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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA, Plaintiff, v. COUNTRYWIDE FINANCIAL CORPORATION; COUNTRYWIDE HOME LOANS, INC; COUNTRYWIDE BANK, Defendants.	CIVIL NO.: CV11 10540 -PSG (AJWx) **COMPLAINT**

Plaintiff, United States of America, alleges:

INTRODUCTION

1. The United States brings this action against Countrywide Financial Corporation, acting through its various divisions and subsidiaries (collectively, "Countrywide") for discriminating against more than 200,000 Hispanic and African-American borrowers in its residential mortgage lending. The action to enforce the Fair Housing Act, 42 U.S.C. §§ 3601-3619 ("FHA"), and the Equal Credit Opportunity Act, 15 U.S.C. §§ 1691-1691f ("ECOA"), is brought to redress the discrimination based on race and national origin that Countrywide engaged in from 2004 to 2008 during the mortgage boom.

2. Countrywide was one of the largest single-family mortgage lenders in the United States, if not the largest, between 2004 and 2008. During that period, Countrywide originated over 4.4 million residential mortgage loans through its retail loan offices and its wholesale division using mortgage brokers. Between 2004 and 2007, the total annual volume of these loans ranged between $110 billion and $243 billion. During that four-year period, Countrywide reported total net earnings of approximately $6.7 billion. Part of Countrywide's business strategy was to target local Hispanic and African-American markets in order to expand its lending and ultimately gain market dominance in making residential loans in those communities.

3. As a result of Countrywide's policies and practices, more than 200,000 Hispanic and African-American borrowers paid Countrywide higher loan fees and costs for their home mortgages than non-Hispanic White borrowers, not based on their creditworthiness or other objective criteria related to borrower risk, but because of their race or national origin.

4. Additionally, as a result of Countrywide's policies and practices, Hispanic and African-American borrowers were placed into subprime loans when similarly-

qualified non-Hispanic White borrowers received prime loans. Between 2004 and 2007, more than 10,000 Hispanic and African-American wholesale borrowers received subprime loans, with adverse terms and conditions such as high interest rates, excessive fees, prepayment penalties, and unavoidable future payment hikes, rather than prime loans from Countrywide, not based on their creditworthiness or other objective criteria related to borrower risk, but because of their race or national origin.

5. The victims of Countrywide's discrimination were located in more than 180 geographic markets across at least 41 states and the District of Columbia. For example, the statistical analyses discussed below found high numbers of potential victims in metropolitan markets throughout the country. The top twenty markets with the highest number of victims are: Los Angeles; Riverside; Chicago; Houston; Miami; Atlanta; New York; Washington, DC; Phoenix; San Diego; Las Vegas; Fort Lauderdale; Orlando; Santa Ana; Dallas; Denver; Oxnard; Newark; Long Island; and Detroit. More than two-thirds of the victims of Countrywide's discrimination are Hispanic, and nearly one-third of all Countrywide's discrimination victims were located in California.

6. Countrywide's home mortgage lending policies allowed its employees and mortgage brokers both to set the loan prices charged to borrowers and to place borrowers into loan products in ways that were not connected to a borrower's creditworthiness or other objective criteria related to borrower risk. Countrywide's policies created financial incentives for its employees and mortgage brokers by sharing increased revenues with them.

7. Countrywide knew or had reason to know based on its own internal monitoring and reporting that its policies of giving unguided discretion to its own loan officers as well as to brokers was resulting in discrimination. Countrywide did not act to adequately compensate borrowers who were victims of discrimination nor did it

take effective action to change the discriminatory policies or practices to eliminate the discrimination.

8. The higher borrowing costs Countrywide charged to hundreds of thousands of Hispanic and African-American families – whether paid as higher up-front fees, higher interest rates, prepayment penalties, or otherwise – put increased economic burdens on those families. For the Hispanic and African-American families Countrywide placed in subprime loans when those same families could have received prime loans, the economic burdens and risks, including the increased risk of delinquency or foreclosure, were particularly high. A recent survey of large national lenders by the Office of the Comptroller of the Currency reported that as of June 30, 2011, 28.1% of subprime loans nationwide are seriously delinquent or in foreclosure compared to only 5.5% of prime loans. Similarly, as of the second quarter of 2011, Bank of America reported that of the residential loans it services, approximately 74% of which were originated by Countrywide, about 33% of its subprime loans were seriously delinquent or in foreclosure compared to about 10% of its prime loans.

9. In addition, Countrywide engaged in discrimination on the basis of marital status by encouraging married borrowers applying for credit in one spouse's name to have their non-applicant spouses give up all their rights and interests in the property securing the loan at the time the loans were originated.

10. The United States brings this lawsuit to hold Countrywide accountable for its serious violations of law and remedy the substantial and widespread harmful consequences of Countrywide's discriminatory lending policies and practices.

11. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1345, 42 U.S.C. § 3614, and 15 U.S.C. § 1691e(h). Venue is appropriate pursuant to 28 U.S.C. § 1391(b) and (c).

PARTIES

12. 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.

13. 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.

14. 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 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.

15. 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.

16. 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."

17. 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.

18. 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.

19. The Defendants in this action are, or were at all relevant times, subject to Federal laws governing fair lending, including the FHA and the ECOA and the regulations promulgated under each of those laws. 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. The ECOA prohibits financial institutions from discriminating on the basis of, inter alia, race, color,

national origin, or marital status with respect to any aspect of a credit transaction in carrying out their lending activities.

20. The Defendants in this action are or were creditors within the meaning of the ECOA, 15 U.S.C. § 1691a(e), and are or were businesses that engage in residential real estate-related transactions within the meaning of the FHA, 42 U.S.C. § 3605.

REFERRALS FROM BANK REGULATORY AGENCIES

21. In2006, 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."

22. Following its determination described in Paragraph 21, and pursuant to 15 U.S.C. § 1691e(g), the FRB referred the matter to the Department of Justice on March 5, 2007. Through a series of tolling agreements, Countrywide "agree[d] to a suspension of the running of any applicable statute of limitations for any cause of action that could be brought against Countrywide pursuant to that referral from the Federal Reserve Board" from March 22, 2007, through December 22, 2011.

23. 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."

24. Following its determination described in Paragraph 23, and pursuant to 15 U.S.C. § 1691e(g), the OTS referred the matter to the Department of Justice on June 27,

2008. Through a series of tolling agreements, Countrywide "agree[d] to a suspension of the running of any applicable statute of limitations under the ECOA for any cause of action that could be brought against Countrywide pursuant to that referral from the Office of Thrift Supervision" from July 1, 2009, through December 22, 2011.

25. Based on the Federal Reserve and OTS referrals, the Department of Justice has engaged since 2007 in an investigation of Countrywide's lending policies, practices, and procedures, including reviewing internal company documents and non-public loan-level data on more than 2.5 million Countrywide loans originated between 2004 and 2008.

FACTUAL ALLEGATIONS

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

27. 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") as well as the less-populated areas of each state outside of MSAs.

28. Between 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. These products included: (a) traditional prime loans; (b) subprime loans, typically designed for borrowers with credit scores or other credit characteristics deemed too weak to qualify for prime loans; and (c) "Alt-A" loans, those 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. Changes in the loan securitization market in 2007 caused Countrywide to focus almost exclusively on prime loans after August 2007 and continuing into 2008. For the purposes of this Complaint, the term "subprime loans" includes any residential loan product that Countrywide originated and internally designated as subprime by including the label "B/C" in the product name. For the purposes of this Complaint, the term "non-subprime loans" includes any residential loan product that Countrywide originated and did not internally designate as subprime. For the purposes of this Complaint, the term "prime loans" includes any "non-subprime loans" that Countrywide originated that (a) required each monthly payment to include interest and a fully amortizing amount of principal and (b) did not categorically allow for reduced documentation of borrowers' income and assets in the underwriting process.

Retail Lending Pricing

29. 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. This subjective and unguided pricing discretion resulted in Hispanic and African-American borrowers paying more not based on borrower risk than non-Hispanic White borrowers both on a nationwide basis and in dozens of geographic markets across the country where Countrywide originated a large volume of loans. As a result of Countrywide's discriminatory retail pricing practices, an Hispanic or African-American borrower paid, on average, hundreds of dollars more for a Countrywide loan.

30. Countrywide's retail pricing monitoring efforts, while inadequate to remedy discriminatory practices against African-American borrowers through 2007 and against Hispanics through 2008, were sufficient to put it on notice of widespread pricing disparities based on race and national origin. Even when Countrywide had reason to know there were disparities, however, Countrywide did not act to determine the full scope of these retail pricing disparities, nor did it take prompt and effective action to eliminate those disparities. Between at least January 2004 and December 2008, Countrywide had a policy or practice of periodically monitoring the pricing of retail home mortgage loans for disparities based on race or national origin at both the branch office and geographic market level. All of Countrywide's monitoring for disparities occurred subsequent to the loan origination, and Countrywide did not reimburse any retail borrowers who were found to have been charged higher loan prices until 2007, when it was required by its regulator to provide some restitution payments. Even then, Countrywide made only a small number of restitution payments.

31. Countrywide's retail channel consisted of two primary divisions. The larger, the Consumer Markets Division ("CMD"), originated Countrywide's non-subprime residential loan products. From 2004 through 2007, CMD had branches in 48 states and the District of Columbia, with the number of branches ranging between 577 and 773, along with 4 to 5 call centers. These CMD branches and call centers originated loans to borrowers from across the United States. 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.

32. Beginning prior to January 2004 and continuing at least until 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.

33. 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.

34. 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.

35. 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's payment of standard fees and with the standard allocation of closing costs between the borrower and Countrywide. A positive NPE was an overage, and a negative NPE was a shortage. Charging overages raised the total cost of loans to borrowers above what they would have paid if the loans had closed based on the rate sheet risk-based price and with the payment of standard fees and the standard allocation of closing costs. Charging shortages lowered the total cost of loans to borrowers below what they would have paid if the loans had closed based on the rate sheet risk-based price and with payment of standard fees and the standard allocation of closing costs. Closing a loan with a shortage did not mean that Countrywide or the loan officer lost money on the transaction, only that they earned less profit than they would have absent the shortage.

36. During the time period at issue, Countrywide established par prices for its loan products that were often above competitors' prices for those loan products for borrowers with specified credit qualifications. The majority of Countrywide's retail borrowers received shortages between 2004 and 2008; as a result, when calculated for all borrowers, the average NPE charged each year during that period was negative. By regularly setting par prices above competitors' prices, Countrywide further encouraged the exercise of subjective pricing adjustments by its loan officers and other employees.

37. 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. Countrywide was required to collect, maintain, and report data with respect to certain loan terms and borrower information for residential loans, including the race and national origin of each retail home loan borrower, pursuant to the Home Mortgage Disclosure Act (HMDA), 12 U.S.C. § 2803.

38. Statistical analyses of data kept by Countrywide on retail loans originated by Countrywide's CMD between January 2004 and December 2008 demonstrate statistically significant[1] discriminatory pricing disparities in retail loans based on both race (African-American) and national origin (Hispanic). These disparities existed both at the national level and in numerous geographic markets across the country.

39. Measured on a nationwide basis by NPE, in each year between 2004 and 2008, Countrywide charged Hispanic borrowers whom Countrywide determined had the credit characteristics to qualify for a home mortgage loan more in pricing adjustments not based on borrower risk for retail CMD loans than non-Hispanic White borrowers. The annual NPE disparities ranged between approximately 15 and 28 basis points, and they are statistically significant.[2] During this period, Countrywide's CMD originated more than 210,000 retail loans to Hispanic borrowers.

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[1] 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 5%.

[2] A basis point is a percentage of the total amount of a loan, with one hundred basis points equaling one percent of the loan amount.

40 Measured on a nationwide basis by NPE, in each year between 2004 and 2007, Countrywide charged African-American borrowers whom Countrywide determined had the credit characteristics to qualify for a home mortgage loan more in pricing adjustments not based on borrower risk for retail CMD loans than non-Hispanic White borrowers. The annual NPE disparities ranged between approximately 13 and 24 basis points, and they are statistically significant. During this period, Countrywide's CMD originated more than 90,000 retail loans to African-American borrowers.

41. In approximately 54% of its high loan-volume markets in 2004 (79 of 147), defined for purposes of this paragraph as those MSAs and non-MSA areas in each state where CMD made more than 300 total loans and 30 or more loans to Hispanic borrowers in a given year, Countrywide charged Hispanic borrowers more in pricing adjustments not based on borrower risk for retail CMD loans, as measured by NPE, than non-Hispanic White borrowers by a statistically significantly amount. In 2005, approximately 56% of such markets (81 of 145); in 2006, 50% of such markets (70 of 140); in 2007, 40% of such markets (60 of 150); and in 2008, approximately 33% of such markets (41 of 126) showed statistically significant NPE disparities disfavoring Hispanic retail borrowers. The disparities in pricing adjustments not based on borrower risk resulted in Hispanic borrowers in these markets paying between approximately 6 and 107 basis points more than non-Hispanic White borrowers for retail CMD loans in a given year. Between 2004 and 2008, the number of these markets in which Countrywide charged non-Hispanic White borrowers statistically significantly higher NPEs for retail CMD

loans than Hispanic borrowers in a given year ranged only between 1 and 3, or 1% to 2% of the high loan-volume markets.[3]

42. In approximately 61% of its high loan-volume markets in 2004 (78 of 128), defined for purposes of this paragraph as those MSAs and non-MSA areas in each state where CMD made more than 300 total loans and 30 or more loans to African-American borrowers in a given year, Countrywide charged African-American borrowers more in pricing adjustments not based on borrower risk for retail CMD loans, as measured by NPE, than non-Hispanic White borrowers by a statistically significantly amount. In 2005, approximately 65% of such markets (74 of 114); in 2006, approximately 60% of such markets (68 of 114); and in 2007, approximately 32% of such markets (42 of 133) showed statistically significant NPE disparities disfavoring African-American retail borrowers. The disparities in pricing adjustments not based on borrower risk resulted in African-American borrowers in these markets paying between approximately 8 and 71 basis points more than non-Hispanic White borrowers for retail CMD loans in a given year. In all four years, there were no high loan-volume markets in which Countrywide charged non-Hispanic White borrowers statistically significantly higher NPEs for retail CMD loans than African-American borrowers in a given year.

43. These NPE disparities mean, for example, that Countrywide in 2007 charged a retail CMD customer in Chicago borrowing $200,000 an average of about $795 more in pricing adjustments not based on borrower risk if he were Hispanic, and

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[3] The inclusion throughout this Complaint of statistical analyses for high-volume markets is intended only to provide examples of Countrywide's violation of lending discrimination laws. The United States' allegations that Countrywide violated lending discrimination laws are not limited to these high-volume markets.

an average of about $460 more if he were African-American, than the average amount charged to a non-Hispanic White borrower. In 2007, Countrywide charged Hispanic and African-American retail CMD customers in Los Angeles borrowing $200,000 approximately $545 and $415, respectively, higher than the average amount Countrywide charged in pricing adjustments not based on borrower risk to a non-Hispanic White borrower.

44. In setting the terms and conditions for its retail loans, including interest rates, Countrywide accounted for individual borrowers' differences in credit risk characteristics by setting the prices shown on its rate sheets for each loan product that include its assessment of applicant creditworthiness as explained in Paragraph 32. Countrywide's loan officers' deviations from the rate sheet prices, as measured by NPE, were separate from and not controlled by the credit risk adjustments already reflected in the rate sheet prices. Accordingly, the race and national origin NPE disparities described in Paragraphs 39-42 are not adjusted for borrowers' credit risk characteristics.

45. No Countrywide policy directed its retail lending employees to consider a borrower's credit risk characteristics for a second time, after they had already been considered in setting the par price, in determining a pricing overage or shortage on a loan. Nevertheless, statistical regression analyses of the Countrywide NPEs that control for credit risk factors such as credit score, loan amount, loan-to-value ratio, debt-to-income ratio, and others, demonstrate a similar pattern of race and national origin pricing disparities, with the magnitude only somewhat diminished from the disparities described in Paragraphs 39-42. Thus, accounting for borrower credit risk factors a second time does not explain the race and national origin disparities, even if those factors were relevant to the subjective pricing adjustments measured by NPE.

46. The statistically significant race and national origin-based disparities in NPEs described in Paragraphs 39-42 for Hispanic and African-American borrowers who

Countrywide determined had the credit characteristics to qualify for a home mortgage loan resulted from the implementation and interaction of Countrywide's policies and practices that: (a) routinely allowed or encouraged the use of subjective and unguided pricing adjustments not based on borrower risk by its own employees in setting pricing overages and shortages after par rates had been established by reference to credit risk and loan characteristics and then including those overages and shortages in the terms and conditions of loans Countrywide originated; (b) did not require its employees to justify or document the reasons for pricing adjustments not based on borrower risk; (c) failed to adequately monitor for and fully remedy the effects of racial and national origin disparities in those pricing adjustments; and (d) linked loan officer compensation in part to the charging of overages and shortages. NPE specifically measures the pricing variation caused by the subjective and unguided pricing adjustments not based on borrower risk. Countrywide continued to use this non-risk-based component of its overall retail loan pricing policy, to inadequately document and review the implementation of that pricing component, and to link loan officer compensation to overages and shortages through at least the end of 2008.

47. Countrywide's policies and practices identified in Paragraph 46 were not justified by business necessity or legitimate business interests. There were less discriminatory alternatives available to Countrywide than these policies or practices.

48. Countrywide had knowledge that the unguided and subjective discretion it granted to loan officers and other CMD employees in its retail loan pricing policies and practices was being exercised in a manner that discriminated against Hispanic and African-American borrowers, but continued to implement its policies and practices with that knowledge. Countrywide did not take effective action to change the pricing adjustment policies and practices to eliminate fully their discriminatory impact, nor did it change its compensation policy to discourage the charging of

overages or shortages. It did not act to identify or compensate any individual borrowers who were victims of its discriminatory retail loan pricing policies and practices until it was required to do so by its regulator in 2007, and then it only identified or compensated a small portion of the victims.

Wholesale Lending Mortgage Broker Fees

49. 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. This subjective and unguided pricing discretion resulted in Hispanic and African-American borrowers paying more not based on borrower risk than non-Hispanic White borrowers both on a nationwide basis and in dozens of geographic markets across the country where Countrywide originated a large volume of loans. As a result of Countrywide's discriminatory practices, an Hispanic or African-American borrower paid, on average, hundreds of dollars more for a Countrywide loan.

50. Countrywide's wholesale pricing monitoring efforts, while inadequate to remedy discriminatory practices against Hispanic and African-American borrowers through 2008, were sufficient to put it on notice of widespread pricing disparities based on race and national origin. Even when Countrywide had reason to know there were disparities, however, Countrywide did not act to determine the full scope of these wholesale pricing disparities, nor did it take prompt and effective action to eliminate those disparities. Between at least January 2004 and December 2008, Countrywide had a policy or practice of periodically monitoring in a limited manner the pricing of wholesale home mortgage loans for discrimination based on

race or national origin at the geographic market level and for some individual brokers. However, Countrywide's monitoring for racial and national origin disparities in its wholesale loans was inadequate. For example, the monitoring only occurred long after loan origination; at the individual broker level, it was limited to those brokers with very large pricing disparities that operated only in geographic markets that were first determined to have large pricing disparities; and the monitoring ignored aggregate broker pricing disparities. In addition, when Countrywide found wholesale borrowers who had been discriminatorily charged higher loan prices, Countrywide did not reimburse any of those borrowers for its discriminatory acts until 2008, when it was required by its regulator to provide some restitution payments. Even then, Countrywide made only a small number of restitution payments.

51. Prior to January 2004 and continuing at least until 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.

52. 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.

53. 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.

54. 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. Countrywide gave brokers who signed its standard WBA access to a non-public website where they could obtain the applicable terms and conditions for its various loan products, including rate sheets. Mortgage loan brokers who were part of Countrywide's network used these rate sheets to assist them in determining the interest rate, points, and fees they would include on completed individual residential loan applications they submitted to Countrywide for approval, origination, and funding. Individual loan applicants did not have access to these rate sheets.

55. 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. The brokers were also responsible for preparing each loan application and supporting documentation on form documents provided by Countrywide, in accordance with Countrywide's policies and procedures in effect at the time.

56. Upon receipt of a completed loan application from a broker, Countrywide evaluated the proposed loan using Countrywide's underwriting guidelines and determined whether to originate and fund the loan. The WBA provided that "Countrywide shall have no obligation to fund any Loan submitted to it by Broker and may reject any Loan that, in Countrywide's sole discretion, does not meet the applicable underwriting guidelines." In the event that Countrywide rejected a loan application or proposed a counteroffer, the WBA provided that Countrywide would prepare the notice of adverse action that ECOA requires the creditor to prepare. The WBA also provided for each loan approved by Countrywide for funding to be closed in the name of Countrywide, in accordance with Countrywide's written closing instructions, and on closing documents prepared by Countrywide.

57. 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.

58. 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."

59. 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. The WBA required the broker to inform an applicant, inter alia, of all fees and charges included with the application, including YSP and direct fees. The WBA further required the broker to submit an application package to Countrywide that included, inter alia, a good-faith estimate of "all amounts Broker will charge Applicant or earn in connection with the loan, including any applicable yield spread premium." Countrywide then included those fees 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.

60. 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, as described in Paragraph 32. 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. 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 for the sale of such a loan from investors. These prices were communicated through the rate sheets described in Paragraph 54.

61. Countrywide's second step of pricing wholesale loans permitted mortgage brokers to exercise subjective, unguided discretion in setting the amount of total broker fees charged to individual borrowers, unrelated to an applicant's credit risk characteristics.

62. Countrywide had written policies placing a ceiling on total broker fees that changed several times during the 2004-2008 time period. For most of 2004, Countrywide capped total broker compensation for prime loans at 5% of the loan amount or $3000 and for subprime loans at 6% of the loan amount or $3500. In December 2004, Countrywide eliminated the dollar limitations and, through July 2007, followed a policy that instead capped total broker fees at 5% of the total loan amount for prime loans and at 6% of the loan amount for what it described as core subprime loans. On a $200,000 loan, for example, these percentage caps allowed brokers to receive up to $10,000 in total broker fees for a prime loan, and $12,000 in total fees for a subprime loan. Other than these 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.

63. 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. Countrywide was required to collect, maintain, and report data with respect to certain loan terms and borrower information for residential loans, including the race and national origin of each wholesale residential loan borrower, pursuant to HMDA, 12 U.S.C. § 2803.

64. Statistical analyses of data kept by Countrywide on wholesale loans originated by Countrywide between January 2004 and December 2008 demonstrate statistically significant discriminatory pricing disparities in both subprime and non-subprime wholesale loans based on both race (African-American) and national origin (Hispanic). These disparities existed both at the national level and in numerous geographic markets across the country.

65. Measured on a nationwide basis in each year between 2004 and 2008, Countrywide charged Hispanic borrowers whom Countrywide determined had the credit characteristics to qualify for a home mortgage loan more in total broker fees for non-subprime wholesale loans than non-Hispanic White borrowers. The annual total broker fee disparities ranged between approximately 31 and 47 basis points, and they are statistically significant. During this period, Countrywide originated more than 160,000 non-subprime wholesale loans to Hispanic borrowers.

66. Measured on a nationwide basis in each year between 2004 and 2008, Countrywide charged African-American borrowers whom Countrywide

determined had the credit characteristics to qualify for a home mortgage loan more in total broker fees for non-subprime wholesale loans than non-Hispanic White borrowers. The annual total broker fee disparities ranged between approximately 59 and 67 basis points, and they are statistically significant. During this period, Countrywide originated more than 65,000 non-subprime wholesale loans to African-American borrowers.

67. Measured on a nationwide basis in each year between 2004 and 2007, Countrywide charged Hispanic borrowers whom Countrywide determined had the credit characteristics to qualify for a home mortgage loan more in total broker fees for subprime wholesale loans than non-Hispanic White borrowers. The annual total broker fee disparities ranged between approximately 12 and 19 basis points, and they are statistically significant.[4] During this period, Countrywide originated more than 55,000 subprime wholesale loans to Hispanic borrowers.

68. Measured on a nationwide basis in each year between 2004 and 2007, Countrywide charged African-American borrowers whom Countrywide determined had the credit characteristics to qualify for a home mortgage loan more in total broker fees for subprime wholesale loans than non-Hispanic White borrowers. The annual total broker fee disparities ranged between approximately 36 and 49 basis points, and they are statistically significant. During this period, Countrywide originated more than 35,000 subprime wholesale loans to African-American borrowers.

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[4] Due to the major changes in the housing market that began in the latter part of 2007, Countrywide made too few subprime wholesale loans in 2008 to permit statistical analysis of 2008 wholesale broker fees similar to that described in Paragraphs 67-68 for 2004-2007.

69. In approximately 76% of its high non-subprime loan-volume markets in 2004 (81 of 106), defined for purposes of this paragraph as those MSAs and non-MSA areas in each state where Countrywide made more than 300 total non-subprime wholesale loans and 30 or more such loans to Hispanic borrowers in a given year, Countrywide charged Hispanic borrowers more in total broker fees not based on borrower risk for wholesale non-subprime loans than non-Hispanic White borrowers by a statistically significant amount. In 2005, approximately 83% of such markets (94 of 113); in 2006, approximately 77% of such markets (91 of 118); in 2007, approximately 82% of such markets (87 of 106); and in 2008, approximately 97% of such markets (33 of 34) showed statistically significant total broker fee disparities disfavoring Hispanic non-subprime wholesale borrowers. The disparities in total broker fees not based on borrower risk resulted in Hispanic borrowers in these markets paying between approximately 18 and 134 basis points more than non-Hispanic White borrowers for non-subprime wholesale loans in a given year. In all five years, there were no high loan-volume markets in which Countrywide charged non-Hispanic White borrowers statistically significantly higher total broker fees for non-subprime wholesale loans than Hispanic borrowers in a given year.

70. In approximately 91% of its high non-subprime loan-volume markets in 2004 (71 of 78), defined for purposes of this paragraph as those MSAs and non-MSA areas in each state where Countrywide made more than 300 total non-subprime wholesale loans and 30 or more such loans to African-American borrowers in a given year, Countrywide charged African-American borrowers more in total broker fees not based on borrower risk for wholesale non-subprime loans than non-Hispanic White borrowers by a statistically significant amount. In 2005, approximately 85% of such markets (74 of 87); in 2006, approximately 84% of such markets (77 of 92); in 2007, approximately 87% of such markets (78 of 90); and in 2008, 90% of such markets (36 of 40) showed statistically significant total

broker fee disparities disfavoring African-American non-subprime wholesale borrowers. The disparities in total broker fees not based on borrower risk resulted in African-American borrowers in these markets paying between approximately 21 and 147 basis points more than non-Hispanic White borrowers for non-subprime wholesale loans in a given year. In all five years, there were no high loan-volume markets in which Countrywide charged non-Hispanic White borrowers statistically significantly higher total broker fees for non-subprime wholesale loans than African-American borrowers in a given year.

71. In approximately 84% of its high subprime-loan-volume markets in 2004 (27 of 32), defined for purposes of this paragraph as those MSAs and non-MSA areas in each state where Countrywide made more than 300 total subprime wholesale loans and 30 or more such loans to Hispanic borrowers in a given year, Countrywide charged Hispanic borrowers more in total broker fees not based on borrower risk for wholesale subprime loans than non-Hispanic White borrowers by a statistically significant amount. In 2005, approximately 61% of such markets (22 of 36); in 2006, approximately 49% of such markets in (17 of 35); and in 2007, 50% of such markets (7 of 14) showed statistically significant total broker fee disparities disfavoring Hispanic subprime wholesale borrowers. The disparities in total broker fees not based on borrower risk resulted in Hispanic borrowers in these markets paying between approximately 14 and 107 basis points more than non-Hispanic White borrowers for subprime wholesale loans in a given year. From 2004-2006, there were no high subprime-loan-volume markets in which Countrywide charged non-Hispanic White borrowers statistically significantly higher total broker fees for subprime wholesale loans than Hispanic borrowers in a given year; in 2007, there was one such market.

72. In approximately 74% of its high subprime-loan-volume markets in 2004 (23 of 31), defined for purposes of this paragraph as those MSAs and non-MSA areas in each state where Countrywide made more than 300 total subprime wholesale loans

and 30 or more such loans to African-American borrowers in a given year, Countrywide charged African-American borrowers more in total broker fees not based on borrower risk for wholesale subprime loans than non-Hispanic White borrowers by a statistically significant amount. In 2005, approximately 74% of such markets (28 of 38); in 2006, approximately 68% of such markets (23 of 34); and in 2007, approximately 58% of such markets (11 of 19) showed statistically significant total broker fee disparities disfavoring African-American subprime wholesale borrowers. The disparities in total broker fees not based on borrower risk resulted in African-American borrowers in these markets paying between approximately 20 and 103 basis points more than non-Hispanic White borrowers for subprime wholesale loans in a given year. In all four years, there were no high subprime-loan-volume markets in which Countrywide charged non-Hispanic White borrowers statistically significantly higher total broker fees for subprime wholesale loans than African-American borrowers in a given year.

73. These disparities in total broker fees mean, for example, that Countrywide in 2007 charged a non-subprime wholesale customer in Los Angeles borrowing $200,000 an average of about $970 more in total broker fees not based on borrower risk if she were Hispanic, and an average of about $1,195 more if she were African-American, than the average amount charged to a non-Hispanic White non-subprime wholesale customer. Comparable average disparities in 2007 for Hispanic and African-American non-subprime wholesale customers in Chicago borrowing $200,000 were approximately $1,100 and $1,235, respectively, higher than the average amount Countrywide charged a non-Hispanic White non-subprime wholesale customer borrowing $200,000.

74. Similarly, in 2006, Countrywide charged a subprime wholesale customer in Chicago borrowing $200,000 an average of about $590 more in total broker fees not based on borrower risk if she were Hispanic, and an average of about $740 more if she were African-American, than the average amount charged to a non-

Hispanic White subprime wholesale customer. Comparable average disparities in 2006 for Hispanic and African-American subprime wholesale customers in Los Angles borrowing $200,000 were approximately $440 and $560, respectively, higher than the average amount Countrywide charged a non-Hispanic White subprime wholesale customer borrowing $200,000.

75. In setting the terms and conditions for its wholesale loans, including interest rates, Countrywide accounted for individual borrowers' differences in credit risk characteristics by setting the prices shown on its rate sheets for each loan product that include its assessment of applicant creditworthiness, as explained in Paragraph 60. Mortgage brokers' deviations from the rate sheet prices, as measured by total broker fees, were separate from and not controlled by the credit risk adjustments already reflected in the rate sheet prices. Countrywide reviewed these total broker fees and then charged them to borrowers in the loans it originated and funded. Accordingly, the race and national origin total broker fee disparities described in Paragraphs 65-72 are not adjusted for borrowers' credit risk characteristics.

76. No Countrywide policy directed its mortgage brokers, or the Countrywide wholesale account executives who worked with them, to consider a borrower's credit risk characteristics for a second time in deviating from the interest rate fixed by its rate sheets for a specific loan product for a borrower with specified credit qualifications or in assessing direct fees. Nevertheless, statistical regression analyses of the Countrywide total broker fees that control for credit risk factors such as credit score, loan amount, loan-to-value ratio, debt-to-income ratio, and others, demonstrate a similar pattern of race and national origin pricing disparities, with the magnitude only somewhat diminished from the disparities described in Paragraphs 65-72. Thus, accounting for borrower credit risk factors a second time does not explain the race and national origin disparities, even if those factors were relevant to the total broker fees not based on borrower risk.

77. The statistically significant race and national origin-based disparities in total broker fees described in Paragraphs 65-72 for Hispanics and African-Americans who Countrywide determined had the credit characteristics to qualify for a home mortgage loan resulted from the implementation and the interaction of Countrywide's policies and practices that: (a) included pricing terms based on the subjective and unguided discretion of brokers in setting total broker fees not based on borrower risk in the terms and conditions of loans Countrywide originated after par rates had been established by reference to credit risk characteristics; (b) did not require mortgage brokers to justify or document the reasons for the amount of total broker fees not based on borrower risk; (c) failed to adequately monitor for and fully remedy the effects of racial and ethnic disparities in those broker fees; and (d) created a financial incentive for brokers to charge interest rates above the par rates Countrywide had set. Total broker fees specifically measures the pricing variation caused by the subjective and unguided pricing adjustments not based on borrower risk. Countrywide continued to use these discretionary wholesale broker fee pricing policies, to inadequately document and review the implementation of that pricing component, and to incentivize upward broker adjustments to the par interest rate through the end of 2008.

78. Countrywide's policies and practices identified in Paragraph 77 were not justified by business necessity or legitimate business interests. There were less discriminatory alternatives available to Countrywide than these policies or practices.

79. Countrywide had knowledge that the unguided and subjective discretion it granted to mortgage brokers in its wholesale pricing policies and practices was being exercised in a manner that discriminated against Hispanic and African-American borrowers, but continued to implement its policies and practices with that knowledge. For example, an internal January 2006 Countrywide fair lending report stated that "WLD believes the current approach/policy is responsible" but

immediately afterward stated that "WLD is not confident that [its] remediation activities will drive down disparity levels materially at the 'Top of House'" (national level). It did not take effective action to change the broker fee policies and practices to eliminate fully their discriminatory impact, nor did it substantially alter its broker compensation policies and practices. Countrywide did not act to identify or compensate any individual borrowers who were victims of its discriminatory wholesale pricing policies and practices until it was required to do so by its regulator in 2008, and it only identified or compensated a small number of the victims.

Wholesale Lending Product Placement

80. 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 in a subprime loan, an 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. 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 subprime loans, 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 where Countrywide originated a large volume of wholesale loans.

81. Countrywide's wholesale product placement monitoring efforts, while inadequate to remedy discriminatory practices against Hispanic and African-American

borrowers through 2007, were sufficient to put it on notice of widespread product placement disparities based on race and national origin. Even when Countrywide had reason to know there were disparities, however, Countrywide did not act to determine the full scope of these wholesale product placement disparities, nor did it take prompt and effective action to eliminate those disparities. 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 it neither required the brokers to inform applicants of this fact nor required 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.

82. Between 2004 and 2007, Countrywide published underwriting guidelines that purported to establish the objective criteria an applicant had to meet in order to qualify for a particular type of loan product. These underwriting guidelines were available to mortgage brokers who had entered into contracts with Countrywide to enable them to select loan products for individual borrowers with differing credit-related characteristics. They also could be used by the wholesale account executives, underwriters, and others employed by Countrywide to determine whether to originate the applications brought to it by mortgage brokers. These underwriting guidelines were intended to be used to determine whether a loan

applicant qualified for a prime loan product, an Alt-A loan product, a subprime loan product, or for no Countrywide loan product at all. A prime loan product has loan terms and conditions, including prices, that generally are most favorable for a borrower, an Alt-A loan product is less favorable, and a subprime loan product is even less favorable and often included terms such as initial short-term teaser interest rates that suddenly rise to produce substantially increased and potentially unaffordable payments after two to three years, as well as substantial pre-payment penalties.

83. Mortgage brokers had discretion to request that applications they submitted be treated as exceptions to Countrywide's underwriting guidelines. Loan underwriters or account executives employed by Countrywide, who determined whether to originate the applications brought to it by mortgage brokers, had the discretion to grant such exceptions. Between January 2004 and early 2007, Countrywide substantially increased the number of exceptions it granted to its loan underwriting guidelines. By early 2007, Countrywide originated as many as half of certain loan products as exceptions to its underwriting policies. As a result, Countrywide made tens of thousands of non-subprime loans to borrowers between 2004 and 2007 based on criteria other than strict adherence to its published underwriting guidelines. Countrywide did not grant these exceptions to Hispanic and African-American borrowers on a basis equal to that for non-Hispanic White borrowers. Countrywide provided no guidance to mortgage brokers about the factors to consider in asking for exceptions and provided only very general, broad guidance to its own employees about how to exercise discretion when granting exceptions. Individual loan applicants had no ability on their own to ask for an exception directly from Countrywide's loan underwriting employees.

84. Between January 2004 and July 2007, Countrywide's cap on the amount of total compensation that a residential mortgage broker could receive on an individual loan varied, in part, based on whether the loan was a subprime product or a non-

subprime product. As described in Paragraph 62, although Countrywide changed its broker compensation caps several times between December 2004 and July 2007, Countrywide's compensation policy allowed brokers to earn higher maximum total compensation for submitting subprime loans to Countrywide for origination than for non-subprime loans throughout this time period.

85. Between 2004 and 2007, mortgage brokers who submitted loan applications funded by Countrywide received higher total broker fees for subprime loans than for non-subprime loans. From 2005-2007, the average subprime loan had total broker fees between approximately 26 and 53 basis points higher than the average non-subprime loan, measured annually on a nationwide basis. Countrywide's compensation policy and practice created a financial incentive for mortgage brokers to submit subprime loans to Countrywide for origination rather than any other type of residential loan product.

86. Statistical analyses of loan data kept by Countrywide on wholesale 30-year term prime and subprime loans originated by Countrywide between January 2004 and August 2007 demonstrate that on a nationwide basis Hispanics who qualified for a Countrywide home mortgage loan and who obtained wholesale loans from Countrywide had odds between approximately 2.6 and 3.5 times higher than similarly-situated non-Hispanic White borrowers of receiving a subprime loan instead of a prime loan, after accounting for objective credit qualifications. Those odds ratios demonstrate a pattern of statistically significant differences between Hispanic and non-Hispanic White borrowers with respect to their placement by Countrywide in one of these two loan product categories even after controlling for objective credit qualifications such as credit score, loan amount, debt-to-income ratio, loan-to-value ratio, and others. These statistically significant disparities existed both at the national level and in numerous geographic markets across the country.

87. In approximately 59% of its high loan-volume markets in 2004 (24 of 41), defined for purposes of this paragraph as those MSAs and non-MSA areas in each state where during the year Countrywide made at least 300 total wholesale loans, including at least 30 subprime loans to both non-Hispanic White and Hispanic wholesale borrowers, Hispanic borrowers had odds of receiving subprime loans that are statistically significantly higher than non-Hispanic White borrowers ("statistically significant odds ratio disparities"). In 2005, approximately 54% (22 of 41) of such markets; in 2006 approximately 77% (33 of 43) of such markets; and in 2007 approximately 58% (11 of 19) of such markets had statistically significant odds ratio disparities disfavoring Hispanic borrowers. In individual high-volume markets with statistically significant odds ratio disparities, the odds of Hispanic borrowers receiving a subprime loan ranged from approximately 1.3 to 11.6 times higher than similarly-situated non-Hispanic White borrowers in a given year. In only one such market, and for only one year from 2004-2007, was there a statistically significant odds ratio disparity favoring Hispanic borrowers.

88. Statistical analyses of loan data kept by Countrywide on wholesale 30-year term prime and subprime loans originated by Countrywide between January 2004 and August 2007 demonstrate that on a nationwide basis African-Americans who qualified for a Countrywide home mortgage loan and who obtained wholesale loans from Countrywide had odds between approximately 2.1 and 2.7 times higher than similarly-situated non-Hispanic White borrowers of receiving a subprime loan instead of a prime loan after accounting for objective credit qualifications. Those odds ratios demonstrate a pattern of statistically significant differences between African-American and non-Hispanic White borrowers with respect to their placement by Countrywide in one of these two loan product categories even after controlling for objective credit qualifications such as credit score, loan amount, debt-to-income ratio, loan-to-value ratio, and others. These statistically

significant disparities existed both at the national level and in numerous geographic markets across the country.

89. In approximately 51% of its high loan-volume markets in 2004 (24 of 47), defined for purposes of this paragraph as those MSAs and non-MSA areas in each state where during the year Countrywide made at least 300 total wholesale loans, including at least 30 subprime loans to both non-Hispanic White and African-American wholesale borrowers, African-American borrowers had odds of receiving subprime loans that are statistically significantly higher than non-Hispanic White borrowers. In 2005, approximately 52% (26 of 50) of such markets; in 2006, approximately 61% (28 of 46) of such markets; and in 2007 approximately 71% (20 of 28) of such markets had statistically significant odds ratio disparities disfavoring African-American borrowers. In individual high-loan volume markets with statistically significant odds ratio disparities, the odds of African-American borrowers receiving a subprime loan ranged from approximately 1.3 to 8.3 times higher than similarly-situated non-Hispanic White borrowers in a given year. In only one such market, and for only one year from 2004-2007, was there a statistically significant odds ratio disparity favoring African-American borrowers.

90. These odds ratio disparities mean, for example, that Countrywide in 2006 placed more than 200 Hispanic and African-American wholesale borrowers in the Chicago market into subprime loans when non-Hispanic White wholesale borrowers in Chicago with similar credit risk characteristics received prime loans. Each of these Hispanic and African-American borrowers would have paid thousands of dollars in extra payments over the first four years of the loan's term because they were placed into a subprime loan rather than a prime loan, based on the average loan amount and the disparity between prime and subprime interest rates for borrowers with similar credit risk characteristics in the Chicago market in 2006. Similarly, Countrywide in 2006 placed more than 400 Hispanic and

African-American wholesale borrowers in the Los Angeles market into subprime loans when non-Hispanic White wholesale borrowers in Los Angeles with similar credit risk characteristics received prime loans. Each of these Hispanic and African-American borrowers would have paid thousands of dollars in extra payments over the first four years of the loan's term because they were placed into a subprime loan rather than a prime loan, based on the average loan amount and the disparity between prime and subprime interest rates for borrowers with similar credit risk characteristics in the Los Angeles market in 2006.

91. Analyses of loan data to determine the odds of borrowers receiving non-subprime loans (as defined in Paragraph 28) as opposed to subprime loans demonstrate similar disparities. Hispanic and African-American wholesale borrowers had statistically significantly higher odds of receiving subprime loans from Countrywide rather than non-subprime loans, as compared to similarly-situated non-Hispanic White wholesale borrowers after taking into account objective credit risk characteristics. These race- and national origin-based disparities persisted at both the nationwide level and in numerous high loan-volume MSAs during the same years, 2004-2007.

92. The disparate placement of both Hispanic and African-American wholesale borrowers whom Countrywide determined had the credit characteristics to qualify for a home mortgage loan into subprime loan products, when compared to similarly-situated non-Hispanic White borrowers described in Paragraphs 86-89, resulted from the implementation and interaction of Countrywide's policies and practices that: (a) permitted mortgage brokers and Countrywide's own employees to place an applicant in a subprime loan product even if the applicant could qualify for a prime loan product; (b) did not require mortgage brokers or its employees to justify or document the reasons for placing an applicant in a subprime loan product even if the applicant could qualify for a prime loan product; (c) did not require mortgage brokers to notify subprime loan applicants that they could

qualify for a prime loan product; (d) created a financial incentive for brokers to place loan applicants in subprime loan products; (e) allowed brokers and Countrywide loan officers and underwriters to request and to grant underwriting exceptions in a subjective, unguided manner; and (f) failed to monitor these discretionary practices to ensure that borrowers were being placed in loan products on a nondiscriminatory basis. Countrywide continued to use these product placement, compensation, and discretionary underwriting policies until it exited the subprime lending business after August 2007.

93. Countrywide's policies or practices identified in Paragraph 92 were not justified by business necessity or legitimate business interests. There were less discriminatory alternatives available to Countrywide than these policies or practices.

94. Countrywide had knowledge that its wholesale lending policies and practices identified in Paragraph 92 encouraged the placement of applicants in subprime rather than prime loan products and that its uplift system described in Paragraph 81 was ineffective, but continued to implement its policies and practices with that knowledge. For example, an internal Countrywide July 2007 report to its fair lending committee discussed "significant errors due to operational failures" in its uplift system. Countrywide did not take effective action to change the discriminatory policies or practices to eliminate their discriminatory impact. It did not act to identify or compensate any individual borrowers who were victims of its discriminatory product placement policies or practices.

Marital Status – Spousal Signature Policy

95. A married individual applying for credit has the choice of whether to apply solely in his or her own name, rather than jointly with his or her spouse. In an application for a loan secured by real property by a married individual who decides to apply solely in his or her own name, the creditor will have a security interest in the entire property as long as the non-applicant spouse signs the legal

document (such as a mortgage or a deed of trust, depending on the state) granting the lender the security interest. The non-applicant spouse need not become obligated to repay the loan from personal resources or to give up his or her ownership interest in the property in order to give the creditor a security interest in the entire property.

96. Between 2004 and 2008, when a married individual decided to apply for a loan solely in his or her own name, Countrywide's spousal signature policies or practices encouraged its employees and agents to have the non-applicant spouse execute documents that transferred to the applicant spouse all rights and interests the non-applicant spouse had in the property securing the loan. Countrywide continued this spousal signature policy or practice at least through June 1, 2008.

97. During the time period at issue, numerous non-borrower spouses executed quitclaim deeds or other similar documents transferring their legal rights and interests in jointly-held property to their borrower spouses as a condition of Countrywide originating a loan to those borrower spouses.

98. Section 701 of the ECOA, 15 U.S.C. § 1691(a), makes it "unlawful for any creditor to discriminate against any applicant, with respect to any aspect of a credit transaction – (1) on the basis of . . . marital status. . . ." Regulation B, adopted pursuant to explicit congressional direction, 15 U.S.C. § 1691b, provides that the term "applicant" includes guarantors, sureties, endorsers, and similar parties whose participation in the credit transaction is required in order to complete it. 12 C.F.R. § 202.2(e). The policy or practice of having a non-borrower spouse execute documents that transfer all legal rights and interests in jointly-held property as a condition of originating a loan to the borrower spouse makes the non-borrower spouse an applicant within the meaning of the ECOA, 15 U.S.C. § 1691a(b).

99. The Official Staff Commentary to Regulation B ("OSC") is an official staff interpretation of Regulation B. The OSC states that "a creditor may require the

applicant's spouse to sign the instruments necessary to create a valid security interest in the property" and nothing more if that "is sufficient to make the property available to satisfy the debt in the event of default." 12 C.F.R. Supp I § 202.7 ¶7(d)(4)(2). The OSC further provides: "Generally, a signature to make the secured property available will only be needed on a security agreement." Id. Moreover, the OSC also states, in the context of unsecured credit: "A creditor may not routinely require, however, that a joint owner sign an instrument (such as a quitclaim deed) that would result in the forfeiture of the joint owner's interest in the property." 12 C.F.R. Supp. I § 202.7 ¶7(d)(2)(1)(ii). That principle applies equally to applications for secured credit.

100. A non-applicant spouse who executes a quitclaim deed or similar transfer document as a result of Countrywide's policy and practices, unless on a voluntary and fully-informed basis, risks substantial financial loss and uncertainty by executing documents that transfer to the applicant spouse all rights and interests the non-applicant spouse had in the property securing the loan.

FAIR HOUSING ACT and EQUAL CREDIT OPPORTUNITY ACT VIOLATIONS

101. Countrywide's residential lending-related policies and practices and the policies and practices it followed in residential credit transactions as alleged herein constitute:

a. Discrimination on the basis of race and national origin in making available, or in the terms or conditions of, residential real estate-related transactions, in violation of the FHA, 42 U.S.C. § 3605(a) (Complaint ¶¶ 29-94);

b. Discrimination on the basis of race and national origin in the terms, conditions, or privileges of sale of a dwelling, in violation of the FHA, 42 U.S.C. § 3604(b) (Complaint ¶¶ 29-94);

c. Discrimination against applicants with respect to credit transactions on the basis of race and national origin, in violation of ECOA, 15 U.S.C. § 1691(a)(1) (Complaint ¶¶ 29-94); and

d. Discrimination against applicants with respect to credit transactions on the basis of marital status, in violation of ECOA, 15 U.S.C. § 1691(a)(1), and Regulation B, 12 C.F.R. §§ 202.4(a) and 202.6(b)(8) (Complaint ¶¶ 95-100).

102. Countrywide's residential lending-related policies and practices as alleged herein constitute:

a. A pattern or practice of resistance to the full enjoyment of rights granted by the FHA, 42 U.S.C. §§ 3601-3619, and ECOA, 15 U.S.C. §§ 1691-1691f (Complaint ¶¶ 29-100); and

b. A denial of rights granted by the FHA to groups of persons – both African-Americans and Hispanics – that raises an issue of general public importance (Complaint ¶¶ 29-94).

103. Between 2004 and 2008, more than 200,000 persons throughout the nation have been victims of Countrywide's pattern or practice of discrimination and denial of rights as alleged herein. In addition to higher direct economic costs, the victims of discrimination suffered additional consequential economic damages resulting from having an excessively costly loan, including possible prepayment penalties, increased risk of credit problems, default, and foreclosure, and other damages, including emotional distress. They are aggrieved persons as defined in the FHA, 42 U.S.C. § 3602(i), and aggrieved applicants as defined in the ECOA, 15 U.S.C. § 1691e, and have suffered injury and damages as a result of Defendants' conduct. Attachment A depicts the states where these aggrieved persons described in Paragraphs 41-42, 69-72, 87, and 89 were located when the discrimination occurred.

104. Countrywide's policies and practices, as described herein, were intentional, willful, or implemented with reckless disregard for the rights of Hispanic and African-American borrowers and non-applicant spouses of married mortgage loan applicants.

RELIEF REQUESTED

WHEREFORE, the United States prays that the Court enter an ORDER that:

(1) Declares that the Defendants' challenged lending policies and practices constitute violations of the Fair Housing Act, 42 U.S.C. §§ 3601-3619, and the Equal Credit Opportunity Act, 15 U.S.C. §§ 1691-1691f;

(2) Enjoins the Defendants, their agents, employees, and successors, and all other persons in active concert or participation with any of the Defendants, from:

(a) Discriminating on the basis of race and national origin with respect to making available, or in the terms or conditions of, a residential real estate-related transaction;

(b) Discriminating on the basis of race and national origin in the terms, conditions, or privileges of sale of a dwelling;

(c) Discriminating on the basis of race, national origin, and marital status against any person with respect to any aspect of a credit transaction;

(d) Failing or refusing to take such affirmative steps as may be necessary to restore, as nearly as practicable, the victims of the Defendants' unlawful conduct to the position they would have been in but for the discriminatory conduct; and

(e) Failing or refusing to take such affirmative steps as may be necessary to prevent the recurrence of any such discriminatory conduct in the future; to eliminate, to the extent practicable, the effects of the Defendants' unlawful practices; and to implement policies and procedures to ensure that all borrowers have an equal opportunity to seek and obtain loans on a non-discriminatory basis and with non-discriminatory terms and conditions;

(3) Awards monetary damages to the victims of the Defendants' discriminatory policies and practices for the injuries caused by the Defendants, including direct economic costs, consequential economic damages, and other damages, pursuant to 42 U.S.C. § 3614(d)(1)(B) and 15 U.S.C. § 1691e(h); and

(4) Assesses a civil penalty against the Defendants in an amount authorized by 42 U.S.C. § 3614(d)(1)(C), in order to vindicate the public interest.

The United States further prays for such additional relief as the interests of justice may require.

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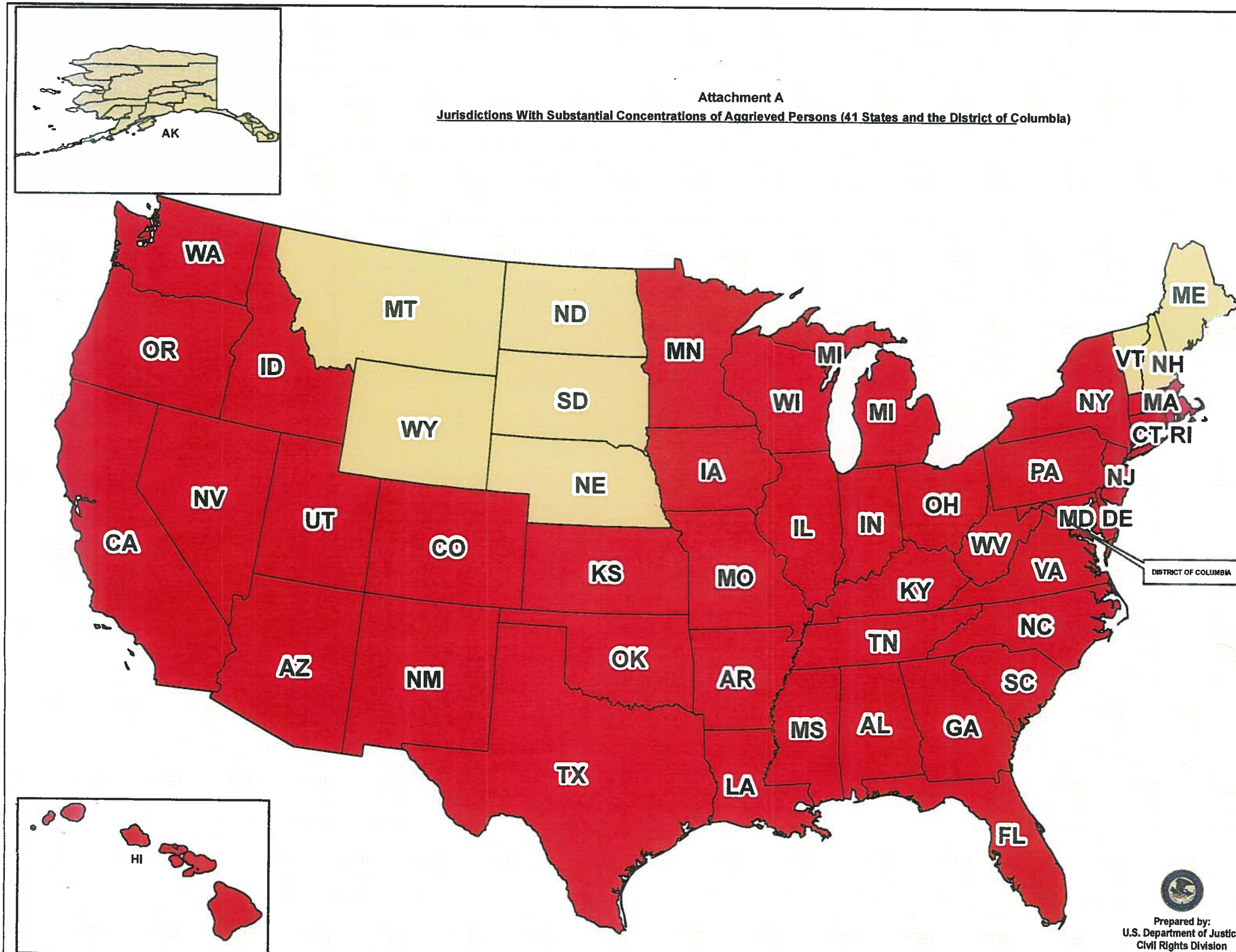
Attachment A

Jurisdictions With Substantial Concentrations of Aggrieved Persons (41 States and the District of Columbia)



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