

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

<p>CECIL BARRETT, JR., CYNTHIA BARRETT, JEAN BLANCO GUERRIER, ANGELIQUE M. BASTIEN, JACQUELINE GRISSETT, CRAIG GRISSETT, STEVEN PARHAM, BETTY HOFFMAN, EDWARD HOFFMAN, DORIS MURRAY, JOSLYN DAY and KEISHA CHAVERS on behalf of themselves and all others similarly situated,</p> <p>Plaintiffs,</p> <p>vs.</p> <p>OPTION ONE MORTGAGE CORPORATION and H&R BLOCK MORTGAGE CORP. N/K/A OPTION ONE MORTGAGE SERVICES, INC.</p> <p>Defendants.</p>		<p>C.A. NO. 08-10157</p> <p><u>JURY TRIAL DEMANDED</u></p>
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SECOND AMENDED CLASS ACTION COMPLAINT

Plaintiffs, Cecil Barrett Jr., Cynthia Barrett, Jean Blanco Guerrier, Angelique M. Bastien Jacqueline Grissett, Craig Grissett, Steven Parham, Betty and Edward Hoffman, Doris Murray, Joslyn Day and Keisha Chavers (collectively "Plaintiffs"), on behalf of themselves and all others similarly situated, by their undersigned attorneys, allege as follows:

1. This is a class action brought by Plaintiffs, on behalf of themselves and other similarly situated minority homeowners, against Option One Mortgage Corporation and H&R Block Mortgage Corp. (collectively "Defendants"), 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. Plaintiffs

seek remedies for themselves and the Class (defined in ¶126, below) for the discriminatory effects of the Defendants' home financing policies and practices.

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

3. The mortgage lending industry has a long history of racial discrimination, offering minorities products and terms that are drastically worse than those given to their similarly-situated white counterparts. Recently, the Federal Reserve Board confirmed that blacks and other minorities are still more likely to pay higher prices for mortgages than whites.

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

¹ This report is available at <http://ncrc.org/policy/cra/documents/ncrediscrimstudy.pdf>.

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

6. In a speech last year, Martin J. Gruenberg, Vice Chairman of the Federal Deposit Insurance Corporation observed that “previous studies have suggested higher-priced, subprime lenders are more active in lower income, urban areas and that minority access to credit is dominated by higher cost lenders.”³

7. In 2006, the Center for Responsible Lending, a non-profit research organization, uncovered “large and statistically significant” differences between the rates of subprime loans offered to blacks and whites, even when income and credit risk were taken into consideration. Compared to their otherwise similarly-situated white counterparts, blacks were 31-34% more likely to receive higher rate fixed-rate loans and 6-15% more likely to receive adjustable-rate loans.⁴

8. Subprime loans to blacks and other minorities not only impose higher interest rates, they are typically laden with excessive, unreasonable and often improperly disclosed fees as well. *See* n.3.

9. These significant disparities are not mere coincidences. They are the result of a systematic and discriminatory policy of targeting minority borrowers for high-cost loans. Defendants’ business practices include implementing and maintaining policies that discriminate

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

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

against minorities. Plaintiffs bring this lawsuit to seek relief from the harms suffered as a result of Defendants' practices and to enjoin Defendants from continuing its discriminatory practices.

10. The Defendants have established policies for retail and wholesale access to their loan products that subject minority financing applicants to a significantly higher likelihood of exposure to discretionary points and fees. These costs drive up the average cost of a mortgage loan made by one of the defendants to minority homeowners.

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

JURISDICTION AND VENUE

12. Plaintiffs invoke the jurisdiction of this Court pursuant to 28 U.S.C. § 1331, which confers original jurisdiction upon this Court in a civil action arising under federal law.

13. Venue is proper in this Court pursuant to 28 U.S.C. 1391(b) inasmuch as the unlawful discriminatory practices are alleged to have been committed in this District, Defendants regularly conduct business in this District, and some of the named Plaintiffs reside in this District.

PARTIES

14. Plaintiffs, Cecil Barrett Jr. and Cynthia Barrett, (the "Barretts") are married minority homeowners who reside at 965 Morton Street, Mattapan, Massachusetts 02126.

15. Plaintiffs, Jean Blanco Guerrier and Angelique M. Bastien ("Mr. Guerrier and Ms. Bastien") are married minority homeowners who reside at 38 Himoor Circle, Randolph, Massachusetts 02368.

⁴ See "Unfair Lending: The Effect of Race and Ethnicity on the Price of Subprime Mortgages,"

16. Plaintiffs, Jacqueline Grissett and Craig Grissett (the “Grissetts”) are married minority homeowners who reside at 22 Country Club Drive, Randolph, Massachusetts 02368.

17. Plaintiff, Steven Parham, (“Mr. Parham”) is a minority homeowner who resides at 20 Brockton Street, Mattapan, Massachusetts 02126.

18. Plaintiffs Betty and Edward Hoffman (the “Hoffmans”) are married minority homeowners who reside at 11 Harwood Street, Dorchester, Massachusetts 02124.

19. Plaintiff Doris Murray (“Murray”) is a minority homeowner who resides at 9806 S. Winston Avenue, Chicago, Illinois 60643.

20. Plaintiff Joslyn Day (“Day”) is a minority homeowner who resides at 407 Washington Street, Unit 6, Dorchester, Massachusetts 02124.

21. Plaintiff Keisha Chavers (“Chavers”) is a minority homeowner who resides at 5849 S. Indiana Avenue, Chicago, Illinois 60637.

22. Defendant, Option One Mortgage Company (“Option One”) is a wholly-owned subsidiary of H&R Block, Inc. Option One was primarily a wholesale mortgage lender and offered its services through its branches and a national network of mortgage brokers until December 2007, when H&R Block, Inc. terminated Option One’s loan origination business. Option One maintains a principal place of business at 3 Ada, Irvine, California 92618 and although it is not making new loans, continues its servicing and collection operations.

23. Defendant, H&R Block Mortgage Corp. (“H&R Block Mortgage”) is a wholly-owned subsidiary of H&R Block, Inc. H&R Block Mortgage was a retail mortgage lender making direct-to-consumer loans nationwide until H&R Block, Inc. terminated H&R

BlockMortgage's loan origination business in 2007. H&R Block Mortgage maintains a principal place of business located at 6561 Irvine Center Drive, Irvine, California 92616.

24. According to the Massachusetts Secretary of State's Office, H&R Block Mortgage Corp. changed its name to Option One Mortgage Services, Inc. on or about July 23, 2007.

FACTS

A. MORTGAGE LENDING IN THE UNITED STATES HISTORICALLY HAS DISCRIMINATED AGAINST MINORITIES

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

26. The skyrocketing levels of foreclosures in urban areas, and minority communities in particular, have been tied to the growth of concentrated subprime lending in these areas.⁵ Concentrated foreclosures have a devastating impact on cities and neighborhoods. They affect local property values, serve as a magnet for crime, and hurt a city's property tax base.⁶

⁵ Immergluck, Dan and Geoff Smith. March 2004. "Risky Business: An Econometric Analysis of the Relationship Between Subprime Lending and Foreclosures." Woodstock Institute: Chicago, IL.

⁶ For discussions of the external impacts of foreclosures, *see* Immergluck, Dan and Geoff Smith. June 2005. *There Goes the Neighborhood: The Effect of Single-Family Mortgage Foreclosures on Property Values*. Woodstock Institute: Chicago, IL; Immergluck, Dan and Geoff Smith.

27. While many institutions specialize in lending to either prime or subprime markets, there is an important set of large lenders that are active in both markets. These lenders utilize diverse lending channels such as branch, broker and correspondent networks that allow them to reach a wide variety of geographic markets. Their size also gives them the capacity to offer an array of products that may be appropriate for customers with different levels of credit quality.

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

29. The passage of civil rights legislation and fair lending laws in the 1960s and 1970s brought an end to the most virulent forms of overt racial discrimination in the housing markets, but throughout the 1980s and 1990s, mortgage lenders found more subtle ways to discriminate, including maintaining offices only in white neighborhoods and engaging in practices such as redlining (refusing to lend on properties in predominantly minority neighborhoods).

30. After such redlining practices were challenged in the 1990s, mortgage lenders changed tactics once again, making loans to minorities, but charging higher interest rates and loan-related fees than they charged to similarly situated white borrowers. Loan data that

November 2006. "The Impact of Single Family Foreclosures on Neighborhood Crime." *Housing Studies* (21:6); and Apgar, William, Mark Duda, and Rochelle Nawrocki Gorey.

mortgage lenders must now compile and disclose under the federal Home Mortgage Disclosure Act (“HMDA”) reveals profound loan pricing disparities between minority borrowers and similarly-situated white borrowers.

31. The HMDA requires mortgage lenders to report information about the home loans they process each year. In 2005, lenders reported information on more than 30 million home loan applications pursuant to HMDA. In 1989, Congress required lenders to begin disclosing information about mortgage borrowers’ race and ethnicity. In 2004, concerned with potential racial discrimination in loan pricing and recognizing that racial or other types of discrimination can occur when loan officers and mortgage brokers have latitude in setting interest rates, the Federal Reserve Board began requiring lenders to also report information concerning rates, points, and fees, charged to borrowers on high-cost loans.

32. According to the Federal Reserve, both 2004 and 2005 HMDA data revealed that “Blacks and minority borrowers were more likely . . . to have received higher-priced loans than non-Hispanic whites . . . [which has] increased concern about the fairness of the lending process.”⁷

33. HMDA data for 2004 reveals profound loan pricing disparities between minority borrowers and non-Hispanic whites even after controlling for borrowers’ gender, income, property location, and loan amount. After accounting for those differences in the 2004 HMDA data, minority borrowers were still almost twice as likely to receive a higher-rate home loan as

February 2005. *The Municipal Costs of Foreclosures: A Chicago Case Study*. Foreclosure Prevention Foundation: Minneapolis, MN.

⁷ Robert B. Avery, Kenneth P. Brevoort and Glenn B. Canner, “Higher-Priced Home Lending and the 2005 HMDA Data,” Federal Reserve Bulletin, A124, A159 (revised Sept. 18, 2006) (<http://www.federalreserve.gov/pubs/bulletin/2006/hmda/bull06hmda.pdf>).

non-Hispanic whites.⁸ In a speech last year, the Vice-Chairman of the Federal Deposit Insurance Corporation, Martin Gruenberg, discussed the 2004 HMDA data and observed that that data “clearly indicated” that minority borrowers are more likely to receive high-cost home loans than are non-Hispanic whites.⁹

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

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

36. The study found that, nationally, black home purchasers were 2.7 times more likely and Hispanics were 2.3 times more likely than white borrowers to be issued a problematic, subprime loan. Additionally, the ACORN study, available at www.acorn.org, found that nationally, for refinance loans, African Americans were 1.8 times more likely and Hispanics were 1.4 times more likely than white borrowers to be issued a problematic, subprime loan.

⁸ This is available at <http://www.responsiblelending.org/pdfs/Testimony-Ernst061306.pdf>

⁹ This speech is available at <http://www.fdic.gov/news/news/speeches/archives/2006/chairman/spoct1806.html>.

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

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

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

40. Further, the U.S. Department of Housing and Urban Development found that in neighborhoods where at least 80 percent of the population is African American, borrowers were 2.2 times as likely as borrowers in the nation as a whole to refinance with a subprime lender.

Higher-income borrowers living in predominately blacks neighborhoods are twice as likely as lower-income white borrowers to have subprime loans.¹⁰

41. The predatory lending practices of the Defendants and other mortgage lenders lead to dire financial consequences for borrowers. Earlier this year, over eighty consumer groups wrote to federal banking agencies about a particular type of subprime loan, 2/28 the adjustable rate mortgage (“2/28 ARM”). A 2/28 ARM typically contains an average built-in “shock payment” increase of 29%, even if interest rates remain unchanged. Fitch Ratings reports that the actual payment shock may be as high as 48%. The majority of subprime loans made to minorities had these adjustable rates. The Center for Responsible Lending estimates that 2.2 million such subprime loans have ended or will end in foreclosure, a rate of 19%.

42. Each named Plaintiff has a 2/28 ARM.

43. The Center for Responsible Lending published a study in December 2006 on the effects of foreclosure.¹¹ The report states that the costs of subprime foreclosures fall heavily on African American and Hispanic homeowners, since subprime mortgages are disproportionately made in communities of color. HMDA data shows that over half of loans to black borrowers are higher-cost loans, which, by definition, are a proxy for subprime loans. For Hispanic homeowners, the portion of higher-cost loans is also very high, at four in ten. This data implies that subprime foreclosures will affect eight percent of recent Hispanic borrowers and 10 percent of recent blacks borrowers. By comparison, subprime foreclosures will likely occur among only about four percent of recent white borrowers.

¹⁰ See “All Other Things Being Equal: A Paired Testing Study of Mortgage Lending Institutions,” 2002, available at www.huduser.org.

44. The Center for Responsible Lending released an additional study in November, 2007¹² that explains how when a home goes into foreclosure, the negative effects extend beyond individual families losing their homes to surrounding neighbors and the wider community. The 2007 study further reports that a foreclosure on a home lowered the price of other nearby single-family homes, on average, by 0.9 percent. That impact was even higher in lower-income neighborhoods, where each foreclosure dropped home values by an average of 1.44 percent. The study notes that communities of color will be especially harmed, since these communities receive a disproportionate share of subprime home loans.

45. The 2007 study projects that, nationally, foreclosures on subprime home loans originated in 2005 and 2006 will have numerous impacts on the neighborhoods and communities in which they occur. For instance, the study predicts that 44.5 million neighboring homes will experience devaluation because of subprime foreclosures that take place nearby, and the total decline in house values and tax base from nearby foreclosure will be about \$223 billion. Homeowners living near foreclosed properties will see their property values decrease \$5,000 on average.

46. A growing number of research studies and investigations show that significant racial disparities still exist.¹³

¹¹ See “Losing Ground: Foreclosures in the Subprime Market and Their Cost to Homeowners.” December 2006, available at www.responsiblelending.org.

¹² See “Subprime Spillover: Foreclosures Cost Neighbors \$223 Billion; 44.5 Million Homes Lost \$5,000 on Average.” Center for Responsible Lending, *available at* www.responsiblelending.org.

¹³ California Reinvestment Coalition, et al., “Paying More for the American Dream: A Multi-State Analysis of Higher Cost Home Purchase Lending” (March 2007) (http://www.nedap.org/pressroom/documents/2007_Report-2005_HMDA.pdf); Ross, “The

47. Moreover, and importantly, research studies have suggested that borrowers' credit profiles cannot fully explain why some borrowers, and not others, are saddled with higher cost loans. Researchers have raised "doubts that risk can adequately explain racial differences" in high-cost loans.¹⁴ In other words, evidence "suggests that weak borrower credit profiles do not fully explain why some borrowers get stuck with higher-cost home loans."¹⁵

B. THE DEFENDANTS' DISCRETIONARY PRICING POLICY CONTINUES THE PERVASIVE DISCRIMINATION AGAINST MINORITIES IN MORTGAGE LENDING

48. Option One was one of the largest subprime mortgage-lending companies in the United States. Option One publicly promoted its home financing expertise by means of nationwide advertising campaigns. In its advertisements, Option One solicited persons to apply for financing with Option One either in one of its branch offices or through one of the mortgage brokers whom Option One had authorized to accept applications on its behalf.

49. H&R Block made home-mortgage loans directly to consumers through its subsidiary, H&R Block Mortgage.

50. Option One made home-mortgage loans - the majority of which were subprime loans - that were arranged by its loan officers and/or its network of mortgage brokers. Those loans were made in reliance on Option One's credit-granting policies and with the participation of H&R Block and H&R Block Mortgage Corp.

Continuing Practice and Impact of Discrimination" (Revised July 2006) (Univ. of Connecticut, Working Paper 2005-19R) (<http://www.econ.uconn.edu/working/2005-19r.pdf>).

¹⁴ Bradford, Center for Community Change, "Risk or Race? Racial Disparities and the Subprime Refinance Market" (May 2002) (http://www.knowledgeplex.org/kp/report/report/relfiles/cc_0729_risk.pdf).

¹⁵ California Reinvestment Coalition, et al., "Paying More for the American Dream: A Multi-State Analysis of Higher Cost Home Purchase Lending." (March 2007).

51. Due to H&R Block's policies as to where to place its offices and how to market its products, minority borrowers were more likely than white borrowers to apply for credit from H&R Block through its sub-prime subsidiary Option One, or from an Option One authorized broker.

52. Even after controlling for differences in credit risk, because of the Discretionary Pricing Policy, loans obtained from Option One or Option One's network of brokers are more expensive, on average, than loans obtained directly from H&R Block or H&R Block Mortgage.

53. H&R Block and H&R Block Mortgage Corp., in the ordinary course of its business, regularly participates in credit decisions made by Option One, including setting the terms of credit available in transactions originated by Option One. H&R Block, H&R Block Mortgage Corp. and Option One jointly established the Discretionary Pricing Policy at issue in this case.

54. H&R Block and H&R Block Mortgage Corp. participated in the decisions to grant credit to the Plaintiffs including, without limitation, by making the Discretionary Pricing Policy applicable to their loans.

55. Based on the latest available Home Mortgage Disclosure Act ("HMDA") data from the Department of Housing and Urban Development, minority homeowners who borrowed from Option One were more likely than whites to have received a high-APR loan.

56. A high-APR loan is a loan whose APR is at least three percentage points higher than the interest rate on U.S. Treasury securities of the same maturity, at the time the loan was made.

57. While credit differences may explain some part of the disparities in rate and terms, the Defendants' Discretionary Pricing Policy accounts for a significant portion of the disparity.

58. The Defendants' Discretionary Pricing Policy is unrelated to a borrower's objective credit characteristics such as credit history, credit score, debt-to-income ratio and loan-to-value ratios and results in purely subjective charges that affect the rate otherwise available to borrowers.

59. Option One provided its loan officers and authorized mortgage brokers with substantial information about its loan programs, rates and credit criteria, as well as its policies for compensating its loan officers and mortgage brokers who arranged business for it.

60. Option One authorized certain mortgage brokers to accept applications on its behalf, to quote financing rates and terms (within the limitations set by H&R Block), to inform credit applicants of Option One's financing options and to originate finance transactions using H&R Block's forms, in accordance with its policies.

61. Option One provided its loan officers and brokers with credit applications, loan contracts and other required financing forms, as well as instructions on filling out such documents necessary to complete home mortgage transactions.

62. After a customer provided credit information to one of Option One's loan officers or brokers, Option One computed a financing rate through an objective credit analysis that, in general, discerned the creditworthiness of the customer.

63. These credit analyses considered numerous risk-related variables of creditworthiness, including credit bureau histories, payment amounts, debt ratio, bankruptcies,

automobile repossessions, charge-offs, prior foreclosures, payment histories, credit score, debt-to-income ratios, loan-to-value ratios and other risk-related attributes or variables. On information and belief, Option One used these variables to determine a “mortgage score” for each credit applicant.

64. Based on these objective risk-related variables and the resulting mortgage score, Option One derived a risk-based financing rate at which it would provide a home mortgage, often called the “Par Rate.” Alternatively, experienced Option One loan officers and brokers estimated the risk-related Par Rate by referring to the applicant’s credit bureau determined credit score.

65. Although Option One’s initial analysis applied objective criteria to calculate this risk-related Par Rate, Option One then authorized a subjective component in its credit pricing system —the Discretionary Pricing Policy — to impose additional non-risk charges. On information and belief, the applicable Par Rates and authorized discretionary charges were communicated by Option One to its loan officers and brokers via regularly published “rate sheets.” On information and belief, such rate sheets were published by Option One via intranet and internet.

66. The discretionary charges are paid by the customer as a component of the total finance charge (the “Contract APR”), without the homeowner knowing that a portion of their contract APR was a non-risk-related charge.

67. Loan officers and brokers had discretion, within the limits set by the Defendants, to impose discretionary mark-ups as additional points in interest – “a rate mark-up”, or as points

and fees on the loan. When there was a rate mark-up, the Defendants received additional income.

68. The Defendants' Discretionary Pricing Policy, by design, caused persons with identical or similar credit scores to pay different amounts for the cost of credit. As a result of using a subjective pricing component that is designed to charge persons with the same credit profiles different amounts of finance charge, the objective qualities of the initial credit analysis used to calculate the Par Rate are undermined and the potential for race bias became inherent in the transaction.

69. The Discretionary Pricing Policy, although facially neutral (insofar as the Defendants use the same or effectively the same policy for all credit applicants), had a disproportionately adverse effect on minorities compared to similarly situated whites in that minorities paid disparately more discretionary charges (both in frequency and amount) than similarly situated whites. Statistical analysis of discretionary charges imposed on minority and white customers of other mortgage companies that use credit pricing systems structured like that of Option One has revealed that minorities, after controlling for credit risk, are substantially more likely than similarly situated whites to pay such charges.

70. Loan officers and brokers are agents of Option One for the purpose of setting credit price, which always was set based on the Defendants' policy.

71. The disparate impact suffered by minorities is a direct result of the Defendants' Discretionary Pricing Policy in that the Defendants designed, disseminated, controlled, implemented and profited from the Discretionary Pricing Policy creating the disparate impact.

72. The Defendants have a non-delegable duty to ensure that their mortgage financing structure and policies do not have a disparate impact on legally protected classes, such as minorities. Despite having such a non-delegable duty, the Defendants chose to use, a commission-driven, subjective pricing policy that they knew or should have known had a significant and pervasive adverse impact on minority homeowners.

73. The disparities between the terms of the Defendants' transactions involving minority homeowners and the terms involving whites homeowners cannot be a product of chance and cannot be explained by factors unrelated to race, but, instead, are the direct causal result of the use of the discriminatory Discretionary Pricing Policy.

74. There are no legitimate business reasons justifying the Defendants' discriminatory Discretionary Pricing Policy that could not be achieved by a policy that has no discriminatory impact or a greatly reduced discriminatory impact.

C. THE DEFENDANTS' DISCRETIONARY PRICING POLICY DISCRIMINATED AGAINST PLAINTIFFS

Facts Relating To The Barretts

75. Plaintiffs, Cecil Barrett Jr. and Cynthia Barrett reside at 965 Morton Street, Mattapan, Massachusetts 02126.

76. On or about January 16, 2004, the Barretts purchased their Mattapan home for approximately \$277,000.00.

77. On August 19, 2005, the Barretts refinanced their home loan with Option One.

78. The loan, (Loan No. 161044209) was a 30-year, adjustable rate loan with a disclosed APR of 8.653%. The loan amount was \$416,000.00. According to the note, the loan

had a five-year fixed rate followed by a 25-year variable rate feature and was an interest only loan.

79. According to the HUD-One Settlement Statement, the Barretts paid \$21,641.08 in settlement charges in connection with the loan, including, a \$17,500 broker fee to Money-Wise Solutions (“Money-Wise”), an Option One authorized mortgage broker, a \$620.00 processing fee to Money-Wise, a \$650 underwriting fee to Option One and a \$50.00 funding fee to Option One.

80. True and correct copies of Truth-in-Lending disclosure and HUD-One Settlement Statement provided in connection with Loan No. 161044209 are attached hereto and labeled Exhibit 1 and Exhibit 2, respectively.

81. On April 6, 2006, the Barretts refinanced their Option One loan with a second Option One loan.

82. The second loan (Loan No. 161048049), which has a loan amount of \$500,000, is an adjustable rate loan with a balloon feature, providing for a final payment of \$344,113.90. The APR of the second loan was 10.536%.

83. According to the HUD-One Settlement Statement, the Barretts paid \$17,066.32 in settlement charges in connection with the second loan, including, a \$3,500 broker fee to Logic Mortgage & Finance (“Logic”), an Option One authorized mortgage broker, a \$595.00 processing fee to Logic, an \$850 underwriting fee to Option One, a \$50.00 funding fee to Option One and a \$7,500 loan origination fee to Option One.

84. True and correct copies of the Truth-in-Lending disclosure and HUD-One Settlement Statement provided in connection with Loan No. 161048049 are attached hereto and labeled Exhibit 3 and Exhibit 4, respectively.

85. According to credit reports available to Option One, Mr. Barrett had an average credit score of 681 and Ms. Barrett had an average credit score of 665 as of January 20, 2006.

86. At the time of the transactions, the Barretts had credit scores that would have qualified with many lenders for a mortgage in the prime-market. Instead, the Barretts received mortgages at sub-prime rates and on sub-prime terms.

87. H&R Block and H&R Block Mortgage Corp, by various means and through its policies, participated in the decision to grant credit to the Barretts, including the rates and terms on which credit would be granted.

88. On information and belief, unbeknownst to the Barretts, the contract APR on the mortgage loans were actually a combination of an objective, risk-based calculation and a totally subjective, discretionary component added pursuant to the Defendants' Discretionary Pricing Policy.

89. On information and belief, the Barretts were subject to the Defendants' Discretionary Pricing Policy.

90. On information and belief, the Barretts were charged a disproportionately greater amount in non-risk-related credit charges than similarly situated white persons.

91. The Barretts were not offered less expensive loan products that were available to borrowers with their credit characteristics directly from H&R Block or H&R Block Mortgage Corp.

Facts Relating To Mr. Guerrier And Ms. Bastien

92. Plaintiffs, Jean Blanco Guerrier and Angelique Bastien reside at 38 Himoor Circle, Randolph, Massachusetts 02368 with their teenaged son and daughter.

93. On or about April 28, 2006, Mr. Guerrier and Ms. Bastien purchased their Randolph home for approximately \$390,000 with Option One as the lender.

94. The loan, (Loan No. 161048878) is a 30-year adjustable rate loan with a disclosed APR of 10.844%. The loan amount was \$360,000. According to the note, the loan had a two-year fixed rate followed by a 28-year variable rate feature.

95. Mr. Guerrier and Ms. Bastien first discovered that the loan had an adjustable rate at the closing, but felt pressured to close because they had sold their previous home on the same day.

96. According to the HUD-One Settlement Statement, Mr. Guerrier and Ms. Bastien paid \$13,403.23 in settlement charges in connection with the loan, including, a \$6,040.00 broker fee to LEHI Mortgage Services, Inc. ("LEHI"), an Option One authorized mortgage broker, a \$570.00 processing fee to LEHI, a \$295.00 application fee to LEHI, an \$850 underwriting fee to Option One, a \$50.00 funding fee to Option One and a \$900 loan discount fee to Option One.

97. True and correct copies of the Truth-in-Lending disclosure and HUD-One Settlement Statement provided in connection with Loan No. 161048878 are attached hereto and labeled Exhibit 5 and Exhibit 6, respectively.

98. At the time of the transaction, Mr. Guerrier had a credit score that would have qualified with many lenders for a mortgage in the prime-market. Instead, Mr. Guerrier received a mortgage at sub-prime rates and on sub-prime terms.

99. H&R Block and H&R Block Mortgage Corp., by various means and through its policies, participated in the decision to grant credit to Mr. Guerrier and Ms. Bastien, including the rates and terms on which credit would be granted.

100. On information and belief, unbeknownst to Mr. Guerrier and Ms. Bastien, the contract APR on the mortgage loans were actually a combination of an objective, risk-based calculation and a totally subjective, discretionary component added pursuant to the Defendants' Discretionary Pricing Policy.

101. On information and belief, Mr. Guerrier and Ms. Bastien were subject to the Defendants' Discretionary Pricing Policy.

102. On information and belief, Mr. Guerrier and Ms. Bastien were charged a disproportionately greater amount in non-risk-related credit charges than similarly situated white persons.

103. Mr. Guerrier and Ms. Bastien were not offered less expensive loan products that were available to borrowers with their credit characteristics directly from H&R Block or H&R Block Mortgage Corp.

Facts Relating To The Grissetts

104. Plaintiffs, Jacqueline Grissett and Craig Grissett reside at 22 Country Club Drive, Randolph, Massachusetts 02368 with their three children, aged 5 years, 9 years and 11 years.

105. On or about August 4, 2006, the Grissetts refinanced their previous Countrywide Home Loans, Inc. mortgage loan with Option One.

106. Option One split the refinance into two loans, Loan No. 161050324, with a principal amount of \$253,600.00 and Loan No. 161050329, with a principal amount of \$63,400.00.

107. The larger loan, (Loan No. 161050324) is a 30-year adjustable rate loan with a disclosed APR of 10.878%. According to the note, the loan had a two-year fixed rate followed by a 28-year variable rate feature.

108. According to the HUD-One Settlement Statement, the Grissetts paid \$11,651.65 in settlement charges in connection with the larger loan, including, a \$5,072.00 broker fee to Maritime Mortgage (“Maritime”), an Option One authorized mortgage broker, a \$950 underwriting fee to Option One, and a \$50.00 funding fee to Option One.

109. True and correct copies of Truth-in-Lending disclosure and HUD-One Settlement Statement provided in connection with Loan No. 161050324 are attached hereto and labeled Exhibit 7 and Exhibit 8, respectively.

110. The smaller loan, (Loan No. 161050329), is a 30-year fixed rate loan with a disclosed APR of 14.131%.

111. True and correct copies of Truth-in-Lending disclosure and HUD-One Settlement Statement provided in connection with Loan No. 161050329 are attached hereto and labeled Exhibit 9 and Exhibit 10, respectively.

112. H&R Block and H&R Block Mortgage Corp., by various means and through its policies, participated in the decision to grant credit to the Grissetts, including the rates and terms on which credit would be granted.

113. On information and belief, unbeknownst to the Grissetts, the contract APR on the mortgage loans were actually a combination of an objective, risk-based calculation and a totally subjective, discretionary component added pursuant to the Defendants’ Discretionary Pricing Policy.

114. On information and belief, the Grissetts were subject to the Defendants' Discretionary Pricing Policy.

115. On information and belief, the Grissetts were charged a disproportionately greater amount in non-risk-related credit charges than similarly situated white persons.

116. The Grissetts were not offered less expensive loan products that were available to borrowers with their credit characteristics directly from H&R Block or H&R Block Mortgage Corp.

Facts Relating To Mr. Parham

117. Plaintiff, Steven Parham resides at 20 Brockton Street, Mattapan, Massachusetts 02126 with his wife and their 11 year old daughter.

118. While serving a police detail on Norfolk Street in Mattapan, Mr. Parham was approached by a mortgage broker from People's Choice Mortgage, Inc. ("People's Choice"), who told Mr. Parham that he could find him a mortgage loan at a lower interest rate.

119. On or about September 29, 2006, Mr. Parham refinanced his previous mortgage loan serviced by AMC Mortgage Services, Inc. with Option One.

120. The loan, (Loan No.161050485) is a 30-year adjustable rate loan with a disclosed APR of 10.829%. According to the note, the loan has a two-year fixed rate followed by a 28-year variable rate feature. The loan note also requires a balloon payment of \$340,057.01.

121. According to the HUD-1A Settlement Statement, Mr. Parham paid \$12,208.92 in settlement charges in connection with the loan, including, a \$4,940.00 broker fee to People's Choice, an Option One authorized mortgage broker, a \$500.00 processing fee to People's Choice, a \$850.00 underwriting fee to Option One and a \$50.00 funding fee to Option One. In

addition, Option One paid a \$4,940.00 yield spread premium to People's Choice for marking up the interest rate on the loan.

122. True and correct copies of Truth-in-Lending disclosure and HUD-1A Settlement Statement provided in connection with Loan No. 161050485 are attached hereto and labeled Exhibit 11 and Exhibit 12, respectively.

123. H&R Block and H&R Block Mortgage Corp., by various means and through its policies, participated in the decision to grant credit to Mr. Parham, including the rates and terms on which credit would be granted.

124. On information and belief, unbeknownst to Mr. Parham, the contract APR on the mortgage loan was actually a combination of an objective, risk-based calculation and a totally subjective, discretionary component added pursuant to the Defendants' Discretionary Pricing Policy.

125. On information and belief, Mr. Parham was subject to the Defendants' Discretionary Pricing Policy.

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

127. Mr. Parham was not offered less expensive loan products that were available to borrowers with their credit characteristics directly from H&R Block or H&R Block Mortgage Corp.

Facts Relating To The Hoffmans

128. Plaintiffs Betty and Edward Hoffman reside at 11 Harwood Street, Dorchester, Massachusetts 02124.

129.

130. The Hoffmans purchased their Dorchester home in 1970 for approximately \$15,900.00.

131. On August 24, 2007, the Hoffmans refinanced their existing home loan with a mortgage loan from Option One.

132. The loan (Loan No. 231098060) was a 30-year, fixed rate loan with a disclosed APR of 10.699%. The loan amount was \$321,950.00.

133. According to the HUD-One Settlement Statement, the Hoffmans paid \$13,370.33 in settlement charges in connection with the loan including a \$8,853.63 broker fee to People's Choice Mortgage Inc. ("People's Choice"), an Option One authorized mortgage broker, a \$600 processing fee to People's Choice, a \$350 application fee to People's Choice, a \$850 underwriting fee to Option One and a \$50 funding fee to Option One. On the Hoffmans' loan, Option One paid additional broker compensation in the form of a \$3,219.50 yield spread premium to People's Choice for marking up the interest rate on the loan.

134. True and correct copies of Truth-in-Lending disclosure and HUD-One Settlement Statement provided in connection with Loan No. 231098060 are attached hereto and labeled Exhibit 13 and Exhibit 14, respectively.

135. H&R Block and H&R Block Mortgage, by various means and through their policies, participated in the decision to grant credit to the Hoffmans, including the rates and terms on which credit would be granted.

136. On information and belief, unbeknownst to the Hoffmans, the Contract APR on the mortgage loan was actually a combination of an objective, risk-based calculation and a

totally subjective, discretionary component added pursuant to Defendants' Discretionary Pricing Policy.

137. On information and belief, the Hoffmans were subject to Defendants' Discretionary Pricing Policy.

138. On information and belief, the Hoffmans were charged a disproportionately greater amount in non-risk-related credit charges than similarly situated white persons.

139. Defendants did not offer the Hoffmans their less expensive loan products that were available to borrowers with their credit characteristics directly under Defendants' policies.

Facts Relating To Doris Murray

140. Plaintiff Murray resides at 9806 S. Winston Avenue, Chicago, Illinois 60643.

141. On or about August 5, 2005, Murray refinanced her existing home loan with a mortgage loan from Option One.

142. The loan (Loan No. 041068915) is a 30-year adjustable rate loan with a disclosed APR of 10.482%. The loan amount was \$182,000.00. According to the note, the loan had a two-year fixed rate followed by a 28-year variable rate feature.

143. According to the HUD-One Settlement Statement, Murray paid over \$7,400 in settlement charges in connection with the loan, including, a \$3,640 broker fee to Skyline Title, ("Skyline"), an Option One authorized mortgage broker, a \$530 processing fee to Skyline, a \$650 underwriting fee to Option One, and a \$50 funding fee to Option One.

144. True and correct copies of the Truth-in-Lending disclosure and HUD-One Settlement Statement provided in connection with Loan No. 041068915 are attached hereto and labeled Exhibit 15 and Exhibit 16, respectively.

145. H&R Block and H&R Block Mortgage, by various means and through its policies, participated in the decision to grant credit to Murray, including the rates and terms on which credit would be granted.

146. On information and belief, unbeknownst to Murray, the Contract APR on the mortgage loan was actually a combination of an objective, risk-based calculation and a totally subjective, discretionary component added pursuant to Defendants' Discretionary Pricing Policy.

147. On information and belief, Murray was subject to Defendants' Discretionary Pricing Policy.

148. On information and belief, Murray was charged a disproportionately greater amount in non-risk-related credit charges than similarly situated white persons.

149. Defendants did not offer Murray its less expensive loan products that were available to borrowers with her credit characteristics directly under Defendants' policies.

Facts Relating To Joslyn Day

150. Plaintiff Day resides at 407 Washington Street, Unit 6, Dorchester, Massachusetts 02124.

151. In 2005, Day worked part time in H&R Block's call center as a customer service representative arranging appointments for people seeking tax preparation services.

152. During the time Day worked for H&R Block, an H&R Block Mortgage loan officer named Gilbert began calling her to suggest that she refinance her then existing home loan with Countrywide Home Loans ("Countrywide") with a loan from H&R Block Mortgage. Day does not know how Gilbert obtained her telephone number.

153. Prior to speaking with Gilbert, Day had no intention of refinancing her Countrywide loan and explained to Gilbert that she was not interested in refinancing.

154. However, Gilbert continued to call Day and eventually convinced her to refinance with H&R Block Mortgage.

155. Day refinanced her Countrywide loan with H&R Block Mortgage on May 16, 2005.

156. The loan (Loan No. 711006957) is a 30-year adjustable rate loan with a disclosed APR of 11.759%. According to the note, the loan had a two-year fixed rate followed by a 28-year variable rate feature.

157. According to the HUD-1A Settlement Statement, Day paid \$9,723.40 in settlement charges in connection with the loan, including, a \$6,982.50 loan origination fee to H&R Block Mortgage and a \$695 underwriting fee to H&R Block Mortgage.

158. True and correct copies of Truth-in-Lending disclosure and HUD-1A Settlement Statement provided in connection with Loan No. 711006957 are attached hereto and labeled Exhibit 17 and Exhibit 18, respectively.

159. H&R Block and Option One by various means and through their policies, participated in the decision to grant credit to Day, including the rates and terms on which credit would be granted.

160. On information and belief, unbeknownst to Day, the Contract APR on the mortgage loan was actually a combination of an objective, risk-based calculation and a totally subjective, discretionary component added pursuant to Defendants' Discretionary Pricing Policy.

161. On information and belief, Day was subject to Defendants' Discretionary Pricing Policy.

162. On information and belief, Day was charged a disproportionately greater amount in non-risk-related credit charges than similarly situated white persons.

163. H&R Block Mortgage did not offer Day less expensive loan products that were available to borrowers with her credit characteristics directly under Defendants' policies.

Facts Relating To Keisha Chavers

164. Plaintiff Chavers resides at 5849 S. Indiana Avenue, Chicago, Illinois 60637.

165. On or about September 14, 2005, Chavers refinanced her existing home loan with a mortgage loan from Option One. The financing was arranged through Approved Financial, Inc. ("Approved Financial"), an Option One approved mortgage broker.

166. The loan (Loan No. 041072031) is a 30-year adjustable rate loan with a disclosed APR of 9.807%. The loan amount was \$130,878.56. This loan was a 2/28 ARM under which the interest rate can rise to 10.1% on the first change date, October 1, 2007, and thereafter can increase by 1% every six months up to a maximum of 13.1%. Option One or its closing agent provided Chavers with only one copy of the Federal Notice of Right To Cancel.

167. According to the HUD-One Settlement Statement, Chavers paid over \$6,100.00 in settlement charges in connection with the loan, including, a \$2,025.00 "Mortgage Broker Fee" to Approved Financial, a \$300 "Application Fee" to Approved Financial, a \$300 "processing fee" to Approved Financial, a \$650 "underwriting fee" to Option One, and a \$50 "funding fee" to Option One.

168. Option One also paid indirect broker compensation in the form of a \$1,350.00 yield spread premium to Approved Financial, which imposed a substantial additional cost on plaintiff.

169. True and correct copies of the Truth-in-Lending disclosure and HUD-One Settlement Statement provided in connection with Loan No. 041072031 are attached hereto and labeled Exhibit 19 and Exhibit 20, respectively.

170. H&R Block and H&R Block Mortgage, by various means and through its policies, participated in the decision to grant credit to Chavers, including the rates and terms on which credit would be granted.

171. On information and belief, unbeknownst to Chavers, the Contract APR on the mortgage loan was actually a combination of an objective, risk-based calculation and a totally subjective, discretionary component added pursuant to Defendants' Discretionary Pricing Policy.

172. On information and belief, Chavers was subject to Defendants' Discretionary Pricing Policy.

173. On information and belief, Chavers was charged a disproportionately greater amount in non-risk-related credit charges than similarly situated white persons.

174. Defendants did not offer Chavers its less expensive loan products that were available to borrowers with her credit characteristics directly under Defendants' policies.

DISCOVERY/FRAUDULENT CONCEALMENT (TOLLING)

175. While long suspected, mortgage lending discrimination has only recently been disclosed and quantified. It has only been in the last few years that mortgage lenders have been required to submit details of their subprime home loans under the Home Mortgage Disclosure

Act. The groups that have studied predatory lending and the mortgage market have uncovered incredible racial disparities in the types of mortgages offered.

176. The causes of action alleged herein accrued upon discovery of the discriminatory impact of the Defendants' Discretionary Pricing Policy. Plaintiffs and members of the Class did not discover and could not have discovered through the exercise of reasonable diligence the factual bases of those claims. Indeed, the data forming the basis of Plaintiffs' claims only recently was released and analyzed in a comprehensive manner. Moreover, because the Defendants knowingly and actively concealed the facts alleged herein, Plaintiffs and the Class have been kept ignorant of vital information essential to the pursuit of these claims, without any fault or lack of diligence on their part.

177. Commission-driven, discretionary pricing systems, such as those used in the mortgage industry and structurally similar to the system utilized by the Defendants, have been found to produce significant discriminatory effects. Knowledge concerning the significant and pervasive discriminatory impact of such commission-driven, discretionary credit pricing systems has been widely circulated within the financing industry for several years, as a result of numerous actions by the United States Department of Justice and federal regulatory agencies. *See, Facts, section A supra.* Thus, the Defendants knew or should have known that their credit pricing system causes minority homeowners to pay more for mortgage financing than the amounts paid by white customers with identical or effectively identical credit scores.

178. Despite the fact that the Defendants knew or should have known of the discriminatory effect of their Discretionary Pricing Policy, none of the loan documents inform

the customer that its finance rates ultimately are subjective and not based solely on risk-related characteristics.

179. The Defendants were and are under a continuous non-delegable duty to disclose to the Plaintiffs and Class material information regarding their loans. The fact that certain loan terms are subjective and discretionary is information a reasonable borrower would consider important when deciding whether to accept the loan and on what terms. The fact that the subjective and discretionary components result in a disparate impact on minority is also information a reasonable minority borrower would consider important.

180. The Defendants failed to disclose this information, however, and Plaintiffs and Class Members reasonably relied upon the Defendants' representation that terms of their loans would be based on their creditworthiness. The Defendants' financing documents falsely fostered the image that the Defendants offer competitive rates that objectively are set. However, the Defendants never disclosed to its credit applicants the fact that: (a) its credit rates are subjective and can vary significantly among persons with identical credit profiles; and (b) it had authorized and provided a financial incentive to mortgage brokers to subjectively increase the credit rate above the rate otherwise available to the homeowner.

181. Due to the inherent nature of the Defendants' undisclosed Discretionary Pricing Policy and due to the Defendants' deception and concealment, the Defendants' minority customers had no way of knowing or suspecting: (a) the existence of the Defendants' subjective credit pricing policy; (b) that they were charged additional subjective credit charges; (c) that they were charged a disproportionately greater amount for their cost of credit than similarly situated white persons, and or (d) that any part of the loan price was negotiable. Thus, the

Defendants are estopped from relying on any statutes of limitation in their defenses of this action.

CLASS ALLEGATIONS

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

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

184. This class action is brought pursuant to ECOA and the FHA by the individual named Plaintiffs on behalf of themselves and all minority consumers (the "Class") who obtained an Option One home mortgage loan in the United States between January 1, 2001 and the date of judgment in this action (the "Class Period") and who were subject to the Defendants' Discretionary Pricing Policy pursuant to which they paid discretionary points, fees or interest mark-ups in connection with their loan. The term "minority" refers to blacks and Hispanics as defined by federal law.

185. The phrase "Discretionary Pricing Policy" refers to the Defendants' policy of authorizing its loan officers and brokers to impose subjective, discretionary charges and interest mark-ups that are included in the finance charge loans they originate.

186. Plaintiffs do not know the exact size or identities of the proposed Class, since such information is in the exclusive control of the Defendants. Plaintiffs believe that the Class encompasses many thousands or tens of thousands of individuals who are dispersed geographically throughout the United States. Therefore, the proposed class is so numerous that joinder of all members is impracticable.

187. All members of the Class have been subject to and affected by the same Discretionary Pricing Policy. There are questions of law and fact that are common to the Class, and predominate over any questions affecting only individual members of the Class. These questions include, but are not limited to the following:

- a. the nature, scope and operations of Defendants' Discretionary Pricing Policy;
 - b. whether H&R Block, Inc., H&R Block Bank, Option One, and H&R Block Mortgage are creditors under the ECOA because, for example, in the ordinary course of its business they participate in the decision as to whether or not to extend credit to consumers;
 - c. whether the Defendants' Discretionary Pricing Policy is a facially neutral credit pricing system that has effected racial discrimination in violation of ECOA;
 - d. whether there are statistically significant disparities between the amount of the discretionary charges imposed on minority persons and the amount of the discretionary charges imposed on white persons that are unrelated to creditworthiness;
 - e. whether any legitimate business reason for the Discretionary Pricing Policy can be achieved by a credit pricing system less discriminatory in its impact;
 - f. whether the Court can enter declaratory and injunctive relief;
 - g. the proper measure of actual and/or punitive damages and/or restitution;
- and

h. the proper measure of disgorgement and/or other relief for unjust enrichment.

188. The claims of the individual named Plaintiffs are typical of the claims of the Class and do not conflict with the interests of any other members of the Class in that both the Plaintiffs and the other members of the Class were subject to the same Discretionary Pricing Policy that disproportionately has affected minority homeowners.

189. The individual named Plaintiffs will fairly and adequately represent the interests of the Class. They are committed to the vigorous prosecution of the Class' claims and have retained attorneys who are qualified to pursue this litigation and have experience in class actions – in particular, consumer protection and discrimination actions.

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

191. In the alternative, Defendants have acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the Class as a whole.

COUNT I
DISCRIMINATION IN VIOLATION OF THE EQUAL CREDIT OPPORTUNITY ACT

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

193. The Defendants are creditors as defined in ECOA, and in the ordinary course of its business, participated in the decision of whether or not to extend credit to the Plaintiffs, the proposed Class representatives herein, and all prospective Class members.

194. The Defendants designed, disseminated, controlled, implemented and profited from the discriminatory policy and practice alleged herein — the Discretionary Pricing Policy — which has had a disparate economic impact on minorities compared to similarly situated whites.

195. All actions taken by Option One's loan officers and authorized brokers were in accordance with the specific authority granted to them by Option One and were in furtherance of the Defendants' policies and practices.

196. As a result of the Defendants' Discretionary Pricing Policy, the Defendants have collected more in finance charges from minority borrowers than from similarly situated white persons, for reasons unrelated to credit risk.

197. The Defendants' Discretionary Pricing Policy violates the Equal Credit Opportunity Act.

198. Plaintiffs and prospective class members are aggrieved persons as defined in ECOA by virtue of having been subject to the Defendants' discriminatory, Discretionary Pricing Policy.

COUNT II
DISCRIMINATION IN VIOLATION OF THE FAIR HOUSING ACT

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

200. The Defendants engaged in residential real estate-related transactions with respect to the Plaintiffs, the proposed Class representatives herein, and all prospective Class members.

201. The Defendants' Discretionary Pricing Policy has resulted in discrimination with respect to the Plaintiffs, the proposed Class representatives herein, and all prospective members of the Class.

202. As a result of the Defendants' Discretionary Pricing Policy, the Defendants have collected more in finance charges from minorities than from similarly situated white persons, for reasons unrelated to credit risk.

203. The Defendants' Discretionary Pricing Policy violates the Fair Housing Act and constitutes actionable discrimination on the basis of race.

204. Plaintiffs and the Class are aggrieved persons as defined in FHA by virtue of having been subject to the Defendants' discriminatory, Discretionary Pricing Policy.

PRAYER FOR RELIEF

WHEREFORE, the Plaintiffs respectfully request the following relief:

- a. Certify this case as a class action and certify the named Plaintiffs herein to be adequate class representatives and their counsel to be class counsel;
- b. Enter a judgment, pursuant to 15 U.S.C. §1691e(c) and/or 42 U.S.C. §3613, declaring the acts and practices of Defendants complained of herein to be in violation of ECOA and the FHA;
- c. Grant a permanent or final injunction, pursuant to 15 U.S.C. 1691e(c) and/or 42 U.S.C. §3613(c), enjoining the Defendants, and the Defendants' agents and employees, affiliates and subsidiaries, from continuing to discriminate against Plaintiffs and the members of the Class because of their race through further use of the Discretionary Pricing Policy or any other non-risk-related discretionary pricing policy employed by the Defendants;
- d. Order the Defendants, pursuant to 15 U.S.C. §1691e(c) and/or 42 U.S.C. §3613(c), to adopt and enforce a policy that requires appropriate training of the Defendants' employees and its brokers and correspondent lenders to prevent discrimination;

- e. Order the Defendants, pursuant to 15 U.S.C. §1691e(c) and/or 42 U.S.C. §3613(c), to monitor and/or audit the racial pattern of its financings to ensure the cessation of discriminatory effects in its home mortgage transactions;
- f. Order disgorgement, pursuant to 15 U.S.C. §1691e(c), of all disproportionate non-risk charges imposed on minorities by the Defendants' Discretionary Pricing Policy; and order the equitable distribution of such charges to all appropriate class members; together with other relief for unjust enrichment;
- g. Order actual and punitive damages and/or restitution to the Plaintiffs and the Class pursuant to 42 U.S.C. § 3613(c);
- h. Award Plaintiffs the costs of this action, including the fees and costs of experts, together with reasonable attorneys' fees, pursuant to 15 U.S.C. § 1691e(d) and/or 42 U.S.C. § 3613(c); and
- i. Grant Plaintiffs and the Class such other and further relief as this Court finds necessary and proper.

JURY TRIAL DEMANDED

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

Respectfully submitted,
On behalf of the Plaintiffs,

/s/ Gary Klein

Gary Klein

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Dated: July 9, 2009

CERTIFICATE OF SERVICE

I, Gary Klein, 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 and paper copies will be sent to any non-registered participants by first class mail, postage prepaid, on July 9, 2009.

/s/ Gary Klein
Gary Klein