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

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

Attorneys for Plaintiff
United States of America

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA, Plaintiff, v. PLAZA HOME MORTGAGE, INC., Defendant.	'13CV2327 H RBB **COMPLAINT**

Plaintiff, United States of America, alleges:

INTRODUCTION

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

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

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

3. 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

4. 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

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

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

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

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

FACTUAL ALLEGATIONS

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

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

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

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

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

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

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

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

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

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

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

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

16. Between 2006 and 2010, African-American borrowers nationwide were charged total broker fees that were 28.2 to 93.8 basis points higher as a percentage of the loan amount than the total broker fees charged to white borrowers. These disparities in total broker fees mean, for example, that on a nationwide basis Plaza charged its African-American customers borrowing $214,000[2] between $604 and

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

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

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

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

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[3] 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%.

Plaza instituted a cap of 3% on YSP in mid-2009 that remained in effect at least through 2010, and the lender officially no longer permitted exceptions to its fee policies after December 2009. Nevertheless, from July 1, 2009 through the end of 2010, nationwide, the odds than an African-American borrower who obtained a wholesale loan from Plaza would receive a loan with YSP in excess of 3% were approximately 2.2 times as high as the odds for a white borrower. Overall, 13.1% of African-American borrowers received loans with YSPs in excess of the 3% cap, while only 6.3% of white borrowers received loans with YSPs in excess of the cap. All of these disparities are statistically significant.

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

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

nationwide basis Plaza charged its Hispanic customers borrowing $230,000[4] between $791 and $1,412 more in total broker fees not based on borrower risk. These disparities are statistically significant.

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

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

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

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

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

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

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

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

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

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

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

FAIR HOUSING ACT AND EQUAL CREDIT OPPORTUNITY ACT VIOLATIONS

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

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

c. 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).

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

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

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

30. Persons who have been victims of Plaza's discriminatory actions, policies, and practices are aggrieved persons as defined in the FHA, 42 U.S.C. § 3602(i), and as described in ECOA, 15 U.S.C. § 1 691(e)(i), and have suffered injury and damages as a result of Plaza's violation of both the FHA and ECOA, as described herein.

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

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

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

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

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

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

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

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

(3) Awards monetary damages to all the victims of Defendant's discriminatory policies and practices for the injuries caused by the 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 the 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.

DATED: September 26, 2013

ERIC H. HOLDER, JR.
Attorney General

JOCELYN SAMUELS
Acting Assistant Attorney General
Civil Rights Division

STEVEN H. ROSENBAUM
Chief

/s/ *Coty R. Montag*
COTY R. MONTAG
Deputy Chief
United States Department of Justice
Civil Rights Division
Housing and Civil Enforcement Section
Coty.Montag@usdoj.gov

LAURA E. DUFFY
United States Attorney
Southern District of California

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