UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA Plaintiff, v. SAGE BANK Defendant.	)	Case No. 1:15-cv-13969 **COMPLAINT**

1. The United States brings this action against Sage Bank ("the Bank") for discriminating against hundreds of African-American and Hispanic borrowers in its residential mortgage lending. This 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 Sage Bank engaged in from 2011 until at least 2014.

2. From January 2011 through May 2014, Sage Bank originated mortgage loans to approximately 550 African-American and Hispanic borrowers that generated greater revenue for the Bank, on average, than did its mortgage loans to non-Hispanic white ("white") borrowers. The higher revenue earned on these loans by the Bank, and the commensurate higher prices for these loans charged to individual borrowers, were not based on the borrowers' creditworthiness or other objective criteria related to borrower risk or loan characteristics, but rather on borrowers' race or national origin.

3. From 2011 until at least 2014, Sage Bank employed a target pricing policy to price mortgage loans it originated and subsequently sold to investors on the secondary market. Pursuant to this policy, the Bank assigned each loan officer a Minimum Base Price ("MBP") that

he/she was expected to receive on each loan he/she originated, regardless of objective factors of a borrower's creditworthiness. Additionally, Sage Bank's policy allowed loan officers subjective and unguided discretion to price loans above their MBP, and again, above any price dictated by a borrower's creditworthiness, without managerial approval.

4. African-American and Hispanic borrowers were served disproportionately by loan officers with higher MBPs than the loan officers serving white borrowers. Additionally, loan officers marked up loans to African-American and Hispanic borrowers to a greater extent above their MBPs than they marked up loans to white borrowers. Combined, Sage Banks' policies and practices resulted in African-American and Hispanic borrowers paying more for Sage Bank loans than white borrowers paid on the basis of race and national origin. For example, an African-American customer borrowing $234,770, the average loan amount for African-American borrowers, would have paid $2,452 more than a white borrower would have paid for a loan of that size. A Hispanic customer borrowing $235,591, the average loan amount for Hispanic borrowers, would have paid $1,438 more than a white borrower would have paid for a loan of that size.

5. Sage Bank's pricing of loans on a discriminatory basis caused African-American and Hispanic borrowers significant economic and other harms. The United States brings this lawsuit to hold Sage Bank accountable for its violations of federal law and to remedy the substantial and widespread harmful consequences of its discriminatory lending policies and practices.

JURISDICTION AND VENUE

6. This Court has jurisdiction over this action under 28 U.S.C. § 1331, 28 U.S.C. § 1345, 42 U.S.C. § 3614, and 15 U.S.C. § 1691e(h).

7. Venue is proper in this District under 28 U.S.C. §§ 1391(b) and (c) because Sage Bank conducts business in this District and its principal place of business is located in this District.

PARTIES

8. The United States brings this action to enforce the FHA and ECOA. The Attorney General is authorized to initiate a civil action in federal district court whenever she has reasonable cause to believe that a pattern or practice of discrimination in violation of the FHA has occurred or that any group of persons has been denied rights granted by the FHA and such denial raises an issue of general public importance. 42 U.S.C. § 3614(a). The Attorney General is authorized to initiate a civil action in Federal district court whenever she has reasonable cause to believe that a pattern or practice of discrimination in violation of the ECOA has occurred. 15 U.S.C. § 1691e(h).

9. Sage Bank, formerly known as Lowell Cooperative Bank, is a retail mortgage lender that originates residential mortgage loans. Sage Bank is headquartered at 18 Hurd Street, Lowell, Massachusetts 01852. During the relevant time period, Sage Bank has handled residential loan originations in over 30 branch locations in Massachusetts, Maine, Connecticut, Rhode Island, New Hampshire, and New Jersey and originated over 8,000 mortgage loans through approximately 200 loan officers. Sage Bank is subject to the enforcement authority of the United States, as well as the Federal Deposit Insurance Corporation ("FDIC").

10. Sage Bank is subject to federal laws governing fair lending, including the FHA and ECOA and their respective implementing regulations, 24 C.F.R. pt. 100 (FHA) and 12 C.F.R. pt. 1002 (ECOA). The FHA and ECOA prohibit creditors from discriminating on the basis of, *inter alia*, race or national origin in their residential mortgage lending practices. Pricing

residential mortgage loans higher for African-American and Hispanic borrowers on the basis of race or national origin is one of the discriminatory practices prohibited by the FHA and ECOA.

11. Sage Bank is a "creditor" within the meaning of ECOA, 15 U.S.C. § 1691a(e), and is engaged in "residential real estate-related transactions" within the meaning of the FHA, 42 U.S.C. § 3605.

12. The FDIC conducted a consumer compliance examination of Sage Bank in May 2013 and determined that there was reason to believe that the Bank engaged in a pattern or practice violation of the FHA and Regulation B, 12 C.F.R. pt. 1002, which implements ECOA. The FDIC referred the matter to the Department of Justice pursuant to 15 U.S.C. § 1691e(g) on February 7, 2014.

FACTUAL ALLEGATIONS

A. Sage Bank's Pricing Policies

13. In or about April 2011, Sage Bank adopted its Minimum Base Price system to price residential mortgage loans sold on the secondary market to investors. Pursuant to this system, each loan officer is assigned an MBP, specified in his/her employment contract. The MBP is a net revenue target that the loan officer is expected to achieve on each loan he/she originates through a combination of interest rates and fees. From April 2011 through December 2013, Sage assigned loan officers MBPs that ranged from 100.8 to 104.3, where 100 represents an expected investor price (i.e., the price the Bank expects to earn upon sale of the loan on the secondary market) equal to the loan amount. For example, a loan officer with an MBP of 101 would be expected to price a loan at an amount equal to 101% of the loan amount – in other words, 1% (equivalent to 100 basis points) above the loan amount. That 1% is the revenue earned by the Bank on the loan.

14. The investor price is based on the objective credit characteristics of the borrower and on loan characteristics and is therefore already a risk-adjusted, borrower-specific price. Because all MBPs were set above that investor price, a loan priced at or above the MBP would be priced above the amount dictated by objective risk factors.

15. Sage Bank set loan officers' MBPs as part of the hiring and employment negotiation process and reassessed loan officers' MBPs periodically. The Bank used the average price paid to loan officers in the past year as a factor in setting loan officers' MBPs upon hiring. Sage Bank's policy of assigning loan officers different MBPs created the risk that borrowers would receive differently priced loans for reasons unrelated to their objective credit factors.

16. From April 2011 through December 2013, Sage Bank allowed loan officers subjective discretion to price loans higher than their MBPs for reasons unrelated to objective credit factors. Sage Bank did not require loan officers to obtain management authorization to price a loan above their assigned MBP, although authorization was required to price below MBP. Sage Bank did not require its loan officers to document or provide reasons for pricing loans higher than their MBPs. Sage Bank ratified loan officers' decisions to price above their MBPs with each loan application that the Bank approved. Sage Bank's policy of allowing loan officers subjective discretion to price loans higher than their MBPs resulted in loan prices that were higher than what the objective credit characteristics of the borrowers dictated. As a result, Sage Bank's policy exacerbated the risk that similarly qualified borrowers would receive differently priced loans.

B. Sage Bank Priced Loans to African-American and Hispanic Borrowers Higher than it Priced Loans to Similarly Qualified White Borrowers

17. From January 3, 2011 through May 19, 2014 ("relevant time period"), Sage Bank originated over 8,000 loans, over 7,800 of which were sold to investors on the secondary market.

18. During the relevant time period, Sage Bank's loans to African-American borrowers produced 104.44 basis points more in revenue to the Bank than did loans to white borrowers. Loans to Hispanic borrowers produced 61.05 basis points more in revenue to the Bank than did loans to white borrowers. These disparities in revenue mean that Sage Bank earned $2,452 more in revenue from an African-American customer borrowing $234,770 (the average home loan amount that Sage Bank originated to African-American borrowers during this period) than it would have from a white customer borrowing the same amount. Similarly, Sage Bank earned $1,438 more in revenue from a Hispanic customer borrowing $235,591 (the average home loan amount that Sage Bank originated to Hispanic borrowers during this period) than it would have from a white customer borrowing the same amount. Therefore, African-American and Hispanic borrowers paid $2,452 and $1,438 more for their loans, respectively, than did white borrowers, not based on their creditworthiness or other objective criteria related to borrower risk, but because of their race and/or national origin. These disparities are statistically significant, meaning here that the probability that these disparities could have occurred by chance is less than 5%.

19. One contributor to the disparities described in Paragraph 18 above is that from 2011 through 2014, African-American and Hispanic borrowers were served disproportionately by Sage loan officers with higher MBPs, on average, than were white borrowers. On average, African-American borrowers were served by a loan officer whose MBP was 18 basis points higher than the average MBP of a loan officer serving white borrowers. On average, Hispanic borrowers were served by a loan officer whose MBP was 36 basis points higher than the average MBP of a loan officer serving white borrowers.

20. Another contributor to the disparities in Paragraph 18 above is that from 2011 through 2014, Sage Bank's loan officers priced loans to African-American and Hispanic borrowers that exceeded their MBPs to a greater extent than loans priced to white borrowers. Loans to African-American borrowers produced, on average, 85 basis points more in revenue above the amount required to meet loan officers' MBPs than did loans to white borrowers. Loans to Hispanic borrowers produced, on average, 25 basis points more in revenue above the amount required to meet loan officers' MBPs than did loans to white borrowers. Therefore, the average African-American customer borrowing $234,770 was charged approximately $1,995 more than was required for the loan officer to meet his/her assigned MBP than a white customer borrowing the same amount would have been charged. The average Hispanic customer borrowing $235,591 was charged approximately $593 more than was required for the loan officer to meet his/her assigned MBP than a white customer borrowing the same amount would have been charged.

21. The higher prices Sage Bank charged to African-American and Hispanic borrowers as compared to white borrowers cannot be fully explained by factors unrelated to race or national origin. Even when controlling for the type of loan a borrower received, i.e., conventional or Federal Housing Administration loans ("FHA loans"), pricing disparities remain significant -- conventional loans to African-American borrowers produced 62 basis points more in revenue to the Bank than did conventional loans to white borrowers; conventional loans to Hispanic borrowers produced 22 basis points more in revenue to the Bank than did conventional loans to white borrowers; FHA loans to African-American borrowers produced 63 basis points more in revenue to the Bank than did FHA loans to white borrowers; and FHA loans to Hispanic

borrowers produced 33 basis points more in revenue to the Bank than did FHA loans to white borrowers.

22. For each loan originated by Sage Bank, information about each borrower's race and national origin and the amounts and types of fees and the interest rate charged was available to and was known, or reasonably should have been known, by Sage Bank prior to its approval of the funding of each loan. Sage Bank 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 residential loan borrower, pursuant to the Home Mortgage Disclosure Act ("HMDA"), 12 U.S.C. § 2803.

23. Sage Bank failed to adequately monitor for or remedy the effects of racial and national origin disparities in pricing.

24. The policies and practices described above were not justified by the necessity to achieve one or more substantial, legitimate, nondiscriminatory business interests under the FHA or its regulations, 24 C.F.R. §100.5, or a legitimate business need under the ECOA or Regulation B of the ECOA, 12 C.F.R. pt. 1002.

C. Seven Loan Officers with High MBPs Disproportionately Served African-American and Hispanic Borrowers

25. Of the 143 Sage Bank loan officers who handled at least ten loan applications during the relevant time period, seven loan officers served a loan applicant population that was over 75% African American or Hispanic and less than 20% white. In contrast, only 13.1% of all Sage Bank's loan applicants during the relevant time period were African-American or Hispanic while 83.1% were white. These seven loan officers handled nearly 30% of all of Sage Bank's African-American and Hispanic applicants.

26. All seven of the loan officers described in Paragraph 25, above, also had MBPs at or above the median MBP of all Sage loan officers. All seven of these loan officers also had MBPs above the average MBP of loan officers whose applicant population was predominantly (over 75%) white.

27. The seven loan officers described in Paragraphs 25 and 26, above, include two loan officers who had the highest MBPs of any loan officers. Since 2012, their MBPs were 103.9 and 104.3, respectively, nearly 90 basis points and 130 basis points higher than the next highest MBP consistently used by a loan officer. Over the entire relevant time period, the odds of an African-American or Hispanic applicant using these two loan officers were 56.4 and 84 times greater, respectively, than the odds of a non-African-American or non-Hispanic applicant using these loan officers.

28. The high MBPs of these seven loan officers were not justified by individual characteristics of the disproportionately minority borrowers whom they were serving.

29. Sage Bank knew or should have known that these seven high-MBP loan officers were disproportionately serving African-American and Hispanic applicants and the Bank effectively ratified the foreseeable disparate impact created by its pricing policy.

D. Sage Bank Amended its Pricing Policies Following an FDIC Investigation, But Did Not Eliminate Disparities Based on Race and National Origin

30. The FDIC notified Sage Bank of the findings of its consumer compliance examination on November 15, 2013.

31. In December 2013, Sage Bank standardized loan officers' MBPs to one of seven MBPs ranging from 101.625 to 103.125. In February 2014, Sage Bank further eliminated the two highest MBPs.

32. Also in December 2013, Sage Bank capped loan officers' discretion to price loans above their MBP at 37.5 basis points above MBP except in limited circumstances.

33. With respect to the approximately 150 loans originated from the December 2013 policy change through May 19, 2014, while the disparity in revenue generated by loans to Hispanic borrowers as compared to white borrowers was not statistically significant, the disparity in revenue generated by loans to African-American as compared to white borrowers continued to be statistically significant. Therefore, despite changes made in December 2013, Sage Bank's policies and practices continued to lead to pricing disparities, at least with respect to African-American borrowers, through at least May 2014.

FAIR HOUSING ACT AND EQUAL CREDIT OPPORTUNITY ACT VIOLATIONS

34. Sage Bank's residential lending-related policies and practices, as alleged herein, constitute:

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

(b) discrimination on the basis of race or national origin in the terms, conditions, or privileges of the sale of a dwelling or in the provision of services in connection therewith, in violation of the Fair Housing Act, 42 U.S.C. § 3604(b); and

(c) discrimination against applicants with respect to credit transactions on the basis of race or national origin in violation of the Equal Credit Opportunity Act, 15 U.S.C. § 1691(a)(1).

35. Sage Bank's policies and practices, as alleged herein, constitute:

(a) a pattern or practice of resistance to the full enjoyment of rights secured by the Fair Housing Act, 42 U.S.C. §§ 3601-3619, and the Equal Credit Opportunity Act, 15 U.S.C. §§ 1691-1691f; and

(b) a denial of rights granted by the Fair Housing Act to a group of persons – both African Americans and Hispanics – that raises an issue of general public importance.

36. As alleged herein, hundreds of Sage Bank's African-American and Hispanic applicants and borrowers overpaid for loans, or had a higher risk of doing so, as a result of the Bank's pattern or practice of discrimination and denial of rights under the FHA and ECOA. In addition to higher direct economic costs, some of the victims of discrimination suffered additional consequential economic damages resulting from having an excessively costly loan, including an increased risk of credit problems, and other damages, including direct and indirect harm. They are aggrieved persons as defined in the Fair Housing Act, 42 U.S.C. § 3602(i), and aggrieved applicants within the meaning of ECOA, 15 U.S.C. § 1691e, and have suffered injury and damages as a result of Sage Bank's conduct.

37. Sage Bank's policies and practices, as described herein, were intentional, willful, or implemented with reckless disregard for the rights of African-American and Hispanic applicants and borrowers.

THIS COURT'S POWER TO GRANT RELIEF

38. The FHA empowers this Court to grant legal or equitable relief necessary to ensure the full enjoyment of the rights granted by the FHA, including a temporary or permanent injunction, restraining order, and monetary damages to aggrieved persons. 42 U.S.C. § 3614(d).

39. ECOA empowers this Court to grant such relief as may be appropriate, including actual and punitive damages and injunctive relief. 15 U.S.C. § 1691e(h).

PRAYER FOR RELIEF

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

(1) Declares that the policies and practices alleged herein of Sage Bank 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, and;

(2) Enjoins Sage Bank, its agents, employees, and successors, and all other persons in active concert or participation with it, from:

a. Discriminating on account of race or national origin in any aspect of its lending practices;

b. Failing or refusing to take such affirmative steps as may be necessary to restore, as nearly as practicable, the victims of Sage Bank's unlawful conduct to the position they would have been in but for the discriminatory conduct; and

c. 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 Sage Bank's 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 equitable relief and monetary damages to all the victims of Sage Bank's discriminatory policies and practices for the injuries caused by Sage Bank, including any damages provided for under 42 U.S.C. § 3614(d)(1)(B) and 15 U.S.C. § 1691e(h); and

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

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

Dated: November 30, 2015

Respectfully submitted,

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