BONNETT, FAIRBOURN, FRIEDMAN
& BALINT, P.C.
Andrew S. Friedman (admitted *pro hac vice*)
Wendy J. Harrison (CA SBN 151090)
2901 North Central Avenue, Suite 1000
Phoenix, Arizona 85012
(602) 274-1100

RODDY KLEIN & RYAN
Gary Klein (admitted *pro hac vice*)
Shennan Kavanagh
Kevin Costello
727 Atlantic Avenue, 2nd Floor
Boston, Massachusetts 02111
(617) 357-5500

Interim Co-Lead Class Counsel

[Additional Counsel on Signature Page]

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

In re WELLS FARGO MORTGAGE LENDING PRACTICES LITIGATION	No. 08-CV-01930-MMC (JL)
	CLASS ACTION
This document relates to ALL ACTIONS	**FIRST CONSOLIDATED AND AMENDED CLASS ACTION COMPLAINT FOR:** 1. Violations of the Fair Housing Act; 42 U.S.C. § 3601 2. Violations of the Equal Credit Opportunity Act; 15 U.S.C. § 1691 **DEMAND FOR JURY TRIAL**

INTRODUCTION

1. This is a class action brought by Plaintiffs, Gilbert Ventura, Sr., Tracy D. Ventura, Juan Rodriguez, Josefina Rodriguez, Howard Queensborough, Ruby Brown and Judy A. Williams ("Plaintiffs"), on behalf of themselves and other similarly situated minority

homeowners, against Wells Fargo Bank, N.A. ("Wells Fargo") under the Equal Credit Opportunity Act, 15 U.S.C. § 1691, *et seq*. ("ECOA") and the Fair Housing Act, 42 U.S.C. § 3601, *et seq*. ("FHA"). Plaintiffs seek remedies for themselves and the Class (defined below) for the discriminatory effects of Wells Fargo's home financing policies and practices. This consolidated and amended complaint is intended to consolidate and supersede the various complaints filed in the matters encompassed by this multidistrict litigation proceeding.

Brown v. Wells Fargo Bank, N.A., CV 08-0492 (N.D. Ca.)

Rodriguez v. Wells Fargo Bank, N.A., CV07-6780 (C.D. Ca.)

Ventura v. Wells Fargo Bank, N.A. CV 07-4309 (N.D. Ca.)

Williams v. Wells Fargo Bank, N.A., 07-cv-6342 (N.D. Ill.)

2. As described below, Wells Fargo has established a specific, identifiable and uniform credit pricing system, a component of which authorizes unchecked, subjective surcharge of interest rate markups and additional points and fees to an otherwise objective risk-based financing rate (referred to herein as the Discretionary Pricing Policy). In other words, after a finance rate acceptable to Wells Fargo is determined by objective criteria (e.g., the individual's credit history, credit score, debt-to-income ratio and loan-to-value ratios), Wells Fargo's credit pricing policy authorizes additional discretionary interest rate markups, pricing exceptions and finance charges. These discretionary elements to Wells Fargo's loan pricing have a widespread discriminatory impact on minority applicants for home mortgage loans, in violation of ECOA and the FHA.

3. The mortgage lending industry has a long history of racial discrimination, offering minorities products and terms that are drastically worse than those given to their similarly situated white counterparts.

4. In 2003, the National Community Reinvestment Coalition ("NCRC") released a report on credit discrimination titled, "The Broken System: Discrimination and Unequal Access to Affordable Loans by Race and Age,"[1] that indicated that consumers living in areas with more minority residents are more likely to have mortgages with interest rates higher than the "prevailing and competitive" rates, often because of discrimination in lending.

5. Home Mortgage Disclosure Act data for 2006 revealed that black and Hispanic borrowers are more likely to obtain higher-priced loans than are white borrowers.[2] The data indicated that black homeowners who received subprime mortgage loans were much more likely to be issued a higher rate loan than white borrowers with the same qualifications.

6. Martin J. Gruenberg, Vice Chairman of the Federal Deposit Insurance Corporation has observed that "previous studies have suggested higher-priced, subprime lenders are more active in lower income, urban areas and that minority access to credit is dominated by higher cost lenders."[3]

7. These significant disparities are not mere coincidences. They are the result of a systematic and discriminatory policy that leads to minority borrowers paying, on average, thousands of dollars more for their Wells Fargo home loans than white borrowers with similar credit characteristics. Plaintiffs bring this lawsuit to seek relief from the harms suffered as a result of Wells Fargo's discriminatory lending practices and to enjoin Wells Fargo from continuing such practices.

---

[1] This report is available at http://ncrc.org/policy/cra/documents/ncrcdiscrimstudy.pdf.

[2] This report is available at www.ffiec.gov./hmda.

[3] *See* "Remarks of Martin J. Gruenberg, Vice Chairman, FDIC; Inter-American Development Bank," October 18, 2006, *available at* http://www/fdic.gov/new/speeches/archives/2006/chairman/spoct1806.html.

8. Wells Fargo has established policies for retail and wholesale access to their loan products that subject minority financing applicants to a significantly higher likelihood of exposure to discretionary interest rate mark-ups, points and fees. These costs drive up the average cost of a mortgage loan made to minority homeowners.

9. Plaintiffs seek damages, declaratory and injunctive relief, disgorgement and restitution of monies disparately obtained from minority borrowers.

JURISDICTION AND VENUE

10. This Court has jurisdiction pursuant to 28 U.S.C. § 1331, which gives this Court original jurisdiction over civil actions arising under federal law.

11. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b) because a substantial part of the events giving rise to Plaintiffs' and the Class's claims occurred in this District. Defendant's corporate headquarters are located in this District, and the practices complained of herein were formulated and structured in this District.

12. One or more of the constituent cases was transferred to this Court by the Judicial Panel on Multidistrict Litigation ("JPML").

PARTIES

13. Plaintiffs Gilbert Ventura, Sr., and Tracy D. Ventura are Hispanic homeowners who reside in Casa Grande, Arizona.

14. Plaintiffs Juan Rodriguez and Josefina Rodriguez are Hispanic homeowners who reside in Las Vegas, Nevada.

15. Plaintiff Howard Queensborough is a black homeowner who resides in Dorchester, Massachusetts.

16. Plaintiff Ruby Brown is a black homeowner who resides in Calera, Alabama.

17. Plaintiff Judy Williams is a black homeowner who resides in East Madison Park, Chicago, Illinois.

18. Defendant Wells Fargo is a mortgage lender whose principal place of business is at 464 California Street, San Francisco, California 94104.

FACTS

I. MORTGAGE LENDING IN THE UNITED STATES HAS HISTORICALLY DISCRIMINATED AGAINST MINORITIES. WELLS FARGO FOLLOWS PRACTICES THAT RESULT IN DISCRIMINATION.

19. Minority borrowers who obtain a home loan with high rates, points and fees will pay hundreds of dollars more each month in mortgage payments, making them more vulnerable to short term economic distress that may result from job loss or medical problems. In consequence, minority homeowners run higher risks of foreclosure, and will accumulate equity in their homes much more slowly than white borrowers. While for some minority borrowers with tarnished credit histories, higher-priced home loans provide the only access to the mortgage market and to homeownership, many other minorities will be paying far more for their mortgages than their credit histories justify.

20. According to the Joint Center for Housing Studies at Harvard University's 2005 study called "The Dual Mortgage Market: The Persistence of Discrimination in Mortgage Lending," mortgage lending discrimination today is subtle but pervasive. More than three decades after the enactment of national fair lending legislation, minority consumers continue to have less-than-equal access to loans at the best price and on the best terms that their credit history, income and other individual financial considerations merit.

21. The passage of civil rights legislation and fair lending laws in the 1960s and 1970s brought an end to the most virulent forms of overt racial discrimination in the housing markets, but throughout the 1980s and 1990s, mortgage lenders found more subtle ways to

discriminate, including maintaining offices only in white neighborhoods and engaging in practices such as redlining (refusing to finance homes in predominantly minority neighborhoods).

22. After such redlining practices were challenged in the 1990s, mortgage lenders changed tactics once again, making loans to minorities, but charging higher interest rates and loan-related fees than they charged to similarly situated white borrowers. Loan data that mortgage lenders must now compile and disclose under the federal Home Mortgage Disclosure Act ("HMDA") reveals profound loan pricing disparities between minority borrowers and similarly situated white borrowers.

23. The HMDA requires mortgage lenders to report information about the home loans they process each year. In 1989, Congress required lenders to begin disclosing information about mortgage borrowers' race and ethnicity. In 2004, concerned with potential racial discrimination in loan pricing and recognizing that racial or other types of discrimination can occur when loan officers and mortgage brokers have latitude in setting interest rates, the Federal Reserve Board began requiring lenders to also report information concerning rates, points and fees charged to borrowers on high-cost loans.

24. According to the Federal Reserve, both 2004 and 2005 HMDA data revealed that "Blacks and minority borrowers were more likely . . . to have received higher-priced loans than non-Hispanic whites . . . [which has] increased concern about the fairness of the lending process."[4]

---

[4] Robert B. Avery, Kenneth P. Brevoort and Glenn B. Canner, "Higher-Priced Home Lending and the 2005 HMDA Data," Federal Reserve Bulletin, A124, A159 (revised Sept. 18, 2006) ("Avery") (http://www.federalreserve.gov/pubs/bulletin/2006/hmda/bull06hmda.pdf).

25. HMDA data for 2004 reveals profound loan pricing disparities between minority borrowers and non-Hispanic whites even after controlling for borrowers' gender, income, property location and loan amount. After accounting for those differences in the 2004 HMDA data, minority borrowers were still almost twice as likely to receive a higher-rate home loan as non-Hispanic whites.[5] The Vice-Chairman of the Federal Deposit Insurance Corporation, Martin Gruenberg, discussed the 2004 HMDA data and observed that that data "clearly indicated" that minority borrowers are more likely to receive high-cost home loans than are non-Hispanic whites.[6]

26. Likewise, HMDA data for 2005 shows that "for conventional home-purchase loans, the gross mean incidence of higher-priced lending was 54.7 percent for blacks and 17.2 percent for non-Hispanic whites, a difference of 37.5 percentage points." Avery, at A159. The situation is similar for refinancing, where there is a difference of 28.3 percentage points between blacks and non-Hispanic whites. *Id.* at A124, A159.

27. The Association of Community Organizations for Reform Now (ACORN) released a report entitled "The High Cost of Credit: Disparities in High-priced Refinanced Loans to Minority Homeowners in 125 American Cities," dated September 27, 2005, that found that "[i]n every metropolitan area where at least 50 refinances were made to African-American homeowners, African-Americans were more likely to receive a high-cost loan than White homeowners."

28. The study found that, nationally, black home purchasers were 2.7 times more likely and Hispanics were 2.3 times more likely than white borrowers to be issued a subprime

---

[5] This is available at http://www.responsiblelending.org/pdfs/Testimony-Ernst061306.pdf

[6] This speech is available at http://www.fdic.gov/news/news/speeches/archives/2006/chairman/spoct1806.html.

loan. Additionally, the ACORN study, available at www.acorn.org, found that nationally, for refinance loans, African Americans were 1.8 times more likely and Hispanics were 1.4 times more likely than white borrowers to be issued a subprime loan.

29. Differences in economic status are not to blame. These racial disparities were found to persist even among borrowers of the same income level. The ACORN study found that, among upper-income purchasers (defined as persons with incomes 120% or greater than the area median income for their metropolitan area), African Americans were 3.3 times more likely and Hispanics were 3 times more likely than similarly-situated whites to be issued a high-cost, subprime loan. Further, the ACORN study found that, with respect to refinance loans, among upper-income borrowers, African Americans and Hispanics were 1.7 times were likely than similarly-situated whites to be issued a high-cost, subprime loan.

30. While some borrowers in the subprime market are genuine credit risks, minority borrowers have been preyed upon by mortgage lenders and illegally steered into subprime loans. Wells Fargo has engaged in this discriminatory lending by refusing to offer minority borrowers the prime loans offered to similarly qualified white borrowers.

31. Studies by Freddie Mac and Standard & Poor's have found that 20% to 30% of borrowers who receive subprime mortgages could have qualified for traditional mortgages at the lower rates offered by banks to prime borrowers. This seriously disadvantages the borrower by effectively diluting the equity of the property, placing the borrower in jeopardy of default, and forcing the borrower to spend years paying off additional loan balances without developing any equity in his home.

32. A growing number of research studies and investigations show that significant racial disparities continue to exist.[7]

33. Moreover, and importantly, research studies have suggested that borrowers' credit profiles cannot fully explain why some borrowers, and not others, are saddled with higher cost loans. Researchers have raised "doubts that risk can adequately explain racial differences" in high-cost loans.[8] In other words, evidence "suggests that weak borrower credit profiles do not fully explain why some borrowers get stuck with higher-cost home loans."[9]

34. As a lender covered by HMDA, Wells Fargo is required to submit its data to the Federal Financial Institutions Examination Council for publication.

35. Wells Fargo's HMDA data reveals stark price differential between minority and non-minority borrowers. Based on Home Mortgage Disclosure Act ("HMDA") data available as of 2007, blacks who borrowed from Wells Fargo were nearly three (3) times more likely than whites to have received a high-APR home loan from Wells Fargo. Hispanics were nearly fifty percent more likely than whites to receive a high-APR loan.

36. Statistical studies have shown that disparities identified in HMDA data are not alleviated when credit risk information is included and controlled for.

---

[7] California Reinvestment Coalition, et al., "Paying More for the American Dream: A Multi-State Analysis of Higher Cost Home Purchase Lending" (March 2007) (http://www.nedap.org/pressroom/documents/2007_Report-2005_HMDA.pdf); Ross, "The Continuing Practice and Impact of Discrimination" (Revised July 2006) (Univ. of Connecticut, Working Paper 2005-19R) (http://www.econ.uconn.edu/working/2005-19r.pdf).

[8] Bradford, Center for Community Change, "Risk or Race? Racial Disparities and the Subprime Refinance Market" (May 2002) (http://www.knowledgeplex.org/kp/report/report/relfiles/ccc_0729_risk.pdf).

[9] California Reinvestment Coalition, et al., "Paying More for the American Dream: A Multi-State Analysis of Higher Cost Home Purchase Lending." (March 2007).

37. For instance, in a study done by the Center for Responsible Lending, a non-profit research organization, Debbie Gruenstein Bocian, Keith Ernst and Wei Li matched data obtained via HMDA with information regarding loan risk available in a large proprietary database used in connection with securitizations. *See* Bocian, Ernst and Li, *Unfair Lending: The Effect of Race and Ethnicity on the Price of Subprime Mortgages*, Center for Responsible Lending (May 31, 2006) ("CRL Study") *available at* http://www.responsiblelending.org/pdfs/rr011-Unfair_Lending-0506.pdf. By matching these data sources, Bocian, Ernst and Li compiled a database of approximately 177,000 loans that included information on race and pricing, as well as credit risk, loan-to-value ratio and ability to document income. *See* CRL Study at 3.

38. The addition of the loan risk information allowed Bocian, Ernst and Wei to isolate the effect that a borrower's race or ethnicity had on loan pricing. Their analysis showed that African American borrowers whose loans included prepayment penalties were between 6% and 34% more likely to receive a higher-rate loan than a white borrower with similar qualifications, depending on loan type and purpose of the loan. *See* CRL Study at 3. Similarly, Latino borrowers taking out loans to purchase homes were between 29% and 142% more likely to receive a higher-rate loan than a similarly qualified white borrower, depending on the loan characteristics. *See* CRL Study at 4.

39. The CRL Study was also published in a peer-reviewed academic economics journal. *See* Bocian, Ernst and Li, *Race, Ethnicity & Subprime Home Loan Pricing*, Vol. 60, Journal of Economics and Business, 110-124 (2008) ("JEB Article"). Expressing their findings in this article as a function of odds ratios, the authors reported as follows: "In general, our analyses show that race and ethnicity were significant factors in determining whether borrowers received higher-rate home loans. That is, African-American and Latino borrowers are more likely to receive higher-rate loans than non-Latino white borrowers with similar risk factors for

many categories of subprime loans. The significance of race was particularly consistent for loans with prepayment penalties, while the impact of ethnicity was concentrated in loans for home purchases. Specifically, for loans with prepayment penalties, all else being equal, the odds of an African-American borrower receiving a higher-rate loan range from 1.17 to 1.84 times greater than for a non-Latino white borrower (depending on loan product). With respect to ethnicity, all else being equal, for purchase loans the odds of a Latino borrower receiving a higher-rate loan range from 1.52 to 2.89 times greater than for a non-Latino white borrower (again, depending on loan product). All of the above odds ratios are significantly different from 1.0 at a 95% confidence-level." *See* JEB Article at 121.

40. According to the congressional testimony of one of the JEB Article authors, these "findings were striking." *See* Testimony of Keith Ernst, Senior Policy Counsel at Center for Responsible Lending, before the House Subcommittee on Financial Institutions and Consumer Credit (June 13, 2006) ("Ernst Testimony"). In recommending policy changes to Congress, Ernst reported that: "even after controlling for legitimate loan risk factors, including borrowers' credit score, loan-to-value ratio, and ability to document income, race and ethnicity matter. African American and Latino borrowers continue to face a much greater likelihood of receiving the most expensive subprime loans—even with the same loan type and the same qualifications as their white counterparts. Across a variety of different loan types, African American and Latino borrowers were commonly 30% more likely to receive a higher-rate loan than white borrowers." *See* Ernst Testimony at 3.

41. Although the research in the JEB Article was not designed to identify the reason for such disparities, the authors concluded that a likely cause was the "substantial leeway [that] exists for prices to be altered without regard to any credit-related criteria." *See* Ernst Testimony at 5.

42. The conclusions of CRL Study and the JEB Article are consistent with the research of the former dean of Harvard Law School and his co-author. *See* Howell E. Jackson and Laurie Burlingame, *Kickbacks Or Compensation: The Case Of Yield Spread Premiums,* 12 Stan. J.L. Bus. & Fin. 289, 350 (Spring 2007) ("Jackson & Burlingame Study").

43. In the Jackson & Burlingame Study, the authors had rare access to a pool of approximately 3000 loan files that included information on the race of the borrower, the price components of the loan, and the riskiness of the loan, i.e. credit score and loan-to-value ratio data. *See* Jackson & Burlingame Study, 12 Stan. J.L. Bus. & Fin. at 316, 346.

44. Focusing on interest rate markups reflected by lender paid incentive payments to brokers known as "yield spread premiums," Jackson and Burlingame concluded that African American borrowers paid on average between $482 and $733 more in total mortgage broker compensation than similarly situated white borrowers. *See* Jackson & Burlingame Study, 12 Stan. J.L. Bus. & Fin. at 350. Similarly, the Jackson and Burlingame Study concluded that Hispanic borrowers paid between $351 and $398 more for their loans. *Id.*

II. DEFENDANT WELLS FARGO'S DISCRETIONARY PRICING POLICY

45. Defendant Wells Fargo has followed – and continues to follow – discretionary loan pricing procedures that cause minority borrowers to pay non-risk based interest rate markups (resulting in incentive-laden payments to brokers and retail loan officers) and other mortgage-related finance charges at higher rates than similarly situated non-minority borrowers. Defendant Wells Fargo has discriminated against Plaintiffs and Class Members through these policies and procedures – systematically giving them mortgage loans with less favorable conditions than were given to similarly situated non-minority borrowers. This pattern of discrimination is not the result of random or non-discriminatory factors. Rather, it is a direct result of Defendant Wells Fargo's mortgage lending policies and procedures.

46. Defendant Wells Fargo gives its loan officers and authorized mortgage brokers discretion to provide for rate markups, discounts, points and fees to borrowers in amounts that are unrelated to credit risk and other objective factors.

47. Defendant Wells Fargo's loan officers and authorized mortgage brokers receive part or all of their compensation from Defendant Wells Fargo based on the interest rate charged to the borrower. Defendant Wells Fargo's loan officers and authorized brokers receive more compensation from Defendant Wells Fargo when they steer their clients into Wells Fargo loans with higher interest rates, and less compensation when they place their clients into Wells Fargo loans with lower interest rates.

48. Defendant Wells Fargo's policies and procedures concerning the assessment of markups, and discretionary points and fees cause persons with identical or similar credit scores to pay different amounts for obtaining credit. Such subjective loan pricing - which by design imposes different finance charges on persons with the same or similar credit profiles - disparately impacts Defendant Wells Fargo's minority borrowers.

49. Defendant Wells Fargo takes numerous concrete steps to implement and facilitate this discriminatory credit-pricing policy.

50. Defendant Wells Fargo actively conceals that rates and fees on Wells Fargo loans are discretionary and negotiable. Thus Wells Fargo's minority borrowers pay finance charges not knowing that a portion of these finance charges are not related to their objective credit characteristics.

51. At the same time Wells Fargo makes incentive based payments to mortgage brokers and retail loan officers that encourage markups.

52. Defendant Wells Fargo funds loans originated by its loan officers and authorized mortgage brokers, sets the terms and conditions of credit on those loans, and shoulders part or all

of the risk on such loans. Defendant Wells Fargo actively and intentionally enforces its credit policies through its authorized loan officers and mortgage brokers in a variety of ways. Among other things, Defendant Wells Fargo supplies its loan officers and mortgage brokers with an array of loan-related forms and agreements,

53. While Defendant Wells Fargo's use of a common credit policy for all loan applicants might appear to be racially neutral, Defendant Wells Fargo's policies allowing for non-risk related markups and disproportionately points and fees adversely affects minorities (relative to similarly situated non-minorities). Defendant Wells Fargo's discretionary pricing policy causes minorities to pay disparately more discretionary finance charges than similarly situated non-minorities.

54. Wells Fargo's loans to its minority borrowers are more expensive than loans it makes to similarly situated non-minorities.

55. Defendant Wells Fargo's Discretionary Pricing Policy constitutes a pattern and practice of discrimination, in that it was the Defendant's standard operating procedure. This pattern of discrimination cannot be justified by business necessity, and could be avoided through the use of alternative policies and procedures that have less discriminatory impact and no less business efficacy.

A. DEFENDANT WELLS FARGO'S WHOLESALE CHANNEL

56. Defendant Wells Fargo discriminates against minority borrowers through its authorized mortgage brokers. Authorized mortgage brokers act as Defendant Wells Fargo's agents in originating mortgage loans. Authorized mortgage brokers enter into agreements with Defendant Wells Fargo to accept loan applications on behalf of Defendant Wells Fargo; communicate to loan applicants financing terms and rates set by Defendant Wells Fargo; tell loan applicants about Defendant Wells Fargo's various financing options; and ultimately originate

mortgage loans funded by Defendant Wells Fargo using Defendant Wells Fargo's forms and in accordance with Defendant Wells Fargo's policies and procedures.

57. Defendant Wells Fargo originates and funds mortgage loans through a nationwide network of mortgage brokers. Mortgage brokers that work with Defendant Wells Fargo broker and fund loans in collaboration with Defendant Wells Fargo and in conformance with Defendant Wells Fargo's credit-pricing policies and procedures. As Defendant Wells Fargo's website explains, mortgage brokers "match borrowers with lenders." (https://www.wellsfargo.com/mortgage/glossary/m (last viewed August 14, 2007).)

58. In order to originate loans for Defendant Wells Fargo, a mortgage broker is required to sign a Broker Agreement that governed the terms of the relationship. The Broker Agreement requires mortgage brokers to adhere to Defendant Wells Fargo's policies and procedures.

59. Defendant Wells Fargo actively educates its brokers in Defendant Wells Fargo's credit policies and procedures. Defendant Wells Fargo has conducted weekly training "webinars" (i.e., interactive Internet seminars) for its brokers concerning its loan products where it disseminates to brokers "detailed information on [Defendant Wells Fargo's] product guidelines[.]" (https://ilnet.wellsfargo.com/ildocs/ee/training.html (last viewed on August 15, 2007).) Defendant Wells Fargo also maintains an Internet site called "Brokers First" that supplies brokers with rate sheets, a "Broker Guide," and underwriting guidelines.

60. Defendant Wells Fargo also actively directs its brokers in marketing Defendant Wells Fargo's loans. Defendant Wells Fargo provides its authorized brokers downloadable mortgage advertisements. (https://ilnet.wellsfargo.com/ildocs/ee/marketing_tools.html (last viewed on August 7, 2007).)

61. Defendant Wells Fargo enforces the terms of its Broker Agreements by regularly evaluating the performance of its mortgage brokers. This is accomplished through the use of Broker Scorecards, monitoring of the average credit scores of individual brokers and the ongoing review of a broker's pricing outcomes.

62. If Defendant Wells Fargo determines that one of its mortgage brokers either violated its policies or was "out of sync" with the local market of mortgage pricing, the mortgage broker is subject to reprimand and counseling via a "coaching script" that is written and delivered by Defendant Wells Fargo employees. Repeated violations or failure to follow Defendant Wells Fargo's direction could lead to termination of the relationship.

63. Defendant Wells Fargo's mortgage brokers are subject at all relevant times to Wells Fargo's polices and procedures.

64. Specifically, in evaluating the objective credit characteristics of a borrower and matching that borrower to a product and par interest rate that they were eligible for, Defendant Wells Fargo's mortgage brokers and correspondent lenders use Wells Fargo's regularly published rate sheets and act subject to Wells Fargo's Pricing Policies.

65. "Par interest rate" refers to the interest rate that a borrower objectively qualifies for with no yield spread premium included in the price of the loan.

66. Yield spread premium is a lump sum payment used by lenders to reward brokers for using discretion to originate its loans at an interest rate above what the borrower objectively qualified for. *See Brewer v. Indymac Bank*, 609 F. Supp. 2d 1104, 1116 n.6 (E.D. Cal. 2009) ("*Brewer*"). The Ninth Circuit has recognized that such costs are "ultimately paid by the consumer." *Id., quoting Schuetz v. Banc One Mortgage,* 292 F.3d 1004, 1007 (9th Cir. 2002).

67. Defendant Wells Fargo directly benefits from the yield spread premium mechanism in at least two primary ways. First, where Defendant Wells Fargo holds a loan for an

extended period of time, it benefits from the proceeds of the disparately heightened interest rate, paid over the life of the loan. Second, where Defendant Wells Fargo sells a loan it originates to a third-party, the disparately heightened interest rate results in an enhanced secondary market price.

68. Defendant Wells Fargo's mortgage brokers have discretion to apply for loan funding on behalf of a borrower at interest rates above the par interest rate for which the borrower objectively qualifies. At the time a mortgage broker submits a loan application package to Defendant Wells Fargo, it corresponds to Defendant Wells Fargo's rate sheet and therefore is identified by interest rate sought, along with the corresponding yield spread premium.

69. Aside from the discretion afforded in interest rate, Defendant Wells Fargo's mortgage brokers also have discretion to include various fees in the price of a loan. These fees include "origination fees," "application fees," and "processing fees," among others, that are paid by the borrower to the mortgage broker.

70. In practice, such discretionary fees are often financed by the borrower, meaning that the borrower uses the proceeds of the loan to pay them. When this occurs Defendant Wells Fargo benefits from the imposition of disparately higher fees because the principal balance of the loan is correspondingly higher. A higher principal balance results in enhanced interest payments and/or secondary market price.

71. Defendant Wells Fargo acknowledges the impact that its allowance of discretionary pricing by regulating discretionary pricing with a system of caps. Defendant Wells Fargo maintains caps relating to both yield spread premium specifically and total broker compensation. The cap relating to total broker compensation includes consideration of the yield spread premium payment as well as any of the discretionary fees that are imposed by the broker.

72. These credit-pricing policies and procedures permit Defendant Wells Fargo's authorized mortgage brokers subjectively to charge certain loan applicants discretionary rate markups, points and other charges, including minority loan applicants.

B. DEFENDANT WELLS FARGO'S RETAIL CHANNEL

73. Defendant Wells Fargo also originates loans in its retail channel. Defendant Wells Fargo's loan officers, known as "Home Mortgage Consultants" act as Defendant Wells Fargo's agents in originating loans.

74. Loan officers that work with Defendant Wells Fargo make loans in accordance with Defendant Wells Fargo's pricing policies and procedures.

75. Defendant Wells Fargo's Loan Officers originate loans both through Defendant Wells Fargo's branch locations and via "centralized" retail, which includes originations from Internet or telephone inquiries to Defendant Wells Fargo directly.

76. Defendant Wells Fargo's Loan Officers are trained to follow Defendant Wells Fargo's pricing policies and procedures. Defendant Wells Fargo's pricing policies and procedures are available to them via intranet. In addition, Defendant Wells Fargo's Loan Officers had access to daily pricing information via an icon on their personal computers, known as "Priceblast."

77. The failure of Defendant Wells Fargo's Loan Officers to adhere to Defendant Wells Fargo's pricing policies and procedures could result in discipline against them.

78. In some cases, Defendant Wells Fargo's Loan Officers are compensated via a monthly commission calculation that incentivized them to originate loans with higher interest rates and fees.

79. Defendant Wells Fargo's Loan Officers are subject to a Discretionary Pricing Policy that allowed them discretion to set the interest rate and fees on a loan within a certain "bandwidth."

80. Defendant Wells Fargo uses the term "bandwidth" to describe the range of loan prices, including, among other things, interest rate and fees, that are acceptable to it.

81. Defendant Wells Fargo's Loan Officers are provided rate sheets that are used to match borrowers to products and interest rates that are available at the time of origination.

82. Upon evaluating a borrower's objective credit information, Defendant Wells Fargo's Loan Officers match the borrower to a product and the corresponding "authorized rate" contained on a rate sheet.

83. Defendant Wells Fargo's Loan Officers have discretion, within the "bandwidth" prescribed by Defendant Wells Fargo, to set the total price of the loan.

84. Included in Defendant Wells Fargo's calculation of the total price is a required one percent origination fee.

85. Also included in Defendant Wells Fargo's calculation of the total price are various fees that, in the Loan Officer's discretion, can be paid either by the borrower or the lender. Such fees include, among others, closing costs, and "non-delivery" fees for loans that were not closed within a certain time period.

86. If the total price exceeds the authorized "bandwidth," the loan is considered to be an "overage." Conversely, if the total price is lower than the authorized "bandwidth," it is considered an "underage."

87. In instances where the total price of a loan does not fall within the "bandwidth" identified by Defendant Wells Fargo, the Loan Officer is required to seek an exception to the

pricing policy. Such exceptions are granted at the discretion of the Branch Manager and/or Area Manager of Defendant Wells Fargo.

88. Prior to 2005, Defendant Wells Fargo had no written policy defining the limits of "bandwidth" that Defendant Wells Fargo's Loan Officers were required to use.

89. From 2005 forward, Defendant Wells Fargo had a written policy prescribing the "bandwidth."

90. Just as Defendant Wells Fargo permits its authorized mortgage brokers to use discretionary markups and charge discretionary fees, Defendant Wells Fargo also allows its retail employees to use discretion in pricing loans within an authorized "bandwidth." This discretion includes the selection of the initial "authorized rate," the decision as to which party will bear certain fees, and the ultimate granting or denial of any exception to the prescribed "bandwidth."

91. These credit-pricing policies and procedures permit Defendant Wells Fargo's retail employees subjectively to treat loan applicants subjectively.

C. LOAN DATA SHOWS PRICE DISPARITIES BETWEEN LOANS MADE TO MINORITY BORROWERS AND THOSE MADE TO WHITE BORROWERS WITH SIMILAR CREDIT PROFILES

92. Comparing Wells Fargo's wholesale first lien home mortgage loans made to Black borrowers to those of Whites with similar credit profiles between 2004 and 2007, the average effect of discrimination on a loan made to a Black borrower in Wells Fargo's wholesale channel (assuming that the loan will be paid according to its terms) is more than $12,400.

93. Comparing Wells Fargo's wholesale first lien home mortgage loans made to Black borrowers to those of Whites with similar credit profiles between 2004 and 2007, the average effect of discrimination on a loan made to a Black borrower in Wells Fargo's retail channel (assuming that the loan will be paid according to its terms) is more than $5,300.

94. Comparing Wells Fargo's wholesale first lien home mortgage loans made to Hispanic borrowers to those of Whites with similar credit profiles between 2004 and 2007, the average effect of discrimination on a loan made to a Hispanic borrower in Wells Fargo's wholesale channel (assuming that the loan will be paid according to its terms) is more than $7,950.

95. Comparing Wells Fargo's wholesale first lien home mortgage loans made to Hispanic borrowers to those of Whites with similar credit profiles between 2004 and 2007, the average effect of discrimination on a loan made to a Hispanic borrower in Wells Fargo's retail channel (assuming that the loan will be paid according to its terms) is more than $3,600.

96. Assuming that Wells Fargo's loans will be amortized over their actual loan terms, the aggregate additional cost to Black borrowers of Wells Fargo loans, resulting from discrimination, exceeds $1.24 billion.

97. Assuming that Wells Fargo's loans will be amortized over their actual loan terms, the aggregate additional cost to Hispanic borrowers of Wells Fargo loans, resulting from discrimination, exceeds $1 billion.

98. Even if Plaintiffs assume that not all loans will be paid over their full term due to sales, refinancing and foreclosure such that the typical amortizations will be ten years, the aggregate additional cost to Black borrowers of Wells Fargo loans, resulting from discrimination, exceeds $535 million.

99. Even if Plaintiffs assume that not all loans will be paid over their full term due to sales, refinancing and foreclosure such that the typical amortization will be ten years, the aggregate additional cost to Black borrowers of Wells Fargo loans, resulting from discrimination, exceeds $489 million.

100. On information and belief, minority borrowers who received loans between 2001 and 2003 from Wells Fargo, were affected by similar impacts of discrimination.

D. BACKGROUND ON WELLS FARGO'S STEERING PRACTICES

101. On January 8, 2008, the City of Baltimore filed a lawsuit against Wells Fargo Bank, N.A. alleging mortgage lending discrimination practices relevant to those raised here. The action is styled, *Mayor and City Council of Baltimore v. Wells Fargo Bank, N.A., et. al*., Case No. 08-cv-00062-BEL (D. MD 2008).

102. In connection with the City of Baltimore litigation, two former Wells Fargo Home Mortgage employees submitted declarations (the "Jacobson Decl." and the "Paschal Decl.") in support of the allegations contained in the City of Baltimore complaint.

103. The statements contained in the Jacobson Decl. and the Paschal Decl. provide relevant background information about Wells Fargo's lending practices.

104. In her Declaration, Ms. Jacobson stated, among other things, that:

a. Wells Fargo steered customers with credit that qualified them for prime loans into subprime loan products;

b. Wells Fargo incentivized her to originate high volumes of subprime loans;

c. Her fees and commissions were based on the size of the loan and the interest rate;

d. Wells Fargo's commission and referral system was set up in a way that make it more profitable for a loan officer to refer a prime customer for a subprime loan than to make the prime loan directly to the customer;

e. Her job was to figure out how to get customers into subprime loans when she received a prime customer referral, and keeping her job required that she make a set number of subprime loans per month;

f. If she had access to Wells Fargo's loan files she could point out exactly when customers who received subprime loans could have qualified for a prime loan;

g. Wells Fargo's pricing policies for prime and subprime loans allowed enough discretion to allow employees to steer prime loan customers into subprime loans;

h. Wells Fargo's guidelines provided her enough discretion to figure out how to qualify most of the referrals for a subprime loan;

i. One tactic Wells Fargo's employees used to steer prime customers into subprime loans was to tell the customer that the loan would be processed more quickly, that there would be less paperwork, or that the customer would not have to put any money down;

j. Wells Fargo employees did not tell customers about the added costs, or advise them about what would be in their best interest;

k. She had discretion to decide which subprime loan products to offer to customers;

l. Most of the subprime loans she sold were 2/28 variable rate loans with teaser rates;

m. Most of the subprime loans she sold also had 3-year prepayment penalty provisions;

n. Wells Fargo management told employees to ignore company policy not to solicit customers for refinancing their 2/28 loans within the first 2 year period, allowing Wells Fargo to capitalize on pre-payment penalties by convincing customers to refinance within the 2-year period;

o. Loan officers had discretion to use different compensating factors to get the customer into a subprime loan product, for example, if a customer had a high credit score and qualified for a prime loan, loan officers could tell the underwriting department that the customer did not want to submit documentation for the loan, or did not have assets, or needed to get the loan closed quickly, in order to get them into a subprime product;

p. Wells Fargo's loan officers encouraged loan applicants to apply for stated income and no income documentation loans because these loans had higher interest rates and fees and would allow the loan officer to receive a higher commission;

q. Some loan officers falsified loan applications to steer prime borrowers to subprime loan officer referrals;

r. One means of falsifying loan applications involved cutting and pasting credit reports from one applicant to another;

s. Prior to 2004, Wells Fargo did not make any effort to determine if subprime loans were being made to customers who qualified for prime loans;

t. In 2004, Wells Fargo implemented a "filter" meant to prevent prime borrowers from receiving subprime loans but the filter did not work and everyone knew it;

u. There were many ways loan officers could get around the filter because of the amount of discretion they had;

v. High ranking Wells Fargo managers knew about the practice of evading the filter;

w. Underwriters and loan officers had a finance incentive to approve subprime loans, because they obtained higher commissions when subprime loans were funded;

x. Wells Fargo charged higher interest rates and fees on its subprime loans than on its prime loans;

y. Subprime loan officers had discretion to decide what interest, points and fees to charge a borrower;

z. Between approximately 1998 and 2002, loan officers had discretion to charge as many points on a loan as they wanted;

aa. From approximately 1998 through at least 2006, Wells Fargo did not restrict or regulate the fees that loan officers could charge;

bb. Only in 2007 did Wells Fargo begin to regulate and set the amount of fees such as processing and underwriting fees;

cc. Despite the regulation efforts, subprime loan officers still had discretion to determine which fees to include as costs to the borrower and had a financial incentive to add fees because they would receive more commission;

dd. "There was always a big financial incentive to make a subprime loan wherever one could"

ee. Once the subprime loan transaction was closed and Wells Fargo and its employees received their fees, closing costs and commissions, Wells Fargo sold the loans on the secondary market;

ff. Many of the customers who were referred to her from prime representatives came from Prince George's County and Baltimore;

gg. A large majority of her customers were African American;

hh. Subprime managers joked that Prince George's County was the "subprime capitol of Maryland";

ii. Managers said that they felt, "so lucky to have Prince George County because it is the subprime capitol of Maryland";

jj. One strategy Wells Fargo's employees used to target African American customers was to focus on African American churches;

kk. Wells Fargo's Emerging Markets unit specifically targeted black churches;

ll. Wells Fargo had a program that provided a donation of $350 to the non-profit of the customer's choice for every loan the customer took out with Wells Fargo;

mm. Wells Fargo hoped to sell the African American pastor or church leader on the program because Wells Fargo believed that African American church leaders had a lot of influence over their ministry, and in this way would convince the congregation to take out subprime loans with Wells Fargo;

nn. She was part of a conference call in 2005 where Wells Fargo sales managers discussed the idea of going into black churches in Baltimore to do presentations about Wells Fargo's subprime products;

oo. Everyone on the 2005 call was a subprime loan officer and two of the individuals were branch managers, on the call loan officers were told that they "have to be of color" to go to the presentation;

pp. The idea was that since churchgoers were black Wells Fargo wanted the loan officers to be black – she was told she could attend only if she "carried someone's bag";

qq. Wells Fargo also targeted African Americans through special events in African American communicates called "wealth building" seminars;

rr. She participated in a wealth building seminar in 2005 that was to be held in Greenbelt, Maryland. It was understood that the audience would be all black;

ss. The point of the seminar was to get people to buy houses using Wells Fargo loans;

tt. At the seminar, the plan was to talk to attendees about "alternative lending," which meant subprime lending, but loan officers were instructed not to use the term "subprime"'

uu. She was supposed to be a speaker at this seminar but the Emerging Markets manager told her that she was "too white" to appear before the audience;

vv. Subprime loan officers did not market to or target white churches for subprime loans; any marketing-related reference to "church" was understood as a code for African American churches;

ww. No manager took any action with regard to complaints she made about the above referenced conduct; and

xx. The culture at Wells Fargo was focused solely on making as much money as possible.

105. In his Declaration, Mr. Paschal (who is African American) stated, among other things, that:

a. In 1998 and 1999, he worked for Wells Fargo as a Community Development Representative, contacting and working with community groups with the goal of expanding Wells Fargo's business in minority communities;

b. Wells Fargo discriminated against minority loan applicants by advising them that the interest rate on their loan was locked when Wells Fargo actually could lower the interest rate if the market rates dropped prior to the loan closing;

c. Wells Faro loan officers lowered interest rates for white loan applicants when market rates dropped after the application but prior to closing;

d. Despite his complaints about this differential treatment of minorities, Wells Fargo did nothing to change this practice;

e. In 2001, Wells Fargo was aggressively targeting existing customers for refinance loans; if a customer did not qualify for a prime loan, the loan officer referred the customer to Wells Fargo's "Mortgage Resource" division (a/k/a "MORE");

f. MORE employees in Annandale, Virginia, - the branch in which he worked – targeted minority customers for both purchase and refinance subprime loans;

g. The MORE division targeted zip codes in Washington, D.C., east of the Anacostia River, Prince George's County, Maryland and the City of Baltimore with predominantly African American populations;

h. Employees in the MORE division commented that Howard County was not good for subprime loans because it has a predominantly white population;

i. He heard MORE employees on several occasions mimic and make fun of their minority customers by using racial slurs, for example, they referred to subprime loans made in minority communities as "ghetto loans" and minority customers as "those people have bad credit," "those people don't pay their bills," and "mud people";

j. Wells Fargo promoted its subprime business by targeting subprime loans to minorities;

k. Wells Fargo targeted minorities by sending marketing materials to minority communities, using minority subprime loan officers to solicit loans in those communities and targeting marketing materials to zip codes with predominantly minority populations;

l. Wells Fargo's Annandale office targeted African American zip codes in Washington, D.C., Prince George's County and Baltimore;

m. Wells Fargo had software to generate marketing materials to minorities; the software allowed Wells Fargo's loan officers located anywhere in the country who wanted to send a flyer to customers in an African-American neighborhood to solicit subprime loans to access the software and print out a flyer to persons speaking the language of "African American";

n. Wells Fargo used minority employees to solicit African Americans for subprime loans;

o. In the Annandale office, all of the MORE loan officers were African-American;

p. In Silver Spring, Maryland, Wells Fargo had an "Affinity Group Marketing" section consisting entirely of African American employees; the Affinity Group targeted African American churches and their members for loans and hired an

African American employee specifically for the purpose of targeting African American churches;

q. He had access to Wells Fargo's customers' loan records and application files and regularly saw minority customers who had good credit scores and credit characteristics in subprime loans who should have qualified for prime loans;

r. Because Wells Fargo made a higher profit on subprime loans, it gave its loan officers cash incentives to aggressively market subprime loans in minority communities;

s. If a loan officer referred a borrower who should have qualified for a prime loan to a subprime loan, the loan officer received a bonus;

t. Loan officers had discretion to decide which loan products to offer customers and discretion to determine the interest rate and fees charged to the customer;

u. Since loan officers made more money when they charged higher interest rates and fees to borrowers, there was a great financial incentive to put as many minority borrowers as possible into subprime loans and to charge these borrowers higher rates and fees;

v. Wells Fargo discriminated against minority loan applicants by not offering them its better or newer products which had lower fixed interest rates and fees; instead, Wells Fargo offered its higher cost loan products, such as its adjustable rate mortgages, to minority applicants;

w. Wells Fargo's loan officers also discriminated against minority refinance applicants by encouraging them to take out more cash from their home equity; this allowed loan officers to receive higher commissions and customers to become unqualified for a prime loan;

x. Some of Wells Fargo's employees, including at the management level, used racial slurs such as "nigger";

y. In late 2004 and early 2005, Wells Fargo implemented "filters," in response to complaints of discrimination by advocacy groups, meant to discourage loan officers from steering minorities to subprime loans;

z. The "filters," were ineffective because there were no repercussions if a Wells Fargo employee violated them and they were easy to circumvent; and

aa. Despite the "filters," loan officers still had discretion to make decisions about products and pricing, had huge financial incentives for making subprime loans to minority borrowers and were encouraged to do so by their managers.

III. DEFENDANT WELLS FARGO IMPOSED DISCRIMINATORY FEES ON PLAINTIFFS

FACTS RELATING TO PLAINTIFFS GILBERT VENTURA, SR., and TRACY D. VENTURA

106. Gilbert Ventura, Sr. and Tracy D. Ventura (the "Venturas") resided at 1136 East Avenida Isabella, Casa Grande, Arizona 85222.

107. On or about September 27, 2005, the Venturas entered into a wholesale channel mortgage transaction with Wells Fargo Bank, NA as the lender. Phoenix Home Loans brokered the loan.

108. The resulting loan is a 2/28 adjustable rate loan, with an initial note rate of 6.950% but an annual percentage rate (APR) of 8.6020%.

109. According to the HUD-One Settlement Statement, Wells Fargo paid Phoenix Home Loans a charge described as "Mtg Broker Comp by WFB to Phoenix Home Loans" in the amount of $2,632.50 on a "POC" basis (i.e., paid outside of closing). On information and belief, this fee was in fact a yield spread premium. That yield spread premium payment by Wells Fargo was provided pursuant to Wells Fargo's Discretionary Pricing Policy, because Phoenix Home Loans marked up the Venturas' loan over the par rate available from Wells Fargo to persons with the Venturas' credit characteristics at the time of the loan.

110. The Venturas paid Phoenix Home Loans a $995 processing fee and a $2,632.50 loan origination fee.

111. True and correct copies of the Truth-in-Lending Disclosure Statement and HUD-One Settlement Statement provided in connection with the loan are attached hereto and labeled Exhibit 1 and Exhibit 2, respectively.

112. At the time of the transaction, the Venturas had a credit score and profile that would have qualified with many lenders for a mortgage in the prime market. Instead, the Venturas received the Wells Fargo mortgage at a subprime rate and on subprime terms.

113. On information and belief, unbeknownst to the Venturas, the contract APR on the mortgage loan was actually a combination of an objective, risk-based calculation and a totally subjective, discretionary component added by Phoenix Home Loans pursuant to Wells Fargo's Discretionary Pricing Policy.

114. On information and belief, the Venturas were subject to Wells Fargo's Discretionary Pricing Policy.

115. On information and belief, the Venturas were charged a disproportionately greater amount in non-risk-related credit charges including, without limitation, a higher interest rate, than similarly situated white persons.

FACTS RELATING TO PLAINTIFFS JUAN AND JOSEFINA RODRIGUEZ

116. Juan and Josefina Rodriguez (the "Rodriguezes") resided at 947 W. 80th Street, Los Angeles, California 90044.

117. On or about July 26, 2006, the Rodriguezes entered into a wholesale channel mortgage transaction with Wells Fargo Bank, N.A., as the lender. Schaefer Financial Service brokered the loan.

118. The resulting loan is a 2/28 adjustable rate loan, with an initial note rate of 9.250% but an annual percentage rate (APR) of 9.8550%.

119. According to the HUD-One Settlement Statement, Wells Fargo paid Schaefer Financial Service a charge described as "Mortgage Broker Comp by WFB to Schaefer Financial Service" in the amount of $6,205.00 on a "POC" basis (i.e., paid outside of closing). On information and belief, this fee was in fact a yield spread premium. That yield spread premium

payment by Wells Fargo was provided pursuant to Wells Fargo's Discretionary Pricing Policy, because Schaefer Financial Service marked up the Rodriguezes' loan over the par rate available from Wells Fargo to persons with the Rodriguezes' credit characteristics at the time of the loan.

120. The Rodriguezes paid Schaefer Financial Service a $12,410.00 loan origination fee and a $595 processing fee.

121. True and correct copies of the Truth-in-Lending Disclosure Statement and HUD-One Settlement Statement provided in connection with the loan are attached hereto and labeled Exhibit 3 and Exhibit 4, respectively.

122. At the time of the transaction, the Rodriguezes had a credit score and profile that would have qualified with many lenders for a mortgage in the prime market. Instead, the Rodriguezes received the Wells Fargo mortgage at a subprime rate and on subprime terms.

123. On information and belief, unbeknownst to the Rodriguezes, the contract APR on the mortgage loan was actually a combination of an objective, risk-based calculation and a totally subjective, discretionary component added by Schaefer Financial Service pursuant to Wells Fargo's Discretionary Pricing Policy.

124. On information and belief, the Rodriguezes were subject to Wells Fargo's Discretionary Pricing Policy.

125. On information and belief, the Rodriguezes were charged a disproportionately greater amount in non-risk-related credit charges including, without limitation, a higher interest rate, than similarly situated white persons.

FACTS RELATING TO PLAINTIFF HOWARD QUEENSBOROUGH

126. Howard Queensborough resides at 39 McLellan Street, Dorchester, Massachusetts 02121.

127. On or about April 6, 2006, Mr. Queensborough entered into a wholesale channel mortgage transaction with Wells Fargo Bank, N.A., as the lender. Lendmark Mortgage Corporation brokered the loan.

128. The resulting loan is a 2/28 adjustable rate loan, with an initial note rate of 7.950% but an annual percentage rate (APR) of 9.8940%.

129. According to the HUD-One Settlement Statement, Wells Fargo paid Lendmark Mortgage Corporation a yield spread premium of $8,940.00 in connection with the loan. That yield spread premium payment by Wells Fargo was provided pursuant to Wells Fargo's Discretionary Pricing Policy, because Lendmark Mortgage Corporation marked up Mr. Queensborough's loan over the par rate available from Wells Fargo to persons with Mr. Queensborough's credit characteristics at the time of the loan.

130. Mr. Queensborough paid Lendmark Mortgage Corporation a $150 processing fee.

131. True and correct copies of the Truth-in-Lending Disclosure Statement and HUD-One Settlement Statement provided in connection with the loan are attached hereto and labeled Exhibit 5 and Exhibit 6, respectively.

132. At the time of the transaction, Mr. Queensborough had a credit score and profile that would have qualified with many lenders for a mortgage in the prime market. Instead, Mr. Queensborough received the Wells Fargo mortgage at a subprime rate and on subprime terms.

133. On information and belief, unbeknownst to Mr. Queensborough, the contract APR on the mortgage loan was actually a combination of an objective, risk-based calculation and a totally subjective, discretionary component added by Lendmark Mortgage Corporation pursuant to Wells Fargo's Discretionary Pricing Policy.

134. On information and belief, Mr. Queensborough was subject to Wells Fargo's Discretionary Pricing Policy.

135. On information and belief, Mr. Queensborough was charged a disproportionately greater amount in non-risk-related credit charges including, without limitation, a higher interest rate, than similarly situated white persons.

FACTS RELATING TO PLAINTIFF RUBY BROWN

136. Ruby Brown resides at 105 Addison Drive, Calera, Alabama 35140.

137. On or about June 10, 2005, Ms. Brown entered into a retail channel mortgage transaction with Wells Fargo Bank, N.A., as the lender. Wells Fargo originated this loan through a centralized retail branch located at 2650 Wells Fargo Way, Minneapolis, Minnesota 55408.

138. The resulting loan is a 2/28 adjustable rate loan, with an initial note rate of 8.750% but an annual percentage rate (APR) of 9.1200%.

139. According to the HUD-One Settlement Statement, Ms. Brown paid Wells Fargo a $350 processing fee and a $400 underwriting review fee.

140. True and correct copies of the Truth-in-Lending Disclosure Statement and HUD-One Settlement Statement provided in connection with the loan are attached hereto and labeled Exhibit 7 and Exhibit 8, respectively.

141. At the time of the transaction, Ms. Brown had a credit score and profile that would have qualified with many lenders for a mortgage in the prime market. Instead, Ms. Brown received the Wells Fargo mortgage at a subprime rate and on subprime terms.

142. On information and belief, unbeknownst to Ms. Brown, the interest rate on the mortgage loan was actually a combination of an objective, risk-based calculation and a totally subjective, discretionary component. Wells Fargo used its discretion to mark up the initial interest rate for which Ms. Brown qualified.

143. On information and belief, Ms. Brown was subject to Wells Fargo's Discretionary Pricing Policy.

144. On information and belief, Ms. Brown was charged a disproportionately greater amount in non-risk-related credit charges including, without limitation, a higher interest rate, than similarly situated white persons.

FACTS RELATING TO PLAINTIFF JUDY A. WILLIAMS

145. Judy A. Williams resides at 1360 East Madison Park, Chicago, Illinois 60615.

146. On or about June 29, 2006, Ms. Williams entered into a retail channel mortgage transaction with Wells Fargo Bank, NA as the lender. Wells Fargo originated this loan through its centralized retail branch located at 2650 Wells Fargo Way, Minneapolis, Minnesota 55408.

147. The resulting loan is a 2/28 adjustable rate loan, with an initial note rate of 8.125% but an annual percentage rate (APR) of 9.9530%.

148. According to the HUD-One Settlement Statement, Ms. Williams paid Wells Fargo a $695 processing fee and a $695 underwriting review fee.

149. True and correct copies of the Truth-in-Lending Disclosure Statement and HUD-One Settlement Statement provided in connection with the loan are attached hereto and labeled Exhibit 9 and Exhibit 10, respectively.

150. At the time of the transaction, Ms. Williams had a credit score and profile that would have qualified with many lenders for a mortgage in the prime market. Instead, Ms. Williams received the Wells Fargo mortgage at a subprime rate and on subprime terms.

151. On information and belief, unbeknownst to Ms. Williams, the interest rate on the mortgage loan was actually a combination of an objective, risk-based calculation and a totally subjective, discretionary component. Wells Fargo used its discretion to mark up the initial interest rate for which Ms. Williams qualified.

152. On information and belief, Ms. Williams was subject to Wells Fargo's Discretionary Pricing Policy.

153. On information and belief, Ms. Williams was charged a disproportionately greater amount in non-risk-related credit charges including, without limitation, a higher interest rate, than similarly situated white persons.

CLASS ACTION ALLEGATIONS

154. Plaintiffs repeat and re-allege each allegation above as if set forth herein in full.

155. This class action is brought pursuant to ECOA, and the FHA by Plaintiffs on behalf of themselves and all minority borrowers (the "Class") who entered into residential mortgage loan contracts with Defendant Wells Fargo between January 1, 2001 and the present (the "Class Period"), originated in Wells Fargo's wholesale or retail channel. For the purposes of this class definition the term "minority" means all borrowers defined as black or Hispanic for the purposes of HMDA.

156. Plaintiffs sue on their own behalf, and on behalf of a class of persons under Rule 23(a) and (b)(2) and/or (b)(3) of the Federal Rules of Civil Procedure.

157. Plaintiffs do not know the exact size of the Class or identities of the members of the Class, since that information is in the exclusive control of Defendant Wells Fargo. Plaintiffs believe that the Class includes many thousands, or tens of thousands of individuals, who are geographically dispersed throughout the United States. Therefore, the Class is so numerous that joinder of all members is impracticable.

158. All members of the Class have been subjected to and affected by Defendant Wells Fargo's Discretionary Pricing Policy. There are questions of law and fact that are common to the Class, and that predominate over any questions affecting only individual members of the Class. These questions include, but are not limited to the following:

a. the nature and scope of Defendant Wells Fargo's policies and procedures concerning the assessment of discretionary rate markups, points and fees on mortgage loans it funds;

b. whether Defendant Wells Fargo discriminated against Class Members by charging them higher interest, fees, and costs, than Defendant Wells Fargo charges similarly situated non-minority borrowers;

c. whether Defendant Wells Fargo can articulate any legitimate non-discriminatory reason for its policies and procedures;

d. whether Defendant Wells Fargo and its subsidiaries are creditors under the ECOA because, in the ordinary course of business, they participate in the decision of whether or not to extend credit to consumers;

e. whether Defendant Wells Fargo's policies and procedures regarding rate markups, yield spread based compensation incentives, and other discretionary points and fees have a disparate impact on minority borrowers;

f. whether Defendant Wells Fargo has any business justification for its policies and procedures;

g. whether there is a less discriminatory alternative to these policies and procedures;

h. whether Defendant Wells Fargo devised and deployed a scheme or common course of conduct that acted to deceive Plaintiffs and members of the Class;

i. whether the Court can enter declaratory and injunctive relief; and

j. the proper measure of disgorgement or monetary relief.

159. Plaintiffs' claims are typical of the claims of the Class, and do not conflict with the interests of any other members of the Class in that Plaintiffs, and the other members of the Class, were subjected to the same rate markups and imposition of other discretionary points and fees that have disproportionately affected minority borrowers.

160. Plaintiffs will fairly and adequately represent the interests of the Class. Plaintiffs are committed to vigorous prosecution of the Class's claims, and have retained attorneys who have extensive experience in consumer protection and credit discrimination actions.

161. Defendant Wells Fargo has acted or refused to act on grounds generally applicable to the Class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole.

162. A class action is superior to other methods for the speedy and efficient adjudication of this controversy. A class action regarding the issues in this case does not create any problems of manageability.

TOLLING / CONTINUING VIOLATION

163. The Discretionary Pricing Policy described in this Consolidated Amended Complaint constitutes a pattern or practice of discrimination because, as an integral part of the Defendant Wells Fargo's business plan, it was the standard operating procedure of Defendant Wells Fargo.

164. Application of the Defendant Wells Fargo's Discretionary Pricing Policy, and the accompanying impact on minority borrowers, was not a sporadic, isolated practice, but rather occurred every day that loans were extended, renewed or continued during the Class Period.

165. Plaintiffs bring this lawsuit to challenge the overall adverse impact on minority borrowers wrought by Defendant Wells Fargo's Discretionary Pricing Policy, rather than merely the legality of their individual loans.

166. The claims of minority borrowers who obtained mortgage loans from Defendant Wells Fargo more than two years prior to the initiation of this action are timely. Under the continuing violation doctrine, as set out by the Supreme Court in *Havens Realty Corp. v. Coleman*, 455 U.S. 363 (1982) and later written into the FHA, a statute of limitations may not bar claims where Plaintiffs challenge not just one incident, but an unlawful practice that continues into the limitations period.

167. Defendant Wells Fargo's use of its Discretionary Pricing Policy occurred both before the limitations period and during the limitations period.

168. There is a substantial nexus between the acts of discrimination occurring within the limitation periods prior to filing suit, and the acts of discrimination before that time. The acts involve the same type of discrimination and are recurring, not isolated events.

169. Plaintiffs and the putative class members were exposed to discrimination as members of a group (i.e., minority borrowers of the Defendant) that suffered an adverse impact within the limitations period.

170. The subject matter of all of the alleged violations is identical. The violations constitute the same type of discrimination – minority borrowers subjected to the Discretionary Pricing Policy were disparately impacted as described in this Consolidated Amended Complaint.

171. Further, despite the exercise of due diligence, a reasonably prudent person would not have knowledge of Defendant Wells Fargo's discriminatory practices more than two years prior to the initiation of this action. The causes of action of the Plaintiffs and putative class members did not accrue until shortly before the filing of this action.

172. The nature of the Defendant Wells Fargo's violations – and the nature of a disparate impact claim – is not such that the act of making a single loan to a borrower has such a degree of permanence as to trigger a reasonably prudent borrower's awareness of a need to assert

his rights. The nature of a disparate impact claim is such that it only manifests itself after a critical mass of similar borrowers have the same experience – information that a single borrower would not have access to.

173. Defendant Wells Fargo's employment of the Discretionary Pricing Policy means that minority borrowers are subjected to increased mortgage-related costs, in the form of higher interest rates and ongoing payments than would be the case in the absence of discrimination.

174. Home foreclosures disproportionately occur in predominantly minority neighborhoods. *See, e.g.,* Juliana Barbassa, *Report: Minorities Hit By Foreclosures*, USA Today, March 6, 2008; National Training & Information Center*, Preying on Neighborhoods, 2007 Foreclosure Update*, March 3, 2008 *available at* http://www.ntic-us.org/images/fullyear2007.pdf.

175. On information and belief, many of the putative class members in this action live in predominantly minority neighborhoods.

176. But for the effects of the Discretionary Pricing Policy, i.e., the ongoing higher interest rates and payments, the foreclosure rate among the Defendant's minority borrowers would have been lower.

177. Minority neighborhoods suffer severe deleterious effects from increased foreclosures. A Woodstock Institute Study has demonstrated that "foreclosures, particularly in lower-income neighborhoods, can lead to vacant, boarded-up, or abandoned properties. These properties, in turn, contribute to the stock of 'physical disorder' in a community that can create a haven for criminal activity, discourage social capital formation, and lead to further disinvestment…and lower property values for existing residential homeowners." Dan Immergluck & Geoff Smith, *There Goes the Neighborhood: The Effect of Single-Family*

Mortgage Foreclosures on Property Values, Woodstock Institute Study (June 2005) *available at* http://www.nw.org/foreclosuresolutions/reports/documents/TGTN_Report.pdf.

178. All residents of these neighborhoods suffer from these effects, including many of the putative class members, resulting in injury from the Defendant's use of the Discretionary Pricing Policy within the limitations period.

179. Additionally, this discrimination has only recently been disclosed and quantified. It has only been in the last several years that mortgage lenders have been required to submit details of their subprime home loans under the Home Mortgage Disclosure Act and that such data has been disclosed and studied by experts in the field.

180. Moreover, on January 29, 2009, President Obama signed the "Lilly Ledbetter Fair Pay Act of 2009" (the "Ledbetter Act") into law. The legislation effectively overrules *Ledbetter v. Goodyear Tire & Rubber Co.*, 550 U.S. 618 (2007), a case upon which other lenders with similar ECOA and FHA claims against them rely to argue that the 2 year statutes of limitation in the ECOA and FHA are not tolled. The Ledbetter Act defines an unlawful employment practice as occurring, *inter alia*, "each time wages, benefits, or other compensation is paid, resulting in whole or in part from such a [discriminatory] decision or other practice." The law's effective date is May 28, 2007 and it applies to all claims pending at that time.

181. Defendant Wells Fargo's discriminatory conduct was inherently self-concealing. Defendant Wells Fargo knew that Plaintiffs and Class Members could not determine the relationship between the terms, fees, and costs of their loans to those available to non-minorities. Defendant Wells Fargo knew that the terms, fees, and costs provided to minorities, unbeknownst to them, were substantially worse than the loans provided to non-minorities.

182. Defendant Wells Fargo has not released or provided information about its discrimination against Plaintiffs and Class Members, and has actively and fraudulently concealed its discriminatory practices.

183. As a result of the foregoing, Plaintiffs and Class Members in the exercise of due diligence could not have reasonably discovered the discriminatory practices, and did not do so until just recently. For the reasons alleged above, the members of the Class still do not know that they have been and continue to be injured by Defendant Wells Fargo's discriminatory conduct.

COUNT I

VIOLATION OF THE FAIR HOUSING ACT (42 U.S.C. §§ 3601 – 3619)

184. Plaintiffs repeat, re-allege and incorporate the allegations in paragraphs 1 through 182 above as if fully set forth herein.

185. Mortgage lending and the providing of residential mortgage loans is a "residential real estate-related transaction" within the meaning of the FHA. 42 U.S.C. § 3605(b).

186. By imposing higher interest rates and other discretionary fees on residential mortgage loans to Plaintiffs and Class members than it imposed on non-minority mortgage borrowers, Defendant Wells Fargo has discriminated against Plaintiffs and members of the Class concerning their ability to participate in real estate-related transactions, and in the terms and conditions of such transactions, in violation of the FHA. 42 U.S.C. § 3605(a).

187. In addition, Defendant Wells Fargo's pricing policies and procedures, which provide financial incentives to its mortgage brokers to make subjective decisions to increase interest rates and charge additional fees and costs, had a disparate impact upon Plaintiffs and Class members.

188. As a proximate result of Defendant Wells Fargo's violation of 42 U.S.C. § 3605, Plaintiffs and members of the Class have been injured and are entitled to injunctive and declaratory relief and damages, or make whole equitable relief.

189. Moreover, Defendant Wells Fargo continues to discriminate in violation of the FHA against members of the Class every time Defendant Wells Fargo provides a home mortgage loan as described herein. If not enjoined from such violation by the Court, Defendant Wells Fargo will continue to engage in conduct that disregards the rights of Plaintiffs and members of the Class, and cause Plaintiffs and members of the Class irreparable injury for which there is no adequate remedy at law. 42 U.S.C. § 3613(c).

190. Plaintiffs and members of the Class ask this Court to declare the rights of the parties herein regarding Defendant Wells Fargo's obligation to participate in credit transactions without discriminating against applicants for credit on the basis of the applicants' race.

COUNT II

VIOLATION OF THE EQUAL CREDIT OPPORTUNITY ACT (15 U.S.C. §§ 1691 - 1691f)

191. Plaintiffs repeat and re-allege the allegations contained in paragraphs 1 through 189 above as if fully set forth herein.

192. Defendant Wells Fargo engages in credit transactions through its offering, granting, and purchasing of residential mortgage loans.

193. By imposing higher interest rates and other discretionary fees on residential mortgage loans to Plaintiffs and Class members than it imposed on non-minority mortgage borrowers, Defendant Wells Fargo has discriminated against Plaintiffs and members of the Class with respect to a credit transaction on the basis of race in violation of the ECOA. 15 U.S.C. § 1691(a).

194. In addition, Defendant Wells Fargo's pricing policies and procedures, which provide financial incentives to its mortgage brokers to make subjective decisions to increase interest rates and charge additional fees and costs, have a disparate impact on Plaintiffs and Class members.

195. As a proximate result of Defendant Wells Fargo’s violation of 15 U.S.C. § 1691, Plaintiffs and members of the Class have been injured and are entitled to injunctive and declaratory relief and damages, or make whole equitable relief.

196. Moreover, Defendant Wells Fargo continues to discriminate in violation of the ECOA against Class members every time Defendant Wells Fargo provides a home mortgage loan as described herein. If not enjoined from such violation by the Court, Defendant Wells Fargo will continue to engage in conduct that disregards the rights of Plaintiffs and members of the Class, and cause Plaintiffs and members of the Class irreparable injury for which there is no adequate remedy at law. 15 U.S.C. § 1691(e).

197. Plaintiffs and members of the Class ask this Court to declare the rights of the parties herein regarding Defendant Wells Fargo’s obligation to participate in credit transactions without discriminating against applicants for credit on the basis of the applicants’ race.

PRAYER FOR RELIEF

WHEREFORE PREMISES CONSIDERED, Plaintiffs requests the following relief:

A. An order determining that the action is a proper class action pursuant to Rule 23 of the Federal Rules of Civil Procedure;

B. A Judgment awarding Plaintiffs and Class members costs and disbursements incurred in connection with this action, including reasonable attorneys' fees, expert witness fees and other costs;

C. A Judgment granting extraordinary equitable and/or injunctive relief as permitted by law or equity, including rescission, restitution, reformation, attaching, impounding, or imposing a constructive trust upon, or otherwise restricting, the proceeds of Defendant's ill-gotten funds to ensure that Plaintiffs and Class members have an effective remedy;

D. A Judgment enjoining Defendant from continuing to collect finance charges from Class Members that exceed amounts collected from similarly situated white borrowers;

E. A Judgment awarding damages, including punitive damages, to Plaintiffs and Class members;

E. A Judgment granting declaratory and injunctive relief and all relief that flows from such injunctive and declaratory relief; and

F. A Judgment or other Order granting such other and further relief as the Court deems just and proper including, but not limited to, recessionary relief and reformation.

JURY TRIAL DEMANDED

198. Plaintiffs demand a trial by jury on all issues so triable.

DATED this 4th day of December, 2009.

BONNETT, FAIRBOURN, FRIEDMAN,
& BALINT, P.C.

/s Andrew S. Friedman

Andrew S. Friedman (*pro hac vice*)
Wendy J. Harrison (CA SBN 151090)
Gustave A. Hanson
2901 North Central Avenue, Suite 1000
Phoenix, Arizona 85012
p. 602.274.1100

RODDY KLEIN & RYAN
Gary Klein (*pro hac vice*)
Shennan Kavanagh
Kevin Costello
727 Atlantic Avenue, 2nd Floor
Boston, Massachusetts 02111
p. 617.357.5500

Co-Lead Interim Class Counsel

Shawn A. Williams
COUGHLIN STOIA GELLER
RUDMAN & ROBBINS LLP
100 Pine Street
Suite 2600
San Francisco, California 94111
p. 415.288.4545

Robert M. Rothman
Samuel H. Rudman
COUGHLIN STOIA GELLER
RUDMAN & ROBBINS LLP
58 South Service Road
Suite 200
Melville, New York 11747
p. 631.367.7100

Liaison Interim Class Counsel

Mark A. Chavez (CA SBN 90858)
Lisa Diane Fialco
Nance Felice Becker
CHAVEZ & GERTLER, L.L.P.
42 Miller Avenue
Mill Valley, California 94941
p. (415) 381-5599

John J. Stoia, Jr. (CA SBN 141757)
Theodore J. Pintar (CA SBN 131372)
Leslie E. Hurst (CA SBN 178432)
COUGHLIN STOIA GELLER
RUDMAN & ROBBINS LLP
655 West Broadway
Suite 1900
San Diego, California 92101
p. 619.231.1058

Marvin A. Miller
Matthew E. Van Tine
Lori A. Fanning
MILLER LAW LLC
115 South LaSalle Street
Suite 2910
Chicago, Illinois 60603
p. 312.332.3400

Timothy P. Dillon
LAW OFFICE OF TIMOTHY P. DILLON
361 Forest Avenue, Suite 205
Laguna Beach, California 92651
p. 949.376.2800

Joseph H. Meltzer
Edward W. Ciolko
Joseph A. Weeden
Donna Siegel Moffa (*pro hac vice*)
Peter A. Muhic (*pro hac vice*)
Katherine B. Bornstein
BARROWAY TOPAZ KESSLER
MELTZER CHECK, LLP
280 King of Prussia Road
Radnor, Pennsylvania 19087
p. 610.667.7706

Robert D. Allison
Bruce C. Howard
Steven P. Schneck
ROBERT D. ALLISON & ASSOCIATES
122 S. Michigan Avenue
Suite 1850
Chicago, Illinois 60603
p. 312.427.4500

Lori E. Andrus
Jennie Lee Anderson
ANDRUS ANDERSON, LLP
155 Montgomery Street, 9th Floor
San Francisco, California 94104
p. 415.986.1400

Barry W. Walker
THE WALKER LAW FIRM
Two 20th Street North, Suite 1320
Birmingham, Alabama 35203
p. 205.252.2770

Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I, Andrew S. Friedman, hereby certify that a true copy of the foregoing document filed through the ECF system will be electronically sent to the registered participants as identified on the Notice of Electronic Filing, and paper copies will be sent to those indicated as non-registered participants on December 4th, 2009.

/s Andrew S. Friedman
Andrew S. Friedman