

1 are done. We made the payment in full with my in-
2 heritance money from my father.

3 **THE COURT:** Is this on a different property?

4 **MS. YEH HO:** Yes. We have a lot of real estate prop-
5 erties.

6 **THE COURT:** This is after you had the problem with
7 Wells Fargo ?

8 **MS. YEH HO:** Yes.

9 **THE COURT:** What is the relevance?

10 **MS. YEH HO:** The relevance is, we found out what is
11 called pending account and suspending account only
12 after we make the mortgage payment in full, so there
13 is no mortgage on the property. Then we wrote letters
14 to Consumer Financial Protection Bureau making a
15 complaint that the bank, even though they cash our
16 check, we making payments on time, plus making ex-
17 tra \$500 monthly payment, they was putting us into a
18 foreclosure status, asking us to make payment of
19 3,000, 6,000, and \$9,000 per month.

20 **THE COURT:** I'm sorry to interrupt you, but is this
21 on a different piece of property?

22 **MS. YEH HO:** 9174 property and –

23 **THE COURT:** Not the property on Tangelo Drive?

24 **MS. YEH HO:** I am trying to relate it. When we re-
25 ceived the bank statement, because they refused to
26 send us anything, when we receive the statement, we
27 say, ah, now we know why, because they were putting
28 our monthly payment in called pending account, sus-
29 pending account.

30 The bank decide when they received the payment they
31 didn't know what to do with it, they can put it in that
32 category, pending, suspending account. So, it looks
33 like we did not make payment. So that was at that
34 time.

1 Then we find out this is exactly what happened to
2 Wells Fargo, but anyway, I feel very, very strongly
3 that Wells Fargo did not honor my permanent streamline
4 loan modification even though Fannie Mae had
5 approved, say I am approved because of my consistent
6 good payment plan, and my payments were put in sus-
7 pended account, which is in one of the exhibits, a huge
8 pile of payment, \$136,000 I make payment to, and so
9 – because I am a woman, and this the whole issue
10 here.

11 Fannie Mae approved the loan. I'm supposed to con-
12 tinue to make the payment, November, December
13 2013, and January 2014 to now. Even in 2017, I could
14 have paid it off in full, everybody win/win, but Wells
15 Fargo, the loan servicer, decide they should – I should
16 have application for the mortgage when it says
17 streamline modification, no application required, you
18 just have to make three payment and you are auto-
19 matic approved.

20 So, they continued to call me, I continue to tell them I
21 have permanent streamline loan modification. They
22 write to me, I continue to write back saying I have a
23 streamline loan modification.

24 I even tell the Court in writing I have a streamline
25 loan modification, and if all that was done correctly by
26 Wells Fargo Bank, not discriminate against me, say-
27 ing I have to produce marital status, I have to produce
28 divorce decree, and Wing must sign in order for the
29 permanent streamline loan modification to take place,
30 which was not in the agreement anyway, that I am
31 making payment to my insurance, homeowners insur-
32 ance on time, homeowner association fee on time,
33 principal on time, interest on time.

34 So what does it have to do with marital status, divorce
35 decree, and Wing has to sign? Would that make any

1 difference whether I will make payment on principal,
2 interest, taxes, and insurance on time? No, This is all
3 totally – it is called discrimination against gender,
4 gender discrimination.

5 Back in 1973, when woman was discriminated for re-
6 fusing the credit because they need their husband to
7 sign off, because they look at husband as bread win-
8 ner, not the woman as a bread winner, I am independ-
9 ent from my husband. I have my own credit, I have
10 my own banking account, and I have my own houses
11 with mortgages, and when I choose to add his name
12 on it, I do so, I add his name on it. I quitclaim his
13 name on it. I usually quitclaim his name on the prop-
14 erty when there is no more mortgage on ti because he
15 doesn't like to owe money.

16 So, that is what I feel about the Equal Credit Oppor-
17 tunity Act discrimination against me, and every
18 phone call, every writing, every time they contact me
19 telling me I have to do this, I have to do this in order
20 to – not to get into foreclosure, that is just a whole
21 bunch of excuse of discrimination against me and pro-
22 duce a lot of stress, stomach acid reflux, hard to sleep
23 and hard to eat.

24 It's very, very bad for the health, and they should put
25 that into consideration. They should have a special
26 department – when a customer complain about the
27 service, they should investigate because the Wells
28 Fargo Bank that I went to to make my monthly pay-
29 ment, they were very, very helpful to me, but they told
30 me they couldn't do anything for me because it is a
31 different division.

32 So, I would say I try my best, try to pay my mortgage
33 in full, but they rejected me, and I have to come all the
34 way to Federal Court to get my justice.

35 **THE COURT:** Okay.

1 MS. YEH HO: Yes.

2 THE COURT: How long do you think you are going
3 to be? The Court Reporter probably – Let's try and
4 finish with Ms. Yeh Ho before we take a break.

5 Did you finish with your testimony.

6 THE WITNESS: I think I put in that Wells Fargo
7 malice, oppressive manner, and reckless regarding to
8 the law, I point out three items very clearly.

9 THE COURT: Thank you. Cross-examination.

10 **CROSS-EXAMINATION**

11 **BY MS. HOLLADAY:**

12 Q. Hi, Ms. Yeh Ho. Just a few clarifying questions.
13 You mentioned the streamline loan modification offer
14 that you received from Wells Fargo. I would like to go
15 ahead and show you what we have marked as Exhibit
16 11. I just want to confirm, this document I am show-
17 ing you as Exhibit 11, is this the streamline loan mod-
18 ification you were referring to in your testimony?

19 A. I received this package in July 2013, and promptly
20 I bring this to Ice Legal, and Ice Legal was holding on
21 to it, and they did not get back to me, Ice Legal. And
22 then I run over, I say, no, the payment due date is
23 soon, I need to get this in, and that is when they told
24 me, they say they are going to foreclose on you any-
25 way. And I say no, no, no, just give it back to me.

26 Then I took this package and went straight to Regions
27 Bank, my bank. Wing doesn't have an account there,
28 I have my own account there, and I have my account
29 there with my mother's account because I am her So-
30 cial Security payee, and also I'm her Medicare repre-
31 sentative for her because I was the least restrictive al-
32 ternative guardian for my mother.

33 So, this requirement, not only that, they don't want
34 my personal check, they want me to send in three
35 bank checks –

1 **THE COURT:** Ms. Yeh Ho, I am sorry, can you just
2 answer the question she asks you, okay?

3 **THE WITNESS:** I am sorry.

4 **BY MS. HOLLADAY:**

5 **Q.** My specific question was, I wanted to make sure
6 that the letter you are looking at dated July 20, 2013,
7 this is the streamline modification offer you were re-
8 ferring to in your testimony earlier that you received
9 from Wells Fargo.

10 **THE COURT:** What exhibit is it?

11 **MS. HOLLADAY:** Exhibit 11.

12 **THE WITNESS:** Yes.

13 **BY MS. HOLLADAY:**

14 **Q.** Just to confirm, you didn't submit an application or
15 request for this modification, correct?

16 **A.** There is no application involved, just the three
17 checks.

18 **Q.** So you didn't go to Wells Fargo and say, I want to
19 apply for a loan modification, they just sent this to
20 you?

21 **A.** Yes, and they send one package to Wing Ho also.

22 **Q.** Okay. In this loan modification package, Exhibit
23 11, there is a reference to these three trial payments
24 you were talking about, correct?

25 **A.** Yes.

26 **Q.** And you did make those three payments, correct?

27 **A.** With a bank check from my own account.

28 **Q.** Understood. And to confirm, after you made those
29 three trail payments, you then received from Wells
30 Fargo a letter confirming that you made the payments
31 and they sent you some documents to sign; is that cor-
32 rect?

33 **A.** After they send me – after I make the payment,
34 they cash the payment, and sometime in November
35 2013, they send me a package. The name of the

1 package is permanent streamline loan modification
2 agreement.

3 **Q.** Okay.

4 **A.** And no application required.

5 **Q.** Understood.

6 **A.** No filling out my name, credit card, mortgage, an-
7 ything that relate to apply for credit, just say make
8 your payments on time every month. That is it.

9 **Q.** Okay. I am going to show you, Ms. Yeh Ho, what
10 we have marked as Exhibit 17. Have you had a
11 chance to look at that, Ms. Yeh Ho.

12 **A.** Yes.

13 **Q.** And to confirm, is this the letter that Wells Fargo
14 sent you dated November 25, 2013, where they sent
15 you a copy of a loan modification agreement to sign?

16 **A.** I don't remember this part, but I do remember on
17 November 25, 2013, Wells Fargo Bank, they send me
18 a package dated November 25, 2013, but I receive it
19 Federal Express mail November 30, 2013. It was like
20 many days later on.

21 **Q.** Okay.

22 **A.** And it required that I had to submit it within 14
23 days, and it is like I do not have the time. And one
24 other instruction, I believe, was waiting for the notary
25 to call me, and I say notary is notary. I did not hear
26 any notary, so I went straight to my notary, which is
27 my insurance, where I buy my property insurance. I
28 say I need to sign this, this is my permanent stream-
29 line loan application, and he notarized my signature,
30 and that is it.

31 He made a statement – I think he made a statement
32 saying he only notarized my signature, and not Wing
33 Ho's signature.

34 **Q.** That is because your husband did not actually sign
35 that loan modification, correct?

1 **A.** Correct. He refused to sign the loan modification.
2 He already did his testimony; he doesn't want to sign.
3 **Q.** And then you returned that loan modification with
4 your signature to Wells Fargo, correct?
5 **A.** Correct, and with my personal check from the Re-
6 gions Bank for the payment for the 8038 Tangelo
7 Drive.
8 **Q.** All right. I don't have a hard copy, but if you look
9 on the screen, you have one in front of you as well.
10 **THE COURT:** Ma'am, you can look right in front of
11 you.
12 **THE WITNESS:** Yes, thank you. Thank you, your
13 Honor.
14 **THE COURT:** Which exhibit number is this?
15 **MS. HOLLADAY:** Exhibit 19, your Honor.
16 **THE COURT:** Thank you.
17 **BY MS. HOLLADAY:**
18 **Q.** Exhibit 19, just to confirm, this is the loan modifica-
19 tion agreement that you signed and returned to Wells
20 Fargo ?
21 **A.** I did make the payment and copy, copy, yes, I send
22 that, yes. Scott Billy, he was the property insurance
23 agent for 8038 Tangelo Drive, so he know the property
24 very well, so I have him be my notary.
25 **Q.** And then, after you sent in this loan modification
26 agreement signed by you to Wells Fargo, did you then
27 have a call with Wells Fargo sometime in January
28 about the documents you submitted?
29 **A.** Phone calls, January, I do not quite remember. I
30 do receive many phone calls from Wells Fargo Bank,
31 and I do – every time I do say to them, I have stream-
32 line loan modification, and I hang up on them. I do
33 that. If I repeat it many time enough, they should be
34 able to hear it.

1 **Q.** Did you tell Wells Fargo on one of these calls that
2 your husband was refusing to sign the loan modifica-
3 tion?
4 **A.** I believe whatever I say I would say, he doesn't
5 want to sign, he doesn't have to be on it, he doesn't
6 have to sign, and he doesn't want to owe money.
7 In fact, my husband is very conservative, he doesn't
8 like to owe money, he is a very old-fashioned guy.
9 **Q.** And sometime in January, do you recall receiving
10 some other letters from Wells Fargo concerning the
11 loan modification?
12 **A.** I do believe I receive it, and I do believe that I write
13 back to them and say I have permanent loan modifi-
14 cation, I have permanent streamline loan modifica-
15 tion. I say that in the Court docket. I say that to Wells
16 Fargo in phone calls, and I wrote to them, Wells Fargo
17 Bank, I say I have permanent loan modification.
18 **Q.** Let me show you what is marked as Exhibit 22. I
19 have a hard copy for you.
20 **A.** Thank you. You guys are very organized, by the
21 way.
22 **Q.** What we have marked as Exhibit 22 is a letter
23 dated January 20, 2014. Ms. Yeh Ho, do you remem-
24 ber receiving this letter?
25 **A.** This letter was sent to 1230 Gulfstream Way, Riv-
26 iera Beach, Florida, 33404. This is not my address
27 there.
28 **Q.** That is not your what?
29 **A.** I don't get mail there.
30 **Q.** Did you receive mail there in 2014?
31 **A.** No.
32 **Q.** Where did you receive mail?
33 **A.** Either 9174 Chianti Court or 8038 Tangelo Drive.
34 **Q.** Let me show you also, and I am going to hand you
35 two letters -

1 A. But doesn't that matter, I have streamline loan
2 modification? You keep going through all this. To me
3 it is moot.

4 Q. I understand your position, Ms. Yeh Ho. Do you
5 own the property at 1230 Gulfstream Way?

6 A. I do own the property at the Gulfstream Way at
7 2014. That house – that is another issue, you Honor.
8 That house I have a mortgage, but it was foreclosed
9 on, and it was saying Federal National mortgage tak-
10 ing over, but that is another scam –

11 THE COURT: Okay. We are just trying to figure out
12 whether you received this letter at that address.

13 THE WITNESS: That is another --

14 THE COURT: Save that for another lawsuit, okay?

15 THE WITNESS: Yes, yes.

16 BY MS. HOLLADAY:

17 Q. So, did you ever receive mail at 1230 Gulfstream
18 Way?

19 A. I do and I don't, because that is not my legal ad-
20 dress. It's like – you keep hitting me with questioning
21 whether Wells Fargo Bank keep harassing me, keep
22 intimidating me, and keep stress me out. Yes, if I am
23 going to say yes, if I do receive this letter, this letter
24 would be very stressful, right?

25 Q. Did you ever represent to Wells Fargo or provide
26 them any documentation, to your recollection, where
27 you said that your address was in fact 1230 Gulf-
28 stream Way?

29 A. I don't remember.

30 Q. Let me show you what we have marked as Exhibit
31 20.

32 A. Okay.

33 Q. First off, let me ask, is this the quitclaim deed that
34 you sent it to Wells Fargo at one point in time to try

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1 to get your husband off of the Tangelo property mort-
2 gage?

3 A. Yes.

4 Q.-- do you see there where it says –

5 A. Mail tax statement to 1230 Gulfstream Way, yes.
6 What was in my mind at that time is that I tried to
7 confirm – my name is not Karen Y. Ho, but Wells
8 Fargo keeps insist that I am Karen Y. Ho, so I put
9 down Karen Y. Ho. Also, you say 1230 Gulfstream
10 Way, I put it in there to match Wells Fargo because –

11 Q. Let me pause you there. Do you see where it says
12 quitclaim deed, know all men by these present that,
13 and then it says Karen Y. Ho, whose address is 1230
14 Gulfstream Way?

15 A. Yes.

16 Q. And this is a document that you submitted to Wells
17 Fargo?

18 A. Yes, and then it says, prepared by Wing Ho, and
19 recording request by Wing Ho, and this document will
20 be sent back to Wing Ho.

21 Q. Let me show you two other documents, ma'am, doc-
22 uments we have marked as Exhibits 23 and 24.

23 A. Okay. Yes.

24 Q. Just to confirm, these are two other letters that
25 were sent to you by Wells Fargo, one on January 14,
26 2014, and another on January 15, 2014, to the Gulf-
27 stream property address; is that correct?

28 A. Yes. Exhibit 22, Exhibit 23, and Exhibit 24 all have
29 1230 Gulfstream Way, Rivera Beach, Florida, 33404.
30 The letter sent to there, yes, and I believe at that time
31 this mailbox is there, and I'm no there. I do pick it up
32 the mail from time to time there.

33 Q. At the time after January 13th, let's say, January
34 14, 2014, did you ever submit to Wells Fargo a divorce
35 decree between you and your husband?

1 A. No. We are not divorced.

2 Q. Did you ever submit to Wells Fargo a completely
3 signed loan modification agreement for the Tangelo
4 Drive property containing your husband's signature?

5 A. My husband refused to sign. I signed it, I am on
6 the promissory note, and I am fully obligated to pay
7 off the mortgage, and all Wells Fargo had to do is ac-
8 cept my permanent streamline loan modification and
9 they will get a payment as a servicer, and Fannie Mae
10 will be happy, I will be happy, and the United States
11 people will be happy because I paid the loan off.

12 **MS. HOLLADAY:** I don't have any further questions,
13 your Honor.

14 **THE COURT:** Thank you. Do you want to add any-
15 thing else?

16 **MS. YEH HO:** I wish I do not get run-around so much
17 and produce a lot of emotional stress, and emotional
18 stress is causing a lot of harm to the human body, and
19 I wish that, if possible, that Wells Fargo using this
20 case and looking to – looking to what can they do bet-
21 ter by servicing the customer.

22 When I went to Wells Fargo Bank, at the branch of-
23 fice, the branch office, their people are nice, nice, they
24 want to help. They couldn't help me because there is
25 nobody who know anything about the mortgage ser-
26 vicing. They make phone call for me, they even had
27 to hang up because they just getting run-around, too.
28 They are getting run-around, I getting run-around,
29 nobody getting anything done except my house got
30 foreclosed, sold at \$250,100, when it should be pay-
31 ment received by Fannie Mae in full.

32 At that time they indicate I owe \$302,000 principal. I
33 don't know all the mumbo-jumbo, the other stuff com-
34 ing from the numbers. They never produce a docu-
35 ment to support the mumbo-jumbo numbers. I intend

1 to pay it off, that is why I signed it. My husband re-
2 fused to sign it because he is a real old fashioned guy,
3 his name is not on the promissory note, he does not
4 want to sign. He has a right not to sign because he is
5 a man.

6 Maybe there should be loan that says man doesn't
7 have to sign, too, because we have a law in Florida,
8 Florida Statue 708.08, I believe, that says woman has
9 a right to their own property. They are supposed to
10 be able to obtain their own credit. For men it is like
11 automatic they get their own credit. With this case
12 maybe Congress should look into it. Men doesn't have
13 to sign for wife's mortgage condition if they don't want
14 to.

15 So, it is like I got a sex discrimination, gender discrim-
16 ination because I am a woman, I am not allowed to
17 have my own permanent streamline loan modifica-
18 tion, even though the original application on the mort-
19 gage was only me, with my signature and my promis-
20 sory note. My husband was not on it, but he signed it
21 at the closing because he wanted to make me happy,
22 but when the streamline permanent loan modification
23 came in, he doesn't want to make me happy anymore
24 because we have been married for how many years, 36
25 years.

26 He figure he has to go, so he doesn't want to sign, so
27 he should have a right not to sign to me. Then his own
28 permanent streamline loan modification he want me
29 to sign, I sign because I am willing to sign.

30 **THE COURT:** Okay, Ms. Yeh Ho.

31 **THE WITNESS:** So, I personally believe that I was
32 discriminated because Fannie Mae already approved
33 my streamline loan modification, already ready to go,
34 and everybody will be win/win if Wells Fargo Bank did
35 not interfere constantly with a letter demanding that

1 his name has to be on it for a permanent loan modification,
2 and using the excuse a copy, using the excuse
3 divorce decree, marital status. Those are irrelevant
4 because I have the ability to pay and I am willing to
5 pay.

6 **THE COURT:** Okay, thank you, ma'am.

7 **THE WITNESS:** In fact, we try to pay off all the other
8 mortgage so we don't have all these problem again. I
9 advise my children, don't take a mortgage, put aside
10 prepay until you can pay in one check. We prepay
11 every month and they put it in a pending account be-
12 cause they don't know what to do with it.

13 **THE COURT:** Ms. Yeh Ho, I think you are repeating
14 yourself.

15 **THE WITNESS:** Yes, I'm sorry. I am done. Thank
16 you.

17 **THE COURT:** Why don't we take a break before we
18 hear from the Defense. All right?

19 **MS. YEH HO:** Thank you.

20 **THE COURT:** We will take a ten minute recess. Is
21 that enough time?

22 (Thereupon, a short recess was taken.)

23 **THE COURT:** Please be seated, everyone.

24 All right. Ms. Yeh Ho, do you have any other evidence
25 or witnesses that you want to present in your case?

26 **MS. YEH HO:** I do not have any more witnesses, but
27 Wells Fargo Bank I request for a witness for –

28 **THE COURT:** I am sorry?

29 **MS. ROTTMANN:** Your Honor, we have our corpo-
30 rate representative here, Philip Cargioli, who we will
31 be calling in our case.

32 **THE COURT:** Did you want to present him as one of
33 your witnesses or did you want to wait for them to call
34 him and you can cross-exam him? Which did you want
35 to do?

1 **MS. YEH HO:** I will cross-examine him after they fin-
2 ish with their witness.
3 **THE COURT:** Okay. You can call him as on eof your
4 witnesses if you want. I just – you have that option.
5 How do you want to proceed?
6 **MS. YEH HO:** I would like to cross-examine him.
7 **THE COURT:** Okay. Do you have any other exhibits
8 or witnesses that you want to call or present?
9 **MS. YEH HO:** My exhibit will be my damages.
10 **THE COURT:** I know Wells Fargo is going to object
11 to the damage exhibit, but I will let you present it over
12 their objection. Where is your damage exhibit?
13 **MS. YEH HO:** My damage exhibit would be off on the
14 closing statements and from the statements I wrote
15 down and the phone calls, the phone calls that the
16 made to me, and also for each time I filed the 15th Ju-
17 dicial Circuit Court docket, and the Federal court
18 docket, and Appellate Court docket, each time they
19 supposed to admit to their errors, but they refuse to
20 admit their errors, and it cause me more emotional
21 damages.
22 **THE COURT:** Okay, but I need to know what exhibit
23 do you want to present in terms of proof, to prove your
24 damages?
25 **MS. YEH HO:** The closing statement.
26 **THE COURT:** Do you have them?
27 **MS. YEH HO:** Just the summary.
28 **THE COURT:** Give me the summary, and I will allow
29 it over Wells Fargo's objection, just for the record.
30 **MS. ROTTMANN:** We'll note that we filed a Motion
31 in Limine on February 24th of this year related to this
32 exhibit and we believe it should not be admissible for
33 a number of reasons stated therein.
34 **THE COURT:** I am going to admit it over objection,
35 and I will give it whatever weight I think it deserves.

1 **MS. YEH HO:** Thank you, your Honor.
2 **MS. HOLLADAY:** It is actually in your notebook as
3 Exhibit 9 of Plaintiff's.
4 **THE COURT:** I will admit Plaintiff's Exhibit 9 over
5 objection.
6 (Whereupon Plaintiff Exhibit 9 was marked for evi-
7 dence.)
8 **MS. YEH HO:** I believe this one, 11th Circuit Court
9 already saying that I am entitled to \$364,000 dam-
10 ages.
11 **THE COURT:** Really?
12 **MS. YEH HO:** Yes, it is in their unpublished opinion.
13 We went all the way tot eh 11th circuit Court and come
14 back.
15 **THE COURT:** Yes, I know.
16 **MS. YEH HO:** And they still won't admit their mis-
17 take.
18 **THE COURT:** Thank you. You don't have anything
19 else, then, no more witnesses and no more exhibits?
20 **MS. YEH HO:** Yes, your Honor, yes.
21 **THE COURT:** Okay.
22 **MS. YEH HO:** Because I believe that I have to say
23 what I need to say, that Fannie Mae approve – I keep
24 repeating myself.
25 **THE COURT:** Okay. I need to move on to their case
26 now. Thank you, Ms. Yeh Ho. Counsel.
27 **MS. ROTTMANN:** Your Honor, to the extent your are
28 willing to entertain it at this point, we believe a mo-
29 tion under Rule 52(c) for a judgement on partial find-
30 ings is appropriate.
31 **THE COURT:** I will reserve.
32 **MS. ROTTMANN:** Thank you. With that, we will call
33 corporate representative, Philip Cargioli.

1 PHILIP CARGIOLI, DEFENDANT'S WITNESS,
2 SWORN

3 THE COURT: Tell us your name, sir.

4 THE WITNESS: Philip Cargioli.

5 THE COURT: Spell your last name, please.

6 THE WITNESS: C-A-R-G-I-O-L-I.

7 THE COURT: Is Philip with one or two Ls?

8 THE WITNESS: One L in Philip.

9 THE COURT: Thank you. You may proceed.

10 DIRECT EXAMINATION

11 BY MS. ROTTMANN:

12 Q. MR. Cargioli, who are you currently employed by?

13 A. Wells Fargo Bank.

14 Q. What is your position with Wells Fargo?

15 A. I'm a senior loan documentation specialist.

46 Q. What are some of your job responsibilities associated with being a **Specialist**?

17 associated with that?

18 A. I act as a liaison on defensive litigation matters, as
19 well as non-defensive litigation matters, I review and
20 verify business records, I verify discovery, and I act as
21 corporate representative in trials, depositions, or just
22 trying to settle a case in a mediation, but it is all re-
23 lated to litigation.

4 Q. How long have you worked for Wells Fargo?

25 A. Since 2009.

6 Q. Previous to your current position, have you also
7 worked in the loan modification department?

7 worked in the loan modification department.
8 A. Yes, from 2009 to 2012, I did assist in handling
9 mortgage modifications.

Q. As part of your work with mortgage modifications, are you familiar with the screen shots and other

1 documents created by the mortgage modification
2 group to record and memorialize business records?

3 **A.** Yes. I name it the loss litigation or home preserva-
4 tion group, but yes, I am familiar with the records.

5 **Q.** Have you had an opportunity to review the docu-
6 ments to the loan we are here on today?

7 **A.** I have.

8 **Q.** Who is the original borrower on the loan?

9 **A.** Karen Yeh Ho.

10 **Q.** And was anyone else a party to the loan **or** sign the
11 mortgage?

12 **A.** Yes, her husband did.

13 **Q.** If we specifically turn to Exhibit 5, previously ad-
14 mitted for Wells Fargo, it should be the mortgage.

15 **A.** Let me see it in here.

16 **Q.** It should be up on the screen now.

17 **A.** Perfect.

18 **Q.** In paragraph B, does it list the borrowers as Karen
19 Yeh Ho and Wing Kei Ho, wife and husband?

20 **A.** Yes, it does.

21 **Q.** And in your experience at Wells Fargo, is that typ-
22 ical when one spouse buys property, a spouse would
23 be listed on the mortgage?

24 **A.** That is, yes.

25 **Q.** If we go to the very end of that document, does it
26 includes both of their signatures?

27 **A.** Yes, it has both of their signatures.

28 **Q.** After the closing took place on the loan –

29 **THE COURT:** I'm sorry. This is the mortgage?

30 **THE WITNESS:** This is the mortgage.

31 **THE COURT:** They weren't both on the note, were
32 they?

1 **THE WITNESS:** No. I believe just Karen Yeh Ho was
2 on the note, and they were both on the mortgage.

3 **THE COURT:** Okay. Thank you.

4 **BY MS. ROTTMANN:**

5 **Q.** In your experience, is it typical to have a spouse
6 sign a mortgage if one spouse buys the property?

7 **A.** Yes, it is.

8 **Q.** Why is that?

9 **A.** *If it is their primary residence or homestead, in the*
10 *State of Florida, it is a common practice that I have*
11 *seen in my experience.*

12 **Q.** And is it also possible that both spouse's signatures
13 would be needed if it is property purchased during the
14 marriage, homestead or not?

15 **A.** Yes.

16 **Q.** And did borrowers eventually default on this loan?

17 **A.** YES.

18 **Q.** And did borrowers eventually default on this loan?

19 **A.** Yes, they did.

20 **Q.** Ultimately, to skip forward in time, was Ms. Yeh
21 Ho offered a Fannie Mae streamline modification?

22 **MR. CARGIOLI:** Yes, she was.

23 **MS. ROTTMANN:** *Can you explain to us what the*
24 *Fannie Mae streamline modification program is, kind*
25 *of different from other loan modification?*

26 **A.** Well, the other loan modifications, traditional loan
27 modifications, would require a lot of documents, an
28 application, proof of income, financial worksheets, tax
29 returns, bank statements, et cetera.

30 The Fannie Mae Streamline loans did not require any
31 of that. They would look at the loan to value ration of
32 the loan, and they would offer borrowers loan

1 modification trial plans without the need for financials
2 or the application or tax returns, anything I previously stated for the traditional.

4 It was like in the title, it's a streamline modification,
5 so it doesn't require all of that. It requires the borrower
6 to make three payments. Once the three trial
7 payments are made, the modification documents
8 would be generated for signature.

9 **Q.** Okay. And if we go to Exhibit 11, is this the
10 streamline modification offer we have been talking
11 about?

12 **A.** Yes, it appears to be the streamline three payment
13 offer.

14 **Q.** If we go, I think it is two pages in, are these the –
15 under step three, are these the three payments that
16 you are referring to?

17 **A.** Yes, September, October, November 1st.

18 **Q.** After the three payments were made, are there any
19 other requirements about what would be needed?

20 **A.** No. Once the three payments are – once the three
21 payments are made, the modification documents
22 would be generated and sent.

23 **Q.** So, borrowers would essentially receive the final
24 modification agreement, sign and return, and that
25 would be the end of it?

26 **A.** Yes.

27 **Q.** All right. So, did borrower ultimately accept the
28 streamline modification offer and make the three trial
29 payments?

30 **A.** Yes.

31 **Q.** Maybe a little late, but they were eventually made;
32 is that fair?

1 A. Yes. The September one was a little late, but there
2 is a 30-day grace period on these trial payments, so
3 she made it in September, so it was fine, and she made
4 the other ones on time, so all three payments were
5 made.

6 Q. If we go to Exhibit 18, have you seen this document
7 before?

8 A. Yes.

9 Q. And can you explain to us kind of what this is?

10 A. This is an automated worksheet that will detail the
11 new modification parameters. You could see on the
12 left side there is the current, and that is what the cur-
13 rent mode – that is what the current loan would look
14 like, and to the right are the modified terms.

15 You can see the extended term of 480 months and
16 there is also an interest rate reduction 6.875 to 4 per-
17 cent, all while capitalizing money back into the prin-
18 cipal balance, and you could see that that would still
19 reduce the payment. It looks like the PITIAS pay-
20 ment would be dropping around \$500 a month.

21 Q. Can you explain to us what PITIAS stands for?

22 A. Principal, interest, taxes, and insurance.

23 Q. Does this indicate that the modification at
24 this point was fully approved?

25 A. Yes, it does.

26 Q. And what is the date on this?

27 A. This is decision, 11/25/13.

28 Q. So, Wells Fargo receives the payments, goes ahead
29 and finally approves it, and at this point, what would
30 be the next step?

1 **A.** The next step would be printing the modification
2 documents and sending them to the borrower for sig-
3 nature and notarization.

4 **Q.** Is that essentially the closing process in a typical
5 loan transaction where you are not modifying a loan?

6 **A.** Yes, it is.

7 **Q.** Did Wells Fargo, in fact, print and send the final
8 loan modification agreement?

9 **A.** Yes.

10 **Q.** If we can go to Exhibit 17. Is this the cover letter
11 where that loan modification agreement was in fact
12 sent?

13 **A.** Yes, it is.

14 **Q.** Does it provide instructions for the borrower on
15 what to do, next steps?

16 **A.** It does.

17 **Q.** If we look, is it fair that it says, sign and return all
18 of the following documents, including both copies of
19 the modification agreement?

20 **A.** It does.

21 **Q.** If we go down to please note, can you take a look at
22 that for us?

23 **A.** Okay.

24 **Q.** And I believe it indicates, and tell me if I am inac-
25 curate here, that if one of the mortgagors listed should
26 not be required to sign the documents or have a differ-
27 ent name, please provide the following documenta-
28 tion, including death certificate, divorce decree, along
29 with a recorded quitclaim deed or a marriage certifi-
30 cate. Do you see that?

31 **A.** I do.

1 **Q.** Is that typical of Wells Fargo's practices when you
2 originally have two people who are married sign a
3 mortgage?

4 **A.** Yes.

5 **Q.** Nothing unusual about this for Ms. Yeh Ho, this is
6 the standard process?

7 **A.** Yes. This is what I have been used to seeing in my
8 time with Wells Fargo and processing these modifica-
9 tions. I have had two requests, recorded quitclaim
10 deeds and divorce decrees, to satisfy this particular
11 requirement so someone could be removed.

12 **Q.** And so, ultimately, did Wells Fargo receive some of
13 the final modification paperwork back from Ms. Yeh
14 Ho?

15 **A.** Yes, we did receive some of it.

16 **Q.** If we go to Exhibit 19, and is this the partially
17 signed loan modification agreement for the Tangelo
18 Drive property?

19 **A.** Can you scroll out to the signature page?

20 **THE COURT:** What exhibit did you say this was?

21 **MS. ROTTMANN:** 19.

22 **THE COURT:** That is not what I have in my 19.

23 **MS. ROTTMANN:** I think there may have been a
24 printing error where the loan modification for the
25 other document got printed twice rather than this
26 modification. This is the one we have shown the pre-
27 vious witnesses and was previously shared with the
28 Plaintiff. We may have had a printing error, and I
29 apologize for that. We will make sure the correct one
30 gets filed after trial.

31 **MS. HOLLADAY:** I have a copy, your Honor, it is
32 highlighted, but no notes on it. May I approach?

1 **THE COURT:** Yes. Thank you.

2 **THE WITNESS:** Yes, this is the partially signed

3 modification agreement. It does have Karen Yeh Ho's

4 signature. It does not have her husband's signature

5 on it, and the lender acknowledgement, which is page

6 four, is not filled out because the documents were not

7 accepted by Wells Fargo, therefore they were not

8 signed by Wells Fargo.

9 **BY MS. ROTTMANN:**

10 **Q.** Okay. And did Wells Fargo receive a quitclaim

11 deed and divorce decree as required by the terms to

12 remove Ms. Ho from the property?

13 **A.** No. We did receive a quitclaim deed, but we did not

14 receive a divorce decree.

15 **Q. *If we could turn to Exhibit 20, is this the quit-claim deed you are referring to?***

16 **A. Yes.**

17 **Q. *Because of the omission of the signature on the modification agreement, was the modification agreement provided ultimately rejected?***

18 **A. It was.**

19 **Q.** What do these notes reflect about the status of the

20 loan modification on December 16, 2013?

21 **A.** It states that we do have a quitclaim deed, but we

22 also need the divorce decree since there is only going

23 to be one signer.

24 **Q.** Okay. And you indicated that divorce decree was

25 never received, correct?

26 **A.** That is correct.

27 **Q.** After Wells Fargo received the incomplete modifi-

28 cation, did Wells Fargo attempt to contact Ms. Yeh Ho

29 to address the deficiencies?

1 **A.** Yes.

2 **Q.** If we look here on Exhibit 16, page 95, are these
3 notations of phone calls?

4 **A.** Yes. At the very beginning of this note on 12/18/13,
5 it says OBC, and that is out bound call.

6 **Q.** Okay.

7 **A.** And the LMFCB is left message for call back. So
8 we called, didn't get an answer, left a message, and we
9 left this note here, so when somebody else would call
10 back, we would know what the issue was with the
11 modification documents.

12 **THE COURT:** Sorry, what page on this exhibit are
13 you referring to?

14 **MS. ROTTMANN:** There are not page numbers on
15 the exhibit, but it is the notes from 12/16/2013. They
16 do go in date order. Sorry, 12/18.

17 **THE COURT:** Again, this is Exhibit 16?

18 **MS. ROTTMANN:** Correct.

19 **THE COURT:** Again, I am not seeing ...

20 **THE WITNESS:** Where does 16 start on here? Then
21 we can count how many pages from the start of it.

22 **MS. ROTTMANN:** It should be about the 15th page
23 then,

24 **THE COURT:** What is the date?

25 **MS. ROTTMANN:** December 18, 2013 is the first
26 date on that page.

27 **THE COURT:** I don't have any date – on my Exhibit
28 16, I don't have any documents that are dated in De-
29 cember.

30 **MS. YEH HO:** Your Honor, may I speak?

31 **THE COURT:** What do you want to say?

1 **MS. YEH HO:** I object to this continuing questioning
2 because the phone number they listed is 999-999-
3 9999. I don't have that phone number.

4 **THE COURT:** When you cross-examine him, you can
5 go over that with him. Okay?

6 **MS. YEH HO:** Okay, I'm sorry.

7 **MS. ROTTMANN:** I will give you another copy of Ex-
8 hibit 16, if that would be helpful. There are two sets
9 of notes in there, which may be part of the confusion.

10 **THE COURT:** May I see it? Thank you. Okay. Can
11 you go over this again?

12 **MS. ROTTMANN:** Absolutely.

13 **MS. ROTTMANN:**

14 **Q.** So, what do the notes reflect?

15 **A.** The note on 12/18/13, starts with OBC, which is
16 outbound call, and left message for call back is
17 LMFCB, those are the two acronyms at the beginning.
18 Then the note states that the docs and LIV are not
19 original copies, but number two, we have the quit-
20 claim deed, but we are in need of the divorce decree
21 since there is only going to be one signer.

22 We called the borrower and left a message for a call
23 back and the representative left this note so when the
24 borrower calls back we know what to tell her, and
25 what is wrong with the documents.

26 **THE COURT:** Okay, thank you.

27 **BY MS. ROTTMANN:**

28 **Q.** Were several other attempts to call Ms. Yeh Ho
29 made around the same time, if we look at the preced-
30 ing and subsequent pages?

31 **A.** Yes. We made several attempts through the month
32 of December.

Special Appendix 2
Official Federal Reporter Transcript Page -66 -
KAREN YEH HO vs. WELLS FARGO BANK, N.A.

1 **Q.** Okay. And did Wells Fargo ultimately speak with
2 Ms. Yeh Ho?

3 **A.** Yes. I believe that was in January.

4 **Q.** So, does this reflect that ultimately Wells Fargo
5 spoke with Ms. Yeh Ho on January 2, 2014?

6 **A.** Yes, it does.

7 **Q.** Could you tell us what occurred during that phone
8 call according to the note?

9 **A.** I advised her we are not able to finalize modifica-
10 tion because we didn't get original copy of documents
11 as well as the needed recorded copy of divorce decree,
12 advised her that First American tried to contact her
13 to set up signing, as well as a single point of contact
14 tried to contact her. She stated Wells Fargo owes her
15 money because this was to be an adjustable-rate mort-
16 gage in the first place.

17 **THE COURT:** I am having trouble hearing you.

18 **THE WITNESS:** Sorry about that. Do you want me
19 to go over that again?

20 **THE COURT:** Yes, please.

21 **THE WITNESS:** Basically, this note is, we did speak
22 to her, it is an inbound call from Karen Yeh Ho, so that
23 means it was a call that she called us and we picked
24 up. We told her that we weren't able to finalize the
25 modification documents because we needed a copy of
26 the recorded divorce decree, and we advised her that
27 First American, that is our title company, tried to con-
28 tact her to set up a signing, as well as a single point of
29 contact on the file tried to contact her.

30 **BY MS. ROTTMANN:**

31 **Q.** What is a single point of contact? Let me stop
32 there.

Special Appendix 2
Official Federal Reporter Transcript Page -67 -
KAREN YEH HO vs. WELLS FARGO BANK, N.A.

1 **A.** A single point of contact is someone assigned to the
2 file at Wells Fargo that would be responsible for her
3 file. So, if she would call in, they would be routed to
4 the single point of contact for a more streamlined cus-
5 tomer service experience.

6 **Q.** Okay. If we go to the prior page is this a continua-
7 tion of the notes related to that same January 2, 2014
8 phone call?

9 **A.** Yes.

10 **Q.** So, happened during the remainder of the call?

11 **A.** We advised her that First American was trying to
12 contact her. She wanted the letter sent to her and we
13 advised that the single point of contact tried to contact
14 her, and she said she didn't know that her removal
15 was going to happen, and she was going to sue Wells
16 Fargo, and hung up.

17 **Q.** Following this, did Wells Fargo ultimately notify
18 Ms. Yeh Ho that it was not proceeding with the loan
19 modification because of this failure?

20 **A.** Yes.

21 **Q.** If we could turn to Exhibit 22. Is this letter dated
22 January 13, 2014 that notification?

23 **A.** Yes.

24 **Q.** Okay. What does it say is the reason the loan mod-
25 ification was not proceeding?

26 **A.** Cannot be finalized until the signed documents are
27 returned, and we have not received your signed modi-
28 fication agreement.

29 **THE COURT:** What exhibit was that?

30 **MS. ROTTMANN:** Exhibit 22.

31 **THE COURT:** Thank you.

32 **BY MS. ROTTMANN:**

1 **Q.** And was additional correspondence sent around
2 that same time?

3 **A.** Yes.

4 **Q.** If we go to Exhibit 23, a letter dated Janaury 14,
5 2014, is this another letter that was sent after the re-
6 moval from the loan modification?

7 **A.** Yes.

8 **Q.** And what does this letter advise Ms. Yeh Ho?

9 **A.** It is talking about funds being applied to payments.

10 After the application of these funds, your loan is 24
11 payments past due, with a total amount of 64, 966.53.

12 **Q.** And this correspondence and the one dated Janu-
13 ary 13th, I believe went to a 1230 Gulfstream Way. Is
14 that the address Ms. Yeh Ho provided on her quit-
15 claim deed she sent to Wells Fargo?

16 **A.** Yes, it is.

17 **Q.** Finally Exhibit 24, this is a letter dated January
18 14, 2014, a few back-to-back days. What does this ad-
19 vise Ms. Yeh Ho?

20 **A.** That Jason is going to be her primary contact for
21 the mortgage assistance process, and that not able to
22 help you find a mortgage assistance solution, for that
23 reason, the normal collections process will resume if
24 appropriate.

25 **Q.** And in your review of the file, did you see that Ms.
26 Yeh Ho ever submitted after this time an application
27 for a loan modification?

28 **A.** No.

29 **Q.** Did Wells Fargo reach out to her via letter and
30 phone call to see if she was still interested in perhaps
31 a new loan modification opportunity separate from
32 the streamlined process?

1 A. Yes. There were some letters sent out soliciting a
2 loan modification, and that would have been the tra-
3 ditional review with all of the documents needed re-
4 quired.

5 MS. ROTTMANN: Nothing further for Mr. Cargioli
6 at this time.

7 **THE COURT:** Thank you. Ms. Yeh Ho, you may
8 cross-examine him.

CROSS-EXAMINATION

10 BY MS. YEH HO:

11 **Q.** My name is Karen Yeh Ho. Wells Fargo like to call
12 me Karen Y. Ho. When the Federal National Mort-
13 gage Association can – they say we don't want to use
14 Wells Fargo Bank as a loan servicer, can they just say,
15 we don't want you to be loan servicer for Karen Yeh
16 Ho's account?

17 MS. ROTTMAN: Objection, outside the scope of di-
18 rect and relevance.

19 THE COURT: I am sorry, what are you asking him?

20 MS. YEH HO: I am asking whether the Wells Fargo
21 Bank can be deleted and then another loan servicer
22 comes to the picture, because that is what happened
23 to us. AmTrust Bank was the loan servicer, and then
24 Wells Fargo Bank, and then if no Wells Fargo Bank,
25 can be any other company, Chase, Morgan Stanley.

26 THE COURT: I don't understand. What is the relevance of that question?
27

28 MS. YEH HO: Because Wells Fargo Bank, on the doc-
29 ument, Exhibit Number 16, on July 19, 2013 –

30 MS. ROTTMANN: Can you show him?

31 THE COURT: I am trying to understand. What is
32 the relevance of whether or not they can change the

33 loan servicer?

1 **MS. YEH HO:** Wells Fargo Bank is a loan servicer for
2 Fannie Mae, and Fannie Mae had approved Karen
3 Yeh Ho's mortgage on July 13, 2013, and also in No-
4 vember –

5 **THE COURT:** Okay. So, what does that have to do
6 with whether or not they can change the loan ser-
7 vicer? I am still trying to understand what the rele-
8 vance is.

9 **MS. YEH HO:** The relevance is Fannie Mae already
10 approved my loan, so they can say, okay, they ap-
11 proved, Wells Fargo Bank still continued with the
12 foreclosure.

13 **THE COURT:** I am not following you, Ms. Yeh Ho.

14 **MS. YEH HO:** With the foreclosure and with demand
15 – each time they make a phone call it is to demand
16 that I file a new application with the Wells Fargo
17 Bank.

18 **THE COURT:** I am going to sustain the objection to
19 the question because I don't understand what rele-
20 vance it has. So why don't you ask him something
21 else.

22 **MS. YEH HO:** Okay, yes.

23 **BY MS. YEH HO:**

24 **Q.** I am going to show you Exhibit 16, line 19, July 19,
25 2013.

26 **A.** Okay.

27 **Q.** And the line says, decision passed. FNMA stream-
28 line modification trial decision, it says passed; is that
29 correct?

30 **A.** Yes.

31 **Q.** When the – then in July, the November of 2013,
32 that is one of the page, GM 7, page four – 41, it also
33 says passed, correct?

34 **A.** Um-m-m, I don't know. Which document?

1 **THE COURT:** Ms. Yeh Ho, I'm sorry to interrupt you,
2 but I don't think anyone is disputing that you were
3 approved. They agree you were approved, so I don't
4 think we need to get him to admit that you were ap-
5 proved. Everyone agrees you were approved.

6 **MS. YEH HO:** Okay, including me.

7 **THE COURT:** Yes.

8 **BY MS. YEH HO:**

9 **Q.** So, when they approve my mortgage, and Wells
10 Fargo Bank keep calling me and write to me, try ot
11 contact me, and ask – did Wells Fargo Bank keep ask-
12 ing me, ask Karen Yeh Ho to apply for new loan mod-
13 ification?

14 **A.** You are asking about after this modification –

15 **Q.** Yes, approval.

16 **A.** – fell through. Yes, Wells Fargo was soliciting you
17 for other modification options, not a Fannie Mae
18 streamline modification.

19 **Q.** A traditional one with the full credit scores, every-
20 thing?

21 **A.** Yes, yes.

22 **Q.** And why is that, in your own words?

23 **A.** Because the streamline modification was ulti-
24 mately denied and removed because we did not have
25 all signatures that have al signatures that we needed.
26 So, once that was closed, the streamline modification
27 wasn't an option any more, and we needed to do a tra-
28 ditional modification if you were to modify the mort-
29 gage.

30 **Q.** Did you accept the January 1st, 2014 payment from
31 Karen Yeh Ho?

32 **A.** I don't know.

33 **Q.** It says that you did.

1 **THE COURT:** Why don't you show him where it says
2 that. If you say – you said it says that you did, so,
3 where does it say that?

4 **MS. YEH HO:** Well, it is in the letter, December 14,
5 2014.

6 **THE COURT:** Let me ask the attorneys. Do you
7 agree that they accepted that payment?

8 **MS. ROTTMANN:** Yes, we agree that the January
9 14th payment was made.

10 **THE COURT:** Okay. There you go.

11 **MS. YEH HO:** Yes. Thank you.

12 **BY MS. YEH HO:**

13 **Q.** Wells Fargo Bank, January 1, 2014, received a pay-
14 ment, and January 13th they decided to remove the
15 payment – not remove the payment, but decide that I
16 am not qualified because Wing Ho did not sign?

17 **A.** That is correct.

18 **Q.** That is the only reason, Wing Ho did not sign?

19 **A.** Yes.

20 **Q.** Not because I don't – I am not making payment, it
21 is because Wing Ho didn't sign?

22 **A.** Right. It's because he didn't sign or you didn't pro-
23 vide the divorce decree to allow just your signature,
24 either one.

25 **Q.** Okay. Can you tell me, Fannie Mae has this rule
26 if I apply for a new loan modification, I would be –
27 waive my right for Fannie Mae's approval?

28 **A.** Can you repeat that. If you –

29 **Q.** Fannie Mae already approved my loan modifica-
30 tion, Wells Fargo decide that my loan modification is
31 now approved, and Wells Fargo asked Karen to re-ap-
32 ply for a new loan modification and Karen declined to
33 apply for a new loan modification.

34 If Karen had gone through and applied for a new loan
35 modification, the Fannie Mae would have to need to

1 reapprove Karen Yeh Ho's mortgage, loan modifica-
2 tion?
3 A. Um-m-m, since this one – since this streamline mod
4 was closed out, a new review would have needed to
5 have been done and, yeah, it would have been Wells
6 Fargo reviewing that for approval, and it would have
7 been doing so under Fannie Mae's guidelines.
8 Q. You would have to submit it back to Fannie Mae
9 for approval?
10 A. No, we wouldn't have to submit it to Fannie Mae
11 for approval. Fannie Mae let's us decide who is ap-
12 proved and who is denied.
13 Q. But on the paper it says Fannie Mae approved?
14 A. It does.
15 Q. It is already approved?
16 A. Yes. It says that for the trial plan in July.
17 Q. And permanent.
18 A. And it would have been a permanent modification
19 if we would have received the signed documents or the
20 divorce decree and we could have issued new docu-
21 ments, but because that didn't happen, this modifica-
22 tion was closed and it was no longer approved.
23 Q. It was a decision by Wells Fargo Bank?
24 A. It was a decision by Wells Fargo Bank to –
25 Q. Only ---
26 A.– deny the loan modification because we did not
27 have both signatures and we did not get a divorce de-
28 cree.
29 Q. Karen Yeh Ho – every time Wells Fargo Bank call
30 and if it happen that Karen Yeh Ho reply, Karen Yeh
31 Ho's words were she already have permanent loan
32 modification settlement. That is what she said to
33 Wells Fargo Bank representative?
34 A. Okay.
35 Q. Correct?

1 **A.** I don't recall that, but once – it is not a permanent
2 modification until it is signed by both parties, and it
3 was not signed by both parties, so it was never a per-
4 manent modification.

5 **MS. YEH HO:** Objection.

6 **THE COURT:** What is the objection?

7 **MS. YEH HO:** He is making legal conclusion.

8 **THE COURT:** That was their reason for rejecting it,
9 that your husband did not sign the modification or you
10 didn't prove to them that you were divorced from your
11 husband. It was either one or the other, either you
12 show them that you were divorced or you have him
13 sign. That was their decision, we already know this.
14 We have been over it about 500 times already today,
15 so why don't we move on.

16 **MS. YEH HO:** Okay. We need to move on.

17 **BY MS. YEH HO:**

18 **Q.** Fannie Mae approval, yes or no?

19 **A.** I don't know what that means.

20 **Q.** Fannie Mae on the paper –

21 **THE COURT:** We already know, Ms. Yeh Ho, that
22 Fannie Mae approved the loan modification, the
23 streamline loan modification. We know that. Let's go,
24 move.

25 **BY MS. YEH HO:**

26 **Q.** Wells Fargo disapprove and Karen Yeh Ho want to
27 pay, making full payments on time, and Wells Fargo
28 continue with the foreclosure in the 15th Judicial Cir-
29 cuit even though she posted sign, black and white on
30 the docket saying, Karen Yeh Ho acceptance of
31 streamline permanent loan modification.

32 **MS. ROTTMANN:** Objection, relevance.

33 **THE COURT:** Sustained. Ms. Yeh Ho, I am not sure
34 I know what you are trying to prove here.

1 **MS. YEH HO:** I am trying to prove that, sincerely,
2 they keep saying that they cannot refer back to the
3 foreclosure process, but I am trying to prove it is a
4 dual track foreclosure, that they denied my due pro-
5 cess because the law says you cannot have a dual fore-
6 closure – a dual foreclosure because –
7 **THE COURT:** Ms. Yeh Ho, I'm sorry, we are not here
8 to talk about the foreclosure. Okay?
9 **MS. YEH HO:** Yes.
10 **THE COURT:** We are here to decide whether you got
11 notification of your failure to provide your husband's
12 signature on the loan modification. That is what we
13 are here for.
14 Did they notify you of their request, or requirement
15 that your husband sign the loan modification or you
16 show them that you were divorced from your husband,
17 one or the two?
18 That is the only issue we are here to talk about, okay?
19 **MS. YEH HO:** Yes, I received those items. I reject
20 that they request for all those item and I accept the
21 fact that they request all those items because I am a
22 woman, discriminate against my gender, and that is
23 what I tried to prove. We already prove all that, so we
24 should be okay, right?
25 **THE COURT:** Whether you are okay or not is a sep-
26 arate issue, but you agree those are the facts, that
27 they did notify you, and you said, I am sorry, my hus-
28 band does not want to sign, so I will not give it ot you.
29 Is that what happened?
30 They notified you, they said give us the divorce decree
31 or give us your husband's signature, and you said, no,
32 I am not going to do it and –
33 **MS. YEH HO:** I am not divorced, my husband refused
34 to sign, I am willing to pay and Fannie Mae approved.
35 So, what is your legal position of rejecting me?

1 **THE COURT:** Okay.
2 **MS. YEH HO:** That's what I say to them.
3 **THE COURT:** Okay.
4 **MS. YEH HO:** So we are done?
5 **THE COURT:** I think so.
6 **MS. YEH HO:** We are done because what I am trying
7 to prove is that I am discriminated against because I
8 am a woman, My husband had streamline –
9 **THE COURT:** Ms. Yeh Ho, you could talk to me about
10 that, he can't help you with that.
11 **BY MS. YEH HO:**
12 **Q.** Do you have anything to add that I need to know?
13 **A.** I don't.
14 **Q.** Were you one of the person I have to talk to?
15 **A.** No. I was not in the modification department at
16 that time.
17 **Q.** What phone number did you call? It show 999-
18 9999-999?
19 **THE COURT:** Just ask him what phone number.
20 **BY MS. YEH HO:**
21 **Q.** Could you tell me what phone number you call?
22 **A.** If you go to the first page on one of the notes.
23 **Q.** 999,999, 999, I don't have that phone number.
24 **THE COURT:** Let him answer the question.
25 **THE WITNESS:** In this note they are listing the
26 home preservation specialist, James Bigman, and it
27 says he is located in Illinois and can be contacted at,
28 and it lists his number, which is not his number, but
29 this is referring to somebody who works at Wells
30 Fargo.
31 **BY MS. YEH HO**
32 **Q.** So there is no indication the phone number call me.
33 I have to admit I did receive some phone calls at my
34 phone number.
35 **THE COURT:** Okay.

1 **MS. YEH HO:** So, yes, I did receive phone calls.
2 **THE COURT:** Let's finish with this witness first.
3 **MS. YEH HO:** Okay. Yes, we are done. I rest my
4 case.
5 **THE COURT:** Thank you. Anything further?
6 **MS. ROTTMANN:** No, and Wells Fargo rests.
7 **THE COURT:** Ms. Yeh Ho, do you have any other ev-
8 idences or testimony you want to present?
9 **MS. YEH HO:** I don't believe – I just want to make a
10 conclusion statement.
11 **THE COURT:** That is fine. I just want to know, did
12 you have any more exhibits or do you want to present
13 any more testimony before we get to your conclusion,
14 your closing argument. Did you have anything else?
15 **MS. YEH HO:** I rest.
16 **THE COURT:** All right. Now you can come up and
17 tell me why you should win the case. Okay?
18 **MS. YEH HO:** I should win the case because the 11th
19 Circuit Court already determined a RESPA claim.
20 **THE COURT:** Let me try an explain. I know you are
21 not a lawyer.
22 The 11th Circuit said that you had a right to go for-
23 ward and try and prove your RESPA claim. They
24 didn't say you won your RESPA claim, they said you
25 could – I dismissed your RESPA claim, and they said,
26 no, I shouldn't have dismissed it, and you should be
27 able to go forward on your RESPA claim, and that was
28 what happened after the 11th Circuit.
29 Then I ruled back in February of last year that I didn't
30 think you had a RESPA claim, but I said you could try
31 and prove the Equal Credit Opportunity Act claim
32 that you brought, and you had to try and prove that
33 you were not notified timely of the deficiencies or the
34 failure of the signature from your husband or the di-
35 vorce decree.

1 That is the only thing we are going forward on. The
2 RESPA claim I said was not valid.
3 I understand you think the 11th Circuit approved your
4 RESPA claim. They didn't say you had a valid RESPA
5 claim, they just said you can proceed on your RESPA
6 claim.
7 MS. YEH HO: My statement with the RESPA claim is
8 hinged on Wells Fargo's denial of my permanent
9 streamline loan modification, because they decided to
10 discriminate – gender discrimination by denying my
11 permanent loan modification, requiring Wing Ho to
12 sign. Without Wing Ho signature, I still making my
13 payment. Without Wing Ho signature, I was still
14 making – I was still keeping my own house.
15 Without Wells Fargo's denial, the settlement agree-
16 ment approved by Federal National Mortgage Associa-
17 tion, I would still own the house. All the investments
18 I put in, twenty percent down, I paid over \$136,000 in
19 mortgage payment, real estate taxes, homeowner as-
20 sociation fees, improvement to the property, upgrade
21 the property, all the heart and soul and my own
22 money poured into the property would be all gone
23 when it is foreclosed.
24 I pay homeowner association fee on time. The reason
25 is I love the property. One thing is, I enjoy investing
26 in real estate properties. I enjoy seeing the improve-
27 ment in the property.
28 When Wells Fargo using gender discrimination it
29 takes away my right, my woman's right to own real
30 estate properties, taking my right as a credit worthy
31 person to pay for a house. Yes, I plan to pay in full no
32 matter what. I have windfall profit, I could win the
33 Lotto, I will pay it off. But just because I am a woman,
34 I should require my husband's signature? And he is
35 not even on the promissory note, a promise to pay.

1 The promissory notes is, he would have to promise the
2 one who is on the promissory note, I am the one who
3 promised to pay the mortgage in full. The mortgage
4 is a collateral to the house.
5 Wouldn't it be easier if his name is not on it? If I do
6 not pay, Wells Fargo would just go after me, one per-
7 son. Isn't that easier to foreclose than having two peo-
8 ple?
9 So, to me, Equal Credit Opportunity Act violation is
10 there. They did not give me a clear reason saying be-
11 cause she – she did not pay because she did not have
12 ability to pay. Even with people on the Social Security
13 disability, they are entitled to the Equal Credit Pro-
14 tection Act. Even if they apply, with the law, with
15 their monthly payment, Social Security disability,
16 they are still supposed to obtain credit.
17 Just because I am a woman, that is all I can say that's
18 different. Wing already proving that, it happened
19 both at the same time, he had his own personal
20 streamline loan modification, and I receive a stream-
21 line loan modification because I guess Wells Fargo
22 didn't know what they were doing at the time.
23 I am making \$136,000 payment, \$86,000 down pay-
24 ment, homeowner association fee, real estate tax, all
25 that investment into the property. By foreclosing on
26 the property, Fannie Mae lose out. They probably
27 only got 250,100, and I lose out because it cost me over
28 \$360,000 of investment, because in the beginning it is
29 all interest paying to Fannie Mae.
30 Wells Fargo is just a loan servicer, they get their
31 monthly fee for servicing the loan, no more. So, why
32 are they so hung up on denying me having a perma-
33 nent streamline loan modification when their boss,
34 Fannie Mae, approved, when I am the consumer ap-
35 proved?

1 The only one that is in the contract is Fannie Mae and
2 Karen Yeh Ho. Wells Fargo is the third party, ha-ha.
3 It's like here I go to the title company, the title com-
4 pany watch, okay, here, you are the seller, you are the
5 buyer, and both of you sign, then I put my stamp on
6 it, say, yes, properly sign the document, the home-
7 owner signed the document to sell, and that is a con-
8 tract.
9 All fall into the contract law, an offer, acceptance, and
10 consideration. I received an offer without asking,
11 without having to apply for credit. It says it is sold,
12 everybody all agree. No documentation required, no
13 documentation are required, you are automatically
14 approved when making all these payments. Is aid,
15 great, I signed up for it.
16 Then Wells Fargo Bank, on their own, making up
17 their own law, say, no, no, you should apply, we want
18 to know every detail of your life, every single one, how
19 much money you spend on this, how much money you
20 spend on that, and that is what they tried to do, in-
21 vading my privacy.
22 Streamline loan modification didn't ask for that, just
23 making the payment, we approve, Fannie Mae ap-
24 prove, the consumer approve, we both agree we ap-
25 prove, and third party comes in and says, no, no, no,
26 there is no permanent loan modification. I am sorry,
27 you are rejected, you go home. We are going to fore-
28 close, we are going to take your house, ha-ha. That is
29 what they did to me.
30 In Conclusion, I suffer a lot of damage. In conclusion,
31 I feel this was injustice. I felt there should be compen-
32 sation for my damages, compensated damage, puni-
33 tive damage, because the lack of the consideration to
34 the consumer that they are only a loan servicer, loan

1 servicer. That means Fannie Mae can decide they
2 want to change the loan servicer. That is it.

3 **THE COURT:** All right. Thank you, Ms. Yeh Ho.

4 **MS. YEH HO:** Thank you, your Honor, for spending
5 all these years reading my pleading, reading, answer-
6 ing my pleading, and thank you for your patience.
7 You are the hero, I really appreciate it very much and
8 I appreciate your direction. Thank you.

9 **THE COURT:** Thank you. ma'am.

10 **MS. YEH HO:** Thank you.

11 **MS. ROTTMANN:** I will be brief here.

12 As the Court noted at the beginning, we are here to-
13 day on a very narrow issue, whether notice was re-
14 quired and whether notice was provided under the
15 Equal Credit Opportunity Act.

16 We are not here today to decide whether it's proper
17 that Mr. Wing Kei Ho's signature was requested. In
18 fact, this Court already noted at summary judgment
19 that it was, in fact, ordinary, logical, typical that such
20 be required because property acquired during the
21 marriage in Florida is marital property.

22 The Plaintiff hasn't proved her case here. Quite to the
23 contrary, there is no proof there is an application. She
24 has admitted she didn't request this loan modifica-
25 tion; it was simply offered. She has acknowledged
26 that the credit decision was already made, therefore
27 any application would have been complete before the
28 time at issue here.

29 She has acknowledged that she didn't return fully
30 signed paperwork. In fact, she has acknowledged that
31 she was never going to sign fully signed paperwork
32 because she was married, could not provide a divorce
33 decree, and her husband would not sign the loan mod-
34 ification agreement.

1 She has also acknowledged that she received the no-
2 tice. She spoke to Wells Fargo, and she received a let-
3 ter shortly thereafter indicating the reason why the
4 loan modification would not be going forward. At that
5 point, no case has been proven by Plaintiff on the lim-
6 ited issue we are here on.
7 Finally, there is no competent evidence of any dam-
8 ages associated with any violation this Court could
9 find. There was a brief few day delay, at best, under
10 the best reading of facts for her, and receiving a notice,
11 and there are no damages proven associated with that
12 time period.
13 Moreover, and we provided this case law in our bench
14 brief, there is case law that if the loan modification
15 would have been rejected anyways, regardless of any
16 notice that was or was not received, that you cannot
17 have accrued damages, and that is exactly the situa-
18 tion that occurred here. Mr. Wing Kei Ho was never
19 going to return the signed modification paperwork, so
20 a rejection of the loan modification was inevitable.
21 Finally, there is certainly no evidence of any punitive
22 damages here. There is no showing that Wells Fargo
23 was wanton or malicious in any fashion. In fact, you
24 have heard evidence that Wells Fargo was actively
25 trying to reach out to Ms. Yeh Ho in order to finalize
26 this loan modification. They made multiple phone
27 calls, they sent multiple letters, they did everything
28 they could to try to make this work and received ob-
29 stinacy in return.
30 With that, we would ask for judgement in Wells
31 Fargo's favor, and appreciate your time here today.
32 THE COURT: Thank you. Anything else, Ms. Yeh Ho?
33 Anything new?
34 MS. YEH HO: Well, I understand I tend to repeat my-
35 self, but the emphasis she said that Wing Ho not

1 intended to sign the mortgage, that is the big differ-
2 ence, that is not part of the agreement. The agree-
3 ment was between Fannie Mae and Karen Yeh HO,
4 contract law. Two party agree, two party accepted,
5 two party giving considerations. Wells Fargo Bank is
6 just the party to do the processing. They had no legal
7 obligation to request that I have to re-apply for a new
8 mortgage so that they can collect more fees.

9 I think – I do not know how much fee they are collect-
10 ing from – if I re-apply, and Fannie Mae already ap-
11 proved, so it's – can I use the word scam? I have no
12 idea, but that is what happened to me.

13 I have received a lot of damages, a lot of emotional
14 trauma because of their malice and they did not fol-
15 low the law just to cause harm to me. I hope this is
16 not repeating myself.

17 **THE COURT:** Okay, thank you.

18 **MS. YEH HO:** Thank you. I rest.

19 **THE COURT:** Thank you. All right. I appreciate
20 everyone's presentation today. Thank you for your
21 time. I will try and get a ruling out as soon as I can.
22 All right?

23 **MS. YEH HO:** Thank you, your Honor.

24 **MS. ROTTMANN:** Your Honor, one housekeeping
25 item. I know we need to file the exhibits under the
26 local rules in the next ten days. As this Court may
27 have noticed, some of them include Plaintiff's personal
28 financial information, the loan application and such.
29 Would you like us to do those under seal or prefer that
30 we redact --

31 **THE COURT:** I would prefer that you redact.

32 **MS. ROTTMANN:** Perfect. Thank you.

33 **THE COURT:** Thank you all. Have a nice day.

34 **MS. YEH HO:** Have a wonderful day.

35 (Thereupon, the hearing was concluded.)

Special Appendix 2
Official Federal Reporter Transcript Page -84 -
KAREN YEH HO vs. WELLS FARGO BANK, N.A.

1

2 I certify that the foregoing is a correct transcript
3 from the record of proceedings in the above matter.

4

5 Date: March 17, 2022

6 /s/ Pauline A. Stipes, Official Federal Reporter

7 Signature of Court Reporter

SPECIAL APPENDIX 3

-1-

IN THE UNITED STATES DISTRICT COURT FOR
THE SOUTHERN DISTRICT OF FLORIDA
WEST PALM BEACH DIVISION
Civil Action No: 9:22-cv-81883-RAR

BRITTANY ROBERSON, REBECCA FREEMAN,
BIANCA VINAS, TIFFANY KING, AND TRESHIA
THOMPSON, individually and on behalf of others
similarly situated, Plaintiffs,

v.

HEALTH CAREER INSTITUTE LLC (dba HCI
COLLEGE LLC and HCI ACQUISITION LLC),
FLORIAN EDUCATION INVESTORS LLC, and
STEVEN W. HART, Defendants.

**STATEMENT OF INTEREST OF THE CON-
SUMER FINANCIAL PROTECTION BUREAU
IN SUPPORT OF PLAINTIFFS.**

Respectfully submitted,
Seth Frotman General Counsel
Steven Y. Bressler Deputy General Counsel
Kristin Bateman Assistant General Counsel
/s/ Lauren Gorodetsky Counsel
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Reformatted to comply with Rule 14

I. Introduction

The Consumer Financial Protection Bureau (“CFPB” OR “Bureau”) respectfully submits this Statement of Interest to assist the Court in its evaluation of Plaintiffs’ claim under the Equal Credit Opportunity Act (“ECOA”). ECOA is a civil rights law that prohibits creditors from discriminating against any applicant “with respect to any aspect of a credit transaction” on a prohibited basis, including “race, color, religion, national origin, sex or marital status, or age.” 15 U.S.C. § 1691(a)(1). The Bureau has authority to enforce ECOA and to interpret, and issue rules under, the statute. *See* 15 U.S.C. § 1691(a)(1). The Bureau has authority to enforce ECOA and to interpret, and issue rules under, the statute. *See* 15 U.S.C. §§ 1691(a)(1). The Bureau has authority to enforce ECOA and to enforce ECOA and to interpret, and issue rules under, the statute. *See* 15 U.S.C. § 1691(b)(a), §§ 1691(b)(a), 1691c(a)(9) 1691e(e). The rules implementing ECOA are known as Regulation B. *See* 12 C.F.R. pt. 1002.

One form of discrimination prohibited under ECOA is discriminatory targeting (also called “reverse redlining” or “targeted predatory lending”). Discriminatory targeting is the act of targeting unfair or predatory lending acts or practices to certain groups on a prohibited basis, which may be proven through either intentional targeting or disparate impact. While the acts underlying a discriminatory targeting claim are varied, courts have recognized such claims when creditors target, on a prohibited basis, predatory lending acts or practices such as equity-stripping, issuing loans that are designed to fail, bait-and-switching,

SPECIAL APPENDIX 3

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churning through foreclosures or repossession, and misrepresenting costs to induce credit applications.¹

The named plaintiffs in this case represent a putative class of Black students who enrolled at Health Career Institute (“HCT”), a for-profit nursing school. First Am. Compl. ¶ 2, ECF No. 40. Plaintiffs allege that HCT extended and arranged for students to take out credit to pay for the program in the form of federal and private student loans. *Id.* ¶ 203. And Plaintiffs allege that HCI intentionally targeted its program to individuals on the basis of race, with the understanding that they were highly likely to require an extension of credit to pay for the program. *Id.* ¶ 517. Plaintiffs claim that HCT engaged in “reverse redlining” (hereinafter “discriminatory targeting”) in violation of ECOA, 15 U.S.C. § 1691(a), and they bring other claims under federal and state law. Defendants moved to dismiss Plaintiffs’ First Amended Complaint, including this ECOA claim. See Defendants’ Motion to Dismiss First Amended Complaint (“MTD”), ECF No. 55.

This Statement of Interest addresses two legal issues regarding the application of ECOA raised by Defendants’ motion. First, to state a claim under ECOA, a plaintiff need allege only facts to plausibly suggest that a defendant discriminated on a prohibited basis with respect to an aspect of a credit transaction; they need not allege the elements of a *prima facie* case, which is an evidentiary standard and not a pleading requirement. Second, ECOA’s prohibition on discrimination “with respect to any aspect of a credit transaction” applies to every aspect of the applicant’s dealings

¹ See reference section.

with a creditor, not merely the loan terms in the contract.

II. Argument

a. A plaintiff need not allege the elements of prima facie case to state a claim of discriminatory targeting under ECOA.

Defendants contend that to state a claim for discriminatory targeting under ECOA, a “plaintiff must allege that: (1) she is a member of a protected class; (2) she applied and was qualified for a loan; (3) the loan was given on grossly unfavorable terms; and (4) the lender intentionally targeted her for unfair loans or makes loans on more favorable terms to others.” MTD at 33 (quoting *Davenport v. Litton Loan Servicing*, LP, 725 F. Supp. 2d 862, 876 (N.D. Cal. 2010)). That contention is mistaken on two fronts: First, those elements are an evidentiary standard for proving discrimination, not a pleading requirement; at this stage, a plaintiff need only sufficient facts to state a claim under the *Twombly/Iqbal* standard. Second, even at later stages when a plaintiff must prove that discrimination occurred, the specific elements that Defendants identify may not be necessary to prove discrimination, since the evidentiary standard will depend on the evidence in the specific case.

On the first point, the four-part test that Defendants cite is a variation of the elements that a plaintiff must show to establish a prima facie case of discrimination when proceeding under the familiar *McDonnell Douglas* burden-shifting standard.² But the Supreme Court has made clear that the prima facie case “is an evidentiary standard, not a pleading requirement.” *Swierkiewicz v. Sorema N.A.*, 534 U.S. 506, 512

² See reference section.

(2002). Thus, a plaintiff “need not plead a *prima facie* case of discrimination” to survive a motion to dismiss. *Id.* at 515. Instead, at this stage, the allegations in the complaint “should be judged by the statutory elements” of the specific statute “rather than the structure of the *prima facie* case.” *Hunt v. Aimco Props.*, L.P., 814 F.3d 1213, 1221 (11th Cir. 2016). Accordingly, to plead a claim of discrimination under ECOA, a plaintiff need allege only “enough factual matter (taken as true) to suggest” that a defendant discriminated on a prohibited basis with respect to any aspect of a credit transaction. *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 556 (2007); *see also Ashcroft v. Iqbal*, 556 U.S. 662, 666 (2009).

Contrary to Defendants’ suggestions, the complaint here adequately alleges that HCI engaged in “discrimination.” Plaintiffs allege that HCI engaged in discrimination by targeting women of color, specifically Black women, with their predatory program and tending practices. To support this claim, Plaintiffs allege that HCI prominently featured Black women as models in advertisements and that HCI enrolled a disproportionate number of Black students compared to the population of surrounding neighborhoods. First Am. Compl. ¶¶ 26(e), 113-14. At this stage, these allegations are sufficient to plausibly allege that HCI discriminated on the basis of race. *See Carroll*, 2022 WL 17252556, at *5-6, 10-11 (plaintiffs sufficiently alleged discrimination by alleging race-targeted advertising and marketing toward nontraditional students which disproportionately impacts a protected class); *Cooper*, 2014 WL 2889993, at *3 (plaintiffs sufficiently alleged discrimination by alleging location of car dealerships in predominantly Black neighborhoods, a high percentage of Black customers, and derogatory

SPECIAL APPENDIX 3

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remarks by an employee); *cf. M&T Mortg.*, 736 F. Supp. 2d at 576 (evidence that defendants advertised in Black neighborhoods and employed Black agents could support conclusions that defendants discriminated on prohibited basis); *Hargraves*, 140 F. Supp. 2d at 21-22 (evidence that defendants solicited brokers who operated predominately in the Black community, distributed flyers and advertisements in Black communities, placed offices in Black communities, and made a greater percentage of loans in majority Black census tracts than other subprime lender could support conclusion that defendants discriminated on a prohibited basis).

On the second point, a plaintiff need not necessarily establish the four elements that Defendants cite even when it comes time to prove that discrimination, in fact, occurred. That is because “the *McDonnell Douglas* framework does not apply in every” discrimination case. *Swierkiewicz*, 534 U.S. 511. Rather, a plaintiff can prove discrimination by using “direct evidence”; presenting “a convincing mosaic of circumstantial evidence”; or establishing “a *prima facie* case” of discrimination under a burden-shifting framework. *Jenkins v. Nell*, 26 F.4th 1243, 1249 (11 th Cir. 2022) (analyzing a § 1981 claim); *see also Glenn v. Vilsack*, No. 4:21-cv-137-AW-MAF, 2022 WL 3012744, at *4 (N.D. Fla. June 29, 2022) (applying same framework to ECOA). In other words, “establishing the elements of the *McDonnell Douglas* framework is not, and never was intended to be, the *sine qua non* for a plaintiff” to prove a claim for discrimination. *Smith v. Lockheed-Martin Corp.*, 644 F. 3D 1321, 1328 (11TH Cir. 2011).

Further, even within the *prima facie* framework, the elements that Defendants identify are not necessarily prerequisites. As the Supreme Court has made