

**SETTLEMENT AGREEMENT
BETWEEN THE UNITED STATES OF AMERICA
AND PACIFIC MERCANTILE BANK**

I. INTRODUCTION

1. This settlement agreement ("Agreement") is entered into between the United States of America, through the U.S. Department of Justice ("United States" or "Department"), and Pacific Mercantile Bank ("PMB" or "the Bank") (collectively, "the Parties"), through their authorized representatives.

II. RECITALS

2. The Parties enter into this Agreement to resolve certain claims of the United States, against PMB under Title VIII of the Civil Rights Act of 1968, as amended, 42 U.S.C. §§ 3601-3631 ("Fair Housing Act" or "FHA"), and the Equal Credit Opportunity Act, 15 U.S.C. §§ 1691-1691e ("ECOA"). The United States contends that the Bank, through its residential lending-related policies and practices, engaged in a pattern or practice of discrimination on the basis of race and national origin in violation of the FHA, 42 U.S.C. §§ 3604(b), 3605(a), 3614(a), and ECOA, 15 U.S.C. §§ 1691(a)(1), 1691c(g)-(h). The claims are also based on the United States' assertion that these policies and practices constituted a denial of rights granted by the FHA to a group of persons that raises an issue of general public importance. 42 U.S.C. § 3614(a).

3. PMB is a commercial bank chartered by the California Department of Business Oversight and headquartered at 949 South Coast Drive, Costa Mesa, California 92626. It is a wholly-owned subsidiary of Pacific Mercantile Bancorp. PMB is subject to the regulatory authority of the Board of Governors of the Federal Reserve System. PMB is subject to federal laws governing fair lending, including the FHA and ECOA and their respective implementing regulations, 24 C.F.R. pt. 100 (FHA) and Regulation B, 12 C.F.R. pt. 1002 (ECOA).

4. The Federal Reserve Bank of San Francisco ("the Fed") determined that there was reason to believe that PMB engaged in a pattern or practice of discrimination in the pricing of mortgage loans on the basis of national origin in violation of ECOA and the FHA, and on August 19, 2013, the Fed referred the matter to the Department under 15 U.S.C. § 1691e(g).

5. On October 17, 2013, the Department notified PMB that the United States had opened an investigation (DJ# 188-12C-44) into potential lending discrimination by the Bank based on the Fed's referral, and on December 20, 2016, the Department notified PMB that based on its investigation the Civil Rights Division's Principal Deputy Assistant Attorney General had authorized filing a complaint against PMB. The United States' claims include that PMB discriminated on the basis of race and national origin in the pricing of its first-lien retail and wholesale mortgage loans originated between April 2011 and April 2013.

6. PMB denies any liability, wrongdoing, or noncompliance with the provisions of the FHA and ECOA.

7. PMB has represented to the United States that it has not engaged in wholesale mortgage lending since April 2013 and that in December 2013 it ceased accepting applications for retail mortgage loans. PMB has further represented that it has no current plans to reenter the residential mortgage market.

8. There has been no factual finding or adjudication with respect to any matter alleged by the United States. The Parties have entered into this Agreement to avoid the risks, expense, and burdens of litigation and to resolve voluntarily the potential claims by the United States based on PMB's alleged violations of federal fair lending laws.

9. This Agreement is a compromise of disputed claims and is not an admission by PMB of any liability, wrongdoing, or noncompliance with the provisions of the FHA or ECOA.

III. STATEMENT OF CONSIDERATION

10. In consideration of, and consistent with, the terms of this Agreement, the United States Department of Justice agrees to refrain from filing a civil lawsuit against PMB arising out of the potential claims described in Section II. The Parties agree and acknowledge that this consideration is adequate and sufficient.

IV. TERMS AND CONDITIONS

A. Compensation for Affected Borrowers

i. Establishment of a Settlement Fund

11. Within thirty (30) days after the effective date of this Agreement, PMB shall deposit in an interest-bearing escrow account the total sum of one million dollars (\$1,000,000) to create a Settlement Fund. Title to this account shall specify that it is "to create a Settlement Fund pursuant to a Settlement Agreement between the United States and Pacific Mercantile Bank (DJ# 188-12C-44)." PMB shall provide written verification of the deposit to the United States, along with the account number and identification of the depository institution, within five (5) days of the depositing of the funds described above.¹ Any interest that accrues shall become part of the Settlement Fund and be utilized and disposed of as set forth in this Agreement. The total sum deposited into the Settlement Fund, plus any accrued interest, shall not be altered for any reason. Any taxes, costs, or other fees incurred by the Settlement Fund shall be paid by PMB.

¹ Any documents or information required by this Agreement to be submitted to the United States shall be sent by private (non-USPS) overnight delivery addressed as follows: 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 #188-12C-44. The Parties may also agree to delivery electronically or by hand-delivery to the above address by courier.

ii. Retention of an Independent Settlement Administrator to Manage the Settlement Fund

12. Within sixty (60) days after the effective date of this Agreement, PMB shall enter into a contract retaining an Independent Settlement Administrator (“Administrator”). The United States has provided its non-objection to the selection of the Administrator and the terms of the Administrator’s contract related to the Administrator’s duties under this Agreement. PMB shall bear all costs and expenses of the Administrator. PMB’s contract with the Administrator requires the Administrator to comply with the provisions of this Agreement as applicable to the Administrator.² The Administrator’s contract requires the Administrator to work cooperatively with the United States in the conduct of its activities, including reporting and providing information to the United States in accordance with the requirements set forth in the paragraphs below. The Administrator’s contract requires the Administrator to comply with all confidentiality and privacy restrictions applicable to the party who supplied the information and data to the Administrator.

13. The Administrator’s contract requires the Administrator, as part of its operations, to establish cost-free means for affected consumers to contact it, consisting of an email address, a website, a toll-free telephone number, and a teletypewriter (TTY) to allow persons with disabilities to communicate effectively. The Administrator’s contract requires the Administrator to provide 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 Spanish language translations for communications—including emails, TTY use, and website content—with affected consumers.

iii. Identification of Persons Eligible to Receive Monetary Relief from the Settlement Fund

14. Within fourteen (14) days of the effective date of this Agreement, the United States shall provide to the Administrator and PMB a list of loans with consumers that the United States has determined are persons eligible to receive monetary relief from the Settlement Fund under the Agreement and based on the information and data provided by PMB during the course of the United States’ investigation (“Loan List”).

15. Within thirty (30) days after the date the United States provides the Loan List to PMB, PMB will provide to the United States and the Administrator the name, most recent mailing address in its records, and Social Security number for the primary borrower and each co-borrower (if any) on each listed loan (“Identified Borrower”). Upon request from the United States, PMB will provide other information to the extent that it is reasonably practicable to

² In the event the United States has reason to believe that the Administrator is not materially complying with the terms of its contract with PMB, the United States and PMB 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 with PMB. In the event that the United States and PMB are unable to agree upon a course of action to effect the Administrator’s material compliance with its contract with PMB, the United States may seek enforcement based on the Administrator’s lack of material compliance consistent with Section VI and notwithstanding Paragraph 44 of this Agreement.

obtain the requested information. Such information and data shall be used by the United States and the Administrator only for the purpose of implementing the Agreement.

16. The United States shall provide PMB and the Administrator with a list of the initial estimate of the amount each Identified Borrower shall receive from the Settlement Fund ("Initial Estimate List") no later than one-hundred-and-twenty (120) days after receipt of all the information required to be provided under Paragraph 15. No individual, agency, or entity may request that the United States, PMB, or the Administrator review the selection of Identified Borrowers or the United States' initial estimates.

17. The Administrator's contract requires the Administrator to notify each Identified Borrower on the Initial Estimate List by letter (using reasonable steps as requested by the United States to confirm the current address of the Identified Borrower). The Administrator shall send to each Identified Borrower: a) a letter in English and Spanish, the English language version of which will take the form of Exhibit 1; b) a release in English and Spanish, the English language version of which will take the form of Exhibit 2; and c) a postage paid return envelope (the "Mailing"). The Spanish translations and final forms of Exhibits 1 and 2 shall be subject to the review and approval of the United States. The Administrator must send the Mailing to Identified Borrowers no later than sixty (60) days after receiving the Initial Estimate List using the most recent mailing address in PMB's records or obtained by the Administrator, unless the United States indicates an alternative address should be used when it provides the Initial Estimate List. The United States may make its own efforts to locate Identified Borrowers. PMB or the Administrator shall provide to the United States a monthly accounting of releases received, notifications for which no response has been received or that were reported to be undeliverable, and any re-mailings. The Administrator will create a list of Identified Borrowers from the Initial Estimate List who have submitted executed releases and are therefore entitled to compensation (the "Compensation List") and provide the Compensation List to the United States, within a period of six (6) months from the date the United States provides the Initial Estimate List, subject to an extension of time as provided by Paragraph 37.

iv. Distribution of Payments to Persons Eligible to Receive Monetary Relief from the Settlement Fund

18. The United States shall specify the final payment amount each Identified Borrower on the Compensation List shall receive from the Settlement Fund, 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 United States, PMB, or the Administrator review the final payment amounts.

19. PMB shall require the Administrator to deliver payments to all Identified Borrowers on the Compensation List in the amounts determined by the United States as described in Paragraph 18 within thirty-five (35) days after the Administrator receives the Compensation List with specified amounts. The Administrator's contract shall also require the Administrator to skip trace any payment that is returned to the Administrator as undeliverable, or not deposited within three (3) months. If the Administrator is able to locate another address from the skip trace the Administrator shall redeliver those payments returned as undeliverable and reissue those checks

that were not deposited. Upon request of the United States or upon request of individuals on the Compensation List, the Administrator shall also reissue checks that were not deposited. PMB or the Administrator shall provide to the United States a monthly accounting of the checks deposited, the checks that are not deposited within three (3) months, the returned checks, results of the skip traces relating to returned and uncashed checks, and re-mailing of checks. The Administrator also will mail one reminder post card to all Identified Borrowers on the Compensation List who have not deposited their checks within forty-five (45) days of mailing.

20. The Administrator's contract shall require the Administrator to maintain the cost-free means for consumers to contact it described in Paragraph 13 at least until twelve (12) months from the date the United States provides the list of final payment amounts to the Administrator in accordance with Paragraph 18, and to finalize distribution of the final payments described in Paragraphs 18 and 19 within the same time period. Identified Borrowers on the Compensation List shall have until the end of the twelve (12) months to deposit checks or request reissuance of payments that have not been deposited.

21. Payments from the Settlement Fund to Identified Borrowers shall be subject to the following conditions, provided that the details in administration of the Settlement Fund set forth in Paragraphs 13-20 can be modified by written agreement of the Parties:

- a. No Identified Borrower shall be paid any amount from the Settlement Fund until he or she has executed and delivered to PMB a written release in the form of Exhibit 2 or the Spanish translation of Exhibit 2 approved by the United States of all lending discrimination claims, legal or equitable, that he or she might have against PMB regarding the potential claims described in Section II of this Agreement, so long as such claims accrued prior to the effective date of this Agreement; and
- b. The total amount paid by PMB collectively to Identified Borrowers shall not exceed the total amount of the Settlement Fund, including accrued interest.

22. All money not distributed to Identified Borrowers from the Settlement Fund, 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 18 shall, after diligent efforts to locate all such Identified Borrowers as specified in Paragraph 19 above and subject to any extensions as provided by Paragraph 37, be distributed to the United States Treasury in the form of an electronic funds transfer based on written instructions to be provided by the United States.

23. PMB 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 the Identified Borrower. PMB also shall not refuse to make a payment based on a release of legal claims or loan modification previously signed by any Identified Borrower.

24. For the term of this Agreement, PMB shall retain all records relating to its obligations and compliance activities set forth in this Agreement. PMB shall provide such records to the United States upon request.

25. In addition to the submission of any other plans or reports specified in this Agreement, PMB shall submit semi-annual reports to the United States summarizing the activities it took in the preceding six (6) months to achieve compliance with this Agreement. PMB shall submit its first report no later than one-hundred-eighty (180) days after the effective date of this Agreement, and every one-hundred-eighty (180) days thereafter for so long as the Agreement is in effect.

V. SCOPE

26. This Agreement shall be binding on PMB, including all its officers, employees, agents, representatives, assignees, and successors in interest, and all those in active concert or participation with it. In the event PMB seeks to transfer or assign all or part of its operations, and the successor or assignee intends on carrying on the same or similar use, as a condition of sale, PMB shall obtain the written agreement of the successor or assignee to any obligations remaining under this Agreement for its remaining term to the extent compliance with such obligations would be transferred or assigned.

27. PMB's compliance with the terms of this Agreement, including any modifications agreed to by the Parties, shall fully and finally resolve all of the United States Attorney General's potential claims of discrimination under the FHA and ECOA described in Section II of this Agreement and arising prior to the effective date of this Agreement, including all claims for equitable relief and monetary damages and penalties. This Agreement does not release claims for practices not addressed in Section II of this Agreement, or that were not within the subject matter of the United States' investigation, including claims that may be held or are currently under investigation by any federal agency. This Agreement does not release 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). 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 Agreement, or to seek penalties for any violations thereof.

28. Nothing in this Agreement shall excuse PMB's compliance with any currently or subsequently effective provision of law or order of a regulator with authority over PMB that imposes additional obligations on PMB.

VI. IMPLEMENTATION AND ENFORCEMENT

29. The United States may review compliance with this Agreement at any time. PMB agrees to cooperate with the United States in any review of compliance with this Agreement. Upon reasonable notice, PMB shall permit counsel for the United States to inspect and copy all non-privileged records pertinent to this Agreement.

30. The Parties shall endeavor in good faith to resolve informally any differences regarding interpretation of or compliance with this Agreement prior to initiating court action. If the United States believes that PMB has failed to perform in a timely manner any act required by this Agreement, or has otherwise not acted in conformance with any provision thereof, whether

intentionally or not, the United States shall notify PMB in writing of its concerns. PMB shall have thirty (30) days from the date of notification to cure the alleged breach.

31. If the Parties are unable to reach a resolution within thirty (30) days, the United States may file a lawsuit for breach of this Agreement, or any provision thereof, in the United States District Court for the Central District of California. In any action filed under this Paragraph, PMB agrees not to contest the exercise of personal jurisdiction over it by this Court and not to raise any challenge on the basis of venue.

32. In the event the United States files a lawsuit for breach of this Agreement as contemplated by Paragraph 31, above, the United States may seek, and the Court may grant as relief, any or all of the following: 1) an order mandating specific performance of any term or provision in this Agreement, without regard to whether monetary relief would be adequate; 2) an award of reasonable attorneys' fees and costs incurred in bringing an action to remedy breach of this Agreement; and 3) any additional relief that may be authorized by law or equity.

33. Failure by the United States to enforce any provision of this Agreement shall not operate as a waiver of the United States' right or ability to enforce any other provision of this Agreement.

VII. TERMINATION OF LITIGATION HOLD

34. The Parties agree that, as of the effective date of this Agreement, litigation is not "reasonably foreseeable" concerning the matters described in Section II of this Agreement. To the extent that either Party has previously implemented a litigation hold to preserve documents, electronically stored information (ESI), or things related to the matters described above, the Party is no longer required to maintain such litigation hold. Nothing in this paragraph relieves any Party of any other obligations under this Agreement, including PMB's obligation to preserve documents under Paragraph 24.

VIII. DURATION, EXECUTION AND OTHER TERMS

35. This Agreement is effective on the date of the signature of the last signatory to the Agreement. The Agreement may be executed in multiple counterparts, each of which together shall be considered an original but all of which shall constitute one agreement. Facsimiles of signatures shall constitute acceptable, binding signatures for purposes of this Agreement.

36. The duration of this Agreement shall be for four (4) years from the effective date or, if earlier, on the satisfaction of the conditions set forth in Paragraph 22 of this Agreement.

37. Any time limits for performance fixed by this Agreement may be changed by mutual written agreement of the Parties. The Parties recognize that there may be changes in relevant and material factual circumstances during the term of this Agreement that may impact the accomplishment of its goals. The Parties agree to work cooperatively to discuss and attempt to agree upon any proposed modifications to this Agreement resulting therefrom.

38. Except as stated in Paragraph 32, each Party shall bear its own legal or other costs incurred in connection with this matter, including the preparation, negotiation and performance of this Agreement.

39. This Agreement constitutes the complete agreement between the Parties. No prior or contemporaneous communications, oral or written, or prior drafts shall be relevant or admissible for purposes of determining the meaning of any provision herein or in any other proceeding.

40. Each Party and signatory to this Agreement represents that it freely and voluntarily enters into this Agreement without any degree of duress or compulsion. The Parties agree that each Party and its representatives have acted consistent with the duty of good faith and fair dealing.

41. The undersigned represent and warrant that they are fully authorized to execute this Agreement on behalf of the persons and entities indicated below.

42. This Agreement is binding on the Parties and their transferees, successors, heirs and assigns.

43. This Agreement is governed by and shall be interpreted under the laws of the United States. For purposes of construing or interpreting this Agreement, it shall be deemed to have been drafted by both Parties and shall not be construed or interpreted against either Party for that reason in any subsequent dispute.

44. Except where this Agreement expressly conditions or predicates performance of a duty or obligation upon the performance of a duty or obligation by any other party, which includes the duties and obligations of the Administrator outlined in this Agreement, the performance of one Party's duties or obligations under this Agreement shall not be discharged or excused by the actual or alleged breach of the duties and obligations by any other party.

45. This Agreement is a public document. The Parties agree and consent to the United States' disclosure of this Agreement and information concerning this Agreement to the public subject to any applicable privacy laws.

46. Should any provision of this Agreement be declared or determined by any court to be illegal or invalid, the validity of the remaining parts, terms, or provisions shall not be affected thereby and the illegal or invalid part, term, or provision shall be deemed not to be a part of this Agreement. The Parties agree that they will not, individually or in combination with another, seek to have any court declare or determine that any provision of this Agreement is illegal or invalid.

47. This Agreement may be modified only with the written consent of the Parties. Any modification must be in writing and signed by the Parties through their authorized representatives.

For the United States of America:

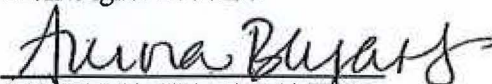
Dated: 7/12/18

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For Pacific Mercantile Bank:

Dated: 7/18/2018



Maxwell G. Sinclair
Executive Vice President & Chief
Compliance Officer
Pacific Mercantile Bank

Exhibit 1

Release

In consideration for the Settlement Agreement between the United States and Pacific Mercantile Bank ("the Bank") and in consideration for the payment of at least \$_____, I hereby release and forever discharge any and all claims of discrimination related to my mortgage loan with the account number _____, including claims brought under the Fair Housing Act or the Equal Credit Opportunity Act. These claims may be known and unknown, up to and including the effective date of the Settlement Agreement.

I understand that I am releasing those claims of discrimination related to my mortgage loan with the account number _____ that I may have against the Bank and all related entities, parents, predecessors, successors, and affiliates, and against any and all of their past and present directors, officers, agents, managers, supervisors, and employees and their heirs, executors, administrators, successors, and assigns.

I acknowledge and understand that by signing this Release, I am waiving any right to pursue my own legal action against the Bank based on discrimination related to my mortgage loan with the account number _____.

Date: _____

Printed Name: _____

Signature: _____

Address: _____

City: _____ State: _____ Zip: _____

Exhibit 2

Letter to Affected Borrowers

Re: Pacific Mercantile Bank Loan No. _____

I am writing on behalf of the U.S. Department of Justice. The United States has determined that you are eligible for at least \$XXX from our settlement with Pacific Mercantile Bank. In May xx, 2018, Pacific Mercantile Bank agreed to settle the United States' claims regarding alleged discrimination in mortgage loans originated between April 2011 and April 2013. Pacific Mercantile denies these discrimination claims. No Court has ruled on the United States' claims. The parties reached a settlement to avoid the risks, expense, and burdens of litigation.

Under the settlement, **you are entitled to receive a payment of at least \$XXX. To get a check, you must sign and return the enclosed Release form by _____ xx, 2018, by mail in the enclosed pre-addressed postage pre-paid envelope.**

If you obtained this loan with another person (a co-borrower), each of you will receive separate letters. Each co-borrower is entitled to receive one half of the money due on that loan. You should decide for yourself whether to take part in the settlement. If your co-borrower chooses not to participate, you will get paid one half of the money due on the loan. To get the full amount of money due on each loan, each co-borrower must participate.

After borrowers have returned their Release forms, we will set the exact amount to be paid to all participating borrowers. We expect checks will be mailed to all participating borrowers a few months following the participation deadline.

Should you have any questions about the settlement, or if your contact information changes, please visit the settlement website at [website address] or call the Settlement Administrator at [phone number].