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24 UNITED STATES DISTRICT COURT
25 CENTRAL DISTRICT OF CALIFORNIA
26 SOUTHERN DIVISION

27 ALFREDO B. PAYARES, ZINNIA
28 GONZALEZ, AND GREGORY
WALKER,

Plaintiffs,

vs.

CHASE BANK U.S.A., N.A., AND
JPMORGAN CHASE BANK, N.A.,

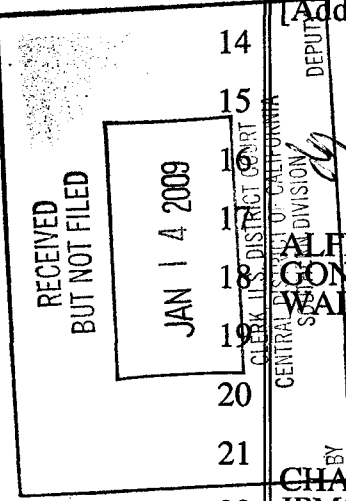
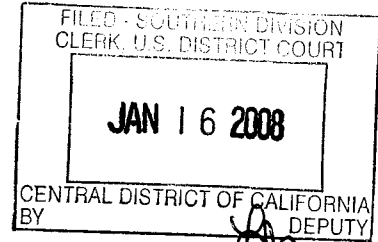
Defendants.

No. CV-07-05540-AG(ANx)

CLASS ACTION

FIRST AMENDED CLASS ACTION
COMPLAINT

Demand For Jury Trial



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JURISDICTION AND VENUE

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

2. Venue is proper in this Court pursuant to 28 U.S.C. 1391(b) because a substantial part of the events giving rise to plaintiffs' and the Class's claims occurred in this District.

INTRODUCTION

3. Plaintiffs Alfredo B. Payares ("Payares"), Zinnia Gonzalez ("Gonzalez") and Gregory Walker ("Walker") (collectively, "plaintiffs"), by and through their attorneys, bring this action against Chase Bank U.S.A., N.A. and JPMorgan Chase Bank, N.A. (collectively "Chase" or "defendants") seeking redress for racially discriminatory lending practices under the Equal Credit Opportunity Act, 15 U.S.C. §1691, *et seq.* ("ECOA"), and the Fair Housing Act, 42 U.S.C. §3601 *et seq.* ("FHA"), on behalf of themselves and all others similarly situated.

4. This class action challenges Chase's racially discriminatory mortgage lending practices. Chase has engaged in disparate impact discrimination through its development and implementation of mortgage pricing policies and procedures that provide financial incentives to its authorized loan officers, mortgage brokers and correspondent lenders to make subjective decisions to increase interest rates and charge additional fees and costs to minority borrowers.

5. Chase's authorized loan officers, mortgage brokers and correspondent lenders are given discretion – and actually encouraged and incentivized – to increase interest rates and charge additional fees to certain borrowers. These policies directly lead to minorities receiving home loans with higher interest rates and higher fees and costs than similarly situated non-minority borrowers.

6. As used in this Complaint, "minority" or "minorities" shall refer to all non-Caucasians and other minority racial groups protected under 42 U.S.C. §§1981, 1982, and 3604, and 15 U.S.C. §1691.

1 Administration (FHA) guidelines to the redlining practices of private mortgage
2 lenders and financial institutions, minorities were denied access to home mortgages in
3 ways that severely limited their ability to purchase a home. Today, mortgage lending
4 discrimination is more subtle. . . . [M]ore than three decades after the enactment of
5 national fair lending legislation, minority consumers continue to have less-than-equal
6 access to loans at the best prices and on the best terms that their credit history, income,
7 and other individual financial considerations merit.” *Id.* at 1.

8 13. The federal Home Mortgage Disclosure Act (“HMDA”) requires
9 mortgage lenders to report information about the home loans they process each year.
10 In 2005, lenders reported information on more than 30 million home loan applications
11 pursuant to HMDA. In 1989, Congress required lenders to begin disclosing
12 information about mortgage borrowers’ race and ethnicity. In 2004, concerned with
13 potential racial discrimination in loan pricing, and recognizing that racial or other
14 types of discrimination can occur when loan officers and mortgage brokers have
15 latitude in setting interest rates, the Federal Reserve Board began requiring lenders to
16 also report information concerning rates, points, and fees, charged to borrowers on
17 high-cost loans.

18 14. HMDA data for 2004 reveals profound loan pricing disparities between
19 Hispanic borrowers and non-Hispanic whites even after controlling for borrowers’
20 gender, income, property location, and loan amount. After accounting for those
21 differences in the 2004 HMDA data, Hispanic borrowers were still almost twice as
22 likely to receive a higher-rate home loan as non-Hispanic whites
23 (<http://www.responsiblelending.org/pdfs/Testimony-Ernst061306.pdf> (last viewed
24 Dec. 29, 2008)). In a speech last year, the Vice-Chairman of the Federal Deposit
25 Insurance Corporation, Martin Gruenberg, discussed the 2004 HMDA data and
26 observed that that data “clearly indicated” that Hispanics are more likely to receive
27 high-cost home loans than are non-Hispanic whites ([http://www.fdic.gov/news/news/
28 speeches/archives/2006/chairman/spoct1806.html](http://www.fdic.gov/news/news/speeches/archives/2006/chairman/spoct1806.html) (last viewed Dec. 29, 2008)).

1 15. Likewise, HMDA data for 2005 shows that “for conventional home-
2 purchase loans, the gross mean incidence of higher-priced lending was 54.7 percent
3 for blacks and 17.2 percent for non-Hispanic whites, a difference of 37.5 percentage
4 points.” *Id.* at A 159. The situation is similar for refinancing, where there is a
5 difference of 28.3 percentage points between blacks and non-Hispanic whites. Avery,
6 Brevoort, and Canner, Federal Reserve Bulletin, “Higher-Priced Home Lending and
7 the 2005 HMDA Date,” A124, A159 (Sept. 8, 2006).

8 16. The Association of Community Organizations for Reform Now
9 (ACORN) released a report entitled “The High Cost of Credit: Disparities in High-
10 priced Refinanced Loans to Minority Homeowners in 125 American Cities,” dated
11 September 27, 2005, which found that “[i]n every metropolitan area where at least 50
12 refinances were made to African-American homeowners, African-Americans were
13 more likely to receive a high-cost loan than White homeowners.” *Id.* at 12.

14 17. Chase’s lending practices are of a piece with the foregoing history.

15 **II. Past as Prologue: CHASE’s Discriminatory Lending Policies**

16 **A. CHASE’s Relationships with Its Mortgage Brokers and 17 Correspondent Lenders**

18 18. Chase represents itself as the fourth largest residential mortgage lender.
19 It originates and funds mortgage loans through loan officers, brokers and through a
20 network of correspondent lenders. On information and belief, the loan officers,
21 mortgage brokers and correspondent lenders that work with Chase broker and fund
22 loans in collaboration with Chase, and in conformance with Chase’s credit-pricing
23 policies and procedures.

24 19. Chase has followed – and continues to follow – discretionary loan pricing
25 procedures that cause minority borrowers to pay subjective fees such as yield spread
26 premiums and other mortgage-related finance charges at higher rates than similarly
27 situated non-minority borrowers. Chase has discriminated against plaintiff and Class
28 members through these policies and procedures – systematically giving them

1 mortgage loans with less favorable conditions than were given to similarly situated
2 non-minority borrowers. This pattern of discrimination is not the result of random or
3 non-discriminatory factors. Rather, it is a direct result of Chase's mortgage lending
4 policies and procedures.

5 20. On information and belief, Chase's authorized loan officers, mortgage
6 brokers and correspondent lenders receive part or all of their compensation from
7 Chase based on the interest rate charged to the borrower. Chase's in-house loan
8 officers, authorized brokers and correspondent lenders receive more compensation
9 from Chase when they steer their clients into Chase loans with higher interest rates,
10 and less compensation when they place their clients into Chase loans with lower
11 interest rates.

12 21. Chase actively implements this discriminatory credit-pricing policy in a
13 number of ways, including actively educating its loan officers and brokers about
14 Chase's credit policies and procedures, and directing its loan officers and brokers
15 regarding the marketing of Chase loan products.

16 22. These credit-pricing policies and procedures permit Chase's authorized
17 loan officers, mortgage brokers and correspondent lenders subjectively to charge
18 certain loan applicants yield spread premiums and other discretionary charges,
19 including minority loan applicants.

20 23. This pattern of discrimination cannot be justified by business necessity,
21 and could be avoided through the use of alternative policies and procedures that have
22 less discriminatory impact and no less business efficacy.

23 **B. CHASE's Discretionary Credit Pricing System: Designed to**
24 **Discriminate**

25 24. Chase discriminates through its authorized mortgage brokers. Authorized
26 mortgage brokers act as Chase's agents in originating mortgage loans. Authorized
27 mortgage brokers enter into agreements with Chase to accept loan applications on
28 behalf of Chase; communicate to loan applicants financing terms and rates set by

1 Chase; tell loan applicants about Chase's various financing options; and ultimately
2 originate mortgage loans funded by Chase using Chase's forms and in accordance
3 with Chase's policies and procedures.

4 25. Likewise with Chase's authorized correspondent lenders and loan
5 officers, who also act as Chase's agents in originating loans. Correspondent mortgage
6 lenders and loan officers that work with Chase make loans in accordance with Chase's
7 credit policies and procedures. Chase funds correspondent-generated loans before or
8 shortly after they go to closing.

9 26. Chase, then, funds loans originated by its loan officers, authorized
10 mortgage brokers and correspondent lenders, sets the terms and conditions of credit on
11 those loans, and shoulders part or all of the risk on such loans. Chase actively
12 enforces its credit policies through its authorized loan officers, mortgage brokers and
13 correspondent lenders in a variety of ways. Among other things, Chase supplies its
14 loan officers, correspondent lenders and mortgage brokers with an array of loan-
15 related forms and agreements, including loan contracts, loan applications, and
16 instructions on completing loan applications and contracts. And, as noted above,
17 Chase actively trains its authorized brokers to follow Chase's policies and procedures,
18 and reinforces that training with marketing support.

19 27. Once a loan applicant has provided credit information to Chase through a
20 loan officer, mortgage broker or correspondent lender, Chase performs an initial
21 objective credit analysis. At that point, Chase evaluates numerous risk-related credit
22 variables, including debt-to-income ratios, loan-to-value ratios, credit bureau histories,
23 debt ratios, bankruptcies, automobile repossessions, prior foreclosures, payment
24 histories, credit scores, and the like.

25 28. Chase derives a risk-based financing rate from these objective factors,
26 which Chase and others in the mortgage industry simply call the "par rate" (Chase's
27 brokers and correspondent lenders can also estimate the par rates by referring to an
28 applicant's credit bureau determined credit score).

1 29. Although Chase's initial analysis applies objective criteria to calculate
2 this risk-related interest rate, Chase as a matter of policy and procedure authorizes its
3 loan officers, brokers and correspondent lenders to mark up that rate later, and also
4 impose additional non-risk-based charges including yield spread premiums, and other
5 discretionary fees. Chase regularly communicates applicable par rates, authorized
6 yield spread premiums, and other discretionary fees to its loan officers, brokers and
7 correspondent lenders via "rate sheets" and other communications.

8 30. Chase gives its loan officers, authorized mortgage brokers and
9 correspondent lenders discretion to impose yield spread premiums and other
10 subjective fees on borrowers. When borrowers pay yield spread premiums, Chase
11 shares in additional income generated by the premium because the yield spread
12 premium-affected borrower is locked into a higher interest rate going forward on their
13 Chase loan than they would be if they had been placed in a par rate loan without a
14 yield spread premium.

15 31. Chase's borrowers pay yield spread premiums and other discretionary
16 fees that inflate their finance charges not knowing that a portion of their finance
17 charges are non-risk-related.

18 32. Chase's policies and procedures concerning the assessment of yield
19 spread premiums and other discretionary fees cause persons with identical or similar
20 credit scores to pay differing amounts for obtaining credit. Such subjective loan
21 pricing – which by design imposes differing finance charges on persons with the same
22 or similar credit profiles – disparately impacts Chase's minority borrowers.

23 33. While Chase's use of a common credit policy for all loan applicants
24 might appear to be racially neutral, Chase's use of yield spread premiums and other
25 discretionary fees disproportionately and adversely affects minorities (relative to
26 similarly situated non-minorities). Chase's credit policy causes minorities to pay
27 disparately more discretionary finance charges than similarly situated non-minorities.

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1 As the HMDA data cited herein indicates, minorities are substantially more likely than
2 similarly situated non-minorities to pay such charges.

3 34. As described above, Chase's credit pricing policy by design discriminates
4 against minority borrowers and directly causes this disparate impact.

5 **III. Chase Imposed Discriminatory Fees on Plaintiffs**

6 **Alfredo Payares**

7 35. Chase's discriminatory credit pricing policy directly damaged plaintiff
8 Payares. On or about August 22, 2005, Mr. Payares refinanced his single-family
9 home located at 13640 Merkel Ave., Paramount, California. The refinancing was
10 arranged through Amstar Mortgage Corporation, a national mortgage banking and
11 brokerage company which also acts as a correspondent lender, through its offices in
12 Rancho Cucamonga, CA. Like other mortgage brokers who do business with Chase,
13 Amstar's loan officers are compensated on a commission basis.

14 36. Amstar arranged for Mr. Payares to obtain a 30-year, adjustable rate loan
15 in the principal amount of \$282,000 secured by a first Deed of Trust and bearing
16 interest at the rate of 6.9500% per annum (an APR of 9.741%). The loan was
17 financed by Chase Bank U.S.A. through its San Diego office, and was to be serviced
18 by Chase Home Finance (also in San Diego). On or about October 1, 2005, the loan
19 servicing function was transferred to JP Morgan Chase.

20 37. The HUD Settlement Statement and the Final Settlement Statement
21 issued by the escrow agent reflect that Mr. Payares paid \$14,010.45 in settlement
22 charges in connection with the transaction. For its services, Amstar charged (among
23 other things) an \$8,460 "loan origination fee," a \$1,900 "application fee," a \$760
24 "processing fee," and a \$375 "underwriting fee." Chase charged another \$320
25 "underwriting fee," a \$175 "processing fee," and a \$275 "document processing fee."
26 In addition, Amstar imposed a \$5,640 "Yield Spread Premium" which was "paid
27 outside of closing" (POC), bringing plaintiff's total fees to almost \$20,000. On
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1 information and belief, all of these fees were assessed pursuant to Chase's credit
2 pricing policies.

3 38. On information and belief, Amstar and Chase knew that Mr. Payares was
4 a minority borrower.

5 39. On information and belief, unbeknownst to Mr. Payares, the pricing of
6 his mortgage loan was actually a combination of an objective, risk-based calculation
7 and a totally subjective, discretionary component added pursuant to the defendants'
8 discretionary pricing policy.

9 40. On information and belief, Mr. Payares was subject to defendants'
10 discretionary pricing policy.

11 41. As a result of Chase's discriminatory conduct, Mr. Payares received a
12 loan on worse terms with higher costs than similarly situated nonminority borrowers.

13 **Zinnia Gonzalez**

14 42. Plaintiff Gonzalez has been harmed by defendants' unlawful conduct.

15 43. Ms. Gonzalez, a resident of Corona, California, is a Minority
16 homeowner. On August 16, 2007, Ms. Gonzalez obtained a mortgage loan from
17 JPMorgan Chase, secured by her residence located at 14769 Bittersweet Lane,
18 Corona, California. Her lender was listed as "Chase Bank USA, N.A." At closing,
19 Ms. Gonzalez was given a notice informing her that her loan would be serviced by
20 Chase Bank U.S.A., N.A. c/o Chase Home Finance, LLC. She was also given a notice
21 that the servicing of her loan was being transferred to JPMorgan Chase Bank, N.A. c/o
22 Chase Home Finance, LLC.

23 44. Ms. Gonzalez' loan was brokered by Watermark Capital, Inc.

24 45. At the time of her loan, Ms. Gonzalez had been gainfully employed by
25 Los Angeles County for approximately 15 years, was a successful business owner and
26 had a good credit score. Ms. Gonzalez was placed into an ARM, with an initial rate of
27 10.250%. At closing, she was charged numerous fees, including a \$200 notary fee, a
28 \$50 "email fee" and other excessive fees.

1 46. Ms. Gonzalez' loan also features a balloon payment at the end of the
2 term.

3 47. Also included in the settlement charges was a loan origination fee,
4 bearing the characteristics of a yield spread premium, paid to Watermark Capital.

5 48. Ms. Gonzalez is now trapped in a high cost loan. Despite clear language
6 in her Adjustable Rate Note that provided for an unfettered right to prepay the loan in
7 full or in part, without penalty, Ms. Gonzalez was instructed to sign an addendum that
8 burdened her with a prepayment penalty, which restricts her ability to refinance into a
9 less expensive loan.

10 49. Ms. Gonzalez was unable to maintain her mortgage payments for her
11 high-priced loan and is now facing the threat of foreclosure.

12 50. On information and belief, Watermark Capital Inc. and Chase knew that
13 Ms. Gonzalez was a minority borrower.

14 51. On information and belief, unbeknownst to Ms. Gonzalez, the pricing of
15 her mortgage loan was actually a combination of an objective, risk-based calculation
16 and a totally subjective, discretionary component added pursuant to the defendants'
17 discretionary pricing policy.

18 52. On information and belief, Ms. Gonzalez was subject to the defendants'
19 discretionary pricing policy.

20 53. On information and belief, Ms. Gonzalez was charged a
21 disproportionately greater amount in non-risk-related credit charges than similarly
22 situated white persons.

23 54. Ms. Gonzalez was not offered less expensive loan products that were
24 available to similarly-situated non-minority borrowers with her credit characteristics
25 directly under the defendants' policies.

26 **Gregory Walker**

27 55. Plaintiff Walker has been harmed by defendants' unlawful conduct.

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1 56. Mr. Walker, a resident of Victorville, California, is a Minority
2 homeowner. On August 14, 2007, Mr. Walker obtained a mortgage loan from
3 JPMorgan Chase, secured by his residence located at 16772 Odell Avenue,
4 Victorville, California. His lender was listed as "JPMorgan Chase Bank, N.A." Mr.
5 Walker's loan was brokered by Premier Group Lending.

6 57. At the time of his loan, Mr. Walker had been gainfully employed by
7 Florida Hospital for a number of years, had excellent income and an excellent credit
8 score. Mr. Walker was placed into an ARM, with an initial rate of 8.0%.

9 58. Also included in the settlement charges was a yield spread premium, paid
10 outside of closing by JPMorgan Chase Bank, N.A. to his mortgage broker, Premier
11 Group Lending.

12 59. At closing, Mr. Walker inquired as to the high nature of his interest rate
13 and was told that this was the best that Chase could offer to him. He is now trapped in
14 a high cost loan. Further, Mr. Walker has been unable to remain current with his
15 mortgage loan payments and currently owes Chase more than his home is worth.

16 60. On information and belief, Premier Lending and Chase knew that Mr.
17 Walker was a minority borrower.

18 61. On information and belief, unbeknownst to Mr. Walker, the pricing of his
19 mortgage loan was actually a combination of an objective, risk-based calculation and
20 a totally subjective, discretionary component added pursuant to the defendants'
21 discretionary pricing policy.

22 62. On information and belief, Mr. Walker was subject to the defendants'
23 discretionary pricing policy.

24 63. On information and belief, Mr. Walker was charged a disproportionately
25 greater amount in non-risk-related credit charges than similarly situated white persons.

26 64. Mr. Walker was not offered less expensive loan products that were
27 available to similarly-situated non-minority borrowers with his credit characteristics
28 directly under the defendants' policies.

1 **CLASS ACTION ALLEGATIONS**

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

4 66. This class action is brought pursuant to ECOA and the FHA by plaintiffs
5 on behalf of themselves and all minority borrowers who entered into residential
6 mortgage loan contracts that were financed or purchased by Chase, and who were
7 harmed by defendants' discriminatory conduct.

8 67. Plaintiffs sue on their own behalf, and on behalf of a class of persons
9 under Fed. R. Civ. P. 23(a) and (b)(2) and/or (b)(3).

10 68. Plaintiffs do not know the exact size of the Class or identities of the
11 members of the Class, since that information is in the exclusive control of Chase.
12 Plaintiffs believe that the Class includes many thousands, or tens of thousands of
13 individuals, who are geographically dispersed throughout the United States.
14 Therefore, the Class is so numerous that joinder of all members is impracticable.

15 69. All members of the Class have been subjected to and affected by Chase's
16 practice of assessing yield spread premiums and other discretionary fees on mortgage
17 loans. There are questions of law and fact that are common to the Class, and that
18 predominate over any questions affecting only individual members of the Class.
19 These questions include, but are not limited to the following:

20 (a) The nature and scope of Chase's policies and procedures
21 concerning the assessment of yield spread premiums and other discretionary fees on
22 mortgage loans it funds;

23 (b) whether Chase discriminated against Class members by charging
24 them higher interest, fees, and costs, than Chase charges similarly situated non-
25 minority borrowers;

26 (c) whether Chase can articulate any legitimate nondiscriminatory
27 reason for its policies and procedures;

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1 (d) whether Chase and its subsidiaries are creditors under the ECOA
2 because, in the ordinary course of business, they participate in the decision of whether
3 or not to extend credit to consumers;

4 (e) whether Chase's policies and procedures regarding yield spread
5 premiums and other discretionary fees have a disparate impact on minority borrowers;

6 (f) whether Chase has any business justification for its policies and
7 procedures.

8 (g) whether there is a less discriminatory alternative to these policies
9 and procedures;

10 (h) whether Chase devised and deployed a scheme or common course
11 of conduct that acted to deceive plaintiffs and members of the Class;

12 (i) whether the Court can enter declaratory and injunctive relief; and

13 (j) the proper measure of disgorgement or monetary relief.

14 70. Plaintiffs' claims are typical of the claims of the Class, and do not
15 conflict with the interests of any other members of the Class in that both plaintiffs, and
16 the other members of the Class, were subjected to the same yield spread premiums
17 and other discretionary fees that have disproportionately affected minority borrowers.

18 71. Plaintiffs will fairly and adequately represent the interests of the Class.
19 Plaintiff is committed to vigorous prosecution of the Class's claims, and they have
20 retained attorneys who have extensive experience in consumer protection and credit
21 discrimination actions and in class actions.

22 72. Chase has acted or refused to act on grounds generally applicable to the
23 Class, thereby making appropriate final injunctive relief or corresponding declaratory
24 relief with respect to the class as a whole.

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

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1 **ACCRUAL, FRAUDULENT CONCEALMENT, CONTINUING**
2 **VIOLATION, AND EQUITABLE TOLLING**

3 74. Plaintiffs and Class members did not know, and could not reasonably
4 have known, that they would receive from Chase mortgage loans with worse terms
5 and higher costs and fees than non-minorities. Their claims did not accrue until
6 shortly before the filing of this action.

7 75. Chase's discriminatory conduct was inherently self-concealing. Chase
8 knew that plaintiffs and Class members could not determine the relationship between
9 the terms, fees, and costs of their loans to those available to non-minorities, or to the
10 services that Chase and its contracted mortgage brokers provided. Chase has superior
11 knowledge about the terms, fees, and costs of its loans, and knew that the terms, fees
12 and costs provided to minorities, unbeknownst to them, were substantially worse than
13 the loans provided to non-minorities.

14 76. Chase has not released or provided information about its discrimination
15 against plaintiffs and Class members, and has actively and fraudulently concealed its
16 discriminatory practices.

17 77. As a result of the foregoing, plaintiffs and Class members in the exercise
18 of due diligence could not have reasonably discovered the discriminatory practices,
19 and did not do so until just recently. For the reasons alleged above, the members of
20 the Class still do not know that they have been and continue to be injured by Chase's
21 discriminatory conduct.

22 78. Chase's discriminatory conduct is continuing in nature, and Chase has
23 committed discriminatory acts throughout the limitations period. Other Class
24 members have contracted with Chase, and been subject to the identical discriminatory
25 practices, within the applicable period of limitations.

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

3 80. Chase specifically misled plaintiffs and Class members into believing
4 that the mortgage-related terms, fees, and costs they were offered were fair,
5 reasonable, and the same as offered to non-minorities, and took steps to conceal its
6 fraudulent and unfair conduct.

7 81. The statute of limitations applicable to any claims that plaintiffs or other
8 Class members have brought or could bring as a result of the unlawful and fraudulent
9 concealment and course of conduct described herein, have been tolled as a result of
10 Chase's fraudulent concealment. In addition, plaintiffs and the Class did not and
11 could not have discovered their causes of action until the time alleged below, thereby
12 tolling any applicable statute of limitations.

13 **COUNT I**

14 **Violation of the Equal Credit Opportunity Act**
15 **(15 U.S.C. §1691 *et seq.*)**

16 82. Plaintiffs repeat and re-allege the allegations above as if fully set forth
17 herein.

18 83. Chase engages in credit transactions through its offering, granting, and
19 purchasing of residential mortgage loans.

20 84. By imposing higher interest rates and other discretionary fees on
21 residential mortgage loans to plaintiffs and Class members than it imposed on non-
22 minority mortgage borrowers, Chase has discriminated against plaintiffs and members
23 of the Class with respect to a credit transaction on the basis of race in violation of the
24 ECOA. 15 U.S.C. §1691(a).

25 85. In addition, Chase's pricing policies and procedures (including yield
26 spread premiums), which provide financial incentives to its mortgage brokers and
27 correspondent lenders to make subjective decisions to increase interest rates and
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1 charge additional fees and costs, have a disparate impact on plaintiffs and Class
2 members.

3 86. As a proximate result of Chase's violation of 15 U.S.C. §1691, plaintiffs
4 and members of the Class have been injured and are entitled to injunctive and
5 declaratory relief and damages, or make whole equitable relief.

6 87. In addition, Chase's conduct as alleged herein was intentional, willful,
7 wanton, reckless, malicious, outrageous, or otherwise aggravated beyond mere
8 negligence. Chase acted with malice and reckless indifference to the federally
9 protected rights of plaintiffs and members of the Class. As a result, plaintiffs and
10 members of the Class are entitled to punitive damages.

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

17 89. Plaintiffs and members of the Class ask this Court to declare the rights of
18 the parties herein regarding Chase's obligation to participate in credit transactions
19 without discriminating against applicants for credit on the basis of the applicants'
20 race.

21 **COUNT II**

22 **Violation of the Fair Housing Act**
23 **(42 U.S.C. §3601 *et seq.*)**

24 90. Plaintiffs repeat, re-allege and incorporate the allegations above as if
25 fully set forth herein.

26 91. Mortgage lending and the providing of residential mortgage loans is a
27 "residential real estate-related transaction" within the meaning of the FHA. 42 U.S.C.
28 §3605(b).

1 92. By imposing higher interest rates and other discretionary fees on
2 residential mortgage loans to plaintiffs and Class members than it imposed on non-
3 minority mortgage borrowers, Chase has discriminated against plaintiffs and members
4 of the Class concerning their ability to participate in real estate-related transactions,
5 and in the terms and conditions of such transactions, in violation of the FHA. 42
6 U.S.C. §3605(a).

7 93. In addition, Chase's pricing policies and procedures (including yield
8 spread premiums), which provide financial incentives to its mortgage brokers and
9 correspondent lenders to make subjective decisions to increase interest rates and
10 charge additional fees and costs, had a disparate impact upon plaintiffs and Class
11 members.

12 94. As a proximate result of Chase's violation of 42 U.S.C. §3605, plaintiffs
13 and members of the Class have been injured and are entitled to injunctive and
14 declaratory relief and damages, or make whole equitable relief.

15 95. In addition, Chase's conduct as alleged herein was intentional, willful,
16 wanton, reckless, malicious, outrageous, or otherwise aggravated beyond mere
17 negligence. Chase acted with malice and reckless indifference to the federally
18 protected rights of plaintiff and members of the Class. As a result, plaintiffs and
19 members of the Class are entitled to punitive damages.

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

26 97. Plaintiffs and members of the Class ask this Court to declare the rights of
27 the parties herein regarding Chase's obligation to participate in credit transactions
28

1 without discriminating against applicants for credit on the basis of the applicants'
2 race.

3 **PRAYER FOR RELIEF**

4 WHEREFORE PREMISES CONSIDERED, plaintiffs request the following
5 relief:

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

8 B. A judgment awarding plaintiffs and Class members costs and
9 disbursements incurred in connection with this action, including reasonable attorneys'
10 fees, expert witness fees and other costs;

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

16 D. A judgment awarding plaintiffs and Class members compensatory
17 damages according to proof;

18 E. A judgment awarding punitive damages to plaintiffs and Class members;

19 F. A judgment granting declaratory and injunctive relief and all relief that
20 flows from such injunctive and declaratory relief; and

21 G. A judgment or other order granting such other and further relief as the
22 Court deems just and proper including, but not limited to, recessionary relief and
23 reformation.

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JURY TRIAL DEMANDED

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

DATED: January 14, 2009

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DECLARATION OF SERVICE BY MAIL

I, the undersigned, declare:

1. That declarant is and was, at all times herein mentioned, a citizen of the United States and a resident of the County of San Diego, over the age of 18 years, and not a party to or interested party in the within action; that declarant's business address is 655 West Broadway, Suite 1900, San Diego, California 92101.

2. That on January 14, 2009, declarant served the FIRST AMENDED CLASS ACTION COMPLAINT by depositing a true copy thereof in a United States mailbox at San Diego, California in a sealed envelope with postage thereon fully prepaid and addressed to the parties listed on the attached Service List.

3. That there is a regular communication by mail between the place of mailing and the places so addressed.

I declare under penalty of perjury that the foregoing is true and correct.
Executed this 14th day of January, 2009, at San Diego, California.



JUNE P. ITO

CHASE FHA

Service List - 1/14/2009 (07-0262)

Page 1 of 1

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