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20 UNITED STATES DISTRICT COURT
21 FOR THE CENTRAL DISTRICT OF CALIFORNIA

22 UNITED STATES OF AMERICA,

23 Plaintiff,

24 v.

25 TOYOTA MOTOR CREDIT
26 CORPORATION,

27 Defendant.

CIVIL ACTION NO.

COMPLAINT

1 Plaintiff, United States of America, alleges:

2 1. The United States of America brings this action against Toyota Motor
3 Credit Corporation (“Toyota” or “Defendant”) for discriminating against thousands of
4 African-American and Asian and/or Pacific Islander borrowers across the United States
5 who obtained loans from Toyota to finance automobiles. The discrimination is caused
6 by Toyota’s policy and practice that allows dealers to include markups in the interest
7 rates on automobile loans in a hidden manner not based on the borrower’s
8 creditworthiness or other objective criteria related to borrower risk. The United States
9 brings this action to enforce provisions of the Equal Credit Opportunity Act (ECOA), 15
10 U.S.C. §§ 1691-1691f, and its implementing regulation, Regulation B, 12 C.F.R. Part
11 1002.

12 2. Between at least January 1, 2011 and February 2, 2016 (“the Relevant
13 Period”), Toyota did not provide adequate constraints across its portfolio of loans to
14 prevent discrimination. Toyota knew or had reason to know that its policy and practice
15 of allowing dealers to mark up consumers’ interest rates created a substantial risk of
16 discrimination. Before September 10, 2014, Toyota did not monitor markup disparities.

17 3. As a result of Toyota’s dealer markup and compensation policy and practice
18 and its lack of compliance monitoring, African-American and Asian and/or Pacific
19 Islander borrowers paid higher interest rates for their automobile loans than non-
20 Hispanic white borrowers, not based on creditworthiness or other objective criteria
21 related to borrower risk, but because of their race and national origin. Between January
22 1, 2011 and December 31, 2013, the average African-American victim was obligated to
23 pay over \$200 more during the term of the loan because of discrimination, and the
24 average Asian and/or Pacific Islander victim was obligated to pay over \$100 more during
25 the term of the loan because of discrimination.

26 4. This Court has jurisdiction pursuant to 15 U.S.C. § 1391e(h) and 28 U.S.C.
27 § 1345. Venue is proper in this District under 28 U.S.C. § 1391.

PARTIES

5. The United States is authorized to initiate a civil action in federal district court whenever a matter is referred to the Attorney General pursuant to 15 U.S.C. § 1691e(g) and when the Attorney General has reasonable cause to believe that a pattern or practice in violation of ECOA has occurred. 15 U.S.C. § 1691e(h).

6. Toyota is a captive auto finance company and the financing arm in the United States of Toyota Financial Services Corporation, which is a subsidiary of Toyota Motor Corporation, the world's largest car maker. Toyota is incorporated in the state of California with its principal place of business in Torrance, California.

7. As of the second quarter of 2015, Toyota was the largest captive auto finance company in the United States. Toyota held a 5.2 percent share of the overall auto loan market based on originations, making it the fifth largest auto lender overall.

8. Toyota finances or purchases both subvented and non-subvented auto loans. Subvented auto loans are loans for which an auto manufacturer, such as Toyota Motor Corporation, reduces the price of the loan through a subsidy, reduced interest rate, or other means. Approximately 50% of Toyota's auto loans are subvented.

9. Automobile dealers submit applications to Toyota on behalf of consumers. To determine whether it will fund a loan, and on what terms, Toyota conducts an underwriting process on each loan application submitted by its dealers on behalf of a consumer. For those applications that Toyota approves, Toyota sets a specified "buy rate." Toyota determines the buy rate using a proprietary underwriting and pricing model that takes into account individual borrowers' creditworthiness and other objective criteria related to borrower risk. Toyota then communicates that buy rate to the dealer that submitted the application to Toyota. Toyota's buy rate reflects the minimum interest rate, absent additional discounts or reductions, at which Toyota will finance or purchase a retail installment contract from a dealer.

10. With respect to non-subservent retail installment contracts, Toyota maintains a specific policy and practice that provides dealers discretion to mark up a consumer's interest rate above Toyota's established risk-based buy rate. The difference between the buy rate and the consumer's interest rate on the retail installment contract (contract rate) is known as the "dealer markup." Toyota compensates dealers from the increased interest revenue to be derived from the dealer markup.

11. During the Relevant Period, Toyota limited the dealer markup to 250 basis points for non-subservent contracts with terms of sixty (60) monthly payments or less; to 200 basis points for contracts with terms greater than sixty (60) and less than seventy-two (72) monthly payments; and to 175 basis points for contracts with terms of seventy-two (72) or greater monthly payments.

12. Toyota regularly participates in the decision to extend credit by taking responsibility for underwriting, setting the terms of credit by establishing the risk-based buy rate, and communicating those terms to automobile dealers. Toyota influences the credit decision by indicating to automobile dealers whether or not Toyota will purchase retail installment contracts on the terms specified by Toyota.

13. Toyota's agreements with automobile dealers require that all loan applications they submit to Toyota must comply with the policies, conditions, and requirements that Toyota sets for dealers.

14. Toyota is a creditor within the meaning of ECOA, 15 U.S.C. § 1691a(e), and Regulation B, 12 C.F.R. § 1002.2(l).

INVESTIGATION

15. On April 25, 2013, the United States and the Consumer Financial Protection Bureau (CFPB) initiated a joint investigation under ECOA of Toyota's pricing of automobile loans or retail installment contracts.

16. On November 25, 2014, the CFPB determined it had reason to believe that Toyota had engaged in a pattern and practice of lending discrimination on the basis of

1 race and national origin in violation of ECOA, 15 U.S.C. § 1691(a)(1). The CFPB
2 referred Toyota to the United States Department of Justice pursuant to ECOA, 15 U.S.C.
3 § 1691e(g), and the December 6, 2012 Memorandum of Understanding between the
4 United States Department of Justice and the CFPB.

5 17. The United States and the CFPB analyzed Toyota's lending policies,
6 procedures, and internal controls, including Toyota's dealer markup and compensation
7 policy and practice. The United States and the CFPB also performed an analysis of
8 Toyota's loan-level data on the automobile loans Toyota funded to test for lending
9 discrimination.

10 FACTUAL ALLEGATIONS

11 18. The United States and the CFPB analyzed the dealer markup of the non-
12 subvented retail installment contracts that Toyota purchased between January 1, 2011
13 and December 31, 2013 ("the time period covered by the analyses"). During the time
14 period covered by the analyses, Toyota purchased hundreds of thousands of non-
15 subvented retail installment contracts, and the United States and the CFPB determined
16 that thousands of retail installment contracts that Toyota purchased had African-
17 American or Asian and/or Pacific Islander borrowers.

18 19. The retail installment contracts analyzed by the United States and the CFPB
19 did not contain information on the race or national origin of borrowers. To evaluate any
20 differences in dealer markup, the United States and the CFPB assigned race and national
21 origin probabilities to applicants. The United States and the CFPB employed a proxy
22 methodology that combines geography-based and name-based probabilities, based on
23 public data published by the United States Census Bureau, to form a joint probability
24 using the Bayesian Improved Surname Geocoding (BISG) method. The joint race and
25 national origin probabilities obtained through the BISG method were then used directly
26 in the United States's and the CFPB's models to estimate any disparities in dealer
27 markup on the basis of race or national origin.

1 20. The United States's and the CFPB's markup analyses focused on the
2 interest rate difference between each borrower's contract rate and each borrower's buy
3 rate set by Toyota. Toyota considers individual borrowers' creditworthiness and other
4 objective criteria related to borrower risk in setting the buy rate as explained in
5 Paragraph 9. The dealer markups charged by Toyota to consumers are based on dealer
6 discretion and are separate from, and not controlled by, the adjustments for
7 creditworthiness and other objective criteria related to borrower risk that are already
8 reflected in the buy rate. Toyota's markup policy provided for dealer discretion and did
9 not include consideration of these factors. Because the analysis focused on only the
10 difference between each borrower's contract rate and buy rate, it did not make additional
11 adjustments for creditworthiness or other objective criteria related to borrower risk.

12 21. During the time period covered by the analyses, on average, African-
13 American borrowers were charged approximately twenty-seven (27) basis points more in
14 dealer markup than similarly-situated non-Hispanic whites for non-subvented retail
15 installment contracts. These disparities are statistically significant, and these differences
16 are based on race and not based on creditworthiness or other objective criteria related to
17 borrower risk. These disparities mean that thousands of African-American borrowers
18 paid higher markups than the average non-Hispanic white markup and were obligated to
19 pay, on average, over \$200 more each in interest than similarly-situated non-Hispanic
20 white borrowers assuming they held their loans for the full term of the contract.

21 22. During the time period covered by the analyses, on average, Asian and/or
22 Pacific Islander borrowers were charged approximately eighteen (18) basis points more
23 in dealer markup than similarly-situated non-Hispanic whites for non-subvented retail
24 installment contracts. These disparities are statistically significant, and these differences
25 are based on race and/or national origin and not based on creditworthiness or other
26 objective criteria related to borrower risk. These disparities mean that thousands of
27 Asian and/or Pacific Islander borrowers paid higher markups than the average non-

1 Hispanic white markup and were obligated to pay, on average, over \$100 more each in
2 interest than similarly-situated non-Hispanic white borrowers assuming they held their
3 loans for the full term of the contract.

4 23. The higher markups that Toyota charged to African-American and Asian
5 and/or Pacific Islander borrowers are a result of Toyota's policy and practice of allowing
6 dealers to mark up a consumer's interest rate above Toyota's established buy rate and
7 then compensating dealers from that increased interest revenue.

8 24. Toyota's policy and practice of allowing dealers to mark up a consumer's
9 interest rate above Toyota's established buy rate and then compensating dealers from
10 that increased interest revenue continued throughout the entire Relevant Period.

11 25. Before September 10, 2014, Toyota did not require dealers to document
12 reasons for charging markups, did not monitor whether discrimination occurred across
13 its portfolio of loans through charging markups, and did not provide detailed fair
14 lending training to its dealers.

15 26. Toyota's policy and practice of allowing dealers to mark up a consumer's
16 contract rate above Toyota's established buy rate and then compensating dealers from
17 that increased interest revenue without adequate controls and monitoring is not justified
18 by legitimate business need that cannot reasonably be achieved as well by means that
19 are less disparate in their impact on African-American and Asian and/or Pacific Islander
20 borrowers. This policy and practice has been in effect during the Relevant Period.

21 27. Toyota knew or had reason to know that its policy and practice of allowing
22 dealers to mark up consumers' interest rates created a substantial risk of discrimination.

23 EQUAL CREDIT OPPORTUNITY ACT VIOLATIONS

24 28. Toyota's policies and practices as alleged herein, coupled with the
25 disparities described above, constitute discrimination against applicants with respect to
26 credit transactions on the basis of race and national origin in violation of the Equal
27
28

1 Credit Opportunity Act, 15 U.S.C. § 1691(a)(1) and Regulation B, 12 C.F.R.
2 §§ 1002.4(a), 1002.6(a), 1002.6(b)(9).

3 29. Toyota's policies and practices, as alleged herein, constitute a pattern or
4 practice of resistance to the full enjoyment of rights secured by the Equal Credit
5 Opportunity Act, 15 U.S.C. §§ 1691-1691f and Regulation B, 12 C.F.R. §§ 1002.1 –
6 1002.16.

7 30. During the time period covered by the analyses, Toyota has charged
8 minority borrowers nationwide discriminatory interest charges for automobile loans as a
9 result of its pattern or practice of discrimination and denial of rights as alleged herein.
10 There is reason to believe that these discriminatory interest charges continued
11 throughout the Relevant Period. In addition to higher direct economic costs, some of
12 the victims of discrimination suffered additional consequential economic damages
13 resulting from having an excessively costly loan, including possible increased risk of
14 credit problems, default, and repossession, and other damages, including emotional
15 distress. They are aggrieved applicants as defined in the Equal Credit Opportunity Act,
16 15 U.S.C. § 1691e, and have suffered injury and damages as a result of Toyota's
17 conduct.

18 31. Toyota's policies and practices, as alleged herein, were intentional, willful,
19 or implemented with reckless disregard for the rights of African-American and Asian
20 and/or Pacific Islander borrowers.

21 32. ECOA empowers this Court to grant such relief as may be appropriate,
22 including actual and punitive damages and injunctive relief. 15 U.S.C. § 1691e(h).

23 PRAYER FOR RELIEF

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

25 (1) Declares that the policies and practices of the Defendant constitute
26 violations of the Equal Credit Opportunity Act, 15 U.S.C. §§ 1691-1691f;
27
28

1 (2) Enjoins the Defendant and its agents, employees, and successors, and all
2 other persons in active concert or participation with it, from:

3 a) Discriminating on the basis of race or national origin against any
4 person with respect to any aspect of their credit transactions;

5 b) Failing or refusing to take such affirmative steps as may be necessary
6 to restore, as nearly as practicable, the victims of the Defendant's unlawful conduct to
7 the position they would have been in but for the discriminatory conduct; and

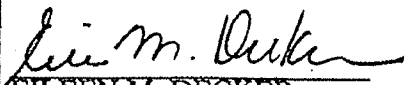
8 c) Failing or refusing to take such affirmative steps as may be necessary
9 to prevent the recurrence of any such discriminatory conduct in the future; to eliminate,
10 to the extent practicable, the effect of Toyota's unlawful practices; and to implement
11 policies and procedures to ensure that all borrowers have an equal opportunity to seek
12 and obtain loans on a non-discriminatory basis and with non-discriminatory terms and
13 conditions; and

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

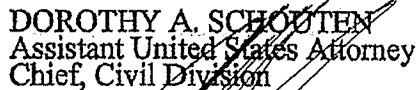
1 The United States pray for such additional relief as the interests of justice may
2 require.

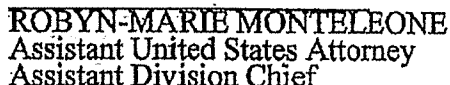
3 Dated: February 2, 2016

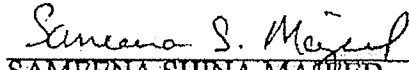
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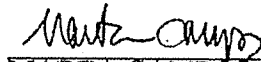
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