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

UNITED STATES OF AMERICA,	)	
Plaintiff,	)	
v.	)	CIVIL ACTION NO. 3:15-CV-144-L
FIRST UNITED BANK,	)	
Defendant.	)	

CONSENT ORDER

I. INTRODUCTION

Before the court is Plaintiff's Unopposed Motion for Entry of Consent Order, filed January 15, 2015. The court determines that the motion should be, and is hereby, **granted**. Accordingly, this Consent Order ("Order") is submitted jointly by the parties for the approval of and entry by the court simultaneously with the filing of the United States' Complaint in this action. This Order resolves the claims of the United States that First United Bank, ("First United" or "Bank") has engaged in a pattern or practice of lending discrimination on the basis of national origin in the pricing of unsecured consumer loans in violation of the Equal Credit Opportunity Act (ECOA), 15 U.S.C. §§ 1691-1691f.

Under the provisions of the Order, First United agrees to maintain uniform pricing policies and procedures designed to provide that the prices it charges for the loans covered by this Order, including the portion of the price that reflects the discretion of the loan officer or any company employee, are set in a nondiscriminatory manner consistent with the requirements of

ECOA. First United also will compensate Hispanic borrowers of unsecured consumer loans who were affected by its pricing policies between 2008 and 2012.

There has been no factual finding or adjudication with respect to any matter alleged by the United States. First United denies the United States' allegations that it engaged in national origin discrimination and maintains that at all times it conducted its lending in compliance with the letter and spirit of fair lending laws and in a nondiscriminatory manner. The parties have entered into this agreed Order to resolve voluntarily the claims asserted by the United States in order to avoid the risks and burdens of litigation. The parties agree that full implementation of the terms of this Order will provide a resolution of the allegations of the United States in a manner consistent with First United's legitimate business interests.

II. BACKGROUND

First United is a state-chartered bank based in Dimmitt, Texas. First United operates fifteen locations in Texas, that include Lubbock, Amarillo, Wichita Falls and surrounding towns. First United offers a wide range of loan products, including mortgage loans, consumer loans, commercial loans, and agriculture loans. The Bank originates its loans exclusively through loan officers at its branch offices. As of December 21, 2013, the Bank had total assets of approximately $1.14 billion. First United is subject to the regulatory authority of the Federal Deposit Insurance Corporation ("FDIC").

Beginning in August 2012, the FDIC conducted an examination of the lending practices of First United to evaluate compliance with the ECOA. Based on analysis of the average rates of interest that First United charged in 2011 and 2012 for unsecured consumer loans, the FDIC found reason to believe that First United had displayed a pattern or practice of discrimination on the basis of national origin against Hispanic borrowers. On April 12, 2013, following the

examination described above, the FDIC referred the lending practices of First United to the United States Department of Justice pursuant to 15 U.S.C. § 1691e(g).

After conducting its own investigation and reviewing the information provided by the FDIC, the United States contends that First United has charged higher interest rates on unsecured consumer loans to Hispanic borrowers as compared to non-Hispanic borrowers from at least January 1, 2008 through December 31, 2012. The Complaint alleges that prior to 2012, 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 every aspect of the unsecured consumer loan transaction, from the information collected at the application stage to setting the interest rate. 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 First United's offices. The Complaint alleges that First United did not properly instruct its loan officers regarding their obligation to treat prospective customers without regard to national origin, and the Bank has failed to supervise or monitor the performance of its loan officers effectively to ensure compliance with fair lending laws. The Complaint alleges that First United's policy or practice of giving its employees broad subjective discretion in handling every aspect of the unsecured consumer loan transaction is not justified by business necessity or legitimate business interests.

First United denies the allegations in the Complaint and maintains that at all times it has complied with the law. First United also states that immediately following the FDIC Compliance Examination in August 2012, the Bank significantly increased the oversight of its lending operations by its Board of Directors and Executive management, including a thorough review of the Bank's underwriting and consumer loan pricing policies, procedures and practices.

The Bank states that it developed a comprehensive Consumer Loan Workbook that governs the entire underwriting process for all consumer loans and allows for the orderly collection and documentation of all data related to the consumer loan underwriting process. The Bank states that it modified its consumer loan policy and developed a Uniform Pricing Matrix or Consumer Loan Rate Sheet. First United states that it does not allow for any discretion of its loan officers to deviate from the Bank's Consumer Loan Rate Sheet without approval from a more senior bank employee or official. The Bank states that it has undergone extensive regulatory compliance training for its lending personnel as well as its Board of Directors to improve its Compliance Management System.

First United states that it has engaged an outside auditing firm to conduct an annual audit of the Bank's compliance program, specifically the Bank's Fair Lending program. The Bank states that the first such audit was completed in December, 2013, and the report indicated the changes made to First United's Fair Lending program have been effective. First United states that it has implemented a Fair Lending Risk Assessment to identify potential threats and vulnerabilities related to Fair Lending compliance. The results of the Risk Assessment will be used to determine if there are strategies that need to be implemented to further reduce the risk of noncompliance.

III. TERMS OF ORDER

1. Unless otherwise stated herein, the remedial provisions of this Order will be implemented within ninety (90) days of the Effective Date of this Order and will continue throughout its term. The Effective Date of this Order will be the date on which it is approved and entered by the court.

2. Unless otherwise stated herein, the types of loans covered by this Order include the following: auto purchase, secured (except for commercial and agricultural loans), unsecured, home purchase, home equity, and home improvement loans.

A. General Prohibitory Injunction

3. First United, including all of its officers, employees, agents, representatives, assignees, and all those in active concert or participation with any of them, is hereby enjoined from engaging in any act or practice that discriminates on the basis of national origin in any aspect of a credit transaction in violation of ECOA. This prohibition includes, but is not limited to: the adoption, performance, or implementation of any policy, practice, or act that results in national origin discrimination in the charging of loan prices, including the portion of the loan price that reflects the discretion of the loan officer or any other company employee, to those who borrow money for loans covered by this Order.

4. This Order requires the Bank to take actions to remedy its alleged discrimination. First United retains the discretion to take any additional actions that it believes are appropriate to achieve the goals of this Order.

B. Pricing Policies and Procedures

5. In 2013, First United began to develop uniform pricing policies and procedures for unsecured consumer loans. First United's pricing policies include a uniform pricing matrix for the loans covered by this Order. The uniform pricing matrix, titled "Consumer Loan Rate Sheet" sets forth objective, nondiscriminatory standards for determining interest rates for the loans covered by this Order. In order for a loan officer to set a loan rate different from the rate set by the Consumer Loan Rate Sheet, the loan originator must (i) document the reasons for the proposed loan rate; and (ii) obtain approval from a more senior employee or official of the Bank.

6. First United will continue to require all loan officers and employees who originate loans covered by this Order to comply with the pricing policies described in Paragraph 5. First United also will continue to require an appropriate manager, under the supervision of a designated senior official of the Bank, to review compliance with these requirements, including the existence of a legitimate nondiscriminatory reason for any disparities between Hispanic and non-Hispanic borrowers and taking steps to ensure that discretionary loan prices do not vary materially by national origin. Any loan that is not in compliance with these requirements may not be funded. In the event that a loan inadvertently is funded in material violation of the policies, an appropriate refund will be provided to the borrower. All reviews shall be documented and kept in the loan files.

7. During the term of this Order, First United may change its loan pricing policies as set forth in Paragraph 5 upon written advance notice to the United States, which will have thirty (30) days from receipt of such notice to raise any objection to the proposed change(s). If it raises any objection, the parties shall confer to resolve their differences and the United States will obtain the position of First United's regulator with respect to such differences. If they are unable to do so, either party may bring the dispute to this court for resolution. First United will not implement the change(s) during such a dispute.

C. <u>Monitoring Program</u>

8. Within ninety (90) days of the Effective Date of this Order, First United will have in place a monitoring program designed to ensure compliance with this Order. The program will be designed to monitor the Bank's loans for potential disparities based on national origin. At a minimum, First United will monitor the interest rates of its loan products covered by this Order. The program also will require a quarterly review by senior managers. Each such quarterly

review will be documented and presented to First United's Board of Directors for review and approval not later than sixty (60) days after the end of each quarter. Each quarterly review shall include, but not be limited to, an analysis designed to detect interest rate disparities based on national origin with respect to the Bank's loan products covered by this Order.

(a) In the event that any such review discloses interest rate disparities between Hispanic and non-Hispanic borrowers, First United will attempt to determine the reason(s) for those disparities and will promptly take corrective action to address disparities that are attributable to a policy or practice of First United and not justified by a legitimate business need. Corrective action will include, as warranted, financial remediation for borrowers, further modifications to First United's pricing policies and/or monitoring programs as appropriate, and education, discipline, or termination of employee(s). First United will document all such disparities, determinations, and actions taken and will provide a summary of the quarterly reviews and any documentation and analysis relating thereto to the United States on a quarterly basis.

(b) In the event that any such review discloses significant disparities with respect to any particular employee or branch, First United will require the employee or branch manager to explain the nondiscriminatory reason(s) for those disparities. If there is no reasonable, non-national origin-based explanation for the noted disparities, First United will require the employee or branch manager to take prompt corrective action to address the disparities.

9. If the United States raises any objections to First United's determinations or remedial actions, the parties will meet and confer to consider appropriate steps to address the concerns raised by the United States' review. If the parties are unable to come to an agreement regarding such objections, any party may bring the dispute to this court for resolution.

D. Notification to the United States and Right to Object

10. First United will provide a copy of the policies it utilizes to implement Paragraphs 5-6 of this Order and descriptions of the monitoring programs required under Paragraphs 8-9 to the United States within ninety (90) days of the Effective Date of this Order. The United States will have thirty (30) days from receipt of the policies and descriptions to raise any objections to them, and if it raises any, the parties shall confer to resolve their differences and the United States will obtain the position of First United's regulator with respect to such differences. In the event the parties are unable to do so, either party may bring the dispute to this court for resolution. Until the court resolves such a dispute, the revised policies will not go into effect.

E. Borrower Notices

11. First United will post and prominently display in each location where loan applications are received by the Bank a notice of non-discrimination (a sample of which is attached as Appendix A).

12. First United will require its employees who originate loans covered by this Order to provide a notice of non-discrimination that provides substantially the same information as is contained in Appendix A. This disclosure will be in writing, signed by the originator and the borrower (if the borrower executes), and submitted by the originator to be made part of the loan file maintained by First United. This disclosure shall be made as early as practicable but not later than the time of the loan application.

F. Equal Credit Opportunity Training Program

13. Within ninety (90) days of the Effective Date of this Order, First United will provide equal credit opportunity training to its management officials, loan officers, and any other employees or agents who participate in the origination of the Bank's loans covered by this Order.

During this training, First United will provide to each participant: (a) access to a copy of this Order and the loan policies adopted pursuant to it; and (b) training on the terms of this Order, the loan policies adopted pursuant to it, the requirements of ECOA, and his or her responsibilities under each. During the term of this Order, First United will provide annual training to covered employees with respect to his or her responsibilities and obligations under ECOA and this Order.

14. First United will secure from each employee or agent specified in the preceding paragraph a signed statement acknowledging that he or she has received access to a copy of this Order and the loan policies and has completed the initial equal credit opportunity training. The signature of the acknowledgement may be either manual or electronic. These statements shall be substantially in the form of Appendix B (Acknowledgment) and Appendix C (Equal Credit Opportunity Training). During the term of this Order, each new employee or agent with substantive responsibility relating to the Bank's loan programs covered by this Order will be provided access to a copy of this Order and given an opportunity to have any questions answered, and will sign the acknowledgment form statement (Appendix B) within ten (10) days of beginning his or her employment in that position.

15. The content of this training program will be approved in advance by the United States. First United will bear all costs associated with the training.

G. <u>Satisfaction of the United States' Claims for Monetary Relief</u>

16. First United will deposit in an interest-bearing escrow account the total sum of $140,000 to compensate for monetary damages that affected persons may have suffered as a result of the alleged violations of ECOA with respect to unsecured consumer loans (the "Settlement Fund"). Title to this account shall be in the name of "First United Bank for the benefit of affected persons pursuant to Order of the court in Civil Action No. 3:15-CV-144-L". First United will provide written verification of the deposit to the United States within five (5) days of the Effective Date of this Order. Any interest that accrues will become part of the Settlement Fund and be utilized and disposed of as set forth herein.

17. Within thirty (30) days of the Effective Date of this Order, the United States will request any information it believes will assist in identifying affected persons and determining any damages. First United will, within thirty (30) days of receipt of such request, supply, to the extent that it is within the Bank's control, such information as requested. Requested data may be supplied as a supplement to the database already provided to the United States by the Bank in the course of the United States' inquiry. To the extent that the information is not within First United's control, the Bank will, within thirty (30) days of receipt of such request, supply any data in its control that identifies other parties that may have that the information.

18. The United States will, upon reasonable notice, be allowed access to the Bank's records and files to verify the accuracy of the data provided and to otherwise identify persons entitled to the payments from the Settlement Fund.

19. Within ninety (90) days of the Effective Date of this Order, the United States will provide to First United a list of affected persons and an amount each individual will receive from the Settlement Fund to compensate for monetary damages these persons may have suffered,

subject to the conditions set forth in Paragraph 20. First United will have sixty (60) days from receipt of such list in which to review the list and the United States will consider in good faith any issues raised by the Bank.

20. Payments from the Settlement Fund to affected persons shall be subject to the following conditions, provided that the details in administration of the Settlement Fund set forth in Paragraphs 21-22, can be modified by agreement of the parties and without further court approval:

(a) No affected person shall be paid any amount from the Settlement Fund until he or she has executed and delivered to First United a written release, as set forth in Appendix D, of all claims, legal or equitable, that he or she might have against the released persons and entities regarding the claims asserted by the United States in this lawsuit, so long as such claims accrued prior to the entry of this Order; and

(b) The total amount paid by First United collectively to the affected persons shall not exceed the amount of the Settlement Fund, including accrued interest.

21. First United will, no later than sixty (60) days after receiving the compensation list referred to in Paragraph 19, or no later than fourteen (14) days after the resolution of any issues raised with the United States pursuant to paragraph 19, whichever is later, notify each identified person eligible for compensation by a letter (using its reasonable best efforts to locate each person). The form of this letter will be subject to the review and approval of the United States. At a minimum, the letter will state that the identified person is eligible for compensation in the indicated amount provided he or she executes and returns to the Bank a copy of the agreed-upon release, which release will be enclosed with the notice along with an addressed and postage-paid return envelope. Each letter will identify the loan(s) the Bank originated to the

identified person. The letter will explain the complaint resolution program referenced in Paragraph 26 of this Order. If the parties are unable to agree on the terms of the letter, any party may bring the dispute to the court for resolution. Any letters that are returned with a forwarding address shall promptly be re-sent to that new address. First United will provide an accounting of these notifications, indicating the name and address to which each was dispatched, within the sixty (60) day period referred to in this Paragraph.

22. First United will issue checks in the amount indicated on the compensation list to all identified persons who execute and return the releases. First United will issue and mail such checks no later than twenty-one (21) days after the receipt of the release. First United will set forth reasonable deadlines for requirements of return of releases, and for the timely deposit of checks, subject to approval of the United States, so that the compensation is distributed and checks are presented for payment or become void prior to the date that is one year from the date the initial notifications are sent. First United will provide, as part of the reporting required in Paragraph 28, an accounting of releases received, checks sent, and notifications for which no response has been received or that were reported to be undeliverable. The United States may make its own efforts to locate affected persons.

23. All money not distributed to identified persons from the Settlement Fund, including accrued interest, shall be distributed to one or more organizations that provide services including credit counseling (including assistance in obtaining loan modification), legal representation of borrowers seeking to obtain a loan modification, financial literacy, and other related programs targeted at Hispanic potential and former homeowners in communities where the Complaint alleges significant discrimination occurred against Hispanic borrowers ("Organization"). Before selecting the qualified Organization(s), First United will obtain

proposals from the Organization(s) on how the funds will be used consistent with the above-stated purpose, submit such proposal to the United States, and consult with and obtain the non-objection of the United States. The United States and First United may request modification of the proposal before approving the Organization(s). Organization(s) must not be related to First United, First United's parent, or any entity owned by First United's parent.

24. The parties shall obtain the court's approval for the Organizations and the amount to be distributed to each prior to distribution provided by Paragraph 23. Within 15 days of the United States' non-objection to the Organizations, the parties shall move the court to order the distribution of the funds. The parties shall provide the court with information regarding how the proposed organizations meet the requirements set forth in Paragraph 23. First United shall require each Organization to submit to First United and the United States a report detailing that funds are utilized for the purposes identified in Paragraph 23 within one year after the funds are distributed and every year thereafter until the funds are exhausted. Failure of any Organization to provide the report(s) required by First United shall not affect the termination of this Order or serve as a basis for reopening this case or the Order.

25. First United will not be entitled to a set-off, or any other reduction, of the amount of payments to identified persons because of any debts owed by the identified persons. First United also will not refuse to make a payment based on a release of legal claims or loan modification previously signed by any identified person.

H. <u>Complaint Resolution Program</u>

26. During the period of this Order, First United will maintain a complaint resolution program to address consumer complaints alleging discrimination regarding loans originated by First United. Documentation regarding this complaint resolution program, including

documentation of individual complaints and resolutions, if any, will be made available to the United States on a quarterly basis and included in the reports referenced in Paragraph 28. A person will not be deemed ineligible for the complaint resolution program on the basis of having executed the release described in Paragraph 20(a), but there is no requirement under this Order that any complaint necessarily be resolved for or against the Bank.

IV. EVALUATING AND MONITORING COMPLIANCE

27. For the duration of this Order, First United will retain all records relating to its obligations hereunder as well as its compliance activities as set forth herein. The United States will have the right to review and copy such records upon request.

28. Within six months of the effective date of this Order, First United will submit a report to the United States on the Bank's progress in establishing and implementing each of the remedial items specified in this Order. A second report will be filed on the first anniversary of this Order. Thereafter, First United will submit a report annually for the term of the Order describing the actions taken in compliance with the provisions of the Order. The report will include an objective assessment of the extent to which each quantifiable obligation was met, an explanation of why any particular component fell short of meeting the goal for that year, and any recommendations for additional actions to achieve the goals of this Order. If applicable, First United will attach to the annual reports representative copies of training materials disseminated pursuant to this Order.

V. ADMINISTRATION

29. The Order will terminate three (3) months after the submission of First United's third annual report to the United States. Notwithstanding the above, this Order may be extended upon further motion of the United States to the court, for good cause shown.

30. Any time limits for performance fixed by this Order may be extended by mutual written agreement of the parties. Other modifications to this Order may be made only upon approval of the court, by motion by either party. The parties recognize that there may be changes in relevant and material factual circumstances during the term of this Order that may impact the accomplishment of its goals. The parties agree to work cooperatively to discuss and attempt to agree upon any proposed modifications to this Order resulting therefrom.

31. In the event that any disputes arise about the interpretation of or compliance with the terms of this Order, the parties will endeavor in good faith to resolve any such dispute between themselves before bringing it to this court for resolution. The parties agree that if either reasonably believes that the other party failed to comply with any obligation under this Order, it will provide written notice thereof and allow a period of at least thirty (30) days to discuss a voluntarily resolution of the alleged violation before presenting the matter to this court. In the event of either a failure by First United to perform in a timely manner any act required by this Order or an act by First United, in violation of any provision hereof, the United States may move this court to impose any remedy authorized by law or equity, including attorneys' fees and costs.

32. The parties agree that, as of the Effective Date, litigation is not "reasonably foreseeable" concerning the matters described in the Order. To the extent that either party previously implemented a litigation hold to preserve documents, electronically stored information, or things related to the matters described in the Order, the party is no longer required to maintain such a litigation hold, with the exception of documents, electronically-stored information, or other things relating to loans originated by First United between January 1, 2008, and December 31, 2012.

33. The Order will be binding on First United, including its officers, employees, agents, assignees, and successors in interest, and all those in active concert or participation with any of them. In the event First United seeks to transfer or assign all or part of its operations, and the successor or assign intends on carrying on the same or similar use, as a condition of sale, First United will obtain the written accession of the successor or assign to any obligations remaining under the Order for its remaining term.

34. Nothing in this Order will excuse the Bank's compliance with any currently or subsequently effective provision of law or order of a regulator with authority over First United that imposes additional obligations on the Bank.

35. First United's compliance with the terms of this Order will fully and finally resolve all claims of the United States relating to the alleged violation of the fair lending laws by means of discriminating on the basis of national origin, as alleged in the Complaint in this action, including all claims for equitable relief and monetary damages and penalties. Each party to this Consent Order will bear its own costs and attorney's fees associated with this litigation.

36. The court will retain jurisdiction for the duration of this Consent Order to enforce the terms of the Order, after which time the case will be dismissed with prejudice.

It is ordered this 28th day of January, 2015.

Sam A. Lindsay
United States District Judge

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

For the United States:

Dated January 15, 2015

JOHN R. PARKER
Acting United States Attorney
Northern District of Texas

T.J. JOHNSON
Assistant United States Attorney
United States Attorney's Office
Northern District of Texas
1100 Commerce Street, Third Floor
Dallas, Texas 75242-1699
Phone: (214) 659-8715
Email: tj.johnson@usdoj.gov

VANITA GUPTA
Acting Assistant Attorney General
Civil Rights Division
STEVEN H. ROSENBAUM
Chief
Civil Rights Division
Housing and Civil Enforcement Section
COTY R. MONTAG
Deputy Chief
Civil Rights Division
Housing and Civil Enforcement Section

LUCY G. CARLSON
Trial Attorney
United States Department of Justice
Civil Rights Division
Housing and Civil Enforcement Section
950 Pennsylvania Avenue, N.W. – G St.
Washington, DC 20530
Phone.: (202) 305-0017
Fax: (202) 514-1116
Email: lucy.carlson@USDOJ.gov

For First United Bank:

Dated January 14, 2015

JOHN J. DELIONADO
Hunton & Williams LLP
Mellon Financial Center
1111 Brickell Avenue, Suite 2500
Miami, Florida 33131