

FILED
IN CLERK'S OFFICE
U.S. DISTRICT COURT E.D.N.Y.
★ APR 29 2011 ★
BROOKLYN OFFICE

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK**

JEAN ROBERT SAINT-JEAN and EDITH
SAINT-JEAN,

Plaintiffs,

v.

EMIGRANT MORTGAGE COMPANY,

Defendants.

Civil Action No.

CV 11 - 2122

COMPLAINT

JURY TRIAL DEMANDED

JOHNSON,

J. ORENSTEIN, M.J.

INTRODUCTION

1. From 2005 through 2009, Emigrant Mortgage Company (hereinafter "Emigrant") utilized a highly-abusive home mortgage "No Income" refinance product. Emigrant aggressively originated these high-cost loans to minority homeowners with low credit scores who were most likely to default on their payments. By selecting borrowers with substantial equity in their homes, Emigrant ensured that it could reap high profits from these nonperforming loans by extracting exorbitant "default" interest charges—calculated at a predatory 18% interest rate—from the borrowers' equity.

2. Since African-Americans and Latinos are disproportionately represented among persons with low credit scores, Emigrant's marketing of these abusive loans to this population ensured that the loans would have their greatest impact on minority homeowners. In fact, Emigrant originated 62.5% of its most costly loans in census tracts where African-Americans and/or Latinos were in the majority, in violation of the Fair Housing Act, the Equal Credit Opportunity Act, and state and local civil rights laws.

3. Emigrant relied on inaccurate federal Truth in Lending consumer disclosure forms to mask the true cost of these equity-stripping refinance loans to borrowers in violation of the federal Truth in Lending Act. Concealing the inevitable imposition of 18% “default” rates, Emigrant routinely listed a deceptively low Annual Percentage Rate (“APR”) on its Truth in Lending disclosures.

4. Emigrant induced longtime Brooklyn homeowners Jean Robert and Edith Saint-Jean into an abusive and patently unaffordable refinance, bearing an initial interest rate of 11.75% and a “default” interest rate of 18%. Emigrant employed inaccurate Truth in Lending disclosures to disguise the true cost of the mortgage loan given to Mr. and Mrs. Saint-Jean. Their loan carried a true APR of at least 17.767%, but was accompanied by a Truth in Lending form disclosing a 10.119% APR. Emigrant’s loan to the Saint-Jeans was certain to fail: the initial payments of the loan exceeded \$4,000 and represented nearly 100% of Mr. and Mrs. Saint-Jean’s net income. As a consequence of Emigrant’s actions, Mr. and Mrs. Saint-Jean have suffered a foreclosure and the loss of nearly all of the equity in their long-time family home. Emigrant’s loan to Mr. and Mrs. Saint-Jean violated the Fair Housing Act, the Equal Credit Opportunity Act, the Truth in Lending Act, and various state and local civil rights laws.

JURISDICTION

5. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1331 for claims under sections 3604 and 3605 of the Fair Housing Act; the Equal Credit Opportunity Act; and the Truth in Lending Act. This Court also has jurisdiction pursuant to 28 U.S.C. § 1367 for Plaintiffs’ claims under state and local law.

PARTIES

6. Plaintiff Jean Robert Saint-Jean, a 47-year-old black Haitian-American man, and plaintiff Edith Saint-Jean, a 47-year-old black Haitian-American woman, husband and wife, live together at 1145 East 80th Street, Brooklyn, New York 11236. Their four daughters, ages 19, 23, 24, and 27, also reside in the property.

7. Defendant Emigrant Mortgage Company, Inc. is a wholly owned subsidiary of Emigrant Savings Bank and a corporation organized under the laws of New York. Emigrant maintains its principal place of business at 7 Westchester Place, Elmsford, NY 10523.

VENUE

8. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391(b) because a substantial portion of the events and omissions giving rise to this Complaint occurred within the Eastern District of New York.

STATEMENT OF FACTS

History of Race Discrimination in the Mortgage Industry

9. The mortgage lending industry has a long and well-documented history of racial discrimination, for decades offering loans to minority borrowers, if at all, on terms that were substantially worse than those given to their similarly-situated white counterparts. For much of the twentieth century, this racial discrimination in the credit markets took the form of “redlining,” with minority borrowers and minority neighborhoods systematically denied home mortgage loans and other financial products. *See, e.g., Douglas S. Massey et al., American Apartheid: Segregation and the Making of the Underclass 51-52 (1993).*

10. Today, after nearly two decades as the focus of destructive high-cost home mortgage lending, these same minority neighborhoods are the epicenter of the foreclosure crisis.

See, e.g., Foreclosures by Race and Ethnicity: The Demographics of a Crisis, Center for Responsible Lending (2010).

11. The concentration of high-cost lending in minority neighborhoods was the result of industry shifts and regulatory changes that took place in the 1990s and interacted to fundamentally alter consumer mortgage lending. For example, legislative changes, including the repeal of the Glass-Steagle Act through the Depository Institutions Deregulatory and Monetary Control Act of 1980, the Garn-St. Germain Depository Institutions Act of 1982, and the Gramm-Leach-Bliley Act of 1999, as well as regulatory changes, loosened long-standing limits on traditional lending institutions and permitted lenders to offer new and different mortgage products, such as adjustable-rate mortgages.

12. In addition, both bank and non-bank mortgage lenders began to use brokers to advertise their products, identify potential customers, and communicate with those customers, collecting information and submitting this information to the originating lender for processing.

13. As the result of these developments, home mortgage lending—especially lending to minority groups traditionally deprived of credit—increased dramatically. Encouraged by investors eager for high-yielding investment vehicles, lenders expanded their offerings beyond traditional “prime” products into “subprime,” “Alt-A” and other non-traditional loan products. These products purported to provide borrowers with blemished credit histories loans priced to account for the additional risk lenders, and/or assignees, would assume. In practice, even controlling for such factors as income and credit history, minority borrowers were more likely to receive these costly loan products, than their white counterparts. *See, e.g., “Unequal Burden: Income and Racial Disparities in Subprime Lending,”* HUD study available at http://www.huduser.org/Publications/pdf/unequal_full.pdf (last visited April 28, 2011).

14. Mortgage loans strayed far beyond traditional, fully-underwritten, 30-year fixed rates. Banks offered Stated Income Stated Assets (“SISA”) loans, in which the borrower merely stated their income without offering any supporting proof. SISAs appeared alongside their close cousins, No Income No Asset (“NINA”) loans. The NINA loan did not require the borrower to provide any information whatsoever about income or assets on the loan application. Instead, banks relied exclusively on the borrower’s credit report and an appraisal of the property’s remaining equity to the price the loan. Holden Lewis, “The Kind of Mortgage Tony Soprano Might Like,” CBS Marketwatch, Feb. 15, 2002. NINA loans were more costly than full-documentation loans because they were more risky for lenders, with NINA borrowers paying higher fees and interest rates. Because a NINA borrower provided no proof of ability to repay a loan, he or she was required to have a moderate to high credit score, usually 680 or above.

Emigrant’s Evolving “No Income” Lending Program

15. Founded in the 19th century as a mutual savings society for Irish immigrants, Emigrant and its parent company Emigrant Savings Bank historically concentrated their mortgage lending in conventional loan products. As a result of their conservative lending practices, through the early 1990s, Emigrant and Emigrant Savings Bank experienced few mortgage defaults, even in difficult economic times.

16. In 1995, as members of the Milstein family that owned the bank began a bitter, 10-year feud for control of the institution, Emigrant began to test out riskier—and more profitable—mortgage products. In that year, Emigrant first offered a mortgage product that did not require borrowers to demonstrate or state their income: Emigrant’s first NINA, or “No Income,” mortgage product.

17. At the time that it developed its first No Income mortgage product, Emigrant overwhelmingly made its mortgage loans in wealthy, white census tracts. According to Emigrant's 1995 Community Reinvestment Act Performance Evaluation,¹ in 1994, Emigrant made 6% of its loans in low/moderate-income census tracts; 34% of its loans in middle-income census tracts; and 61% of its loans in upper-income census tracts. In that year, Emigrant made 4% of its loans in minority census tracts, 18% in "integrated" census tracts,² and 66% in white census tracts.

18. In 1995, Emigrant's first year offering its No Income mortgage product, its origination of these mortgages appeared to follow this same demographic pattern. In that year, No Income loans made up 27% of Emigrant's one-to-four family mortgage loans,³ according to Emigrant's 1997 Community Reinvestment Act Performance Evaluation. Of these, Emigrant originated the vast majority of its No Income mortgage loans in New York County (72%), with an additional concentration in Westchester County (14%). As of 1995, in New York and Westchester counties, 86.6% and 88.8% of homeowners, respectively, were white.

19. By 2004, Emigrant's lending pattern had shifted dramatically. In that year, No Income refinance mortgages represented 83% of Emigrant's one-to-four family mortgage refinance loans, and 57% of these No Income loans were originated in majority-minority census tracts.

20. On information and belief, Emigrant's No Income Refinance Program fully developed in 2005 and evolved into an abusive and damaging program designed to broker

¹ Emigrant's Community Reinvestment Act Performance Evaluations are available at: <http://www2.fdic.gov/crapes/> (last visited April 28, 2011).

² Emigrant's 1995 Community Reinvestment Act Performance Evaluation defines an "integrated" census tract as one in which "minority residents make up 20% to 79.99% of the population." See p. 21.

³ A one-to-four family mortgage loan is a mortgage loan secured by a building or home with no more than four units; this category includes loans secured by a condominium or cooperative unit.

extremely high-cost loans to vulnerable minority borrowers with substantial equity. Whereas in 2004, 7.32% of No Income refinance loans in minority census tracts were “very high cost” (a difference of at least five basis points above the going “Prime” interest rate), in 2005, the proportion was 44.50%; and in 2006, 45.89%.

21. By 2005, Emigrant’s No Income program had developed into one that was highly predatory, outdoing its competitors in the mortgage industry with sky-high interest rates, pernicious terms, and deceptive sales tactics.

22. What distinguished Emigrant’s lending even from that of other NINA lenders was its practice of lending to borrowers with extremely low credit scores who would not qualify even for NINA mortgage loans at other banks. Emigrant did not reject borrowers with credit scores in the low 500s; instead—where there was sufficient equity in the home—Emigrant merely accorded an applicant with a lower credit score a higher interest rate.

23. By lending at exorbitant interest rates to borrowers with such low credit scores, Emigrant ensured high default rates.

24. Whereas most of the industry’s originators made NINA loans to sell onto the secondary market, and therefore had to accommodate investor and rating agency loan and credit quality assessments, Emigrant held the vast majority of the loans it originated—including those it originated through its equity-stripping No Income Refinance Program—retaining the loans in the portfolio of Emigrant Mortgage Company, or the portfolios of its affiliates.

25. In order to profit from loans that were predestined to fail, Emigrant engaged mortgage brokers to identify individuals with significant equity in their homes. Emigrant then extracted this equity from its defaulting borrowers through a variety of onerous mortgage terms. For example, Emigrant imposed an 18% “default” interest rate on the vast majority of its

borrowers. By its terms, this 18% interest rate could be imposed after a single payment was late by only 30 days. In 2007, 83% of the loans Emigrant originated incorporated an 18% “default” interest rate; in 2008, 91%.

26. Whereas subprime originating lenders intending to sell their loans in the secondary mortgage market often utilized inflated appraisals, upon information and belief, Emigrant required careful, accurate appraisals to accurately discern a potential borrower’s home equity.

27. Emigrant also encouraged its brokers to increase the interest rates they sold to a borrower beyond the rate for which the borrower would otherwise qualify by offering its brokers an additional incentive payment called a Yield Spread Premium (“YSP”). The YSP would increase as the interest rate sold to the borrower increased. Emigrant paid a YSP to the broker who assisted Emigrant in originating the Saint-Jeans’ mortgage refinance loan.

28. Meanwhile, across the industry NINA loans were beginning to fail in large numbers, and regulators, news sources, and industry watchdogs sounded warnings about the weakness of the NINA product. *See, e.g.*, Intragency Guidance on Nontraditional Mortgage Product Risks, September 2006; “‘No Money Down’ Falls Flat,” Steven Pearlstein, *The Washington Post*, March 14, 2007; “A Bad Loan By Any Other Name,” Floyd Norris, *The New York Times*, November 23, 2007; “Experts: Economy nearing cusp of recession,” Dean Calbreath, *San Diego Union-Tribune*, Sept. 12, 2007; “Sorting out the mortgage mess,” *Boston Globe*, 1C, Jan. 25, 2008.

29. As other lenders retreated from NINA lending, Emigrant continued to press its No Income Refinance Program. In 2008, the year in which Emigrant originated Mr. and Mrs. Saint-Jean’s mortgage, No Income loans represented only 3% of non-Emigrant one-to-four family

refinance mortgage loans originated in New York City, but 85% of the one-to-four family refinance mortgage loans that Emigrant originated.

30. Even Emigrant's own foreclosure patterns indicated that its No Income Refinance Program was failing to produce performing loans. Even though, upon information and belief, Emigrant typically waited several months, and even years, after default to commence foreclosure proceedings, nearly half of the foreclosures that Emigrant commenced in 2007 were on loans originated in the prior year and 78% were on loans originated in the prior two years. In 2008, Emigrant's loan performance fell further still; 69% of the foreclosures that Emigrant commenced in 2008 were on loans originated in the prior year and 83% were on loans originated in the prior two years. Yet, Emigrant persisted in originating equity-stripping No Income Refinance loans through 2009.

31. In 2008, Emigrant originated less than 1.5% of all refinance loans originated in New York City, but made 30% of all City-wide No Income refinance loans.

Emigrant's False TILA Disclosures Mask High Cost of Loans

32. The Truth in Lending Act is a remedial statute, requiring the clear and conspicuous disclosure of the expected costs of a consumer credit transaction. The statute was designed to ensure that borrowers would be informed about the consequences of certain types of financial transactions.

33. In its equity-stripping No Income Refinance Program, Emigrant routinely used the Truth in Lending Act disclosures, not to *clarify* the financial consequences of its transactions, but rather to *mask* the true cost of its unsustainable loans. Although the Truth in Lending Act requires that all expected principal and interest payments be included in the calculation of the

APR on the Truth in Lending disclosure, Emigrant routinely disregarded the predicted and contemplated imposition of the 18% “default” interest in calculating the APR and related terms.

34. The exclusion of these 18% interest payments falsely lowered the APR of Emigrant’s high-cost loans, resulting in inaccurate disclosures that violated the federal Truth in Lending Act and robbed Emigrant’s borrowers of the opportunity to accurately evaluate the dire financial consequences of an Emigrant No Income refinance.

Emigrant’s Discriminatory No Income Refinance Program: Facially Neutral Policy with a Foreseeable Disparate Impact

35. Emigrant’s equity-stripping No Income Refinance Program, incorporating all of the risky and abusive elements described above, although facially neutral, has had a discriminatory impact on minority borrowers because of Emigrant’s origination of these abusive loans through No Income Refinancing to homeowners with extremely low credit scores.

36. Emigrant’s equity-stripping No Income Refinance Program deviated significantly from standard industry NINA programs. Other lenders made NINA loans available only to borrowers with relatively strong credit scores, typically greater than 680 or, at the most risky, greater than 620. The high credit score was routinely required because a high score indicated that the borrower was likely to repay the loan, a particularly important indicator in the absence of other information typically required for underwriting. “Pushing the Edge on Alternative-A,” Robert Stowe England, Mortgage Banking, February 1, 2004. Emigrant’s No Income Refinance Program provided loans to borrowers with much lower credit scores—well below the 680 industry standard, even into the low 500s.

37. In New York City, at the time that Emigrant made its loan to Mr. and Mrs. Saint-Jean, residents of minority neighborhoods had significantly lower credit scores than residents of white neighborhoods, as shown in the chart below.

	Census Tract				New York City
	80% or Greater African-American	50% or Greater Latino	50% to 79.9% Mixed Minority	Less than 10% Minority	
Credit Score 700 and Above	34.2%	36.2%	48.6%	68.9%	55.8%
Credit Score 620-699	25.6%	26.3%	23.6%	17.3%	21.3%
Credit Score Below 620	40.2%	37.5%	27.9%	13.8%	22.9%

Distribution of individuals within credit score ranges by zip code racial composition, June 30, 2007
From Addendum to "Understanding Credit Score Patterns in New York City," Woodstock Institute (2011)

38. Notably, the Woodstock Institute study cited above also found that in 2007, over 60% of those with credit scores of 580 or below in New York City resided in zip codes that had 50% or greater minority residents. *Id.* Hence, a loan program, such as Emigrant's No Income Refinance Program, designed to charge exorbitant rates to refinance customers with very low credit scores regardless of their ability to pay, would have the foreseeable result of concentrating very high-cost—equity-stripping—loans in minority neighborhoods.

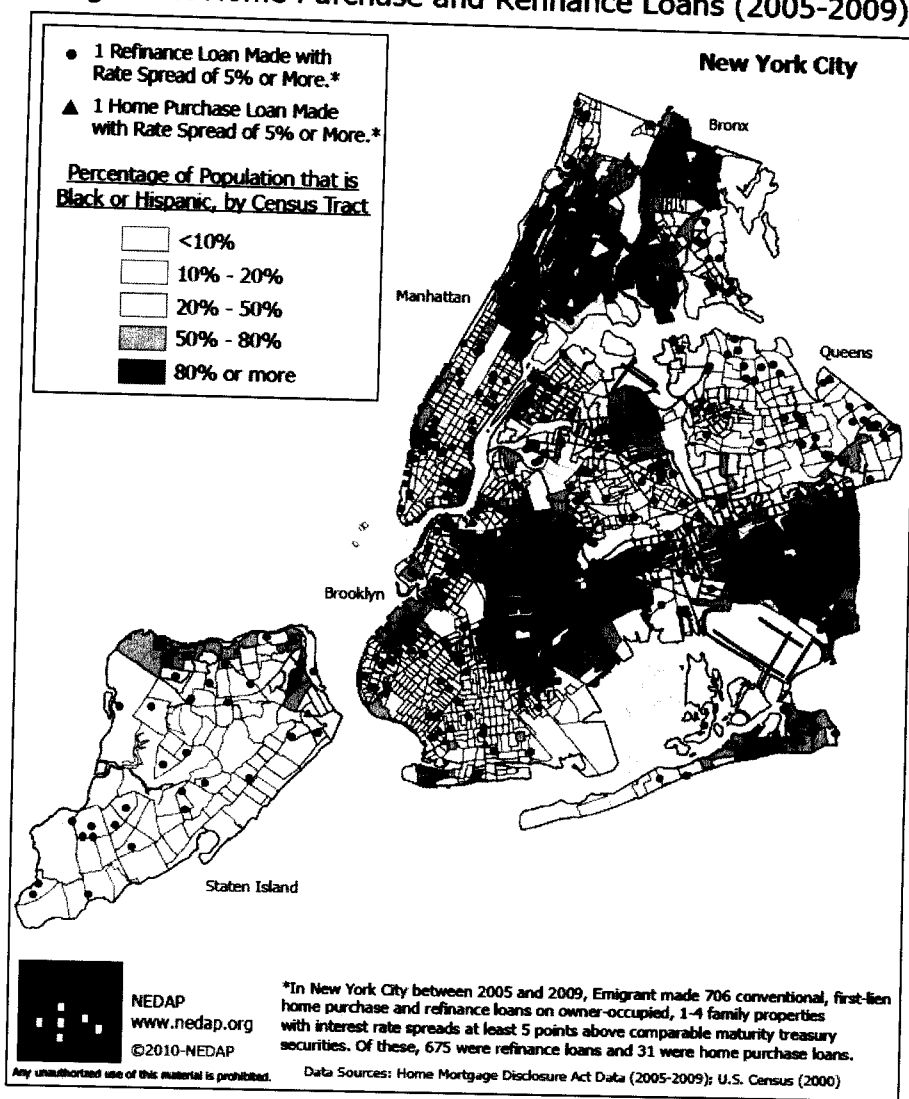
39. Between 2007 and 2009, Emigrant originated 62.5% of these high-cost, highly-profitable, and highly destructive, No Income refinance loans in "minority census tracts," or census tracts with 50% or greater minority residents. In 2007 and 2005, Emigrant originated over 70% of its very high-cost No Income refinance loans in minority census tracts.

Emigrant's Discriminatory No Income Refinance Program: Disparate Impact on Black and Hispanic Borrowers

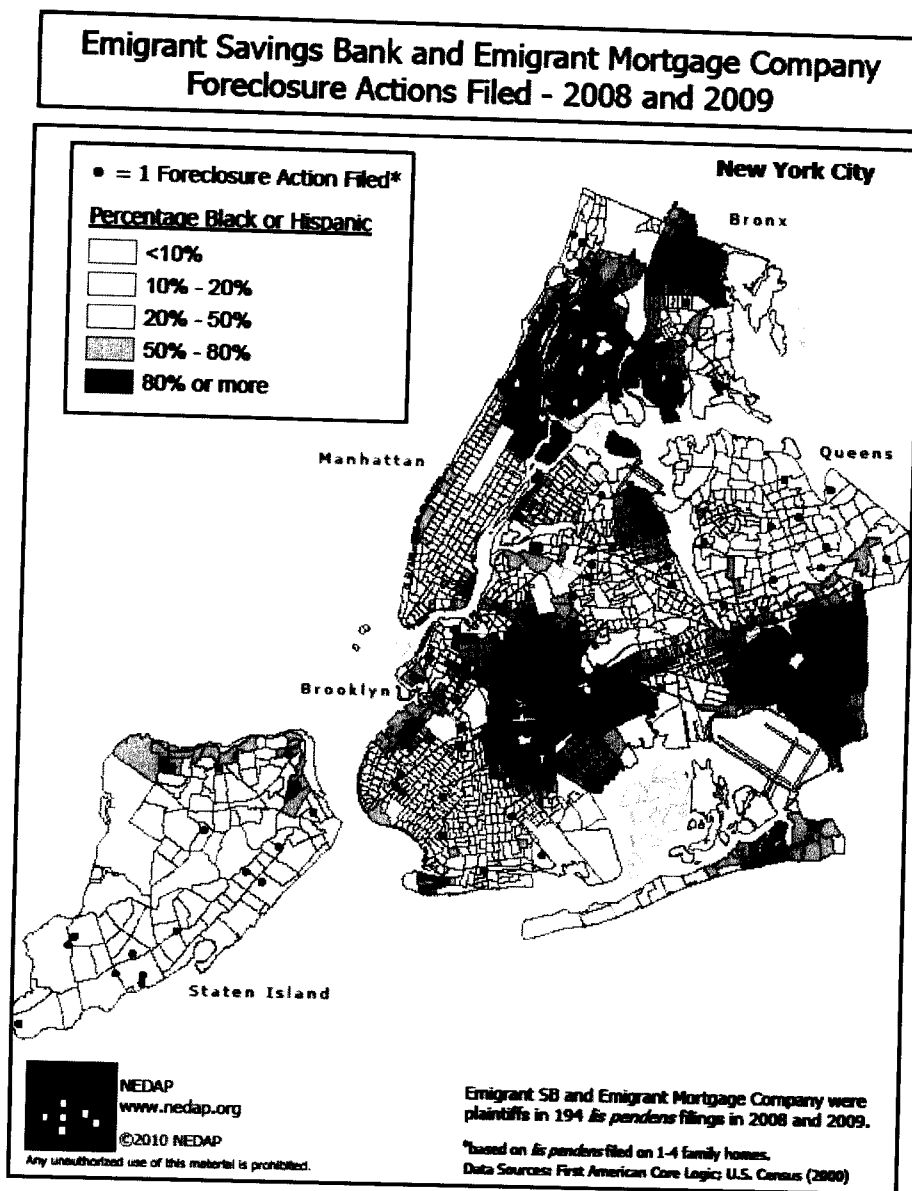
40. Emigrant's equity-stripping No Income Refinance Program, a facially neutral policy, has had a devastating effect and disparate impact on minority homeowners in New York City. Although, from 2005 through 2009, Emigrant originated loans in all neighborhoods of New York City, Emigrant's discriminatory No Income Refinance Program concentrated its most expensive loans in minority neighborhoods. A map of Emigrant's very high-cost No Income

Refinance loans, included below and as Exhibit A to this Complaint, demonstrates that these loans are concentrated in minority census tracts.

**Emigrant Funding Corp. and Emigrant Mortgage Co.
High-Cost Home Purchase and Refinance Loans (2005-2009)**



41. A map of Emigrant foreclosures commenced in 2008, 2009 and 2010, included below and attached hereto as Exhibit B, demonstrates that Emigrant's foreclosures are highly concentrated in minority neighborhoods.



42. Emigrant’s very high-cost, variable-rate loans were disproportionately represented among the foreclosures it commenced. In 2007, 65% of foreclosures that Emigrant commenced on variable-rate loans were on mortgage loans with interest rates of 10% or higher. In 2008, 66% of foreclosures that Emigrant commenced on variable-rate loans were on mortgage loans with interest rates of 10% or higher. In both years, foreclosures on variable-rate loans represented the vast majority of Emigrant’s foreclosures: 87% in 2007; 90% in 2008.

Plaintiffs Jean Robert and Edith Saint-Jean

43. Mr. Saint-Jean and Mrs. Saint-Jean, live with their four daughters in their home, a three-family property located at 1145 East 80th Street, Brooklyn, NY 11236, in the Canarsie neighborhood of Brooklyn. Mr. Saint-Jean works as a public school library paraprofessional; Mrs. Saint-Jean works as a home health aide. At the time the subject loan was originated, their four daughters were all students and did not contribute to the household income.

44. Mr. and Mrs. Saint-Jean purchased their home in 1995, with a fixed rate, \$216,000 mortgage from Arbor National Mortgage and a down payment of approximately \$34,000, their life savings. .

45. In 2001, Mr. and Mrs. Saint-Jean refinanced their mortgage loan, obtaining a \$263,900 mortgage loan from American International Mortgage Bankers, Inc., with a fixed rate of 7.25%.

46. In late 2007, Mr. and Mrs. Saint-Jean began to look for a broker to help them obtain a home equity loan. Although they had always made their mortgage payments, they were behind in payments on their gas and water bills, and wanted to bring those accounts current.

47. Mr. and Mrs. Saint-Jean contacted an acquaintance, Shawn Mason, a man who held himself out to be an appraiser and mortgage broker, and told him that they wanted a \$50,000 home equity loan that would allow them to pay off their debts. Upon information and belief, Mr. Mason worked for a company called N.Y. Financial Mortgage Lending.

48. At all relevant times, Mr. Mason and N.Y. Financial Mortgage Lending acted as brokers and agents of Emigrant.

49. Originally, Mr. Mason told Mr. and Mrs. Saint-Jean that the \$50,000 sum was too low for a home equity loan, but that he could find them a home equity loan for \$100,000. After running their credit reports, however, Mr. Mason told them—incorrectly—that their credit scores

were too low to obtain the home equity loan that they were looking for. At the time, Mr. and Mrs. Saint-Jean both had credit scores in the 500s.

50. Mr. Mason had an appraisal performed on the house, which showed that the house was worth \$742,000. Mr. Mason told the Saint-Jeans that, because of the equity in their home, he could easily help them refinance their mortgage with Emigrant.

51. The Saint-Jeans were reluctant to refinance. They were happy with their fixed rate mortgage and felt their payments of \$2,650 were manageable for them. Mr. Mason explained, however, that a refinance was the only way they could get the funds to pay off their debts. The Saint-Jeans believed Mr. Mason because he seemed to be looking out for their interests. Mr. Mason told them: "I'll take care of you. I'll take care of everything."

52. Mr. Mason told the Saint-Jeans to provide him with pay stubs and tax returns in order to document their income, which they did. Based upon his comments and their past experience applying for mortgage loans, Mr. and Mrs. Saint-Jean thought that Mr. Mason would use these documents to qualify them for a mortgage loan.

53. At the time, the Saint-Jeans had a gross monthly income of approximately \$5,500 and owed approximately \$255,000 on their existing mortgage.

54. The Saint-Jeans pressed Mr. Mason to tell them what their interest rate would be. At first, he would not tell them. Eventually, Mr. Mason told the Saint-Jeans that their mortgage would have a fixed interest rate of approximately 9%, and a monthly payment of \$3,000. Although this was higher than the \$2,650 monthly mortgage payment on their existing mortgage, the Saint-Jeans felt that they could make the higher payments. Mr. Mason explained that after six on-time payments, the Saint-Jeans' credit would be improved, and he would help them to get a lower, fixed 6% rate of interest with monthly payments of \$2,700 from Emigrant. Mr. Mason

said that they should take additional cash out from the refinance to help them to make their payments on time. Mr. and Mrs. Saint-Jean felt that, with the help of the extra cash out, they could make these increased payments for just six months. They could pay off their debts and, after six months, have nearly the same low payment they had been paying for many years.

55. As the closing approached, Mr. Saint-Jean told Mr. Mason that they were looking for an attorney to represent them at closing. Mr. Mason discouraged him from doing so. He told Mr. Saint-Jean that the couple did not need an attorney for a refinance, only for a transfer of the property. Mr. Mason said the attorney at the closing would look out for the Saint-Jeans' interests. Based upon Mr. Mason's representations, the Saint-Jeans did not hire an attorney to represent them at the closing.

At the Closing Table

56. Mr. and Mrs. Saint-Jean's mortgage closing took place on January 10, 2008. The Saint-Jeans did not receive any closing papers prior to the mortgage closing.

57. Mr. Mason picked the Saint-Jeans up and brought them to the closing. Both of the Saint-Jeans were present at the closing, as well as Mr. Mason, a notary, and an attorney for Emigrant. Mr. Mason seemed to know the others at the closing well.

58. In the attorney's presence, Mr. Mason said that the attorney would be representing the Saint-Jeans. The attorney did not dispute this assertion. On information and belief, this attorney represented Emigrant at the closing and the Saint-Jeans were not represented by counsel.

59. When Mr. and Mrs. Saint-Jean looked at the closing papers, they saw that their interest rate was not the 9% that they were promised, but 11.75%. This was the first time the

Saint-Jeans learned that their interest rate would be so high. The Saint-Jeans were shocked and asked Mr. Mason to explain how things were so different than what he had told them before.

60. Mr. Saint-Jean told Mr. Mason that they would not go through with the transaction. Mr. Saint-Jean stopped the closing, got up from the closing table, and walked away while Mrs. Saint-Jean sat at the closing table. Mr. Mason went over to speak with Mr. Saint-Jean. He explained that the interest rate was high because of the Saint-Jeans' lower credit scores. He reminded Mr. Saint-Jean that they would have a fixed 6% interest rate after six months of on-time payments. After talking with Mr. Mason, Mr. Saint-Jean rejoined his wife at the closing table.

61. At the closing table, Mr. Mason said once again that the high initial monthly payments would last for only six months at which time the Saint-Jeans' credit would be repaired and their interest rate would be reduced by Emigrant to 6%, with monthly payments of \$2,700. The additional cash that they were taking out in the refinance would provide them with the resources they would need to make the six timely, monthly payments. No one who was present disagreed with Mr. Mason's explanation.

62. After this discussion, the closing went quickly. The Saint-Jeans were not given a chance to read through the loan documents at the closing. Based on what Mr. Mason and the attorney told them, they signed the loan documents. The loan closing lasted for approximately one hour during which time the Saint-Jeans signed countless papers.

63. At the closing, Mr. and Mrs. Saint-Jean signed documents for a \$370,000 refinance loan. The loan papers disclosed an initial monthly interest rate of 11.75% and a "default" interest rate of 18%. Mr. and Mrs. Saint-Jean were not told that their loan terms included a prepayment penalty. Mr. and Mrs. Saint-Jean were not told that their mortgage

interest rate was adjustable. They thought that their interest rate was fixed, only to be reduced to 6% if they made six on-time payments.

64. The HUD-1 Settlement Statement that Mr. and Mrs. Saint-Jean received at closing discloses that “NY Financial” received a payment of \$1,387.50 from Emigrant outside of the closing. Upon information and belief, this payment was a YSP, provided as compensation to Mr. Mason and N.Y. Financial Mortgage Lending for inducing Mr. and Mrs. Saint-Jean into a loan that had a higher interest rate than that for which they would have otherwise qualified under Emigrant’s lending program.

65. Emigrant’s federal Truth in Lending disclosure accompanying this loan represented the following:

Annual Percentage Rate	Finance Charge	Amount Financed	Total of Payments
10.119%	\$695,585.19	\$355,256.01	\$1,050,841.20

66. The initial monthly payments of \$4,174, including taxes and insurance, nearly exceeded the Saint-Jeans’ net monthly income and represented almost 80% of their gross monthly income. According to the HUD-1 Settlement Statement pertaining to the closing, proceeds from the transaction were used to pay \$450 to Shawn Mason, and \$12,357.50 to N.Y. Financial Mortgage Lending. The proceeds were also used to establish a \$21,000 escrow account, to be used to pay the Saint-Jeans’ outstanding water charges.

67. From the \$21,000 escrow, only \$20,532.76 was sent to New York City’s Department of Environmental Protection to pay the overdue water charges. The Saint-Jeans were never reimbursed \$467.24 for the remaining amount.

68. A “High Equity Loan Certificate” included in the Saint-Jeans’ closing papers indicated that Mr. and Mrs. Saint-Jean’s mortgage loan was originated under Emigrant’s High

Equity Plus Loan program, a variety of Emigrant's equity-stripping No Income Refinance Program. Despite Mr. Mason's assurances that those present at the closing would look out for the Saint-Jeans' interests, no one alerted the Saint-Jeans to review the certificate, nor did anyone present explain its contents to them.

69. A "Resource Letter" included in the Saint-Jeans' closing papers indicated that the Saint-Jeans' loan had been originated without consideration of Mr. and Mrs. Saint-Jeans' financial capacity to make payments on the loan. This letter indicated that Mr. and Mrs. Saint-Jean would need dependable annual income of over \$102,000 in order to make payments on the mortgage—an annual income which greatly exceeded Mr. and Mrs. Saint-Jean's income at the time. Despite Mr. Mason's assurances that those present at the closing would look out for the Saint-Jeans' interests, no one alerted the Saint-Jeans to review the Resource Letter, nor did anyone present explain its contents to them.

70. An "Ontime Advantage Rate Reduction" addendum to the Mortgage Commitment provided to the Saint-Jeans for signature at closing promised interest rate reductions after nine, 15, and 21 on-time payments. This disclosure was an addendum to the Mortgage Commitment provided to the Saint-Jeans at the closing.

71. The Saint-Jeans together received only one copy of the Truth In Lending Act disclosure.

72. The Saint-Jeans together received only one copy of the notice of their right to rescind the mortgage loan.

73. Mr. and Mrs. Saint-Jean received \$66,494.30 in cash at closing. They used approximately \$16,000 of these funds to pay Keyspan for overdue gas charges, and

approximately \$27,500 to make substantial repairs to their home, as planned. They applied the remainder of the funds to make timely monthly payments on their mortgage.

Emigrant's Loan to the Saint-Jeans

74. Although Emigrant presented the Saint-Jeans' loan as a variable-rate loan with an 11.75% initial interest rate, in reality, Emigrant's loan to the Saint-Jeans was far more costly. As presented to the Saint-Jeans, the loan had an APR of 10.119%, *lower* than the initial interest rate of 11.75% because of lowered payments after a five-year period at the initial rate. In fact, because Emigrant knew, or should have known, that the loan was unaffordable to the Saint-Jeans from origination, the APR should have taken into account the predicted and contemplated imposition of an 18% interest rate, raising the correctly calculated APR to at least 17.767%.

75. Emigrant knew, or should have known, that the Saint-Jeans could not afford to make the high initial payments on the mortgage based on the following indicators: (1) pay stubs and tax returns provided to Emigrant's agent, Mr. Mason, at Mr. Mason's request; (2) the Saint-Jeans' low credit scores; (3) the "payment shock" that Mr. and Mrs. Saint-Jean would suffer from the increase in their mortgage payments by almost 100%; and (4) the substantial arrears that the Saint-Jeans had accrued on their gas and water charges, with their prior, lower mortgage payment.

76. In fact, Emigrant's loan to the Saint-Jeans was designed from origination to fail, triggering the imposition of the 18% "default" interest rate within the first year of the loan. The many onerous provisions of Emigrant's loan to the Saint-Jeans worked in concert to ensure "default" within a year of origination. The extremely high initial interest rate guaranteed monthly payments that were well beyond the Saint-Jeans' capacity to pay. The prepayment penalty prevented refinance once the Saint-Jeans learned the true cost of their loan and

discovered that they could not obtain lower payments after six months of on-time payments, as promised.

77. Properly disclosed, the Saint-Jean's loan should have been accompanied by a TILA statement disclosing an APR of at least 17.767%.

78. Emigrant not only understated the costs associated with the loan, it misstated the payment schedule of the loan. The TILA disclosure that Emigrant provided to the Saint-Jeans contained the following payment schedule:

No. of Payments	Amount of Payments	When Payments are Due
60	\$3,734.82	monthly, beginning 03/01/2008
300	\$2,755.84	monthly, beginning 03/01/2013

79. Emigrant should have provided a payment schedule for this loan as follows, based upon the imposition of an 18% interest rate within 12 months of origination:

No. of Payments	Amount of Payments	When Payments are Due
12	\$3,734.82	monthly, beginning 03/01/2008
348	\$5,559.99	monthly, beginning 03/01/2009

80. Not only did the TILA disclosure fail to incorporate the inevitable imposition of the 18% interest rate, Emigrant's disclosures actually reflect a decrease to the Saint-Jeans' payments to approximately \$2,700 after five years, due to the adjustable rate provisions of the Saint-Jeans' note. This had the effect of artificially lowering the annual percentage rate and making the loan appear even less costly even than the 11.75% initial monthly interest rate.

After the Closing

81. In accordance with their understanding of the terms of their loan, the Saint-Jeans made six monthly payments. After six months of payments, Mr. Saint-Jean contacted Mr.

Mason in July of 2008. When Mr. Saint-Jean spoke with Mr. Mason, Mr. Mason told him that he needed only three days to process the lowered interest rate. After 10 days, the Saint-Jeans still had not heard from Mr. Mason. Mrs. Saint-Jean tried to call Mr. Mason, but, despite leaving messages, she was not able to reach him.

82. Mrs. Saint-Jean waited to hear back from Mr. Mason before making the August 1 mortgage payment. Mrs. Saint-Jean intended to make this payment by the end of August and hoped that by that point the paperwork would have been processed and the payments would have been reduced.

83. Finally, after hearing no word from Mr. Mason, Mrs. Saint-Jean went to the Emigrant Savings Bank branch located at Kings Highway and Flatbush Avenue to make the mortgage payment in September. She told an Emigrant employee there that while she could not make both the August and September payments, she could make the August payment. Mrs. Saint-Jean made the August payment and Emigrant accepted this payment.

84. At this point, the Saint-Jeans had used most of the funds set aside from the loan closing to make their monthly mortgage payments and they were struggling to come up with the money to make the September mortgage payment. Mr. Mason finally responded to the Saint-Jeans, only to inform them that he had run their credit reports and that they would not qualify for the lower 6% interest rate they had been promised. The Saint-Jeans were shocked to hear this. Mr. Saint-Jean told Mr. Mason that they had been cheated. After this conversation, Mr. Mason refused to take the Saint-Jeans' calls.

85. In the fall of 2008, instead of reducing the Saint-Jeans' payment to \$2,700 as the Saint-Jeans expected, Emigrant imposed the 18% "default" interest rate, increasing the Saint-Jeans' monthly mortgage payment to over \$6,000. The Saint-Jeans were shocked by this

development. Mrs. Saint-Jean attempted to contact Emigrant repeatedly, calling the phone number listed on their mortgage statement. Mrs. Saint-Jean was never able to reach a representative and, although she left many messages, her messages were never returned. Very quickly, the Saint-Jeans fell over \$10,000 behind on their loan and realized they were unlikely to be able to bring the loan current.

86. In November of 2008, when the Saint-Jeans were three payments behind, Mrs. Saint-Jean spoke with an Emigrant representative and told them that they had gathered enough money to make two payments at the original \$4,174 payment amount. Emigrant's representative said that Emigrant would not accept this partial payment, stating that the bank would now accept only payment of all arrears.

87. After eight months of delay, during which time over \$30,000 in "default" interest accrued against the Saint-Jeans' home, Emigrant filed a foreclosure case against them, in May of 2009.

88. The Saint-Jeans did not discover the discrimination underlying their loan until they consulted with an attorney in July of 2009. They could not have reasonably discovered the discrimination independently because the information about Emigrant's lending practices was not known to them until explained to them by their counsel.

FIRST CAUSE OF ACTION

FAIR HOUSING ACT, 42 U.S.C. §§ 3604, 3605

89. Mr. and Mrs. Saint-Jean repeat and reallege paragraphs 1 through 88 as though fully set forth herein.

90. Mr. and Mrs. Saint-Jean are members of a protected class on the basis of race, color, and national origin because they are black and Haitian-American.

91. The Fair Housing Act makes it unlawful to “make unavailable . . . a dwelling to any person because of race, color, . . . or national origin.” 42 U.S.C. § 3604(a).

92. The Fair Housing Act makes it unlawful to discriminate on the basis of race, color, or national origin against any person in a residential real estate-related transaction such as the making or purchasing of loans or providing other financial assistance. 42 U.S.C. § 3605(a).

93. Emigrant engaged in a residential real estate-related transaction with respect to plaintiffs Mr. and Mrs. Saint-Jean by making a loan to the Saint-Jeans secured by residential real estate.

94. Emigrant’s actions violated the Fair Housing Act and constitute actionable discrimination on the basis of race, color, and national origin.

95. Plaintiffs Mr. and Mrs. Saint-Jean are aggrieved persons as defined by Section 3602(i) of the Fair Housing Act by virtue of having been subject to Emigrant’s discriminatory equity-stripping No Income Refinance Program. As described above, through its equity-stripping No Income Refinance Program, Emigrant engaged in a facially neutral mortgage pricing policy of “no income” “underwriting”, lending solely on the basis of the equity remaining in a borrowers home and credit score, aggressively originating these loans at very high interest rates to individuals with very low credit scores and ensuring its stake in the equity in a borrower’s home on default through 18% “default” interest rates and other onerous terms.

96. Emigrant engaged in this housing-related policy, the equity-stripping No Income Refinance Program, which resulted in a disparate impact to the detriment of black and African-American borrowers throughout New York City.

97. As a proximate result of such discriminatory housing practices, Mr. and Mrs. Saint-Jean have suffered economic loss, mental anguish, deprivation of civil rights, and the prospective loss of their home.

98. Emigrant's actions were intentional, wanton, malicious and done in reckless disregard of the plaintiffs' civil rights.

99. As a result of the aforesaid violations of the Fair Housing Act, Emigrant is liable to Mr. and Mrs. Saint-Jean for:

- a. Compensatory damages to be determined at trial;
- b. Injunctive relief;
- c. Costs and disbursements; and,
- d. Attorney's fees. 42 U.S.C. § 3613(c).

SECOND CAUSE OF ACTION

EQUAL CREDIT OPPORTUNITY ACT, 15 U.S.C. § 1691 et seq.

100. Mr. and Mrs. Saint-Jean repeat and reallege paragraphs 1 through 99 as though fully set forth herein.

101. Mr. and Mrs. Saint-Jean are members of a protected class on the basis of race, color, and national origin because they are black and Haitian-American.

102. Emigrant is a creditor as set forth in the Equal Credit Opportunity Act because in the ordinary course of its business Emigrant extended credit to plaintiffs Mr. and Mrs. Saint-Jean. Moreover, Emigrant is a creditor as set forth in the Equal Credit Opportunity Act because it set the terms of the credit that was extended to the Saint-Jeans through the equity-stripping No Income Refinance Program.

103. Emigrant designed, disseminated, controlled, implemented and profited from the discriminatory equity-stripping No Income Refinance Program, which has had a disparate economic impact on minority homeowners.

104. As the result of Emigrant's discriminatory equity-stripping No Income Refinance Program, Emigrant has charged black and African-American borrowers disproportionately high interest rates, taken the equity from their homes, and subjected them to the risk of foreclosure.

105. Emigrant's actions violated the Equal Credit Opportunity Act and constitute actionable discrimination on the basis of race, color, and national origin.

106. Plaintiffs Mr. and Mrs. Saint-Jean are aggrieved persons as defined in the Equal Credit Opportunity Act by virtue of having been subject to Emigrant's equity-stripping No Income Refinance Program.

107. As a result of the aforesaid violations of the Equal Credit Opportunity Act, Emigrant is liable to Mr. and Mrs. Saint-Jean for:

- a. Compensatory damages to be determined at trial;
- b. Injunctive relief;
- c. Costs and disbursements; and,
- d. Attorney's fees. 15 U.S.C. § 1691e(d).

THIRD CAUSE OF ACTION

NEW YORK STATE HUMAN RIGHTS LAW EXECUTIVE LAW §§ 296-a

108. Mr. and Mrs. Saint-Jean repeat and reallege paragraphs 1 through 107 as though fully set forth herein.

109. Emigrant engaged in a housing-related policy that resulted in a disparate impact to the detriment of non-white homeowners in, and residents and would-be residents of,

communities of color throughout New York City; this housing-related policy constituted discrimination on the basis of race, color, and national origin.

110. As a proximate result of such discriminatory actions, Mr. and Mrs. Saint-Jean have suffered economic loss, mental anguish, deprivation of civil rights, and the prospective loss of their home.

111. Defendants' actions were intentional, wanton, malicious and done in reckless disregard of the plaintiffs' civil rights.

112. As a result of the aforesaid violations of the New York State Human Rights Law, Emigrant is liable to Mr. and Mrs. Saint-Jean for:

- a. Compensatory damages to be determined at trial;
- b. Injunctive relief;
- c. Costs and disbursements; and,
- d. Attorney's fees. N.Y. Executive Law § 297(10).

FOURTH CAUSE OF ACTION

UNLAWFUL DISCRIMINATORY PRACTICES IN VIOLATION OF TITLE 8 OF THE NEW YORK CITY ADMINISTRATIVE CODE

113. Mr. and Mrs. Saint-Jean repeat and reallege paragraphs 1 through 112 as though fully set forth herein.

114. Emigrant engaged in a housing-related policy that resulted in a disparate impact to the detriment of non-white homeowners in, and residents and would-be residents of, communities of color throughout New York City; this housing-related policy constituted discrimination on the basis of race, color, and national origin.

115. As a proximate result of such discriminatory actions, Mr. and Mrs. Saint-Jean have suffered economic loss, mental anguish, deprivation of civil rights, and the prospective loss of their home.

116. Defendants' actions were intentional, wanton, malicious and done in reckless disregard of the plaintiffs' civil rights.

117. As a result of the aforesaid violations of Title 8 of the New York City Administrative Code, Emigrant is liable to Mr. and Mrs. Saint-Jean for:

- a. Compensatory damages to be determined at trial;
- b. Costs and disbursements; and,
- c. Attorney's fees.

FIFTH CAUSE OF ACTION

TRUTH IN LENDING ACT, 15 U.S.C. § 1601 et seq.

118. Mr. and Mrs. Saint-Jean repeat and reallege paragraphs 1 through 117 as though fully set forth herein.

119. The subject loan comes within the statutory language of the Truth in Lending Act, 15 U.S.C. § 1601 et seq., and its implementing regulations, Federal Reserve Board Regulation Z, 12 C.F.R. § 226, and is not one of the specified transactions exempted by 15 U.S.C. § 1603. Consequently, Mr. and Mrs. Saint-Jean's loan is subject to TILA.

120. Mr. and Mrs. Saint-Jean are consumers within the meaning of TILA, 15 U.S.C. § 1602(h) and Regulation Z § 226.2(a)(11). The subject loan is a consumer credit transaction and secured by their principal dwelling and not a residential mortgage transaction.

121. At all times relevant hereto, Emigrant was a creditor within the meaning of TILA 15 U.S.C. § 1602(f) and Regulation Z § 226.2(a)(17). Emigrant in the ordinary course of

business regularly extended or offered to extend consumer credit for which a finance charge is or may be imposed or which, by written agreement, is payable in more than four installments.

122. TILA and Regulation Z mandate that all closed end consumer loans be accompanied by a Truth in Lending disclosure of material terms. 15 U.S.C. §§ 1638, 1639; 12 C.F.R. § 226.18. In the course of this consumer credit transaction, Emigrant failed to make TILA's required disclosures clearly and conspicuously in writing in violation of 15 U.S.C. § 1632(a) and Regulation Z § 226.17(a) and failed to deliver all "material" disclosures as required by TILA and Regulation Z, including the following:

- a. Failing to disclose properly and accurately the "finance charge," in violation of 15 U.S.C. § 1638(a)(3) and 12 C.F.R. § 226.18(d);
- b. Failing to disclose properly and accurately the "amount financed," in violation of 15 U.S.C. § 1638(a)(2) and 12 C.F.R. §§ 226.18(b); 226.18(c);
- c. Failing to disclose properly and accurately the "annual percentage rate," in violation of 15 U.S.C. § 1638(a)(4) and 12 C.F.R. § 226.18(e);
- d. Failing to disclose properly and accurately the payment schedule, in violation of 15 U.S.C. § 1638(6) and 12 C.F.R. § 226.18(g); and,
- e. Failing to disclose properly and accurately the "total of payments," in violation of 15 U.S.C. § 1638(a)(5) and 12 C.F.R. § 226.18(h).

123. Emigrant's loan to the Saint-Jeans was disclosed as an adjustable rate mortgage with an APR of 10.119 %. However, it is in fact a mortgage with a minimum APR of 17.767%. The monthly payments on this loan exceeded the family's income and the true interest rate of the loan was its 18% "default" rate.

124. The errors on the Saint-Jean TILA disclosure greatly exceed the tolerances for inaccurate disclosures permissible under 15 U.S.C. §§ 1605(f) (with regard to the “finance charge,” tolerance of .5% of the total amount of credit extended), 1606(c) (with regard to the APR, one eighth of one percent); and 1635(i)(2) (for purposes of rescission, with regard to the “amount financed,” §35).

125. Notice that the borrower has 3-business days to cancel the mortgage is one of the material disclosures required by TILA. 12 C.F.R. §226.23. TILA and Regulation Z require that each consumer with a right to rescind the loan receive two copies of the notice of their right to rescind. 15 U.S.C. § 1635; 12 C.F.R. § 226.23(b)(1). Neither Mr. nor Mrs. Saint-Jean received two copies each of the notice of their right to rescind their mortgage.

126. TILA and Regulation Z require that each borrower receive a copy of the TILA disclosure statement. Mr. and Mrs. Saint-Jean together received only one copy of the TILA disclosure statement, rather than the two to which they were entitled. Failure to provide the requisite disclosures gives rise to an extended right to rescind. 15 U.S.C. § 1635(a); 12 C.F.R. § 223(a)(3).

127. Each of the TILA violations described above is a material violation as defined by Regulation Z, 226.23 and each gives Mr. and Mrs. Saint-Jean an extended three year right to rescind the loan held by defendants pursuant to 15 U.S.C. § 1635 and 12 C.F.R. § 226.23.

128. On July 12, 2010, Mr. and Mrs. Saint-Jean rescinded the subject loan by mailing a notice of rescission to Emigrant and Emigrant’s attorney.

129. As a result of the aforesaid violations of TILA and Regulation Z, Emigrant is liable to Mr. and Mrs. Saint-Jean for:

- a. Rescission of the subject loan and termination of any security interest in the Saint-Jeans' property created under the transaction;
- b. Compensatory damages to be determined at trial;
- c. Statutory damages;
- d. Costs and disbursements; and,
- e. Attorney's fees. 15 U.S.C. § 1640(a)(3).

WHEREFORE, plaintiffs Jean Robert and Edith Saint-Jean respectfully request that this

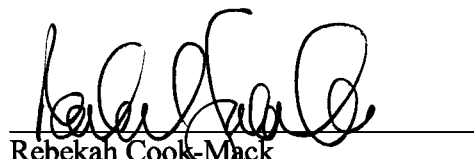
Court:

- a. Grant the relief requested in Counts I - V herein;
- b. Order the rescission of the mortgage loan transaction and termination of any security interest in the Saint-Jeans' property created in connection with the transaction;
- c. Order the return of any money or property given by Emigrant to anyone in connection with this transaction;
- d. Enjoin Emigrant from underwriting loans under its equity-stripping No Income Refinance Program or any other No Income loan program;
- e. Award compensatory damages and interest thereon in the amount to be determined at trial;
- f. Award statutory damages, as set forth above;
- g. Award reasonable costs of this action as set forth above;
- h. Award reasonable attorney's fees;
- i. Award such other further relief as the Court deems just and proper.

DATED: April 29, 2011
Brooklyn, NY

SOUTH BROOKLYN LEGAL SERVICES

By:

A handwritten signature in black ink, appearing to read 'Rachel Geballe', is written over a horizontal line.

Rebekah Cook-Mack
Meghan Faux
Rachel Geballe
105 Court Street, Third Floor
Brooklyn, NY 11201
(718) 237-5500 (tel)
(718) 875-8546 (fax)

Attorneys for Plaintiff

A

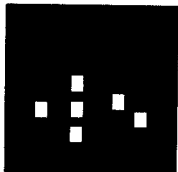
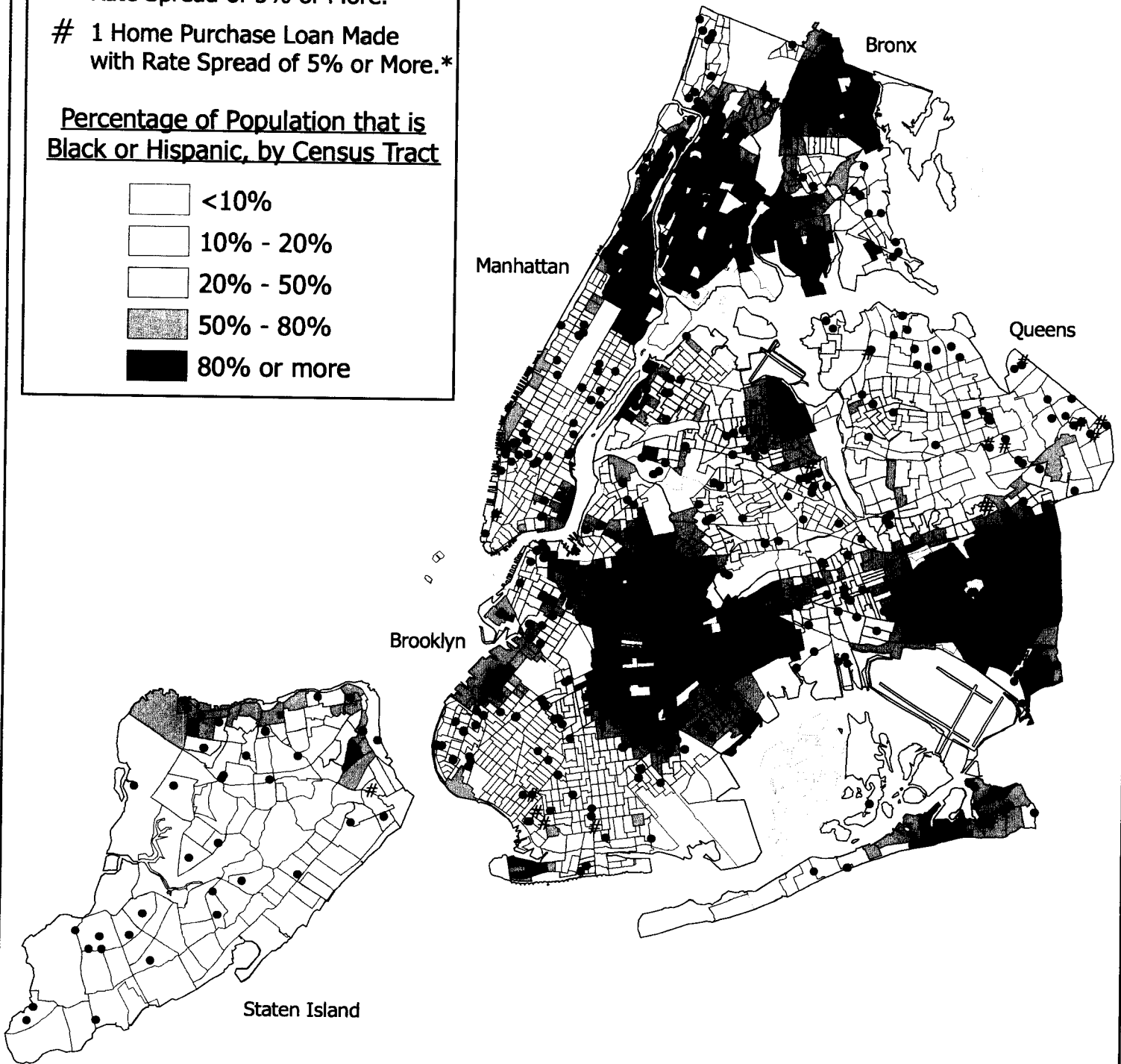
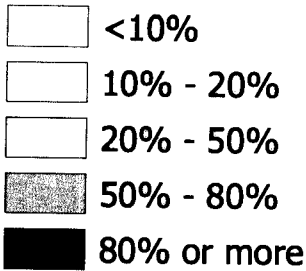
Emigrant Funding Corp. and Emigrant Mortgage Co. High-Cost Home Purchase and Refinance Loans (2005-2009)

New York City

! 1 Refinance Loan Made with Rate Spread of 5% or More.*

1 Home Purchase Loan Made with Rate Spread of 5% or More.*

Percentage of Population that is Black or Hispanic, by Census Tract



NEDAP
www.nedap.org
 ©2010-NEDAP






*In New York City between 2005 and 2009, Emigrant made 706 conventional, first-lien home purchase and refinance loans on owner-occupied, 1-4 family properties with interest rate spreads at least 5 points above comparable maturity treasury securities. Of these, 675 were refinance loans and 31 were home purchase loans.

Data Sources: Home Mortgage Disclosure Act Data (2005-2009); U.S. Census (2000)

Emigrant Savings Bank and Emigrant Mortgage Company Foreclosure Actions Filed - 2008 and 2009

● = 1 Foreclosure Action Filed*

Percentage Black or Hispanic

-  <10%
-  10% - 20%
-  20% - 50%
-  50% - 80%
-  80% or more

New York City

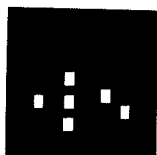
Bronx

Manhattan

Queens

Brooklyn

Staten Island



NEDAP
www.nedap.org

©2010 NEDAP

Any unauthorized use of this material is prohibited.

Emigrant SB and Emigrant Mortgage Company were plaintiffs in 194 *lis pendens* filings in 2008 and 2009.

*based on *lis pendens* filed on 1-4 family homes.

Data Sources: First American Core Logic; U.S. Census (2000)