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15 UNITED STATES DISTRICT COURT
16 CENTRAL DISTRICT OF CALIFORNIA
17

18 FEDERAL TRADE COMMISSION,

19 Plaintiff,

20 v.

21 GOLDEN EMPIRE MORTGAGE,
22 INC.,
a corporation,

23 and HOWARD D. KOOTSTRA
24 individually and as a corporate officer

25 Defendants.

Case No.

CV09-03227 CAS (SHx)

26 COMPLAINT FOR PERMANENT INJUNCTION
27 AND OTHER EQUITABLE RELIEF
28

1 Plaintiff, the Federal Trade Commission (“FTC” or “Commission”), for its
2 complaint alleges that:

3 1. Plaintiff brings this action under Sections 5(a), 13(b), and 19 of the
4 Federal Trade Commission Act (“FTC Act”), 15 U.S.C. §§ 45(a), 53(b), and 57b;
5 Section 704(c) of the Equal Credit Opportunity Act (“ECOA”), 15 U.S.C.
6 § 1691c(c); and Section 202.16(a)(2) of its implementing Federal Reserve Board
7 Regulation B (“Regulation B”), 12 C.F.R. § 202.16(a)(2), to obtain a permanent
8 injunction, consumer redress, disgorgement, and other equitable relief for
9 Defendants’ violations of the FTC Act, 15 U.S.C. § 45, the ECOA, 15 U.S.C. §§
10 1691-1691f, and its implementing Regulation B, 12 C.F.R. pt. 202.

11 **JURISDICTION AND VENUE**

12 2. This Court has jurisdiction over this matter under 28 U.S.C. §§ 1331,
13 1337(a), 1345, and 1355, and under 15 U.S.C. §§ 45(a), 53(b), 56(a), 57b, and
14 1691c(c).

15 3. Venue in the United States District Court for the Central District of
16 California is proper under 28 U.S.C. §§ 1391(b-c) and under 15 U.S.C. § 53(b).

17 **DEFENDANTS**

18 4. Defendant Golden Empire Mortgage, Inc. (“GEM”) is a California
19 corporation that maintains its principal office and place of business in Bakersfield,
20 California. At all times relevant to this Complaint, GEM has maintained offices and
21 transacted business in the Central District of California.

22 5. Defendant Howard D. Kootstra (“Kootstra”) is the sole shareholder,
23 owner, president, and chief executive officer of GEM. Defendant Kootstra, in his
24 capacity as the sole shareholder, owner, president, and chief executive officer of
25 GEM, has formulated, directed, controlled, or had the authority to control, the acts
26 and practices of GEM, including the acts and practices alleged in this Complaint. At
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1 all times relevant to this Complaint, Kootstra has resided in the State of California
2 and has transacted business in the Central District of California.

3 6. At all times relevant to this complaint, GEM and Kootstra (together,
4 “Defendants”) have been “creditors” as defined in Section 702(e) of the ECOA, 15
5 U.S.C. § 1691a(e), and Section 202.2(l) of Regulation B, 12 C.F.R. § 202.2(l), and
6 therefore have been required to comply with the applicable provisions of the ECOA
7 and Regulation B.

8 COMMERCE

9 7. The acts and practices of Defendants alleged in this complaint have
10 been in or affecting commerce, as “commerce” is defined in Section 4 of the FTC
11 Act, 15 U.S.C. § 44, as amended.

12 DEFENDANTS’ COURSE OF BUSINESS

13 8. From at least January 1, 2006 to the present, Defendants have been
14 regularly engaged in the business of originating and financing mortgage loans. The
15 majority of Defendants’ business is direct or “retail” mortgage lending, in which
16 Defendants solicit applications for residential mortgage loans through their employee
17 loan officers and branch managers at their approximately 45 branches.

18 9. Defendants originate numerous types of mortgage loans, such as
19 Freddie Mac and Fannie Mae loans, subprime loans and Alt-A loans, jumbo loans,
20 prime and subprime second-lien loans, and government loans such as Federal
21 Housing Administration and Department of Veterans Affairs loans.

22 10. Defendants determine whether applicants are qualified for financing and
23 set the terms and conditions of any financing to be granted. The vast majority of
24 Defendants’ direct mortgage loans are funded by, and in the name of, GEM. GEM
25 has submitted mortgage loan data to the Federal Reserve Board pursuant to the
26 Home Mortgage Disclosure Act, 12 U.S.C. §§ 2801–2810, since at least 2004.

1 11. Each mortgage loan originated by Defendants' loan officers and branch
2 managers has a price that includes both an interest rate and up-front fees. Both the
3 interest rate and the up-front fees on each loan are determined (1) in part by the
4 credit characteristics of applicants and the underwriting risk to Defendants (the "risk-
5 based price"), and (2) in part at the discretion of Defendants' employee loan officers
6 and branch managers (the "overage").

7 12. As a matter of policy, Defendants' loan officers and branch managers, at
8 their discretion, may charge applicants overages in addition to the risk-based price.
9 These overages are not based on the underwriting risk or the credit characteristics of
10 the applicants. Defendants' loan officers and branch managers may charge
11 applicants overages through a higher interest rate, higher up-front charges, or both.
12 This policy of allowing such overages is referred to herein as the "Discretionary
13 Pricing Policy." Defendants authorized the Discretionary Pricing Policy.

14 13. Pursuant to the Discretionary Pricing Policy, Defendants' loan officers
15 keep as compensation a portion of whatever overage they charge applicants.

16 14. The Defendants contract with each loan officer individually to
17 determine the portion of the overage that constitutes the loan officer's compensation.

18 15. Defendants' branch managers keep as compensation the net profits of a
19 branch. The higher the overages on each loan originated at a branch, the greater the
20 branch's net profits and corresponding branch manager compensation.

21 16. The Defendants contract with each branch manager individually to
22 determine the calculation of the branch's net profits, which include revenues from
23 overages.

24 17. Pursuant to the Discretionary Pricing Policy, Defendants give their loan
25 officers and branch managers wide discretion to determine the amount of the overage
26 imposed on an applicant's loan. Also pursuant to the Discretionary Pricing Policy,
27 Defendants place only one limitation on the amount of overage that may be charged
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1 on a loan: Defendants cap the overage amount at a total of three percent of an
2 applicant's loan amount (hereafter "Overage Cap"). However, Defendants'
3 Discretionary Pricing Policy allows a branch manager or a member of Defendants'
4 senior management team to grant exceptions to the Overage Cap, resulting in
5 overages that exceed the three percent Overage Cap.

6 18. From at least January 1, 2006 to the present, Defendants did not review,
7 monitor, examine, or analyze the overages imposed on Hispanic applicants compared
8 to non-Hispanic white applicants to ensure that loan officers and branch managers
9 were not unjustifiably charging higher overages to Hispanic applicants. Defendants
10 also did not review, monitor, examine, or analyze any other aspects or measures of
11 loan price, such as annual percentage rate, to ensure that loan officers and branch
12 managers were not unjustifiably charging higher prices to Hispanic applicants.
13 Defendants also did not review, monitor, examine, or analyze the exceptions granted
14 to Defendants' Overage Cap to ensure that branch managers and senior management
15 were not unjustifiably granting exceptions with more frequency on loans to Hispanic
16 applicants.

17 19. From at least January 1, 2006 to at least December 31, 2006, Defendants
18 made exceptions to their Overage Cap for loans originated to Hispanic applicants
19 substantially and significantly more frequently than they made exceptions to their
20 Overage Limit for loans originated to non-Hispanic white applicants. Every such
21 exception resulted in an overage exceeding the three percent Overage Cap.

22 20. From at least January 1, 2006 to at least December 31, 2006, Defendants
23 charged Hispanic applicants, on average, higher prices for their mortgage loans than
24 non-Hispanic white applicants. These price differentials were caused by Defendants'
25 Discretionary Pricing Policy. Defendants' Discretionary Pricing Policy resulted in
26 Hispanic applicants being charged higher overages because of their national origin.
27 These disparities in the overages charged are substantial, statistically significant, and
28

1 cannot be explained by factors related to underwriting risk or credit characteristics of
2 the applicants.

3 21. Information as to each applicant's national origin was available and
4 known to Defendants and their employees, including to the employees who made the
5 decisions to grant or deny loans and to set or confirm the terms and conditions of
6 each loan granted.

7 **VIOLATIONS OF THE ECOA, REGULATION B, AND THE FTC ACT**

8 22. Section 701(a)(1) of the ECOA, 15 U.S.C. § 1691(a)(1), and Section
9 202.4(a) of Regulation B, 12 C.F.R. § 202.4(a), prohibit a creditor from
10 discriminating against an applicant with respect to any aspect of a credit transaction
11 on the basis of race, color, religion, national origin, sex, marital status, or age
12 (provided the applicant has the capacity to contract).

13 23. Section 704(c) of the ECOA, 15 U.S.C. § 1691c(c), specifically
14 empowers the Commission to enforce the ECOA. Under its provisions, Defendants'
15 violations of the ECOA are deemed to be violations of the FTC Act and are
16 enforceable as such by the Commission under that Act. Further, the Commission is
17 authorized to use all of its functions and powers under the FTC Act to enforce
18 compliance with the ECOA by any person, irrespective of whether that person is
19 engaged in commerce or meets any other jurisdictional tests set by the FTC Act.
20 This includes the power to enforce a Federal Reserve Board regulation promulgated
21 under the ECOA, such as Regulation B, in the same manner as if a violation of that
22 regulation had been a violation of an FTC trade regulation rule.

23 24. From at least January 1, 2006 to at least December 31, 2006, Defendants
24 charged Hispanic applicants higher prices for mortgage loans than non-Hispanic
25 white applicants. These pricing disparities cannot be explained by any legitimate
26 underwriting risk factors or credit characteristics of the applicants.

1 25. Defendants' acts and practices alleged in Paragraph 24 constitute
2 discrimination against applicants with respect to credit transactions on the basis of
3 national origin in violation of Section 701(a)(1) of the ECOA, 15 U.S.C.
4 § 1691(a)(1), and Section 202.4(a) of Regulation B, 12 C.F.R. § 202.4(a). Pursuant
5 to Section 704(c) of the ECOA, 15 U.S.C. § 1691c(c), the acts and practices alleged
6 in Paragraph 24 also constitute unfair or deceptive acts or practices in violation of
7 Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

8 **CONSUMER INJURY**

9 26. Consumers have suffered, and will continue to suffer, substantial injury
10 as a result of Defendants' violations of the ECOA, Regulation B, and the FTC Act,
11 as set forth above.

12 **THIS COURT'S POWER TO GRANT RELIEF**

13 27. Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), empowers this court to
14 grant injunctive and other ancillary relief to prevent and remedy any violations of
15 any provision of law enforced by the Commission.

16 **PRAYER FOR RELIEF**

17 WHEREFORE, Plaintiff requests that this Court, pursuant to Sections 13(b)
18 and 19 of the FTC Act, 15 U.S.C. §§ 53(b) and 57b; Section 704(c) of the ECOA, 15
19 U.S.C. § 1691c(c); and pursuant to the Court's own equitable powers:

- 20 (1) Enter a permanent injunction to prevent future violations of the
21 ECOA, Regulation B and the FTC Act by Defendants;
22 (2) Award such relief as the Court finds necessary to redress injury to
23 consumers resulting from Defendants' violations of the ECOA,
24 Regulation B, and the FTC Act, including but not limited to,
25 rescission or reformation of contracts, restitution, the refund of
26 monies paid, and the disgorgement of ill-gotten monies; and
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1 (3) Award Plaintiff the costs of bringing this action, as well as such
2 other and additional relief as the Court may determine to be just
3 and proper.
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5 Dated: May 1, 2009

6 Respectfully submitted,

7 FEDERAL TRADE COMMISSION:

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