

**SETTLEMENT AGREEMENT
BETWEEN THE UNITED STATES OF AMERICA
AND RAUL LUNA, PARTIALLY
RESOLVING *UNITED STATES v. THE HOME LOAN AUDITORS, ET AL.*,
Case No. 3:16-cv-04839 (N.D. Cal.)**

I. INTRODUCTION

1. This Settlement Agreement is made and entered into by and between the United States of America, through the U.S. Department of Justice (“United States”), and Raul Luna (“Luna”) (collectively, “the Parties”), through their authorized representatives. This Agreement resolves all of the claims against Luna brought by the United States in the civil action filed in the United States District Court for the Northern District of California, captioned *United States v. The Home Loan Auditors, et al.*, No. 3:16-cv-04839-RS (N.D. Cal.) (“Civil Action”). This Agreement does not resolve claims brought by the United States against other Defendants in the Civil Action, nor does this Agreement resolve claims brought by the Intervenor-Plaintiffs in the Civil Action.

II. RECITALS

2. This Agreement arises out of a Complaint filed by the United States on August 23, 2016, and amended on May 9, 2017, alleging violations of the Fair Housing Act, 42 U.S.C. §§ 3601-3631 (“FHA”). The Complaint was brought pursuant to 42 U.S.C. § 3612(o) on behalf of Eberardo Perez, Eva Perez, Jessie Perez, Roberto Hernandez, Margarita Galindo, and minor children DG and CH (together, “HUD Complainants”). The Complaint was also brought pursuant to the United States Attorney General’s authority under 42 U.S.C. § 3614(a) to seek redress when the Attorney General has reasonable cause to believe that, under the Fair Housing Act, there has been a pattern or practice of discrimination or there has been discrimination that raises an issue of general public importance. The United States brought its Complaint against The Home Loan Auditors, LLC (“THLA”), Century Law Center, LLC (“CLC”), SOE Assistance Center, Inc. (“SOE”), and Spieker Law Office, and individuals Omar Alcaraz, Araceli Castro, Oralia Gutierrez, Hortencia Leon, Luna, Elena Ramirez, and David Spieker (“Spieker”) (all together, “Defendants”). On November 30, 2016, HUD Complainants and Housing and Economic Rights Advocates (“HERA”), HUD Complainants’ counsel and a self-described “legal service and advocacy organization,” intervened. Luna has denied all wrongdoing.

3. The United States’ Complaint, as amended, alleges that from at least 2009 through at least 2010, Defendants deliberately targeted persons of Hispanic national origin, including HUD Complainants and other persons, for grossly unfair real estate-related transactions related to mortgage loan modifications because of their Hispanic national origin and limited English proficiency. The Complaint alleges that Defendants did this by inducing homeowners to purchase “forensic home loan audits” for the purpose of securing modifications of their mortgage loans and/or preventing foreclosure of their homes when such audits were not necessary or otherwise of any value. Luna has denied the allegations against him.

4. The United States’ Complaint, as amended, alleges that by their actions, policies, and practices, Defendants: made housing unavailable because of national origin, in violation of

42 U.S.C. § 3604(a); discriminated in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services of facilities in connection therewith, because of national origin, in violation of 42 U.S.C. § 3604(b); discriminated in the making or terms or conditions of residential real estate-related transactions, because of national origin, in violation of 42 U.S.C. § 3605; and coerced, intimidated, threatened or interfered with persons in the exercise or enjoyment of, or on account of their having exercised or enjoyed, their rights under the Fair Housing Act, in violation of 42 U.S.C. § 3617. Luna has denied these allegations.

5. The United States' Complaint, as amended, alleges that Defendants' conduct constitutes a pattern or practice of resistance to the full enjoyment of the rights granted by the Fair Housing Act, 42 U.S.C. §§ 3601, *et seq.*, or a denial to a group of persons of rights granted by the Fair Housing Act, 42 U.S.C. §§ 3601, *et seq.*, which raises an issue of general public importance. It further alleges that such conduct injured HUD Complainants and other aggrieved persons, as defined in the FHA, 42 U.S.C. § 3602(i), and that Defendants' actions were intentional, willful, and taken in disregard for the rights of others. Luna has denied these allegations.

6. Luna represents, by his signature below, that he is no longer involved in mortgage loan modification businesses and does not intend to reenter such businesses for the duration of this Agreement.

7. The HUD Complainants and HERA have entered into separate agreement(s) resolving their claims against Luna ("Private Settlement Agreement(s)").

III. STATEMENT OF CONSIDERATION

8. The Parties agree that the United States' claims against Luna should be resolved without further proceedings or a trial. The United States and Luna therefore agree to entry of this Agreement. This Agreement constitutes full resolution of the United States' claims in its Complaint against Luna.

9. During the pendency of any aspect of the Civil Action as against any party, Luna shall preserve and provide to the United States non-privileged information relevant to the claims and defenses in the Civil Action. Subject to law and the Federal Rules of Civil Procedure and Evidence, this includes, but is not limited to, accepting service of and complying with lawful subpoenas for information and testimony, including at deposition, hearings, and at trial.

10. In consideration of, and consistent with, the terms of this Agreement, the United States agrees to move jointly with Luna for dismissal of the Civil Action, as set forth in Paragraph 27, attaching this Agreement thereto. The Parties agree and acknowledge that this consideration is adequate and sufficient. The Parties agree and acknowledge that the provisions of this Agreement are conditioned on the representations made in Paragraph 6.

THEREFORE, the Parties, through their authorized representatives, hereby stipulate and agree as follows:

IV. GENERAL NONDISCRIMINATION PROVISIONS

11. Luna, his employees, agents, successors and assigns, and all other persons or entities in active concert of participation with Luna, shall not:

- a. Refuse to sell or rent, refuse to negotiate for the sale or rental, or otherwise make unavailable, a dwelling because of national origin;
- b. Discriminate in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services of facilities in connection therewith, because of national origin;
- c. Discriminate in the making or terms or conditions of residential real estate-related transactions, because of national origin; or
- d. Coerce, intimidate, threaten or interfere with persons in the exercise or enjoyment of, or on account of their having exercised or enjoyed, or on account of having aided and encouraged any other person in the exercise or enjoyment of, any rights granted or protected under the Fair Housing Act.

V. CONDITIONS ON PARTICIPATION IN ACTIVITIES RELATED TO HOUSING

12. For purposes of this Agreement, the term “Principal” means a person authorized to develop and implement policies for a company, which includes having the authority to hire, to fire, or to otherwise delegate responsibility to a person who develops and/or implements policies for a company.

13. Within forty-five (45) days after the effective date of this Agreement, Luna shall attend an in-person training on nondiscrimination laws, including the Fair Housing Act, and with emphasis on discrimination in real estate-related transactions. The training shall be conducted in accordance with the following:

- a. The trainer or training entity shall be independent of Luna, qualified to conduct such training, and approved in advance by the United States;
- b. Luna shall submit to the United States the name and contact information of the person or organization proposed to provide the training no fewer than fourteen (14) days before the training date;
- c. Within fourteen (14) days after the training, Luna shall provide to the United States a signed statement confirming his attendance that includes the date of the training, the name of the instructor, and the length of the course; and
- d. Any expenses associated with this training shall be borne by Luna.

14. In addition to the requirements in Paragraph 13, if Luna is or becomes a Principal in a business or organization whose activity relates to housing¹ during the duration of this Agreement, he shall do the following for each business or organization:

- a. Design policies to prevent and detect potential Fair Housing Act violations, and provide to the United States the details of those policies. If on the effective date of this Agreement Luna is a Principal, he must submit the policies to counsel for the United States within forty-five (45) days of the effective date of this Agreement. If after the effective date of this Agreement Luna becomes a Principal, he must submit the policies within forty-five (45) days after he becomes a Principal. The United States shall have thirty (30) days to review and agree or object to the proposed policies. The parties shall utilize the dispute resolution procedures set forth in Paragraphs 23-25 to resolve any objections by the United States. Within one (1) week of being approved by the United States, the policies shall be implemented and distributed to all employees, agents, managers, co-Principals, and owners involved in the activity related to housing.
- b. Provide training on the Fair Housing Act, including on its national origin discrimination provisions, for all employees, contractors, owners, and co-Principals who interact with, communicate with, or make decisions that directly impact members of the public. If on the effective date of this Agreement Luna is a Principal, the training must occur within forty-five (45) days of the effective date. If after the effective date of this Agreement Luna becomes a Principal, the training must occur within forty-five (45) days after he becomes a Principal. The trainer or training entity shall be independent of Luna, qualified to conduct such training, and approved in advance by the United States. Luna shall submit to the United States the name and contact information of the person or organization proposed to provide the training no fewer than fourteen (14) days before the training date. Within fourteen (14) days after the training, Luna shall provide to the United States signed statements from all attendees confirming attendance that includes the date of the training, the name of the instructor, and the length of the course. Any expenses associated with this training shall be borne by Luna.
- c. Notify current or prospective clients about and, upon request, make available Spanish-language translations of all documents provided to any current or prospective clients in the activity related to housing. If on the effective date of this Agreement Luna is a Principal, he must begin notifying about and, upon request, making available Spanish-language translations within forty-five (45) days after the effective date of this Agreement. If after the effective date of this Agreement Luna becomes a Principal, he must begin notifying about and, upon request, making available Spanish-language translations within forty-five (45) days after he becomes a Principal. For any new document created for client or prospective

¹ Any reference in this Agreement to “activities related to housing” means those activities subject to the provisions of the Fair Housing Act described in Paragraph 4 and alleged in the United States’ Complaint, as amended, which includes those activities that involve residential real estate-related transactions.

client use during the duration of this Agreement, Luna shall make available Spanish-language versions concurrently with English versions.

VI. BIANNUAL REPORTING

15. Luna shall report to the United States every six (6) months, beginning six (6) months from the effective date of this Agreement, with the final report provided to the United States sixty (60) days prior to the expiration of this Agreement. Except as provided under Paragraph 15.c, Luna shall not be required to disclose the name or contact information of any clients or customers, or income received from any business activity or employment as part of the biannual reporting required under this Paragraph. The reports to the United States shall include:

- a. Descriptions of business interests Luna held, and/or business activities or employment he engaged in, at any point in time during the six-month reporting period. Specifically, for each business interest Luna shall include (1) the name of the business in which Luna holds an interest or with whom Luna was employed, (2) a description of what type of business the company engages in, and (3) Luna's job title and job description;
- b. For each business interest described in Paragraph 15.a that includes activities related to housing, as defined in Footnote 1, Luna shall also identify whether any of these interests, activities, or employment are in businesses that primarily serve a population that is limited English proficient, defined as individuals who do not speak English as their primary language and who have a limited ability to read, speak, write, or understand English ("LEP"); and
- c. For each business interest described in Paragraph 15.a that includes activities related to housing, as defined in Footnote 1, Luna shall also describe any complaints of discrimination, misrepresentation, or fraud made about Luna or the business(es) Luna was engaged in, whether such complaints were formal or informal, written or otherwise. If written in any form or medium, Luna must submit legible copies of the complaint with the report required by this Paragraph.

16. If Luna is or becomes the Principal in an activity related to housing, consistent with those requirements under Paragraph 14, Luna shall provide the following to the United States along with the biannual report described in Paragraph 15:

- a. English and Spanish language versions of any standard form client documents or prospective client documents translated under Paragraph 14.c. In the event of a request by a third party for disclosure of confidential business information under the Freedom of Information Act, the Department of Justice will act in accordance with its stated policy (*see* 28 C.F.R. § 16.7) and will assert all applicable exemptions from disclosure, including those exemptions set forth in 5 U.S.C. §§ 552(b)(4), (b)(7)(A) and (b)(7)(C) (to the extent applicable); and

- b. Confirmation that the antidiscrimination policies under Paragraph 14.a have been distributed to all employees, representatives, managers, co-Principals, and owners, including any new employees, representatives, managers, co-Principals, and owners hired in the preceding year.

VII. RESTITUTION FOR AGGRIEVED PERSONS OTHER THAN HUD COMPLAINANTS

17. Within eighteen (18) months of the effective date of this Agreement, Luna shall pay \$105,000 as restitution into a Restitution Fund established by Spieker. Beginning no later than thirty (30) days after the effective date of this Agreement, Luna shall make monthly payments of at least \$5,833 until the \$105,000 is paid in full. No later than twenty-one (21) days after the effective date of this Agreement, counsel for the United States shall provide Luna with written instructions for how to make the payment. The funds paid by Luna shall be used only to restore Defendants' clients to the position they formerly occupied through the return of fees they paid to Defendants to secure forensic loan audit and mortgage modification services. Luna shall provide written verification to counsel for the United States of the deposit within three (3) business days of each deposit made pursuant to this Paragraph. Any taxes, costs, or other fees incurred on the escrow funds shall be paid by Spieker, and any interest accrued shall be distributed to recipients identified by the United States under Paragraph 18.

18. The United States shall determine recipients entitled to receive distributions from the Restitution Fund. The United States shall also determine the amount that each recipient will receive under the Restitution Fund. The United States shall produce a list to Spieker of the recipients and amount each recipient shall receive from the Restitution Fund ("Recipient List"). The Recipient List shall be subject to the following conditions:

- a. A recipient must have paid money to THLA, CLC, SOE, and/or Spieker Law Office in exchange for promised home loan audit and/or home loan modification services;
- b. The amount a recipient may receive from the Restitution Fund shall not exceed the amount paid by the recipient to THLA, CLC, SOE, and/or Spieker Law Office for services related to home loan audits and/or home loan modifications, less any money previously refunded to that recipient; and
- c. In order to be eligible to receive restitution under this Agreement, recipients must complete the Declaration and Release attached to this Agreement as Attachment A.²

² Attachment A reflects those Defendants with whom the United States has executed settlement agreements in connection with its claims in this Civil Action, as of the effective date of this Agreement. If, at the time of the Restitution Fund's distribution, the United States has resolved its claims against additional Defendants, Luna agrees to the United States using a version of Attachment A that adds those additional Defendants to the list of released Defendants (including Luna).

19. Luna agrees that the determinations of the United States made pursuant to Paragraph 18 shall be final, and he hereby waives the right to contest the United States' determination in this or any other proceedings.

20. A separate settlement agreement executed with Spieker on August 2, 2018 ("the Spieker Agreement") requires the United States and Spieker to take the following actions related to the Restitution Fund:

- a. The United States shall deliver the Recipient List to Spieker. Within fourteen (14) days of receiving the Recipient List, Spieker shall deliver to counsel for the United States restitution checks payable to each person on the Recipient List in the amount specified by the United States. Those checks must be valid for no less than 180 days.
- b. When counsel for the United States has received a check from Spieker payable to a recipient and a signed Declaration and Release from the recipient, counsel for the United States shall promptly deliver the check to the recipient and copies of the signed Declaration and Release to Spieker. No recipient shall be paid until he or she has signed and delivered to counsel for the United States the Declaration and Release in Attachment A. Should any aggrieved person refuse to execute the release attached to this Agreement as Attachment A, his or her share of the Restitution Fund will be distributed, in the United States' discretion, among the recipients who execute releases subject to the conditions in Paragraph 18.
- c. The United States may take reasonable steps to facilitate the deposit of funds to recipients on the Recipient List, including by redelivering checks returned to the United States as undeliverable.
- d. If requested by the United States, Spieker will take the necessary steps to re-issue checks. Spieker also agrees to provide promptly information to counsel for the United States about the Restitution Fund, including, but not limited to, the Restitution Fund's available balance, checks that have or have not been cashed/deposited, and administrative fees incurred
- e. Should any individuals identified on the Recipient List fail to deposit their checks within 180 days, or if any funds remain in the Restitution Fund for any other reason sixty (60) days prior to the expiration of the Spieker Agreement, the United States may, in its sole discretion, allocate those remaining funds among those on the original Recipient List or take any other measures to distribute the Restitution Funds to remedy the alleged harm in a manner consistent with the Spieker Agreement. In no event shall the total amount received by any individual exceed the amount of restitution to which he or she is entitled, consistent with Paragraph 18. Spieker agrees to issue additional checks consistent with this paragraph.

VIII. MONETARY DAMAGES FOR HUD COMPLAINANTS

21. Luna shall pay the HUD Complainants the amounts agreed upon in the Private Settlement Agreement(s).

IX. IMPLEMENTATION AND ENFORCEMENT

22. The United States may monitor compliance with this Agreement at any time, including, but not limited to, by conducting tests at any offices or locations at which Luna conducts activities related to housing. Luna agrees to cooperate with the United States in any review of compliance with this Agreement. Upon reasonable notice, Luna shall permit counsel for the United States to inspect and copy all non-privileged records pertinent to this Agreement. Unless such inspection or copying is otherwise provided for in this Agreement, if non-privileged records sought by the United States contain personally identifiable information (“PII”) or financial information of Luna or third parties, the Parties shall first meet and confer to discuss appropriate measures to protect that information from disclosure, including the use of redactions to protect portions of the documents containing or constituting PII. Nothing in this provision, however, shall constitute a waiver of any rights the United States may have in any action to enforce the terms of this Agreement.

23. 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 Luna 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 Luna in writing of its concerns via email and United States mail to the email and mailing addresses specified by Luna in Attachment B. Luna shall have thirty (30) days from the date of the United States’ notification to cure the breach.

24. If the United States and Luna are unable to reach a resolution within thirty (30) days, as contemplated in the preceding Paragraph, the Parties agree that the United States may move to restore the Civil Action to the active docket for purposes of resolution of any such claim of breach, or may file a separate lawsuit for breach of this Agreement, or any provision thereof, in the United States District Court for the Northern District of California. This Court shall serve as the exclusive jurisdiction and venue for any dispute concerning this Agreement. In any such action, the Parties consent to and agree not to contest the jurisdiction of this Court. The Parties further acknowledge that venue in this Court is appropriate and agree not to raise any challenge on this basis.

25. In the event the United States, as contemplated by Paragraph 24, reopens the Civil Action or files a new civil action to remedy breach of this Agreement, the United States may seek, and the Court may grant as relief, 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; and 2) any additional relief that may be authorized by law or equity. Luna expressly agrees not to count the time during which this Agreement is in place, or use the terms or existence of this Agreement, to plead, argue, or otherwise raise any defenses under theories of claim preclusion, issue preclusion, statute of limitations, estoppel, laches, or similar

defenses. Nothing in this Agreement is intended to waive any defenses under these theories applicable to a period in which this Agreement is not in place.

26. 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.

27. Upon receipt of confirmation of Luna's first payment as contemplated in this Agreement, the United States and Luna shall jointly move the Court for dismissal with prejudice of the claims against Luna in the Civil Action, subject to its reopening as set forth in Paragraph 24. The Parties shall attach a copy of this Agreement to the joint motion.

X. TERMINATION OF LITIGATION HOLD

28. The Parties agree that, as of the effective date of this Agreement, litigation is not "reasonably anticipated" concerning the matters described in this Agreement. To the extent that any Party has previously implemented a litigation hold to preserve documents, electronically stored information (ESI), or things related to the matters described above, that Party is no longer required to maintain such litigation hold. Nothing in this Paragraph relieves any Party of any other obligations under this Agreement or other obligations to preserve information.

XI. DURATION, EXECUTION AND OTHER TERMS

29. The effective date of this Agreement is the date of the last signature, below. 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.

30. The provisions of this Agreement shall remain in effect for forty-two (42) months after the effective date.

31. Except as allowed under Paragraph 25, 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.

32. This Agreement constitutes the complete agreement among 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.

33. 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.

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

35. 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 all Parties and shall not be construed or interpreted against any Party for that reason in any subsequent dispute.

36. Except where this Agreement expressly conditions or predicates performance of a duty or obligation upon the performance of a duty or obligation by another Party, 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 another Party.

37. 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.

38. 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 said illegal or invalid part, term or provision shall be deemed not to be a part of this Agreement.

39. 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.

[signatures appear on next page]

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Dated: 10/31/2018 10:15:56 AM PDT

DocuSigned by:

Raul Luna

RAUL LUNA
Defendant

Dated: 11/1/18

Rebecca Coll

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Dated: 11/2/18

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SAMEENA SHINA MAJEED
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ATTACHMENT A

DECLARATION AND RELEASE

I, _____, declare and state as follows:

1. I paid \$_____ to The Home Loan Auditors, LLC (“THLA”), Century Law Center, LLC (“CLC”), SOE Assistance Center, Inc. (“SOE”), Spieker Law Office, Omar Alcaraz, Araceli Castro, Oralia Gutierrez, Hortencia Leon, Raul Luna, Elena Ramirez, and/or David Spieker (collectively, “Defendants”) in exchange for promised home loan audit and/or home loan modification services at the following address:

2. To date, I have received or recovered \$ _____ of the money I paid to Defendants.

3. In consideration for the parties’ agreement to the terms of the Settlement Agreement resolving the United States’ allegations in *United States v. The Home Loan Auditors, et al.*, Case No. 3:16-cv-04839-RS (N.D. Cal.), that Raul Luna, Hortencia Leon, David Spieker, and Spieker Law Office violated the Fair Housing Act, and partial restitution to me from the Restitution Fund created as part of the Settlement Agreement, I, _____, hereby release and forever discharge all claims, arising prior to the date of this Release, related to the facts at issue in the litigation referenced above and related to the alleged violation of the Fair Housing Act, that I may have against Raul Luna, Hortencia Leon, David Spieker, and Spieker Law Office and all related entities and persons.

I confirm that the foregoing is true and correct.

Executed on this date: _____, 20_____.

SIGNATURE: _____

PRINT NAME: _____

ADDRESS: _____
