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**UNITED STATES DISTRICT COURT**
**CENTRAL DISTRICT OF CALIFORNIA**

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| UNITED STATES OF AMERICA,<br><br>Plaintiff,<br><br>v.<br><br>LUTHER BURBANK SAVINGS,<br><br>Defendant. | CV12-7809 -JAK (FMOx)<br><br>**COMPLAINT** |

Plaintiff, United States of America, alleges:

## INTRODUCTION

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

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

3. From 2006 through 2010, Luther originated very few single-family residential mortgage loans in majority-minority census tracts (with a non-white population greater than 50%)[1] throughout California. For example, from 2006 through 2010, Luther originated only 5.2% of its single-family residential mortgage loans in majority-minority census tracts in the greater Los Angeles area. During the same time period, other prime lenders in this area, which made a similar volume of single-family residential loans as Luther, originated 41.7% of their single-family residential mortgage loans in majority-minority census tracts.

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[1] Most of the majority-minority census tracts in California are composed of majority-African-American and Hispanic tracts. For example, according to the 2010 U.S. Census, approximately 70% of the majority-minority census tracts in the greater Los Angeles area have a majority African-American and Hispanic population.

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

5. Luther continued its $400,000 minimum loan amount policy in the face of its knowledge that its low level of lending to African-American and Hispanic borrowers, and in majority-minority census tracts, was attributable to the policy. Luther continued its minimum loan amount policy until June 2011, more than a year after its regulator identified the policy or practice as potentially discriminatory and referred the issue to the Department of Justice pursuant to ECOA.

6. Since June 2011, Luther has operated with a $20,000 minimum loan amount policy for single-family residential mortgage loans that has not produced adverse consequences to its lending business.

7. This Court has jurisdiction of 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.

## PARTIES

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

9. Luther's principal activity is real estate lending, with an emphasis on apartment and commercial real estate loans.[2] Luther also offers 3- and 5-year hybrid adjustable-rate single-family (defined by the Home Mortgage Disclosure Act ("HMDA"), 28 U.S.C. §§ 2801-2810, as dwellings with 1-4 units) residential mortgage loans through its wholesale and retail channels. All references to "single-family residential loans" in this Complaint refer to owner-occupied, single-family residential mortgage loans.

10. Luther is subject to the federal laws governing fair lending, including the FHA and ECOA and their respective implementing regulations, the fair housing regulations of the Department of Housing and Urban Development, 24 C.F.R. § 100.1, *et seq.,* and Regulation B of the Consumer Financial Protection Bureau, 12 C.F.R. § 1002.1, *et seq.* The FHA and ECOA prohibit financial institutions from

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[2] Defendant's multi-family lending program is not at issue in this Complaint.

discriminating on the basis of, *inter alia*, race and national origin in their mortgage lending practices.

## FACTUAL ALLEGATIONS

11. Beginning in 2009, the OTS conducted an examination of Luther's wholesale single-family residential lending in the Los Angeles-Long Beach-Riverside Combined Metropolitan Statistical Area ("Los Angeles CMSA") and the San Jose-San Francisco-Oakland CMSA to evaluate compliance with the FHA and ECOA.[3] During the examination, the OTS determined that Luther had established a minimum loan amount of $400,000 in Southern California and $800,000 in Northern California (later reduced to $400,000) for its wholesale single-family residential lending program. Based on analysis of Luther's 2008 applications and originations for single-family residential loans, the OTS found reason to believe that Luther's minimum loan amount policy had a disparate impact in violation of the FHA and ECOA. On March 8, 2010, following the examination described above, the OTS referred the matter to the Attorney General for appropriate action pursuant to 15 U.S.C. § 1691e(g).

12. Luther operates throughout the state of California. From 2006 through 2010, according to data reported pursuant to HMDA, Defendant originated 584 single-family residential loans totaling $793.2 million secured by single-family residential

[3] For purposes of this Complaint, all metropolitan statistical areas cited herein use the definitions provided by the Office of Management and Budget in December 2009.

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

13. From 2006 through 2010, according to data maintained by Luther, the bank originated 94% of its single-family residential loans through its wholesale channel and 6% of such loans through its retail channel.[5] Luther arranged its single-family residential wholesale loans through a network of mortgage brokers. Like other wholesale lenders, Luther communicated to brokers the particular terms on which it was willing to make loans, including acceptable interest rates, points, and loan amounts for its loan products, through rate sheets that it distributed periodically. From 2006, when it

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[4] The data and analyses described in paragraphs 12-17 of this complaint are based on data publicly reported by Luther and other residential mortgage lenders pursuant to HMDA.

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

created its single-family residential loan unit, until mid-2011, Luther required a minimum loan amount of at least $400,000 for all single-family residential loans originated through its wholesale channel (referred to herein as the "minimum loan amount policy"). During this time period, Luther's rate sheets specified that the price range for its wholesale single-family residential mortgage program was $400,000 to $5,000,000.

14. Statistical analyses of Luther's single-family residential loan originations from 2006 through 2010 show that Luther's $400,000 minimum loan amount policy had a disparate impact both on African-American and Hispanic borrowers and on the residents of majority-minority census tracts in the primary areas in California in which Luther operated.[6] These analyses demonstrate statistically significant[7] disparities in the origination of loans to African-American and Hispanic borrowers and residents of majority-minority census tracts when the primary areas in which Luther operated are combined and in separate analyses of those primary areas.

15. From 2006 through 2010, Luther originated 550 single-family residential loans in the primary areas of California in which it operated through its wholesale and

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[6] Separate statistical analyses of Luther's *applications* in the primary areas of California in which Luther operated from 2006 through 2010 also demonstrate a statistically significant failure by Luther to generate applications from African-American and Hispanic borrowers and majority-minority census tracts at a level equal to its peer lenders.

[7] 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%.

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

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

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

16. From 2006 through 2010, Luther originated 380 single-family residential loans in the primary areas of California in which it operated for which the race or ethnicity of the borrower was identified. Of these, Luther originated 85% to white borrowers and 5.5% to African-American and Hispanic borrowers. During that same time period, other prime lenders in these areas, which made a similar volume of single-family residential loans as Luther, originated approximately 30.4% of their loans – a proportion more than five times as high as Luther – to African-American and Hispanic borrowers. These disparities are statistically significant. The statistically significant disparities in each of the primary areas are summarized in Table 2:

**Table 2: Luther vs. Peer Group (HMDA Originations from 2006 through 2010 to African-American and Hispanic Borrowers)**

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

17. Approximately 33% of the single-family residential loans originated to white borrowers from 2006 through 2010 in the primary areas in California in which Luther operated were above $400,000, while only 23% of the loans originated to African-American borrowers and 20% of the loans originated to Hispanic borrowers exceeded $400,000. Additionally, approximately 36% of the single-family residential loans originated in majority-white census tracts from 2006 through 2010 in the primary areas in California in which Luther operated were above $400,000, while only 21% of the loans originated in majority-minority census tracts in these areas exceeded $400,000.

18. Luther has been aware of its low level of lending to minorities for years. In 2009, Defendant's Chief Residential Lending Officer prepared an assessment of Luther's 2008 single-family residential lending activity. The report stated that in 2008, Luther originated only one loan to an African-American borrower and three loans to Hispanic borrowers from all areas in which Defendant operated that year. The report acknowledged that Luther had a low number of minority applicants and concluded that

Luther needed to increase its applications to minorities. Luther conducted follow-up assessments that analyzed its lending to minorities in 2009 and 2010. Both follow-up assessments found no improvement in the number of minority originations from the previous assessments and once again concluded that Luther needed to increase its minority lending. These assessments also acknowledged that Luther's multi-family lending program must be analyzed separately from its single-family residential lending program, because of the numerous dissimilar components to each group's business process. None of these assessments referenced the minimum loan amount policy or considered whether the policy has played a role in its low level of lending to minorities and in majority-minority census tracts. Luther did not terminate its $400,000 minimum loan amount policy until June 2011.

19. Luther's $400,000 minimum loan amount policy has resulted in low levels of single-family residential lending to African-American and Hispanic borrowers and in majority-minority census tracts. This $400,000 minimum loan amount policy has had a disparate impact on African-American and Hispanic borrowers and residents of majority-minority census tracts in the primary areas in California in which Luther operated from 2006 through 2010. This policy and practice is not justified by business necessity or legitimate business considerations.

## FAIR HOUSING ACT AND EQUAL CREDIT OPPORTUNITY ACT VIOLATIONS

20. Defendant's actions as alleged herein constitute:

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

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

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

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

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

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.

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

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

## RELIEF REQUESTED

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

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

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

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

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

(C) 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;

(D) 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 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 Defendant's discriminatory policies and practices for the injuries caused by Defendant, pursuant to 42 U.S.C. § 3614(d)(1)(B) and 15 U.S.C. § 1691e(h); and

(4) Assesses a civil penalty against Defendant 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.

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