use these discretionary wholesale broker fee pricing policies, to inadequately document and review the implementation of that pricing component, and to incentivize upward broker adjustments to the par interest rate at least through the end of 2008.

97. Wells Fargo's policies and practices identified above were not justified by business necessity or

legitimate business interests. There were less discriminatory alternatives available to Wells Fargo that would have achieved the same business goals as these policies and practices.

98. Wells Fargo had knowledge that the unguided and subjective discretion it granted to mortgage brokers in its wholesale pricing policies and practices was being exercised in a manner that discriminated against African-American and Hispanic borrowers, but continued to implement its policies and practices with that knowledge. Wells Fargo did not take effective action to change the broker fee policies and practices to eliminate fully their discriminatory impact. Wells Fargo did not act to identify or compensate any individual borrowers who were victims of its discriminatory wholesale pricing policies and practices.

C. Wells Fargo Intentionally Discriminated Against Minority Borrowers in Violation of the Fair Housing Act, as Demonstrated by Former Bank Employees

99. Confidential Witnesses ("CWs") are former Wells Fargo employees responsible for making and/or underwriting loans on behalf of Wells Fargo in the greater Miami region. CWs describe how Wells Fargo has targeted minorities and residents of minority neighborhoods in and around Miami for predatory lending practices.

100. CW1 worked for Wells Fargo in 2010 as a Community Reinvestment Act loan officer based in the Miami area. He left his employment because he did not agree with how management was encouraging him to put low- to moderate-income

borrowers into FHA and Freddie Mac loans that were more expensive than CRA loans.

101. CW2 worked for Wells Fargo as a loan officer between 2004 and 2005. He worked for two branches in the Miami area. He dealt exclusively with non-prime loans.

102. CW3 worked for Wells Fargo as a loan officer between 2000 and 2012. He dealt with loans originating throughout Miami-Dade County and the City of Miami. His customer base was largely comprised on lower to middle-income Hispanic borrowers.

103. CW4 was a Home Mortgage Consultant, Sales Manager and top subprime loan officer at Wells Fargo. She was invited to participate in a number of sales and marketing meetings with upper-level management. A number of other loan officer representatives and personnel from around the country attended these meetings as well. As a result, while she was employed by the Bank in Maryland, she was aware that the Bank's discriminatory lending practices took place nationally. Similarly, she was aware that the Bank's compensation and pricing policies were applied on a nationwide basis.

1. Wells Fargo targets minorities for predatory loan terms.

104. The CWs explain that Wells Fargo targeted minorities in Miami in various ways. One was by targeting its discriminatory lending toward predominantly minority neighborhoods in Miami.

105. CW1 explained that CRA loans are part of a federal legal framework designed to discourage redlining. According to CW1, management pushed

FHA and Freddie Mac loans on low- to mid-income borrowers. The FHA and Freddie Mac loans were more expensive to borrowers, but they were more profitable to Wells Fargo and easier to sell on the secondary market. CW1 expressed to management that he wanted to tell these borrowers that there was a better product out there for them, and that he was not in this industry to put people into bad loans. Management disagreed, responding that "it's about putting food on the table at your home for your family."

106. CW2 made a point of reaching out to Latinos and African-Americans in marketing non-prime loans in Miami by attending community gatherings at organizations like the Columbian Chamber of Commerce and at an African-American congregation.

107. According to CW4, Wells Fargo also targeted minority churches and their congregations for subprime loans. Wells Fargo did not target white churches – "[w]hen it came to marketing, any reference to 'church' or 'churches' was understood as code for African-American or black churches."

108. Wells Fargo even assigned employees to make presentations at the churches on the basis of race. During a conference call in 2005 with subprime loan officers and branch managers about making presentations to black churches, the loan officers were told that only employees "of color" could attend, said CW4. She was later told that she could come, but only if she "carried someone's bag."

109. Wells Fargo also targeted African-Americans for subprime loans through a variety of special events, according to CW4. Wells Fargo selected

employees to make presentations at these events on the basis of race, as it did with church presentations. One such event was a "'wealth building' seminar" designed to promote subprime products in 2005, where the audience was expected to be predominantly African-American. CW4 was told by the manager of Emerging Markets, a subprime unit that targeted African-Americans, that she was "too white" to appear before the audience at the seminar. She complained to higher management, but received no response and no action was taken.

2. Wells Fargo gives its employees discretion to steer people who qualify for conventional mortgages into discriminatory mortgages (and pays its employees more for doing so).

110. The CW statements demonstrate that Wells Fargo steered borrowers who qualified for prime loans into subprime loans.

111. CW2 said that, as a non-prime loan officer, he felt pressured to write a lot of non-prime loans. His quota was about 8-10 loans a month, depending on the size of the loans. He would write non-prime loans for borrowers with credit scores up to 700. The non-prime loans that he wrote had higher rates and fees.

112. According to CW4, the Bank's commission and fee structure gave A rep loan officers a financial incentive to refer loans to a subprime loan officer. Her job was to figure out how to get the customer into a subprime loan. She knew that many of the referrals she received could qualify for a prime loan, and the Bank's underwriting guidelines left ample

discretion to figure out how to qualify most referrals for a subprime loan. Even after Wells Fargo began limiting the amount of loan fees, loan officers still had discretion and a big financial incentive to offer higher-cost loans because doing so increased their commissions.

3. Wells Fargo underwrites adjustable rate loans that borrowers cannot afford.

113. Wells Fargo frequently originates "3/27" adjustable rate mortgages, and frequently originated "2/28" adjustable rate mortgages until mid-2007, to borrowers from predominantly minority neighborhoods in Miami. Unless properly underwritten, such loans are destined to fail.

114. CW3 confirmed that Wells Fargo originated interest-only and adjustable rate mortgages. He cautioned that some loan officers misled borrowers about the terms of such loans. For example, he said that a loan officer would tell a borrower that an interest only loan would convert to a fixed rate after the interest only period, when in fact, it would convert to an adjustable rate after the interest only period expired.

115. Wells Fargo does not properly underwrite these loans when made to minorities and in minority neighborhoods. Wells Fargo does not adequately consider the borrowers' ability to repay these loans, especially after the teaser rate expires and the interest rate increases. The fact that these loans would result in delinquency, default, and foreclosure for many borrowers was, or should have been, clearly

foreseeable to Wells Fargo at the time the loans were made.

116. The use of "2/28" and "3/27" adjustable rate mortgages in the manner described above is consistent with the practice of reverse redlining, has subjected minority borrowers to unfair and deceptive loan terms, and has contributed significantly to the high rate of foreclosure found in the minority neighborhoods of Miami.

4. Wells Fargo limits the ability of minority borrowers to refinance out of the same predatory loans that they previously received from the Bank.

117. After the market crashed in or around 2008, the Bank's documentation required for approval became "overwhelming," CW3 said. "Minorities had a harder time verifying the documentation," according to CW3, which precluded many of them from refinancing existing loans. CW3 also explained that underwriting became so strict that the Bank questioned things like a $100 cash deposit in bank accounts and routinely rejected a borrower's representation of intent to occupy a property.

118. CW3 noticed that the Hispanic borrowers' applications he submitted to underwriting seemed to be rejected more than others. "I always said that a Rodriguez in the last name was treated differently than a Smith," he said of loan applications. In two applications with similar scenarios, "the one with Smith would get it and the one with Rodriguez wouldn't."

5. Wells Fargo engages in other abusive lending practices.

119. The CWs further demonstrate that Wells Fargo loan officers engaged in other abusive lending practices at the expense of minority borrowers.

120. According to CW2, for customers with less than prime credit scores, management suggested offering non-prime loans in order to give them time to improve their credit and then refinance their loans so the bank would make more fees.

121. CW2 further explained that Wells Fargo often changed paperwork that showed which bank branches were originating loans in order to make it appear as if no single branch was solely originating loans from a single ethnic community. "It was common knowledge that, to avoid problems, loans from one office were sent to another office to make both look more balanced. We needed to put some white loans in that community and some black loans in this community because [otherwise] we'll get some sh#% from the Fed."

122. CW3 said that, prior to 2008, Wells Fargo sent loan officers out into the community to promote its "no doc" loans, which were also called the "reduced documentation" loans at Wells Fargo. These loans, which carried a higher interest rate than fully documented loans, were frequently promoted to Hispanic borrowers with credit scores above 660. CW3 believed that other Wells Fargo loan officers had submitted false documents and exaggerated borrowers' incomes to qualify borrowers for loans. "If a guy told you he made $3000, you'd put in $5000" into the underwriting software program, he said,

explaining how it worked. He said there was no "backstop" system at the Bank to prevent it. Consequently, loan officers were "putting people in homes that they didn't qualify for," he said. "Obviously, it would put them in a bad predicament."

123. Further, CW3 said that loan officers sometimes took advantage of low to middle-income Hispanic customers who were not well-educated. According to CW3, the more affluent and better educated borrower knew to read and understand the terms of their loans, whereas the less affluent and less knowledgeable borrower was easily misled about mortgages. CW3 added that some loan officers at Wells Fargo did not fully inform borrowers of the financial repercussions of their mortgages.

124. Further still, CW3 described that, for years after the market crash, the only mortgage loans that the Bank made generally available in the Miami area (other than loans requiring a near perfect financial profile) were FHA loans.

D. Minorities in Fact Receive Predatory Loan Terms from Wells Fargo

125. As discussed herein, Wells Fargo's *predatory* loans include: high-cost loans (*i.e.*, loans with an interest rate that was at least three percentage points above a federally-established benchmark), subprime loans, interest-only loans, balloon payment loans, loans with prepayment penalties, negative amortization loans, no documentation loans, and/or ARM loans with teaser rates (*i.e.*, lifetime maximum rate > initial rate + 6%).

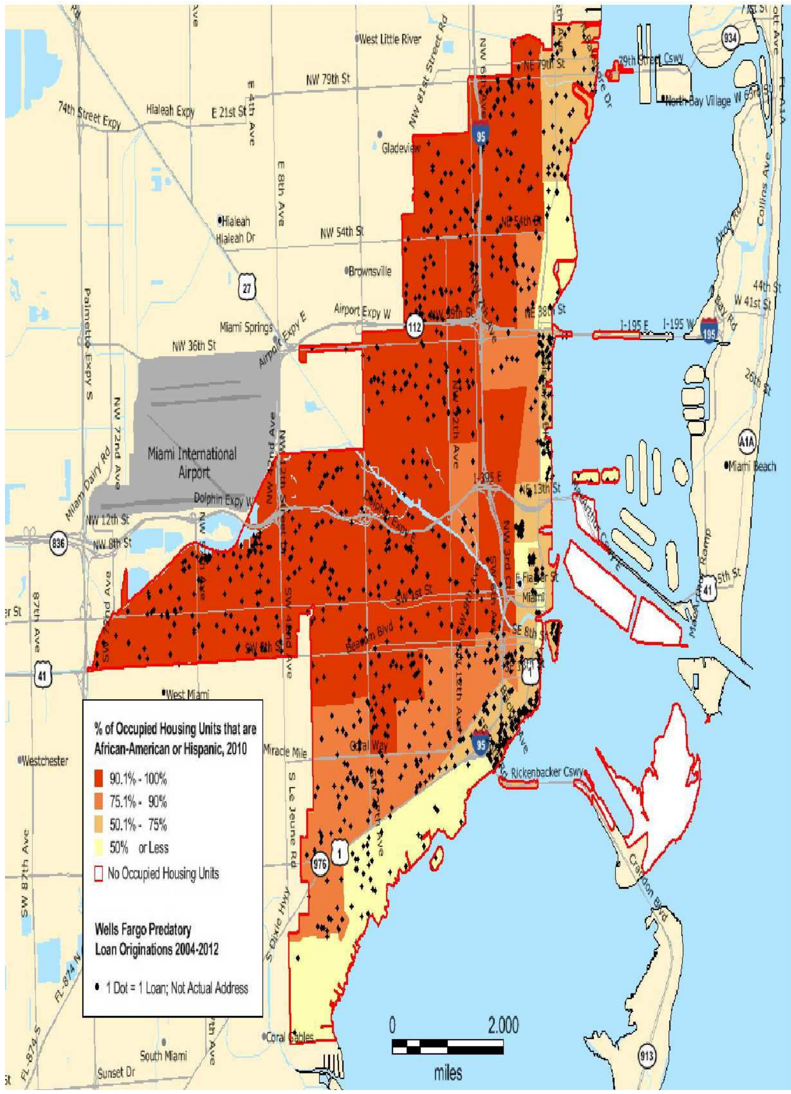
126. Data reported by the Bank and available through public databases shows that in 2004-

2012,11.1% of loans made by Wells Fargo to African-American and Latino customers in Miami were high cost, but only3.2% of loans made to white customers in Miami were high cost.[26] This data demonstrates a pattern of statistically significant differences in the product placement for high cost loans between minority and white borrowers.[27]

127. The following map of Wells Fargo predatory loans originated in Miami between 2004-2012 illustrates the geographic distribution of predatory loans in African-American and Latino neighborhoods and white neighborhoods in Miami. This map demonstrates that Wells Fargo's predatory loans are disproportionately located in minority neighborhoods.

[26] As alleged throughout the complaint, all references to the date range 2004-2012 are intended to include the time period up to and including December 31, 2012.

[27] Statistical significance is a measure of probability that an observed outcome would not have occurred by chance. As used in this Complaint, an outcome is statistically significant if the probability that it could have occurred by chance is less than 10%.


% of Occupied Housing Units that are African-American or Hispanic, 2010
90.1% - 100%
75.1% - 90%
50.1% - 75%
50% or Less
No Occupied Housing Units
Wells Fargo Predatory Loan Originations 2004-2012
1 Dot = 1 Loan; Not Actual Address
Miami International Airport
Miami
Miami Beach
Hialeah
Miami Springs
Gladeview
Brownsville
West Little River
North Bay Village
West Miami
Westchester
South Miami
Coral Gables
Rickenbacker Cswy
0
2,000
miles

128. The fact that predatory loans involving all of Wells Fargo's loan products are more heavily concentrated in minority neighborhoods in Miami is consistent with the practice of reverse redlining and, upon information and belief, has contributed significantly to the disproportionately high rates of foreclosure in minority communities in Miami.

E. Minorities in Miami Receive Such Predatory Loan Terms from Wells Fargo Regardless of Creditworthiness

129. According to *Discretionary Pricing, Mortgage Discrimination, and the Fair Housing Act*, 45 HARVARD CIVIL RIGHTS-CIVIL LIBERTIES LAW REV. 375, 398 (2010), several studies dating back to 2000 have established that minority borrowers were charged higher interest rates/fees than similar creditworthy white borrowers.

130. Likewise, according to *A Racial Financial Crisis*, 83 TEMPLE LAW REV. 941, 947, 949 (2011), one study concluded that "even after controlling for underwriting variables, African-American borrowers were 6.1% to 34.3% more likely than whites to receive a higher rate subprime mortgage during the subprime boom." And another study found that significant loan pricing disparity exists among low risk borrowers - African-American borrowers were 65% more likely to receive a subprime home purchase loan than similar creditworthy white borrowers, and 124% more likely to receive a subprime refinance loan.

131. Similarly, the Center for Responsible Lending's November 2011 report, *Lost Ground, 2011: Disparities in Mortgage Lending and Foreclosures,*

stated that "racial and ethnic differences in foreclosure rates persist even after accounting for differences in borrower incomes." Further, the Center stated it is "particularly troublesome" that minorities received riskier loans "even within [similar] credit ranges." For example, among borrowers having FICO scores above 660, the incidence of higher rate loans among various groups was as follows: whites - 6.2%; African-American - 21.4%; and Latino - 19.3%.

132. Moreover, data reported by the Bank and available through both public and private databases shows that minorities in Miami received predatory loan terms from Wells Fargo more frequently than white borrowers regardless of creditworthiness.

133. A regression analysis of this data controlling for borrower race and objective risk characteristics such as credit history, loan-to-value ratio, and the ratio of loan amount to income demonstrates that, from 2004-2012, an African-American borrower was 4.321 times more likely to receive a predatory loan as a white borrower possessing similar underwriting and borrower characteristics. The regression analysis further demonstrates that the odds that a Latino borrower would receive a predatory loan was 1.576 times the odds that a white borrower possessing similar underwriting and borrower characteristics would receive a predatory loan. These odds ratios demonstrate a pattern of statistically significant differences between African-American and white borrowers and between Latino and white borrowers.

134. The regression analysis also shows that these disparities persist when comparing only borrowers with FICO scores above 660. An African-American borrower with a FICO score above 660 was 2.572 times more likely to receive a predatory loan as a white borrower with similar underwriting and borrower characteristics. A Latino borrower with a FICO score above 660 was 1.875 times more likely to receive a predatory loan as a white borrower with similar underwriting and borrower characteristics. These odds ratios demonstrate a pattern of statistically significant differences between African-American and white borrowers and between Latino and white borrowers.

135. A similar regression analysis taking into account the racial makeup of the borrower's neighborhood rather than the individual borrower's race shows that borrowers in heavily minority neighborhoods in Miami were more likely to receive predatory loans than borrowers in heavily white neighborhoods. For example, a borrower in a heavily minority census tract (census tract consisting of at least 90% African-American or Latino households) was 1.955 times more likely as a borrower with similar characteristics in a non-minority neighborhood (census tract with at least 50% white households) to receive a predatory loan. These odds ratios demonstrate a pattern of statistically significant differences between African-American and white borrowers and between Latino and white borrowers.

136. This data also establishes that Wells Fargo disproportionately issued loans with higher risk features including government loans (FHA/VA) and

other high cost loans to African-American and Latino borrowers in Miami from 2008-2012. A regression analysis controlling for borrower race and objective risk characteristics such as ratio of loan amount to income demonstrates that an African-American borrower was 9.321 times more likely to receive one of these loans with higher risk features than a white borrower possessing similar borrower and underwriting characteristics. The regression analysis further demonstrates that a Latino borrower was 3.162 times more likely to receive one of these loans with higher risk features than a white borrower possessing similar borrower and underwriting characteristics. These odds ratios demonstrate a pattern of statistically significant differences between African-American and white borrowers and between Latino and white borrowers.

137. Thus, the disparities are not the result of or otherwise explained by legitimate non-racial underwriting criteria.

F. Wells Fargo's Targeting of Minorities who in Fact Receive Predatory Loan Terms Regardless of Creditworthiness Causes Foreclosures

1. Data shows that Wells Fargo's foreclosures are disproportionately located in minority neighborhoods in Miami.

138. Wells Fargo's failure to underwrite mortgage loans in minority and underserved communities in a responsible manner has been the subject of public attention and concern for years. For example, its practices are the focus of a 2004 report from the

Center for Responsible Lending. The report concluded that Wells Fargo's customers "too often face the loss of their home or financial ruin as a result" of its "predatory practices."[28] The predatory practices identified in the report include charging excessively high interest rates that are not justified by borrowers' creditworthiness; requiring large prepayment penalties while deliberately misleading borrowers about the penalties; convincing borrowers to refinance mortgages into new loans that only benefit Wells Fargo; deceiving borrowers into believing that they are getting fixed-rate loans when they are really getting adjustable rate loans; charging excessive fees; and more.

139. Such reports underscore the foreseeability of foreclosures arising from predatory lending practices, and their attendant harm.

140. Wells Fargo has intentionally targeted these kinds of predatory practices at African-American and Latino neighborhoods and residents. Far from being a responsible provider of much-needed credit in minority communities, Wells Fargo is a leading cause of stagnation and decline in African-American and Latino neighborhoods where its foreclosures are concentrated. Specifically, since at least 2000, its foreclosures have been concentrated in neighborhoods with African-American or Latino populations exceeding 75%.

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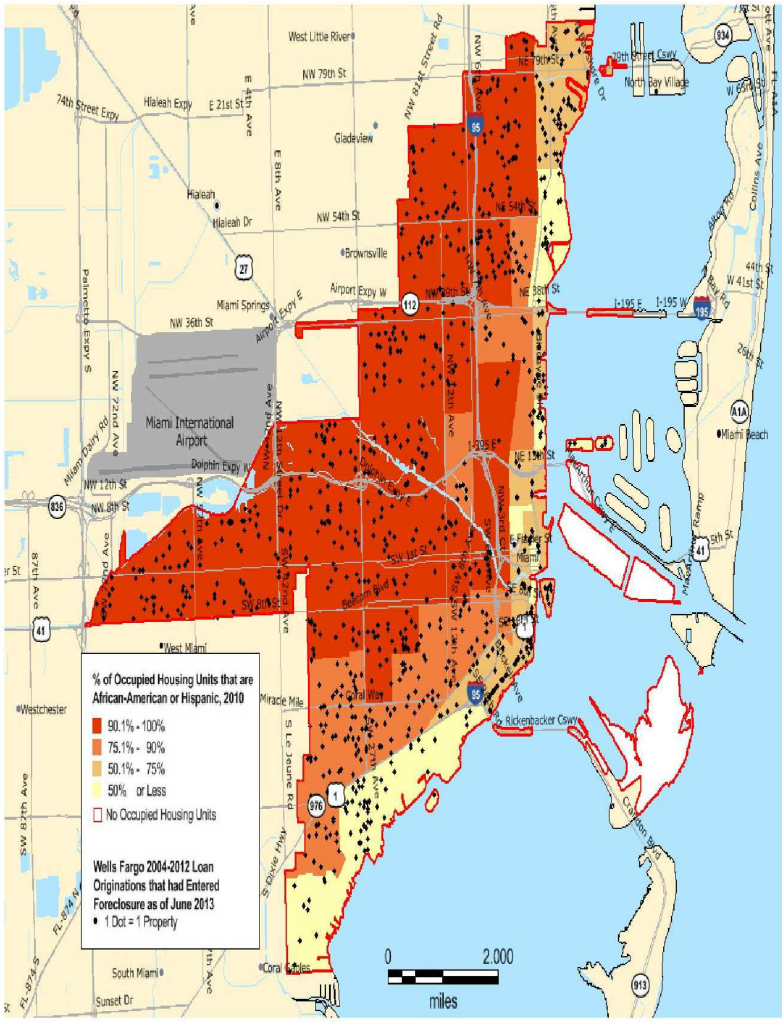
[28] Center for Responsible Lending, *A Review of Wells Fargo's Subprime Lending* (Apr. 2004) at 10 (available at http://www.responsiblelending.org/mortgage-lending/research-analysis/ip004-Wells_Fargo-0404.pdf).

141. Although 50.5% of Wells Fargo's loan originations in Miami from 2004 to 2012 were in census tracts that are at least 75% African-American or Latino, 63.9% of loan originations that had entered foreclosure by June 2013 were in those census tracts. Similarly, while 83.3% of Wells Fargo's loan originations in Miami from 2004 to 2012 occurred in census tracts that are at least 50% African-American or Latino, 95.5% of Wells Fargo's loan originations that had entered foreclosure by June 2013 were in those census tracts. Moreover, while 16.7% of Wells Fargo's loan originations in Miami from 2004 to 2012 occurred in census tracts that were less than 50% African-American or Latino, only 4.5% of Wells Fargo's loan originations that has entered foreclosure by June 2013 were in those census tracts. This data demonstrates a pattern of statistically significant differences between African-American and white borrowers and between Latino and white borrowers.

142. The following map represents the concentration of Wells Fargo's loan originations from 2004 through 2012 that had entered foreclosure by June 2013 in African-American and Latino neighborhoods. In addition to the disproportionate distribution of Wells Fargo foreclosures in African-American and Latino neighborhoods, disparate rates of foreclosure based on race further demonstrate Wells Fargo's failure to follow responsible underwriting practices in minority neighborhoods. While 24.3% of Wells Fargo's loans in predominantly (greater than 90%) African-American or Latino neighborhoods result in foreclosure, the same is true for only 4.4% of its loans in non-minority (at least

50% white) neighborhoods. In other words, a Wells Fargo loan in a predominantly African-American or Latino neighborhood is 6.975 times more likely to result in foreclosure as a Wells Fargo loan in a non-minority neighborhood. These odds ratios demonstrate a pattern of statistically significant differences between African-American and white borrowers and between Latino and white borrowers.



143. Thus, Wells Fargo's discretionary lending policies and pattern or practice of targeting of minorities, who in fact receive predatory loan terms regardless of creditworthiness, have caused and continue to cause foreclosures in Miami.

2. Data shows that Wells Fargo's loans to minorities result in especially quick foreclosures.

144. A comparison of the time from origination to foreclosure of Wells Fargo's loans originated in Miami from 2004 to 2012 shows a marked disparity with respect to the speed with which loans to African-Americans and Latinos and whites move into foreclosure. The average time to foreclosure for African- American and Latino borrowers is 2.996 years. By comparison, the average time to foreclosure for white borrowers is 3.266 years. These statistically significant disparities demonstrate that Wells Fargo aggressively moved minority borrowers into foreclosure as compared with how the Bank handled foreclosures for white borrowers.

145. This disparity in time to foreclosure is further evidence that Wells Fargo is engaged in lending practices consistent with reverse redlining. The disparity in time to foreclosure demonstrates that Wells Fargo is engaged in irresponsible underwriting in African-American and Latino communities that does not serve the best interests of borrowers. If Wells Fargo were applying the same underwriting practices in African-American and Latino neighborhoods and white neighborhoods in Miami, there would not be a significant difference in time to foreclosure. Were Wells Fargo underwriting borrowers in both communities with equal care and attention to proper underwriting practices, borrowers in African-American and Latino communities would not find themselves in financial straits significantly sooner during the lives of their loans than borrowers in white communities. The faster time to foreclosure

in African-American and Latino neighborhoods is consistent with underwriting practices in minority communities that are less concerned with determining a borrower's ability to pay and qualifications for the loan than they are in maximizing short-term profit.

146. The HUD/Treasury Report confirms that time to foreclosure is an important indicator of predatory practices: "[t]he speed with which the subprime loans in these communities have gone to foreclosure suggests that some lenders may be making mortgage loans to borrowers who did not have the ability to repay those loans at the time of origination."[29]

3. Data shows that the discriminatory loan terms cause the foreclosures.

147. Wells Fargo's discriminatory lending practices cause foreclosures and vacancies in minority communities in Miami.

148. Steering borrowers into loans that are less advantageous than loans for which they qualify, including steering borrowers who qualify for prime loans into subprime loans, can cause foreclosures because the borrowers are required to make higher loan payments. The difference between what a borrower who is steered in this manner must pay and the lower amount for which the borrower qualified can cause the borrower to be unable to make payments on the mortgage. In such instances, the borrower would have continued to make payments on the mortgage and remained in possession of the premises had Wells Fargo made the

[29] HUD/Treasury Report at 25.

loan without improperly steering the borrower into a subprime, or less advantageous loan. Steering borrowers in this manner, therefore, causes foreclosures and vacancies.

149. Giving a loan to an applicant who does not qualify for the loan, especially a refinance or home equity loan, can also cause foreclosures and vacancies. Some homeowners live in properties that they own subject to no mortgage. Other homeowners live in properties with modest mortgages that they can comfortably afford to pay. Where a lender, such as Wells Fargo, solicits such a homeowner to take out a home equity loan on their property, or alternatively, to refinance their existing loan into a larger loan without properly underwriting them to assure that they can make the monthly payments for the new, larger loan, the result is likely to be that the borrower will be unable to make payments on the mortgage. This is particularly true where the borrower is refinanced from a fixed-rate loan into an adjustable rate loan that the lender knows the borrower cannot afford should interest rates rise. In some instances the lender may refinance the borrower into a new loan that the lender knows the borrower cannot sustain given the borrower's present debt obligations and financial resources. In such circumstances, the likely result of such practices is to cause homeowners who are otherwise occupying properties without a mortgage, or comfortably making payments on a modest existing mortgage, to be unable to make payment on a new, unaffordable loan. This, in turn, causes foreclosures and vacancies. If these unaffordable refinance and home

equity loans had not been made, the subject properties would not have become vacant.

150. A regression analysis of loans issued by Wells Fargo in Miami from 2004-2012 controlling for objective risk characteristics such as credit history, loan to value ratio, and the ratio of loan amount to income demonstrates that a predatory loan is 5.494 times more likely to result in foreclosure than a non-predatory loan.

151. The regression analysis also demonstrates that a predatory loan made to an African-American borrower was 13.324 times more likely as a non-predatory loan made to a white borrower with similar borrower and underwriting characteristics to result in foreclosure. A predatory loan made to a Latino borrower was 17.341 times more likely as a non-predatory loan made to a white borrower with similar risk characteristics to result in foreclosure. These odds ratios demonstrate a pattern of statistically significant differences between African-American and white borrowers and between Latino and white borrowers.

152. A regression analysis of loans with higher risk features including government loans (FHA/VA) and other high cost loans issued by Wells Fargo in Miami from 2008-2012 controlling for borrower race and objective risk characteristics such as ratio of loan amount to income demonstrates that these loans are 1.620 times more likely as loans without these higher risk features to result in foreclosure. These odds ratios demonstrate a pattern of statistically significant differences between African-American

and white borrowers and between Latino and white borrowers.

VI. INJURY TO MIAMI CAUSED BY WELLS FARGO'S DISCRIMINATORY LOAN PRACTICES

153. Miami has suffered financial injuries as a direct result of Wells Fargo's pattern or practice of reverse redlining and the resulting disproportionately high rate of foreclosure on Wells Fargo loans to African-Americans and Latinos in minority neighborhoods in Miami. Miami seeks redress for these injuries. The City does not seek redress in this action for injuries resulting from foreclosures on mortgages originated by lenders other than Wells Fargo.

154. Wells Fargo continues to engage in the discriminatory pattern or practice described herein with similar and continuing deleterious consequences to the City.

155. The City seeks damages based on reduced property tax revenues due to (a) the decreased value of the vacant properties themselves, and (b) the decreased value of properties surrounding the vacant properties. In addition, the City seeks damages based on municipal services that it provided and still must provide to remedy blight and unsafe and dangerous conditions which exist at properties that were foreclosed as a result of Wells Fargo's illegal lending practices.

A. Miami has been Injured by a Reduction in Property Tax Revenues from Foreclosures

Caused by Discriminatory Loans Issued by Wells Fargo

156. When a home falls into foreclosure, it affects the property value of the foreclosed home as well as the values of other homes in the neighborhood. These decreased property values in turn reduce property tax revenues to the City.

157. As property values drop, Miami communities could lose many millions in property tax revenues from the decreased value of the foreclosed homes themselves and those in the surrounding neighborhoods.

1. The decreased value of the properties foreclosed by Wells Fargo result in reduced property tax revenues.

158. Homes in foreclosure tend to experience a substantial decline in value (e.g., 28%).[30]

159. A portion of this lost home value is attributable to homes foreclosed as a result of Wells Fargo's discriminatory loan practices.

160. The decreased property values of foreclosed homes in turn reduce property tax revenues to the City and constitute damages suffered by Miami.

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[30] Campbell, John Y., Stefano Giglio, and Parag Pathak, National Bureau of Economic Research, NBER Working Paper Series, "*Forced Sales and House Prices*" (2009) (*available at* http://www.nber.org/papers/w14866.pdf?new_window=1).

2. The decreased value of properties in the neighborhoods surrounding foreclosed properties results in reduced property tax revenues.

161. Wells Fargo foreclosure properties and the problems associated with them likewise cause especially significant declines in surrounding property values because the neighborhoods become less desirable. This in turn reduces the property tax revenues collected by Miami.

162. Property tax losses suffered by Miami as a result of vacancies resulting from Wells Fargo's foreclosures are fully capable of empirical quantification.

163. Routinely maintained property tax and other data allow for the precise calculation of the property tax revenues lost by the City as a direct result of particular Wells Fargo foreclosures. Using a well-established statistical regression technique that focuses on effects on neighboring properties, the City can isolate the lost property value attributable to Wells Fargo foreclosures and vacancies from losses attributable to other causes, such as neighborhood conditions. This technique, known as Hedonic regression, when applied to housing markets, isolates the factors that contribute to the value of a property by studying thousands of housing transactions. Those factors include the size of a home, the number of bedrooms and bathrooms, whether the neighborhood is safe, whether neighboring properties are well-maintained, and more. Hedonic analysis determines the contribution

of each of these house and neighborhood characteristics to the value of a home.

164. The number of foreclosures in a neighborhood is one of the neighborhood traits that Hedonic analysis can examine. Hedonic analysis allows for the calculation of the impact on a property's value of the first foreclosure in close proximity (*e.g.*, $^1/_8$ or $^1/_4$ of a mile), the average impact of subsequent foreclosures, and the impact of the last foreclosure.

165. Foreclosures attributable to Wells Fargo in minority neighborhoods in Miami can be analyzed through Hedonic regression to calculate the resulting loss in the property values of nearby homes. This loss can be distinguished from any loss attributable to non-Wells Fargo foreclosures or other causes. The loss in property value in minority neighborhoods in Miami attributable to Wells Fargo's unlawful acts and consequent foreclosures can be used to calculate the City's corresponding loss in property tax revenues.

166. Various studies establish that Hedonic regression can be used for this purpose. A study published by the Fannie Mae Foundation, using Chicago as an example, determined that each foreclosure is responsible for an average decline of approximately 1.1% in the value of each single-family home within an eighth of a mile.[31]

167. Other studies have focused on the impact of abandoned homes on surrounding property values. A study in Philadelphia, for example, found that each

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[31] *See* Dan Immergluck & Geoff Smith, *The External Costs of Foreclosure: The Impact of Single-Family Mortgage Foreclosures on Property Values*, 17 Housing Policy Debate 57 (2006) at 69.

home within 150 feet of an abandoned home declined in value by an average of $7,627; homes within 150 to 299 feet declined in value by $6,810; and homes within 300 to 449 feet declined in value by $3,542.[32]

168. These studies highlight the foreseeability of tax related harm to the City as the result of foreclosures arising from discriminatory loans.

169. And most recently, a Los Angeles study reported, "[i]t is conservatively estimated that each foreclosed property will cause the value of neighboring homes within an eighth of a mile to drop 0.9%." Thus, "[i]n Miami, impacted homeowners could experience property devaluation of $53 billion."[33] This decreased property value of neighboring homes in turn reduces property tax revenues to the City.

170. Application of such Hedonic regression methodology to data regularly maintained by Miami can be used to quantify precisely the property tax injury to the City caused by Wells Fargo's discriminatory lending practices and resulting foreclosures in minority neighborhoods.

B. Miami Is Injured Because It Provided and Still Must Provide Costly Municipal Services for Foreclosure Properties in Minority Neighborhoods as a Direct Result

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[32] *See* Anne B. Shlay & Gordon Whitman, *Research for Democracy: Linking Community Organizing and Research to Leverage Blight Policy*, at 21 (2004).

[33] The Alliance of Californians for Community Empowerment and the California Reinvestment Coalition, *The Wall Street Wrecking' Ball: What Foreclosures are Costing Los Angeles Neighborhoods*, at 3 (2011) ("Cost to Los Angeles Report").

of Discriminatory Loans Originated or Purchased by Wells Fargo

171. Wells Fargo foreclosure properties cause direct costs to the City because the City is required to provide increased municipal services at these properties. These services would not have been necessary if the properties had not been foreclosed upon.

172. For example, the City's Police Department has sent, and will continue to send personnel and police vehicles to Wells Fargo foreclosure properties to respond to a variety of problems, including increased vagrancy, criminal activity, and threats to public health and safety that arise at these properties because of their foreclosure status. Because violent crime has generally been found to increase due to foreclosures, the Miami PD must respond to calls reporting suspicious activity at foreclosure properties and perform ongoing investigations involving criminal activity, including gang activity, at these properties.

173. Likewise, the Miami Fire Department has sent, and will continue to send personnel and resources to Wells Fargo foreclosure properties to respond to a variety of fire-related problems that arise at these properties because of their foreclosure status.

174. The Miami Building Department and Code Enforcement/Code Compliance Departments have devoted, and will continue to devote personnel time and out-of-pocket funds to perform a number of tasks that arise at these properties because of their foreclosure status. These include, but are not limited

to the following: (a) inspect and issue permitting violations in contravention of Florida statutes 553 and the Florida Building Code; (b) inspect and issue violations of the Miami City Code and Florida statutes 162; (c) condemn and demolish vacant structures deemed an imminent hazard to public safety.

175. The City frequently hires independent contractors to perform certain services, including, but not limited to, (i) removing excess vegetation at vacant properties, (ii) hauling away trash and debris at vacant properties, (iii) boarding vacant property from casual entry, (iv) putting up fencing to secure vacant properties, (v) painting and removing graffiti at vacant properties. Occasionally, some of these services are performed by the City's General Services Administration Department.

176. The Miami City Attorney's Office has devoted, and will continue to devote personnel time and out-of-pocket resources perform a number of tasks that arise at these properties because of their foreclosure status. These include, but are not limited to the following: (a) prosecuting code enforcement cases; (b) preserving the City's lien rights at judicial foreclosure proceedings; and (c) pursuing court ordered injunctions involving a myriad of potential problems at foreclosure properties.

177. The City is required to administer and fund the Unsafe Structures Board, which was formerly under the jurisdiction of Miami-Dade County.

178. As stated by the *Cost to Los Angeles* Report, "[l]ocal government agencies have to spend money and staff time on blighted foreclosed properties,

providing maintenance, inspections, trash removal, increased public safety calls, and other code enforcement services .... Responding to these needs is a gargantuan task that involves multiple agencies and multiple levels of local government."[34]

179. Moreover, as discussed above, the Apgar-Duda report underscores the foreseeability of municipal costs as the result of foreclosures arising from discriminatory loans.

VII. SAMPLE FORECLOSURE PROPERTIES IN THE CITY OF MIAMI

180. Plaintiff has preliminarily identified nine hundred and ninety-nine (999) discriminatory loans issued by Wells Fargo in Miami between 2004-2012 that resulted in foreclosure.[35] The City has already incurred, or will incur in the future, damages corresponding to each of these properties. A sample of property addresses corresponding to these foreclosures is set forth below:

4780 NW 5th St., 33126

2779 NW 4th Terrace, 33125

744 NW 23rd Ave., 33125

1153 NW 32nd Pl., 33125

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[34] *Id.*

[35] Plaintiff anticipates that it will be able to identify more foreclosures resulting from the issuance of discriminatory loans during this time period with the benefit of discovery. This conclusion derives from the fact that because of certain reporting limitations, the publicly available mortgage loan databases utilized by Plaintiff are not as comprehensive as the mortgage loan databases maintained by and in the possession of an issuing bank.

3268 NW 19th St., 33125

170 NW 46th St., 33127

230 SW 30th Ave., 33135

1928 SW 17th St., 33145

1246 NW 71st. St., 33147

7631 NW 2nd. Ct., 33150

VIII. STATUTE OF LIMITATIONS AND CONTINUING VIOLATIONS DOCTRINE

181. As alleged herein, Defendant Wells Fargo has engaged in a continuous pattern and practice of mortgage discrimination in Miami since at least 2004 by imposing different terms or conditions on a discriminatory and legally prohibited basis. In order to maximize profits at the expense of the City of Miami and minority borrowers, Wells Fargo adapted its unlawful discrimination to changing market conditions. This unlawful pattern and practice conduct is continuing through the present and has not terminated. Therefore, the operative statute of limitations governing actions brought pursuant to the Federal Fair Housing Act has not commenced to run.

IX. CLAIMS FOR RELIEF
FIRST CLAIM FOR RELIEF

(Violation of the Federal Fair Housing Act, 42 U.S.C. §§ 3601, *et seq.*)

182. Plaintiff repeats and incorporates by reference all allegations contained in the preceding paragraphs as if fully set forth herein.

183. Wells Fargo's acts, policies, and practices as described constitute intentional discrimination on the basis of race. Wells Fargo has intentionally targeted residents of predominantly African-American and Latino neighborhoods in Miami for different treatment than residents of predominantly white neighborhoods in Miami with respect to mortgage lending. Wells Fargo has intentionally targeted residents of these neighborhoods for high-cost loans without regard to their credit qualifications and without regard to whether they qualify for more advantageous loans, including prime loans. Wells Fargo has intentionally targeted residents of these neighborhoods for increased interest rates, points, and fees, and for other disadvantageous loan terms including, but not limited to, adjustable rates, prepayment penalties, and balloon payments. Wells Fargo has intentionally targeted residents of these neighborhoods for unfair and deceptive lending practices in connection with marketing and underwriting mortgage loans.

184. Wells Fargo's acts, policies, and practices have had an adverse and disproportionate impact on African-Americans and Latinos and residents of predominantly African-American and Latino neighborhoods in Miami as compared to similarly situated whites and residents of predominantly white neighborhoods in Miami. This adverse and disproportionate impact is the direct result of Wells Fargo's policies of providing discretion to loan officers and others responsible for mortgage lending; failing to monitor this discretion to ensure that borrowers were being placed in loan products on a nondiscriminatory basis when Wells Fargo had

notice of widespread product placement disparities based on race and national origin; giving loan officers and others responsible for mortgage lending large financial incentives to issue loans to African-Americans and Latinos that are costlier than better loans for which they qualify; otherwise encouraging and directing loan officers and others responsible for mortgage lending to steer borrowers into high-cost loans or loans with adjustable rates, prepayment penalties, or balloon payments without regard for whether they qualify for better loans, including but not limited to prime loans; and setting interest rate caps. These policies have caused African-Americans and Latinos and residents of predominantly African-American and Latino neighborhoods in Miami to receive mortgage loans from Wells Fargo that have materially less favorable terms than mortgage loans given by Wells Fargo to similarly situated whites and residents of predominantly white neighborhoods in Miami, and that are materially more likely to result in foreclosure.

185. Wells Fargo's residential lending-related acts, policies, and practices constitute reverse redlining and violate the Fair Housing Act as:

(a) Discrimination on the basis of race and national origin in making available, or in the terms and conditions of, residential real estate-related transactions, in violation of 42 U.S.C. § 3605(a); and

(b) Discrimination on the basis of race and national origin in the terms, conditions, or privileges of sale of a dwelling, in violation of 42 U.S.C. § 3604(b).

186. Wells Fargo's policies or practices are not justified by business necessity or legitimate business interests.

187. Wells Fargo's policies and practices are continuing.

188. The City is an aggrieved person as defined by 42 U.S.C. § 3602(i) and has suffered damages as a result of Wells Fargo's conduct.

189. The City's damages include lost tax revenues and the need to provide increased municipal services. The loss of tax revenues at specific foreclosure sites and at closely neighboring properties in predominantly minority neighborhoods of the City was a foreseeable consequence that was fairly traceable to Wells Fargo's discriminatory lending. Likewise, the need to provide increased municipal services at blighted foreclosure sites in predominantly minority neighborhoods of the City was a foreseeable consequence that was fairly traceable to Wells Fargo's discriminatory lending.

190. Wells Fargo's policies and practices, as described herein, had the purpose and effect of discriminating on the basis of race or national origin. These policies and practices were intentional, willful, or implemented with reckless disregard for the rights of African-American and Latino borrowers.

SECOND CLAIM FOR RELIEF

(Common Law Claim For Unjust Enrichment Based On Florida Law)

191. Plaintiff repeats and incorporates by reference paragraphs 1 - 181 as if fully set forth herein.

192. Defendants have received and utilized benefits derived from a variety of municipal services, including police and fire protection, as well as zoning ordinances, tax laws, and other laws and services that have enabled Defendants to operate and profit within the City of Miami.

193. Defendants are aware of and have taken advantage of the services and laws provided by the City of Miami to further their businesses.

194. As a direct and proximate result of Defendants' predatory lending practices, Defendants have been enriched at the City's expense by utilizing benefits conferred by the City and, rather than engaging in lawful lending practices, practicing unlawful lending practices that have both denied the City revenues it had properly expected through property and other tax payments and by costing the City additional monies for services it would not have had to provide in the neighborhoods affected by foreclosures due to predatory lending, absent the Defendants' unlawful activities. Defendants have failed to remit those wrongfully obtained benefits or reimburse the City for its costs improperly caused by Defendants, and retention of the benefits by Defendants would be unjust without payment.

195. In addition, to its detriment the City has paid for the Defendants' externalities or Defendants' costs of harm caused by its mortgage lending discrimination, in circumstances where Defendants are and have been aware of this obvious benefit and retention of such benefit would be unjust.

DEMAND FOR JURY TRIAL

Pursuant to Fed. R. Civ. P. 38(b), the City demands a trial by jury on all issues so triable.

PRAYER FOR RELIEF

WHEREFORE, the City respectfully prays that the Court grant it the following relief:

A. Enter a declaratory judgment that the foregoing acts, policies, and practices of Wells Fargo violate 42 U.S.C. §§ 3604 and 3605;

B. Enter a permanent injunction enjoining Wells Fargo and its directors, officers, agents, and employees from continuing the discriminatory conduct described herein, and directing Wells Fargo and its directors, officers, agents, and employees to take all affirmative steps necessary to remedy the effects of the discriminatory conduct described herein, and to prevent additional instances of such conduct or similar conduct from occurring in the future, pursuant to 42 U.S.C. § 3613(c)(1);

C. Award compensatory damages to the City in an amount to be determined by the jury that would fully compensate the City of Miami for its injuries caused by the conduct of Wells Fargo alleged herein, pursuant to 42 U.S.C. § 3613(c)(1);

D. Award punitive damages to the City in an amount to be determined by the jury that would punish Wells Fargo for the willful, wanton, and reckless conduct alleged herein, and that would effectively deter similar conduct in the future, pursuant to 42 U.S.C. § 3613(c)(1);

E. Award the City its reasonable attorneys' fees and costs, pursuant to 42 U.S.C. § 3613(c)(2);

F. Require payment of pre-judgment interest on monetary damages; and

G. Order such other relief as this Court deems just and equitable.

Dated: December 13, 2013

Respectfully submitted,

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. 13-cv-24508-DIMITROULEAS

CITY OF MIAMI,
a Florida municipal corporation

Plaintiff,

v.

WELLS FARGO & CO., and
WELLS FARGO BANK, N.A.,

Defendants.

Filed: July 21, 2014

DEMAND FOR JURY TRIAL

EXHIBIT A TO THE CITY'S MOTION FOR RECONSIDERATION AND LEAVE TO FILE FIRST AMENDED COMPLAINT

[PROPOSED] FIRST AMENDED COMPLAINT FOR VIOLATIONS OF THE FEDERAL FAIR HOUSING ACT

[Table of Contents omitted]

I. NATURE OF THE ACTION

1. It is axiomatic that banks should not make discriminatory loans. Banks must extend credit to minorities on equal terms as they do to other

similarly situated borrowers. Banks should not target minority neighborhoods for loans that discriminate nor make loans to minorities on terms that are worse than those offered to whites with similar credit characteristics. When Banks engage in such discriminatory conduct, it has profound non-economic and economic consequences for the cities in which mortgaged properties exist, and Banks should be responsible for those consequences. Wells Fargo's conduct has harmed the residents of Miami and impaired the City's strong, longstanding and active commitment to open, integrated residential housing patterns and its attendant benefits of creating a stable community that increases social and professional opportunities and the quality of life in the City. Additionally, Wells Fargo's conduct has caused the City to lose property tax revenues and required the City to pay the costs of repairing and maintaining properties that go into foreclosure due to discriminatory lending. This lawsuit arises because Wells Fargo breached these legally mandated obligations and foreseeably injured the City of Miami.

A. Wells Fargo Has Engaged in a Continuing Pattern of Discriminatory Mortgage Lending Practices in Miami Resulting in Foreclosures.

2. This suit is brought pursuant to the Fair Housing Act of 1968 ("FHA"), as amended, 42 U.S.C. §§ 3601, *et seq.*, by the City of Miami ("Miami" or "City") to seek redress for injuries caused by Wells Fargo's[1] ("Wells Fargo" or "the Bank") pattern or

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[1] Defendants collectively are referred to as "Wells Fargo," including: Wells Fargo & Co., and Wells Fargo Bank, N.A.

practice of illegal and discriminatory mortgage lending. Specifically, Miami seeks injunctive relief and damages for the injuries caused by foreclosures on Wells Fargo's loans in minority neighborhoods and to minority borrowers that are the result of Wells Fargo's unlawful and discriminatory lending practices. The unlawful conduct alleged herein consists of both intentional discrimination and disparate impact discrimination.

3. The State of Florida in general, and the City of Miami in particular, have been devastated by the foreclosure crisis. As of October 2013, Florida has the country's highest foreclosure rate, and Miami has the highest foreclosure rate among the 20 largest metropolitan statistical areas in the country.[2] Moreover, Florida is by far the leading state in the country with regard to owner-vacated or "Zombie" foreclosures.[3] Since 2008, banks have foreclosed on approximately 1.8 million homes in Florida, and

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Plaintiff alleges that Defendants are also liable for residential home loans and lending operations acquired from, and/or sold by or through, AM Mortgage Network DBA Vertice, American Mortgage, American Mortgage Network, American Mortgage Network DBA Vertice, Wachovia Mortgage, Wachovia Mortgage, FSB, World Savings Bank, and World Savings Bank, FSB.

[2] RealtyTrac, *Scheduled Judicial Foreclosure Auctions Increase Annually for 16th Straight Month, Foreclosure Starts Up Monthly for Second Straight Month, Big Jumps in FL, IL, CO*, (Nov. 14, 2013) (*available at* http://www.realtytrac.com/content/foreclosure-market-report/october-2013-us-foreclosure-market-report-7934).

[3] RealtyTrac, *Q1 2013 Foreclosure Inventory Update*, pg. 5 (*available at* http://www.realtytrac.com/images/reportimages/RealtyTrac_Foreclosure_Inventory_Analysis_Q1_2013.pdf).

Wells Fargo's discriminatory conduct is responsible for a significant number of these foreclosures.

4. The foreclosure crisis in Florida resulted in such drastic consequences that the Florida Supreme Court established a Task Force to recommend "policies, procedures, strategies, and methods for easing the backlog of pending residential mortgage foreclosure cases while protecting the rights of parties."[4]

5. Wells Fargo has engaged in a continuous pattern and practice of mortgage discrimination in Miami since at least 2004 by imposing different terms or conditions on a discriminatory and legally prohibited basis. In order to maximize profits at the expense of the City of Miami and minority borrowers, Wells Fargo adapted its unlawful discrimination to changing market conditions. This unlawful pattern and practice is continuing through the present and has not terminated. Therefore, the operative statute of limitations governing actions brought pursuant to the Federal Fair Housing Act has not commenced to run.

6. The pattern and practice of lending discrimination engaged in by Wells Fargo consists of traditional redlining[5] and reverse redlining,[6] both of which have been deemed to violate the FHA by

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[4] Florida Supreme Court Task Force On Residential Mortgage Foreclosure Cases, *Final Report And Recommendations* (August 17, 2009) (*available at* www.floridasupremecourt.org/.../Filed_08-17-2009_Foreclosure_Final_).

[5] Redlining is the practice of denying credit to particular neighborhoods based on race.

[6] Reverse redlining is the practice of flooding a minority community with exploitative loan products.

federal courts throughout the country. Wells Fargo engaged in redlining, and continues to engage in said conduct, by refusing to extend mortgage credit to minority borrowers in Miami on equal terms as to non-minority borrowers. Wells Fargo engaged in reverse redlining, and continues to engage in said conduct, by extending mortgage credit on predatory terms to minority borrowers in minority neighborhoods in Miami on the basis of the race, or ethnicity of its residents. Federal Reserve Chairman Ben Bernanke recently acknowledged these twin evils of mortgage discrimination and explained that both types of mortgage discrimination "continue to have particular significance to mortgage markets."[7]

7. Major banks such as Wells Fargo have a long history of engaging in redlining throughout Miami. That practice began to change in the late 1990s, when Wells Fargo adapted to changing market conditions and began to flood historically underserved minority communities with mortgage loans that consisted of a variety of high cost and abusive mortgage loan products with predatory terms as compared to the mortgage loans issued to similarly-situated white borrowers (reverse redlining).

8. Wells Fargo's discriminatory lending practices have the purpose and effect of placing vulnerable, underserved borrowers in loans they cannot afford. Reverse redlining maximizes Wells Fargo's profit

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[7] Remarks by Federal Reserve Chairman Ben Bernanke at the Operation HOPE Global Financial Dignity Summit, Atlanta, Georgia at pg. 10 (November 15, 2012) (*available at* www.federalreserve.gov/newsevents/speech/bernanke20121115a.htm).

without regard to the borrower's best interest, the borrower's ability to repay, or the financial health of underserved minority neighborhoods. Moreover, Wells Fargo has averted any significant risk to itself by selling the vast majority of mortgage loans it originates or purchases on the secondary market (collectively "Wells Fargo Loans").

9. Between 1996-2006, one category of discriminatory loan products - subprime loans - grew throughout the country from $97 billion to $640 billion. These loans were frequently targeted to minorities. Upon information and belief, the lack of accessible credit resulting from Wells Fargo's previous pattern and practice of redlining in the minority communities in Miami created conditions whereby the Bank could easily target and exploit the underserved minority communities who due to traditional redlining had been denied credit.

10. Thereafter, following several years of issuing abusive, subprime mortgage loans throughout the minority communities of Miami, commencing in or around 2007, Wells Fargo once again adapted to changing market conditions while continuing its pattern and practice of issuing a variety of discriminatory loan products. Simultaneously, Miami and other communities throughout the country experienced a curtailment of mortgage credit issued to minority borrowers.[8] Wells Fargo is one of

[8] Center for Responsible Lending, *The State of Lending in America & its Impact on U.S. Households* (2012) (*available at* http://www.responsiblelending.org/state-of-lending/State-of-Lending-report-1.pdf); Harvard School of Public Health, *Home Purchase Loan Denial Rate By Race / Ethnicity* (2010) (*available at* http://diversitydata.sph.harvard.edu/Data/Rankings/Show.aspx?ind=9).

the largest mortgage lenders doing business in Miami and its policies and practices contributed to this problem. In other words, Wells Fargo not only refused to extend credit to minority borrowers when compared to white borrowers, but when the Bank did extend credit, it did so on predatory terms. This combination of reverse redlining and redlining represents a continuing and unbroken pattern and practice of mortgage lending discrimination in Miami that still exists today.

11. Wells Fargo's pattern and practice of *reverse redlining* has caused an excessive and disproportionately high number of foreclosures on the Wells Fargo Loans it has made in the minority neighborhoods of Miami. Foreclosures on loans originated by Wells Fargo are concentrated in these neighborhoods. *A loan in a predominantly minority neighborhood is 6.975 times more likely to result in foreclosure than is a loan in a neighborhood with a majority of white residents*.

12. Wells Fargo's pattern and practice of *traditional redlining* has also caused an excessive and disproportionately high number of foreclosures in the minority neighborhoods of Miami. These foreclosures often occur when a minority borrower who previously received a predatory loan sought to refinance the loan, only to discover that Wells Fargo refused to extend credit at all, or on equal terms as refinancing similar loans issued to white borrowers. The inevitable result of the combination of issuing a predatory loan, and then refusing to refinance the loan, was foreclosure.

13. Wells Fargo would have had comparable foreclosure rates in minority and white communities

if it was properly and uniformly applying responsible underwriting practices in both areas. Wells Fargo possesses sophisticated underwriting technology and data that allows it to predict with precision the likelihood of delinquency, default or foreclosure. The fact that Wells Fargo's foreclosures are so disproportionately concentrated in minority neighborhoods is not the product of random events. To the contrary, it reflects and is fully consistent with Wells Fargo's practice of targeting minority neighborhoods and customers for discriminatory practices and predatory pricing and products. It also reflects and is consistent with Wells Fargo's practice of failing to underwrite minority borrowers' applications properly and of putting these borrowers into loans which (1) have more onerous terms than loans given to similarly situated white borrowers and (2) the borrowers cannot afford, leading to foreclosures.

14. The Bank's predatory and discriminatory lending practices are evidenced by information from confidential witness statements provided by former employees of Wells Fargo (discussed further herein). For example:

(a) Manager of Bank's subprime unit that targeted African-Americans told witness that she was "too white" to appear before the audience at a seminar.

(b) "If a guy told you he made $3000, you'd put in $5000" into the underwriting software program. There was no "backstop" system at the Bank to prevent it. Loan officers were "putting people in homes that they didn't qualify for. Obviously, it would put them in a bad predicament."

(c) After the market crashed in or around 2008, "[m]inorities had a harder time verifying the documentation."

(d) "I always said that a Rodriguez in the last name was treated differently than a Smith. . .[T]he one with Smith would get [the loan] and the one with Rodriguez wouldn't."

(e) "It was common knowledge that, to avoid problems, loans from one office were sent to another office to make both look more balanced. We needed to put some white loans in that community and some black loans in this community because [otherwise] we'll get some sh#% from the Fed."

15. The reports of these witnesses are confirmed when the Miami data on Wells Fargo loans is examined. Such an examination reveals a widespread practice of discrimination. For example, a regression analysis that *controls for credit history* and other factors demonstrates that an African-American Wells Fargo borrower was 4.321 times more likely to receive a predatory loan as a white borrower and a Latino borrower 1.576 times more likely. The regression analysis confirms that African-Americans with FICO scores over 660 are 2.572 times more likely to receive a predatory Wells Fargo loan as a white borrower, and a Latino borrower 1.875 times more likely.

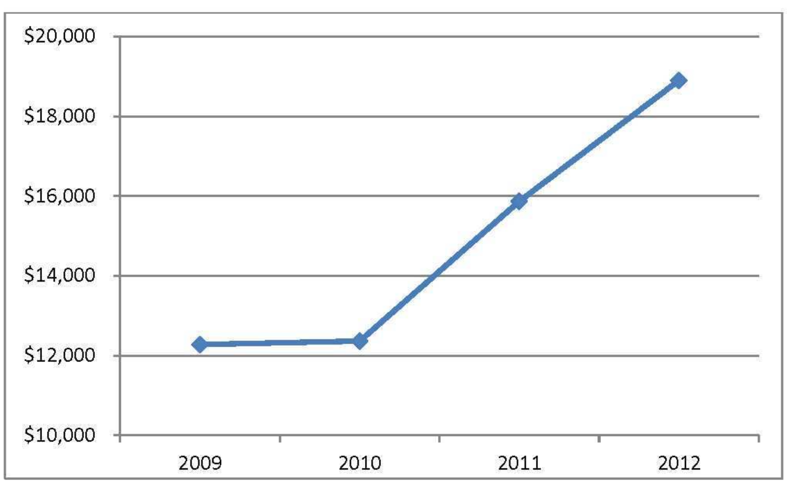
16. To date, successful discriminatory lending actions alleging conduct similar to that alleged herein have been brought against Wells Fargo by the City of Baltimore, the City of Memphis, the

Department of Justice, and the Federal Reserve Bank. The Federal Reserve levied an $85 million penalty against Wells Fargo, representing the largest penalty it has assessed in a consumer protection enforcement action.

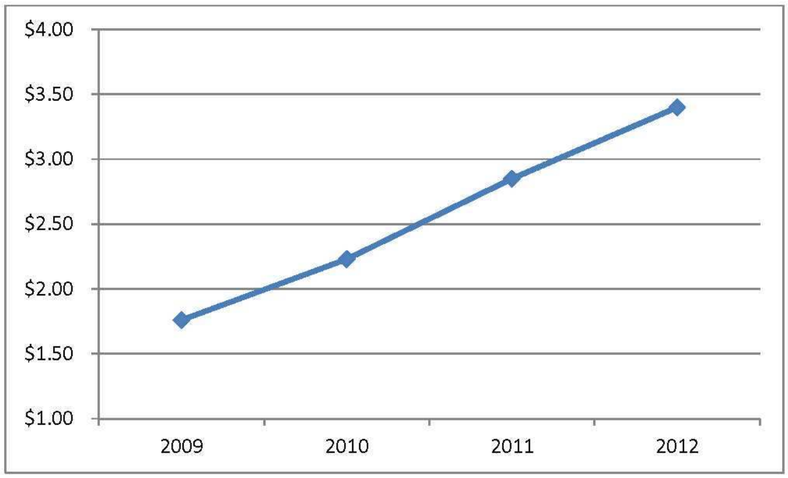
17. The Department of Justice's Civil Rights Division determined that mortgage brokers who generated loan applications through Wells Fargo's wholesale channel, and were granted broad pricing discretion by Wells Fargo, had charged higher fees and rates to tens of thousands of minority borrowers across the country than they had to white borrowers who posed the same credit risk - selling what Wells Fargo employees in Baltimore referred to as "ghetto loans."

18. The past several years have been highly profitable for Wells Fargo. According to a January 11, 2013, press release, the Bank generated a record amount of (i) net income ($18.9 billion) and (ii) diluted earnings per share ($3.36). The following charts illustrate these results.

Net Income (millions)



Earnings per share



19. The $19 billion that the Bank reported as profit in 2012 is more than double the annual profit that it reported during the boom years of 2003-2007. During the crisis years of 2009-2012, Wells Fargo reported a combined $59 billion in profits, while millions lost their homes.

20. At the same time that Wells Fargo achieved record financial success, the Bank's discriminatory practices and resulting foreclosures in the City's minority neighborhoods have inflicted significant, direct, and continuing non-economic and economic harm to the City, while at the same time undermining the City's interest in integrated housing.

21. Because of the multitude of analytic tools available to Wells Fargo to determine the likelihood that a particular mortgage loan would result in default by the borrower, as well as the existence of various studies, reports, and other pertinent literature specifically addressing the connection between mortgage loans and foreclosures, it was

foreseeable that Wells Fargo knew, or should have known, that a predatory or high risk loan issued to an African-American or Hispanic in certain neighborhoods in Miami would result in default and subsequent foreclosure. Moreover, because Wells Fargo maintains numerous branch offices throughout Miami and has knowledge of the specific address for each loan it issued, it was foreseeable that Wells Fargo knew, or should have known of the condition of foreclosed properties corresponding to loans that it issued in Miami regardless of whether it serviced the loan or subsequently sold the servicing rights to a third party.

22. According to Federal Reserve Chairman Bernanke, "foreclosures can inflict economic damage beyond the personal suffering and dislocation that accompany them. Foreclosed properties that sit vacant for months (or years) often deteriorate from neglect, adversely affecting not only the value of the individual property but the values of nearby homes as well. Concentrations of foreclosures have been shown to do serious damage to neighborhoods and communities, reducing tax bases and leading to increased vandalism and crime. Thus, the overall effect of the foreclosure wave, especially when concentrated in lower-income and minority areas, is broader than its effects on individual homeowners."[9]

23. The discriminatory lending practices at issue herein have resulted in what many leading commentators describe as the "greatest loss of wealth for people of color in modern US history." It is well-established that poverty and unemployment rates for minorities exceed those of whites, and therefore,

[9] Bernanke, *supra* n.7 at p. 4.

home equity represents a disproportionately high percentage of the overall wealth for minorities.[10] As Federal Reserve Chairman Bernanke recently explained, as a result of the housing crisis, "most or all of the hard-won gains in homeownership made by low-income and minority communities in the past 15 years or so have been reversed."[11] The resulting impact of these practices represents "nothing short of the preeminent civil rights issue of our time, erasing, as it has, a generation of hard fought wealth accumulation among African-Americans."[12]

II. PARTIES

24. Plaintiff City of Miami is a Florida municipal corporation. The City has maintained an active and longstanding interest in the quality of life and the professional opportunities that attend an integrated community. One way that the City has furthered these interests is through its Department of Community and Economic Development, which is charged with responsibility for operating the City's fair housing program, reducing illegal housing discrimination, monitoring and investigating fair housing complaints, supporting fair housing litigation, and conducting research and studies to identify and address fair housing impediments as a

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[10] Robert Schwemm and Jeffrey Taren, *Discretionary Pricing, Mortgage Discrimination, and the Fair Housing Act*, 45 HARVARD CIVIL RIGHTS-CIVIL LIBERTIES LAW REV. 375, 382 (2010).

[11] Bernanke, *supra* n.7 at p. 3.

[12] Charles Nier III and Maureen St. Cyr, *A Racial Financial Crisis: Rethinking the Theory of Reverse Redlining to Combat Predatory Lending Under the Fair Housing Act*, 83 TEMPLE LAW REVIEW 941, 942 (2011).

means of improving the overall quality of life in the city. The City is authorized by the City Commission to institute suit to recover damages suffered by the City as described herein.

25. Wells Fargo & Company is a nationwide, diversified, financial services company. Upon information and belief, its corporate headquarters are located in San Francisco, California. It is the parent company of Wells Fargo Bank, N.A.

26. Wells Fargo Bank, N.A. is organized as a national banking association under the laws of the United States. Upon information and belief, its corporate headquarters are located in South Dakota. It maintains multiple offices in the State of Florida for the purposes of soliciting applications for and making residential mortgage loans and engaging in other business activities.

27. The Defendants in this action are, or were at all relevant times, subject to Federal laws governing fair lending, including the FHA and the regulations promulgated under each of those laws. The FHA prohibits financial institutions from discriminating on the basis of, *inter alia*, race, color, or national origin in their residential real estate-related lending transactions.

28. The Defendants in this action are or were businesses that engage in residential real estate-related transactions in the City of Miami within the meaning of the FHA, 42 U.S.C. § 3605.

29. Based on information reported pursuant to the Home Mortgage Disclosure Act, in addition to loans that Defendants originated directly, Defendants are responsible for residential home loans acquired from, and/or sold by or through, Wells Fargo Financial,

Wells Fargo Funding, Inc., Wachovia Mortgage, FSB, Wachovia Bank, N.A., Wachovia Mortgage Co., World Savings Bank, FSB, American Mortgage Network, Inc., and Home Services Lending, LLC.

30. Upon information and belief, Plaintiff alleges that each of the Defendants was and is an agent of the other Defendants. Each Defendant, in acting or omitting to act as alleged in this Complaint, was acting in the course and scope of its actual or apparent authority pursuant to such agencies, and/or the alleged acts or omissions of each Defendant as agent were subsequently ratified and adopted by each agent as principal. Each Defendant, in acting or omitting to act as alleged in this Complaint, was acting through its agents, and is liable on the basis of the acts and omissions of its agents.

III. JURISDICTION AND VENUE

31. This Court has jurisdiction over this matter pursuant to 42 U.S.C. § 3613 and 28 U.S.C. §§ 1331, 1343, because the claims alleged herein arise under the laws of the United States.

32. Venue is proper in this district under 28 U.S.C. § 1391(b) because Wells Fargo conducts business in this district and a substantial part of the events and omissions giving rise to the claims occurred in this district.

IV. FACTUAL BACKGROUND

A. Background Regarding Discriminatory Loan Practices, Reverse Redlining, and Redlining.

33. Prior to the emergence of subprime lending, most mortgage lenders made only "prime" loans. Prime lending offered uniformly priced loans to

borrowers with good credit, but individuals with lower credit were not eligible for prime loans.

34. Subprime lending developed and began growing rapidly in the mid-1990s as a result of technological innovations in risk-based pricing and in response to the demand for credit by borrowers who were denied prime credit by traditional lenders. Advances in automated underwriting allowed lenders to predict with improved accuracy the likelihood that a borrower with lower credit will successfully repay a loan. These innovations gave lenders the ability to adjust the price of loans to match the different risks presented by borrowers whose credit records did not meet prime standards. Lenders found that they could now accurately price loans to reflect the risks presented by a particular borrower. When done responsibly, this made credit available much more broadly than had been the case with prime lending.

35. Responsible subprime lending has opened the door to home ownership to many people, especially low- to moderate-income and minority consumers, who otherwise would have been denied mortgages. At the same time, however, subprime lending has created opportunities for unscrupulous lenders to target minorities and engage in discriminatory, irresponsible lending practices that result in loans that borrowers cannot afford. This, in turn, leads directly to defaults and foreclosures.

36. Enticed by the prospect of profits resulting from exorbitant origination fees, points, and related pricing schemes, some irresponsible lenders took advantage of a rapidly rising real estate market to convince borrowers to enter into discriminatory loans that had unfair terms that they could not afford.

Often this was accomplished with the help of deceptive practices and promises to refinance at a later date. These abusive lenders did not worry about the consequences of default or foreclosure to their business because, once made, a significant amount of the loans were sold on the secondary market.

37. As the subprime market grew, the opportunities for abusive practices grew with it.[13] As a consequence, the federal government has found that abusive and predatory practices "are concentrated in the subprime mortgage market."[14] These practices, which in recent years have become the target of prosecutors, legislators, and regulators, include the following:

a. Placing borrowers in subprime loans even though they qualify for prime loans on better terms.

b. Failing to prudently underwrite hybrid adjustable rate mortgages (ARMs), such as 2/28s and

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[13] United States Department of Housing and Urban Development Office of Policy Development and Research, *Report to Congress on the Root Causes of the Foreclosure Crisis*, (2010), at 52 ("While many factors have undoubtedly contributed to the recent rise in foreclosures, as discussed earlier, no small part of the increase stems from recent increases in abusive forms of subprime lending") (*available at* http://www.huduser.org/portal/Publications/PDF/Foreclosure_09.pdf).

[14] United States Department of Housing & Urban Development and United States Department of the Treasury, *Curbing Predatory Home Mortgage Lending* (2000), at 1 (*available at* http://www.huduser.org/Publications/pdf/treasrpt.pdf) ("HUD/Treasury Report").

3/27s.[15] After the borrower pays a low "teaser rate" for the first two or three years, the interest rate on these loans resets to a much higher rate that can continue to rise based on market conditions. Subprime lenders often underwrite these loans based only on consideration of whether the borrower can make payments during the initial teaser rate period, without regard to the sharply higher payments that will be required for the remainder of a loan's 30-year term. Irresponsible lenders aggressively market the low monthly payment that the borrower will pay during the teaser rate period, misleading borrowers into believing that they can afford that same low monthly payment for the entire 30-year term of the loan, or that they can refinance their loan before the teaser rate period expires.

c. Failing to prudently underwrite refinance loans, where borrowers substitute unaffordable mortgage loans for existing mortgages that they are well-suited for and that allow them to build equity. Such refinanced loans strip much or even all of that equity by charging substantial new fees, often hiding the fact that the high settlement costs of the new loan are also being financed. Lenders that aggressively market the ability of the borrower to pay off existing credit card and other debts by refinancing all of their debt into one mortgage loan mislead borrowers into believing that there is a benefit to debt consolidation, while obscuring the

[15] In a 2/28 ARM, the "2" represents the number of years the mortgage will be fixed over the term of the loan, while the "28" represents the number of years the interest rate paid on the mortgage will be variable. Similarly, in a 3/27 ARM, the interest rate is fixed for three years and variable for the remaining 27-year amortization.

predictable fact that the borrower will not be able to repay the new loan. The refinanced loans are themselves often refinanced repeatedly with ever-increasing fees and higher interest rates, and with ever-decreasing equity, as borrowers seek to stave off foreclosure.

d. Allowing mortgage brokers to charge "yield spread premiums" for qualifying a borrower for an interest rate that is higher than the rate the borrower qualifies for and can actually afford.

e. Failing to underwrite loans based on traditional underwriting criteria such as debt-to-income ratio, loan-to-value ratio, FICO score, and work history. These criteria ensure that a borrower is obtaining a loan that he or she has the resources and assets to repay, and ignoring these criteria results in many loans that bear no relation to borrowers' ability to repay them. This allows the lender to make a quick profit from the origination, but sets the borrower up for default and foreclosure.

f. Requiring substantial prepayment penalties that prevent borrowers whose credit has improved from refinancing their subprime loan to a prime loan. Prepayment penalties not only preclude borrowers from refinancing to a more affordable loan, but reduce the borrowers' equity when a subprime lender convinces borrowers to needlessly refinance one subprime loan with another.

g. Charging excessive points and fees that are not associated with any increased benefits for the borrower.

38. The problem of predatory practices in mortgage lending is particularly acute in minority communities because of "reverse redlining." As used

by Congress and the courts, the term "reverse redlining" refers to the practice of targeting residents in certain geographic areas for credit on unfair terms due to the racial or ethnic composition of the area. This is in contrast to "redlining," which is the practice of denying *equal* credit opportunities to specific geographic areas because of the racial or ethnic composition of the area. Both practices have repeatedly been held to violate the Federal Fair Housing Act.

39. Following the onset of the subprime mortgage crisis, and after years of issuing abusive home loans in minority neighborhoods, the big bank lenders began to limit the issuance of mortgage credit to minority borrowers (*i.e.*, refusing to refinance predatory loans). At the same time, when the big banks did extend credit, they continued to do so on predatory terms.

V. WELLS FARGO ENGAGED IN DISCRIMINATORY LENDING PRACTICES.

A. Wells Fargo Permits and Promotes Discriminatory Lending.

1. Wells Fargo's mortgage loan channels.

40. Between 2004 and at least 2008, Wells Fargo originated retail residential home mortgage loans and purchased loans in numerous geographic markets in the United States, including several hundred metropolitan areas ("MSAs"), and specifically, the Miami MSA.

41. During all or part of this time period, Wells Fargo Home Mortgage was divided into two major divisions - Retail (National Consumer Lending) and

Institutional Lending ("IL"), of which Wells Fargo Wholesale Lending was a business line. Within the retail channel, Wells Fargo had "Distributed Retail" and "Centralized Retail" lines. The Distributed Retail line operated as a traditional retail channel that had face-to-face contact with customers in branch offices and originated both prime and subprime loans. The subprime division of the Distributed Retail line was known as the Mortgage Resources ("MoRe") division; in early 2005, its name was changed to Home Credit Solutions ("HCS"). Loan officers within the Distributed Retail line were assigned to either the prime or MoRe/HCS divisions. Until the two divisions were merged in 2008, no retail loan officer originated both prime and subprime loans. The Centralized Retail line primarily handled prime loan products and operated through telephone calls and internet applications. Wells Fargo referred to both prime and subprime loan officers in its Distributed Retail and Centralized Retail lines as "Home Mortgage Consultants" or "HMCs." The same prime pricing policies applied to both the Centralized and Distributed Retail lines.

42. Through its retail and wholesale channels, Wells Fargo originated virtually every type of loan product that was available in the residential lending market. Among others, these products included: (a) traditional prime loans (least risky); (b) subprime loans (most risky) typically designed for borrowers with credit scores or other credit characteristics deemed too weak to qualify for prime loans; and (c) "Alt-A" loans (risk level between prime and subprime loans) with application requirements or payment terms less restrictive than traditional prime loan terms or requirements, such as interest-only

terms, reduced documentation requirements, or balloon payments. Subsequent to origination, Wells Fargo sold or securitized for sale the bulk of the loans it originated in the secondary market, either to government-sponsored entities Fannie Mae and Freddie Mac or to private investors.

43. Wells Fargo applied its pricing policies on a nationwide basis, though the rate sheets followed certain state-specific requirements.

2. Product Placement

44. Wells Fargo placed African-American and Hispanic borrowers into predatory loans (*e.g.*, subprime, burdensome HELOCs, more onerous/expensive terms, higher costs, etc.) even though white borrowers who had similar credit qualifications were placed into prime loans. As a result of being placed into an illegal discriminatory loan, an African-American or Hispanic borrower paid, on average, up to tens of thousands of dollars more for a Wells Fargo loan, and was subject to possible pre-payment penalties, increased risk or credit problems, default, and foreclosure, as well as the emotional distress that accompanies such economic pressures. It was Wells Fargo's business practice to allow its HMCs and mortgage brokers to place an applicant in a discriminatory loan even when the applicant qualified for a prime loan according to Wells Fargo's underwriting guidelines. Wells Fargo also gave its HMC's and mortgage brokers originating Wells Fargo loans discretion to request and grant exceptions to underwriting guidelines. These policies and practices resulted in the placement of African-American and Hispanic borrowers into predatory loans, when similarly-

situated white borrowers were placed into prime loans, both on a nationwide basis and in dozens of geographic markets across the country (including Miami) where Wells Fargo originated a large volume of loans.

45. Wells Fargo's fair lending monitoring efforts were sufficient to put it on notice of widespread product placement disparities based on race and national origin. Wells Fargo did not act to determine the full scope of these product placement disparities, nor did it take prompt and effective action to eliminate those disparities. As described in further detail below, at certain times relevant to this action, Wells Fargo had in place a system, called the "A-Paper Filter" or the "Enhanced Care Filter," whose stated purpose was ensuring that all prime-eligible borrowers were referred to the Bank's prime division. The A-Paper Filter was highly susceptible to manipulation because individual non-prime loan originators were responsible for entering a borrower's information into the Filter. Further, internal Wells Fargo officers indicate that senior Wells Fargo officers were aware that the Bank's compensation structure incentivized loan originators to manipulate the data they entered into the A-Paper Filter in order to keep prime-eligible borrowers within the subprime division. Senior Wells Fargo officers were aware that this manipulation was in fact occurring on a systematic basis, but failed to take appropriate corrective action.

46. Wells Fargo published underwriting guidelines that purported to establish the objective criteria an applicant had to meet in order to qualify for a particular type of loan product. These underwriting guidelines were available to Wells

Fargo's underwriters, as well as its third-party loan originators who had entered into contracts with Wells Fargo to enable them to select loan products for individual borrowers with differing credit-related characteristics (*i.e.*, purchases made via Wells Fargo's wholesale channel). These underwriting guidelines were intended to be used, for example, to determine whether a loan applicant qualified for a prime loan product, a referral from the prime division to the subprime division, a subprime loan product, referral to an FHA/VA loan or other special loan product, or for no Wells Fargo loan product at all.

47. Loan terms and conditions, including prices, generally are most favorable for a borrower with a prime loan product, and least favorable for a borrower with a subprime loan product, which often included terms such as initial short-term teaser interest rates that suddenly rise to produce substantially increased and potentially unaffordable payments after two to three years, substantial pre-payment penalties, balloon payments, higher fees, and longer underwriting times.

48. In mortgage lending commission structures, loan officers typically receive commissions in terms of "basis points," with one basis point being equivalent to 0.01% of the loan amount. From 2004 to 2005, for example, Wells Fargo's subprime HMCs earned between 95 and 180 basis points, depending on loan amount and monthly origination volume, for originating a subprime loan. From 2006 to 2007, subprime HMCs earned between 75 and 175 basis points, depending on loan amount and monthly origination volume, for originating a subprime loan. From 2004 to 2007, a subprime HMC earned only 50

basis points for referring a prime-eligible borrower to the prime division. Accordingly, a subprime HMC lost between 25 and 130 basis points for referring a prime-eligible borrower to the prime division rather than originating the loan as subprime. This policy and practice created a financial incentive for HMCs to originate loans as subprime rather than prime, even when the applicant could have qualified for a prime loan.

49. Wells Fargo's cap on the amount of total compensation that a mortgage broker could receive on an individual loan also varied, in part, based on whether the loan was a subprime product or a prime product. From 2004 through at least 2007, total broker compensation for prime loans was capped at 4.5% (450 basis points) of the loan amount. However, total broker compensation for subprime loans was capped at 500 basis points, giving brokers a financial incentive to originate a subprime loan where possible. The higher cap means, for example, that a broker originating a $300,000 loan could make $1,500 more by originating the loan as subprime rather than prime.

50. Wells Fargo's compensation structure provided a strong incentive for HMCs and wholesale mortgage brokers to originate a loan, as subprime, even if the borrower could qualify for a more favorable prime loan. This compensation structure, combined with the substantial discretion that subprime loan originators had to qualify prime-eligible borrowers for subprime loans, resulted in discrimination on the basis of race and national origin against African-American and Hispanic borrowers.

51. For each residential loan that Wells Fargo's HMCs and mortgage brokers originated from at least 2004, information about each borrower's race and national origin was known by or available to Wells Fargo.

52. Subprime loan originators had the ability to enter incorrect information into the A-Paper Filter to prevent a borrower from being identified as prime-eligible, thereby ensuring that the loan would remain in the subprime division. The incorrect information included, but was not limited to: (1) stating a reduced income in order to make a borrower's debt-to-income ratio ("DTI") appear higher than it actually was; (2) omitting assets to create the appearance that a borrower had no reserves; and (3) misstating the borrower's length of employment. The A-Paper Filter was not capable of identifying situations wherein information was entered into the Filter incorrectly for purposes of ensuring that a loan could remain in the subprime channel.

53. Subprime loan originators were not prohibited from encouraging prime-eligible borrowers to take steps that would disqualify them from receiving prime loans, including, but not limited to, the following: (1) encouraging borrowers to forego providing income and/or asset documentation; and (2) encouraging borrowers to take out additional cash or forego making a down payment, thereby increasing the borrower's loan-to-value ratio ("LTV"). Internal Wells Fargo documents indicate that Wells Fargo senior managers were aware that loan originators were encouraging borrowers to take these and other steps adverse to borrowers' interests on a systematic basis. Notably, the A-Paper Filter was not able to identify situations wherein prime-eligible

borrowers were encouraged by loan originators to take steps that would disqualify them from receiving prime loans.

54. Internal Wells Fargo audits of the A-Paper Filter identified multiple problems. These audits indicated that data inputted into the Filter was often inconsistent with the information contained in the loan files, and that many loans were originated as subprime although no subprime qualifiers existed in the loan files.

55. For each subprime loan that had a prepayment penalty, an interest-only feature, or reduced documentation, Wells Fargo required borrowers to sign a disclosure form, called the "Product/Feature Selection Disclosure." This form purported to explain how these features impacted the borrower's financing and to explain that the borrower was receiving a subprime loan, and required the borrower to confirm that a Wells Fargo loan originator had discussed all available Wells Fargo home mortgage options with the borrower.

56. This disclosure form was not effective in preventing loan originators from steering borrowers to the subprime division. Wells Fargo subprime loan originators often failed to discuss all available loan options with borrowers before having them sign the disclosure form. Further, Wells Fargo subprime loan originators were not required to inform prime-eligible customers who received a subprime loan that they did in fact qualify for a more favorable loan. Rather, Wells Fargo required all subprime borrowers to sign the Product/Feature Selection Disclosure, without specific knowledge as to whether they were in fact prime-eligible.

3. Wholesale mortgage broker fees.

57. Wells Fargo charged African-American wholesale borrowers higher fees and costs than white borrowers, not based on their creditworthiness or other objective criteria related to borrower risk, but because of their race. Similarly, Wells Fargo charged Hispanic wholesale borrowers higher fees and costs than white borrowers, not based on their creditworthiness or other objective criteria related to borrower risk, but because of their national origin. It was Wells Fargo's business practice to allow its mortgage brokers who generated loan applications through its wholesale channel to vary a loan's interest rate and other fees from the price set based on a borrower's objective credit-related factors. This unguided and subjective pricing discretion resulted in African-American and Hispanic borrowers paying more than white borrowers with similar credit characteristics.

58. Wells Fargo's wholesale pricing monitoring efforts, while inadequate to remedy discriminatory practices against African-American and Hispanic borrowers, were sufficient to put it on notice of widespread pricing disparities based on race and national origin. Even when Wells Fargo had reason to know there were disparities, however, Wells Fargo did not act to determine the full scope of these wholesale pricing disparities, nor did it take prompt and effective action to eliminate those disparities.

59. From at least 2004, Wells Fargo originated and funded residential loans of all types through its Wholesale Lending Division ("WLD"). Applications for these loans-were brought to Wells Fargo by mortgage brokers throughout the United States who

entered into contracts with Wells Fargo for the purpose of bringing loan applications to it for origination and funding.

60. Wells Fargo required prospective brokers to submit a document entitled "Intent to Act as a Broker," and to enter into a Broker Origination Agreement in order to be approved as a Wells Fargo broker. According to Wells Fargo, the process of obtaining and maintaining approved broker status involved its careful analysis of the broker's financial condition; experience level; operational scope and operational methodology; and thorough consideration of the broker's organization, staff, organization principals, licensing, agency standing, and regulatory approvals based upon documents and information provided by the broker.

61. Wells Fargo's brokers were required to adhere to the provisions set forth in its Wholesale Lending Broker Origination Guide, and Wells Fargo's contracts with brokers required representations and warranties that they would comply with applicable federal, state, and local laws and regulations, including fair lending requirements. Wells Fargo required its brokers to attest that all mortgage loans submitted conformed to the Bank's applicable requirements and to all of the guidelines for a particular loan program.

62. Wells Fargo authorized brokers to inform prospective borrowers of the terms and conditions under which a Wells Fargo residential loan product was available. Wells Fargo did not require the mortgage brokers to inform a prospective borrower of all available loan products for which he or she qualified, of the lowest interest rates and fees for a

specific loan product, or of specific loan products best designed to serve the interests expressed by the applicant. Upon receipt of a completed loan application from a broker, Wells Fargo evaluated the proposed loan using its underwriting guidelines and determined whether to originate and fund the loan.

63. Wells Fargo was directly and extensively involved in setting the complete, final terms and conditions of wholesale loan applications generated by mortgage brokers that Wells Fargo approved and originated. At the time of originating each loan, Wells Fargo was fully informed of the loan terms and conditions, including the fees it passed along to brokers, and it incorporated those terms and conditions into the wholesale loans it originated.

64. From at least 2004, Wells Fargo's policies and practices established a two-step process for the pricing of wholesale loans that it originated. The first step was to establish a base or par rate for a particular type of loan for an applicant with specified credit risk characteristics. In this step, Wells Fargo accounted for numerous objective credit-related characteristics of applicants by setting a variety of prices for each of the different loan products that reflected its assessment of individual applicant creditworthiness, as well as the current market rate of interest and price it could obtain for the sale of such a loan from investors.

65. From at least 2004, Wells Fargo set terms and conditions, including interest rates, for its various home mortgage loan products available through its wholesale loan channel. Wells Fargo accounted for numerous applicant credit risk characteristics by setting a range of prices for each of the different loan

products it offered that reflected applicant creditworthiness. It communicated these loan product prices to its brokers through rate sheets. Wells Fargo made prime rate sheets available to brokers on a daily basis via email or the "Brokers First" website that communicated the effective date, time, and product pricing that was released with a specific price change. The rate sheets also established price caps that limited the level of broker compensation. According to Wells Fargo's Wholesale Pricing Policy, price changes were initiated by Wells Fargo's Capital Markets Group as a result of rate movements, or by the Wholesale Pricing Group to adjust profit expectations or alter competitive position. Wells Fargo distributed its Traditional Nonprime rate sheets once a week.

66. Wells Fargo's second step of pricing wholesale loans permitted mortgage brokers to set the amount of broker fees charged to individual borrowers, unrelated to an applicant's credit risk characteristics. Mortgage brokers who supplied Wells Fargo with loan applications that Wells Fargo funded were compensated in two ways. One was through a yield spread premium ("YSP"), an amount paid by Wells Fargo to the brokers based on the extent to which the interest rate charged on a loan exceeded the base or par rate for that loan to a borrower with particular credit risk characteristics fixed by Wells Fargo and listed on its rate sheets. The YSP is derived from the present dollar value of the difference between the credit risk-determined par interest rate a wholesale lender such as Wells Fargo would have accepted on a particular loan and the interest rate a mortgage broker actually obtained for Wells Fargo. Wells Fargo benefitted financially from the loans it made

at interest rates above the par rates set by its rate sheets. For those loans that it sold or securitized, higher interest rates meant sales at prices higher than it otherwise would have obtained; for loans it retained, higher interest rates meant more interest income over time. The second way brokers were compensated was through direct fees and origination fees charged to the borrower. Wells Fargo directed its closing agents to pay direct fees to brokers out of borrowers' funds at the loan closing. Taken together, these two forms of compensation are referred to in this Complaint as "total broker fees."

67. Wells Fargo had written policies placing a ceiling on total broker fees. From 2004 through at least 2009, the maximum total broker fee that a broker could earn from originating a prime Wells Fargo loan was 4.5% of the total loan amount. From 2004 through 2007, the maximum total broker fee that a broker could earn from originating a subprime Wells Fargo loan was 5.0% of the total loan amount. Wells Fargo stopped originating subprime loans from its wholesale channel in July 2007. Wells Fargo *also* permitted pricing exceptions for reasons wholly unrelated to creditworthiness, such as customer service issues or competitive reasons, and required approval based on the amount of the exception (*e.g.*, exceptions over $2,000 required Vice President approval).

68. According to Wells Fargo's stated policy, screening for broker compensation caps was automated within the origination system to prevent users from generating closing documents if broker compensation exceeded the caps. Wells Fargo maintained this pricing policy through at least April 2009.

69. Other than these caps, Wells Fargo did not establish any objective criteria, or provide guidelines, instructions, or procedures to be followed by brokers (a) in setting the amount of direct fees they should charge or (b) in determining to charge an interest rate for a loan above that set by its rate sheet, which in turn determined the amount of YSP that Wells Fargo would pay the broker. Mortgage brokers exercised this pricing discretion that Wells Fargo gave them untethered to any objective credit characteristics, on every loan they brought to Wells Fargo for origination and funding. Wells Fargo affirmed or ratified these discretionary pricing decisions for all the brokered loans it originated and funded.

70. From 2004 to at least 2009, Wells Fargo was fully informed of all broker fees to be charged with respect to each individual residential loan application presented to it. Wells Fargo also required brokers to disclose to the borrower all compensation and all other fees expected to be received by the broker in connection with the mortgage loan. Wells Fargo required brokers to disclose their fees on the Good Faith Estimate, the HUD-1, and other disclosures as applicable. Total broker fees raised the annual percentage rate charged on a loan, and could increase the note interest rate and the total amount borrowed.

71. For each residential loan application obtained by mortgage brokers and subsequently funded by Wells Fargo, information about each borrower's race and national origin and the amount and types of broker fees paid was available to and was known by Wells Fargo. Wells Fargo was required to collect, maintain, and report data with respect to certain

loan terms and borrower information for residential loans, including the race and national origin of each wholesale residential loan borrower, pursuant to HDMA. 12 U.S.C. § 2803.

B. Wells Fargo's Conduct Had a Disparate Impact on Minority Borrowers in Violation of the Fair Housing Act.

1. Discriminatory lending results in a disproportionate number of foreclosures in minority areas.

72. Foreclosures are on the rise in many of the nation's most vulnerable neighborhoods, particularly those with substantial concentrations of minority households. The increase appears to stem from the presence of (1) subprime lending in these communities and (2) continuing discriminatory lending practices (*e.g.*, steering minorities into loan products with more onerous terms).

73. A seminal report on foreclosure activity by Mark Duda and William Apgar documents the negative impact that rising foreclosures have on low-income and low-wealth minority communities, using Chicago as a case study.[16] Mr. Apgar is a Senior Scholar at the Joint Center for Housing Studies of Harvard University, and a Lecturer on Public Policy at Harvard's John F. Kennedy School of Government. He previously served as the Assistant Secretary for Housing/Federal Housing Commissioner at the U.S. Department of Housing and Urban Development, and also Chaired the Federal Housing Finance

[16] This report, and others cited in the First Amended Complaint, further corroborate the allegations specifically pertaining to the City of Miami.

Board. Mr. Apgar holds a Ph.D. in Economics from Harvard University. Mr. Duda is a Research Fellow at the Joint Center for Housing Studies. The Apgar-Duda report has continually been cited by subsequent governmental, public sector, and private sector reports due to its clarity and thoroughness with respect to the negative impact foreclosures have on lower-income and minority neighborhoods.[17]

74. This significant report highlights the foreseeability of foreclosures arising from predatory lending practices and their attendant harm, demonstrating that such foreclosures impose significant and predictable costs on borrowers, municipal governments, and neighboring homeowners.

75. Another report, by the Center for Responsible Lending, uses a national dataset to show that the foreclosure rate for low- and moderate-income African-Americans is approximately 1.8 times higher than it is for low- and moderate-income non-Hispanic whites. The gap is smaller for Latinos, especially among low-income households, but even among low-income Latinos the foreclosure rate is 1.2 times that of low-income whites. Racial and ethnic disparities in foreclosure rates cannot be explained by income, since disparities persist even among higher-income groups. For example: approximately 10 percent of higher-income African-American borrowers and 15 percent of higher-income Latino borrowers have lost their home to foreclosure, compared with 4.6 percent

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[17] *See* W. Apgar, M. Duda & R. Gorey, *The Municipal Costs of Foreclosures: A Chicago Case Study* (2005) (*available at* http://www.nw.org/network/neighborworksProgs/foreclosuresolutions/documents/2005Apgar-DudaStudy- FullVersion.pdf).

of higher income non-Hispanic white borrowers. Overall, low- and moderate-income African-Americans and middle- and higher-income Latinos have experienced the highest foreclosure rates.[18]

76. Nearly 20 percent of loans in high-minority neighborhoods have been foreclosed upon or are seriously delinquent, with significant implications for the long-term economic viability of these communities.[19]

2. Minority neighborhoods are disproportionate recipients of predatory loans.

77. There is a substantial body of empirical evidence demonstrating the prevalence of reverse redlining in the subprime mortgage market. These studies show that, even after controlling for creditworthiness and other legitimate underwriting factors, subprime loans and the predatory practices often associated with subprime lending are disproportionately targeted at minority neighborhoods.[20]

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[18] Center for Responsible Lending, *Lost Ground, 2011: Disparities in Mortgage Lending and Foreclosures* (2011) (*available at* www.responsiblelending.org/mortgage-lending/research--analysis/*Lost-Ground-2011*.pdf).

[19] *Id.*

[20] *See* Abt Associates, *Using Credit Scores to Analyze High-Cost Lending in Central City Neighborhoods* (2008); Center for Responsible Lending, *Lost Ground, 2011: Disparities in Mortgage Lending and Foreclosures* (2011) (*available at* www.responsiblelending.org/-mortgage-lending/research-analysis/*Lost-Ground-2011*.pdf); Center for Responsible Lending, *Unfair Lending: The Effect of Race and Ethnicity on the Price of Subprime Mortgages* (2006) (available at http://www.responsiblelending.org/mortgage-lending/research-

78. In general, as recently observed by the Federal Reserve in December 2012, both African-American and Hispanic borrowers were far more likely (in fact, nearly twice more likely) to obtain higher-priced loans than were white borrowers. These relationships hold both for home-purchase and refinance lending and for non-conventional loans. These differences are reduced, but not eliminated, after controlling for lender and borrower characteristics. "Over the years, analyses of HMDA data have consistently found substantial differences in the incidence of higher-priced lending across racial and ethnic lines, differences that cannot be fully explained by factors included in the HMDA data."[21]

79. African-Americans and Hispanics were much more likely to receive subprime loans and loans with features that are associated with higher foreclosures, specifically prepayment penalties and hybrid or option ARMs. These disparities were evident even comparing borrowers within the same credit score

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analysis/rr-011-*Unfair_Lending-0506*.pdf); Finance and Economics Discussion Series Divisions of Research & Statistics and Monetary Affairs Federal Reserve Board, Washington, D.C, *Subprime Mortgages: What, Where, and to Whom?* (2008) (*available at* http://www.nber.org/papers/w14083.pdf?new_window=1); C. Reid and E. Laderman, Federal Reserve Bank of San Francisco, *The Untold Costs of Subprime Lending: Examining the Links among Higher-Priced Lending, Foreclosures and Race in California*, Presented at Brandeis University (2009) (*available at* http://iasp.brandeis.edu/pdfs/Author/reid-carolin/The%20Untold%20Costs%20of%20Subprime%20Lending%203.pdf).

[21] Federal Reserve Bulletin, *The Mortgage Market in 2011: Highlights from the Data Reported under the Home Mortgage Disclosure Act* (Dec. 2012) (*available at* http://www.federalreserve.gov/pubs/bulletin/2012/PDF/2011_HMDA.pdf).

ranges. In fact, the disparities were especially pronounced for borrowers with higher credit scores. For example, among borrowers with a FICO score of over 660 (indicating good credit), African-Americans and Latinos received a high interest rate loan more than three times as often as white borrowers.[22]

80. In addition to receiving a higher proportion of higher-rate loans, African-Americans and Latinos also were much more likely to receive loans with other risky features, such as hybrid and option ARMs and prepayment penalties. Disparities in the incidence of these features are evident across all segments of the credit spectrum.

81. Since 2008, as the data discussed below makes clear, there has been a shift in the types of loans issued - and not issued - by the Bank both in Miami and throughout the country. For example, the Bank shifted from offering new subprime loans toward issuing more Home Equity Lines of Credit ("HELOCs") and higher cost loans including, but not limited to, FHA/VA loans.[23] FHA and VA government loans are characterized as higher risk loans because (1) they are typically more expensive for a borrower than conventional loans and include fees and costs not associated with conventional loans, and (2) several of the government loan programs

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[22] Center for Responsible Lending, *Lost Ground, 2011*, *supra* n.19.

[23] While FHA/VA loans are not inherently predatory, these loans have higher risk features such as higher fees and higher interest rates. When banks target minorities for FHA/VA loans and issue more of them to minorities, they are acting in a discriminatory manner.

permit negative amortization.[24] At the same time, in the last several years, the Bank tightened lending requirements in a manner that drastically limited the ability of minority borrowers to refinance or otherwise modify the subprime loans previously issued by the Bank.

82. At the same time that conventional credit has contracted over the past five years, FHA lending has expanded dramatically. During the subprime boom, FHA lending fell as subprime lenders targeted minority communities. Now, with little or no subprime lending, and conventional credit restricted, FHA lending has shot up. Overall, the share of loans with government backing went from 5% in 2005 to 26.6% in 2010.[25]

83. For African-Americans, the share of mortgages used to purchase a home and backed by a government program increased to almost 80% in 2010; for Latinos the share increased to 73%. But for whites, the share increased to only 49%. At present, most minority borrowers cannot gain access to the conventional mortgage market, and instead, are relegated to more expensive FHA loans.[26] As discussed above, these government loans often have higher interest, fees, and costs than conventional loans.

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[24] California Reinvestment Coalition, et al., *Paying More for the American Dream VI Racial Disparities in FHA/VA Lending*, (July 2012); www.fha.com/fha_loan_types; www.benefits.va.gov /homeloans.

[25] Center for Responsible Lending, *supra*, n.8.

[26] *Id.*

3. Statistical analyses conducted by the United States Department of Justice of data for loans originated by Wells Fargo showed a disparate impact on minority borrowers.

a. Minority borrowers were more likely than whites to receive subprime loans.

84. Statistical analyses conducted by the United States Department of Justice of loan data for prime and subprime wholesale loans originated by Wells Fargo just for the time period of 2004 to 2008 demonstrate that, measured on a nationwide basis after controlling for major risk-based factors relevant to determining loan product placement, including credit history, LTV, and DTI, African-American and Hispanic borrowers remained more likely to receive subprime loans from 2004 to 2008 than similarly-situated whites. This demonstrates a pattern of statistically significant differences between African-American and white borrowers with respect to their product placement by Wells Fargo. These statistically significant disparities existed in numerous geographic markets across the nation as well.

85. For the combined time period of 2004 to 2008, nationwide, the odds that an African-American borrower who obtained a wholesale loan from Wells Fargo would receive a subprime loan rather than a prime loan were approximately 2.9 times as high as the odds for a similarly situated white borrower, after accounting for the same factors. For the same time period, the odds that an African-American borrower who obtained a retail loan from Wells

Fargo would receive a subprime loan rather than a prime loan were approximately 2.0 times as high as the odds for a similarly-situated white borrower, after accounting for the same factors. These odds ratios demonstrate a pattern of statistically significant differences between African-American and white borrowers with respect to their product placement by Wells Fargo, even after accounting for objective credit qualifications.

86. For the combined time period of 2004 to 2008, nationwide, the odds that a Hispanic borrower who obtained a wholesale loan from Wells Fargo would receive a subprime loan instead of a prime loan were approximately 1.8 times as high as the odds for a similarly-situated white borrower, after accounting for the same factors. During the same time period, the odds that a Hispanic borrower would receive a subprime retail loan rather than a prime retail loan wore approximately 1.3 times as high as the odds for a similarly-situated white borrower, after accounting for the same factors. These odds ratios demonstrate a pattern of statistically significant differences between Hispanic and white borrowers with respect to their product placement by Wells Fargo, even after accounting for objective credit qualifications.

87. The disparate placement of both African-Americans and Hispanic borrowers whom Wells Fargo determined had the credit characteristics to qualify for a home mortgage loan into subprime loan products, when compared to similarly-situated white borrowers, resulted from the implementation and interaction of Wells Fargo's policies and practices that: (a) permitted Wells Fargo subprime loan originators to place an applicant in a subprime loan product even if the applicant could qualify for a

prime loan product; (b) provided a financial incentive to Wells Fargo subprime loan originators to place loan applicants in subprime loan products; (c) did not require Wells Fargo subprime loan originators to justify or document the reasons for placing an applicant in a subprime loan product even if the applicant could qualify for a prime loan product; (d) did not require Wells Fargo subprime loan originators to notify subprime loan applicants when they did in fact qualify for a more favorable loan product; and (e) failed to monitor these discretionary practices to ensure that borrowers were being placed in loan products on a nondiscriminatory basis.

88. Wells Fargo's policies or practices were not justified by business necessity or legitimate business interests. There were less discriminatory alternatives available to Wells Fargo that would have achieved the same business goals as these policies and practices.

89. As early as 2005, Wells Fargo's senior officers had knowledge that its lending policies and practices resulted in the placement of prime-qualified minority applicants in subprime rather than prime loan products and that its A-Paper Filter was ineffective. For example, an internal Wells Fargo document from 2005 sent from a Wells Fargo Vice President of Retail Underwriting, National Programs to a number of senior and executive vice presidents revealed concerns about A-Paper Filter manipulation and listed various tactics that subprime originators routinely employed to keep loans in the subprime division, rather than sending them to the prime channel. Another internal Wells Fargo document from 2005 concluded that loans were being originated as subprime, even though the borrowers

had prime characteristics. Nonetheless, Wells Fargo continued to implement those policies and practices and did not take effective action to change the discriminatory policies or practices to eliminate their discriminatory impact. Nor did it act to identify or compensate the individual borrowers who were victims of its discriminatory product placement policies or practices.

b. Minority borrowers were more likely than white borrowers to pay higher broker fees and costs.

90. Statistical analyses of data kept by Wells Fargo on its wholesale loans between 2004 and 2008 demonstrate statistically significant discriminatory pricing disparities in both prime and subprime loans based on both race (African-American) and national origin (Hispanic). These disparities existed both at the national level and in numerous geographic markets across the country.

91. Measured on a nationwide basis in each year between 2004 and 2008, Wells Fargo charged African-American borrowers whom Wells Fargo determined had the credit characteristics to qualify for a home mortgage loan more in total broker fees for prime wholesale loans than white borrowers. The annual total broker fee disparities ranged up to 78 basis points, and they are statistically significant.

92. Measured on a nationwide basis, in each year between 2004 and 2008, Wells Fargo charged Hispanic borrowers whom Wells Fargo determined had the credit characteristics to qualify for a home mortgage loan more in total broker fees for prime wholesale loans than white borrowers. The annual

total broker fee disparities ranged up to 55 basis points, and they are statistically significant.

93. Measured on a nationwide basis in each year between 2004 and 2007, Wells Fargo charged African-American borrowers whom Wells Fargo determined had the credit characteristics to qualify for a home mortgage loan more in total broker fees for subprime wholesale loans than white borrowers. The annual total broker fee disparities ranged up to 53 basis points, and they are statistically significant.

94. In setting the terms and conditions for its wholesale loans, including interest rates, Wells Fargo accounted for individual borrowers' differences in credit risk characteristics by setting the prices shown on its rate sheets for each loan product for borrowers with specified credit qualifications. These adjustments based on credit risk characteristics were separate from and did not control for either component of the total broker fees - the interest rate deviations that Wells Fargo's policy allowed mortgage brokers to make from the par prices, which already fully accounted for borrower risk according to Wells Fargo's own standards, nor the amount of brokers' direct fees that were driven by a borrower's credit risk factors. The race and national origin total broker fee disparities described above are not adjusted for borrowers' credit risk characteristics; Wells Fargo reviewed these broker fees and then authorized its brokers to charge them to borrowers in the loans it originated and funded.

95. The statistically significant race and national origin-based disparities in broker fees for African-Americans and Hispanics resulted from the implementation and interaction of Wells Fargo's

policies and practices that: (a) included pricing terms based on the subjective and unguided discretion of brokers in setting broker fees not based on borrower risk in the terms and conditions of loans that Wells Fargo originated after par rates had been established by reference to credit risk characteristics; (b) created a financial incentive for brokers to charge interest rates above the par rates that Wells Fargo had set; (c) did not require mortgage brokers to justify or document the reasons for the amount of broker fees not based on borrower risk; and (d) failed to adequately monitor for and fully remedy the effects of racial and ethnic disparities in those broker fees. Broker fees specifically measure the pricing variation caused by the subjective and unguided pricing adjustments not based on borrower risk. Wells Fargo continued to use these discretionary wholesale broker fee pricing policies, to inadequately document and review the implementation of that pricing component, and to incentivize upward broker adjustments to the par interest rate at least through the end of 2008.

96. Wells Fargo's policies and practices identified above were not justified by business necessity or legitimate business interests. There were less discriminatory alternatives available to Wells Fargo that would have achieved the same business goals as these policies and practices.

97. Wells Fargo had knowledge that the unguided and subjective discretion it granted to mortgage brokers in its wholesale pricing policies and practices was being exercised in a manner that discriminated against African-American and Hispanic borrowers, but continued to implement its policies and practices with that knowledge. Wells Fargo did not take

effective action to change the broker fee policies and practices to eliminate fully their discriminatory impact. Wells Fargo did not act to identify or compensate any individual borrowers who were victims of its discriminatory wholesale pricing policies and practices.

C. Wells Fargo Intentionally Discriminated Against Minority Borrowers in Violation of the Fair Housing Act, as Demonstrated by Former Bank Employees.

98. Confidential Witnesses ("CWs") are former Wells Fargo employees responsible for making and/or underwriting loans on behalf of Wells Fargo in the greater Miami region. CWs describe how Wells Fargo has targeted minorities and residents of minority neighborhoods in and around Miami for predatory lending practices.

99. CW1 worked for Wells Fargo in 2010 as a Community Reinvestment Act loan officer based in the Miami area. He left his employment because he did not agree with how management was encouraging him to put low- to moderate-income borrowers into FHA and Freddie Mac loans that were more expensive than CRA loans.

100. CW2 worked for Wells Fargo as a loan officer between 2004 and 2005. He worked for two branches in the Miami area. He dealt exclusively with non-prime loans.

101. CW3 worked for Wells Fargo as a loan officer between 2000 and 2012. He dealt with loans originating throughout Miami-Dade County and the City of Miami. His customer base was largely comprised on lower to middle-income Hispanic borrowers.

102. CW4 was a Home Mortgage Consultant, Sales Manager and top subprime loan officer at Wells Fargo. She was invited to participate in a number of sales and marketing meetings with upper-level management. A number of other loan officer representatives and personnel from around the country attended these meetings as well. As a result, while she was employed by the Bank in Maryland, she was aware that the Bank's discriminatory lending practices took place nationally. Similarly, she was aware that the Bank's compensation and pricing policies were applied on a nationwide basis.

1. Wells Fargo targets minorities for predatory loan terms.

103. The CWs explain that Wells Fargo targeted minorities in Miami in various ways. One was by targeting its discriminatory lending toward predominantly minority neighborhoods in Miami.

104. CW1 explained that CRA loans are part of a federal legal framework designed to discourage redlining. According to CW1, management pushed FHA and Freddie Mac loans on low- to mid-income borrowers. The FHA and Freddie Mac loans were more expensive to borrowers, but they were more profitable to Wells Fargo and easier to sell on the secondary market. CW1 expressed to management that he wanted to tell these borrowers that there was a better product out there for them, and that he was not in this industry to put people into bad loans. Management disagreed, responding that "it's about putting food on the table at your home for your family."

105. CW2 made a point of reaching out to Latinos and African-Americans in marketing non-prime

loans in Miami by attending community gatherings at organizations like the Columbian Chamber of Commerce and at an African-American congregation.

106. According to CW4, Wells Fargo also targeted minority churches and their congregations for subprime loans. Wells Fargo did not target white churches - "[w]hen it came to marketing, any reference to 'church' or 'churches' was understood as code for African-American or black churches."

107. Wells Fargo even assigned employees to make presentations at the churches on the basis of race. During a conference call in 2005 with subprime loan officers and branch managers about making presentations to black churches, the loan officers were told that only employees "of color" could attend, said CW4. She was later told that she could come, but only if she "carried someone's bag."

108. Wells Fargo also targeted African-Americans for subprime loans through a variety of special events, according to CW4. Wells Fargo selected employees to make presentations at these events on the basis of race, as it did with church presentations. One such event was a 'wealth building' seminar" designed to promote subprime products in 2005, where the audience was expected to be predominantly African-American. CW4 was told by the manager of Emerging Markets, a subprime unit that targeted African-Americans, that she was "too white" to appear before the audience at the seminar. She complained to higher management, but received no response and no action was taken.

2. Wells Fargo gives its employees discretion to steer people who qualify for conventional mortgages into discriminatory mortgages (and pays its employees more for doing so).

109. The CW statements demonstrate that Wells Fargo steered borrowers who qualified for prime loans into subprime loans.

110. CW2 said that, as a non-prime loan officer, he felt pressured to write a lot of non-prime loans. His quota was about 8-10 loans a month, depending on the size of the loans. He would write non-prime loans for borrowers with credit scores up to 700. The non-prime loans that he wrote had higher rates and fees.

111. According to CW4, the Bank's commission and fee structure gave A rep loan officers a financial incentive to refer loans to a subprime loan officer. Her job was to figure out how to get the customer into a subprime loan. She knew that many of the referrals she received could qualify for a prime loan, and the Bank's underwriting guidelines left ample discretion to figure out how to qualify most referrals for a subprime loan. Even after Wells Fargo began limiting the amount of loan fees, loan officers still had discretion and a big financial incentive to offer higher-cost loans because doing so increased their commissions.

3. Wells Fargo underwrites adjustable rate loans that borrowers cannot afford.

112. Wells Fargo frequently originates "3/27" adjustable rate mortgages, and frequently originated

"2/28" adjustable rate mortgages until mid-2007, to borrowers from predominantly minority neighborhoods in Miami. Unless properly underwritten, such loans are destined to fail.

113. CW3 confirmed that Wells Fargo originated interest-only and adjustable rate mortgages. He cautioned that some loan officers misled borrowers about the terms of such loans. For example, he said that a loan officer would tell a borrower that an interest only loan would convert to a fixed rate after the interest only period, when in fact, it would convert to an adjustable rate after the interest only period expired.

114. Wells Fargo does not properly underwrite these loans when made to minorities and in minority neighborhoods. Wells Fargo does not adequately consider the borrowers' ability to repay these loans, especially after the teaser rate expires and the interest rate increases. The fact that these loans would result in delinquency, default, and foreclosure for many borrowers was, or should have been, clearly foreseeable to Wells Fargo at the time the loans were made.

115. The use of "2/28" and "3/27" adjustable rate mortgages in the manner described above is consistent with the practice of reverse redlining, has subjected minority borrowers to unfair and deceptive loan terms, and has contributed significantly to the high rate of foreclosure found in the minority neighborhoods of Miami.

4. Wells Fargo limits the ability of minority borrowers to refinance out of the same predatory loans that they previously received from the Bank.

116. After the market crashed in or around 2008, the Bank's documentation required for approval became "overwhelming," CW3 said. "Minorities had a harder time verifying the documentation," according to CW3, which precluded many of them from refinancing existing loans. CW3 also explained that underwriting became so strict that the Bank questioned things like a $100 cash deposit in bank accounts and routinely rejected a borrower's representation of intent to occupy a property.

117. CW3 noticed that the Hispanic borrowers' applications he submitted to underwriting seemed to be rejected more than others. "I always said that a Rodriguez in the last name was treated differently than a Smith," he said of loan applications. In two applications with similar scenarios, "the one with Smith would get it and the one with Rodriguez wouldn't."

5. Wells Fargo engages in other abusive lending practices.

118. The CWs further demonstrate that Wells Fargo loan officers engaged in other abusive lending practices at the expense of minority borrowers.

119. According to CW2, for customers with less than prime credit scores, management suggested offering non-prime loans in order to give them time to improve their credit and then refinance their loans so the bank would make more fees.

120. CW2 further explained that Wells Fargo often changed paperwork that showed which bank branches were originating loans in order to make it appear as if no single branch was solely originating loans from a single ethnic community. "It was common knowledge that, to avoid problems, loans from one office were sent to another office to make both look more balanced. We needed to put some white loans in that community and some black loans in this community because [otherwise] we'll get some sh#% from the Fed."

121. CW3 said that, prior to 2008, Wells Fargo sent loan officers out into the community to promote its "no doc" loans, which were also called the "reduced documentation" loans at Wells Fargo. These loans, which carried a higher interest rate than fully documented loans, were frequently promoted to Hispanic borrowers with credit scores above 660. CW3 believed that other Wells Fargo loan officers had submitted false documents and exaggerated borrowers' incomes to qualify borrowers for loans. "If a guy told you he made $3000, you'd put in $5000" into the underwriting software program, he said, explaining how it worked. He said there was no "backstop" system at the Bank to prevent it. Consequently, loan officers were "putting people in homes that they didn't qualify for," he said. "Obviously, it would put them in a bad predicament."

122. Further, CW3 said that loan officers sometimes took advantage of low to middle-income Hispanic customers who were not well-educated. According to CW3, the more affluent and better educated borrower knew to read and understand the terms of their loans, whereas the less affluent and less knowledgeable borrower was easily misled about

mortgages. CW3 added that some loan officers at Wells Fargo did not fully inform borrowers of the financial repercussions of their mortgages.

123. Further still, CW3 described that, for years after the market crash, the only mortgage loans that the Bank made generally available in the Miami area (other than loans requiring a near perfect financial profile) were FHA loans.

D. Minorities in Miami Receive Predatory Loan Terms from Wells Fargo Regardless of Creditworthiness.

124. As discussed herein, Wells Fargo's *predatory* loans include: high-cost loans (i.e., loans with an interest rate that was at least three percentage points above a federally-established benchmark), subprime loans, interest-only loans, balloon payment loans, loans with prepayment penalties, negative amortization loans, no documentation loans, and/or ARM loans with teaser rates (*i.e.*, lifetime maximum rate > initial rate + 6%).

125. Data reported by the Bank and available through both public and private databases shows that minorities in Miami received predatory loan terms from Wells Fargo more frequently than white borrowers regardless of creditworthiness.

126. A regression analysis of this data controlling for borrower race and objective risk characteristics such as credit history, loan-to-value ratio, and the ratio of loan amount to income demonstrates that, from 2004-2012, an African-American borrower was 4.321 times more likely to receive a predatory loan as a white borrower possessing similar underwriting

and borrower characteristics.[27] The regression analysis further demonstrates that the odds that a Latino borrower would receive a predatory loan was 1.576 times the odds that a white borrower possessing similar underwriting and borrower characteristics would receive a predatory loan. These odds ratios demonstrate a pattern of statistically significant differences between African-American and white borrowers and between Latino and white borrowers.[28]

127. The regression analysis also shows that these disparities persist when comparing only borrowers with FICO scores above 660. An African-American borrower with a FICO score above 660 was 2.572 times more likely to receive a predatory loan as a white borrower with similar underwriting and borrower characteristics. A Latino borrower with a FICO score above 660 was 1.875 times more likely to receive a predatory loan as a white borrower with similar underwriting and borrower characteristics. These odds ratios demonstrate a pattern of statistically significant differences between African-American and white borrowers and between Latino and white borrowers.

128. A similar regression analysis taking into account the racial makeup of the borrower's

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[27] As alleged throughout the complaint, all references to the date range 2004-2012 are intended to include the time period up to and including December 31, 2012.

[28] Statistical significance is a measure of probability that an observed outcome would not have occurred by chance. As used in this Complaint, an outcome is statistically significant if the probability that it could have occurred by chance is less than 10%.

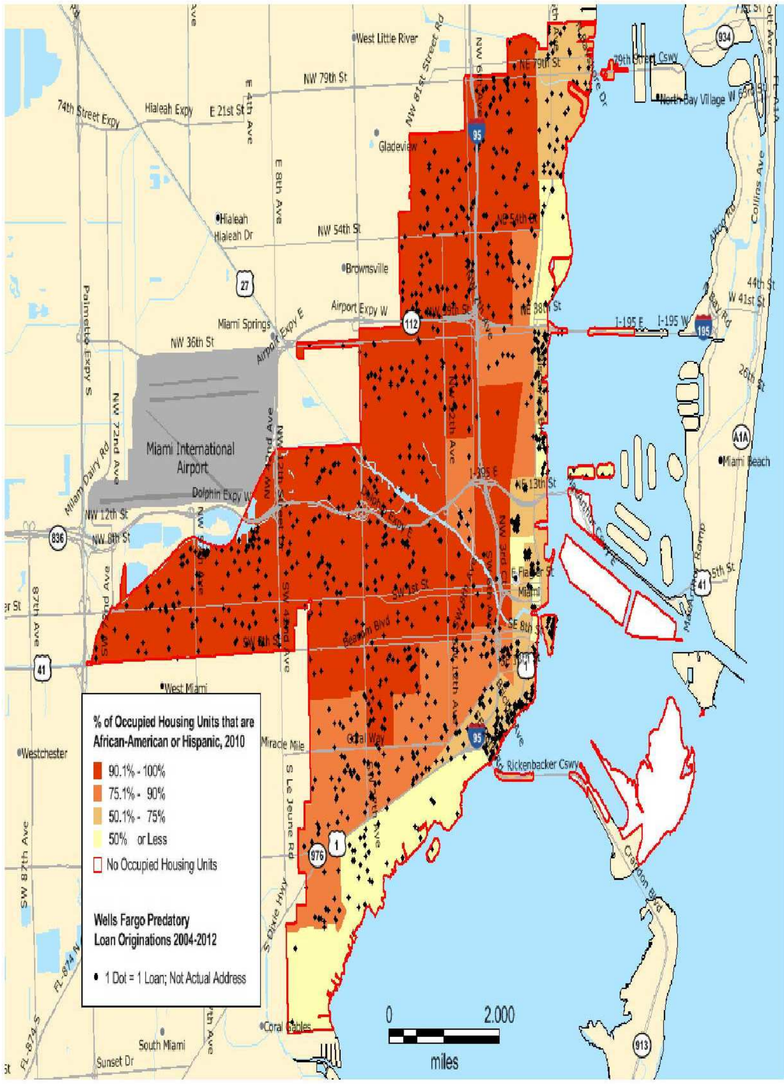
neighborhood rather than the individual borrower's race shows that borrowers in heavily minority neighborhoods in Miami were more likely to receive predatory loans than borrowers in heavily white neighborhoods. For example, a borrower in a heavily minority census tract (census tract consisting of at least 90% African-American or Latino households) was 1.955 times more likely as a borrower with similar characteristics in a non-minority neighborhood (census tract with at least 50% white households) to receive a predatory loan. These odds ratios demonstrate a pattern of statistically significant differences between African-American and white borrowers and between Latino and white borrowers.

129. This data also establishes that Wells Fargo disproportionately issued loans with higher risk features including government loans (FHA/VA) and other high cost loans to African-American and Latino borrowers in Miami from 2008-2012. A regression analysis controlling for borrower race and objective risk characteristics such as ratio of loan amount to income demonstrates that an African-American borrower was 9.321 times more likely to receive one of these loans with higher risk features than a white borrower possessing similar borrower and underwriting characteristics. The regression analysis further demonstrates that a Latino borrower was 3.162 times more likely to receive one of these loans with higher risk features than a white borrower possessing similar borrower and underwriting characteristics. These odds ratios demonstrate a pattern of statistically significant differences between African-American and white borrowers and between Latino and white borrowers.

130. Additionally, data reported by the Bank and available through public databases shows that in 2004-2012,11.1% of loans made by Wells Fargo to African-American and Latino customers in Miami were high cost, but only3.2% of loans made to white customers in Miami were high cost. This data demonstrates a pattern of statistically significant differences in the product placement for high cost loans between minority and white borrowers.

131. Thus, the disparities in Miami are not the result of, or otherwise explained by, legitimate non-racial underwriting criteria.

132. The following map of Wells Fargo predatory loans originated in Miami between 2004-2012 illustrates the geographic distribution of predatory loans in African-American and Latino neighborhoods and white neighborhoods in Miami. This map demonstrates that Wells Fargo's predatory loans are disproportionately located in minority neighborhoods.



133. The fact that predatory loans involving all of Wells Fargo's loan products are more heavily concentrated in minority neighborhoods in Miami is consistent with the practice of reverse redlining and, upon information and belief, has contributed

significantly to the disproportionately high rates of foreclosure in minority communities in Miami.

E. Miami's Data Analysis is Corroborated by Additional Studies/Reports.

134. According to *Discretionary Pricing, Mortgage Discrimination, and the Fair Housing Act*, 45 HARVARD CIVIL RIGHTS-CIVIL LIBERTIES LAW REV. 375, 398 (2010), several studies dating back to 2000 have established that minority borrowers were charged higher interest rates/fees than similar creditworthy white borrowers.

135. Likewise, according to *A Racial Financial Crisis*, 83 TEMPLE LAW REV. 941, 947, 949 (2011), one study concluded that "even after controlling for underwriting variables, African-American borrowers were 6.1% to 34.3% more likely than whites to receive a higher rate subprime mortgage during the subprime boom." And another study found that significant loan pricing disparity exists among low risk borrowers - African-American borrowers were 65% more likely to receive a subprime home purchase loan than similar creditworthy white borrowers, and 124% more likely to receive a subprime refinance loan.

136. Similarly, the Center for Responsible Lending's November 2011 report, *Lost Ground, 2011: Disparities in Mortgage Lending and Foreclosures*, stated that "racial and ethnic differences in foreclosure rates persist even after accounting for differences in borrower incomes." Further, the Center stated it is "particularly troublesome" that minorities received riskier loans "even within [similar] credit ranges." For example, among borrowers having FICO scores above 660, the

incidence of higher rate loans among various groups was as follows: whites - 6.2%; African-American - 21.4%; and Latino - 19.3%.

F. Wells Fargo's Targeting of Minorities who in Fact Receive Predatory Loan Terms Regardless of Creditworthiness Causes Foreclosures.

1. Data shows that Wells Fargo's foreclosures are disproportionately located in minority neighborhoods in Miami.

137. Wells Fargo's failure to underwrite mortgage loans in minority and underserved communities in a responsible manner has been the subject of public attention and concern for years. For example, its practices are the focus of a 2004 report from the Center for Responsible Lending. The report concluded that Wells Fargo's customers "too often face the loss of their home or financial ruin as a result" of its "predatory practices."[29] The predatory practices identified in the report include charging excessively high interest rates that are not justified by borrowers' creditworthiness; requiring large prepayment penalties while deliberately misleading borrowers about the penalties; convincing borrowers to refinance mortgages into new loans that only benefit Wells Fargo; deceiving borrowers into believing that they are getting fixed-rate loans when they are really getting adjustable rate loans; charging excessive fees; and more.

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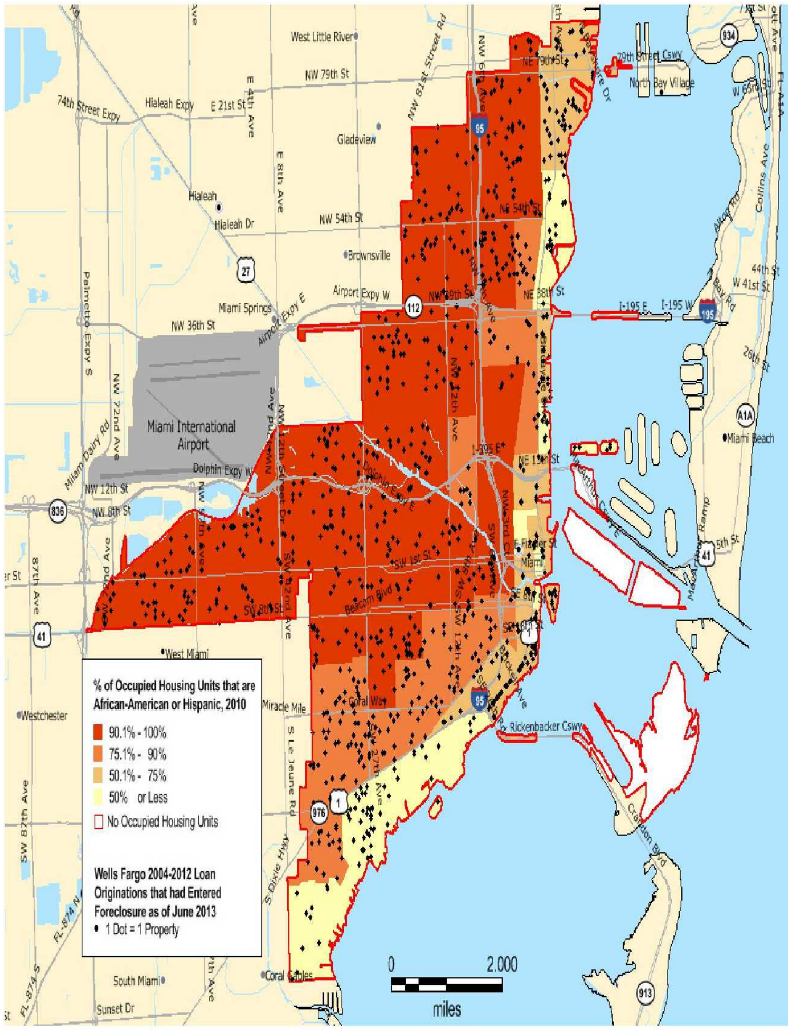
[29] Center for Responsible Lending, *A Review of Wells Fargo's Subprime Lending* (Apr. 2004) at 10 (available at http://www.responsiblelending.org/mortgage-lending/research-analysis/ip004-Wells_Fargo-0404.pdf).

138. Such reports underscore the foreseeability of foreclosures arising from predatory lending practices, and their attendant harm.

139. Wells Fargo has intentionally targeted these kinds of predatory practices at African-American and Latino neighborhoods and residents. Far from being a responsible provider of much-needed credit in minority communities, Wells Fargo is a leading cause of stagnation and decline in African-American and Latino neighborhoods where its foreclosures are concentrated. Specifically, since at least 2000, its foreclosures have been concentrated in neighborhoods with African-American or Latino populations exceeding 75%.

140. Although 50.5% of Wells Fargo's loan originations in Miami from 2004 to 2012 were in census tracts that are at least 75% African-American or Latino, 63.9% of loan originations that had entered foreclosure by June 2013 were in those census tracts. Similarly, while 83.3% of Wells Fargo's loan originations in Miami from 2004 to 2012 occurred in census tracts that are at least 50% African-American or Latino, 95.5% of Wells Fargo's loan originations that had entered foreclosure by June 2013 were in those census tracts. Moreover, while 16.7% of Wells Fargo's loan originations in Miami from 2004 to 2012 occurred in census tracts that were less than 50% African-American or Latino, only 4.5% of Wells Fargo's loan originations that has entered foreclosure by June 2013 were in those census tracts. This data demonstrates a pattern of statistically significant differences between African-American and white borrowers and between Latino and white borrowers.

141. The following map represents the concentration of Wells Fargo's loan originations from 2004 through 2012 that had entered foreclosure by June 2013 in African-American and Latino neighborhoods. In addition to the disproportionate distribution of Wells Fargo foreclosures in African-American and Latino neighborhoods, disparate rates of foreclosure based on race further demonstrate Wells Fargo's failure to follow responsible underwriting practices in minority neighborhoods. While 24.3% of Wells Fargo's loans in predominantly (greater than 90%) African-American or Latino neighborhoods result in foreclosure, the same is true for only 4.4% of its loans in non-minority (at least 50% white) neighborhoods. In other words, a Wells Fargo loan in a predominantly African-American or Latino neighborhood is 6.975 times more likely to result in foreclosure as a Wells Fargo loan in a non-minority neighborhood. These odds ratios demonstrate a pattern of statistically significant differences between African-American and white borrowers and between Latino and white borrowers.



142. Thus, Wells Fargo's discretionary lending policies and pattern or practice of targeting of minorities, who in fact receive predatory loan terms regardless of creditworthiness, have caused and continue to cause foreclosures in Miami.

2. Data shows that Wells Fargo's loans to minorities result in especially quick foreclosures in Miami.

143. A comparison of the time from origination to foreclosure of Wells Fargo's loans originated in Miami from 2004 to 2012 shows a marked disparity with respect to the speed with which loans to African-Americans and Latinos and whites move into foreclosure. The average time to foreclosure for African- American and Latino borrowers is 2.996 years. By comparison, the average time to foreclosure for white borrowers is 3.266 years. These statistically significant disparities demonstrate that Wells Fargo aggressively moved minority borrowers into foreclosure as compared with how the Bank handled foreclosures for white borrowers.

144. This disparity in time to foreclosure is further evidence that Wells Fargo is engaged in lending practices consistent with reverse redlining. The disparity in time to foreclosure demonstrates that Wells Fargo is engaged in irresponsible underwriting in African-American and Latino communities that does not serve the best interests of borrowers. If Wells Fargo were applying the same underwriting practices in African-American and Latino neighborhoods and white neighborhoods in Miami, there would not be a significant difference in time to foreclosure. Were Wells Fargo underwriting borrowers in both communities with equal care and attention to proper underwriting practices, borrowers in African-American and Latino communities would not find themselves in financial straits significantly sooner during the lives of their loans than borrowers in white communities. The faster time to foreclosure

in African-American and Latino neighborhoods is consistent with underwriting practices in minority communities that are less concerned with determining a borrower's ability to pay and qualifications for the loan than they are in maximizing short-term profit.

145. The HUD/Treasury Report confirms that time to foreclosure is an important indicator of predatory practices: "[t]he speed with which the subprime loans in these communities have gone to foreclosure suggests that some lenders may be making mortgage loans to borrowers who did not have the ability to repay those loans at the time of origination."[30]

3. Data shows that the discriminatory loan terms cause the foreclosures in Miami.

146. Wells Fargo's discriminatory lending practices cause foreclosures and vacancies in minority communities in Miami.

147. Steering borrowers into loans that are less advantageous than loans for which they qualify, including steering borrowers who qualify for prime loans into subprime loans, can cause foreclosures because the borrowers are required to make higher loan payments. The difference between what a borrower who is steered in this manner must pay and the lower amount for which the borrower qualified can cause the borrower to be unable to make payments on the mortgage. In such instances, the borrower would have continued to make payments on the mortgage and remained in possession of the premises had Wells Fargo made the loan without improperly steering the borrower into a

[30] HUD/Treasury Report at 25.

subprime, or less advantageous loan. Steering borrowers in this manner, therefore, causes foreclosures and vacancies.

148. Giving a loan to an applicant who does not qualify for the loan, especially a refinance or home equity loan, can also cause foreclosures and vacancies. Some homeowners live in properties that they own subject to no mortgage. Other homeowners live in properties with modest mortgages that they can comfortably afford to pay. Where a lender, such as Wells Fargo, solicits such a homeowner to take out a home equity loan on their property, or alternatively, to refinance their existing loan into a larger loan without properly underwriting them to assure that they can make the monthly payments for the new, larger loan, the result is likely to be that the borrower will be unable to make payments on the mortgage. This is particularly true where the borrower is refinanced from a fixed-rate loan into an adjustable rate loan that the lender knows the borrower cannot afford should interest rates rise. In some instances the lender may refinance the borrower into a new loan that the lender knows the borrower cannot sustain given the borrower's present debt obligations and financial resources. In such circumstances, the likely result of such practices is to cause homeowners who are otherwise occupying properties without a mortgage, or comfortably making payments on a modest existing mortgage, to be unable to make payment on a new, unaffordable loan. This, in turn, causes foreclosures and vacancies. If these unaffordable refinance and home equity loans had not been made, the subject properties would not have become vacant.

149. A regression analysis of loans issued by Wells Fargo in Miami from 2004-2012 controlling for objective risk characteristics such as credit history, loan to value ratio, and the ratio of loan amount to income demonstrates that a predatory loan is 5.494 times more likely to result in foreclosure than a non-predatory loan.

150. The regression analysis also demonstrates that a predatory loan made to an African-American borrower was 13.324 times more likely as a non-predatory loan made to a white borrower with similar borrower and underwriting characteristics to result in foreclosure. A predatory loan made to a Latino borrower was 17.341 times more likely as a non-predatory loan made to a white borrower with similar risk characteristics to result in foreclosure. These odds ratios demonstrate a pattern of statistically significant differences between African-American and white borrowers and between Latino and white borrowers.

151. A regression analysis of loans with higher risk features including government loans (FHA/VA) and other high cost loans issued by Wells Fargo in Miami from 2008-2012 controlling for borrower race and objective risk characteristics such as ratio of loan amount to income demonstrates that these loans are 1.620 times more likely as loans without these higher risk features to result in foreclosure. These odds ratios demonstrate a pattern of statistically significant differences between African-American and white borrowers and between Latino and white borrowers.

VI. INJURY TO MIAMI CAUSED BY WELLS FARGO'S DISCRIMINATORY LOAN PRACTICES.

152. Miami has suffered both non-economic and economic injuries as a direct result of Wells Fargo's pattern or practice of reverse redlining and the resulting disproportionately high rate of foreclosure on Wells Fargo loans to African-Americans and Latinos in minority neighborhoods in Miami. Miami seeks redress for these injuries. The City does not seek redress in this action for injuries resulting from foreclosures on mortgages originated by lenders other than Wells Fargo.

153. Wells Fargo continues to engage in the discriminatory pattern or practice described herein with similar and continuing deleterious consequences to the City.

154. Through the use of expert evidence and analytic tools such as Hedonic regression, Miami is capable of establishing that the Bank's discriminatory lending practices were the cause of the resulting injuries alleged herein in a manner that excludes other potential causes.

A. Non-Economic Injuries

155. Wells Fargo's conduct has adversely impacted the racial composition of the City and impaired the City's goals to assure racial integration and desegregation and the social and professional benefits of living in an integrated society.

156. The Bank's predatory lending conduct frustrates the City's longstanding and active interest in promoting fair housing and securing the benefits

of an integrated community, which is the purpose and mission of the Miami's Department of Community & Economic Development. The Department, which has responsibility for operating the City's fair housing program, is designed to "affirmatively further fair housing objectives of Title VI of the Civil Rights Act of 1964, Title VIII of the Civil Rights Act of 1968, as amended, and other relevant federal, state, and local housing laws." In discharging that responsibility, the Department "actively works to reduce illegal housing discrimination. The City promotes equal housing opportunity through education and training, monitoring and investigating fair housing complaints utilizing techniques to support fair housing litigation, and conducts research and studies to identify and address fair housing impediments."[31] The Bank's discriminatory lending practices directly interfere with the City's ability to achieve these important objectives.

B. Economic Injuries

157. The City has suffered economic injury based upon reduced property tax revenues resulting from (a) the decreased value of the vacant properties themselves, and (b) the decreased value of properties surrounding the vacant properties. In addition, the City has suffered economic injury resulting from the cost of municipal services that it provided and still must provide to remedy blight and unsafe and dangerous conditions which exist at properties that were foreclosed as a result of Wells Fargo's illegal lending practices.

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[31] http://www.miamigov.com/communitydevelopment/pages/housing/FairHousing.asp.

1. Miami has been Injured by a Reduction in Property Tax Revenues from Foreclosures Caused by Discriminatory Loans Issued by Wells Fargo.

158. When a home falls into foreclosure, it affects the property value of the foreclosed home as well as the values of other homes in the neighborhood. These decreased property values in turn reduce property tax revenues to the City.

159. As property values drop, Miami communities could lose many millions in property tax revenues from the decreased value of the foreclosed homes themselves and those in the surrounding neighborhoods.

160. Homes in foreclosure tend to experience a substantial decline in value relative to those that are not in foreclosure (e.g., 28%).[32] The relative decline in property values can be measured by a number of objective criteria, including the well-established Case-Shiller Home Price Index for the Miami Metropolitan Statistical Area.

161. A portion of this lost home value is attributable to homes foreclosed as a result of Wells Fargo's discriminatory loan practices.

162. The decreased property values of foreclosed homes in turn reduce property tax revenues to the City and constitute damages suffered by Miami.

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[32] Campbell, John Y., Stefano Giglio, and Parag Pathak, National Bureau of Economic Research, NBER Working Paper Series, *"Forced Sales and House Prices"* (2009) (*available at* http://www.nber.org/papers/w14866.pdf?new_window=1).

163. Wells Fargo foreclosure properties and the problems associated with them likewise cause especially significant declines in surrounding property values because the neighborhoods become less desirable. This in turn reduces the property tax revenues collected by Miami.

164. Property tax losses suffered by Miami as a result of vacancies resulting from Wells Fargo's foreclosures are fully capable of empirical quantification.

165. Routinely maintained property tax and other data allow for the precise calculation of the property tax revenues lost by the City as a direct result of particular Wells Fargo foreclosures. Using a well-established statistical regression technique that focuses on effects on neighboring properties, the City can isolate the lost property value attributable to Wells Fargo foreclosures and vacancies from losses attributable to other causes, such as neighborhood conditions. This technique, known as Hedonic regression, when applied to housing markets, isolates the factors that contribute to the value of a property by studying thousands of housing transactions. Those factors include the size of a home, the number of bedrooms and bathrooms, whether the neighborhood is safe, whether neighboring properties are well-maintained, and more. Hedonic analysis determines the contribution of each of these house and neighborhood characteristics to the value of a home.

166. The number of foreclosures in a neighborhood is one of the neighborhood traits that Hedonic analysis can examine. Hedonic analysis allows for the calculation of the impact on a property's value of

the first foreclosure in close proximity (*e.g.*, $^1/_8$ or $^1/_4$ of a mile), the average impact of subsequent foreclosures, and the impact of the last foreclosure.

167. Foreclosures attributable to Wells Fargo in minority neighborhoods in Miami can be analyzed through Hedonic regression to calculate the resulting loss in the property values of nearby homes. This loss can be distinguished from any loss attributable to non-Wells Fargo foreclosures or other causes. The loss in property value in minority neighborhoods in Miami attributable to Wells Fargo's unlawful acts and consequent foreclosures can be used to calculate the City's corresponding loss in property tax revenues.

168. Various studies establish that Hedonic regression can be used for this purpose. A study published by the Fannie Mae Foundation, using Chicago as an example, determined that each foreclosure is responsible for an average decline of approximately 1.1% in the value of each single-family home within an eighth of a mile.[33]

169. Other studies have focused on the impact of abandoned homes on surrounding property values. A study in Philadelphia, for example, found that each home within 150 feet of an abandoned home declined in value by an average of $7,627; homes within 150 to 299 feet declined in value by $6,810; and homes within 300 to 449 feet declined in value by $3,542.[34]

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[33] *See* Dan Immergluck & Geoff Smith, *The External Costs of Foreclosure: The Impact of Single-Family Mortgage Foreclosures on Property Values*, 17 Housing Policy Debate 57 (2006) at 69.

[34] *See* Anne B. Shlay & Gordon Whitman, *Research for Democracy: Linking Community Organizing and Research to Leverage Blight Policy*, at 21 (2004).

170. These studies highlight the foreseeability of tax related harm to the City as the result of foreclosures arising from discriminatory loans.

171. And most recently, a Los Angeles study reported, "Mt is conservatively estimated that each foreclosed property will cause the value of neighboring homes within an eighth of a mile to drop 0.9%." Thus, "[i]n Miami, impacted homeowners could experience property devaluation of $53 billion." [35] This decreased property value of neighboring homes in turn reduces property tax revenues to the City.

172. Application of such Hedonic regression methodology to data regularly maintained by Miami can be used to quantify precisely the property tax injury to the City caused by Wells Fargo's discriminatory lending practices and resulting foreclosures in minority neighborhoods.

C. Miami Is Injured Because It Provided and Still Must Provide Costly Municipal Services for Foreclosure Properties in Minority Neighborhoods as a Direct Result of Discriminatory Loans Originated or Purchased by Wells Fargo.

173. Wells Fargo foreclosure properties cause direct costs to the City because the City is required to provide increased municipal services at these properties. These services would not have been necessary if the properties had not been foreclosed

[35] The Alliance of Californians for Community Empowerment and the California Reinvestment Coalition, *The Wall Street Wrecking Ball: What Foreclosures are Costing Los Angeles Neighborhoods*, at 3 (2011) ("Cost to Los Angeles Report").

upon. Moreover, these foreclosures resulting from Wells Fargo's unlawful conduct have contributed to the necessity for the City to divert essential municipal services that would have been utilized for other purposes to promote the health, welfare, and safety of its residents.

174. For example, the City's Police Department has sent, and will continue to send personnel and police vehicles to Wells Fargo foreclosure properties to respond to a variety of problems, including increased vagrancy, criminal activity, and threats to public health and safety that arise at these properties because of their foreclosure status. Because violent crime has generally been found to increase due to foreclosures, the Miami PD must respond to calls reporting suspicious activity at foreclosure properties and perform ongoing investigations involving criminal activity, including gang activity, at these properties.

175. Likewise, the Miami Fire Department has sent, and will continue to send personnel and resources to Wells Fargo foreclosure properties to respond to a variety of fire-related problems that arise at these properties because of their foreclosure status.

176. The Miami Building Department and Code Enforcement/Code Compliance Departments have devoted, and will continue to devote personnel time and out-of-pocket funds to perform a number of tasks that arise at these properties because of their foreclosure status. These include, but are not limited to the following: (a) inspect and issue permitting violations in contravention of Florida statutes 553 and the Florida Building Code; (b) inspect and issue

violations of the Miami City Code and Florida statutes 162; (c) condemn and demolish vacant structures deemed an imminent hazard to public safety.

177. The City frequently hires independent contractors to perform certain services, including, but not limited to, (i) removing excess vegetation at vacant properties, (ii) hauling away trash and debris at vacant properties, (iii) boarding vacant property from casual entry, (iv) putting up fencing to secure vacant properties, (v) painting and removing graffiti at vacant properties. Occasionally, some of these services are performed by the City's General Services Administration Department. .

178. The Miami City Attorney's Office has devoted, and will continue to devote personnel time and out-of-pocket resources perform a number of tasks that arise at these properties because of their foreclosure status. These include, but are not limited to the following: (a) prosecuting code enforcement cases; (b) preserving the City's lien rights at judicial foreclosure proceedings; and (c) pursuing court ordered injunctions involving a myriad of potential problems at foreclosure properties.

179. The City is required to administer and fund the Unsafe Structures Board, which was formerly under the jurisdiction of Miami-Dade County.

180. As stated by the *Cost to Los Angeles* Report, "[l]ocal government agencies have to spend money and staff time on blighted foreclosed properties, providing maintenance, inspections, trash removal, increased public safety calls, and other code enforcement services . . . . Responding to these needs

is a gargantuan task that involves multiple agencies and multiple levels of local government."[36]

181. Moreover, as discussed above, the Apgar-Duda report underscores the foreseeability of municipal costs as the result of foreclosures arising from discriminatory loans.

VII. SAMPLE PROPERTIES IN THE CITY OF MIAMI

A. Foreclosures

182. Plaintiff has preliminarily identified nine hundred and ninety-nine (999) discriminatory loans issued by Wells Fargo in Miami between 2004-2012 that resulted in foreclosure.[37] The City has already incurred, or will incur in the future, damages corresponding to each of these properties. A sample of property addresses corresponding to these foreclosures is set forth below:

511 NW 51st St., 33127[38]

285 NE 82nd St., 33138[39]

6625 SW 4th St., 33144

5077 NW 7th St., Apt. 1017, 33126

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[36] *Id.*

[37] Plaintiff anticipates that it will be able to identify more foreclosures resulting from the issuance of discriminatory loans during this time period with the benefit of discovery. This conclusion derives from the fact that because of certain reporting limitations, the publicly available mortgage loan databases utilized by Plaintiff are not as comprehensive as the mortgage loan databases maintained by and in the possession of an issuing bank.

[38] This loan was originated in September, 2011.

[39] This loan was originated in March, 2009.

3698 William Ave. Apt. 3, 33133

6321 N. Miami Ave., 33150

252 NE 78th St., 33138

4454 NW 11th Pl., 33127

1487 NW 27th St., 33142

170 NW 46th St., 33127

B. Predatory Loans Issued Subsequent to December 13, 2011.

183. Wells Fargo has continued to issue discriminatory loans in Miami subsequent to December 13, 2011. A sample of property addresses corresponding to the issuance of these loans is set forth below. Based upon the experts' analysis in this case to date, coupled with their analysis in previous predatory lending cases, they are aware that a percentage of these predatory loans originated subsequent to December 13, 2011 will eventually enter the foreclosure process, thereby damaging the City.

2172 NW 17th St. Unit 74, 33125

1000 NW 32nd Ct, 33125

2011 NW 3rd St., 33125

260 NW 58th Ct., 33126

260 SW 27th Rd., 33129

2635 SW 25th Ave., 33133

3241 Oak Ave., 33133

1798 SW 3rd St., 33135

2725 SW 6th St., 33135

1399 NW 51st St., 33142

1544 NW 34th St., 33142

VIII. STATUTE OF LIMITATIONS AND CONTINUING VIOLATIONS DOCTRINE

184. As alleged herein, Defendant Wells Fargo has engaged in a continuous pattern and practice of mortgage discrimination in Miami since at least 2004 by imposing different terms or conditions on a discriminatory and legally prohibited basis. In order to maximize profits at the expense of the City of Miami and minority borrowers, Wells Fargo adapted its unlawful discrimination to changing market conditions and originated predatory mortgages in accordance with the various specific practices referenced herein. This unlawful pattern and practice of discriminatory conduct and the specific practices referenced herein is continuing through the present and has not terminated. Therefore, the operative statute of limitations governing actions brought pursuant to the Federal Fair Housing Act has not commenced to run.

IX. CLAIMS FOR RELIEF

FIRST CLAIM FOR RELIEF

(Violation of the Federal Fair Housing Act, 42 U.S.C. §§ 3601, et seq.)

185. Plaintiff repeats and incorporates by reference all allegations contained in the preceding paragraphs as if fully set forth herein.

186. Wells Fargo's acts, policies, and practices as described constitute intentional discrimination on the basis of race. Wells Fargo has intentionally targeted residents of predominantly African-American and Latino neighborhoods in Miami for different treatment than residents of predominantly white neighborhoods in Miami with respect to

mortgage lending. Wells Fargo has intentionally targeted residents of these neighborhoods for high-cost loans without regard to their credit qualifications and without regard to whether they qualify for more advantageous loans, including prime loans. Wells Fargo has intentionally targeted residents of these neighborhoods for increased interest rates, points, and fees, and for other disadvantageous loan terms including, but not limited to, adjustable rates, prepayment penalties, and balloon payments. Wells Fargo has intentionally targeted residents of these neighborhoods for unfair and deceptive lending practices in connection with marketing and underwriting mortgage loans.

187. Wells Fargo's acts, policies, and practices have had an adverse and disproportionate impact on African-Americans and Latinos and residents of predominantly African-American and Latino neighborhoods in Miami as compared to similarly situated whites and residents of predominantly white neighborhoods in Miami. This adverse and disproportionate impact is the direct result of Wells Fargo's policies of providing discretion to loan officers and others responsible for mortgage lending; failing to monitor this discretion to ensure that borrowers were being placed in loan products on a nondiscriminatory basis when Wells Fargo had notice of widespread product placement disparities based on race and national origin; giving loan officers and others responsible for mortgage lending large financial incentives to issue loans to African-Americans and Latinos that are costlier than better loans for which they qualify; otherwise encouraging and directing loan officers and others responsible for mortgage lending to steer borrowers into high-cost

loans or loans with adjustable rates, prepayment penalties, or balloon payments without regard for whether they qualify for better loans, including but not limited to prime loans; and setting interest rate caps. These policies have caused African-Americans and Latinos and residents of predominantly African-American and Latino neighborhoods in Miami to receive mortgage loans from Wells Fargo that have materially less favorable terms than mortgage loans given by Wells Fargo to similarly situated whites and residents of predominantly white neighborhoods in Miami, and that are materially more likely to result in foreclosure.

188. Wells Fargo's residential lending-related acts, policies, and practices constitute reverse redlining and violate the Fair Housing Act as:

(a) Discrimination on the basis of race and national origin in making available, or in the terms and conditions of, residential real estate-related transactions, in violation of 42 U.S.C. § 3605(a); and

(b) Discrimination on the basis of race and national origin in the terms, conditions, or privileges of sale of a dwelling, in violation of 42 U.S.C. § 3604(b).

189. Wells Fargo's policies or practices are not justified by business necessity or legitimate business interests.

190. Wells Fargo's policies and practices are continuing.

191. The City is an aggrieved person as defined by 42 U.S.C. § 3602(i) and has suffered damages as a result of Wells Fargo's conduct.

192. The City's damages include lost tax revenues and the need to provide increased municipal services. The loss of tax revenues at specific foreclosure sites and at closely neighboring properties in predominantly minority neighborhoods of the City was a foreseeable consequence that was fairly traceable to Wells Fargo's discriminatory lending. Likewise, the need to provide increased municipal services at blighted foreclosure sites in predominantly minority neighborhoods of the City was a foreseeable consequence that was fairly traceable to Wells Fargo's discriminatory lending.

193. Wells Fargo's policies and practices, as described herein, had the purpose and effect of discriminating on the basis of race or national origin. These policies and practices were intentional, willful, or implemented with reckless disregard for the rights of African-American and Latino borrowers.

SECOND CLAIM FOR RELIEF

(Common Law Claim For Unjust Enrichment Based On Florida Law)

194. Plaintiff repeats and incorporates by reference paragraphs 1 - 184 as if fully set forth herein.

195. Defendants have received and utilized benefits derived from a variety of municipal services, including police and fire protection, as well as zoning ordinances, tax laws, and other laws and services that have enabled Defendants to operate and profit within the City of Miami while engaging in a lengthy pattern and practice of unlawful activity. Defendants are not legally entitled to the benefits of these services to the extent they were utilized to further the unlawful conduct alleged herein.

196. Defendants are aware of and have taken advantage of the services and laws provided by the City of Miami to further their unlawful businesses practices.

197. As a direct and proximate result of Defendants' predatory lending practices, Defendants have been enriched at the City's expense by utilizing benefits conferred by the City and, rather than engaging in lawful lending practices, practicing unlawful lending practices that have both denied the City revenues it had properly expected through property and other tax payments and by costing the City additional monies for services it would not have had to provide in the neighborhoods affected by foreclosures due to predatory lending, absent the Defendants' unlawful activities. Additionally, by foreclosing on the properties for which Wells Fargo issued predatory loans, the City expended otherwise unnecessary externalities to protect the properties acquired by Defendants in foreclosure, including, at a minimum, increased police protection. Defendants were specially benefitted as the new owners of these properties. Defendants have failed to remit those wrongfully obtained benefits or reimburse the City for its costs improperly caused by Defendants, and retention of the benefits by Defendants would be unjust without payment.

198. In addition, to its detriment the City has paid for the Defendants' externalities or Defendants' costs of harm caused by its mortgage lending discrimination, in circumstances where Defendants are and have been aware of this obvious benefit and retention of such benefit would be unjust.

DEMAND FOR JURY TRIAL

Pursuant to Fed. R. Civ. P. 38(b), the City demands a trial by jury on all issues so triable.

PRAYER FOR RELIEF

WHEREFORE, the City respectfully prays that the Court grant it the following relief:

A. Enter a declaratory judgment that the foregoing acts, policies, and practices of Wells Fargo violate 42 U.S.C. §§ 3604 and 3605;

B. Enter a permanent injunction enjoining Wells Fargo and its directors, officers, agents, and employees from continuing the discriminatory conduct described herein, and directing Wells Fargo and its directors, officers, agents, and employees to take all affirmative steps necessary to remedy the effects of the discriminatory conduct described herein, and to prevent additional instances of such conduct or similar conduct from occurring in the future, pursuant to 42 U.S.C. § 3613(c)(1);

C. Award compensatory damages to the City in an amount to be determined by the jury that would fully compensate the City of Miami for its injuries caused by the conduct of Wells Fargo alleged herein, pursuant to 42 U.S.C. § 3613(c)(1);

D. Award punitive damages to the City in an amount to be determined by the jury that would punish Wells Fargo for the willful, wanton, and reckless conduct alleged herein, and that would effectively deter similar conduct in the future, pursuant to 42 U.S.C. § 3613(c)(1);

E. Award the City its reasonable attorneys' fees and costs, pursuant to 42 U.S.C. § 3613(c)(2);

F. Require payment of pre-judgment interest on monetary damages; and

G. Order such other relief as this Court deems just and equitable.

Date: July 21, 2014 Respectfully submitted,

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