

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

SCOTT RODRIGUEZ, DEJOY and
NISHA MODICA, and TAMMY SMITH,
on behalf of themselves and all others
similarly situated,

Plaintiffs,

CIVIL ACTION NO.:

3:07cv1816 (JCH)

JURY TRIAL DEMANDED

DECEMBER 4, 2007

v.

BEAR STEARNS COMPANIES, INC. and
EMC MORTGAGE CORPORATION,

Defendants.

PLAINTIFFS' CLASS ACTION COMPLAINT

Plaintiffs, by and through their undersigned attorneys, submit the following Class Action
Complaint.

INTRODUCTION

1. Plaintiffs seek redress for the racially discriminatory practices of Defendants Bear
Stearns Companies, Inc. ("Bear Stearns") and EMC Mortgage Corporation ("EMC") in servicing

near-prime and sub-prime residential home loans. As set forth in detail herein, Bear Stearns, the leading issuer of securities backed by near-prime and subprime mortgages, conspired with EMC and utilized EMC to exploit and extort the nation's most vulnerable borrowers to bolster the profits of Bear Stearns and EMC, to feed the market's insatiable appetite for non-prime mortgage-backed securities, and to inflate the returns on the mortgage-backed securities issued by Bear Stearns. To that end, Bear Stearns created EMC to provide a conduit through which EMC and Bear Stearns could acquire hundreds of thousands of non-prime, predominantly minority-owned mortgages to feed Bear's securitization machine. Unfortunately for thousands of Hispanic and African American borrowers whose loans were acquired by Bear Stearns, the company also created EMC and its unfair and predatory loan servicing system to service the mortgages that are securitized by Bear Stearns.

2. For purposes of this complaint, loan "servicing" means receiving any scheduled monthly payments from a consumer pursuant to the terms of any loan, including amounts for escrow accounts, and making the payments of principal and interest and such other payments as may be required pursuant to the terms of the loan. "Servicing" also includes any related loan servicing activity such as the administration of loan accounts, the collection of loan payments, the foreclosure of real property, the use of consumer reports, and the furnishing of information to consumer reporting agencies, and the collection or imposition of fees in relation to any of the foregoing.

3. At the direction of Bear Stearns, EMC engaged in unfair and predatory servicing practices that targeted and exploited non-prime borrowers and which resulted in a disparate impact on Hispanic and African American borrowers. As part of this nefarious servicing system,

EMC routinely and systemically mismanaged Hispanic and African Americans' mortgage loans by charging them unauthorized fees, such as force-placed insurance and other charges, and refusing to properly credit loan payments made by borrowers. EMC's predatory servicing practices damaged minority borrowers by forcing them to pay unjustified fees to avoid suffering damage to their credit reputations, or worse, foreclosure on their homes. EMC's predatory servicing practices also caused many minority borrowers to become delinquent or to default on their mortgage loans through no fault of their own. In addition, many borrowers were trapped into a downward spiral ending in foreclosure after EMC reported them as delinquent to credit bureaus on the basis of their failure to pay EMC's unjustified fees, thereby making it impossible for those borrowers to refinance their mortgages elsewhere. Finally, in many instances, EMC intentionally prevented delinquent borrowers from curing their delinquent status by continually assessing additional unauthorized fees and charges and refusing to provide the information necessary for borrowers to avoid defaults or foreclosure.

4. As alleged herein, Bear Stearns and EMC systematically violated the Fair Housing Act and Civil Rights laws, causing substantial and devastating injury to Hispanic and African American consumers and members of the class. EMC and Bear Stearns intentionally sought out non-prime loans, predominantly made to Hispanics and African Americans, in order to reap profits from their predatory servicing practices. EMC and Bear Stearns' actions have resulted in a disparate impact on and the disparate treatment of Hispanic and African American home loan borrowers.

5. Accordingly, Plaintiffs bring this action under the Fair Housing Act (FHA), the Civil Rights laws, and Federal Rule of Civil Procedure 23 to obtain damages and permanent

injunctive or other equitable relief for Defendants' discriminatory loan servicing practices, on behalf of themselves and all other African-American and Hispanic/Latino borrowers throughout the Nation who have or had a non-prime residential loan serviced by Defendant EMC and who were subjected to Defendants' predatory servicing practices (hereinafter collectively referred to as the "Class" or "Class Members"). For purposes of this complaint, the term "predatory servicing practices" includes the imposition of unwarranted fees and costs, the pyramiding of late fees, the unjustifiable force-placing of insurance, the failure to properly credit payments, the unwarranted reporting of derogatory information regarding borrowers to credit reporting agencies, and the failure to properly administer escrow accounts.

JURISDICTION AND VENUE

6. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331, 1343(a)(4); 42 U.S.C. §§ 1981, 1982, 1985(3); and 42 U.S.C. §§ 3604, 3605. The Court has personal jurisdiction over the Defendants because the Defendants conduct substantial business in the state of Connecticut.

7. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b).

PARTIES

8. Plaintiff Scott Rodriguez is a Hispanic male residing in Waterbury, Connecticut, with his wife, Heather Rodriguez.

9. Plaintiffs Dejoy and Nisha Modica, husband and wife, are African Americans residing in Winchester, California.

10. Plaintiff Tammy Smith is an African American female residing in Niles, Illinois.

11. Defendant Bear Stearns Companies, Incorporated. (“Bear Stearns”) is a Delaware corporation with its principal place of business in New York.

12. Defendant EMC Mortgage Corporation (“EMC”) is a Delaware corporation with its principal place of business in Texas.

FACTUAL ALLEGATIONS

BEAR STEARNS AND EMC

13. EMC is a wholly-owned subsidiary of Defendant Bear Stearns, formed in 1990. EMC is a loan servicer, incorporated in Delaware, with its headquarters and principal place of business in Lewisville, Texas.

14. EMC is a mortgage banking company. Bear created EMC in order for EMC to purchase and service residential mortgages that Bear Stearns could then securitize into investment products.

15. Bear Stearns and EMC are an integrated enterprise, with common or overlapping management, common ownership, interest, or financial control, and a functional interrelation of operations. EMC is a mere instrumentality and/or alter ego of Bear Stearns as Bear Stearns directed, controlled, and influenced EMC's discriminatory practices and policies.

16. Since its creation, Bear Stearns has caused EMC to acquire hundreds of thousands of near- prime and sub-prime mortgage loans, predominantly borrowed by Hispanics and African Americans, that were ultimately securitized by Bear Stearns. Near-prime and sub-prime loans are made to borrowers that cannot qualify for the more favorable loans terms available to prime borrowers due to unfavorable credit history or other negative factors. Near-

prime and sub-prime mortgages typically employ less-stringent underwriting standards than prime loans, requiring less documentation of income and permitting higher loan-to-value ratios than prime loans.

17. Prime loans have long been “securitized” by quasi-governmental entities such as Fannie Mae and Freddie Mac, but due to the strict guidelines circumscribing the types of loans these entities may purchase and securitize, these entities do not purchase and securitize near-prime and sub-prime loans, also called non-prime loans. The securitization of sub and near prime loans is a relatively recent development in the mortgage lending industry. Virtually all of the loans EMC acquires are non-prime residential mortgage loans.

18. At the direction and behest of Bear Stearns, EMC acquires loans through three primary channels. First, EMC purchases mortgages in bulk from mortgage holders through competitive bidding. Second, EMC routinely acquires loans via prenegotiated agreements with hundreds of approved sellers through its “Conduit Loan Purchase Program.” Third, through its “EMC Loan Purchase Program” EMC acquires what it calls “Scratch & Dent” mortgages, which are loans that are considered either “non-performing,” meaning delinquent or in default, or “re-performing,” which were delinquent in the past but have become current. As owner of EMC, Bear Stearns directed EMC’s underwriting decisions in the three primary channels described above. As a result, Bear Stearns effectively established the standards for the purchases EMC made.

THE SECURITIZATION OF RESIDENTIAL MORTGAGE LOANS

19. In the past, mortgage lenders typically handled the entire process of mortgage

lending including originating, funding, servicing, and holding the mortgage through maturity.

20. In recent years the secondary market of mortgage loans has experienced tremendous growth, and it has become quite common for lenders to sell or assign many if not all of their mortgages to secondary buyers. EMC and Bear Stearns have become huge purchasers in the secondary market, and because EMC services a large portion of the loans EMC and Bear Stearns acquire, EMC has become one of the largest mortgage servicers in the country.

21. The securitization process begins with Bear Stearns directing EMC to acquire certain mortgages, which Bear Stearns then purchases from EMC. In the next step, Bear Stearns, in its role as Depositor, transfers the ownership of the bundle of mortgages to a Trust. The trustee of the Trust is typically a third party financial institution such as Wells Fargo or J.P. Morgan. In return, Bear Stearns receives Certificates back from the Trustee. These Certificates represent the entire beneficial ownership interest in the mortgage assets contained in the Trust. This initial conveyance of the legal ownership of the subject mortgages also includes the Notes underlying the mortgages, since it is the Note that obligates the borrower to make payments, and also any Real Estate Owned ("REO") properties, which are residential properties that have come to be owned by the mortgage holders, usually through foreclosure.

22. Bear Stearns then divides the income streams from the various bundles of mortgages into senior and subordinated tranches. Under this structure, the senior tranche receives all principal payments from the entire pool of mortgages until it is fully repaid, then the next senior tranche receives all pool principal payments until it is fully repaid, and so on until all tranches are paid. As a result of this structure the junior tranches are first to absorb losses and

consequently these tranches are more risky and rated lower than the senior tranches. Tranches are typically varied in such a way that a particular tranche may, for example, pay the certificate-holder the interest payments received from a bundle of mortgages, while another tranche entitles the investor to receive the principal payments from the same bundle of mortgages.

23. As part of this securitization process a Master Servicer and Securities Administrator is designated. The Master Servicer is responsible for receiving and depositing the payments received from borrowers, then remitting those payments to designated accounts for ultimate payment to the certificate-holders through Bear Stearns. The Master Servicer also bears ultimate responsibility for the ongoing servicing of the mortgage loans. Although the actual servicing of a loan continues to be provided by a servicer, the Master Servicer is responsible for overseeing the servicers and retains the right to transfer the servicing of any mortgage loans.

24. In the earliest Bear Stearns offerings, EMC frequently acted as Master Servicer. In more recent offerings Bear Stearns has utilized third party Master Servicers such as Wells Fargo, but EMC continues to provide the actual servicing of many of the securitized mortgage loans even when a different entity is acting as Master Servicer.

25. Generally, even in the best of circumstances, securitization of residential mortgages results in increased default and foreclosure rates. Securitization of mortgages allows the issuers, administrators, trustees, and master servicers to price and spread the risk of defaults and foreclosures and then justify the risk through higher interest rates. Thus, higher levels of default and foreclosure that would have been unacceptable to a bank or thrift are accepted for mortgages that are securitized.

26. In addition, tasks that in the past were performed by one regulated entity are now divided amongst several unregulated entities. In the past, a heavily regulated lender would be first and foremost concerned with a borrower's ability and means to repay a mortgage loan. The investor demand for securitized mortgages now means that a borrower's ability to obtain a mortgage and the terms of the mortgage are largely dependent on whether there exists investor demand for a particular mortgage. Currently regulation of near-prime and sub-prime mortgages rests essentially in the hands of securities issuers and the ratings agencies that are in the business of serving investors, not borrowers.

27. Against this backdrop of already increased risk to borrowers, Bear Stearns devised a securitization process that would yield it heretofore unheard of profits by controlling the acquisition, servicing, bundling and master servicing under one roof, allowing it to exploit Hispanic and African American non-prime borrowers.

DEFENDANTS' DISCRIMINATORY PRACTICES

28. Not content to make money from investors' insatiable appetite for mortgage backed securities, Bear Stearns and EMC also developed a scheme to extract additional profits from the servicing of loans Bears Stearns securitized. This scheme consists of Bears Stearns ensuring that EMC will act as the servicer for loans it securitizes and EMC intentionally shirking its responsibilities as that servicer and instead engaging in predatory servicing practices designed to wring every bit of profit as possible out of the loans it services. These profits are, in turn, passed up the corporate hierarchy back to Bears Stearns.

29. Bears Stearns' and EMC's predatory servicing scheme is made possible by the

shifting of risk inherent in the securitization process. Prior to securitization, the financial institution which originated a loan typically also serviced the loan. In this scenario, the financial institution had an economic incentive not to service the loan in such a way as to harm the borrower or otherwise jeopardize its prospects of receiving payments and income from that loan. With securitization, however, the entity servicing the loan is not the same as the entity or entities owning the loan or that can expect payments or income from the loan. Thus, with securitized loans, the servicer is not constrained by self-interest from aggressively pursuing the borrower for additional fees and costs or from engaging in behaviors that could increase the risk of a borrower defaulting on the loan.

30. In addition to being rooted in the risk shifting inherent in the securitization process, Bears Stearns' and EMC's predatory servicing scheme is also predicated on Defendants' knowledge that a higher proportion of minorities are present in the non-prime residential lending market than are present in the population as a whole. This fact has been well known in the lending industry for some time and has become much more widely recognized as the fall-out from the irresponsible lending practices spurred by securitization has begun. Bear Stearns and EMC were also aware of data collected by the federal government pursuant to the Home Mortgage Disclosure Act (HMDA) reflecting the greater proportion of minority borrowers in non-prime residential loans and were aware of numerous studies undertaken by housing advocates since the 1990's reaching this same conclusion. Thus, Bear Stearns and EMC knew for many years preceding the advent of the mortgage securitization process outlined in this complaint that minorities were over-represented in the non-prime lending market.

31. Bear Stearns and EMC's predatory servicing scheme is also predicated upon

Defendants' belief that African-Americans and Hispanics are less sophisticated financial consumers than Caucasians and the belief that due to African-Americans' and Hispanics' historical difficulty in obtaining credit from traditional financial institutions such as banks, they are less likely or able to resist predatory servicing practices than Caucasian borrowers, who constitute a smaller proportion of the non-prime loan pool.

32. Armed with this knowledge, Bear Stearns and EMC intentionally target non-prime loans for securitization and subsequent servicing by EMC. Once EMC becomes the servicer, it maximizes its profits by intentionally understaffing the departments necessary to actually service the loans and by engaging in practices designed to collect additional fees and costs from borrowers. EMC's predatory servicing practices include:

- a) failing to timely apply or misapplying payments made by borrowers, resulting in unjustified fees and "pyramiding" schemes where a borrower is charged a late fee every month as a result of one missed or misapplied payment;
- b) force placing insurance on borrowers' accounts;
- c) mishandling escrow accounts, resulting in additional fees being charged to their accounts; and,
- d) failing to adequately staff its payment processing, customer service departments, and back-end support departments making it impossible for EMC to adequately service loans or to respond to borrowers inquiries and complaints

33. EMC's predatory servicing practices disproportionately harm African-American and Hispanic borrowers in comparison to Caucasian borrowers. EMC's predatory practices have

a disparate impact on these two minority groups because those groups constitute a greater proportion of the loans EMC services. In addition, EMC's practices have a disparate impact because these minority groups are, on average, less able to recover from or avoid negative financial consequences resulting from predatory servicing practices than similarly situated Caucasians.

34. Indeed, in many instances, as a result of EMC's failure to post Hispanic and African American consumers' mortgage payments to their accounts in a timely manner, EMC has made untimely payments for casualty insurance, property taxes, and other charges from escrow accounts, and consumers consequently are assessed unwarranted late fees and related charges. This practice puts consumers into delinquency, creates the need for consumers to pay additional money for taxes and insurance, and harms their credit ratings. In many instances, EMC's failure to timely pay premiums for casualty insurance has resulted in lapse of coverage and then the imposition of force-placed insurance at higher costs to consumers.

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

35. Plaintiffs and Class Members did not know and could not reasonably have known that they were victims of racially discriminatory conduct on the part of Defendants. While the harm resulting from Defendants' predatory servicing practices was immediately ascertainable, the fact that Defendants' conduct was racially discriminatory was not known and could not reasonably have been known by Plaintiffs and Class Members. Thus, their claims did not accrue until shortly before the filing of this action.

36. Defendants' discriminatory scheme was, by design and in practice, inherently self-concealing. Defendants knew that Plaintiffs and Class Members could not determine that Defendants had targeted non-prime loans because of the racial composition of the non-prime residential loan pool, and could not have known that Defendants targeted these kinds of loans because Defendants believed they could extract extra profit from minority borrowers through predatory servicing practices.

37. Defendants intentionally continue to discriminate and knowingly conceal their racially discriminatory practices. Although the initial decisions by Defendants to discriminate and to conceal were made years ago, Defendants have repeatedly elected to continue the concealment of their discriminatory practices and have acted in accordance with this decision throughout the limitations period.

38. At no time did Defendants train or encourage their employees or agents to explain to borrowers the different treatment of minorities and Caucasians to Plaintiffs or Class Members or to notify minority borrowers that they were experiencing inferior loan servicing than servicing experienced by similarly situated Caucasians.

39. Plaintiffs and Class Members were unable to determine from any materials provided to them by Defendants that they were the victims of Defendants' efforts to intentionally target minority borrowers for predatory loan servicing practices. Thus, even if Class Members had complained about or had attempted to investigate Defendants' predatory loan servicing practices, they could not have discovered that Defendants' had targeted their loans because of the higher probability that those loans would be held by minorities and because of Defendants' belief

that Defendants' could extract greater profits from loans held by a greater proportion of minorities though the use of predatory loan servicing practices.

40. Defendants systematically and uniformly trained their employees, officers and agents not to disclose that Defendants were specifically targeting minorities for predatory loan servicing practices. Defendants never disclosed their discriminatory practices in any materials provided to Plaintiffs or the Class. Defendants never disclosed to Plaintiffs or Class Members that Defendants' discriminatory practices had a disparate impact on African-American and Hispanic borrowers.

41. As a result of the foregoing, Plaintiffs and Class Members in the exercise of due diligence could not have reasonably discovered Defendants' discriminatory servicing 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 Defendants' discriminatory conduct.

42. Defendants' discriminatory conduct is continuing in nature and Defendants have committed discriminatory acts throughout the limitations period.

43. 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.

44. Defendants have actively concealed their discriminatory and other wrongful conduct in order to prevent, and indeed have succeeded in preventing, Plaintiffs and Class Members from discovering their racially discriminatory targeting of minority borrowers and racially discriminatory servicing tactics. Defendants specifically misled Plaintiffs and Class

Members into believing that their loan servicing practices were fair, reasonable, and justified and Defendants took steps to conceal their fraudulent and unfair conduct.

45. The statute of limitations applicable to any claims which Plaintiffs 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 Defendants' fraudulent concealment. In addition, Plaintiffs and the Class did not and could not have discovered their causes of action until the time alleged herein, thereby tolling any applicable statute of limitations.

46. Defendants, through various devices of concealment and secrecy described above, affirmatively and fraudulently concealed the existence of their unlawful and discriminatory scheme and course of conduct from Plaintiffs and Class Members. Plaintiffs and Class Members had no knowledge of Defendants' scheme and unlawful conduct and did not learn of or discover Defendants' fraudulent course of conduct until the filing of this action.

PLAINTIFFS' FACTUAL ALLEGATIONS

HEATHER AND SCOTT RODRIGUEZ

47. Plaintiff Scott Rodriguez and his wife, Heather Rodriguez reside in Waterbury, Connecticut in a home they own located at 1072 Meriden Road.

48. The Rodriguezes refinanced their residential mortgage loan in 2005. They refinanced with Town and Country Credit Corporation, and closed on the loan on May 19, 2005.

49. Town and Country Credit Corporation has recently entered into a \$325 million multistage settlement for predatory lending charges. A company known as AMC was the loan servicing company initially after the loan closed.

50. In August 2005, EMC purchased the loan from Town and Country Credit Corporation, and assumed all responsibility for servicing the loan from AMC.

51. The Rodriguezes' refinance loan was in the amount of \$96,000.00 and had an interest rate of 9.15% for the first two years with an adjustable rate thereafter. The loan also contained a prepayment penalty if the Rodriguezes paid off the loan within the first three years.

52. The Rodriguezes' taxes to the city of Waterbury were payable either annually or semi-annually, with the first half due in July and the second half due the following January. During the time AMC serviced the loan for Town and Country Credit Corporation, AMC arranged to pay the Rodriguezes' taxes semi-annually. Indeed, a check dated May 26, 2005, was issued in the amount of approximately \$1,433.03 to pay the first half of the property taxes due in July 2005.

53. Unbeknownst to the Rodriguezes, after taking over the servicing of their loan from AMC in August of 2005, EMC proceeded to miss the second semi-annual installment of the taxes owed to the city of Waterbury.

54. In August 2005 and October 2005, the Rodriguezes received escrow analyses indicating that as of July 2006 the Rodriguezes' would have an escrow shortage. Worried that this would cause an increase in their payment, the Rodriguezes repeatedly called and faxed EMC, notifying EMC that the taxes should be paid semi-annually as opposed to annually. Instead of fixing this incorrect escrow issue, EMC sent the Rodriguezes a check for \$690.57 for an alleged escrow overage in October 2005. Again, fearful that their payment would eventually increase as a result of this refund, the Rodriguezes contacted EMC and were simply told that a refund was due.

55. In March 2006, the Rodriguezes received notice of a tax lien from the city of Waterbury, a result of EMC's failure to pay the second half of the years' taxes, which were due in January 2006. In fear of losing their home, the Rodriguezes immediately contacted EMC in an effort to resolve the lien situation and the semi-annual tax payment issue. Despite constant phone calls and faxes made by the Rodriguezes to EMC, the Rodriguezes were unable to get resolution of the tax lien issue until several months later and EMC never resolved the Rodriguezes' semi-annual tax payment issue.

56. Because EMC never corrected the Rodriguezes' escrow account to reflect a semi-annual tax payment, the Rodriguezes' monthly payment increased in July 2006. Subsequently, the Rodriguezes' monthly payments were placed in EMC suspense accounts because EMC did not deem them full payments. Consequently, the Rodriguezes were notified that they were in default on their loan as of September 15, 2006 for \$2,532.43. The Rodriguezes were continuously assessed late charges and were reported delinquent to the credit reporting agencies for several months. In December 2006, EMC responded to the Rodriguezes' concerns stating that "as a courtesy to the frustration this has caused Ms. Rodriguez, our Customer Service Department has agreed to correct the derogatory credit reported for the July, August, September, October, and November 2006 installments" Despite these facts, as of October 25, 2007, the Rodriguezes' credit reports have not been corrected.

57. In an attempt to escape from EMC's predatory practices, the Rodriguezes tried to refinance their loan with Opteum Financial Services in 2006. Even though they could only get approved for a loan with a 6.6% interest rate, the Rodriguezes took the refinance opportunity in order to escape from EMC's predatory servicing practices. The refinance included a prepayment

penalty of \$3,474.18, an escrow overdraft charge of \$490.16, late fees in the amount of \$ 187.88, and settlement charges in the amount of \$6,003.16, which the Rodriguezes were forced to pay.

58. Additionally, when the Rodriguezes attempted to purchase a vehicle in 2007, they were denied financing numerous times and eventually had to take loans with higher interest rates than they would have qualified for without the negative EMC credit reporting.

59. As a result of EMC's predatory servicing practices, Scott Rodriguez was injured and requests injunctive, equitable, and monetary relief and any other relief the court deems just.

PLAINTIFFS NISHA AND DEJOY MODICA

60. Nisha Modica, an African American female and her husband DeJoy Modica, an African American male, took out a mortgage loan from Greenpoint Mortgage Funding, Inc. on June 21, 2005 in the amount of \$183,500.00 for a residence located at 2523 West Saint Catherine Avenue, Phoenix, Arizona 85041. In August 2007, due to its practice of originating non-conforming loans, Greenpoint Mortgage Funding closed down.

61. The Modicas' mortgage was a 40 year mortgage with a one percent (1%) "teaser rate" for the first three months and an adjustable rate thereafter. The Modicas did not arrange to include an escrow payment in their mortgage loan payment. EMC purchased the Modicas' mortgage loan in July 2005.

62. According to the terms of their loan, each month, the Modicas had options as to the amount to pay EMC. As of August 1, 2006, the minimum payment they could make on their account was \$498.80, which did not even cover the interest accruing on the loan. The Modicas chose to pay more than their minimum monthly payment in an attempt to avoid high negative

amortization. The Modicas made timely payments to EMC throughout the time EMC serviced their loan, from November 8, 2005 through October 11, 2006.

63. A series of inherently deceptive and confusing statements from EMC in July 2006 through October 2006, lead the Modicas to believe that EMC had accurately processed all of their timely made payments. However, unbeknownst to them at the time, EMC reported them to the credit reporting agencies as past due on their account as of October 2006. The Modicas called EMC and spoke to three different employees who stated that their account was in collection due to late payments. The Modicas were charged late fees during this time and they were threatened with foreclosure. Finally on October 19, 2006, EMC wrote to the Modicas admitting that they had erroneously put their account in a delinquent status and that the loan had been timely paid. The Modicas suffered damages as a result of EMC's inaccurately reporting their account information.

64. In September 2006, the Modicas attempted to refinance the mortgage on their Chula Vista, California residence with Easy Fee Home Loan/Cornerstone Mortgage and were verbally told over the phone that they could qualify for a loan with approximately a 6.0% interest rate based on their credit scores at the time. On October 3, 2006, the Modicas received notification from Cornerstone Mortgage reflecting Nisha Modica's high credit scores on which the loan rate would be based. However, as a result of EMC's erroneous credit reporting later that same month, the Modicas were no longer able to qualify for a loan with a 6% interest rate and had to refinance their loan with Cornerstone Mortgage at a higher rate of 6.875%.

65. Also in September 2006, the Modicas attempted refinance their Phoenix, Arizona

property. The Modicas were quoted a 6.5% interest rate by CSC Mortgage/US Bank Home Mortgage in September 2006; however, subsequently, on October 12, 2006, the Modicas received a disclosure letter from CSC Mortgage/US Bank Home Mortgage which indicated much lower credit scores than they had on October 3, 2006. As a result of EMC's erroneous credit reporting the Modicas were denied a refinance loan at the time. The Modicas were not able to refinance this property until June 2007 at a 7.25% interest rate.

PLAINTIFF TAMMY SMITH

66. Tammy Smith is an African American female who owns a residence at 1801 Tulip Street, Baton Rouge, Louisiana 70802. In May 1999, Smith refinanced her home loan through Superior Bank. The loan had a 9.875% interest rate for two years with an adjustable rate thereafter. The loan also contained a prepayment penalty. Superior Bank was closed by the FDIC for its predatory servicing practices in 2001 and Smith's loan was purchased by EMC in July 2001.

67. In February 2003, Smith mailed a bank check, which she paid for in cash, to EMC for her monthly mortgage payment. However, EMC failed to credit Smith's February 2003 payment to her account and she was subsequently charged an unjustified late fee of \$38.08. The next month, in March 2003, when Smith again timely paid her mortgage payment, EMC applied the payment to her February 2003 payment, causing her to be late, and incur another late charge, for the month of March 2003. For years, EMC continued to apply Smith's payment one month behind the date she intended it to apply to. Upon discovering the late fees in April 2003, Smith contacted EMC daily regarding the missing February 2003 payment and she was told that the

payment could be in “unapplied payments.” Every time Smith called EMC she spoke to a different person with a different explanation. Smith confirmed with the Post Office that the check had been delivered to EMC; however, despite her constant phone calls to EMC regarding this issue, EMC never applied the payment and continued to charge her late fees every month even though she timely paid her mortgage payment. This unfair and predatory pyramiding of late fees, resulting from EMC’s failure to properly credit Smith’s account for her February 2003 payment, resulted in over \$1,047.00 in late fees.

68. In August 2005, Smith’s home was damaged by Hurricane Katrina and her homeowner’s insurance policy, Farmers Insurance, issued her a check on or around December 28, 2005, for approximately \$6,697.14. The check was made payable to both Tammy Smith and EMC. When Smith called EMC regarding the check, she was told that EMC would not release its interest in the funds due to the late fees charged to her account. Smith verified with the Louisiana State Department of Insurance that such a practice was illegal and she notified EMC of the same. EMC stated it would only release its interest in the insurance funds to Smith if she agreed to enter into a forbearance agreement in February 2006, raising her payment from \$765.00 per month to \$898.47 per month. In order to repair her home, Smith had no choice but to enter into the loan modification agreement and agree to pay the late fees on the account.

69. Smith finally escaped from EMC’s unfair and predatory servicing scheme when she refinanced her mortgage in March 2006. As a result of the refinance, Smith was forced to pay the unpaid pyramided late charges, which at that time were \$1,035.07. As a victim of EMC’s conduct, Smith suffered damages.

CLASS ACTION ALLEGATIONS

70. This case is brought as a class action pursuant to Rule 23(a) and (b)(2) of the Federal Rules of Civil Procedure because Defendants have acted or refused to act on grounds generally applicable to the Class. In addition, Plaintiffs seek certification of a Rule 23(b)(3) punitive damage class. Plaintiffs seek certification of this action as a class action on behalf of a Class defined as follows:

Each and every African-American and Hispanic/Latino borrower who currently has or has had a non-prime residential mortgage loan serviced by Defendant EMC and who has been subjected to EMC's predatory servicing practices which include the imposition of unwarranted fees and costs, the pyramiding of late fees, the unjustifiable force-placing of insurance, the failure to properly credit payments, the unwarranted reporting of derogatory information regarding borrowers to credit reporting agencies, and the failure to properly administer escrow accounts.

71. This action is appropriate as a class action pursuant to Rule 23. Defendants have engaged in a common course of racially discriminatory conduct in targeting Class Members for servicing of their loans and then engaging in predatory loan servicing practices with respect to those loans.

72. Membership in the Class is so numerous that separate joinder of each member is impracticable. The number of Class Members is unknown but can be readily determined from the records of Defendants. Plaintiffs reasonably estimate that there are thousands of persons in the Class. Although Plaintiffs do not presently know the names of all Class Members, the Class is ascertainable and the identities and addresses of Class Members' can be obtained from Defendants' records.

73. Plaintiffs are members of the Class of victims described herein. They have

residential home loans that were serviced by Defendant EMC and were subjected to and damaged by Defendants' common course of predatory servicing conduct in one or more of the ways outlined in the definition of the Class.

74. There are numerous and substantial questions of law and fact common to all Class Members which control this litigation and which predominate over any individual issues. Included within the common questions are:

- a. Whether Defendants targeted Class Members by purchasing non-prime residential loans because of the high proportion of minority borrowers present in the non-prime residential loan pool as compared to the prime residential loan pool;
- b. Whether Defendants have engaged in predatory loan servicing practices and if so, whether Defendants did so because of the racial composition of the non-prime residential loan pool from which Defendants purchased loans to be serviced by Defendant EMC;
- c. Whether Defendants' predatory servicing practices have had a disproportionately harmful effect on African-American and Hispanic/Latino residential borrowers in comparison to Caucasian residential borrowers;
- d. Whether Defendants' discriminatory policies and practices were racially motivated;
- e. Whether Defendants maintained a corporate policy to engage in predatory servicing practices and whether their decision to do so was racially

motivated;

- f. Whether Defendants have concealed material information from Plaintiffs and Class Members concerning Defendant EMC's predatory loan servicing practices, concerning the disparate impact of those practices, and concerning Defendants' racial animus;
- g. Whether Defendants trained, directed, or determined that their officers, employees, and agents should conceal or not disclose Defendants' discriminatory practices in the servicing of residential loans;
- h. Whether Defendants devised and deployed a scheme or common course of conduct which acted to defraud or deceive Plaintiffs and Class Members and/or exacted unjustified unreasonable, unconscionable and/or discriminatory loans by taking advantage of their position of superior knowledge and otherwise;
- i. Whether Defendants systematically failed to disclose to Plaintiffs and Class Members material information such as the actual basis on which loan servicing terms were determined;
- j. Whether Defendants systematically discriminated against Class Members and engaged in a deceptive scheme and common course of conduct in targeting an economically disadvantaged segment of the population for the servicing of non-prime loans;
- i. Whether Plaintiffs and Class Members are entitled to specific performance,

injunctive relief and/or other equitable relief against Defendants;

- k. Whether Plaintiffs and Class Members are entitled to an award of punitive damages against Defendants; and
- l. Whether Plaintiffs and Class Members have sustained damages and the proper measure of those damages.

75. The claims of Plaintiffs are typical of the claims of the Class, and Plaintiffs have no interests which are adverse to those of the Class.

76. Plaintiffs will fairly and adequately protect the interests of the Class and have retained counsel experienced and competent in the prosecution of lending and servicing class actions and similar types of complex litigation.

77. Plaintiffs seek preliminary and permanent injunctive and equitable relief and punitive damages on behalf of the entire Class because Defendants have acted or refused to act on grounds generally applicable to the entire Class.

78. Certification of a punitive damage Class pursuant to Rule 23(b)(3) meets the superiority and manageability tests required under the Rules of Civil Procedure.

79. A class action is superior to other available methods for the fair and efficient adjudication of this controversy. Absent a class action, Class Members will continue to suffer damage, and Defendants' legal violations will proceed without remedy while Defendants continue to retain the proceeds of their ill-gotten gains.

80. Most individual Class Members have little ability to prosecute an individual action due to the complexity of the issues involved in this litigation, the size and scope of Defendants'

uniform servicing scheme, and the significant costs attendant to litigation on this scale.

81. This action will result in an orderly and expeditious administration of Class claims. Economies of time, effort, and expense will be fostered and uniformity of decisions will be ensured.

82. This action presents no difficulty that would impede its management by the Court as a class action, and a class action is superior to other available methods for the fair and efficient adjudication of the claims.

COUNT I
(FAIR HOUSING ACT, 42 U.S.C. § 3604)

83. Plaintiffs repeat, reallege, and incorporate the allegations contained in paragraphs 1 through 82 above as if fully set forth herein.

84. Home loans and the servicing of home loans are covered by the Fair Housing Act, 42 U.S.C. § 3601 *et seq.*

85. Plaintiffs and Class Members are Hispanics and African Americans who were exposed to Defendants' discriminatory servicing practices of untimely and improperly crediting payments, force-placing insurance on minority borrowers, and mishandling minorities' escrow accounts, resulting in a disparate impact of negative account actions on Class Members' accounts.

86. Due to Defendants' tactics, Hispanics and African Americans with loans serviced by EMC/Bear Stearns were typically serviced in a less favorable manner than the service given to Caucasians. This less favorable servicing indicates discrimination based on race in the terms,

conditions, or privilege of services in connection with the sale of a dwelling, or in provision of services or facilities in connection therewith, in violation of 42 U.S.C. § 3604(b).

87. By targeting Hispanics' and African Americans' non-prime loans for servicing, Defendants seized upon and took advantage of the opportunity created by the existence of non-prime loans and the historical difficulty Hispanics and African Americans have had in obtaining credit, thus exploiting Hispanics and African Americans.

88. Defendants' conduct, in violation of 42 U.S.C. § 3604 and alleged herein, is a direct and proximate cause of injury and damage to the Plaintiffs and Class Members. As a result, Plaintiffs and Class Members are entitled to equitable and legal relief.

89. Defendants' actions were taken deliberately and with racially discriminatory intent, and with reckless disregard for Plaintiffs' rights. These actions were intended to and did exploit the segregated, dual housing market that exists in the United States.

90. In addition, Defendants' engaged in a pattern of discriminatory practices related to housing that resulted in a disparate impact to the detriment of Hispanics and African American homeowners in the United States.

91. The predatory practices alleged can make housing unavailable by putting borrowers at risk of losing the property which secures their loans. As a result of Defendants' actions, Plaintiffs have suffered economic loss, mental anguish, deprivation of civil rights, and the prospective loss of their homes.

COUNT II
(Race Discrimination - 42 U.S.C. § 3605)

92. Plaintiffs repeat, reallege, and incorporate the allegations contained in paragraphs 1

through 82 above as if fully set forth herein.

93. Defendants' business of servicing home loans constitutes engaging in real estate-related transactions within the meaning of 42 U.S.C. § 3605(b).

94. Defendants discriminated against Plaintiffs based on race, in violation of 42 U.S.C. § 3605(a) by servicing non-prime loans in a discriminatory manner.

95. Defendants discriminated against Plaintiffs based on race, in violation of 42 U.S.C. § 3605(a), in the terms and/or conditions of their loans because it serviced Hispanic and African American loans in a manner which resulted in adverse action being taken against Hispanics and African Americans more often than adverse action being taken against similarly situated Caucasians.

96. The discriminatory servicing perpetrated by Defendants had a disparate impact on Hispanics and African Americans, including Plaintiffs and Class Members, whose loans were serviced by the Defendants.

97. Defendants' conduct, in violation of 42 U.S.C. § 3605 and alleged herein, is a direct and proximate cause of injury and damage to the Plaintiffs and Class Members. As result, Plaintiffs and Class Members are entitled to equitable and legal relief.

COUNT III

DEPRIVATION OF CIVIL RIGHTS IN VIOLATION OF 42 U.S.C. §§ 1981, 1982, and

1985

98. Plaintiffs reassert and reallege paragraphs 1-82 as though fully set forth herein.

99. Through their actions described above, Defendants have exploited the segregated, dual

housing market that exists in the United States, seeking to service loans borrowed by individuals who will accept unreasonable terms and conditions of loan servicing. Such actions were taken deliberately and with racially discriminatory intent, and with reckless disregard for Plaintiffs' rights.

100. This racially discriminatory pattern of acts and conduct constitutes discrimination and denied Plaintiffs the same rights to make and enforce contracts, and to enjoy the full and equal benefit of the laws, as are enjoyed by white citizens of the United States, in violation of 42 U.S. C. § 1981.

101. Furthermore, such acts and conduct denied Plaintiffs the same rights to inherit, purchase, lease, sell, hold and convey real property, as are enjoyed by Caucasian citizens of the United States, in violation of § 1982.

102. Finally, such pattern of actions constituted a conspiracy for the purpose of depriving Plaintiffs of the equal protection of the laws, or of equal privileges and immunities of the laws of the United States, in violation of 42 U.S.C. § 1985(3).

103. As a proximate result of these racially discriminatory actions, Plaintiffs have suffered economic loss, mental anguish, deprivation of civil rights, and the prospective loss of their homes.

WHEREFORE, Plaintiffs demand judgment and orders against Defendants on behalf of themselves and Class Members as follows:

- (1) An order determining that the action is a proper class action pursuant to Rule 23 of the Federal Rules of Civil Procedure, appointing Plaintiffs as

Class Representatives for the Class and undersigned counsel as counsel for the Class;

- (2) Granting extraordinary equitable and/or injunctive relief as permitted by law or equity, including rescission, reformation, attaching, impounding or imposing a constructive trust upon, or otherwise restricting, the proceeds of Defendants' ill-gotten funds to ensure that Plaintiffs and Class Members have an effective remedy;
- (3) Granting declaratory and injunctive relief and all relief that flows from such injunctive and declaratory relief;
- (4) Awarding Plaintiffs punitive damages;
- (5) Awarding Plaintiffs and Class Members their costs and disbursements incurred in connection with this action, including reasonable attorneys' fees, expert witness fees, and other costs; and,
- (6) Granting such other and further relief as the Court deems just and proper including, but not limited to, recessionary relief and reformation.

JURY DEMAND

Plaintiffs, on behalf of themselves and all others similarly situated, hereby demand trial by jury.

Dated: 12/10/07



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