

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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PEOPLE OF THE STATE OF NEW YORK,
by ANDREW M. CUOMO, ATTORNEY GENERAL
OF THE STATE OF NEW YORK,

Plaintiffs,
-against-

COMPLAINT &
JURY DEMAND

U.S. CAPITAL FUNDING, LLC

Defendant.
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The People of the State of New York, by and through their attorney, Andrew M. Cuomo, Attorney General of the State of New York, as and for their complaint, allege, upon information and belief, as follows:

PRELIMINARY STATEMENT

1. Plaintiffs bring this action against U.S. Capital Funding, LLC (“U.S. Capital”) for engaging in a pattern and practice of discriminating against Black and Latino borrowers by charging them significantly higher mortgage brokerage fees than White borrowers. U.S. Capital provides mortgage brokerage services in Nassau, Suffolk, and Queens Counties, New York, as well as in other states.
2. From at least January 2006 through July 2007, U.S. Capital charged Black and Latino borrowers on average thousands of dollars more in upfront fees than White borrowers. These stark fee disparities cannot be explained by differences in the scope or quality of the services provided to minority borrowers. Indeed, the fee disparities remain even after taking into account borrower, property, and loan characteristics that could potentially impact the amount of time and

effort U.S. Capital took to arrange home mortgage loans.

3. By engaging in these discriminatory pricing practices, U.S. Capital has violated the Fair Housing Act of 1968, as amended by the Fair Housing Amendments Act of 1988, 42 U.S.C. § 3601 *et seq.*, New York Executive Law § 296-a, and New York Executive Law § 63(12).

JURISDICTION AND VENUE

4. This Court has jurisdiction over all federal law claims pursuant to 42 U.S.C. § 3613(a), 15 U.S.C. § 1691e, and 28 U.S.C. §§ 1331, 1343(a)(3), 1343(a)(4), and 2201. This Court has jurisdiction over Plaintiffs' state law claims under 28 U.S.C. § 1367.

5. Venue lies in this District pursuant to 28 U.S.C. § 1391(b). A substantial portion of the events giving rise to the claims occurred in this District and U.S. Capital resides there.

PARTIES

6. Plaintiffs, the People of the State of New York, are represented by their chief legal officer, Andrew M. Cuomo, Attorney General of the State of New York. Where, as here, the interests and well being of the people of the State of New York as a whole are implicated, the Attorney General possesses *parens patriae* authority to commence legal actions in federal court for violations of federal and state law.

7. The State of New York has a quasi-sovereign interest in protecting residents from the harmful effects of discrimination, including discrimination in credit transactions, and preventing the substantial social and economic harm created thereby.

8. The discriminatory practices at issue here have harmed and will continue to harm a substantial segment of the population, namely Blacks and Latinos who seek to receive mortgage brokerage services from U.S. Capital. By charging Blacks and Latinos higher fees to secure a

home mortgage loan, U.S. Capital impedes their ability to obtain equal access to credit.

9. Absent action by the Attorney General, Blacks and Latinos will be unable to meaningfully and promptly vindicate their rights and will, collectively, suffer substantial economic harm.

Individuals who face discrimination when obtaining home mortgage loans are unlikely to bring private suits because they are often not in a position to know that they are being treated unfavorably as compared to Whites. In addition, victims of credit discrimination often lack the financial resources and incentives to bring an action to recover what may be limited damages. If harmed individuals do bring private suits, their own individualized interests may impede their ability to effectively seek necessary broad injunctive relief to stop the discriminatory practices. Complete relief thus cannot be obtained through private lawsuits by individual plaintiffs.

10. Defendant U.S. Capital provides mortgage services through offices located in Nassau, Suffolk, and Queens Counties in the State of New York. In 2007, U.S. Capital generated approximately \$1.3 million in revenue from its New York mortgage business. U.S. Capital is a licensed mortgage banker in the State of New York, and its principal place of business is located at 250 Carleton Avenue, East Islip, New York.

FACTUAL ALLEGATIONS

11. From January 2006 through July 2007 (the "Review Period"), U.S. Capital served as the mortgage broker for approximately 300 home mortgage loans within the State of New York, including about 135 loans made to Black and Latino borrowers. U.S. Capital arranged many loans for lenders that specialized in subprime loans, including Indymac and New Century.

12. Mortgage brokerage companies, such as U.S. Capital, assist borrowers in obtaining home mortgage loans from different financial institutions. In exchange for these services, mortgage

brokers typically charge the borrower certain up-front fees, commonly referred to as “Broker Fees.” Broker Fees are a component of the interest rate (“APR”) that borrowers pay for a loan.

13. Broker Fees are distinct from the yield spread premium (“YSP”) – another type of compensation mortgage brokers collect when they arrange a home mortgage loan. The YSP represents the payment made by the lender directly to the broker for securing a higher interest rate than the par interest rate for which the borrower qualifies.

14. With the assistance of the New York State Banking Department (“Banking Department”), the Office of the Attorney General launched an investigation into U.S. Capital’s pricing practices. The investigation revealed that U.S. Capital has repeatedly charged Black and Latino borrowers significantly more in Broker Fees than similarly-situated White borrowers.

15. With respect to borrowers who received only a first lien mortgage loan for their home during the Review Period, the mean Broker Fee (measured in basis points) for Black and Latino borrowers was approximately 58% more than the mean Broker Fee for White borrowers, resulting in an additional charge of about \$3500.

16. With respect to borrowers who received a first lien and a second lien loan for their home (*i.e.*, a piggyback loan) during the Review Period, the mean Broker Fee (measured in basis points) for Black and Latino borrowers was approximately 121% more than the mean Broker Fee for White borrowers, resulting in an additional charge of about \$5360.

17. The above-referenced disparities are statistically significant, and there is almost no possibility that the disparities occurred by chance.

18. The substantial racial and ethnic disparities cannot be explained by differences in the scope or quality of services provided by U.S. Capital to Black and Latino borrowers. These

disparities persist even after accounting for race-and-ethnicity-neutral borrower, property, and loan characteristics that could potentially impact the amount of time and effort U.S. Capital expended to arrange a given loan, such as creditworthiness, the loan amount, or the loan-to-value ratio. In addition, the Broker Fee disparities could not be explained by YSP differences.

19. U.S. Capital has no clear standards or criteria for setting Broker Fees. U.S. Capital allows its employees and other agents to calculate Broker Fees based on subjective factors that are not related to the time or effort spent on arranging the loan. U.S. Capital's policy and practice of allowing its employees and other agents to exercise almost absolute discretion when determining Broker Fees have had a significant adverse and disparate impact on Black and Latino borrowers.

20. Thus, U.S. Capital charged, and continues to charge, higher Broker Fees to Black and Latino borrowers than to similarly-situated White borrowers based on their race, color, and/or national origin. As a result, Black and Latino borrowers pay more for their home mortgage loans.

21. At all relevant times, the U.S. Capital employees and other agents who determined the Broker Fees for Black and Latino customers were acting with the consent of U.S. Capital, under the control and supervision of U.S. Capital, and within their authority as agents of U.S. Capital.

22. In carrying out the unlawful discriminatory policies and practices described in this complaint, U.S. Capital acted intentionally and willfully, with callous disregard of the rights of Black and Latino borrowers.

FIRST CAUSE OF ACTION:
FAIR HOUSING ACT, 42 U.S.C. § 3605

23. 42 U.S.C. § 3605(a) prohibits any business engaged in residential real estate-related transactions from discriminating "against any person . . . in the terms or conditions of such a

transaction, because of race, color . . . or national origin.”

24. The home mortgage loans secured through U.S. Capital are “residential real estate-related transactions” within the meaning of the Fair Housing Act, 42 U.S.C. § 3605(a).

25. By engaging in a pattern and practice of charging Black and Latino borrowers higher Broker Fees based on their race, color, and/or national origin, U.S. Capital has discriminated against these borrowers in the terms or conditions of their home mortgage loans in violation of the Fair Housing Act, 42 U.S.C. §3605(a).

SECOND CAUSE OF ACTION:
NEW YORK STATE HUMAN RIGHTS LAW, N.Y. EXECUTIVE LAW § 296-a

26. N.Y. Executive Law § 296-a(1)(b) prohibits any creditor from discriminating “in the fixing of the rates, terms or conditions of [] any form of credit, on the basis of race, . . . color, [or] national origin.”

27. As a mortgage broker, U.S. Capital is a “creditor” within the meaning of N.Y. Executive Law § 292(22).

28. The home mortgage loans secured through U.S. Capital are a form of “credit“ within the meaning of N.Y. Executive Law § 292(20).

29. By engaging in a pattern and practice of charging Black and Latino borrowers higher Broker Fees based on their race, color, and/or national origin, U.S. Capital has discriminated against these borrowers in the terms or conditions of their home mortgage loans in violation of N.Y. Executive Law § 296-a(1)(b).

THIRD CAUSE OF ACTION:
NEW YORK STATE EXECUTIVE LAW § 63(12)

30. Section 63(12) of the New York Executive Law proscribes repeated and persistent illegal acts in the carrying out of a business.

31. U.S. Capital has violated Section 63(12) by its repeated and persistent violations of the Fair Housing Act, 42 U.S.C. § 3605(a), and New York Executive Law § 296-a(1)(b).

REQUEST FOR RELIEF

WHEREFORE, Plaintiffs request that this Court:

- a) Declare, pursuant to 28 U.S.C. §§ 2201 and 2202, that U.S. Capital's pattern and practice of discriminating against Black and Latino borrowers by charging them significantly higher Brokerage Fees than White borrowers on the basis of their race, color, and/or national origin violate the Fair Housing Act, 42 U.S.C. § 3605(a), New York Executive Law § 296-a(1)(b), and New York Executive Law § 63(12);
- b) Enjoin U.S. Capital and its agents, employees, and successors from discriminating on the basis of race, color, and/or national origin in any aspect of their mortgage brokerage practices, and order U.S. Capital to implement policies and procedures sufficient to prevent such unlawful actions in the future;
- c) Award appropriate compensatory and punitive damages;
- d) Award Plaintiffs reasonable attorneys' fees and costs under 42 U.S.C. § 3613(c)(2) and 15 U.S.C. § 1691e(d); and
- e) Award such other and further relief as this Court may deem appropriate and equitable, including injunctive and declaratory relief as may be required in the interests of justice.

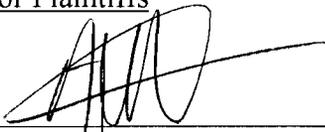
JURY DEMAND

Plaintiffs hereby demand a trial by jury.

Dated: New York, New York
January 5, 2009

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