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CLERK U.S. DISTRICT COURT
CENTRAL DIST. OF CALIF.
LOS ANGELES

1 ERIC H. HOLDER, JR.
Attorney General
2 THOMAS E. PEREZ
Assistant Attorney General
3 Civil Rights Division
STEVEN H. ROSENBAUM
4 Chief
DONNA M. MURPHY
5 Deputy Chief
CHARLA D. JACKSON
6 ROBIN L. DULL
Trial Attorneys
7 E-mail: charla.jackson@usdoj.gov
Housing & Civil Enforcement Section
8 Civil Rights Division
U.S. Department of Justice
9 950 Pennsylvania Avenue, N.W. - G Street
Washington, DC 20530
10 Tel: (202) 353-9705; Fax: (202) 514-1116

11 ANDRE BIROTTE, JR.
United States Attorney
12 LEON W. WEIDMAN
Chief, Civil Division
13 ERIKA JOHNSON-BROOKS
Assistant United States Attorney
14 Calif. Bar No. 210908
E-mail: erika.johnson@usdoj.gov
15 1200 U.S. Courthouse
312 North Spring Street
16 Los Angeles, CA 90012
Tel: (213) 894-2434; Fax: (213) 894-0141
17 Attorneys for Plaintiff United States of America

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

20 UNITED STATES OF AMERICA,

Plaintiff,

v.

21 NARA BANK;
22 UNION AUTO SALES, INC., d/b/a
Union Mitsubishi;
23 HAN KOOK ENTERPRISE, INC., d/b/a
Los Angeles City Hyundai, Garden
24 Grove Hyundai, Han Kook Imports, Inc.
Vermont Chevrolet, Inc., and
25 Han Kook Motors, Inc.;
HAN KOOK IMPORTS, INC.;
26 VERMONT CHEVROLET, INC.;
HAN KOOK MOTORS, INC.

27 Defendants.
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Case No: CV09-7124 RGK (JCx)

FIRST AMENDED
COMPLAINT
(And Demand for Jury Trial)

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2 Plaintiff, United States of America alleges:

- 3 1. The United States brings this action to enforce provisions of the Equal
4 Credit Opportunity Act, 15 U.S.C. §§ 1691-1691f (“ECOA”), and its
5 implementing regulations located at 12 C.F.R. Part 202 (“Regulation B”).
- 6 2. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1345 and
7 15 U.S.C. § 1691e(h), and venue is appropriate pursuant to 28 U.S.C. §
8 1391(b) and (c).
- 9 3. Defendant Nara Bank is headquartered in Los Angeles, California and was
10 founded in June 1989. As of May 2007, Nara Bank had assets of
11 approximately \$2.1 billion and is primarily a business lender, but offers a
12 full range of banking services to consumers and businesses. As of May
13 2007, Nara Bank operated fourteen full-service branches in California and
14 four in New York. It also had one loan production office located in each of
15 the states of California, Colorado, Georgia, Illinois, New Jersey, Texas,
16 Virginia, and Washington.
- 17 4. Defendant Union Auto Sales, Inc., d/b/a Union Mitsubishi (“Union
18 Mitsubishi”), is the parent corporation that, at all times relevant to this
19 action, owned and/or was affiliated with the Union Mitsubishi automobile
20 dealership that participates in automobile lending in the State of California.
21 Union Mitsubishi was incorporated in 1992 and has its headquarters and
22 principal place of business in Los Angeles, California. During the time
23 period relevant to this complaint, Union Mitsubishi’s primary business
24 purpose was the retail sale of new and used automobiles. As of August
25 2008, the company employed 30 people, including officers, 10 of whom are
26 employed at the dealership itself. As of July 2008, Union Mitsubishi had
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1 annual estimated sales of \$11 million.

2 5. Defendant Han Kook Enterprise, Inc., d/b/a Los Angeles City Hyundai,
3 Garden Grove Hyundai; Han Kook Imports, Inc.; Vermont Chevrolet, Inc.,
4 and Han Kook Motors, Inc., (“HKE”) is a corporation that, at all times
5 relevant to this action, owned and/or was affiliated with these five named car
6 dealerships that participate in automobile lending in the State of California.
7 During the time period relevant to this complaint, HKE’s headquarters and
8 principal place of business was in Los Angeles, California, and its primary
9 business purpose was the retail sale of new and used automobiles. As of
10 July 2008, the company employed 35 people, including officers, and as of
11 March 2008, had estimated annual sales of \$12.3 million.

12 6. Two of the HKE dealerships, Los Angeles City Hyundai and Garden Grove
13 Hyundai (“LAC&GG”), are not registered as corporations and are or were
14 managed and owned by HKE at all times relevant to this action. The other
15 three defendant HKE dealerships, Han Kook Imports, Inc., Vermont
16 Chevrolet, Inc., and Han Kook Motors, Inc., are or were registered
17 corporations at all times relevant to this action, and are or were related
18 through common principals and/or ownership to HKE at all times relevant to
19 this action. These five dealerships are collectively referred to herein as “the
20 HKE dealerships”.

21 7. Union Mitsubishi and the five HKE dealerships have entered into
22 agreements with Nara Bank so that each dealership can offer automobile
23 financing to consumers. These agreements set forth the terms upon which
24 Nara Bank will agree to purchase retail vehicle installment sales contracts
25 and security agreements from Union Mitsubishi and the HKE dealerships.

26 8. Nara Bank, Union Mitsubishi, and the HKE dealerships are creditors as
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1 defined by ECOA, 15 U.S.C. §1691(e) and by Regulation B, 12 C.F.R.
2 202.2(1).

3 9. On September 25, 2006, Federal Reserve System bank examiners conducted
4 a consumer compliance examination of Nara Bank. The examination
5 included an evaluation of Nara Bank's compliance with fair lending laws
6 and regulations in its indirect automobile lending program, in which the
7 Bank made loans to customers who were buying cars through a network of
8 automobile dealerships that arranged the loan terms with the customers. In
9 addition to reviewing Nara Bank's policies, procedures, and internal
10 controls, the examiners performed an analysis of indirect automobile loans
11 offered to Asian and non-Asian borrowers to test the frequency and the
12 amount of "dealer mark-ups" or "overages" charged. The Board of
13 Governors of the Federal Reserve System ("the Board") found reason to
14 believe that Nara Bank engaged in a pattern or practice of discrimination on
15 the basis of race in the pricing of automobile loans in violation of Section
16 701(a) of the ECOA, 15 U.S.C. § 1691(a), and its implementing Regulation
17 B, 12 C.F.R. § 202.4(a). Specifically, the examination found that in Nara
18 Bank's indirect automobile lending program non-Asian borrowers, many of
19 whom were Hispanic, were charged overages with more frequency and in
20 greater amounts than Asian borrowers.

21 10. Pursuant to 15 U.S.C. §1691e(g) of the ECOA, the Board referred the matter
22 to the Attorney General on May 16, 2007, for appropriate enforcement
23 action, following the Board's determination described in paragraph 9.

24 11. The Board did not make any findings with respect to the Union Mitsubishi
25 or HKE dealerships. The United States conducted investigations of the
26 Union Mitsubishi and HKE dealerships.

1 12. During the time period between January 1, 2004 and December 31, 2006,
2 there were 17 dealerships in Nara Bank's indirect automobile lending
3 network, including Union Mitsubishi and the five HKE dealerships. During
4 this time period, loans made with Union Mitsubishi represented
5 approximately 21% of Nara Bank's indirect automobile loans, and loans
6 made with the five HKE dealerships represented approximately 40% of Nara
7 Bank's indirect automobile loans.

8 13. In a typical indirect automobile financing transaction through Nara Bank, a
9 dealership would obtain and complete customer applications, obtain
10 customer credit reports, and verify income, among other customer
11 characteristics, to make an initial determination whether an automobile loan
12 applicant met Nara Bank's underwriting guidelines, as indicated on rate
13 sheets that were provided on a regular basis to the dealerships in Nara
14 Bank's lending network. If the dealership concluded that the applicant met
15 the underwriting standards, the dealership and customer would sign a sales
16 contract setting forth the agreed upon interest rate. This contract, reflecting
17 the dealership as the creditor, would be forwarded to Nara Bank. Nara Bank
18 would then order a new credit report and validate the dealership's
19 underwriting and the pricing of the loan. If Nara Bank agreed to purchase
20 the loan, it would send the dealer a "Notification of Acceptance." Under its
21 agreements with the dealership, if Nara Bank did not accept the contract, it
22 would provide the applicant with a notification of adverse action.

23 14. For each loan application referred by Union Mitsubishi, one of the five HKE
24 dealerships, or another dealership to Nara Bank, or by Union Mitsubishi or
25 the HKE dealerships to another lender, the dealership used a lender's "buy
26 rate," which is a risk-related finance charge taking into account a consumer's
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1 credit risk and the terms of the deal. The “buy rate” was customarily
2 communicated by the lender only to the dealership, not the consumer. The
3 dealership then set the “dealer mark-up” or “overage,” a non-risk related
4 finance charge that the dealership adds to the “buy rate.” Typically, the
5 dealership then disclosed to the consumer the “contract rate,” which equals
6 the “buy rate” plus the “dealer mark-up.”

7 15. Between at least January 2004 and December 2006, Union Mitsubishi and
8 the five HKE dealerships followed the procedures set forth in paragraphs 13
9 and 14. During that time period, Nara Bank provided Union Mitsubishi and
10 the five HKE dealerships with rate sheets that reflected Nara Bank’s
11 underwriting standards and pricing policies. These rate sheets were updated
12 periodically as new automobile models were introduced or as Nara Bank’s
13 rates changed. The rate sheets included the underwriting criteria for
14 establishing the buy rate and other loan terms based on the credit tier of the
15 applicant.

16 16. Pursuant to Nara Bank’s agreements with Union Mitsubishi and the five
17 HKE dealerships, the dealerships were permitted to charge overages to be
18 shared between the dealership and Nara Bank, according to terms set forth
19 on the rate sheets. The rate sheets given to Union Mitsubishi and the HKE
20 dealerships by Nara Bank purported to limit the overage amount for which
21 they would compensate the dealerships to between 200 and 300 basis points
22 (between two and three percentage points)¹. According to the dealership
23 contracts with Nara Bank, if a dealership exceeded the cap² established by
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25 ¹ One basis point represents one-hundredth of a percentage point (0.01%); thus a 25
26 basis point differential represents one quarter of one percent.

27 ² The cap is referenced on Nara Bank rate sheets as the “dealer participation amount.”
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1 Nara Bank, it would not be paid any compensation for any amounts that
2 exceed the overage cap. In that instance, Nara Bank would retain any excess
3 overage above the cap. For loans with no overage, where the buy rate and
4 the customer rate were the same, Nara Bank would pay the dealership a flat
5 fee based upon the loan amount.

6 17. At least between January 2004 and September 2006, Nara Bank charged
7 non-Asian customers, many of whom were Hispanic, higher overages than
8 similarly-situated Asian customers. The differences in the overages between
9 non-Asian customers receiving automobile loans from Nara Bank and those
10 made to Asian customers cannot be explained fully by factors unrelated to
11 race or national origin such as differences in the customers' creditworthiness.
12 These differences are statistically significant.

13 18. Union Mitsubishi did not use formal, written, or uniform underwriting
14 guidelines and procedures to set interest rate markups. Instead, employees
15 of the Union Mitsubishi dealership were granted the discretion to engage in
16 subjective decision-making and set overages within broad parameters. This
17 discretion was exercised in a manner that discriminated against non-Asian
18 borrowers.

19 19. Union Mitsubishi originated more than 1400 automobile loans between
20 January 1, 2004 and December 31, 2006. Review of names and driver's
21 license photographs contained in loan files and data regarding Union
22 Mitsubishi automobile loans originated during this period reveals at least
23 200 borrowers as Asian and at least 1200 borrowers as non-Asian, many of
24 whom were Hispanic.

25 20. Statistical analysis of automobile loans originated by Union Mitsubishi for
26 the period of January 1, 2004 and December 31, 2006, demonstrates that
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1 Union Mitsubishi's non-Asian borrowers were charged mean overages
2 approximately 35 to 155 basis points higher than Asian borrowers. More
3 than 600 non-Asian customers of Union Mitsubishi were charged overages
4 higher than the mean overage charged to Asian borrowers during the
5 covered time-period.

6 21. The differences in the overages between the automobile loans made to non-
7 Asian customers of the Union Mitsubishi dealership and those made to
8 Asian customers cannot be explained fully by factors unrelated to race or
9 national origin such as differences in the customers' creditworthiness. These
10 differences are statistically significant.

11 22. The HKE dealerships did not use formal, written, or uniform underwriting
12 guidelines and procedures to set interest rate markups. Instead, employees
13 of the HKE dealerships were granted the discretion to engage in subjective
14 decision-making and set overages within broad parameters. This discretion
15 was exercised in a manner that discriminated against non-Asian borrowers.

16 23. The HKE dealerships originated more than 3000 automobile loans between
17 January 1, 2004 and December 31, 2006. Review of names and driver's
18 license photographs contained in loan files and data regarding the HKE
19 dealerships' automobile loans originated during this period reveals at least
20 1600 borrowers as Asian and at least 1300 borrowers as non-Asian, many of
21 whom were Hispanic.

22 24. Statistical analysis of automobile loans originated by the HKE dealerships
23 for the period of January 1, 2004 and December 31, 2006, demonstrates that
24 the HKE dealerships' non-Asian borrowers were charged mean overages
25 approximately 20 to 90 basis points higher than Asian borrowers. More than
26 600 non-Asian customers of the HKE dealerships were charged overages
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1 higher than the mean overage charged to Asian borrowers during the
2 covered time-period.

3 25. The differences in the overages between the automobile loans made to non-
4 Asian customers of the HKE dealerships and those made to Asian customers
5 cannot be explained fully by factors unrelated to race or national origin such
6 as differences in the customers' creditworthiness. These differences are
7 statistically significant.

8 26. As described in the preceding paragraphs, and at least between January 1,
9 2004 and September 30, 2006, Nara Bank has engaged in a pattern or
10 practice of discrimination on the basis of race or national origin, as defined
11 in ECOA, 15 U.S.C. § 1691e(h), and Regulation B, 12 C.F.R. 202.2(n),
12 202.4, and 202.6(b)(9).

13 27. As described in the preceding paragraphs, and at least between January 1,
14 2004 and December 31, 2006, Union Mitsubishi has engaged in a pattern or
15 practice of discrimination on the basis of race or national origin, as defined
16 in ECOA, 15 U.S.C. § 1691e(h), and Regulation B, 12 C.F.R. 202.2(n),
17 202.4, and 202.6(b)(9).

18 28. As described in the preceding paragraphs, and at least between January 1,
19 2004 and December 30, 2006, the HKE dealerships have engaged in a
20 pattern or practice of discrimination on the basis of race or national origin,
21 as defined in ECOA, 15 U.S.C. § 1691e(h), and Regulation B, 12 C.F.R.
22 202.2(n), 202.4, and 202.6(b)(9).

23 29. Persons who have been victims of Nara Bank's pattern or practice of
24 discrimination are aggrieved applicants under ECOA, 15 U.S.C. § 1691e,
25 and have suffered injury and damages as a result of Nara Bank's conduct.
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1 30. Persons who have been victims of Union Mitsubishi's pattern or practice of
2 discrimination are aggrieved applicants under ECOA, 15 U.S.C. §1691e, and
3 have suffered injury and damages as a result.

4 31. Persons who have been victims of the HKE dealerships' pattern or practice
5 of discrimination are aggrieved applicants under ECOA, 15 U.S.C. §1691e,
6 and have suffered injury and damages as a result.

7 32. The discriminatory policies and practices of Nara Bank, Union Mitsubishi,
8 and the HKE dealerships, as described herein, were intentional, willful, and
9 were implemented with reckless disregard for the rights of non-Asian and
10 Hispanic customers.

11
12 WHEREFORE, the United States prays that the Court enter an ORDER that:

- 13 (1) Declares that the policies and practices of the defendants constitute a
14 violation of the Equal Credit Opportunity Act, 15 U.S.C. §§ 1691-1691f;
15 (2) Enjoins Union Mitsubishi and the HKE dealerships, as well as their agents,
16 employees, and successors, and all other persons in active concert or
17 participation with the defendant, from:

18 (a) discriminating on the basis of race or national origin in any aspect
19 of their lending practices;

20 (b) failing or refusing to take such affirmative steps as may be
21 necessary to restore, as nearly as practicable, the victims of the
22 defendants' unlawful practices to the position they were in but for the
23 discriminatory conduct;

24 (c) failing or refusing to take such affirmative steps as may be
25 necessary to prevent the recurrence of any discriminatory conduct in
26 the future and to eliminate, to the extent practicable, the effects of the
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1 defendants' unlawful practices, including revising its decision-making
2 process to eliminate considerations of race or national origin in the
3 setting of overages for automobile loans; providing policies,
4 procedures, and guidelines to ensure that race or national origin is not
5 a factor considered in making loan pricing decisions; maintaining an
6 accurate and complete record of all automobile loan documentation,
7 including the process for setting overages; and implementing a
8 training program on the requirements of ECOA for defendants'
9 employees who are involved in the financing process, including the
10 setting of overages for automobile loans.

- 11 (3) Awards monetary damages to the victims of the Union Mitsubishi and HKE
12 dealerships' discriminatory policies and practices for the injuries caused by
13 the defendants, pursuant to 15 U.S.C. §1691e(h).

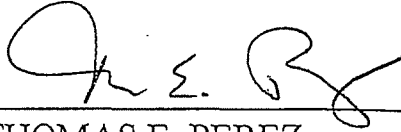
14 The United States further prays for such additional relief as the interests of
15 justice may require.

16 Pursuant to Rule 38 of the Federal Rules of Civil Procedure, the United
17 States of America hereby demands a trial by jury of this action of all issues triable
18 of right to a jury.

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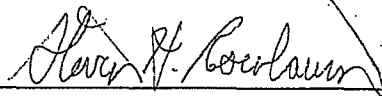
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ERIC H. HOLDER, JR.
Attorney General



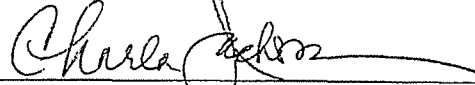
ANDRE BIROTTE, JR.
United States Attorney

THOMAS E. PEREZ
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Civil Rights Division



LEON W. WEIDMAN
Civil Chief, Civil Division

STEVEN H. ROSENBAUM
Chief
Housing and Civil Enforcement Section



ERIKA JOHNSON-BROOKS
Assistant United States Attorney
Email: erika.johnson@usdoj.gov
Office of the United States Attorney
Central District of California
312 North Spring Street
Los Angeles, CA 90012
(213)894-2434 (phone)
(213)894-0141 (fax)

DONNA M. MURPHY
Deputy Chief
CHARLA D. JACKSON
ROBIN L. DULL
Trial Attorneys
Email: charla.jackson@usdoj.gov
Housing and Civil Enforcement Section
Civil Rights Division
U.S. Department of Justice
950 Pennsylvania Avenue, N.W. - G St.
Washington, D.C. 20530
(202)514-4713 (phone)
(202)514-1116 (fax)