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10
11 Attorneys for Plaintiffs

12 UNITED STATES DISTRICT COURT
13
14 NORTHERN DISTRICT OF CALIFORNIA

15 TENISHA TATE-AUSTIN; PAUL
16 AUSTIN; and FAIR HOUSING
ADVOCATES OF NORTHERN
17 CALIFORNIA,

18 Plaintiffs,

19 v.

20 JANETTE C. MILLER; MILLER AND
PEROTTI REAL ESTATE APPRAISALS,
INC., AMC LINKS LLC;

21 Defendants.

Case No.

**COMPLAINT FOR INJUNCTIVE,
DECLARATORY, AND MONETARY
RELIEF; JURY TRIAL DEMAND**

22
23 **INTRODUCTION**

24 1. Plaintiffs Tenisha Tate-Austin and Paul Austin, an African American couple,
25 invested in the American dream. In December 2016, they purchased a house in Marin County,
26 California and moved into their house with their minor children. After spending thousands of
27 dollars on renovations that increased the square footage of the house and upgraded many features,
28 and beginning renovations on an accessory dwelling unit, the Austins sought to refinance their

1 mortgage in 2020. Defendant Janette Miller, a licensed real estate appraiser, was hired through
2 defendant AMC Links LLC to inspect the Austins' house and prepare an appraisal report. Miller
3 concluded that the current market value of the Austins' house was \$995,000.

4 2. In preparing her report and estimating the value of the Austins' house, plaintiffs
5 contend that Miller took into account the Austins' race – Black – and the current and historical
6 racial demographics of the house's location in the unincorporated area known as Marin City. Within
7 days, a different appraiser inspected the Austins' house. But this time, the Austins' erased any
8 evidence of their racial identities inside their house, even asking a white friend to pose as the
9 homeowner during the inspection. This different appraiser arrived at a value of \$1,482,500 – nearly
10 half a million dollars higher than Miller's estimated value.

11 3. Race was a motivating factor in Miller's unreasonably low valuation of the Austins'
12 house, in violation of the Fair Housing Act and related federal and state laws. Accordingly, the
13 Austins seek monetary, declaratory, and injunctive relief.

14 4. Fair Housing Advocates of Northern California (FHANC) is a non-profit corporation
15 headquartered in Marin County. FHANC alleges that it was injured when it diverted its scarce
16 resources to investigating defendants' discriminatory housing practices, and that those practices
17 frustrated its mission. FHANC seeks equitable relief only in this action.

18
19
20 **JURISDICTION, VENUE, AND INTRADISTRICT ASSIGNMENT**

21 5. Jurisdiction is conferred upon this Court pursuant to 28 U.S.C. section 1331 in that
22 the claims alleged herein arise under the laws of the United States. This Court has supplemental
23 jurisdiction pursuant to 28 U.S.C. section 1367 to hear and determine plaintiffs' state law claims
24 because those claims are related to plaintiffs' federal law claims and arise out of a common nucleus
25 of related facts. Plaintiffs' state law claims are related to plaintiffs' federal law claims such that they
26 form part of the same case or controversy under Article III of the United States Constitution.
27
28

1 Perotti Real Estate Appraisers, Inc.

2 11. Defendant Miller and Perotti Real Estate Appraisals, Inc. is a California corporation
3 with a primary address in San Rafael, California.

4 12. Defendant AMC Links, LLC, is an LLC registered in Utah that does business in
5 California. AMC Links LLC is an appraisal management company licensed by the California
6 Bureau of Real Estate Appraisers.

7
8 13. Each defendant was, in doing the things complained of, the agent of its co-
9 defendants herein and acting within the scope of said agency and/or representation, and each
10 defendant is liable for the discriminatory housing practices alleged herein under the Fair Housing
11 Act and the California Fair Employment and Housing Act, 24 C.F.R. § 100.7 and Government Code
12 § 12955.6, and are jointly and severally responsible and liable to plaintiff for the damages alleged.
13

14 **FACTS**

15 **A. Racial Demographics in Marin County and Marin City**

16 14. Marin City is an unincorporated community located in Marin County, situated
17 between the cities of Sausalito to the south and Mill Valley to the north. Properties located in Marin
18 City have a Sausalito mailing address. Marin City and the City of Sausalito share the same school
19 district.

20
21 15. According to the U.S. Census, as of July 2019, Marin County's population was
22 85.3% white, 2.8% Black, 6.6% Asian, and 16.3% Latino.¹ The County's Black residents are
23 overwhelmingly concentrated in two census tracts, one of which is located in Marin City.²

24 16. Housing was first developed in Marin City in the early 1940s to house workers
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28 ¹<https://www.census.gov/quickfacts/marincountycalifornia>

²<https://data.census.gov/cedsci/table?t=Black%20or%20African%20American&g=0500000US06041%24140000&tid=DECENNIALPL2020.P1&hidePreview=true>

1 migrating to the area to work in the Sausalito shipyards for the war effort.³ Many of these workers
2 were African Americans who came from the South as part of the Great Migration, but whites and
3 Asians also lived in Marin City and worked at the shipyards. As a result of the war effort and
4 employment in the shipyards in the 1940s, Marin City became a diverse, racially-integrated
5 community.⁴

6
7 17. Following World War II, shipbuilding jobs largely disappeared. Many workers found
8 themselves unemployed. Many white residents moved away in search of better employment
9 opportunities, aided by Federal Housing Administration guaranteed bank loans that were designed
10 to move white residents to all-white neighborhoods that would remain all-white through the use of
11 racially-restrictive covenants.⁵ Many African American residents were unable to move to other
12 towns and neighborhoods in the area due to housing discrimination, racially-restrictive covenants,
13 redlining, denial of access to government-backed financing, and other forms of discrimination.⁶

14
15 18. In the years following the war, African Americans became the largest demographic
16 group in Marin City. Since the 1980s and 1990s, the census tract that encompasses Marin City has
17 become more racially diverse, but African Americans still accounted for approximately 35.95% of
18 the population as of 2019.⁷

19
20 19. By contrast, the population of the City of Sausalito (excluding unincorporated areas
21 like Marin City) is 92.2% white as of 2019. African Americans comprise only 0.9% of Sausalito's
22 population.⁸

23 **B. The Appraisal Process**

24
25 ³ See www.marincitygov.org; County of Marin, Analysis of Impediments to Fair Housing Choice (January 2020),
26 (hereafter, "Analysis of Impediments" 33-34, available at <https://www.marincounty.org/-/media/files/departments/cd/housing/fair-housing/2020-ai/2020aienglishvfinal.pdf?la=en>

27 ⁴ Analysis of Impediments at 34.

28 ⁵ Analysis of Impediments at 34.

⁶ *Id.*

⁷ <https://www.towncharts.com/California/Demographics/Marin-City-CDP-CA-Demographics-data.html>

⁸ <https://www.towncharts.com/California/Demographics/Marin-City-CDP-CA-Demographics-data.html>

1 20. Obtaining a real estate appraisal is a necessary step on the path to obtaining a
2 mortgage or refinancing the mortgage of a house in the United States. Mortgage lenders require
3 appraisals – defined by the Uniform Standards of Professional Appraisal Practice as professional,
4 reasoned, credible assessments of a property’s value as of a given date – before approving loans.
5 With few exceptions, home buyers cannot obtain a mortgage, and homeowners cannot refinance a
6 mortgage, without submitting to an appraisal. Because the vast majority of home sales in the United
7 States require mortgage financing, the vast majority of home sales require the use of a professional
8 appraiser to generate an appraisal report of value.

9
10 21. Every state requires appraisers to obtain a professional license. In California,
11 appraisers are licensed by the state Bureau of Real Estate Appraisers (“BRE”), which is a
12 subdivision within the California Department of Consumer Affairs. Various federal regulators and
13 entities oversee BRE and other state licensing boards.

14
15 22. Through the 1970s, textbooks used to educate and train appraisers contained explicit
16 instructions that (1) housing appraisals must start with an appraisal of the neighborhood, and (2)
17 racially segregated, white neighborhoods were “desirable” neighborhoods. Houses located in
18 predominantly white areas were assumed to be of the highest and best value, while houses located
19 in predominantly non-white areas, or areas of diverse races, were assumed to be undesirable and of
20 lower value. For example, the influential textbook written by Frederick Babcock in 1924 states that
21 “the habits, character, the race . . . of the people are the ultimate factors of real estate value.”⁹
22 Babcock went on to become a founding member of the American Institute of Real Estate Appraisers
23 (“AIREA”) and a head of underwriting for the Federal Housing Administration.¹⁰
24
25
26
27

28 ⁹ Frederick Babcock, Appraisal of Real Estate 71 (1924).

¹⁰ Gene Slater, Freedom to Discriminate 97 (2021).

1 23. Twenty-five years after Babcock’s textbook was published, the same principles of
2 race-based valuation appeared in revised versions of Babcock’s textbook and all the leading
3 publications guiding the appraisal industry. For example, textbook author George Schmutz wrote in
4 1951, “Perhaps the most important condition in the neighborhood is congruity; *i.e.*, the similarity of
5 structures...and the similarity of the people as regards, race, color, income-earning level, and social
6 position.”¹¹ Schmutz adds that one aspect of a neighborhood’s “appeal” that should be evaluated by
7 the appraiser is “the relationship between families in the neighborhood having similar educations,
8 abilities, mode of living, and racial characteristics.”¹² Schmutz asserts that property values decline
9 with “the presence of people of dissimilar cultures.”¹³
10

11 24. These race-based valuation standards in appraisal textbooks remained iron-clad until
12 the United States Department of Justice sued the American Institute of Real Estate Appraisers and
13 related defendants in 1976 under the Fair Housing Act. (*United States v. The American Inst. Of Real*
14 *Estate Appraisers of the Nat’l Assn of Realtors, et al.*, Case No. 76-C-1448, N.D. Ill.) The case was
15 settled when AIREA¹⁴ agreed to revise its courses, ethical standards, and textbook, *The Appraisal of*
16 *Real Estate*, to reflect policies against race-based valuation standards.
17

18 25. But the damage was already done. Property in Black neighborhoods and racially
19 diverse neighborhoods reflect these low valuations that appraisers were trained to make. Most
20 appraisers continue to evaluate a house’s value by comparing it to houses in similar, proximate
21 neighborhoods that have sold in the recent past (“comps”). The continued use of the sales
22 comparison approach recycles home values that were initially determined using explicitly race-
23 based criteria, and compounds the effects of decades of undervaluation of homes in non-white
24
25

26
27 ¹¹ George L. Schmutz, The Appraisal Process 168 (1951)

¹² *Id.* at 174

¹³ *Id.* at 175

28 ¹⁴ AIREA and another professional appraisal organization, the Society of Real Estate Appraisers, merged in 1991 to become the Appraisal Institute.

1 areas. Likewise, some appraisers, including defendants, have continued to use race-based criteria in
2 assessing property value, including limiting comparisons to houses within areas of similar racial
3 demographics and valuing predominantly white areas more highly than other areas. Redlining,
4 disinvestment, and lower property tax revenue compounded the effects of lower appraised values in
5 such neighborhoods.

6
7 26. In September 2021, the Federal Home Loan Mortgage Corporation (“Freddie Mac”) released the results of a five-year study based on more than 12 million appraisals.¹⁵ The study found
8 that “Appraisers’ opinions of value are more likely to fall below the contract price in Black and
9 Latino census tracts, and the extent of the gap increases as the percentage of Black or Latino people
10 in the tract increases.”¹⁶ These differences remained constant even when other characteristics of the
11 property and neighborhood were equal.

12
13
14 27. The Freddie Mac study also concluded that the race of mortgage applicants affects appraisal value. Black and Latino applicants were more likely than white applicants to receive an
15 appraisal value lower than the contract price.¹⁷

16
17 28. The Freddie Mac study also evaluated the selection of comps for housing appraisals
18 located in a Black or Latino census tract. The study concluded that appraisers chose comps located
19 substantially closer to the subject property if it was located in a Black or Latino census tract than if
20 it was located in a white census tract.¹⁸ This conclusion suggests that appraisers continue to view
21 neighborhoods, and thus relevant comps, based on racial demographics.

22 23 **C. Appraisal Management Companies**

24
25
26
27 ¹⁵ Racial and Ethnic Valuation Gaps in Home Purchase Appraisals, September 20, 2021, available at
http://www.freddiemac.com/research/insight/20210920_home_appraisals.page (last visited Nov. 17, 2021)

28 ¹⁶ *Id.* at § 1.

¹⁷ *Id.* at § 2.

¹⁸ *Id.* at § 4.

1 29. Following industry reforms enacted by the Dodd-Frank Wall Street Reform and
2 Consumer Protection Act, mortgage lenders and brokers could no longer employ or contract with an
3 appraiser directly to appraise property for mortgage lending. *See* 15 U.S.C. § 1639e. Instead,
4 lenders and brokers contract with independent appraisal management companies to obtain an
5 appraisal. Appraisal management companies (AMCs) are business entities that serve as
6 intermediaries between lenders and appraisers. AMCs contract with lenders or other entities to
7 provide appraisal services. AMCs then contract with licensed and certified appraisers to perform
8 appraisal assignments. AMCs are licensed and regulated in California by the Bureau of Real Estate
9 Appraisers. Cal. Bus. & Prof. Code §§ 11302 (m); 11314 *et seq.*

11 30. An AMC is required by law to review the work of all employee appraisers and
12 independent contractor appraisers with whom it contracts to ensure that appraisal services are
13 performed in accordance with the Uniform Standards of Professional Appraisal Practice. 12 U.S.C.
14 § 3353(a); Cal. Bus. & Prof. Code § 11345.3 (b).

16 **D. The Effect of Using Sales Comparisons in Marin City**

17 31. Appraising a house located in Marin City, such as the Pacheco Street House, using
18 comparisons of other property sales located exclusively or primarily in Marin City results in a
19 skewed and race-based valuation of the property. Marin City has a long history of undervaluation
20 based on stereotypes, redlining, discriminatory appraisal standards, and actual or perceived racial
21 demographics. Choosing to use comps located in Marin City means that the valuation is dictated by
22 these past sale prices, which were the direct product of racial discrimination. The use of such comps
23 perpetuates the effects of discriminatory appraisal practices.

25 32. Marin City also has a very small number of property sales every year. Relying
26 exclusively or primarily on Marin City sales as comps is statistically unsound, because there are not
27 enough to constitute a useful data set. The sample size of annual sales is too small to be reliable.
28 Using Marin City sales as the primary source of comps is evidence of racial bias – *i.e.*, that the

1 appraiser believes that Marin City’s demographics make it so much less “desirable” than
2 surrounding areas that property in those areas cannot be used as comps.

3 33. A competent, unbiased appraisal must look to additional areas outside of Marin City
4 for relevant comps.

5
6 **E. USPAP Standards**

7 34. The Appraisal Foundation is a professional organization established in the wake of
8 the savings and loan crisis of the 1980s. Congress authorized the Appraisal Foundation as the
9 source of appraisal standards and qualifications pursuant to the Financial Institutions Reform,
10 Recovery, and Enforcement Act (FIRREA) in 1989. *See* 12 U.S.C. §§ 3339, 3345.

11 35. Under this Congressional authority, the Appraisal Foundation publishes the Uniform
12 Standards of Professional Appraisal Practice (USPAP).¹⁹ USPAP provides ethical and performance
13 requirements for professional appraisers, and provides AMCs, borrowers, and lenders with a gauge
14 by which to measure the quality of an appraiser’s analysis and reliability of their conclusions.
15 Federal and state law require all real estate appraisals to conform to USPAP standards. *See* 12
16 C.F.R. § 323.4 (a).

17
18 36. USPAP contains rules and standards for appraisers, including rules of ethics. One of
19 the components of USPAP’s Ethics Rule provides that an appraiser “must not perform an
20 assignment with bias.” Another component of USPAP’s Ethics Rule provides that an appraiser
21 “must not use or rely on unsupported conclusions relating to characteristics such as race, color...or
22 that homogeneity of such characteristics is necessary to maximize value.”

23
24 37. USPAP Standards Rule 1-1 states that: “In developing a real property appraisal, an
25 appraiser must: (a) be aware of, understand, and correctly employ those recognized methods and
26

27
28 ¹⁹ https://www.appraisalfoundation.org/imis/TAF/Standards/TAF/Standards_Qualifications.aspx?hkey=f95f32ad-67dc-439a-b82b-6bf3ea89fa44 (last visited Nov. 17, 2021)

1 techniques that are necessary to produce a credible appraisal; (b) not commit a substantial error or
2 omission or commission that significantly affects an appraisal; and (c) not render appraisal services
3 in a careless or negligent manner, such as by making a series of errors that, although individually
4 might not significantly affect the results of an appraisal, in the aggregate affects the credibility of
5 those results.”

6
7 **F. The Pacheco Street House**

8 38. On or about December 19, 2016, Tenisha Tate-Austin and Paul Austin purchased
9 the Pacheco Street House for \$550,000, and have owned and occupied the house ever since.

10 39. The Pacheco Street House is located near major streets, Highway 101, easy access to
11 the Golden Gate Bridge, shopping, and public transit. It is walking distance from desirable hiking
12 trails. Many rooms in the house, as well as the deck, have views of the San Francisco Bay and
13 surrounding hills.

14
15 40. In connection with the purchase and financing of the Pacheco Street House in 2016,
16 the Austins’ mortgage lender obtained an appraisal. The appraisal estimated the market value of
17 house to be \$575,500. The appraisal report obtained by the Austins’ lender, dated December 3,
18 2016, indicated that the Pacheco Street House had 1,248 square feet of gross living area, including
19 four bedrooms and two bathrooms. The report also noted that there had been “no updates in the
20 prior 15 years.” The estimated value of the house per square foot, according to the appraisal, was
21 \$441.
22

23 41. Between 2016 and 2018, the Austins completely remodeled the Pacheco Street
24 House using licensed contractors. They upgraded the kitchen and bathrooms with high quality
25 appliances and fixtures. They had the hardwood floors refinished, painted the interior, and replaced
26 many windows. They also redesigned the interior, removing a wall to create one larger, more
27 functional primary bedroom. One of the small bathrooms was enlarged to create the primary
28 bathroom.

1 42. The Pacheco Street House was appraised again in May 2018, when the Austins
2 refinanced their mortgage. The estimated value of the house per square foot, according to the
3 appraisal, had risen to \$672. The appraisal report obtained by the Austins' lender, dated May 14,
4 2018, indicated the market value of the house to be \$864,000.

5 43. Following that refinance, the Austins hired contractors to add a new foundation and
6 retaining wall to replace open space under the house. This created an additional 270 square feet of
7 living space on the ground level, comprised of a den and half-bathroom. In the upstairs area, the
8 Austins added a deck and a gas fireplace. They extended their main living area upstairs by 8 feet.

9 44. They also obtained permits and began the construction of a separate, accessory
10 dwelling unit (ADU) on the property equipped with a kitchen and bathroom, containing
11 approximately 450 square feet of living space which could be used for rental income, a home office,
12 or other purpose that would enhance the value of the property. The ADU has a separate entrance
13 and views of the Bay.

14 45. In or about March 2019, the Austins applied to refinance their mortgage again. They
15 obtained a new appraisal report for the Pacheco Street House. The estimated value of the house per
16 square foot, according to the appraisal, had nearly doubled, to \$1,162. The appraisal report dated
17 March 6, 2019, indicated the market value of the house to be \$1,450,000.

18 46. In early 2020, the Austins sought to refinance their mortgage again to take advantage
19 of historically low interest rates and obtain additional funding to complete the basement conversion
20 and ADU. They contacted their mortgage broker, who retained the services of AMC Links, LLC, in
21 order to obtain an appraisal and begin the process of refinancing.

22 **G. The Inspection and Appraisal Report by Defendants**

23 47. AMC Links, LLC, contracted with Janette C. Miller of Miller and Perotti Real Estate
24 Appraisers, Inc. to conduct an appraisal of the Pacheco Street House. Miller visited the house to
25 conduct the appraisal on or about January 29, 2020.

1 48. Janette Miller knew that the owners of the Pacheco Street House were African
2 American when she conducted the appraisal inspection on January 29, 2020.

3 49. Paul Austin, who is African American, was present in the Pacheco Street House
4 when Janette Miller arrived to conduct the appraisal inspection, and introduced himself by name.
5

6 50. The Pacheco Street House displays family photos of the Austins and their minor
7 children, all of whom are African American. The Austins also have art that is African-themed
8 displayed in the Pacheco Street house.

9 51. Miller walked around the house and exterior areas on the property. The Austins'
10 family photos depicting African Americans, and the Austins' African-themed art, were conspicuous
11 during Miller's inspection of the Pacheco Street House.

12 52. Race was a motivating factor in Miller's unreasonably low valuation of the Austins'
13 house, in violation of the Fair Housing Act and related federal and state laws. There are at least five
14 indicia of racial bias in the Miller Appraisal: (1) unreasonably and inexplicably low market value
15 ascribed to the Pacheco Street House; (2) unsupportable adjustments to value made based solely on
16 the Pacheco Street House's location in Marin City; (3) the selection of properties as "comparable"
17 based on racial demographics; (4) comments regarding the "distinct marketability" of Marin City;
18 and (5) the race or perceived race of the homeowners.
19

20 53. Miller and AMC Links, Inc. issued an appraisal report for the Pacheco Street House
21 dated February 12, 2020 ("Miller Appraisal"). Miller concluded that the market value of the
22 Pacheco Street House was \$995,000.
23

24 54. The Miller Appraisal opines that the price of single-family homes in Marin City is
25 between \$270,000 to \$1,800,000, with a "predominate value" of \$720,000. Miller states that this
26 opinion is based on five years of home sales, where no one year had more than four sales. This
27 opinion is fundamentally flawed because of the small number of home sales per year and the
28 number of years of home sales evaluated. Using such a small sample size results in a huge margin

1 of error. In fact, the relatively small number of sales in Marin City suggests a marketplace where
2 owners do not move often. As a result, extrapolating the value of the Pacheco Street House from
3 sales in Marin City is inherently flawed and statistically unsound. It also evidences an approach to
4 appraisal value that is based on the racial demographics of Marin City, or the race of the residents of
5 the Pacheco Street House, or both.

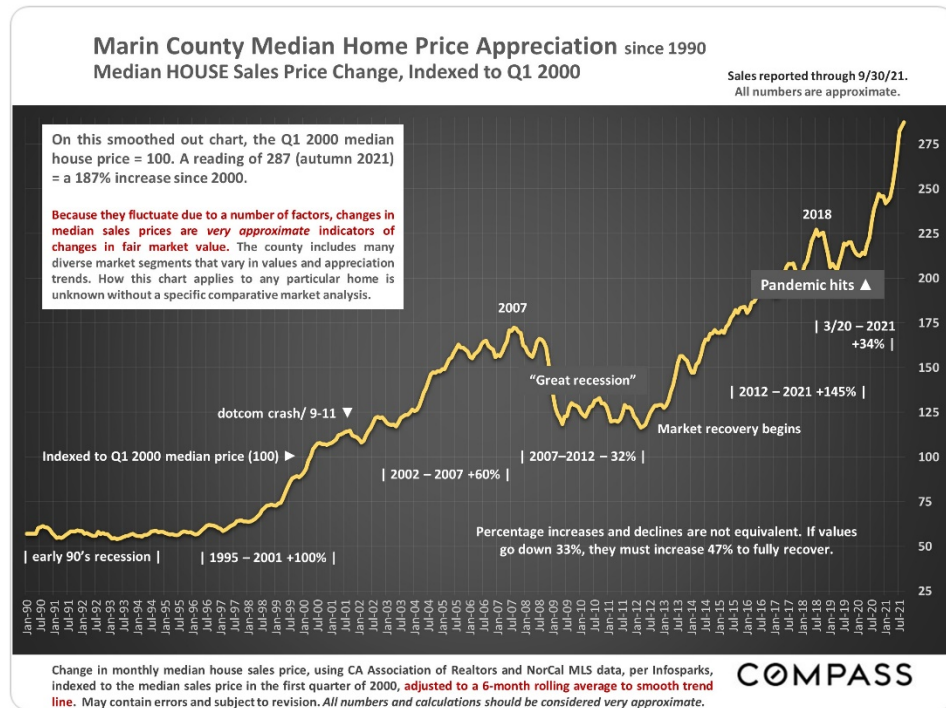
6
7 55. Miller states in her report that Marin City has a “distinct marketability which differs
8 from the surrounding areas.” Based on the racial demographics and history of Marin City, this
9 phrase is coded based on race. Embedded in this statement are Miller’s assumptions that Marin City
10 is predominantly non-white; that white homebuyers would not be willing to consider purchasing a
11 house located in Marin City; and, thus, Marin City is not comparable in marketability to
12 surrounding areas. Each assumption is based on race. Marin City has such a small number of home
13 sales from year to year that there is not a statistically significant and legitimate basis on which to
14 conclude that it has a “distinct marketability.” As the Miller report itself notes, there were only three
15 sales of single-family homes in Marin City in the previous year and three the year before, likely
16 because of the stability of homeownership within the area.

17
18 56. Miller’s market analysis of Marin City speaks only to market trends before the 2007
19 recession and ends at 2008, with no analysis of recent trends. Additionally, it speaks to market
20 trends that were true for the entire Bay Area at the time, not just those unique to Marin City. For
21 example, Miller writes:

22
23 “Area experienced escalating residential values from 2003 to 2005. During 2005 and
24 2006 values experienced a readjustment with longer days on market and stable or
25 decreasing values in some neighborhoods. In 2007, values within much of the area
26 began to increase again with days on market remaining less than 2 months. During
27 2008, however, many communities in the Bay Area began to feel the effects of
28 tightening credit and deteriorating economic conditions. Though these communities

1 appear to have been the last to be affected by the housing crisis which began in 2005,
 2 there were then declining home values in many, but not all communities in the Bay
 3 Area.”

4 57. Her use of such dated market trends deviates from professional standards and
 5 presaged her erroneously low appraised value of the Pacheco Street House. Marin City, like other
 6 communities that are predominantly non-white in the United States, experienced foreclosures
 7 during the Great Recession at a higher rate than predominantly white communities. The relatively
 8 higher rate of foreclosures in non-white communities is directly linked to the history of redlining,
 9 segregation, discrimination, and lack of access to credit in such communities. Accordingly,
 10 considering “market trends” from 2008 disproportionately and inappropriately devalues property in
 11 Marin City, because more than ten years have passed and the market value for single-family
 12 housing in the area has rebounded entirely as shown on the Table below:²⁰
 13
 14



²⁰ <https://www.bayareamarketreports.com/trend/marin-county-real-estate-market-report>

1 58. By contrast, in the same market analysis, Miller notes increasing home values in
2 Sausalito since 2014 – an entirely different period of time than she reviewed in her market analysis
3 of Marin City. She writes, “values [in the City of Sausalito] have increased since 2014 with a recent
4 stabilization of values as evidenced by MLS year-end data for all residential properties sold.”

5 59. Miller selected five property sales and one sale listing as comps in analyzing the
6 value of the Pacheco Street House. Despite the paucity of recent sales in Marin City, three of the six
7 comps selected by Miller were in Marin City. Two of those three properties were not comparable to
8 the Pacheco Street House in any way except for their location in Marin City. One was a bank-
9 owned property that sold in foreclosure a full two years before. One was an attached dwelling that
10 was contained within a planned unit development.

11 60. Pursuant to professional standards and practice, Miller should have selected comps
12 outside of Marin City with features that were more closely analogous to the Pacheco Street House,
13 but failed to do so because the racial demographics of surrounding areas were different – *i.e.*, whiter
14 -- than Marin City’s. Sausalito and Mill Valley, for example, are adjacent areas that have hundreds
15 of single-family home sales every year, with many properties that would have presented appropriate
16 comparisons for the Miller Report. Many would have proven more comparable than the comps
17 selected by Miller if race had not been a consideration.

18 61. Miller selected only three comps from outside of Marin City – one in Sausalito and
19 two in Mill Valley. When evaluating the value of these three comps outside of Marin City, Miller
20 made “adjustments” to value based on, according to her, the differences in relative price per square
21 foot between properties in Marin City on the one hand, and Sausalito and Mill Valley on the other.
22 Miller opined that she looked at several years of data and determined that houses in Marin City
23 were worth “conservatively” 25% less per square foot than those in “surrounding areas.” This
24 adjustment was both statistically unsound and based on the racial demographics of Marin City.
25 There are not enough property sales in Marin City to assert that there is any statistical average
26
27
28

1 “price per square foot” for houses in Marin City as compared with Mill Valley or Sausalito. In
2 addition, price per square foot varies based on many factors, including quality of construction and
3 amenities.

4 62. Miller then made downward adjustments beyond the 25% reduction described above.
5 Miller further reduced the value of the Pacheco Street house, opining that it was worth nearly 28%
6 less per square foot than the price per square foot of the allegedly comparable properties in
7 Sausalito and Mill Valley. These unfounded adjustments resulted in Miller attributing a lower value
8 to the Pacheco Street House than credible or reasonable. They can be explained only by race-based
9 bias.
10

11 63. The Miller Appraisal includes the following “Appraiser’s Certification,” reprinted
12 below in pertinent part, and signed by Janette Miller:
13

14 The Appraiser certifies and agrees that:

15 3. I performed this appraisal in accordance with the requirements of the Uniform
16 Standards of Professional Appraisal Practice that were adopted and promulgated by
17 the Appraisal Standards Board of the Appraisal Foundation and that were in place at
18 the time this appraisal report was prepared.

18 ***

19 7. I selected and used comparable sales that are locationally, physically, and
20 functionally the most similar to the subject property.

21 ***

22 16. I stated in this appraisal report my own personal, unbiased, and professional
23 analysis, opinions, and conclusions, which are subject only to the assumptions and
24 limiting conditions in this appraisal report.

24 ***

25 23. The borrower, another lender at the request of the borrower, the mortgagee or its
26 successors and assigns, mortgage insurers, government sponsored enterprises, and
27 other secondary market participants may rely on this appraisal report as part of any
28 mortgage finance transaction that involves any one or more of these parties.

1 64. The Miller Report demonstrates that Miller deviated from recognized methods and
2 techniques of real estate appraisal and did not follow USPAP. Miller did not sufficiently research
3 and analyze the available data, and rendered her services in a careless and negligent manner,
4 resulting in a flawed and discriminatory analysis.

5 65. Race was a motivating factor in Miller's unreasonably low valuation of the Austins'
6 house, in violation of the Fair Housing Act and related federal and state laws. Miller's valuation
7 was influenced by the race of the Austins, or the racial demographics of Marin City, or both, when
8 she undervalued the Pacheco Street House.

9 66. In the alternative, or in addition, the methods of valuation used by Miller had a
10 disparate impact on African American homeowners or home purchasers based on their race.

11 67. AMC Links failed to review the Miller Report to ensure that the work was performed
12 in accordance with USPAP standards and was not influenced by race. In the alternative, AMC Links
13 carelessly and incompetently reviewed the Miller Report and failed to detect its breaches of USPAP
14 and other professional norms.

15 68. The Austins were shocked by the Miller Report and the appraised value of the
16 Pacheco Street House. The Austins' mortgage broker informed them that they could not obtain
17 refinancing at favorable terms because of the unreasonably low value ascribed to the Pacheco Street
18 House by Miller. The Austins, through their broker, contacted AMC Links and requested a second
19 appraisal by a different appraiser.
20
21
22

23 **H. The Second 2020 Inspection of the Pacheco Street House**

24 69. In February 2020, a different appraiser contacted the Austins and made an
25 appointment to conduct an inspection. Before that inspection took place, the Austins asked Jan, a
26 friend who is white, to be present during the inspection and greet the appraiser as if she was the
27 homeowner. Jan agreed.
28

1 70. Before the inspection, the Austins “white-washed” their house. They packed away
2 their family photos, which depicted the house’s occupants as an African American family. They
3 also removed and stored any art that was African or African American themed and stored it where it
4 would not be visible. Jan placed some of her own family photos, depicting her white family, around
5 the Pacheco Street House before the inspection.
6

7 71. An appraiser from a different company came to the Pacheco Street House to conduct
8 the inspection on February 15, 2020. Jan answered the door when the appraiser arrived, and sat in
9 the dining area while the appraiser conducted the inspection. Neither Paul Austin nor Tenisha Tate-
10 Austin was present during the inspection.

11 72. On March 8, 2020, the second appraiser issued a report estimating the value of the
12 Pacheco Street House at \$1,482,500 (“March 2020 Appraisal”). She estimated that the Pacheco
13 Street House was worth \$877 per square foot.
14

15 73. According to the March 2020 Appraisal, the total estimated value of the Pacheco
16 Street House is 49% higher, or \$487,500 higher, than the appraised value assigned in the Miller
17 Appraisal, issued just three weeks before.

18 74. The value per square foot of the Pacheco Street House, according to the March 2020
19 Appraisal, was \$877. This is an increase of \$295 per square foot, or 50.6%, from the Miller
20 Appraisal.
21

22 75. In the three weeks between the Miller Appraisal and the March 2020 Appraisal,
23 nothing about the Pacheco Street House or the local real estate market changed in any material way.
24 The only things that had changed were the appraiser and the perceived race of the Pacheco Street
25 House’s owners.

26 76. In the March 2020 Appraisal, the appraiser selected eight properties as comps. Two
27 properties were located in Marin City, and the other six were located close by in Sausalito. All eight
28

1 properties were available to use as comps when Miller prepared her appraisal report three weeks
2 earlier. None of the same comps were used in the two reports.

3 77. Although the Austins refinanced their mortgage based on the March 2020 appraisal,
4 they were not able to refinance on the favorable terms that had been available one month before.
5

6 **I. FHANC's Investigation and Outreach**

7 78. As a result of the discriminatory practices reported by the Austins, FHANC began an
8 investigation into the appraisal industry and appraisal practices in Marin County. That investigation
9 diverted FHANC's resources, including staff time and financial resources, from other investigations
10 and activities. FHANC also spent time and resources working with the media and the local
11 community to counteract the effects of discriminatory appraisal practices by developing new
12 educational resources and educating residents about their fair housing rights, including the right to
13 engage in real estate transactions free from unlawful discrimination.
14

15 79. Discriminatory appraisals, including the appraisal that the Austins received from
16 defendants, frustrate FHANC's mission of promoting equal opportunity and equity in housing.
17 Defendants' actions frustrate FHANC's mission by engaging in racialized analyses of home value,
18 perpetuating segregation, depressing home values in Marin City, and depriving residents of color of
19 housing opportunities. FHANC must engage in ongoing educational efforts to counteract the
20 adverse effects of defendants' discriminatory housing practices.
21

22 **INJURIES**

23 80. As a result of the unlawful housing practices of defendants as alleged herein,
24 plaintiffs Tenisha Tate-Austin and Paul Austin suffered damages, including loss of financing
25 opportunity in connection with their dwelling, economic losses, emotional distress with attendant
26 physical injuries, and violation of their civil rights. In addition, defendants' discriminatory housing
27 practices result in lower property values in Marin City generally, to the detriment of plaintiffs.
28

81. As a result of the unlawful housing practices of defendants as alleged herein,

1 plaintiff FHANC has suffered diversion of its scarce resources and frustration of its mission.

2 Accordingly, it is an aggrieved person within the meaning of the Fair Housing Act and California

3 Fair Employment and Housing Act.

4 82. In doing the acts of which plaintiffs complain, defendants acted recklessly, callously,
5 and willfully, with malice, and with wanton and conscious disregard for fair housing rights.

6 Accordingly, plaintiffs are entitled to punitive damages under the Fair Housing Act and the Civil
7 Rights Act of 1866.

8 83. There now exists an actual controversy between the parties regarding defendants'
9 duties under federal and state fair housing laws. Accordingly, plaintiffs are entitled to declaratory
10 relief.

11 84. Unless enjoined, defendants will continue to engage in the unlawful acts and the
12 pattern, practice, or policy of discrimination described above. Plaintiffs have no adequate remedy at
13 law. Plaintiffs are now suffering and will continue to suffer irreparable injury from defendants' acts
14 and their pattern or practice of discrimination unless relief is provided by this Court. Accordingly,
15 plaintiffs are entitled to injunctive relief.

16
17
18 **CLAIMS**

19 **FIRST CLAIM FOR RELIEF**

20 **[Fair Housing Act]**

21 ***42 U.S.C. § 3601 et seq.***

22 85. Plaintiffs reallege and incorporate by reference each paragraph previously alleged in
23 this complaint.

24 86. Defendants injured plaintiffs in violation of the federal Fair Housing Act by
25 committing the following discriminatory housing practices:

- 26 a. Otherwise making unavailable or denying housing opportunities based on race, in
27 violation of 42 U.S.C. § 3604 (a).
28

- b. For any person or other entity whose business includes engaging in residential real estate-related transactions, including the appraising of residential real properties, to discriminate against any person in making available such a transaction, or in the performance of such services, because of race, in violation of 42 U.S.C. § 3605(a); 24 C.F.R. §§ 100.110(b); 100.135 (a) and (d).
- c. Interfering with any person in the exercise or enjoyment of any right granted or protected by the Fair Housing Act, including 42 U.S.C. §§ 3604, 3605, 3606, in violation of 42 U.S.C. § 3617.
- d. Making or printing a statement with respect to the sale of a dwelling that indicates preference, limitation, or discrimination based on race, or an intention to make such a preference, limitation or discrimination, in violation of 42 U.S.C. § 3604(c).

87. Accordingly, plaintiffs are aggrieved persons under 42 U.S.C. section 3602, who are entitled to relief. 42 U.S.C. § 3613 (c).

SECOND CLAIM FOR RELIEF

[California Fair Employment and Housing Act]

Cal. Gov't Code §§ 12927, 12955 et seq.

88. Plaintiffs reallege and incorporate by reference each paragraph previously alleged in this complaint.

89. Defendants injured plaintiffs in violation of the California Fair Employment and Housing Act by committing the following discriminatory housing practices:

- a. Making, printing or publishing notices or statements with respect to the sale of a housing accommodation that indicates a preference, limitation, or discrimination based on race, in violation of Cal. Gov't Code § 12955(c);

Cal. Bus. & Prof. Code § 17200 et seq.

1
2 99. Plaintiffs reallege and incorporate by reference each paragraph previously alleged in
3 this complaint.

4 100. In acting as alleged herein, Defendants have engaged in unlawful discrimination in
5 the operation of their businesses, , and therefore have engaged in unlawful acts in violation of the
6 Unfair Competition Law. Plaintiffs suffered injury in fact and lost money as a result of those
7 unlawful acts.
8

9 101. In bringing this action for relief, Plaintiffs are acting in the interest of themselves and
10 the general public pursuant to section 17204 of the California Business and Professions Code.

11 **SEVENTH CLAIM FOR RELIEF**

12 **[Negligent Misrepresentation]**

13 *Cal. Civil Code § 1710*

14 **[Plaintiffs Tenisha Tate-Austin and Paul Austin only vs. All Defendants]**

15
16 102. Plaintiffs reallege and incorporate by reference each paragraph previously alleged in
17 this complaint.

18 103. Defendants represented to plaintiffs that they were providing an unbiased appraisal
19 of the Pacheco Street House based on all information available and in full compliance with USPAP.
20 Defendants intended for plaintiffs to rely on those representations.
21

22 104. Defendants' representations were untrue. Although one or more defendants may
23 have honestly believed that the representations were true, those defendants had no reasonable
24 grounds for believing the representations were true when they made them.

25 105. Plaintiffs reasonably relied on defendants' representations and were harmed in doing
26 so.

27 **RELIEF**

28 Wherefore, Plaintiffs pray that the Court:

- 1 a. Permanently enjoin defendants from engaging in discriminatory housing practices,
2 either directly or through others;
3 b. Order defendants to take appropriate affirmative actions to ensure that the activities
4 complained of above are not engaged in by them again;
5 c. Declare that defendants have violated the provisions of applicable federal and state
6 laws;
7 d. Award compensatory damages, statutory damages, and punitive damages to plaintiffs
8 according to proof;
9 e. Award costs of suit and reasonable attorneys' fees and expenses; and,
10 f. Grant all such other relief as the Court deems just.
11

12 **DEMAND FOR TRIAL BY JURY**

13 Pursuant to Rule 28 of the Federal Rules of Civil Procedure, plaintiffs hereby demand a jury
14 trial.
15

16 DATED: December 2, 2021

17
18 Respectfully submitted,
BRANCART & BRANCART

19 */s/ Liza Cristol-Deman*
20 Liza Cristol-Deman
lcristoldeman@brancart.com

21
22 FAIR HOUSING ADVOCATES OF
NORTHERN CALIFORNIA

23 */s/ Julia Howard-Gibbon*
24 Julia Howard-Gibbon
julia@fairhousingnorcal.org

25
26 Attorneys for Plaintiffs
27
28

CIVIL COVER SHEET

The JS-CAND 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved in its original form by the Judicial Conference of the United States in September 1974, is required for the Clerk of Court to initiate the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

(b) County of Residence of First Listed Plaintiff (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

DEFENDANTS

County of Residence of First Listed Defendant (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- 1 U.S. Government Plaintiff 3 Federal Question (U.S. Government Not a Party)
2 U.S. Government Defendant 4 Diversity (Indicate Citizenship of Parties in Item III)

Table with columns for PTF and DEF for Citizen of This State, Citizen of Another State, and Citizen or Subject of a Foreign Country.

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Large table with columns: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, HABEAS CORPUS, OTHER, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding 2 Removed from State Court 3 Remanded from Appellate Court 4 Reinstated or Reopened 5 Transferred from Another District (specify) 6 Multidistrict Litigation-Transfer 8 Multidistrict Litigation-Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

Brief description of cause:

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, Fed. R. Civ. P. DEMAND \$

CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S), IF ANY (See instructions):

JUDGE

DOCKET NUMBER

IX. DIVISIONAL ASSIGNMENT (Civil Local Rule 3-2)

(Place an "X" in One Box Only) SAN FRANCISCO/OAKLAND SAN JOSE EUREKA-MCKINLEYVILLE

DATE

SIGNATURE OF ATTORNEY OF RECORD

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS-CAND 44

Authority For Civil Cover Sheet. The JS-CAND 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved in its original form by the Judicial Conference of the United States in September 1974, is required for the Clerk of Court to initiate the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I. a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the “defendant” is the location of the tract of land involved.)
- c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section “(see attachment).”
- II. Jurisdiction.** The basis of jurisdiction is set forth under Federal Rule of Civil Procedure 8(a), which requires that jurisdictions be shown in pleadings. Place an “X” in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
- (1) United States plaintiff. Jurisdiction based on 28 USC §§ 1345 and 1348. Suits by agencies and officers of the United States are included here.
 - (2) United States defendant. When the plaintiff is suing the United States, its officers or agencies, place an “X” in this box.
 - (3) Federal question. This refers to suits under 28 USC § 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
 - (4) Diversity of citizenship. This refers to suits under 28 USC § 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS-CAND 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an “X” in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerk(s) in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.
- V. Origin.** Place an “X” in one of the six boxes.
- (1) Original Proceedings. Cases originating in the United States district courts.
 - (2) Removed from State Court. Proceedings initiated in state courts may be removed to the district courts under Title 28 USC § 1441. When the petition for removal is granted, check this box.
 - (3) Remanded from Appellate Court. Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
 - (4) Reinstated or Reopened. Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
 - (5) Transferred from Another District. For cases transferred under Title 28 USC § 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
 - (6) Multidistrict Litigation Transfer. Check this box when a multidistrict case is transferred into the district under authority of Title 28 USC § 1407. When this box is checked, do not check (5) above.
 - (8) Multidistrict Litigation Direct File. Check this box when a multidistrict litigation case is filed in the same district as the Master MDL docket. Please note that there is no Origin Code 7. Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC § 553. Brief Description: Unauthorized reception of cable service.
- VII. Requested in Complaint.** Class Action. Place an “X” in this box if you are filing a class action under Federal Rule of Civil Procedure 23. Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction. Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS-CAND 44 is used to identify related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.
- IX. Divisional Assignment.** If the Nature of Suit is under Property Rights or Prisoner Petitions or the matter is a Securities Class Action, leave this section blank. For all other cases, identify the divisional venue according to Civil Local Rule 3-2: “the county in which a substantial part of the events or omissions which give rise to the claim occurred or in which a substantial part of the property that is the subject of the action is situated.”
- Date and Attorney Signature.** Date and sign the civil cover sheet.