

**UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TENNESSEE  
WESTERN DIVISION**

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MAE JACKSON, individually, and  
on behalf of all others similarly situated,

Plaintiff,

v.

CASE NO.:

NOVASTAR MORTGAGE,

**CLASS ACTION  
JURY DEMANDED**

Defendant.

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**COMPLAINT**

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COMES NOW the Plaintiff, Mae Jackson by and through undersigned counsel, and in support of her claim for relief against Defendant, states the following:

**NATURE OF THE CASE**

1. This is a class action seeking redress for the racially discriminatory conduct of Defendant NovaStar Mortgage (“NovaStar”) in the offering and sale of residential mortgage loans to minority borrowers. Through aggressive and misleading marketing efforts, Defendant targets and locates minorities to sell them subprime residential mortgage loans, and in doing so, discriminates against them by engaging in predatory lending practices and charging them higher interest, including discriminatory “yield-spread premiums,” and greater fees and costs than Defendant otherwise charges similarly situated non-minority borrowers purchasing the same subprime residential mortgage loans.

2. Defendant Novastar has engaged in both intentional discrimination and disparate impact discrimination through its development and implementation of practices and procedures

regarding the financial incentives (including the yield-spread premiums), and other related policies directed towards its mortgage brokers which cause minorities to receive loans on worse terms and with higher fees and costs than similarly-situated non-minority borrowers.

3. As used in this Complaint, “minority” or “minorities” shall refer to all non-Caucasians and other minority racial groups protected under 42 U.S.C. §§ 1981, 1982, and 3604, and 15 U.S.C. § 1691. In addition, “residential mortgage loan” means a loan made for the purpose of purchasing, constructing, improving, repairing, or maintaining a dwelling, or a loan was secured by residential real estate.”

4. This action is brought by Plaintiff as a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure on behalf of all minorities (hereinafter collectively referred to as the “Class” or “Class Members”) who have entered into residential mortgage loan contracts that were financed or purchased by Defendant NovaStar based upon the common course of conduct described herein and who were harmed thereby.

5. Plaintiff seeks damages, including punitive damages, injunctive, declaratory and equitable relief, and other remedies for Defendant’s racially discriminatory conduct.

### **JURISDICTION AND VENUE**

6. This action is brought pursuant to the provisions of the Civil Rights Act, 42 U.S.C. §§1981 and 1982, the Fair Housing Act, 42 U.S.C. §§3601 et seq. (the “FHA”), and the Equal Credit Opportunity Act, 15 U.S.C. §1691 et seq. (the “ECOA”). Jurisdiction is conferred upon this Court by 28 U.S.C. §1331.

7. Venue is proper in this district pursuant to 28 U.S.C. §1391(b) in that Plaintiff and the Defendant reside or do business in this district and/or a substantial part, if not all, of the events or omissions giving rise to the claim occurred in this district. Venue is also proper in this

district pursuant to 18 U.S.C. §1965(a) in that all parties reside, are found, have an agent, and/or transact his/her/its affairs in this district.

### **PARTIES**

8. Plaintiff, Mae Jackson (hereinafter “Ms. Jackson”) is an adult resident citizen of Memphis, Shelby County, Tennessee and currently resides at 930 Maury Street, Memphis, TN 38107.

9. Defendant, Novastar Mortgage, Inc. (hereinafter “Novastar”) is a corporation duly registered to transact business in Tennessee. Its principal place of business is 8140 Ward Parkway, Kansas City, MO 64114. Its registered agent for service of process in Tennessee is CT Corporation System, 530 Gay Street, Knoxville, TN 37902.

### **FACTS**

10. Defendant NovaStar is a lending institution that engages in “subprime” lending. “Subprime” lending refers to the granting of loans to borrowers who do not qualify for the best or “prime” rates, generally because of credit problems or because of low income, and who often who could not obtain loans from traditional lenders such as banks. Lenders generally view subprime loans as having higher risk of non-payment or default than prime loans. In light of this perceived risk, many banks or other traditional financial institutions will not offer subprime loans, and those lenders that do offer such loans generally charge higher interest rates than the prevailing interest rate for prime loans. Despite the perceived higher risk of subprime loans, however, subprime loans are very profitable for those institutions making them. Upon information and belief, virtually all of Defendant NovaStar’s home loan portfolio consists of subprime loans.

11. Defendant NovaStar's primary, if not exclusive, method for making and selling subprime loans is through mortgage brokers. Defendant NovaStar relies upon these mortgage brokers to locate and sell subprime loans to consumers. While mortgage brokers act as the initial point of contact between the lender and the consumer, it is Defendant NovaStar that is actually causing and accepting the discriminatory terms and conditions under which a subprime loan will be granted to the consumer. The mortgage broker will work with the consumer to complete all the required steps for obtaining the loan, such as completing any forms, submitting documentation, and obtaining appraisals and the like. The mortgage broker will also complete the closing of the loan. Defendant NovaStar, however, dictates what steps will be required, what documents must be submitted, and what other qualifications the potential borrower must meet. Defendant NovaStar also sets the terms of conditions of the residential mortgage loan that will be granted.

12. Defendant NovaStar encourages mortgage brokers to sell subprime loans by offering mortgage brokers various financial incentives. One device Defendant NovaStar uses to encourage the sale of subprime loans is its agreement to share any "yield-spread premium" imposed on the subprime loan with the mortgage broker initiating the loan.

13. A "yield spread premium" is the difference between the interest rate the lender, in this case Defendant NovaStar, would be willing to accept for granting the loan and the interest rate actually charged to the borrower. Lenders often justify the imposition of a yield spread premium on the basis of the perceived increase risk involved with subprime loans. In actuality, the yield spread premium is simply a device by which Defendant NovaStar and participating mortgage brokers can increase their profits.

14. In addition, mortgage brokers take advantage of subprime residential mortgage loan borrowers by imposing hefty fees and costs on those loans that are in excess of the fees and

costs they impose on prime residential mortgage loans. Defendant NovaStar is aware of these practices and condones and encourages them.

15. Defendant Novastar has established practices and procedures related to the financial incentives paid to mortgage brokers, including yield spread premiums, and other related policies directed at its mortgage brokers as a means to discriminate against minorities. Defendant Novastar knows and intends that these procedures cause a disparate impact upon minority borrowers, like Plaintiff. Because of these practices and procedures, minority borrowers, including Plaintiff, receive worse terms and pay higher costs and fees than similarly situated non-minority subprime borrowers. Defendant Novastar has established these practices and procedures which encourage, condone and cause mortgage brokers to prey upon minority borrowers, believing that they are more likely to accept less favorable loan terms and conditions than non-minority borrowers.

16. As a result of Defendant Novastar's practices and procedures, mortgage brokers doing business with Defendant NovaStar specifically market subprime residential loans to minorities and often use deceptive or high pressure tactics to foist these unfair and discriminatory subprime loans onto unsuspecting minority borrowers.

**MAE JACKSON**

17. Mae Jackson is a 61-year-old African-American woman with less than a high school diploma.

18. Ms. Jackson bought the residence located at 930 Maury Avenue, Memphis, TN 38107 in 1977. As of April 2003 Plaintiff was current on her mortgage payments for the residence located at 930 Maury Avenue, Memphis, TN 38107.

19. Ms. Jackson heard advertisements on a gospel radio station in Memphis, Tennessee claiming that one could get “easy money,” have “cash in your pocket,” and “consolidate bills”.

20. Ms. Jackson was interested in consolidating credit card loans and contacted the company advertising in order to seek advice and help about getting loan consolidation.

21. Ms. Jackson had existing mortgages on the property located at 930 Maury Avenue, in the approximate amount of \$35,000.00 for the first mortgage and approximately \$14,000.00 for the second mortgage.

22. After contacting the radio advertiser, Ms. Jackson was solicited both in person and on the telephone.

23. One of these solicitors was Nina Townes, an employee of a mortgage broker, “Worldwide Mortgage Corporation.” Ms. Jackson explained to Nina Townes that she was only interested in consolidating her credit card bills.

24. Ms. Jackson was again contacted by “Worldwide Mortgage Corporation”, and informed that she had been “approved for a loan”, and was asked to come in for an appointment for the closing.

25. When Ms. Jackson went in for her appointment, she was not told the amount of the loan, the interest rate, or the closing costs.

26. Ms. Jackson did not realize she would have to pay new closing costs, have a new interest rate, pay a higher monthly payment, and have new terms in her loan.

27. Ms. Jackson did not receive a good faith estimate of closing costs as required by law prior to closing.

28. The closing was held on April 30, 2003 at the offices of Worldwide Mortgage Corporation.

29. Only Janet (last name unknown at this time), an employee of Worldwide Mortgage, was present at the closing.

30. Equity Title and Escrow Company of Memphis, L.L.C. was listed as the settlement agent for the transaction. However, no one from that company participated or conducted the closing.

31. No notary public from Equity Title and Escrow Company of Memphis, L.L.C. was present to witness Ms. Jackson's signature on any of the documents signed at closing.

32. Ms. Jackson did not receive copies of any documents indicating a notary's signature and seal.

33. None of the documents presented to Ms. Jackson at the closing were explained to Ms. Jackson and she was simply instructed where to sign her name on the papers.

34. Although the closing documents bear the date of April 29, 2003, the closing was actually held on April 30, 2003. Ms Jackson dated several of the documents she signed, April 30, 2003.

35. The HUD-1 settlement sheet dated April 29, 2003, but executed April 30, 2003, indicates that Ms. Jackson's First Mortgage to Fairbanks Capital in the amount of \$34,128.90 was paid off; Ms. Jackson's Second Mortgage to "ASC" in the amount of \$14,884.64 was paid off; and settlement charges were \$23,937.23. The total of Ms. Jackson's new loan was \$99,450.00.

36. The truth in lending statement signed by Ms. Jackson shows the annual percentage rate of her loan at 9.67%.

37. Ms. Jackson's current loan has a pre-payment penalty for a period of five years.

38. As a portion of mortgage funds due to the borrower, Ms. Jackson received a check for \$25,999.23. She did not receive these or any other funds at the time of closing. Because she

did not want, or request, this additional money, having only desired to consolidate her credit card bills, she attempted to return the money to NovaStar. NovaStar informed her that she could not simply give the money back, but could apply the money as an additional principal payment to her loan. Ms. Jackson did this, but was assessed a substantial penalty pursuant to the Prepayment Penalty provision.

39. During the closing, Ms. Jackson signed a “Notice of Assignment, Sale or Transferring of Service Rights.” This document notified Ms. Jackson that her loan was being sold or transferred from Worldwide Mortgage Corporation to NovaStar Mortgage, Inc. Upon information and belief, Worldwide Mortgage Corporation is the agent of NovaStar Mortgage for the purpose of completing all the required steps for obtaining loans, such as completing any forms, submitting documentation, obtaining appraisals and the like. Further, upon information and belief, Worldwide Mortgage Corporation is the agent of NovaStar Mortgage for the purpose completing closing of the loans. Defendant NovaStar dictates what steps will be required, what documents must be submitted, and what other qualifications the potential borrower must meet. Defendant NovaStar also sets the terms of conditions of the residential mortgage loan that will be granted.

40. Upon information and belief, Worldwide Mortgage Corporation and NovaStar are parties to a “Correspondent Lending Agreement,” under which: NovaStar provides a line of credit to Worldwide Mortgage for the purpose of table funding loans originated by Worldwide Mortgage; NovaStar is obligated to purchase loans originated by Worldwide mortgage; and Worldwide Mortgage has full and complete access to NovaStar’s underwriting and other services.

41. Ms. Jackson’s loan with NovaStar is for thirty (30) years and will be paid off when Ms. Jackson is eighty-eight (88) years old.



42. Ms. Jackson was never informed about the term of her loan.

43. The “Additional Disbursements Exhibit” to the HUD-1 settlement sheet indicates “Payoff” disbursements made to several entities. One of these entities is “Providian Financial” in the amount of \$2,208.00. Upon information and belief, Ms. Jackson did not, however, have debt to “Providian Financial.” The check for \$2,208.00, made out to “Providian Financial” was delivered to Ms. Jackson sometime after the closing. When Ms. Jackson attempted to return the check, advising NovaStar that she had no debt with Providian, she was told by NovaStar that she could not return the check and the money would not be credited to her loan balance. Accordingly, Ms. Jackson is still in possession of a \$2,208.00 check that she cannot cash. These are funds (unusable by her) that she is currently paying interest on.

44. The HUD-1 settlement statement discloses that Worldwide Mortgage Corporation received a \$3,550.00 loan origination fee.

45. The settlement charges far exceed the amount allowed under the Home Ownership Equity Protection Act.

46. Taxes and insurance are not escrowed as part of the mortgage loan with NovaStar. Although Ms. Jackson signed what purported to be a “Waiver of Escrow,” and an “Escrow Account Option Notice,” Ms. Jackson was never informed that her taxes and insurance would not be escrowed and included in her monthly payment.

47. Upon information and belief, neither NovaStar nor its agent Worldwide Mortgage Corporation practiced due diligence in reviewing the loan request or in considering repayment ability in making the credit decision.

48. Upon information and belief, NovaStar paid Worldwide Mortgage a yield spread premium for Ms. Jackson’s loan which is greater than the yield spread premiums for similarly situated non-minority loans.

49. Upon information and belief, NovaStar, as the lender, caused the unfair and discriminatory manner in which the loan was made as well as the discriminatory interest rate and other features present in the loan. These features are predatory in nature and took advantage of Ms. Jackson's lack of sophistication.

50. Upon information and belief, NovaStar currently owns the loan and is reaping the benefits of the high interest rate on the loan and would benefit from any refinancing for the next two years through a stiff prepayment penalty.

51. Upon information and belief, NovaStar has not taken any action to terminate or release the security interest in Ms. Jackson's home.

52. NovaStar has used the same or similar tactics to ensnare unsophisticated African Americans and other minorities into exploitative and predatory loans. NovaStar's tactics encompass the same or similar purposes, results, participants, victims, and methods of commission and are marked by distinctive characteristics.

53. As a result of Defendant's discriminatory conduct as alleged above, Ms. Jackson received a loan on worse terms with higher costs and fees than similarly situated non-minority borrowers.

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

54. Plaintiff and Class Members did not know and could not reasonably have known that they would receive worse terms, higher costs and fees than non-minorities. Their claims did not accrue until shortly before the filing of this action.

55. Defendant Novastar's discriminatory conduct was inherently self-concealing. Defendant Novastar knew that Plaintiff and Class Members could not determine the relationship between the terms, fees and costs of their loans to those available to non-minorities. Defendant

Novastar knew that the terms, fees and costs provided to minorities, unbeknownst to them, were substantially worse than the loans provided to non-minorities.

56. Defendant Novastar has not released or provided information about its discrimination against Plaintiff and Class Members and has actively and fraudulently concealed its discriminatory practices.

57. As a result of the foregoing, Plaintiff and Class Members in the exercise of due diligence could not have reasonably discovered the discriminatory practices and did not do so until just recently. For the reasons alleged above, the members of the Class still do not know that they have been and continue to be injured by Defendant Novastar's discriminatory conduct.

58. Defendant Novastar's discriminatory conduct is continuing in nature, and it has committed discriminatory acts throughout the limitations period.

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

60. Defendant Novastar specifically misled Plaintiff and Class Members into believing that the terms, fees and costs offered were fair, reasonable, and the same as offered to non-minorities, and took steps to conceal its fraudulent and unfair conduct.

61. The statute of limitations applicable to any claims which Plaintiff or other Class Members have brought or could bring as a result of the unlawful and fraudulent concealment and course of conduct described herein has been tolled as a result of Defendant Novastar's fraudulent concealment. In addition, Plaintiff and the Class did not and could not have discovered their causes of action until the time alleged below, thereby tolling any applicable statute of limitations.

### **CLASS ACTION ALLEGATIONS**

62. This action is brought by Plaintiff as a class action pursuant to Rule 23(a) and Rule 23(b)(2) and/or Rule 23(b)(3) of the Federal Rules of Civil Procedure on behalf of all minorities (hereinafter collectively referred to as the “Class” or “Class Members”) who entered into residential mortgage loan contracts that were financed or purchased by Defendant NovaStar; and were harmed by Defendant NovaStar’s discriminatory conduct.

63. The Class is believed to comprise many thousands of mortgage applicants in the United States, the joinder of whom is impracticable, and for whose claims class treatment will provide substantial benefit to both the parties and the court system. A well-defined commonality of interest in the questions of law and fact involved affects Plaintiff and proposed Class Members. Common questions of law and fact predominate over any questions that may affect Class Members individually. The common questions include:

- a. Whether Defendant discriminated against Class Members by charging them higher interest, fees, and other costs for home mortgage loans than Defendant charges similarly situated non-minority borrowers;
- b. Whether Defendant’s intent in its discriminatory policies and practices was racially motivated;
- c. Whether Defendant can articulate a legitimate non-discriminatory reason for its practices and procedures which are discriminatory;
- d. Whether Defendant’s practices and procedures regarding financial incentives paid to mortgage brokers, including yield spread premiums, and other related policies have a disparate impact on minority borrowers;
- e. Whether Defendant has any business justification for these practices and procedures which cause a disparate impact upon minorities;
- f. Whether there is a less discriminatory alternative to these practices and procedures;
- g. Whether Defendant devised and deployed a scheme or common course of conduct which acted to deceive Plaintiff and Class Members;

- h. Whether Plaintiff and Class Members are entitled to specific performance, injunctive relief and/or other equitable relief against Defendant;
- i. Whether Plaintiff and Class Members have sustained damages and the proper measure of those damages.

64. Plaintiff's claims are typical of the claims of the proposed Class, and Plaintiff will fairly and adequately represent and protect the interests of the proposed Class. Plaintiff does not have any interests antagonistic to those of the Class. Plaintiff has retained competent and experienced counsel in the prosecution of this type of litigation.

65. Defendant has acted and refused to act on grounds generally applicable to the Class by engaging in the same discriminatory conduct with respect to all Class Members, thereby making injunctive or declaratory relief applicable with respect to the Class as a whole. Class Members primarily seek injunctive relief.

66. A class action also is superior to other available methods for the fair and efficient adjudication of this controversy, because Class Members number in the thousands and individual joinder is impracticable. The expense and burden of individual litigation would make it impracticable or impossible for proposed Class Members to prosecute their claims individually. Trial of Plaintiff's and Class Members' claims is manageable, and economies of time, effort, and expense will be fostered and uniformity of decisions will be insured.

67. Most individual Class Members have little ability to prosecute an individual action due to the complexity of the issues involved in this litigation and the significant costs attendant to litigation on this scale compared to the significant, but small damages suffered by individual Class Members.

68. Unless a class is certified, Defendant will continue to engage in predatory and discriminatory lending practices to the detriment of minority borrowers. Unless a class-wide

injunction is issued, Defendant will continue to commit violations against minority home mortgage loan applicants.

**COUNT I**  
**RACIAL DISCRIMINATION – 42 U.S.C. § 1981**

69. Plaintiff repeats, realleges, and incorporates the allegations contained in paragraphs 1 through 68 above as if fully set forth herein.

70. Defendant intentionally discriminated against Plaintiff and Class Members by offering residential mortgage loans on less favorable conditions by charging higher fees, costs, interest, and yield spread premiums for residential mortgage loans than the fees, costs, interest and premiums charged to similarly situated Caucasian borrowers.

71. By charging higher fees, costs, interest and yield spread premiums on residential mortgage loans, Defendant unlawfully discriminated against Plaintiff and Class Members in (I) formation of contracts, (ii) making, performance, modification, and termination of contracts, (iii) the enjoyment of all benefits, privileges, terms and conditions of the contractual relationship, and/or (iv) conduct that interferes with the right to establish and enforce contract obligations.

72. Defendant's actions violate 42 U.S.C. §1981, as well as the rights of Plaintiff and the Class under the Fifth, Thirteenth, and Fourteenth Amendments to the Constitution of the United States.

73. Plaintiff and Class Members who are entitled to injunctive and declaratory relief and damages or make whole equitable relief as a result of Defendant's discriminatory conduct.

74. At no time has Defendant undertaken corrective action to ameliorate its racially discriminatory practices. Defendant continues to reap the profits of its discriminatory practices and continues to discriminate. Defendant's conduct as alleged herein was intentional, willful, wanton, reckless, malicious, outrageous or otherwise aggravated beyond mere negligence.

Defendant has acted with malice and reckless indifference to the federally protected rights of Plaintiff and Class Members. As a result, Plaintiff and Class Members are entitled to punitive damages.

**COUNT II**  
**RACE DISCRIMINATION – 42 U.S.C. §1982**

75. Plaintiff repeats, realleges, and incorporates the allegations contained in paragraphs 1 through 74 above as if fully set forth herein.

76. Section 42 U.S.C. §1982 provides that all citizens of the United States “shall have the same right, in every State and Territory, as is enjoyed by White citizens thereof to inherit, purchase, lease, sell, hold, and convey real and personal property.”

77. Defendant has discriminated against Plaintiff and the Class with respect to the residential mortgage loans Defendant sold to them by charging Plaintiff and the Class higher interest, including yield spread premiums, and greater fees and costs on residential mortgage loans, than Defendant has charged similarly situated Caucasian borrowers for the same loans. As a result of Defendant’s conduct, Plaintiff and the Class have not had the same right as Caucasians to inherit, purchase, sell, hold and convey real property. Defendant has thereby violated 42 U.S.C. §1982.

78. Defendant’s violation of 42 U.S.C. §1982 was intentional and malicious.

79. As a proximate result of Defendant’s violation of 42 U.S.C. §1982, Plaintiff and Class Members have been injured and are entitled to injunctive and declaratory relief and damages or make whole equitable relief. In addition, Defendant’s conduct as alleged herein was intentional, willful, wanton, reckless, malicious, outrageous or otherwise aggravated beyond mere negligence. Defendant acted with malice and reckless indifference to the federally

protected rights of Plaintiff and Class Members. As a result, Plaintiff and Class members are entitled to punitive damages.

**COUNT III**  
**VIOLATION OF THE FAIR HOUSING ACT**  
**42 U.S.C. §3601 – 3619**

80. Plaintiff repeats and realleges the allegations in paragraphs 1 through 79 above as if fully set forth herein.

81. Mortgage lending and the providing of residential mortgage loans is a “residential real estate-related transaction” within the meaning of the FHA. 42 U.S.C. §3605(b).

82. Through imposing higher interest, including yield spread premiums, and greater fees and costs on residential mortgage loans to Plaintiff and Class Members, Defendant has discriminated against Plaintiff’s and Class Members’ ability to participate in real estate-related transactions and in the terms and conditions of such transactions in violation of the FHA. 42 U.S.C. §3605(a).

83. In addition, Defendant’s practices and procedures regarding its financial incentives and other related policies directed towards its mortgage brokers had a disparate impact upon Plaintiff and Class Members.

84. As a proximate result of Defendant’s violation of 42 U.S.C. §3605, Plaintiff and Class Members have been injured and are entitled to injunctive and declaratory relief and damages or make whole equitable relief. In addition, Defendant’s conduct as alleged herein was intentional, willful, wanton, reckless, malicious, outrageous or otherwise aggravated beyond mere negligence. Defendant acted with malice and reckless indifference to the federally protected rights of Plaintiff and Class Members. As a result, Plaintiff and Class members are entitled to punitive damages.



85. Moreover, Defendant continues to discriminate in violation of the FHA against Class Members every time Defendant provides a residential mortgage loan as described herein. If not enjoined from such violation by the Court, Defendant will continue to engage in conduct that disregards the rights of Plaintiff and Class Members and cause Plaintiff and Class Members irreparable injury for which there is no adequate remedy at law. 42 U.S.C. §3613(c).

86. Plaintiff and Class Members ask this Court to declare the rights of the parties herein regarding Defendant's obligation to participate in credit transactions without discriminating against applicants for credit on the basis of the applicants' race.

**COUNT IV**  
**VIOLATION OF THE EQUAL CREDIT OPPORTUNITY ACT**  
**15 U.S.C. § 1691 - 1691f**

87. Plaintiff repeats and realleges the allegations contained in paragraphs 1 through 86 above as if fully set forth herein.

88. Defendant engages in credit transactions through its offering, granting, and purchasing of residential mortgage loans.

89. Through imposing higher interest, including yield spread premiums, and greater fees and costs on residential mortgage loans to Plaintiff and Class Members, Defendant has discriminated against Plaintiff and Class Members with respect to a credit transaction on the basis of race in violation of the ECOA. 15 U.S.C. §1691(a).

90. In addition, Defendant's practices and procedures regarding its financial incentives and other related policies directed towards its mortgage brokers has a disparate impact upon Plaintiff and Class Members with respect to a credit transaction on the basis of race in violation of the ECOA. 15 U.S.C. §1691(a).

91. As a proximate result of Defendant's violation of 15 U.S.C. §1691, Plaintiff and Class Members have been injured and are entitled to injunctive and declaratory relief and damages or make whole equitable relief. In addition, Defendant's conduct as alleged herein was intentional, willful, wanton, reckless, malicious, outrageous or otherwise aggravated beyond mere negligence. Defendant acted with malice and reckless indifference to the federally protected rights of Plaintiff and Class Members. As a result, Plaintiff and Class members are entitled to punitive damages.

92. Moreover, Defendant continues to discriminate in violation of the ECOA against Class Members every time Defendant provides a residential mortgage loan as described herein. If not enjoined from such violation by the Court, Defendant will continue to engage in conduct that disregards the rights of Plaintiff and Class Members and cause Plaintiff and Class Members irreparable injury for which there is no adequate remedy at law. 15 U.S.C. §1691(e).

93. Plaintiff and Class Members ask this Court to declare the rights of the parties herein regarding Defendant's obligation to participate in credit transactions without discriminating against applicants for credit on the basis of the applicants' race.

### **JURY DEMAND**

94. Plaintiff, on behalf of herself and all others similarly situated, hereby demands trial by jury.

### **REQUESTS FOR RELIEF**

**WHEREFORE PREMISES CONSIDERED**, Plaintiff requests the following relief:

(1) An order determining that the action is a proper class action pursuant to Rule 23 of the Federal Rules of Civil Procedure;

(2) A Judgment awarding Plaintiff and Class Members costs and disbursements incurred in connection with this action, including reasonable attorneys' fees, expert witness fees and other costs;

(3) A Judgment granting extraordinary equitable and/or injunctive relief as permitted by law or equity, including rescission, restitution, reformation, attaching, impounding or imposing a constructive trust upon, or otherwise restricting, the proceeds of Defendant's ill-gotten funds to ensure that Plaintiff and Class Members have an effective remedy;

(4) A Judgment awarding punitive damages to Plaintiff and Class Members;

(5) A Judgment granting declaratory and injunctive relief and all relief that flows from such injunctive and declaratory relief; and

(6) A Judgment or other Order granting such other and further relief as the Court deems just and proper including, but not limited to, recessionary relief and reformation.

DATED: April 28, 2006.

**GLASSMAN, EDWARDS WADE  
& WYATT, P.C.**

BY: s/ B. J. Wade

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