

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF ILLINOIS

UNITED STATES OF AMERICA,)
)
 Plaintiff,) CIVIL ACTION NO. ____
)
 v.)
)
 MID AMERICA BANK, fsb,)
)
 Defendant.)
 _____)

ANSWER

Defendant Mid America Bank, fsb (“the Bank”), through undersigned counsel, answers the Complaint in the above-captioned matter as follows:

1. The allegations contained in paragraphs 1 and 2 of the Complaint, concerning the statutes under which this action is brought and the basis for jurisdiction and venue, consist of assertions of law to which no response is required. To the extent that a response is required, the Bank states that the pertinent statutes speak for themselves.

2. The Bank admits the allegations contained in paragraph 3 (concerning the Bank’s corporate structure, charter, and headquarters), paragraph 4 (concerning its asset size), and paragraph 5 (concerning its corporate history). Except as admitted above, the remaining allegations in paragraphs 3-5 are denied.

3. The Bank admits that it regularly engages in residential real-estate related transactions and extends credit to individuals for such transactions, and that the Chicago Metropolitan Statistical Area consists of the nine counties specified in paragraph 8 of the

Complaint. Otherwise, the allegations in paragraphs 6-8 are denied and/or consist of assertions of law to which no response is required.

4. The Bank lacks sufficient information to admit or deny the allegations contained in paragraphs 9-10, and also lacks sufficient information to admit or deny the accuracy of the maps cited in paragraph 10 and attached as Exhibits 1-3 to the Complaint (concerning patterns of alleged residential segregation in the Chicago MSA). The Bank asserts, however, that the allegations contained in paragraphs 9-10 and Exhibits 1-3 consist of characterizations of United States census data to which no response is required, because those census data speak for themselves. The Bank further asserts that, in any event, the allegations contained in paragraphs 9-10 and Exhibits 1-3 do not relate specifically to the Bank or its mortgage lending policies or practices, and are therefore irrelevant to the Complaint.

5. The Bank admits the allegations contained in paragraph 11 (concerning the fact that it has periodically expanded its business through the construction or acquisition of new branches) and paragraph 12 (concerning the number of branches that it operated as of the dates specified). Except as otherwise admitted, the Bank denies the allegations in paragraphs 11-12, including, but not limited to, the allegation contained in paragraph 11 that the Bank has expanded its business to “the entire Chicago MSA.” The Bank asserts that it does not operate a branch or loan production office in five of the nine counties in the Chicago MSA – DeKalb, Grundy, Kendall, Lake, or McHenry.

6. The Bank denies any and all allegations in the Complaint that its lending policies and practices, or any other act or omission on its part, discriminated on the basis of race or national origin in violation of the Fair Housing Act (“FHA”) and/or the Equal Credit

Opportunity Act ("ECOA"), at any time. This includes, but is not limited to, a denial of all allegations in paragraphs 13-29 of the Complaint that the Bank's home mortgage lending policies or practices violated the FHA or ECOA.

7. The Bank denies the Complaint's allegations that the Bank did not engage in a sufficient level of home mortgage lending to residents of majority minority census tracts in the Chicago, Illinois metropolitan area ("Chicago MSA") between 1996 and 2000, or at any other time. The Bank further asserts that these so-called "redlining" allegations are rebutted by the facts of, among other things, the Bank's home mortgage lending record, with respect to all types of home mortgage lending identified in the Complaint. Between 1996 and 2000, the Bank made 2,975 home mortgage loans totaling \$338.2 million in majority minority census tracts in the Chicago MSA, based on 2000 census data. The Bank's level of home mortgage lending in those census tracts was statistically comparable to, or in excess of, the levels of other mortgage lenders in the Chicago area, whether those lenders are selected on the basis of largest market share or other features of comparability to the Bank.

8. The Bank specifically denies that the lending statistics cited in the Complaint support the Complaint's allegations that the Bank's loan volume in majority minority census tracts was inadequate. The Bank asserts that the Complaint, and the analysis on which it purportedly relies, fail to place the Bank's lending statistics in the appropriate context of overall home mortgage lending in majority minority census tracts in the Chicago MSA. The allegations in the Complaint ignore non-racial and non-ethnic characteristics of the majority minority census tracts that have an undeniable impact on the overall volume of home mortgage lending in those census tracts – including, but not limited to, population, median income, percentage of owner-

occupied dwellings, percentage of households age-65 or older, and number of households above and below the poverty level. When those variables are properly accounted for, the Bank's volume of home mortgage loan applications and originations in the majority minority census tracts is within the statistically predicted range for every year addressed by the Complaint's allegations.

9. The Bank further denies that the maps attached as Exhibits 4-7 to the Complaint demonstrate, or constitute evidence of, a violation of the FHA or ECOA. Although the Bank lacks sufficient information to admit or deny the accuracy of the maps, the Bank asserts that, even if accurate, the maps (and the analyses on which they are purportedly based) fail to account for crucial non-racial and non-ethnic characteristics of the majority minority census tracts, as detailed in paragraph 8 of this Answer. Further, as illustrated by the map attached as Exhibit A to this Answer, the Bank asserts that the geographical distribution of its home mortgage loan originations is strongly correlated with credit quality, as measured by the industry standard of Fair, Isaac & Company ("FICO") scores.

10. The Bank further denies that the Complaint's allegations regarding loan volume are based upon statistically or legally sound theories. Among other things, the Bank asserts that the Complaint's definition of "majority minority census tract" has not been accepted by any court; that the analysis upon which the Complaint's allegations are based fails to account for critical non-racial and non-ethnic variables, as detailed in paragraph 8 of this Answer; that the lending statistics cited in the Complaint do not constitute a "pattern or practice" of unlawful discrimination in violation of the FHA or ECOA; and that the Complaint fails to allege sufficient facts to support a claim based on either "disparate treatment" or "disparate impact," assuming a disparate impact claim based on the type of allegations contained in the Complaint is cognizable

at all under FHA or ECOA (which the Bank denies). Further, the Bank specifically denies that its lending policies and practices were intended to deny, or had the effect of denying, an equal opportunity to residents of majority minority census tracts to obtain home mortgage financing.

11. The Bank denies the Complaint's allegations that the Bank's network of branch locations violated the FHA and/or ECOA. Specifically, the Bank denies that considerations of race or national origin were ever a factor in the Bank's decisions on where to locate branches or loan production offices, and denies that its network of branch locations reflects a discriminatory pattern of any kind. The Bank further asserts that, as of December 2000, five of its 27 branches were located in majority minority census tracts, based on 2000 census data. Four of those branches were located in majority Hispanic census tracts, and one branch, Broadview, was located in a majority African American census tract. The Bank denies that the Broadview branch fails to offer services comparable to those of its other branch offices. Furthermore, on several occasions the Bank attempted unsuccessfully to acquire institutions that would have given the Bank additional branches in majority minority census tracts and other areas with substantial minority populations.

12. The Bank denies the Complaint's allegations that the Bank delineated its Community Reinvestment Act ("CRA") assessment area to avoid or exclude majority minority census tracts. The Bank further asserts that its CRA assessment area has always been delineated in accordance with applicable law and regulations, including the CRA and Regulation BB; that the Bank has received a rating of "Outstanding" on each of its three most recent CRA compliance examinations by the Office of Thrift Supervision ("OTS"); that the OTS repeatedly approved the Bank's CRA assessment area which the Complaint now attacks; and that in any event, the Bank,

prior to being notified of the investigation that led to the filing of the Complaint, modified its CRA assessment area in December 2001 to include all of Cook, Dupage, Kane, and Will counties ("the four-county area"). The Bank specifically asserts that considerations of race or national origin have never influenced its designation of a CRA assessment area, and notes that the four-county area has a population of 7.2 million and includes the vast majority of majority minority census tracts in the Chicago MSA.

13. The Bank denies the Complaint's allegations that the Bank failed to market itself or promote its lending products in minority areas to the same extent as in majority white areas. The Bank further asserts that such allegations are refuted by the facts regarding the Bank's advertising and marketing efforts, as well as by the Bank's participation in numerous voluntary lending initiatives that promote the Bank's mortgage lending services in minority areas. The Bank consistently has advertised its home mortgage lending products to all members of the community, including but not limited to residents of African American and Hispanic areas. Additionally, the Bank has hired a full-time Director of Community Lending with the rank of Vice President to oversee the Bank's marketing efforts in lower-income and minority areas; has participated in numerous homebuyer fairs and other initiatives to inform residents of minority areas about the availability of home mortgage loan products from the Bank; and has provided financial support to, and/or active participation with, numerous organizations that directly promote homeownership in minority areas, including but not limited to Fannie Mae's City of Chicago Anti-Predatory Lending Initiative, Neighborhood Housing Services of Chicago, Community Investment Corporation, ACORN, Spanish Coalition for Housing, Congressional

Black Caucus Foundation's With Ownership Wealth Initiative, and Chicago Housing Authority Corporation's Choose to Own program.

14. The Bank denies that any person or persons have suffered damages as a result of any of the acts or omissions alleged in the Complaint.

15. The Bank denies the Complaint's allegation that the totality of the Bank's policies and practices, as described in the Complaint, constituted a violation of the FHA and/or ECOA. The Bank denies that the policies and practices alleged in the Complaint were motivated in any way by considerations of race or national origin and further denies that its policies and practices were intended to, or had the effect of, denying equal access to home mortgage financing to residents of the majority minority census tracts. The Bank further asserts that its mortgage lending policies and practices were developed and conducted at all times in accordance with safe and sound banking practices and applicable law, were justified by business necessity, and were developed and applied for legitimate and permissible purposes and wholly unrelated to race and national origin.

16. Any allegation of wrongdoing not specifically answered herein is denied.

17. The Bank denies that Plaintiff is entitled to the relief requested in the Complaint.

AFFIRMATIVE DEFENSES

The Bank alleges the following as separate and distinct affirmative defenses:

FIRST AFFIRMATIVE DEFENSE **(Failure to State a Cause of Action)**

18. The Complaint fails to state a cause of action upon which relief can be granted, insofar as: (1) the Complaint fails to allege any facts supporting a finding of "discriminatory

motive” by the Bank as required for a claim based upon disparate treatment under the FHA or ECOA; (2) to the extent that the Complaint is based upon a theory of “disparate impact,” such a theory lacks statutory or judicial support with respect to the FHA and ECOA, given the facts in this case; and (3) even if a disparate impact theory were accepted, the facts alleged in the Complaint fail to support the imposition of liability under such a theory.

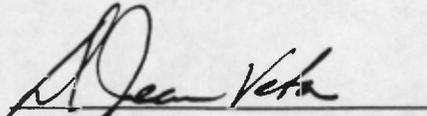
SECOND AFFIRMATIVE DEFENSE
(Estoppel)

19. Without admitting any of the allegations in the Complaint, the Bank asserts that any act or omission cited therein as a violation of the FHA or ECOA was the result of the Bank’s good-faith adherence to the rules, regulations, and guidance of federal bank regulatory agencies. Accordingly, the United States is estopped from obtaining relief on the basis of those alleged acts or omissions.

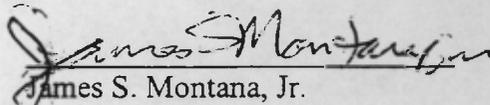
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WHEREFORE, the Bank respectfully requests a judgment dismissing the Complaint.

Respectfully submitted,



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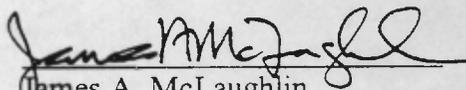
Dated: December 30, 2002

CERTIFICATE OF SERVICE

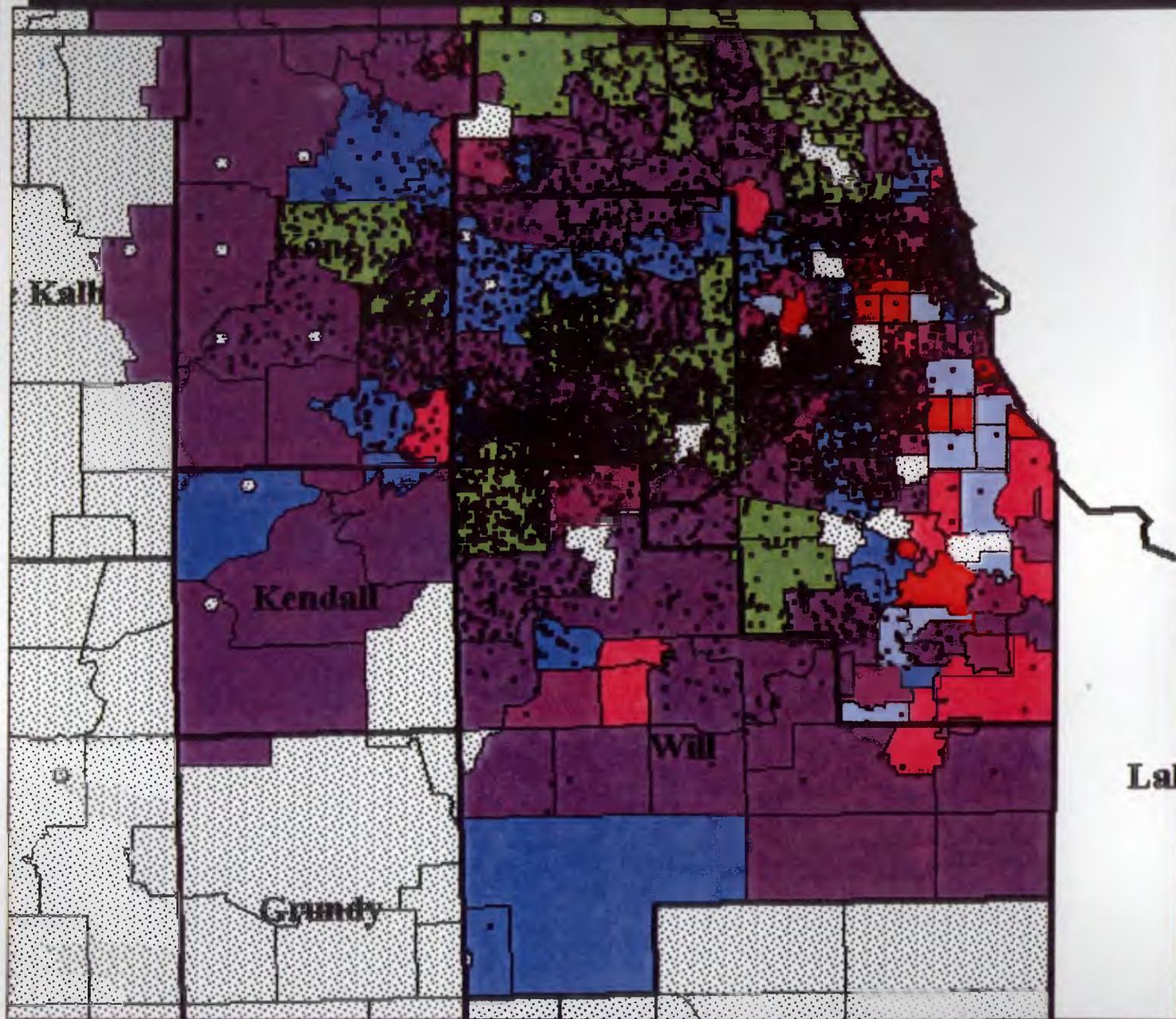
I hereby certify that on December 30, 2002, I caused a copy of the foregoing Answer of defendant Mid America Bank, fsb to be served by hand upon:

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James A. McLaughlin

Average FICO Score and Number of MAF Originations in Each Zip Code



Legend

-  Zip Code
-  County

Average FICO Score

-  0 to 550
-  550 to 600
-  600 to 625
-  625 to 650
-  650 to 675
-  675 to 700
-  700 to 725
-  725 to 750
-  750 to 1000

Number of Originations

-  5 Per Dot

Miles

