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22 **UNITED STATES DISTRICT COURT**
23 **SOUTHERN DISTRICT OF CALIFORNIA**

24 UNITED STATES OF AMERICA,
25 Plaintiff,

26 v.

27 PLAZA HOME MORTGAGE, INC.,
28 Defendant.

Case No.: 13cv2327-H (RBB)

CONSENT ORDER

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I. INTRODUCTION

This Consent Order (Order) is submitted jointly by the parties for the approval of and entry by the Court simultaneously with the filing of the United States' Complaint in this action. The Order resolves the claims of the United States that Plaza Home Mortgage, Inc. ("Plaza" or "the lender") has engaged in a pattern or practice of lending discrimination in violation of the Fair Housing Act (FHA), 42 U.S.C. §§ 3601-3619, and the Equal Credit Opportunity Act (ECOA), 15 U.S.C. §§ 1691-1691f, by allowing its wholesale mortgage brokers to charge African-American and Hispanic borrowers higher broker fees for residential real estate-related loans than non-Hispanic white ("white") borrowers.

There has been no factual finding or adjudication with respect to any matter alleged by the United States. Accordingly, the execution of this Order is not, and is not to be considered as, an admission or finding of any violation of the FHA or ECOA by Plaza. Rather, the parties have entered into this agreed Order to resolve voluntarily the claims asserted by the United States in order to avoid the risks and burdens of litigation. The parties agree that full implementation of the terms of this Order shall provide a fair and reasonable resolution of the allegations of the United States in a manner consistent with Plaza's legitimate business interests.

II. BACKGROUND

Plaza is a nationwide wholesale mortgage lender headquartered in San Diego, California. Plaza has offices in 15 cities and is licensed to conduct business in 48 states and the District of Columbia. Plaza also is licensed to make reverse mortgages in 44 states and is qualified to make FHA, FNMA, HUD, GNMA, USDA, and VA loans. Plaza is subject to the enforcement authority of the Federal Trade Commission ("FTC"). As of January 5, 2012, the Consumer Financial Protection Bureau ("CFPB") also has supervisory authority over Plaza.

In early 2009, the FTC examined data reported under HMDA in 2006 and 2007 to

1 determine whether any wholesale lenders showed substantial rate spread disparities
2 between white and minority borrowers. Based on this initial targeting analysis, the FTC
3 identified Plaza as a lender with high disparities. In 2009, the FTC issued two civil
4 investigative demands to Plaza, requesting loan data for 2006 to 2009 and information
5 regarding the lender's policies and mortgage business practices. In 2010, the FTC
6 conducted four investigational hearings of Plaza officials and met with Plaza
7 representatives on several occasions to discuss the investigation. In 2011, at the FTC's
8 request, the Department of Justice took over the investigation and obtained loan data for
9 2010.

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

24 The Complaint further alleges that Plaza's second step of pricing wholesale loans
25 permitted mortgage brokers to exercise subjective, unguided discretion in setting the
26 amount of broker fees charged to individual borrowers, unrelated to an applicant's credit
27 risk characteristics. Mortgage brokers who supplied Plaza with wholesale loans were
28 compensated in two ways: through direct fees paid by the borrower to the broker and/or

1 through YSPs. In setting the terms and conditions for its loans, Plaza accounted for
2 individual borrowers' differences in credit risk characteristics by setting the prices
3 shown on its rate sheets for each loan product that included its assessment of applicant
4 creditworthiness. The Complaint alleges that mortgage brokers' deviations from the
5 rate sheet prices were separate from and not controlled by the credit risk adjustments
6 already reflected in the rate sheet prices. The United States alleges that Plaza reviewed
7 these total broker fees that brokers charged to borrowers in the loans Plaza funded. The
8 Complaint alleges that Plaza had written policies placing a ceiling on total broker fees
9 that changed several times from 2006 to 2010; however, Plaza did not strictly enforce its
10 shifting fee caps.

11 The United States contends that from 2006 through at least 2010, Plaza through
12 its brokers charged thousands of African-American and Hispanic wholesale borrowers
13 higher fees than white borrowers for home mortgage loans,¹ not based on their
14 creditworthiness or other objective criteria related to borrower risk, but because of their
15 race or national origin. The Complaint alleges that these disparities resulted from the
16 implementation and the interaction of Plaza's policies and practices that: (a) included
17 pricing terms based on the subjective and unguided discretion of brokers in setting total
18 broker fees not based on borrower risk in the terms and conditions of loans Plaza
19 originated after par rates had been established by reference to credit risk characteristics;
20 (b) did not require mortgage brokers to justify or document the reasons for the amount
21 of total broker fees not based on borrower risk; (c) failed to monitor for or remedy the
22 effects of racial and ethnic disparities in those broker fees; (d) permitted mortgage
23 brokers to charge fees in excess of Plaza's stated caps; and (e) failed to monitor for or
24 remedy the effects of racial and ethnic disparities in those fees that exceeded Plaza's
25 stated caps. The United States contends that these policies and practices were not
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27 ¹ For purposes of this Consent Order, and consistent with the Home Mortgage Disclosure Act
28 ("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 justified by business necessity or legitimate business interests. The Complaint alleges
2 that as a result of Plaza's practices, an African-American or Hispanic borrower paid, on
3 average, hundreds of dollars more for a Plaza loan, in violation of the FHA and ECOA.

4 **III. POSITION OF PLAZA**

5 Plaza denies all allegations and claims of a pattern or practice of discrimination in
6 violation of the FHA and the ECOA as set forth in the United States' allegations. Plaza
7 asserts that at all times it conducted its lending in compliance with the letter and spirit of
8 the fair lending laws and in a non-discriminatory manner. Plaza maintains that any of
9 the differences in pricing, as alleged by the United States, were attributable to
10 legitimate, non-discriminatory factors.

11 The United States' claim focuses on wholesale loans and arises from the fees that
12 independent mortgage brokers charged their customers. Plaza asserts that these fees
13 were negotiated independently between the mortgage brokers and their clients. Plaza
14 believes that competitive market conditions require it to allow independent mortgage
15 brokers to negotiate their compensation directly with their borrower-customers. Plaza
16 contends that it did not receive any compensation from brokers resulting from fees that
17 its independent brokers charged borrowers. To the extent that brokers charged
18 borrowers fees, that compensation went solely to the broker as part of the price
19 negotiated directly between the broker and the borrower. Therefore, Plaza asserts that
20 allowing mortgage brokers to set their own compensation is justifiable by a legitimate
21 business purpose.

22 Furthermore, Plaza notes that it has not been advised by the United States that it
23 alleges that any Plaza employee discriminated intentionally on the basis of race or
24 national origin. Notwithstanding its disagreement with the allegations of the United
25 States, Plaza has agreed to the entry of this order to resolve voluntarily the claims
26 asserted by the United States in order to avoid the costs, risks, and burdens of litigation.

27 Since 2010, Plaza has taken steps designed to lessen any broker compensation
28 disparities based on race or national origin. Plaza has revised its broker compensation

1 policy to comply with the April 2011 amendments to Regulation Z. Plaza has
2 developed a nationwide lending program intended to accommodate traditionally
3 underserved communities and provide financial literacy training, home ownership
4 instruction, and access to more affordable credit in the acquisition of housing. Plaza has
5 also initiated a company-wide fair lending training program that is a part of its ongoing
6 compliance program as well as its new-hire orientation syllabus.²

7 **IV. REMEDIAL ORDER**

8 **A. General Prohibitory Injunction**

9 1. Plaza, including all of its officers, employees, agents, representatives,
10 assignees, and all those in active concert or participation with any of them, is hereby
11 enjoined from engaging in any act or practice that discriminates on the basis of race or
12 national origin in any aspect of a residential real estate-related transaction in violation of
13 the FHA, or in any aspect of a credit transaction in violation of ECOA. This prohibition
14 includes, but is not limited to: the adoption, performance, or implementation of any
15 policy, practice, or act that results in race or national origin discrimination against
16 residential mortgagors in the assessment of mortgage broker fees.

17 2. This Order requires the lender to take actions to remedy its alleged
18 discrimination. Plaza retains the discretion to take any additional actions that it believes
19 are appropriate to achieve the goals of this Order. The effective date of this Order shall
20 be the date on which it is approved and entered by the Court.

21 **B. Pricing Policies and Procedures**

22 3. Plaza shall have in place as part of a loan pricing policy, specific, race- and
23 national origin-neutral standards for the assessment of broker fees on residential real-
24 estate related loans that Plaza underwrites, originates, or funds that are designed to
25 avoid unlawful discrimination by the lender. The loan pricing policy shall also require
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27 ² In addition, since 2010, Plaza has hired a nationally recognized civil rights law firm to help
28 implement and manage Plaza's compliance program, and retained the services of a national non-profit
fair housing organization to both review Plaza's policies and recommend initiatives designed to
prevent discrimination.

1 that written documentation of such fees be maintained in each loan file and be among
2 the application documents submitted to Plaza. These requirements shall be made part of
3 any broker agreement between a wholesale mortgage broker and Plaza.

4 4. Plaza's loan pricing policies shall require the lender to post and
5 prominently display in each location where applications for Plaza's loans are received a
6 notice of non-discrimination (a sample of which is attached as Exhibit A).

7 5. Plaza's policy shall require brokers to make the following disclosures to
8 applicants, to the extent not inconsistent with applicable law: (a) the full amount of any
9 broker compensation and that such compensation may or may not be negotiable
10 between the broker and borrower, and (b) a notice of non-discrimination that provides
11 substantially the same information as is contained in Appendix A. Such disclosures
12 shall be in writing, signed by the broker and the borrower (if the borrower executes),
13 and submitted by the broker to be made part of the loan file by Plaza. This disclosure
14 shall be made as early as practicable but not later than 48 hours prior to the closing of
15 the loan.

16 6. Plaza's loan pricing policies shall require all wholesale mortgage brokers
17 from whom they accept wholesale residential mortgage applications to comply with the
18 requirements established in Paragraphs 3-5. Plaza's policies shall also require
19 designated employees, subject to the approval of the United States and under the
20 supervision of a designated manager of Plaza, to review applications received from
21 wholesale mortgage brokers for compliance with loan pricing policies. Any loan that is
22 not in compliance with the pricing policy may not be funded. All reviews shall be
23 documented and kept in the loan file.

24 7. During the term of this Order, Plaza may change its loan pricing policies as
25 set forth in Paragraphs 3-6 upon written advance notice to the United States, which shall
26 have thirty (30) days from receipt of such notice to raise any objection to the proposed
27 change(s). If it raises any objection, the parties shall confer to resolve their differences.
28 If they are unable to do so, either party may bring the dispute to this Court for

1 resolution. Plaza shall not implement the change(s) during such a dispute.

2 **C. Monitoring Program**

3 8. Within ninety (90) days of the Effective Date of this Order, Plaza shall
4 have in place a monitoring program designed to ensure compliance with this Order. The
5 program shall monitor the lender's loans for potential disparities based on race and
6 national origin. At a minimum, Plaza shall monitor the compensation received by its
7 wholesale mortgage brokers. The program also shall require a semi-annual review by
8 senior managers. Each semi-annual review shall include, but not be limited to, an
9 analysis designed to detect statistically significant broker fee disparities based on race
10 and national origin with respect to the lender's loan products covered by this Order.
11 The analysis shall be conducted on an aggregate basis for all of Plaza's wholesale
12 mortgage brokers and on a broker-by-broker basis in selected geographic areas, to be
13 agreed upon by the parties in advance of each semi-annual analysis.

14 a. In the event that any such review discloses statistically significant
15 broker fee disparities between African-American or Hispanic and white borrowers,
16 Plaza shall attempt to determine the reason(s) for those disparities and shall promptly
17 take corrective action to address disparities that are attributable to a policy or practice of
18 Plaza and not justified by a legitimate business need. In determining whether to take
19 corrective action and what action to take, a variety of different factors and analyses may
20 be considered, with the review and approval of the United States, including analyses
21 done at an aggregate, metropolitan statistical area, or broker level. Such analyses shall
22 be utilized as deemed appropriate on a case-by-case basis. Nothing in this Decree shall
23 mandate the use of any one type of analysis as dispositive of the corrective action to be
24 taken in all situations. Corrective action may include, as warranted, financial
25 remediation for borrowers, further modifications to Plaza's pricing policies and/or
26 monitoring programs as appropriate, education, discipline, or termination of broker
27 relationships, or any other action as deemed appropriate under the circumstances. Plaza
28 shall document all such disparities, determinations, and actions taken and shall provide

1 a summary of the semi-annual reviews and any documentation and analysis relating
2 thereto to the United States on a semi-annual basis.

3 b. In the event that any such review discloses statistically significant
4 disparities with respect to any particular broker's compensation practices, Plaza shall
5 require the broker to explain the non-discriminatory reason(s) for those disparities. If
6 there is no reasonable, non-race or national origin-based explanation for the noted
7 disparities, Plaza shall require the broker to take prompt corrective action to address the
8 disparities.

9 9. If the United States raises any objections to Plaza's determinations or
10 remedial actions, the parties shall meet and confer to consider appropriate steps to
11 address the concerns raised by the United States' review. If the parties are unable to
12 come to an agreement regarding such objections, any party may bring the dispute to this
13 Court for resolution.

14 **D. Notification to the United States and Right to Object**

15 10. Plaza shall provide a copy of the policies it utilizes to implement
16 Paragraphs 3-6 of this Order and descriptions of the monitoring programs required
17 under Paragraphs 8-9 to the United States within ninety (90) days of the Effective Date
18 of this Order. The United States shall have thirty (30) days from receipt of the policies
19 and descriptions to raise any objections to them, and if it raises any, the parties shall
20 confer to resolve their differences. In the event the parties are unable to do so, either
21 party may bring the dispute to this Court for resolution.

22 **E. Equal Credit Opportunity Training Program**

23 11. Plaza currently provides comprehensive fair lending training to
24 management officials and employees. Within ninety (90) days of the Effective Date of
25 the Order, Plaza will provide access to a copy of this Order and the policies referenced
26 therein to its management officials and employees who participate in taking applications
27 for, originating, or pricing loans secured by residential real estate, including employees
28 who have significant contact with or oversight of mortgage brokers, and employees

1 responsible for conducting compliance monitoring as provided in Paragraph 9 of this
2 Order.

3 12. Within 180 days of the Effective Date of the Order, and annually thereafter
4 for the duration of the Order, Plaza will continue to provide equal credit opportunity
5 training to the management officials and employees specified in Paragraph 11. Plaza
6 will provide equal credit opportunity training to each new management official or
7 employee whose responsibilities include those set forth in the preceding sentence within
8 ninety (90) days of beginning his or her employment in that position.

9 13. During the equal credit opportunity training, Plaza will provide to each
10 participant training on the terms of this Order, the policies referenced therein, the
11 requirements of the FHA, the ECOA, and his or her responsibilities under each. Should
12 the content of the training program required by this Paragraph change, such changes
13 will be submitted to the United States for approval in advance of implementation. Any
14 expenses associated with this training program will be borne by Plaza.

15 14. Plaza shall secure from each official and employee specified in Paragraph
16 11 a signed statement acknowledging that he or she has received access to a copy of this
17 Order and the loan policies and has completed the initial equal credit opportunity
18 training. The signature of the acknowledgement may be either manual or electronic.
19 These statements shall be substantially in the form of Appendix B (Acknowledgment)
20 and Appendix C (Equal Credit Opportunity Training). During the term of this Order,
21 each new employee or agent with substantive responsibility relating to the lender's loan
22 programs covered by this Order shall be provided access to a copy of this Order and
23 given an opportunity to have any questions answered, and shall sign the
24 acknowledgment form statement (Appendix B) within ten (10) days of beginning his or
25 her employment in that position.

26 **F. Community Enrichment Program**

27 15. Plaza currently operates a Community Enrichment Program that is
28 designed to address the lack of affordable housing and lending products in minority and

1 underserved communities in selected geographic areas nationwide. Plaza shall continue
2 to operate the Community Enrichment Program for the entire duration of the Order.

3 16. Through the program, Plaza offers the Fannie Mae Community Home
4 Buyers Affordable Lending product as well as standard FHA, VA and USDA lending
5 products to meet the financing needs of qualified applicants in communities that may
6 not otherwise have access to prime mortgage lending programs and interest rates. The
7 program provides qualified residents in designated minority and underserved areas loan
8 products with interest rates, terms, and/or other subsidies that are more advantageous to
9 the applicant than Plaza's normal products. Under this program, Plaza offers one or
10 more of the following: an interest rate below that which Plaza would normally charge,
11 down payment or closing cost grants or assistance, or other financial aid.

12 17. Within thirty (30) days of entry of this Order, the parties will confer on the
13 precise financial benefits Plaza shall provide to qualified borrowers under the program
14 for the duration of the Order. The parties shall also confer on the specific geographic
15 areas where the program will continue to operate and any other relevant program
16 requirements, including the targeted marketing that Plaza will provide in each
17 designated area. In the event that the parties are unable to agree upon the terms of the
18 program, either party may bring the dispute to this Court for resolution.

19 18. For the duration of this Order, Plaza shall retain the discretion to offer
20 multiple forms of financial assistance to qualified applicants on an individual basis as it
21 deems appropriate under the factual circumstances of a particular application so long as
22 the maximum total financial assistance provided by Plaza on a covered transaction does
23 not exceed \$15,000. Plaza shall apply the available funds in a manner that maximizes
24 the likelihood that it shall originate a loan to a qualified applicant, consistent with
25 applicable underwriting guidelines, investor guidelines, and safety and soundness
26 standards. Plaza also shall have discretion to provide the loan subsidy among its single-
27 family residential loan products.

28 19. Plaza may expend additional funds in connection with the program,

1 including funds related to homebuyer education, counseling, and sponsorship of trade
2 events and conferences. Any homebuyer education or counseling associated with the
3 program must be conducted by a HUD-approved counseling agency. Plaza may define
4 additional procedures and requirements for homebuyer education and counseling,
5 subject to approval by the United States.

6 20. No provision of this Order, including the Community Enrichment Program,
7 requires Plaza to make any unsafe or unsound loan or to make a loan to a person who is
8 not qualified for the loan based on lawful, nondiscriminatory terms. Nor does any
9 provision of this Order require Plaza to alter its standards for underwriting mortgage
10 loans. The bank's underwriting standards applied to applicants that qualify for the
11 Community Enrichment Program shall be no less favorable than the standards that are
12 applied to all other applicants. At the same time, no provision of this Order imposes an
13 obligation on Plaza to apply underwriting standards to applicants that qualify for the
14 program that are more favorable than the standards otherwise applied by the lender. No
15 provision of this Order shall require Plaza to offer a benefit to a borrower, or a form of
16 financial assistance, that violates any law, regulation, rule, or standard imposed by any
17 federal agency, including the Department of Housing and Urban Development (HUD).

18 21. During the term of this Order, Plaza shall provide semi-annual progress
19 reports to the United States summarizing its actions taken during the previous six
20 months to implement the Community Enrichment Program, including the number of
21 loans originated under the program, the amount of subsidies provided, and a description
22 of any marketing, consumer education, or outreach related to the program.

23 22. During the term of this Order, Plaza shall assess the effectiveness of the
24 Community Enrichment Program in achieving its goals and shall recommend to the
25 United States any changes it reasonably believes are necessary and appropriate to
26 increase the program's effectiveness.

27 23. The United States has the sole discretion to determine whether Plaza is in
28 material compliance with Paragraphs 15-22 of this Order. If at any time during the term

1 of this Order the United States has reason to believe that Plaza is not materially
2 complying with these paragraphs, it shall notify Plaza and the parties shall meet and
3 confer for the purpose of mutually agreeing upon a course of action to effect Plaza's
4 compliance with the Community Enrichment Program. In the event that the United
5 States and Plaza are unable to agree upon a course of action to effect Plaza's material
6 compliance, the United States has the discretion to present the matter to the court or to
7 rescind this Consent Order and seek supplemental relief or reinstate its Complaint. In
8 the event that the United States opts to rescind this Consent Order under the terms of
9 this paragraph, Plaza expressly agrees not to count time during which this Consent
10 Order is in place, or use the terms or existence of this Consent Order, to plead, argue, or
11 otherwise raise any defenses under theories of claim preclusion, issue preclusion, statute
12 of limitations, estoppel, laches, or similar theories. If the United States determines that
13 Plaza has materially complied with Paragraphs 15-22 of this Order, it shall provide a
14 certification to Plaza no later than sixty (60) days after Plaza's submission of its fifth
15 annual report pursuant to Paragraph 39.

16 **V. SATISFACTION OF UNITED STATES' CLAIMS FOR**
17 **MONETARY RELIEF**

18 24. Plaza shall deposit in an interest-bearing escrow account the total sum of
19 \$3 million to compensate for monetary damages that aggrieved persons may have
20 suffered as a result of the alleged violations of the FHA and ECOA with respect to
21 residential mortgage loans (the "Settlement Fund"). Title to this account shall be in the
22 name of "Plaza Home Mortgage, Inc. for the benefit of aggrieved persons pursuant to
23 Order of the Court in Civil Action No. [xxx]". Plaza shall provide written verification
24 of the deposit to the United States within fifteen (15) days of the Effective Date of this
25 Order. Any interest that accrues shall become part of the Settlement Fund and be
26 utilized and disposed of as set forth herein.

27 25. Within thirty (30) days of the Effective Date of this Order, Plaza shall
28 identify a proposed Settlement Administrator ("Administrator"). Within thirty (30) days

1 of obtaining the United States' consent to the selected Administrator, Plaza shall
2 execute a contract with the Administrator to conduct the activities set forth in the
3 following paragraphs. Plaza shall obtain the United States' consent to the contract prior
4 to its execution. Plaza shall bear all reasonable costs and expenses of the Administrator.
5 The Administrator's contract shall require it to work cooperatively with the United
6 States in the conduct of its activities, including reporting regularly and providing all
7 reasonably requested information to the United States. Plaza shall allow the
8 Administrator access to relevant mortgage loan files and borrower contact information
9 for the purposes of accomplishing its duties under the Order. The contract shall require
10 the Administrator to comply with all confidentiality and privacy restrictions applicable
11 to the party who supplies the information and data to the Administrator.

12 26. In the event the United States has reason to believe that the Administrator
13 is not materially complying with the terms of its contract with Plaza, the United States
14 and Plaza shall meet and confer for the purpose of mutually agreeing upon a course of
15 action to effect the Administrator's material compliance with its contract. In the event
16 that the United States and Plaza are unable to agree upon a course of action to effect the
17 Administrator's material compliance with its contract, the parties may present the matter
18 to the court.

19 27. Within thirty (30) days of the Effective Date of this Order, the United
20 States shall request any information it believes shall assist in identifying aggrieved
21 persons and determining any damages. Plaza shall, within thirty (30) days of receipt of
22 such request, supply, to the extent that it is within the lender's control, such information
23 as requested. Requested data may be supplied as a supplement to the database already
24 provided to the United States by the lender in the course of the United States' inquiry.
25 To the extent that the information is not within Plaza's control, the lender shall, within
26 thirty (30) days of receipt of such request, supply any data in its control that identifies
27 other parties that may have that the information.

28 28. The United States shall, upon reasonable notice, be allowed access to the

1 lender's records and files to verify the accuracy of the data provided and to otherwise
2 identify persons entitled to the payments from the Settlement Fund.

3 29. Within ninety (90) days of the Effective Date of this Order, the United
4 States shall provide to the Administrator a list of aggrieved persons and an initial
5 estimate of the amount each borrower will receive from the Settlement Fund. The
6 United States shall base these initial estimates on the loan fees and costs of the
7 individual loans. Pursuant to its contract, the Administrator shall make its best efforts,
8 using all reasonable methods regularly used by companies that administer litigation and
9 government enforcement settlement funds, to locate each identified aggrieved person
10 and obtain such information as the United States reasonably considers necessary from
11 each. The Administrator's contract shall require the Administrator to complete this
12 responsibility within a period of four (4) months from the date the United States
13 provided the list, subject to an extension of time as provided by Paragraph 40. The
14 Administrator's contract shall require it to establish cost-free means for the allegedly
15 aggrieved persons to contact it, such as email and a toll-free telephone number, and
16 shall require it to provide all written materials to aggrieved persons in both English and
17 Spanish.

18 30. The United States shall specify the final amount each aggrieved person
19 located by the Administrator shall receive from the initial amount deposited into the
20 Settlement Fund no later than sixty (60) days after the Administrator's deadline for
21 locating aggrieved persons has passed. The United States shall provide the
22 compensation list to the Administrator. No individual may request a review by the
23 Court or the Administrator of the final payment amounts. The parties agree that the
24 total amount of the Settlement Fund shall not be altered based on the number of
25 allegedly aggrieved persons who confirm their identity and willingness to release
26 individual discrimination claims pursuant to Paragraph 31.

27 31. The Administrator shall send releases, as set forth in Appendix D
28 ("Release"), to each aggrieved person prior to their receipt of their payment. After

1 receipt of executed Releases, the Administrator shall promptly deliver payments to
2 those persons in the amounts determined by the United States as described in Paragraph
3 30. The Administrator's identification and payment responsibility may be implemented
4 on a rolling basis with approval from the United States.

5 32. The Administrator's contract shall require the Administrator to set forth
6 reasonable deadlines, subject to approval of the United States, so that compensation is
7 distributed and checks are presented for payment or become void prior to the date that is
8 twenty-four (24) months from the date the Administrator begins to locate aggrieved
9 persons pursuant to Paragraph 29.

10 33. Payments from the Settlement Fund to allegedly aggrieved persons shall be
11 subject to the following conditions:

12 (a) No aggrieved person shall be paid any amount from the Settlement
13 Fund until he or she has executed and delivered to the Administrator a written release of
14 all claims, legal or equitable, that he or she might have against the released persons and
15 entities regarding the claims asserted by the United States in this lawsuit, so long as
16 such claims accrued prior to the entry of this Order; and

17 (b) The total amount paid by Plaza collectively to the aggrieved persons
18 shall not exceed the amount of the Settlement Fund, including accrued interest.

19 34. Any moneys not distributed from the Settlement Fund, including accrued
20 interest, within two (2) years of the date the initial notifications are sent to persons
21 deemed to be aggrieved by the United States shall be distributed to qualified
22 organization(s) that provide services including credit and housing counseling (including
23 assistance in obtaining loan modification and preventing foreclosure), legal
24 representation of borrowers seeking to obtain a loan modification or to prevent
25 foreclosure, financial literacy, and other related educational programs targeted at
26 African-American and Hispanic potential and former borrowers in communities where
27 the Complaint alleges significant discrimination occurred against African-American and
28 Hispanic borrowers. Recipient(s) of such funds must not be related to Plaza or any

1 entity owned by Plaza. Before selecting the qualified organization(s), Plaza shall obtain
2 a proposal from the organization(s) on how the funds will be used consistent with the
3 above-stated purpose, submit such proposal to the United States, and consult with and
4 obtain the non-objection of the United States. The United States and Plaza may request
5 modification of the proposal before approving the organization(s). The parties shall
6 thereafter seek approval from the Court to distribute the remaining funds to the qualified
7 organization(s). Plaza shall require each recipient to submit to Plaza and the United
8 States a detailed report on how funds are utilized within one (1) year after the funds are
9 distributed, and every year thereafter until the funds are exhausted.

10 35. Plaza will not be entitled to a set-off, or any other reduction, of the amount
11 of payments to aggrieved persons because of any debts owed by the identified persons.
12 Plaza also will not refuse to make a payment based on a release of legal claims or loan
13 modification previously signed by any such aggrieved persons.

14 36. During the period of this Order, Plaza shall maintain a complaint resolution
15 program to address consumer complaints alleging discrimination regarding loans
16 originated by Plaza. Documentation regarding this complaint resolution program,
17 including documentation of individual complaints and resolutions, if any, shall be made
18 available to the United States on a semi-annual basis and included in the reports
19 referenced in Paragraph 38. A person shall not be deemed ineligible for the complaint
20 resolution program on the basis of having executed the release described in Paragraph
21 33(a), but there is no requirement under this Order that any complaint necessarily be
22 resolved for or against the lender.

23 **VI. EVALUATING AND MONITORING COMPLIANCE**

24 37. For the duration of this Order, Plaza shall retain all records relating to its
25 obligations hereunder as well as its compliance activities as set forth herein. The United
26 States shall have the right to review and copy such records upon request.

27 38. In addition to the reporting requirements set forth in Paragraphs 8(a), 21,
28 and 36, Plaza shall submit a report to the United States within six months of the

1 effective date of this Order regarding its progress in establishing and implementing each
2 of the remedial items specified in this Order. A second report shall be filed on the first
3 anniversary of this Order. Thereafter, Plaza shall submit a report annually for the term
4 of the Order describing the actions taken in compliance with the provisions of the Order.
5 The report shall include an objective assessment of the extent to which each quantifiable
6 obligation was met, an explanation of why any particular component fell short of
7 meeting the goal for that year, and any recommendations for additional actions to
8 achieve the goals of this Order. If applicable, Plaza shall attach to the annual reports
9 representative copies of training material and disseminated pursuant to this Order.

10 **VII. ADMINISTRATION**

11 39. The Order shall terminate (a) three (3) months after the submission of
12 Plaza's fifth annual report to the United States, provided that the United States has
13 certified that Plaza has materially complied with Paragraphs 15-22 of this Order, as set
14 forth in Paragraph 23. If the United States determines that Plaza has not materially
15 complied with Paragraphs 15-22 within sixty (60) days after Plaza submits its fifth
16 annual report pursuant to Paragraph 38, it may present the matter to the court to extend
17 the term of this Order or rescind the Order and reinstate its Complaint. Notwithstanding
18 the above, this Order may be extended upon further motion of the United States to the
19 Court, for good cause shown.

20 40. Any time limits for performance fixed by this Order may be extended by
21 mutual written agreement of the parties. Additionally, details related to administration
22 of the Settlement Fund as set forth in Paragraphs 25-32 can be modified by agreement
23 of the parties and without further Court approval. Other modifications to this Order
24 may be made only upon approval of the Court, by motion by either party. The parties
25 recognize that there may be changes in relevant and material factual circumstances
26 during the term of this Order that may impact the accomplishment of its goals. The
27 parties agree to work cooperatively to discuss and attempt to agree upon any proposed
28 modifications to this Order resulting therefrom.

1 41. In the event that any disputes arise about the interpretation of or
2 compliance with the terms of this Order, the parties shall endeavor in good faith to
3 resolve any such dispute between themselves before bringing it to this Court for
4 resolution. The parties agree that if it either reasonably believes that the other party
5 failed to comply with any obligation under this Order, it shall provide written notice
6 thereof and allow a period of at least thirty (30) days to discuss a voluntarily resolution
7 of the alleged violation before presenting the matter to this Court. In the event of either
8 a failure by Plaza to perform in a timely manner any act required by this Order or an act
9 by Plaza, in violation of any provision hereof, the United States may move this Court to
10 impose any remedy authorized by law or equity, including attorneys' fees and costs.

11 42. Nothing in this Order shall excuse the lender's compliance with any
12 currently or subsequently effective provision of law or order of a regulator with
13 authority over Plaza that imposes additional obligations on the lender.

14 43. The parties agree that, as of the date of the entry of this Order, litigation is
15 not "reasonably foreseeable" concerning the matters described above. To the extent that
16 either party previously implemented a litigation hold to preserve documents,
17 electronically stored information (ESI), or things related to the matters described above,
18 the party is no longer required to maintain such litigation hold. Nothing in this
19 paragraph relieves either party of any other obligations imposed by this Order.

20 44. Subject to the conditions of Paragraphs 23 and 39, Plaza's compliance with
21 the terms of this Order shall fully and finally resolve all claims of the United States
22 relating to the alleged violation of the fair lending laws by means of discriminating on
23 the basis of race and national origin, as alleged in the Complaint in this action, including
24 all claims for equitable relief and monetary damages and penalties. Each party to this
25 Consent Order shall bear its own costs and attorney's fees associated with this litigation.

26 45. The Court shall retain jurisdiction for the duration of this Consent Order to
27 enforce the terms of the Order, after which time the case shall be dismissed with
28 prejudice.

SO APPROVED AND ORDERED, this ____ day of _____, 2013.

UNITED STATES DISTRICT JUDGE

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1 The undersigned hereby apply for and consent to the entry of this Order:

2 Date: September 26, 2013

3
4 For the United States:

5 LAURA E. DUFFY
6 United States Attorney
7 Southern District of California

JOCELYN SAMUELS
Acting Assistant Attorney General
Civil Rights Division

8 /s/ Joseph P. Price, Jr.
9 JOSEPH P. PRICE, JR.
10 Assistant United States Attorney
11 Joseph.Price@usdoj.gov

STEVEN H. ROSENBAUM
Chief

12 /s/ Coty R. Montag
13 COTY R. MONTAG
14 Deputy Chief
15 United States Department of Justice
16 Civil Rights Division
17 Housing and Civil Enforcement Section
18 Coty.Montag@usdoj.gov

19 For Plaza Home Mortgage, Inc.:

20 /s/ Lynde Selden II, Esq.³
21 LYNDE SELDEN II, Esq.
22 Senior Corporate Counsel
23 MICHAEL D. DICKS, Esq.
24 Co-Owner
25 Plaza Home Mortgage, Inc.
26 Lynde.Selden@plazahomemortgage.com

27
28 ³ The filer certifies that Lynde Selden II authorized his electronic signature to be placed on this document indicating the content is acceptable to him.

APPENDIX A

**We do Business in Accordance with
Federal Fair Lending Laws**

**UNDER THE EQUAL CREDIT OPPORTUNITY
ACT, IT IS ILLEGAL TO DISCRIMINATE IN ANY
CREDIT TRANSACTION:**

**On the basis of race, color, national origin, religion,
sex, marital status, or age;**

Because income is from public assistance; or

**Because a right has been exercised under the Federal
Consumer Credit Protection Laws.**

**IF YOU BELIEVE YOU HAVE BEEN
DISCRIMINATED AGAINST, YOU SHOULD SEND
A COMPLAINT TO ONE OF THE FOLLOWING:**

**U.S. Department of Justice
Civil Rights Division
Housing and Civil Enforcement
Section
Washington, DC 20530
1-800-896-7743
<http://www.usdoj.gov/crt/housing>**

**Consumer Financial Protection Bureau
P.O. Box 4503
Iowa City, Iowa 52244
(855) 411-CFPB (2372)
(855) 729-CFPB (2372) (TTY/TDD)
www.consumerfinance.gov**

**Federal Trade Commission
Washington, DC 20580
(202) 326-2222
<https://www.ftccomplaintassistant.gov/>**

APPENDIX B

Officer and Employee Acknowledgement

I acknowledge that on _____, I was provided copies of the Consent Order entered by the Court in United States v. Plaza Home Mortgage, Inc. (S.D. Cal.), and the loan policies developed pursuant thereto. I have read and understand these documents and have had my questions about these documents answered. I believe I understand my legal responsibilities and shall comply with those responsibilities.

Signature

Print Name

Job Title

Date

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APPENDIX C

Officer and Employee Training Certification

I certify that on _____, I received training with respect to my responsibilities under the Consent Order entered by the Court in United States v. Plaza Home Mortgage, Inc. (S.D. Cal.), and the federal fair lending laws. I have had the opportunity to have my questions about them answered. I believe I understand my legal responsibilities not to discriminate under the federal fair lending laws, including the Fair Housing Act and Equal Credit Opportunity Act, and shall comply with those responsibilities.

Signature

Print Name

Job Title

Date

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APPENDIX D

Release

In consideration for the parties' agreement to the terms of the Consent Order entered in United States v. Plaza Home Mortgage, Inc. (S.D. Cal.), and the payment to me of \$_____, pursuant to the Consent Order and effective upon that payment, I hereby release and forever discharge all claims, rights, remedies, and recoveries related to the facts of credit discrimination in the origination of residential mortgage loans at issue in the litigation referenced above, and release and forever discharge all claims, rights, remedies, and recoveries arising from credit discrimination alleged in that litigation in connection with the origination of my loan(s), known and unknown, up to and including the date of execution of this release.

I understand that this releases those claims, rights, remedies and recoveries against Plaza Home Mortgage, Inc., and against any and all related entities, parents, predecessors, successors, subsidiaries, and affiliates, and against any and all of their past and present directors, officers, agents, managers, supervisors, shareholders, and employees and their heirs, executors, administrators, successors in interest, or assigns.

Executed this ___ day of _____, ____.

Signature

Print Name

Address