

Via FedEx and Email

September 21, 2010

Financial Crisis Inquiry Commission
1717 Pennsylvania Avenue, NW, Suite 800
Washington, DC 20006-4614

Attn: Sylvia Boone

Re: Field Hearing, September 23, 2010, Sacramento, California; Testimony of Mona Tawatao, Regional Counsel, Legal Services of Northern California

Dear Chairman Angelides, Vice Chairman Thomas, and members of the Commission:

My name is Mona Tawatao. I am a Regional Counsel with Legal Services of Northern California (LSNC). My job is to oversee and direct LSNC's housing and land use advocacy. On behalf of LSNC, I thank the Commission for this opportunity to testify about the impact of the financial crisis on our organization and practice and, more importantly, the devastating effect the crisis has had on the clients and communities we serve in the Sacramento region and Northern California.

Legal Services of Northern California

Founded in 1956, Legal Services of Northern California (LSNC) is a non-profit organization charged with providing no-cost civil legal services and representation to low-income persons in 23 northern California counties through eight field offices covering a geographic area the size of the state of Ohio. LSNC is headquartered in Sacramento, the primary population center in its service area. There are 25 LSNC attorneys located in Sacramento County several of whom are responsible for serving and covering areas beyond Sacramento. There is one LSNC attorney for every 7,284 people living below the poverty line. The LSNC attorney-potential client ratio is actually much larger as our program guidelines permit us to serve clients who are low-income, but earn significantly more than a poverty income. Notwithstanding this challenge, LSNC completed assistance in over 15,000 cases in 2009 while maintaining its strong impact advocacy practice to meet both the immediate and broader needs of the clients and communities we serve.

The economic crisis has had a devastating impact on our clients and has required LSNC to spread its scarce resources to their limit. Poverty and homelessness in the region have increased significantly. The financial and housing crises have drastically cut the revenues of the state and local governments resulting in cuts in essential services when demand and need has never been higher. Places of last resort such as food banks

report an unprecedented demand resulting in significantly smaller margins of inventory and supply (five days).

Consequently, in addition to rising to the challenge of assisting homeowners and tenants affected by the rampant foreclosures in our service area, particularly the Sacramento region, we are obligated to advocate on behalf our clients to ensure wherever possible that they have access to basic necessities of life despite a disappearing safety net. For example, two months ago, we were compelled to expend significant resources to obtain a court injunction to stop Sacramento County from cutting essential indigent medical care services on behalf of clients with cancer, bleeding ulcers and other conditions whose very lives depend on such services. It is against this backdrop that I provide testimony regarding the financial and foreclosure crisis and its effect on our clients and our practice.

The Foreclosure and Economic Crisis and the Sacramento region

As compared to other areas in the country, the Sacramento area has been hit particularly severely by the financial and foreclosure crises. The area, which has appeared consistently over the last three years in the top ten areas most affected by foreclosure was ranked at #7 in RealtyTrac's most recent national foreclosure report.¹ Foreclosure rates in Sacramento skyrocketed over the last several years from a record low of 117 in 2005 to nearly 18,000 in 2008.² Moreover, the Brookings Institution reports that Sacramento and six other California metro areas are among the weakest performers in the country in terms of rate of recovery from the recession.³ According to Brookings, Sacramento's anemic recovery is due to persistent job loss and the area's high unemployment rate, currently at 12.4 percent as compared to the 9.3 percent national rate.

Historic and repeated redlining and predatory lending practices targeting lower-income segregated communities of color in Sacramento over the last century have contributed significantly to the financial crises the area has experienced in the past. Studies focusing on more recent patterns of this type of discriminatory lending make a strong case for a significant causal connection between such practices and the current economic crisis.

According to a California Reinvestment Coalition (CRC) analysis of 2005 Home Mortgage Disclosure Act (HMDA) data, most of the home purchase loans made to

¹ RealtyTrac, "Foreclosure Activity Increases 4% in August," September 16, 2010, at <http://www.realtytrac.com/content/press-releases/foreclosure-activity-increases-4-percent-in-august-6041>

² Jesus Hernandez, *The Residual Impact of History: Connecting Residential Segregation, Mortgage Redlining, and the Housing Crisis*, (Presented by the Kirwan Institute for the Study of Race and Ethnicity) December 2009, p. 1.

³ See Brookings, March 10 - MetroMonitor: Tracking Economic Recession and Recovery in America's 100 Largest Metropolitan Areas, at http://www.brookings.edu/reports/2009/06_metro_monitor.aspx, pp. 5, 27.

African American (57.9%) and Latino borrowers (56.3%) were higher cost subprime loans.⁴ Similarly, 2004 HMDA data, representing the year of highest subprime lending in Sacramento, show substantially higher rates of subprime loan usage by non-whites as compared to whites.⁵ Further, a CRC analysis of lending patterns in 2006 revealed that nearly 50 percent of all loans made in neighborhoods of color were subprime. Given the higher risk associated with subprime loans, it should come as no surprise, that the rate of foreclosure in these populations and in neighborhoods that are significantly of color are disproportionately high. Indeed, “[s]ubprime borrowers are 6 to 9 times more likely to foreclose when compared to borrowers with conventional home loans.”⁶ Whole neighborhoods, such as the Oak Park and Del Paso Heights areas of Sacramento have been devastated by this dynamic. The high rates of foreclosure and property abandonment in these neighborhoods have caused property values to plummet by as much as 80 percent in some cases.⁷ These phenomena here and across the state widen the existing significant asset gap between white and non-white Californians boding ill for families of color working hard to break the cycle of poverty and realize the American dream.

Exponential rise in LSNC’s foreclosure cases between 2005 and the present⁸

LSNC has seen a literal ten-fold increase in its homeowner foreclosure caseload between 2005 and the present. This number does not include the hundreds of tenants in foreclosed properties LSNC has assisted, particularly over the last 15 months after the Protecting Tenants at Foreclosure Act became law.⁹

As the chart below shows, LSNC handled just 47 foreclosure-related homeowner cases in 2005 as compared to 487 thus far this year.

⁴ See, “Who Really Gets Higher Cost Home Loans,” California Reinvestment Coalition, December 2006

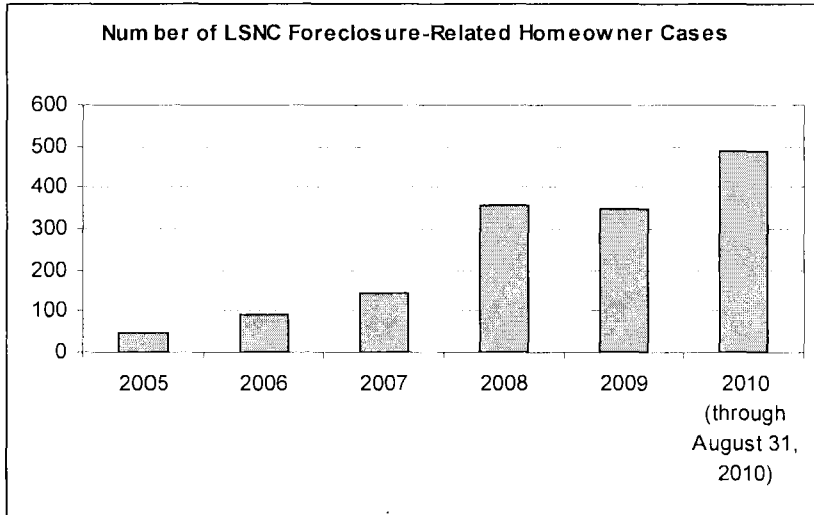
⁵ Hernandez, p. 2.

⁶ Ibid.

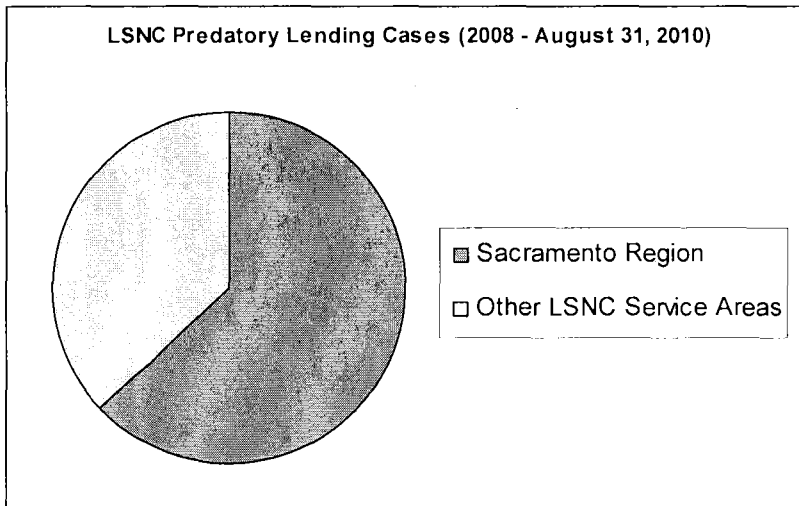
⁷ Hernandez, p. 1.

⁸ The data set forth in this section are based on an analysis of a LSNC case database subset of cases closed between 2005 and August 31, 2010 identified as cases in which the client is a homeowner and the issue for which the client was seeking assistance was foreclosure-related.

⁹ In 2009, it is estimated that in Sacramento, Placer, Solano and Butte counties, all served by LSNC nearly 21,000 renters were in foreclosed rental units, with nearly 14,000 in Sacramento County alone. Tenants Together, *2010 Report: California Renters in the Foreclosure Crisis*, May 2010, pp. 13 – 14.



Of the cases involving predatory lending LSNC handled between January 1, 2008 and the present, nearly two-thirds (63 percent) are from the Sacramento region¹⁰, the primary population center of LSNC's service area.



Most of LSNC's homeowner foreclosure cases are from the Sacramento region, however notably, approximately one in five are from Solano County containing the Vallejo-Fairfield metropolitan area ranked at #9 nationally for foreclosures by RealtyTrac. Seniors are overwhelmingly represented in LSNC's foreclosure cases likely due to the fact that LSNC's Senior Legal Hotline and other senior counseling programs that work closely with LSNC and primarily assist persons over the age of 60. This does not take away from the fact that seniors are disproportionately targeted by predatory lenders and mortgage scam artists and thus disproportionately affected by foreclosure. African-

¹⁰ The Sacramento region refers to Sacramento and most or all of El Dorado, Placer, and Yolo counties.

Americans and Latinos are also significantly represented in LSNC's homeowner foreclosure case statistics.

Prevalent problems among LSNC homeowner clients: Predatory lending, mortgage rescue scams and ineffectual modification programs

Predatory lending

Consistent with the data and studies cited above, since the onset of the foreclosure crisis LSNC has seen the targeting and a disproportionate negative impact on households of color and also seniors, people with disabilities and persons with limited English proficiency. Until recently, however, due to the time intensive nature of prosecuting predatory lending cases, stretched resources and relative lack of in-house expertise, LSNC's involvement in anti-predatory lending litigation and advocacy had been limited. The current crisis has greatly broadened and worsened the effects of predatory and sub-prime in Sacramento causing the further ravaging of Sacramento's disenfranchised neighborhoods. Consequently, in early 2008, LSNC decided to devote significant resources to obtain training, develop partnerships and take on anti-predatory lending cases. Due to the aforementioned resource constraints and time-intensive nature of this type of work, LSNC must prioritize regarding the the predatory cases it can take for representation, considering, among other things, the strength of the case and facts, the hardship to the client and whether the property is in a neighborhood in which LSNC is already engaged in community development improvement advocacy, etc.. Thus, at any given time LSNC can only handle a handful (four to six) predatory lending cases.

To understand the resources required to aggressively pursue these types of cases, one need only look at the numbers of hours expended thus far on LSNC's five pending predatory lending cases. They range from 260 hours (representing an attorney working one and two-thirds months full time) to over 1,000 hours (over six months full time), not counting all of the pro bono attorney time expended.¹¹ It bears mentioning that it is not uncommon for the servicers and banks and their counsel to purposefully and aggressively "paper" our clients, thus requiring time consuming labor-intensive responses.

Of the plaintiffs (our clients) in the five pending cases, all filed in 2008 or 2009, three are in the Sacramento region, one is in Butte County and one is in Ukiah (Mendocino County). Three of the five plaintiffs are seniors and all five are frail or have significant disabilities and/or health challenges. The cases share similar fact patterns with the borrower needing or being aggressively pressured to take out a loan for repairs or cash due to financial difficulties and being pressured into signing loan documents with predatory terms such as exceedingly high interest rates, balloon payments and upward adjusting payments. Stated or falsified income as the basis for the loan is prevalent in the fact patterns. In four of the five cases, the borrowers owned their homes outright prior to falling victim to the predatory activity. Claims common to these cases include fraud,

¹¹ The contributions of the private bar, specifically individual pro bono attorneys has been invaluable to our clients and to LSNC in the prosecution of these predatory lending cases.

elder abuse and violations of the federal Truth in Lending Act, California's anti-predatory lending law (as set forth in California Finance Code Section 4970), the Homeownership and Equity Preservation Act. Wells Fargo/Wachovia and Instant Mortgage Lending are among the defendants in these cases.

I summarize one of the cases here to illustrate a typical predatory lending scenario. Mrs. Cole¹², age 66, has owned her home since 1979. After her husband died in 2003, her income fell to just \$913 per month in social security payments. It was a struggle to make ends meet and she had reached the near end of her savings. Mrs. Cole received a reverse mortgage that enabled her to remain in her home without mortgage payments for the rest of her life. Two years later, Mrs. Cole began to get unsolicited calls from someone who represented himself as a broker. This "broker" through high pressure tactics and misrepresentation, convinced Mrs. Cole that her reverse mortgages was too risky, that the lender could call in the loan at any time and that she should enter into a new adjustable rate mortgage agreement serviced by a major institution. Subsequently, using falsified income, without giving Mrs. Cole time to read through the loan papers and sending a notary to Mrs. Cole's home, the broker persuaded her to sign the documents. The loan was a pay-option plan adjustable rate mortgage with three payment options, the lowest of which actually resulted in negative amortization of her home. Mrs. Cole opted for the lowest monthly payment, however ultimately she could not make the monthly payments and foreclosure ensued.

Mortgage rescue scams

Among the worst foreclosure-related cases we see involve mortgage rescue scam operators that persuade homeowners, usually already victimized by predatory lending practices, to purchase their services. The misconduct ranges from simply taking the homeowners' last bit of savings and not performing any of the services promises to defrauding homeowners into signing over their homes. Lovey Hollis' case is illustrative.

Mrs. Hollis is a 79 year old African-American woman who was active in the anti-segregation movement in Sacramento in the 1960s. Four years ago she and her now late husband owned their home in Land Park free and clear, but they needed a larger place to accommodate her husband's disabilities. They purchased her present home for over \$300,000 with a near 50 percent down payment. Unfortunately, the home loan was a pick-a-pay loan obtained through apparently false retirement income which the lender failed to verify. The monthly payment adjustments, confusingly described in the loan documents, rose from \$546 to over \$1,400 in five years which is now. Mrs. Hollis' income is just \$1,599 per month. Mrs. Hollis struggled to make the payments only to be approached by a so-called loan modification service company. This company charged Mrs. Hollis \$4,000 for its "services", took her late husband's 2001 Mercury Grand Marquis as part of the payment, and advised her not to make any more mortgage payments. Consequently, Mrs. Hollis' home was sold in foreclosure earlier this year.

¹² I use a pseudonym here to conceal this client's identity.

Mrs. Hollis' is working with LSNC to prevent her eviction, from which she has received a temporary reprieve, and to see if she can get her home back.

HAMP is not working

From the many loan modification cases LSNC has handled, particularly over the last year, it appears that most of these cases involve clients experiencing problems with the federal Making Home Affordable Program (HAMP) or other purported loan modification programs. Based on our experience, we must conclude that the servicers are generally unhelpful and in fact, often hinder permanent modification, and that the vast majority of HAMP and other modification cases we assist with do not result in permanent modification.

I surveyed two financial counseling clinics in LSNC's service area regarding clients with modification programs with the following results:

Lake County Senior Law Project – Loan Counseling Program.¹³ This program is funded by a small grant to serve rural Lake County located 65 miles Northwest of Sacramento. It is staffed by one person on a part time basis. There is a significant need for senior services of all types and virtually no other loan or financial counseling services in the area. The grant funding the program permits the staff person, who happens to be an attorney, to engage in negotiation only, and not litigation, on behalf of the program clients. Since the project's inception in November 2009, the program has handled 10 cases. The grant budget is based on a 5 hours per case formula, but due to the myriad problems the staff person encounters with servicers in HAMP, he is generally required to spend more than 10 hours on each case.

Staff reports that in every case, the client's HAMP paperwork, including income and hardship information had to be resubmitted, in some cases multiple times. In half the cases, when the borrower's submission was "out of date" according to the servicer, the servicer failed to inform the borrower of the nature of the problem, in some cases, for several months. In several cases, each phone call to the servicer resulted in a 30 minute delay just to establish that the program staff person was authorized to receive information from the servicer on the client's behalf despite the fact that the servicer had a signed authorization on file. The "verification" process often required re-submission of the authorization form. Just one of the cases has resulted in a permanent modification and only after the local Congressman intervened on the borrower's behalf. This is despite the fact that in most of the cases, by the program staff person's estimation, the borrower was a good candidate for permanent modification under HAMP.

¹³ These survey results are based on interviews with Senior Law Project program staff Andrew Rossoff taken during the month of September, 2010.

Senior Legal Hotline.¹⁴ The Hotline is a special program of LSNC. While based in Sacramento, until recently, the Hotline operated a statewide phone-based HUD-approved loan counseling program for two years through which staff were able to assist seniors with loan modifications and also to address predatory lending practices. Designated hotline staff continue to provide such services on a much more limited scale though the Hotline has handled approximately 200 foreclosure-related cases since the beginning of January 2010. To the extent the Hotline does significant follow-up on cases, it prioritizes cases taking only those that are stuck most deeply in the HAMP or other modification program mire and involving other extenuating circumstances, e.g. when grandparents are serving as guardians of grandchildren and the whole family is about to lose or has lost their home in foreclosure due to a modification snafu.

Since January 2010, program staff is only aware of a handful of successful permanent modification stories and estimates that well below 10 percent of the modification cases it has seen make it through the process successfully.

Among the most common HAMP or modification issues that Hotline clients and staff face when dealing with servicers in modification negotiations are: 1) delays in service due to alleged lack of authorization to give information to a third party; 2) getting a different servicer staff person with each phone call, each often providing different or conflicting information from other servicer staff, and inability to get referred to a servicer negotiator; and 3) non-responsive negotiators reluctant to give contact information, a problem particularly harsh for seniors who disproportionately lack electronic access and must therefore sit by or on the phone for hours waiting for calls or information. The Hotline has also noticed a recent trend among clients simply seeking a short sale, an outcome which offers the modest benefits of closure to a very stressful situation and a less harmful effect on the borrowers' credit compared to foreclosure. Specifically, servicers provide such poor service and engage in lengthy unexplained delays in processing short sale approval that prospective buyers lose patience and potential deals fall through.

According to a recent survey by the California Reinvestment Coalition, the types of bad experiences with servicers in the HAMP program described above are similar to those experienced by housing counselors and advocates across the state.¹⁵

Both the Lake County program and Hotline report the following servicers as in their modification cases: Aurora Loan Services, Bank of America, Chase, CitiMortgage, and Wells Fargo/Wachovia.

Both programs also report cases in which borrowers were in the midst of a modification having made payments according to the trial agreement with the servicer

¹⁴ This survey was completed by interviewing Senior Legal Hotline attorney and counselor Michelle Saterlee during the month of September 2010.

¹⁵ See California Reinvestment Coalition, Community Reinvestment News, *Survey Says: HAMP Not Working*, Summer 2010 or <http://www.calreinvest.org/blog>.

and without proper notice; the home is sold in foreclosure out from under them. This happened to couple Bernard Mose and Nia Luvalo of Sacramento.

Mr. Mose purchased Ms. Luvalo's childhood home in April 2008 from a family member with 10 percent down and at a fixed rate. The couple and their son also took in several of Ms. Luvalo's family members who were experiencing a family crisis in order to provide the children with stability and a roof over their head. The loan was owned by Fannie Mae and serviced by CitiMortgage. Mr. Mose lost his primary job in May 2009 and fell behind on the mortgage payments. He received a Notice of Default and the trustee sale was set for the end of October 2009. Mr. Mose applied for and CitiMortgage offered a HAMP Trial Period Plan commencing in January 2010 under which Mr. Mose made the payments that were required based on the HAMP agreement and CitiMortgage staff's representations. The couple was concerned when, during the trial period, they saw persons taking photos of their home. The servicer staff, always different when Mr. Mose called, reassured them that all was well. Then, at the end of July, without prior notice, Fannie Mae informed the couple that their home had already gone through foreclosure and it now owned their home. Just a few days later, CitiMortgage sent Mr. Moses a permanent modification offer for a home it had already foreclosed on. Despite requests, neither Fannie Mae nor CitiMortgage have taken steps toward unwinding the foreclosure sale and honoring the permanent modification agreement.

The majority of LSNC's work regarding HAMP and other modification programs has primarily been in the form of counseling and negotiating on behalf of clients. For cases that require and warrant more formal advocacy, LSNC is contemplating employing various litigation strategies that have emerged around the country given the universal problems borrowers are experiencing with modification programs.

The colossal amount of time borrowers and their advocates spend on simply holding servicers to their obligation to adhere to the HAMP procedures and provide borrowers with the proper service, let alone modify their loans when borrowers meet the HAMP criteria, strikes me as absurd. In many cases, it is no wonder that borrowers turn to litigation or other strategies to hold onto their homes. Would it not be more efficient and sensible to create a better system and make sure that it works properly?

Despite the dismal HAMP statistics, I have heard the program spun as a success because it has stopped the rate of foreclosures. This kind of statement offers little comfort to Mr. Mose and his family and the thousands of other Californians like them in modification limbo worried about growing arrearages who believed what they were told about HAMP: that it would be a means for those who qualify to modify their loans and stay in their homes.

Conclusion

In my capacity at LSNC, I am the first to advocate for more resources for meaningful legal and counseling assistance to clients experiencing the problems described above. And, I am in constant awe of my colleagues, our partners in the private

bar and others who work heroically to help our clients avoid the loss of their homes, or oftentimes, just provide them with some closure to a foreclosure or predatory lending ordeal. That said there can be no meaningful response to the crisis unless fundamental policies around banking and lending practices are fixed and changed and existing laws are fully enforced to address the needs of and protect struggling Sacramento homeowners and their counterparts around the state and country. Such measures might include facilitating reverse mortgages with appropriate safeguards for seniors, stronger anti-predatory lending enforcement and anti-segregation lending policies that further housing and regional equity, programs that include meaningful principal reduction and transparent, accountable and functional modification programs.

Thank you for the opportunity to provide this testimony. Low-income people and families in Sacramento and northern California are counting on the Commission to hear their stories and include their perspectives in a report that will lead to meaningful changes and improvements in the financial and housing system for all.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Mona Tawatao', with a long horizontal flourish extending to the right.

Mona Tawatao
Regional Counsel, Legal Services of Northern California