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19 **UNITED STATES DISTRICT COURT**  
 20 **CENTRAL DISTRICT OF CALIFORNIA**

21 UNITED STATES OF AMERICA, )

22 Plaintiff,

23 v.

24 LUTHER BURBANK SAVINGS, )

25 Defendant.  
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**[PROPOSED] AGREED ORDER**

**I. INTRODUCTION**

1  
2 This Agreed Order (“Agreement”) is submitted jointly by the parties for the  
3 approval of and entry by the Court simultaneously with the filing of the United States’  
4 Complaint (“Complaint”) in this action. The Agreement resolves the claims of the  
5 United States that Luther Burbank Savings (“Luther” or “the bank”), has engaged in a  
6 pattern or practice of conduct in violation of the Fair Housing Act (“FHA”), 42 U.S.C.  
7 §§ 3601-3619, and the Equal Credit Opportunity Act (“ECOA”), 15 U.S.C. §§ 1691-  
8 1691f, by implementing and maintaining a \$400,000 minimum loan amount policy in its  
9 wholesale lending channel that has resulted in discrimination on the basis of race and  
10 national origin in the bank’s owner-occupied, single-family residential lending<sup>1</sup>  
11 throughout California. The bank denies these allegations.  
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15 There has been no factual finding or adjudication with respect to any matter  
16 alleged by the United States. Accordingly, the execution of this Agreement is not, and  
17 is not to be considered as, an admission or finding of any violation of the FHA or the  
18 ECOA by Luther. Rather, the parties have entered into this Agreement to resolve  
19 voluntarily the claims asserted by the United States in order to avoid the risks and  
20 burdens of litigation. The parties agree that full implementation of the terms of this  
21 Agreement shall provide a fair and reasonable resolution of the allegations of the United  
22 States in a manner consistent with Luther’s legitimate business interests.  
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26 <sup>1</sup> All references to “single-family residential loans” throughout this Agreement refer to owner-  
27 occupied, single-family residential mortgage loans.  
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## II. BACKGROUND

Luther is a federally-chartered stock institution headquartered in Santa Rosa, California. Luther's principal activity is real estate lending, with an emphasis on apartment and commercial real estate loans. Although its primary focus is on multi-family lending, Luther offers 3- and 5-year hybrid adjustable-rate single-family (defined by the Home Mortgage Disclosure Act ("HMDA"), 28 U.S.C. §§ 2801-2810, as dwellings with 1-4 units) residential mortgage loans through its wholesale and retail channels. From 2006 through 2010, the bank originated 584 single-family residential loans totaling \$793.2 million. As of June 30, 2012, Luther had \$3.7 billion in assets. Luther previously was subject to the regulatory authority of the Office of Thrift Supervision ("OTS"). Since June 21, 2011, Luther has been subject to the regulatory authority of the Office of the Comptroller of the Currency ("OCC").

Beginning in 2009, the OTS conducted an examination of Luther's wholesale single-family residential lending. Based on its examination, the OTS found reason to believe that Luther's minimum loan amount of \$400,000 for its wholesale single-family residential lending program appears to have had a disparate impact on minority borrowers in the Los Angeles CMSA. On March 8, 2010, following the examination described above, the OTS referred the matter to the Attorney General for appropriate enforcement action pursuant to 15 U.S.C. § 1691e(g).

1 After conducting its own investigation and reviewing the information provided by  
2 the OTS, the United States contends that Luther's \$400,000 minimum loan amount  
3 policy had a disparate impact on African-American and Hispanic borrowers and  
4 residents of majority-minority census tracts in the primary areas in California in which  
5 Luther operated from 2006 through 2010.<sup>2</sup> The Complaint alleges that from 2006  
6 through 2010, Luther originated very few single-family residential mortgage loans to  
7 African-American or Hispanic borrowers throughout California, as compared to other  
8 prime lenders with a similar volume of lending as the bank. The Complaint also alleges  
9 that from 2006 through 2010, Luther originated very few single-family residential  
10 mortgage loans in majority-minority census tracts (with a non-white population greater  
11 than 50%) throughout California, as compared to other prime lenders with a similar  
12 volume of lending as the bank.  
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17 Luther denies all the allegations and claims of a pattern or practice of  
18 discrimination in violation of the FHA and the ECOA as set forth in the Complaint.  
19 Luther asserts that at all times it conducted its lending in compliance with the letter and  
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21 <sup>2</sup> Unless otherwise stated herein, the provisions of this Agreement apply to the primary areas in  
22 California in which Luther operated from 2006 through 2010. The primary areas in California in  
23 which Luther operated from 2006 through 2010 are defined as follows: Los Angeles-Long Beach-  
24 Riverside Combined Metropolitan Statistical Area ("Los Angeles CMSA"); the San Diego-Carlsbad-  
25 San Marcos MSA; the San Francisco-San Mateo-Redwood City Metropolitan Division; and the Santa  
26 Barbara-Santa Maria-Goleta MSA. For the purposes of this Agreement, the term "majority-minority  
27 census tract" is defined to mean a census tract with a non-white population greater than 50%. The  
28 term "majority white census tract" is defined to mean a census tract whose population is more than  
50% non-Hispanic white. Lists of the majority-white and majority-minority census tracts in the  
primary areas in California in which Luther operated from 2006 through 2010, based upon the 2010  
Census, are attached to this Agreement as Exhibits A and B, respectively.

1 spirit of the fair lending laws and in a nondiscriminatory manner. Luther maintains that  
2 the disparities alleged in the Complaint were attributable to legitimate,  
3 nondiscriminatory factors. Notwithstanding its disagreement with the allegations of the  
4 United States, Luther has agreed to enter into this Agreement to resolve voluntarily the  
5 claims asserted by the United States in order to avoid the costs, risks, and burdens of  
6 litigation.  
7

### 8 **III. REMEDIAL PROVISIONS**

#### 9 **A. General Prohibitory Injunction**

10 1. Luther, including all of its officers, employees, agents, assignees, and  
11 successors in interest, and all those in active concert or participation with any of them, is  
12 hereby enjoined from implementing a policy or practices similar to the \$400,000  
13 minimum loan amount policy at issue in the Complaint.  
14

#### 15 **B. Minimum Loan Amount Policy**

16 2. In June 2011, Luther lowered the minimum loan amount for its wholesale  
17 single-family residential loan program to \$20,000. Under the provisions of this  
18 Agreement, Luther has committed to maintaining a nondiscriminatory lending program  
19 that does not include a \$400,000 minimum loan amount. Luther also shall implement a  
20 number of measures, in a manner consistent with safe and sound practices, to redress the  
21 alleged effects of the minimum loan amount policy in the primary areas of California in  
22 which Luther operated from 2006 through 2010. Nothing in the Agreement requires  
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1 Luther to make a loan to a person who is not qualified for the loan based upon lawful,  
2 nondiscriminatory criteria.

3           3. During the term of this Agreement, Luther shall not establish or implement  
4 a minimum loan amount policy similar to the prior \$400,000 minimum loan amount  
5 policy and shall provide written notice to the United States sixty (60) days prior to  
6 implementing any proposed changes that would increase the minimum loan amount in  
7 the bank's retail or wholesale single-family residential lending program. The United  
8 States shall have a period of thirty (30) days to present any objection that it may have to  
9 the bank's proposed changes to its minimum loan amount policy. The parties shall  
10 work cooperatively to resolve any disputes they may have regarding the proposed  
11 changes to the policy, with either party retaining the right to seek a resolution of any  
12 dispute from this Court.

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17 **C. Fair Lending Training**

18           4. Luther shall continue to provide periodic training to all bank and bank  
19 subsidiary employees with significant involvement in single-family residential lending  
20 to ensure that their activities are conducted in a nondiscriminatory manner. This  
21 training shall encompass their fair lending obligations under the FHA, ECOA, and  
22 responsibilities under this Agreement. In addition, within thirty (30) days of the entry  
23 of this Agreement, Luther shall make available to all such employees an explanation  
24 and copies of the applicable provisions of this Agreement, and allow an opportunity for  
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1 such employees to have any questions concerning the Agreement answered. Luther  
2 shall bear all costs associated with the training.

3           5. Luther shall offer all mortgage brokers who submit applications to Luther  
4 for loans secured by residential real estate the opportunity to undergo fair lending  
5 training similar to the training described in Paragraph 4. Luther shall retain for the  
6 duration of the Agreement documentation of any training conducted, requests for  
7 training, and offers of training made pursuant to this Paragraph, and make such  
8 documentation available to the United States upon request.  
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10

11 **D. Community Development and Partnerships**

12           6. Within four (4) months of the entry of the Agreement and for the duration  
13 of the Agreement, Luther shall employ at least one Community Development Lender,  
14 whose primary responsibilities shall include generating residential mortgage loans to  
15 qualified borrowers in majority-minority census tracts within the primary areas of  
16 California in which Luther operated from 2006 through 2010 and facilitating the special  
17 financing program described in Paragraphs 13 through 21. The Community  
18 Development Lender also shall assist in the preparation of reports to Luther's Board of  
19 Directors on the progress of the community lending initiatives described in Paragraph 6  
20 at least quarterly, including recommending adjustments to these programs to increase  
21 their effectiveness.  
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26           7. Luther shall participate in partnerships with one or more community-based  
27 organizations that provide credit and financial services to minorities in the primary areas  
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1 in California in which Luther operated from 2006 through 2010. Luther may select  
2 organizations with which it has a pre-existing relationship. Luther shall spend a  
3 minimum of \$450,000 on these partnerships over the course of the Agreement.  
4

5 8. Luther shall present its initial proposal for the partnership(s) to the United  
6 States for its review and approval within four (4) months of entry of the Agreement and  
7 a subsequent proposal within nine (9) months of entry of the Agreement. Luther's  
8 proposal should include a thorough review of all selected relevant organizations; a  
9 summary of the bank's meetings with these organizations; an examination of any  
10 relevant federal, state, or local governmental programs that may assist Luther and the  
11 organization(s) in serving the specified areas; the basis for Luther's selection(s) for the  
12 proposed partnership(s); and a description of how Luther intends to implement the  
13 partnership(s) over the term of this Agreement.  
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16  
17 **F. Advertising and Outreach**

18 9. Luther shall develop marketing, advertising, and outreach programs to  
19 improve its performance in meeting the single-family residential lending needs of  
20 residents of majority-minority census tracts in the primary areas of California in which  
21 Luther operated from 2006 through 2010.  
22

23 10. Luther shall spend a minimum of \$300,000 over the term of the Agreement  
24 on the targeted advertising and marketing campaign described in paragraphs (a)-(f)  
25 below. This program shall include, at a minimum, the following components:  
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1 (a) Print Media. During each year of this Agreement, in addition to any other  
2 print advertising, Luther shall place print media advertisements in at least one (1) print  
3 media specifically directed to African-American readers and one (1) print media  
4 specifically directed to Hispanic readers. These advertisements shall include any  
5 special products or services made available as part of this Agreement. Luther retains the  
6 discretion to determine the size, content, and frequency of such advertising subject to  
7 the standards set forth above.  
8

9  
10 (b) Radio. During each year of this Agreement, Luther shall place radio  
11 advertisements on at least one (1) African-American-oriented and one (1) Hispanic-  
12 oriented Los Angeles County radio stations. These advertisements shall include any  
13 special products and services made available under this Agreement. The radio  
14 advertising shall be in the languages commonly used by the listeners of the selected  
15 stations. Luther retains the discretion to determine the content and frequency of such  
16 radio spots subject to the standards set forth above and to place such advertising on  
17 additional minority-oriented stations.  
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21 (c) Promotional Materials. Luther shall create point-of-distribution materials,  
22 such as posters and brochures, targeted toward the majority-minority census tracts in the  
23 primary areas of California in which the bank operated from 2006 through 2010 to  
24 advertise any special loan products and services made available pursuant to this  
25 Agreement. These materials shall be published in languages commonly used in the  
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1 targeted areas. Luther shall place or display these promotional materials in its branch  
2 offices and additional, appropriate distribution locations throughout the targeted areas.

3 (d) Direct Mailings. Luther also may utilize direct mailing to advertise the  
4 special financing program required by this Agreement to residents in the majority-  
5 minority census tracts in the primary areas of California in which Luther operated from  
6 2006 through 2010, so long as those mailings are not targeted exclusively or primarily at  
7 existing customers.  
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9  
10 (e) All of Luther's print advertising and promotional materials shall contain an  
11 equal housing opportunity logotype, slogan, or statement. All of Luther's radio and  
12 television advertisements shall include the audible statement "Equal Opportunity  
13 Lender" or an equivalent phrase translated in the languages commonly used by listeners  
14 of the selected stations.  
15

16  
17 (f) In addition to the targeted efforts described in subparagraphs (a)-(d), during  
18 the term of this Agreement, Luther shall conduct a minimum of four (4) outreach  
19 programs per year for real estate brokers and agents, developers, and public or private  
20 entities engaged in residential real estate-related business in the majority-minority  
21 census tracts in one or more of the primary areas of California in which Luther operated  
22 from 2006 through 2010, to inform them of the products and services Luther offers,  
23 including those detailed in this Agreement, and to otherwise develop business  
24 relationships with them. These programs shall be offered at locations reasonably  
25 convenient to the business operations of the attendees.  
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1 **G. Consumer Education**

2 11. Luther shall invest a minimum of \$150,000 over the term of the Agreement  
3 to provide credit counseling, financial literacy, and other related educational programs  
4 targeted at the residents in the primary areas of California in which Luther operated  
5 from 2006 through 2010. This shall include a total of twelve (12) outreach seminars per  
6 year targeted toward residents in the majority-minority census tracts of these areas.  
7

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9 12. Luther shall allocate a minimum of one-half of this \$150,000 to sponsor  
10 such programs offered by community or governmental organizations engaged in fair  
11 lending work. Such programs also shall be offered where appropriate in Spanish and  
12 any other foreign languages commonly used in the targeted areas.  
13

14 **IV. SATISFACTION OF UNITED STATES' CLAIMS FOR MONETARY**

15 **RELIEF**

16  
17 13. In addition to the monetary commitments detailed above, Luther shall  
18 make available a minimum of \$1.1 million over the duration of this Agreement in a  
19 special financing program designed to increase the residential mortgage credit that the  
20 bank extends to qualified borrowers seeking loans of \$400,000 or less within the  
21 primary areas of California in which Luther operated from 2006 through 2010.<sup>3</sup> When  
22 combined with the other financial commitments described herein, this special lending  
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27 <sup>3</sup> In addition, no loan originated under this program shall exceed the conforming loan limit applicable  
28 to Fannie Mae and Freddie Mac, as determined annually by the Federal Housing Finance Board.

1 program shall satisfy fully the claims of the United States for damages and other  
2 monetary relief in this case.

3 14. Through this special financing program for these categories of loans,  
4  
5 Luther shall offer residents in majority-minority census tracts in the primary areas of  
6 California in which Luther operated from 2006 through 2010 who are qualified for its  
7 loan products interest rates and/or terms that are more advantageous to the applicant  
8  
9 than the bank would normally provide.

10 15. Luther shall subsidize each covered transaction by one or more of the  
11 following means: an interest rate below that which Luther would normally charge, down  
12 payment or closing cost grants or assistance, or other financial aid. The following forms  
13 of financial assistance may be offered to any applicant qualified for a residential  
14 mortgage loan under the bank's generally applicable underwriting standards for loans to  
15 be sold to Fannie Mae or Freddie Mac or to be insured by the FHA or VA:  
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18 (a) a single-family residential mortgage loan for a home purchase, refinancing, or  
19 home improvement at an interest rate a minimum of 1/2 of a percentage point (50 basis  
20 points) below the otherwise prevailing annual percentage rate, provided that if the  
21 prevailing annual percentage rate for any such loan exceeds 8% at any time during the  
22 term of this Agreement, the interest rate subsidy shall be a minimum of 1%, and if the  
23 prevailing APR exceeds 9% at any time during the term of this Agreement, the subsidy  
24 shall be a minimum of 1.5% below the market rate for the type of loan offered;  
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1 (b) a direct grant of a minimum of 2% of the loan amount, up to a maximum of  
2 3%, for the purpose of down payment assistance;

3 (c) closing cost assistance in the form of a direct grant or discount with a  
4 maximum of \$15,000.00; or  
5

6 (d) payment of the initial mortgage insurance premium (currently 1.75%) on  
7 FHA-guaranteed loans.  
8

9 16. Luther retains the discretion to offer more than one, or all, of the foregoing  
10 forms of financial assistance to qualified applicants on an individual basis as it deems  
11 appropriate under the factual circumstances of a particular application so long as the  
12 maximum total financial assistance provided by the bank on a covered transaction does  
13 not exceed \$15,000. Luther shall apply the available funds in a manner which  
14 maximizes the likelihood that it shall originate a loan to a qualified applicant, consistent  
15 with applicable underwriting guidelines, investor guidelines, and safety and soundness  
16 standards.  
17

18  
19 17. Luther shall have discretion to provide the loan subsidy among its single-  
20 family residential loan products.  
21

22 18. No provision of this Agreement, including this special financing program  
23 commitment, requires Luther to make any unsafe or unsound loan or to make a loan to a  
24 person who is not qualified for the loan based upon lawful, nondiscriminatory terms.  
25 Nor does any provision of this Agreement require Luther to alter its standards for  
26 underwriting mortgage loans that are regularly applied to make loans saleable to Fannie  
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1 Mae or Freddie Mac or comply with the provisions applicable for FHA or VA  
2 insurance. The bank's underwriting standards applied to applicants that qualify for the  
3 special financing program shall be no less favorable than the standards that are applied  
4 to all other applicants. At the same time, no provision of this Agreement imposes an  
5 obligation on the bank to apply underwriting standards to applicants that qualify for the  
6 special financing program that are more favorable than the standards otherwise applied  
7 by the bank.  
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10 19. The \$1.1 million made available under the terms of the special financing  
11 program shall be the sum total to the bank of providing below-market financing and the  
12 dollar amount of any grants or other payments made pursuant to Paragraph 14.  
13

14 20. The special financing program is intended to afford its benefits to qualified  
15 applicants who respond to the bank's marketing program or otherwise seek residential  
16 mortgage credit from the bank. Nothing herein shall be construed to require the bank to  
17 take any action other than what is expressly provided for in this Agreement.  
18

19 21. During the term of this Agreement, Luther shall assess the effectiveness of  
20 this special financing program in achieving its remedial goal and shall recommend to  
21 the United States any changes it reasonably believes are necessary and appropriate to  
22 increase the program's effectiveness.  
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25 **V. EVALUATING AND MONITORING COMPLIANCE**

26 22. For the duration of this Agreement, Luther shall retain all records relating  
27 to its obligations hereunder, including its single-family residential lending activities, as  
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1 well as its advertising, outreach, special programs, and other compliance activities as set  
2 forth herein. The United States shall have the right to review and copy such records  
3 upon request.  
4

5 23. Luther shall provide to counsel for the United States the data it submits to  
6 the Federal Financial Institutions Examination Council (FFIEC) pursuant to the Home  
7 Mortgage Disclosure Act and the CRA. The data shall be provided in the same format  
8 in which it is presented to the FFIEC within thirty (30) days of its submission to the  
9 FFIEC each year for the duration of this Agreement, including the record layout.  
10

11 24. In addition to the submission of any other plans or reports specified in this  
12 Agreement, Luther shall make an annual report to the United States on its progress in  
13 fulfilling the goals of this Agreement. All reports submitted by the bank pursuant to this  
14 paragraph shall include a summary of Luther's actions to comply with each requirement  
15 of this Agreement during the previous year, an objective assessment of the extent to  
16 which each quantifiable obligation was met, and an explanation of why any particular  
17 component fell short of meeting the goal for that year. Luther shall submit this report  
18 each year for the term of this Agreement within forty-five (45) days of the anniversary  
19 of the date of the entry of this Agreement. In addition, Luther shall attach to the annual  
20 reports representative copies of training material and advertising and marketing  
21 materials disseminated pursuant to this Agreement.  
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1 **VI. ADMINISTRATION**

2 25. The Agreement shall terminate (a) three (3) months after the submission of  
3 Luther's third annual report to the United States, if Luther has fully complied with all its  
4 terms, including the following investment requirements: (i) \$450,000 in community  
5 development partnerships as described in Paragraphs 6-8; (ii) \$300,000 in targeting  
6 advertising and marketing as described in Paragraphs 9-10; (iii) \$150,000 in consumer  
7 education as described in Paragraphs 11-12; and (iv) \$1.1 million in the special  
8 financing program as described in Paragraphs 13-21; or (b) if the bank has not  
9 completed its investment requirements as described in subsection (a) within three (3)  
10 years from the date of entry of the Order, three months after the submission of the  
11 bank's final report to the United States, which shall be submitted after the bank  
12 completes its investment requirements. It shall only be extended further upon motion of  
13 the United States to the Court, for good cause shown.

14 26. The parties agree that, as of the date of the entry of this Order, litigation is  
15 not "reasonably foreseeable" concerning the matters described above. To the extent that  
16 either party previously implemented a litigation hold to preserve documents,  
17 electronically stored information (ESI), or things related to the matters described above,  
18 the party is no longer required to maintain such litigation hold. Nothing in this  
19 paragraph relieves either party of any other obligations imposed by this Order.

20 27. Any time limits for performance fixed by this Agreement may be extended  
21 by mutual written agreement of the parties. Other modifications to this Agreement may  
22

1 be made only upon approval of the Court, by motion by either party. The parties  
2 recognize that there may be changes in relevant and material factual circumstances  
3 during the term of this Agreement that may impact the accomplishment of its goals.  
4

5 The parties agree to work cooperatively to discuss and attempt to agree upon any  
6 proposed modifications to this Agreement resulting therefrom.

7  
8 28. In the event that any disputes arise about the interpretation of or  
9 compliance with the terms of this Agreement, the parties shall endeavor in good faith to  
10 resolve any such dispute between themselves before bringing it to this Court for  
11 resolution. The United States agrees that if it reasonably believes that Luther has  
12 violated any provision of this Agreement, it shall provide the bank written notice thereof  
13 and give it thirty (30) days to resolve the alleged violation before presenting the matter  
14 to this Court. In the event of either a failure by Luther to perform in a timely manner  
15 any act required by this Agreement or an act by Luther in violation of any provision  
16 hereof, the United States may move this Court to impose any remedy authorized by law  
17 or equity, including attorneys' fees and costs.  
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21 29. Luther's compliance with the terms of this Agreement shall fully and  
22 finally resolve all claims of the United States relating to the bank's alleged violation of  
23 the fair lending laws by means of discriminating on the basis of race or national origin,  
24 as alleged in the Complaint in this action, including all claims for equitable relief and  
25 monetary damages and penalties. Each party to this Agreed Agreement shall bear its  
26 own costs and attorney's fees associated with this litigation.  
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1 30. The Court shall retain jurisdiction for the duration of this Agreement to  
2 enforce its terms, after which time the case shall be dismissed with prejudice.

3 SO ORDERED, this 12th day of October, 2012.

4  
5   
6 \_\_\_\_\_  
7 UNITED STATES DISTRICT JUDGE

8 The undersigned hereby apply for and consent to the entry of this Agreement:

9 For the United States:

10 ANDRÉ BIROTTE JR.  
11 United States Attorney  
12 Central District of California

THOMAS E. PEREZ  
Assistant Attorney General  
Civil Rights Division

13 LEON W. WEIDMAN  
14 Civil Chief, Civil Division  
15 Central District of California

16 \_\_\_\_\_  
17 STEVEN H. ROSENBAUM  
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1 For Luther Burbank Savings:  
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