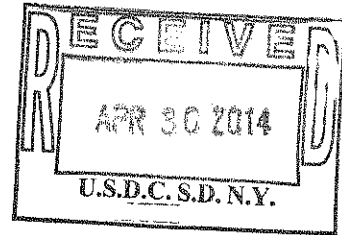


JUDGE SWEET

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK



-----X
TONY WONG,

No. 14 Civ. _____

Plaintiff,

-against-

**COMPLAINT
JURY TRIAL DEMANDED**

BARCLAYS BANK PLC,

14 CV 3044

Defendants.
-----X

Plaintiff Tony Wong, for his complaint, alleges, upon personal knowledge as to himself and upon information and belief as to other matters, as follows:

PRELIMINARY STATEMENT

1. This action seeks to vindicate the rights of a New York City homeowner, Tony Wong, who alleges that Barclays Bank PLC (“Barclays”) discriminated against him on the basis of his race.

2. Barclays ignored standard underwriting guidelines and peddled predatory subprime loans to New Yorkers who belonged to racial minorities, including Mr. Wong.

3. Between 2005 and 2008, Barclays created what it called a “vertically-integrated mortgage franchise.” Under that franchise, Barclays acted as the originator of subprime mortgages, the securitizer of those mortgages, and the servicer of the mortgages after the subprime-filled mortgage-backed security was created. Barclays was thus on all sides of the mortgage securitization transaction, profiting from each step.

4. In 2007, Barclays consummated its goal of a vertically-integrated mortgage franchise with its purchase of well-known subprime lender EquiFirst Corporation (“EquiFirst”). Barclays not only provided the crucial funding necessary for EquiFirst to continue making

subprime mortgages at a rapid clip, but it also positioned itself to adjust EquiFirst's underwriting policies in accordance with Barclays' investors' concerns. Instead of abiding by standard underwriting procedures, through these high-cost and high-risk EquiFirst mortgages, Barclays failed to examine borrowers' ability to repay their mortgage.

5. Barclays' need for subprime mortgages to feed its securitization machine ensured that it would aggressively originate these EquiFirst mortgages in minority neighborhoods and to minority homeowners in New York City. In fact, in 2007, the year at issue in this case, 66.13% of all EquiFirst mortgages issued in New York City were in census tracts with a majority minority population.

6. Plaintiff Tony Wong, an Asian-American and long-time Staten Island resident, fell prey to Barclays' vertically-integrated mortgage scheme, refinancing in 2007 with EquiFirst. Offering a stated-income loan bearing an 11.075% interest rate, a loan-to-value ratio of 97% and monthly mortgage payments of \$3,750, Barclays guaranteed that Mr. Wong would default. Although Mr. Wong was able to make payments for the first six to seven months following the transaction, eventually, because the terms of mortgage were unsustainable, the inevitable happened: Mr. Wong began missing mortgage payments, falling behind on his subprime loan.

7. As a consequence of Barclays' policies and practices, Mr. Wong has suffered a foreclosure and the loss of nearly all of the equity in his long-time family home. Barclays' loan to Mr. Wong violated the Fair Housing Act, 42 U.S.C. §§ 3601-3619, the Equal Credit Opportunity Act, 15 U.S.C. § 1691, *et seq.*, the New York State Human Rights Law, New York Executive Law Article 15, § 296-a, and the New York City Human Rights Law, New York City Administrative Code Title 8, § 8-107.

JURISDICTION AND VENUE

8. This Court has original subject matter jurisdiction over Plaintiff's Fair Housing Act and Equal Credit Opportunity Act claims pursuant to 28 U.S.C. § 1331, 42 U.S.C. § 3613(a)(1)(A), and 15 U.S.C. § 1691e(f).

9. This Court has supplemental jurisdiction over Plaintiff's New York State Human Rights Law, Executive Law Article 15, § 296-a, and New York City Human Rights Law, Administrative Code Title 8, § 8-107 claims under 28 U.S.C. § 1367 because they arise from a common nucleus of operative facts with the federal claims alleged herein and are so related to the federal claims as to form part of the same controversy under Article III of the United States Constitution.

10. Venue in this district is proper under 28 U.S.C. § 1391 because Defendant conducts business and can be found in this district, and a substantial part of the events or omissions giving rise to the claims alleged herein occurred in this district.

PARTIES

11. Plaintiff Tony Wong is a 57-year-old Asian-American homeowner who owns the home located at 123 Amity Place in the Mariners Harbor section of Staten Island, New York, 10303. Mr. Wong lives there with his son, a 28-year-old New York City police officer.

12. Defendant Barclays Bank PLC ("Barclays") is a public limited company registered in England and Wales, with its registered head office at 1 Churchill Place, London E14 5HP. Barclays maintains a New York branch at 745 Seventh Avenue, New York, New York 10019. Together with its subsidiaries, Defendant Barclays is an international financial services group engaged primarily in banking, investment banking and asset management.

BACKGROUND ON THE MORTGAGE CRISIS

13. Historically, large investment firms like Barclays were not directly involved in residential mortgage lending in the United States. That changed in the early 2000s.

14. During the relevant time period, large investment banks became more involved with individual home mortgages through the creation of residential mortgage-backed securities and the “securitization” of these residential mortgages.

15. Knowledge of this securitization process is essential to understanding Barclays’ entry into the predatory lending arena and how its policies and practices of aggressively originating subprime mortgages without regard to standard underwriting procedures had a disparate impact on minority homeowners and minority neighborhoods.

The Emergence of Mortgage Securitization and Private-Label Securitization

16. Securitization is “the pooling of loans and the issuance of securities backed by the cash flow from those loans.” Adam J. Levitin & Susan M. Wachter, *Explaining the Housing Bubble*, 100 THE GEORGETOWN LAW JOURNAL 1177, 1182 (2012).

17. Thousands of mortgages are pooled together into one entity that becomes a residential mortgage-backed security (“RMBS”). The RMBS, usually structured as a trust, is then divided into shares and those shares are sold to investors.

18. Prior to 2000, government-sponsored enterprises (“GSE”) like the Federal National Mortgage Association (“Fannie Mae”) and the Federal Home Loan Mortgage Corporation (“Freddie Mac”) issued RMBS products. But by 2000, investment banks began to get more involved in “private label” securitization, securitizing those mortgages that did not meet the generally stricter Freddie and Fannie underwriting guidelines. *Id.* at 1183.

19. By 2003, this shift from GSE mortgage securitization to private-label securitization also led to a shift in the type of mortgages being pooled into RMBS products. No longer were traditional, amortizing, fixed-rate mortgages the norm, as Fannie and Freddie had required. Instead, the private label securitizations, subject to significantly less regulation, increasingly included riskier subprime mortgage products such as interest-only mortgages, negatively amortizing mortgages and adjustable-rate mortgages, all originated without any regard to the homeowners' ability to repay. *Id.* at 1183.

The Creation of the RMBS Trust: How Mortgages Are Securitized

20. The securitization of residential mortgages is a multi-party, multi-step process involving homeowners, lenders, investment banks, and a variety of other entities created by investment banks to assist in the securitization process.

21. Origination of a mortgage loan – either because a homeowner seeks to purchase a home or to refinance – is the first step in the process.

22. During the relevant time period, many homeowners were targeted by mortgage brokers who endorsed specific mortgage products, in particular subprime loans.

23. Through the mortgage brokers, the homeowner finds a lender who originates the mortgage loan to them. The note and mortgage serve as the contract between this original lender and the individual homeowner.

24. Soon after the original lender closes on a mortgage with a homeowner, the investment bank sponsoring the securitization begins to create the mortgage-backed security where these loans will eventually be pooled and then the shares of the security sold to investors. This is the second step in the securitization process.

25. To generate this pool, the investment bank creates a “sponsor” of the mortgages, the third step in the securitization process. This sponsor, which is sometimes called a “special purpose entity” or a “special purpose vehicle,” is typically responsible for selecting the thousands of mortgages that will populate the RMBS trust. The sponsor reviews the type of loan products that will be included in the mortgage-backed security and the quality of those products.

26. After reviewing these loans, the sponsor briefly holds the mortgages and notes while the investment bank completes the creation of the RMBS. Once the sponsor has collected enough notes and mortgages to populate the security, it transfers the notes and mortgages to another entity in the RMBS creation process: the depositor. The depositor “deposits” the notes and mortgages into the RMBS. This is the fourth step in the securitization process.

27. At this point, the investment bank that created the mortgage-backed security submits to the various rating agencies the documentation necessary for the agencies to review the security and rate it. After the mortgage-backed security receives a rating, the investment bank sells shares of the security to investors, typically on Wall Street, the fifth step in the process.

28. Because most of these mortgage-backed securities are publicly traded, their prospectuses must be registered with the Securities and Exchange Commission (“SEC”).

29. One final step in the securitization process is to select the entity that will process the thousands of homeowners’ monthly mortgage payments, manage their accounts and credit those payments to the mortgage-backed security. That entity is known as the servicer because it “services” the mortgages on behalf of the mortgage-backed security. Although the servicer is the only entity with which a homeowner ordinarily interacts after the loan closing, it does not own or hold the note and mortgage. The investors, through the mortgage-backed security, hold the note and own the mortgage.

30. When an investment bank sponsors a mortgage-backed security, it typically receives fees in connection with the sale of shares in the security. It receives such fees regardless of how the security performs (*i.e.*, whether the borrowers whose loans are included in the package continue making payments on their mortgages).

31. Between 2003 and 2008, the number of mortgage-backed securities issued in the United States increased at a rapid pace. In 2008, the housing bubble popped, the American economy crashed, and private-label home mortgage lending came to a virtual halt.

The Emergence of Subprime Lending

32. From 2003 through 2008, as U.S. and international investment banks needed more mortgages to securitize, they sought to expand lending to more homeowners.

33. As the market for traditional mortgages – 20% down, fixed-rate, 30-year mortgages – became saturated, investment banks looked to subprime lenders for mortgages that could be securitized.

34. As a result of this demand and the fact that private investment banks were not subject to the same regulations as Fannie Mae and Freddie Mac, subprime mortgage lending increased at a rapid clip between 2003 and 2008.

35. Beginning in 2004, the Federal Reserve Board began to require that mortgage lenders identify their “high-cost” loans pursuant to their Home Mortgage Disclosure Act (“HMDA”) commitments.¹ Identifying certain loans as “high-cost” operates as a proxy for identifying subprime loans. A “high-cost” loan is defined as a first-lien loan with an annual percentage rate and borrowing costs that exceed by more than three (3) percentage points United

¹ Under HMDA, mortgage lenders are required to disclose certain information about each mortgage loan originated or purchased in a fiscal year.

States Treasury securities of comparable maturity, or a subordinate lien loan that exceeds the Treasury benchmark by more than five points.

36. There is no universal legal definition of a subprime mortgage loan, and for purposes of this Complaint, subprime loans are those loans that combined multiple high-risk terms with also being a high-cost loan under HMDA. Subprime loans contain two or more of the following high-risk terms: (a) the loan was issued based upon the “stated income,” rather than the verified income, of the borrower; (b) the debt-to-income ratio exceeds 55%; (c) the loan-to-value ratio is at least 90%; (d) the loan has an adjustable interest rate; (e) the loan has “interest only” payment features; (f) the loan negatively amortizes; (g) the loan has a “balloon” payment at the end of the loan; and/or (h) the loan imposes prepayment penalties.

37. Individually, these loan features make mortgage loans riskier and costlier to the borrower. When multiple such features are layered within the same loan, the riskiness and costliness of the loans increase dramatically.

38. Not all subprime loans are predatory, but nearly all predatory loans are subprime. While the definition of a subprime loan focuses on the loan itself, the definition of a predatory loan looks at the borrower and his or her ability to repay. Predatory loans place the borrower at an elevated risk of default or foreclosure and usually combine several of the risky loan features enumerated above.

39. Even controlling for such factors as income and credit history, during the subprime build-up of 2003 to 2008, minority borrowers were more likely than their white counterparts to receive these costly subprime loan products. *See, e.g.*, “Unequal Burden: Income and Racial Disparities in Subprime Lending,” U.S. Department of Housing and Urban Development (2008) available at http://www.huduser.org/Publications/pdf/unequal_full.pdf.

FACTUAL ALLEGATIONS

Barclays Enters the Subprime Mortgage Business

40. In 2005, Barclays securitized \$27.1 billion in mortgage-backed securities, placing it in the top 10 banks in that category in the United States.

41. By 2006, Barclays was executing a plan to vertically integrate its securitization business into what it called a “mortgage franchise.” To achieve that goal, it began to acquire and manage a variety of entities that would permit it to more quickly and effectively originate subprime and predatory mortgage loans and then create mortgage-backed securities to sell to investors.

Barclays Acquires an RMBS Sponsor

42. Sutton Funding LLC (“Sutton Funding”) is a Delaware limited liability company formed in December 2005.

43. During the relevant time period, Sutton Funding was a “special purpose entity” and sponsor of mortgage-backed securities. As a sponsor, Sutton Funding acted as the “middle man” in the securitization process, reviewing the mortgages from the original lender and holding them briefly before transferring them to the depositor and then to the mortgage-backed trust.

44. Between 2005 and at least 2007, Barclays frequently used Sutton Funding as a sponsor of its mortgage-backed securities.

45. One such mortgage-backed security for which Sutton Funding was Barclays’ sponsor was the June 2007 “EquiFirst Loan Securitization Trust 2007-1” (“the EquiFirst Trust”), for which a prospectus was filed with the SEC (“the EquiFirst Trust Prospectus”).

46. Every year between 2007 and 2010, Defendant Barclays Bank listed Sutton Funding as one of its subsidiaries in Exhibit 8.1 of its Form 20-F required to be filed with the SEC.

47. The EquiFirst Trust Prospectus identifies Barclays as the “administrator” of Sutton Funding. In that capacity, Barclays “manage[d] Sutton’s mortgage loan acquisition business.”

48. According to the EquiFirst Trust Prospectus, as administrator for Sutton and “[p]rior to acquiring any residential mortgage loans, Barclays . . . conduct[ed] a review of the related mortgage loan seller that [wa]s based upon the credit quality of the selling institution.”

49. As administrator, Barclays performed the work that Sutton Funding, as sponsor, was legally tasked to perform – the review and purchase of loans for inclusion into the mortgage-backed security.

50. By 2007, Barclays exercised complete domination and control of Sutton Funding and was, upon information and belief, Sutton Funding’s alter ego.

51. As a result of its domination and control of Sutton Funding, Barclays was able to more efficiently create mortgage-backed securities and thus increase its profits.

To Add to its Profits, Barclays Acquires HomEq Servicing

52. In building its “vertically-integrated mortgage franchise,” Barclays also purchased Wachovia Corporation’s (“Wachovia”) subprime residential mortgage servicing business, including its subsidiary HomEq Servicing (together “HomEq”) in November 2006 for \$469 million.

53. Prior to its purchase of Wachovia’s subprime servicing business, Barclays had no direct ownership of a residential mortgage servicer.

54. After Barclays purchased subprime servicer HomEq, the subprime servicing business was run by Barclays Capital Real Estate Inc. d/b/a HomEq Servicing (“Barclays Capital Real Estate”), a wholly owned subsidiary of Defendant Barclays Bank.

55. The additional income earned by Barclays Capital Real Estate d/b/a HomEq Servicing allowed Barclays to further profit from the issuance and securitization of subprime loans by other Barclays-related entities.

56. Every year between 2007 and 2010, Defendant Barclays Bank listed Barclays Capital Real Estate d/b/a HomEq Servicing as one of its subsidiaries in Exhibit 8.1 of its Form 20-F required to be filed with the SEC.

Barclay’s Vertical Integration is Completed with the Purchase of the Subprime Lender EquiFirst Corporation

57. EquiFirst Corporation (“EquiFirst”) was founded in Charlotte, North Carolina in 1990 as a mortgage lending company.

58. By 1997 it was listed as a subprime lender on the U.S. Department of Housing and Urban Development (“HUD”) list of subprime lenders.

59. EquiFirst remained on HUD’s subprime lender list every year through 2005, when HUD stopped compiling its list.

60. Regions Financial Corporation acquired EquiFirst in 1998 to serve as its subprime lending arm. While Regions Financial Corporation continued to make traditional – fixed rate, 30-year – mortgages, EquiFirst dealt exclusively in subprime products.

61. By 2007, EquiFirst was ranked as the United States’ 12th largest subprime lender.

62. In January 2007, Barclays entered into an agreement to purchase EquiFirst, a deal it completed a few months later in April 2007.

63. Barclays was also EquiFirst's principal financier during the relevant time period providing EquiFirst with warehouse lines of credit.

64. As EquiFirst's parent company and warehouse lender, Barclays was in the unique position to direct EquiFirst to increase the number of subprime and "Alt-A" (near-prime) mortgage loans it originated by encouraging EquiFirst to expand further into that market and directing EquiFirst's underwriting procedures.

65. Barclays' practices allowed EquiFirst to ignore standard underwriting procedures such as examining the borrower's ability to repay the loan.

66. Instead, Barclays' policies and practices allowed EquiFirst to provide subprime and Alt-A mortgage products based upon the stated income on the mortgage application.

67. Barclays required little to no documentation to verify that stated income.

68. Barclays advertised this role as an intermediary between EquiFirst and the investors of Barclays' mortgage-backed securities as a selling point to investors who might purchase the mortgage-backed securities.

69. In addition to serving as EquiFirst's parent company and warehouse lender, Barclays also exercised complete domination and control of EquiFirst, and, as a result, was EquiFirst's alter ego.

70. Barclays' policies of directing EquiFirst's subprime lending resulted in riskier, high-cost loans being made disproportionately to borrowers of color and disproportionately to homeowners residing in predominantly minority neighborhoods in New York City.

Barclays Discriminatory Subprime Mortgage Loans, Although Facially Neutral, Had a Foreseeable Disparate Impact

71. Barclays' facially neutral policies, which directed EquiFirst to issue subprime loans without regard to standard underwriting procedures or a homeowner's ability to repay, had

a discriminatory impact on minority borrowers where minority borrowers received subprime loans that put them at greater risk of default than they otherwise would have and should have been.

72. The discriminatory impact of Barclays policies and practices was foreseeable as it took advantage of the redlining of credit in communities of color.

73. Prior to the 1990s, a major problem in mortgage lending was what was known as “redlining,” a practice based on the federal government’s 1930s-era risk assessment maps where predominantly non-white neighborhoods were outlined in red (white, desirable neighborhoods were marked in blue) to demonstrate the alleged riskiness of lending in those neighborhoods. As a result, loans were almost never made in those neighborhoods that had been “redlined.”

74. With the emergence of the subprime mortgage lending industry in the late 1990s and the fact that redlined neighborhoods were devoid of responsible lending products, subprime mortgage companies specifically peddled their products in minority neighborhoods. This phenomenon became known as “reverse redlining.”

75. Barclays’ policies and practices fed off of this reverse redlining.

76. Without access to responsible lending products, minority homeowners and neighborhoods were susceptible to subprime mortgages. That susceptibility increased when a program such as Barclays’ – where ability to repay the mortgage was not considered – was followed.

77. Barclays’ policies resulted in EquiFirst aggressively originating subprime mortgages, the only mortgages EquiFirst provided, disproportionately to minority neighborhoods resulting in a disproportionate harm to minority borrowers.

78. In 2007, the year EquiFirst originated Mr. Wong's subprime, predatory mortgage, EquiFirst's subprime lending had a disparate impact upon minority neighborhoods in New York City area.

79. Almost half of Barclays' EquiFirst lending was in hyper-segregated communities (where the minority population is 80% or greater).

80. Based on EquiFirst's HMDA data for 2007, in the New York City Metropolitan Statistical Area ("New York City MSA"),² EquiFirst originated 620 new residential mortgage loans³; of these, 410 were originated in areas with 50% or greater minority population and 299 were originated in areas with 80% or greater minority population. Thus, 66.13% of new loans originated by EquiFirst in New York City MSA in 2007 were created in neighborhoods with a majority of minority residents, and 48.23% were created in neighborhoods with 80% or greater minority population.

81. In contrast to EquiFirst's 48.23%, during the same time period – 2007 – the total percentage of all residential mortgage lending⁴ made in hyper-segregated neighborhoods in the New York City MSA was only 25.73%. Similarly, for majority-minority neighborhoods (50% or more minority population), the total percentage of lending was only 41.54% (in contrast to Barclays' 66.13%).

² What this Complaint refers to as the New York City MSA is the area that the Office of Management and Budget refers to as the "New York – White Plains – Wayne, NY – NJ Metropolitan Statistical Area." This area includes all five boroughs of New York City as well as Westchester, Rockland and Orange counties in New York. In addition, it also includes the following counties in New Jersey: Bergen, Hudson, Middlesex, Monmouth and Ocean.

³ Residential mortgage loans are loans on one-to-four family homes.

⁴ "All residential mortgage lending" includes the following HMDA categories: (1) conventional home purchase loans on a one-to-four family dwelling; (2) refinancing on a one-to-four family dwelling; and (3) home improvement loans (a.k.a. second mortgages) on a one-to-four family dwelling. Because EquiFirst did not originate any FHA, VA or FSA/RHS loans in the New York City MSA, this loan category was excluded.

Plaintiff Tony Wong Falls Prey to Barclay's Predatory Lending

82. Plaintiff Tony Wong, an Asian-American, has lived at 123 Amity Place in the Mariners Harbor section of Staten Island since 1993 when he purchased the home. He raised his two sons in this home, and he wants to continue to reside in it.

83. According to federal census tract data, Mr. Wong's home is located in an area that is currently 69% minority. In 2007, the neighborhood was 56.28% minority.

84. In 2007, due to increasing debt related to a divorce and the faltering economy, Mr. Wong looked to refinance his mortgage. To find a mortgage, he worked with a mortgage broker from Custom Capital who steered him to apply for a mortgage with EquiFirst.

85. The mortgage EquiFirst offered to Mr. Wong was a subprime loan as it contained the following features: (1) a high-interest rate; (2) it was a stated income loan; (3) it was more than 90% of loan-to-value; and (4) it resulted in a debt-to-income ratio greater than 55%.

86. In originating this loan, EquiFirst did not follow standard underwriting procedures and did not examine whether Mr. Wong would be able to repay the mortgage.

87. Mr. Wong was unaware that EquiFirst had provided him with a predatory mortgage loan.

88. On November 8, 2007, Mr. Wong closed on the EquiFirst mortgage, which was in the amount of \$361,250. The interest rate of the mortgage was 11.075% with monthly payments of approximately \$3,750 (inclusive of principal, interest, taxes and insurance).

89. In 2007, the market interest rate for a 30-year, fixed-rate residential mortgage was approximately 6.5%.

90. The precise terms of the EquiFirst mortgage were not revealed to Mr. Wong until he attended the closing.

91. The term of the mortgage was 30 years, thus requiring continued payments every month through November 2037.

92. At the time of the EquiFirst loan closing, the market value of Mr. Wong's property was approximately \$372,100, reflecting a loan-to-value ratio of 97%.

93. According to Mr. Wong's U.S. Department of Housing and Urban Development ("HUD") Settlement Statement, EquiFirst paid a yield spread premium or broker's fee of \$2,709.38 directly to the mortgage broker, Custom Capital. A fee of \$3,610.00 was also paid to Custom Capital as an additional broker's fee.

94. The EquiFirst loan required Mr. Wong to pay for seven months of homeowner's insurance. The cost of this insurance policy was financed through the EquiFirst loan and was therefore subject to financing costs.

95. Given Mr. Wong's income, this mortgage was not affordable to him.

96. For the first six to seven months, Mr. Wong, using his savings, was able to make payments on his EquiFirst mortgage.

97. Mr. Wong made these payments to HomEq.

98. In or around August 2008, Mr. Wong received a summons and complaint for a foreclosure action in Richmond County Supreme Court. The plaintiff was Sutton Funding, Barclays' subsidiary, and it was seeking to foreclose on the EquiFirst mortgage. Mr. Wong filed an answer in that action.

99. After filing his answer, between 2008 and September 2013, no other papers were filed in the Sutton Funding foreclosure action.

100. Mr. Wong assumed that Sutton Funding withdrew its foreclosure case against him.

101. In or around May 2009, Mr. Wong was sued in a second foreclosure action in Richmond Supreme Court by an entity known as Selene Financial LP (“Selene Finance”) on the same EquiFirst mortgage that Sutton Funding was seeking to foreclosure.

102. Between 2009 and August 2012, Mr. Wong vigorously attempted to represent himself *pro se* in the Selene Finance foreclosure case, appearing in court multiple times, filing opposition to the foreclosure, and applying numerous times for an affordable mortgage modification.

103. The same law firm, Rosicki, Rosicki & Associates P.C., was the counsel of record for the plaintiffs in each of the two foreclosure cases.

104. In August 2012, Mr. Wong retained MFY Legal Services, Inc. (“MFY”) to represent him in the Selene Finance case. It was a result of MFY’s investigation of his case and explanations that Mr. Wong first became aware that (1) Barclays was behind his EquiFirst mortgage, (2) Barclays was in control of Sutton Funding, and (3) that Barclays’ policies and practices of encouraging EquiFirst to originate subprime loans without regard to standard underwriting procedures or the ability to repay caused a disparate impact on him and other minority borrowers in the New York City MSA, in violation of federal, state and local law.

105. While the Sutton Funding foreclosure case was finally discontinued in December 2013 after MFY appeared in that matter, the Selene Finance foreclosure case is still pending against Mr. Wong.

106. With its 11.075% interest rate, Mr. Wong currently owes \$663,783.98 on the EquiFirst mortgage.

107. Mr. Wong’s home is currently valued at \$345,000.

FIRST CAUSE OF ACTION

**DISPARATE IMPACT IN VIOLATION OF
THE FAIR HOUSING ACT, 42 U.S.C. §§ 3601-3619**

108. Mr. Wong restates, realleges and incorporates by reference all foregoing paragraphs.

109. Mr. Wong is a member of a protected class on the basis of race, color and national origin because he is Asian-American.

110. Under the Fair Housing Act, it is unlawful “for any person or other entity whose business includes engaging in residential real estate-related transactions to discriminate against any person in making available such a transaction, or in the terms or conditions of such transaction, because of race. . . .” 42 U.S.C. § 3605(a). A residential real estate transaction is defined to include, inter alia, the “purchasing of loans...secured by residential real estate.” *Id.* at § 3605(b)(1); *see also* 24 C.F.R. § 100.125 (2010).

111. At all relevant times, Barclays was, and continues to be, an entity “engaging in residential real estate-related transactions” under 42 U.S.C. § 3605.

112. A covered entity violates 42 U.S.C. § 3605 when its policies or practices have an adverse disparate impact on members of a protected class.

113. Barclays’ policies and practices alleged herein (namely, its policy of pushing EquiFirst to originate subprime loans without regard to standard underwriting guidelines and without regard to a borrower’s ability to repay) had, and continues to have, a disparate impact on minority borrowers in the New York City MSA, including Mr. Wong.

114. Barclays, through EquiFirst, discriminated against Mr. Wong by engaging in a pattern of unfair and predatory lending and securitization practices that resulted in a disparate impact to his detriment.

115. As a result of Barclays' discriminatory policies and practices, a disproportionate number of subprime loans were originated in communities of color.

116. Barclays' policies and practices cannot be justified by business necessity or legitimate business interest, as evidenced by, among other things, their failure to observe standard underwriting policies and procedures. There were less discriminatory alternatives available to Barclays than these policies.

117. Barclays' policies and practices alleged herein constitute discrimination "against any person in making available [real estate-related transactions], or in the terms or conditions of such transaction, because of race" in violation of 42 U.S.C. § 3605.

118. Mr. Wong was harmed by, and continues to be harmed by, Barclays' discriminatory policies and practices alleged herein, in that, *inter alia*, he has been subjected to excessive fees and costs and default or foreclosure or excessive risk of default, delinquency, and foreclosure of his home.

119. Barclays been unjustly enriched as a result of its discriminatory policies and practices alleged herein, including, but not limited to, through its receipt of fees in connection with the securitization of loans and the sale of the corresponding securities.

120. Barclays' discriminatory policies and practices alleged herein represent continuing violations of the Fair Housing Act because, *inter alia*, (a) Mr. Wong continues to receive demands for payment under the terms of his subprime loan and remains subject to excessive costs and penalties associated with his subprime loan; and (b) Mr. Wong has been, and continues to be, subject to foreclosure proceedings.

121. Mr. Wong is therefore entitled to compensatory damages, injunctive or other equitable relief, and a reasonable attorney's fee, including litigation expenses and costs. 42 U.S.C. § 3605; 24 C.F.R. § 100.125.

SECOND CAUSE OF ACTION

DISPARATE IMPACT IN VIOLATION OF THE EQUAL CREDIT OPPORTUNITY ACT, 15 U.S.C. § 1691, *et seq.*

122. Mr. Wong restates, realleges and incorporates by reference all foregoing paragraphs.

123. Mr. Wong is a member of a protected class on the basis of race, color and national origin because he is Asian-American.

124. Under the Equal Credit Opportunity Act ("ECOA") it is unlawful for "any creditor to discriminate against any applicant, with respect to any aspect of a credit transaction. . . on the basis of race." 15 U.S.C. § 1691(a).

125. ECOA defines the term "creditor" to mean, *inter alia*, "any person who regularly extends, renews, or continues credit" or "any assignee of an original creditor who participates in the decision to extend, renew, or continue credit." *Id.* at § 1691a(e).

126. ECOA's prohibition against discrimination applies to original lenders as well as securitizers of residential mortgage loans.

127. At all relevant times, Barclays is or was a creditor within the meaning of the ECOA, 15 U.S.C. § 1691a(e).

128. A creditor violates 15 U.S.C. § 1691 when its policies and practices have an adverse disparate impact on members of a racial group.

129. Barclays' policies and practices alleged herein had, and continue to have, an adverse disparate impact on minority borrowers, including Mr. Wong.

130. Barclays engaged in a discriminatory lending scheme that disproportionately harmed minority communities and borrowers. As a result of Barclays' discriminatory policies and practices, minority borrowers were more likely to receive and be adversely affected by unfavorable subprime loans, in violation of 15 U.S.C. § 1691.

131. Barclays' policies and practices cannot be justified by business necessity or legitimate business interest, as evidenced by, among other things, the failure to adhere to standard underwriting policies and procedures. There were less discriminatory alternatives available to Barclays than these policies.

132. Barclays' policies and practices alleged herein constitute discrimination "against any applicant, with respect to any aspect of a credit transaction. . . . on the basis of race" in violation of 15 U.S.C. § 1691.

133. Mr. Wong was harmed by, and continues to be harmed by, Barclays' discriminatory policies and practices alleged herein, in that, *inter alia*, he has been subjected to excessive fees and costs and default or foreclosure or excessive risk of default, delinquency, and foreclosure of his home.

134. Barclays has been unjustly enriched as a result of its discriminatory policies and practices alleged herein, including, but not limited to, through their receipt of fees in connection with the securitization of loans and the sale of the corresponding securities.

135. Barclays' discriminatory policies and practices alleged herein represent continuing violations of the ECOA because, *inter alia*, (a) Mr. Wong continues to receive demands for payment under the terms of his subprime loan and remains subject to excessive costs and penalties associated with his subprime loan; and (b) Mr. Wong has been, and continues to be, subject to foreclosure proceedings.

136. Mr. Wong is therefore entitled to compensatory damages, injunctive or other equitable relief, and a reasonable attorney's fee, including litigation expenses and costs. 15 U.S.C. § 1691.

THIRD CAUSE OF ACTION

**DISPARATE IMPACT IN VIOLATION OF
EXECUTIVE LAW ARTICLE 15, § 296-a
(NEW YORK STATE HUMAN RIGHTS LAW)**

137. Mr. Wong restates, realleges and incorporates by reference all foregoing paragraphs.

138. Barclays had a housing-related policy that resulted in a disparate impact to the detriment of non-white homeowners and potential homeowners in communities of color in the New York City area. This housing-related policy constituted discrimination on the basis of race, color and national origin.

139. As a proximate result of such discriminatory actions, Mr. Wong has suffered economic loss, mental anguish, deprivation of civil rights, and the prospective loss of his home.

140. Mr. Wong is therefore entitled to compensatory damages, injunctive or other equitable relief, and a reasonable attorney's fee, including litigation expenses and costs. N.Y. Exec. Law § 296-a.

FOURTH CAUSE OF ACTION

**DISPARATE IMPACT VIOLATION OF
NEW YORK CITY ADMINISTRATIVE CODE TITLE 8, § 8-107
(NEW YORK CITY HUMAN RIGHTS LAW)**

141. Mr. Wong restates, realleges and incorporates by reference all foregoing paragraphs.

142. Barclays engaged in a housing-related policy that resulted in a disparate impact to the detriment of non-white homeowners and potential homeowners in communities of color in the New York City area. This housing-related policy constituted discrimination on the basis of race, color and national origin.

143. As a proximate result of such discriminatory actions, Mr. Wong has suffered economic loss, mental anguish, deprivation of civil rights, and the prospective loss of his home.

144. Barclays' actions were intentional, wanton, malicious and done in reckless disregard of Mr. Wong's civil rights.

145. Mr. Wong is therefore entitled to compensatory damages, injunctive or other equitable relief, and a reasonable attorney's fee, including litigation expenses and costs. NYC Admin. Code § 8-107.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests the following relief:

- i. Declare that Defendant Barclays' discriminatory practices violated the Fair Housing Act, 42 U.S.C. §§ 3601-3619, the Equal Credit Opportunity Act, 15 U.S.C. § 1691, *et seq.*, the New York State Human Rights Law, New York Executive Law Article 15, § 296-a, and the New York City Human Rights Law, New York City Administrative Code Title 8, § 8-107;
- ii. Enter judgment against Barclays and in favor of Plaintiff Tony Wong on the Causes of Action in this Complaint, for injunctive relief and declaratory relief, and for equitable monetary relief in the nature of disgorgement, in amounts to be determined at trial;

- iii. Enjoin Barclays, its agents, employees, and successors, and all other persons in active concert or participation with them, from
 - a. Discriminating on the basis of race, color, or 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, color, or national origin in the terms, conditions, or privileges of sale of a dwelling;
 - c. Discriminating on the basis of race, color, or national origin against any person with respect to any aspect of a credit transaction; and
 - d. Failing or refusing to take such affirmative steps as may be necessary to restore, as nearly as practicable, Defendant to the position he would have been in but for the discriminatory conduct.
- iv. Award Plaintiff compensatory damages and interest thereon in the amount to be determined at trial;
- v. Award Plaintiff punitive damages in the amount to be determined at trial;
- vi. Award Plaintiff reasonable costs and litigation expenses of this action as set forth above;
- vii. Award Plaintiff reasonable attorney's fees; and
- viii. Award such other further relief as the Court deems just and proper.

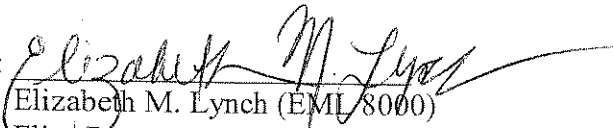
JURY TRIAL DEMANDED

Plaintiff requests a jury on all claims so triable.

Dated: April 30, 2014
New York, New York

Respectfully Submitted,

MFY LEGAL SERVICES, INC.

By: 
Elizabeth M. Lynch (EML 8000)
Elise Brown (AEB 9587), of counsel to
Jeanette Zelhof, Esq.
299 Broadway, 4th Floor
New York, NY 10007
Tel: (212) 417-3700