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CENTRAL DIST. OF CALIF.
LOS ANGELES

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19 UNITED STATES DISTRICT COURT
20 CENTRAL DISTRICT OF CALIFORNIA

21 UNITED STATES OF AMERICA,

22 Plaintiff,

23 v.

24 LUTHER BURBANK SAVINGS,

25 Defendant.
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27
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CV12-7809

JAK
(FMDx)

COMPLAINT

1 Plaintiff, United States of America, alleges:

2 **INTRODUCTION**

3 1. This action is brought by the United States to enforce the provisions of the
4 Fair Housing Act, 42 U.S.C. §§ 3601-3619 (“FHA”), and the Equal Credit Opportunity
5 Act, 15 U.S.C. §§ 1691-1691f (“ECOA”).
6

7 2. For five years, from 2006 through mid-2011, Defendant Luther Burbank
8 Savings (“Luther” or “Defendant”) enforced a \$400,000 minimum loan amount policy
9 for its wholesale single-family residential mortgage loan program. This policy or
10 practice had a disparate impact on the basis of race and national origin and violates the
11 FHA and ECOA.
12

13 3. From 2006 through 2010, Luther originated very few single-family
14 residential mortgage loans in majority-minority census tracts (with a non-white
15 population greater than 50%)¹ throughout California. For example, from 2006 through
16 2010, Luther originated only 5.2% of its single-family residential mortgage loans in
17 majority-minority census tracts in the greater Los Angeles area. During the same time
18 period, other prime lenders in this area, which made a similar volume of single-family
19 residential loans as Luther, originated 41.7% of their single-family residential mortgage
20 loans in majority-minority census tracts.
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26 ¹ Most of the majority-minority census tracts in California are composed of majority-African-
27 American and Hispanic tracts. For example, according to the 2010 U.S. Census, approximately 70%
28 of the majority-minority census tracts in the greater Los Angeles area have a majority African-
American and Hispanic population.

1 4. From 2006 through 2010, Luther originated very few single-family
2 residential mortgage loans to African-American or Hispanic borrowers throughout
3 California. In the greater Los Angeles area, for example, only 5.8% of Luther's single-
4 family residential mortgage loans were made to African-American and Hispanic
5 borrowers. During that same time period, other prime lenders in the greater Los
6 Angeles area, which made a similar volume of single-family residential loans as Luther,
7 originated 31.8% of their single-family residential mortgage loans to African-American
8 or Hispanic borrowers.
9

10
11 5. Luther continued its \$400,000 minimum loan amount policy in the face of
12 its knowledge that its low level of lending to African-American and Hispanic borrowers,
13 and in majority-minority census tracts, was attributable to the policy. Luther continued
14 its minimum loan amount policy until June 2011, more than a year after its regulator
15 identified the policy or practice as potentially discriminatory and referred the issue to
16 the Department of Justice pursuant to ECOA.
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19 6. Since June 2011, Luther has operated with a \$20,000 minimum loan
20 amount policy for single-family residential mortgage loans that has not produced
21 adverse consequences to its lending business.
22

23 7. This Court has jurisdiction of this action pursuant to 28 U.S.C. § 1345, 42
24 U.S.C. § 3614, and 15 U.S.C. § 1691e(h). Venue is appropriate pursuant to 28 U.S.C.
25 § 1391.
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PARTIES

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2 8. Luther is a federally-chartered stock institution headquartered in Santa
3 Rosa, California. As of June 30, 2012, Luther had \$3.7 billion in assets. Luther
4 previously was subject to the regulatory authority of the Office of Thrift Supervision
5 (“OTS”). Since July 21, 2011, Luther has been subject to the regulatory authority of the
6 Office of the Comptroller of the Currency (“OCC”).
7

8
9 9. Luther’s principal activity is real estate lending, with an emphasis on
10 apartment and commercial real estate loans.² Luther also offers 3- and 5-year hybrid
11 adjustable-rate single-family (defined by the Home Mortgage Disclosure Act
12 (“HMDA”), 28 U.S.C. §§ 2801-2810, as dwellings with 1-4 units) residential mortgage
13 loans through its wholesale and retail channels. All references to “single-family
14 residential loans” in this Complaint refer to owner-occupied, single-family residential
15 mortgage loans.
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18 10. Luther is subject to the federal laws governing fair lending, including the
19 FHA and ECOA and their respective implementing regulations, the fair housing
20 regulations of the Department of Housing and Urban Development, 24 C.F.R. § 100.1,
21 *et seq.*, and Regulation B of the Consumer Financial Protection Bureau, 12 C.F.R.
22 § 1002.1, *et seq.* The FHA and ECOA prohibit financial institutions from
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27 ² Defendant’s multi-family lending program is not at issue in this Complaint.
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1 discriminating on the basis of, *inter alia*, race and national origin in their mortgage
2 lending practices.

3 FACTUAL ALLEGATIONS

4
5 11. Beginning in 2009, the OTS conducted an examination of Luther's
6 wholesale single-family residential lending in the Los Angeles-Long Beach-Riverside
7 Combined Metropolitan Statistical Area ("Los Angeles CMSA") and the San Jose-San
8 Francisco-Oakland CMSA to evaluate compliance with the FHA and ECOA.³ During
9 the examination, the OTS determined that Luther had established a minimum loan
10 amount of \$400,000 in Southern California and \$800,000 in Northern California (later
11 reduced to \$400,000) for its wholesale single-family residential lending program. Based
12 on analysis of Luther's 2008 applications and originations for single-family residential
13 loans, the OTS found reason to believe that Luther's minimum loan amount policy had a
14 disparate impact in violation of the FHA and ECOA. On March 8, 2010, following the
15 examination described above, the OTS referred the matter to the Attorney General for
16 appropriate action pursuant to 15 U.S.C. § 1691e(g).
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21 12. Luther operates throughout the state of California. From 2006 through
22 2010, according to data reported pursuant to HMDA, Defendant originated 584 single-
23 family residential loans totaling \$793.2 million secured by single-family residential
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27 ³ For purposes of this Complaint, all metropolitan statistical areas cited herein use the definitions
28 provided by the Office of Management and Budget in December 2009.

1 property in California.⁴ Approximately 62.8% of Defendant's single-family residential
2 loans originated from 2006 through 2010 were secured by properties located in the Los
3 Angeles CMSA. Luther originated 18.5% of its single-family residential loans in the
4 San Diego-Carlsbad-San Marcos Metropolitan Statistical Area ("San Diego MSA");
5 San Diego-Carlsbad-San Marcos Metropolitan Statistical Area ("San Diego MSA");
6 6.5% in the San Francisco-San Mateo-Redwood City Metropolitan Division ("San
7 Francisco MD"); and 6.3% in the Santa Barbara-Santa Maria-Goleta MSA ("Santa
8 Barbara MSA"). Collectively, Luther originated about 94% of its single-family
9 residential loans in these areas, which are referred to herein as "the primary areas in
10 California in which Luther operated from 2006 through 2010."

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13 13. From 2006 through 2010, according to data maintained by Luther, the bank
14 originated 94% of its single-family residential loans through its wholesale channel and
15 6% of such loans through its retail channel.⁵ Luther arranged its single-family
16 residential wholesale loans through a network of mortgage brokers. Like other
17 wholesale lenders, Luther communicated to brokers the particular terms on which it was
18 willing to make loans, including acceptable interest rates, points, and loan amounts for
19 its loan products, through rate sheets that it distributed periodically. From 2006, when it
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23 ⁴ The data and analyses described in paragraphs 12-17 of this complaint are based on data publicly
reported by Luther and other residential mortgage lenders pursuant to HMDA.

24 ⁵ From 2006 through 2010, Luther had a formal \$20,000 minimum loan amount policy for its retail
25 channel. According to data maintained by the bank, Luther's average retail loan amount from 2006
26 through 2010 was \$499,750, substantially higher than the threshold imposed by the minimum loan
27 amount policy in the wholesale channel. During this time period, Luther made only 10 single-family
residential loans less than \$400,000 through its retail channel. As of June 2011, the \$20,000 policy
now applies to the bank's retail and wholesale single-family residential lending program.

1 created its single-family residential loan unit, until mid-2011, Luther required a
2 minimum loan amount of at least \$400,000 for all single-family residential loans
3 originated through its wholesale channel (referred to herein as the “minimum loan
4 amount policy”). During this time period, Luther’s rate sheets specified that the price
5 range for its wholesale single-family residential mortgage program was \$400,000 to
6 \$5,000,000.
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9 14. Statistical analyses of Luther’s single-family residential loan originations
10 from 2006 through 2010 show that Luther’s \$400,000 minimum loan amount policy had
11 a disparate impact both on African-American and Hispanic borrowers and on the
12 residents of majority-minority census tracts in the primary areas in California in which
13 Luther operated.⁶ These analyses demonstrate statistically significant⁷ disparities in the
14 origination of loans to African-American and Hispanic borrowers and residents of
15 majority-minority census tracts when the primary areas in which Luther operated are
16 combined and in separate analyses of those primary areas.
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19 15. From 2006 through 2010, Luther originated 550 single-family residential
20 loans in the primary areas of California in which it operated through its wholesale and
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23 ⁶ Separate statistical analyses of Luther’s *applications* in the primary areas of California in which
24 Luther operated from 2006 through 2010 also demonstrate a statistically significant failure by Luther
25 to generate applications from African-American and Hispanic borrowers and majority-minority census
26 tracts at a level equal to its peer lenders.

27 ⁷ Statistical significance is a measure of probability that an observed outcome would not have
28 occurred by chance. As used in this Complaint, an outcome is statistically significant if the probability
that it could have occurred by chance is less than 5%.

1 retail channels. Only 27, or 4.9%, of these loans were originated in majority-minority
 2 census tracts. During that same time period, other prime lenders in these areas, which
 3 made a similar volume of single-family residential loans as Luther, originated
 4 approximately 38.7% of their loans – a proportion more than seven times as high as
 5 Luther – from majority-minority census tracts. These disparities are statistically
 6 significant. The statistically significant disparities in each of the primary areas are
 7 summarized in Table 1:
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 9

10 **Table 1: Luther vs. Peer Group (HMDA Originations from 2006 through 2010 in**
 11 **Majority-Minority Tracts)**

Geographic Area	Similar Prime Lenders	Luther
	Loans in Majority-Minority Tracts	Loans in Majority-Minority Tracts
Los Angeles CMSA	41.7%	5.2%
San Diego MSA	28.8%	0.9%
San Francisco MD	29.7%	10.5%

17 16. From 2006 through 2010, Luther originated 380 single-family residential
 18 loans in the primary areas of California in which it operated for which the race or
 19 ethnicity of the borrower was identified. Of these, Luther originated 85% to white
 20 borrowers and 5.5% to African-American and Hispanic borrowers. During that same
 21 time period, other prime lenders in these areas, which made a similar volume of single-
 22 family residential loans as Luther, originated approximately 30.4% of their loans – a
 23 proportion more than five times as high as Luther – to African-American and Hispanic
 24 borrowers. These disparities are statistically significant. The statistically significant
 25 disparities in each of the primary areas are summarized in Table 2:
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1 **Table 2: Luther vs. Peer Group (HMDA Originations from 2006 through 2010 to**
 2 **African-American and Hispanic Borrowers)**

Geographic Area	Similar-Peers Lenders Loans to African-American and Hispanic Borrowers	Luther Loans to African-American and Hispanic Borrowers
Los Angeles CMSA	34.2%	5.8%
San Diego MSA	21.1%	6.3%
Santa Barbara MSA	24.8%	0%

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9 17. Approximately 33% of the single-family residential loans originated to
10 white borrowers from 2006 through 2010 in the primary areas in California in which
11 Luther operated were above \$400,000, while only 23% of the loans originated to
12 African-American borrowers and 20% of the loans originated to Hispanic borrowers
13 exceeded \$400,000. Additionally, approximately 36% of the single-family residential
14 loans originated in majority-white census tracts from 2006 through 2010 in the primary
15 areas in California in which Luther operated were above \$400,000, while only 21% of
16 the loans originated in majority-minority census tracts in these areas exceeded
17 \$400,000.
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21 18. Luther has been aware of its low level of lending to minorities for years. In
22 2009, Defendant's Chief Residential Lending Officer prepared an assessment of
23 Luther's 2008 single-family residential lending activity. The report stated that in 2008,
24 Luther originated only one loan to an African-American borrower and three loans to
25 Hispanic borrowers from all areas in which Defendant operated that year. The report
26 acknowledged that Luther had a low number of minority applicants and concluded that
27
28

1 Luther needed to increase its applications to minorities. Luther conducted follow-up
2 assessments that analyzed its lending to minorities in 2009 and 2010. Both follow-up
3 assessments found no improvement in the number of minority originations from the
4 previous assessments and once again concluded that Luther needed to increase its
5 minority lending. These assessments also acknowledged that Luther's multi-family
6 lending program must be analyzed separately from its single-family residential lending
7 program, because of the numerous dissimilar components to each group's business
8 process. None of these assessments referenced the minimum loan amount policy or
9 considered whether the policy has played a role in its low level of lending to minorities
10 and in majority-minority census tracts. Luther did not terminate its \$400,000 minimum
11 loan amount policy until June 2011.
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15 19. Luther's \$400,000 minimum loan amount policy has resulted in low levels
16 of single-family residential lending to African-American and Hispanic borrowers and in
17 majority-minority census tracts. This \$400,000 minimum loan amount policy has had a
18 disparate impact on African-American and Hispanic borrowers and residents of
19 majority-minority census tracts in the primary areas in California in which Luther
20 operated from 2006 through 2010. This policy and practice is not justified by business
21 necessity or legitimate business considerations.
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1 **FAIR HOUSING ACT AND EQUAL CREDIT OPPORTUNITY ACT**
2 **VIOLATIONS**

3 20. Defendant's actions as alleged herein constitute:

4 a. Discrimination on the basis of race or national origin in making available,
5 or in the terms or conditions of residential real estate-related transactions, in violation of
6 the FHA, 42 U.S.C. § 3605(a);

7
8 b. The making unavailable or denial of dwellings to persons because of race
9 or national origin in violation of the FHA, 42 U.S.C. § 3604(a);

10
11 c. Discrimination on the basis of race or national origin in the terms,
12 conditions, or privileges of the provision of services or facilities in connection with the
13 sale or rental of dwellings, in violation of the FHA, 42 U.S.C. § 3604(b); and

14
15 d. Discrimination against applicants with respect to credit transactions, on the
16 basis of race or national origin in violation of ECOA, 15 U.S.C. § 1691(a)(1).

17 21. Defendant's policy and practice as alleged herein constitutes:

18 a. A pattern or practice of resistance to the full enjoyment of rights secured by
19 the FHA, 42 U.S.C. §§ 3601 *et seq.*, and ECOA, 15 U.S.C. § 1691e(h); and

20 b. A denial of rights granted by the FHA to a group of persons that raises an
21 issue of general public importance.

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24 22. Persons who have been victims of Defendant's discriminatory policy and
25 practice are aggrieved persons as defined in 42 U.S.C. § 3602(i) and as described in
26 ECOA, 15 U.S.C. § 1691(e)(i), and have suffered damages as a result of Defendant's
27 conduct in violation of both the FHA and ECOA.
28

1 23. The discriminatory policy and practice of Defendant has been intentional
2 and willful, and implemented with reckless disregard for the rights of African-American
3 and Hispanic borrowers and residents of majority-minority census tracts in the primary
4 areas of California in which the bank operates.
5

6 **RELIEF REQUESTED**

7 WHEREFORE, the United States prays that the Court enter an ORDER that:

8
9 (1) Declares that the policies and practices of Defendant constitute a violation
10 of the FHA and ECOA;

11 (2) Enjoins Defendant, its agents, employees, and successors, and all other
12 persons in active concert or participation with Defendant, from:
13

14 (A) Discriminating on the basis of race or national origin with respect to
15 making available, or in the terms or conditions of, a residential real estate-related
16 transaction, or the sale of a dwelling;
17

18 (B) Discriminating on the basis of race or national origin against any
19 person with respect to any aspect of a credit transaction;
20

21 (C) Failing or refusing to take such affirmative steps as may be
22 necessary to restore, as nearly as practicable, the victims of Defendant's unlawful
23 practices to the position they would be in but for the discriminatory conduct;
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25 (D) Failing or refusing to take such affirmative steps as may be
26 necessary to prevent the recurrence of any discriminatory conduct in the future
27 and to eliminate, to the extent practicable, the effects of Defendant's unlawful
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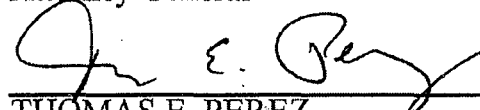
1 practices; and to implement policies and procedures to ensure that all borrowers
2 have an equal opportunity to seek and obtain loans on a non-discriminatory basis
3 and with non-discriminatory terms and conditions;

4
5 (3) Awards monetary damages to all the victims of Defendant's discriminatory
6 policies and practices for the injuries caused by Defendant, pursuant to 42 U.S.C.
7 § 3614(d)(1)(B) and 15 U.S.C. § 1691e(h); and

8
9 (4) Assesses a civil penalty against Defendant in an amount authorized by 42
10 U.S.C. § 3614(d)(1)(C), in order to vindicate the public interest.

11 The United States further prays for such additional relief as the interests of justice
12 may require.

14 ERIC H. HOLDER, JR.
Attorney General

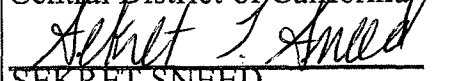



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