UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

ANA RAMIREZ, ISMAEL RAMIREZ and JORGE SALAZAR, on behalf of themselves and all others similarly situated,

Plaintiffs,

v.

GREENPOINT MORTGAGE FUNDING, INC.,

Defendant,

Case No. 3:08-cv-00369-TEH

CLASS CERTIFICATION REBUTTAL REPORT OF PATRICIA A. McCOY

I, Patricia A. McCoy, respectfully submit this class certification rebuttal report on behalf of Ana Ramirez, Ismael Ramirez, Jorge Salazar and similarly situated individuals ("Plaintiffs") in the above-captioned case.

I. Basis of Expert Opinion and Compensation

All of the expert opinions expressed in this report are based on my personal knowledge and on materials I have reviewed regarding the parties and transactions at issue in this case, which include specific documents produced by the parties, certain depositions in this case, certain pleadings, and my own and other authors' publications, including without limitation:

- The First Amended Complaint;
- The Class Certification Report of Howell E. Jackson;
- The Class Certification Report of Laura J. Borrelli;
- Report of Marsha J. Courchane;
- Transcript of the Deposition of Kevin McDade;
- Transcript of the Deposition of Barry Jay Weiss;
- Transcript of the Deposition of Gregory Kundinger;
- Rough ASCII Transcript of the Deposition of Burnett K. Jarvis;
- Rough ASCII Transcript of the Deposition of Laura Borrelli;
- Transcript of the Deposition of Kevin Hughes and Exhibit 3 thereto;
- Transcript of the Deposition of Ismael Ramirez;
- Transcript of the Deposition of Ana E. Ramirez;
- Rough ASCII Transcript of the Deposition of Jorge Salazar;
- Relevant regulations and laws; and
- The reports and scholarly works cited in this opinion.

My opinions are solely based on my personal knowledge and belief and on materials I have reviewed. I reserve the right to supplement and/or modify my opinions based on future discovery in this case and other information not now known to me.

My expert compensation in this case is $500.00 per hour.

II. Expert Qualifications

I am the Connecticut Mutual Professor of Law and Director of the Insurance Law Center at the University of Connecticut School of Law, where I specialize in financial services regulation. I earned my J.D. at the University of California (Berkeley) School of Law and clerked for the late Hon. Robert S. Vance of the Eleventh Circuit Court of Appeals immediately after law school. In addition, I was a Visiting Scholar at the Massachusetts Institute of Technology Department of Economics in 2002-2003. My resume is attached to this expert report as Appendix A.

Currently, I am a member of the Editorial Advisory Board for the Cambridge Series on Law, Finance, and Economics at Oxford University Press. I am also a Fellow at the Center for Law, Economics and Finance at George Washington University School of Law. Last year, Columbia

Law School appointed me as Adjunct Research Scholar at the National State Attorneys General Program.

I am a recognized national authority on the mortgage crisis due to my extensive expertise in the structure and economics of the residential lending and mortgage broker industry and mortgage securitization. My expertise is based in part on research into residential mortgage industry practices and economics that resulted in the authorship of the following articles, book chapters, and working papers:

Op Ed, *Another View: The Best Way to Protect Borrowers*, THE NEW YORK TIMES DEALBOOK, March 8, 2010.

Barriers to Federal Home Mortgage Modification Efforts During the Financial Crisis (Working Paper, Joint Center for Housing Studies, Harvard University, April 20, 2010), available at http://www.jchs.harvard.edu/.

Securitization and Systemic Risk Amid Deregulation and Regulatory Failure, 41 CONN. L. REV. 1327 (2009) (with Andrey D. Pavlov and Susan Wachter).

From Credit Denial To Predatory Lending: The Challenge Of Sustaining Minority Homeownership, *in* SEGREGATION: THE RISING COSTS FOR AMERICA (James H. Carr & Nandinee Kutty, eds., Routledge, 2008) (with Kathleen C. Engel).

The Impact of Predatory Lending Laws: Policy Implications and Insights (with Raphael Bostic, Kathleen C. Engel, Anthony Pennington-Cross and Susan Wachter) *in* BORROWING TO LIVE: CONSUMER AND MORTGAGE CREDIT REVISITED 138(Nicolas P. Retsinas & Eric S. Belsky eds., Joint Center for Housing Studies of Harvard University and Brookings Institution Press, 2008).

The Legal Infrastructure of Subprime and Nontraditional Mortgage Lending (with Elizabeth Renuart), *in* BORROWING TO LIVE: CONSUMER AND MORTGAGE CREDIT REVISITED 110 (Nicolas P. Retsinas & Eric S. Belsky eds., Joint Center for Housing Studies of Harvard University and Brookings Institution Press, 2008).

State and Local Anti-Predatory Lending Laws: The Effect of Legal Enforcement Mechanisms, 60 J. ECON. & BUS. 47-66 (2008) (with Raphael Bostic, Kathleen C. Engel, Anthony Pennington-Cross and Susan Wachter) (peer reviewed), full working paper version available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1005423.

The Home Mortgage Disclosure Act: A Synopsis and Recent Legislative History, 29 J. REAL ESTATE RESEARCH 381-397 (2007) (peer reviewed), http://cbeweb-1.fullerton.edu/finance/journal/papers/abstract/forth/accepted/JRER_SI(0703S02R1)_5.htm.

Predatory Lending and Community Development at Loggerheads, *in* FINANCING LOW-INCOME COMMUNITIES (Julia Rubin, ed., Russell Sage Foundation, 2007) (with Kathleen C. Engel), working paper version available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=687161.

Rethinking Disclosure in a World of Risk-Based Pricing, 44 HARV. J. LEGIS. 123 (2007), http://www.law.harvard.edu/students/orgs/jol/vol44_1/mccoy.pdf.

Turning a Blind Eye: Wall Street Finance Of Predatory Lending, 75 FORDHAM L. REV. 2039 (2007) (with Kathleen C. Engel), http://www.law.uconn.edu/faculty/pmccoy/blind-eye.pdf.

Accounting for Subprime Losses: The Impact of FAS 157, EY FACULTY CONNECTION, Issue 20 (Dec. 2007), http://www.ey.com/global/content.nsf/US/EY_Faculty_Connection_(Issue_20) (with Amy Dunbar).

Interview panelist in *Perspectives on Assessing CRA's Impact, Effectiveness, and Applicability for the Future*, CR (COMMUNITY REINVESTMENT) REPORT (Fed. Res. Bank of Cleveland, Summer 2007), http://www.clevelandfed.org/CommAffairs/CR_Reports/CRReport_summer07.pdf.

Guest Author (with Kathleen Engel), *Credit Slips* blog, Dec. 11-15, 2006, www.creditslips.org/.

Banking on Bad Credit: New Research on the Subprime Home Mortgage Market, published online in the Proceedings of the Third Federal Reserve System Conference (titled "Promises and Pitfalls: As Consumer Finance Options Multiply, Who Is Being Served and at What Cost?), 2005, http://www.chicagofed.org/cedric/files/2005_conf_discussant_session1_mccoy.pdf.

A Behavioral Analysis of Predatory Lending, 38 AKRON L. REV. 725 (2005), http://www.uakron.edu/law/lawreview/docs/McCoy384.pdf.

Predatory Lending: What Does Wall Street Have to Do with It?, 15 HOUSING POL'Y DEBATE 715 (2004) (with Kathleen C. Engel), http://www.fanniemaefoundation.org/programs/hpd/pdf/hpd_1503_Engel.pdf.

Predatory Lending Practices: Definition and Behavioral Implications, in PREDATORY LENDING: WHY THE POOR PAY MORE FOR FINANCIAL SERVICES (Greenwood Press 2004, Gregory Squires ed.).

A Tale of Three Markets Revisited, 82 TEX. L. REV. 439 (Dec. 2003) (with Kathleen C. Engel).

A Tale of Three Markets: The Law and Economics of Predatory Lending, 80 TEX. L. REV. 1255 (2002) (with Kathleen C. Engel), http://www.law.uconn.edu/faculty/pmccoy/three-markets.pdf.

The CRA Implications of Predatory Lending, 29 FORDHAM URB. L.J. 1571 (2002) (with Kathleen C. Engel).

The Law and Economics of Remedies for Predatory Lending, *in* FEDERAL RESERVE SYSTEM, CHANGING FINANCIAL MARKETS & COMMUNITY DEVELOPMENT 155 (2001) (with Kathleen C. Engel).

By virtue of my mortgage lending expertise, I have headed major research initiatives on subprime lending. At Columbia Law School, I am currently the lead Adjunct Research Scholar overseeing the North Carolina Predatory Lending Project, sponsored by the National State Attorneys General Program. Previously, in 2004, I served as the guest co-editor of a special symposium issue of *Housing Policy Debate* on subprime home mortgage lending, titled *Special Issue on Market Failures and Predatory Lending*, 15 HOUSING POL'Y DEBATE Issue 3 (2004).

My mortgage lending expertise also builds on my broader expertise in federal banking and securities regulation, both in practice and as an academic. In practice, I handled complex banking, securities fraud, and discrimination cases at the law firm of Mayer, Brown, & Platt (now Mayer, Brown, LLP) in Washington, D.C., from 1984 to 1992, where I was a partner and earlier an associate. In that capacity, while representing nationally recognized accounting firms, I reviewed numerous residential loan files and internal lending controls in cases involving failed banks and savings and loan institutions.

While in academe, I have published two books on federal banking regulation. In 2000, I wrote a leading treatise on federal bank regulation titled BANKING LAW MANUAL: FEDERAL REGULATION OF FINANCIAL HOLDING COMPANIES, BANKS AND THRIFTS (Lexis 2d ed. 2000 & cum. supps.). In 2002, I served as the editor for and a contributor to FINANCIAL MODERNIZATION AFTER GRAMM-LEACH-BLILEY (Lexis 2002), which dealt with modernization of the financial services industry. My latest book, THE SUBPRIME VIRUS, coauthored with Kathleen C. Engel, will be published in late 2010 by Oxford University Press.

Since 2002, I have served on several national boards where I reviewed and gave advice on mortgage lending practices. From 2002 to 2004, I was a member of the Consumer Advisory Council of the Board of Governors of the Federal Reserve System. There, I chaired the Council's Consumer Credit Committee, which studied developments in home mortgage lending and considered whether there was a need to amend the federal statutes and regulations governing that area, including the Truth in Lending Act, the Home Ownership and Equity Protection Act, and the Real Estate Settlement Procedures Act. In 2006, I served on the Blue Ribbon Advisory Committee on Risk or Race of the Joint Center on Housing Studies at Harvard University and I currently sit on the Research Advisory Council of the Center for Responsible Lending. Both of these advisory committees examined home lending practices. In 2008, I was appointed to the Advisory Committee on the Ford Foundation Subprime Crisis Project, sponsored by the Harvard University Joint Center for Housing Studies. Closer to home, through 2007, I sat on the board of directors and was Treasurer of the Connecticut Fair Housing Center, a non-profit organization that seeks to further equal access to housing and mortgage lending.

Other of my recent activities drew on my expertise on subprime and predatory lending. In 2009, I testified twice before the U.S. Senate and once before the U.S. House of Representatives on mortgage lending reforms.[1] In February 2008, I testified before the Committee of Banks of the

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1 Hearing before the Subcommittee on Securities, Insurance, and Investment of the U.S. Senate Committee on Banking, Housing, and Urban Affairs at hearing titled "Securitization of Assets: Problems and Solutions," October 7, 2009, Washington, D.C.; Hearing before the Subcommittee on Domestic Monetary Policy and Technology of the U.S. House Committee on Financial Services at hearing titled "Regulatory Restructuring: Safeguarding Consumer Protection and the Role of the Federal Reserve," July 16, 2009, Washington, D.C.; Hearing before the U.S. Senate Committee on Banking, Housing, and Urban Affairs at hearing titled "Consumer Protections in Financial Services: Past Problems, Future Solutions," March 3, 2009, Washington, D.C.

Connecticut General Assembly on mortgage lending reform in the subprime industry. In July 2006, I testified in Atlanta, Georgia, before the Federal Reserve Board at hearings on the Home Ownership and Equity Protection Act. I also helped design a national subprime mortgage database for the Ford Foundation.

III. <u>Prior Expert Appearances</u>

I have appeared in the following expert engagements to date:

- Expert for defendant title insurance company in *Mesa Bank v. Alexander*, No. CV2008-019063 (Maricopa County, Arizona, Superior Court): filed expert report in mortgage fraud case.

- Expert for plaintiff borrowers in *In re Ameriquest Mortgage Co. Mortgage Lending Practices Litigation*, MDL No. 1715, Lead Case No. 05-cv-07097 (N.D. Ill.): filed expert report in support of settlement and distribution plan.

- Expert for defendant title insurance company in *Rubin v. Coppenger et al.*, No. CV-2006-07-4229 (Summit County, Ohio, Court of Common Pleas): filed expert report in mortgage fraud case.

- Expert for defendant title insurance company in *Countrywide Home Loans, Inc. vs. LandAmerica American Title Company et al.*, Cause No. 07-14386-I (Dallas County, Texas, District Court: 162d Jud. District): provided background consultation in mortgage fraud case.

- Expert for defendant title insurance company in bankruptcy proceeding titled *Credit Suisse Financial Corporation, et al. v. Parish Marketing & Development Corporation, et al.*, C.A. 0:08-cv-01038-DWF-SRN, Claim #F34052233, F34052083, and F34052229 (D. Minn.): provided background consultation in mortgage fraud case.

- Expert witness for defendant title insurance companies in *Countrywide Home Loans, Inc. v. National Land Title of Tarrant, Inc. et al.*, Cause No. 06-11971-H (Dallas County, Texas, District Court: 160th Jud. District) and related litigation: filed expert report in mortgage fraud case.

- Expert witness for defendant title insurance companies in *Ohio Savings Bank v. Commonwealth Land Title Insurance Co. et al.*, Cause No. 2006-32092 (Harris County, Texas, District Court: 295th Jud. District): filed expert report in mortgage fraud case.

- Expert witness for defendant title insurance company in *ABN AMRO Mortgage Group, Inc. v. The Mortgage Zone, Inc.*, Case No. 05-74150 (E.D. Mich.): filed expert report in predatory mortgage lending case.

- Expert witness for defendant title insurance company in *ABN-AMRO Mortgage Group, Inc. v. New Partners Mortgage Company,* Case No. 1:05 CV 1167 (N.D. Ohio): filed expert report in predatory mortgage lending case.

- Expert witness for state agency plaintiffs in *State of Connecticut v. Approved Mortgages, Inc. et al.*, Docket No. HHD-X09-CV-05-40097378-S (Connecticut Superior Ct., Jud. District of Hartford): testified at expert deposition in predatory mortgage lending case.

- Expert witness for borrower plaintiff in *Devlin v. Northeast Mortgage Corp.*, original Docket No. X01-CV-03-0178670-S (Connecticut Superior Ct., Jud. District of Waterbury), later transferred to U.S. Bankruptcy Court: testified at expert deposition in predatory mortgage lending case.

- Expert witness for state agency plaintiffs in *State of Connecticut v. GRZ, LLC*, Docket No. CV 03 0829985S (Connecticut Superior Ct., Jud. District of Waterbury Complex Litigation): filed expert report and testified at expert deposition in predatory mortgage lending case.

- Expert witness for borrower plaintiff in *Heaton v. Monogram Credit Card Bank of Georgia*, Civil Action No: 98-1823 c/w 99-2603 Section: "J" (1) (U.S. District Court for the Eastern District of Louisiana): filed expert report in challenge to a claim of federal preemption by a credit card bank.

IV. Background

Plaintiffs sue GreenPoint Mortgage Funding, Inc. ("GreenPoint") for discrimination in mortgage lending under the Equal Credit Opportunity Act and Title VIII of the Fair Housing Act. GreenPoint was a nonprime[2] mortgage lender that originated most of its loans through outside mortgage brokers via its wholesale lending channel. Capital One Financial purchased GreenPoint in December 2006. Hughes Depo. at 24. GreenPoint funded its last mortgage loan in December 2007. Hughes Depo. at 14.

According to Plaintiffs, GreenPoint offered its mortgage brokers a discretionary loan pricing policy that enabled them to charge blacks and Hispanics more for identical loan products than comparably situated whites. First Amended Complaint. The class allegations in the complaint are limited to GreenPoint's wholesale channel mortgage loans.

V. Class Certification Opinion

GreenPoint's experts Ms. Borrelli and Dr. Courchane oppose class certification on grounds that any higher annual percentage rates charged to GreenPoint's black and Hispanic wholesale customers were the product of legitimate cost differentials among GreenPoint's mortgage brokers and that individualized proof of those cost structures obviates class certification. To the contrary, GreenPoint's own mortgage brokers consistently testified that their costs did not vary

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[2] In this opinion, I use the word "nonprime" to denote subprime loans designed for borrowers with weaker credit plus the so-called "Alt-A loans," which included low- and no-documentation loans and other nontraditional mortgages such as interest-only adjustable-rate mortgages ("ARMs").

by ethnicity or race. Instead, policies and practices instituted by GreenPoint and a regulatory environment that together were common to the class allowed GreenPoint's mortgage brokers to overcharge customers in general and to charge even more to black and Hispanic borrowers. These policies and practices included GreenPoint's discretionary pricing policy, its use of risk-based pricing, the secrecy of its rate sheets, inadequate federal disclosure of yield spread premiums, and product differentiation. Similarly, GreenPoint's attacks on the typicality of two of the named plaintiffs are unfounded.

A. GreenPoint Consciously Adopted Pricing Policies To Maximize The Proceeds From The Sale Of Mortgages On the Secondary Market

Thirty years ago, most lenders performed the key functions of residential mortgage lending themselves in-house. Back then, lenders solicited loan applicants through their loan officers, underwrote and funded loans, serviced the loans, and held the loans in portfolio. In recent decades, however, the structure of the home mortgage industry underwent fundamental change. Starting in the 1970s, lenders increasingly unbundled many of their key lending functions and outsourced them to outside individuals and firms.

One aspect of this unbundling featured the sale of mortgage loans to investors. The invention of securitization in the late 1970s eliminated the need for lenders to hold their mortgages on their books until repayment or maturity.[3] In securitization, a lender bundles home mortgages and sells them to a bankruptcy-remote trust. Then an investment bank repackages the monthly loan payments into bonds for sale to investors. The bonds are divided into tranches, rated by rating agencies, and secured by the underlying mortgages as collateral.

GreenPoint deliberately adopted an "originate-to-distribute" business model in which it originated most of its mortgages with the intent of selling them to investors for purposes of securitization. Jarvis Depo. at 125-126. Bear Stearns and Lehman Brothers were the biggest purchasers of GreenPoint's loans and bought them to repackage into private-label mortgage-backed securities. Hughes Depo. at 44-45, 57. Charging higher interest rates to borrowers allowed GreenPoint to sell its loans for more on the secondary market. Jarvis Depo. at 125-128.

GreenPoint maintained two units – secondary marketing and secondary operations – that handled the sale of GreenPoint's home mortgages. From 2004 onward, both units were overseen by Kevin Hughes. Mr. Hughes managed the sale of GreenPoint's loans in the secondary market, handled the settlement of those sales, and ran GreenPoint's hedging operations. He also was responsible for the pricing of GreenPoint's loans. Mr. Hughes similarly supervised the processing of due diligence requests by investors and their due diligence firms. Hughes Depo. at 11-12, 15, 17-18, 46-50, 82-86.

GreenPoint evaluated how much it was likely to get paid for a particular type of loan in the secondary market based on the past sales price and conversations with investors about specific loan programs. Hughes Depo. at 52. Investors would provide GreenPoint with Excel spreadsheets every morning setting forth the prices they were willing to pay. The spreadsheets included an interest rate, the corresponding price the investor was willing to pay, and loan-level

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[3] For fuller treatment of these developments, see Kathleen C. Engel and Patricia A. McCoy, *A Tale of Three Markets: The Law and Economics of Predatory Lending*, 80 TEX. L. REV. 1255 (2002).

price adjustments. Other GreenPoint loan programs were originated and sold on a competitive bid basis and were not priced to any specific investor. Hughes Depo. at 53-57.

GreenPoint used the information from the investors' spreadsheets and the market rates to set the rates and prices for all of its loan programs on a daily basis. It then uploaded the rates and prices into its rate sheets. GreenPoint used a pricing model to hit its profit target from the sale of the loans to the secondary market. In addition to its profit margin, GreenPoint's pricing model took account of the price it could sell loans on the secondary market, needed loan loss reserves, and the rebates (yield spread premiums or "YSPs") that GreenPoint paid to its mortgage brokers. GreenPoint's Excel pricing spreadsheets had a formula for doing those pricing calculations. Hughes Depo. at 59-65, 82-83, 118-119, 185. GreenPoint evaluated its loan sales on a retrospective basis to adjust its pricing model to make sure GreenPoint was earning its expected profit margin. Hughes Depo. at 68-70, 112-113.

To summarize, GreenPoint set its loan prices and the YSPs it paid to its brokers to maximize the profits from the sale of its loans on the secondary market.

B. During The Class Period, Residential Mortgage Lenders Including GreenPoint Adopted A Business Strategy Of Soliciting Mortgages Through Outside Mortgage Brokers In Order To Maximize Volume And Profits

As part of the mortgage market's transformation over the past forty years, lenders including GreenPoint placed increasingly heavy reliance on outside mortgage brokers to recruit potential borrowers, take their loan applications, and verify the *bona fides* of their loan applications. The use of mortgage brokers to solicit business for lenders was referred to as the "wholesale lending channel." GreenPoint originated 75% to 90% of its mortgage loans through the wholesale channel. Jarvis Depo. at 211-212.

GreenPoint and other major mortgage lenders specifically embraced the wholesale channel to extend their lending operations nationwide and to minimize the cost of nationwide operations. Lenders such as GreenPoint gravitated to wholesale channel in order to cut costs and maximize profits. Cutting costs was one of GreenPoint's principal motivations for originating through mortgage brokers. Jarvis Depo. at 212; Borrelli Depo. at 146. Soliciting business through a standing force of in-house loan officers was an expensive proposition, entailing high overhead. Lenders often compensated their loan officers with salaries (in whole or in part) and also paid them costly fringe benefits, including health insurance and pensions. Lenders also had to maintain brick-and-mortar offices in order to house their loan officers. Any retail lender that aspired to a large market share had to have a large sales force in order to extend its geographic reach.

These costs remained fixed, regardless whether mortgage applications were booming or waning. Residential mortgage lending is a volatile business, alternating between periods of high and low demand. Retail lenders who assembled large sales forces to meet high demand from customers during busy periods later often found themselves stuck with the same high cost structure of loan officers if their mortgage business fell off, as it periodically did. Mass layoffs of loan officers during slow periods were painful and could engender litigation.

For these reasons, GreenPoint made a business decision during the class period to substantially cut its fixed costs by minimizing its use of retail loan officers and farming out loan officers' duties to outside mortgage brokers.[4] Jarvis Depo. at 212-213; Hughes Depo. at 203. GreenPoint originated most of its loans through the wholesale lending channel. Hughes Depo. at 88.

In sum, GreenPoint depended heavily on mortgage brokers as part of its conscious national strategy to run a national mortgage lending business while minimizing its costs. GreenPoint's expert, Laura Borrelli, concurred, stating in her expert report: "By working with mortgage brokers, wholesale mortgage lenders gain a national presence without incurring the expense of direct advertising and/or the overhead expenses related to operating numerous branch offices across the country." Borrelli Report at 4.

To achieve its overall business goals, GreenPoint asserted control over its wholesale lending process and mortgage brokers in numerous ways. For every wholesale loan that GreenPoint funded, GreenPoint was the creditor. Hughes Depo. at 88. All of GreenPoint's loans were originated consistent with GreenPoint's policies and procedures. Hughes Depo. at 94. GreenPoint set the prices of all its loans, including all loans originated by its mortgage brokers. Hughes Depo. at 91, 187, 189-192.

GreenPoint asserted many other indicia of control as well. It required mortgage brokers to obtain its approval and enter into broker agreements before they could originate loans on GreenPoint's behalf. Jarvis Depo. at 77-78; Borrelli Depo. at 60. Like other wholesale mortgage lenders, GreenPoint maintained a force of account executives who recruited brokers for GreenPoint and instructed them on how to submit successful loans. Jarvis Depo. at 68-70, 72-73; Borrelli Depo. at 71-72. As part of those sales efforts, GreenPoint's sales executives provided mortgage brokers with marketing fliers to give to borrowers. Jarvis Depo. at 34. GreenPoint's brokers had to follow GreenPoint's policies, both for underwriting and otherwise. Jarvis Depo. at 129-130; Borrelli Depo. at 69, 164. GreenPoint's staff were supposed to examine mortgage brokers' fees to determine whether they were reasonable. Jarvis Depo. at 132-133. GreenPoint also had a policy of monitoring its mortgage brokers for compliance with GreenPoint's policies and for fraud. See Jarvis Depo. at 141, 189-196, 199-200, 205-206. GreenPoint terminated mortgage brokers on occasion for fraud, abusive style with GreenPoint's staff, or lack of business. Jarvis Depo. at 203.

GreenPoint instituted its broker force in order to operate nationwide and to increase its aggregate profits from its national operations. As part of its business model, GreenPoint asserted control over its mortgage brokers via policies and procedures of national scope to assure that brokers advanced GreenPoint's national business strategy. For these reasons, any analysis of pricing disparities in GreenPoint's loans should be done from a national perspective.

C. GreenPoint Gave Its Brokers The Ability And The Latitude To Overcharge Consumers

The Class Certification Report of Howell E. Jackson establishes that GreenPoint's black and Hispanic wholesale borrowers were charged higher Annual Percentage Rates ("APRs") than

[4] See William Apgar, Amal Bendimerad and Ren S. Essene, Mortgage Market Channels and Fair Lending: An Analysis of HMDA Data 7-8 (Working Paper, Joint Center for Housing Studies at Harvard University, 2007).

comparable whites after controlling for creditworthiness. These pricing disparities arose from GreenPoint's decision to give its mortgage brokers discretion in the pricing of nonprime loans.

Within its overall pricing system, GreenPoint established parameters that gave mortgage brokers discretion to vary prices charged to borrowers within those parameters in a variety of ways. See Borrelli Depo. at 90. GreenPoint gave its mortgage brokers discretion as to the amount of fees they charged borrowers. GreenPoint also gave mortgage brokers discretion as to the size of yield spread premiums they collected from GreenPoint, within parameters set out in GreenPoint's rate sheets. Finally, GreenPoint frequently granted pricing exceptions to brokers.

Direct Broker Fees to Borrowers -- First, GreenPoint allowed its mortgage brokers to decide whether to charge borrowers loan origination fees and in what amount. Jarvis Depo. at 96, 104, 106; Borrelli Depo. at 30. GreenPoint's mortgage brokers also had discretion whether to charge borrowers processing fees. Jarvis Depo. at 106-107. GreenPoint did not place limits on how much its brokers could charge borrowers for origination fees and processing fees, except to monitor brokers' fees before funding to make sure those fees were reasonable in relation to the loan amount.[5] Jarvis Depo. at 107-109, 115-117, 120, 204.

Yield Spread Premiums -- In addition, GreenPoint paid yield spread premiums to mortgage brokers for convincing borrowers to pay interest rates above par. Weiss Depo. at 77-78, 117; Kundinger Depo. at 77; McDade Depo. at 45, 59; Jarvis Depo. at 106; Borrelli Depo. at 30, 32-33; Hughes Depo. at 118-119. It was common for GreenPoint to pay YSPs to its mortgage brokers for wholesale loans. Jarvis Depo. at 99-100. Under that system, the higher the interest rate on the loan, the higher the broker's YSP. Jarvis Depo. at 96, 114-115; Hughes Depo. at 137-138, 142. GreenPoint also paid brokers higher YSPs for delivering loans with "hard" prepayment penalties – in other words, prepayment penalties that applied whether a homeowner sold the home or refinanced the loan. Hughes Depo. at 143-144, 164-165.

GreenPoint calibrated the YSPs that it was willing to pay according to the interest rate paid by borrowers, which was reflected on its proprietary rate sheets. Jarvis Depo. at 114-115; Borrelli Depo. at 90; Hughes Depo. at 120-124; Exhibit 3 to Hughes Depo. GreenPoint provided its mortgage brokers with the rate sheets, which set out different combinations of interest rates and yield spread premiums that GreenPoint was willing to pay its brokers, depending on a borrower's credit rating and the loan-to-value ratio. See Exhibit 3 to Hughes Depo. Unless GreenPoint granted an exception, the parameters that GreenPoint set out on its rate sheets calibrating YSPs to specific interest rates were binding on the mortgage brokers who originated GreenPoint's loans. Jarvis Depo. at 70-71. Within those parameters, however, GreenPoint's brokers had discretion to try to sell borrowers loans with higher interest rates in order to increase the brokers' YSPs.

GreenPoint did not restrict the size of its YSPs apart from monitoring whether total broker compensation was reasonable given the loan amount. Jarvis Depo. at 109, 115-117, 120, 204, 213-214. Similarly, GreenPoint did not monitor whether brokers passed any price concessions on to their borrowers. Jarvis Depo. at 180. GreenPoint's former executive vice president for

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[5] GreenPoint's expert Laura Borrelli could not recall whether GreenPoint had a specific policy on broker compensation caps. Borrelli Depo. at 93.

sales, Burnett K. Jarvis, could not recall any instance in which GreenPoint had terminated a broker for collecting excessive compensation. Jarvis Depo. at 204.

GreenPoint paid even higher YSPs to brokers in certain cases to boost its revenues. It paid higher YSPs to brokers for submitting more loans. Jarvis Depo. at 133-159, 167, 180. It paid higher YSPs in some regions based on the regions' economics. Jarvis Depo. at 153, 159-163. It offered higher YSPs on particular loan products, thereby encouraging mortgage brokers to steer their customers toward more profitable loan products. Jarvis Depo. at 169-170.

Pricing Exceptions -- Finally, GreenPoint granted pricing exceptions for its loans at the company's discretion and subject to its approval. Hughes Depo. at 94-95. Pricing exceptions were prevalent; GreenPoint approved them for approximately 30% to 35% of its loans. Hughes Depo. at 105. GreenPoint had a policy for evaluating pricing exception requests and Kevin Hughes, GreenPoint's executive vice president in charge of secondary marketing, supervised that process. Hughes Depo. at 95-97, 98-100, 105, 167-168. For requests for downward exceptions, GreenPoint determined whether it would be able to sell that particular loan at a lower rate to a potential investor and still make a profit. Hughes Depo. at 96-97. As this suggests, GreenPoint granted pricing exceptions that allowed lower prices than its published prices. It granted other exceptions in which it allowed higher prices than its published prices. Hughes Depo. at 97-98. The majority of GreenPoint's pricing adjustments were upward adjustments, "meaning it was a higher-cost loan." Hughes Depo. at 107. Its pricing exception policy made it possible to steer black and Hispanic borrowers to higher-priced loans than similarly qualified whites.

In all of these ways, GreenPoint's discretionary pricing system created a symbiotic relationship that inured to the profit of both GreenPoint and its mortgage brokers. As the Joint Center for Housing Studies at Harvard University noted, both the lender and the mortgage broker "benefit financially" from discretionary pricing techniques such as YSPs and pricing exceptions "by the placement of a specific loan product or a loan made at a higher rate than suggested by the rate sheet."[6] GreenPoint's former executive vice president for sales, Mr. Jarvis, confirmed that this was true for GreenPoint. Jarvis Depo. at 125-128. Thus, GreenPoint consciously instituted a discretionary pricing system that did not dictate what its mortgage brokers charged in order to increase GreenPoint's profits.

GreenPoint instituted discretionary pricing for another important reason: to compete for mortgage brokers' business. Mortgage brokers could do business with many wholesale lenders and were not obliged to deliver loans to any particular lender. Borrelli Report at 5; Kundinger Depo. at 52; see also Courchane Report at 11-14. As a result, mortgage brokers shopped for lenders who would pay them the most. Weiss Depo. at 28. For example, Barry Jay Weiss, a mortgage broker who sent more of his loans to GreenPoint than to any other lender, testified: "[I]f you're looking at 6 percent for a customer, for example, whichever lender you can send it to and make the most money at 6 percent and close on schedule is who you're going to send it to, because we're all in business to make money." Weiss Depo. at 72; accord, Kundinger Depo. at 103-104.

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6 William Apgar, Amal Bendimerad and Ren S. Essene, Mortgage Market Channels and Fair Lending: An Analysis of HMDA Data 8 (Working Paper, Joint Center for Housing Studies at Harvard University, 2007).

GreenPoint's discretionary pricing program was designed to encourage mortgage brokers to do business with GreenPoint by maximizing their compensation. GreenPoint's mortgage brokers all testified that they compensated their loan officers solely based on commission, not on salary. Kundinger Depo. at 41-42; Weiss Depo. at 20; McDade Depo. at 22. In turn, those commissions were based "on the percentage of profit on the loan." Weiss Depo. at 20. Accordingly, loan officers at GreenPoint's mortgage brokerages had incentives to do business with whatever lender would let them earn the highest compensation on loans in order to maximize their commissions. Brokers' incentives to steer their business to such lenders was boosted by the fact that they did not bear the default risk on those loans.

In turn, the more loans brokers sent to GreenPoint, the higher its profits. GreenPoint's business model was based on volume. The more loans GreenPoint originated, the more loans it could sell to the secondary market and the more sales proceeds it could collect. For this reason, GreenPoint consciously designed its discretionary pricing system to entice mortgage brokers to send it more loans. This is why GreenPoint, under its "Mortgage Loyalty Program" (also known as "GreenPoint Advantage"), paid brokers higher yield spread premiums for submitting more loan applications. Jarvis Depo. at 133-152, 179-180, 182. GreenPoint also paid its account executives commissions based on the volume of loans. Jarvis Depo. at 183-185. GreenPoint placed no cap on the total amount of account executives' commissions. Jarvis Depo. at 185-186.

According to GreenPoint's former executive vice president for sales, Mr. Jarvis, GreenPoint "didn't care what" its mortgage brokers "charged as long as they did not exceed [GreenPoint's] compensation limit." Jarvis Depo. at 215. After it approved a broker, GreenPoint did not monitor a broker's compensation for fair lending compliance. Jarvis Depo. at 200-202. Thus, GreenPoint did not care whether brokers charged more to black or Hispanic customers in order to pad their income so long as brokers sent increasing numbers of loans to GreenPoint to originate as a result.

D. GreenPoint Used Reduced-Documentation Loans and Automated Systems To Attract More Mortgage Brokers And To Lower Mortgage Brokers' Operating Costs

Mortgage brokers shopped for lenders who would pay them the most for doing the least amount of work. During the class period, GreenPoint used two devices -- low- and no-documentation loans and automated underwriting – to drastically reduce the amount of work its mortgage brokers had to do for any set level of compensation.

Low-documentation and no-documentation loans -- such as stated income-stated asset loans -- permitted loan approval without written verification of income and/or assets. Kundinger Depo. at 114-115. These loans were highly popular with mortgage brokers because the brokers could maximize their profits by dispensing with the time and effort needed to verify income and assets. For unscrupulous brokers, stated income-stated asset loans had added appeal, because the lack of verification made it easier for them to inflate borrowers' incomes or assets without detection. See Kundinger Depo. at 46. By so doing, brokers could increase their loan approval rate and thus their fee volume. Due to these dynamics, stated income-stated asset loans were commonly known as "liars' loans."

GreenPoint also used electronic portals and automated underwriting (AUS) to enable mortgage brokers to maximize profits by allowing them, for example, to work cheaply out of their homes. See Weiss Depo. at 58; Kundinger Depo. at 44, 132, 139; Borrelli Depo. at 79. Electronic portals allowed GreenPoint's mortgage brokers to submit loan applications electronically. Automated underwriting allowed mortgage brokers to upload data from a customer's loan application into a computer system. Then, using statistical modeling, the computer system analyzed the customer's creditworthiness and recommended a loan decision, often consisting of approval. In many cases, automated underwriting recommended loan approval without requiring documentation of income or assets. Weiss Depo. at 111; Kundinger Depo. at 115; Borrelli Depo. at 80, 83-84; Hughes Depo. at 185-186.

GreenPoint offered both of these lures to mortgage brokers to direct loans to GreenPoint. GreenPoint specifically specialized in stated income-stated asset loans. See Weiss Depo. at 34, 110; Kundinger Depo. at 114-115, 122; McDade Depo. at 53-54. Similarly, GreenPoint adopted automated underwriting and electronic loan processing in 2002 or 2003, "ahead of its time." Weiss Depo. at 64; see also Kundinger Depo. at 143-144, 148. In tandem with GreenPoint's discretionary pricing system, both of these innovations by GreenPoint were common to the Class and allowed GreenPoint's mortgage brokers to minimize costs and maximize profits.

E. The Evidence Establishes That The Cost Structure Of GreenPoint's Mortgage Brokers Did Not Vary By Ethnicity Or Race

GreenPoint's experts, Laura J. Borrelli and Marsha Courchane, argue that the disparities in the APRs charged to GreenPoint's black and Hispanic customers were reasonable because they resulted from variations in the cost structures of the mortgage brokers GreenPoint used to originate wholesale loans. Borrelli Report at 3-11; Courchane Report at 6-8, 10-11, 14-16.

Certainly GreenPoint's individual mortgage brokers had different costs, depending on the borrower and the broker. However, GreenPoint's experts ignore two crucial facts. First, GreenPoint's mortgage brokers consistently testified that black and Hispanic customers did not entail more time, more work, or higher costs than white customers for GreenPoint's mortgage brokers. Weiss Depo. at 98; Kundinger Depo. at 136, 152; McDade Depo. at 62; Borrelli Depo. at 96. In fact, Ms. Borrelli herself – who was a GreenPoint mortgage broker[7] before serving as GreenPoint's expert in this case – confirms that a loan applicant's race has no effect on the amount of work to process a loan. Borrelli Depo. at 96. Her testimony and that of the other three brokers conclusively establish that whatever the cost differentials GreenPoint's brokers faced, broker costs did not vary by race or ethnicity.

Second, one of the reasons why GreenPoint offered its mortgage brokers yield spread premiums was to compensate brokers for their expenses. Yet GreenPoint did not base the amount of YSPs on the amount of work that brokers did in connection with submitting their loans. Rather, the size of GreenPoint's YSPs was solely based on the interest rate associated with the loan. Hughes Depo. at 203-204. For these reasons, individualized proof of broker cost structures is irrelevant to proving the disparate impact of GreenPoint's mortgage loan pricing policies on the members of the Class. Instead, disparate impact can be proven with common evidence and methods.

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7 In 2004 and 2005, approximately 50% to 60% of the loans originated by Ms. Borrelli and her brokerage firm were originated for GreenPoint. Borrelli Depo. at 17, 19.

GreenPoint's experts lack evidence to the contrary that GreenPoint's brokers incurred higher costs for blacks or Hispanics. Borrelli Report at 3; Courchane Report at 6. GreenPoint's brokers did not even keep track of the hours they spent on originating loans. McDade Depo. at 69-70; Kundinger Depo. at 135-136; Borrelli Depo. at 76, 121. Furthermore, I am aware of no academic literature to the effect that mortgage broker costs are higher for blacks or Hispanics than for whites as individual groups.

Dr. Courchane argues instead that lower pull-through rates for African-American and Hispanic borrowers provide indirect evidence that minority borrowers impose higher costs on brokers. However, she only analyzes the issue using descriptive statistics and does not control for credit risk and other pertinent factors using multivariate regression. Courchane Report at 15-16.

In sum, GreenPoint's experts only speculate about whether the company's mortgage brokers had higher costs for minority customers. The testimony of all four GreenPoint brokers, including Ms. Borrelli, lays this speculation to rest by conclusively establishing that GreenPoint's mortgage brokers did not have higher costs for black or Hispanic loan customers.

F. Brokers Used Several Techniques To Overcharge Customers, With GreenPoint's Participation And Acquiescence

The record establishes that the APR disparities identified by Professor Jackson were not the result of broker cost differentials along racial or ethnic lines. Rather, GreenPoint's mortgage brokers exploited mortgage market defects to impede competitive pricing. They took added advantage of the relative vulnerability of minority borrowers to charge minorities even higher prices than comparable whites. GreenPoint made these discriminatory overages possible by instituting discretionary pricing policies and by not policing lending discrimination by its mortgage brokers.

These problems are a matter of common knowledge in the mortgage industry. Gregory Kundinger, a mortgage broker for GreenPoint, testified that the mortgage broker industry had been plagued by misconduct over time. According to Kundinger, "it's easy to abuse people" in the mortgage broker industry. Kundinger Depo. at 46-47.

In a competitive market that did not overcharge consumers, customers could obtain binding price quotes of the key price terms of a mortgage, including broker compensation, up-front to allow them to comparison-shop. GreenPoint's expert, Laura Borrelli, waxes eloquently about the mortgage broker industry as a fully competitive one and helpful to consumers. In hew view, mortgage brokers fully informed borrowers about the tradeoffs among interest rates, broker fees, and yield spread premiums. Ms. Borrelli lauds mortgage brokers for offering "'one-stop shopping' for loan products" and "more flexible business hours," earning appreciation from "working families" and acceptance by the public. She describes mortgage brokers as trusted advisers who "counsel[ed] the borrower with respect to choosing a loan program that best fits the borrower's needs and in identifying which wholesale lender is most appropriate to fit those needs." Borrelli Depo. at 5-6, 9.

The rosy picture that Ms. Borrelli seeks to paint bears little or no resemblance to the sordid reality of the mortgage broker industry and the wholesale lending channel. To the contrary, nonprime wholesale lenders such as GreenPoint, in tandem with their mortgage brokers, used a variety of techniques to keep borrowers in the dark about their choices and to make meaningful comparison-shopping difficult or impossible. In part for this reason, empirical studies largely find that, other things being equal, loans originated by mortgage brokers cost borrowers more than retail loans and loans originated by mortgage brokers were more likely to default.[8]

1. Impeding Comparison Shopping

In a competitive market, sellers post their prices publicly and do so early enough in the shopping process so that consumers can compare prices. GreenPoint was able to thwart this type of comparison-shopping by keeping its price structure secret and by delaying when it revealed the true price of a borrower's loan.

GreenPoint deliberately blocked comparison shopping by its customers by concealing its price structure from public view. GreenPoint's prices were embodied in its rate sheets, which on any given day stated the par rate for each of its loan products according to credit score. In addition, the rate sheets set forth the yield spread premiums that GreenPoint would pay to mortgage brokers for delivering loans at above-par interest rates.

GreenPoint's customers needed to read those rate sheets in order to know what par rate they qualified for and the effect of YSPs on their interest rates. GreenPoint, however, like virtually every other wholesale lender,[9] had an express policy of keeping rate sheets secret from consumers and did not post them publicly. A GreenPoint rate sheet dated July 31, 2006, explicitly stated: "Not for consumer use or distribution" and "For use by Residential Lending Professionals Only to assist in Qualifying Borrowers." Exhibit 3 to Hughes Depo. at GPM-01-000781 to 782. See also Borrelli Depo. at 136-140, 142-43.

GreenPoint's decision to conceal its rate sheets from consumers impeded consumers' ability to comparison-shop in at least three respects. The first involved GreenPoint's use of risk-based pricing. Under risk-based pricing, the minimum interest rate that GreenPoint was willing to charge a borrower varied according to the borrower's creditworthiness and other indicia of risk (such as the loan-to-value ratio).[10] The rate sheet contains a matrix with these minimum interest rates. Because borrowers could not see the rate sheets, they could not tell what rate they should get given their risk level or whether they were instead being overcharged.

GreenPoint's use of risk-based pricing also made it more difficult for consumers to get a binding quote up front and opened the door to bait-and-switch techniques. GreenPoint and its mortgage brokers could not determine the actual price for a loan until a consumer first went through the loan application process and revealed his or her creditworthiness. Thus, even with a rate lock, a customer could not shop binding price quotes under risk-based pricing until they filed multiple loan applications and obtained multiple rate locks. GreenPoint did not necessarily grant consumers rate locks on the date of application, moreover. Hughes Depo. at 126. For loan

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[8] See Michael LaCour-Little, *The Pricing of Mortgages by Brokers: An Agency Problem?*, 31 J. REAL EST. RESEARCH, 235, 238-243 (2009) and studies reviewed therein.

[9] See Alan M. White, *Risk-Based Mortgage Pricing: Present and Future Research*, 15 HOUSING POLICY DEBATE 503, 509-512 (2004).

[10] See generally Alan M. White, *Risk-Based Mortgage Pricing: Present and Future Research*, 15 HOUSING POLICY DEBATE 503, 509-512 (2004).

applicants who did not receive a rate lock, federal disclosure law at the time allowed GreenPoint and its mortgage brokers to change the loan product and the price of the loan up until the closing (so long as they re-disclosed fully immediately before closing). See Borrelli Depo. at 86-87. This created an opportunity for bait-and-switch techniques.[11] A recent study by researchers at the University of North Carolina at Chapel Hill substantiated this bait-and-switch phenomenon, reporting that borrowers who used mortgage brokers were significantly more likely than borrowers using retail lenders to report that their loan terms changed at closing.[12]

Finally, the secrecy shrouding GreenPoint's rate sheets meant that GreenPoint's wholesale borrowers did not know that YSP payments to their brokers would boost their interest rates. Nor did they know the magnitude of that effect. Federal mortgage disclosure laws during the class period did not require lenders or mortgage brokers to disclose the effect of YSPs on interest rates to borrowers. During the class period, in fact, the only YSP disclosure that the Real Estate Settlement Procedures Act required was a cryptic reference on the HUD-1 settlement statement at the closing to a "YSP (POC)" or something to a similar effect. Most borrowers did not know that those six letters meant that the lender had paid the broker some sort of compensation outside of settlement. Furthermore, most borrowers were in the dark about the effect of YSPs on their interest rates. GreenPoint's discretionary pricing policy allowed GreenPoint's mortgage brokers to place minority borrowers into costlier loans than the borrowers deserved, based on their credit scores and risk factors, in order to increase their YSPs from GreenPoint.[13]

In view of these market dynamics and the weak disclosure environment at the time, I take issue with the opinion given by GreenPoint's expert Ms. Borrelli which implied that mortgage brokers were fully transparent about the choice of pricing options and loan products offered to customers. She suggested, for instance, that mortgage brokers offered borrowers a full set of trade-offs between the interest rate and discount points to "fit their individual needs." Borrelli Report at 6. Similarly, she suggested that brokers fully informed borrowers about their compensation for individual loans in a timely and understandable manner. Borrelli Report at 6-7. The record shows otherwise. GreenPoint's policy of rate sheet secrecy, the effect of GreenPoint's risk-based pricing practices in hampering timely binding price quotes, and the lack of disclosure concerning the effect of GreenPoint's YSPs refute Ms. Borrelli's assertions about full transparency in pricing.

Similarly, federal disclosure laws during the class period did not require mortgage brokers to offer customers a choice of price trade-offs or loan products. Researchers have documented that mortgage brokers did not always offer such trade-offs.[14] GreenPoint's own mortgage brokers confirmed these findings in their testimony in this case. At their depositions, GreenPoint broker stated that often they did not offer consumers those trade-offs; instead, they slotted borrowers unilaterally into specific types of loans. For example, Kevin McDade, a GreenPoint mortgage broker, testified that "GreenPoint's rate sheets were so complicated, okay, we would normally

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11 See Patricia A. McCoy, *Rethinking Disclosure in a World of Risk-Based Pricing*, 44 HARV. J. LEGIS. 123 (2007).

12 Jonathan S. Spader and Roberto G. Quercia, *Mortgage Brokers and the Refinancing Transaction: Evidence from CRA Borrowers*, 10 JOURNAL OF REAL ESTATE FINAN. ECON. (2009).

13 William Apgar, Amal Bendimerad and Ren S. Essene, Mortgage Market Channels and Fair Lending: An Analysis of HMDA Data 8-10 (Working Paper, Joint Center for Housing Studies at Harvard University, 2007).

14 Jonathan S. Spader and Roberto G. Quercia, *Mortgage Brokers and the Refinancing Transaction: Evidence from CRA Borrowers*, 10 JOURNAL OF REAL ESTATE FINAN. ECON. (2009).

call our account rep and explain the situation, okay, and he would tell us what probably was the best program that that consumer fit into." McDade Depo. at 55; see id. at 57. Similarly, Gregory Kundinger, another GreenPoint mortgage broker, rebutted Ms. Borrelli's speculative assertions that GreenPoint's mortgage brokers offered borrowers a full set of trade-offs to fit their individual needs. According to Mr. Kundinger, his firm did not offer consumers these trade-offs; instead, it "generally" offered only "zero point" loans. The consequence was that most of his company's income came from YSPs. Kundinger Depo. at 105-106. Thus, Mr. Kundinger's mortgage brokerage used zero point loans to exploit YSPs, which were not transparent to consumers and which GreenPoint freely offered.

2. GreenPoint Also Evaded Price Competition By Segmenting Markets Through Product Differentiation

Dr. Courchane argues that when the minority differentials in APRs are broken down according to eleven different loan types, those differentials are substantially reduced. Courchane Report at 6, 18-20. However, during the class period, GreenPoint and mortgage brokers used exactly this sort type of product differentiation – which resulted in a bewildering assortment of loans, many with different features – to make it difficult for consumers to comparison-shop.[15] By manufacturing an apples-to-oranges problem, GreenPoint made it easier to evade competitive pricing. GreenPoint should not be allowed to further benefit from this anti-competitive practice by fragmenting its disparate impact analysis according to these same eleven loan types.

Take, for example, the most common first-lien loan that GreenPoint sold to its Hispanic customers, which was a "Jumbo A AQ_PIG-3Yr/6Mo I.O. LIBOR ARM." Courchane Report at 19-20. This appears to be a hybrid interest-only adjustable-rate jumbo piggyback interest-only mortgage with a fixed initial interest rate for the first three years and a floating interest rate indexed to LIBOR[16] thereafter, adjusted every six months. The piggyback feature meant that the loan would be packaged with a second mortgage to eliminate the need for private mortgage insurance and reduce or negate any down payment requirement.

This loan product had several complex moving parts that made it hard for customers to compare its price to the price of other types of loans. For instance, consumers could not easily gauge the interest rate and monthly payments after the three-year fixed-rate period expired. At that point, the interest rate could go up depending on LIBOR, subject to a lifetime cap that GreenPoint only disclosed at closing. Moreover, if the initial fixed rate was an artificially low teaser rate, the rate could go up even more sharply on the rate reset date. Finally, the interest-only feature of the loan introduced added uncertainty by allowing customers to only make interest payments and defer principal payments for several years. Sometime later, however, borrowers would have to start paying the piper and start paying principal, further increasing their monthly payments substantially. All of these features made it more difficult and often well nigh impossible for

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15 Researchers at the University of North Carolina at Chapel Hill found, for instance, that borrowers who refinanced through mortgage brokers were more likely to receive adjustable-rate mortgages in general – with their more complex features – and high-cost ARMs in particular, than borrowers using retail lenders. Jonathan S. Spader and Roberto G. Quercia, *Mortgage Brokers and the Refinancing Transaction: Evidence from CRA Borrowers*, 10 JOURNAL OF REAL ESTATE FINAN. ECON. (2009).

16 LIBOR refers to the London Interbank Offered Rate and is a commonly used index for adjustable-rate mortgages.

borrowers to grasp the true price of the loan and compare it to other products with different combinations of features.[17]

Lenders such as GreenPoint heavily marketed interest-only ARMs like these because the initial minimum monthly payments were lower. During the class period, lenders commonly qualified borrowers for these loans based only on the initial minimum monthly payments because that way more borrowers could qualify for loans. This practice was especially common in states such as California, Arizona, and Nevada, with rapidly appreciating housing prices and higher proportions of Hispanic borrowers. Mortgage brokers gravitated towards interest-only ARMs because they could qualify borrowers more easily and thus more easily earn commissions on those loans. By consciously promoting a proliferation of complex loan products with incompatible terms, GreenPoint defeated comparison-shopping by consumers and made it easier for its mortgage brokers to overcharge customers for loans.

GreenPoint also structured its adjustable-rate mortgage products in ways that facilitated mortgage broker fraud. GreenPoint's ARMs featured a fixed-rate for an initial period, following by a floating rate for the remainder of the loan. The GreenPoint mortgage broker who served named plaintiffs Ana and Ismael Ramirez, for example, told them that they would get a fixed interest rate of 2% on their GreenPoint loan. The mortgage broker did not tell them, however, that that was just an initial rate on an adjustable-rate, not a fixed-rate, loan. Nor did the broker tell them that their rate would go up substantially after the initial period expired. Ana Ramirez Depo. at 18, 21, 23, 45-46, 52, 65-66; Ismael Ramirez Depo. at 17-19, 23. The GreenPoint mortgage broker for named plaintiff Jorge Salazar also assured him that he was getting a fixed-rate loan Salazar Depo. at 85, 88, 100-101.

G. The Named Plaintiffs Provided Accurate Documentation Of Their Incomes

Lastly, GreenPoint's expert Dr. Courchane asserts that named plaintiffs Ismael Ramirez and Jorge Salazar are not typical of the Class because they allegedly "submitted fraudulent applications." Courchane Report at 24. The record conclusively refutes Dr. Courchane's claim.

1. Ismael Ramirez

Ismael Ramirez and his wife, Ana Ramirez, applied together for their GreenPoint mortgage. Ms. Ramirez testified that she in fact provided documentary proof of their income to GreenPoint's mortgage broker. She handled the loan application process, not Mr. Ramirez. Ismael Ramirez Depo. at 16-17. Their GreenPoint mortgage broker was someone named Kathy Objio at First Call Mortgage Company. Kathy took the Ramirezes' loan application over the phone and filled in the loan application herself. Ana Ramirez Depo. at 18, 21, 53, 67-68; Ismael Ramirez Depo. at 15-16, 57-58. Ms. Ramirez testified that Kathy knew her husband was unemployed and that was why the Ramirezes were seeking to refinance to get a lower interest rate. Ana Ramirez Depo. at 45-46, 52, 59. The Ramirezes never saw their loan application until the closing. At the closing, the Ramirezes did not read the loan application; Kathy simply directed them where to sign it. Ana Ramirez Depo. at 61, 65, 67-68, 107-112; Ismael Ramirez Depo. at 15-16, 19-22, 25, 27-31, 57-58.

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[17] Ren S. Essene and William Apgar, Understanding Mortgage Market Behavior: Creating Good Mortgage Options for All Americans 18-21 (Joint Center for Housing Studies at Harvard University Working Paper, 2007).

On the phone, Kathy asked Ms. Ramirez for two years' worth of tax returns and their two most recent monthly bank statements. Ms. Ramirez gave originals of all of those documents to Kathy, who came to the Ramirezes' house to pick them up and later came back to return the documents. Ana Ramirez Depo. at 56-57. Later, Kathy told Ms. Ramirez that she did not need any more documents and that Ms. Ramirez would have to wait for a loan decision because they were processing all of the documents. Ana Ramirez Depo. at 57-58, 64.

Mr. Ramirez testified that he did not put false numbers on the loan application or provide them to the mortgage broker. Ismael Ramirez Depo. at 25-30, 57-58. To the contrary, Kathy filled out the loan application. The Ramirezes truthfully provided GreenPoint and its mortgage broker with all the documentation they needed to verify Mr. Ramirez's income. Their truthfulness and candor in providing these documents refutes Dr. Courchane's claim that Mr. Ramirez is not typical of the Class.

2. Jorge Salazar

Named Plaintiff Jorge Salazar obtained his GreenPoint loan through a mortgage broker named Jimmy at TLN Financial. Salazar Depo. at 75, 78-81. At Jimmy's request, Mr. Salazar provided him with truthful documentary proof of his income, including pay stubs, bank statements, and, Mr. Salazar believed, tax returns. Jimmy never asked Mr. Salazar how much he earned; instead, he just looked at Mr. Salazar's pay stubs. Salazar Depo. at 93-95, 98-100, 134-137. Mr. Salazar did not personally fill out his loan application; someone else did at TLN Financial. Salazar Depo. at 154. He did not see his loan application until TLN Financial had typed it up and handed it to him. Salazar Depo. at 102-106, 154.

Mr. Salazar testified that he was completely honest in his dealings with Jimmy and provided all the documents Jimmy asked for. Salazar Depo. at 106. Like the Ramirezes, Mr. Salazar truthfully provided GreenPoint and its mortgage broker with all the documentation they needed to verify Mr. Salazar's income. His truthfulness and candor in providing these documents refutes Dr. Courchane's claim that Mr. Salazar is not typical of the Class.

In conclusion, the record demonstrates that the costs of GreenPoint's mortgage brokers are not attributable to the borrowers' ethnicity or race. To the contrary, the price disparities in this case are a product of GreenPoint's deliberate policies and practices, which were common to the Class and allowed GreenPoint's mortgage brokers to overcharge black and Hispanic borrowers. These policies and practices included GreenPoint's discretionary pricing policy, risk-based pricing, secret rate sheets, and product differentiation. Finally, the facts refute allegations by GreenPoint's expert Dr. Courchane that two of the named plaintiffs engaged in fraud and thus are not typical of the Class.

Respectfully submitted,

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Patricia A. McCoy

APPENDIX A

PATRICIA A. McCOY
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EMPLOYMENT

Connecticut Mutual Professor of Law, 2010. George J. & Helen M. England Professor of Law, University of Connecticut School of Law, 2006-2010. Director of the Insurance Law Center, 2009-present. Professor of Law, 2002-06. Visiting Professor, Spring 2000.

- Have taught Banking Regulation, Securities Regulation, Consumer Finance Law, Business Organizations, Retirement Security Law, Regulation of Mutual Funds, Cybercommerce Law.

- Dean Search Committee (search coordinator); Faculty Appointments Committee; Chair, Personnel Action Committee Working Subcommittee; Academic Support Committee; Computer Committee; University Senate.

- Guest Lecturer, Hong Kong Polytechnic University, June 2007.

Honorary Guest Professor, University of International Business and Economics, School of Insurance, Beijing, China, 2007-date. Co-Chair, Law and Economics Program, 2008-date.

Visiting Scholar, Massachusetts Institute of Technology, Department of Economics, 2002-2003.

- Focus on behavioral economics, public finance, and corporate finance.

Professor of Law, Cleveland-Marshall College of Law, Cleveland State University, 2001-2002. Associate Professor of Law with tenure, 1997-2001. Assistant Professor of Law, 1992-1997.

- Faculty member, Summer Law Institute in St. Petersburg, Russia, Summers 1995 and 2002. Taught Comparative Financial Services Regulation.

- Guest Lecturer, St. Petersburg State University, Moscow State University, and Volgograd State University, Russia, Spring 1994.

Partner, Mayer, Brown, Washington, D.C., 1991-1992. Associate, 1984-1990. Summer associate, Summer 1983.

- Specialized in complex banking, securities fraud, and general business law litigation at the trial and appellate levels. Represented numerous *pro bono* plaintiffs in housing and employment discrimination cases in conjunction with the Washington Lawyers' Committee for Civil Rights.

- Named Pro Bono Attorney of the Year for 1991-1992 by the District of Columbia Bar.

Law Clerk to the late Hon. Robert S. Vance, United States Court of Appeals for the Eleventh Circuit, 1983-1984.

Summer associate, Shaw, Pittman, Potts & Trowbridge, Washington, D.C., Summer 1982.

Summer associate, U.S. Nuclear Regulatory Commission, Bethesda, Maryland, Summer 1981.

Earlier positions: Legal assistant, McCutchen, Doyle, Brown and Enersen, San Francisco, California (1979-1980); Legal assistant, Kansas Legal Services, Pottawatomi and Kickapoo Nations (1977-1979); Research analyst for U.S. Commissioner of Education Terrel H. Bell, Washington, D.C. (1974-1975); Intern, Rep. William Roy (D-Kan.), U.S. House of Representatives, Washington, D.C. (1974); Intern, Common Cause, Washington, D.C. (1973).

EDUCATION

Case Western Reserve University. Non-degree course work in mathematics, probability, and statistical analysis, 1998-2002.

University of California (Berkeley) School of Law. J.D. 1983.

- *Industrial Relations Law Journal* (now the *Berkeley Journal of Employment and Labor Law*). Editor-in-Chief, 1982-1983; Managing Editor, 1981-1982.

Ludwig Maximilians University (University of Munich) and Bavarian Film Academy, Germany. Graduate studies, 1976-1977.

- German Marshall Fund (Deutscher Akademischer Austauschdienst) Scholar.

Oberlin College. B.A. 1976, Government.

PUBLICATIONS

Editorships and Research Appointments

Member, Editorial Advisory Board, *The Journal of Accounting, Economics and Law – A Convivium*.

Lead Adjunct Research Scholar, National State Attorneys General Program, Columbia Law School.

Member, Editorial Advisory Board, Cambridge Series on Law, Finance, and Economics, Oxford University Press.

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Guest Author (with Kathleen C. Engel), *Credit Slips* blog, Dec. 11-15, 2006, www. creditslips.org/.

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OTHER PROFESSIONAL ACTIVITIES

James W. Cooper Fellow, Connecticut Bar Foundation, 2009.

Adviser, Congressional Oversight Committee on TARP (headed by Elizabeth Warren).

Adviser, Obama Transition Team, 2008.

Adviser, Obama Presidential Campaign, 2007-2008.

Member, Advisory Committee on Ford Foundation Subprime Crisis Project, Harvard University Joint Center for Housing Studies, 2008 (advising on study of the boom and bust of the subprime market).

Member, Blue Ribbon Committee, Harvard University Joint Center for Housing Studies, 2006-2007 (advising on study titled *Race or Risk: From Dueling Data to Systemic Solutions*, funded by the Ford Foundation).

Member, Demos: A Network for Ideas and Action, The Debt and Assets Working Group, January 2006 (sponsored by the Rockefeller Foundation).

Program Chair, Association of American Law Schools, Section on Financial Institutions and Consumer Financial Services, 2005.

Member, Research Committee, Center for Responsible Lending, Washington, D.C., 2005-present.

Consultant, Subprime Mortgage Database Project (in tandem with the National Consumer Law Center, funded by the Ford Foundation), 2004-present.

Member, Consumer Advisory Council, Federal Reserve Board of Governors, 2002-2004. Chair, Consumer Credit Committee, 2004-2005.

- Advised Federal Reserve governors and staff on needed reforms to federal consumer protection laws and regulations on home mortgages, credit cards, other consumer loans, real estate settlement procedures, credit reporting, lending discrimination, community reinvestment, financial privacy, and home mortgage data reporting.

Director, Connecticut Bar Foundation, 2008-date. Member, Audit and Finance Committees.

Director, Insurance Marketplace Standards Association, 2003-2008. Member, Audit Committee.

Director and Treasurer, Connecticut Fair Housing Center, 2004-2007. Member, Executive Committee.

Member, Research Working Group, National Consumer Law Center, 2003-2004.

Chair, Association of American Law Schools, Section on Financial Institutions and Consumer Financial Services, 2000-2001; Program Chair, 2006.

Consultant, Ohio Public School Finance Reform Project, 1999-2000.

Consultant on Bulgarian banking reforms for Chemonics International, Sofia, Bulgaria, May 1997.

Commentator on the draft of Part I of the Russian Civil Code under the auspices of the Institute for Reform in the Informal Sector (IRIS), University of Maryland, Spring 1994.

Director, Washington Council of Lawyers, 1986-1992.

Member, District of Columbia Bar (admitted 1984).

TESTIMONY AND EXPERT REPORTS

Expert for defendant title insurance company in *Mesa Bank v. Alexander*, No. CV2008-019063 (Maricopa County, Arizona, Superior Court): filed expert report in mortgage fraud case.

Expert for plaintiff borrowers in *In re Ameriquest Mortgage Co. Mortgage Lending Practices Litigation*, MDL No. 1715, Lead Case No. 05-cv-07097 (N.D. Ill.): filed expert report in support of settlement and distribution plan.

Testified before the Subcommittee on Securities, Insurance, and Investment of the U.S. Senate Committee on Banking, Housing, and Urban Affairs at hearing titled "Securitization of Assets: Problems and Solutions," October 7, 2009, Washington, D.C.

Expert for defendant title insurance company in *Rubin v. Coppenger et al.*, No. CV-2006-07-4229 (Summit County, Ohio, Court of Common Pleas): filed expert report in mortgage fraud case.

Testified before the Subcommittee on Domestic Monetary Policy and Technology of the U.S. House Committee on Financial Services at hearing titled "Regulatory Restructuring: Safeguarding Consumer Protection and the Role of the Federal Reserve," July 16, 2009, Washington, D.C.

Expert for defendant title insurance company in *Countrywide Home Loans, Inc. vs. LandAmerica American Title Company et al.*, Cause No. 07-14386-I (Dallas County, Texas, District Court: 162d Jud. District): provided background consultation in mortgage fraud case.

Expert for defendant title insurance company in bankruptcy proceeding titled *Credit Suisse Financial Corporation, et al. v. Parish Marketing & Development Corporation, et al.*, C.A. 0:08-cv-01038-DWF-SRN, Claim #F34052233, F34052083, and F34052229 (D. Minn.): provided background consultation in mortgage fraud case.

Testified before the U.S. Senate Committee on Banking, Housing, and Urban Affairs at hearing titled "Consumer Protections in Financial Services: Past Problems, Future Solutions," March 3, 2009, Washington, D.C.

Expert witness for defendant title insurance companies in *Countrywide Home Loans, Inc. v. National Land Title of Tarrant, Inc. et al.*, Cause No. 06-11971-H (Dallas County, Texas, District Court: 160th Jud. District) and related litigation: filed expert report in mortgage fraud case.

Testified before the Committee on Banks, Connecticut General Assembly, in hearing on mortgage lending bills, February 28, 2008.

Expert witness for defendant title insurance companies in *Ohio Savings Bank v. Commonwealth Land Title Insurance Co. et al.*, Cause No. 2006-32092 (Harris County, Texas, District Court: 295th Jud. District): filed expert report in mortgage fraud case.

Expert witness for defendant title insurance company in *ABN AMRO Mortgage Group, Inc. v. The Mortgage Zone, Inc.*, Case No. 05-74150 (E.D. Mich.): filed expert report in predatory mortgage lending case.

Expert witness for defendant title insurance company in *ABN-AMRO Mortgage Group, Inc. v. New Partners Mortgage Company*, Case No. 1:05 CV 1167 (N.D. Ohio): filed expert report in predatory mortgage lending case.

Expert witness for plaintiffs in *State of Connecticut v. Approved Mortgages, Inc. et al.*, Docket No. HHD-X09-CV-05-40097378-S (Connecticut Superior Ct., Jud. District of Hartford): testified at expert deposition in predatory mortgage lending case.

Expert witness for plaintiff in *Devlin v. Northeast Mortgage Corp.*, original Docket No. X01-CV-03-0178670-S (Connecticut Superior Ct., Jud. District of Waterbury), later transferred to U.S. Bankruptcy Court: testified at expert deposition in predatory mortgage lending case.

Testified before the Federal Reserve Board in hearings on the Home Ownership Equity and Protection Act, Atlanta, Georgia, July 11, 2006.

Expert witness for plaintiffs in *State of Connecticut v. GRZ, LLC*, Docket No. CV 03 0829985S (Connecticut Superior Ct., Jud. District of Waterbury Complex Litigation): filed expert report and testified at expert deposition in predatory mortgage lending case.

Expert witness for plaintiff in *Heaton v. Monogram Credit Card Bank of Georgia*, Civil Action No: 98-1823 c/w 99-2603 Section: "J" (1) (U.S. District Court for the Eastern District of Louisiana): filed expert report in challenge to a claim of federal preemption by a credit card bank.