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4  
5 UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

6 UNITED STATES OF AMERICA, and )  
7 CONSUMER FINANCIAL )  
PROTECTION BUREAU, )  
8 )  
9 Plaintiffs, )  
10 v. )  
11 PROVIDENT FUNDING ASSOCIATES, )  
L.P., )  
12 Defendant. )  
13 \_\_\_\_\_)

Case No.

**COMPLAINT**

14 1. Plaintiffs, the United States and the Consumer Financial Protection Bureau (“Bureau”),  
15 bring this action against Provident Funding Associates, L.P. (“Provident”) for discriminating against  
16 thousands of African-American and Hispanic borrowers throughout the country in its residential  
17 wholesale mortgage lending. This action to enforce the Fair Housing Act, 42 U.S.C. §§ 3601-3619  
18 (“FHA”) and the Equal Credit Opportunity Act, 15 U.S.C. §§ 1691-1691f (“ECOA”), is brought to  
19 redress the pattern or practice of discrimination based on race and national origin that Provident  
20 engaged in from as early as 2006 through at least 2011 (“relevant time period”).

22 2. During the relevant time period, Provident charged approximately 14,000 African-  
23 American and Hispanic borrowers higher total broker fees<sup>1</sup> on wholesale mortgage loans than non-  
24 Hispanic white (“white”) borrowers. The higher fees were not based on the borrowers’  
25

26 \_\_\_\_\_  
27 <sup>1</sup> As described in greater detail at Paragraphs 14 and 15, “total broker fees” is the sum of the direct  
28 fees paid by the borrower to the broker and the yield spread premium.

1 creditworthiness or other objective criteria related to borrower risk or loan characteristics, but on their  
2 race or national origin. It was Provident's business practice to give the mortgage brokers who  
3 generated loan applications for it the subjective and unguided discretion to determine the total broker  
4 fees they would charge in connection with any individual loan application. The exercise of this  
5 subjective and unguided pricing discretion resulted in African-American and Hispanic borrowers  
6 paying more than white borrowers for home mortgage loans for reasons unrelated to borrower risk or  
7 characteristics of the loan. As a result of Provident's discriminatory practices during the relevant time  
8 period, an African-American or Hispanic borrower paid, on average, hundreds of dollars more for a  
9 Provident loan than a white borrower on the basis of race and national origin.

11 3. The higher total broker fees Provident charged on a discriminatory basis to thousands of  
12 African-American and Hispanic borrowers caused them significant economic and other harms. The  
13 Plaintiffs bring this lawsuit to hold Provident accountable for its violations of federal law and to  
14 remedy the substantial and widespread harmful consequences of its discriminatory lending policies and  
15 practices.

#### 17 **JURISDICTION AND VENUE**

18 4. This Court has jurisdiction over this action under 12 U.S.C. § 5565(a)(1), 28 U.S.C.  
19 § 1331, 28 U.S.C. § 1345, 42 U.S.C. § 3614, and 15 U.S.C. § 1691e(h).

20 5. Venue is proper in this District under 28 U.S.C. §§ 1391(b) and (c) and 12 U.S.C.  
21 § 5564(f) because Provident conducts business in this District and its principal place of business is  
22 located in this District.

#### 24 **INTRADISTRICT ASSIGNMENT**

25 6. Provident is headquartered in San Bruno, California; accordingly, pursuant to Civ. L.R.  
26 3-2(d), this action should be assigned to the San Francisco or Oakland Divisions.

**PLAINTIFFS**

1  
2 7. Plaintiff United States brings this action to enforce the FHA and ECOA. The Attorney  
3 General is authorized to initiate a civil action in federal district court whenever she has reasonable  
4 cause to believe that a pattern or practice of discrimination in violation of the FHA has occurred or that  
5 any group of persons has been denied rights granted by the FHA and such denial raises an issue of  
6 general public importance. 42 U.S.C. § 3614(a). The Attorney General is authorized to initiate a civil  
7 action in Federal district court whenever she has reasonable cause to believe that a pattern or practice  
8 of discrimination in violation of the ECOA has occurred. 15 U.S.C. § 1691e(h).  
9

10 8. Plaintiff the Bureau is an independent agency of the United States charged with  
11 regulating the offering and provision of consumer financial products or services under federal  
12 consumer financial laws, including ECOA. 12 U.S.C. §§ 5481(12)(D), (14), and 5491(a); 15 U.S.C.  
13 § 1691c(a)(9). The Bureau brings this action under: (1) Sections 1054 and 1055 of the Consumer  
14 Financial Protection Act of 2010 (“CFPA”), 12 U.S.C. §§ 5564 and 5565; and (2) Section 704 of the  
15 ECOA, 15 U.S.C. § 1691c.  
16

**DEFENDANT**

17  
18 9. Provident is a non-bank wholesale mortgage lender established in 1992 that originates  
19 conventional residential mortgage loans nationwide. It is the second-largest private mortgage  
20 company in the United States. Provident is headquartered at 851 Traeger Avenue, Suite 100, San  
21 Bruno, CA 94066. During the relevant time period, Provident was licensed nationwide, had 42 or  
22 more offices nationwide, and served over 450,000 borrowers. Provident is subject to the enforcement  
23 authority of the United States and the Bureau, as well as the Federal Trade Commission (“FTC”). 15  
24 U.S.C. §§ 1691c(a)(9), (c), 1691e(h). The Bureau also has supervisory authority over Provident. 12  
25 U.S.C. § 5514(a).  
26

27 10. Provident is subject to federal laws governing fair lending, including the FHA and  
28 ECOA and their respective implementing regulations. 24 C.F.R. pt. 100 (FHA), 12 C.F.R. pt. 1002

1 (ECOA). The FHA and ECOA prohibit creditors from discriminating on the basis of, *inter alia*, race  
2 or national origin in their residential mortgage lending practices. Charging higher total broker fees for  
3 residential mortgage loans on the basis of race or national origin is one of the discriminatory practices  
4 prohibited by the FHA and ECOA.

5 11. Provident is a “creditor” within the meaning of ECOA, 15 U.S.C. § 1691a(e), and is  
6 engaged in “residential real estate-related transactions” within the meaning of the FHA, 42 U.S.C.  
7 § 3605.

### 8 FACTUAL ALLEGATIONS

9  
10 12. In early 2009, the FTC opened an investigation into potential discrimination in  
11 Provident’s wholesale mortgage lending practices that focused on loan data from 2006-2008, based on  
12 an initial analysis that showed substantial interest rate disparities between white and minority  
13 borrowers. In early 2011, pursuant to a referral from the FTC, the Department of Justice (“DOJ”) took  
14 over and subsequently expanded the time frame of the investigation. In March 2012, the Bureau joined  
15 the DOJ’s investigation.  
16

17 13. From as early as 2006 through at least 2011, wholesale residential loans accounted for  
18 approximately 97% of Provident’s more than 450,000 home mortgage loans. During this time period,  
19 Provident originated residential mortgage loans through a wholesale channel which originated loans  
20 through mortgage brokers. Provident’s relationship with the mortgage brokers who brought loan  
21 applications to it during the relevant time period was governed by a standard Broker Agreement. The  
22 Broker Agreement provided, in pertinent part, that a broker could identify and qualify potential  
23 borrowers for conventional residential mortgage loans that Provident could, upon its approval of the  
24 application, underwrite, close, and either retain or sell into the secondary mortgage market. Provident  
25 was responsible for setting the complete final terms and conditions of each of its wholesale mortgage  
26 loans. Provident evaluated the risk of making each wholesale mortgage loan using its own  
27  
28

1 underwriting guidelines and made the final credit decision. It had the sole and absolute discretion to  
2 approve or reject any residential loan application submitted to it by a broker.

3 14. From as early as 2006 through at least 2011, Provident's policies and practices  
4 established a process for the pricing of wholesale mortgage loans that it originated. The first step was  
5 to establish a base or par interest rate for a particular type of loan for an applicant with specified credit  
6 characteristics. In this step, Provident accounted for numerous objective credit-related characteristics  
7 of applicants by setting a variety of prices for each of its different loan products that reflected its  
8 assessment of individual applicant creditworthiness, as well as the current market rate of interest and  
9 the price it could obtain for the sale of such a loan from investors. Provident communicated these risk-  
10 based or par interest rates through rate sheets that it issued to brokers on a daily basis.

11 15. The second step in Provident's loan pricing process directly affected broker  
12 compensation. In addition to setting the par interest rates, the rate sheets also included a yield spread  
13 premium ("YSP"), the amount that Provident would pay a broker when a loan had an interest rate that  
14 exceeded the risk-based par rate for that specific loan product and borrower with specified credit  
15 qualifications. Provident's mortgage brokers had subjective, unguided discretion to set an interest rate  
16 above the par rate on any loan. Provident's second step in the loan pricing process also permitted  
17 mortgage brokers to exercise subjective, unguided discretion in setting the amount of fees charged to  
18 individual borrowers, unrelated to an applicant's credit risk characteristics or the terms of the loan.  
19 Mortgage brokers who supplied Provident with wholesale loans for origination thus were compensated  
20 in two ways: through the YSP paid by Provident and through the direct fees paid by the borrower to  
21 the broker. Taken together, this compensation is referred to herein as "total broker fees."  
22

23 16. It was Provident's policy during the relevant time period to set a cap on total broker  
24 compensation, but to allow its brokers subjective, unguided discretion in determining the amount of  
25 their compensation as long as it remained below the applicable cap. Between 2006 and 2011,  
26 Provident generally capped total broker fees at 3.5% of the total loan amount, including YSPs and fees  
27  
28

1 charged to the borrower. But Provident imposed no other guidelines or rules with respect to the  
2 determination of total broker fees. Provident modified its cap on total broker fees several times during  
3 the relevant time period, but none of the cap modifications were made to address fair lending concerns.

4 17. In April 2011, in response to new federal regulatory requirements, 12 C.F.R. § 226.36,  
5 Provident eliminated YSPs and limited brokers to the discretionary amount of compensation disclosed  
6 in the good faith estimate initially provided to prospective borrowers. Provident maintained the cap on  
7 total broker fees at 3.5% of the loan amount for borrower-paid transactions (*i.e.*, when broker  
8 compensation was paid by the borrower through broker fees) but lowered it to 2% for lender-paid  
9 transactions (*i.e.*, when broker compensation was paid by Provident) or a maximum dollar amount  
10 based on size of the loan in either circumstance, whichever was less.

11  
12 18. From as early as 2006 through at least 2011, Provident did not have in place objective  
13 criteria to be followed by mortgage brokers in charging broker fees or setting interest rates that differed  
14 from its published risk-based par rates. Provident did not require its brokers to document the reasons  
15 for charging broker fees or setting interest rates that differed from its published par rates. Brokers  
16 were free to charge higher interest rates and set fees untethered to consideration of any objective credit  
17 characteristics, and Provident ratified those pricing decisions with each loan application that it  
18 approved. During this time period, Provident did not have meaningful, if any, monitoring to determine  
19 whether the total broker fees it charged differed significantly for borrowers of differing races or  
20 national origin. It also did not offer fair lending training to, or require fair lending training of,  
21 mortgage brokers with whom it conducted business.  
22

23  
24 19. For each wholesale loan originated by Provident, information about each borrower's  
25 race and national origin and the amounts and types of broker fees and the interest rate charged was  
26 available to and was known, or reasonably should have been known, by Provident prior to its approval  
27 of the funding of each loan. Provident was required to collect, maintain, and report data with respect  
28 to certain loan terms and borrower information for residential loans, including the race and national

1 origin of each wholesale residential loan borrower, pursuant to the Home Mortgage Disclosure Act  
2 (“HMDA”), 12 U.S.C. § 2803.

3 20. Plaintiffs analyzed Provident’s mortgage loan data from 2006 through 2011. During  
4 this time period, Provident originated over 450,000 loans. Plaintiffs’ analysis specifically analyzed the  
5 total broker compensation paid by African-Americans and Hispanics compared to non-Hispanic  
6 whites. During the relevant time period, Provident accounted for individual borrowers’ differences in  
7 creditworthiness and other objective criteria related to borrower risk in setting the risk-based par rate,  
8 as explained in Paragraph 14. The total broker compensation borrowers paid was separate from the  
9 risk-based par rate, and brokers were free to charge higher interest rates and set fees untethered to  
10 consideration of any objective credit characteristics, as explained in Paragraph 15. Accordingly,  
11 Plaintiffs did not adjust their analyses of total broker compensation to account for creditworthiness and  
12 other objective criteria related to borrower risk.  
13

14 21. Between 2006 and 2011, Provident charged African-American borrowers nationwide  
15 total broker fees that were 38.6 basis points<sup>2</sup> higher as a percentage of the loan amount than the total  
16 broker fees charged to white borrowers. This disparity is statistically significant.<sup>3</sup> These disparities in  
17 total broker fees mean, for example, that on average, Provident charged its African-American  
18 customers borrowing \$220,000<sup>4</sup> at least \$858 more in total broker fees, not based on their  
19 creditworthiness or other objective criteria related to borrower risk, but because of their race.  
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23 <sup>2</sup> A basis point is equal to one hundredth of a percentage point with 100 basis points equaling 1%.

24 <sup>3</sup> Statistical significance is a measure of the probability that an observed outcome could not have  
25 occurred by chance. As used in this Complaint, an observed outcome is statistically significant if the  
26 probability that it could have occurred by chance is less than 5%.

27 <sup>4</sup> This is the average home loan amount that Provident originated to African-American borrowers in  
28 the period from 2006 to 2011.



1           22.     Measured annually between 2006 and 2011, Provident charged African-American  
2 borrowers nationwide total broker fees that were 16.9 to 58.2 basis points higher than the total broker  
3 fees charged to white borrowers. These disparities are statistically significant. In 2008, for example,  
4 Provident charged African-American borrowers total broker fees that were 58.2 basis points higher  
5 than the fees charged to white borrowers. This means that on average an African-American customer  
6 borrowing \$206,000, the average loan amount that year, was charged at least \$1,199 more in total  
7 broker fees than the average white borrower.  
8

9           23.     Between 2006 and 2009, Provident charged Hispanic borrowers nationwide total broker  
10 fees that were 25.5 basis points higher as a percentage of the loan amount than the total broker fees  
11 charged to white borrowers. This disparity is statistically significant. These disparities in total broker  
12 fees mean, for example, that on average, Provident charged its Hispanic customers borrowing  
13 \$246,000<sup>5</sup> at least \$615 more in total broker fees, not based on their creditworthiness or other objective  
14 criteria related to borrower risk, but because of their national origin.  
15

16           24.     Measured annually between 2006 and 2009, Provident charged Hispanic borrowers  
17 nationwide total broker fees that were 19.8 to 31.8 basis points higher than the total broker fees  
18 charged to white borrowers. These disparities are statistically significant. In 2007, for example,  
19 Provident charged Hispanic borrowers total broker fees that were 31.8 basis points higher than the fees  
20 charged to white borrowers. This means that on average a Hispanic customer borrowing \$248,000, the  
21 average loan amount that year, was charged at least \$789 more in total broker fees than the average  
22 white borrower.  
23

24           25.     The higher total broker fees Provident charged to African-American and Hispanic  
25 borrowers in its wholesale channel during the relevant time period were a result of its policies and  
26

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27 <sup>5</sup> This is the average home loan amount that Provident originated to Hispanic borrowers in the period  
28 from 2006 to 2009.

1 practices that: (a) allowed mortgage brokers subjective and unguided discretion in setting their  
2 compensation for wholesale loans unrelated to objective borrower credit risk characteristics and the  
3 terms and conditions of the loan; (b) did not require mortgage brokers to justify or document the  
4 reasons for the amount of total broker fees charged; (c) failed to adequately monitor, detect, or correct  
5 for disparities in total broker fees based on race or national origin; and (d) created a financial incentive  
6 for mortgage brokers to charge higher discretionary fees and interest rates. Provident continued to use  
7 these discretionary wholesale broker fee pricing policies; to inadequately document, review, and  
8 correct for the implementation of those policies; and to incentivize upward broker adjustments to the  
9 par interest rate and/or broker fees at least through the end of 2011.  
10

11 26. The higher total broker fees Provident charged to African-American and Hispanic  
12 borrowers as compared to white borrowers cannot be fully explained by factors unrelated to race or  
13 national origin. The policies and practices that produced this result were not justified by the necessity  
14 to achieve one or more substantial, legitimate, nondiscriminatory business interests or a legitimate  
15 business need.  
16

### 17 **EQUAL CREDIT OPPORTUNITY ACT VIOLATIONS**

18 27. Provident's policies, and practices, as alleged herein, constitute discrimination against  
19 applicants with respect to credit transactions on the basis of race and/or national origin in violation of  
20 the Equal Credit Opportunity Act, 15 U.S.C. § 1691(a)(1).  
21

22 28. Provident's policies and practices, as alleged herein, constitute a pattern or practice of  
23 resistance to the full enjoyment of rights secured by the Equal Credit Opportunity Act, 15 U.S.C.  
24 §§ 1691-1691f.

25 29. Thousands of African-American and Hispanic borrowers nationwide overpaid for loans  
26 as a result of Provident's pattern or practice of discrimination and denial of rights as alleged herein. In  
27 addition to higher direct economic costs, some of the victims of discrimination suffered additional  
28 consequential economic damages resulting from having an excessively costly loan, including an

1 increased risk of credit problems, and other damages, including direct and indirect harm. They are  
2 aggrieved applicants within the meaning of ECOA, and have suffered injury and damages as a result of  
3 Provident’s conduct.

4 30. Provident’s pattern or practice of discrimination was intentional and willful and was  
5 implemented with reckless disregard for the rights of African-American and Hispanic borrowers.

6 **FAIR HOUSING ACT VIOLATIONS**

7  
8 31. Provident’s residential real estate-related lending policies and practices, as alleged  
9 herein, constitute:

10 (a) discrimination on the basis of race and national origin in making available, or in  
11 the terms or conditions of, residential real estate-related transactions, in violation of the  
12 Fair Housing Act, 42 U.S.C. § 3605(a); and

13 (b) discrimination on the basis of race and national origin in the terms, conditions,  
14 or privileges of the sale of a dwelling or in the provision of services in connection  
15 therewith, in violation of the Fair Housing Act, 42 U.S.C. § 3604(b).

16  
17 32. Provident’s residential lending-related actions, policies and practices, as alleged herein,  
18 constitute:

19 (a) a pattern or practice of resistance to the full enjoyment of rights secured by the  
20 Fair Housing Act, 42 U.S.C. §§ 3601-3619; and

21 (b) a denial of rights granted by the Fair Housing Act to a group of persons – both  
22 African Americans and Hispanics – that raises an issue of general public importance.

23  
24 33. Thousands of African-American and Hispanic borrowers nationwide have been victims  
25 of Provident’s pattern or practice of discrimination and denial of rights under the FHA as alleged  
26 herein. In addition to higher direct economic costs, some of the victims of discrimination suffered  
27 additional consequential economic damages resulting from having an excessively costly loan,  
28 including an increased risk of credit problems, and other damages, including emotional distress. They

1 are aggrieved persons as defined in the Fair Housing Act, 42 U.S.C. § 3602(i), and have suffered injury  
2 and damages as a result of Provident’s conduct.

3 34. Provident’s pattern or practice of discrimination was intentional and willful and was  
4 implemented with reckless disregard for the rights of African-American and Hispanic borrowers.

5 **CONSUMER INJURY**

6 35. Consumers have suffered substantial injury as a result of Provident’s violations of the  
7 ECOA and the FHA as alleged herein.

8 **THIS COURT’S POWER TO GRANT RELIEF**

9  
10 36. The CFPA empowers this Court to grant any appropriate legal or equitable relief  
11 including, without limitation, a permanent or temporary injunction, rescission or reformation of  
12 contracts, the refund of moneys paid, restitution, disgorgement or compensation for unjust enrichment,  
13 damages, and other monetary relief, to prevent and remedy any violation of any provision of law  
14 enforced by the Bureau. 12 U.S.C. § 5565.

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

18 38. The FHA empowers this Court to grant legal or equitable relief necessary to ensure the  
19 full enjoyment of the rights granted by the FHA, including a temporary or permanent injunction,  
20 restraining order, and monetary damages to aggrieved persons. 42 U.S.C. § 3614(d).

21 **PRAYER FOR RELIEF**

22 WHEREFORE, the United States and the Consumer Financial Protection Bureau pray that the  
23 Court enter an ORDER that:

24  
25 (1) Declares that the policies and practices alleged herein of Provident constitute violations  
26 of the Equal Credit Opportunity Act, 15 U.S.C. §§ 1691-1691f, and the Fair Housing Act, 42 U.S.C.  
27 §§ 3601-3619;

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

- 3 a. Discriminating on account of race or national origin in any aspect of its lending  
4 practices;
- 5 b. Failing or refusing to take such affirmative steps as may be necessary to restore,  
6 as nearly as practicable, the victims of Provident's unlawful conduct to the  
7 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 to prevent  
9 the recurrence of any such discriminatory conduct in the future; to eliminate, to  
10 the extent practicable, the effects of Provident's unlawful practices; and to  
11 implement policies and procedures to ensure that all borrowers have an equal  
12 opportunity to seek and obtain loans on a non-discriminatory basis and with  
13 non-discriminatory terms and conditions;

14  
15 (3) Awards equitable relief and monetary damages to all the victims of Provident's  
16 discriminatory policies and practices for the injuries caused by Provident, including direct economic  
17 costs, consequential damages, and other damages provided under 15 U.S.C. §§ 1691c(a)(9) and  
18 1691e(h), 12 U.S.C. § 5565, and 42 U.S.C. § 3614(d)(1)(B);

19  
20 (4) Assesses a civil penalty against Provident in an amount authorized by 42 U.S.C.  
21 § 3614(d)(1)(C), in order to vindicate the public interest; and

22  
23 (5) Awards such additional relief as the interests of justice may require.

24  
25 Dated: May 28, 2015.

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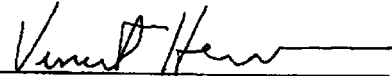
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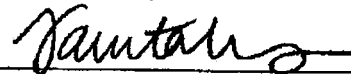
  
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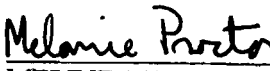
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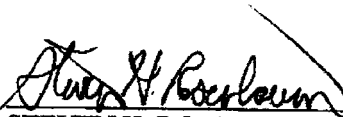
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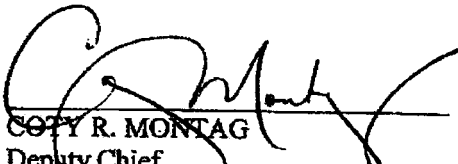
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