

DOCKETED

Nathan, J

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

Plaintiff,

v.

JPMORGAN CHASE BANK, N.A.,

Defendant.

USDC SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #:
DATE FILED: JAN 20 2017

17 Civ. 347 (AJN)

CONSENT ORDER

WHEREAS on January 18, 2017, the United States filed its Complaint (the "Complaint") in this matter, alleging that the Defendant JPMorgan Chase Bank, N.A. ("Chase") has engaged in a pattern or practice of conduct in violation of the Equal Credit Opportunity Act ("ECOA"), 15 U.S.C. §§ 1691-1691f, and the Fair Housing Act ("FHA"), 42 U.S.C. §§ 3601-3619, by discriminating on the basis of race and national origin in the extension of residential credit and in the making of residential real estate-related loans between 2006 and 2009 through mortgage brokers;

WHEREAS the United States, prior to filing the Complaint, conducted an investigation of Chase's mortgage lending practices in its wholesale and retail channels between 2005 and 2010, including to identify any instances of (i) improper steering of African-American or Hispanic borrowers into certain loan products; or (ii) payment by African-American or Hispanic borrowers of higher note rates or upfront fees than white borrowers (the "Investigation");

WHEREAS, Chase denied all of the United States' allegations that Chase engaged in a pattern or practice of discrimination, in violation of the FHA or the ECOA, in the 2006-2009 period. Chase further contended that it conducted its lending in compliance with the letter and

spirit of the fair lending laws and in a non-discriminatory manner, and that any alleged pricing disparities were attributable to legitimate, non-discriminatory factors; and Chase filed an Answer to the Complaint, denying the United States' allegations that Chase engaged in a pattern or practice of conduct in violation of the ECOA and FHA, through mortgage brokers in the 2006-2009 period;

WHEREAS there has been no factual finding, adjudication or stipulation with respect to any matter alleged by the United States; and

WHEREAS the parties now jointly submit this Consent Order for the approval of and entry by the Court, to fully resolve the claims asserted in the Complaint;

NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED, and DECREED:

JURISDICTION AND VENUE

1. The 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).
2. Venue is appropriate pursuant to 28 U.S.C. § 1391, because Chase, the defendant in this action, conducts business in this district.

PARTIES

3. Plaintiff is the United States of America.
4. Defendant JPMorgan Chase Bank, N.A., a subsidiary of JPMorgan Chase & Co., is a large consumer bank with a main office in Columbus, Ohio. Chase is one of the nation's largest residential mortgage lenders.

FACTUAL STIPULATIONS

5. Chase agrees and admits the following facts, as alleged in the Complaint:

- a. Chase is subject to federal laws governing fair lending, including the FHA and the ECOA and the regulations promulgated under each of those laws. The FHA and the ECOA prohibit financial institutions from discriminating on the basis of, *inter alia*, race or ethnicity in their lending practices. Charging higher prices for loans on the basis of race or ethnicity, including charging higher fees and annual percentage rates of interest, is one of the discriminatory lending practices prohibited by the FHA and the ECOA.
- b. Chase is a “creditor” within the meaning of the ECOA, 15 U.S.C. § 1691a(e), and engages in “residential real estate-related transactions” within the meaning of the FHA, 42 U.S.C. § 3605. Chase also is subject to the Home Mortgage Disclosure Act, 12 U.S.C. § 2803, which requires mortgage lenders to maintain data on the race or ethnicity of each borrower.
- c. Prior to January 2006 and continuing until early 2009, Chase originated and funded residential mortgage loans through a wholesale channel. Applications for these loans were brought to Chase by thousands of independent mortgage brokers throughout the United States who had entered into contracts with Chase for the purpose of bringing mortgage loan applications to it for origination and funding.
- d. From 2006 to 2009, approximately 360,000 wholesale mortgage loans were sourced by these independent brokers and brought to Chase. Of these, Chase reported that approximately 40,000 wholesale loans were made to African-American borrowers and that approximately 66,000 wholesale loans

were made to Hispanic borrowers. Chase closed its wholesale channel in 2009.

- e. The government's data model projects that, from at least 2006 through late 2009, certain of the approximately 106,000 African-American and Hispanic borrowers who obtained loans through independent mortgage brokers participating in Chase's wholesale channel paid higher rates and fees on wholesale home mortgage loans compared to the rates and fees paid by similarly situated white borrowers who obtained loans through independent mortgage brokers participating in Chase's wholesale channel. It projects that in thousands of instances, an African-American borrower entering into the same type of Chase wholesale mortgage as a white borrower paid higher loan rates and larger fees than such white borrower. Similarly, it projects that in thousands of instances, a Hispanic borrower entering into the same type of Chase wholesale mortgage as a white borrower paid higher loan rates and larger fees than such white borrower.
- f. Chase developed and implemented a number of measures to promote independent brokers' compliance with the FHA and ECOA, among other laws, and Chase's fair lending policies. For example, Chase contractually required all independent brokers to adhere to the FHA, ECOA, and its fair lending policies. Chase provided fair lending training to brokers. Chase also capped the Yield Spread Premium brokers could charge borrowers, as well as brokers' total fees, to reduce the risk of discriminatory pricing, and developed policies requiring repayment of prohibited overage to affected borrowers.

Chase monitored fees charged by independent mortgage brokers for unwarranted disparities and counseled and/or terminated brokers.

MONETARY RELIEF

6. In full settlement and satisfaction of the United States' claims for monetary relief, including but not limited to monetary damages for allegedly aggrieved persons, restitution, disgorgement, and a civil penalty, Chase shall pay a total of \$54,300,000 (fifty-four million, three hundred thousand dollars), from which shall be deducted: (a) a credit for payments made to the plaintiff class in *Payares et al. v. Chase Bank USA, N.A., and JPMorgan Chase Bank, N.A.*, Case No. CV 07-05540 AG (ANx) (C.D. Cal.), in the amount of \$932,390 (nine hundred, thirty-two thousand, three hundred and ninety dollars) (the "*Payares Credit*"); and (b) the sum of \$55,000 to the United States as a civil penalty, pursuant to 42 U.S.C. § 3614(d)(1)(C) (the "*Civil Penalty Amount*"), for a net payment of \$53,312,610 (fifty-three million, three hundred, twelve thousand, six hundred and ten dollars) (the "*Settlement Payment*").

7. Chase shall deposit the Settlement Payment within ten (10) days of the entry of this Order in an interest-bearing escrow account (the "*Settlement Fund*"), title to which shall specify that it is "for the benefit of allegedly aggrieved persons pursuant to Order of the Court in *United States v. JPMorgan Chase Bank, N.A.*" Chase shall provide written verification of the deposit to the United States within five (5) days of such deposit. Any interest that accrues on the account shall become part of the Settlement Fund and be utilized and disposed of as set forth herein. Chase shall pay the Civil Penalty Amount in the form of an electronic funds transfer pursuant to written instructions to be provided by the United States.

8. Unless otherwise stated herein, the provisions of this Order shall be implemented not later than thirty (30) days after the effective date of this Order. The effective date (the "*Effective*

Date”) of this Order is the date upon which it is approved and entered by the Court.

9. Within sixty (60) days of entry of this Order, Chase shall enter into a contract retaining a Settlement Administrator (“Administrator”), subject to approval by the United States, to conduct the activities of the Administrator set forth in this Order. Chase shall bear all costs and expenses of the Administrator up to \$1,500,000.00 (one million and five hundred thousand dollars), and Chase’s contract with the Administrator shall require the Administrator to comply with the provisions of this Order as applicable to the Administrator. The Administrator’s contract shall require the Administrator to work cooperatively with the United States in the conduct of its activities, including reporting regularly to and providing all reasonably requested information to the United States. The Administrator’s contract shall require the Administrator to comply with all confidentiality and privacy restrictions applicable to the party who supplied the information and data to the Administrator.

10. In the event the United States has reason to believe that the Administrator is not materially complying with the terms of its contract with Chase, the United States and Chase shall meet and confer for the purpose of mutually agreeing upon a course of action to effect the Administrator’s material compliance with its contract. In the event that the United States and Chase are unable to agree upon a course of action to effect the Administrator’s material compliance with its contract, the parties may present the matter to the Court.

11. The Administrator’s contract shall require the Administrator, as part of its operations, to establish cost-free means for affected consumers to contact it, including an email address, a website, a toll-free telephone number, and means for persons with disabilities to communicate effectively, including TTY. The Administrator’s contract shall require the Administrator to make all reasonable efforts to provide effective translation services to affected

consumers, including but not limited to providing live English and Spanish language-speaking operators to speak to affected consumers who call the toll-free telephone number and request a live operator, and providing Spanish language interpretations and translations for communications with affected consumers.

12. Within sixty (60) days of Chase's entry into the aforementioned contract with the Administrator, the United States shall jointly provide to the Administrator and Chase a list of loans with consumers that the United States has determined are eligible to receive monetary relief pursuant to the Order based on the information and data provided by Chase during the course of the Investigation. The total amount of the Settlement Fund shall not be altered based on the number of listed loans.

13. Within ninety (90) days after the date the United States provides the list of loans referenced in Paragraph 12, Chase will provide to the United States and the Administrator the name, most recent mailing address in its servicing records, Social Security number, the amount (if any) that the borrower received from the *Payares* settlement, and other information as requested for the primary borrower and each co-borrower (if any) on each listed loan ("Identified Borrower") to the extent Chase has this information in its custody or control. Such information and data shall be used by the United States and the Administrator only for the law enforcement purposes of implementing the Order. The total amount of the Settlement Fund shall not be altered based on the number of Identified Borrowers, or the amount expected to be, or actually, received by any Identified Borrower.

14. Within sixty (60) days of the United States' receipt of all the information required to be provided by Paragraph 13, the United States shall provide Chase and the Administrator with the initial estimate of the amount each Identified Borrower will receive from the Settlement

Fund. No individual, agency, or entity may request that the Court, the United States, Chase, or the Administrator review the selection of Identified Borrowers or the amount to be received. The total amount of the Settlement Fund, and Chase's obligations under this Order, shall not be altered based on the amounts that Identified Borrowers receive, either individually or collectively.

15. The Administrator's contract shall require the Administrator to make its best efforts, using all reasonable methods as requested by the United States, to locate each Identified Borrower and obtain such information as the United States reasonably considers necessary from each, to create a list of Identified Borrowers who will be entitled to compensation (the "Compensation List"). The Administrator's contract shall require the Administrator to complete this responsibility within a period of six (6) months from the date the United States provides the list described in Paragraph 12, subject to an extension of time as provided by Paragraph 27.

16. The United States shall specify the amount each allegedly aggrieved person on the Compensation List shall receive from the Settlement Fund (individually, the "Final Payment Amount," and collectively, the "Final Payment Amounts"), and provide such information to the Administrator, no later than sixty (60) days after receiving the Compensation List. No individual, agency, or entity may request that the Court, the United States, Chase, or the Administrator review or alter any Final Payment Amount.

17. The Administrator's contract shall require the Administrator to deliver payment to each allegedly aggrieved person on the Compensation List in the amount of his or her Final Payment Amount within forty-five (45) days. The Administrator's contract shall also require the Administrator to skip trace and redeliver any payment that is returned to the Administrator as undeliverable, or not deposited within six (6) months.

18. The Administrator's contract shall require the Administrator to maintain the cost-free means for consumers to contact it described in Paragraph 11 and finalize distribution of the final payments described in Paragraphs 16 and 17 within twelve (12) months from the date the United States provides the list of final payment amounts to the Administrator in accordance with Paragraph 16. Allegedly aggrieved persons on the Compensation List shall have until that date to request reissuance of payments that have not been deposited.

19. Payments from the Settlement Fund to allegedly aggrieved persons shall be subject to the following conditions, provided that the details in administration of the Settlement Fund set forth in Paragraphs 6 - 18 can be modified by written agreement of the parties and without further Court approval:

a. The Administrator shall advise allegedly aggrieved persons that acceptance of any payment from the Settlement Fund shall constitute a release of all pending discrimination claims, legal or equitable, that he or she might have against the released entities regarding the claims asserted by the United States in this lawsuit, so long as such claims accrued prior to the entry of this Order; and

b. The total amount paid by Chase collectively to allegedly aggrieved persons shall not exceed the total amount of the Settlement Fund, including accrued interest.

20. In the event that all money in the Settlement Fund is not distributed to allegedly aggrieved persons, including accrued interest, within twelve (12) months from the date the United States provides the list of Final Payment Amounts to the Administrator in accordance with Paragraph 16, the United States and Chase shall meet and confer regarding disposition of the remaining funds. In no event shall any monies remaining in the Settlement Fund revert to Chase or any entity related to Chase. In the event that the United States and Chase are unable to

agree upon an appropriate resolution regarding any amounts remaining in the Settlement Fund, the parties shall present the matter to the Court.

21. Apart from the *Payares* Credit already reflected in Paragraph 6, Chase shall not be entitled to a set-off, or any other reduction, of the amount of payments to Identified Borrowers because of any debts owed by Identified Borrowers. Chase also shall not refuse to pay the Final Payment Amount based on a release of legal claims or loan modification previously signed by any Identified Borrower.

RECORD KEEPING

22. For the duration of this Order, Chase shall retain all records relating to its obligations hereunder. The United States shall have the right to review and copy such records upon reasonable request.

23. In addition to the submission of any other plans or reports specified in this Order, the Administrator's contract shall require the Administrator to submit annual reports to the United States on its progress in completing the requirements of this Order. Each such report shall provide a complete account of the Administrator's compliance with Paragraphs 15 and 17 – 19 during the previous 12 months. The Administrator shall submit its first report no later than 180 days after the Effective Date of the Order, and on the anniversary date of the Order thereafter for so long as the Order is in effect.

24. Chase represents that it no longer originates wholesale mortgage loans. During the duration of this Order, in the event that Chase reenters the business of originating wholesale mortgage loans, Chase shall notify the United States at the earlier of sixty (60) days before it intends to reenter this line of business or the time that they notify their federal regulators of Chase's intent to reenter this line of business. Chase shall also implement policies, practices and

monitoring designed to prevent and detect potential fair lending violations in their origination of wholesale loans, and shall provide the United States with the details of these policies, practices, and monitoring, forty-five (45) days prior to implementing such reentry. Chase agrees to cooperate in good faith to resolve any issues the United States has with such policies.

25. All material required by this Order to be sent to counsel for the United States must be sent by commercial overnight delivery service addressed as follows: (1) Chief, Housing and Civil Enforcement Section, Civil Rights Division, U.S. Department of Justice, 1800 G Street NW, Suite 7002, Washington, DC 20006, Attn: DJ 188-51-11; and (2) Chief, Civil Rights Unit, U.S. Attorney's Office for the Southern District of New York, 86 Chambers Street, 3rd Floor, New York, New York 10007; or (c) as otherwise directed by the United States.

DURATION OF THIS ORDER

26. The Court shall retain jurisdiction for the duration of the Order – four (4) years from the Effective Date – to enforce the terms of the Order, after which time the case shall be dismissed with prejudice. However, if Chase has not reentered the business of originating wholesale mortgage loans, then this Order shall expire at the time that no money remains in the Settlement Fund. Notwithstanding the foregoing, the Order may be extended further upon motion of the United States to the Court, for good cause shown.

27. Any time limits for performance fixed by the Order may be extended by mutual written agreement of the parties. Except as provided by Paragraph 19, other modifications to this Order may be made only upon approval of the Court, upon motion by either party.

RELEASE

28. Effective immediately upon Chase's deposit of the Settlement Payment described in Paragraph 6 of this Order, the United States shall be deemed to have fully, finally, and forever

to have released Chase and its affiliates, as well as their predecessors, successors, heirs, and assigns, from any and all claims, charges, obligations, rights, demands, liability, action, or cause of action of any and every kind for discrimination relating to the allegations in the Complaint or subject matter of the Investigation. Specifically, this release includes (i) improper steering of African-American or Hispanic borrowers into certain loan products; or (ii) payment by African-American or Hispanic borrowers of higher note rates or upfront fees than white borrowers in Chase's extension of residential credit, and making of residential real estate-related transactions, between 2005 and 2010. Such release includes claims under the FHA, the ECOA, or any other federal statute, regulation, common law, or other law, for equitable, declaratory, injunctive, monetary (including monetary damages, restitution, and disgorgement), or any other form of relief, or civil or other penalties, under any legal theory or cause of action for discrimination, whether known or unknown, suspected or unsuspected, that the United States ever had, now has, or may have in the future, resulting from, arising out of, or in any way, directly or indirectly connected with the allegations or subject matter of the Investigation.

29. This Order does not release claims for practices that do not relate to either the allegations in the Complaint or the subject matter of the Investigation. It also does not release claims that may be held or are currently under investigation by any federal agency, or any claims that may be held or are currently under investigation by any executive agency established by 12 U.S.C. § 5491 or the appropriate Federal Banking Agency, as defined in 12 U.S.C. § 1813(q), against Chase, any of its affiliated entities, and/or any institution affiliated with Chase, as defined in 12 U.S.C. § 1813(u), pursuant to 12 U.S.C. § 1818 or any other statute or regulation. This Order does not resolve and does not release claims other than claims for discrimination. This release shall not preclude or affect any right of the United States to determine and ensure

compliance with the terms and provisions of the Order, or to seek penalties for any violations thereof.

MISCELLANEOUS PROVISIONS

30. This Order shall be binding on Chase, including all its officers, employees, agents, assignees, and successors in interest, and all those in active concert or participation with any of them. In the event Chase seeks to transfer or assign all or part of its operations, and the successor or assign intends on carrying on the same or similar use, as a condition of sale, Chase shall obtain the written accession of the successor or assign to any obligations remaining under the Order for its remaining term.

31. Nothing in this Order shall excuse Chase from compliance with any currently or subsequently effective provision of law or order of a regulator with authority over Chase that imposes additional obligations on Chase.

32. In the event that any disputes arise about the interpretation of or compliance with the terms of this Order, the parties shall endeavor in good faith to resolve any such dispute between themselves before bringing it to this Court for resolution. If the United States believes that Chase has violated any provision of this Order, it will provide Chase written notice thereof and allow thirty (30) days to resolve the alleged violation before presenting the matter to this Court. In the event of either a failure by Chase to perform in a timely manner any act required by this Order or an act by Chase in violation of any provision hereof, the United States may move this Court to impose any remedy authorized by law or equity.

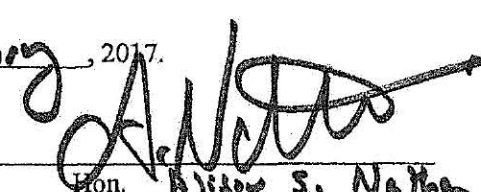
33. Each party to this Order shall bear its own costs and attorneys' fees associated with this litigation.

34. The parties agree that, as of the Effective Date, litigation is not "reasonably

foreseeable" concerning the matters described above. To the extent that either party previously implemented a litigation hold to preserve documents, electronically stored information, or things related to the matters described above, it is no longer required to maintain such litigation hold. Nothing in this paragraph relieves either party of any other obligations imposed by the Order.

35. The individuals signing this Order on behalf of Chase represent and warrant that they are authorized to execute this Order. The United States signatories represent that they are signing this Order in their official capacities and are authorized to execute this Order.

SO ORDERED, this 20th day of January, 2017.


Hon. Alison S. Nathan
United States District Judge

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

For Plaintiff United States of America:

JS

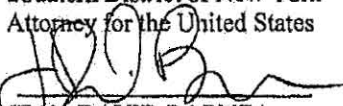
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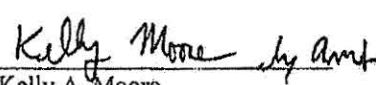
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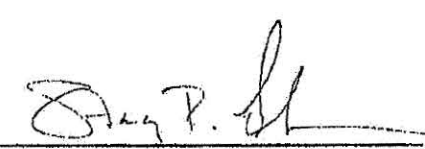
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