

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	CIVIL ACTION NO.
)	
FIRST UNITED BANK,)	
)	
Defendant.)	
)	
)	

COMPLAINT

The United States of America alleges:

1. This action is brought by the United States to enforce the Equal Credit Opportunity Act, 15 U.S.C. §§ 1691-1691f (“ECOA”).
2. From at least 2008 to 2012, Defendant First United Bank (“First United” or “the Bank”) engaged in a pattern or practice of discrimination on the basis of national origin because it charged hundreds of Hispanic borrowers higher interest rates on unsecured consumer loans compared to the rates charged to similarly-situated non-Hispanic borrowers.
3. This Court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1345 and 15 U.S.C. § 1691e(h).
4. Venue is proper pursuant to 28 U.S.C. §§ 1391(b) and (c) because Defendant’s principal place of business is in the Northern District of Texas and because a substantial part of the events or omissions giving rise to this action occurred in the Northern District of Texas.

5. Defendant First United is a state-chartered bank based in Dimmitt, Texas. First United operates fifteen locations in Texas, in Lubbock, Amarillo, Wichita Falls and surrounding towns. First United is a subsidiary of Plains Bancorp, Inc., a holding company.

6. First United offers a variety of loan products, including consumer loans, mortgage loans, commercial loans, and agricultural loans. The Bank originates its loans through loan officers and other employees operating at one or more of its branches.

7. As of September 30, 2014, the Bank had total assets of approximately \$1.18 billion. First United is subject to the regulatory authority of the Federal Deposit Insurance Corporation (“FDIC”).

8. First United is subject to federal laws governing fair lending, including ECOA and the regulations promulgated thereunder. ECOA prohibits financial institutions from discriminating on the basis of, *inter alia*, national origin in their lending practices. Charging higher prices for loans on the basis of national origin, including charging higher rates of interest, is one of the discriminatory lending practices prohibited by ECOA. First United is a “creditor” within the meaning of section 702(e) of ECOA, 15 U.S.C. § 1691a(e).

9. Beginning in August 2012, the FDIC conducted an examination of the lending practices of First United to evaluate compliance with ECOA. Based on analysis of the average rates of interest that the Bank charged on unsecured consumer loans made between August 11, 2011, and August 10, 2012, the FDIC found reason to believe that First United had engaged in a pattern or practice of discrimination on the basis of national origin against Hispanic borrowers.

10. On April 12, 2013, following its examination, the FDIC referred the lending practices of First United to the United States Department of Justice pursuant to 15 U.S.C. § 1691e(g).

11. After receiving the referral from the FDIC, the United States analyzed the interest rates that First United charged for unsecured consumer loans originated between January 1, 2008 and December 31, 2012. The United States also reviewed and evaluated the Bank's loan policies, procedures, and practices for that time period.

12. Prior to May 1, 2013, First United did not use a uniform pricing system such as a matrix or rate sheet and did not have specific pricing guidelines for unsecured consumer loans; loan officers had broad subjective discretion to set interest rates.

13. Between January 1, 2008, and December 31, 2012, First United made approximately 560 unsecured consumer loans to Hispanic borrowers. During this period, First United charged interest rates to Hispanic borrowers for unsecured consumer loans that were 205 basis points¹ higher, on average, than the rates charged to non-Hispanic borrowers. This disparity is statistically significant.

14. Between January 1, 2008, and December 31, 2012, the average interest rate charged to non-Hispanic borrowers was 10.6 percent, and the average interest rate charged to Hispanic borrowers was 12.6 percent.

15. After accounting for credit risk factors such as loan term, credit score, loan amount, geographic market and default behavior, First United charged interest rates to Hispanic borrowers between January 1, 2008, and December 31, 2012, that were 142 basis points higher, on average, than the rates charged to similarly-situated non-Hispanic borrowers.

16. The higher rates of interest that First United charged to Hispanic borrowers for unsecured consumer loans are a result of First United's policy or practice of giving its employees broad subjective discretion in setting the interest rate for unsecured consumer loan transactions.

¹ One basis point represents one hundredth of a percentage point (0.01%).

Information as to each applicant's national origin was available and known to the Bank's loan officers, who personally handled each loan transaction at one of Bank's branch offices. First United did not properly instruct its loan officers regarding their obligation to treat prospective customers without regard to national origin, and the Bank failed to supervise or monitor the performance of its loan officers to ensure compliance with fair lending laws.

17. First United's policy or practice of giving its employees broad subjective discretion in handling every aspect of the unsecured consumer loan transaction had a disparate detrimental impact on Hispanic borrowers compared to similarly-situated non-Hispanic borrowers and is not justified by business necessity or legitimate business interests.

18. First United's actions, policies, and practices, as alleged herein, constitute discrimination against applicants with respect to credit transactions on the basis of national origin in violation of ECOA.

19. First United's actions, policies, and practices, as alleged herein, constitute a pattern or practice of resistance to the full enjoyment of rights secured by ECOA.

20. Persons who have been victims of First United's discriminatory actions, policies and practices are affected persons as defined in ECOA, 15 U.S.C. § 1691e, and have suffered injury and damages as a result of First United's violation of ECOA.

21. First United's pattern or practice of discrimination has been intentional, willful, and implemented with reckless disregard for the rights of 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 violations of the Equal Credit Opportunity Act, 15 U.S.C. §§ 1691-1691f;

2. Enjoins the Defendant, its agents, employees, successors, and assigns, and all other persons in active concert or participation with it, from:
 - a. Discriminating on the basis of national origin against any person with respect to any aspect of a credit transaction;
 - 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 conduct to the position they would have been in but for the discriminatory conduct; and
 - c. Failing or refusing to take such actions as may be necessary to prevent the recurrence of any such discriminatory conduct in the future.

3. Awards equitable relief and monetary damages to all the victims of the Defendant's discriminatory policies and practices for the injuries caused by the Defendant, including direct economic costs, consequential damages, and other damages, pursuant to 15 U.S.C. § 1691e(h).

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

Dated: January 15, 2015

Respectfully submitted,

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CIVIL COVER SHEET

The JS 44 civil coversheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS
(b) County of Residence of First Listed Plaintiff
(c) Attorneys (Firm Name, Address, and Telephone Number)

DEFENDANTS
County of Residence of First Listed Defendant
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.
Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)
1 U.S. Government Plaintiff
2 U.S. Government Defendant
3 Federal Question (U.S. Government Not a Party)
4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)
Citizen of This State
Citizen of Another State
Citizen or Subject of a Foreign Country
PTF DEF
1 1 Incorporated or Principal Place of Business In This State
2 2 Incorporated and Principal Place of Business In Another State
3 3 Foreign Nation
4 4
5 5
6 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)
CONTRACT
110 Insurance
120 Marine
130 Miller Act
140 Negotiable Instrument
150 Recovery of Overpayment & Enforcement of Judgment
151 Medicare Act
152 Recovery of Defaulted Student Loans (Excl. Veterans)
153 Recovery of Overpayment of Veteran's Benefits
160 Stockholders' Suits
190 Other Contract
195 Contract Product Liability
196 Franchise
TORTS
PERSONAL INJURY
310 Airplane
315 Airplane Product Liability
320 Assault, Libel & Slander
330 Federal Employers' Liability
340 Marine
345 Marine Product Liability
350 Motor Vehicle
355 Motor Vehicle Product Liability
360 Other Personal Injury
362 Personal Injury - Med. Malpractice
PERSONAL INJURY
365 Personal Injury - Product Liability
367 Health Care/Pharmaceutical Personal Injury Product Liability
368 Asbestos Personal Injury Product Liability
370 Other Fraud
371 Truth in Lending
380 Other Personal Property Damage
385 Property Damage Product Liability
FORFEITURE/PENALTY
625 Drug Related Seizure of Property 21 USC 881
690 Other
LABOR
710 Fair Labor Standards Act
720 Labor/Mgmt. Relations
740 Railway Labor Act
751 Family and Medical Leave Act
790 Other Labor Litigation
791 Empl. Ret. Inc. Security Act
IMMIGRATION
462 Naturalization Application
463 Habeas Corpus - Alien Detainee (Prisoner Petition)
465 Other Immigration Actions
BANKRUPTCY
422 Appeal 28 USC 158
423 Withdrawal 28 USC 157
PROPERTY RIGHTS
820 Copyrights
830 Patent
840 Trademark
SOCIAL SECURITY
861 HIA (1395ff)
862 Black Lung (923)
863 DIWC/DIWW (405(g))
864 SSID Title XVI
865 RSI (405(g))
FEDERAL TAX SUITS
870 Taxes (U.S. Plaintiff or Defendant)
871 IRS—Third Party 26 USC 7609
OTHER STATUTES
375 False Claims Act
400 State Reapportionment
410 Antitrust
430 Banks and Banking
450 Commerce
460 Deportation
470 Racketeer Influenced and Corrupt Organizations
480 Consumer Credit
490 Cable/Sat TV
850 Securities/Commodities/Exchange
890 Other Statutory Actions
891 Agricultural Acts
893 Environmental Matters
895 Freedom of Information Act
896 Arbitration
899 Administrative Procedure Act/Review or Appeal of Agency Decision
950 Constitutionality of State Statutes
REAL PROPERTY
210 Land Condemnation
220 Foreclosure
230 Rent Lease & Ejectment
240 Torts to Land
245 Tort Product Liability
290 All Other Real Property
CIVIL RIGHTS
440 Other Civil Rights
441 Voting
442 Employment
443 Housing/Accommodations
445 Amer. w/Disabilities - Employment
446 Amer. w/Disabilities - Other
448 Education
PRISONER PETITIONS
510 Motions to Vacate Sentence
Habeas Corpus:
530 General
535 Death Penalty
540 Mandamus & Other
550 Civil Rights
555 Prison Condition
560 Civil Detainee - Conditions of Confinement

V. ORIGIN (Place an "X" in One Box Only)
1 Original Proceeding
2 Removed from State Court
3 Remanded from Appellate Court
4 Reinstated or Reopened
5 Transferred from another district (specify)
6 Multidistrict Litigation

VI. CAUSE OF ACTION
Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
Brief description of cause:

VII. REQUESTED IN COMPLAINT:
CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23
DEMAND \$
CHECK YES only if demanded in complaint:
JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY
(See instructions): JUDGE DOCKET NUMBER

DATE SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY
RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE