Honorable Chief Justice Gants and Justices of the Supreme Judicial Court
John Adams Courthouse,
1 Pemberton Square, Suite 2500,
Boston, MA 02108
% SJCReporter@sjc.state.ma.us[1]

June 25, 2020

Re: Bank Of New York Mellon as trustee on behalf of the registered holders of Alternative Loan Trust 2006- J7, Mortgage Pass-Through Certificates, Series 2006-J7 vs. Alton King, JR, SJC-12859
CC: Bigelow & others vs. Massachusetts Courts Promulgator Of The Official Forms & others, SJC-12974[2]

To the Honorable Chief Justice Gants and Justices of the Supreme Judicial Court of Massachusetts,

The Court must reverse this Alton King decision which abandons this Court's responsibility to arrest, rather than facilitate, the mortgaging and foreclosure industry's

[1] The Slip Opinion provides this address for communicating to the entire court "errors" in its draft decisions. M.R.A.P. rule 27 provides 14 days for reconsideration; while signatories are not parties to the case, their notice is clearly within the time period for the Court to rescind its decision. Signatories and those similarly situated are within the segment of Massachusetts Inhabitants herein stripped of their constitutional protections including as to property ('Inhabitants' is used by our Declaration of Rights, Part the First of our Constitution; the addition to the original proposed Constitution without which the Commonwealth's Inhabitants refused to ratify it). Further, as far as the signatories can tell, this Court has no authority nor jurisdiction to strip constitutional rights except if "forfeited by some criminal conduct" (see Commonwealth V. Jennison (1783)). Neither Alton King nor those similarly situated are even accused of a crime. Thus, this request appears forever timely as this decision appears to be 'void' and therefore cannot ever be too late (See Reporter's Notes, M.R.Civ. P. Rule 60 "no time limit applies to a motion under the Rule 60(b)(4) because a void judgment can never acquire validity through laches. See Crosby v. Bradstreet Co., 312 F.2d 483 (2nd Cir.) cert. denied, 373 U.S. 911 (1963) where the court vacated a judgment as void 30 years after entry. See also Marquette Corp. v. Priester, 234 F.Supp. 799 (E.D.S.C.1964) where the court expressly held that clause Rule 60(b)(4) carries no real time limit.") Debt as a stand alone violation was outlawed as a crime in 1833 nationally and by our state legislature on May 15, 1855.

[2] While the Bigelow decision is only a page long addressing few particulars, the case is about Indigent litigants after a purported foreclosure in an eviction case; it includes as one of its few references, the same erasure by omission of the applicable law that is the legal expression of our Constitutional protection of access to the Courts in these cases. As the decision implies the same ignoring and viciating of the same population's rights and the same abandonment of this Court's responsibility to arrest not facilitate the mortgaging and foreclosure industry's structural racism, please provide this letter to the Honorable Judges for that case as well.

structural racism.[3]

Massachusetts was the first state to outlaw slavery[4]. A foundation of this decision was that no statute could override the state constitution.[5] Now, more than 200 years later, with this decision, it appears that the Massachusetts SJC has abandoned the protections of an entire class of people to the Constitutional rights to property.[6]

We can't breathe! As with George Floyd's life, equal rights to property are being taken away from Massachusetts homeowners in what amounts to a constitutional lynching! The analogy is stark but apparent. For Massachusetts homeowners fighting for their fundamental inalienable rights, the banks have thrown us to the ground and cuffed us. This Alton King decision is akin to the Court sitting on our necks until we die.

This Honorable Court's Adjartey decision, (barely over a year old; essentially the ink isn't even dry on it) said that:

1. All indigent Court litigants, across the entire state Court system, had a right not to be barred from access to the Courts for inability to afford to participate,[7]

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[3] Authors of this letter are members of *Bring Our Wealth Home*, all homeowners of color who have been damaged, victimized and then targeted for shame by the well documented, intentional and structurally racist practices of the mortgaging and foreclosure industry through predatory lending and foreclosures – many times over – illegally and likely criminally under settled law. See, for instance, starkly disparate statistics from Boston that for 2003, over 25 percent of refinance loans provided to African-American borrowers, 19 percent to Hispanic borrowers, and only 5.6 percent to white borrowers were subprime loans, Jim Campen, Borrowing Trouble: Subprime Lending in Greater Boston 2000-2003 (Jan. 2005), Table 2; Campen's 2008 study, Changing Patterns: Mortgage Lending to Traditionally Underserved Borrowers & Neighborhoods in Boston, Greater Boston and Massachusetts, 2006 (Feb. 2008) demonstrates that this pattern of racially disparate refinancing continues. (See addended map)

[4] Commonwealth V. Jennison (1783)

[5] In fact, in *Jennison*, Chief Judge Cushing, writing for this Court, established the unique powers of the Supreme Judicial Court as enforcer of Constitutional protections and its ability under the constitution to vacate a law which contravenes a Constitutional protection. This judicial principle was later established at the national level in the famous Maybury v. Madison decision (1803) when Cushing sat on the new US Supreme Court.,

[6] The Court is reminded that the Constitution puts Constitutional protections to Life, Liberty and Property on equal footing (See, again, Commonwealth V. Jennison (1783)). We can testify to why having experienced the life threatening damage of the attempted illegal taking of our homes; the Framers had just been through what appears to have been the last foreclosure crisis with rates as bad as this one has been - foreclosures in the worst years of this crisis have been estimated at 3.4 times the peak rate of 1931 in the Great Depression. The Framers apparently knew the profound human toll of illegal taking of a home; until COVID, that reality has been the hidden suffering *unjustly* for too many of us. (Informal estimates put the ratio of Massachusetts households who have lost a home as high as 1 in 12.95 households)

[7] p. 840, "The Indigent Court Costs Law exists to "ensur[e] that the doors of the Commonwealth's courts will not be closed to the poor." Reade, supra. The equitable and

2. Appeal Bonds are among the enumerated fees that should be waived so as to ensure that the litigant has access to the courts,[8] and
3. The consistent application of this rule was critical to the Courts fulfilling their Constitutional obligation for us all to have access to justice without paying for it.

Certainly, and as codified into our laws, we are not to have to pay for it by forgoing our basic and our family's basic necessities.[9]

In the Alton King decision, the Court has carved out an exception that only applies to homeowners that the Industry have illegally foreclosed. We are to be barred from the Courts if we can't afford to pay, and, if we can't pay as much as the multi-trillion industry we are opposing . This is eerily reminiscent of the historic “poll tax” that was used to make sure that blacks couldn’t vote in decades past. However, as with all structurally racist policies, it affected a lot of white people as well.

Wording and basis of this decision reflects the race coded prejudice behind the slogan of “having bought too much house.[10]” All of the history of the predatory loans’ and the

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consistent application of this law is therefore **critically important to safeguarding every Massachusetts litigant's ability to "obtain right and justice freely, and without being obliged to purchase it."** [Note 14] Art. 11 of the ... Declaration of Rights.” [emphasis added]

[8] p.837, “See, e.g., G. L. c. 261, § 27A (describing appeal bonds as "extra fees and costs")...Under the Indigent Court Costs Law, G. L. c. 261, §§ 27A-27G, indigent parties are able to obtain waivers or reductions of various fees and costs (including, for example, filing fees, fees related to the service of process, and appeal bond costs) incurred while litigating a summary process action. See G. L. c. 261, §§ 27A, 27B; Reade v. Secretary of the Commonwealth, 472 Mass. 573, 574 (2015).” Procedures are supplied at G. L. c. 261, §27D. p.845, “If the cost of an appeal bond is considered "extra," it makes sense that the cost of audio recordings is likewise considered "extra," regardless of whether the audio recordings are required for the appeal to proceed. See generally Mass. R. A. P. 8, as appearing in 481 Mass. 1611 (2019)”. Clearly, if the audio recordings which are not even ‘required to proceed’ are eligible for waiver to guarantee an indigent litigant can proceed, if periodic rent payments could even be ordered, they must be waivable so as not to violate our Constitutional guarantee to access the Courts without giving up the necessities of life.

[9] Adjartey, p.840-41, “An individual is eligible for a fee waiver based on indigency only if one or more of the following applies:... the individual is unable to pay the court fees or costs without depriving him or herself (or those dependent on him or her) of the "necessities of life," including food, shelter, and clothing. G. L. c. 261, § 27A.”

[10] According to the Center for Responsible Lending, a majority of subprime loans did not go for home purchases, only one-fourth to first time homebuyers. (Subprime Lending is A Net Drain on Homeownership (Center for Responsible Lending, CRL Issue Paper No. 14, March 27, 2007)). In contrast, racial targeting of subprime loans reversed slow gains in percentage of ownership by homeowners of color; the disturbing likely outcome of that predatory lending and the disparate denial of loan modifications (which continued the structural racism), was to reverse ownership gains *and strip more than a lifetime of wealth accumulation.* Then president of the Center for Responsible Lending, Mike Calhoun stated that, because of the racial underpinnings of the subprime crisis, it “stands to likely be the largest loss of African-American

then predictable illegal foreclosures were rooted in an explicitly racist strategy by the mortgaging industry. That prejudice has now been fueled by shaming the same people targeted for these immoral and unconstitutional practices of the wealthiest industry in the world. The Alton King decision acknowledges that the Notices required might well be illegal; by law, then, the foreclosure void; the Securitized Trust without ownership and therefore no standing to evict. Yet, the Court says it will not act to address these well-established illegalities *unless the homeowner pays.* Instead, the Court strikes such homeowners' access to our courts instead of enforcing our laws against the wrong-doers *and admonishes the lower courts to do likewise.*

The Adjartey petition to this, Massachusetts' top court, was brought under the leadership of a black African immigrant to this country who believed in the American Dream and the right to buy her home.

We, the movement's leadership team, are writing to you to recognize and enforce our laws that can end illegal, predatory lending and foreclosures. You should use your powers to reverse their harm to those who were hurt first and worst, the communities that the predatory Industry explicitly and intentionally targeted for predatory loans, and the most predatory loans, in this entire era of illegal and, evidently, criminal intentional procedures by the mortgaging and foreclosure industry. That is: Communities of Color.

This Court has no right to carve out an exception to the rights to access the Court for any segment of the Massachusetts population, ever.

However, in this period where structural racism is finally being recognized by even the overwhelmingly white leadership of our state, we are shocked that this Court has exempted itself from that very recognition. The arc of justice has taken a very long time to move from a time when African American men and women were themselves property to being equally protected in their right to own property. Or so we thought.

This Court must reverse its decision because it is a continuance and (we would argue) a facilitation of *expanding one area of structural racism*. This decision puts out squarely that apparently in the eyes of this Court,

- people of color are not, in fact, equally covered under the amended version of Article I of the Constitution (the Declaration of Rights of the Inhabitants of the Commonwealth);
- they do not have an inalienable right to their property;
- they do not have an equal right to access to our courts to protect that right –and
- they, and then the white homeowners to whom the Industry gave predatory loans after the Communities of Color, are uniquely and specifically required to purchase justice in violation of our Constitution.

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wealth that we have ever seen, wiping out a generation of home wealth building." Ellen Schloemer and Wei Li. "Losing Ground: Foreclosures in the Subprime Market and their Cost to Homeowners." Center For Responsible Lending. December 2006.

Not only must “Black Lives Matter" equally, but black and brown rights to own property must matter equally. If this does not happen, the Court will have abrogated being arbiter and interpreter of our Constitution and of our laws, and will have abdicated its right to claim the integrity and credibility to function as the top Court in this state.

The recent COVID-19 crisis has centralized for the first time apparently since the ratification of the Massachusetts Constitution, that your home is a fundamental protection of human existence.

Even the most recent report from our State Government shows that people of color *are three times more likely to die from the COVID crisis, and* named one and only one key factor in protecting people from death: their home.

Massachusetts has already got the ignominious status of having the widest divide between homeownership by people of color and white people. The root of this foreclosure crisis was the Industry’s targeting of what was internally referred to by the Industry as “mud people” or “ghetto loans”[11] and the impact on communities of color.

If our laws had been enforced timely, it could have stopped the further broadening of the widest racial divide in homeownership rates. This reversal would have guarded against, and prevented and halted much of the massive destruction of wealth,[12] housing stability, and health[13] etc. The deplorable triple rate of deaths among people of color in our state would surely have been lessened.

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[11] “Wells Fargo, ... saw the black community as fertile ground for subprime mortgages,...pushed customers who could have qualified for prime loans into subprime mortgages.” Wells Fargo “employees had referred to blacks as “mud people” and to subprime lending as “ghetto loans.” (see addended). The famous federal Countrywide settlement demonstrates the Industry incentivization of discriminating against borrowers of color. (see addended press release)

[12] During the years of the peak of the foreclosures of subprime loans “From 2005 to 2009, inflation-adjusted median wealth fell by 66% among Hispanic households and 53% among black households, compared with just 16% among white households.” Kochhar R, Fry R, Taylor P. Twenty-to-One: Wealth Gaps Rise to Record Highs between Whites, Blacks and Hispanics. Washington, D.C: Pew Research Center; 2011. Jul 26 . “In 2016, the median wealth of white households was $171,000. That’s 10 times the wealth of black households ($17,100) – a larger gap than in 2007 – and eight times that of Hispanic households ($20,600), about the same gap as in 2007.” Pew Research Center, http://pewrsr.ch/2iSfbOS

[13] Life-threatening illnesses are heavily correlated with the stress of foreclosure, which on the stressful life events measure is comparable to such events as deaths. See, for instance, “foreclosure has significant effects on visits for mental health, visits for preventable conditions, and on visits for a wide range of physical conditions that are susceptible to stress including suicide attempts, heart attack, and stroke….The estimated effects are particularly large for Hispanics, though we find the largest estimated effects on heart attack and stroke among

We can only hope that it was unconscious prejudice by this Court that targeted an African American man's ownership of his home as the basis for this decision.

This decision blesses and enables the intentional, endemic and thorough racism of the mortgaging and foreclosure industry which is well documented from the incentivizing to originators to explicitly discriminate against people of color in the origination of mortgages, giving them the worst possible characteristics, (explicitly against Massachusetts Anti-Redlining Statute, MGL Chapter183 §64). The distribution of the assigning of predatory mortgages shows that Massachusetts communities with the highest percentages of people of color were primarily targeted for these loans, (also in violation of anti-Redlining law, Chapter 183 §64 of the Massachusetts Code), that the illegality of the practices to originate these loans have been enumerated in MGL Chapter 183C; they are further enumerated in the regulations that have been around since the mid-1990s, 940 CMR Chapters seven and eight (although these were expanded after 183C was passed.) Chapter 183C makes it clear that even in an eviction case, those violations can be raised as a defense.

As was illustrated for decades before the 1990s, redlining prevented communities of color from benefiting from the unique wealth-building opportunity of owning a home. A May 29, 2019 article in the *Dorchester Reporter* "How Redlining Dashed Dreams, Hurt Neighborhoods," provides a historical review of the failure of the Boston Banks Urban Renewal Group (BBURG). The BBURG program included overt redlining so that "African American families could purchase homes in Dorchester and Mattapan but not in West Roxbury, Quincy, or Newton." As a result of blockbusting by realtors and FHA-insured loans made on homes that were supposed to be inspected but often weren't, new black homeowners inherited homes that badly needed structural repairs. If a homeowner fell even one month behind due to repairs needed because of faulty repairs, the bank could, and often did foreclose. "More than 1,200[14] homeowners lost their homes to the "fast foreclosure" practiced by banks on FHA-insured loans." This report references lessons from 50 years ago, including "Big banks are very powerful and can hurt communities that give them their savings" and how "all these events fed a false narrative that when blacks moved in, a neighborhood would soon deteriorate. Yet the truth was that intentional acts of big banks and realtors, and the lack of action and regulation by the government, caused the neighborhoods to decline."

We often think of redlining as the act of systematically denying credit to people based on their race. However, in Massachusetts statute, it also includes giving bad credit, which is undoubtedly part of the narrative of the events mentioned above 50 years ago.

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blacks." Janet Currie and Erdal Tekin, Is the Foreclosure Crisis Making Us Sick? National Bureau of Economic Research, (August, 2011).

[14] The exact number is not known, but a couple of thousand African Americans got mortgages from this program and were never foreclosed on.
https://www.dotnews.com/columns/2019/how-redlining-dashed-dreams-hurt-neighborhoods

It is an insidious part of the now illegal redlining. See Massachusetts Anti-Redlining Statute, MGL Chapter183 §64[15].

It is this Court's constitutional and moral duty to insist upon and enforce a far expanded number of laws than those enumerated in its last dozen years, for the banks, the Securitized Trusts and other Industry players to comply with before foreclosing and be allowed to evict after a purported foreclosure.

That the Court in this case stated that it was willing to accept that the bank had probably violated its own Pinti decision and admit the recognition that King's is a nonfrivolous appeals argument was not enough to stop this Court from stripping all Massachusetts homeowners who are fighting foreclosure or who have been illegally foreclosed from their right of access to the Courts. Shockingly, the exemplar that the Court uses to put down this decision is a black man. The court presumes he will never get enough money to pay a legal mortgage (the document entitled 'mortgage' the Court used as its measure is a transparently illegal one on the public record in the registry of deeds).

Further, the Court rooted its decision in the presumption that you were at fault for not paying the mortgage and because you could not afford payments that led to this foreclosure that you would not pay if it was reversed and be foreclosed again. This false misapprehension ignores the systemic reality that you, the homeowner, have been sufficiently and effectively enough victimized by mortgages (illegally far overpriced and with illegal characteristics); this made them far more expensive to pay and stripped homeowners of their wealth. That then, the Court goes on to assume that you will be forever unable to pay even if the Court holds the Plaintiff accountable and holds what is already true by law – that the foreclosure is void. Instead of expecting the Courts to then fulfill their role and repair all the illegalities and injustice of the illegal mortgage and foreclosure, the Court assumes you will be illegally foreclosed via the illegal mortgage again. Based on these misconceptions, this Court holds that it can abdicate its responsibility to enforce the laws against the perpetrators and hold that It and all Massachusetts Courts should deny you the rights to have the original illegal foreclosure overturned. It should be noted that the decision almost exclusively focuses on King not on the perpetrators of the illegal acts.

The presumptive prediction that an illegal foreclosure if justly recognized as void will not create an opening for the homeowner to obtain further justice is either a shocking condemnation of the courts themselves or a commitment by this body to guide all the lower courts to ignore all of the industry's staggering number of legal violations; it will be essentially blessing the industry's repeated requests (to protect its own illegal and in many cases criminal behavior) that it be exempted from all laws.

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[15] **How 'redlining' dashed dreams, hurt neighborhoods,** Finfer; Dorchester Reporter: 05/29/19 https://www.dotnews.com/columns/2019/how-redlining-dashed-dreams-hurt-neighborhoods

In fact, perhaps the most shocking thing about this decision is the Court focused on the worthiness of the victim of the illegal and possible criminal acts, rather than requiring compliance by the party that committed the illegal act.

We are reminded of the historically-rooted presumption that 'all black people are criminals; all black people deserve to be enslaved; and all black people and other people of color deserve to be barred from white neighborhoods'.

237 years ago, this Court (with an African-American man in front of it) recognized that all people are guaranteed liberty under the Commonwealth's Constitution, and outlawed slavery. Thereby, it established the fundamental principle that our Constitutional guarantees override any law that would contravene them, and established the role of a top court in our three-part form of a Constitutional democracy. This Jennison decision of 1783 defined the role of a top court as the enforcer of Constitutional guarantees, even where the other branches of our government might limit or circumscribe them.

434 days ago, this Court continued in its unique role and held in affirming previous case law (with a lead litigant of a black African immigrant) that access to our courts is Constitutionally guaranteed, even if you are indigent.

8 days ago, (with an African-American man in front of it) this Court held the absolute opposite: that one statute can override any Constitutional guarantee – including those in Article I as Amended by amendment CVI, Article XI and XV. And it chose a case where stereotype and prejudice might make that startling and unconscionable reversal get a pass?

Where a Massachusetts resident has been the victim of the structurally racist practices of the banks and their securitized trusts, and only for this population, the Court reversed the fundamental principles of the role of the top court, as well as the meaning of Constitutional guarantees.[16]

We cannot believe this is the same Massachusetts Supreme Judicial Court that on June 3, 2020, publicly took the responsibility to… "look afresh at what we are doing, or

[16] In this decision, the Court reversed the meaning of ownership of own's home; it referred to the right to Constitutional protections of your home as if this were not a right but a privilege "he or she is continuing to receive the 'benefit' of possession of the property." (Article I, "that of acquiring, possessing, and protecting property" and with Amendment CVI, "Equality under the law shall not be denied or abridged because of sex, race, color, creed or national origin.") The Court's bias against the indigent litigants – a disparate percentage of whom are people of color – victimized, stripped of their wealth and now seeking before the Courts to stop the further stripping of possession after the illegal ('void') taking of their title, is apparent in the next sentence in its decision; the Court frames the very party whose illegal actions created this situation as the wronged party: "Instead, the cost ... are being imposed on the plaintiff …"

failing to do, to root out any conscious **and unconscious bias in our courtrooms**; to ensure that the justice provided to African-Americans is the same that is provided to white Americans; to create in our courtrooms, our corner of the world, a place where all are truly equal." [emphasis added] Further, the justices of this Court called on the wider legal community to join you as you lead by example.

How could you then on June 17th render a decision that does so much harm? We must call it a judicial version of "We Can't Breathe." *Do not finalize this decision asking the judges and legal community to follow this oppressive decision to facilitate and expand structural racism and the erasing of the Constitutional and legal existence of a whole sector of the people of this Commonwealth!*[17]

We must point out that Black and Brown people are singularly harmed by your ruling. We insist you review your decision through our viewpoint and the history of racial oppression:

- Why select a Black man with a $1Million mortgage[18] from the queue of six appellants? Is there bias in this?
- Why is the burden on Mr. King to prove he is worthy? Yet no burden on the Securitized Trust[19] to prove they even have a mortgage[20] with Mr. King?

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[17] Commonwealth V. Jennison (Massachusetts, 1783, Unreported), a/k/a the 3rd Quock Walker decision, "And upon this ground our Constitution of Government, by which the people of this Commonwealth have solemnly bound themselves, sets out with declaring that all men are born free and equal -- **and that every subject is entitled to liberty, and to have it guarded by the laws, as well as life and *property*** -- and in short is totally repugnant to the idea of being born slaves. This being the case, I think the idea of slavery is inconsistent with our own conduct and Constitution; and there can be no such thing as perpetual servitude of a rational creature, unless his liberty is forfeited by some criminal conduct or given up by personal consent or contract". [emphasis added]

[18] For an example, "Of home purchase loans made in 2006, roughly one out of every two loans made to African American (53 percent) and Latino (46 percent) borrowers were high-cost, compared to fewer than one out of five loans made to white borrowers (18 percent) (Been, Ellen, and Madar 2009). Similarly, for refinance loans made in 2006, 52 percent of black refinance borrowers and 39 percent of Latino refinance borrowers received high-cost loans compared to only 26 percent of white borrowers (Been, Ellen, and Madar 2009). Even after controlling for available loan and household characteristics, such as income, black home purchase borrowers were more than twice as likely to receive a subprime loan as white borrowers and **the likelihood of receiving a subprime loan actually increased with household income, calling into question claims that subprime loans were given to riskier borrowers** (Faber 2013)." https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6084476/

[19] Note: the Court misnames the Plaintiff as a "bank" when it claims to be a securitized trust; a cursory review of the "execution copy" of this Securitized Trust's founding document at the Securities and Exchange Commission shows it was never even executed. Therefore, as a non-existent legal entity, it is it, not King who has no Constitutional existence.

[20] The so-called 'mortgage' is recorded and available to the world; its terms violate numerous laws and is not a legal contract (see G.L. c. 183C §10). ("If a contract or term thereof is unconscionable at the time the contract is made a court may refuse to enforce the contract, or

- In your June 3, 2020 letter to the legal community, you quote Reverend Doctor Martin Luther King, Jr.'s "Letter From The Birmingham Jail." Rev. Dr. King said in part, *"Injustice anywhere is a threat to justice everywhere. We are caught in an inescapable network of mutuality, tied in a single garment of destiny. Whatever affects one directly, affects all indirectly."* Did you have this top of mind when making your ruling which for Black people is a return to the Slave Codes, which forced us to be property, never to own property?

You must fully rescind this decision – to rescind the carve out of constitutional rights for those Indigent parties (mostly rendered so by the very opposing parties they are then forced to face pro se in court) fighting an illegal foreclosure during Summary Process.

In our fight against practices steeped in structural racism, you must:
1. reverse your decision that disproportionately denies people of color recognized Constitutional guarantees, and,
2. reverse this Court's guidance to all the lower Courts that non-payment of a mortgage is a basis to deny:
    a. all accountability from those who claim to have foreclosed and
    b. all justice for those victims of the unconscionable, adhesion, and overwhelmingly void contracts that were intentionally unaffordable and illegal from origination forward.[21]

Respectfully, to adapt this own Court's recent statement: "The events of the last ~~few months~~ *several days* have reminded us ~~of what~~ *as* African-Americans [*and other people of color] what we* know all too well: that too often, by too many, black ~~lives,~~ *brown and*

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may enforce the remainder of the contract without the unconscionable term, or may so limit the application of any unconscionable term as to avoid any unconscionable result." Restatement (Second) of Contracts § 208 (1981))

[21] As this Court already held but now reverses its obligation to enforce: "When a loan has been made based on the foreclosure value of the collateral, rather than on a determination that the borrower has the capacity to make the scheduled payments under the terms of the loan, .. the lender is effectively counting on its ability to seize the borrower's equity in the collateral to satisfy the obligation and to recover the typically high fees associated with such credit.… the judge appropriately could and did "look to Chapter 183C as an established, statutory expression of public policy that it is unfair for a lender to make a home mortgage loan secured by the borrower's principal residence in circumstances where the lender does not reasonably believe that the borrower will be able to make the scheduled payments and avoid foreclosure." Commonwealth v. Fremont Investment & Loan, 459 Mass. 209 (2011). Like so many others, especially homeowners of color, Alton King's loan is in direct violation of c. 183C, 244 §35B and others, and yet, when the mortgagee Securitized Trust forecloses (as was planned for this loan all along), this Court says: given the length of Alton King's inability to pay, this Court can look away from enforcing our laws unless he still has enough money left for this Court to be obligated to discover what has already been publicly recorded - this loan was predatory, discriminatory and unenforceable; *if this Court or any higher court recognizes its obligation to review this loan, King won't need any more money to pay to stop a new attempt to foreclose.*

red homes are not treated with the dignity and respect accorded to white ~~lives~~ *homes*…. ~~As judges and as lawyers~~, we are both saddened and angry at the confluence of recent events that have revealed how much more ~~we~~ *even this, our highest Court (that until now has mostly upheld our Constitution and long settled law in this fight for justice)* needs to do to create a just, fair, and peaceful society."

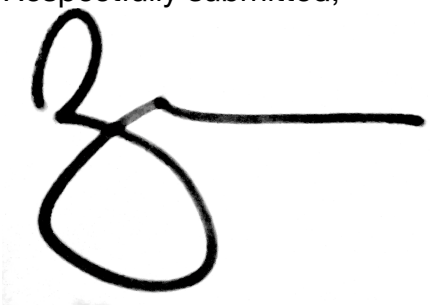
You must "look afresh at what" you are "failing to do, to root out any ... unconscious bias in our courtrooms; to ensure that the justice provided to African-Americans" and all targeted by illegal loans and practices as part of the structural racism of this industry; "to create in [y]our courtrooms, [y]our corner of the world, a place where all are truly equal."

Further, we call on you as the Justices of the Highest Court to abide by your Constitutional obligation *which was explicitly reversed in this decision*, that, *"As lawyers, we must also look at what we are doing, or failing to do, to provide legal assistance to those who cannot afford it; to diminish the economic ... inequalities arising from rac[ism]."*

On June 4, you said you must not just "reflect", you must "act".

Follow your own words, reflect on this draft decision and *act*, rescind it.

Respectfully submitted,



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Zakiya Alake, co-chair, Bring Our Wealth Home[22]

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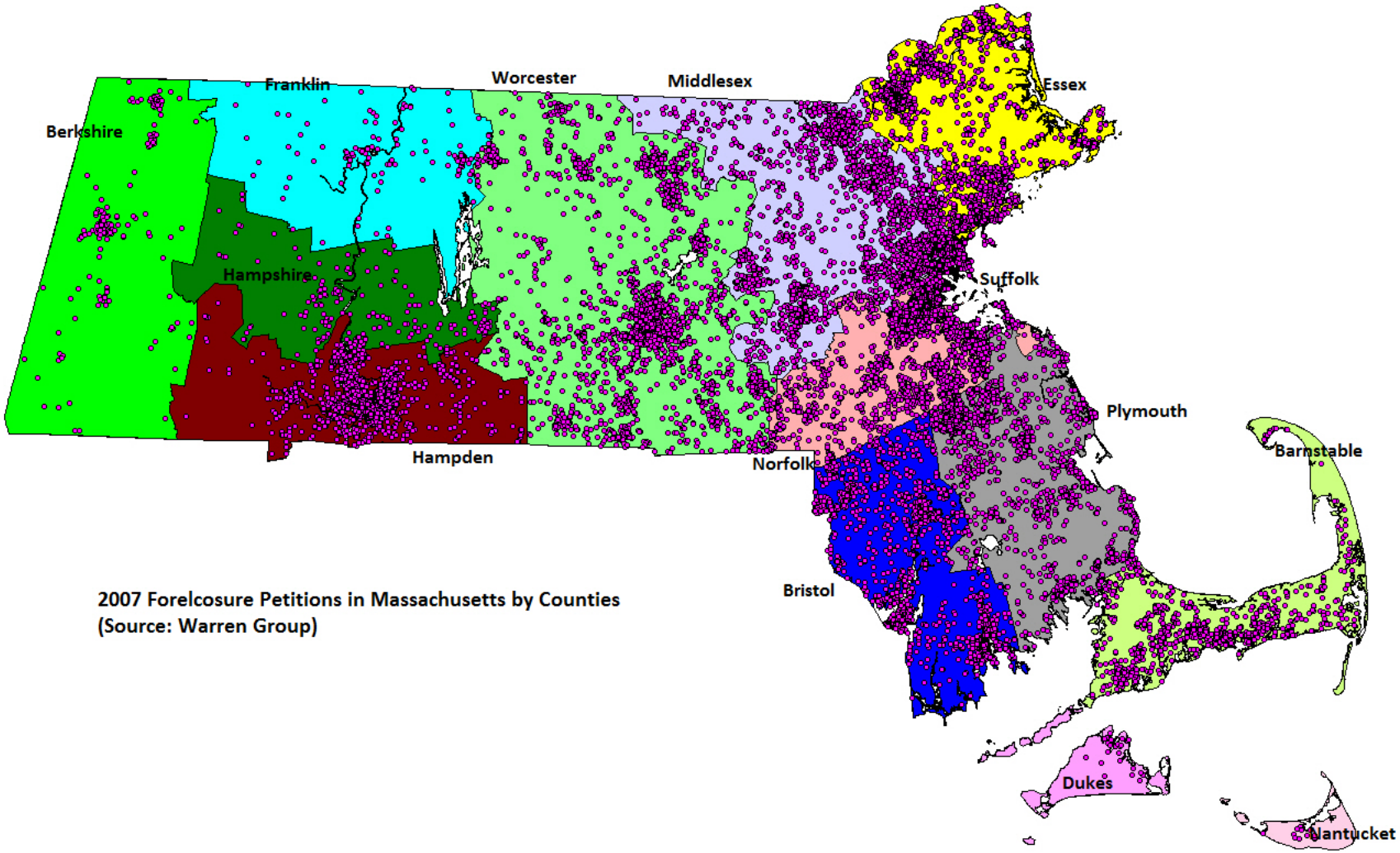
Dawn Duncan, co-chair, Bring Our Wealth Home
On behalf of the homeowners of color of the Commonwealth, fighting to reverse predatory lending and foreclosures and their devastating harm and injustice.
#BlackBrownHomesMatter

[22] Bring Our Wealth Home is a campaign of the Mass Alliance Against Predatory Lending, and may be reached through 508-630-1686 or MAAPLinfo@gmail.com.

Impacts and Responses to 'Spatial Concentrations' of Foreclosures in Massachusetts Communities of Color

Presentation
William Monroe Trotter Institute
University of Massachusetts Boston
March 2008

James Jennings
Tufts University



2007 Forelcosure Petitions in Massachusetts by Counties
(Source: Warren Group)

The New York Times

Bank Accused of Pushing Mortgage Deals on Blacks

By Michael Powell

- June 6, 2009

As she describes it, Beth Jacobson and her fellow loan officers at Wells Fargo Bank "rode the stagecoach from hell" for a decade, systematically singling out blacks in Baltimore and suburban Maryland for high-interest subprime mortgages.

These loans, Baltimore officials have claimed in a federal lawsuit against Wells Fargo, tipped hundreds of homeowners into foreclosure and cost the city tens of millions of dollars in taxes and city services.

Wells Fargo, Ms. Jacobson said in an interview, saw the black community as fertile ground for subprime mortgages, as working-class blacks were hungry to be a part of the nation's home-owning mania. Loan officers, she said, pushed customers who could have qualified for prime loans into subprime mortgages. Another loan officer stated in an affidavit filed last week that employees had referred to blacks as "mud people" and to subprime lending as "ghetto loans."

"We just went right after them," said Ms. Jacobson, who is white and said she was once the bank's top-producing subprime loan officer nationally. "Wells Fargo mortgage had an emerging-markets unit that specifically targeted black churches, because it figured church leaders had a lot of influence and could convince congregants to take out subprime loans."

Ms. Jacobson's account and that of the other loan officer who gave an affidavit, Tony Paschal, both of whom have left Wells Fargo, provide the first detailed accusations of deliberate racial steering into subprimes by one of the nation's top banks.

The toll taken by such policies, Baltimore officials argue, is terrible. Data released by the city as part of the suit last week show that more than half the properties subject to foreclosure on a Wells Fargo loan from 2005 to 2008 now stand vacant. And 71 percent of those are in predominantly black neighborhoods.

Judge Benson E. Legg of Federal District Court had asked the city to file the additional paperwork and has not decided whether the lawsuit can go forward.

Wells Fargo officials have declined detailed interviews since Baltimore filed suit in January 2008. In an e-mail statement on Friday, a spokesman said that only 1 percent of the city's 33,000 foreclosures have come on Wells Fargo mortgages.

Image

A foreclosed home on Barclay Street in Baltimore. The city is suing Wells Fargo Bank over its mortgage lending practices in black neighborhoods.Credit...Matt Roth for The New York Times

"We have worked extremely hard to make homeownership possible for more African-American borrowers," wrote Kevin Waetke, a spokesman for Wells Fargo Home Mortgage. "We absolutely do not tolerate team members treating our customers or others disrespectfully or unfairly, or who violate our ethics and lending practices."

City and state officials across the nation have investigated and sometimes sued Wells Fargo over its practices. The Illinois attorney general has investigated whether Wells Fargo Financial violated fair lending and civil rights laws by steering black and Latino homeowners into high-interest loans. New York's attorney general, Andrew M. Cuomo, raised similar questions about the lending practices of Wells Fargo, JPMorgan Chase and Citigroup, among other banks.

The N.A.A.C.P. has filed a class-action lawsuit charging systematic racial discrimination by more than a dozen banks, including Wells Fargo.

At the heart of such charges is reverse redlining, specifically marketing the most expensive and onerous loan products to black customers.

The New York Times, in a recent analysis of mortgage lending in New York City, found that black households making more than $68,000 a year were nearly five times as likely to hold high-interest subprime mortgages as whites of similar or even lower incomes. (The disparity was greater for Wells Fargo borrowers, as 2 percent of whites in that income group hold subprime loans and 16.1 percent of blacks.)

“We’ve known that African-Americans and Latinos are getting subprime loans while whites of the same credit profile are getting the lower-cost loans,” said Eric Halperin, director of the Washington office of the Center for Responsible Lending. “The question has been why, and the gory details of this complaint may provide an answer.”

The affidavits of the two loan officers seem to bolster Baltimore’s lawsuit. Mr. Paschal, who is black and worked as a loan officer in Wells Fargo’s office in Annandale, Va., from 1997 to 2007, offers a sort of primer on Wells Fargo’s subprime marketing strategy by race.

In 2001, he states in his affidavit, Wells Fargo created a unit in the mid-Atlantic region to push expensive refinancing loans on black customers, particularly those living in Baltimore, southeast Washington and Prince George’s County, Md.

“They referred to subprime loans made in minority communities as ghetto loans and minority customers as ‘those people have bad credit’, ‘those people don’t pay their bills’ and ‘mud people,’ ” Mr. Paschal said in his affidavit.

He said a bank office in Silver Spring, Md., had an “affinity group marketing” section, which hired blacks to call on African-American churches.

Image

Another foreclosed house on Baltimore's North Brice Street, which shares a downed fence with a house still lived in.Credit...Matt Roth for The New York Times

“The company put ‘bounties’ on minority borrowers,” Mr. Paschal said. “By this I mean that loan officers received cash incentives to aggressively market subprime loans in minority communities.”

Both loan officers said the bank had given bonuses to loan officers who referred borrowers who should have qualified for a prime loan to the subprime division. Ms. Jacobson said that she made $700,000 one year and that the company flew her and other subprime officers to resorts across the country.

“I used to joke that ‘I’ll pay for your kids to go to private school if you give me clients,’ ” Ms. Jacobson said in the interview.

Loan officers employed other methods to steer clients into subprime loans, according to the affidavits. Some officers told the underwriting department that their clients, even those with good credit scores, had not wanted to provide income documentation.

“By doing this, the loan flipped from prime to subprime,” Ms. Jacobson said. “But there was no need for that; many of these clients had W2 forms.”

Other times, she said, loan officers cut and pasted credit reports from one applicant onto the application of another customer.

These practices took a great toll on customers. For a homeowner taking out a $165,000 mortgage, a difference of three percentage points in the loan rate ☐ a typical spread between conventional and subprime loans ☐ adds more than $100,000 in interest payments.

The accusations contained in the affidavits, which were given to Relman & Dane, a civil rights law firm working with the City of Baltimore, have not drawn a specific response from Wells Fargo. But city officials say the conclusion is clear.

“They confirm our worst fears: that this is not just a case based on a review of numbers and a statistical analysis,” said the city solicitor, George Nilson. “You don’t have to scratch your head and wonder if maybe this was just an accident. The behavior is pretty explicit.”

Both sides expect to appear in court at a hearing in the case in late June.

Janet Roberts contributed reporting.

JUSTICE NEWS

Department of Justice
Office of Public Affairs

FOR IMMEDIATE RELEASE
Wednesday, December 21, 2011

Justice Department Reaches $335 Million Settlement to Resolve Allegations of Lending Discrimination by Countrywide Financial Corporation

More than 200,000 African-American and Hispanic Borrowers who Qualified for Loans were Charged Higher Fees or Placed into Subprime Loans

The Department of Justice today filed its largest residential fair lending settlement in history to resolve allegations that Countrywide Financial Corporation and its subsidiaries engaged in a widespread pattern or practice of discrimination against qualified African-American and Hispanic borrowers in their mortgage lending from 2004 through 2008.

The settlement provides $335 million in compensation for victims of Countrywide's discrimination during a period when Countrywide originated millions of residential mortgage loans as one of the nation's largest single-family mortgage lenders.

The settlement, which is subject to court approval, was filed today in the U.S. District Court for the Central District of California in conjunction with the department's complaint which alleges that Countrywide discriminated by charging more than 200,000 African-American and Hispanic borrowers higher fees and interest rates than non-Hispanic white borrowers in both its retail and wholesale lending. The complaint alleges that these borrowers were charged higher fees and interest rates because of their race or national origin, and not because of the borrowers' creditworthiness or other objective criteria related to borrower risk.

The United States also alleges that Countrywide discriminated by steering thousands of African-American and Hispanic borrowers into subprime mortgages when non-Hispanic white borrowers with similar credit profiles received prime loans. All the borrowers who were discriminated against were qualified for Countrywide mortgage loans according to Countrywide's own underwriting criteria.

"The department's action against Countrywide makes clear that we will not hesitate to hold financial institutions accountable, including one of the nation's largest, for lending discrimination," said Attorney General Eric Holder. "These institutions should make judgments based on applicants' creditworthiness, not on the color of their skin. With today's settlement, the federal government will ensure that the more than 200,000 African-American and Hispanic borrowers who were discriminated against by Countrywide will be entitled to compensation."

The settlement resolves the United States' pricing and steering claims against Countrywide for its discrimination against African Americans and Hispanics.

The United States' complaint alleges that African-American and Hispanic borrowers paid more than non-Hispanic white borrowers, not based on borrower risk, but because of their race or national origin. Countrywide's business practice allowed its loan officers and mortgage brokers to vary a loan's interest rate and other fees from the price it set based on the borrower's objective credit-related factors . This subjective and unguided pricing discretion resulted in African American and Hispanic borrowers paying more. The complaint further alleges that Countrywide was aware the fees and interest rates it was charging discriminated against African-American and Hispanic borrowers, but failed to impose meaningful limits or guidelines to stop it.

"Countrywide's actions contributed to the housing crisis, hurt entire communities, and denied families access to the American dream," said Thomas E. Perez, Assistant Attorney General for the Civil Rights Division. "We are using every tool in our law enforcement arsenal, including some that were dormant for years, to go after institutions of all sizes that discriminated against families solely because of their race or national origin."

The United States' complaint also alleges that, as a result of Countrywide's policies and practices, qualified African-American and Hispanic borrowers were placed in subprime loans rather than prime loans even when similarly-qualified non-Hispanic white borrowers were placed in prime loans. The discriminatory placement of borrowers in subprime loans, also known as "steering," occurred because it was Countrywide's business practice to allow mortgage brokers and employees to place a loan applicant in a subprime loan even when the applicant qualified for a prime loan . In addition, Countrywide gave mortgage brokers discretion to request exceptions to the underwriting guidelines, and Countrywide's employees had discretion to grant these exceptions.

This is the first time that the Justice Department has alleged and obtained relief for borrowers who were steered into loans based on race or national origin, a practice that systematically placed borrowers of color into subprime mortgage loan products while placing non-Hispanic white borrowers with similar creditworthiness in prime loans. By steering borrowers into subprime loans from 2004 to 2007, the complaint alleges, Countrywide harmed those qualified African-American and Hispanic borrowers. Subprime loans generally carried higher-cost terms, such as prepayment penalties and exploding adjustable interest rates that increased suddenly after two or three years, making the payments unaffordable and leaving the borrowers at a much higher risk of foreclosure.

The settlement also resolves the department's claim that Countrywide violated the Equal Credit Opportunity Act by discriminating on the basis of marital status against non-applicant spouses of borrowers by encouraging them to sign away their home ownership rights . The law allows married individuals to apply for credit either in their own name or jointly with their spouse, even when the property is owned by both spouses. For applications made by married individuals applying solely in their own name between 2004 and 2008, Countrywide encouraged non-applicant spouses to sign quitclaim deeds or other documents transferring their legal rights and interests in jointly-held property to the borrowing spouse. Non-applicant spouses who execute a quitclaim deed risk substantial uncertainty and financial loss by losing all their rights and interests in the property securing the loan.

In addition, the settlement requires Countrywide to implement policies and practices to prevent discrimination if it returns to the lending business during the next four years. Countrywide currently operates as a subsidiary of Bank of America but does not originate new loans.

The department's investigation into Countrywide's lending practices began after referrals by the Board of Governors of the Federal Reserve and the Office of Thrift Supervision to the Justice Department's Civil Rights Division in 2007 and 2008 for potential patterns or practices of discrimination by Countrywide.

Today's announcement is part of efforts underway by President Obama's Financial Fraud Enforcement Task Force (FFETF). President Obama established the interagency FFETF to wage an aggressive, coordinated and proactive effort to investigate and prosecute financial crimes. The task force includes representatives from a broad range of federal agencies, regulatory authorities, inspectors general and state and local law enforcement who, working together, bring to bear a powerful array of criminal and civil enforcement resources. The task force is working to improve efforts across the federal executive branch, and with state and local partners, to investigate and prosecute significant financial crimes, ensure just and effective punishment for those who perpetrate financial crimes, combat discrimination in the lending and financial markets, and recover proceeds for victims of financial crimes. For more information on the task force, visit www.StopFraud.gov .

A copy of the complaint and proposed settlement order, as well as additional information about fair lending enforcement by the Justice Department, can be obtained from the Justice Department website at www.justice.gov/fairhousing.

Component(s):
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