

Rights Act”). Plaintiffs seek remedies for themselves and the Class (defined in ¶102, below) for the discriminatory effects of HSBC's home financing policies and practices.

2. As described below, HSBC has 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 HSBC is determined by objective criteria (e.g., the individual’s credit history, credit score, debt-to-income ratio and loan-to-value ratios), HSBC's credit pricing policy authorizes additional discretionary financing charges and interest mark-ups. These subjective, additional finance charges have a widespread discriminatory impact on black and Hispanic applicants for home mortgage loans, in violation of ECOA, the FHA and the Civil Rights Act.

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 were much more likely to be issued a higher-rate loan than white borrowers with the same qualifications.

6. In a speech in 2006, 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

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

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>.

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 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 practice is alleged to have been committed in this District, Defendants regularly conduct business in this District, and the named Plaintiffs reside in this District.

PARTIES

14. Plaintiff, Suyapa Allen, is a black homeowner who resides at 78 Blackstone Street, Unit 78, Stoughton, MA 02072. On September 8, 2006, Ms. Allen entered into a mortgage transaction, secured by her residence, with the lender identified as Decision One.

15. Plaintiff, Glenda Medina, is a Hispanic individual who resides at 28 Gilbert Street, Lawrence, MA 01843. On October 20, 2005, Ms. Medina entered into a mortgage transaction secured by her residence with the lender identified as Decision One.

16. Plaintiff, Demetrie Doiron, is a black homeowner who resides at 6541 Greenback Lane, Citrus Heights, California. On June 30, 2006, Mr. Doiron obtained a high cost adjustable

rate mortgage loan (“ARM”) secured by his residence, with the lender identified as “HSBC Mortgage Services, Inc.”,

17. Plaintiff, Rosalind Cavero, is a Hispanic individual who resides at 1645 W. School St., Unit 218, Chicago, Illinois. On June 12, 2006, Ms. Cavero obtained a high cost ARM secured by her residence, with the lender identified as “HSBC Mortgage Corp. (USA)”.

18. Plaintiff, Freddie Ramon Chavez Toruno, is a Hispanic individual who resides at 809 West Madison Avenue, Montebello, CA 90640. On or about June 21, 2004, Mr. Toruno obtained a mortgage secured by his residence with the lender identified as Decision One.

19. Defendant, Decision One Mortgage Company, LLC (“Decision One”), is a mortgage lender with a principal place of business at 3023 HSBC Way, Fort Mill, South Carolina 29707. Decision One operates through more than 15 branches in cities nationwide, as well as through relationships with loan brokers. Decision One Mortgage is owned by British bank HSBC Holdings through that company's US-based HSBC Finance subsidiary. Decision One was purchased by Household International in 1999.

20. Defendants HSBC Finance (formerly Household International), HSBC Mortgage, and HSBC Mortgage Services are the consumer lending entities and subsidiaries of HNAH. HSBC conducts the lending activities at issue in this action throughout the United States, including in this judicial district and elsewhere.

21. As the parent of HSBC’s residential lending operations, HNAH directed, participated in and/or influenced the setting and establishing of credit-related policies and underwriting guidelines and practices used by each of the other Defendants.

A. FACTS

22. Mortgage Lending in the United States Historically has Discriminated Against Minorities.

23. 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.

24. 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.⁴ 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.⁵

25. 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 and broker 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.

⁴ Immergluck, Dan and Geoff Smith. March 2004. "Risky Business: An Econometric Analysis of the Relationship Between Subprime Lending and Foreclosures." Woodstock Institute: Chicago, IL.

⁵ 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. November 2006. "The Impact of Single Family Foreclosures on Neighborhood Crime." *Housing Studies* (21:6); and Apgar, William, Mark Duda, and Rochelle Nawrocki Gorey. February 2005. *The Municipal Costs of Foreclosures: A Chicago Case Study*. Foreclosure Prevention Foundation: Minneapolis, MN.

26. 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.

27. 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).

28. 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 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.

29. 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.

30. According to a study published by 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.”⁶

31. 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.⁷ In a speech in 2006, 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.⁸

32. 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.

⁶ 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>).

⁷ This is available at <http://www.responsiblelending.org/pdfs/Testimony-Ernst061306.pdf>

⁸ This speech is available at <http://www.fdic.gov/news/news/speeches/archives/2006/chairman/spoct1806.html>.

33. 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.”

34. 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.

35. 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 were likely than similarly-situated whites to be issued a high-cost, subprime loan.

36. 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.

37. 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.

38. 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 black neighborhoods are twice as likely as lower-income white borrowers to have subprime loans.⁹

39. 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%.

40. Plaintiffs Allen and Medina each have a 2/28 ARM.

⁹ See "All Other Things Being Equal: A Paired Testing Study of Mortgage Lending Institutions," 2002, available at www.huduser.org.

41. The Center for Responsible Lending published a study in December 2006 on the effects of foreclosure.¹⁰ 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 black borrowers. By comparison, subprime foreclosures will likely occur among only about four percent of recent white borrowers.

42. The Center for Responsible Lending released an additional study in November, 2007¹¹ 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.

43. 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

¹⁰ See “Losing Ground: Foreclosures in the Subprime Market and Their Cost to Homeowners.” December 2006, available at www.responsiblelending.org.

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.

44. A growing number of research studies and investigations show that significant racial disparities still exist.¹²

45. Moreover, 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.¹³ In other words, evidence "suggests that weak borrower credit profiles do not fully explain why some borrowers get stuck with higher-cost home loans."¹⁴

46. In 2003, the California Reinvestment Coalition published a study, "Who Really Gets Home Loans? Year Eleven: Mortgage Lending to African-American and Latino Borrowers in 5 California Communities,"¹⁵ that analyzed seven lenders, including HSBC. The study found that HSBC, along with one other lender, had the worst records, "stand[ing] apart for making significantly higher cost subprime loans to African Americans and Latinos in the five cities than lower cost prime loans."

¹¹ 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.

¹² 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 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>).

¹³ 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/ccc_0729_risk.pdf).

¹⁴ California Reinvestment Coalition, et al., "Paying More for the American Dream: A Multi-State Analysis of Higher Cost Home Purchase Lending." (March 2007).

¹⁵ *Available at*, www.calreinvest.org/system/assets/24.pdf.

47. A September 2005 Report by the Community Reinvestment Association of North Carolina, entitled, "Paying More and Getting Less: An Analysis of 2004 Mortgage Lending in North Carolina,"¹⁶ highlights HSBC's channeling policy. "HSBC offers mortgages in North Carolina through HSBC Mortgage, Beneficial, and Decision One. While HSBC Mortgage issued only 0.3% of its mortgages at a high cost rate in 2004 in North Carolina, fully 68.5[] percent of Decision One's originated mortgages in North Carolina were high cost loans. Beneficial originated 21.3 percent of its North Carolina mortgages at high cost rates.

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

48. Defendants originate and fund mortgage loans through loan officers, brokers and through a network of correspondent lenders.

49. On information and belief, the loan officers, mortgage brokers and correspondent lenders that work with Defendants broker and fund loans in collaboration with Defendants and in conformance with Defendants' credit-pricing policies and procedures.

50. Defendants have followed -- and continue to follow -- discretionary loan pricing procedures that cause minority borrowers to pay subjective fees such as yield spread premiums and other mortgage related finance charges at higher rates than similarly situated non-minority borrowers. Defendants have intentionally discriminated against Plaintiffs and Class Members through these policies and procedures -- systematically giving them mortgage loans with less favorable conditions than were given to similarly situated non-minority borrowers. This pattern of discrimination is not the result of random or non-discriminatory factors. Rather, it is a direct result of Defendants' mortgage lending policies and procedures.

¹⁶ Available at, www.federalreserve.gov/SECRS/2006/August/20060808/OP-1253/OP-1253_7_1.pdf

51. On information and belief, Defendants' authorized loan officers, mortgage brokers and correspondent lenders receive part of all of their compensation from Defendants based on the interest rate charged to the borrower. Defendants' in-house loan officers, authorized brokers and correspondent lenders receive more compensation from Defendants when they steer their clients into HSBC loans with higher interest rates, and less compensation when they place their clients into HSBC loans with lower interest rates.

52. Defendants' conduct intentionally and actively implements this discriminatory credit-pricing policy in a number of ways, including actively educating its loan officers and brokers about Defendants' credit policies and procedures, and directing its loan officers and brokers regarding the marketing of Defendants' loan products.

53. Decision 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 Decision One's credit-granting policies and with the participation of HSBC Finance.

54. Due to HSBC's policies as to where to place its offices and how to market its products, black and Hispanic borrowers are more likely than white borrowers to apply for credit from HSBC through its sub-prime subsidiary, Decision One, or from a Decision One authorized broker.

55. Even after controlling for differences in credit risk, because of the Discretionary Pricing Policy, loans obtained from Defendants' network of brokers are more expensive to black and Hispanic homeowners, on average, than loans obtained directly from HSBC.

56. HSBC Finance, in the ordinary course of its business, regularly participates in credit decisions made by Decision One, including setting the terms of credit available in

transactions originated by Decision One. HSBC Finance and Decision One jointly established the Discretionary Pricing Policy at issue in this case.

57. HSBC Finance participated in the decisions to grant credit to the Plaintiffs including, without limitation, by making the Discretionary Pricing Policy applicable to their loans.

58. 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.

59. Based on the latest available Home Mortgage Disclosure Act (“HMDA”) data, available from the Department of Housing and Urban Development, whites who borrow from Decision One are over one and a half times more likely than blacks to have received a loan other than a high-APR loan to purchase or refinance their home.

60. 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.

61. 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.

62. Defendants provided their loan officers and authorized mortgage brokers with substantial information about its loan programs, rates and credit criteria, as well as its policies for compensating mortgage brokers who arrange business for it.

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

64. Defendants provided their loan officers and brokers with credit applications, loan contracts and other required financing forms, as well as instructions on filing out such documents necessary to complete home mortgage transactions.

65. In all of the home-mortgage-finance-transactions at issue, HSBC Finance advances the funds to make the loans and bears some or all of the risk of default.

66. After a customer provided credit information to one of Defendants' loan officers or brokers, Defendants computed a financing rate through an objective credit analysis that, in general, discerns the creditworthiness of the customer.

67. These credit analyses consider 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, these variables are used by Defendants to determine a "mortgage score" for each credit applicant.

68. 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, experienced Defendants loan officers and brokers estimated the risk-related Par Rate by referring to the applicant's credit bureau determined credit score.

69. Although Defendants' initial analysis applied objective criteria to calculate this risk-related Par Rate, Defendants 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 Defendants to their loan officers and brokers via regularly published “rate sheets.” Such rate sheets were published by Decision One via intranet and internet.

70. The discretionary charges are paid by the homeowner 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.

71. 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.

72. 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 becomes inherent in the transaction.

73. The Discretionary Pricing Policy, although facially neutral (insofar as Defendants use the same or effectively the same policy for all credit applicants), has a disproportionately adverse effect on blacks and Hispanics compared to similarly situated whites in that blacks and Hispanics pay disparately more discretionary charges (both in frequency and amount) than

similarly situated whites. Statistical analysis of discretionary charges imposed on black, Hispanic and white customers of other mortgage companies that use credit pricing systems structured like that of the Defendants have revealed that blacks and Hispanics, after controlling for credit risk, are substantially more likely than similarly situated whites to pay such charges.

74. Loan officers and brokers are agents of Defendants for the purpose of setting credit price, which is always set based on Defendants' policy.

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

76. 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 blacks and Hispanics. 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 black and Hispanic homeowners.

77. The disparities between the terms of Defendants' transactions involving black and Hispanic 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.

78. 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 Plaintiff Suyapa Allen

79. Suyapa Allen resides at 78 Blackstone Street, Unit 78, Stoughton, MA 02072.

80. After attending a first-time homebuyer's class and finding a home she wanted to buy, Ms. Allen's realtor, Prudential Scott Haynes Realtor, in Dorchester, Massachusetts, referred her to Zeus Funding to seek financing.

81. On September 8, 2006, Ms. Allen entered into a mortgage transaction with Decision One as lender and Zeus Funding as broker. The transaction was divided into two loans.

82. The larger loan (Loan No. 2090060823014) is a 30-year, adjustable rate loan with a balloon feature and a disclosed APR of 11.2141%. The loan amount was \$243,200.00.

83. According to the HUD-One Settlement Statement, the following was paid from the seller's funds at settlement: a \$1,059.00 loan origination fee to Decision One, a \$775.00 processing fee to Zeus Funding, a \$275.00 application fee to Zeus Funding and a \$260.00 administration fee to Zeus Funding.

84. Although the settlement sheet ostensibly reflects a credit from the seller to cover closing costs, all fees and charges were paid by Ms. Allen. Had the seller not provided a credit for settlement costs, the purchase price of the property would have been reduced by the amount of the credit. In effect, Ms. Allen ultimately bore the settlement costs in the transaction by paying a higher purchase price for the property.

85. The smaller loan (Loan No. 2090060823015), which had a loan amount of \$60,800, is a 15-year fixed rate loan with a balloon feature, providing for a final payment of \$53,390.01. The APR of the smaller loan is 12.7483%.

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

87. On information and belief, unbeknownst to Ms. Allen, the contract APR on the mortgage loans was actually a combination of an objective, risk-based calculation and a totally subjective, discretionary component added pursuant to the HSBC's Discretionary Pricing Policy.

88. On information and belief, Ms. Allen was subject to HSBC's Discretionary Pricing Policy.

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

Facts Relating To Plaintiff Glenda Medina

90. Glenda Medina resides at 28 Gilbert Street, Lawrence, Massachusetts 01843. She formerly owed and lived in a home located at 24 Kenwood Road, Methuen, Massachusetts 01844, but lost the home to foreclosure. Ms. Medina purchased the Methuen property in October, 2005 and received her purchase money loan from Decision One.

91. On October 20, 2005, Ms. Medina entered into a mortgage transaction with Decision One as the lender and Global Home Loans & Finance (“Global Home”) as the broker. The transaction was divided into two loans.

92. The larger loan (Loan No. 2090051075870) is a 30-year, adjustable rate loan with a disclosed APR of 9.9462%. The loan amount was \$296,000.

93. According to the HUD-One Settlement Statement, Decision One paid Global Home a \$4,810.00 yield spread premium (paid outside of closing) based on the discretionary marked up rate in the transaction.

94. Ms. Medina paid \$22,067.20 in settlement charges in connection with the loan, including, a \$1,300 broker fee to Global Home, a \$1,059.00 origination fee to Decision One, a \$520.00 processing fee to Global Home, a \$520.00 application fee to Global Home and a \$500.00 administration fee to Global Home.

95. The smaller loan (Loan No. 2090051075880), which had a loan amount of \$74,000.00, is a 15-year fixed rate loan with a balloon feature, providing for a final payment of \$63,881.95. The APR of the smaller loan is 11.9%.

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

97. On information and belief, unbeknownst to Ms. Medina, the contract APR on the mortgage loans was actually a combination of an objective, risk-based calculation and a totally subjective, discretionary component added pursuant to the HSBC's Discretionary Pricing Policy.

98. On information and belief, Ms. Medina was subject to HSBC's Discretionary Pricing Policy.

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

Facts Relating to Demetrie Doiron

100. Mr. Doiron, a resident of Citrus Heights, California, is a Minority homeowner. On June 30, 2006, Mr. Doiron obtained a mortgage loan from HSBC, secured by his residence located at 6541 Greenback Lane, Citrus Heights, California. His lender was listed as "HSBC Mortgage Services, Inc.," with an address of 636 Grand Regency Blvd., Brandon, Florida.

101. At the time of his loan, Mr. Doiron was gainfully employed and had a good credit score. Mr. Doiron was placed into an adjustable rate mortgage with an initial rate of 8.11% and

an APR of 11.32%. At closing, Mr. Doiron was surprised by the interest rate on his loan, as HSBC had promised a lower rate prior to closing.

102. Mr. Doiron is now trapped in a high cost loan. Mr. Doiron was instructed to sign a prepayment rider, which restricts his ability to refinance into a less expensive loan.

103. At the time of closing, HSBC was aware of Mr. Doiron's Minority status.

104. Plaintiff Demetrie Doiron has been harmed by Defendants' unlawful conduct.

Facts Relating to Rosalind Cavero

105. Ms. Cavero is a resident of Chicago, Illinois. On June 12, 2006, Ms. Cavero obtained a mortgage loan from HSBC, secured by her residence located at 1645 W. School St., Unit 218, Chicago, Illinois. Her lender was listed as "HSBC Mortgage Corp. (USA)," with an address of 2929 Walden Ave., Depew, New York.

106. At the time of her loan, Ms. Cavero was gainfully employed, earned excellent income and a good credit score. Despite her employment history, income and credit score, Ms. Cavero was placed into an adjustable rate mortgage with an initial rate of 8.00%.

107. Upon information and belief, at the time of closing, HSBC was aware of Ms. Cavero's Minority status.

108. Plaintiff Rosalind Cavero has been harmed by Defendants' unlawful conduct.

Facts Relating to Freddie Ramon Chavez Toruno

109. Freddie Ramon Chavez Toruno resides at 809 West Madison Avenue, Montebello, CA 90640

110. On or about June 21, 2004, Plaintiff refinanced his home. He engaged the services of mortgage broker 1st Realty Funding, Inc. ("1st Realty"), to assist him with his refinance transaction.

111. Plaintiff refinanced his home with a \$300,000 loan issued by Defendant Decision One. In connection with this transaction, Plaintiff was required to pay 1st Realty a “Brokerage Fee” of \$3,900. At the same time, Plaintiff’s loan also was assessed a separate fee described as “Mortgage Broker Compensation,” which was paid outside of closing (“POC”) to 1st Realty in the amount of \$3,000. On information and belief, these broker fees were assessed pursuant to Defendants standard credit pricing policies.

112. Plaintiff is primarily Spanish-speaking, and his mortgage broker and Defendants knew he was a minority borrower.

113. As a result of Defendants’ discriminatory conduct, Plaintiff received a loan on worse terms with higher costs than similarly situated non-minority borrowers.

TOLLING/CONTINUING VIOLATIONS

114. The Discretionary Pricing Policy is part of the Defendants’ regular course of business and standard operating procedure.

115. The Discretionary Pricing Policy has been in effect throughout the Class Period.

116. Because of its disparate effect, the Discretionary Pricing Policy constitutes an ongoing pattern or practice of discrimination.

117. Plaintiffs are challenging not just single, isolated incidents of conduct but a continuing policy and practice -- namely the Discretionary Pricing Policy which enables racial discriminatory practices, unrelated to creditworthiness.

118. The Discretionary Pricing Policy has affected, and continues to affect, Plaintiffs and members of the proposed class.

CLASS ALLEGATIONS

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

120. This class action is brought pursuant to ECOA, the FHA and the Civil Rights Act by the individual named Plaintiffs on behalf of themselves and all African-American or Hispanic persons throughout the United States (“the Class”) who, between January 1, 2004 and the date of entry of the judgment in this action (the “Class Period”), obtained residential closed-end real estate secured loans from any of the following businesses: Decision One, HFC/Beneficial, HSBC Mortgage Corp. (USA) or HSBC Mortgage Services Telesales.

121. 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.

122. "Discretionary Pricing Policy" means HSBC's 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.

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

124. 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 HSBC's Discretionary Pricing Policy;

(b) whether HSBC Finance and Decision One are creditors under the ECOA because, for example, in the ordinary course of their business they participate in the decision of whether or not to extend credit to consumers;

(c) whether HSBC's 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 black and Hispanic 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 Defendants have violated the Civil Rights Act;

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

(h) the proper measure of disgorgement or damages.

125. 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 has disproportionately affected black and Hispanic homeowners.

126. 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.

127. 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.

128. In the alternative, HSBC has 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)

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

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

131. HSBC 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 blacks and Hispanics compared to similarly situated whites.

132. All actions taken by the HSBC loan officers and HSBC's brokers were in accordance with the specific authority granted to them by HSBC and were in furtherance of HSBC's policies and practices.

133. As a result of HSBC's Discretionary Pricing Policy, HSBC has collected more in finance charges from blacks and Hispanics than from similarly situated white persons, for reasons totally unrelated to credit risk.

134. HSBC's Discretionary Pricing Policy violates the Equal Credit Opportunity Act.

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

COUNT II
(DISCRIMINATION IN VIOLATION OF THE FAIR HOUSING ACT)

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

137. HSBC engaged in residential real estate-related transactions with respect to the Plaintiffs, the proposed Class representative herein, and all prospective Class members.

138. HSBC's Discretionary Pricing Policy has resulted in discrimination with respect to the Plaintiffs, the proposed Class representative herein, and all prospective members of the Class.

139. As a result of HSBC's Discretionary Pricing Policy, HSBC has collected more in finance charges from blacks and Hispanics than from similarly situated white persons, for reasons totally unrelated to credit risk.

140. HSBC's Discretionary Pricing Policy violates the Fair Housing Act and constitutes actionable discrimination on the basis of race.

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

COUNT III:
VIOLATIONS OF THE CIVIL RIGHTS ACT: RACIAL DISCRIMINATION
(42 U.S.C. §§ 1981, 1982 et seq.)

142. Plaintiffs hereby incorporate by reference the preceding paragraphs as if they were fully set forth herein.

143. The Civil Rights Act of 1866 and 1870, and later expanded in 1991, prohibits racial discrimination in the formation and issuance of contracts, and intentional interference to purchase and hold real property.

144. Defendants intentionally discriminated against Plaintiffs and the Class Members by charging them higher interest rates than those charged to similarly-situated Caucasian mortgagees.

145. By charging higher rates to the Plaintiffs and Class Members, Defendants unlawfully discriminated against them in the (i) formation of contracts, (ii) making, performance, modification, and termination of contracts, and/or (iii) the enjoyment of all benefits, privileges, terms and conditions of the contractual relationship, and in their right to purchase and hold real property.

146. Defendants' actions violate the Civil Rights Act. As a proximate result of Defendants' systematic violation of this statute, Plaintiffs and the Class Members are entitled to the requested relief provided thereunder.

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 representative and her 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 HSBC 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 HSBC, and HSBC's 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 non-risk-related Discretionary pricing policy employed by HSBC;

D. Order HSBC, 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 HSBC's employees and its brokers to prevent discrimination;

E. Order HSBC, 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 blacks and Hispanics by HSBC's Discretionary Pricing Policy; and order the equitable distribution of such charges, as restitutionary relief, to all appropriate class members;

G. enjoin collection of all disproportionate non-risk charges in connection with future payments by class members;

H. Order actual and punitive damages to the Plaintiffs and the class pursuant to 42 U.S.C. § 3613(c);

I. 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

J. 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.

Dated: November 27, 2009

Respectfully submitted,
On Behalf of the Plaintiffs,

/s/ Gary Klein
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