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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA

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UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
 v.)
)
CHEVY CHASE BANK, F.S.B.,)
through its Successor in Interest,)
)
Defendant.)
_____)

No. 1:13-cv-1214
(AJT/JFA)

COMPLAINT

The United States of America alleges:

INTRODUCTION

1. The United States brings this action to remedy discrimination by Chevy Chase Bank, F.S.B. ("Chevy Chase Bank") against more than 3,100 African-American and Hispanic residential mortgage borrowers. This action is brought to enforce the Fair Housing Act, 42 U.S.C. §§ 3601-3619 (FHA), and the Equal Credit Opportunity Act, 15 U.S.C. §§ 1691-1691f (ECOA), and to redress discrimination based on race and national origin engaged in by Chevy Chase Bank between 2006 and 2009. Capital One, N.A. ("Capital One"), purchased Chevy Chase Bank in 2009, and as its successor in interest is responsible for remedying FHA and ECOA violations by Chevy Chase Bank and its subsidiaries.

2. From 2006 to 2009, Chevy Chase Bank annually originated between 4,000 and 6,500 mortgage loans through its retail loan officers, making it one of the Washington, D.C. region's largest mortgage lenders in each of those years. Chevy Chase Bank originated these retail loans through its subsidiaries, Chevy Chase Mortgage and B.F. Saul Mortgage Company. During

2006 and 2007, Chevy Chase Bank also originated between 5,000 and 6,000 loans throughout the country through its wholesale lending channels using mortgage brokers.

3. As a result of Chevy Chase Bank's policies and practices, African-American and Hispanic borrowers paid Chevy Chase Bank higher loan interest rates, fees and costs for their home mortgages than non-Hispanic White borrowers ("White borrowers"), not based on their creditworthiness or other objective criteria related to borrower risk, but because of their race or national origin.

4. Chevy Chase Bank's discrimination increased loan prices for many of the African-American and Hispanic borrowers who obtained loans between 2006 and 2009 through offices operated in Maryland and Virginia by Chevy Chase Bank's subsidiaries, B.F. Saul Mortgage Company and Chevy Chase Mortgage. Chevy Chase Bank's discrimination also increased loan prices for many of the African-American and Hispanic borrowers located across the United States who obtained loans between 2006 and 2007 through Chevy Chase Bank's national network of mortgage brokers.

5. The victims of Chevy Chase Bank's discrimination were located in geographic markets spread across the country, with a concentration located in the Washington-Arlington-Alexandria DC-VA-MD-WV metropolitan area. Approximately 44% of the victims are African-American and 56% are Hispanic.

6. While it knew that African-American and Hispanic borrowers were being charged higher interest rates, fees and costs than similarly-situated White borrowers, Chevy Chase Bank maintained compensation systems that created financial incentives for loan officers to charge

“overages” and to minimize “underages.” These financial incentives resulted in discrimination against African-American and Hispanic borrowers.

7. An “overage” is an additional fee charged to borrowers above the rate-sheet price of mortgage loans. An overage raises the total cost to borrowers above what they would pay if the loans were closed using the prices that were set based on the borrowers’ objective credit characteristics. An “underage” is a price concession that reduces the rate-sheet price of a loan. An underage lowers the total cost to borrowers below what they would pay if the loans were closed using the prices that were set based on the borrowers’ objective credit characteristics.

8. The higher interest rates, fees and costs Chevy Chase Bank charged to African-American and Hispanic families – whether paid as higher up-front fees or higher interest rates – put increased economic burdens on those families.

9. The United States brings this lawsuit to hold Capital One accountable for Chevy Chase Bank’s serious violations of law and remedy the substantial and widespread harmful consequences of Chevy Chase Bank’s discriminatory lending policies and practices.

10. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1345, 42 U.S.C. § 3614, and 15 U.S.C. § 1691e(h). Venue is appropriate pursuant to 28 U.S.C. § 1391.

DEFENDANT

11. Chevy Chase Bank was one of the leading mortgage lenders in the Washington, DC region,¹ with its principal place of business at 7926 Jones Branch Drive, McLean, Virginia. During the period of time relevant to the events at issue in this Complaint, Chevy Chase Bank was subject to the regulatory authority of the Office of Thrift Supervision.

¹ Chevy Chase Bank was in the top 5% of mortgage lenders in the Washington, D.C. primary metropolitan statistical area (“PMSA”) in 2006 by number of loan originations. In 2007 and 2008, Chevy Chase Bank was in the top 3% of mortgage lenders in the Washington, D.C. PMSA by number of loan originations.

12. Chevy Chase Bank was subject to federal laws prohibiting lending discrimination, including the FHA and the ECOA and the regulations promulgated under each of those laws. The FHA and the ECOA prohibit lenders from discriminating on the basis of, *inter alia*, race or national origin in their lending practices. Charging higher prices for loans on the basis of race or national origin, including charging higher discretionary fees at the time of origination and charging higher rates of interest, is a discriminatory lending practice prohibited by the FHA and the ECOA.

13. Chevy Chase Bank was a “creditor” within the meaning of the ECOA, 15 U.S.C. § 1691a(e), and it engaged in “residential real estate-related transactions” within the meaning of the FHA, 42 U.S.C. § 3605. Chevy Chase Bank also was subject to the Home Mortgage Disclosure Act (HMDA), 12 U.S.C. § 2803, which requires mortgage lenders to collect and maintain data on the race and national origin of each applicant for a home loan.

REFERRAL FROM BANK REGULATORY AGENCY

14. In February 2009, Capital One purchased Chevy Chase Bank. Capital One is a wholly-owned subsidiary of Capital One Financial Corporation, a member of the Federal Reserve System. In connection with the merger, the Office of the Comptroller of the Currency (OCC), which regulated Capital One, conducted a pre-conversion examination, which revealed various deficiencies in Chevy Chase Bank’s fair lending program. Accordingly, the OCC directed Capital One to: (1) conduct a fair lending analysis of Chevy Chase Bank’s 2006, 2007 and 2008 home mortgage lending activity; (2) conduct an assessment of Chevy Chase Bank’s fair lending risk; and (3) develop action plans to address any significant fair lending findings. Capital One conducted an internal review and found statistically significant disparities favoring

White borrowers over minority borrowers in Chevy Chase Bank's retail, fixed-rate, first-lien loan program in 2008. Capital One attributed these disparities to practices at Chevy Chase Bank's Springfield/Tyson's Corner and Virginia Beach branches. Capital One also conducted an analysis of the Pay Option Adjustable Rate Mortgage product. Capital One's analysis found statistically significant pricing disparities favoring White borrowers over minority borrowers in 2006 and 2007. These disparities were attributable largely to the wholesale channel.

15. The OCC reviewed Capital One's analysis and conducted its own analysis of Chevy Chase Bank's home mortgage lending activity. In addition to confirming the existence of disparities at the Springfield/Tyson's Corner and Virginia Beach branches, the OCC found disparities favoring White borrowers over minority borrowers at two additional branches—Newport News and Bethesda. The OCC also determined that the charging of discretionary overages was the cause of the pricing disparities it identified. The OCC determined that the sole purpose of the overages was to provide additional compensation to loan officers, and that the overages were not based on the borrower's creditworthiness or the cost of origination. The OCC concluded that Chevy Chase Bank's management did not have adequate procedures in place to monitor how overages were charged or ensure that they did not vary based on race or national origin. The OCC also conducted a comparative loan file review and did not identify any borrower credit characteristics or loan features that would explain the disparities. As a result of its review, the OCC determined that it had reason to believe that Chevy Chase Bank had engaged in a pattern or practice of discrimination on the basis of race, color, and ethnicity, in violation of the FHA and the ECOA.

16. Following its determination described in the previous Paragraph, and pursuant to 15 U.S.C. § 1691e(g), the OCC referred the matter to the United States Department of Justice on September 24, 2010. Through a series of tolling agreements, Capital One agreed to a suspension of the running of any applicable statute of limitation from October 14, 2010, to February 13, 2011, from May 3, 2011, through September 14, 2012, and from February 27, 2013, to September 30, 2013, for “any cause of action or related claim or remedy that could have been brought against the Bank by the Department of Justice under the FHA, HUD’s Fair Housing Regulations, ECOA and/or Regulation B.”

17. The Department of Justice, based on the OCC’s referral and its independent authority under the FHA and ECOA, has engaged since 2010 in an investigation of Chevy Chase Bank’s retail and wholesale mortgage lending policies, practices, and procedures, including reviewing internal company documents and non-public loan-level data on more than 36,000 residential mortgage loans Chevy Chase Bank originated between 2006 and 2009.

FACTUAL ALLEGATIONS

18. Beginning prior to January 2006 and continuing through at least February 2009, Chevy Chase Bank originated residential mortgage loans through its retail channel, with eight loan production offices in Maryland and Virginia. Chevy Chase Bank also maintained a wholesale channel, which originated loans through 2007.

Retail Lending Pricing

19. Between 2006 and 2009, Chevy Chase Bank charged African-American and Hispanic retail borrowers higher interest rates, fees, and costs than White retail borrowers because of their race or national origin and not based on their creditworthiness or other objective criteria related to borrower risk. It was Chevy Chase Bank's business practice to allow its employees who originated loans through its retail channel to vary a loan's interest rate and other fees from the price initially set based on a borrower's objective credit-related factors. This subjective and unguided pricing discretion resulted in African-American and Hispanic borrowers paying more -- not based on borrower risk -- than White borrowers. As a result of Chevy Chase Bank's discriminatory retail pricing practices, an African-American or Hispanic borrower paid, on average, hundreds of dollars more for a Chevy Chase Bank retail loan than White borrowers.

20. Chevy Chase Bank's retail pricing monitoring efforts, while inadequate to remedy discriminatory practices against African-American and Hispanic borrowers between 2006 and 2009, were sufficient to put it on notice of widespread pricing disparities based on race and national origin. Even though Chevy Chase Bank had reason to know there were retail pricing disparities based on race and national origin, the Bank did not act to determine the full scope of these disparities, nor did it take prompt and effective action to eliminate unjustified disparities.

21. Before January 2006 and continuing through at least February 2009, Chevy Chase Bank set prices, including the interest rate and points, for its various retail mortgage loan products based on the current market rates of interest and the price it would receive by selling loans to investors, plus a profit margin for Chevy Chase Bank. These prices were communicated

through “rate sheets,” which were available to its retail mortgage loan officers and other retail lending employees.

22. Before January 2006 and continuing through at least February 2009, Chevy Chase Bank gave its retail mortgage loan officers discretion to charge borrowers more than the rate sheet price (an “overage”) of up to one percentage point, or to offer a pricing concession (an “underage”) of up to one percentage point. These overages and underages were not related to loan terms or to a borrower’s objective credit characteristics.

23. Retail mortgage loan officers’ compensation varied based on these discretionary pricing adjustments. Loan officers retained up to half of the overages they charged for loans originated through B.F. Saul Mortgage Company, and a quarter of the overages originated through Chevy Chase Mortgage. The compensation system rewarded loan officers with extra compensation for making loans with overages – the greater the overage, the greater the additional compensation. The compensation system also created incentives to make any underages as small as possible.

24. Chevy Chase Bank continued to allow mortgage loan officers to charge overages and raise their compensation through discretionary pricing until at least February 2009, when the bank was acquired by Capital One.

25. Between at least January 2006 and at least February 2009, Chevy Chase Bank did not establish objective criteria, or provide guidelines, instructions, or procedures to its retail mortgage loan officers, for setting overages or underages.

26. Charging a higher net overage on the basis of race or national origin, whether through Chevy Chase Bank’s inclusion of a greater overage or a smaller underage in the price of

the mortgage loan, is a discriminatory lending practice by Chevy Chase Bank prohibited by the FHA and the ECOA.

27. For each retail mortgage loan that Chevy Chase Bank originated, information about each borrower's race and national origin was available to, and was known by, Chevy Chase Bank. Chevy Chase Bank was required to collect, maintain, and report data with respect to significant mortgage loan terms and borrower information for residential loans, including the race and national origin of each retail home loan borrower, pursuant to HMDA. In addition to the information required by HMDA, Chevy Chase specifically tracked overages and underages for each loan it originated.

28. Statistical analyses of retail mortgage loans originated by Chevy Chase Bank between January 2006 and February 2009 demonstrate statistically significant discriminatory pricing disparities in retail mortgage loans based on race and national origin. Statistical significance is a measure of probability that an observed outcome would not have 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%.

29. In each year between 2006 and 2009, Chevy Chase Bank charged qualified African-American and Hispanic retail borrowers (borrowers whom Chevy Chase Bank determined had the credit characteristics to qualify for a home mortgage) more in pricing adjustments that were not based on borrower risk than it charged White retail borrowers. These differences are demonstrated by the annual net overage disparities for the years 2006, 2007, and 2008-2009

(combined)², which range between approximately 7 and 27 basis points³, and they are statistically significant.

30. In the Bethesda branch, there were statistically significant disparities favoring White borrowers over African-American borrowers of approximately 19 basis points in 2006, 23 basis points in 2007, and 14 basis points in 2008-2009; in the Columbia branch, these disparities were approximately 15 basis points in 2006, 20 basis points in 2007, and 16 basis points in 2008-2009; in the Home Loan Express office, these disparities were approximately 6 basis points in 2006 and 8 basis points in 2008-2009; in the Newport News branch, these disparities were approximately 13 basis points in 2006, 17 basis points in 2007, and 20 basis points in 2008-2009; in the Reston branch, these disparities were approximately 22 basis points in 2006; in the Springfield/Tyson's Corner branch, these disparities were approximately 38 basis points in 2007. For Chevy Chase Mortgage, these disparities were approximately 13 basis points in 2007 and 14 basis points in 2008-2009. These disparities were not based on borrower risk. There were no branches at which Chevy Chase Bank charged White borrowers statistically significant higher net overages for retail loans than African-American borrowers in any given year.

31. In the Home Loan Express office, there were statistically significant disparities favoring White borrowers over Hispanic borrowers of approximately 4 basis points in 2007 and 14 basis points in 2008-2009; in the Reston branch, these disparities were approximately 23 basis points in 2006 and 37 basis points in 2007; in the Springfield/Tyson's Corner branch, these disparities were approximately 38 basis points in 2006, 60 basis points in 2007 and 47 basis

² For purposes of analysis, loans originated in January and February of 2009 are combined with loans originated in 2008.

³ A "basis point" is a percentage of the total amount of a loan, with one hundred basis points equaling one percent of the loan amount.

points in 2008-2009; in the Virginia Beach branch, these disparities were approximately 72 basis points in 2008-2009. These disparities were not based on borrower risk. There were no branches at which Chevy Chase Bank charged White borrowers statistically significant higher net overages for retail loans than Hispanic borrowers in any given year.

32. These net overage disparities mean, for example, that in 2007 Chevy Chase Bank would have charged a hypothetical retail customer in the Springfield/Tyson's Corner branch borrowing \$250,000⁴ an average of about \$950 more in pricing adjustments if the borrower were African-American, than the average amount charged to a White borrower. In 2008, Chevy Chase Bank would have charged a hypothetical retail customer in the Virginia Beach branch borrowing \$250,000 an average of about \$1,800 more in pricing adjustments if the borrower were Hispanic, than the average amount charged to a White borrower. The increases in price would not have been based on borrower risk factors.

33. In setting the terms and conditions for its retail mortgage loans, including interest rates, points, and fees, Chevy Chase Bank accounted for individual borrowers' differences in credit risk characteristics by setting the prices shown on its rate sheets for each loan product to include its assessment of applicant creditworthiness. Chevy Chase Bank's loan officers' pricing adjustments, as measured by net overage, were separate from and not controlled by the credit risk adjustments already reflected in the rate sheets. Accordingly, the racial and national origin net overage disparities described in Paragraphs 30-31 are not adjusted for borrowers' credit risk characteristics.

⁴ The mean loan amount for the retail loans at issue was approximately \$246,000 for African-American borrowers in 2006, \$237,000 for African-American borrowers in 2007; \$222,000 for African-American borrowers in 2008-2009; \$295,000 for Hispanic borrowers in 2006; \$285,000 for Hispanic borrowers in 2007; and \$251,000 for Hispanic borrowers in 2008-2009.

34. The disparities in net overage described in Paragraphs 30-31 were for African-American and Hispanic retail borrowers who Chevy Chase Bank determined had the credit characteristics to qualify for a home mortgage loan. These disparities resulted from the implementation and interaction of Chevy Chase Bank's policies and practices that: (a) allowed subjective and unguided pricing adjustments not based on borrower risk by its own employees, including retail mortgage loan officers, in setting overages and underages and then including those overages and underages in the terms and conditions of loans Chevy Chase Bank originated; (b) did not require its employees to justify or document the reasons for many of the pricing adjustments not based on borrower risk; (c) failed to adequately monitor for and fully remedy the effect of racial disparities in those pricing adjustments; and (d) linked loan officer compensation in part to the charging of overages and underages. Net overage specifically measures the pricing variation caused by the subjective and unguided pricing adjustments not based on borrower risk. Chevy Chase Bank continued to use this non-risk-based component of its overall retail loan pricing policy, to inadequately document and review the implementation of that pricing component, and to link loan officer compensation to overages and underages through at least February 2009, when it was acquired by Capital One.

35. Chevy Chase Bank's policies and practices identified in the previous Paragraph were not justified by business necessity or legitimate business interests. There were less discriminatory alternatives available to Chevy Chase Bank than these policies or practices.

36. Chevy Chase Bank had knowledge that the subjective and unguided discretion it granted to mortgage loan officers in its retail mortgage loan pricing policies and practices was being exercised in a manner that resulted in African-American and Hispanic borrowers paying

more in interest rates, fees and costs than similarly-situated White borrowers, but it continued to implement its policies and practices with that knowledge. Chevy Chase Bank did not take effective action before it was acquired by Capital One to change the pricing adjustment policies or practices to fully eliminate the discrimination, nor did it change its compensation policy to discourage the charging of overages or the provision of underages. It did not act before it was acquired by Capital One to identify or compensate the individual borrowers who were victims of its discriminatory retail mortgage loan pricing policies or practices.

Wholesale Lending Pricing

37. In 2006 and 2007, Chevy Chase Bank charged African-American and Hispanic wholesale borrowers higher fees and costs than White wholesale borrowers, not based on their creditworthiness or other objective criteria related to borrower risk, but because of their race or national origin. It was Chevy Chase Bank's business practice to allow mortgage brokers who generated loan applications through its wholesale channel to vary a loan's interest rate and other fees from the price initially set based on a borrower's objective credit-related factors. This subjective and unguided pricing discretion resulted in higher loan costs that were not based on borrower risk for African-American and Hispanic borrowers compared with White borrowers; this was true both on a nationwide basis and in dozens of geographic markets where Chevy Chase Bank originated a large volume of wholesale loans. As a result of Chevy Chase Bank's discriminatory wholesale pricing practices, African-American and Hispanic borrowers paid, on average, hundreds of dollars more for a Chevy Chase Bank wholesale loan.

38. Chevy Chase Bank's wholesale pricing monitoring efforts, while inadequate to remedy discriminatory practices against African-American and Hispanic borrowers in 2006 and

2007, were sufficient to put it on notice of widespread pricing disparities based on race and national origin. Even when Chevy Chase Bank had reason to know there were disparities, however, Chevy Chase Bank did not act to determine the full scope of these wholesale pricing disparities, nor did it take prompt and effective action to eliminate those disparities.

39. Prior to January 2006 and continuing until December 2007, Chevy Chase Bank originated and funded residential mortgage loans through a wholesale channel. Applications for these loans were brought to Chevy Chase Bank by mortgage brokers throughout the United States who had entered into contracts with Chevy Chase Bank for the purpose of bringing mortgage loan applications to it for origination and funding.

40. Chevy Chase Bank was directly and extensively involved in setting the complete terms and conditions of wholesale mortgage loans. Chevy Chase Bank evaluated the risk of making each wholesale mortgage loan using Chevy Chase Bank's underwriting guidelines and determined whether to originate and fund the loan.

41. Before January 2006 and continuing through December 2007, Chevy Chase Bank set prices, including the interest rate and points, for its various wholesale home mortgage loan products based on the current market rates of interest and the price it would receive by selling loans to investors, plus a profit margin for Chevy Chase Bank. These prices were communicated to its mortgage brokers through "rate sheets."

42. Chevy Chase Bank mortgage brokers determined the interest rate, fees, and points to quote individual mortgage loan applicants based on their objective credit characteristics. Individual loan applicants did not have access to the rate sheets or pricing adjustment

worksheets, and could not apply for a wholesale mortgage loan from Chevy Chase Bank except at the price quoted by their mortgage broker.

43. Before January 2006 and continuing through December 2007, Chevy Chase Bank gave its mortgage brokers discretion to increase or decrease the loan price that was set based on the borrower's objective credit characteristics using the rate sheets. This step of pricing wholesale loans permitted mortgage brokers to exercise subjective, unguided discretion in setting the final price Chevy Chase Bank charged to individual borrowers, unrelated to a borrower's credit risk characteristics.

44. Mortgage brokers who supplied Chevy Chase Bank with mortgage loan applications that Chevy Chase Bank funded were compensated in two ways. One was through a yield spread premium ("YSP"), an amount paid by Chevy Chase Bank to the brokers based on the extent to which the interest rate charged on a mortgage loan exceeded the rate set by Chevy Chase Bank based on a borrowers' particular credit qualifications. The second way brokers were compensated was through direct fees paid to brokers out of borrowers' funds, including loan proceeds at the loan closing.

45. Based on these two forms of compensation, Chevy Chase Bank calculated the "total compensation" charged on each wholesale mortgage loan. Higher total compensation raised the borrower's price for a loan, through a higher note interest rate, a higher final annual percentage rate charged on a loan, and/or a higher final total amount borrowed. Chevy Chase Bank continued to allow mortgage brokers to charge YSPs and raise their compensation through pricing adjustments through December 2007.

46. During the time period at issue, Chevy Chase Bank was fully informed of all broker compensation to be charged with respect to each individual residential loan application presented to it. Chevy Chase Bank exercised its right to control broker compensation, but it left wide discretion to mortgage brokers on the compensation charge that Chevy Chase Bank included in the terms of the loan between at least January 2006 and December 2007. Beginning prior to January 2006 and continuing through December 2007, Chevy Chase Bank's policy and practices allowed brokers subjective, unguided discretion in setting the amount of broker compensation charged to individual borrowers. From at least January 1, 2006, through the time it ceased making wholesale loans, Chevy Chase Bank capped total broker compensation charged to wholesale borrowers at 5% of the total loan amount. This cap allowed wide discretion to mortgage brokers because the maximum permissible amount far exceeded the average total compensation charged by its mortgage brokers between 2006 and 2007.

47. Other than this cap, Chevy Chase Bank did not establish any objective criteria, or provide guidelines, instructions, or procedures to be followed by brokers in setting the amount of total compensation to be charged to borrowers. Mortgage brokers exercised the pricing discretion Chevy Chase Bank gave them, untethered to any objective credit characteristics, on every loan they brought to Chevy Chase Bank for origination and funding. Chevy Chase Bank affirmed or ratified these discretionary pricing adjustments for all the wholesale loans it originated and funded. Chevy Chase Bank did not review the reasonableness of charges that fell within the ceiling before including them in the terms of the loan.

48. Charging higher total compensation on the basis of race and national origin, whether through Chevy Chase Bank's inclusion of a higher YSP or higher direct broker fees in the price

of the mortgage loan, is a discriminatory lending practice by Chevy Chase Bank prohibited by the FHA and the ECOA.

49. For each wholesale mortgage loan that Chevy Chase Bank originated, information about each borrower's race and national origin, the amount and types of broker fees paid, and the effect of broker fees on each borrower's annual percentage rate (APR), was available to, and was known by, Chevy Chase Bank prior to the approval and funding of the loan. Under HMDA, Chevy Chase Bank was required to collect, maintain, and report data with respect to significant mortgage loan terms and borrower information for residential loans, including the race and national origin of each wholesale home loan borrower.

50. Statistical analyses of wholesale mortgage loans originated by Chevy Chase Bank between January 2006 and December 2007 demonstrate statistically significant discriminatory pricing disparities in wholesale mortgage loans based on race and national origin.

51. Measured on a nationwide basis by APR, Chevy Chase Bank in 2007 charged qualified African-American borrowers (borrowers whom Chevy Chase Bank determined had the credit characteristics to qualify for a home mortgage) more in pricing adjustments not based on borrower risk for wholesale loans than White borrowers. The annual APR disparity was approximately 4.9 basis points in 2007.

52. Measured on a nationwide basis by APR, Chevy Chase Bank in 2006 and 2007 charged qualified Hispanic borrowers (borrowers whom Chevy Chase Bank determined had the credit characteristics to qualify for a home mortgage) more in pricing adjustments not based on borrower risk for wholesale loans than White borrowers. The annual APR disparities were approximately 7.5 and 7.1 basis points, respectively, in 2006 and 2007.

53. These APR disparities mean, for example, that in 2006 Chevy Chase Bank charged a hypothetical wholesale customer borrowing \$400,000⁵ an average of about \$300 more per year if he were Hispanic, than the average amount charged to a White borrower. In 2007, Chevy Chase Bank charged a hypothetical wholesale customer borrowing \$400,000 an average of about \$196 more per year if he were African-American and an average of \$284 more per year if he were Hispanic, than the average amount Chevy Chase Bank charged in pricing adjustments not based on borrower risk to a White borrower.

54. The statistically significant race and national origin disparities in APR described in Paragraphs 51-52 for qualified African-American and Hispanic wholesale borrowers (borrowers whom Chevy Chase Bank determined had the credit characteristics to qualify for a home mortgage) resulted from the implementation and the interaction of Chevy Chase Bank's policies and practices that: (a) allowed mortgage brokers subjective and unguided discretion in setting pricing adjustments for wholesale loans that were not based on credit risk characteristics and were determined after the loan price had been established based on credit risk characteristics; (b) did not require mortgage brokers to justify or document the reasons for the amount of pricing adjustments not based on credit risk characteristics; (c) failed to adequately monitor for and fully remedy the effects of race and national origin disparities in APR; and (d) created a financial incentive for mortgage brokers to charge interest rates above the interest rates Chevy Chase Bank had set based on credit risk characteristics. Chevy Chase Bank continued to use these discretionary wholesale pricing policies, to inadequately document and review the broker fees

⁵ The mean loan amount for the wholesale loans at issue was approximately \$412,000 for African-American borrowers in 2006, \$403,000 for African-American borrowers in 2007, \$466,000 for Hispanic borrowers in 2006, and \$465,000 for Hispanic borrowers in 2007.

charged to Chevy Chase Bank customers, and to incentivize upward broker adjustments to pricing through the end of 2007.

55. Chevy Chase Bank's policies and practices identified in the previous paragraph were not justified by business necessity or legitimate business interests. There were less discriminatory alternatives available to Chevy Chase Bank than these policies or practices.

56. Chevy Chase Bank had knowledge that the subjective and unguided discretion it granted to mortgage brokers in its wholesale mortgage loan pricing policies and practices was being exercised in a manner that discriminated against African-American and Hispanic borrowers, but continued to implement its policies and practices with that knowledge. Chevy Chase Bank did not take effective action before it ceased originating wholesale loans at the end of 2007 to change the pricing adjustment policies or practices to fully eliminate their discriminatory impact. Nor did it change its compensation policy to discourage the charging of higher pricing adjustments or to identify or compensate the individual borrowers who were victims of its discriminatory wholesale mortgage loan pricing policies or practices.

FAIR HOUSING ACT and EQUAL CREDIT OPPORTUNITY ACT VIOLATIONS

57. Chevy Chase Bank's residential lending-related policies and practices and the policies and practices it followed in residential credit transactions as alleged herein constitute:

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

b. Discrimination on the basis of race and national origin in the terms, conditions, or privileges of the provision of services in connection with the sale of a dwelling, in violation of the Fair Housing Act, 42 U.S.C. § 3604(b); and

c. Discrimination against applicants with respect to credit transactions on the basis of race and national origin in violation of the Equal Credit Opportunity Act, 15 U.S.C. § 1691(a)(1).

58. Chevy Chase Bank's residential lending-related policies and practices as alleged herein constitute:

a. A pattern or practice of resistance to the full enjoyment of rights secured by the Fair Housing Act, 42 U.S.C. §§ 3601-3619, and the Equal Credit Opportunity Act, 15 U.S.C. §§ 1691-1691f; and

b. A denial of rights granted by the Fair Housing Act to a group of persons – both African-Americans and Hispanics – that raises an issue of general public importance.

59. Between 2006 and 2009, at least 3,100 persons have been victims of Chevy Chase Bank's pattern or practice of discrimination and denial of rights as alleged herein. In addition to higher direct economic costs, some of the victims of discrimination suffered additional consequential economic damages resulting from having an excessively costly loan, including possible increased risk of credit problems, and other damages, including emotional distress. They are aggrieved persons as defined in the Fair Housing Act, 42 U.S.C. § 3602(i), and aggrieved applicants as defined in the Equal Credit Opportunity Act, 15 U.S.C. § 1691e, and have suffered injury and damages as a result of Chevy Chase Bank's conduct.

60. Chevy Chase Bank's policies and practices, as described herein, were intentional, willful, or implemented with reckless disregard for the rights of African-American and Hispanic borrowers.

RELIEF REQUESTED

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

(1) Declares that the policies and practices of Chevy Chase Bank constitute violations of the Fair Housing Act, 42 U.S.C. §§ 3601-3619, and the Equal Credit Opportunity Act, 15 U.S.C. §§ 1691-1691f;

(2) Enjoins Chevy Chase Bank, through its successor in interest, as well as its agents, employees, and other successors, and all other persons in active concert or participation with it, from:

a. Failing or refusing to take such affirmative steps as may be necessary to restore, as nearly as practicable, the victims of Chevy Chase Bank's unlawful conduct to the position they would have been in but for the discriminatory conduct; and

b. Failing or refusing to take such affirmative steps as may be necessary to prevent the recurrence of any such discriminatory conduct in the future; to eliminate, to the extent practicable, the effect of the Chevy Chase Bank's unlawful practices; and to implement policies and procedures to ensure that all borrowers have an equal opportunity to seek and obtain loans on a non-discriminatory basis and with non-discriminatory terms and conditions;

(3) Awards monetary damages to all the victims of Chevy Chase Bank's discriminatory policies and practices for the injuries caused by Chevy Chase Bank, including direct economic

costs, consequential economic damages, and other damages, pursuant to 42 U.S.C.

§ 3614(d)(1)(B) and 15 U.S.C. § 1691e(h); and

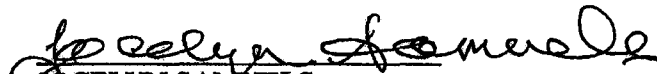
(4) Assesses a civil penalty in an amount authorized by 42 U.S.C. § 3614(d)(1)(C), in order to vindicate the public interest.

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


Dated: September 30, 2013


ERIC H. HOLDER, Jr.
Attorney General

DANA J. BOENTE
Acting United States Attorney
Eastern District of Virginia


JOCELYN SAMUELS
Acting Assistant Attorney General
Civil Rights Division


STEVEN H. ROSENBAUM
Chief


STEVEN E. GORDON
Assistant United States Attorney
2100 Jamieson Avenue
Alexandria, Virginia 22314
Telephone: 703-299-3817
Steve.Gordon@usdoj.gov


COTY R. MONTAG
Deputy Chief
LUCY G. CARLSON
Trial Attorney
Civil Rights Division
U.S. Department of Justice
950 Pennsylvania Ave., N.W.
Northwestern Building, 7th Floor
Washington, D.C. 20530
Ph: (202) 305-0017; Fax: (202) 514-1116
lucy.carlson@usdoj.gov

1 ERIC H. HOLDER, JR.
Attorney General
2 JOCELYN SAMUELS
Acting Assistant Attorney General
3 Civil Rights Division
STEVEN H. ROSENBAUM
4 Chief
COTY R. MONTAG
5 Deputy Chief
Cal. State Bar No. 255703
6 United States Department of Justice
Civil Rights Division
7 Housing and Civil Enforcement Section
950 Pennsylvania Avenue, N.W. – G Street
8 Washington, D.C. 20530
(202) 305-0122

9 LAURA E. DUFFY
United States Attorney
10 JOSEPH P. PRICE, JR.
Assistant United States Attorney
11 Cal. State Bar No. 131689
Southern District of California
12 880 Front Street, Room 6293
San Diego, CA 92101
13 (619) 546-7642

14 Attorneys for Plaintiff
15 United States of America

16 **UNITED STATES DISTRICT COURT**
17 **SOUTHERN DISTRICT OF CALIFORNIA**
18

19 UNITED STATES OF AMERICA,

20 Plaintiff,

21 v.

22 PLAZA HOME MORTGAGE, INC.,

23 Defendant.
24

'13CV2327 H RBB

COMPLAINT

25 Plaintiff, United States of America, alleges:

26 **INTRODUCTION**

27 1. The United States brings this action against Plaza Home Mortgage, Inc.
28 ("Plaza" or "the lender") for discriminating against African-American and Hispanic

1 borrowers in its residential mortgage lending. The action to enforce the Fair Housing
2 Act, 42 U.S.C. §§ 3601-3619 (“FHA”), and the Equal Credit Opportunity Act,
3 15 U.S.C. §§ 1691-1691f (“ECOA”), is brought to redress the discrimination based on
4 race and national origin that Plaza engaged in from 2006 through at least 2010.

5 2. From 2006 through at least 2010, Plaza charged thousands of African-
6 American and Hispanic wholesale borrowers higher fees than non-Hispanic white
7 (“white”) borrowers. The higher fees were not based on their creditworthiness or
8 other objective criteria related to borrower risk, but because of race or national origin.
9 Plaza also permitted its mortgage brokers to charge fees in excess of the lender’s
10 stated fee caps, and these brokers charged African-American and Hispanic borrowers
11 excessive fees in violation of the lender’s stated policies more frequently than white
12 borrowers. It was Plaza’s business practice to allow its mortgage brokers who
13 generated loan applications for Plaza to vary their fees and thus alter the price set
14 based on a borrower’s objective credit-related factors. This subjective and unguided
15 pricing discretion resulted in African-American and Hispanic borrowers paying more
16 than white borrowers for home mortgage loans,¹ for reasons unrelated to borrower
17 risk, both on a nationwide basis and in numerous geographic markets across the
18 country. As a result of Plaza’s discriminatory practices, an African-American or
19 Hispanic borrower paid, on average, hundreds of dollars more for a Plaza loan.

20 3. This Court has jurisdiction of this action pursuant to 28 U.S.C. § 1345,
21 42 U.S.C. § 3614, and 15 U.S.C. § 1691e(h). Venue is appropriate pursuant to
22 28 U.S.C. § 1391.

23 **PARTIES**

24 4. Plaza is a nationwide wholesale mortgage lender headquartered in San
25 Diego, California. Plaza has offices in 15 cities and is licensed to conduct business in
26

27 ¹ For purposes of this Complaint, and consistent with the Home Mortgage
28 Disclosure Act (“HMDA”), the term “home mortgage loan” or “home loan” refers to
loans originated for the purchase or refinance of owner-occupied, one-to-four family
dwellings.

1 48 states and the District of Columbia. Plaza also is licensed to make reverse
2 mortgages in 44 states and is qualified to make conventional and government-insured
3 loans. Plaza is subject to the enforcement authority of the Federal Trade Commission
4 (“FTC”). As of January 5, 2012, the Consumer Financial Protection Bureau also has
5 supervisory authority over Plaza.

6 5. Plaza is subject to the federal laws governing fair lending, including the
7 FHA and ECOA and their respective implementing regulations, the fair housing
8 regulations of the Department of Housing and Urban Development, 24 C.F.R. § 100.1,
9 *et seq.*, and Regulation B of the Consumer Financial Protection Bureau,
10 12 C.F.R. § 1002.1, *et seq.* The FHA and ECOA prohibit financial institutions from
11 discriminating on the basis of, *inter alia*, race or national origin in their mortgage
12 lending practices.

13 6. Plaza is a “creditor” within the meaning of section 702(e) of ECOA,
14 15 U.S.C. § 1691a(e), and is engaged in “residential real estate-related transactions”
15 within the meaning of section 805 of the FHA, 42 U.S.C. § 3605. Plaza also is subject
16 to the Home Mortgage Disclosure Act (“HMDA”), 12 U.S.C. § 2803, which requires
17 mortgage lenders to maintain data on the race and ethnicity of each borrower.

18 **FACTUAL ALLEGATIONS**

19 7. In early 2009, the FTC examined data reported under HMDA in 2006
20 and 2007 to determine whether any wholesale lenders showed substantial rate spread
21 disparities between white and minority borrowers. Based on this initial targeting
22 analysis, the FTC identified Plaza as a lender with high disparities. In 2009, the FTC
23 issued two civil investigative demands to Plaza, requesting loan data for 2006 to 2009
24 and information regarding the lender’s policies and mortgage business practices. In
25 2011, at the FTC’s request, the Department of Justice took over the investigation and
26 obtained loan data for 2010.

27 8. Brokered loans accounted for approximately 98% of Plaza’s loan
28 originations between 2006 and 2010. During that time period, Plaza’s relationship

1 with its brokers was governed by a Broker Agreement. The Broker Agreement stated
2 that the broker may identify and qualify potential borrowers for conventional,
3 residential mortgage loans that Plaza may, upon its approval, underwrite, close, and
4 sell into the secondary mortgage market. Plaza made the credit decision and had the
5 sole and absolute discretion to approve or reject any application submitted by a
6 broker.

7 9. From 2006 to 2010, Plaza's policies and practices established a two-step
8 process for the pricing of wholesale loans that it originated. The first step was to
9 establish a base or par rate for a particular type of loan for an applicant with specified
10 credit characteristics. In this step, Plaza accounted for numerous objective credit-
11 related characteristics of applicants by setting a variety of prices for each of the
12 different loan products that reflected its assessment of individual applicant
13 creditworthiness, as well as the current market rate of interest and the price it could
14 obtain for the sale of such a loan from investors. Plaza communicated these prices
15 through rate sheets that it issued to brokers on a daily basis. The rate sheets spelled
16 out the "par" interest rates based on a borrower's credit characteristics and the yield
17 spread premiums ("YSPs") that Plaza paid the broker when the loan application
18 requested an interest rate that exceeded the par rate.

19 10. Plaza's second step of pricing wholesale loans permitted mortgage
20 brokers to exercise subjective, unguided discretion in setting the amount of broker
21 fees charged to individual borrowers, unrelated to an applicant's credit risk
22 characteristics. Mortgage brokers who supplied Plaza with wholesale loans were
23 compensated in two ways: through direct fees paid by the borrower to the broker
24 and/or through YSPs. Taken together, this compensation is hereinafter referred to
25 collectively as "total broker fees."

26 11. From at least 2006 through 2010, Plaza had written policies placing a
27 ceiling on total broker fees that changed several times during the relevant period. As
28 of December 6, 2006, Plaza capped total mortgage broker compensation at 5% of the

1 principal amount of the loan, up to \$25,000, and compensation in excess of \$10,000
2 required approval in order to limit broker fraud. Plaza amended its broker fee caps
3 several times from 2006 through 2009. In June 2007, Plaza specified that YSP was
4 included in the 5% cap. In December 2007, Plaza lowered the maximum amount of
5 broker compensation to \$10,000. In mid-2009, Plaza issued a new policy on total
6 broker compensation. The policy specified that Plaza would not close a loan if the
7 total points and fees charged to the borrower exceeded the lesser of 5% or \$10,000 of
8 the mortgage amount on conventional loans and the lesser of 3% or \$10,000 on FHA
9 or VA loans. YSP was capped at 3% of the mortgage amount.

10 12. In December 2009, Plaza determined that a number of its loans closed
11 over the past six months had exceeded its maximum broker compensation policy and
12 revised its broker compensation policy once again. The new policy capped total
13 broker compensation at the lesser of 4.5% or \$10,000 for conventional loans up to
14 \$500,000 and the lesser of 4.5% or \$20,000 for loans greater than \$500,000. For
15 government and USDA loans, Plaza capped broker compensation at 4% or \$10,000
16 for loans up to \$250,000, 3.5% or \$10,000 for loans between \$250,001 and \$500,000,
17 and 3% or \$20,000 for loans greater than \$500,000. The limit included the sum of all
18 fees paid by the borrower to the broker and any fees paid by the lender to the broker,
19 such as YSP. YSP remained capped at 3%, and Plaza charged one administration or
20 underwriting fee that was inclusive of its own costs.

21 13. Through at least December 2009, Plaza explicitly permitted exceptions in
22 excess of its caps. For example, managers could approve broker compensation on
23 government loans in excess of 3% if the total compensation was below \$10,000.
24 Further, they could approve compensation up to \$12,000 on any loan if the 3% or 5%
25 cap (depending on the loan type) was not exceeded. Documents produced by Plaza
26 from this time period indicated that brokers sought approval for compensation even
27 above \$12,000, if the total amount was below the 3% or 5% cap. Additionally, Plaza
28 ran promotions that increased the amount of allowable broker compensation. For

1 example, in November 2009, the lender permitted the Chicago office to increase the
2 cap on government loans to 4% as a holiday special. After December 2009, Plaza's
3 policies stated that the lender no longer permitted exceptions to its fee policies.

4 14. Other than its shifting fee caps, which were not strictly enforced, Plaza
5 did not establish any objective criteria, or provide guidelines, instructions, or
6 procedures to be followed by brokers (a) in setting the amount of direct fees they
7 should charge, or (b) in determining to charge an interest rate for a loan above that set
8 by its rate sheet, which in turn determined the amount of YSP Plaza would pay the
9 broker. Mortgage brokers exercised this fee pricing discretion Plaza gave them,
10 untethered to any objective credit characteristics, on every loan they brought to Plaza
11 for origination and funding. Plaza affirmed or ratified these discretionary fee pricing
12 decisions for all the brokered loans it originated and funded. Further, Plaza did not
13 conduct any type of broker monitoring to determine whether there were disparities
14 between the total fees charged to minority and white borrowers.

15 15. For each loan originated by Plaza, information about each borrower's
16 race and national origin and the amounts and types of broker fees paid was available
17 to, and was known or reasonably should have been known by Plaza prior to the
18 approval and funding of the loan. Plaza was required to collect, maintain, and report
19 data with respect to certain loan terms and borrower information for residential loans,
20 including the race and national origin of each wholesale residential loan borrower,
21 pursuant to HMDA, 12 U.S.C. § 2803.

22 16. Between 2006 and 2010, African-American borrowers nationwide were
23 charged total broker fees that were 28.2 to 93.8 basis points higher as a percentage of
24 the loan amount than the total broker fees charged to white borrowers. These
25 disparities in total broker fees mean, for example, that on a nationwide basis Plaza
26 charged its African-American customers borrowing \$214,000² between \$604 and
27

28 ² This is the average home loan amount that Plaza originated to African-American borrowers in the period from 2006 to 2010.

1 \$2,007 more in total broker fees not based on borrower risk. These disparities are
2 statistically significant.³

3 17. These disparities between African-American and white borrowers
4 extended to at least the following 15 metropolitan statistical areas (“MSAs”) in which
5 Plaza made a substantial number of brokered loans to African-American and white
6 borrowers: Baltimore-Towson, MD; Boston-Quincy, MA; Chicago-Naperville-Joliet,
7 IL; Dallas-Plano-Irving, TX; Fort Worth-Arlington, TX; Houston-Sugar Land-
8 Baytown, TX; Los Angeles-Long Beach-Glendale, CA; Oakland-Fremont-Hayward,
9 CA; Orlando-Kissimmee-Sanford, FL; Phoenix-Mesa Glendale, AZ; San Diego-
10 Carlsbad-San Marcos, CA; St. Louis, MO-IL; Vallejo-Fairfield, CA; Virginia Beach-
11 Norfolk-Newport News, VA-NC; and Washington-Arlington-Alexandria, DC-VA-
12 MD-WV. In these MSAs, from 2006 to 2010, African-American borrowers paid total
13 broker fees ranging from 20.4 and 130.0 basis points higher, on average, than the total
14 broker fees paid by white borrowers. All of these disparities are statistically
15 significant. From 2006 to 2010, there was only one MSA (Killeen-Temple-Fort
16 Hood, TX) in which Plaza charged white borrowers statistically significantly higher
17 total broker fees for wholesale loans than African-American borrowers.

18 18. For the combined time period of 2006 to 2010, nationwide, the odds that
19 an African-American borrower who obtained a wholesale loan from Plaza would
20 receive a loan with total broker fees that exceeded Plaza’s stated fee caps rather than a
21 loan with total broker fees within the caps were approximately 1.6 times as high as the
22 odds for a white borrower. Overall, 20% of African-American borrowers paid total
23 broker fees in excess of Plaza’s stated caps, while only 13.8% of white borrowers paid
24 total broker fees in excess of the caps. These differences persisted when Plaza’s
25 various fee caps are examined independently. For example, as stated in Paragraph 11,

26
27 ³ Statistical significance is a measure of probability that an observed outcome
28 would not have 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 Plaza instituted a cap of 3% on YSP in mid-2009 that remained in effect at least
2 through 2010, and the lender officially no longer permitted exceptions to its fee
3 policies after December 2009. Nevertheless, from July 1, 2009 through the end of
4 2010, nationwide, the odds than an African-American borrower who obtained a
5 wholesale loan from Plaza would receive a loan with YSP in excess of 3% were
6 approximately 2.2 times as high as the odds for a white borrower. Overall, 13.1% of
7 African-American borrowers received loans with YSPs in excess of the 3% cap, while
8 only 6.3% of white borrowers received loans with YSPs in excess of the cap. All of
9 these disparities are statistically significant.

10 19. These disparities in fees exceeding Plaza's stated caps between African-
11 American and white borrowers extended to at least the following 7 MSAs in which
12 Plaza made a substantial number of brokered loans to African-American and white
13 borrowers: Baltimore-Towson, MD; Chicago-Naperville-Joliet, IL; Dallas-Plano-
14 Irving, TX; Houston-Baytown-Sugar Land, TX; Riverside-San Bernardino-Ontario,
15 CA; St. Louis, MO-IL; and Vallejo-Fairfield, CA. From 2006 to 2010, African-
16 American wholesale borrowers had statistically significant odds ratio disparities in
17 approximately 23% (7 of 31) of high loan-volume markets where Plaza made a
18 substantial number of brokered loans to African-American and white borrowers. For
19 this combined time period, in the high-volume markets with statistically significant
20 odds ratio disparities, the odds of an African-American borrower receiving a subprime
21 wholesale loan in a given year were up to 8.4 times as high as the odds for a white
22 borrower. From 2006 to 2010, only one market (Boston-Quincy, MA) had
23 statistically significant disparities favoring African-American wholesale borrowers
24 over white borrowers.

25 20. Between 2006 and 2010, Hispanic borrowers nationwide were charged
26 total broker fees that were 34.4 to 61.4 basis points higher than the total fees charged
27 to white borrowers. These disparities in total broker fees mean, for example, that on a
28

1 nationwide basis Plaza charged its Hispanic customers borrowing \$230,000⁴ between
2 \$791 and \$1,412 more in total broker fees not based on borrower risk. These
3 disparities are statistically significant.

4 21. These disparities between Hispanic and white borrowers extended to at
5 least the following 27 MSAs in which Plaza made a substantial number of brokered
6 loans to Hispanic and white borrowers: Albuquerque, NM; Bakersfield-Delano, CA;
7 Boston-Quincy, MA; Chicago-Naperville-Joliet, IL; Dallas-Plano-Irving, TX; Denver-
8 Aurora-Broomfield, CO; Fort Worth-Arlington, TX; Fresno, CA; Houston-Sugar
9 Land-Baytown, TX; Kennewick-Pasco-Richland, WA; Las Vegas-Paradise, NV; Los
10 Angeles-Long Beach-Glendale, CA; Madera-Chowchilla, CA; Oakland-Fremont-
11 Hayward, CA; Orlando-Kissimmee-Sanford, FL; Phoenix-Mesa Glendale, AZ;
12 Providence-New Bedford-Fall River, RI-MA; Riverside-San Bernardino-Ontario, CA;
13 Sacramento-Arden Arcade-Roseville, CA; Salem, OR; San Antonio-New Braunfels,
14 TX; San Diego-Carlsbad-San Marcos, CA; Santa Ana-Anaheim-Irvine, CA; Stockton,
15 CA; Tucson, AZ; Vallejo-Fairfield, CA; and Visalia-Porterville, CA. In these MSAs,
16 from 2006 to 2010, Hispanic borrowers paid total broker fees ranging from 20.4 and
17 100.2 basis points higher, on average, than the total broker fees paid by white
18 borrowers. All of these disparities are statistically significant. From 2006 to 2010,
19 there was only one MSA (Santa Barbara-Santa Maria-Goleta, CA) in which Plaza
20 charged white borrowers statistically significantly higher total broker fees for
21 wholesale loans than Hispanic borrowers.

22 22. For the combined time period of 2006 to 2010, nationwide, the odds that
23 a Hispanic borrower who obtained a wholesale loan from Plaza would receive a loan
24 with total broker fees that exceeded Plaza's stated fee caps instead of a loan with total
25 broker fees within the caps were approximately 1.2 times as high as the odds for a
26 white borrower. Overall, 16% of Hispanic borrowers paid total broker fees in excess
27

28 ⁴ This is the average home loan amount that Plaza originated to Hispanic borrowers in the period from 2006 to 2010.

1 of Plaza's stated caps, while only 13.8% of white borrowers paid total broker fees in
2 excess of the caps. These differences persisted when Plaza's various fee caps are
3 examined independently. From July 1, 2009 through the end of 2010, nationwide, the
4 odds than a Hispanic borrower who obtained a wholesale loan from Plaza would
5 receive a loan with YSP in excess of 3% were approximately 1.8 times as high as the
6 odds for a white borrower. Overall, 10.6% of Hispanic borrowers received loans with
7 YSPs in excess of the 3% cap, while only 6.3% of white borrowers received loans
8 with YSPs in excess of the cap. All of these disparities are statistically significant.

9 23. These disparities in fees exceeding Plaza's stated caps between Hispanic
10 and white borrowers extended to at least the following 14 MSAs in which Plaza made
11 a substantial number of brokered loans to Hispanic and white borrowers: Chicago-
12 Naperville-Joliet, IL; Corpus Christi, TX; Dallas-Plano-Irving, TX; Denver-Aurora,
13 CO; Fort Lauderdale-Pompano Beach-Deerfield Beach, FL; Fort Worth-Arlington,
14 TX; Fresno, CA; Houston-Baytown-Sugar Land, TX; Madera, CA; Miami-Miami
15 Beach-Kendall, FL; Modesto, CA; New York-Wayne-White Plains, NY-NJ;
16 Riverside-San Bernardino-Ontario, CA; and Vallejo-Fairfield, CA. From 2006 to
17 2010, Hispanic wholesale borrowers had statistically significant odds ratio disparities
18 in approximately 30% (14 of 46) of high loan-volume markets where Plaza made a
19 substantial number of brokered loans to Hispanic and white borrowers. For this
20 combined time period, in the high-volume markets with statistically significant odds
21 ratio disparities, the odds of a Hispanic borrower receiving a subprime wholesale loan
22 in a given year were up to 4.5 times as high as the odds for a white borrower. From
23 2006 to 2010, five markets (Portland-Vancouver-Beaverton, OR-WA; San Diego-
24 Carlsbad-San Marcos, CA; San Jose-Sunnyvale-Santa Clara, CA; Santa Ana-
25 Anaheim-Irvine, CA; and Santa Barbara-Santa Maria-Goleta, CA) had statistically
26 significant disparities favoring Hispanic wholesale borrowers over white borrowers.

27 24. In setting the terms and conditions for its loans, Plaza accounted for
28 individual borrowers' differences in credit risk characteristics by setting the prices

1 shown on its rate sheets for each loan product that included its assessment of applicant
2 creditworthiness. Mortgage brokers' deviations from the rate sheet prices, as
3 measured by total broker fees, were separate from and not controlled by the credit risk
4 adjustments already reflected in the rate sheet prices. Plaza reviewed these total
5 broker fees and charged them to borrowers in the loans it originated and funded.
6 Accordingly, the race- and national origin-based disparities described above are not
7 adjusted for borrowers' credit risk characteristics.

8 25. No Plaza policy directed its mortgage brokers to consider a borrower's
9 credit risk characteristics for a second time in deviating from the interest rate fixed by
10 its rate sheets for a specific loan product for a borrower with specified credit
11 qualifications or in assessing direct fees. Nevertheless, statistical regression analyses
12 of total broker fees that control for credit risk factors such as the loan amount, whether
13 the borrower took out a subordinate loan (vs. first lien only), whether the loan was a
14 refinance (vs. purchase), and the specific month of origination, demonstrate a similar
15 pattern of pricing disparities, with the magnitude only slightly diminished from the
16 disparities described above. Thus, accounting for credit risk factors a second time
17 does not explain the race- and national origin-based disparities with respect to the
18 amount of fees paid by minority borrowers as opposed to white borrowers, even if
19 those factors were relevant to the total broker fees not based on borrower risk.

20 26. The statistically significant race- and national origin-based disparities
21 described above for African-Americans and Hispanics who Plaza determined had the
22 credit characteristics to qualify for a home mortgage loan resulted from the
23 implementation and the interaction of Plaza's policies and practices that: (a) included
24 pricing terms based on the subjective and unguided discretion of brokers in setting
25 total broker fees not based on borrower risk in the terms and conditions of loans Plaza
26 originated after par rates had been established by reference to credit risk
27 characteristics; (b) did not require mortgage brokers to justify or document the reasons
28 for the amount of total broker fees not based on borrower risk; (c) failed to monitor for

1 or remedy the effects of racial and ethnic disparities in those broker fees; (d) permitted
 2 mortgage brokers to charge fees in excess of Plaza's stated caps; and (e) failed to
 3 monitor for or remedy the effects of racial and ethnic disparities in those fees that
 4 exceeded Plaza's stated caps. Total broker fees specifically measure the pricing
 5 variation caused by the subjective and unguided pricing adjustments not based on
 6 borrower risk. Plaza continued to use these discretionary wholesale broker fee pricing
 7 policies, to inadequately document and review the implementation of that pricing
 8 component, and to incentivize upward broker adjustments to the par interest rate at
 9 least through the end of 2010.

10 27. The higher total broker fees charged to African-American and Hispanic
 11 borrowers as compared to white borrowers were a result of Plaza's policy and practice
 12 of ratifying the subjective discretion of its brokers in the setting of their fees, and
 13 cannot be fully explained by factors unrelated to race or national origin that Plaza
 14 claims were taken into account. This policy and practice is not justified by business
 15 necessity or legitimate business interests.

16 **FAIR HOUSING ACT AND EQUAL CREDIT OPPORTUNITY ACT**

17 **VIOLATIONS**

18 28. Plaza's actions, policies, and practices, as alleged herein, constituted:

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

22 b. Discrimination on the basis of race or national origin in the terms,
 23 conditions, or privileges of sale of a dwelling in violation of the FHA, 42 U.S.C. §
 24 3604(b); and

25 c. Discrimination against applicants with respect to credit transactions on
 26 the basis of race or national origin in violation of ECOA, 15 U.S.C. § 1691(a)(1).
 27
 28

29. Plaza's actions, policies, and practices, as alleged herein, constituted:

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

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

30. Persons who have been victims of Plaza's discriminatory actions, policies, and practices are aggrieved persons as defined in the FHA, 42 U.S.C. § 3602(i), and as described in ECOA, 15 U.S.C. § 1691(e)(i), and have suffered injury and damages as a result of Plaza's violation of both the FHA and ECOA, as described herein.

31. Plaza's pattern or practice of discrimination was intentional and willful, and was implemented with reckless disregard for the rights of African-American and Hispanic borrowers.

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

(1) Declares that the policies and practices of the Defendant constitute a violation of the FHA, 42 U.S.C. §§ 3601-3619, and ECOA, 15 U.S.C. §§ 1691-1691f;

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

(A) Discriminating on account of race or national origin in any aspect of its lending business practices;

(B) Failing or refusing to take such affirmative steps as may be necessary to restore, as nearly as practicable, the victims of Defendant's unlawful practices to the position they would be in but for the discriminatory conduct;

(C) Failing or refusing to take such affirmative steps as may be necessary to prevent the recurrence of any discriminatory conduct in the future and to eliminate, to the extent practicable, the effects of Defendant's unlawful practices, and providing policies and procedures to ensure all segments of

1 Defendant's market areas are served without regard to prohibited
2 characteristics;

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

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

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

10 DATED: September 26, 2013

11 ERIC H. HOLDER, JR.
12 Attorney General

13 LAURA E. DUFFY
14 United States Attorney
15 Southern District of California

JOCELYN SAMUELS
Acting Assistant Attorney General
Civil Rights Division

16 /s/ Joseph P. Price, Jr.
JOSEPH P. PRICE, JR.
17 Assistant United States Attorney
18 Joseph.Price@usdoj.gov

STEVEN H. ROSENBAUM
Chief

/s/ Coty R. Montag
COTY R. MONTAG
19 Deputy Chief
20 United States Department of Justice
21 Civil Rights Division
22 Housing and Civil Enforcement Section
23 Coty.Montag@usdoj.gov
24
25
26
27
28