

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

PACIFICO FORD, INC.,

Defendant.

Civil Action No. _____

COMPLAINT

Plaintiff, United States of America, for its Complaint against Defendant Pacifico Ford, Inc., alleges:

1. The United States brings this action to enforce provisions of the Equal Credit Opportunity Act, 15 U.S.C. §§ 1691-1691f ("ECOA"), and its implementing regulations located at 12 C.F.R. Part 202 ("Regulation B").

2. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1345 and 15 U.S.C. § 1691e(h), and venue is appropriate pursuant to 28 U.S.C. § 1391(b) and (c).

3. Defendant Pacifico Ford, Inc. (hereinafter "Pacifico Ford"), is incorporated under the laws of the Commonwealth of Pennsylvania, with its principal place of business at 6701 Essington Avenue in Philadelphia, Pennsylvania. Pacifico Ford is an automobile dealership which sells new and used automobiles to consumers.

4. Pacifico Ford is visited by a substantial number of consumers each year. The consumers regularly meet with sales associates, sales managers and finance managers. When a consumer has made a decision to test drive or buy an automobile, the sales associate photocopies the consumer's driver's license. The driver's license is then placed, along with other documents,

in a deal jacket. The deal jacket is subsequently reviewed by Pacifico Ford sales managers and finance managers. Pacifico Ford sales associates, sales managers and finance managers are aware of consumers' race by their personal observations and by their review of the consumers' driver's licences, which include the consumers' photographs and home addresses.

5. Pacifico Ford has entered into agreements with fifteen or more banks or other financial institutions so that it can offer financing to consumers. These agreements set forth the terms upon which each lender will agree to purchase retail vehicle installment sales contracts and security agreements from Pacifico Ford.

6. When a consumer decides to buy an automobile and requests dealer financing, Pacifico Ford asks the consumer to complete a loan application and refers the application to one or more of the lenders. A lender then determines the consumer's credit risk or score and reviews the terms of the deal, including but not limited to the duration of the loan, the price of the car and the amount of the down payment. The lender subsequently decides whether or not the loan application will be accepted and most of the terms of the loan.

7. For each loan application referred by Pacifico Ford and subsequently accepted by a lender, Pacifico Ford receives, from the lender, a "buy rate" or a risk-related finance charge for a particular consumer after consideration of his or her credit risk and the terms of the deal. The "buy rate" is customarily communicated only to Pacifico Ford, not the consumer. Pacifico Ford sets the "interest rate markup," a non-risk related finance charge that Pacifico Ford adds to the "buy rate." Pacifico Ford then discloses to the consumer the "contract rate," which equals the "buy rate" plus the "interest rate markup."

8. Pacifico Ford sets the interest rate markup, which cannot exceed the amount set in

its agreements with the lenders. In some deals, the lenders only allow Pacifico Ford to charge the consumer the buy rate. In most deals during the period of January 1, 1999 through December 31, 2002, the lenders allowed Pacifico Ford to charge the consumer the buy rate and an interest rate markup, which during that time period added a maximum of four percentage points to the buy rate.

9. In deals where the lenders allow Pacifico Ford to charge consumers the buy rate and an interest rate markup, Pacifico Ford receives an incentive paid by the lenders, sometimes called a “dealer participation” incentive, which since January 1999 has been between 50% and 80% of the interest rate markup.

10. Pacifico Ford finance managers and other employees do not use formal, written, uniform underwriting guidelines and procedures to set interest rate markups. Instead, Pacifico Ford finance managers and other employees are granted the discretion to engage in subjective decision-making and set interest rate markups within broad parameters bounded only by the maximum interest rate markups set by the lenders.

11. Pacifico Ford is a creditor as defined by ECOA, 15 U.S.C. § 1691a(e) and by Regulation B, 12 C.F.R. 202.2(l).

12. Between January 1, 1999 and December 31, 2002, Pacifico Ford charged African-American consumers higher interest rate markups than similarly situated non-African-American consumers. The differences in the interest rate markups between the automobile loans made to African-American consumers purchasing automobiles from Pacifico Ford and those made to non-African-American consumers cannot be explained fully by factors unrelated to race, such as differences in the consumers' creditworthiness or by differences in the down payment amounts

provided by consumers. These differences are statistically significant.

13. As described in the preceding paragraphs, and at least between January 1, 1999 and December 31, 2002, Pacifico Ford has engaged in a pattern or practice of discrimination, as defined in ECOA, 15 U.S.C. § 1691e(h), and Regulation B, 12 C.F.R. 202.17(b)(4).

14. Persons who have been victims of Pacifico Ford's pattern or practice of discrimination are aggrieved applicants under ECOA, 15 U.S.C. § 1691e; and have suffered injury and damages as a result of Pacifico Ford's conduct.

15. The discriminatory practices of Pacifico Ford as described herein were implemented with reckless disregard for the rights of African-American persons.

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

(1) Declares that the practices of the defendant constitute a violation 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 the defendant, from:

- (a) discriminating on account of race in any aspect of their business practices;
- (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 practices to the position they were 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 the defendant's unlawful practices, including revising its decision making process to eliminate

considerations of race in the setting of interest rate markups and contract rates for automobile loans; and providing policies, procedures, and guidelines to ensure that race is not a factor considered in making loan pricing decisions;

(3) Awards monetary damages to all the victims of the defendant's discriminatory 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.

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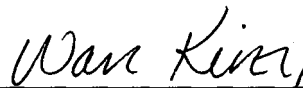
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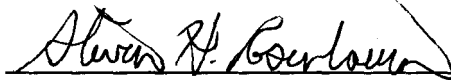
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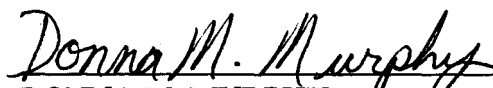
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CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that on this 21st day of August 2007, I caused a true and correct copy of the foregoing Complaint to served by United States prepaid first class mail upon the following:

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