



LEXSEE 2007 U.S. DIST. CT. PLEADINGS 571766

[View U.S. District Court Opinion](#)

[View Original Source Image of This Document](#)

RICHARD TURNLEY III, BARON H.C. FINLAYSON, COLEEN ALECIA HINDS,
MARK -ANTHONY BROWN, TIMOTHY JOHNSON II, KHAIRI DWAYNE
RAHMAN, RAHMEL HOBBS and TERRY M. GRAVELY, on behalf of themselves and
all others similarly situated, Plaintiffs, v. BANC OF AMERICA INVESTMENT
SERVICES, INC., and BANK OF AMERICA, N.A., Defendants.

Civ. Action No.07cv10949-NG

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MASSACHUSETTS

2007 U.S. Dist. Ct. Pleadings 571766; 2008 U.S. Dist. Ct. Pleadings LEXIS 2879

September 17, 2008

Complaint

COUNSEL: [*1] BERNSTEIN LITOWITZ BERGER & GROSSMANN LLP.

Steven B. Singer (pro hac vice), Jeremy P. Robinson (pro hac vice), New York, NY -and- Niki L. Mendoza (pro hac vice), Matthew P. Jubenville (pro hac vice), San Diego, CA.

MAJOR KHAN LLC, Major Khan, Weehawken, NJ.

MESSING, RUDAVSKY & WELIKY, P.C., Ellen J. Messing (BBO No. 343960), Boston, MA.

TITLE: SECOND AMENDED CLASS ACTION COMPLAINT

TEXT: Leave to file granted on 9/17/08

PLAINTIFFS DEMAND A TRIAL BY JURY

Plaintiffs Richard Turnley III, Baron H.C. Finlayson, Coleen A. Hinds, Mark-Anthony Brown, Timothy Johnson II, Khairi Dwayne Rahman, Rahmel Hobbs and Terry M. Gravely 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 eight individual plaintiffs on behalf of themselves and other similarly situated individuals (the "Class") against Banc of America Investment Services, Inc. ("BAI") [*2] and Bank of America, N.A. ("BOA") (collectively, the "Company"). BAI, a subsidiary of BOA, and BOA systematically discriminate against African-American employees of BAI and BOA, including but not limited to Financial Advisors ("FAs") and Premier Bankers ("PBs"), 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 ("c.151B"). In addition, plaintiffs Timothy Johnson II, Baron H.C. Finlayson and Rahmel Hobbs have received Right To Sue Letters from the United States Equal Employment Opportunity Commission ("EEOC"), and thereby assert claims against defendants on behalf of themselves and the Class under Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e, et seq., as amended by the Civil Rights Act of 1991, 42 U.S.C. § 1981(a) ("Title VII"). On or about July 28, 2008, plaintiff Terry M. Gravely filed a Charge of Discrimination with the EEOC and the State [*3] of California Fair Employment and Housing Agency ("FEHA") on behalf of himself and the Class alleged herein, and in accordance with that Charge requested that the EEOC issue him a Right To Sue Letter. When Gravely receives that Right To Sue Letter, the Complaint will be amended to add claims arising under Title VII on behalf of Gravely and the Class.

2. As set forth below, BAI and BOA have regularly discriminated against African-American FAs and PBs with respect to territorial and work assignments; training; and access to financial accounts. Class members have largely been partnered only with other African-American FAs and PBs and have been disproportionately "steered" to sales territories which are largely minority and/or low net worth. Defendants also do not provide adequate support or resources to African-American FAs and PBs when those employees solicit business from potential African-American clients. These practices have significantly and adversely impacted the job success, career and income of plaintiffs and the Class. When they have complained about these patterns and practices, plaintiffs have been told that BAI and BOA believe that BAI and BOA clients are more "comfortable" [*4] dealing with sales professionals of their own race, and that African-American client pools do not constitute a "lucrative market," and are not "sophisticated," "competent," or "savvy," and therefore are not appropriate for the full range of BAI and BOA products and services.

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 BAI and BOA.

4. 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 BAI and BOA.

5. In addition, BOA and BAI have engaged in a pattern of retaliation designed to deter African-American PBs and FAs from objecting to the defendants' discriminatory policies and practices. BOA and BAI have retaliated against class [*5] members by terminating class members and denying class members opportunities for promotion or transfer after such persons have exercised their civil rights by objecting to the defendants' discriminatory policies and practices.

6. 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, Title VII, and c. 151B.

7. 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

8. 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 600 Peachtree St., Atlanta office of BAI [*6] from on or about October 13, 2003 until November 17, 2006.

9. Plaintiff Baron Finlayson is an African-American citizen and resident of Atlanta, Georgia. He had been employed as a Financial Advisor in the 600 Peachtree St., Atlanta office of BAI since August 12, 2002. As more fully alleged below, on April 16, 2008, Mr. Finlayson was constructively discharged by BAI.

10. 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 Road, Atlanta, Georgia, from December 13, 2004 through June 24, 2006.

11. 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.

12. 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. [*7]

13. Plaintiff Khairi Dwayne Rahman is an African-American citizen and resident of the Commonwealth of Massachusetts. He was employed as a Financial Advisor in the 100 Federal St., Boston office of BAI from on or about August 12, 2005 until September 2006.

14. Plaintiff Rahmel Hobbs is an African-American resident of the Commonwealth of Massachusetts. He has been employed as a Premier Banker at the 740 Gallivan Blvd., Dorchester, Massachusetts office of BOA since July 2006. On June 2, 2008, BOA wrongfully discharged Mr. Hobbs, in retaliation for Mr. Hobbs's exercise of his civil rights by objecting to the discriminatory policies and practices of BAI, as more fully described below.

15. Plaintiff Terry M. Gravely is an African-American resident of Hollywood, California. He has been employed in the BOA/BAI system since July 2001. Mr. Gravely has been employed as a Premier Banker at the BOA Los Angeles Central office location at 300 South Grand Avenue - 18th Floor in Los Angeles, California since June 2005.

16. Defendant BAI is a subsidiary of BOA, a corporation formed under the laws of the State of Delaware. BAI is headquartered in Plantation, Florida, and maintains its principal place [*8] of business in this District at 100 Federal St., Boston, Massachusetts. BAI, part of the Global Wealth & Investment Management ("GWIM") division of BOA, is a financial services and investment services firm that employs approximately 7,000 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.

17. Defendant 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 [*9] and, as of 2006, had sales of more than \$ 73 billion.

JURISDICTION AND VENUE

18. 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, under 42 U.S.C. § 1981, and under 42 U.S.C. §§ 2000e-5(e) and (f). This Court also has supplemental jurisdiction of plaintiffs' claims arising under c. 151B.

19. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b) and (c), and 42 U.S.C. § 2000e-5(f)(3). Defendants have admitted that 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. Named plaintiffs Khairi Dwayne Rahman and Rahmel Hobbs reside in Massachusetts and defendants have admitted, that as of May 18, 2007, at least eighteen Class members reside in this District. Defendant [*10] 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. The senior management for BAI and the Company's Wealth and Investment Management business (in which the Class members worked, and where the discriminatory policies and practices were and are established, implemented and overseen) are located in this District. The individuals who are responsible for these Company-wide policies and practices live and work in Boston, and the key witnesses reside in this District, including G. Patrick Phillips ("Patrick Phillips") (President, Premier Banking and Investments and Office of Bank of America Corporation), Brian Moynihan (President Global Corporate and Investment Banking, and an Officer of BOA), John Bahnken (EVP, President, GWIM Product Group, and an Officer of BAI), Keith Banks (President, GWIM, and an Officer of BOA), Jeff Carney (SVP, President, GWIM Product Group, and an Officer of BOA), Richard Kane (International Wealth Management Executive, and an Officer of BOA), Jane Magpiong (President of Private Bank, and an Officer of BOA), Keith Winn, Marty Courage and Jeffrey Wheeler [*11] (Boston Market Director for Banc of America Investment Services Division).

20. The unlawful employment practices were committed in, and emanated from, this District, and the employment records, including the records of *all* Class members, relevant to the Company's discriminatory policies and practices are maintained and administered in this District. Senior management in the Company's Wealth and Investment Management business, located in Boston, exercise control over the Company's development and enforcement of its personnel policies and practices.

21. In 2004, the Company announced plans to "expand its presence in Massachusetts by relocating 300 additional leadership positions in its Wealth & Investment Management businesses (including BAI) to Boston, building upon former plans to relocate the Wealth & Investment Management businesses and approximately 100 positions to Boston, bringing the total number of relocated positions to more than 400." Defendants touted the move as follows:

"Bank of America is further demonstrating our company's commitment to building a strong, vibrant, and enduring presence in Boston and New England," said Brian Moynihan, president of Wealth [*12] & Investment Management. "Hundreds of talented investment management executives responsible for leading one of the company's four major business lines will soon be gathered here to create a truly integrated, robust business headquarters. This transition will enable us to better serve clients, drive growth and strengthen Bank of America's ties to Boston now and in the future."

22. BAI's senior management in Boston develops and approves uniform policies and procedures for operating BAI's business at every level. These uniform policies and procedures are then disseminated, implemented, enforced and maintained, from Boston, through Company operations throughout the United States. Indeed, Company offices/departments and branches throughout the United States are linked by state-of-the-art electronic communications systems (including an internal intranet) called Flagscape. Flagscape allows BAI senior management in Boston to compile and monitor all payroll, labor and other employment related data throughout the United States, including, but not limited to, information regarding territorial assignments, partnership assignments, account assignments, and compensation. The Company's internal [*13] intranet also includes an electronic version of the Company policy handbook that is not available in hard copy and not printable from the Company intranet.

23. Senior managers in Boston, including Patrick Phillips (President of Premier Banking and Investments), have specifically condoned and allowed the discriminatory practices alleged herein. For example, Mr. Phillips met with at

least one named plaintiff, Mr. Rahman, regarding BAI's offensive stereotyping of the African-American client pool and its impact on Mr. Rahman's job success. When Mr. Rahman complained about these patterns and practices, he was told by top BAI executives in Boston, including Patrick Phillips, that such client pools do not constitute a "lucrative market," and are not "sophisticated," "competent," or "savvy." Patrick Phillips also directly allowed BAI managers to order the discriminatory partnering and territorial assignments alleged herein. According to the Company's own press releases, Patrick Phillips "lead[s] the delivery of comprehensive financial services to affluent clients across the United States through the company's Premier Banking and Banc of America Investment Services, Inc. (BAI) organizations. [*14] Phillips [reports] to Brian Moynihan, president of Global Wealth & Investment management and [is] based in Boston." Patrick Phillips himself recently confirmed that each region reports directly to Boston, stating that his "leadership team will leverage partnerships across the larger Bank of America organization and oversee teams of experienced banking and investment professionals to help clients build and preserve wealth through a comprehensive and integrated approach."

CLASS ACTION ALLEGATIONS

24. 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.

25. The members of the Class identified herein are so numerous that joinder of all members is impracticable. As of the filing of this [*15] Second Amended Complaint, BAI has approximately 3,000 Financial Advisors and BOA 4,400 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.

26. 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 FAs and PBs to inferior positions when compared to their Caucasian counterparts;

c. whether BAI and BOA have a policy or practice of giving African-American FAs and PBs 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 [*16] 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 FAs with African-American PBs;

i. whether BAI and BOA have a policy or practice of favoring the partnership of Caucasian FAs with Caucasian PBs;

j. whether BAI and BOA have a policy or practice of favoring the assignment of African-American FAs and/or PBs 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 FAs and/or PBs to territories and banking centers that are primarily Caucasian and/or high net worth;

l. whether BAI and BOA have a policy or practice [*17] of disproportionately failing to assign African-American FAs and/or African-American PBs accounts, including but not limited to, the accounts of departing FAs and/or PBs when compared to their Caucasian counterparts;

m. whether BAI and BOA have a policy or practice of disproportionately favoring Caucasian FAs and/or Caucasian PBs in the assignment of accounts, including but not limited to the accounts of departing FAs and/or PBs 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's 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.

27. 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 [*18] policies and practices at BAI and BOA. The policies and practices complained of in this Complaint affect the entire Class.

28. 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.

29. 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's and BOA's common, uniform, unfair and discriminatory policies and practices.

30. 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 [*19] 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

31. 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 purports to offer 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 2,200 financial advisors. BAI's main office is located at 100 Federal St., Boston, Massachusetts.

32. Plaintiffs charge that BAI and BOA have engaged in systematic and pervasive race, color, and/or national origin discrimination. Despite employing a [*20] 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.

33. 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), Title VII, 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.

34. BAI's and BOA's written and unwritten policies concerning and including, but not limited to, hiring, promotion, compensation, territorial/work assignments, training, partnerships/workplace [*21] 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.

35. 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 FAs with PBs is for PBs to refer their BOA clients to their FA partners so that the FAs - and BAI - can get that potentially lucrative business. The idea is the PBs will provide these clients with banking services, and the FAs 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 [*22] a Financial Advisor manages and the amount a Premier Banker has produced.

36. 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.

37. 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 FAs with minority PBs. Furthermore, once the minority PBs and FAs 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 [*23] their business, careers and income.

38. Conversely, BAI and BOA have engaged in a pattern and practice of favoring the partnership of Caucasian FAs with Caucasian PBs, 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.

39. 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 reassign that Caucasian FA/PB or territory to other Caucasians.

40. An additional effect of these time-limited "parking" arrangements is that African-American [*24] FAs, unlike Caucasian FAs, are invariably subjected to a high turnover rate with respect to both the PBs they are partnered with and the territories they are assigned. This further limits the ability of African-American FAs to develop their business, careers and income when compared to Caucasian FAs. Caucasian FAs are not subjected to such high turnover.

41. This high turnover rate has also resulted in African-American FAs, unlike their Caucasian counterparts, regularly being partnered with junior, less experienced and/or problematic PBs.

42. Defendants have also failed to provide adequate support and resources to Class members who are selling investment products to potential African-American client pools. For example, Defendants often instruct African-American FAs to focus on soliciting debt-side (e.g., credit card) business instead of investment-side business, from potential African-American client pools, because BAI executives in Boston, including Patrick Phillips, have claimed that such client pools do not constitute a "lucrative market" and that African-Americans are not "sophisticated," "competent," or "savvy" investors.

43. BAI's and BOA's nationwide account allocation policies [*25] 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 FAs and PBs based on management's biased personal preferences.

44. 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.

45. The aforementioned pattern of unequal territorial and partnership assignments, support, resources, compensation, and advancement opportunities is not the result of random or non-discriminatory factors. Rather, it is the result of an on-going and continuous pattern of intentional racial discrimination in assignments, support, resources, compensation, and promotions, and reliance on policies and practices that have an adverse impact on African-American [*26] employees that cannot be justified by business necessity, and for which alternative policies and practices with less discriminatory impact could be utilized that equally serve any asserted justification. Plaintiffs are informed and believe that such policies and practices include, without limitation:

a. Reliance on unweighted, arbitrary and subjective criteria in making territorial and partnership assignments, and in allocating support and resources. To the extent that BAI and BOA policy state objective requirements, these requirements are often ignored or applied in an inconsistent manner.

b. Reliance on racial stereotypes in making territorial and partnership assignments and in allocating support, resources, accounts and other business opportunities.

c. Pre-selection and "grooming" of Caucasian FAs and PBs for favorable assignments and advancement.

d. Maintenance of racially segregated territorial and partnership assignments.

e. Deterrence and discouragement of African-American FAs and PBs from seeking advancement, support,

resources, and favorable assignments and pay.

f. Assigning African-American FAs and PBs to territories with less advancement potential than those given [*27] to Caucasians, and advancing African-Americans more slowly than similarly situated Caucasians.

g. Providing less support and resources to African-American FAs and PBs than that given to Caucasian FAs and PBs.

h. Retaliating against African-American FAs and PBs who have complained about BAI's or BOA's treatment of its African-American FAs and PBs.

ALLEGATIONS OF THE INDIVIDUAL PLAINTIFFS

Richard Turnley III's Claims

46. Plaintiff Richard Turnley III, began his employment with BAI on October 13, 2003 as an FA in the office located at 600 Peachtree St., Atlanta, Georgia. 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.

47. Mr. Turnley also 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 [*28] 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 named 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.

48. 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.

49. 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.

50. 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 [*29] 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 FAs who were not even in partnership with him. Rather than take 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.

51. In or about the third quarter of 2005, after just two to three months of "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.

52. 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 [*30] FA-PB partnership.

53. 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.

54. 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 as 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.

55. 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. [*31]

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

57. BAI also discriminates in its application of resources and support, favoring Caucasian FAs over African-American FAs. For example, FAs require the assistance of licensed Sales Assistants. Sales Assistants are often initially hired without their licenses and subsequently acquire their licenses on the job. Sales Assistants who work for African-American FAs are typically taken away from African-American FAs as soon as they acquire their licenses and then reassigned to Caucasian FAs. This has resulted in a disparately high turnover of Sales Assistants for African-American FAs 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.

58. BAI also engages in discriminatory behavior, including racial steering, with respect to the reassignment of accounts of departing FAs. When [*32] an FA leaves BAI, that FA's accounts are reassigned to remaining FAs. Such reassignments play a significant role in an FA's job success, career growth and income.

59. BAI has engaged in a pattern and practice of reassigning a majority of the largest and most promising accounts of departing Caucasian FAs to remaining Caucasian FAs. 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.

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

61. BAI's discrimination against African-Americans is so pervasive that minority FAs are even typically denied access to the accounts of departing African-American FAs. 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 [*33] employee was told that Mr. Turnley had no fee-based accounts - which was false.

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

63. Mr. Turnley seeks declaratory, injunctive, compensatory and other relief, to benefit himself and all members of the Class.

Baron Finlayson's Claims

64. Plaintiff Baron Finlayson is a 48 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, Georgia.

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

66. 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 Southwest Atlanta. These territories were primarily African-American and low net-worth.

67. Approximately a year later, in August/September 2003, upon BAI and BOA embarking [*34] 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.

68. The Finlayson-Gibson partnership was assigned territories located in Southwest 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.

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

70. 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.

71. In or about September 2004, Mr. Finlayson was assigned to new territories. These territories were [*35] located in East Atlanta/Lithonia and were again primarily African-American and low net-worth.

72. 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.

73. 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.

74. 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.

75. 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.

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

77. On or about September 11, 2006, Mr. Finlayson, who had been without a PB since Ms. Hinds' departure [*36] in June 2006, met with his manager, Andy Gillenson, and the manager of PBs 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.

78. 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.

79. 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 FAs were not subjected to such practices.

80. During Mr. Finlayson's employment at BAI, he understood [*37] that there were communications between senior management located in Boston, and managers at Mr. Finlayson's local Atlanta office that directly resulted in the discrimination against him. For example, during Mr. Finlayson's September 11, 2006 meeting with his manager, Andy Gillenson, and the manager of premier bankers/client managers in the Atlanta market, Paige Green, they discussed issues relating to Mr. Finlayson's partnerships and territorial assignments. During this meeting, in response to Mr. Finlayson's questions regarding the Premier Bankers Mr. Finlayson was partnered with and the territories he was assigned to, both Mr. Gillenson and Ms. Green indicated to Mr. Finlayson that Patrick Phillips, President of Premier Banking and Investments, and other senior managers located in Boston, had permitted them to make the partnership and territorial assignments they made.

81. On or about June 21, 2007, a Charge of Discrimination on behalf of Mr. Finlayson was submitted to the Boston Area Office of the EEOC, with copies to the Massachusetts Commission Against Discrimination ("MCAD"), for dual filing with the MCAD.

82. On or about March 19, 2008, the EEOC issued a Right to Sue Letter [*38] to Mr. Finlayson. Attached hereto as Exhibit A is a true and correct copy of the letter.

83. Despite Mr. Finlayson's complaints regarding his low net worth territories and racial steering, no improvement was made in his assigned territories. Mr. Finlayson made persistent requests for a territory change to Cliff Ingram and Andy Gillenson at BAI team meetings. He was told by Ingram and Gillenson that they would look into a territory change, but they wanted Finlayson to continue to cover the territories assigned and do the best he could. BAI's failure to correct the discriminatory practices created an intolerable working environment for Mr. Finlayson as it directly and adversely affected his financial and career goals and amounted to constructive discharge. As a direct result of the racially discriminatory working environment created by BAI's actions described above, Mr. Finlayson felt he had no other alternative, and resigned from BAI on April 16, 2008.

84. Mr. Finlayson made every effort to continue to advance his career at BAI and remain as an employee of BAI. Absent BAI's racially discriminatory practices, Mr. Finlayson would have continued his employment with BAI.

85. All of the [*39] foregoing discriminatory practices by BAI have significantly and adversely impacted Mr. Finlayson's job success, career and compensation.

86. Mr. Finlayson seeks declaratory, injunctive, compensatory and other relief, to benefit himself and all members of the Class.

Coleen Hinds' Claims

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

88. 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, Georgia. Ms. Hinds resigned from BOA on June 24, 2006.

89. 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.

90. Like Messrs. 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 Southeast Atlanta, which is primarily African-American and low net-worth. This [*40] 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.

91. 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.

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

93. Ms. Hinds asked to be transferred to another position within BOA. While Mr. Romm indicated that was fine - and, indeed, [*41] 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.

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

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

96. Ms. Hinds seeks declaratory, injunctive, compensatory and other relief, to benefit herself and all members of the Class.

Mark-Anthony Brown's Claims

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

98. 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.

99. 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, [*42] Parthemer had a business relationship with two African-American BOA Premier Bankers named Sylvester King and Paul Wiggins.

100. 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.

101. 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.

102. Because of Ms. Carter's refusal to refer her clients to him, Mr. Brown was forced to sustain himself with referrals [*43] he received from Sylvester King and clients he developed on his own in the Fort Lauderdale market.

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

104. 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.

105. 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.

106. 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.

107. For example, BAI failed to provide Mr. Brown an office or any administrative support [*44] 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.

108. 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.

109. 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.

110. 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.

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

112. Mr. Brown seeks declaratory, injunctive, compensatory and other relief, to benefit himself [*45] and all members of the Class.

Timothy Johnson II's Claims

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

114. 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.

115. 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.

116. 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.

117. 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, [*46] were immediately partnered - not "parked" - with a Caucasian Premier Banker.

118. 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.

119. 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.

120. 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.

121. 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.

122. BAI has [*47] 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.

123. 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.

124. 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 [*48] to leave BAI on March 12, 2007.

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

126. Mr. Johnson seeks declaratory, injunctive, compensatory and other relief, to benefit himself and all members of the Class.

127. On or about June 21, 2007, a Charge of Discrimination on behalf of Mr. Johnson was submitted to the Boston Area Office of the EEOC, with copies to the MCAD, for dual filing. On November 5, 2007, the Boston Area Office of the EEOC issued a Right To Sue Letter for Mr. Johnson. A true and correct copy of this letter is attached hereto as Exhibit B.

Khairi Dwayne Rahman's Claims

128. Plaintiff Khairi Dwayne Rahman began his employment with BAI on August 12, 2005 when he was hired by Jeffrey W. Wheeler, the Boston Market Director for Banc of America Investment Services Division. At all times relevant hereto, Mr. Rahman worked as an FA in BAI's main office located at 100 Federal St., Boston, Massachusetts. Prior to joining BAI, Mr. Rahman was successfully employed by Merrill Lynch, earning \$ 232,000 after taxes within the first seven months of 2005, and had over [*49] seven years of experience in the financial services industry.

129. Mr. Rahman was a victim of overt racial discrimination during his tenure at BAI. Mr. Rahman agreed to join BAI only after Mr. Wheeler promised Mr. Rahman that he would have the resources and support of senior management in executing his Business Development Strategy, which Mr. Rahman fully disclosed prior to his joining BAI. Defendants failed to honor their promises in breach of their agreement with Mr. Rahman and instead engaged in discriminatory practices directly undermining Mr. Rahman's efforts to execute his strategy.

130. Racially stereotypical limitations were placed on the type of investment and banking products Mr. Rahman could offer to his African-American clients. For example, when Mr. Rahman was considering making the transition to BAI, he was assured by Mr. Wheeler that he would have the opportunity to sell the full panoply of investment products offered by BAI. However, when he started working for BAI, BAI instructed him to change his business model to focus on soliciting "debt-side" business from his African-American institutional relationships, such as credit cards, rather than "investment-grade" products [*50] such as mutual funds and 403(b) platforms with annuities. Because sales of investment grade products typically result in significantly higher commissions than debt-side products, and also because they generally lead to more stable and recurring business from clients, this severely impacted Mr. Rahman's and other Class members' compensation and job opportunities.

131. When Mr. Rahman complained to senior management about the impact these limitations were having on his business, he was met with overt racism. For example, on several occasions, Mr. Rahman met with Patrick Phillips, President of Premier Banking and Investments (in Boston), and other top BAI executives in Boston, including Keith Winn, Marty Courage, and Jeffrey Wheeler, regarding these limitations and the impact they were having on his ability to perform his job responsibilities. When Mr. Rahman complained about these patterns and practices, the top BAI executives in Boston, including Patrick Phillips, told Mr. Rahman that African-American client pools do not constitute a "lucrative market," and were not comprised of "sophisticated," "competent," or "savvy" investors. This breach of BAI's agreement with Mr. Rahman and the [*51] racially motivated limitations placed on the type of business he could undertake severely impacted Mr. Rahman's compensation and job success.

132. Mr. Rahman, like the other plaintiffs, has also been a victim of defendants' racially motivated practice of partnering African-Americans with each other. Before Mr. Rahman even started his employment at BAI, BAI already had him paired with a Premier Broker, a Middle Market Banker, and a Retail Financial Advisor - *all three* of whom were African-American. Indeed, during Mr. Rahman's employment at BAI, he was partnered only with Premier Brokers who were African-American and of African lineage, including Naji Farrat, Pierre Vital, and Robert Williams, and with one Financial Advisor who was also African-American. Mr. Rahman understood that this was because BAI believed that African-Americans FAs should sell to African-American clients.

133. Mr. Rahman was discriminated against in terms of his compensation in additional ways as well. Mr. Rahman had several discussions with Caucasian FAs who, like him, had recently transferred to BAI. Although the newly transferred Caucasian Financial Advisors had past production performance records at their [*52] prior respective firms similar to Mr. Rahman, BAI had offered the Caucasian FAs transition packages ranging from \$ 175,000 to \$ 225,000 upfront bonuses as well as Sr. Vice-President positions. In contrast, Mr. Rahman was offered only a \$ 50,000 upfront bonus and an Assistant Vice-President position. Thus, Mr. Rahman was discriminated against in terms of his compensation as compared to his Caucasian counterparts.

134. Mr. Rahman was also subjected to other demeaning stereotypical remarks about the African-American market,

and to insults with humiliating racial undertones regarding the work Mr. Rahman had achieved with the African-American market and research and relationships Mr. Rahman built over several years with national African-American leaders and institutions. For instance, on his first day on the job at BAI, Mr. Rahman was told by Mr. Wheeler that he wanted Mr. Rahman to meet and work with the Boston office "Black Lesbian," and that they "would be the perfect diversity Financial Advisor Team."

135. Mr. Rahman had several emotionally charged meetings with BAI's Human Resources Department in Boston, during which Mr. Rahman broke down and cried due to the strain of working in [*53] an unwelcoming work environment towards African-Americans. Mr. Rahman met with BAI's Human Resources Department in Boston regarding, among other things, BAI's policies and practices of pairing employees solely because of their color, rather than because their job skills and experience appropriately matched.

136. In February 2006, in one of the discussions regarding BAI's offensive stereotyping of the African-American client pool, Mr. Rahman was told by Jeffrey Wheeler that Mr. Rahman should "move and work in a market with a high concentration of African-Americans." The message was clear: if Mr. Rahman wanted to continue working for BAI, he needed to consider leaving Boston.

137. Mr. Rahman witnessed first-hand how African-American BAI Financial Advisors in Boston had to work harder and were provided fewer resources than their Caucasian counterparts. Caucasian FAs received favorable treatment, forcing the African-American FAs to compete on an uneven playing field. African-American FAs were made to feel undervalued, thus creating an unwelcoming work environment that interfered with the ability to develop into a successful BAI Financial Advisor.

138. After Mr. Rahman complained about [*54] the Company's discriminatory policies and practices, he was retaliated against for speaking out and the executive channels of the Company were no longer made available to him, creating an environment in which Mr. Rahman no longer had support towards business building. As a result, Mr. Rahman left the Company in September 2006, and is now President of his own financial services company, New Vision Financial.

139. All of the foregoing discriminatory practices and policies by BAI significantly and adversely impacted Mr. Rahman's job success, career and compensation.

140. Mr. Rahman seeks declaratory, injunctive, compensatory and other relief, to benefit himself and all members of the Class.

Rahmel Hobbs' Claims

141. Plaintiff Rahmel Hobbs is a class member, and began his employment with BOA in July 2006 at the BOA location at 740 Gallivan Blvd., Dorchester, Massachusetts as a BOA Premier Banker.

142. Like plaintiffs Turnley, Finlayson, Brown, Johnson, Rahman, Hinds and Gravely, Mr. Hobbs has been a victim of the racial discrimination and steering described above.

143. Mr. Hobbs alleges upon information and belief that during his recent employment with BOA, he was the only [*55] African-American BOA Premier Banker in the greater Boston Area. Mr. Hobbs further alleges upon information and belief that Vernon Dailey, the FA with whom he was partnered, was the only African-American BAI Financial Advisor in the greater Boston Area.

144. Mr. Hobbs and Mr. Dailey were partnered together and assigned to territories which have a higher percentage of minority and/or low net worth clients compared to territories where their Caucasian counterparts are assigned.

145. Because Mr. Hobbs' and Mr. Dailey's territories had a higher percentage of low net worth customers compared

to the territories of their Caucasian counterparts, the potential for income generation, particularly from investment products, was substantially lower.

146. Mr. Hobbs alleges on information and belief that FA-PB partnerships in more affluent areas of Boston are only responsible for managing two to three territories. By contrast, because the areas to which Mr. Hobbs and Mr. Dailey were assigned are lower net worth, they were responsible for 14 territories.

147. Mr. Hobbs was denied access to similar resources compared to his Caucasian counterparts. For example, in an effort to attract clients interested [*56] in BOA's investment products, Mr. Hobbs requested the use of an office in a higher net worth territory, rather than the cubicle he was assigned to work from in Dorchester. The request was refused due to a "lack of space," but an offer was extended to Mr. Hobbs to use a cubicle in a higher net worth area only on an "as needed" basis.

148. Despite the "lack of space" at the higher net worth territories, Caucasian PBs, including one that Mr. Hobbs himself recruited, were later assigned to these territories.

149. On or about February 26, 2008, Mr. Hobbs submitted a Charge of Discrimination to the Boston Area Office of the EEOC. This charge was also dual-filed with the MCAD. Attached hereto as Exhibit C is a true and correct copy of this Charge.

150. On or about February 28, 2008, the Boston Area Office of the EEOC issued a Right to Sue Letter to Mr. Hobbs. Attached hereto as Exhibit D is a true and correct copy of the letter.

151. On or about March 19, 2008, the MCAD consented in writing to Mr. Hobbs withdrawing his Charge of Discrimination in accordance with c. 151B § 9. Attached hereto as Exhibit E is a true and correct copy of the written consent issued by the MCAD.

152. On or [*57] about March 30, 2008, Vernon Dailey, the African American FA with whom Mr. Hobbs was partnered, resigned from BAI due to BAI's discriminatory practices, including his assignment to low net worth territories. Mr. Dailey made repeated requests for changes in his territory and changes in his business location necessary to achieve higher commissions. His requests were denied. Due to BAI's unwillingness to grant Mr. Dailey's repeated requests for transfer to an office location that would allow Mr. Dailey to attract clients that met the BOA investment criteria or a better territory, Mr. Dailey felt compelled to resign from BAI on March 30, 2008.

153. In May, 2008, approximately 30 days after Plaintiffs filed the initial Proposed Second Amended Complaint, which reflected Mr. Hobbs' addition as a named plaintiff, BOA informed Mr. Hobbs that he would be placed on a 30 day performance plan. Mr. Hobbs was told that in order to remain employed with BOA he had to meet eight performance metrics in a 30 day period. The required metrics included, without limitation, the following: (1) make ten contacts a day with customers; (2) conduct a minimum of one weekly planning session with the assigned FA; [*58] (3) conduct five joint investment meetings per week with the assigned FA and a customer; (4) bring overdue client follow-up calls exceeding 90-180 days within less than 10%; and (5) close \$ 1M in credit business in 30 days (the "credit production goal"). Mr. Hobbs fulfilled seven of the required performance metrics, but was unable to meet the eighth, *i.e.*, credit production goal.

154. During the 30-day period, Mr. Hobbs had succeeded in obtaining guaranteed client loan transactions, and established closing dates for the loans. BOA refused to allow Mr. Hobbs additional time to close the transactions, and refused to count these loans toward the credit production goal. If Mr. Hobbs had been allowed additional time to close the guaranteed loans, he would have met the BOA credit production goal.

155. In addition, Mr. Hobbs had complained to his manager regarding a number of loans that were taken from him by other BOA personnel in violation of BOA policies. Mr. Hobbs' manager had agreed to investigate the circumstances and inform Mr. Hobbs of the steps taken by BOA to correct the situation and properly credit Mr. Hobbs for the loans.

BOA did not count any of these loans toward the [*59] credit production goal.

156. During the 30-day period, Mr. Hobbs had also closed several loan transactions that were not reflected in the BOA computer system. Loans that are closed do not immediately appear in the BOA computer system. A delay of several days is not unusual. Because the BOA computer records did not reflect the closed loans, Mr. Hobbs was not given credit toward the credit production goal for these loan transactions.

157. BOA thereafter wrongly discharged Mr. Hobbs on June 2, 2008, purportedly for failure to meet the credit production goal. BOA refused to grant Mr. Hobbs credit for the loan transactions he had closed and refused to allow Mr. Hobbs to contest the wrongful discharge.

158. Based on information and belief, Mr. Hobbs alleges that BOA's wrongful discharge was in retaliation of Mr. Hobbs' opposition to BOA's unlawful, discriminatory, employment practices and Mr. Hobbs' request to participate as a named plaintiff in the legal proceedings that are the subject of the Proposed Second Amended Class Action Complaint. Less than 60 days after Mr. Hobbs attempted to join the class action suit as a named plaintiff, BOA placed Mr. Hobbs on a performance improvement [*60] plan and then wrongfully discharged Mr. Hobbs.

159. But for BOA's racially discriminatory practices, unfair treatment and wrongful discharge in retaliation for Mr. Hobbs' exercise of his civil rights, Mr. Hobbs would have continued his employment with BOA.

160. All of the foregoing discriminatory practices and policies by BAI have significantly and adversely impacted Mr. Hobbs' job success, career and compensation.

161. Mr. Hobbs seeks declaratory, injunctive, compensatory and other relief, to benefit himself and all members of the Class.

Terry Gravely's Claims

162. Mr. Gravely is a class member and is currently employed as a Premier Banker in the BOA Los Angeles Central office located at 300 South Grand Avenue - 18th Floor in Los Angeles, California. Like plaintiffs Turnley, Finlayson, Brown, Johnson, Rahman, Hinds and Hobbs, Mr. Gravely has been a victim of racial discrimination and steering by BOA and BAI.

163. Prior to joining BOA, Mr. Gravely was employed as an American Express financial advisor. Mr. Gravely received his Master of Science and Bachelor of Arts degrees from Virginia Tech. To Mr. Gravely's knowledge, he is one of only three persons in the BOA Los [*61] Angeles Central office who has obtained a Series 7 license.

164. Plaintiff Terry Gravely began his employment with BOA in July of 2001 in the BOA consumer banking division as a personal banker selling BOA financial products. In July of 2003, Mr. Gravely accepted a position as a financial advisor sales assistant. This was a lateral employment move designed to enable Mr. Gravely to transition into the position of premier banker. From July 2003 until June 2005, Mr. Gravely continued his employment with BAI as a BAI sales assistant. During this period, Mr. Gravely was never offered a financial advisor position although Mr. Gravely was licensed as a financial advisor and had previously worked as a financial advisor for American Express.

165. On June 15, 2005, Mr. Gravely was offered a position as a Premier Banker with BOA. Mr. Gravely accepted the position with the stipulation that he would be assigned territories in more affluent areas. Mr. Gravely's immediate manager, Vince Caballero, promised Mr. Gravely that BOA would work on this request. Mr. Caballero was moved to another BOA location, and the promise made to Mr. Gravely was not honored by BOA.

166. After Mr. Gravely accepted the [*62] BOA position as a Premier Banker, he was assigned the lowest income banking centers in the market. Based on information and belief, Mr. Gravely alleges that his Caucasian counterparts in the BOA Los Angeles Central office customarily have one or two assigned banking centers. The potential income from

Mr. Gravely's individual assigned centers was so low that he was assigned four centers instead of the customary one or two. Each of these centers was fully staffed with African American and Latino employees only. Mr. Gravely's assigned territories during his tenure as a PB have included Inglewood, Main, 29th and Crenshaw, Martin Luther King and other high-minority and low income areas.

167. Mr. Gravely's financial position and career advancement were adversely affected by BOA's assignment to Mr. Gravely of these low income territories that were primarily African American and Latino areas, in which the majority of customers did not meet BOA's own established investment model. In an attempt to improve his financial situation and career opportunities, Mr. Gravely made persistent requests for a change or reassignment of territories.

168. Mr. Gravely also experienced racial discrimination [*63] in BOA's practice of pairing African American PBs with other minorities and then assigning the partnership to low income, high minority territories. From 2005 until approximately October 2007, Mr. Gravely was paired with Miguel Sanchez, a Latino FA. Mr. Gravely and Mr. Sanchez were then assigned to low income territories and banking centers. During this period, BOA allowed Mr. Sanchez to obtain clients from areas outside the assigned territories. These accounts were not within the territory assigned to the Sanchez/Gravely partnership and, therefore, were not referred to Mr. Gravely. When Mr. Gravely requested that he be allowed to obtain clients outside of his assigned territory in order to improve his income and client base, Mr. Gravely's request was denied.

169. Mr. Gravely made persistent requests for changes in his territorial assignments at every quarterly meeting of the BOA PBs for the LA Central office. These requests were ignored until the initial complaint in this action was filed on May 18, 2007. Mr. Gravely noticed that after the initial complaint was filed in this action, for the first time BOA managers began asking Mr. Gravely which centers he wanted to consider for reassignment [*64] of his territory.

170. During the summer of 2006, for a brief period Mr. Gravely was assigned to Hollywood and Main, a lucrative banking center, with clientele that met the BOA investment model. The Hollywood and Main assignment to Mr. Gravely was made by Raphael Henderson, an African-American manager, in response to Mr. Gravely's request for a better territory.

171. Mr. Gravely was then deprived of the opportunities available in this new territory by another act of racial discrimination. At the Hollywood and Main location, Mr. Gravely was briefly partnered with a Caucasian FA. The Caucasian FA, however, contacted his manager Dino Aloisio and convinced Mr. Gravely's manager to remove Mr. Gravely from the assignment at the Hollywood and Main location. Under customary BOA policies and practices, an FA could not force a territorial change for a PB. To Mr. Gravely's knowledge, BOA had never permitted a Caucasian PB to be removed and reassigned based on a complaint from a FA.

172. All of the foregoing discriminatory practices by BOA have significantly and adversely impacted Mr. Gravely's job success, career and compensation. Mr. Gravely continues to experience discriminatory practices [*65] in the BOA system and is aware of continuing discrimination impacting other PBs and FAs in the BOA and BAI system. Mr. Gravely seeks declaratory, injunctive, compensatory and other relief, to benefit himself and all members of the Class.

173. On or about July 28, 2008, Gravely filed a Charge of Discrimination with the Los Angeles, California District Office of the EEOC, with request for dual filing with the FEHA on behalf of himself and the class alleged herein, and in accordance with that Charge requested that the EEOC issue him a Right To Sue Letter. Attached hereto as Exhibit F is a true and correct copy of the cover letter and Charge. When Gravely receives that Right To Sue Letter, the Complaint will be amended to add claims arising under Title VII on behalf of Gravely and the class.

COUNT I

THE CIVIL RIGHTS ACT OF 1866

42 U.S.C. § 1981

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

175. 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 [*66] of their employment relationship with BAI and BOA, and with regard to the enjoyment of all benefits, privileges, terms and conditions of that relationship, and by retaliating against employees who assert their civil rights in violation of the Civil Rights Act of 1866 as amended, *42 U.S.C. § 1981*.

176. 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.

177. 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

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

179. Defendants have discriminated against plaintiffs and the Class on account of their race in violation of Massachusetts General Law c.151B by denying plaintiffs and the Class equal terms and conditions of employment; by denying African-American FAs and PBs the same opportunities for profitable territories and promotions as Caucasian FAs and PBs; by maintaining a pattern and practice of compensating African-American employees less than Caucasian employees [*67] 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.

180. As explained above, the Class members' employment relationship with the Company is centered in Boston, where the discriminatory policies and practices are created, implemented, and overseen. In addition, the MCAD, the agency charged with interpreting c. 151B, has expressly recognized that it has a significant interest in encouraging in-state companies to promote work environments free of discrimination and in protecting its residents from unlawful discrimination.

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

182. Named plaintiffs Finlayson and Johnson properly filed Charges of Discrimination with the MCAD more than 90 days prior to filing the Second Amended Complaint in this action, and thus have satisfied the procedural prerequisite to joining a private action described in c. 151B, § 9.

183. Named plaintiff Hobbs properly filed his Charge of Discrimination with the MCAD within 300 days of the acts alleged herein. Thereafter, he properly [*68] requested withdrawal of that Charge and received the MCAD's written consent to do so on March 19, 2008. Accordingly, he has satisfied the procedural prerequisites to joining a private action described in c. 151B, § 9.

COUNT III

TITLE VII OF THE CIVIL RIGHTS ACT OF 1964

42 U.S.C. § 2000e, et seq.

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

185. Plaintiffs Johnson, Finlayson, and Hobbs have filed Charges of Discrimination with the EEOC and have received Right to Sue Letters. Plaintiff Gravely has filed a Charge of Discrimination with the EEOC, with request for

dual filing with the California FEHA, on behalf of himself and the Class alleged herein, and in accordance with that Charge requested that the EEOC issue him a Right To Sue Letter. When Gravely receives that Right To Sue Letter, the Complaint will be amended to add claims arising under Title VII.

186. Defendants have discriminated against plaintiffs Johnson, Finlayson, Hobbs, Gravely and the Class on account of race in violation of Title VII, the Civil Rights Act of 1964, as amended in 1991, *42 U.S.C. §§ 2000e* [*69], *et seq.*, by maintaining a pattern and practice of assigning African-American employees to lower net-worth territories than Caucasian employees who hold either the same or similar positions, or who hold positions that entail similar responsibilities and duties; by maintaining a pattern and practice of making partnership decisions favoring the partnership of African-American FAs with African-American PBs; by maintaining a pattern and practice of compensating African-American employees less than Caucasian employees who hold either the same or similar positions, or who hold positions that entail similar responsibilities and duties; by retaliating against employees who assert their civil rights; by denying plaintiffs Johnson, Finlayson, Hobbs, Gravely and the Class equal terms, opportunities, resources, and conditions of employment as Caucasian employees with same or similar positions, or positions with similar responsibilities and duties; and by maintaining a pervasive atmosphere perpetuating discriminatory treatment.

187. By virtue of BAI's and BOA's conduct as alleged herein, plaintiffs Johnson, Finlayson, Hobbs, Gravely and the Class have been injured.

JURY DEMAND [*70]

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's 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*, *42 U.S.C. § 2000(e)*, *et seq.*, Title VII of the Civil Rights Act of 1964, 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 [*71] 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.

**RICHARD TURNLEY III, BARON H.C.
FINLAYSON, COLEEN ALECIA HINDS,
MARK-ANTHONY BROWN, TIMOTHY
JOHNSON II, KHAIRI DWAYNE RAHMAN,
RAHMEL HOBBS AND TERRY M.
GRAVELY**

By their attorneys,

**BERNSTEIN LITOWITZ BERGER
& GROSSMANN LLP**

By: /s/ Steven Singer

Steven B. Singer (*pro hac vice*)

Jeremy P. Robinson (*pro hac vice*)

1285 Avenue of the Americas

New York, NY 10019

Tel: (212) 554-1400

Fax: (212) 554-1444

-and-

Niki L. Mendoza (*pro [*72] hac vice*)

Matthew P. Jubenville (*pro hac vice*)

12481 High Bluff Drive, Suite 300

San Diego, CA 92130

Tel: (858) 793-0070

Fax: (858) 793-0323

MAJOR KHAN LLC

Major Khan

20 Bellevue Terrace

Weehawken, NJ 07086

Tel: (646) 546-5664

Fax: (646) 546-5755

MESSING, RUDAVSKY & WELIKY, P.C.

Ellen J. Messing (BBO No. 343960)

50 Congress Street, Suite 1000

Boston, MA 02109

Tel: (617) 742-0004

Fax: (617) 742-1887

Dated: September 17, 2008

CERTIFICATE OF SERVICE

I hereby certify that this document filed through the ECF system will be sent electronically to the registered

participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent by hand delivery or overnight mail to those indicated as non-registered participants on September 17, 2008.

/s/ Steven B. Singer
STEVEN B. SINGER (*pro hac vice*)
Bernstein Litowitz Berger & Grossmann LLP

[SEE EXHIBIT A IN ORIGINAL]

[SEE EXHIBIT B IN ORIGINAL]

[SEE EXHIBIT C IN ORIGINAL]

[SEE EXHIBIT D IN ORIGINAL]

[SEE EXHIBIT E IN ORIGINAL]

[SEE EXHIBIT F IN ORIGINAL]