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COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS.

SUPERIOR COURT DEPARTMENT
CIVIL ACTION NO. 2084 – CV00450

Anthony and Margaret Oates, Ursula Humes, Nardella Thomas, Maureen and Robert Cormier, Cheryl and Dante Ortiz, Larry and Marlene Meilleur, Francis and Debra DeSimone, Ronald and Christine Dolat, Carlos Perdomo and Rosa Ochoa, and Cheryl and Peter L'Ecuyer, with the individuals suing on behalf of themselves and those similarly situated,

Plaintiffs

v.

BlueHub Capital, Inc., (formerly known as Boston Community Capital, Inc.), Aura Mortgage Advisors, LLC, and NSP Residential, LLC,

Defendants

FIRST AMENDED
CLASS ACTION COMPLAINT
AND JURY DEMAND

INTRODUCTION

1. Plaintiffs, individually and as class representatives, are homeowners who, when facing economic ruin and foreclosure on their homes, turned to BlueHub Capital, Inc., (f/k/a Boston Community Capital, Inc., and hereafter referred to as "BCC"), only to find themselves trapped in structurally unfair, unconscionable loans that ultimately caused them harm and losses. Accompanied by the use of incomplete and misleading disclosures and other wrongful acts, BCC leveraged its purported non-profit, charitable status to profit from the plaintiffs' vulnerabilities, obtaining equity interests in their homes, encumbering their homes with debt on terms contrary

to lawfully mandated practices, and reaping profits from transactions that BCC designated as confidential.

2. As the allegations set forth below establish, no less than a thousand financially desperate families were subject to these wrongful practices, and the named plaintiffs in this suit constitute and represent such persons who have incurred significant losses as a result thereof. Plaintiffs bring this action in order to hold BCC accountable to those harmed to the fullest extent of the law.

PARTIES

3. Plaintiffs Anthony and Margaret Oates are a married couple who reside at 31 Glenarm Street, Dorchester, Boston, Massachusetts.

4. Plaintiff Ursula Humes is an individual who resides at 18 King Street, Dorchester, Boston, Massachusetts.

5. Plaintiff Nardella Thomas is an individual who resides at 711 School Street, Webster, Massachusetts.

6. Plaintiffs Maureen and Robert Cormier are a married couple who reside at 12 Leroy Street, Fitchburg, Massachusetts.

7. Plaintiffs Cheryl and Dante Ortiz are a married couple who reside at 151 Hamilton Street, Southbridge, Massachusetts.

8. Plaintiffs Larry and Marlene Meilleur are a married couple who reside at 122 May Hill Road, Monson, Massachusetts.

9. Plaintiffs Francis and Debra DeSimone are a married couple who reside at 1 Weldon Drive, Millbury, Massachusetts.

10. Plaintiffs Ronald and Christine Dolat are a married couple who reside at 24 Delawanda Drive, Worcester, Massachusetts.

11. Plaintiffs Carlos Perdomo and Rosa Ochoa are a married couple who reside at 8 Vine Street, Taunton, Massachusetts.

12. Plaintiffs Cheryl and Peter L'Ecuyer are a married couple who reside at 121 Highland Street, Athol, Massachusetts.

13. Defendant Blue Hub Capital, Inc., f/k/a Boston Community Capital, was founded in 1994 supposedly as a Massachusetts charitable corporation pursuant to G.L. c. 180. Its principal place of business is located at 10 Malcolm X Boulevard, Boston, Massachusetts. It describes itself as the holding company entity for "the BCC organization [that] provides strategic and management direction for the overall organization, carries out our public policy work, and oversees the development of new initiatives."

14. Defendant Aura Mortgage Advisors, LLC ("Aura"), originally known as "BCC Mortgage LLC," is a Massachusetts limited liability company with a principal place of business also at 10 Malcolm X Boulevard, Boston. It was formed in 2006 and holds itself out in its Annual Reports as engaged in "foreclosure relief" and describes itself as a mortgage broker for low-income people and communities. It is licensed by the Massachusetts Division of Banks as a mortgage broker and lender. It typically provided the first mortgage financing at issue in this case.

15. Defendant NSP Residential, LLC ("NSP" or "NSP Residential") is a Massachusetts limited liability company organized in 2008 and engaged in taking title to property sold back to homeowners and then mortgaged to Aura, with a principal place of business also at 10 Malcolm X Boulevard, Boston, Massachusetts. NSP is licensed as a real

estate broker and holds itself out as being in the business of "mortgage foreclosure relief," and it typically buys and the re-sells the homes in question, and holds the shared appreciation note and mortgage, described below. Its stated purposes in its Certificate of Organization largely repeat BCC's stated purposes in its Articles of Organization to improve the housing of lower income residents, and it specifically describes its core purpose as "allowing ... residents to remain in the[ir] homes and avoid eviction."

16. Aura and NSP describe themselves as "subsidiaries," "divisions," or as "affiliates" of BCC. Their function, upon information and belief, is to implement BCC's residential shared appreciation program, described below. Aura, NSP, and BCC may hereafter be referred to as "BCC".

STATEMENT OF FACTS

17. The practices of BCC that are at issue in this suit have similarly affected and harmed the individual plaintiffs, and, upon information and belief, the thousand or so families and members of the class that BCC claims to have helped.

Defendants Were Plaintiffs' Representatives, Agents and Fiduciaries Negotiating The Subject Transactions On Plaintiffs' Behalf, And The Resulting Loans Were Unconscionable

18. Defendant BCC holds itself out as a non-profit community organization committed to serving "homeowners facing the threat of foreclosures" by providing beneficial "new mortgages to homeowners in default." It is a tax-exempt §501(c)(3) organization that claims to qualify, for tax purposes, as a publicly supported charity.

19. BCC's Articles of Organization describe its purpose as "improv[ing] the housing, economic and general living conditions of ... lower income residents and other disadvantaged people ...."

20. BCC touts its "Stabilizing Urban Neighborhoods Initiative" (SUN) as preventing the "displacement of families" by acquiring their foreclosed homes and "reselling them to their existing occupants with mortgages they can afford." BCC's public marketing materials claim that it "has helped over 1,000 families facing foreclosure to keep their homes."

21. Aura has been granted status as a Community Development Financial Institution ("CDFI) by the U.S. Department of the Treasury, and in 2017 entered into a $100 million loan under the CDFI Bond Guarantee Program. As a CDFI, Aura is required to support economically disadvantaged communities and inject new sources of capital into neighborhoods that lack access to financing. CDFIs must be dedicated to improving the social and economic conditions of low-income, distressed communities.

22. BCC cultivates relationships with non-profit groups serving low-income communities, and homeowners in distress learn of BCC from its advertising or public relations materials and by referrals from these community groups and sometimes from conventional lenders. BCC's founder was a prominent supporter of prior Massachusetts Attorney General Martha Coakley, and to this day that office identifies BCC as a resource for homeowners facing foreclosure – unknowingly referring distressed homeowners to BCC even when it is BCC that is or may be foreclosing on their homes.

23. It is defendants' model and practice that in all cases borrowers would repose their trust and confidence in BCC, which they do, with BCC's knowledge and encouragement. BCC specifically targets community groups devoted to foreclosure and evictions defense and resistance as referral sources for BCC as part of its strategy to create trust and confidence by borrowers, and such groups, upon information and belief, are unaware of BCC's wrongdoing as identified in this complaint.

24. BCC represents to desperate, distressed, often unsophisticated homeowners facing loss of their homes that it is a public interest, charitable non-profit entity whose sole purpose is to help them, and on this basis it engenders their trust and confidence. BCC has characterized its relationships with its borrowers as "a partnership", and indeed it takes an ownership interest, often equal to the borrower's, in the growth of the value for the home, and it prides itself on negotiating with the prior Lender on the borrower's behalf. BCC labels this ownership interest as "shared."

25. The BCC entities serve as the borrower's agent, broker, representative, and fiduciary to purchase the home threatened with (or taken in) a foreclosure in order to acquire it on behalf of the borrower at what BCC says is its fair market value or "distressed" fair market value and sell it back to the borrower:

a. After the borrower learns of BCC from a community agency or BCC advertising, and the borrower contacts BCC, the borrower thereafter works directly with personnel employed by Boston Community Capital, Inc., now BlueHub Capital, Inc., and gets information from it about the SUN Program called, *inter alia,* "Save Your Home." Every borrower known to plaintiffs states that BCC holds out its program as their only hope to save their home.

b. The borrower submits an application to BCC, typically with an application fee of $5,000. If the application is approved by BCC, it appoints a "negotiator" whose job it is to represent the borrower.

c. The application and negotiation process thereafter takes from four months to more than a year, beginning with BCC obtaining an appraisal or opinion of value for the home (what is supposed to be its fair market value).

d. BCC thereafter negotiates the terms of the purchase from the borrower's last lender, making offers and counter-offers, in periodic communication with the borrower.

e. Plaintiffs do not know what representations BCC makes to borrowers' former lenders, who absorb the loss in the short-sale or re-purchase transaction, but BCC consistently represents to borrowers that it is working diligently in their best interest to keep them in their homes at a cost they can afford and that it conducts negotiations that the prior lenders will not undertake with the borrowers themselves – *i.e.*, "That's what we do, we negotiate for you because the banks won't, we're unique" (negotiator to plaintiff Nardella Thomas).

26. BCC at closing purchases the home through NSP, and NSP sells the house back to the homeowner, usually the same day, at a price typically more than 25 percent higher than the price at which BCC purchased the home moments earlier. BCC does not include this extra cost charged to the homeowner as a finance charge in its Truth-In-Lending Disclosure Statement or related disclosures required to be made to the homeowner as part of the transaction, and upon sale BCC takes what is essentially an equity position in the home through shared appreciation.

27. The transactions are accomplished by dealings rife with conflicts: BCC (through NSP) is the borrower's real estate broker which arranges the sale of the borrower's property to itself **and** then sells the home back to its borrower at a profit to itself. BCC's Aura is the mortgage broker which arranges a first mortgage to itself, well in excess of market. And then real estate broker NSP steps in to take a second "shared appreciation" mortgage to the property that will burden borrowers potentially for generations.

28. The ultimate effect of these many conflicts of interest is that, in contradiction to BCC's representations that "homeowners apply for financing through other sources," *see* 2016-2017 Consolidated Statements at p. 12, in fact borrowers are steered exclusively to Aura, where

they are provided shared appreciation loans, which loans are disfavored under law. See Regulation Z at 1026.36(e), incorporated into Massachusetts General Laws 140D.

29. In effect, BCC through its divisions and/or affiliates acts as borrowers, mortgage brokers, lenders, and real estate brokers, creating outsized profits for itself and its affiliates.

30. BCC's financing practices are unconscionable and oppressive, not charitable or even remotely fair for, without limitation, the following reasons.

31. BCC, unlike the homeowner, enriches itself at every step of the way: upon sale of the home to the homeowners facing or in foreclosure, it makes a profit; after closing, it makes a continuing profit through collecting excessive interest payments; and upon refinancing, sale, or maturity of the thirty-year mortgage BCC profits by often collecting about half of the home's appreciation, or all of the appreciation through a sale after foreclosure. In fact, even a homeowner who has paid her above-market fixed rate mortgage interest for thirty years finds herself at the end of the thirty-year term facing a giant balloon payment due then, which can only be paid by selling or refinancing the home. Thus, a thirty-year mortgage is virtually guaranteed to extend for decades more.

32. Specifically, BCC finances the homeowner's re-purchase of his/her house, requiring the execution of two promissory notes secured by two mortgages on the property.

33. The first note and mortgage are typical, secondary market compliant documents, albeit at an interest rate well above market, and typically for 100 percent of the purchase price.

34. The second note and mortgage are for the shared appreciation, whereby BCC acquires a significant interest in the future value of the home, requiring a balloon payment due, at the latest, at the maturity of the first promissory note, which represents the imposition of

significant additional interest paid by the borrower. (This mortgage will hereafter be called a "SAM.")

35. BCC represents on the federally-required Truth-in-Lending Disclosure Statement (now "Closing Disclosure") and Good Faith Estimate (now "Loan Estimate") that the credit terms are for a fixed rate, thirty-year mortgage with no balloon payment.

36. BCC typically charges closing costs significantly above prevailing market rates.

37. The SAM is a second mortgage of record on the property, and its effective rate of interest payable to BCC is variable. BCC does not disclose the SAM on the Truth-in-Lending/Closing Disclosure, Good Faith Estimate/Loan Estimate, or settlement statement (HUD-1) disclosures, or on the deed, which states the "full consideration" for the transaction. BCC also does not disclose the true nature of the transaction and overall cost of the credit in general and, specifically, the variable rate characteristics of the SAM, and BCC splits what in fact is a single financing into two supposedly separate transactions that conceal the true cost of the transaction and the fact that BCC has effectively taken significant equity in the borrower's home.

38. At closing, plaintiffs are required to sign numerous unexplained or barely explained documents, including two recourse promissory notes and two mortgages, with, at closing, only the Truth-in- Lending Disclosure Statement (now "Closing Disclosure") and HUD-1 reviewed in any detail.

39. For example, Plaintiffs Cheryl and Dante Ortiz recently obtained their files. At closing, and based only on what remains in BCC's files, the Ortizes were presented at closing with approximately 45 documents totaling approximately 140 pages, many concerning important legal matters and important representations by the Ortizes. They were required to sign or initial

most of these, the vast majority of which were neither explained nor did the Ortizes have any chance to read them.

40. BCC also includes a, to plaintiffs' knowledge, unique confidentiality provision in the SAM promissory note exacted at closing that purportedly compels the homeowner to keep all of the terms of financing "strictly confidential," and requires such confidentiality even after the BCC loan(s) has been paid in full. This provision alone is unconscionable and grounds to strike the shared appreciation transactions. The provision reads as follows:

> Confidentiality. Borrower acknowledges and agrees that all of the terms of financing discussed by Holder and Borrower as well as the terms and provisions incorporated herein are strictly confidential, and Borrower agrees not to disclose such terms to any person or entity whatsoever other than (a) disclosure to Borrower's legal counsel and financial advisors, provided such person or persons agree to be bound by the foregoing confidentiality provision, (b) such information as is required to be disclosed by Borrower by legal process or by a governmental or quasi governmental entity that requires such disclosure and is authorized to require such disclosure and (c) in any legal proceeding to which Lender and Borrower are parties. This confidentiality agreement shall survive the Maturity Date.

While the confidentiality provision allows limited disclosure to borrowers' attorneys or financial advisors, BCC borrowers do not have attorneys or financial advisors.

41. The confidentiality provision in the shared appreciation promissory note is subject to the default provisions of the shared appreciation mortgage, which provides for draconian penalties upon breach, including the penalty of acceleration and foreclosure.

42. Plaintiffs have been given no explanation of the purpose of the confidentiality provision, which on its face is intended to stymie borrowers' efforts to understand their financing and shields from scrutiny BCC's practices in general, including the SAM practices and other

ways BCC profits from the short sale, including profiting upon sale to the borrower, profiting by the above-market interest rate charge, and profiting from the SAM.

43. The confidentiality requirement imposed on plaintiffs and the class is part and parcel of BCC's fraudulent concealment of its wrongful conduct, which concealment also includes, without limitation, building trust and reliance with plaintiffs and serving as their agents in dealings with prior lenders; only including information about shared appreciation within a mass of documents that do not reference it and include documents emphasized at closings that contradict shared appreciation; failing to explain to vulnerable and unrepresented plaintiffs the ramifications of shared appreciation, which create impediments to refinancing; and failing to disclose fairly, or at all, that the SAM means that at the end of the first mortgage term of 30 years borrowers will still owe a very significant payment. The confidentiality provision may also serve specifically to conceal wrongful BCC conduct in connection with short sales.

44. In a short sale, the sale proceeds are less than the outstanding debt on the property, but the liens are nevertheless released. Most of BCC's SUN transactions are short sales.

45. Most lenders, and guarantors to lenders Freddie Mac and Fannie Mae, have adopted "ALT" (arm's length transaction) and "Make-Whole" policies that require the parties to a short sale to execute affidavits that the sale was an arm's-length transaction and that the borrower facing foreclosure will not remain on the property for more than 90 days or subsequently repurchase the property from the buyer. The purpose of the ALT and Make-Whole policies is to prevent mortgage fraud and cost to the government, specifically including where non-profit entities purchase the homes of certain borrowers following a short sale and resell the

homes back to the former borrowers at a profit to the non-profit entities. *See Suero v. Federal Home Mortgage Corp.*, 123 F.Supp.3d 162, 171 (D.Mass. 2015).

46. BCC avoids ALT and Make-Whole restrictions in some cases through reliance on M.G.L. c. 244 §35C(h), which, on information and belief BCC helped author, and which allows §501(c)(3) entities to resell short sale homes to their original owners.

47. Plaintiffs do not know whether BCC discloses to prior lenders in short sale transactions the fact that they immediately sell the property back to the original borrower at a price significantly in excess of what the prior lender was paid, which price includes BCC's profit on sale and share of appreciation. Such profit is inconsistent with federal policy – which favors loan modification programs – and may in part explain BCC's unique unconscionable confidentiality provisions.

48. The SAM, in combination with the other BCC loan features, is in violation of the law. See 940 C.M.R. 8.06(6), prohibiting a mortgage broker or lender for providing "terms which significantly deviate from industry-wide standards." SAMs are unusual, atypical provisions subject to easy abuse, but are subject to industry-wide standard practices. Those standard practices require below market fixed interest rates offered by the shared appreciation lender, in return for which the lender is compensated by a controlled and capped shared appreciation. BCC combines above-market interest rates, and profit and fees with uncapped, uncontrolled shared appreciation in violation of industry standards.

49. BCC also calculates the SAM appreciation in a way that improperly and unfairly disadvantages borrowers and overstates what borrower must pay.

a. BCC calculates the total appreciation by subtracting not the borrowers' actual cost of acquiring the home back from BCC from the fair market value of the

home at sale or refinancing, but its own lower cost to acquire the home from the prior lender, plus a "loss reserve" amount and its closing costs, leading to greater supposed appreciation in many cases, and double payment by homeowners of a share of the appreciation.

b. This method inflates appreciation by not including the borrowers' actual purchase price, the borrowers typical application fee of $5000, closing costs, and tax costs, if any, created by forgiveness of debt in the short sale.

c. BCC calculates the percentage of the shared appreciation in a manner that gives it an excessive and undeserved portion of all appreciation.

d. Specifically, as to the period prior to April 2013, the supposedly "pre-application" documents, titled "Shared Appreciation Mortgage Disclosure Statement":

(1) Did not state clearly that the borrower would owe shared appreciation; and

(2) Did not say that shared appreciation would be owed at maturity of the first loan.

e. But the earlier, "pre-application" documents did, in fact, explain how shared appreciation was calculated, though in a way no borrower could understand: the borrower's share of appreciation would be 125% of NSP's price to purchase the home, explained as "the base purchase price to the homeowner/buyer," divided by a capitalized term not explained, "The Original Price of the Property."

f. Thereafter, and only at closing, did the unrepresented borrower facing foreclosure and signing almost fifty documents, sign one that contained in one

place on its second page "the Original Price of the Property," and, upon information and belief, in every case now known to plaintiffs, BCC misapplied its own formula, always or almost always to increase the future appreciation it claimed for itself.

g. Specifically, applying the disclosure formula, and inserting into it "the Original Price of the Property" for each of the named plaintiffs, whose loans closed prior to mid-April 2013, BCC's share of future appreciation appears to be as follows:

(1) **Anthony and Margaret Oates**: While BCC claimed 54 percent of the Oates' home's appreciation, a proper application of BCC's formula would, upon information and belief, result in little or no shared appreciation owed to BCC.

(2) **Ursula Humes**: While BCC claimed 53 percent of her home's appreciation, her BCC file appears to contain no shared appreciation Note, so no calculation is possible, and apparently no shared appreciation is owed.

(3) **Nardella Thomas**: While BCC claimed 42 percent of her home's appreciation, a proper application of BCC's formula would, upon information and belief, result in no appreciation owed BCC if the "Original Price of the Property" as stated numerically by BCC was used.

(4) **Carlos Perdomo and Rosa Ochoa**: While BCC claimed 50 percent of their home's appreciation, a proper application of BCC's formula would, upon information and belief, result in approximately 10 percent owed BCC.

h. At the very least, and whatever the shared appreciation percentages are supposed to be, it is clear that BCC systematically calculates them incorrectly and overly beneficial to itself, and that it claims funds not owed it. For

instance, for Cheryl Ortiz, who has her full file, the formula which it seems likely BCC purports to apply to determine the borrower's shared appreciation – cost at BCC's closing to borrower divided by total indebtedness being paid off, produces the shared appreciation owed the Ortizes as 54 percent, not 48% as calculated by BCC. No borrower, without counsel and sworn to secrecy, would ever know of these likely systematic errors.

i. In short, as to all loans made on or before April 2013, BCC's formulas and calculations are confusing, misleading, wrongly applied later, and not understood by BCC's own personnel, including when BCC calculated the borrowers' appreciation owed at re-financings or sales.

j. In, upon information and belief, the later time period starting in April 2013, BCC represented that the borrower's share of home appreciation would be the percentage of the initial BCC mortgage principal divided by the prior mortgage being discharged. While BCC's practice appears consistent with this calculation, pending discovery, the calculation is unrelated to BCC's costs or risk and is still based on the false assumption that it, and not decline in the housing market, produced the mortgage savings. In fact, the reduction in the homeowner's mortgage was a cost to the prior mortgagee (and its mortgage insurer and thus the taxpayers), and not to BCC, and BCC taking any shared appreciation is therefore unconscionable and wrongful.

k. Additionally in this later period, as in the earlier period, BCC overstates total appreciation by using its costs, and not the borrowers' costs to acquire the home, thus double-counting some of the supposed appreciation.

50. In sum, what is for most of BCC's low- and moderate- income borrowers their sole savings and their only asset—their homes—are encumbered into the indefinite future by mortgage debt, either BCC's or new financing to pay off BCC's shared appreciation.

51. The unwary, unrepresented, desperate homeowner, already in or threatened by foreclosure, is trapped by BCC into a thirty-year plus, well above market rate mortgage with an additional, final giant payment that will come out of the borrower's equity in their one asset, their home.

52. The entire BCC scheme, and particularly the shared appreciation loan, is structurally unfair.

53. Homeowners facing foreclosure are in a drastic predicament. Class members report feelings of shame and humiliation, anxiety, depression, and even suicidal thoughts as they contemplate losing what for most is the only home they have ever owned. They are vulnerable in the extreme.

54. The disparity in bargaining power between BCC and its borrowers is extreme, and the ultimate unfairness of the loans is extreme as well.

55. In sum, the BCC loans are unconscionable because, *inter alia*, its superior (indeed, overwhelmingly superior) bargaining position results in its owning a significant portion of the equity of its distressed borrowers' homes. The BCC loans are predatory because, *inter alia*, the only way borrowers can ever repay the loans is either by losing their homes to foreclosure or by finding new lenders to advance new borrowed funds to pay BCC – *i.e.*, the borrowers cannot possibly pay the loans from their other sources of income.

56. To date, the homes of shared appreciation borrowers have appreciated by approximately $100 million. Defendants, in addition to selling the homes back to the borrowers

at a profit and charging above-market interest rates on their mortgage loans, intend to take about half of that value from their mostly low-income borrowers. While the particular facts of particular plaintiffs' cases may vary, every member of the class is burdened by the shared appreciation note and mortgage, both of which should be determined to be void *ab initio*.

BCC Takes Little Or No Risk

57. While BCC, like other sub-prime lenders, purports to justify the excessive payments it takes from borrowers on the basis that the borrowers are high risk, the loans it makes are not high risk, since it makes them only when the prior mortgagee writes down the debt so that the borrowers can afford the debt and, if only barely, BCC's above-market interest rate.

58. In fact, BCC exploits the often-temporary distress of low- and moderate- income homeowners who are experiencing particular hardship and facing foreclosure because of matters like illness, loss of jobs, or divorce. And when BCC borrowers do default, BCC, upon information and belief, does not consistently provide required loan modification undertakings and forecloses aggressively. *See Aura Mortgage Advisors, LLC v. McKnight et. al.*, Mass. Housing Ct. Dept. (Eastern Division), 19 – SP – 4559.

59. Specifically, BCC states in its financial statements, see consolidated statements for 2017-2018, that only about 12 percent of its residential loan portfolio balances are "substandard" high risk, while almost 70 percent are identified as high quality/low risk.

60. In fact, BCC makes clear that it chooses only borrowers with a history of steady income, see *Chronicle of Philanthropy*, July 24, 2011, and its scheme depends on the current mortgagee's willingness to accept market value for the home – what BCC calls "distressed market value," in lieu of the outstanding mortgage balance. *Id.* BCC's lending depends more on the anticipated value of the home going forward than the need of the borrower.

61. The scheme thus revolves around an erstwhile credit-worthy borrower with a home temporarily under water, with BCC stepping in and taking an outsized profit on flipping the home, over-market mortgage interest, and usually what is a very significant equity share of the home through shared appreciation which will keep the homeowner in debt potentially for generations to come.

BCC's Disclosures Are Incomplete, Inaccurate, and Misleading

62. BCC attempts to insulate its practices from liability by claiming that it makes full and fair disclosures concerning all aspects of its loans, but this is not so.

63. The inadequate disclosures constitute actionable concealment tolling the statute of limitations. In all known cases, plaintiffs and other similarly situated homeowners financing with BCC have not been represented by legal counsel at closing.

64. BCC informs homeowners orally prior to or at closing that they can refinance anytime from six months to three years post-closing, when their credit has improved, encourages them to refinance and states in writing at closing that there will be no prepayment penalty. BCC's public relations materials emphasize that their program is intended to help their borrowers refinance quickly into a conventional mortgage, without explaining that the SAM will greatly interfere with refinancing, and that the SAM essentially constitutes a massive de facto prepayment penalty which in many cases will make refinancing either practically unavailable, since borrowers will be unable to qualify, or so financially burdensome as to be without practical value to the homeowner. This traps the homeowners in the artificially high BCC interest rate loans indefinitely.

65. Additionally, because of their earlier credit problems, most borrowers are not able to refinance for much longer than six months to three years after their BCC financing. The "rule

of thumb" for refinancing is no sooner than 3 years from a short sale or 6 years from a foreclosure. Thereafter many homeowners who have tried to refinance are unable to do so because of the SAM, since it becomes due at refinancing and thus the SAM requires significant additional borrowing by the homeowner, whose available refinancing will almost always be limited to 80 percent of the value of the home. The existing fixed-rate mortgage is "front loaded" such that the principal balance goes down very little in the earlier years. The first time borrowers discover the effect of the SAM – or even that they had a SAM – and that the SAM greatly interferes with their ability to refinance, is when they actually try to go through a refinancing transaction.

66. But BCC does not disclose that its transactions may impose fatal obstacles to homeowners' ability later to refinance their homes. Borrowers are unaware that BCC's written disclosures at closing – "if you pay off your loan early, you will not have to pay a penalty" and "I may make a full prepayment or partial prepayment without paying a prepayment charge" – are misleading and deceptive.

67. BCC does not disclose in its advertising or public relations materials for borrowers that it profits from selling the home back to the borrower, that its mortgage interest rates are well above prevailing market rates, and that it acquires an ownership interest in the home that will significantly impede the homeowner's ability to save for the future or to refinance the property.

68. BCC does not disclose on the Truth-In-Lending Disclosure Statement (provided just prior to and at closing) or Good Faith Estimate (provided within three days of application) or successor documents that borrowers will have two notes and two mortgages, one with variable rate characteristics that effectively take a significant share of the borrowers' equity, and

eventually a potentially significant balloon payment, such that the true nature and amount of interest they are obligated to pay is undisclosed and unknown, and is much higher than they are told, *see infra*.

69. BCC never discloses what the BCC percentage of shared appreciation will be until the actual closing, when the percentage is supposedly disclosed (but usually incorrectly calculated) buried on one page of one document when it is much too late, indeed impossible, for the borrower to walk away from the transaction, even if the borrower sees this notation.

70. BCC never discloses in any way legally acceptable that even if the borrower has paid its above-market-rate fixed interest mortgage loan for thirty years and the first mortgage is discharged, the SAM will at that time become due and payable, and the borrower will either lose her home or have to refinance the new debt, leaving the borrower in debt for potentially decades to come.

71. While defendants claim that the "disclosures" they make about shared appreciation should shield them from liability as to this matter, this is not so, for reasons described above and further including:

a. The "disclosures" BCC made for years did not clearly tell borrowers they would owe shared appreciation, never said or suggested that such appreciation would be owed even after the 30-year mortgage was paid off, misstated the formula to calculate shared appreciation, stated that NSP had the "option" to claim shared appreciation (not that it always would), explained none of the effects of shared appreciation (e.g., difficulty of refinancing), and, perhaps most importantly, gave no hint until the distressed homeowner was sitting in the closing that BCC's share of the appreciation would be 40% or 50%, or

even a higher percent even though such facts should have all been known to BCC well before closing.

b. Additionally, the documents required by law that explain to every borrower, without confusion or equivocation, what they would owe and have to pay, the Good Faith Estimate, now the Loan Estimate (required by law to be given to every borrower within 3 days after application) and the federal Truth and Lending Disclosure Statement later replaced by the Closing Disclosure (required to be given the borrower 3 days prior to closing and reviewed and signed at closing), said nothing about shared appreciation and specifically said there would be no "balloon payment," nothing owed at the end of the mortgage term.

c. While at a certain time BCC updated its shared appreciation "disclosure," the new form suffered from all of the problems of the earlier form absent possibly the incorrect formula, and was if anything even more difficult to understand.

d. Finally, the SAM and the shared appreciation promissory note also state that NSP "shall have the right, at its option, except as prohibited by law," to call the shared appreciation due at the triggering event or by implication not to, but in fact this language is, upon information and belief, pretextual and for an ulterior purpose, and is never followed by BCC, which always demands payment of the shared appreciation at the triggering events – but none of this is known or could be known to borrowers.

72. In short, the first time a borrower could be (but was not) on notice of what shared appreciation he or she would actually owe was at closing, when, unrepresented by counsel and in

the midst of signing numerous documents, and out of time and too late to walk away, the borrower was also relying on the Truth In Lending Disclosure Statement or Closing Disclosure and the HUD-1, which explained what the borrower would owe with no mention of shared appreciation.

73. Additionally, even if borrowers understood shared appreciation at closing, which they did not, it was never explained to them that at the end of thirty years they would still remain deeply in debt to BCC, facing sale or foreclosure then.

74. BCC also does not disclose or send the required letter to the Attorney General's Office, and share it with borrowers, to the effect that the BCC loan may potentially exceed the Massachusetts usury rate, defined in G.L. c. 271, §49 as "interest and expenses in the aggregate of which exceeds an amount greater than twenty per centum per annum."

75. Finally, on information and belief, BCC never sends to buyers who do later sell or refinance the required form showing interest they have paid BCC through shared appreciation, which interest is deductible from their income. Such notices are required to be sent in the first quarter of the year following the year in which the former BCC borrower sold or refinanced the home.

76. And fundamentally, even full and accurate disclosure cannot make predatory or unconscionable mortgage loans lawful. Indeed, it is because, as recent history has shown, mortgage financing is so susceptible to overreaching, and borrowers in distress so susceptible to exploitation, that many practices, whether "disclosed" or not, are not tolerable or allowed.

Plaintiffs Unable to Refinance

Anthony and Margaret Oates

77. Anthony and Margaret Oates are a married couple who purchased their two-family home located at 31 Glenarm Street in Dorchester in 2005. They have three adult children living at home, one attending college.

78. Anthony Oates is retired from the Boston School Department, most recently as a substitute teacher, and Margaret was a homemaker and, with her children now grown, was doing operations and claims work for an insurance company, but was recently laid off. Anthony was driving for Uber and Lyft.

79. The Oates filed for bankruptcy in 2011, and their home had been foreclosed because they were in default of their payments to mortgagee HBC Beneficial. They were referred to BCC as a non-profit that helped people facing loss of their homes.

80. NSP purchased the home from the Oates' prior lender on May 2, 2012, for $144,900.00.

81. On that next day, NSP sold the home back to the Oates for $192,000, with closing costs of almost $7,000. The Oates paid NSP $47,100 more to purchase their home on May 3, 2012, than BCC's affiliate paid to purchase it the previous day. This was profit to BCC.

82. When BCC sold their home to the Oates for $192,000, it took back a loan for $192,000, plus closing costs and fees. BCC was only out of pocket for the purchase price, so essentially it was receiving interest on $47,100 more than it had spent. By loaning the Oates $192,000, it recouped its purchase price, and then received higher than market rate interest going forward on the profit it had made, indefinitely, until such time as the Oates loan to BCC could be paid off. This is the same pattern for all or almost all BCC residential loans.

83. The closing was at BCC's office at 57 Warren Street, Roxbury and was quick and confusing. BCC's lawyer or legal worker had a stack of documents he put before and had the Oates sign.

84. The numerous documents included: a Quitclaim Deed whereby NSP sold the home to the Oates for "full consideration" of $192,000; a recourse promissory note in the amount of $192,000 running to Aura, providing for a thirty-year term with interest at 6.375% (well above the market rate at the time), and stating that the Oates "may make a full Prepayment ... without paying a Prepayment charge"; the Federal Truth-In-Lending Disclosure Statement and the HUD settlement statement, both stating, *inter alia*, that the loan had no prepayment penalty or balloon payment and that the transaction was for a loan with a fixed rate of interest, and not disclosing the SAM or its variable rate characteristics, or the cost of shared appreciation, or, in fact, anything at all about shared appreciation; another recourse promissory note, this one five-and-a-half single-spaced pages stating that the Oates would pay NSP 54 percent of any appreciation of the value of the home since May 4, 2012, and requiring at its paragraph 12 right above their signatures that the Oates would not disclose the "strictly confidential" "terms of financing" except, *inter alia*, in legal proceedings; an "Automatic Payment Authorization" allowing BCC affiliate Aura automatically to debit the Oates' bank accounts to collect all funds owed (this form was signed in blank by the Oates, with Aura free to fill in any and all financial institutions with which the Oates did business); a first mortgage in the amount of $192,000 running to Aura and secured by the home; a "Shared Appreciation Mortgage and Security Agreement," recorded immediately after the first mortgage, running to NSP, stating that it was subordinate to Aura's first mortgage of $192,000, and further stating that the Oates may not, *inter alia*, sell or assign

any interest in the home without NSP's written consent, and that any default of the SAM note or mortgage would entitle NSP to accelerate the debt due, which debt is not identified.

85. In addition to these documents the Oates signed approximately thirty-five or more other documents at the May 4, 2012, closing, and none of those documents was explained to them in any reasonable detail by the BCC attorney or legal worker conducting the closing, except a brief explanation of the Federal Truth-In-Lending Disclosure Statement and the HUD-1, which failed to include anything about shared appreciation.

86. Other than the fact that they were buying back their house for $192,000, and had an above-market interest rate and a 30-year mortgage, the Oates had no understanding of the transaction and did not understand, specifically, that they had two notes and two mortgages and that, as BCC later asserted, they could not sell or even refinance their home unless they paid NSP not only the first mortgage amount, but more than half of any appreciation of the house from May 4, 2012.

87. The above transactions of May 4, 2012, were suffused with secrecy and deception, were accompanied by documents that, when they had to be recorded, omitted key dollar terms so the reality of the transaction was hidden from public view, were controlled by an unrecorded document (the Shared Appreciation Note) that allowed BCC to accelerate and foreclose if the Oates disclosed the transaction, and overall had the effect of tying the Oates for the next 30 years and beyond to BCC and its unconscionable loan terms, and requiring, in effect, that the Oates would likely be in debt long after the 30-year mortgage term ended unless they sold the home then in order to pay NSP 54 percent of the home's appreciation.

88. The Oates initially inquired about refinancing within two years of their BCC financing, but were not eligible because of their too-recent foreclosure. Thereafter, they learned

of SAM only when they tried to refinance their home in 2018. They needed both to reduce their interest rate and, in 2018, to obtain funds to do needed repairs, including fixing a badly leaking roof.

89. The Oates approached their credit union and a mortgage company in 2018 to refinance for money to repair the roof, but were turned down because the NSP second mortgage had to be repaid at the time of the refinancing. BCC calculated the appreciation of which it would take 54 percent to be $140,000. Upon information and belief, that calculation was incorrect and improperly burdened the Oates for, *inter alia*, the reasons stated above. Also, the Oates had spent significant sums of money over the years to improve their home. They explained that to BCC and were told by BCC that if they produced their receipts for the expenditures, BCC would give them a credit on the shared appreciation of up to 75% of the receipt totals, but not 100%. Upon information and belief, BCC took this wrongful position based on provisions in 2018 SAMs providing for only a partial credit for improvements to the borrowers' homes, which provisions were not in the Oates' documents.

90. The Oates are unable to refinance because of the SAM, as to which defendants calculate total appreciation and shared appreciation improperly, and remain obligated to pay the above market promissory note until and unless they sell their home, when they will have to pay off both the first mortgage and the SAM.

Ursula Humes

91. Ursula Humes is 64 years old and purchased and has lived in her single family home located at 18 King Street in Dorchester since 1994. She purchased the home on her own, after her divorce, with financing from Shawmut Mortgage. She later refinanced a larger loan

with Wells Fargo and used it to maintain the home, pay college and related expenses, and support her grandmother.

92. Ms. Humes was born in Panama, came to the United States at the age of 14, graduated from St. Patrick's High School in Roxbury and the University of Massachusetts, Boston, and served in the Air Force and in the Army Reserves for ten years. She retired from the MBTA Police Department in 2016 after twenty-three years.

93. Ms. Humes raised and financially supported two now-grown children almost entirely on her own, and also supported her elderly grandmother (who raised her) from January 2000 until her grandmother's death in 2006.

94. After Wells Fargo's failure to properly apply certain of her mortgage payments, and after Ms. Humes was unable to make certain other payments, Wells Fargo foreclosed on Ms. Humes' home on May 8, 2009. Ms. Humes refused to leave her home, and she was referred to BCC by a community group.

95. BCC representatives told Ms. Humes, similarly to their representations to all plaintiffs in this case, that they would purchase her home from her lender and sell it to her, that BCC was a non-profit in the business of helping people save their homes, and that they were in the business to help "people in the community." BCC told Ms. Humes she would have to pay a $5,000 fee before closing, which she did.

96. Aura thereafter appraised her home at $270,000, assuming "repair/replacement of the roof and repair of all water damaged areas."

97. Ms. Humes' closing occurred at BCC's office at 57 Warren Avenue, Roxbury, on December 28, 2010. Ms. Humes was present, together with a BCC executive who identified

herself as "a BCC founder," and BCC's attorney. Ms. Humes was not advised before the closing that she should retain an attorney.

98. Ms. Humes was presented with a stack of documents and she was given a brief overview. "Shared appreciation" was mentioned, as was the number 50 percent, but Ms. Humes did not understand the references. She was incorrectly told that she could refinance her new loan once she "got on her feet," which should take a year, and she understood that to mean she could then get a new loan from BCC. She was told at the closing that she was borrowing $38,000 to make repairs to her home, but she did not understand why she did not actually receive the funds. She was told that the terms of her loan were confidential and that if she had questions, she should "just talk to" BCC.

99. Ms. Humes was distressed at the closing and did not understand the terms of the transaction. She asked if she could go home and think about it. The BCC representative said she had to execute the documents then and there, or there would be no closing – i.e., she would lose her home. She left the closing literally in tears, but before she left she signed the numerous documents put before her.

100. While plaintiffs are aware of one BCC borrower, Annie McKnight, whose loan closing occurred on November 9, 2011, who received from BCC, apparently at closing, a Notice of Right to Cancel, stating that she had "a legal right under federal law to cancel this transaction ... within three business days," neither Ms. Humes nor other plaintiffs in this case have any memory of receiving such notice.

101. The numerous documents put before Ms. Humes included: a Quitclaim Deed, in the form provided all plaintiffs, whereby NSP sold the home to Ms. Humes for "full consideration" of $264,400; a recourse promissory note in the amount of $264,400 running to

Aura Mortgage, providing for a thirty-year term with a significantly above-market interest rate, and stating that the borrower "may make a full Prepayment … without paying a Prepayment charge"; a Purchase and Sale Agreement, providing that her purchase price "TOTAL" would be $264,400, with nothing about "shared appreciation"; a "Biweekly Payment Agreement" providing for mortgage payments every fourteen days directly from borrower's bank account; a first mortgage in the amount of $264,400 running to Aura and secured by the home; a HUD settlement statement and Federal Truth-In-Lending Statement, each stating that the loan had no prepayment penalty or balloon payment and not disclosing the shared appreciation loan; and numerous other documents.

102. Ms. Humes has no memory of signing a second, shared appreciation mortgage or a second shared appreciation note, and neither was in her file produced to her by BCC, but she had signed, under great pressure, every document that BCC put before her to sign.

103. Ms. Humes did not understand from BCC, at the closing or later, that, while they sold her home to her for $264,400, they had purchased the property from her lender, Wells Fargo, for only $170,000.

104. Thus, this transaction resulted in an "instant" profit to BCC of almost $100,000.

105. About four years after the closing, Ms. Humes did go back to BCC to refinance her loan at a lower interest rate. She was told by BCC's Rachel Dorr, "No, we don't refinance."

106. Ms. Humes thereafter went to her bank, Santander, N.A., to refinance her BCC loan in mid-2017. Santander approved the refinancing at a 3.99 percent interest rate for a loan of $255,000 that saved Ms. Humes hundreds of dollars a month.

107. But on or about the next day, Santander informed Ms. Humes that BCC's affiliate would not accept their payment to retire Aura's first mortgage, and BCC stated that there was a second mortgage on the property.

108. Ms. Humes shortly thereafter heard from BCC representative Ron McCormick, who informed her that in order to refinance, she would have to provide BCC a current appraisal of her house and pay NSP 53 percent of the home's appreciation since 2010. The home was appraised in 2017 at approximately $700,000, and it is currently valued on Zillow at more than $800,000. Ms. Humes, who is retired now and sick and disabled by hip problems, lacks income sufficient to afford to pay the costs of a new mortgage of sufficient size to repay the debt BCC claims she owes. Ms. Humes, who needs funds for various matters, and has significant equity in her home, is thus not able to access that equity for the funds needed, and remains obligated to pay her above-market mortgage for decades more, at which time BCC contends she will owe an enormous balloon payment that she will never be able to afford.

Nardella Thomas

109. Nardella Thomas, who is a single mother of two adult boys, purchased her single-family home at 711 School Street in Webster, Massachusetts, on July 27, 2005, with her youngest son's father, for $279,900. Ms. Thomas has an Associate Degree from Becker College in Worcester and has held full-time jobs as an executive administrative assistant and in similar positions for most of her adult life.

110. Ms. Thomas' original lender was Wells Fargo, and later was HSBC Bank. In 2010, Ms. Thomas' son's father lost his job, and HSBC foreclosed. The home was purchased at auction on October 14, 2010, for a bid price at foreclosure of $165,750 by HSBC.

111. After she lost her home, Ms. Thomas moved into an apartment with her youngest son. In or around July 2011, she saw a television feature about BCC. In the feature, BCC touted itself as a non-profit program that helped people avoid foreclosure, bought back homes when owners could no longer afford their mortgages, and sold the homes to the previous owners at a price they could afford.

112. After watching the segment, Ms. Thomas called BCC and explained her situation and her hope to get back her home – the only home she had ever owned. She was initially screened on the telephone by BCC, and thereafter provided them with work history and related documentation.

113. In early November, 2011, Ms. Thomas went to BCC's office on Warren Street in Roxbury, where she was given and signed numerous documents, including a Federal Truth-In-Lending Disclosure Statement stating, *inter alia,* that her mortgage interest rate would be 6.56 percent, but she could refinance without penalty and calculating closing costs at about $7,000, and not mentioning a second mortgage; a Good Faith Estimate to the same effect; and various other documents.

114. BCC, upon information and belief, had Ms. Thomas' 1,124 square foot home valued at about $100 per square foot, or $112,400.

115. Ms. Thomas signed all the many application documents that were given to her by a BCC representative named Carmen. Carmen told Ms. Thomas that BCC had reached an agreement to acquire her home from HSBC for around its value, that they would sell it to her for approximately $150,000 depending on underwriting, that she should be happy with the purchase price she would pay BCC, that her closing costs would be about $5000, and that HSBC would

negotiate with BCC. BCC did not explain to her the details, impact, and consequences of the documents she was signing.

116. Carmen instructed Ms. Thomas where to sign the documents. Ms. Thomas does not remember what documents she signed or what she was told, other than what is stated directly above, and some information being provided to her about a capital account.

117. The closing occurred at BCC's offices at 57 Warren Street, Roxbury, on June 22, 2012. Ms. Thomas remembers signing about 50 documents put in front of her over about an hour. BCC was represented by "General Manager" Rachael Dorr. On information and belief, Rachael Dorr was also an experienced real estate attorney with over 30 years of experience at the time of the closing. Ms. Thomas was not represented by an attorney and asked before the closing if she needed an attorney. She was told she did not need an attorney.

118. Ms. Thomas remembers going over a Truth-In-Lending Disclosure Statement at the closing and having explained to her what her payments would be, the interest rate (6.375%) and length of the mortgage, and the bi-weekly payment structure. The statement did not reference the shared appreciation note.

119. Ms. Thomas understood that the interest rate was above market because, she was told, of the foreclosure, but she was also told she would be able to refinance soon.

120. Ms. Thomas does not remember being told about a shared appreciation note or mortgage and did not know until years later that she had two notes and two mortgages.

121. Ms. Thomas' mother is 85 years old, and in 2018 Ms. Thomas sought to refinance her BCC loan in order to get funds to renovate her mother's two-family home.

122. Ms. Thomas went through screening at Quicken Loans in October 2018, which appraised her home for $272,000, and reported that Quicken would refinance Ms. Thomas' first

mortgage debt and provide her with the estimated $40,000 she needed to renovate her mother's home. Ms. Thomas met all of Quicken Loan's qualification, and her credit score was in the 700's.

123. Thereafter, however, Quicken Loans reported to Ms. Thomas that she had an additional, NSP mortgage on her property. Quicken Loans could not proceed with the refinancing.

124. From communication with BCC, Ms. Thomas understood that she had a second mortgage and that, pursuant to BCC's calculations, she was going to have to pay it $49,098, or 42 percent of the total shared appreciation, in shared appreciation above and beyond her first mortgage pay-off in order to be allowed by BCC to refinance. Ms. Thomas attempted to negotiate with BCC, but BCC refused to negotiate with her. Plaintiffs know of no BCC borrowers with whom BCC negotiated the SAM at the time of refinancing to allow the refinancing to proceed.

125. Ms. Thomas later communicated with BCC to ask for documents or other explanation of how her shared appreciation payment was calculated, but BCC was unable to provide such documents.

126. Upon information and belief, BCC overcalculated appreciation, since BCC calculated the relevant appreciation to be $116,900, while a proper calculation would have resulted in a lower number.

127. Ms. Thomas was, and remains, unable to refinance her home because of the shared appreciation mortgage that encumbers her home.

Maureen and Robert Cormier

128. Maureen and Robert Cormier are a married couple who have lived in their home at 12 Leroy Street, Fitchburg, Massachusetts, since 1997, when they purchased the home from Robert's family. Maureen, who is 57 years old, has worked as a barber for decades, and now suffers from certain medical problems such that she is pursuing disability assistance. Robert, 59 years old, has worked as a carpenter, but the seasonal work has become more difficult to obtain with age and medical conditions, including knee surgery. The Cormiers raised three children in their home on Leroy Street, and two of the children continue to live with them.

129. In 2015, with Robert out of work and with the family facing financial difficulties, the Cormiers were referred by a community group in Fitchburg to the SUN Program, and the Cormiers also found a mortgage broker in Concord, Massachusetts. Mrs. Cormier had communications at BCC with Ron McCormick and others who told her in words and substance, as BCC tells all its borrowers, that BCC is a non-profit group committed to keeping people in their homes and was their only option for doing so.

130. The mortgage broker was instrumental, upon information and belief, in working with BCC and the prior lender to arrange for a short sale for the Cormiers, but was cut out of the transactions as the closing approached, and when it occurred he knew nothing about the Cormiers' financing with BCC.

131. The BCC closing occurred at BCC's Boston office on June 29, 2016. The Cormiers and an attorney from BCC were present. The closing took no longer than one hour, and the Cormiers initialed or signed 45-50 documents. The Cormiers remember going over a document outlining their interest rate – 6.375% – and costs (the Federal Truth-In-Lending Disclosure Statement or successor document), and being told by the attorney that "most people [who take BCC financing] refinance as soon as they can because the interest is so high," and

"they usually refinance as soon as they can." The Cormiers do not remember anything about a shared appreciation note or mortgage, but the attorney did tell them something about an "insurance policy" or "safety net" so that "if you [the Cormiers] cannot make payments on the loan, they [BCC] don't lose." The Cormiers signed first loan documents to pay NSP at closing $117,000 for the house they moments before sold to NSP for $95,000, which was financed by Aura. The Cormiers also paid significant closing costs, and they remember having to come up with approximately $14,000 to close.

132. Upon information and belief, the Cormiers, who do not have their BCC files (other than the shared appreciation promissory note separately sent to them recently), executed all of the standard BCC documents referenced elsewhere in this Complaint, which documents, including the Truth-In-Lending Disclosure or Closing Statement and the Good Faith Estimate, failed to reference, among other things, the SAM, the balloon payment due at maturity, or the actual interest rate on the loan.

133. BCC also escrowed Cormier funds at closing and post closing for repairs, or related needs, and the Cormiers have had difficulty accessing what they needed to repair their roof.

134. By March 2019, the Cormiers asked BCC for a modification since they were having trouble meeting their monthly payments because of medical and employment problems. Within a few months BCC first threatened to foreclose, but then agreed to a modification that left the Cormiers with the same monthly payment due of $1,534, but deferred payment of an arrearage.

135. The Cormiers have periodically inquired about refinancing since the modification was put in place in October 2019, and through that process learned that they had a SAM that

would have to be repaid at refinancing. After several inquiries, BCC's Jonathan Coakley wrote the Cormiers in February 2020 and informed them that BCC's percentage of appreciation is 53 percent.

136. This calculation is excessive and unfair and, upon information and belief, is incorrect even according to BCC's procedures and should be significantly lower.

137. In their inquiries about refinancing, the Cormiers have learned of mortgages that could be available at or even under 3 percent, but because of their credit problems with BCC and the SAM, refinancing is not available to them.

Plaintiffs Compelled to Pay Shared Appreciation Upon Refinancing

Cheryl and Dante Ortiz

138. Cheryl and Dante Ortiz are a married couple who purchased their single family home at 151 Hamilton Street in Southbridge, Massachusetts, on July 30, 2004, for $247,500, with mortgages totaling $235,125 from First Horizons Home Lending Corporation. They have lived in the house since then and have four children.

139. Ms. Ortiz has worked as a special education teacher in the Worcester Public Schools for twenty years. Mr. Ortiz was a factory worker, then trained to become a Certified Nursing Assistant when back problems prevented him from continuing his job, and he has been disabled since late 2010 as a result of multiple cancers.

140. By the middle of 2012, the Ortizes were struggling to make their mortgage payments and owed $265,000 on the home, whose value was by then well under the mortgage amount.

141. The Ortizes heard of BCC through a newspaper article they saw in or around June-July 2012, and Ms. Ortiz telephoned BCC in early 2013. The Ortizes understood from

publicly available sources and their communications with BCC that it is a non-profit in the business of helping people and keeping them in their homes, and like all the plaintiffs in this case, they relied on that information.

142. Ms. Ortiz met with BCC representatives in around June 2013 at BCC's offices on Warren Street in Roxbury. The BCC representative told her that BCC would attempt to purchase her home in a short sale from the bank and then sell it back to her, and she agreed to pay BCC $5000 to process her application. BCC's Anne Maria LaSalvia explained that BCC does not want to hold mortgages long term and that it encouraged and then it helped to refinance as soon as possible. While Ms. Ortiz expressed concern with the high interest rate she understood BCC would charge, Ms. La Salvia said repeatedly that if Ms. Ortiz re-financed quickly she would get a lower interest rate.

143. The closing occurred on October 31, 2013, across the street from BCC, which Ms. Ortiz believes was Aura's office. BCC was represented by Ron McCormick and a lawyer. Mr. and Ms. Ortiz, with one of their sons, were present.

144. Among the dozens of documents put before the Ortizes for signing, and signed at the closing, were: the Quitclaim Deed from them selling their home to NSP for $100,000; a Quitclaim Deed from NSP selling the home back to them for $140,000; a recourse Note in the amount of $140,000 from them to Aura with an interest rate of 6.375% and a thirty-year term, specifying "Borrower's Right to Prepay" without charge; a Promissory Note stating that Mr. and Ms. Ortiz would pay NSP on or before the maturity date 52% of the home's appreciation, and containing the confidentiality provision; a "Shared Appreciation Mortgage and Security Agreement" running to NSP, stating that it was subordinate to Aura's first mortgage of $140,000; the mortgage securing the $140,000 note, but not identifying or referencing the

"confidential" and unrecorded shared appreciation note; and the Federal Truth-In-Lending Disclosure Statement and HUD-1, not referencing shared appreciation.

145. The Ortizes also signed dozens of other documents at the closing, including, without limitation, Declaration of Homestead, Certification and Indemnification Regarding UREA, Foreign Investment Certification, certification regarding smoke detectors and monoxide alarm, tax agreement, tax and utility compliance agreement, Flood Hazard Determination, and other documents.

146. The Ortizes did not know or understand that they had two mortgages and two notes, and while they did understand that they were paying an above-market interest rate, they did not understand that at a re-financing BCC would claim and demand payment of 52% of the home's appreciation.

147. Within a few months of the closing, the Ortizes received a 1099 calculating their taxable gain from the short sale as a result of forgiveness of debt as $175,536.40. The Ortizes had been given no warning by BCC that such taxes could be due from the short sale, but were told by BCC that this really was "not a problem" since all they would have to do is show the taxing authority that they were insolvent at the time of the short sale.

148. Approximately a year after the closing, Ms. Ortiz attempted to refinance the loan to reduce the interest but, despite BCC's earlier statements concerning refinancing, was told by Quicken Loans that because of the short sale they would have to wait three to four years before being considered for refinancing.

149. In December 2017, Quicken Loans agreed to refinance, but Quicken informed Ms. Ortiz that there were two mortgages on the property. Quicken obtained an appraisal of the property putting its value at $204,000. Ms. Ortiz attempted without any success to negotiate

with BCC over the claim to be paid shared appreciation, which was incorrectly calculated by BCC to be $39,520 based on its cost to acquire the property and incorrect percentages, rather than the Ortizes' cost to acquire the property, and which the Ortizes were forced to pay to BCC. BCC did not disclose to Cheryl and Dante Ortiz that their shared appreciation payment was a payment of deferred interest deductible against ordinary income, nor send them a statement of interest paid showing this payment.

Larry and Marlene Meilleur

150. Larry and Marlene Meilleur are a married couple who built their single family home at 122 May Hill Road, Monson, Massachusetts, thirty years ago and have lived there since 1980.

151. Mr. Meilleur is 69 years old and is a retired commercial offset printer who served six years in the Marine Corps Reserves. Mrs. Meilleur is 64 years old, worked in hospital billing, and has been disabled from work for a number of years. The Meilleurs raised three now-grown children.

152. In 2017, after Mrs. Meilleur had suffered from serious illnesses and had been hospitalized on a number of occasions, the couple was facing foreclosure by mortgagee Bank of America ("BOA"). BOA referred them to BCC.

153. BCC, as with all the plaintiffs, held itself out to the Meilleurs as their only chance to save their home and as there to help them, which statements the Meilleurs relied upon.

154. The BCC closing occurred at BCC's Boston offices at 10 Malcolm X Boulevard on March 9, 2017. The Meilleurs had telephoned earlier specifically to ask if they needed an attorney, and they were told by the BCC representative that BCC would have an attorney present who could explain everything and they did not need an attorney.

155. The property had been foreclosed on, and NSP bought the property on March 9, 2017, for $170,000 and sold it back to the Meilleurs that same day for $197,000.

156. As with all other BCC borrowers, the Meilleurs signed many dozens of unexplained or barely explained documents at the closing, including a shared appreciation note, with a confidentiality provision, giving NSP 30 percent of appreciation, and a SAM that the Meilleurs did not realize encumbered their property.

157. BCC's attorney did review with the Meilleurs the "Closing Disclosure," a statement required by law. The Closing Disclosure stated that the Meilleurs were paying $197,000 to buy back their home, that they were borrowing $161,000 from Aura at an actual interest rate of 6.567 percent, with a thirty-year fixed rate term and with no prepayment penalty and no "Balloon Payment" at the end. Closing costs were $9,233.50, and the Meilleurs were required to come up with $46,823.19 in cash, which was calculated by BCC as half of a disability payment the Meilleurs had received and which the Meilleurs paid to BCC. Nothing on the Closing Disclosure referred to the SAM or the fact that at sale, refinancing, or the thirty-year maturity, the Meilleurs would owe shared appreciation of 30 percent of the value of the home in excess of $174,700, which was inaccurately stated in the shared appreciation note as the appreciation base.

158. Over the next months after closing the Meilleurs had a number of difficulties with BCC, including difficulty getting BCC to release funds held in escrow for repairs and other matters, and they decided to seek to refinance. Mrs. Meilleur suffered great emotional distress as a result of the family's dealings with BCC.

159. The Meilluers were able to refinance in part because of Mr. Meilleur's status as a veteran. They closed on refinancing with Evolve Bank & Thrift on February 22, 2018, with a

thirty-year fixed rate of 4.25 percent with no shared appreciation or other balloon payment due Evolve. However, in order to discharge the SAM, the Meilleurs had to pay BCC (through NSP) an additional $19,260 in shared appreciation (which shared appreciation was first calculated by BCC at $25,000 but was then reduced to account for certain monies the Meilleurs had put into the home). It was only when they refinanced that the Meilleurs learned and understood that they had a SAM and its effects.

160. Upon information and belief, as a result of the Meilleurs' SAM, their interest payments, including interest of about $1000 monthly to Aura for a year and all expenses properly considered finance charges, exceeded the 20 percent per annum allowed under the Massachusetts Usury Statute.

Plaintiffs Who Will Be Required to Pay the SAM's Shared <u>Appreciation Upon Refinancing, Sale, or Loan Maturity.</u>

<u>Francis and Debra DeSimone</u>

161. Francis and Debra DeSimone are a married couple who purchased their home at 1 Weldon Drive, Millbury, Massachusetts in 1985. They later expanded, upgraded and improved the home significantly.

162. Mr. DeSimone is retired and is disabled by heart problems, diabetes, and a series of surgeries. Mrs. DeSimone is a nursing director.

163. By December 2016, the DeSimones had fallen behind on their mortgage payments to Bank of America because of Mr. DeSimone's disabilities, and Mr. DeSimone was in a chapter 13 bankruptcy reorganization. The Bankruptcy Court approved the hiring of a Negotiation Agent, and the Agent negotiated with the bank's mortgage service company, resulting in an agreement for a short sale sufficient to net Bank of America approximately $288,000.

164. The Negotiation Agent referred the DeSimones to BCC, which appraised the DeSimones' home at $365,000.

165. On January 4, 2017, the DeSimones sold their home to NSP for $298,000, and on that same day purchased it back from NSP for $372,625.

166. While the DeSimones were disturbed by BCC's profit, they had no alternative, and BCC's response to their concerns was, "You can afford it."

167. In response to the DeSimones' additional concern about their new interest rate of 6.375%, fixed for thirty years, BCC told them they could refinance in 1-2 years, without disclosing problems the SAM might cause.

168. Mr. DeSimone signed the Shared Appreciation Mortgage and Note, which put BCC's share of appreciation at 17 percent.

169. Upon information and belief, the DeSimones' Federal Truth-In-Lending Disclosure Statement or successor document did not disclose the costs of the shared appreciation note.

170. The DeSimones now understand that the SAM will be an impediment to refinancing, or that they will have to pay it at sale or upon the maturity of the loan. They contend that BCC took advantage of their vulnerable situation to extract an unconscionable profit from "flipping" their own home, a high interest rate mortgage, and a share as well of any ultimate sale proceeds from the home.

Ronald V. Dolat Sr. and Christine M. Dolat

171. Ronald and Christine Dolat are a married couple who purchased their single family home at 24 Delawanda Drive, Worcester, Massachusetts in early 2000. They have lived

in the home since then with, in earlier times, their three now-grown children and a mentally handicapped relative, and, until recently, Mr. Dolat's disabled mother.

172. Mr. Dolat, who is 53 years old, worked as an IT specialist for twenty years before becoming disabled by neck and back injuries. Mrs. Dolat, who is 51 years old, was a pharmacy technician before she became disabled about four years ago by COPD.

173. Prior to BCC, the Dolats had mortgage financing from Select Portfolio Servicing, Inc., but when both had become disabled, it became increasingly difficult for them to keep up with their payments. A Community Development Corporation in the Worcester area referred them to BCC.

174. BCC informed the Dolats that they were there to help people stay in their homes and lower their mortgage and related payments. The Dolats were then paying to Select, with taxes and insurance, monthly mortgage costs of $1,760, but were months behind in making their payments. As of July 16, 2018, BCC proposed lending the Dolats $200,000 at 6.375%, which would lower the Dolats' monthly payments only about $120. As of September 17, 2018, Aura had the Dolats' home appraised for from $238,960 to $245,600, and a real estate agent and/or BCC struck a deal with the Dolats' lender to accept $132,000 to release its mortgage.

175. With the Dolats facing foreclosure from Select, the BCC closing was put off by BCC until the day before the foreclosure auction was scheduled.

176. The Dolats closed on the BCC financing on February 7, 2019, at an attorney's office in, the Dolats believe, Quincy, Massachusetts. One hour was scheduled for the closing, with only the BCC attorney and the Dolats present. The Dolats were rushed through signing numerous documents at the closing that were barely explained, or not explained at all, with the exception of the "Closing Disclosure," which confirmed that the Dolats were borrowing

$183,855.61 from Aura, that their annual percentage rate was 6.558 percent (well above prevailing market) for a fixed rate, thirty year term, that their closing costs were $11,546.41, that there was no prepayment penalty or "Balloon Payment" that would be due, and that their total monthly mortgage, tax, and insurance payments would be $1,641.85, not the lower amount presented the prior July.

177. Among the many documents the Dolats signed at closing were a shared appreciation note providing NSP with 51 percent of the home's appreciation at sale, refinancing, or maturity.

178. At closing, the BCC attorney advised the Dolats that "within six months to a year you will be able to refinance to current rates because your credit will be cleared up," which was both inaccurate and omitted the effect of the SAM.

179. The recorded and file documents disclose that on February 7, 2019, NSP purchased the Dolats' home from them for $132,000 and resold it to them for $170,475.

180. While the Dolats' monthly payments were, until the summer of 2019, the $1,642 represented in the Closing Disclosure, Aura's mortgage servicer, Dovenmuehle Mortgage, Inc. (which the Dolats learned at or after closing would be servicing their loan) notified the Dolats that their monthly payments were increased to $1,750 because of back taxes or other fees. When the Dolats inquired of Dovenmuehle how this could happen, they were referred to BCC, which simply repeated that their monthly costs would go up because of fees owed pre-closing.

181. The Dolats are now burdened with a thirty-year fixed rate mortgage well above market, are behind on their payments, have a reduced possibility of refinancing because of the SAM, and are trapped and disadvantaged by BCC, which now states that "the Dolats have entered the foreclosure process." Fully secured by the value of the home, BCC made about

$50,000 up front, closed on a loan it should have known the Dolats would not be able to pay, and stood to make a giant windfall upon foreclosure or, if the Dolats are somehow able to keep up, upon sale or refinancing.

Cheryl And Peter L'Ecuyer

182. Cheryl and Peter L'Ecuyer are a married couple who live at 121 Highland Street, Athol, Massachusetts. Cheryl and Peter are both 66 years old. They have been married 47 years and have four adult children. They have lived in their Athol home since 1984.

183. Cheryl was a licensed practical nurse, got her GED, and has since worked as a Registered Nurse. Peter is a production worker at an industrial packing company.

184. The L'Ecuyers got behind on mortgage payments to lender Wells Fargo in 2018-2019. They believe that payments they made were misapplied or never got to Wells Fargo, and foreclosure proceedings started.

185. The L'Ecuyers learned about BCC from a flyer that informed them that BCC was a non-profit that could help borrowers in risk of losing their homes. Cheryl called BCC and learned that it had started in Boston and was expanding into other parts of the state. Over a series of telephone calls, BCC offered and agreed to negotiate with Wells Fargo on the L'Ecuyers' behalf to keep them in their home. The negotiations occurred over a period of months, with many phone calls and with the L'Ecuyers providing information to BCC. During this period, the L'Ecuyers have no memory of learning about shared appreciation, or that BCC would sell their home back to them at a higher price than BCC paid for the home, or that the interest rate they would be charged by BCC would be above prevailing market rates.

186. Cheryl, who was handling these matters for the couple, does remember that BCC represented that it would arrange financing for them that would lower their monthly costs to an amount they could afford.

187. The L'Ecuyers closed on their BCC financing at its Boston Office, 10 Malcolm X Boulevard, on July 31, 2019. Present at the closing were the L'Ecuyers and BCC's closing attorney. The closing attorney went over the Closing Statement in some detail, explaining what payments would be owed when, but there was nothing on that document about shared appreciation. On that day of July 31, 2019, NSP acquired the couple's home for $119,000, sold it back to them that day for $153,181.25, and had them sign a promissory note, secured by a first mortgage on their home, in the amount of $163,000 (including closing costs) which was $44,000 more than NSP paid to Wells Fargo. The couple also signed all the other typical 40 or more documents put before them over about an hour at the closing, including the Shared Appreciation Note and Mortgage, with BCC's appreciation share set at 20 percent. The L'Ecuyers did not know or understand then that there was going to be a second mortgage on their home or that they would owe a portion of the appreciation of their home in the future. Their Aura interest rate was set at 6.5 percent, but the L'Ecuyers' monthly mortgage costs went down from the $1,400 they were paying Wells Fargo to $1,321, excluding the $44,000 referenced above and the shared appreciation. The Closing Statement, which explained the costs, did not disclose the shared appreciation or the actual financing charges the L'Ecuyers would owe, but it did say that there would be no prepayment penalty and no balloon payment.

188. The closing attorney told the couple at the closing that "you should try to refinance your [BCC] loan really soon so you won't have to pay so much money at the end," but the couple did not understand the reference, while they did understand that the attorney appeared

to suggest that a quick refinancing would be available. Neither the lawyer nor anyone else at BCC ever stated or suggested that the SAM, especially coupled with the fact that Aura's first mortgage was well above 100 percent of the value of the home, will make refinancing very difficult, nor that the shared appreciation payment due at the mortgage's thirty-year term will require sale of the home or refinancing then that will keep the family in debt thereafter.

189. The L'Ecuyers only came to understand they have a second mortgage and owe shared appreciation in February 2020 after press reports about this case.

Plaintiffs Who Paid the SAM's Shared Appreciation Upon Sale of Their Home

Carlos Perdomo and Rosa Ochoa

190. Carlos Perdomo and Rosa Ochoa are a married couple who now live at Eight Vine Street, Taunton, Massachusetts. Mr. Perdomo works as a truck driver for a restaurant, and Ms. Ochoa works in the restaurant business.

191. Carlos and Rosa purchased their prior home at 55 Bow Street, Everett, Massachusetts on January 27, 2006 for $275,000. By 2012, they had run into financial difficulty making monthly payments to their mortgagee, First Horizon Home Loan Corporation. They were referred to BCC by a community group which explained that BCC was a non-profit that helped people keep their homes. BCC thereafter represented itself to Carlos and Rosa as their only chance to keep their home.

192. BCC had the home at 55 Bow Street appraised as of July 14, 2012, at a fair market value of $155,000.

193. The closing occurred on November 30, 2012, at BCC's offices at 30 Warren Street, Roxbury. Carlos and Rosa remember only a notary public being present (this person was

likely an attorney), who told them to sign numerous documents that they did not understand and were not translated into Spanish, their native language.

194. The documents show that at the closing, NSP purchased 55 Bow Street from Mr. Perdomo and Ms. Ochoa for $125,000 in a short sale, and sold the home back to them that same day for $171,000. Aura provided a thirty-year fixed rate first mortgage at 6.375 percent interest, well above the prevailing market rate for thirty-year fixed rate mortgages, and NSP took a second mortgage to secure its shared appreciation promissory note. The promissory note divided future appreciation evenly (50 percent each) between Carlos and Rosa and NSP. They also signed on November 30, 2012, a Fannie Mae/Freddie Mac standard form note and mortgage in the amount of $139,700.

195. Carlos and Rosa did not understand at the closing that they were getting two mortgages and that the second mortgage was a SAM.

196. The plaintiffs' home at 55 Bow Street turned out to be in a location that was potentially useful to the new Everett casino, and plaintiffs sold the home to the casino's agent, 101 Station Landing, on August 28, 2019, for $800,000. The Casino's agent had advised Mr. Perdomo and Ms. Ochoa to retain an attorney for all business between the parties, which they did.

197. Before it would release the SAM, BCC insisted that Mr. Perdomo and Ms. Ochoa pay it, as its fifty percent share of appreciation, $314,500, which they did pay to NSP (this payment appears to have gone into an Aura account). The defendants did not explain to Mr. Perdomo or Ms. Ochoa that their shared appreciation payment to NSP was in excess of what BCC was allowed by law to charge under the Massachusetts usury statute, G.L. c. 271, s. 49, or that BCC had to return the overage pursuant to the standard form, Fannie Mae/Freddie Mac

mortgage from them to BCC. BCC failed to inform these borrowers that the $314,500 shared appreciation payment is a payment of deductible interest.

CLASS ACTION ALLEGATIONS

198. The class defined directly below should be certified under MRCP 23(a) and (b) and 93A.

199. The class is defined as any person who obtained a SAM (Shared Appreciation Mortgage) secured by a Shared Appreciation Note from defendants. The class does not include employees of defendants.

200. Defendants' public relations materials state that one thousand or more persons have obtained SAMs secured by mortgages from defendants. Thus, membership in the class is so numerous that joinder of all members is impracticable.

201. Plaintiffs' claims concern common questions of law and fact that are typical of the claims of the class as a whole. The primary common question is whether the SAM notes and mortgages are in violation of law and should be deemed void *ab initio*. Among the subsidiary questions are:

a. Whether the "confidentiality" provision in the SAM violates c. 93A, or is otherwise unenforceable or wrongful;

b. Whether the failure to disclose the shared appreciation cost on the Federal Truth-In-Lending Disclosure Statement, the successor Closing Disclosure Form, the Good Faith Estimate, the successor Loan Estimate, the Settlement Statement (HUD-1), or the Deed violates M.G.L. c. 140D and/or is a violation of c. 93A; and

c. Whether, *inter alia*, the combination of above-market sales prices, interest rates and shared appreciation makes BCC's loans unconscionable.

202. Alternatively, and in the event that the shared appreciation note and mortgage are not deemed void, whether those instruments should be reformed for, without limitation, the following reasons:

a. Because BCC calculates shared appreciation improperly and not consistent with its own documents and properly considered costs;

b. Because, in light of customary practice and the factors above, BCCs calculation of appreciation and its share of that appreciation is unfair, unreasonable, and excessive, and should be governed by a different procedure or formula consistent with BCC's representations and charitable status, including, without limitation, caps on dollar totals and percentages, deductions for over-fair-market sales price and for over-market interest paid and capital improvements made by borrowers, and termination after a certain period of years or at refinancing;

c. Whether BCC's disclosures regarding the SAMs and borrowers' abilities to refinance the interest rate they are paying, and lack of disclosures about usury, are adequate and lawful, or whether new disclosures and procedures are necessary, including whether disclosures concerning the SAM program must be made to BCC borrowers by independent third parties;

203. Whether BCC's Truth-In-Lending, Closing Disclosure Form, and HUD-1 and related disclosures are unfair and deceptive, or otherwise legally inadequate, by virtue of the failure to include specific reference to the SAM that puts borrowers on notice of BCC's equity interest and the additional, shared appreciation costs and interest they are assuming;

204. These common questions of law and fact in this matter predominate over any questions affecting only individual class members. Defendants have acted or refused to act on grounds generally applicable to the class such that declaratory and injunctive relief would be

appropriate to the class as a whole, and disgorgement of unlawful profits or awards of damages in individual cases can be efficiently determined by streamlined proceedings.

205. Plaintiffs have a strong personal interest in the outcome of this litigation, and they are represented by competent counsel who will adequately and fairly protect the interests of the class.

206. A class action is superior to any other available method for a fair and efficient adjudication of this controversy. Separate actions by individual members of the class would create a risk of multiple, inconsistent or differing adjudications and delay the ultimate resolution of the issues at stake.

VI. CAUSES OF ACTION

All Counts Are Against All Defendants

Count I: For Injunctive Relief and Declaratory Relief

207. Plaintiffs repeat and incorporate the above paragraphs.

208. This Court should enter preliminary and final injunctive relief to deem the shared appreciation notes and mortgages void *ab initio*, and/or otherwise refuse to enforce them as contrary to law and public policy.

209. In the alternative this Court should enter injunctive relief including, without limitation, refusing to enforce offending provisions of the notes and mortgages, without limitation as follows:

a) Striking the confidentiality provisions in the shared appreciation notes for being invalid and unlawful;

b) Reforming defendants' calculations both of total appreciation and of shared appreciation;

c) Setting caps on any shared appreciation payments and defendants' share of appreciation, and declaring void any loan where the finance charges exceed those allowed by G.L. c. 271, §49, which charges also are prohibited by the borrowers' first mortgage loans;

d) Requiring that the appreciation owed defendants be reduced by all above-market costs and fees previously paid defendants, and that the shared amount owed be, in all cases, reduced to zero for those homeowners who maintain their first mortgage with defendants through a reasonable period, thus showing they are not a risk, or at refinancing, and for all borrowers who maintain their first mortgage to maturity, the shared appreciation note and mortgage be discharged; and

e) Ordering defendants to implement policies to assure that borrowers get proper deductions from the shared appreciation provisions as a result of borrowers' improvements to their homes.

f) Compelling BCC to abide by all state and other disclosure statutes and implementing regulations in order to provide full and fair disclosure of all borrowers' rights and all pertinent terms of its loans, including taxation matters; and

g) Compelling BCC to include policies and practices advising prospective borrowers to obtain their own legal counsel to review the terms and conditions of the SAMs, and shared appreciation provisions, if such practices continue, and/or certify that any borrower taking a SAM has received appropriate counseling on the transaction, *see* M.G.L. c. 183C.

210. BCC should be further required to make full, complete, and timely disclosures concerning the shared appreciation program, including without limitation, in the Loan Estimate, the Closing Disclosure, the Deed, and the HUD-1, and including additionally that BCC should be ordered:

a) To put procedures in place at BCC to assure that prospective borrowers are fully told when they first inquire about a loan all important aspects of the SUN loan program, including how the sales price to the borrower is calculated, interest the borrower will pay, and how the shared appreciation program works;

b) To make disclosures to regulators fully disclosing all aspects of the shared appreciation program;

c) To make disclosures to existing mortgagees or lenders in possession of the properties fully disclosing the resale price of the home and the shared appreciation percentage the borrower in question will pay;

d) To make disclosures in all advertising and public relations materials that prominently describe the SAMs;

e) To make disclosures to borrowers well in advance of closing that prominently show what the borrower's shared appreciation percentage will be, how this will or may affect re-financing (e.g., that borrowers will have to finance the shared appreciation amount) and the fact that at the end of thirty years the SAM will be due if that remains the case.

Count II: Violation of M.G.L. c. 93A, §9

211. Plaintiffs repeat and incorporate the above paragraphs.

212. Plaintiffs served their c. 93A, §9 demand letter on defendants on December 6, 2019, and defendants served their response on January 6, 2019.

213. Defendants are engaged in trade or commerce as required by the statute, and their practices described above are unfair and/or deceptive.

214. Specifically, and without limitation, 940 C.M.R. 8.06(6) states "It is an unfair or deceptive act or practice for a mortgage broker or lender to procure or negotiate from a borrower a mortgage loan with … terms which significantly deviate from industry-wide standards or

which are otherwise unconscionable." Additionally, Chapter 140D §34, which regulates credit transactions, provides that "[a] violation of this chapter, or any rule or regulation issued hereunder, shall constitute a violation of chapter ninety-three A."

215. Without limitation, BCC's actions, including, *inter alia*, resale of the home to borrowers at a price above what BCC itself says is the home's fair market value, the above-market mortgage interest rate, the above-market closing costs, the SAM provisions, the incorrect calculations, the confidentiality provisions, and the likelihood that the effective term of the loan will extend the maturity date, *cf.* M.G.L. c. 244, §35B(b)(2)(ii), all significantly deviate from industry-wide standards, and all are otherwise unconscionable.

216. The rationale for shared appreciation mortgages, which are already market outliers, is that the lender makes up a loan at below-market interest rates by the later payment of (usually restricted) shared appreciation. Here BCC takes both excessive interest during the term of the loan and additional excessive deferred interest at sale, refinancing, or maturity.

217. Such unlawful and unconscionable practices and mortgage terms entitle plaintiffs to injunctive relief modifying, rescinding or striking down BCC's unlawful practices, mortgage terms and tainted transactions, disgorgement of BCC's unlawful profits, damages, multiple damages, attorneys' fees and such further relief as this Court may deem just and proper.

218. 940 C.M.R. 806.1 states, in part, that "it is an unfair or deceptive act or practice for a mortgage broker or lender to make any representation or statement of fact if the representation or statement is false or misleading or has the tendency or capacity to be misleading." Without limitation, BCCs written and oral representations to the effect that plaintiffs could refinance within six months to three years and that they could "make full Prepayment or a partial Prepayment without paying a Prepayment charge" were false and

misleading, entitling plaintiffs to injunctive relief modifying, rescinding or striking down BCC's unlawful practices, mortgage terms and tainted transactions, disgorgement of BCC's unlawful profits, damages, multiple damages, attorneys' fees and such further relief as this Court may deem just and proper.

219. 940 C.M.R. 8.04(4) states, in part: "It is an unfair or deceptive act or practice for a mortgage broker or lender to engage in bait advertising or to misrepresent (directly or by failure to adequately disclose) the terms, conditions or charges incident to the mortgage loan being advertised in any advertisement." Without limitation, BCC's publicity and related statements and solicitations do not adequately or accurately describe the SAM and other material terms and conditions of the finance transactions, entitling plaintiffs to injunctive relief modifying, rescinding or striking down BCC's unlawful practices, mortgage terms and tainted transactions, disgorgement of BCC's unlawful profits, damages, multiple damages, attorneys' fees and such further relief as this Court may deem just and proper.

220. The Massachusetts Consumer Credit Cost Disclosure Act, M.G.L. c.140D, §34, provides that a violation of it is a violation of c. 93A, §9, *see* c. 140D at §34. The practices described below in Count III are violations of c. 93A, §9.

221. A violation of the Massachusetts Predatory Home Loan Practices Statute, M.G.L. c. 183C, is a violation of c. 93A, §9, *see* c. 183C, §18(b), and thus violations of that statute and the relief required under it, *see* Count IV, *infra*, are also cognizable under this c. 93A count.

222. Defendants failed to make a fair or reasonable settlement offer in response to plaintiffs' c. 93A demand letter. Defendants offered to rescind the shared appreciation transactions, but only if plaintiffs would convey their homes, "vacant, in good condition, and

broom clean" to NSP, and would forgive or surrender to Aura and NSP any payments made by borrowers to them (e.g., escrows).

223. In other words, in response to a demand to end their practices of taking part of plaintiffs' homes' appreciation, defendants offered to take **all** of borrowers' approximately $100 million in appreciation instead of just half of it, and leave borrowers homeless.

224. Additionally, while BCC offered for other class members to "reform" the SAM mortgages and notes by not making the shared appreciation due at maturity, but instead extending the date of payment to refinance or sale, in exchange for plaintiffs' release of all claims, this "reform" was nothing more than what defendants' disclosures, which said nothing about shared appreciation being due at first mortgage maturity, should be interpreted already to require, and the "reform" was additionally oppressive by incorporating implicitly an existing provision for well over market interest on the balances.

225. Finally, the supposed settlement offer misconstrued and misapplied the statutes of limitation.

226. The "settlement offer" was an additional unfair practice.

227. Plaintiffs are entitled to injunctive relief, rescission, disgorgement, damages, multiple damages, and attorneys' fees pursuant to c. 93A, §9.

Count III: Violation Of The Massachusetts Consumer Credit Cost Disclosure Act (MCCCDA), M.G.L. c. 140D

228. Plaintiffs repeat and incorporate the above paragraphs.

229. The Massachusetts Consumer Credit Cost Disclosure Act was enacted to assure a meaningful disclosure of credit terms and to avoid the uninformed use of credit.

230. The defendants failed to provide accurate and proper disclosures for several material terms of the mortgages provided to plaintiffs and the class, including, but not limited to,

the "annual percentage rate," "the finance charge," "the amount financed," "the total payments," and the "payment schedule," since the disclosures provided by defendants failed to take into account the shared appreciation, and defendants produced incorrect calculations.

231. To the extent information concerning the shared appreciation was provided to plaintiffs and the class, that information contained inaccuracies, including a failure to state that the shared appreciation amount would be due at the maturity of the term of the loan. The information provided also contained conflicting information, and therefore was not provided "accurately and conspicuously" as required. *See* M.G.L. c. 140D at, *e.g.* §§6,8 (annual percentage rate and finance charge shall be disclosed conspicuously), *see* §12.

232. Because borrowers will be unable to repay the loans without accessing the equity in their homes, BCC's loans also violate 209 CMR 32.43

233. Defendants' advertisements failed to disclose the SAM, focusing instead on defendants' SUN program's claim of saving homeowners from foreclosure by providing fixed interest rates that consumers could afford in violation of 940 C.M.R. 8.03-8.04. Defendants' advertisements also included "triggering" words requiring disclosures that were not made.

234. Plaintiffs are entitled to injunctive relief, rescission, disgorgement, damages, multiple damages, and attorneys' fees pursuant to M.G.L. c. 140D, §§10(a) and 32 and c. 93A, *see* c. 140D at §34.

Count IV: Violation Of The Massachusetts Predatory Home Loan Practices Statute, M.G.L. c. 183C

235. Plaintiffs repeat and incorporate the above paragraphs.

236. The Massachusetts Predatory Practice Statute (the "Statute") defines "high cost" home mortgage loans, c. 183C, §2; requires that lenders making such mortgage loans provide certification that the borrower "has completed an approved counseling program" on the

"advisability of the loan transaction", *id.*, and borrower "will be able to repay the home loan [from] resources other than the borrower's equity in the" home, *id.* at §4; provides that no high cost mortgage loan shall contain "any provision for prepayment fees or penalties," *id.* at §5, nor any fees that exceed five percent of the total loan amount, *id.* at §6.

237. The Statute has a private right of action, *id.* at §18(b), a violation of the Statute constitutes a violation of c. 93A, and, *inter alia*, the court may rescind or reform the loan contract, *id.* at §18.

238. Whether shared appreciation is considered interest or a fee, every shared appreciation loan and mortgage qualifies as a high-cost mortgage loan, and defendants are in breach of its provisions

239. More specifically, any charge payable directly or indirectly by the borrower incident to the extension of credit is part of the borrower's finance charge. While plaintiffs await discovery on these matters, plaintiffs' initial calculations show that the charges they pay at closing, the term interest they pay pursuant to the fixed rate note and mortgage, and the shared appreciation they have paid or owe now if they are current borrowers, exceeds the threshold for a "high cost" mortgage, for the six loans as to which plaintiffs can make estimates now, from a high of over 40% annually to a low of the mid-teens annually, with most around or above 20% annually. BCC borrowers are never told the actual, effective interest rate they are charged, and do not know how high it is.

240. Even if shared appreciation is not held to be interest or a fee, the Supreme Judicial Court has held that the Statute's analysis is properly applied to other structurally unfair mortgage loans, *see Commonwealth v. Fremont Investment & Loan*, 452 Mass. 733, 748 *et. seq*. (2008), *cf. also* c. 183, §28C. Here, the BCC loan is not affordable to the borrowers, since the shared

appreciation, including particularly the shared appreciation due at maturity, will only be paid by the borrower, if paid at all, by selling or refinancing the home. *See Drakopoulos v. U. S. Bank National Association*, 465 Mass. 775, 786 (2013) (core inquiry under statute is whether borrower will be able to repay the loan).

Count V: Unconscionability

241. Plaintiffs repeat and incorporate the above paragraphs.

242. Defendants' loans are far outside customary practice and are oppressive and unfair to the disadvantaged plaintiffs, in that the loan terms are unreasonably favorable to BCC and the contracts are contracts of adhesion without meaningful choice by plaintiffs.

243. Plaintiffs are entitled to injunctive relief, rescission, disgorgement, and their damages.

Count VI: Fraudulent and Negligent Misrepresentations

244. Plaintiffs repeat and incorporate the above paragraphs.

245. Defendants made false representations of material facts – to wit, that plaintiffs could refinance within six months to three years without penalty – with knowledge of their falsity, or recklessly, or negligently, for the purpose of inducing the plaintiffs to act thereon, and the plaintiffs relied upon the representations to their damage. More generally, defendants' representations about their nonprofit and charitable purposes and actions constituted misrepresentations inconsistent with their practices.

246. Defendants' advertisements failed to explain the shared appreciation aspects of the mortgage transactions instead focusing on the defendants' claims to save financially distressed homeowners' homes by providing affordable, fixed-rate mortgages.

247. In addition, the information provided to plaintiffs concerning the shared appreciation mortgages contradicted the required disclosures under the MCCCDA concerning the "annual percentage rate," "the finance charge," "the amount financed," "the total payments," and the "payment schedule." This information was intentionally confusing, insofar as it also stated that the defendants may not seek to collect the interest provided by the shared appreciation notes, and contained an unusual confidentiality clause designed to deter plaintiffs from further disclosing the terms of the transactions and coming to an understanding of the effect of the shared appreciation aspects.

248. Plaintiffs are entitled to injunctive relief, rescission, disgorgement, and their damages.

Count VII: Breach of Contract

249. Plaintiffs repeat and incorporate the above paragraphs.

250. Defendants and plaintiffs executed a note and mortgage for financing with the following terms: a 30-year, fixed rate loan with a specified interest rate as disclosed in the statutorily required disclosures, and BCC signed a quitclaim deed reciting the "full consideration" paid by borrowers that included no reference to shared appreciation.

251. The fixed rate note providing for the loan terms contains a provision or implies that it is the complete agreement, as do the provisions of the Good Faith Estimate, the Loan Estimate, the Federal Truth-in-Lending disclosures, the Closing Disclosure, the HUD-1, and the deed. The fixed rate note is signed under seal and thus a violation is actionable for 20 years.

252. The shared appreciation note and mortgage contain terms that contradict the provisions of the first note and first mortgage, and BCC's practices and calculations violate the shared appreciation note.

253. The shared appreciation note and mortgage are tantamount to an inconsistent provision in a contract requiring reformation of the transaction striking the non-conforming SAM provisions.

Count VIII: Breach of the Implied Covenant of Good Faith and Fair Dealing

254. Plaintiffs repeat and incorporate the above paragraphs.

255. Specifically, and without limitation, defendants denied plaintiffs the enjoyment of the fruits of their agreement by telling plaintiffs that they could, and indeed should, refinance as soon as their credit improved in order to avoid a lengthy term of financing with the above-market interest rates of defendants' loans.

256. Defendants represented to plaintiffs that they were charitable, non-profit entities committed to helping plaintiffs.

257. Defendants, in light of their stated purposes, relied upon by plaintiffs, including preventing foreclosures, failed to satisfy the implied covenant by, without limitation, taking excessive profit and fees, interfering with plaintiffs' ability to refinance, and taking equity in plaintiffs' homes.

Count IX: Lack of Consideration

258. Plaintiffs repeat and incorporate the above paragraphs.

259. While the Shared Appreciation Promissory Note runs between the borrowers and NSP, identified as the "Lender," and recites that it is entered "[f]or value received," in fact NSP is not a Lender, and has provided no value or consideration, and in fact flips the home and sells it back to the borrower at a price well in excess of the fair market value.

260. Accordingly, the SAM and Shared Appreciation Note should be struck and declared void and unenforceable for lack of consideration.

Count X: Breach of Fiduciary Duty

261. Plaintiffs repeat and incorporate the above paragraphs.

262. Plaintiffs reposed their trust and confidence in defendants, with defendants' knowledge. Defendants owed plaintiffs a fiduciary duty, based, *inter alia*, on their purported charitable nature, their representations to plaintiffs, defendant Aura's status as a mortgage broker required to act in the borrower's interest, *see* CMR 8:06 (17), NSP's status as real estate broker, defendant's sharing in the borrower's home's appreciation, and defendants' status as borrower's agent negotiating with the mortgagee to pay off the existing mortgage in default and structuring the various transactions.

263. In fact, the defendants' relationships were rife with conflicts of interest, with mortgage broker Aura also serving in all cases as the first lender charging above market interest, and with plaintiffs' real estate broker, NSP, buying their homes from plaintiffs, then selling the homes back to plaintiffs, and then taking an ownership position in these same homes through the SAM.

264. Defendants failed to act with fairness, loyalty, and proper disclosures to plaintiffs, and enriched themselves at plaintiffs' expense, entitling plaintiffs to injunctive relief and their damages.

Count XI: Civil Conspiracy

265. Plaintiffs repeat and incorporate the above paragraphs.

266. Defendant Blue Hub Capital, Inc., f/k/a Boston Community Capital, Inc. ("BlueHub" for the purposes of this Count X only) describes itself as the holding company entity that "provides strategic and management direction for the overall organization," including its SUN initiative, which is at issue in this case.

267. The BlueHub enterprise, in particular, has identified Aura and NSP in shared appreciation-related papers as its "subsidiaries" or "divisions."

268. In fact, Aura and NSP are limited liability companies and BlueHub's affiliates, with, upon information and belief, BlueHub as their Sole Member as well as Manager.

269. Acting in concert, under BlueHub's control and direction, the three entities are able to effectuate outcomes, and, upon information and belief, attempt to avoid required disclosures, that they could not accomplish acting singly.

270. BlueHub, for example, is able to oversee provision of real estate brokerage services, purchasing and selling homes in connection with mortgage financing, including the taking of first and second mortgages, all involving a single borrower/buyer, without being licensed to do any of these things, and without, upon information and belief, a consolidated disclosure to regulators that identifies all of these activities.

271. Defendants' acting in concert enables them to exercise control over plaintiffs that they could not accomplish acting alone.

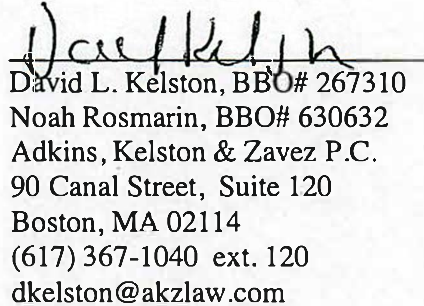
272. BlueHub's claim, as stated in its reply to plaintiffs' c. 93A letter in this case, that "BlueHub is not a direct participant in the SUN program" is simply not accurate, and appears intended to shield its activities from scrutiny and disclosures.

273. Defendants are liable for civil conspiracy, entitling plaintiffs to injunctive relief and their damages.

Whereby, plaintiffs pray that this Court enter class-wide judgment on all their counts, and award them injunctive relief, modifying, rescinding or striking down BCC's unlawful practices, mortgage terms and tainted transactions, disgorgement of BCC's unlawful profits, damages, multiple damages, attorneys' fees and such further relief as this Court may deem just and proper.

PLAINTIFFS DEMAND A JURY TRIAL ON ANY ISSUES SO TRIABLE.

Respectfully submitted,
The plaintiffs,
By their attorneys,



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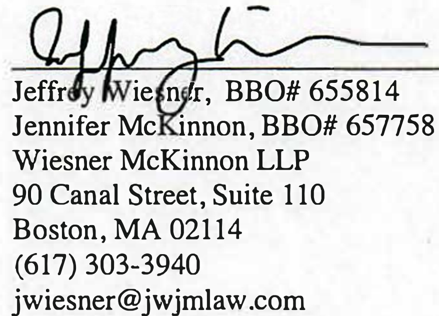

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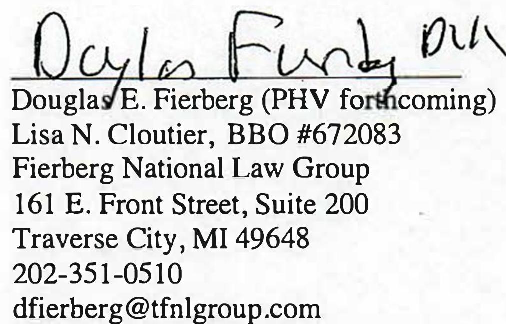

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Dated: March 13, 2020

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the above document was served upon the attorney of record for each other party by mail (~~by hand~~) on this date 3/13/2020 and electronic mail