

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

CASE NO: _____

CITY OF MIAMI, a Florida municipal
Corporation,

Plaintiff,

v.

BANK OF AMERICA CORPORATION;
BANK OF AMERICA, N.A.;
COUNTRYWIDE FINANCIAL
CORPORATION; COUNTRYWIDE
HOME LOANS; and COUNTRYWIDE
BANK, FSB,

DEMAND FOR JURY TRIAL

Defendants.

_____/

COMPLAINT
FOR VIOLATIONS OF THE FEDERAL FAIR HOUSING ACT

TABLE OF CONTENTS

	<u>Page</u>
I. NATURE OF THE ACTION	1
A. BoA Has Engaged in a Continuing Pattern of Discriminatory Mortgage Lending Practices in Miami Resulting in Foreclosures	1
II. PARTIES	10
III. REFERRALS FROM BANK REGULATORY AGENCIES	13
IV. JURISDICTION AND VENUE	14
V. FACTUAL BACKGROUND	14
A. Background Regarding Discriminatory Loan Practices, Reverse Redlining, and Redlining	14
VI. BOA/COUNTRYWIDE ENGAGED IN DISCRIMINATORY LENDING PRACTICES	18
A. Specific Allegations Regarding BoA’s Countrywide Subsidiary	18
1. Mortgage loan channels and loan types.....	18
2. Retail Lending Pricing.....	18
3. Wholesale Lending Mortgage Broker Fees.....	21
4. Wholesale Lending Product Placement.....	25
B. BoA/Countrywide’s Conduct Had a Disparate Impact on Minority Borrowers in Violation of the Fair Housing Act	26
1. Discriminatory lending results in a disproportionate number of foreclosures in minority areas.	26
2. Minority neighborhoods are disproportionate recipients of predatory loans. .	28
C. BoA/Countrywide Intentionally Discriminated Against Minority Borrowers in Violation of the Fair Housing Act Throughout the Time Period 2004-2012 as Demonstrated by Former Bank Employees.....	30
1. BoA/Countrywide targets minorities for predatory loan terms.....	31
2. BoA/Countrywide underwrites teaser rate loans that borrowers cannot afford.	32
3. BoA induced foreclosures by failing to offer refinancing or loan modifications to minority customers on fair terms, and otherwise limiting equal access to fair credit.	33
D. Minorities in Fact Receive Predatory Loan Terms from BoA/Countrywide	34

E.	Minorities in Miami Receive Such Predatory Loan Terms from BoA/Countrywide Regardless of Creditworthiness	36
F.	BoA/Countrywide’s Targeting of Minorities who in fact Receive Predatory Loan Terms Regardless of Creditworthiness Causes Foreclosures	39
1.	Data shows that BoA/Countrywide’s foreclosures are disproportionately located in minority neighborhoods in Miami.	39
2.	Data shows that BoA/Countrywide’s loans to minorities result in especially quick foreclosures.....	42
3.	Data shows that the discriminatory loan terms cause the foreclosures.	43
VII.	INJURY TO MIAMI CAUSED BY BOA/COUNTRYWIDE’S DISCRIMINATORY LOAN PRACTICES.....	45
A.	Miami has been Injured by a Reduction in Property Tax Revenues from Foreclosures Caused by Discriminatory Loans Issued by BoA	45
1.	The decreased value of the properties foreclosed by BoA result in reduced property tax revenues.	46
2.	The decreased value of properties in the neighborhoods surrounding foreclosed properties results in reduced property tax revenues.....	46
B.	Miami Is Injured Because It Provided and Still Must Provide Costly Municipal Services for Foreclosure Properties in Minority Neighborhoods as a Direct Result of Discriminatory Loans Originated or Purchased by BoA.....	49
VIII.	SAMPLE FORECLOSURE PROPERTIES IN THE CITY OF MIAMI	50
IX.	STATUTE OF LIMITATIONS AND CONTINUING VIOLATIONS DOCTRINE.....	51
X.	CLAIMS FOR RELIEF.....	52
	FIRST CLAIM FOR RELIEF (Violation of the Federal Fair Housing Act, 42 U.S.C. §§ 3601, <i>Et Seq.</i>).....	52
	SECOND CLAIM FOR RELIEF (Common Law Claim for Unjust Enrichment Based on Florida Law).....	54
	DEMAND FOR JURY TRIAL	55
	PRAYER FOR RELIEF	55

I. NATURE OF THE ACTION

1. It is axiomatic that banks should not make discriminatory loans. Banks must extend credit to minorities on equal terms as they do to other similarly situated borrowers. Banks should not target minority neighborhoods for loans that discriminate nor make loans to minorities on terms that are worse than those offered to whites with similar credit characteristics. When Banks engage in such discriminatory conduct, the misconduct has profound financial consequences for the cities in which mortgaged properties exist, and Banks should be responsible for those financial consequences. Banks should reimburse the City for lost tax revenues due to discriminatory lending. And Banks should pay the costs of repairing and maintaining properties that go into foreclosure due to discriminatory lending. This lawsuit arises because BoA breached these legally mandated obligations and foreseeably injured the City of Miami.

A. BoA Has Engaged in a Continuing Pattern of Discriminatory Mortgage Lending Practices in Miami Resulting in Foreclosures

2. This suit is brought pursuant to the Fair Housing Act of 1968 (“FHA”), as amended, 42 U.S.C. §§ 3601, *et seq.*, by the City of Miami (“Miami” or “City”) to seek redress for injuries caused by Bank of America’s¹ (“BoA/Countrywide,” “BoA” or “the Bank”) pattern or practice of illegal and discriminatory mortgage lending. Specifically, Miami seeks injunctive relief and damages for the injuries caused by foreclosures on BoA’s loans in minority neighborhoods and to minority borrowers that are the result of the Bank’s unlawful and discriminatory lending practices. The unlawful conduct alleged herein consists of both intentional discrimination and disparate impact discrimination.

¹ Defendants collectively are referred to as “BoA,” including: Bank of America Corporation, Bank of America, N.A., Countrywide Financial Corporation, Countrywide Home Loans, and Countrywide Bank, FSB. Plaintiff alleges that Defendants are also liable for residential home loans and lending operations acquired from, and/or sold by or through, Countrywide Bank, N.A., First Franklin Corporation, Grand Harbor Mortgage, John Laing Homes, Nexstar Financial Corporation, and Treasury Bank National Association.

3. The State of Florida in general, and the City of Miami in particular, have been devastated by the foreclosure crisis. As of October 2013, Florida has the country's highest foreclosure rate, and Miami has the highest foreclosure rate among the 20 largest metropolitan statistical areas in the country.² Moreover, Florida is by far the leading state in the country with regard to owner-vacated or "Zombie" foreclosures.³

4. The foreclosure crisis in Florida resulted in such drastic consequences that the Florida Supreme Court established a Task Force to recommend "policies, procedures, strategies, and methods for easing the backlog of pending residential mortgage foreclosure cases while protecting the rights of parties."⁴

5. BoA has engaged in a continuous pattern and practice of mortgage discrimination in Miami since at least 2004 by imposing different terms or conditions on a discriminatory and legally prohibited basis. In order to maximize profits at the expense of the City of Miami and minority borrowers, BoA adapted its unlawful discrimination to changing market conditions. This unlawful pattern and practice is continuing through the present and has not terminated. Therefore, the operative statute of limitations governing actions brought pursuant to the Federal Fair Housing Act has not commenced to run.

² RealtyTrac, *Scheduled Judicial Foreclosure Auctions Increase Annually for 16th Straight Month, Foreclosure Starts Up Monthly for Second Straight Month, Big Jumps in FL, IL, CO*, (Nov. 14, 2013) (available at <http://www.realtytrac.com/content/foreclosure-market-report/october-2013-us-foreclosure-market-report-7934>).

³ RealtyTrac, *Q1 2013 Foreclosure Inventory Update*, pg. 5 (available at http://www.realtytrac.com/images/reportimages/RealtyTrac_Foreclosure_Inventory_Analysis_Q1_2013.pdf).

⁴ Florida Supreme Court Task Force On Residential Mortgage Foreclosure Cases, *Final Report And Recommendations* (August 17, 2009) (available at www.floridasupremecourt.org/.../Filed_08-17-2009_Foreclosure_Final_).

6. The pattern and practice of lending discrimination engaged in by BoA consists of traditional redlining⁵ and reverse redlining,⁶ both of which have been deemed to violate the FHA by federal courts throughout the country. BoA engaged in redlining, and continues to engage in said conduct, by refusing to extend mortgage credit to minority borrowers in Miami on equal terms as to non-minority borrowers. BoA engaged in reverse redlining, and continues to engage in said conduct, by extending mortgage credit on predatory terms to minority borrowers in minority neighborhoods in Miami on the basis of the race or ethnicity of its residents. Federal Reserve Chairman Ben Bernanke recently acknowledged these twin evils of mortgage discrimination, and explained that both types of mortgage discrimination “continue to have particular significance to mortgage markets.”⁷

7. Major banks such as BoA have a long history of engaging in redlining throughout Miami. That practice began to change in the late 1990s, when BoA adapted to changing market conditions, and began to flood historically underserved minority communities with mortgage loans that consisted of a variety of high cost and abusive mortgage loan products with predatory terms as compared to the mortgage loans issued to white borrowers (reverse redlining).

8. BoA’s discriminatory lending practices have the purpose and effect of placing vulnerable, underserved borrowers in loans they cannot afford. Reverse redlining maximizes BoA’s profit without regard to the borrower’s best interest, the borrower’s ability to repay, or the financial health of underserved minority neighborhoods. Moreover, BoA has averted any significant risk to itself by selling

⁵ Redlining is the practice of denying credit to particular neighborhoods based on race.

⁶ Reverse redlining is the practice of flooding a minority community with exploitative loan products.

⁷ Remarks by Federal Reserve Chairman Ben Bernanke at the Operation HOPE Global Financial Dignity Summit, Atlanta, Georgia at pg. 10 (November 15, 2012) (*available at* www.federalreserve.gov/newsevents/speech/bernanke20121115a.htm).

the vast majority of mortgage loans it originates or purchases on the secondary market (collectively “BoA Loans”).

9. Between 1996-2006, one category of discriminatory loan products – subprime loans – grew throughout the country from \$97 billion to \$640 billion. These loans were frequently targeted to minorities. Upon information and belief, the lack of accessible credit resulting from BoA’s previous pattern and practice of redlining in the minority communities in Miami created conditions whereby the Bank could easily target and exploit the underserved minority communities who, due to traditional redlining, had been denied credit.

10. Therefore, following several years of issuing abusive, subprime mortgage loans throughout the minority communities of Miami, commencing in or around 2007, BoA once again adapted to changing market conditions, while continuing its pattern and practice of issuing a variety of discriminatory loan products. Simultaneously, Miami and other communities throughout the country experienced a curtailment of mortgage credit issued to minority borrowers.⁸ BoA is one of the largest mortgage lenders doing business in Miami and its policies and practices contributed to this problem. In other words, BoA not only refused to extend credit to minority borrowers when compared to white borrowers, but when the Bank did extend credit, it did so on predatory terms. This combination of reverse redlining and redlining and represents a continuing and unbroken pattern and practice of mortgage lending discrimination in Miami that still exists today.

11. BoA’s pattern and practice of *reverse redlining* has caused an excessive and disproportionately high number of foreclosures on the BoA Loans it has made in the minority neighborhoods of Miami. Foreclosures on loans originated by BoA are concentrated in these neighborhoods. *A loan in a predominantly minority*

⁸ Center for Responsible Lending, *The State of Lending in America & its Impact on U.S. Households* (2012) (available at <http://www.responsiblelending.org/state-of-lending/State-of-Lending-report-1.pdf>); Harvard School of Public Health, *Home Purchase Loan Denial Rate By Race/Ethnicity* (2010) (available at <http://diversity.data.sph.harvard.edu/Data/Rankings/Show.aspx?ind=9>).

neighborhood is 5.857 times more likely to result in foreclosure than is a loan in a neighborhood with a majority of white residents.

12. BoA's pattern and practice of *traditional redlining* has also caused an excessive and disproportionately high number of foreclosures in the minority neighborhoods of Miami. These foreclosures often occur when a minority borrower who previously received a predatory loan sought to refinance the loan, only to discover that BoA refused to extend credit at all, or on terms equal to those offered when refinancing similar loans issued to white borrowers. The inevitable result of the combination of issuing a predatory loan, and then refusing to refinance the loan, was foreclosure.

13. BoA would have had comparable foreclosure rates in minority and white communities if it was properly and uniformly applying responsible underwriting practices in both areas. BoA possesses sophisticated underwriting technology and data that allows it to predict with precision the likelihood of delinquency, default, or foreclosure. The fact that BoA's foreclosures are so disproportionately concentrated in minority neighborhoods is not the product of random events. To the contrary, it reflects and is fully consistent with BoA's practice of targeting minority neighborhoods and customers for discriminatory practices and predatory pricing and products. It also reflects and is consistent with BoA's practice of failing to underwrite minority borrowers' applications properly, and of putting these borrowers, into loans which (1) have more onerous terms than loans given to similarly situated white borrowers, and (2) the borrowers cannot afford, leading to foreclosures.

14. The Bank's predatory and discriminatory lending practices are evidenced by confidential witness statements provided by former employees of BoA (discussed further herein). For example:

- a) "They [the less savvy minority borrower] didn't know anything about it [negative amortization loans]. The white American educated [borrower] knew what those

loans were and what they were going to do, and they stayed away from them. . . . [The less savvy minority borrower] didn't realize the negative amortization consequences down the road for them that would make it that much harder to refinance with no equity."

- b) Borrowers "couldn't afford ["interest-only" and "pick-a-payment" loans]. Half the time they couldn't even afford the [full] interest on those homes."
- c) "There's no money in [Community Reinvestment Act] loans for [the Bank]" so the Bank didn't encourage loan officers to make CRA loans.
- d) Back-end premiums [the difference between the borrower's loan rate and the rate the bank pays for it] were "non-disclosed", which often eluded less educated, minority borrowers.

15. The reports of these witnesses are confirmed when Miami data on BoA loans is examined. Such an examination reveals a widespread practice of discrimination. For example, a regression analysis that controls for credit history and other factors demonstrates that an African-American BoA borrower is 1.581 times more likely to receive a predatory loan than is a white borrower and a Latino borrower is 2.087 times more likely to receive such a loan. The regression analysis confirms that African-Americans with FICO scores over 660 are 1.533 times more likely to receive a predatory BoA loan than is a white borrower, and a Latino borrower is 2.137 times more likely to receive such a loan.

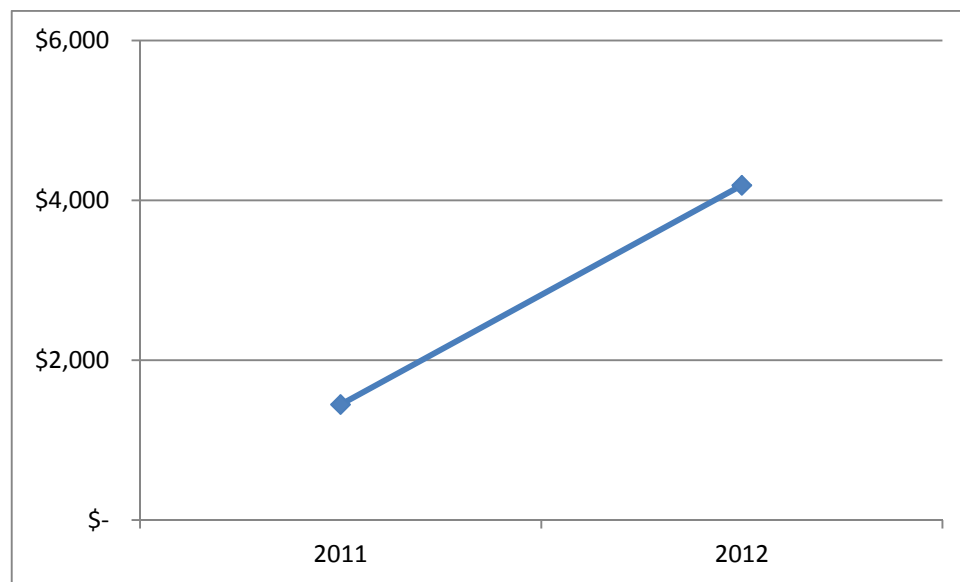
16. According to a Justice Department complaint, BoA's Countrywide subsidiary: (i) had charged upwards of 200,000 minority homeowners higher interest rates and fees than white borrowers who were similarly qualified, with similar credit ratings; (ii) had failed to offer minority homeowners conventional mortgages for which they qualified and which they would have been offered, were they white; and (iii) systematically pushed minority borrowers into exploitative mortgages with higher rates and fees. Many of the victims were in Florida. To settle the complaint, Bank of America agreed to pay \$335 million in restitution and penalties to the

200,000 identified minority victims – without compensation, restitution, or penalties to the City of Miami.

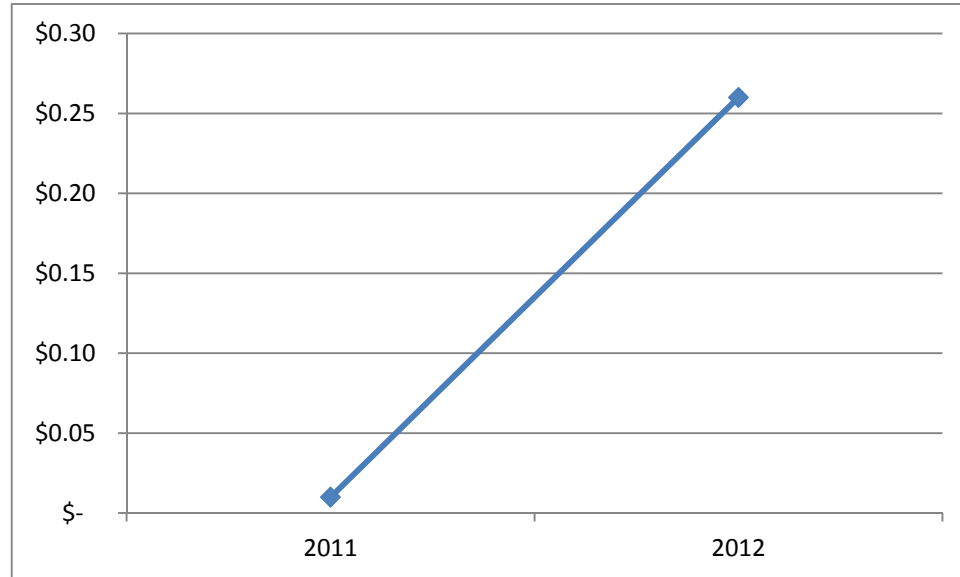
17. In or about June 2011, BoA settled charges with the Federal Trade Commission alleging that Countrywide had charged excessive fees to homeowners for property maintenance when they went into default, and added illegitimate charges to what the homeowners owed. To settle the FTC complaint, Bank of America paid \$107 million to the FTC for distribution to homeowner victims (again without compensation to the City of Miami).

18. The past several years have been highly profitable for BoA. The following charts illustrate these results.

Net Income (millions)



Earnings per share



19. The Bank's discriminatory practices and resulting foreclosures in the City's minority neighborhoods have inflicted significant, direct, and continuing financial harm to the City. Since 2008, banks have foreclosed on approximately 1.8 million homes in Florida, and BoA is responsible for a significant number of these foreclosures.

20. In this action the City seeks damages based on reduced property tax revenues based on (a) the decreased value of the vacant properties themselves, and (b) the decreased value of properties surrounding the vacant properties. In addition, the City seeks damages based on the expenditure of municipal services that will be required to remedy the blight and unsafe and dangerous conditions which exist at vacant properties that were foreclosed as a result of BoA's illegal lending practices.

21. Because of the multitude of analytic tools available to BoA to determine the likelihood that a particular mortgage loan would result in default by the borrower, as well as the existence of various studies, reports, and other pertinent literature specifically addressing the connection between mortgage loans and foreclosures, it was foreseeable that BoA knew, or should have known, that a predatory or high risk loan issued to an African-American or Hispanic in certain

neighborhoods in Miami would result in default and subsequent foreclosure. Moreover, because BoA maintains numerous branch offices throughout Miami, and has knowledge of the specific address for each loan it issued, it was foreseeable that BoA knew, or should have known, of the condition of foreclosed properties corresponding to loans that it issued in Miami regardless of whether it serviced the loan or subsequently sold the servicing rights to a third party.

22. According to Federal Reserve Chairman Bernanke, “foreclosures can inflict economic damage beyond the personal suffering and dislocation that accompany them. Foreclosed properties that sit vacant for months (or years) often deteriorate from neglect, adversely affecting not only the value of the individual property but the values of nearby homes as well. Concentrations of foreclosures have been shown to do serious damage to neighborhoods and communities, reducing tax bases and leading to increased vandalism and crime. Thus, the overall effect of the foreclosure wave, especially when concentrated in lower-income and minority areas, is broader than its effects on individual homeowners.”⁹

23. The discriminatory lending practices at issue herein have resulted in what many leading commentators describe as the “greatest loss of wealth for people of color in modern US history.” It is well-established that poverty and unemployment rates for minorities exceed those of whites, and therefore, home equity represents a disproportionately high percentage of the overall wealth for minorities.¹⁰ As Federal Reserve Chairman Bernanke recently explained, as a result of the housing crisis, “most or all of the hard-won gains in homeownership made by low-income and minority communities in the past 15 years or so have been reversed.”¹¹ The resulting impact of these practices represents “nothing short of the

⁹ Bernanke, *supra* n.7 at pg. 4.

¹⁰ Robert Schwemm and Jeffrey Taren, *Discretionary Pricing, Mortgage Discrimination, and the Fair Housing Act*, 45 HARVARD CIVIL RIGHTS-CIVIL LIBERTIES LAW REV., 375, 382 (2010).

¹¹ Bernanke, *supra* n.7 at pg. 3.

preeminent civil rights issue of our time, erasing, as it has, a generation of hard fought wealth accumulation among African-Americans.”¹²

II. PARTIES

24. Plaintiff City of Miami is a Florida municipal corporation. The City is authorized by the City Commission to institute suit to recover damages suffered by the City as described herein.

25. Bank of America, N.A. is organized as a national banking association under the laws of the United States. Upon information and belief, its corporate headquarters are located in Charlotte, North Carolina. It maintains multiple offices in the State of Florida, including in the City of Miami, for the purposes of soliciting applications for and making residential mortgage loans and engaging in other business activities.

26. During the period of time relevant to the events at issue in this Complaint through July 1, 2008, Defendant Countrywide Financial Corporation (“CFC”) was a Delaware-incorporated financial holding company or savings and loan holding company with its principal business office in Calabasas, California. CFC created, authorized, and/or ratified the lending-related policies and practices at issue in this Complaint that its divisions and subsidiaries implemented.

27. On July 1, 2008, Bank of America Corporation (“BAC”), a Delaware-incorporated financial holding company, acquired ownership of CFC, including all of its subsidiary business entities. Since that acquisition, CFC has remained a Delaware-incorporated company with its principal business office in Calabasas, California, as a direct, wholly-owned subsidiary of BAC.

28. Defendant Countrywide Home Loans, Inc. (“CHL”) is a New York-incorporated wholly-owned subsidiary of CFC with its principal business office in Calabasas, California. Prior to 2008, CHL funded the majority of CFC’s nationwide

¹² Charles Nier III and Maureen St. Cyr, *A Racial Financial Crisis: Rethinking the Theory of Reverse Redlining to Combat Predatory Lending Under the Fair Housing Act*, 83 TEMPLE LAW REV. 941, 942 (2011).

residential mortgage loan origination activity. For the loans it funded under the Countrywide name, CHL was the named lender on the promissory notes for those loans. CHL became a wholly-owned indirect subsidiary of BAC on or about July 1, 2008, as a result of BAC's acquisition of CFC.

29. Countrywide Bank ("CWB") was originally chartered as a national bank subject to supervision by the Office of the Comptroller of the Currency, and was a subsidiary of financial holding company CFC. CWB was headquartered in Alexandria, Virginia, until February, 2009. As a financial holding company, CFC, together with its subsidiary CHL, was supervised by the Board of Governors of the Federal Reserve System. On or about March 12, 2007, CWB changed its charter to that of a federal savings association, and CFC became a savings and loan holding company. Those changes caused CWB, CFC, and CHL to become subject to supervision by the Office of Thrift Supervision.

30. During 2006, CFC began the process of transitioning the funding of its residential loan originations from CHL to CWB. For those loans funded through CWB under the Countrywide name, CWB was the named lender on the promissory notes for those loans. As of January 1, 2008, CWB funded substantially all nationwide residential loan origination activity using the Countrywide name. For those loans funded by either CHL or CWB, CFC used the same loan origination policies and procedures that it had created, authorized, or ratified, and the same employees and mortgage brokers. Throughout this Complaint, CFC, CWB, and CHL are referred to collectively as "Countrywide."

31. Even after BAC's purchase of CFC on July 1, 2008, CWB continued its banking and mortgage lending operations as a direct subsidiary of CFC, using the same loan origination policies and procedures, until approximately November 7, 2008. At that time, BAC engaged in a series of corporate transactions that ended CWB's status as a subsidiary of CFC and made CWB a direct subsidiary of BAC.

32. On April 23, 2009, the Office of the Comptroller of the Currency approved CWB's request to convert its charter back to that of a national bank and the request by Bank of America, N.A. to then immediately acquire CWB by merger. These transactions were executed on April 27, 2009, as a result of which CWB ceased to exist. Bank of America, N.A. was the surviving institution resulting from this merger. Thus, Bank of America, N.A. is the successor in interest to CWB.

33. The Defendants in this action are, or were at all relevant times, subject to Federal laws governing fair lending, including the FHA and the regulations promulgated thereunder. The FHA prohibits financial institutions from discriminating on the basis of, inter alia, race, color, or national origin in their residential real estate-related lending transactions.

34. The Defendants in this action are or were businesses that engage in residential real estate-related transactions in the City of Miami within the meaning of the FHA, 42 U.S.C. § 3605.

35. Based on information reported pursuant to the Home Mortgage Disclosure Act, in addition to loans that Defendants originated directly, Defendants are responsible for residential home loans acquired from, and/or sold by or through, Merrill Lynch Bank & Trust FSB, Merrill Lynch Credit Corp., and First Franklin Financial Corp.

36. Upon information and belief, Plaintiff alleges that each of the Defendants was and is an agent of the other Defendants. Each Defendant, in acting or omitting to act as alleged in this Complaint, was acting in the course and scope of its actual or apparent authority pursuant to such agencies, and/or the alleged acts or omissions of each Defendant as agent were subsequently ratified and adopted by each agent as principal. Each Defendant, in acting or omitting to act as alleged in this Complaint, was acting through its agents, and is liable on the basis of the acts and omissions of its agents.

III. REFERRALS FROM BANK REGULATORY AGENCIES

37. In 2006, Federal Reserve System Examiners initiated a fair lending review of CHL's mortgage pricing practices. As a result of that review, the Federal Reserve Board ("FRB") determined that it had "reason to believe that Countrywide Home Loans engaged in a pattern or practice of discrimination based on race and ethnicity in violation of Section 701(a) of the Equal Credit Opportunity Act and the Fair Housing Act."

38. Following its determination described in Paragraph 37, and pursuant to 15 U.S.C. § 1691e(g), the FRB referred the matter to the Department of Justice on March 5, 2007. Countrywide agreed that various statutes of limitations for any cause of action that could be brought against Countrywide pursuant to the FRB referral would be tolled from March 22, 2007 through December 22, 2011.

39. In early 2008, the Office of Thrift Supervision ("OTS") conducted an examination of the operations of Countrywide, including its compliance with applicable fair lending laws and regulations. As a result of that examination, the OTS determined that it had "a 'reason to believe' that Countrywide has displayed a 'pattern or practice' of discriminating against minority loan applicants in the pricing of home loans and against married couples concerning the terms and condition of home loans."

40. Following its determination described in Paragraph 39, and pursuant to 15 U.S.C. § 1691e(g), the OTS referred the matter to the Department of Justice on June 27, 2008. Countrywide agreed that various statutes of limitations for any cause of action that could be brought against Countrywide pursuant to the OTS referral would be tolled from July 1, 2009 through December 22, 2011.

41. Based on the FRB and OTS referrals, the Department of Justice engaged in a lengthy investigation of Countrywide's lending policies, practices, and procedures, including reviewing millions of Countrywide loans originated between 2004 and 2008. The investigation led to the Justice Department's complaint against

Countrywide for discriminatory lending practices affecting upwards of 200,000 minority homeowners (saddling them with higher interest rates and fees than white borrowers who were similarly qualified, with similar credit ratings).

IV. JURISDICTION AND VENUE

42. This Court has jurisdiction over this matter pursuant to 42 U.S.C. § 3613 and 28 U.S.C. §§ 1331, 1343, because the claims alleged herein arise under the laws of the United States.

43. Venue is proper in this district under 28 U.S.C. § 1391(b) because Bank of America, N.A., BAC, and Countrywide all conduct business in this district and a substantial part of the events and omissions giving rise to the claims occurred in this district.

V. FACTUAL BACKGROUND

A. Background Regarding Discriminatory Loan Practices, Reverse Redlining, and Redlining

44. Prior to the emergence of subprime lending, most mortgage lenders made only “prime” loans. Prime lending offered uniformly priced loans to borrowers with good credit, but individuals with lower credit were not eligible for prime loans.

45. Subprime lending developed and began growing rapidly in the mid-1990s as a result of technological innovations in risk-based pricing and in response to the demand for credit by borrowers who were denied prime credit by traditional lenders. Advances in automated underwriting allowed lenders to predict with improved accuracy the likelihood that a borrower with lower credit will successfully repay a loan. These innovations gave lenders the ability to adjust the price of loans to match the different risks presented by borrowers whose credit records did not meet prime standards. Lenders found that they could now accurately price loans to reflect the risks presented by a particular borrower. When done responsibly, this made credit available much more broadly than had been the case with prime lending.

46. Responsible subprime lending has opened the door to homeownership to many people, especially low- to moderate-income and minority consumers, who otherwise would have been denied mortgages. At the same time, however, subprime lending has created opportunities for unscrupulous lenders to target minorities and engage in discriminatory, irresponsible lending practices that result in loans that borrowers cannot afford. This, in turn, leads directly to defaults and foreclosures.

47. Enticed by the prospect of profits resulting from exorbitant origination fees, points, and related pricing schemes, some irresponsible subprime lenders took advantage of a rapidly rising real estate market to convince borrowers to enter into discriminatory loans that had unfair terms that they could not afford. Often this was accomplished with the help of deceptive practices and promises to refinance at a later date. These abusive subprime lenders did not worry about the consequences of default or foreclosure to their business because, once made, a significant number of the loans were sold on the secondary market.

48. As the subprime market grew, the opportunities for abusive practices grew with it.¹³ As a consequence, the federal government has found that abusive and predatory practices “are concentrated in the subprime mortgage market.”¹⁴ These practices, which in recent years have become the target of prosecutors, legislators, and regulators, include the following:

a. Placing borrowers in subprime loans even though they qualify for prime or conventional loans on better terms.

¹³ United States Department of Housing and Urban Development Office of Policy Development and Research, Report to Congress on the Root Causes of the Foreclosure Crisis, (2010) at 52 (“While many factors have undoubtedly contributed to the recent rise in foreclosures, as discussed earlier, no small part of the increase stems from recent increases in abusive forms of subprime lending”) (*available at* http://www.huduser.org/portal/Publications/PDF/Foreclosure_09.pdf).

¹⁴ United States Department of Housing & Urban Development and United States Department of the Treasury, Curbing Predatory Home Mortgage Lending (2000) at 1 (*available at* <http://www.huduser.org/Publications/pdf/treasrpt.pdf>) (“HUD/Treasury Report”).

b. Failing to prudently underwrite hybrid adjustable rate mortgages (ARMs), such as 2/28s and 3/27s.¹⁵ After the borrower pays a low “teaser rate” for the first two or three years, the interest rate on these loans resets to a much higher rate that can continue to rise based on market conditions. Subprime lenders often underwrite these loans based only on consideration of whether the borrower can make payments during the initial teaser rate period, without regard to the sharply higher payments that will be required for the remainder of a loan’s 30-year term. Irresponsible lenders aggressively market the low monthly payment that the borrower will pay during the teaser rate period, misleading borrowers into believing that they can afford that same low monthly payment for the entire 30-year term of the loan, or that they can refinance their loan before the teaser rate period expires.

c. Failing to prudently underwrite refinance loans, where borrowers substitute unaffordable mortgage loans for existing mortgages that they are well-suited for and that allow them to build equity. Such refinanced loans strip much or even all of that equity by charging substantial new fees, often hiding the fact that the high settlement costs of the new loan are also being financed. Lenders that aggressively market the ability of the borrower to pay off existing credit card and other debts by refinancing all of their debt into one mortgage loan mislead borrowers into believing that there is a benefit to debt consolidation, while obscuring the predictable fact that the borrower will not be able to repay the new loan. The refinanced loans are themselves often refinanced repeatedly with ever-increasing fees and higher interest rates, and with ever-decreasing equity, as borrowers seek to stave off foreclosure.

¹⁵ In a 2/28 ARM, the “2” represents the number of years the mortgage will be fixed over the term of the loan, while the “28” represents the number of years the interest rate paid on the mortgage will be variable. Similarly, in a 3/27 ARM, the interest rate is fixed for three years and variable for the remaining 27-year amortization.

d. Allowing mortgage brokers to charge “yield spread premiums” for qualifying a borrower for an interest rate that is higher than the rate the borrower qualifies for and can actually afford.

e. Failing to underwrite loans based on traditional underwriting criteria such as debt-to-income ratio, loan-to-value ratio, FICO score, and work history. These criteria ensure that a borrower is obtaining a loan that he or she has the resources and assets to repay, and ignoring these criteria results in many loans that bear no relation to borrowers’ ability to repay them. This allows the lender to make a quick profit from the origination, but sets the borrower up for default and foreclosure.

f. Requiring substantial prepayment penalties that prevent borrowers whose credit has improved from refinancing their subprime loan to a prime loan. Prepayment penalties not only preclude borrowers from refinancing to a more affordable loan, but reduce the borrowers’ equity when a subprime lender convinces borrowers to needlessly refinance one subprime loan with another.

g. Charging excessive points and fees that are not associated with any increased benefits for the borrower.

49. The problem of predatory practices in subprime mortgage lending is particularly acute in minority communities because of “reverse redlining.” As used by Congress and the courts, the term “reverse redlining” refers to the practice of targeting residents in certain geographic areas for credit on unfair terms due to the racial or ethnic composition of the area. This is in contrast to “redlining,” which is the practice of denying *prime* credit to specific geographic areas because of the racial or ethnic composition of the area. Both practices have repeatedly been held to violate the Federal Fair Housing Act.

50. Following the onset of the subprime mortgage crisis, and after years of issuing abusive home loans in minority neighborhoods, the big bank lenders began to limit the issuance of mortgage credit to minority borrowers (*i.e.*, refusing to

refinance predatory loans). At the same time, when the big banks did extend credit, they continued to do so on predatory terms.

VI. BOA/COUNTRYWIDE ENGAGED IN DISCRIMINATORY LENDING PRACTICES

A. Specific Allegations Regarding BoA's Countrywide Subsidiary

1. Mortgage loan channels and loan types.

51. Between January 2004 and December 2008, Countrywide originated residential loans nationwide through both a retail channel and a wholesale channel.

52. Between 2004 and 2008, Countrywide's retail and wholesale divisions operated in virtually all geographical markets in the United States, including several hundred metropolitan areas ("MSAs"), including specifically the Miami MSA.

53. Between in at least January 2004 and August 2007, Countrywide originated virtually every type of loan product that was available in the residential lending market, several hundred products in all. Among others, these products included: (a) traditional prime loans (least risky); (b) subprime loans (most risky), typically designed for borrowers with credit scores or other credit characteristics deemed too weak to qualify for prime loans; and (c) "Alt-A" loans (risk level between prime and subprime loans), with application requirements or payment terms less restrictive than traditional prime loan terms or requirements, such as interest-only or negative amortization terms, reduced documentation requirements, or balloon payments. Subsequent to origination, Countrywide sold or securitized for sale the bulk of the loans it originated in the secondary market, either to government-sponsored entities Fannie Mae and Freddie Mac, or to private investors.

2. Retail Lending Pricing.

54. Between 2004 and 2008, Countrywide charged more than 100,000 Hispanic and African-American borrowers higher fees and costs than non-Hispanic White retail borrowers, not based on their creditworthiness or other objective criteria related to borrower risk, but because of their race or national origin. It was

Countrywide's business practice to allow its employees who originated loans through its retail channel to vary a loan's interest rate and other fees from the price initially set based on a borrower's objective credit-related factors. As a result of Countrywide's discriminatory retail pricing practices, a Hispanic or African-American borrower paid, on average, hundreds of dollars more for a Countrywide loan.

55. Countrywide's retail channel consisted of two primary divisions. The larger, the Consumer Markets Division ("CMD"), originated Countrywide's non-subprime residential loan products. Countrywide employed retail loan officers and other employees at each CMD branch and call center to solicit applications for, and originate residential loans to, individual loan applicants.

56. Beginning prior to January 2004 and continuing through at least December 2008, Countrywide utilized a two-tier decision-making process to set the interest rates and other terms and conditions of retail loans it originated. The first step involved setting the credit risk-based prices on a daily basis for Countrywide's various home mortgage loan products, including interest rates, loan origination fees, and discount points. In this step, Countrywide accounted for numerous objective credit-related characteristics of applicants by setting a variety of prices for each of the different loan products that reflected its assessment of individual applicant creditworthiness, as well as the current market rate of interest and the price it could obtain from the sale of such a loan to investors. These prices, referred to as par or base prices, were communicated through rate sheets, which were available electronically to its retail mortgage loan officers and other retail lending employees. Individual loan applicants did not have access to these rate sheets.

57. As the second step in determining the final price it would charge an applicant for a loan, Countrywide allowed its retail mortgage loan officers, and other employees who participated in the loan origination process, to increase the loan price charged to borrowers over the rate sheet prices set by Countrywide, up to certain

caps; this pricing increase was labeled an overage. Countrywide also allowed these same employees to decrease the loan price charged to borrowers below the stated rate sheet prices; this pricing decrease was labeled a shortage. Countrywide further allowed those employees to alter the standard fees it charged in connection with processing a loan application and the standard allocation of closing costs between Countrywide and the borrower. Employees made these pricing adjustments in a subjective manner, unrelated to factors associated with an individual applicant's credit risk. Countrywide provided no written guidance to its retail loan officers or other employees about the criteria they should consider in adjusting risk-based prices during the time period at issue. It did not establish an operational system for the documentation and supervisory review of their adjustments prior to loan origination.

58. During the time period at issue, Countrywide loan officer compensation was affected by the loan officers' decisions with respect to pricing overages and shortages, as well as other factors, such as volume of loans originated. Loan officers could obtain increased compensation for overages, and could have their total compensation potentially decreased for shortages. Countrywide's compensation policy thus provided an incentive for its loan officers in making pricing adjustments to maximize overages and, when offering shortages, to minimize their amount.

59. Countrywide regularly calculated a Net Pricing Exception ("NPE") for each retail loan it funded, subsequent to origination. The NPE approximates the amount, positive or negative, by which the total cost of a loan to a borrower differs from the total cost of that loan had it closed at the rate sheet price, with the borrower paying standard fees and with standard allocation of closing costs between the borrower and Countrywide. A positive NPE was an overage, and a negative NPE was a shortage.

60. For each residential loan that Countrywide retail mortgage loan officers originated, information about each borrower's race and national origin and the

amount of overage or shortage paid was available to, and was known by, Countrywide.

3. Wholesale Lending Mortgage Broker Fees.

61. Between 2004 and 2008, Countrywide charged more than 100,000 Hispanic and African-American wholesale borrowers higher fees and costs than non-Hispanic White wholesale borrowers, not based on their creditworthiness or other objective criteria related to borrower risk, but because of their race or national origin. It was Countrywide's business practice to allow its mortgage brokers who generated loan applications through its wholesale channel to vary a loan's interest rate and other fees from the price set based on a borrower's objective credit-related factors. As a result of Countrywide's discriminatory practices, a Hispanic or African-American borrower paid, on average, hundreds of dollars more for a Countrywide loan.

62. Prior to January 2004, and continuing through at least December 2008, Countrywide originated and funded residential loans of all types, including both subprime and non-subprime loans, through its Wholesale Lending Division ("WLD"). Applications for these loans were brought to Countrywide during those years by mortgage brokers throughout the United States who had entered into contracts with Countrywide for the purpose of bringing loan applications to it for origination and funding.

63. Countrywide's relationship with the mortgage brokers who brought loans to it was governed throughout the time period at issue by its standard Wholesale Broker Agreement ("WBA"). The WBA, while revised from time to time, consistently contained extensive provisions (a) mandating that a broker act in compliance with all Countrywide policies, (b) requiring submission to Countrywide of the full details of all compensation a broker received for each Countrywide loan, (c) specifying that the decision whether to fund a loan application was

Countrywide's alone, and (d) permitting Countrywide to obtain any information with respect to a broker's business operations.

64. Countrywide was directly and extensively involved in setting the complete, final terms and conditions of wholesale loan applications generated by mortgage brokers that Countrywide approved and originated. Countrywide employed wholesale account executives who worked with mortgage brokers in submitting loan applications to Countrywide, and it employed underwriters to determine whether and on what terms to approve and fund wholesale loan applications. At the time of originating each loan, Countrywide was fully informed of those terms and conditions, including the fees it passed along to brokers, and it incorporated those terms and conditions into the wholesale loans it originated.

65. Prior to January 2004 and until December 2008, Countrywide set terms and conditions, including interest rates, on a daily basis for its various home mortgage loan products available through its wholesale loan channel. Countrywide accounted for numerous applicant credit risk characteristics by setting a range of prices for each of the different loan products it offered that reflected applicant creditworthiness. It communicated these loan product prices to its brokers through rate sheets updated daily. Individual loan applicants did not have access to these rate sheets.

66. Under its WBA, Countrywide authorized brokers to inform prospective borrowers of the terms and conditions under which a Countrywide residential loan product was available. Countrywide did not require the mortgage brokers to inform a prospective borrower of all available loan products for which he or she qualified, of the lowest interest rates and fees for a specific loan product, or of specific loan products best designed to serve the interests expressed by the applicant.

67. Between 2004 and 2008, Countrywide operated between 39 and 52 WLD branch offices and several regional centers, and employed wholesale account executives to work with mortgage brokers in originating loans, which included

assisting the brokers in setting the terms and conditions of loan applications and approvals.

68. Mortgage brokers who supplied Countrywide with loan applications that Countrywide funded were compensated in two ways. One was through a yield spread premium (“YSP”), an amount paid by Countrywide to the brokers based on the extent to which the interest rate charged on a loan exceeded the base, or par, rate for that loan to a borrower with particular credit risk characteristics fixed by Countrywide and listed on its rate sheets. The YSP is derived from the present dollar value of the difference between the credit risk-determined par interest rate a wholesale lender such as Countrywide would have accepted on a particular loan and the interest rate a mortgage broker actually obtained for Countrywide. Countrywide benefitted financially from the loans it made at interest rates above the par rates set by its rate sheets. For those loans that it sold or securitized, higher interest rates meant sales at prices higher than it otherwise would have obtained; for loans it retained, higher interest rates meant more interest income over time for it. The second way brokers were compensated was through direct fees. Countrywide directed its closing agents to pay these direct fees to brokers out of borrowers’ funds at the loan closing. Taken together, these two forms of compensation are referred to in this Complaint as “total broker fees.”

69. During the time period at issue, Countrywide was fully informed of all broker fees to be charged with respect to each individual residential loan application presented to it. Countrywide included fees from the broker’s application package in the calculations it made to prepare various closing documents, including the HUD-1 Form, an itemized statement of receipts and expenditures in connection with a residential loan closing, and the Truth in Lending Act Disclosure Statement. Countrywide also included these fees in its instructions on how to distribute funds at closing. Total broker fees raised the annual percentage rate (“APR”) charged on a loan, and could increase the note interest rate and the total amount borrowed.

70. Between at least January 2004 and December 2008, Countrywide's policies and practices established a two-step process for the pricing of wholesale loans that it originated similar to that used in its retail division. The first step was to establish a base or par rate for a particular type of loan for an applicant with specified credit risk characteristics.

71. Countrywide's second step of pricing wholesale loans permitted mortgage brokers to set the amount of total broker fees charged to individual borrowers, unrelated to an applicant's credit risk characteristics.

72. Total broker fees for an average subprime loan were notably higher than total broker fees on a similarly-sized non-subprime loan. Other than certain broker fee caps, Countrywide did not establish any objective criteria, or provide guidelines, instructions, or procedures to be followed by brokers (a) in setting the amount of direct fees they should charge or (b) in determining to charge an interest rate for a loan above that set by its rate sheet, which in turn determined the amount of YSP Countrywide would pay the broker. Mortgage brokers exercised this fee pricing discretion Countrywide gave them, untethered to any objective credit characteristics, on every loan they brought to Countrywide for origination and funding. Countrywide affirmed or ratified these discretionary fee pricing decisions for all the brokered loans it originated and funded. Each year during this time period when Countrywide had in place higher fee caps for subprime than prime loans, Countrywide's mortgage brokers charged higher average total fees for subprime loan applications than for non-subprime loan applications, measured on a nationwide basis.

73. Countrywide's compensation policy and practice created a financial incentive for mortgage brokers to submit subprime loans to Countrywide for origination rather than other types of residential loan products.

74. For each residential loan application obtained by mortgage brokers and subsequently funded by Countrywide, information about each borrower's race and

national origin and the amount and types of broker fees paid was available to, and was known by, Countrywide.

4. Wholesale Lending Product Placement.

75. Between 2004 and 2007, Countrywide placed more than 10,000 Hispanic and African-American wholesale borrowers into subprime loans even though non-Hispanic White wholesale borrowers who had similar credit qualifications were placed into prime loans. As a result of being placed into an illegal discriminatory loan, a Hispanic or African-American borrower paid, on average, thousands of dollars more for a Countrywide loan. It was Countrywide's business practice to allow its mortgage brokers and employees to place a wholesale loan applicant in a subprime loan even when the applicant qualified for a prime loan according to Countrywide's underwriting practices.

76. Countrywide also gave mortgage brokers discretion to request exceptions to underwriting guidelines, and Countrywide's employees had discretion to grant these exceptions. These policies and practices resulted in the placement of Hispanic and African-American borrowers into discriminatory loans (based on criteria other than strict adherence to its published underwriting guidelines), when similarly-situated non-Hispanic White borrowers were placed into prime loans, both on a nationwide basis and in dozens of geographic markets across the country (including Miami), where Countrywide originated a large volume of wholesale loans. Between at least January 2004 and August 2007, Countrywide attempted to implement a system that would "flag" subprime loan applicants eligible to be "uplifted" to a non-subprime loan product. This system flagged thousands of Hispanic and African-American loans. However, this pre-origination "uplift" system only required that notification of potential uplift eligibility be given to brokers, and neither required the brokers to inform applicants of this fact, nor obligated the brokers to take any other specific action with respect to identified applicants. Moreover, this "uplift" system did not accurately correspond to Countrywide's actual

underwriting practices for non-subprime loan products that treated published underwriting guidelines as merely advisory, and widely granted exceptions. As a result, the system both failed to identify a large proportion of applicants who received a subprime loan whose qualifications were similar to those of applicants who received non-subprime loan products, and resulted in few “flagged” applicants receiving a non-subprime loan.

B. BoA/Countrywide’s Conduct Had a Disparate Impact on Minority Borrowers in Violation of the Fair Housing Act

1. Discriminatory lending results in a disproportionate number of foreclosures in minority areas.

77. Foreclosures are on the rise in many of the nation’s most vulnerable neighborhoods, particularly those with substantial concentrations of minority households. The increase appears to stem from the presence of (1) subprime lending in these communities and (2) continuing discriminatory lending practices (*e.g.*, steering minorities into loan products with more onerous terms).

78. A seminal report on foreclosure activity by Mark Duda and William Apgar documents the negative impact that rising foreclosures have on low-income and low-wealth minority communities, using Chicago as a case study. Mr. Apgar is a Senior Scholar at the Joint Center for Housing Studies of Harvard University, and a Lecturer on Public Policy at Harvard’s John F. Kennedy School of Government. He previously served as the Assistant Secretary for Housing/Federal Housing Commissioner at the U.S. Department of Housing and Urban Development, and also Chaired the Federal Housing Finance Board. Mr. Apgar holds a Ph.D. in Economics from Harvard University. Mr. Duda is a Research Fellow at the Joint Center for Housing Studies. The Apgar-Duda report has continually been cited by subsequent governmental, public sector, and private sector reports due to its clarity and

thoroughness with respect to the negative impact foreclosures have on lower-income and minority neighborhoods.¹⁶

79. This significant report highlights the foreseeability of foreclosures arising from predatory lending practices and their attendant harm, demonstrating that such foreclosures impose significant and predictable costs on borrowers, municipal governments, and neighboring homeowners.

80. Another report, by the Center for Responsible Lending, uses a national dataset to show that the foreclosure rate for low- and moderate-income African-Americans is approximately 1.8 times higher than it is for low- and moderate-income non-Hispanic whites. The gap is smaller for Latinos, especially among low-income households, but even among low-income Latinos the foreclosure rate is 1.2 times that of low-income whites. Racial and ethnic disparities in foreclosure rates cannot be explained by income, since disparities persist even among higher-income groups. For example: approximately 10 percent of higher-income African-American borrowers and 15 percent of higher-income Latino borrowers have lost their homes to foreclosure, compared with 4.6 percent of higher income non-Hispanic white borrowers. Overall, low- and moderate-income African-Americans and middle- and higher-income Latinos have experienced the highest foreclosure rates.¹⁷

81. Nearly 20 percent of loans in high-minority neighborhoods have been foreclosed upon or are seriously delinquent, with significant implications for the long-term economic viability of these communities.¹⁸

¹⁶ See W. Apgar, M. Duda & R. Gorey, *The Municipal Costs of Foreclosures: A Chicago Case Study* (2005) (available at <http://www.nw.org/network/neighborworksProgs/foreclosuresolutions/documents/2005Apgar-DudaStudy-FullVersion.pdf>).

¹⁷ Center for Responsible Lending, *Lost Ground, 2011: Disparities in Mortgage Lending and Foreclosures* (2011) (available at www.responsiblelending.org/-mortgage-lending/research-analysis/Lost-Ground-2011.pdf).

¹⁸ *Id.*

2. Minority neighborhoods are disproportionate recipients of predatory loans.

82. There is a substantial body of empirical evidence demonstrating the prevalence of reverse redlining in the subprime mortgage market. These studies show that, even after controlling for creditworthiness and other legitimate underwriting factors, subprime loans and the predatory practices often associated with subprime lending are disproportionately targeted at minority neighborhoods.¹⁹

83. In general, as recently observed by the Federal Reserve in December 2012, both African-American and Hispanic borrowers were far more likely (in fact, nearly twice more likely) to obtain higher priced loans than were white borrowers. These relationships hold both for home-purchase and refinance lending and for non-conventional loans. These differences are reduced, but not eliminated, after controlling for lender and borrower characteristics. “Over the years, analyses of HMDA data have consistently found substantial differences in the incidence of higher-priced lending across racial and ethnic lines, differences that cannot be fully explained by factors included in the HMDA data.”²⁰

84. African-Americans and Hispanics were much more likely to receive subprime loans and loans with features that are associated with higher foreclosures,

¹⁹ See Abt Associates, *Using Credit Scores to Analyze High-Cost Lending in Central City Neighborhoods* (2008); Center for Responsible Lending, *Lost Ground, 2011: Disparities in Mortgage Lending and Foreclosures* (2011) (available at www.responsiblelending.org/mortgage-lending/research-analysis/Lost-Ground--2011.pdf); Center for Responsible Lending, *Unfair Lending: The Effect of Race and Ethnicity on the Price of Subprime Mortgages* (2006) (available at http://www.responsiblelending.org/mortgage-lending/research-analysis/rr011-Unfair_Lending-0506.pdf); Finance and Economics Discussion Series Divisions of Research & Statistics and Monetary Affairs Federal Reserve Board, Washington, D.C., *Subprime Mortgages: What, Where, and to Whom?* (2008) (available at http://www.nber.org/papers/w14083.pdf?new_window=1); C. Reid and E. Laderman, Federal Reserve Bank of San Francisco, *The Untold Costs of Subprime Lending: Examining the Links among Higher-Priced Lending, Foreclosures and Race in California*, Presented at Brandeis University (2009) (available at <http://iasp.brandeis.edu/pdfs/Author/reid-carolin/The%20Untold%20Costs%20of%20Subprime%20Lending%203.pdf>).

²⁰ Federal Reserve Bulletin, *The Mortgage Market in 2011: Highlights from the Data Reported under the Home Mortgage Disclosure Act* (Dec. 2012) (available at http://www.federalreserve.gov/pubs/bulletin/2012/PDF/2011_HMDA.pdf).

specifically prepayment penalties and hybrid or option ARMs. These disparities were evident even comparing borrowers within the same credit score ranges. In fact, the disparities were especially pronounced for borrowers with higher credit scores. For example, among borrowers with a FICO score of over 660 (indicating good credit), African-Americans and Latinos received a high interest rate loan more than three times as often as white borrowers.²¹

85. In addition to receiving a higher proportion of higher-rate loans, African-Americans and Latinos also were much more likely to receive loans with other risky features, such as hybrid and option ARMs and prepayment penalties. Disparities in the incidence of these features are evident across all segments of the credit spectrum.²²

86. Since 2008, as the data discussed below makes clear, there has been a shift in the types of loans issued – and not issued – by the Bank. For example, the Bank shifted from offering new subprime loans toward issuing more Home Equity Lines of Credit (HELOCs) and higher cost loans including, but not limited to, FHA/VA loans.²³ FHA and VA government loans are characterized as higher risk loans because (a) they are typically more expensive for a borrower than conventional loans and include fees and costs not associated with conventional loans, and (2) several of the government loan programs permit negative amortization.²⁴ At the same time, in the last several years, the Bank tightened lending requirements in a manner that drastically limited the ability of minority borrowers to refinance or otherwise modify the subprime loans previously issued by the Bank.

²¹ Center for Responsible Lending, *Lost Ground*, 2011, *supra*, n.17.

²² *Id.*

²³ While FHA/VA loans are not inherently predatory, these loans have higher risk features such as higher fees and higher interest rates. When banks target minorities for FHA/VA loans and issue more of them to minorities, they are acting in a discriminatory manner.

²⁴ See, e.g., California Reinvestment Coalition, et al., *Paying More for the American Dream VI, Racial Disparities in FHA/VA Lending*, (July 2012); www.fha.com/fha_loan_types; www.benefits.va.gov/homeloans.

87. At the same time that conventional credit has contracted over the past five years, FHA lending has expanded dramatically. During the subprime boom, FHA lending fell as subprime lenders targeted minority communities. Now, with little or no subprime lending, and conventional credit restricted, FHA lending has shot up. Overall, the share of loans with government backing went from 5% in 2005 to 26.6% in 2010.²⁵

88. For African-Americans, the share of mortgages used to purchase a home and backed by a government program increased to almost 80% in 2010; for Latinos the share increased to 73%. But for whites, the share increased to only 49%. At present, most minority borrowers cannot gain access to the conventional mortgage market, and instead, are relegated to more expensive FHA loans.²⁶ As discussed above, these government loans often have higher interest, fees, and costs than conventional loans.

C. BoA/Countrywide Intentionally Discriminated Against Minority Borrowers in Violation of the Fair Housing Act Throughout the Time Period 2004-2012 as Demonstrated by Former Bank Employees

89. Confidential Witnesses (“CWs”) are former BoA/Countrywide employees responsible for making and/or underwriting loans on behalf of the Bank in the greater Miami region. CWs describe how the Bank has targeted minorities and residents of minority neighborhoods in and around Miami for predatory lending practices.

90. CW1 was a mortgage loan officer with BoA from 2008 to 2010; she worked in the Bank’s Miami-Dade County mortgage lending center in 2010.

91. CW2 was a mortgage loan officer for BoA from 2011 to 2013. Part of his time as a BoA loan officer was spent working in a Miami Beach branch. CW2’s

²⁵ Center for Responsible Lending, *supra*, n.8.

²⁶ *Id.*

job involved writing new mortgages, refinancing mortgages, and helping customers obtain loans through the federal Home Affordable Refinance Program.

92. CW3 was a mortgage loan officer for BoA in Florida from 2005 to 2008; he worked on loans throughout the Miami area.

1. BoA/Countrywide targets minorities for predatory loan terms.

93. According to CW2, a large percentage of the people who wanted to refinance because they were struggling to pay the note on a negative amortization loan were minorities who were not savvy financially. “They (the less savvy minority borrower) didn’t know anything about it,” he said. “The white American educated (borrower) knew what those loans were and what they were going to do, and they stayed away from them.” CW2, who has had his mortgage broker’s license for over 25 years, said he believed BoA targeted less savvy minorities for these types of onerous loans.

94. CW2 added that “most people just knew about or wanted to pay that minimum (monthly payment) only. They’re in a house and have a roof over their head and didn’t realize the negative amortization consequences down the road for them that would make it that much harder to refinance with no equity.”

95. CW3 said that most of the borrowers he dealt with in the Miami area were minorities. He explained that “interest-only” and “pick-a-payment” loans were popular in Miami, and he understood that borrowers were approved for such loans based on repayment of interest payments alone – not interest and principal. In CW3’s experience, few of the borrowers were able to pay down the loan principal on these loans along with the interest every month. “After four or five years, that’s how everything went the way it did,” he said. “They couldn’t afford it. Half the time they couldn’t even afford the (full) interest on those homes.” BoA/Countrywide paid its employees more for steering minorities into predatory loans.

96. The confidential witness statements demonstrate that BoA/Countrywide incentivized employees to steer minority borrowers into predatory loans.

97. According to CW1, the most beneficial type of loan for low-income buyers was the CRA loan, which allowed borrowers to obtain large grants for the down payments and closing costs. CRA loans were designed in part to discourage redlining. But, as CW1 explained, “there’s no money in those loans for [the Bank]” so the Bank didn’t encourage loan officers to make CRA loans.

98. At BoA, the CRA loan process was slow, complicated and labor-intensive. Notably, BoA paid loan officers less commissions on CRA loans than it paid on FHA and other government loans, CW1 said. In effect, BoA incentivized loan officers to put low-income borrowers into less advantageous FHA loans over CRA loans. The Bank did so by paying higher commissions for the FHA loans—CW1 said loan officers received an extra 15 percent in commission on FHA loans compared to CRA loans. CW1 added that minorities missed out on opportunities to get into a CRA loan through BoA.

99. CW3 explained that BoA loan officers earned origination fees and back-end premiums (the difference between the borrower’s loan rate and the rate the bank pays for it). He said the back-end premiums were not disclosed to borrowers. He added that loan officers were allowed to charge up to 3 points on the front-end at origination plus up to 5 or 6 points on the back-end. According to CW3, this often eluded less educated, minority borrowers.

2. BoA/Countrywide underwrites teaser rate loans that borrowers cannot afford.

100. BoA/Countrywide originated loans with low teaser rates (e.g., “pick-your-payment” loans, negative amortization loans, etc.), marketed to borrowers from predominantly minority neighborhoods in Miami. Unless properly underwritten, such loans are destined to fail.

101. BoA/Countrywide does not properly underwrite these loans when made to minorities and in minority neighborhoods. BoA/Countrywide does not adequately consider the borrowers’ ability to repay these loans, especially after the teaser rate

expires and the interest rate increases. The fact that these loans would result in delinquency, default, and foreclosure for many borrowers was, or should have been, clearly foreseeable to BoA/Countrywide at the time the loans were made.

102. The confidential witness statements of CW2 and CW3 support that BoA/Countrywide underwrote these loans as if the teaser rate will apply for the full life of the loan instead of considering the borrowers' ability to repay the loan after the teaser rate expires.

103. The use of negative amortization loans, pick-a-payment notes, and/or other teaser-rate adjustable loans in the manner described above is consistent with the practice of reverse redlining, has subjected minority borrowers to unfair and deceptive loan terms, and has contributed significantly to the high rate of foreclosure found in the minority neighborhoods of Miami.

3. BoA induced foreclosures by failing to offer refinancing or loan modifications to minority customers on fair terms, and otherwise limiting equal access to fair credit.

104. CW2 explained that, in the 2011-2013 timeframe, BoA did not offer regular refinancing to persons with mortgages at over 80% of the value of the house. Consequently, BoA refused to refinance many of the teaser loans (e.g., negative amortization loans) that it previously marketed to borrowers. CW2 said many of the people in this situation were facing the high likelihood of losing their homes, and many of them were minorities in Miami, both Hispanics and African-Americans.

105. In this manner, BoA induced foreclosures by failing to offer refinancing or loan modifications to minority customers on fair terms – which constitutes a particularly egregious form of redlining, given that minority borrowers sought refinancing or loan modifications with respect to bad loans that the Bank previously made to them.

D. Minorities in Fact Receive Predatory Loan Terms from BoA/Countrywide

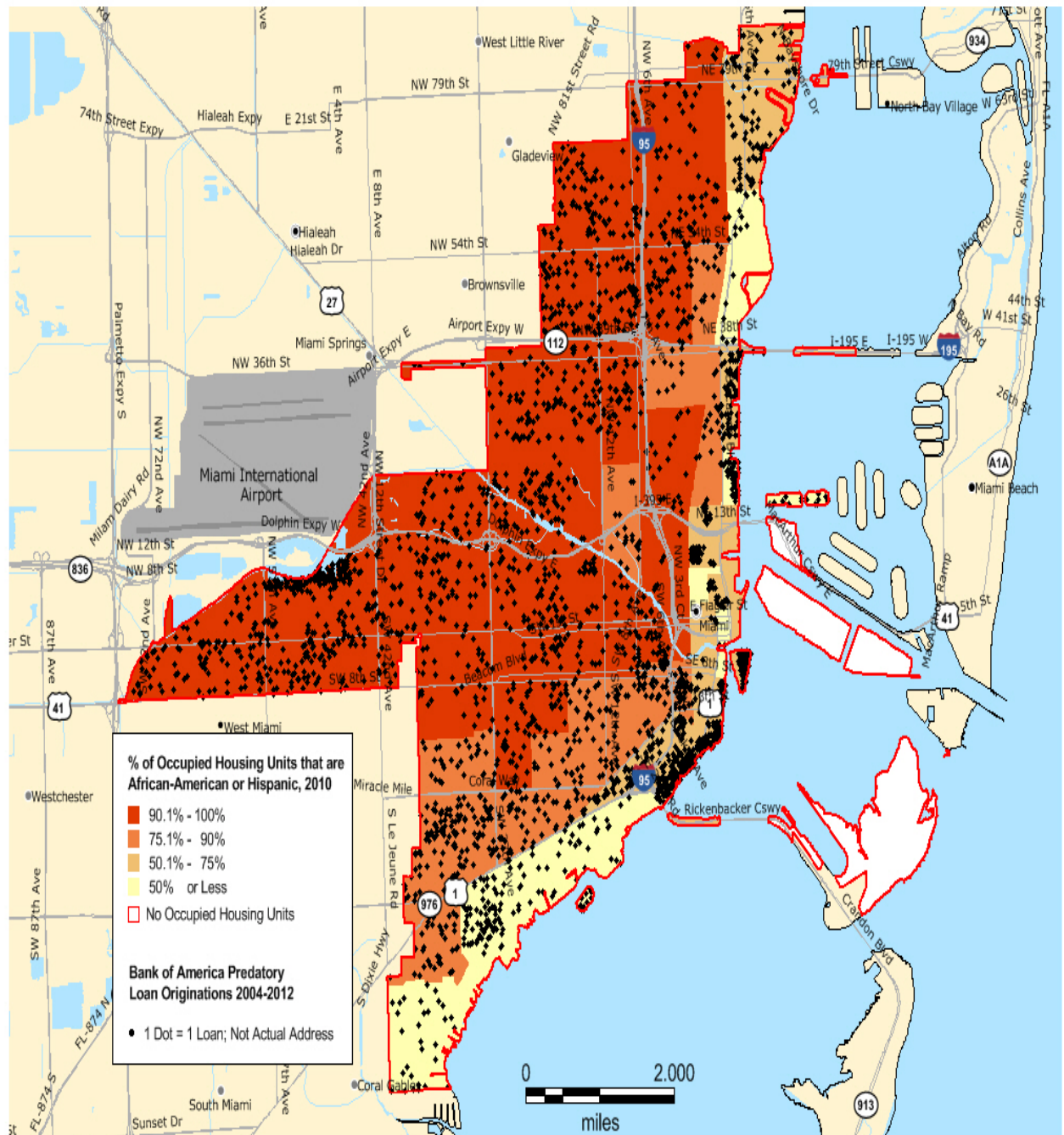
106. As discussed herein, BoA/Countrywide's *predatory* loans include: high-cost loans (*i.e.*, loans with an interest rate that was at least three percentage points above a federally-established benchmark), subprime loans, interest-only loans, balloon payment loans, loans with prepayment penalties, negative amortization loans, no documentation loans, and/or ARM loans with teaser rates (*i.e.*, lifetime maximum rate > initial rate + 6%).

107. Data reported by the Bank and available through public databases shows that in 2004-2012, 21.9% of loans made by BoA/Countrywide to African-American and Latino customers in Miami were high-cost, but only 8.9% of loans made to white customers in Miami were high-cost.²⁷ This data demonstrates a pattern of statistically significant differences in the product placement for high cost loans between minority and white borrowers.²⁸

²⁷ As alleged throughout the complaint, all references to the date range 2004-2012 are intended to include the time period up to and including December 31, 2012.

²⁸ Statistical significance is a measure of probability that an observed outcome would not have occurred by chance. As used in this Complaint, an outcome is statistically significant if the probability that it could have occurred by chance is less than 10%.

108. The following map of BoA/Countrywide predatory loans originated in Miami between 2004-2012 illustrates the geographic distribution of predatory loans in African-American and Latino neighborhoods and white neighborhoods in Miami. This map demonstrates that BoA/Countrywide's predatory loans are disproportionately located in minority neighborhoods.



109. The fact that predatory loans involving all of BoA/Countrywide's loan products are more heavily concentrated in minority neighborhoods in Miami is consistent with the practice of reverse redlining and, upon information and belief, has contributed significantly to the disproportionately high rates of foreclosure in minority communities in Miami.

E. Minorities in Miami Receive Such Predatory Loan Terms from BoA/Countrywide Regardless of Creditworthiness

110. According to *Discretionary Pricing, Mortgage Discrimination, and the Fair Housing Act*, 45 HARVARD CIVIL RIGHTS-CIVIL LIBERTIES LAW REV. 375, 398 (2010), several studies dating back to 2000 have established that minority borrowers were charged higher interest rates/fees than similar creditworthy white borrowers.

111. Likewise, according to *A Racial Financial Crisis*, 83 TEMPLE LAW REV. 941, 947, 949 (2011), one study concluded that "even after controlling for underwriting variables, African-American borrowers were 6.1% to 34.3% more likely than whites to receive a higher rate subprime mortgage during the subprime boom." And another study found that significant loan pricing disparity exists among low risk borrowers – African-American borrowers were 65% more likely to receive a subprime home purchase loan than similar creditworthy white borrowers, and 124% more likely to receive a subprime refinance loan.

112. Similarly, the Center for Responsible Lending's November 2011 report, *Lost Ground, 2011: Disparities in Mortgage Lending and Foreclosures*, stated that "racial and ethnic differences in foreclosure rates persist even after accounting for differences in borrower incomes." Further, the Center stated it is "particularly troublesome" that minorities received riskier loans "even within [similar] credit ranges." For example, among borrowers having FICO scores above 660, the incidence of higher rate loans among various groups was as follows: whites – 6.2%;

African-American – 21.4% (3.5 times white rate); and Latino – 19.3% (3.1 times white rate).

113. Moreover, data reported by the Bank and available through both public and private databases shows that minorities in Miami received predatory loan terms from BoA/Countrywide more frequently than white borrowers, regardless of creditworthiness.

114. A regression analysis of this data controlling for borrower race and objective risk characteristics such as credit history, loan to value ratio, and the ratio of loan amount to income demonstrates that from 2004-2012, an African-American borrower was 1.581 times more likely to receive a predatory loan as was a white borrower possessing similar underwriting and borrower characteristics. The regression analysis further demonstrates that the odds that a Latino borrower would receive a predatory loan were 2.087 times greater than that of a white borrower possessing similar underwriting and borrower characteristics. These odds ratios demonstrate a pattern of statistically significant differences between African-American and white borrowers, and between Latino and white borrowers.

115. The regression analysis also shows that these disparities persist when comparing only borrowers with FICO scores above 660. An African-American borrower with a FICO score above 660 was 1.533 times more likely to receive a predatory loan as was a white borrower with similar underwriting and borrower characteristics. A Latino borrower with a FICO score above 660 was 2.137 times more likely to receive a predatory loan as was a white borrower with similar underwriting and borrower characteristics. These odds ratios demonstrate a pattern of statistically significant differences between African-American and white borrowers, and between Latino and white borrowers.

116. A similar regression analysis taking into account the racial makeup of the borrower's neighborhood rather than the individual borrower's race shows that borrowers in heavily minority neighborhoods in Miami were more likely to receive

predatory loans than borrowers in heavily white neighborhoods. For example, a borrower in a heavily minority census tract (census tract consisting of at least 90% African-American or Latino households) was 1.585 times more likely to receive a predatory loan as was a borrower with similar characteristics in a non-minority neighborhood (census tract with at least 50% white households). These odds ratios demonstrate a pattern of statistically significant differences between African-American and white borrowers, and between Latino and white borrowers.

117. This data also establishes that BoA/Countrywide disproportionately issued loans with higher risk features including government loans (FHA/VA) and other high cost loans to African-American and Latino borrowers in Miami from 2008-2012. A regression analysis, controlling for borrower race and objective risk characteristics such as ratio of loan amount to income, demonstrates that an African-American borrower was 5.388 times more likely to receive one of these loans with higher risk features than was a white borrower possessing similar borrower and underwriting characteristics. The regression analysis further demonstrates that a Latino borrower was 1.685 times more likely to receive one of these loans with higher risk features than was a white borrower possessing similar borrower and underwriting characteristics. These odds ratios demonstrate a pattern of statistically significant differences between African-American and white borrowers, and between Latino and white borrowers.

118. Thus, the disparities are not the result of, or otherwise explained by, legitimate non-racial underwriting criteria.

F. BoA/Countrywide's Targeting of Minorities who in fact Receive Predatory Loan Terms Regardless of Creditworthiness Causes Foreclosures

1. Data shows that BoA/Countrywide's foreclosures are disproportionately located in minority neighborhoods in Miami.

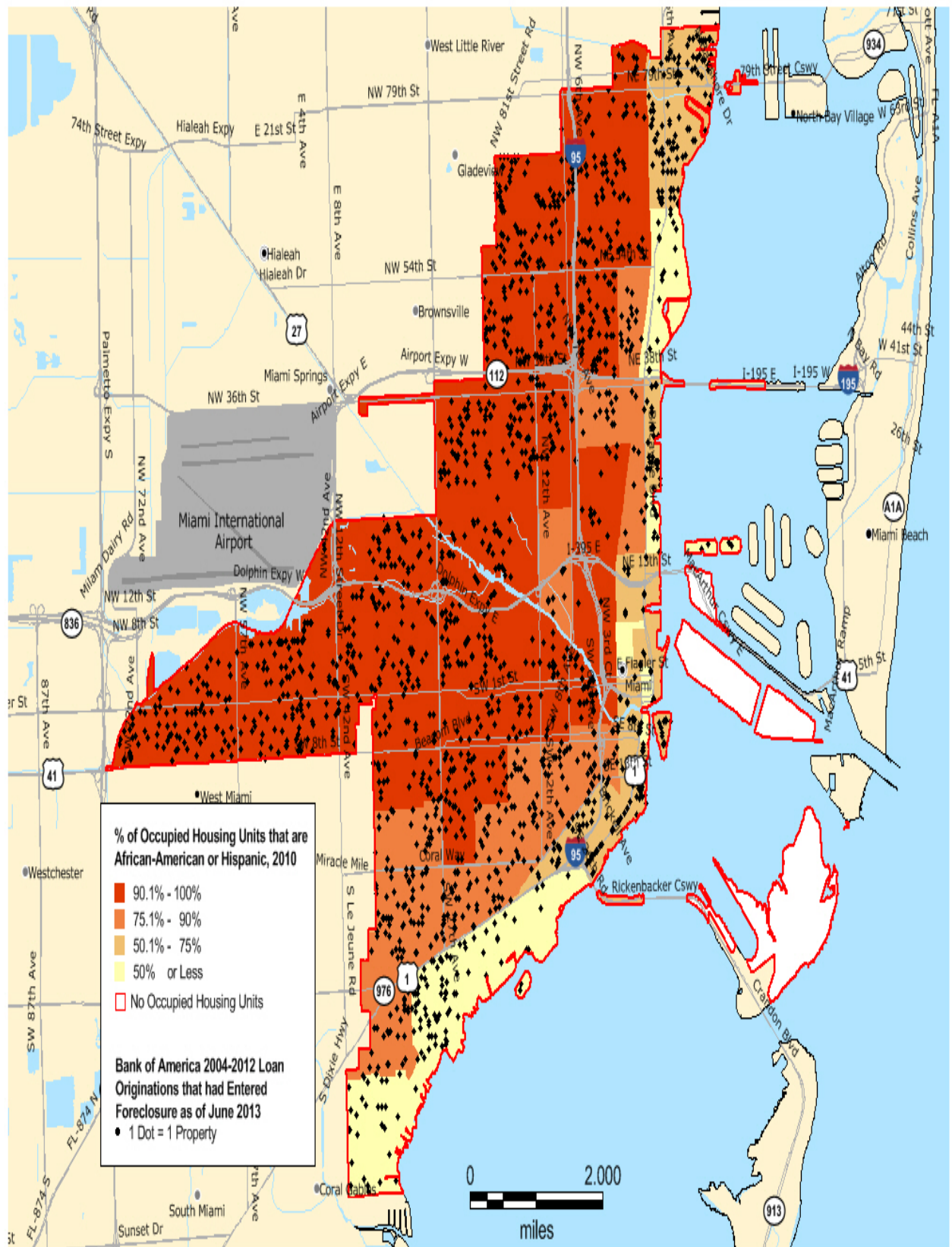
119. BoA/Countrywide has intentionally targeted predatory practices at African-American and Latino neighborhoods and residents. The predatory practices include charging excessively high interest rates and fees that are not justified by borrowers' creditworthiness; providing teaser rate loans with bogus refinance opportunities; requiring large prepayment penalties while deliberately misleading borrowers about the penalties; refusing to refinance or modify predatory loans; and more.

120. Far from being a responsible provider of much-needed credit in minority communities, BoA/Countrywide is a leading cause of stagnation and decline in African-American and Latino neighborhoods where its foreclosures are concentrated. Specifically, since at least 2000, its foreclosures have been concentrated in neighborhoods with African-American or Latino populations exceeding 75%.

121. Although 53.3% of BoA/Countrywide's loan originations in Miami from 2004 to 2012 were in census tracts that are at least 75% African-American or Latino, 62.5% of loan originations that had entered foreclosure by June 2013 were in those census tracts. Similarly, while 84.7% of BoA/Countrywide's loan originations in Miami from 2004 to 2012 occurred in census tracts that are at least 50% African-American or Latino, 95.7% of BoA/Countrywide's loan originations that had entered foreclosure by June 2013 were in those census tracts. Moreover, while 15.3% of BoA/Countrywide's loan originations in Miami from 2004 to 2012 occurred in census tracts that were less than 50% African-American or Latino, only 4.3% of BoA/Countrywide's loan originations that had entered foreclosure by June 2013 were in those census tracts. This data demonstrates a pattern of statistically

significant differences between African-American and white borrowers, and between Latino and white borrowers.

122. The following map represents the concentration of BoA/Countrywide's loan originations from 2004 through 2012 that had entered foreclosure by February 2013 in African-American and Latino neighborhoods. In addition to the disproportionate distribution of BoA/Countrywide foreclosures in African-American and Latino neighborhoods, disparate rates of foreclosure based on race further demonstrate BoA/Countrywide's failure to follow responsible underwriting practices in minority neighborhoods. While 32.8% of BoA/Countrywide's loans in predominantly (greater than 90%) African-American or Latino neighborhoods result in foreclosure, the same is true for only 7.7% of its loans in non-minority (greater than 50%) neighborhoods. In other words, a BoA/Countrywide loan in a predominantly African-American or Latino neighborhood is 5.857 times more likely to result in foreclosure as is a BoA/Countrywide loan in a non-minority neighborhood. These odds ratios demonstrate a pattern of statistically significant differences between African-American and white borrowers, and between Latino and white borrowers.



123. Thus, BoA/Countrywide's discretionary lending policies and pattern or practice of targeting of minorities, who in fact receive predatory loan terms regardless of creditworthiness, have caused and continue to cause foreclosures in Miami.

2. Data shows that BoA/Countrywide's loans to minorities result in especially quick foreclosures.

124. A comparison of the time from origination to foreclosure of BoA/Countrywide's loans originated in Miami from 2004 to 2012 shows a marked disparity with respect to the speed with which loans to African-Americans and Latinos and whites move into foreclosure. The average time to foreclosure for African-American borrowers is 3.144 years, and for Latino borrowers is 3.090 years. By comparison, the average time to foreclosure for white borrowers is 3.448 years. These statistically significant disparities demonstrate that BoA/Countrywide aggressively moved minority borrowers into foreclosure as compared with how the Bank handled foreclosures for white borrowers.

125. This disparity in time to foreclosure is further evidence that BoA/Countrywide is engaged in lending practices consistent with reverse redlining. The disparity in time to foreclosure demonstrates that BoA/Countrywide is engaged in irresponsible underwriting in African-American and Latino communities that does not serve the best interests of borrowers. If BoA/Countrywide were applying the same underwriting practices in African-American and Latino neighborhoods and white neighborhoods in Miami, there would not be a significant difference in time to foreclosure. Were BoA/Countrywide underwriting borrowers in both communities with equal care and attention to proper underwriting practices, borrowers in African-American and Latino communities would not find themselves in financial straits significantly sooner during the lives of their loans than do borrowers in white communities. The faster time to foreclosure in African-American and Latino neighborhoods is consistent with underwriting practices in minority communities

that are less concerned with determining a borrower's ability to pay and qualifications for the loan than they are in maximizing short-term profit.

126. The HUD/Treasury Report confirms that time to foreclosure is an important indicator of predatory practices: “[t]he speed with which the subprime loans in these communities have gone to foreclosure suggests that some lenders may be making mortgage loans to borrowers who did not have the ability to repay those loans at the time of origination.”²⁹

3. Data shows that the discriminatory loan terms cause the foreclosures.

127. BoA/Countrywide's discriminatory lending practices cause foreclosures and vacancies in minority communities in Miami.

128. Steering borrowers into loans that are less advantageous than loans for which they qualify, including steering borrowers who qualify for prime loans into subprime loans, can cause foreclosures because the borrowers are required to make higher loan payments. The difference between what a borrower who is steered in this manner must pay and the lower amount for which the borrower qualified can cause the borrower to be unable to make payments on the mortgage. In such instances, the borrower would have continued to make payments on the mortgage and remained in possession of the premises had BoA/Countrywide made the loan without improperly steering the borrower into a subprime, or less advantageous loan. Steering borrowers in this manner, therefore, causes foreclosures and vacancies.

129. Giving a loan to an applicant who does not qualify for the loan, especially a refinance or home equity loan, can also cause foreclosures and vacancies. Some homeowners live in properties that he or she owns subject to no mortgage. Other homeowners live in properties with modest mortgages that he or she can comfortably afford to pay. Where a lender, such as BoA/Countrywide, solicits such a homeowner to take out a home equity loan on their property, or

²⁹ HUD/Treasury Report at 25.

alternatively, to refinance an existing loan into a larger loan without proper underwriting to assure that the borrower can make the monthly payments for the new, larger loan, the result is likely to be that the borrower will be unable to make payments on the mortgage. This is particularly true where the borrower is refinanced from a fixed rate loan into an adjustable rate loan that the lender knows the borrower cannot afford, should interest rates rise. In some instances the lender may refinance the borrower into a new loan that the lender knows the borrower cannot sustain, given the borrower's present debt obligations and financial resources. In such circumstances, the likely result of such practices is to cause homeowners who are otherwise occupying properties without a mortgage, or comfortably making payments on a modest existing mortgage, to be unable to make payments on a new, unaffordable loan. This, in turn, causes foreclosures and vacancies. If these unaffordable refinance and home equity loans had not been made, the subject properties would not have become vacant.

130. A regression analysis of loans issued BoA/Countrywide in Miami from 2004-2012, controlling for objective risk characteristics such as credit history, loan to value ratio, and the ratio of loan amount to income, demonstrates that a predatory loan is 1.721 times more likely to result in foreclosure than is a non-predatory loan.

131. The regression analysis also demonstrates that a predatory loan made to an African-American borrower was 2.744 times more likely to result in foreclosure than was a non-predatory loan made to a white borrower with similar borrower and underwriting characteristics. A predatory loan made to a Latino borrower was 2.861 times more likely as a non-predatory loan made to a white borrower with similar risk characteristics to result in foreclosure. These odds ratios demonstrate a pattern of statistically significant differences between African-American and white borrowers, and between Latino and white borrowers.

132. A regression analysis of loans with higher risk features including government loans (FHA/VA) and other high cost loans issued by BoA/Countrywide

in Miami from 2008-2012, controlling for borrower race and objective risk characteristics such as ratio of loan amount to income, demonstrates that these loans are 1.855 times more likely as loans without these risk features to result in foreclosure. These odds ratios demonstrate a pattern of statistically significant differences between African-American and white borrowers, and between Latino and white borrowers.

VII. INJURY TO MIAMI CAUSED BY BOA/COUNTRYWIDE'S DISCRIMINATORY LOAN PRACTICES

133. Miami has suffered financial injuries as a direct result of BoA's pattern or practice of reverse redlining and the resulting disproportionately high rate of foreclosure on BoA loans to African-Americans and Latinos in minority neighborhoods in Miami. Miami seeks redress for these injuries. The City does not seek redress in this action for injuries resulting from foreclosures on mortgages originated by lenders other than BoA.

134. BoA continues to engage in the discriminatory pattern or practice described herein with similar and continuing deleterious consequences to the City.

135. The City seeks damages based on reduced property tax revenues based on (a) the decreased value of the vacant properties themselves, and (b) the decreased value of properties surrounding the vacant properties. In addition, the City seeks damages based on municipal services that it provided and still must provide to remedy blight and unsafe and dangerous conditions which exist at properties that were foreclosed as a result of BoA's illegal lending practices.

A. Miami has been Injured by a Reduction in Property Tax Revenues from Foreclosures Caused by Discriminatory Loans Issued by BoA

136. When a home falls into foreclosure, it affects the property value of the foreclosed home as well as the values of other homes in the neighborhood. These decreased property values in turn reduce property tax revenues to the City.

137. As property values drop, Miami communities could lose millions in property tax revenues from the decreased value of the foreclosed homes themselves and those in the surrounding neighborhoods.

1. The decreased value of the properties foreclosed by BoA result in reduced property tax revenues.

138. Homes in foreclosure tend to experience a substantial decline in value (e.g., 28%).³⁰

139. A portion of this lost home value is attributable to homes foreclosed as a result of BoA's discriminatory loan practices.

140. The decreased property values of foreclosed homes in turn reduce property tax revenues to the City and constitute damages suffered by Miami.

2. The decreased value of properties in the neighborhoods surrounding foreclosed properties results in reduced property tax revenues.

141. BoA foreclosure properties and the problems associated with them likewise cause especially significant declines in surrounding property values because the neighborhoods become less desirable. This in turn reduces the property tax revenues collected by Miami.

142. Property tax losses suffered by Miami as a result of vacancies resulting from BoA's foreclosures are fully capable of empirical quantification.

143. Routinely maintained property tax and other data allow for the precise calculation of the property tax revenues lost by the City as a direct result of particular BoA foreclosures. Using a well-established statistical regression technique that focuses on effects on neighboring properties, the City can isolate the lost property value attributable to BoA foreclosures and vacancies from losses attributable to other causes, such as neighborhood conditions. This technique, known as Hedonic regression, when applied to housing markets, isolates the factors that contribute to

³⁰ Campbell, John Y., Stefano Giglio, and Parag Pathak, National Bureau of Economic Research, NBER Working Paper Series, "*Forced Sales and House Prices*" (2009) (available at http://www.nber.org/papers/w14866.pdf?new_window=1).

the value of a property by studying thousands of housing transactions. Those factors include the size of a home, the number of bedrooms and bathrooms, whether the neighborhood is safe, whether neighboring properties are well-maintained, and more. Hedonic analysis determines the contribution of each of these house and neighborhood characteristics to the value of a home.

144. The number of foreclosures in a neighborhood is one of the neighborhood traits that Hedonic analysis can examine. Hedonic analysis allows for the calculation of the impact on a property's value of the first foreclosure in close proximity (*e.g.*, $\frac{1}{8}$ or $\frac{1}{4}$ of a mile), the average impact of subsequent foreclosures, and the impact of the last foreclosure.

145. Foreclosures attributable to BoA in minority neighborhoods in Miami can be analyzed through Hedonic regression to calculate the resulting loss in the property values of nearby homes. This loss can be distinguished from any loss attributable to non-BoA foreclosures or other causes. The loss in property value in minority neighborhoods in Miami attributable to BoA's unlawful acts and consequent foreclosures can be used to calculate the City's corresponding loss in property tax revenues.

146. Various studies establish that Hedonic regression can be used for this purpose. A study published by the Fannie Mae Foundation, using Chicago as an example, determined that each foreclosure is responsible for an average decline of

approximately 1.1% in the value of each single-family home within an eighth of a mile.³¹

147. Other studies have focused on the impact of abandoned homes on surrounding property values. A study in Philadelphia, for example, found that each home within 150 feet of an abandoned home declined in value by an average of \$7,627; homes within 150 to 299 feet declined in value by \$6,810; and homes within 300 to 449 feet declined in value by \$3,542.³²

148. These studies highlight the foreseeability of tax related harm to the City as the result of foreclosures arising from discriminatory loans.

149. And most recently, a Los Angeles study reported, “[i]t is conservatively estimated that each foreclosed property will cause the value of neighboring homes within an eighth of a mile to drop 0.9%.” Thus, “[i]n Los Angeles, impacted homeowners could experience property devaluation of \$53 billion.”³³ This decreased property value of neighboring homes in turn reduces property tax revenues to the City.

150. Application of such Hedonic regression methodology to data regularly maintained by Miami can be used to quantify precisely the property tax injury to the City caused by BoA’s discriminatory lending practices and resulting foreclosures in minority neighborhoods.

³¹ See Dan Immergluck & Geoff Smith, *The External Costs of Foreclosure: The Impact of Single-Family Mortgage Foreclosures on Property Values*, 17 HOUSING POLICY DEBATE 57 (2006) at 69.

³² See Anne B. Shlay & Gordon Whitman, *Research for Democracy: Linking Community Organizing and Research to Leverage Blight Policy*, at 21 (2004).

³³ The Alliance of Californians for Community Empowerment and the California Reinvestment Coalition, *The Wall Street Wrecking Ball: What Foreclosures are Costing Los Angeles Neighborhoods*, at 3 (2011) (“Cost to Los Angeles Report”).

B. Miami Is Injured Because It Provided and Still Must Provide Costly Municipal Services for Foreclosure Properties in Minority Neighborhoods as a Direct Result of Discriminatory Loans Originated or Purchased by BoA

151. BoA foreclosure properties cause direct costs to the City because the City is required to provide increased municipal services at these properties. These services would not have been necessary if the properties had not been foreclosed upon.

152. For example, the City's Police Department has sent, and will continue to send personnel and police vehicles to BoA foreclosure properties to respond to a variety of problems, including increased vagrancy, criminal activity, and threats to public health and safety that arise at these properties because of their foreclosure status. Because violent crime has generally been found to increase due to foreclosures, the Miami PD must respond to calls reporting suspicious activity at foreclosure properties and perform ongoing investigations involving criminal activity, including gang activity, at these properties.

153. Likewise, the Miami Fire Department has sent, and will continue to send personnel and resources to BoA foreclosure properties to respond to a variety of fire-related problems that arise at these properties because of their foreclosure status.

154. The Miami Building Department and Code Enforcement/Code Compliance Departments have devoted, and will continue to devote personnel time and out-of-pocket funds to perform a number of tasks that arise at these properties because of their foreclosure status. These include, but are not limited to the following: (a) inspect and issue permitting violations in contravention of Florida statutes 553 and the Florida Building Code; (b) inspect and issue violations of the Miami City Code and Florida statutes 162; (c) condemn and demolish vacant structures deemed an imminent hazard to public safety.

155. The City frequently hires independent contractors to perform certain services, including, but not limited to, (i) removing excess vegetation at vacant

properties, (ii) hauling away trash and debris at vacant properties, (iii) boarding vacant property from casual entry, (iv) putting up fencing to secure vacant properties, (v) painting and removing graffiti at vacant properties. Occasionally, some of these services are performed by the City's General Services Administration Department. .

156. The Miami City Attorney's Office has devoted, and will continue to devote personnel time and out-of-pocket resources perform a number of tasks that arise at these properties because of their foreclosure status. These include, but are not limited to the following: (a) prosecuting code enforcement cases; (b) preserving the City's lien rights at judicial foreclosure proceedings; and (c) pursuing court ordered injunctions involving a myriad of potential problems at foreclosure properties.

157. The City is required to administer and fund the Unsafe Structures Board, which was formerly under the jurisdiction of Miami-Dade County.

158. As described in the *Cost to Los Angeles* Report, "[l]ocal government agencies have to spend money and staff time on blighted foreclosed properties, providing maintenance, inspections, trash removal, increased public safety calls, and other code enforcement services Responding to these needs is a gargantuan task that involves multiple agencies and multiple levels of local government."³⁴

159. Moreover, as discussed above, the Apgar-Duda report underscores the foreseeability of municipal costs as the result of foreclosures arising from discriminatory loans.

VIII. SAMPLE FORECLOSURE PROPERTIES IN THE CITY OF MIAMI

160. Plaintiff has preliminarily identified three thousand three hundred and twenty-six (3,326) discriminatory loans issued by BoA in Miami between 2004-2012

³⁴ *Id.*

that resulted in foreclosure.³⁵ The City has already incurred, or will incur in the future, damages corresponding to each of these properties. A sample of property addresses corresponding to these foreclosures is set forth below:

1111 NW 65th St., 33150

1073 NW 64th St., 33150

597 NW 69th St., 33127

1557 NW 66th St., 33147

253 NW 73rd St., 33150

7200 SW 5th St., 33144

3635 NW 14th St., 33125

2728 NW 23rd Ct., 33142

1671 NW 36th Ave., 33125

4321 NW 11th Ct., 33127

IX. STATUTE OF LIMITATIONS AND CONTINUING VIOLATIONS DOCTRINE

161. As alleged herein, Defendant BoA/Countrywide has engaged in a continuous pattern and practice of mortgage discrimination in Miami since at least 2004 by imposing different terms or conditions on a discriminatory and legally

³⁵ Plaintiff anticipates that it will be able to identify more foreclosures resulting from the issuance of discriminatory loans during this time period with the benefit of discovery. This conclusion derives from the fact that because of certain reporting limitations, the publicly-available mortgage loan databases utilized by Plaintiff are not as comprehensive as the mortgage loan databases maintained by, and in the possession of, an issuing bank.

prohibited basis. In order to maximize profits at the expense of the City of Miami and minority borrowers, BoA/Countrywide adapted its unlawful discrimination to changing market conditions. This unlawful pattern and practice conduct is continuing through the present and has not terminated. Therefore, the operative statute of limitations governing actions brought pursuant to the Federal Fair Housing Act has not commenced to run.

X. CLAIMS FOR RELIEF

FIRST CLAIM FOR RELIEF

(Violation of the Federal Fair Housing Act, 42 U.S.C. §§ 3601, *et seq.*)

162. Plaintiff repeats and incorporates by reference all allegations contained in the preceding paragraphs as if fully set forth herein.

163. BoA/Countrywide's acts, policies, and practices as described constitute intentional discrimination on the basis of race. BoA/Countrywide has intentionally targeted residents of predominantly African-American and Latino neighborhoods in Miami for different treatment than residents of predominantly white neighborhoods in Miami with respect to mortgage lending. BoA/Countrywide has intentionally targeted residents of these neighborhoods for high-cost loans without regard to their credit qualifications and without regard to whether they qualify for more advantageous loans, including prime loans. BoA/Countrywide has intentionally targeted residents of these neighborhoods for increased interest rates, points, and fees, and for other disadvantageous loan terms including, but not limited to, adjustable rates, prepayment penalties, and balloon payments. BoA/Countrywide has intentionally targeted residents of these neighborhoods for unfair and deceptive lending practices in connection with marketing and underwriting mortgage loans.

164. BoA/Countrywide's acts, policies, and practices have had an adverse and disproportionate impact on African-Americans and Latinos and residents of predominantly African-American and Latino neighborhoods in Miami as compared to similarly situated whites and residents of predominantly white neighborhoods in

Miami. This adverse and disproportionate impact is the direct result of BoA/Countrywide's policies of providing discretion to loan officers and others responsible for mortgage lending; failing to monitor this discretion to ensure that borrowers were being placed in loan products on a nondiscriminatory basis when BoA/Countrywide had notice of widespread product placement disparities based on race and national origin; giving loan officers and others responsible for mortgage lending large financial incentives to issue loans to African-Americans and Latinos that are costlier than better loans for which they qualify; otherwise encouraging and directing loan officers and others responsible for mortgage lending to steer borrowers into high-cost loans or loans with adjustable rates, prepayment penalties, or balloon payments without regard for whether they qualify for better loans, including but not limited to prime loans; and setting interest rate caps. These policies have caused African-Americans and Latinos and residents of predominantly African-American and Latino neighborhoods in Miami to receive mortgage loans from BoA/Countrywide that have materially less favorable terms than mortgage loans given by BoA/Countrywide to similarly situated whites and residents of predominantly white neighborhoods in Miami, and that are materially more likely to result in foreclosure.

165. BoA/Countrywide's residential lending-related acts, policies, and practices constitute reverse redlining and violate the Fair Housing Act as:

(a) Discrimination on the basis of race and national origin in making available, or in the terms and conditions of, residential real estate-related transactions, in violation of 42 U.S.C. § 3605(a); and

(b) Discrimination on the basis of race and national origin in the terms, conditions, or privileges of sale of a dwelling, in violation of 42 U.S.C. § 3604(b).

166. BoA/Countrywide's policies or practices are not justified by business necessity or legitimate business interests.

167. BoA/Countrywide's policies and practices are continuing.

168. The City is an aggrieved person as defined by 42 U.S.C. § 3602(i) and has suffered damages as a result of BoA/Countrywide's conduct.

169. The City's damages include lost tax revenues and the need to provide increased municipal services. The loss of tax revenues at specific foreclosure sites and at closely neighboring properties in predominantly minority neighborhoods of the City was a foreseeable consequence that was fairly traceable to BoA's discriminatory lending. Likewise, the need to provide increased municipal services at blighted foreclosure sites in predominantly minority neighborhoods of the City was a foreseeable consequence that was fairly traceable to BoA's discriminatory lending.

170. BoA/Countrywide's policies and practices, as described herein, had the purpose and effect of discriminating on the basis of race or national origin. These policies and practices were intentional, willful, or implemented with reckless disregard for the rights of African-American and Latino borrowers.

SECOND CLAIM FOR RELIEF

(Common Law Claim For Unjust Enrichment Based On Florida Law)

171. Plaintiff repeats and incorporates by reference paragraphs 1 - 161 as if fully set forth herein.

172. Defendants have received and utilized benefits derived from a variety of municipal services, including police and fire protection, as well as zoning ordinances, tax laws, and other laws and services that have enabled Defendants to operate and profit within the City of Miami.

173. Defendants are aware of and have taken advantage of the services and laws provided by the City of Miami to further their businesses.

174. As a direct and proximate result of Defendants' predatory lending practices, Defendants have been enriched at the City's expense by utilizing benefits conferred by the City and, rather than engaging in lawful lending practices, practicing unlawful lending practices that have both denied the City revenues it had properly expected through property and other tax payments and by costing the City additional monies for services it would not have had to provide in the neighborhoods affected by foreclosures due to predatory lending, absent the Defendants' unlawful activities. Defendants have failed to remit those wrongfully obtained benefits or reimburse the City for its costs improperly caused by Defendants, and retention of the benefits by Defendants would be unjust without payment.

175. In addition, to its detriment the City has paid for the Defendants' externalities, or Defendants' costs of harm caused by its mortgage lending discrimination, in circumstances where Defendants are and have been aware of this obvious benefit and retention of such benefit would be unjust.

DEMAND FOR JURY TRIAL

Pursuant to Fed. R. Civ. P. 38(b), the City demands a trial by jury on all issues so triable.

PRAYER FOR RELIEF

WHEREFORE, the City respectfully prays that the Court grant it the following relief:

A. Enter a declaratory judgment that the foregoing acts, policies, and practices of BoA/Countrywide violate 42 U.S.C. §§ 3604 and 3605;

B. Enter a permanent injunction enjoining BoA/Countrywide and its directors, officers, agents, and employees from continuing the discriminatory

conduct described herein, and directing BoA/Countrywide and its directors, officers, agents, and employees to take all affirmative steps necessary to remedy the effects of the discriminatory conduct described herein and to prevent additional instances of such conduct or similar conduct from occurring in the future, pursuant to 42 U.S.C. § 3613(c)(1);

C. Award compensatory damages to the City of Miami in an amount to be determined by the jury that would fully compensate the City for its injuries caused by the conduct of BoA/Countrywide alleged herein, pursuant to 42 U.S.C. § 3613(c)(1);

D. Award punitive damages to the City in an amount to be determined by the jury that would punish BoA/Countrywide for the willful, wanton and reckless conduct alleged herein, and that would effectively deter similar conduct in the future, pursuant to 42 U.S.C. § 3613(c)(1);

E. Award the City its reasonable attorneys' fees and costs, pursuant to 42 U.S.C. § 3613(c)(2);

F. Require payment of pre-judgment interest on monetary damages; and

G. Order such other relief as this Court deems just and equitable.

Dated: December 13, 2013

Respectfully submitted,

By: s/ Lance A. Harke, P.A.

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