

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF TEXAS  
SAN ANTONIO DIVISION

UNITED STATES OF AMERICA,	)	
	)	
	)	
Plaintiff,	)	CIVIL ACTION NO. SA-11-CV-488
	)	
v.	)	
	)	
	)	
NIXON STATE BANK,	)	
	)	
	)	
Defendant.	)	
_____	)	

**COMPLAINT**

The United States of America alleges:

1. This action is brought by the United States to enforce the provisions of the Equal Credit Opportunity Act, 15 U.S.C. §§ 1691-1691f (“ECOA”).
2. This Court has jurisdiction of this action pursuant to 28 U.S.C. § 1345 and 15 U.S.C. § 1691e(h). Venue is appropriate pursuant to 28 U.S.C. § 1391.
3. Defendant Nixon State Bank (“Nixon” or “the bank”) is an independent community bank based in Nixon, Texas. Chartered in 1906, Nixon is the seventh oldest state-chartered institution in Texas. In addition to its location in Nixon, the bank operates two additional branches located in La Vernia, Texas and China Grove, Texas. Nixon offers a wide range of loan products, including mortgage loans, consumer loans, commercial loans, and agriculture loans. The bank originates its loans through loan officers at its three branches.

4. As of September 30, 2009, the bank had total assets of \$68.88 million and total equity capital of \$6.65 million. Nixon is subject to the regulatory authority of the Federal Deposit Insurance Corporation (“FDIC”).

5. Nixon is subject to federal laws governing fair lending, including ECOA and the regulations promulgated thereunder. ECOA prohibits financial institutions from discriminating on the basis of, *inter alia*, national origin in their lending practices. Charging higher prices for loans on the basis of national origin, including charging higher rates of interest, is one of the discriminatory lending practices prohibited by ECOA. Nixon is a “creditor” within the meaning of section 702(e) of ECOA, 15 U.S.C. § 1691a(e).

6. Beginning in 2008, the FDIC conducted an examination of the lending practices of Nixon to evaluate compliance with ECOA. Based on analysis of the average rates of interest that Nixon charged in 2007 and 2008 for unsecured consumer loans, the FDIC found reason to believe that Nixon had displayed a pattern or practice of discrimination on the basis of national origin against Hispanic borrowers. On April 14, 2010, following the examination described above, the FDIC referred the lending practices of Nixon to the United States Department of Justice pursuant to 15 U.S.C. § 1691e(g).

7. After receiving the referral from the FDIC, the United States analyzed the interest rates that Nixon charged between 2007 and 2010 on unsecured consumer loans. The United States also reviewed Nixon’s loan policies and procedures from 2006 to 2010.

8. Prior to mid- to late- 2009, Nixon did not have a written loan pricing guideline for its unsecured consumer loans. The bank did not require a written application or credit report; utilize a uniform pricing system such as a matrix or rate sheet; or document loan denials.

Instead, Nixon's loan officers were granted broad discretion in handling all aspects of the unsecured consumer loan transaction.

9. Nixon has been aware of the flaws with its unsecured consumer lending policies and procedures since at least 2006. In April 2006, an independent auditor recommended to Nixon that an application and a current credit report be obtained for all unsecured consumer loan applicants. The auditor also recommended that an analysis should be documented in the loan file for applications denied due to excessive debt-to-income. As a result of the auditor's report, bank management made a recommendation to the Board of Directors to amend the bank's loan policy to define how often an application and credit report should be obtained for unsecured loans. Around the same time, Nixon's Training and Controls Monitoring Committee resolved to (1) define the meaning of an application; (2) define the meaning of a recent application; and (3) determine how often a credit report is needed.

10. The bank failed to implement any changes to address its discretionary loan pricing procedures from 2006 to mid-2009. In June 2008, the FDIC criticized Nixon for failing to include applications, financial statements, credit reports, and other documentation in its loan files. In May 2009, another independent auditor of the bank detected some inconsistencies with bank-wide pricing and recommended that the bank become structured in its pricing strategies.

11. In mid-2009, Nixon's CEO acknowledged the following issues in a memorandum to all employees: (1) inconsistent and sometimes non-existent loan underwriting; (2) inconsistency in loan administration; (3) inconsistency in loan pricing; and (4) inconsistency in following loan pricing. After this memorandum was issued, Nixon introduced new policies and procedures to improve its overall fair lending program, including: (a) new loan procedures for

obtaining loan applications, financial statements, and credit reports; (b) revision of loan worksheets to assist loan officers in underwriting and pricing criteria; (c) a new filing system to ensure that loans are fully and consistently documented; (d) a monitoring system for each loan to be reviewed and noted for deficiencies; (e) fair lending training for the bank's loan officers; and (f) development of a uniform loan pricing matrix for unsecured consumer loans.

12. Between at least 2007 and 2009, Nixon charged higher loan prices to Hispanic borrowers for unsecured consumer loans, as measured through rates of interest, than it charged to non-Hispanic borrowers. The differences in interest rates charged to Hispanic borrowers and those charged to non-Hispanic borrowers cannot be explained fully by factors unrelated to national origin.

13. From at least 2007 to 2008, Nixon charged interest rates that were 207 basis points<sup>1</sup> higher to Hispanic borrowers who obtained unsecured consumer loans than the rates charged to non-Hispanic borrowers. In 2009, Nixon charged interest rates to Hispanic borrowers that were 118 basis points higher, on average, than the rates charged to non-Hispanic borrowers. These disparities are statistically significant.

14. After accounting for credit risk factors such as loan term, credit score, and the branch office from which the loan originated, Nixon charged interest rates to Hispanic borrowers from 2007 to 2008 that were 198 basis points higher, on average, than the rates charged to similarly-situated non-Hispanic borrowers. In 2009, Nixon charged interest rates to Hispanic borrowers that were 84 basis points higher, on average, than the rates charged to similarly-situated non-Hispanic borrowers, after controlling for the same credit risk factors. These disparities are statistically significant.

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<sup>1</sup> One basis point represents one hundredth of a percentage point (0.01%).

15. The higher rates of interest that Nixon charged to Hispanic borrowers for unsecured consumer loans are a result of Nixon's policy or practice of giving its employees broad subjective discretion in every aspect of the unsecured consumer loan transaction, from the information collected at the application stage to setting the interest rate. Information as to each applicant's national origin was available and known to the bank's loan officers, who personally handled each loan transaction at one of Nixon's three branch offices. Nixon did not properly instruct its loan officers regarding their obligation to treat prospective customers without regard to national origin, and the bank has failed to supervise or monitor the performance of its loan officers to ensure compliance with fair lending laws.

16. Nixon's policy or practice of giving its employees broad subjective discretion in handling every aspect of the unsecured consumer loan transaction has had a disparate impact on Hispanic borrowers compared to similarly-situated non-Hispanic borrowers and is not justified by business necessity or legitimate business interests.

17. Nixon's actions, policies and practices, as alleged herein, constitute discrimination against applicants with respect to credit transactions on the basis of national origin in violation of ECOA.

18. Nixon's actions, policies and practices, as alleged herein, constitute a pattern or practice of resistance to the full enjoyment of rights secured by ECOA.

19. Persons who have been victims of Nixon's discriminatory actions, policies and practices are affected persons as defined in ECOA, 15 U.S.C. § 1691e, and have suffered injury and damages as a result of Nixon's violation of ECOA.

20. Nixon's pattern or practice of discrimination has been intentional and willful, and has been implemented with reckless disregard for the rights of 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 violations of the Equal Credit Opportunity Act, 15 U.S.C. §§ 1691-1691f;

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

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

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

(c) Failing or refusing to take such actions as may be necessary to prevent the recurrence of any such discriminatory conduct in the future.

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

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

Dated: \_\_\_\_\_, 2011

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Western District of Texas

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Respectfully submitted,

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CIVIL COVER SHEET

The JS 44 civil coversheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS
United States of America
(b) County of Residence of First Listed Plaintiff
(EXCEPT IN U.S. PLAINTIFF CASES)
(c) Attorney's (Firm Name, Address, and Telephone Number)
Coty R. Miller
USDOJ, Civil Rights Division, 950 Pennsylvania Avenue, NW - G. Street,
Washington, DC 20530 (202) 305-0122

DEFENDANTS
Nixon State Bank
County of Residence of First Listed Defendant Gonzales
(IN U.S. PLAINTIFF CASES ONLY)
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.
Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)
[X] 1 U.S. Government Plaintiff
[ ] 2 U.S. Government Defendant
[ ] 3 Federal Question (U.S. Government Not a Party)
[ ] 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)
(For Diversity Cases Only)
PTF DEF
Citizen of This State [ ] 1 [ ] 1
Citizen of Another State [ ] 2 [ ] 2
Citizen or Subject of a Foreign Country [ ] 3 [ ] 3
Incorporated or Principal Place of Business In This State [ ] 4 [ ] 4
Incorporated and Principal Place of Business In Another State [ ] 5 [ ] 5
Foreign Nation [ ] 6 [ ] 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)
CONTRACT TORTS FORFEITURE/PENALTY LABOR IMMIGRATION BANKRUPTCY SOCIAL SECURITY FEDERAL TAX SUITS OTHER STATUTES
[ ] 110 Insurance [ ] 310 Airplane [ ] 362 Personal Injury - Med. Malpractice [ ] 610 Agriculture [ ] 422 Appeal 28 USC 158 [ ] 400 State Reapportionment
[ ] 120 Marine [ ] 315 Airplane Product Liability [ ] 365 Personal Injury - Product Liability [ ] 620 Other Food & Drug [ ] 423 Withdrawal 28 USC 157 [ ] 410 Antitrust
[ ] 130 Miller Act [ ] 320 Assault, Libel & Slander [ ] 368 Asbestos Personal Injury Product Liability [ ] 625 Drug Related Seizure of Property 21 USC 881 [ ] 430 Banks and Banking [ ] 450 Commerce
[ ] 140 Negotiable Instrument [ ] 330 Federal Employers' Liability [ ] 340 Marine [ ] 370 Other Fraud [ ] 440 State Reapportionment [ ] 460 Deportation
[ ] 150 Recovery of Overpayment & Enforcement of Judgment [ ] 345 Marine Product Liability [ ] 371 Truth in Lending [ ] 442 Employment [ ] 470 Racketeer Influenced and Corrupt Organizations
[ ] 151 Medicare Act [ ] 350 Motor Vehicle [ ] 380 Other Personal Property Damage [ ] 443 Housing/Accommodations [ ] 480 Consumer Credit
[ ] 152 Recovery of Defaulted Student Loans (Excl. Veterans) [ ] 355 Motor Vehicle Product Liability [ ] 385 Property Damage Product Liability [ ] 444 Welfare [ ] 490 Cable/Sat TV
[ ] 153 Recovery of Overpayment of Veteran's Benefits [ ] 360 Other Personal Injury [ ] 445 Amer. w/Disabilities - Employment [ ] 810 Selective Service [ ] 850 Securities/Commodities/Exchange
[ ] 160 Stockholders' Suits [ ] 441 Voting [ ] 446 Amer. w/Disabilities - Other [ ] 861 HIA (1395ff) [ ] 875 Customer Challenge 12 USC 3410
[ ] 190 Other Contract [ ] 442 Employment [ ] 447 Other Civil Rights [ ] 862 Black Lung (923) [ ] 890 Other Statutory Actions
[ ] 195 Contract Product Liability [ ] 443 Housing/Accommodations [ ] 510 Motions to Vacate Sentence [ ] 863 DIWC/DIWW (405(g)) [ ] 891 Agricultural Acts
[ ] 196 Franchise [ ] 444 Welfare [ ] 530 General [ ] 864 SSID Title XVI [ ] 892 Economic Stabilization Act
[ ] 210 Land Condemnation [ ] 445 Amer. w/Disabilities - Employment [ ] 535 Death Penalty [ ] 865 RSI (405(g)) [ ] 893 Environmental Matters
[ ] 220 Foreclosure [ ] 446 Amer. w/Disabilities - Other [ ] 540 Mandamus & Other [ ] 870 Taxes (U.S. Plaintiff or Defendant) [ ] 894 Energy Allocation Act
[ ] 230 Rent Lease & Ejectment [ ] 447 Other Civil Rights [ ] 550 Civil Rights [ ] 871 IRS—Third Party 26 USC 7609 [ ] 895 Freedom of Information Act
[ ] 240 Torts to Land [ ] 448 Other Civil Rights [ ] 555 Prison Condition [ ] 872 Tax (U.S. Defendant) [ ] 900 Appeal of Fee Determination Under Equal Access to Justice
[ ] 245 Tort Product Liability [ ] 449 Other Civil Rights [ ] 560 Other [ ] 873 Tax (U.S. Plaintiff or Defendant) [ ] 950 Constitutionality of State Statutes
[ ] 290 All Other Real Property [ ] 450 Other Civil Rights [ ] 565 Other [ ] 874 Tax (U.S. Plaintiff or Defendant) [ ] 950 Constitutionality of State Statutes

V. ORIGIN (Place an "X" in One Box Only)
[X] 1 Original Proceeding [ ] 2 Removed from State Court [ ] 3 Remanded from Appellate Court [ ] 4 Reinstated or Reopened [ ] 5 Transferred from another district (specify) [ ] 6 Multidistrict Litigation [ ] 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION
Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
15 U.S.C. Section 1691 et seq., Equal Credit Opportunity Act
Brief description of cause:
Civil rights complaint to redress unfair lending practices based upon national origin.

VII. REQUESTED IN COMPLAINT:
[ ] CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 DEMAND \$ CHECK YES only if demanded in complaint:
JURY DEMAND: [ ] Yes [X] No

VIII. RELATED CASE(S) IF ANY
(See instructions): JUDGE DOCKET NUMBER

DATE 06/17/2011 SIGNATURE OF ATTORNEY OF RECORD /s/ Robert Shaw-Meadow, AUSA, W.D. Tex. (co-counsel/local counsel)

FOR OFFICE USE ONLY
RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

**INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44**

## Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

**I. (a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency identify first the agency and then the official, giving both name and title.

(b) County of Residence. For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)

(c) Attorneys. Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".

**II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.C.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.

United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.

United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.

Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.

Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; federal question actions take precedence over diversity cases.)

**III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.

**IV. Nature of Suit.** Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section V below, is sufficient to enable the deputy clerk or the statistical clerks in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.

**V. Origin.** Place an "X" in one of the seven boxes.

Original Proceedings. (1) Cases which originate in the United States district courts.

Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.

Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.

Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.

Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.

Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.

Appeal to District Judge from Magistrate Judgment. (7) Check this box for an appeal from a magistrate judge's decision.

**VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553  
Brief Description: Unauthorized reception of cable service

**VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.

Demand. In this space enter the dollar amount (in thousands of dollars) being demanded or indicate other demand such as a preliminary injunction.

Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.

**VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

**Date and Attorney Signature.** Date and sign the civil cover sheet.