

2007 WL 2321120 (D.Mass.) (Trial Pleading)  
United States District Court, D. Massachusetts.

Richard TURNLEY III, Baron H.C. Finlayson, Coleen Alecia Hinds, Mark - Anthony Brown and Timothy Johnson II, on behalf of themselves and all others similarly situated, Plaintiffs,

v.

BANC OF AMERICA INVESTMENT SERVICES, INC., and Bank of America, N.A., Defendants.

No. 07 CA 10949 NG.

May 17, 2007.

**Class Action Complaint**

Bernstein Litowitz Berger & Grossmann LLP, Darnley D. Stewart (DS-0835), Jeremy P. Robinson, 1285 Avenue of the Americas, New York, NY 10019, Tel: (212) 554-1400, Fax: (212) 554-1444.

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Messing, Rudavsky & Weliky, P.C., Local Counsel, Ellen J. Messing (BBO No. 343960), 50 Congress St., Suite 1000, Boston, MA 02109, Tel: (617) 742-0004, Fax: (617) 742-1887.

Magistrate Judge Bowler.

***PLAINTIFFS DEMAND A TRIAL BY JURY***

Plaintiffs Richard Turnley, III, Baron H.C. Finlayson, Coleen A. Hinds, Mark-Anthony Brown, and Timothy Johnson II, on behalf of themselves and all other similarly situated employees and former employees of Banc of America Investment Services, Inc., and Bank of America, N.A., by their attorneys, Bernstein Litowitz Berger & Grossmann LLP, Major Khan LLC, and Messing, Rudavsky & Weliky, P.C., allege as follows:

***PRELIMINARY STATEMENT***

1. This is a class action brought by five individual plaintiffs on behalf of themselves and other similarly situated individuals against Banc of America Investment Services, Inc. (“BAI” or the “Company”) and Bank of America, N.A. (“BOA”). BAI, a subsidiary of BOA, and BOA systematically discriminate against African-American employees of BAI and BOA, including but not limited Financial Advisors (“FA’s”) and Premier Bankers (“PB’s”), on the basis of race with respect to compensation, promotion, mentoring, training, resources and business opportunities, and other terms and conditions of employment in violation of the Civil Rights Act of 1866, as amended in 1991, 42 U.S.C. § 1981 (“Section 1981”), and Massachusetts General Law Chapter 151B (“Chapter 151B”).

2. As set forth below, BAI and BOA have regularly discriminated against African-American FA’s and PB’s with respect to territorial and work assignments; training; and access to financial accounts. Class members have largely been partnered only with other African-American FA’s and PB’s and have been disproportionately “steered” to sales territories which are largely minority and/or low net worth. This practice has significantly and adversely impacted the job success, career and income of plaintiffs and the Class. When they have complained about this pattern or practice, plaintiffs have been told that BAI and BOA believe that BAI and BOA clients are more “comfortable” dealing with sales professionals of their own race.

3. Class members are also denied promotions in favor of less qualified Caucasian employees and entirely denied promotion to certain positions. BAI’s and BOA’s failure to promote qualified African-American employees to higher levels results in a

“glass ceiling” preventing African-Americans from achieving upward advancement to senior levels at BAT and BOA.

4. In addition, Class members are provided with fewer resources, support and professional opportunities compared with their Caucasian co-workers. This includes, without limitation: training, allocation of accounts and administrative support services. This form of discrimination handicaps Class members in their efforts to advance within the system at BAI and BOA.

5. These discriminatory practices represent an ongoing systematic, company-wide pattern and practice, rather than a series of isolated incidents. BAI’s and BOA’s written and unwritten policies and practices subject plaintiffs and Class members to ongoing disparate impact and disparate treatment based on their race. Moreover, this pattern and practice of discrimination has been furthered by subjective decision-making by a predominantly Caucasian management structure and constitutes a continuing violation of Section 1981 and Chapter 151B.

6. Absent injunctive relief, BAI and BOA will continue their unlawful practices to the detriment of the Class. Class-wide injunctive and declaratory relief is necessary to redress BAI’s and BOA’s unlawful conduct.

### *PARTIES*

7. Plaintiff Richard Turnley, III is an African-American citizen and resident of the State of Georgia. He was employed as a Financial Advisor in the Peachtree St., Atlanta office of BAI from on or about October 13, 2003 until November 17, 2006.

8. Plaintiff Baron Finlayson is an African-American citizen and resident of Atlanta, Georgia. He has been employed as a Financial Advisor in the Peachtree St., Atlanta office of BAI since August 12, 2002.

9. Plaintiff Coleen Alecia Hinds is an African-American citizen and resident of Duluth, Georgia. Ms. Hinds was employed as a Premier Banker with BOA’s Premier Banking & Investments Division at 3414 Peachtree St. Atlanta, Georgia from December 13, 2004 through June 24, 2006.

10. Plaintiff Timothy Johnson II is an African-American citizen and resident of St. Louis, Missouri. Mr. Johnson was employed as a Financial Advisor in BAI’s office at 7800 Forsyth Blvd., Clayton, Missouri from February 24, 2006 until March 12, 2007.

11. Plaintiff Mark-Anthony Brown is an African-American citizen and resident of Dallas, Georgia. Mr. Brown was employed as a Financial Advisor in the (i) Fort Lauderdale, Florida; (ii) West Palm Beach, Florida; and (iii) Atlanta, Georgia offices of BAI from December 1, 2001 through August 31, 2006.

12. Defendant Banc of America Investment Services, Inc. (“BAI”) is a subsidiary of Bank of America, N.A. (“BOA”), a corporation formed under the laws of the State of Delaware. BAI is headquartered in Plantation, Florida and maintains its principal place of business in this district at 100 Federal St., Boston, Massachusetts. BAI, part of the Global Wealth & Investment Management division of BOA, is a financial services and investment services firm that employs approximately 7000 investment representatives and financial advisors in 30 states and Washington D.C. For purposes of this Complaint, the term “BAI” includes Banc of America Investment Services, Inc., and its predecessors, including NationsBanc Investments, Inc., NationsBanc Securities, Inc., and NCNB Securities, Inc.

13. Defendant Bank of America, N.A. (“BOA”) is one of two banking subsidiaries of Bank of America Corporation (“Bank of America”), and represents the surviving entity following a merger with Fleet National Bank on June 13, 2005. Bank of America, which is headquartered in Charlotte, North Carolina, is a worldwide financial services organization with business groups offering wealth management, investment banking, private banking, securities, and asset management services throughout the United States. Bank of America conducts its operations through its bank and non-bank subsidiaries operating in 30 states, including Massachusetts. Bank of America employs approximately 175,000 people and, as of 2006, had sales of more than \$73 billion dollars.

***JURISDICTION AND VENUE***

14. Plaintiffs invoke the jurisdiction of this Court pursuant to 28 U.S.C. §§ 1343(3) and 1343(4), which confer original jurisdiction upon this Court in a civil action to recover damages or to secure equitable relief under any Act of Congress providing for the protection of civil rights; and under 42 U.S.C. § 1981. This Court also has supplemental jurisdiction of plaintiffs' claims arising under Chapter 151B.

15. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b) and (c). Members of the Class reside in Massachusetts and throughout the United States. Defendant BAI's principal place of business is located in this District and defendant BOA has branch offices, conducts business and can be found in the District of Massachusetts.

***CLASS ACTION ALLEGATIONS***

16. Plaintiffs bring this action pursuant to Fed.R.Civ.P. 23(a), (b)(2), and (b)(3) on behalf of a Class of African-American Financial Advisors and Premier Bankers employed by BAI or BOA as part of their Global Wealth & Investment Management business in the United States at any time from April 1, 2003 to the present. The individual plaintiffs are members of the Class they seek to represent. Plaintiffs reserve the right to amend the definitions of the Class based on discovery and/or legal developments.

17. The members of the Class identified herein are so numerous that joinder of all members is impracticable. As of the filing of this Complaint, BAI has approximately 3000 Financial Advisors and BOA 4400 Premier Bankers located throughout the United States. Although the precise number of African-American Financial Advisors and Premier Bankers is currently unknown, it is far greater than can be feasibly addressed through joinder.

18. There are questions of law or fact common to the Class, including, without limitation:

- a. whether BAI's and BOA's policies, practices and procedures discriminate against plaintiffs and the Class;
- b. whether BAI and BOA have a policy or practice of assigning African-American FA's and PB's to inferior positions when compared to their Caucasian counterparts;
- c. whether BAI and BOA have a policy or practice of giving African-American FA's and PB's less favorable job assignments than comparable Caucasian employees, thus preventing Class members from advancing in their professional careers;
- d. whether BAI and BOA have a policy or practice of providing lower compensation to African-American employees compared with similarly situated Caucasian employees;
- e. whether BAI and BOA African-American banking professionals have been promoted at rates that are disproportionately low compared to rates at which Caucasian professionals have been promoted;
- f. whether BAI and BOA have a policy or practice of providing fewer resources, support and professional opportunities to African-American employees compared with similarly situated Caucasian employees;
- g. whether BAI and BOA engage in the practice of "racial steering" in their decisions as to promotion, partnership and territorial assignments, account assignments, business opportunities, and other terms and conditions of employment;
- h. whether BAI and BOA have a policy or practice of favoring the partnership of African-American FA's with African-American PB's;
- i. whether BAI and BOA have a policy or practice of favoring the partnership of Caucasian FA's with Caucasian PB's;
- j. whether BAI and BOA have a policy or practice of favoring the assignment of African-American FA's and/or PB's to territories and banking centers that are primarily African-American and/or low net worth;

- k. whether BAI and BOA have a policy or practice of favoring the assignment of Caucasian FA's and/or PB's to territories and banking centers that are primarily Caucasian and/or high net worth;
- l. whether BAI and BOA have a policy or practice of disproportionately failing to assign African-American FA's and/or African-American PB's accounts, including but not limited to, the accounts of departing FA's and/or PB's when compared to their Caucasian counterparts;
- m. whether BAI and BOA have a policy or practice of disproportionately favoring Caucasian FA's and/or Caucasian PB's in the assignment of accounts, including but not limited to the accounts of departing FA's and/or PB's when compared to their African-American counterparts;
- n. whether BAI and BOA knowingly engage in the discriminatory acts and practices alleged herein;
- o. whether the employment policies and practices of BAI and BOA at issue have adversely affected their African-American employees under either a disparate treatment or disparate impact theory;
- p. whether equitable relief is warranted and the nature of such relief;
- q. whether BAI and BOA's discriminatory employment practices constitute a continuing violation; and
- r. whether BAI's and BOA's conduct warrants an award of punitive damages.

19. Plaintiffs' claims are typical of the claims of the members of the Class. The individual plaintiffs have been subjected to each form of the discriminatory common operating policies and practices at BAI and BOA. The policies and practices complained of in this Complaint affect the entire Class.

20. Plaintiffs will fairly and adequately represent and protect the interests of the Class. Plaintiffs have no conflict with the Class members and have retained counsel who are experienced in class action litigation and cases of this nature.

21. This action is properly maintainable under Rule 23(b)(2) because BAI and BOA have acted and/or refused to act on grounds generally applicable to the Class, making appropriate final injunctive or declaratory relief with respect to the Class as a whole. The Class members are entitled to injunctive relief to end BAI and BOA's common, uniform, unfair and discriminatory policies and practices.

22. Class certification is also appropriate pursuant to Fed.R.Civ.P. 23(b)(3) because common questions of fact and law predominate over any questions affecting only individual members of the Class, and because a class action is superior to other available methods for the fair and efficient adjudication of this litigation. The Class members have been damaged and are entitled to recovery as a result of BAI's and BOA's common, uniform, unfair, and discriminatory policies and practices. BAI and BOA have computerized account data, payroll and personnel data that will make calculation of damages for specific Class members relatively simple. The propriety and amount of punitive damages are based on the conduct of the defendants, making these issues common to the Class.

#### ***GENERAL POLICIES OR PRACTICES OF DISCRIMINATION***

23. Defendant BAI is a registered broker dealer and non-bank subsidiary wholly owned by defendant BOA, the largest consumer and small business bank in the United States and one of the largest financial services firms in the world. BAI offers a full range of investment products, accounts, and services for individual investors including full-service and self-directed brokerage services. It serves more than one million customers through a network of 3,600 investment representatives and more than 2200 financial advisors. BAI's main office is located at 100 Federal St., Boston, Massachusetts, 02110.

24. Plaintiffs charge that BAI and BOA have engaged in systematic and pervasive race, color, and/or national origin discrimination. Despite employing a large number of employees, BAI's and BOA's workforces are not diversified by race,

color, or national origin, and Caucasian employees dominate upper-level and higher-paying positions within both companies.

25. During the course of plaintiffs' employment, BAI and BOA regularly discriminated against plaintiffs and other African-American employees in various ways; including but not limited to hiring, promotion, compensation, territorial/work assignments, training, partnerships/workplace networks/teams, access to financial accounts/business, departing employee account assignments, distribution of business support and office resources, and application of company policies/procedures. This discrimination has violated and continues to violate the Civil Rights Act of 1866 (42 U.S.C. § 1981), and applicable State and local anti-discrimination laws. In all of the aforementioned areas, BAI and BOA have consistently favored Caucasian employees over African-American employees.

26. BAI's and BOA's written and unwritten policies concerning and including, but not limited to, hiring, promotion, compensation, territorial/work assignments, training, partner ships/workplace networks/teams, access to financial accounts/business, departing employee account assignments, distribution of business support and office resources, and application of company policies/procedures were not applied uniformly or fairly. On the contrary, these decisions were often based on management's subjective and racially biased decision-making.

27. BAI's and BOA's pattern and practice of discrimination includes, but is not limited to, "racial steering." Racial steering occurs when BAI and BOA regularly engage in a business practice of partnering Financial Advisors with Premier Bankers and assigning those partnerships to certain sales territories. The general purpose behind the practice of partnering FA's with PB's is for PB's to refer their BOA clients to their FA partners so that the FA's - and BAI - can get that potentially lucrative business. The idea is the PB's will provide these clients with banking services, and the FA's will provide these clients with investment services. The Financial Advisors at BAI depend on these referrals for their business because virtually all indicia of success, advancement, and achievement at BAI and BOA are based on the total dollar amount of assets a Financial Advisor manages and the amount a Premier Banker has produced.

28. When a PB is partnered with a FA, they are assigned to cover specific geographic territories and/or banking centers. This partnership practice is dependent upon the PB referring his/her BOA clients to the FA, including those originating from within the specifically assigned territories/banking centers.

29. Under this business model, BAI and BOA regularly and knowingly engage in racial steering. Indeed, BAI and BOA have engaged in a pattern and practice of favoring the partnership of minority FA's with minority PB's. Furthermore, once the minority PB's and FA's are partnered, BAI and BOA almost invariably assign the minority partnerships to geographic territories composed primarily of minority clients. BAI and BOA are aware that these territories are composed of minority clients who are low net-worth as compared with the primarily non-minority clients in certain other geographic areas but have said that they believe their clients to be more "comfortable" with sales representatives of their own race. As a result of this discriminatory practice by BAI and BOA, African-Americans face greater difficulty in developing their business, careers and income.

30. Conversely, BAI and BOA have engaged in a pattern and practice of favoring the partnership of Caucasian FA's with Caucasian PB's, and assigning these Caucasian FA-PB partnerships geographic territories composed primarily of non-minority Caucasian clients. BAI and BOA know that these territories are composed of primarily Caucasian clients and that these Caucasian clients are high net-worth as compared with the primarily minority clients in certain other geographic territories. As a result of this discriminatory practice by BAI and BOA, Caucasians face less difficulty in developing their business, careers and income.

31. In the limited instances when BAI and BOA have partnered a Caucasian with an African-American or assigned an African-American to a non-minority territory, they have done so on a purely limited-duration basis. This occurs for purposes of temporarily "parking" that Caucasian FA/PB or territory for internal reasons; subsequently, after a short period of time, BAI and BOA will re-assign that Caucasian FA/PB or territory to other Caucasians.

32. An additional effect of these time-limited "parking" arrangements is that African-American FA's, unlike Caucasian FA's, are invariably subjected to a high turnover rate with respect to both the PB's they are partnered with and the territories they are assigned. This further limits the ability of African-American FA's to develop their business, careers and income when compared to Caucasian FA's. Caucasian FA's are not subjected to such high turnover.

33. This high turnover rate has also resulted in African-American FA's, unlike their Caucasian counterparts, regularly being partnered with junior, less experienced and/or problematic PB's.

34. BAI's and BOA's nationwide account allocation policies and practices discriminate against African-Americans because they permit excessive subjectivity by management in account assignment and the allocation of business opportunities. This is a uniform practice across BAI's and BOA's offices. Thus, managers distribute accounts, referrals, leads, call-ins, walk-ins, and other business opportunities to the FA's and PB's based on management's biased personal preferences.

35. By entrusting these managers, virtually all of whom are Caucasian, with undue discretion in these matters, BAI and BOA maintain a system whereby managers apply their own personal preferences and biases in making allocation decisions in a way that systematically disadvantages African-Americans and limits their compensation.

### ***ALLEGATIONS OF THE INDIVIDUAL PLAINTIFFS***

#### ***Richard Turnley's Claims***

36. Plaintiff Richard Turnley began his employment with BAI on October 13, 2003 as an FA in the office located at 600 Peachtree St., Atlanta, GA 30308. Prior to joining BAI, Mr. Turnley had 14 years experience in the financial services industry, including ten successful years at Smith Barney and more than three years at Wachovia Bank.

37. Mr. Turnley has been a victim of the racial discrimination and steering described above. For instance, when Mr. Turnley began his employment with BAI, he was temporarily assigned to - or more accurately, "parked with" -- a Caucasian PB, Terry Williams. Terry Williams was an experienced PB with an established book of business derived from mostly high net-worth Caucasian clients located primarily in mid-town Atlanta. After just two months, however, Mr. Turnley's Caucasian manager, Cliff Ingram, terminated this partnership and assigned Mr. Turnley to a partnership with an African-American PB name Chris Williams. PB Williams was assigned to geographic territories in Decatur/South Dekalb County that were primarily African-American and low net-worth. The FA assigned to Chris Williams prior to Mr. Turnley was also an African-American.

38. Mr. Ingram made this change fully aware that PB Terry William's established status would have helped Mr. Turnley grow his business and that the limitations of PB Chris William's territories and other associated difficulties would only hinder Mr. Turnley's ability to succeed.

39. After Cliff Ingram terminated Mr. Turnley's partnership with Terry Williams, he partnered Mr. Williams with a Caucasian FA, Justin Zegalia. When Mr. Turnley voiced his concern about these changes to Cliff Ingram, Mr. Ingram took no action.

40. In or about the first quarter of 2005, PB Chris Williams left the employment of BAI. At this time, Mr. Turnley was partnered or "parked" with a Caucasian PB, Kevin Glass, who had an established book of business in primarily Caucasian high net-worth territories in the Buckhead area of Atlanta. Contrary to how the BAI/BOA system was supposed to work, however, Mr. Glass did not refer any of his clients to his "partner," Mr. Turnley. Instead, with the full knowledge of senior management, Mr. Glass referred his clients to Caucasian FA's who were not even in partnership with him. Rather than taken corrective action against Mr. Glass for this discriminatory practice -- which was at odds with BAI's FA-PB partnership model - BAI elected to do nothing.

41. In or about the third quarter of 2005, after just two to three months "partnership" with Mr. Turnley, Mr. Glass terminated his partnership with Mr. Turnley and moved to another city. Shortly thereafter, consistent with its pattern and practice, BAI again partnered Mr. Turnley with another African-American PB, Glen Caldwell.

42. Mr. Turnley and Mr. Caldwell initially believed they would be permitted to continue working in the high net-worth and primarily Caucasian territory of Buckhead to which Mr. Turnley had been briefly assigned with Mr. Glass. However, BAI

removed this high net-worth Caucasian territory from the African-American partnership and reassigned it to a Caucasian FA-PB partnership.

43. Mr. Turnley and Mr. Caldwell were instead assigned to the same African-American, low net-worth territory that Mr. Turnley previously had been assigned to with African-American PB Chris Williams. At this point, Mr. Turnley felt he had no choice but to terminate his employment with BAI, which he did on November 17, 2006.

44. BAI also discriminated against Mr. Turnley with respect to promotion. In the fall of 2004, Mr. Turnley inquired about and sought the position of Sales Manager from his Manager Cliff Ingram. Mr. Ingram informed Mr. Turnley that he was not qualified as he was not doing enough "fee-based business." BAI, however, subsequently hired a Caucasian, Andy Gillenson, who had worked at a discount broker at Quick & Reilly, (a non fee-based position), to fill the position of Sales Manager. During his first week at BAI, while speaking with Mr. Turnley, Mr. Gillenson stated that he had *no* fee-based business, and in fact had, at that very moment, a fee-based business study manual in his hand.

45. In mid-2005, Mr. Turnley sought a position as a client manager in BOA's private banking division. Again, he was not selected for this position.

46. Support and mentoring by senior managers is also critical to the success of FA's. Managers Cliff Ingram and Andy Gillenson, both of whom are Caucasian, routinely visited Caucasian FA's and provided them guidance, support and mentoring. They did not do so for Mr. Turnley and other African-American FA's.

47. BAI also discriminates in its application of resources and support, favoring Caucasian FA's over African-American FA's. For example, FA's require the assistance of licensed Sales Assistants. Sales Assistants are often initially hired without their licenses and subsequently acquire their license on the job. Sales Assistants who work for African-American FA's are typically taken away from African-American FA's as soon as they acquire their licenses and then reassigned to Caucasian FA's. This has resulted in a disparately high turnover of Sales Assistants for African-American FA's which has negatively impacted their business, compensation and careers. During Mr. Turnley's tenure with BAI, he had no less than *seven* different Sales Assistants.

48. BAI also engages in discriminatory behavior, including racial steering, with respect to the reassignment of accounts of departing FA's. When an FA leaves BAI, that FA's accounts are reassigned to remaining FA's. Such reassignments play a significant role in a FA's job success, career growth and income.

49. BAI has engaged in a pattern and practice of reassigning a majority of the largest and most promising accounts of departing Caucasian FA's to remaining Caucasian FA's. To the limited extent that a departing Caucasian FA's accounts have been reassigned to an African-American FA, they were few, small and generally not promising accounts.

50. For example, at or around the end of 2005, two Caucasian FA's in the Atlanta office, Mack McGrew and Dunbar Harrison, left BAI. McGrew and Harrison's accounts, totaling approximately \$300 million in assets, were assigned to FA's Steve Burroughs, Janis Jones, Heather Buck and Frank Pittman, all of whom are Caucasian.

51. BAI's discrimination against African-Americans is so pervasive that minority FA's are even typically denied access to the accounts of departing African-American FA's. For instance, shortly after Mr. Turnley left BAI, a remaining African-American FA sought to have some of Mr. Turnley's fee-based accounts assigned to him. Mr. Turnley later learned that this African-American employee was told that Mr. Turnley had no fee-based accounts - which was false.

52. All of the foregoing discriminatory practices by BAI have significantly and adversely impacted Mr. Turnley's job success, career and income.

#### ***Baron Finlayson's Claims***

53. Plaintiff Baron Finlayson is a 46 year-old African-American Financial Advisor at BAI. Mr. Finlayson began his employment with BAI on August 12, 2002 as a Financial Advisor in the office located at 600 Peachtree St., Atlanta, GA

30308.

54. Prior to joining BAI, Mr. Finlayson was employed by First Union Corporation as a trader and analyst. Mr. Finlayson has over twenty years experience in the financial services industry.

55. Like Mr. Turnley, Mr. Finlayson has been a victim of BAI's pattern and practice of racial steering. Shortly after completing his training program in late 2002, Mr. Finlayson was assigned to territories in South West Atlanta. These territories were primarily African-American and low net-worth.

56. Approximately a year later, in August/September 2003, upon BAI and BOA embarking on their new "partnership" structure, Mr. Finlayson was assigned to an African-American PB, Joyie Gibson. In fact, Mr. Finlayson was required by BAI to share his partnership with Ms. Gibson with another African-American FA, Tyrone Johnson.

57. The Finlayson-Gibson partnership was assigned territories located in South West Atlanta. These territories were primarily African-American and low net-worth. Because Mr. Finlayson and Ms. Gibson were limited to only these African-American low net-worth territories, their business, careers and compensation suffered.

58. After approximately six months, PB Gibson was partnered exclusively with African-American FA Tyrone Johnson.

59. On or about January 2004, because Mr. Finlayson was now without a PB, BAI "parked" a recently graduated, inexperienced Caucasian PB, Matthew Pietzak, with Mr. Finlayson. After just a few months, BAI permitted Finlayson's partnership with Pietzak to be terminated, and Pietzak was then partnered with a Caucasian FA and assigned territories in North Atlanta. These territories were primarily Caucasian and high net-worth.

60. In or about September 2004, Mr. Finlayson was assigned to new territories. These territories were located in East Atlanta/Lithonia and were again primarily African-American and low net-worth.

61. At this same time, Mr. Finlayson was partnered with a new PB, Angela Clayton, who was an African-American. After approximately six months, PB Clayton ended her employment with BAI.

62. After Ms. Clayton's departure, BAI again "parked" a Caucasian PB, Eileen Burns, and her Caucasian high net-worth client portfolio, with Mr. Finlayson. Soon, after only approximately five months time, BAI terminated Mr. Finlayson's partnership with Ms. Burns and his access to her high net-worth Caucasian client portfolio.

63. Subsequently, in or around January 2006, BAI "parked" another Caucasian PB, Jason Lauck, with Mr. Finlayson. After just two weeks, however, BAI permitted Lauck to terminate his partnership with Mr. Finlayson.

64. Mr. Finlayson was subsequently assigned to PB plaintiff Coleen Hinds, who is African-American. Again, the Finlayson-Hinds partnership was assigned the primarily African-American low net-worth territories in East Atlanta/Lithonia.

65. PB Hinds left BAI on June 24, 2006.

66. On or about September 11, 2006, Mr. Finlayson, who had been without a PB since Ms. Hinds' departure in June 2006, met with his manager, Andy Gillenson, and the manager of PB's in the Atlanta market, Paige Green, both of whom are Caucasian. During this meeting, Paige Green informed Mr. Finlayson that they were interested in partnering him with a new African-American PB, Michael Green. Michael Green had been partnered, for approximately four to six months, with a Caucasian FA, Larry Smith, who was assigned Caucasian high net-worth territories South Georgia.

67. According to Paige Green, the reason that BAI wanted to terminate Michael Green's partnership with Larry Smith and partner him with Mr. Finlayson was that BAI believed that Caucasian FA Larry Smith's Caucasian clients were "uncomfortable" working with Mr. Green.

68. During the foregoing four-year period, Mr. Finlayson was subjected to territorial reassignments on *six different* occasions by BAI. During this same period, Mr. Finlayson was subjected to PB partnership changes *seven* times. Each time he was



partnered with an African-American PB, he was assigned to a largely African-American, low net-worth territory. Caucasian FA's were not subjected to such practices.

69. All of the foregoing discriminatory practices by BAI have significantly and adversely impacted Mr. Finlayson's job success, career and compensation.

#### ***Coleen Hinds' Claims***

70. Plaintiff Coleen Hinds is a 30 year-old African-American former Premier Banker at BOA.

71. Ms. Hinds began her employment with BOA on December 13, 2004 as a Premier Banker at BOA's Premier Banking & Investments office located at 3414 Peachtree Rd., Atlanta, GA 30326. Ms. Hinds resigned from BOA on June 24, 2006.

72. Prior to joining BAI, Ms. Hinds was successfully employed by J.P. Morgan and Citibank, and had over ten years experience in the financial services industry.

73. Like Mrs. Turnley and Finlayson, Ms. Hinds was a victim of racial discrimination and racial steering on the part of BAI and BOA. Following the completion of her training program in February 2005, Ms. Hinds was partnered with an African-American FA, Clark Cesar. They were assigned and then restricted to branches/territories located in South East Atlanta, which is primarily African-American and low net-worth. This severely limited Ms. Hinds' ability to develop her business. Despite repeated complaints by Ms. Hinds to her Caucasian supervisor, David Simmons, BOA made no change with regard to this racial steering. Disappointed with the situation, FA Cesar left BAI in or about December of 2005. After Mr. Cesar left, Ms. Hinds was left without an FA partner from December 2005 until February of 2006.

74. In or about February 2006, Ms. Hinds was finally partnered with plaintiff Baron Finlayson, who is also African-American. Ms. Hinds was also again assigned branches/territories in East Atlanta made up of primarily low net-worth African-Americans. This further negatively impacted Ms. Hinds' job success and income and was also part of BOA's continuing retaliation against her for complaining about BOA's discriminatory practices. Nonetheless, Ms. Hinds continued to voice her concerns to her supervisor, Glen Romm.

75. As part of its continuing retaliation against Hinds for her complaints, Mr. Romm issued Ms. Hinds a pretextual written warning in or about May of 2006.

76. Ms. Hinds asked to be transferred to another position within BOA. While Mr. Romm indicated that was fine - and, indeed, offered to "help" - he rejected every position that Ms. Hinds suggested. Ultimately, he said, she could not obtain any new sales position at BOA because she was on written warning.

77. Ms. Hinds, believing that she had no other choice, left BOA on June 24, 2006.

78. All of the foregoing discriminatory practices by BOA have significantly and adversely impacted Ms. Hinds' job success, career and compensation.

#### ***Mark-Anthony Brown's Claims***

79. Plaintiff, Mark-Anthony Brown, is a 34 year-old African-American former Financial Advisor at BAI.

80. Mr. Brown began his employment with BAI on August 10, 1998 as a registered sales assistant but left on or about September 1, 2000 because BAI refused to hire him as a Financial Advisor. According to the Company, Mr. Brown required five years of experience and an established book of business or to be "sponsored" by an already "established" Financial Advisor.

81. BAI ultimately agreed to hire Mr. Brown as a Financial Advisor after a BAI Financial Advisor, Aaron Parthemer, agreed to “sponsor” him. At that time, Parthemer had a business relationship with two African-American BOA Premier Bankers named Sylvester King and Paul Wiggins.

82. In or about October 2002, Mr. Brown moved his family to West Palm Beach, Florida. Because there were no African-American Premier Bankers in the West Palm Beach market, Mr. Brown was partnered with a Caucasian PB named Sandra Carter.

83. Despite being partnered with Mr. Brown and being required by Company policy to refer all eligible clients that originated from their shared territories, Ms. Carter told Mr. Brown that she would not refer any clients to him. After Mr. Brown raised an issue with this, Ms. Carter began to refer some of her clients to him, but only those clients who were not interested in a long-time advisory relationship, and those clients who had already indicated they were leaving BOA. While Ms. Carter refused to refer any clients to Mr. Brown, she did refer her clients to three other Caucasian Financial Advisors in the West Palm Beach area. BAI and BOA knowingly permitted Ms. Carter to engage in this discriminatory practice.

84. Because of Ms. Carter’s refusal to refer him her clients, Mr. Brown was forced to sustain himself with referrals he received from Sylvester King and clients he developed on his own in the Fort Lauderdale market.

85. Because of the ongoing discrimination he was facing in Florida, and BAI and BOA’s refusal to remedy the situation, Mr. Brown decided to move - again - to Atlanta, Georgia in September 2005.

86. Anxious to properly and smoothly transition to his new territory, Mr. Brown notified the Atlanta Marketing Manager, Cliff Ingram, as early as October 2005 that he would be moving to Atlanta in January 2006.

87. Mr. Brown made clear to both Mr. Ingram as well as his West Palm Beach Manager, Scott Chaison, that he would retain his Florida book of business while he developed new business in Atlanta. This was essential because it would allow Mr. Brown to continue to earn income while he transitioned to and developed his new territory.

88. Over the course of the next several months, BAI engaged in a series of actions that not only undermined Mr. Brown’s ability to establish himself in the Atlanta market, but also caused him to lose his Florida book of business that he had worked so hard to develop.

89. For example, BAI failed to provide Mr. Brown an office or any administrative support in Atlanta despite having had several months of advance notice that he would be transferring to the Atlanta office. Mr. Brown was not given a phone number at which clients could reach him and could not have business cards printed because he had no telephone.

90. Nor did BAI or BOA assign Mr. Brown a Premier Banker or any territories in Atlanta for several months. It was not until May 2006 that Mr. Brown was even assigned a territory. Mr. Brown was ultimately forced to forge his own partnership with African-American Premier Banker Greg Crane in April 2006.

91. At the same time, BAI permitted Caucasian Financial Advisors in Florida to raid Mr. Brown’s clients in Florida despite being informed by Mr. Brown that he intended to keep this business.

92. Frustrated by his efforts to gain a foothold in the Atlanta market, and losing his Florida clients to Caucasian Financial Advisors, Mr. Brown had no choice but to resign from BAI in August 2006.

93. All of the foregoing discriminatory practices by BAI have significantly and adversely impacted Mr. Brown’s job success, career and income.

#### ***Timothy Johnson II’s Claims***

94. Plaintiff, Timothy Johnson II, is a 25 year-old African-American former Financial Advisor at BAI.

95. Mr. Johnson began his employment with BAI on February 28, 2006 as a Financial Advisor at BAI's office at 7800 Forsyth Blvd., St. Louis, Missouri. Prior to joining BAI, Mr. Johnson was employed as a Financial Consultant at U.S. Bancorp Investments and Insurance.

96. Shortly after joining the Company, Mr. Johnson was assigned territories in the St. Louis market that are primarily African-American and low net-worth, including Baden, New Halls Ferry and Florrisant.

97. Upon his hiring, Mr. Johnson was initially "parked" with a Caucasian Premier Banker named Doug Rankin, but Mr. Rankin terminated his partnership with Mr. Johnson within three months.

98. At or about the same time that Mr. Johnson was hired, BAI also hired two Caucasian Financial Advisors, Cole Taylor, also from U.S. Bancorp, and Aaron Unger. In contrast to Mr. Johnson, Mr. Taylor and Mr. Unger were immediately assigned territories that are primarily Caucasian and high net worth. In addition, both Mr. Taylor and Mr. Unger, unlike Mr. Johnson, were immediately partnered - not "parked" - with a Caucasian Premier Banker.

99. After Rankin terminated his partnership with Mr. Johnson, BAI did not assign Mr. Johnson a new Premier Banker for over three months. Unlike the Caucasian Financial Advisors who started with Mr. Johnson, Mr. Johnson was deprived of potential new business during this time period.

100. When BAI finally did assign Mr. Johnson to another Premier Banker, it was a brand new, inexperienced Caucasian banker named Shawn Eldridge. Mr. Eldridge was one of the lowest-ranked Premier Bankers in the St. Louis market. Mr. Johnson continued to be assigned to largely African-American low net-worth territories.

101. BAI and BOA also discriminated against Mr. Johnson in terms of compensation. On or about March 1, 2007, BAI reduced Mr. Johnson's pay-out from 36% to 24%. No such reduction was made to the pay-out of the Caucasian Financial Advisors such as Mr. Taylor.

102. As set forth above, BAI also engages in racial steering with respect to the reassignment of accounts of departing Financial Advisors. When a Financial Advisor leaves BAI, that advisor's accounts are reassigned to other Financial Advisors.

103. BAI has a practice or pattern of reassigning the majority, largest and most promising accounts of departing advisors to Caucasian Financial Advisors. To the limited extent that a departing Caucasian Financial Advisor's accounts are reassigned to an African-American Financial Advisor, they are few, small and generally not promising accounts.

104. For example, shortly before Mr. Johnson was hired, William Tate, an African-American Financial Advisor, transferred from the St. Louis office of BAI to Washington D.C. When this transfer occurred, Mr. Tate's most profitable fee-based accounts were reassigned to Caucasian Financial Advisors, including Cole Taylor. In contrast, Mr. Johnson received only the accounts of Mr. Tate's low net worth African-American clients. Similarly, when Caucasian Financial Advisor Will Brennan left, his clients were assigned to Aaron Unger who, unlike Mr. Johnson, had no previous experience as a financial advisor.

105. In response to Mr. Johnson's many complaints about the discrimination he experienced, BAI took no action. To the contrary, BAI retaliated against him by continuing to limit his access to office space and other necessary resources. Mr. Johnson felt compelled to leave BAI on March 12, 2007.

106. All of the foregoing discriminatory practices by BAI have significantly and adversely impacted Mr. Johnson's professional success, career and income.

### ***COUNT I***

#### ***THE CIVIL RIGHTS ACT OF 1866 42 U.S.C. § 1981***

107. Plaintiffs reallege and incorporate by reference the above paragraphs.

108. BAI and BOA have discriminated against plaintiffs and the Class by denying them the same rights as enjoyed by

Caucasian employees with regard to the making, performance, modification and termination of their employment relationship with BAI and BOA and with regard to the enjoyment of all benefits, privileges, terms and conditions of that relationship in violation of the Civil Rights Act of 1866 as amended, 42 U.S.C. § 1981.

109. BAI's and BOA's conduct has been intentional, deliberate, willful, and conducted in callous disregard of the rights of plaintiffs and the Class under the law.

110. By virtue of BAI's and BOA's conduct as alleged herein, plaintiffs and the Class have been injured.

## ***COUNT II***

### ***MASSACHUSETTS GENERAL LAW CHAPTER 151B***

111. Plaintiffs reallege and incorporate by reference the above paragraphs

112. Defendant has discriminated against plaintiffs and the Class on account of their race in violation of Massachusetts General Law Chapter 151B by denying plaintiffs and the Class equal terms and conditions of employment, by denying African-American FA's and PB's the same opportunities for profitable territories and promotions as Caucasian FA's and PB's, by maintaining a pattern and practice of compensating African-American employees less than Caucasian employees who either hold the same or similar positions, or who hold positions that entail similar responsibilities and duties, and by retaliating against employees who assert their civil rights.

113. By virtue of BAI's and BOA's conduct as alleged herein, plaintiffs and the Class have been injured.

## ***JURY DEMAND***

Plaintiffs hereby demand a trial by jury as to all issues so triable.

## ***PRAYER FOR RELIEF***

WHEREFORE, Plaintiffs respectfully pray that the Court enter an order:

1. Certifying this action as a class action, with plaintiffs as the class representatives and their counsel of record as class counsel;
2. Adjudicating and declaring that BAI and BOA's conduct as set forth above is in violation of the Civil Rights Act of 1866 as amended, 42 U.S.C. § 1981 and Massachusetts General Law Chapter 151B;
3. Permanently enjoining and prohibiting BAI and BOA, and their officers, agents, employees and successors from continuing to engage in the practices complained of herein;
4. Permanently enjoining and requiring BAI and BOA to adopt policies and practices that ensure the cessation of all discriminatory practices complained of herein and requiring the institution of such measures that are necessary or appropriate to ensure that these practices do not reemerge;
5. Awarding Plaintiffs and the Class such equitable remedies, including, without limitation, back pay and front pay, necessary to provide the Plaintiffs and the Class with full equitable relief from the discrimination they have suffered;
6. Awarding Plaintiffs and the Class compensatory damages justified under the circumstances;

7. Awarding the Plaintiffs and the Class punitive damages justified under the circumstances;
  8. Awarding attorneys' fees and reimbursement of costs associated with this action to counsel for Plaintiffs and the Class;
  9. Retaining jurisdiction to ensure that BAI and BOA fully comply with the equitable relief ordered; and
  10. Awarding Plaintiffs and the Class such other and further relief as may be appropriate in the interest of justice.
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