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12 UNITED STATES DISTRICT COURT  
13 NORTHERN DISTRICT OF CALIFORNIA  
14 SAN FRANCISCO DIVISION

15 ANA RAMIREZ, ISMAEL RAMIREZ,  
16 JORGE SALAZAR, AND EMANUEL  
FANNING on behalf of themselves and all  
17 others similarly situated,

18 Plaintiffs,

19 vs.  
20

21 GREENPOINT MORTGAGE FUNDING,  
22 INC.,

23 Defendant.  
24  
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) Case No. 3:08-cv-00369-TEH  
)  
)  
)

) **SECOND AMENDED  
COMPLAINT FOR:**

- ) **1. Violations of the Equal Credit Opportunity Act; 15 U.S.C. § 1691; and**
- ) **2. Violations of the Fair Housing Act; 42 U.S.C. § 3601.**

) **CLASS ACTION**

) **JURY TRIAL DEMANDED**  
)  
)  
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)

1 Plaintiffs, Ana Ramirez, Ismael Ramirez, Jorge Salazar, and Emanuel Fanning,  
2 (collectively, the “Plaintiffs”), on behalf of themselves and all others similarly situated, by their  
3 undersigned attorneys, allege as follows:

4 **INTRODUCTION**

5 1. This is a class action brought by Plaintiffs, on behalf of themselves and other  
6 similarly situated minority homeowners, against GREENPOINT Mortgage Funding, Inc.  
7 (“GREENPOINT”) under the Equal Credit Opportunity Act, 15 U.S.C. § 1691, et seq.  
8 (“ECOA”) and the Fair Housing Act, 42 U.S.C. § 3601 et seq. Plaintiffs seek remedies for  
9 themselves and the Class (defined in ¶11, below) for the discriminatory effects of the  
10 Defendant’s home financing policies and practices.  
11

12 2. As described below, GREENPOINT has established a specific, identifiable and  
13 uniform credit pricing system, a component of which, referred to herein as the Discretionary  
14 Pricing Policy, authorizes unchecked, subjective surcharge of additional points and fees to an  
15 otherwise objective risk-based financing rate. In other words, after a finance rate acceptable to  
16 GREENPOINT is determined by objective criteria (e.g., the individual’s credit history, credit  
17 score, debt-to-income ratio and loan-to-value ratios), GREENPOINT’s credit pricing policy  
18 authorizes additional discretionary financing charges and interest rate mark-ups. These  
19 subjective, additional finance charges have a widespread discriminatory impact on minority  
20 applicants for home mortgage loans, in violation of ECOA and the FHA.  
21

22 3. GREENPOINT has established policies for retail and wholesale access to its loan  
23 products that subject minority financing applicants to a significantly higher likelihood of  
24 exposure to discretionary points, fees and interest rate mark-ups. These costs drive up the  
25 average cost of a mortgage loan made by GREENPOINT to minority applicants.  
26

27 4. Plaintiffs seek declaratory and injunctive relief, disgorgement and restitution of  
28 monies disparately obtained from minority borrowers.

**JURISDICTION AND VENUE**

1  
2 5. Plaintiffs invoke the jurisdiction of this Court pursuant to 28 U.S.C. § 1331,  
3 which confers original jurisdiction upon this Court in a civil action arising under federal law.

4 6. Venue is proper in this Court pursuant to 28 U.S.C. 1391(b) because a substantial  
5 part of the events giving rise to Plaintiffs’ and the Class’ claims occurred in this District, because  
6 Defendant is headquartered in this District, and because Defendant regularly conducts business  
7 in this District.  
8

9 **INTRADISTRICT ASSIGNMENT**

10 7. Intradistrict assignment pursuant to Local Rule 3-2(c) is proper in the San  
11 Francisco Division as this action arises in San Francisco County and the surrounding counties as  
12 Defendant regularly conducts business in this District and is headquartered in Sonoma County.  
13

14 **PARTIES**

15 8. Plaintiffs Ana and Ismael Ramirez (“the Ramirezes”) are minority homeowners  
16 who reside at 46 Stellman Road, Roslindale, Massachusetts 02131.

17 9. Plaintiff Jorge Salazar (“Salazar”) is a minority homeowner who resides at 4172  
18 51<sup>st</sup> Street, San Diego, California 92105.

19 10. Plaintiff Emanuel Fanning ("Fanning") is a minority homeowner who resides at  
20 999 Marshall Road, Apt. 75, Vacaville, CA 95687.

21 11. Defendant, GREENPOINT Mortgage Funding, Inc. (“GREENPOINT”)  
22 originated sub-prime mortgage loans for approximately 20 years before closing its residential  
23 loan business on August 20, 2007. GREENPOINT is headquartered at 100 Wood Hollow Drive,  
24 Novato, California, 94945.  
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26  
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**FACTS**

**I. MORTGAGE LENDING IN THE UNITED STATES HISTORICALLY HAS DISCRIMINATED AGAINST MINORITIES**

12. The mortgage lending industry has a long history of racial discrimination, offering minorities products and terms that are drastically worse than those given to their similarly situated white counterparts.

13. According to the Joint Center for Housing Studies at Harvard University’s 2005 study called “The Dual Mortgage Market: The Persistence of Discrimination in Mortgage Lending,” mortgage lending discrimination today is subtle but pervasive, with minority consumers continuing to have less-than-equal access to loans at the best price and on the best terms that their credit history, income, and other individual financial considerations merit more than three decades after the enactment of national fair lending legislation.

14. The passage of civil rights legislation and fair lending laws in the 1960s and 1970s brought an end to the most virulent forms of overt racial discrimination in the housing markets, but throughout the 1980s and 1990s, mortgage lenders found more subtle ways to discriminate, including maintaining offices only in white neighborhoods and engaging in practices such as redlining (refusing to lend on properties in predominantly minority neighborhoods).

15. After such redlining practices were challenged in the 1990s, mortgage lenders changed tactics once again, making loans to minorities, but charging higher interest rates and loan-related fees than they charged to similarly-situated white borrowers. Loan data that mortgage lenders must now compile and disclose under the federal Home Mortgage Disclosure Act (“HMDA”) reveals profound loan pricing disparities between minority borrowers and similarly-situated white borrowers.

1           16.       The HMDA requires mortgage lenders to report information about the home loans  
2 they process each year. In 2005, lenders reported information on more than 30 million home  
3 loan applications pursuant to HMDA. In 1989, Congress required lenders to begin disclosing  
4 information about mortgage borrowers' race and ethnicity. In 2004, concerned with potential  
5 racial discrimination in loan pricing and recognizing that racial or other types of discrimination  
6 can occur when loan officers and mortgage brokers have latitude in setting interest rates, the  
7 Federal Reserve Board began requiring lenders to also report information concerning rates,  
8 points, and fees, charged to borrowers on high-cost loans.

10           17.       According to the Federal Reserve, both 2004 and 2005 HMDA data revealed that  
11 "Blacks and minority borrowers were more likely . . . to have received higher-priced loans than  
12 non-minority whites. . . . [which has] increased concern about the fairness of the lending  
13 process." Robert B. Avery, Kenneth P. Brevoort and Glenn B. Canner, "Higher-Priced Home  
14 Lending and the 2005 HMDA Data," Federal Reserve Bulletin, A124, A159 (revised Sept. 18,  
15 2006) (<http://www.federalreserve.gov/pubs/bulletin/2006/hmda/bull06hmda.pdf> (last viewed  
16 March 5, 2008).)

18           18.       HMDA data for 2004 reveals profound loan pricing disparities between minority  
19 borrowers and non-minority whites even after controlling for borrowers' gender, income,  
20 property location, and loan amount. After accounting for those differences in the 2004 HMDA  
21 data, minority borrowers were still almost twice as likely to receive a higher-rate home loan as  
22 non-minority whites. (<http://www.responsiblelending.org/pdfs/Testimony-Ernst061306.pdf> (last  
23 viewed March 5, 2008).) In a speech in 2006, the Vice-Chairman of the Federal Deposit  
24 Insurance Corporation, Martin Gruenberg, discussed the 2004 HMDA data and observed that  
25 that data "clearly indicated" that minority borrowers are more likely to receive high-cost home  
26 loans than are non-minority whites. ([http://www.fdic.gov/news/news/speeches/archives/  
27 2006/chairman/spoct1806.html](http://www.fdic.gov/news/news/speeches/archives/2006/chairman/spoct1806.html) (last viewed March 5, 2008).)  
28

1           19.       Likewise, HMDA data for 2005 shows that “for conventional home-purchase  
2 loans, the gross mean incidence of higher-priced lending was 54.7 percent for blacks and 17.2  
3 percent for non-Hispanic whites, a difference of 37.5 percentage points.” Avery, *supra*, at A159.  
4 The situation is similar for refinancings, where there is a difference of 28.3 percentage points  
5 between blacks and non-minority whites. *Id.* at A124, A159.

6           20.       In 2003, the National Community Reinvestment Coalition (“NCRC”) released a  
7 report on credit discrimination titled, “The Broken System: Discrimination and Unequal Access  
8 to Affordable Loans by Race and Age,” that indicated that consumers living in areas with more  
9 minority residents are more likely to have mortgages with interest rates higher than the  
10 “prevailing and competitive” rates, often because of discrimination in lending. *Available at*  
11 <http://ncrc.org/policy/cra/documents/ncrcdiscrimstudy.pdf>.

12           21.       Home Mortgage Disclosure Act (“HMDA”) Data for 2006 revealed that black and  
13 Hispanic borrowers are more likely to obtain higher-priced loans than are white borrowers. The  
14 data indicated that black homeowners who received subprime mortgage loans were much more  
15 likely to be issued a higher-rate loan than white borrowers with the same qualifications.  
16 *Available at* [www.ffiec.gov/hmda](http://www.ffiec.gov/hmda). (last viewed February 15, 2008).

17           22.       In 2006, the Center for Responsible Lending, a non-profit research organization,  
18 uncovered “large and statistically significant” differences between the rates of subprime loans  
19 offered to blacks and whites, even when income and credit risk were taken into consideration.  
20 Compared to their otherwise similarly-situated white counterparts, blacks were 31-34% more  
21 likely to receive higher rate fixed-rate loans and 6-15% more likely to receive adjustable-rate  
22 loans. “Unfair Lending: The Effect of Race and Ethnicity on the Price of Subprime Mortgages,”  
23 *available at* [www.responsiblelending.org](http://www.responsiblelending.org).

24           23.       The Association of Community Organizations for Reform Now (ACORN)  
25 released a report entitled “The High Cost of Credit: Disparities in High-priced Refinanced Loans  
26  
27  
28

1 to minority Homeowners in 125 American Cities,” dated September 27, 2005, that found that  
2 “[i]n every metropolitan area where at least 50 refinances were made to African-American  
3 homeowners, African-Americans were more likely to receive a high-cost loan than White  
4 homeowners.”

5  
6 24. A growing number of research studies and investigations show that significant  
7 racial disparities still exist. California Reinvestment Coalition, et al., “Paying More for the  
8 American Dream: A Multi-State Analysis of Higher Cost Home Purchase Lending” (March  
9 2007) ([http://www.nedap.org/pressroom/documents/2007\\_Report-2005\\_HMDA.pdf](http://www.nedap.org/pressroom/documents/2007_Report-2005_HMDA.pdf) (last viewed  
10 March 5, 2008); Ross, “The Continuing Practice and Impact of Discrimination” (Revised July  
11 2006) (Univ. of Connecticut, Working Paper 2005-19R) ([http://www.econ.uconn.edu/  
12 working/2005-19r.pdf](http://www.econ.uconn.edu/working/2005-19r.pdf)) (last viewed March 5, 2008).

13  
14 25. In March 2008, the California Reinvestment Coalition, jointly with several other  
15 non-profit and housing advocacy groups, published another report examining the impact of  
16 lending by subprime, high-risk lenders in 7 metropolitan areas – Boston, Charlotte, Chicago,  
17 Cleveland, Los Angeles, New York City and Rochester, NY. Among other things, the study  
18 showed that subprime high –risk lenders are concentrated in minority neighborhoods. Data  
19 supporting this finding demonstrated that subprime high-risk lenders had 20% of the market  
20 share in predominantly minority neighborhoods in these metro areas, compared to a 4% market  
21 share in predominantly white neighborhoods. In addition, over 40% of the loans made by  
22 subprime high-risk lenders were in neighborhoods where 80% or more of the residents were  
23 minorities. In stark contrast, less than 10% of subprime high-risk lender loans were in areas  
24 where less than 10% of the residents were minorities.

25  
26 26. In metro Boston, where the Ramirezes reside, the same study shows that  
27 subprime, high-risk lenders had 22% of the home loan market in neighborhoods where more than  
28 80% of the residents were minorities, while subprime high-risk lenders had only 5% of the

1 market for home loans in neighborhoods where less than 10% of the residents were minorities. In  
2 6 of the 7 metro areas analyzed, the subprime high-risk lender market share in predominantly  
3 minority neighborhoods was at least 3 times the subprime high-risk lender market share in  
4 predominantly white neighborhoods. California Reinvestment Coalition, et al., “Paying More  
5 for the American Dream: A Multi-State Analysis of Higher Cost Home Purchase Lending”  
6 (March 2008) (<http://www.nedap.org/resources/reports.html>) (last viewed March 12, 2008).

8 27. Moreover, and importantly, research studies have suggested that borrowers’ credit  
9 profiles cannot fully explain why some borrowers, and not others, are saddled with higher cost  
10 loans.

11 28. As an example, research by Howell Jackson of Harvard Law School, detailed in  
12 the article *Kickbacks or Compensation: The Case of Yield Spread Premiums* (Harvard Univ.), H.  
13 Jackson and J. Berry, *available at*  
14 [http://www.law.harvard.edu/faculty/hjackson/pdfs/january\\_draft.pdf](http://www.law.harvard.edu/faculty/hjackson/pdfs/january_draft.pdf) (last viewed March 5,  
15 2008), concluded that the substantially higher mortgage broker compensation received as the  
16 result of yield spread premiums could not fully be explained when controlling for variables  
17 associated with creditworthiness.

19 29. In short, a number of researchers have raised “doubts that risk can adequately  
20 explain racial differences” in high-cost loans. Bradford, Center for Community Change, “Risk  
21 or Race? Racial Disparities and the Subprime Refinance Market” (May 2002)  
22 ([http://www.knowledgeplex.org/kp/report/](http://www.knowledgeplex.org/kp/report/report/relfiles/ccc_0729_risk.pdf)  
23 [report/relfiles/ccc\\_0729\\_risk.pdf](http://www.knowledgeplex.org/kp/report/report/relfiles/ccc_0729_risk.pdf)) (last viewed March 5, 2008). In other words, evidence  
24 “suggests that weak borrower credit profiles do not fully explain why some borrowers get stuck  
25 with higher-cost home loans.” California Reinvestment Coalition, et al., “Paying More for the  
26 American Dream: A Multi-State Analysis of Higher Cost Home Purchase Lending” (March  
27 2007).  
28



1 **II. GREENPOINT'S DISCRETIONARY PRICING POLICY CONTINUES THE**  
2 **PERVASIVE DISCRIMINATION AGAINST MINORITIES IN MORTGAGE**  
3 **LENDING**

4 30. For approximately 20 years, GREENPOINT publicly promoted its home  
5 financing expertise by means of nationwide advertising campaigns. In its advertisements,  
6 GREENPOINT solicited persons to apply for financing with GREENPOINT either in one of its  
7 offices or through one of the mortgage brokers whom GREENPOINT had authorized to accept  
8 applications on its behalf.  
9

10 31. GREENPOINT made home-mortgage loans directly to consumers through its  
11 branches in several markets.

12 32. GREENPOINT also made home-mortgage loans that were arranged by its  
13 network of mortgage brokers. Those loans were made in reliance on GREENPOINT's credit-  
14 granting policies and with GREENPOINT's participation.

15 33. Due to GREENPOINT's policies as to where to place its offices and how to  
16 market its products, minority borrowers were more likely than white borrowers to apply for  
17 credit from GREENPOINT by an application made to an authorized broker rather than one made  
18 directly to GREENPOINT.  
19

20 34. Because of the Discretionary Pricing Policy, loans obtained through  
21 GREENPOINT's network of brokers are more expensive to minority homeowners, on average,  
22 than loans obtained directly from GREENPOINT.  
23

24 35. A high-APR loan is a loan whose APR is at least three percentage points higher  
25 than the interest rate on U.S. Treasury securities of the same maturity, at the time the loan was  
26 made.

27 36. Based on Home Mortgage Disclosure Act ("HMDA") data from the Department  
28 of Housing and Urban Development, minorities who borrowed from GREENPOINT between

1 2004 and 2006 are almost 50% more likely than white borrowers to have received a high-APR  
2 loan to purchase or refinance their home.

3 37. While credit differences may explain some part of the disparities in rate and  
4 terms, GREENPOINT's Discretionary Pricing Policy accounts for a significant portion of the  
5 disparity.

6 38. GREENPOINT's Discretionary Pricing Policy is unrelated to a borrower's  
7 objective credit characteristics such as credit history, credit score, debt-to-income ratio and loan-  
8 to-value ratios and results in charges that are determined on a purely subjective basis and that  
9 adversely affect the rate otherwise available to borrowers.

10 39. GREENPOINT provided authorized mortgage brokers with substantial  
11 information about its loan programs, rates and credit criteria, as well as its policies for  
12 compensating mortgage brokers and correspondent lenders who arrange business for it.

13 40. GREENPOINT authorized mortgage brokers who have signed a contract with it  
14 to accept applications on its behalf, quote financing rates and terms for loans from it (within the  
15 limitations set by GREENPOINT), inform credit applicants of GREENPOINT's financing  
16 options and to originate finance transactions using GREENPOINT's forms, in accordance with  
17 its policies.

18 41. In all of the home mortgage finance transactions at issue, GREENPOINT  
19 advanced the funds to make the loans and bears some or all of the risk of default.  
20 GREENPOINT provided its loan officers and brokers with credit applications, loan contracts and  
21 other required financing forms, as well as instructions on filling out such documents necessary to  
22 complete home mortgage transactions.

23 42. After a customer provided credit information to one of GREENPOINT's loan  
24 officers or brokers, GREENPOINT computed a financing rate through an objective credit  
25 analysis that, in general, discerned the creditworthiness of the customer.

1           43.       These credit analyses considered numerous risk-related variables of  
2 creditworthiness, including credit bureau histories, payment amounts, debt-to-asset ratio,  
3 bankruptcies, automobile repossessions, charge-offs, prior foreclosures, payment histories, credit  
4 score, debt-to-income ratios, loan-to-value ratios and other risk-related attributes or variables.  
5 On information and belief, GREENPOINT used these variables to determine a “mortgage score”  
6 for each credit applicant.  
7

8           44.       Based on these objective risk-related variables and the resulting mortgage score,  
9 GREENPOINT derived a risk-based financing rate at which it would provide a home mortgage,  
10 often called the “Par Rate.” Alternatively, experienced GREENPOINT loan officers, brokers  
11 and correspondent lenders could estimate the risk-related Par Rate by referring to the applicant’s  
12 credit bureau determined credit score.  
13

14           45.       Although GREENPOINT’s initial analysis applied objective criteria to calculate  
15 this risk-related Par Rate, GREENPOINT then authorized a subjective component in its credit  
16 pricing system—the Discretionary Pricing Policy—to impose additional non-risk-related  
17 charges. On information and belief, GREENPOINT communicated the applicable Par Rates and  
18 authorized discretionary charges to its loan officers and brokers via regularly published “rate  
19 sheets.” GREENPOINT published such rate sheets via intranet and internet means.  
20

21           46.       The discretionary charges are paid by the customer as a component of the total  
22 finance charge (the “Contract APR”), without the homeowner knowing that a portion of their  
23 Contract APR was a non-risk-related charge.

24           47.       Loan officers and brokers had discretion, within the limits set by GREENPOINT,  
25 to impose discretionary mark-ups as additional points in interest—“a rate mark-up.” When there  
26 was a rate mark-up, GREENPOINT shared the additional income, even if a broker originated the  
27 loan.  
28

1           48.       GREENPOINT's Discretionary Pricing Policy, by design, causes persons with  
2 identical or similar credit scores to pay different amounts for the cost of credit. As a result of  
3 using a subjective pricing component that is designed to charge persons with the same credit  
4 profiles different amounts of finance charge, the objective qualities of the initial credit analysis  
5 used to calculate the Par Rate are undermined and the potential for race bias becomes inherent in  
6 the transaction.  
7

8           49.       The Discretionary Pricing Policy, although facially neutral (insofar as  
9 GREENPOINT uses the same or effectively the same policy for all credit applicants), has a  
10 disproportionately adverse effect on minority borrowers compared to similarly situated whites in  
11 that minority borrowers pay disparately more discretionary charges (both in frequency and  
12 amount) than similarly situated whites. Statistical analysis of discretionary charges imposed on  
13 minority and white customers of other mortgage companies that use credit pricing systems  
14 structured like that of GREENPOINT has revealed that minority borrowers, after controlling for  
15 credit risk, are substantially more likely than similarly situated whites to pay such charges.  
16

17           50.       Loan officers and brokers were agents of GREENPOINT for the purpose of  
18 setting credit price, which was always set based on GREENPOINT's policy.  
19

20           51.       The disparate impact suffered by minority borrowers is a direct result of  
21 GREENPOINT's Discretionary Pricing Policy in that GREENPOINT designed, disseminated,  
22 controlled, implemented and profited from the Discretionary Pricing Policy creating the disparate  
23 impact.

24           52.       GREENPOINT has a non-delegable duty to ensure that its mortgage financing  
25 structure and policies do not have a disparate impact on legally protected classes, such as  
26 minority borrowers. Despite having such a non-delegable duty, GREENPOINT has chosen to  
27 use a commission-driven, subjective pricing policy that it knows or should have known has a  
28 significant and pervasive adverse impact on minority homeowners.

1           53.       The disparities between the terms of GREENPOINT's transactions involving  
2 minority homeowners and the terms involving white homeowners cannot be a product of chance  
3 and cannot be explained by factors unrelated to race, but, instead, are the direct causal result of  
4 the use of the discriminatory Discretionary Pricing Policy.

5           54.       There are no legitimate business reasons justifying GREENPOINT's  
6 discriminatory Discretionary Pricing Policy that could not be achieved by a policy that has no  
7 discriminatory impact or a greatly reduced discriminatory impact.

8           55.       Commission-driven, discretionary pricing systems—such as those in the real estate  
9 mortgage industry that are structurally similar to the system utilized by GREENPOINT—have  
10 been found to produce significant discriminatory effects. Knowledge concerning the significant  
11 and pervasive discriminatory impact of such commission-driven, discretionary credit pricing  
12 systems has been widely circulated throughout the financing industry for several years,  
13 particularly since 1994, as a result of numerous high profile actions by the United States  
14 Department of Justice and federal regulatory agencies. GREENPOINT has known or should  
15 have known that its credit pricing system causes minority borrowers to pay the Defendant more  
16 for mortgage financing than the amounts paid by white customers with identical or effectively  
17 identical credit scores. The following various regulatory settlements involved discriminatory  
18 pricing policies structurally similar to GREENPOINT's pricing policy and were widely reported  
19 through the financing industry:  
20  
21  
22

23           United States v. Blackpipe State Bank, Civ. Act. No. 93-5115 (D. S.D. filed  
24 November 16, 1993)(charging American Indians higher interest rates)

25           United States v. First National Bank of Vicksburg, No. 5:94 CV 6(B)(N) (S.D. Miss.  
26 filed Jan. 21, 1994) (charging African-Americans higher interest rates)

27           United States v. Huntington Mortgage Co., No. 1; 95 CV 2211 (N.D. Ohio filed  
28 October 18, 1995)(charging African-Americans higher fees)

United States v. Security State Bank of Pecos, No. SA 95 CA 0996 (W.D.Tex. filed  
October 15, 1995)(charging minority borrowers higher interest rates)

1 United States v. First National Bank of Gordon, No. CIV-96-5035 (W.D.S.D. filed  
2 April 15, 1996)(charging American Indians higher interest rates)

3 United States v. Fleet Mortgage Corp., No. 96-2279 (E.D.N.Y. filed May 7,  
4 1996)(charging African-Americans and minority borrowers higher interest rates)

5 United States v. Long Beach Mortgage Co., No. CV-96-6159 (C.D. Cal. filed Sept. 5,  
6 1996)(charging African-Americans, Latinos, women and persons over age 55 higher  
7 interest rates)

8 **III. GREENPOINT'S DISCRETIONARY PRICING POLICY DISCRIMATED**  
9 **AGAINST PLAINTIFFS**

10 **Facts Relating To The Ramirezes**

11 56. Plaintiffs Ana Ramirez and Ismael Ramirez reside at 46 Stellman Road,  
12 Roslindale, Massachusetts 02131.

13 57. In 2005, the Ramirezes sought to refinance their existing home loan to obtain cash  
14 and to do construction on their home. The Ramirezes' former real estate broker, Ms. Santana,  
15 referred them to First Call Mortgage Company, Inc. ("First Call"), a mortgage broker.

16 58. On August 3, 2005, the Ramirezes entered into a mortgage transaction with  
17 GREENPOINT as lender and First Call as broker.

18 59. The Ramirezes' loan contained a 2.000% one-month "teaser rate" that was set to  
19 adjust upwards only immediately as of October 1, 2005 and could potentially reset every month  
20 thereafter. The cap on the interest rate is 12.000%.

21 60. The Ramirezes' loan has a 30-year term and a disclosed APR of 6.191%. The  
22 loan amount was \$469,000.00.

23 61. According to the Ramirezes' HUD-One Settlement Statement, First Call was paid  
24 a \$5,276.25 Yield Spread Premium, \$4,690.00 in Broker Points, and a \$500.00 Processing Fee.

25 62. On information and belief, unbeknownst to the Ramirezes, the contract APR on  
26 the mortgage loans was actually a combination of an objective, risk-based calculation and a  
27 totally subjective, discretionary component paid to First Call pursuant to GREENPOINT's  
28 Discretionary Pricing Policy.

1           63.       On information and belief, the Ramirezes were subject to GREENPOINT's  
2 Discretionary Pricing Policy.

3           64.       On information and belief, the Ramirezes were charged a disproportionately  
4 greater amount in non-risk-related credit charges than similarly-situated white persons.

5           65.       The Ramirezes were not offered less expensive loan products that were available  
6 to borrowers with his credit characteristics directly under GREENPOINT'S policies.

7  
8 **Facts Relating To Mr. Salazar**

9           66.       Plaintiff Jorge Salazar resides at 4172 51st Street, San Diego, California 92105  
10 and maintains a rental property at 4174 51st Street, San Diego, California, 92105.

11           67.       In August 2006, Mr. Salazar sought to refinance his home and rental property.  
12 Mr. Salazar's tax agent, Alicia Bruche, referred him to GREENPOINT and its authorized broker,  
13 TLN Financial.

14           68.       On August 17, 2006, Mr. Salazar entered into a mortgage transaction with  
15 GREENPOINT as the lender and TLN Financial as broker.

16           69.       Mr. Salazar's loan has a 30-year term and a disclosed APR of 7.181%. The loan  
17 amount was \$475,000.00.

18           70.       According to Mr. Salazar's HUD-One Settlement Statement, TLN Financial was  
19 paid a \$2,375.00 Yield Spread Premium on a "POC" basis (i.e., paid outside of closing), a  
20 \$11,625.00 Origination Fee, and a \$1,290 Processing Fee.

21           71.       On information and belief, unbeknownst to Mr. Salazar, the contract APR on the  
22 mortgage loan was actually a combination of an objective, risk-based calculation and a totally  
23 subjective, discretionary component paid to TLN Financial pursuant to GREENPOINT'S  
24 Discretionary Pricing Policy.

25           72.       On information and belief, Mr. Salazar was subject to GREENPOINT'S  
26 Discretionary Pricing Policy.  
27  
28

1 73. On information and belief, Mr. Salazar was charged a disproportionately greater  
2 amount in non-risk-related credit charges than similarly-situated white persons.

3 74. Mr. Salazar was not offered less expensive loan products that were available to  
4 borrowers with his credit characteristics directly under GREENPOINT'S policies.

5 **Facts Relating To Mr. Fanning**

6 75. Plaintiff Emanuel Fanning resides at 999 Marshall Road, Apt. 75, Vacaville, CA  
7 95687.

8 76. On May 17,, 2006, Mr. Fanning entered into a wholesale mortgage transaction  
9 with GREENPOINT as lender. in the face amount of \$1,000,000 at a fully indexed rate above  
10 7.5%.

11 77. On information and belief, unbeknownst to Mr. Fanning, the contract APR on the  
12 mortgage loan was actually a combination of an objective, risk-based calculation and a totally  
13 subjective, discretionary component paid to his mortgage broker pursuant to GREENPOINT's  
14 Discretionary Pricing Policy.  
15

16 78. On information and belief, Mr. Fanning was subject to GREENPOINT'S  
17 Discretionary Pricing Policy.  
18

19 79. On information and belief, Mr. Fanning was charged a disproportionately greater  
20 amount in non-risk-related credit charges than similarly-situated white persons.

21 80. Mr. Fanning was not offered less expensive loan products that were available to  
22 borrowers with his credit characteristics directly under GREENPOINT'S policies.

23 81. Mr. Fanning's loan resulted in foreclosure.

24 **CLASS ACTION ALLEGATIONS**

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

26 83. This class action is brought pursuant to ECOA and the FHA by the individual  
27 named Plaintiffs on behalf of themselves and all  
28



1 All African-American or Hispanic persons throughout the United States to whom  
2 GreenPoint originated a residential-secured loan in GreenPoint's wholesale lending  
3 channel between January 1, 2004 and January 1, 2008 (the "class").

4 84. Plaintiffs sue on their own behalf and on behalf of a class of persons under Rules  
5 23(a) and (b)(3) of the Federal Rules of Civil Procedure.

6 85. "Discretionary Pricing Policy" means GREENPOINT's policy of authorizing its  
7 loan officers, brokers and correspondent lenders to impose subjective, discretionary charges and  
8 interest rate mark-ups that are included in the loans they originate.

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

14 87. All members of the Class have been subject to and affected by the same  
15 Discretionary Pricing Policy. There are questions of law and fact that are common to the Class,  
16 and predominate over any questions affecting only individual members of the Class. These  
17 questions include, but are not limited to the following:  
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- 20 a. the nature, scope and operations of GREENPOINT's Discretionary  
21 Pricing Policy;
- 22 b. whether GREENPOINT is a creditor under the ECOA because, for  
23 example, in the ordinary course of its business it participates in the  
24 decision of whether or not to extend credit to consumers;
- 25 c. whether GREENPOINT's Discretionary Pricing Policy is a facially neutral  
26 credit pricing system that has effected racial discrimination in violation of  
27 ECOA;
- 28

- 1 d. whether there are statistically significant disparities between the amount of
- 2 the discretionary charges imposed on minority persons and the amount of
- 3 the discretionary charges imposed on white persons that are unrelated to
- 4 creditworthiness;
- 5 e. whether there are any legitimate business reasons for the Discretionary
- 6 Pricing Policy, and if so, whether they can be achieved by a credit pricing
- 7 system less discriminatory in its impact;
- 8 f. whether the Court can enter declaratory and injunctive relief; and
- 9 g. the proper measure of disgorgement or damages.

10 88. The claims of the individual named Plaintiffs are typical of the claims of the Class  
11 and do not conflict with the interests of any other members of the Class in that both the Plaintiffs  
12 and the other members of the Class were subject to the same Discretionary Pricing Policy that  
13 has disproportionately affected minority homeowners.

14 89. The individual named Plaintiffs will fairly and adequately represent the interests  
15 of the Class. They are committed to the vigorous prosecution of the Class' claims and have  
16 retained attorneys who are qualified to pursue this litigation and have experience in class  
17 actions—in particular, consumer protection and discrimination actions.

18 90. A class action is superior to other methods for the fast and efficient adjudication  
19 of this controversy. A class action regarding the issues in this case does not create any problems  
20 of manageability.

21 91. In the alternative, GREENPOINT has acted or refused to act on grounds generally  
22 applicable to the Class, thereby making appropriate final injunctive relief or corresponding  
23 declaratory relief with respect to the Class as a whole.

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**TOLLING / CONTINUING VIOLATION**

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2           92.     The Discretionary Pricing Policy described in this Second Amended Class Action  
3 Complaint constitutes a pattern or practice of discrimination because, as an integral part of  
4 GREENPOINT's business plan, it was the standard operating procedure of GREENPOINT.

5           93.     Application of GREENPOINT's Discretionary Pricing Policy, and the  
6 accompanying impact on minority borrowers, was not a sporadic, isolated practice, but rather  
7 occurred every day that loans were extended, renewed or continued during the Class Period.

8           94.     Plaintiffs bring this lawsuit to challenge the overall adverse impact on minority  
9 borrowers wrought by GREENPOINT's Discretionary Pricing Policy, rather than merely the  
10 legality of their individual loans.

11           95.     The claims of minority borrowers who obtained mortgage loans GREENPOINT  
12 more than two years prior to the initiation of this action are timely. Under the continuing  
13 violation doctrine, as set out by the Supreme Court in *Havens Realty Corp. v. Coleman*, 455 U.S.  
14 363 (1982) and later written into the FHA, a statute of limitations may not bar claims where the  
15 Plaintiffs challenge not just one incident, but an unlawful practice that continues into the  
16 limitations period.

17           96.     GREENPOINT's use of its Discretionary Pricing Policy occurred both before the  
18 limitations period and during the limitations period.

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

22           98.     Plaintiffs and the putative class members were exposed to discrimination as  
23 members of a group (i.e. minority borrowers of GREENPOINT) that suffered an adverse impact  
24 within the limitations period.

1           99.     The subject matter of all of the alleged violations is identical. The violations  
2 constitute the same type of discrimination – minority borrowers subjected to the Discretionary  
3 Pricing Policy were disparately impacted as described in this Second Amended Class Action  
4 Complaint.

5           100.    Further, despite the exercise of due diligence, a reasonably prudent person would  
6 not have knowledge of GREENPOINT's discriminatory practices more than two years prior to  
7 the initiation of this action. The causes of action of the Plaintiffs and putative class members did  
8 not accrue until shortly before the filing of this action.

9           101.    The nature of GREENPOINT's violations – and the nature of a disparate impact  
10 claim – is not such that the act of making a single loan to a borrower has such a degree of  
11 permanence as to trigger a reasonably prudent borrower's awareness of a need to assert his  
12 rights. The nature of a disparate impact claim is such that it only manifests itself after a critical  
13 mass of similar borrowers have the same experience – information that a single borrower would  
14 not have access to.

15           102.    GREENPOINT's employment of the Discretionary Pricing Policy means that  
16 minority borrowers are subjected to increased mortgage-related costs, in the form of higher  
17 interest rates and ongoing payments than would be the case in the absence of discrimination.  
18

19           103.    Home foreclosures disproportionately occur in predominantly minority  
20 neighborhoods. *See, e.g.,* Juliana Barbassa, *Report: Minorities Hit By Foreclosures*, USA  
21 Today, March 6, 2008; National Training & Information Center, *Preying on Neighborhoods*,  
22 *2007 Foreclosure Update*, March 3, 2008 available at [http://www.ntic-](http://www.ntic-us.org/images/fullyear2007.pdf)  
23 [us.org/images/fullyear2007.pdf](http://www.ntic-us.org/images/fullyear2007.pdf).

24           104.    On information and belief, many of the putative class members in this action live  
25 in predominantly minority neighborhoods.  
26  
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1           105. But for the effects of the Discretionary Pricing Policy, i.e., the ongoing higher  
2 interest rates and payments, the foreclosure rate among GREENPOINT's minority borrowers  
3 would have been lower.

4           106. Minority neighborhoods suffer severe deleterious effects from increased  
5 foreclosures. A Woodstock Institute Study has demonstrated that “foreclosures, particularly in  
6 lower-income neighborhoods, can lead to vacant, boarded-up, or abandoned properties. These  
7 properties, in turn, contribute to the stock of ‘physical disorder’ in a community that can create a  
8 haven for criminal activity, discourage social capital formation, and lead to further  
9 disinvestment...and lower property values for existing residential homeowners.” Dan  
10 Immergluck & Geoff Smith, *There Goes the Neighborhood: The Effect of Single-Family*  
11 *Mortgage Foreclosures on Property Values*, Woodstock Institute Study (June 2005) available at  
12 [http://www.nw.org/foreclosuresolutions/reports/documents/TGTN\\_Report.pdf](http://www.nw.org/foreclosuresolutions/reports/documents/TGTN_Report.pdf).

13  
14  
15           107. All residents of these neighborhoods suffer from these effects, including many of  
16 the putative class members, resulting in injury from GREENPOINT's use of the Discretionary  
17 Pricing Policy within the limitations period.

18           108. Additionally, this discrimination has only recently been disclosed and quantified.  
19 It has only been in the last several years that mortgage lenders have been required to submit  
20 details of their sub-prime home loans under the Home Mortgage Disclosure Act and that such  
21 data has been disclosed and studied by experts in the field.

22  
23           109. Moreover, on January 29, 2009, President Obama signed the “Lilly Ledbetter Fair  
24 Pay Act of 2009” into law. The legislation effectively overrules *Ledbetter v. Goodyear Tire &*  
25 *Rubber Co.*, 550 U.S. 618 (2007), a case upon which other Defendants with similar ECOA and  
26 FHA claims against them rely to argue that the 2 year statutes of limitation in the ECOA and  
27 FHA are not tolled. The Act defines an unlawful employment practice as occurring, *inter alia*,  
28 “each time wages, benefits, or other compensation is paid, resulting in whole or in part from such

1 a [discriminatory] decision or other practice.” The law’s effective date is May 28, 2007 and it  
2 applies to all claims pending at that time.

3 110. GREENPOINT's discriminatory conduct was inherently self-concealing.  
4 GREENPOINT knew that Plaintiffs and Class Members could not determine the relationship  
5 between the terms, fees, and costs of their loans to those available to non-minorities.  
6 GREENPOINT knew that the terms, fees, and costs provided to minorities, unbeknownst to  
7 them, were substantially worse than the loans provided to non-minorities.  
8

9 111. GREENPOINT has not released or provided information about its discrimination  
10 against Plaintiffs and Class Members, and has actively and fraudulently concealed its  
11 discriminatory practices.

12 112. As a result of the foregoing, Plaintiffs and Class Members in the exercise of due  
13 diligence could not have reasonably discovered the discriminatory practices, and did not do so  
14 until just recently. For the reasons alleged above, the members of the Class still do not know that  
15 they have been and continue to be injured by GREENPOINT's discriminatory conduct.  
16

17 **COUNT ONE**

18 **DISCRIMINATION IN VIOLATION OF THE EQUAL CREDIT OPPORTUNITY ACT**

19 **(15 U.S.C. §§ 1691 - 1691f)**

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

21 114. ECOA makes it “unlawful for any creditor to discriminate against any application,  
22 with respect to any aspect of a credit transaction—(1) on the basis of race, color, religion,  
23 national origin, sex or marital status, or age.” 28 U.S.C. § 1691(a).  
24

25 115. GREENPOINT is a creditor as set forth in the ECOA because in the ordinary  
26 course of its business, GREENPOINT participated in the decision to extend credit to Plaintiffs,  
27 the proposed Class representative herein, and all prospective Class members. 28 U.S.C.  
28 § 1691a(e). Moreover, GREENPOINT is a creditor as set forth in the ECOA because it set the

1 terms of the credit that was extended to Plaintiffs, the proposed Class representative herein, and  
2 all prospective Class members through its Discretionary Pricing Policy. 12 C.F.R. § 202.2(l)  
3 (defining “creditor” under ECOA as one who “participates in a credit decision, including setting  
4 the terms of the credit”).

5  
6 116. GREENPOINT designed, disseminated, controlled, implemented and profited  
7 from the discriminatory policy and practice alleged herein—the Discretionary Pricing Policy—  
8 which has had a disparate economic impact on minority borrowers compared to similarly  
9 situated whites.

10 117. All actions taken by the GREENPOINT loan officers and brokers were in  
11 accordance with the specific authority granted to them by GREENPOINT and were in  
12 furtherance of GREENPOINT’s policies and practices.

13  
14 118. As a result of GREENPOINT’s Discretionary Pricing Policy, GREENPOINT has  
15 collected more in finance charges from minority borrowers than from similarly situated white  
16 persons, for reasons totally unrelated to credit risk.

17 119. GREENPOINT’s Discretionary Pricing Policy violates the Equal Credit  
18 Opportunity Act.

19 120. Plaintiffs and prospective class members are aggrieved persons as defined in  
20 ECOA by virtue of having been subject to GREENPOINT’s discriminatory Discretionary  
21 Pricing Policy.  
22

23 **COUNT TWO**

24 **DISCRIMINATION IN VIOLATION OF THE FAIR HOUSING ACT**

25 **(42 U.S.C. §§ 3601 – 3619)**

26 121. Plaintiffs repeat and re-allege every allegation above as if set forth herein in full.  
27  
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1           122. The Fair Housing Act makes it unlawful to discriminate against any person in  
2 residential real estate-related transactions such as the making or purchasing of loans or providing  
3 other financial assistance. 42 U.S.C. § 3605.

4           123. GREENPOINT engaged in residential real estate-related transactions with respect  
5 to the Plaintiffs, the proposed Class representative herein, and all prospective Class members, by  
6 extending credit to Plaintiffs and all prospective Class members.

7           124. GREENPOINT’s Discretionary Pricing Policy has resulted in discrimination with  
8 respect to the Plaintiffs, the proposed Class representative herein, and all prospective members of  
9 the Class.

10           125. As a result of GREENPOINT’s Discretionary Pricing Policy, GREENPOINT has  
11 collected more in finance charges from minority borrowers than from similarly situated white  
12 persons, for reasons totally unrelated to credit risk.

13           126. GREENPOINT’s Discretionary Pricing Policy violates the Fair Housing Act and  
14 constitutes actionable discrimination on the basis of race.

15           127. Plaintiffs and the Class are aggrieved persons as defined in FHA by virtue of  
16 having been subject to GREENPOINT’s discriminatory Discretionary Pricing Policy.

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19                               **PRAYER FOR RELIEF**

20       WHEREFORE, the Plaintiffs respectfully request the following relief:

- 21           A. Certify this case as a class action and certify the named Plaintiffs herein to be  
22 adequate class representatives and their counsel to be class counsel;  
23  
24           B. Enter a judgment pursuant to 15 U.S.C. section 1691e(c) and/or 42 U.S.C. section  
25 3613 declaring the acts and practices of GREENPOINT complained of herein to  
26 be in violation of ECOA and the FHA;  
27  
28           C. Grant a permanent or final injunction, pursuant to 15 U.S.C. section 1691e(c)  
and/or 42 U.S.C. section 3613(c), enjoining GREENPOINT and GREENPOINT’s  
agents, employees, affiliates and subsidiaries from continuing to discriminate



- 1                   against Plaintiffs and the members of the Class because of their race or national
- 2                   origin through further use of the Discretionary Pricing Policy or any non-risk-
- 3                   related discretionary pricing policy employed by GREENPOINT;
- 4           D.       Order GREENPOINT pursuant to 15 U.S.C. section 1691e(c) and/or 42 U.S.C.
- 5                   section 3613(c) to adopt and enforce a policy that requires appropriate training of
- 6                   GREENPOINT's employees and its brokers to prevent discrimination;
- 7           E.       Order GREENPOINT pursuant to 15 U.S.C. section 1691e(c) and/or 42 U.S.C.
- 8                   section 3613(c) to monitor and/or audit the racial pattern of its financings to
- 9                   ensure the cessation of discriminatory effects in its home mortgage transactions;
- 10          F.       Order disgorgement pursuant to 15 U.S.C. section 1691e (c) of all
- 11                   disproportionate non-risk charges imposed on minority borrowers by
- 12                   GREENPOINT's Discretionary Pricing Policy and order the equitable distribution
- 13                   of such charges, as restitutionary relief, to all appropriate class members;
- 14          G.       Order actual and punitive damages to the Plaintiffs and the class pursuant to 42
- 15                   U.S.C. § 3613(c);
- 16          H.       Award Plaintiffs the costs of this action, including the fees and costs of experts,
- 17                   together with reasonable attorneys' fees pursuant to 15 U.S.C. section 1691e(d)
- 18                   and/or 42 U.S.C. section 3613(c); and
- 19          I.       Grant Plaintiffs and the Class such other and further relief as this Court finds
- 20                   necessary and proper.

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**JURY TRIAL DEMANDED**

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Plaintiffs demand a trial by jury on all issues so triable.

DATED this 14<sup>th</sup> day of December, 2010

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**CERTIFICATE OF SERVICE**

I, Gary Klein, hereby certify that a true copy of the foregoing document filed through the ECF system will be electronically sent to the registered participants as identified on the Notice of Electronic Filing, and paper copies will be sent to those indicated as non-registered participants on December 14, 2010.

/s/ Gary Klein  
Gary Klein