

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

<p>SHATONYA HARRIS, MATEO HUERTA and KEVIN NICHOLSON, on behalf of themselves and all others similarly situated,</p> <p>Plaintiffs,</p> <p>vs.</p> <p>CITIGROUP, INC., and CITIMORTGAGE, INC.</p> <p>Defendants.</p>	<p>C.A. NO. 08-10417-MLW</p> <p>LEAVE TO FILE GRANTED MAY 3, 2010</p> <p><u>JURY TRIAL DEMANDED</u></p>
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SECOND AMENDED CLASS ACTION COMPLAINT

Plaintiffs Shatonya Harris, Mateo Huerta and Kevin Nicholson, 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 Citigroup, Inc. ("Citigroup"), and Citimortgage, Inc. ("Citimortgage," and 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 ¶ 121, 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.

5. Loan data that 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. HMDA data for 2006 showed that black and Hispanic borrowers are more likely to obtain higher-priced loans than are white borrowers. The data indicated that black homeowners who received subprime mortgage loans

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

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.”²

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.³

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 supra*, 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 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.

² *See* Martin J. Gruenberg, FDIC Vice-Chairman, Address to the Conference on Hispanic Immigration to the United States: Banking the Unbanked Initiatives in the U.S. (Oct. 18, 2006) available at <http://www.fdic.gov/news/news/speeches/archives/2006/chairman/spoct1806.html>.

³ *See Unfair Lending: The Effect of Race and Ethnicity on the Price of Subprime Mortgages*, available at <http://www.responsiblelending.org>.

10. The Defendants' Discretionary Pricing Policy constitutes a pattern and practice of discriminatory disparate impact by subjecting 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 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 Defendants regularly conduct business in this District.

PARTIES

14. Plaintiff Shatonya Harris is a minority homeowner who resides at 20231 St. Andrews Ct., Olympia Fields, IL 60641.

15. Plaintiff Mateo Huerta, is a minority homeowner who resides at 145 South 58th St., San Diego, CA 92114.

16. Plaintiff Kevin Nicholson is a minority homeowner who resides at 1218 Kasten Drive, Dolton, IL 60419.

17. Defendant Citigroup, Inc., is a Delaware corporation headquartered at 399 Park Avenue, New York, NY 10043. Citigroup offers a range of financial services through its subsidiary, defendant Citimortgage and through other subsidiaries that operate nationwide.

18. Defendant Citimortgage, Inc. is headquartered at 1000 Technology Drive, O'Fallon, MO 63368. Citimortgage is a subsidiary of Citigroup.

19. Citimortgage and Citigroup transact business in this district.

FACTS

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

20. 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.

21. 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).

22. 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.

23. As noted above, 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.

24. 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.”⁴

25. 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 non-Hispanic whites.⁵

26. 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, et al., *supra* n.4, 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.

27. 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.

⁴ 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) available at <http://www.federalreserve.gov/pubs/bulletin/2006/hmda/bull06hmda.pdf>.

⁵ This is available at <http://www.responsiblelending.org/pdfs/Testimony-Ernst061306.pdf>

Defendants have engaged in this discriminatory lending by refusing to offer minority borrowers the prime loans offered to similarly-qualified white borrowers.

28. 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.

29. 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.⁶

30. The Center for Responsible Lending ("CRL") published a study in December 2006 on the effects of foreclosure.⁷ 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

⁶ See U.S. Department of Housing and Urban Development, Office of Policy Development and Research, *All Other Things Being Equal: A Paired Testing Study of Mortgage Lending Institutions*, (2002) available at <http://www.huduser.org/publications/hsgfin/aotbe.html>.

percent of recent blacks borrowers. By comparison, subprime foreclosures will likely occur among only about four percent of recent white borrowers.

31. The CRL released an additional study in November, 2007 that explains the negative effects of foreclosure extend beyond individual families losing their homes to surrounding neighbors and the wider community.⁸ The 2007 CRL 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.

32. The 2007 CRL study projects that, nationally, foreclosures on subprime home loans originated in 2005 and 2006 will have devastating 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

⁷ See Ellen Schloemer, et al., *Losing Ground: Foreclosures in the Subprime Market and Their Cost to Homeowners*, (December 2006) available at <http://www.responsiblelending.org/pdfs/FC-Paper-12-19-new-cover-1.pdf>.

⁸ See CRL Issue Paper, *Subprime Spillover: Foreclosures Cost Neighbors \$223 Billion; 44.5 Million Homes Lost \$5,000 on Average*, Center for Responsible Lending, available at <http://www.responsiblelending.org/pdfs/subprime-spillover.pdf>. For general discussion of the external impacts of foreclosures, see Dan Immergluck and Geoff Smith, *There Goes the Neighborhood: The Effect of Single-Family Mortgage Foreclosures on Property Values* (June 2005), Woodstock Institute, Chicago, IL; November 2006; Dan Immergluck and Geoff Smith, *The Impact of Single Family Foreclosures on Neighborhood Crime*, in *Housing Studies*, (November 2006); and William Apgar, Mark Duda, and Rochelle Nawrocki Gorey, *The Municipal Costs of Foreclosures: A Chicago Case Study*, (February 2005), Foreclosure Prevention Foundation, Minneapolis, MN.

average. 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.⁹

33. A growing number of research studies and investigations show that significant racial disparities in the terms of mortgage lending still exist.¹⁰

34. 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

⁹ Dan Immergluck and Geoff Smith, *Risky Business: An Econometric Analysis of the Relationship Between Subprime Lending and Foreclosures*, (March 2004), Woodstock Institute, Chicago, IL.

¹⁰ See, e.g., California Reinvestment Coalition, et al., *Paying More for the American Dream: A Multi-State Analysis of Higher Cost Home Purchase Lending*, (March 2007) (hereinafter "2007 CRC Report") available at http://www.nedap.org/pressroom/documents/2007_Report-2005_HMDA.pdf; Stephen L. Ross, *The Continuing Practice and Impact of Discrimination*, (Revised July 2006) (Univ. of Connecticut, Working Paper 2005-19R), available at <http://www.econ.uconn.edu/working/2005-19r.pdf>. In addition to the 2007 report, the California Reinvestment Coalition, jointly with several other non-profit and housing advocacy groups, has also published a 2008 report examining the impact of lending by subprime lenders in 7 metropolitan areas – Boston, Charlotte, Chicago, Cleveland, Los Angeles, New York City and Rochester, NY. California Reinvestment Coalition, et al., *Paying More for the American Dream: The Subprime Shakeout and Its Impact on Lower-Income and Minority Communities*, (March 2008) (hereinafter "2008 CRC Report") available at <http://www.nedap.org/resources/reports.html>. Among other things, the study showed that subprime lenders are concentrated in minority neighborhoods. Data supporting this finding demonstrated that subprime lenders had 20% of the market share in predominantly minority neighborhoods in these metro areas, compared to a 4% market share in predominantly white neighborhoods. 2008 CRC Report at 5. In addition, over 40% of the loans made by subprime lenders were in neighborhoods where 80% or more of the residents were minorities. *Id.* In stark contrast, less than 10% of subprime lender loans were in areas where less than 10% of the residents were minorities. *Id.* In metro Boston, where one of the Plaintiffs resides, the same study shows that subprime, high-risk lenders had 22% of the home loan market in neighborhoods where more than 80% of the residents were minorities, while subprime lenders had only 5% of the market for home loans in neighborhoods where less than 10% of the residents were minorities. *Id.*, at 8-10. Likewise, in metro Chicago, where the remaining Plaintiffs reside, the same study shows that subprime, lenders had 20.5% of the home loan market in neighborhoods where more than 80% of the residents were minorities, while subprime lenders had only 5.6% of the market for home loans in neighborhoods where less than 10% of the residents were minorities. *Id.*, at 17. See also, 2008 CRC Report, Appendices & Dot Density Maps.

high-cost loans.¹¹ In other words, evidence “suggests that weak borrower credit profiles do not fully explain why some borrowers get stuck with higher-cost home loans.”¹²

35. 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.

36. 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.

37. Specifically, the Community Reinvestment Association of North Carolina (“CRA-NC”) conducted a review of Citigroup’s lending practices and determined that the company has developed separate lending channels for subprime and prime products.¹³ According to its review, a borrower engaging one of Citigroup’s subprime subsidiaries to borrow will receive less

¹¹ Calvin Bradford, Center for Community Change, *Risk or Race? Racial Disparities and the Subprime Refinance Market*, (May 2002), available at http://www.knowledgeplex.org/kp/report/report/refiles/ccc_0729_risk.pdf.

¹² 2007 CRC Report, *supra* n.10 at 7.

favorable terms than would be available at Citigroup's prime subsidiaries, (e.g., Citibank). Because minorities are disproportionately represented among subprime borrowers, CRA-NC concluded that Citigroup's channeling had a disparate impact on minorities. Id. Indeed, the CRA-NC review recounts a Department of Justice statistic that 98% of subprime borrowers who could qualify for prime loans are African-Americans. Id.

38. In addition, a public study of Citigroup's 2004 HMDA data concluded that African-Americans were more than seven times more likely, and Hispanics three times more likely, to receive a high-APR loan (defined as at least 3% higher than comparable treasuries on a first lien or at least 5% higher on a subordinated lien) than white Citigroup customers.¹⁴

39. In 2004, the Federal Reserve Board entered into a consent Order to Cease and Desist with Citigroup, stemming from its allegations that the company was routinely violating ECOA. *See* Federal Reserve Press Release, May 24, 2004.¹⁵ The Order required the company to pay a \$70 million penalty, which was, in part, restitution to certain borrowers who received subprime mortgage and personal loans. Id.

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

40. According to Citigroup's website, "Citi is today's pre-eminent financial services company, with some 200 million customer accounts in 100 countries." Citigroup Website,

¹³ *See* Community Reinvestment Association of North Carolina, *Separate and Unequal: The Effects of Overcharging by Citigroup*, available at http://www.cra-nc.org/citigroup_effects_of_overcharging.htm#_ftnref5.

¹⁴ *See* Matthew Lee, *Predatory Lending in the Big Apple: Citigroup Confines African Americans in New York to Higher Cost Loans Over Seven Times More Frequently Than Whites, Over Three Times for Latinos*, (April 27, 2005) available at <http://www.innerecitypress.org/2004hmda4.html>.

¹⁵ This press release is available at <http://www.federalreserve.gov/boarddocs/press/enforcement/2004/20040527/default.htm>.

available at <http://www.citigroup.com/citigroup/about/index.htm>. Citimortgage is a subsidiary of Citigroup. Citimortgage is one of the nation's largest mortgage originators and servicers. Citimortgage provides loans through a branch network, as well as through wholesale and correspondent channels.

41. Citigroup makes home-mortgage loans directly to consumers itself and through its subsidiaries, including Citimortgage, as well as through other mortgage lending subsidiaries in the Citigroup family of companies.

42. Due to the Defendants' policies as to where to place their offices and how to market their products, minority borrowers were more likely than white borrowers to obtain subprime loans. The Defendants' lending patterns indicate that higher-cost subprime loans are heavily targeted to minority borrowers.

43. In addition to its relationships with brokers and correspondent lenders, Defendants utilize loan officers, known as account executives, at their local branch locations to arrange mortgage loans.

44. The loans of Citimortgage are priced based on the Defendants' policies.

45. Citigroup, in the ordinary course of its business, regularly participates in credit decisions made by Citimortgage, including setting the terms of credit available in transactions originated by Citimortgage. Among other things, the Defendants jointly established the Discretionary Pricing Policy at issue in this case.

46. Citigroup participated in determining the terms of credit available to the Plaintiffs including, without limitation, by making credit available in the Plaintiffs' communities with discretionary costs and fees.

47. 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.

48. Citimortgage provided their account executives, brokers and/or correspondent lenders with substantial information about its loan programs, rates and credit criteria, as well as its policies for compensating its account executives.

49. Citimortgage account executives, brokers and/or correspondent lenders accepted applications, quoted financing rates and terms (within the limitations set by the Defendants), informed credit applicants of Defendants' financing options and originated finance transactions using Defendants' forms, in accordance with its policies.

50. Citimortgage provided their account executives, brokers and/or correspondent lenders with credit applications, loan contracts and other required financing forms, as well as instructions on filling out those documents necessary to complete home mortgage transactions.

51. After a customer provided credit information to one of Defendants' account executives, brokers or correspondent lenders, Defendants computed a financing rate through an objective credit analysis that, in general, discerned the creditworthiness of the customer.

52. 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, Defendants used these variables to determine a "mortgage score" for each credit applicant.

53. Based on these objective risk-related variables and the resulting mortgage score, Defendants derived a risk-based financing rate at which it would provide a home mortgage, often called the “Par Rate.” Alternatively, Defendants’ experienced account executives, brokers and/or correspondent lenders estimated the risk-related Par Rate by referring to the applicant’s credit bureau determined credit score.

54. Although Defendants’ initial analysis applied objective criteria to calculate this risk-related Par Rate, the Defendants then authorized a subjective component in its credit pricing system —the Discretionary Pricing Policy — to impose additional non-risk charges. Defendants also allow account executives and mortgage brokers to apply for exceptions from their standard pricing on a discretionary basis and such discretion is applied to the disadvantage of minority borrowers. On information and belief, the applicable Par Rates and authorized discretionary charges were communicated by the Defendants to its account executives, brokers and/or correspondent lenders via regularly published “rate sheets.” On information and belief, such rate sheets were published by Defendants via intranet and other sources.

55. 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.

56. Account executives, brokers and/or correspondent lenders 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.

57. On information and belief, account executives, brokers and/or correspondent lenders received compensation based, in part, on the amount of discretionary charges added to

each loan. This compensation scheme served as an incentive for account executives, brokers and/or correspondent lenders to mark-up loans, including the Plaintiffs' loans.

58. The Defendants' Discretionary Pricing Policy, by design, causes 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.

59. The Discretionary Pricing Policy, although facially neutral (insofar as the Defendants use the same or effectively the same policy for all credit applicants), has a disproportionately adverse effect on minorities compared to similarly situated whites in that minorities pay 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 the Defendants has revealed that minorities, after controlling for credit risk, are substantially more likely than similarly situated whites to pay such charges.

60. The Discretionary Pricing Policy constitutes a pattern and practice that had an ongoing effect of discrimination against minority homeowners by way of disparate impact. The pattern and practice continued throughout the Class Period, defined below, and is ongoing. During this time period, the Discretionary Pricing Policy was the regular practice and standard operating procedure of the Defendants.

61. Account executives, brokers and/or correspondent lenders are agents of the Defendants for the purpose of setting credit price, which always was set based on the Defendants' policy.

62. 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.

63. 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.

64. 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.

65. 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 Shatonya Harris

66. Plaintiff Shatonya Harris is an African-American homeowner.

67. On or about August 7, 2007, Ms. Harris refinanced her home with Mortgage Direct as the broker and Citimortgage as the lender. Ms. Harris wished to consolidate two loans she used to purchase the home into a single loan.

68. Ms. Harris was given a 30-year, adjustable rate loan for \$445,000 with an initial two-year interest rate of 8.9%. After the initial two-year period, the interest rate was set to adjust to the rate published as "Six Month LIBOR" plus a margin of 4.21%.

69. At the time of closing, Citimortgage paid the broker a yield spread premium in the amount of \$8900 representing additional commission to the broker based on a marked up rate.

70. Ms. Harris was informed that these were the best terms available to her. Nevertheless, Ms. Harris refinanced her Citimortgage loan approximately six month later and was provided with significantly better terms.

71. On information and belief, unbeknownst to Ms. Harris, the contract APR on their 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.

72. On information and belief, Ms. Harris was subject to the Defendants' Discretionary Pricing Policy.

73. On information and belief, the Defendants charged Ms. Harris a disproportionately greater amount in non-risk-related credit charges than they charge similarly situated white persons.

Facts Relating to Plaintiff Mateo Huerta

74. Plaintiff Mateo Huerta is an Hispanic male. In March of 2007, Mr. Huerta purchased his home for approximately \$385,000.

75. Citimortgage provided the financing for this purchase, through a broker named TFM Mortgage. The financing consisted of two loans.

76. The first loan was a 30-year adjustable rate loan with a disclosed APR of 7.472%. The first three years of the loan payments were slated to be “interest-only,” meaning that none of Mr. Mateo’s payments during this time would be used to pay down the principal. Following this “interest-only” period, the loan was to adjust yearly, based on an index of 2.25% above the “average of interbank offered rates for one year U.S. dollar denominated deposits in the London Market. The loan amount was \$308,000.00.

77. The second loan was a thirty year fixed rate loan with a disclosed APR of 8.65% in the amount of \$77,000.

78. According to the HUD-One Settlement Statements, Mr. Huerta paid a "Loan Origination Fee" of \$8470.00, as well as a \$550.00 “Processing Fee,” a \$950.00 “Admin Fee,” and a \$1000.00 “broker fee.” In addition, Mr. Huerta paid a \$780 committent fee to Citimortgage. The Statements also reflect that Citimortgage paid \$1995.84 to the broker in compensation for these loans.

79. On information and belief, Mr. Huerta had an average credit score in excess of 700 at the time of these loans.

80. On information and belief, unbeknownst to Mr. Huerta, 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.

81. On information and belief, Mr. Huerta was subject to the Defendants’ Discretionary Pricing Policy.

82. On information and belief, the Defendants charged Mr. Huerta a disproportionately greater amount in non-risk-related credit charges than it charges similarly situated white persons.

Facts Relating to Kevin Nicholson

83. Plaintiff Kevin Nicholson is an African-American homeowner.

84. In 2002, Mr. Nicholson purchased his home with a mortgage loan from Citimortgage.

85. Mr. Nicholson's 2002 mortgage loan had a 30-year fixed rate at an interest rate of 6.625%.

86. In 2007, because Mr. Nicholson liked the option he was given at that time to pay his mortgage loan biweekly, he went to a Citibank branch to seek out refinancing in order to pay off some existing debt.

87. Mr. Nicholson's interactions regarding the 2007 loan transaction were with employees of the Defendants. He met with a Citimortgage account executive named Marlon Sanders in July 2007.

88. After Mr. Nicholson requested a loan at an interest rate of approximately 7.125% in their initial meeting, Mr. Sanders provided Mr. Nicholson with a "counter-offer" document shortly thereafter. The document indicated that Mr. Nicholson was being offered a 7.625% fixed rate loan. Mr. Nicholson accepted this offer and agreed to proceed with refinancing from Citimortgage.

89. The closing of Mr. Nicholson's refinance loan occurred on or about August 17, 2007.

90. By contrast both with his existing loan and the “counter-offer,” Mr. Nicholson’s refinance loan was a 30-year, adjustable rate loan for \$126,350 with an initial two-year interest rate of 8.875% and an APR over 10%. After the initial two-year period, the interest rate was set to adjust to the rate published as “Six Month LIBOR” plus a margin of 4.985%.

91. Mr. Nicholson did not learn of the final terms of the loan until shortly before closing. When Mr. Nicholson expressed surprise to Mr. Sanders, he was informed that these were the best terms available to him. Mr. Sanders also assured Mr. Nicholson that he could refinance the loan again in the future to get a lower interest rate.

92. At the time of closing, Citimortgage charged Mr. Nicholson a “Commitment Fee” of \$565.00 and an “Application Fee” of \$455.00.

93. On information and belief, unbeknownst to Mr. Nicholson, the contract APR on his 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.

94. On information and belief, Mr. Nicholson was subject to the Defendants’ Discretionary Pricing Policy.

95. On information and belief, the Defendants charged Mr. Nicholson a disproportionately greater amount in non-risk-related credit charges than they charge similarly situated white persons.

CONTINUING VIOLATION (TOLLING)

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

97. The Discretionary Pricing Policy described in this Amended and Consolidated Class Action Complaint constitutes a pattern or practice of discrimination because, as an integral

part of the Defendants' business plan, it was the standard operating procedure of Defendants that had a disparate impact on Minority borrowers.

98. Application of the Defendants' Discretionary Pricing Policy, and the accompanying impact on minority borrowers, was not a sporadic, isolated practice, but rather occurred every day that loans were extended, renewed or continued during the Class Period.

99. Plaintiffs bring this lawsuit to challenge the overall adverse impact on minority borrowers wrought by Defendants' Discretionary Pricing Policy, rather than merely the legality of their individual loans.

100. The claims of minority borrowers who obtained mortgage loans from Defendants more than two years prior to the initiation of this action are timely. Under the continuing violation doctrine, as set out by the Supreme Court in *Havens Realty Corp. v. Coleman*, 455 U.S. 363 (1982) and later written into the FHA, a statute of limitations may not bar claims where the plaintiff challenges not just one incident, but an unlawful practice that continues into the limitations period.

101. Defendants' use of their Discretionary Pricing Policy occurred both before the limitations period and during the limitations period.

102. Plaintiffs were exposed to discrimination as members of a group (i.e. minority borrowers of the Defendants) that suffered an adverse impact within the limitations period.

103. Additionally, applicable statutes of limitation may be tolled based upon principles of equitable tolling, fraudulent concealment and/or the discovery rule. In this case, it would be inequitable to permit the applicable statutes of limitation to bar the claims of any named plaintiff or absent Class Member.

104. The subject matter of all of the alleged violations is identical. The violations constitute the same type of discrimination – minority borrowers subjected to the Discretionary Pricing Policy were disparately impacted as described in this Amended and Consolidated Class Action Complaint.

105. Further, despite the exercise of due diligence, a reasonably prudent person would not—and the absent Class Members did not—have knowledge of Defendants’ discriminatory practices more than two years prior to the initiation of this action.

106. The nature of Defendants’ violations is not such that they would trigger a reasonably prudent borrower’s awareness of a need to assert his rights. The nature of a disparate impact violation is such that it only manifests itself after a critical mass of similar borrowers have the same experience – information that a single borrower would not have access to.

107. The nature of the Defendants’ violations – and the nature of a disparate impact claim – is not such that the act of making a single loan to a borrower has such a degree of permanence as to trigger a reasonably prudent borrower’s awareness of a need to assert his rights. The nature of a disparate impact claim is such that it only manifests itself after a critical mass of similar borrowers have the same experience – information that a single borrower would not have access to.

108. Defendants’ employment of the Discretionary Pricing Policy means that minority borrowers are subjected to increased mortgage-related costs, in the form of higher interest rates and ongoing payments than would be the case in the absence of discrimination.

109. Home foreclosures disproportionately occur in predominantly minority neighborhoods. *See, e.g.,* Juliana Barbassa, *Report: Minorities Hit By Foreclosures*, USA Today, March 6, 2008; National Training & Information Center, *Preying on Neighborhoods*,

2007 Foreclosure Update, March 3, 2008 available at

<http://www.nticus.org/images/fullyear2007.pdf> (last viewed April 28, 2010).

110. Plaintiffs in this action live in predominantly minority neighborhoods.

111. But for the effects of the Discretionary Pricing Policy, i.e., the ongoing higher interest rates and payments, the foreclosure rate among the Defendants' minority borrowers would have been lower.

112. Minority neighborhoods suffer severe deleterious effects from increased foreclosures. A Woodstock Institute Study has demonstrated that "foreclosures, particularly in lower-income neighborhoods, can lead to vacant, boarded-up, or abandoned properties. These properties, in turn, contribute to the stock of 'physical disorder' in a community that can create a haven for criminal activity, discourage social capital formation, and lead to further disinvestment...and lower property values for existing residential homeowners." Dan Immergluck & Geoff Smith, *There Goes the Neighborhood: The Effect of Single-Family Mortgage Foreclosures on Property Values*, Woodstock Institute Study (June 2005) available at http://www.nw.org/foreclosuresolutions/reports/documents/TGTN_Report.pdf

113. All residents of these neighborhoods suffer from these effects, including the Plaintiffs. As such, all Plaintiffs have suffered injury from the Defendants' use of the Discretionary Pricing Policy within the limitations period.

114. Additionally, this discrimination has only recently been disclosed and quantified. It has only been in the last several years that mortgage lenders have been required to submit details of their sub-prime home loans under the Home Mortgage Disclosure Act and that such data has been disclosed and studied by experts in the field.

115. On January 29, 2009, President Obama signed the “Lilly Ledbetter Fair Pay Act of 2009.” The legislation effectively overrules *Ledbetter v. Goodyear Tire & Rubber Co.*, 550 U.S. 618 (2007), a case upon which other defendants with similar ECOA and FHA claims against them rely to argue that the 2 year statutes of limitation in the ECOA and FHA are not tolled. The Act defines an unlawful employment practice as occurring, *inter alia*, “each time wages, benefits, or other compensation is paid, resulting in whole or in part from such a [discriminatory] decision or other practice.”

CLASS ALLEGATIONS

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

117. 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.

118. 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 a home mortgage loan from Defendants 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.

119. 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.

120. 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.

121. 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 Citimortgage and Citigroup 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; and
- g. the proper measure of disgorgement or damages.

122. 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.

123. The individual named plaintiffs will fairly and adequately represent the interests of the Class. They are committed to the vigorous prosecution of the Class's 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.

124. 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.

125. In the alternative, Defendants have acted or refused to act on grounds generally applicable to the case, 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

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

127. 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.

128. 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.

129. All actions taken by Defendants' account executives, brokers and/or correspondent lenders were in accordance with the specific authority granted to them by Defendants and were in furtherance of the Defendants' policies and practices.

130. 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.

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

132. 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

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

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

135. 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.

136. 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.

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

138. 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 collection of any amounts, including interest, resulting from actionable discrimination and/or from continuing to discriminate against Plaintiffs and the members of the Class because of their race or ethnicity;
- 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 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

Gary Klein (BBO # 560769)
Shennan Kavanagh (BBO # 655174)
Kevin Costello (BBO # 669100)
RODDY KLEIN & RYAN
727 Atlantic Avenue, 2nd Flr.
Boston, MA 02111-2810
Telephone: (617) 357-5500 ext. 15
Facsimile: (617) 357-5030

Stuart Rossman (BBO # 430640)
Charles Delbaum (BBO # 543225)
NATIONAL CONSUMER LAW CENTER
7 Winthrop Square, 4th Flr.
Boston, MA 021110
Telephone: (617) 542-8010
Facsimile: (617) 542-8028

Al Hofeld
Law Offices of Al Hofeld, Jr., LLC
1525 East 53rd Street, Suite 903
Chicago, IL 60615
Telephone: (773) 241-5844

Marvin A. Miller
Matthew E. Van Tine
Lori A. Fanning
MILLER LAW LLC
115 South LaSalle Street, Suite 2910
Chicago, IL 60603
Telephone: (312) 332-3400

Robert M. Rothman
ROBBINS GELLER RUDMAN & DOWD LLP
58 South Service Road, Suite 200
Melville, NY 11747
Telephone: (631) 367-7100
Facsimile: (631) 367-1173

Dated: May 12, 2010

CERTIFICATE OF SERVICE

I hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic File (NEF) and paper copies will be sent to those indicated as non-registered participants on May 12, 2010.

/s/Gary Klein
Gary Klein