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14 UNITED STATES DISTRICT COURT  
15 NORTHERN DISTRICT OF CALIFORNIA

16 Consumer Financial Protection Bureau,

17 Plaintiff,

18 v.

19 RPM Mortgage, Inc. and Erwin Robert  
20 Hirt, individually,

21 Defendants.

Case No. 4:15-cv-02475

COMPLAINT FOR PERMANENT  
INJUNCTION AND OTHER  
RELIEF

22  
23  
24 The Consumer Financial Protection Bureau files this Complaint against RPM  
25 Mortgage, Inc. and Erwin Robert Hirt (collectively, "Defendants") and alleges as follows:  
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## Introduction

1  
2 1. In September 2010, the Federal Reserve Board announced a rule that  
3 prohibited the compensation of loan officers based on a term or condition of a mortgage  
4 loan, including the interest rate. This rule (the “Compensation Rule”) also outlawed  
5 “point-bank” schemes – tracking systems that permit loan officers to “bank” profits on  
6 one loan to supplement their compensation on future ones.  
7

8  
9 2. In April 2011, RPM implemented a compensation plan that gave loan  
10 officers a financial incentive to steer customers into higher-rate loans by paying them, in  
11 part, based on the interest rates of the loans they closed. Loans with higher rates created  
12 more profits for RPM.  
13

14 3. But RPM disguised this interest-rate-based compensation by funneling it  
15 through so-called employee-expense accounts. RPM deposited profits from an officer’s  
16 closed loans – profits that were a direct product of the loans’ interest rates – into the loan  
17 officer’s employee-expense account, and then used it to pay her bonuses and increased  
18 commissions. RPM also allowed loan officers to use their employee-expense accounts to  
19 offset interest-rate reductions or credits for RESPA-tolerance cures or appraisal costs  
20 they sometimes granted to avoid losing loans to a competitor.  
21

22  
23 4. Because this compensation came from funds that were based on the interest  
24 rates of the loans, RPM’s compensation plan violated both the Compensation Rule and  
25 § 1036 of the Consumer Financial Protection Act of 2010 (“CFPA”).  
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## Jurisdiction and Venue

1  
2 5. This Court has subject-matter jurisdiction over this action because it is  
3 brought under “Federal consumer financial law,” 12 U.S.C. § 5565(a)(1), presents a  
4 federal question, 28 U.S.C. § 1331, and is brought by an agency of the United States, 28  
5 U.S.C. § 1345.  
6

7 6. Venue is proper in this district because a substantial part of the events or  
8 omissions giving rise to the claims occurred here, RPM’s principal place of business is  
9 located here, and Defendants reside here. 28 U.S.C. §1391(b); 12 U.S.C. § 5564(f).  
10

## Parties

11  
12  
13 7. The Bureau is an independent agency of the United States created by the  
14 CFPA. It has independent litigating authority, including the authority to enforce the  
15 Compensation Rule and the CFPA and to secure appropriate relief for violations of those  
16 provisions. 12 U.S.C. §§ 5564(a)-(b), 5565.  
17

18 8. RPM Mortgage, Inc., a California corporation, maintains its principal place  
19 of business at 3240 Stone Valley Road West, Alamo, California. As a significant part of  
20 its business, RPM offers and provides mortgage loans to consumers primarily for  
21 personal, family, or household purposes. Those activities are “consumer financial  
22 services or products” under the CFPA. 12 U.S.C. § 5481(5)(A), (15)(A)(i). RPM is  
23 therefore a “covered person” under the CFPA. 12 U.S.C. § 5481(6).  
24  
25

26 9. Erwin Robert Hirt is RPM’s CEO and one of its two shareholders and  
27 directors. Hirt is a licensed real-estate broker in California, and his Nationwide Mortgage  
28

1 Licensing System and Registry unique identifier is 4756. At all times material to this  
2 Complaint, Hirt has exercised managerial responsibility for RPM and has materially  
3 participated in the conduct of its affairs. Hirt is therefore a “related person.” 12 U.S.C.  
4 § 5481(25)(C)(i)-(ii). Because Mr. Hirt is a “related person,” he is deemed a “covered  
5 person” under the CFPA. 12 U.S.C. § 5481(25)(B).  
6

### 7 **Factual Background**

8  
9 10. RPM is a residential-mortgage lender that offers and provides loan products,  
10 including conventional fixed loans, adjustable-rate loans, Federal Housing Act loans, and  
11 United States Department of Agriculture loans, to consumers seeking to purchase or  
12 refinance residential homes. Each of these loans is secured by the dwelling for which the  
13 mortgage loan was provided.  
14

15 11. RPM currently operates about 60 branches in 6 states. From 2011 through  
16 2013, RPM operated in 18 states and originated tens of thousands of mortgage loans  
17 worth billions of dollars.  
18

19 12. RPM’s branches employ loan officers who work directly with borrowers.  
20 RPM pays its loan officers to assist borrowers with obtaining and arranging credit to be  
21 secured by a dwelling. Borrowers do not directly compensate RPM’s loan officers for the  
22 loan-origination services they provide.  
23  
24

25 13. RPM’s loan officers take the initial loan applications, assess the borrowers’  
26 creditworthiness, and determine the interest rates to offer borrowers for particular loan  
27 products.  
28

1 14. RPM offers loan products at a variety of interest rates, and each interest rate  
2 is connected to a specific cash rebate or profit that RPM earns from selling the loan on  
3 the secondary market. RPM regularly sells the loans it originates on the secondary  
4 market.  
5

6 15. RPM informs its loan officers that higher-interest-rate loans will result in  
7 higher secondary-market prices, translating into higher profits for RPM.  
8

9 16. Before the Compensation Rule became effective, RPM paid its loan officers  
10 a “commission split,” that is, a pre-determined percentage of the rebate or profit  
11 generated on a closed loan.  
12

13 17. A loan officer received a higher commission on loans that generated higher  
14 profits to RPM. Loan officers shared in the profits generated on higher-interest-rate loans  
15 and thus had a financial incentive to steer consumers to those more expensive products.  
16

#### 17 Employee Expense Account Plan

18 18. The Compensation Rule made RPM’s then-existing commission structure  
19 illegal.  
20

21 19. RPM, however, still wanted to encourage its loan officers to originate high-  
22 interest (and high-profit) mortgages. Soon after the Compensation Rule went into effect,  
23 RPM implemented a new compensation plan based on “employee-expense accounts.”  
24 Like the one that preceded it, this compensation plan tied the loan officers’ compensation  
25 to the interest rates of the loans they originated.  
26  
27  
28

1           20.   RPM’s new compensation plan provided for (i) an upfront commission  
2 based either on a fixed percentage of the loan amount or a flat dollar amount per loan  
3 closed and (ii) compensation based on the loan’s profit, including periodic bonuses,  
4 pricing concessions, and, later, supplemental commissions.  
5

6           21.   RPM maintained an employee-expense account for each of its loan officers.  
7 The company enabled loan officers to monitor their employee-expense-account balances.  
8

9           22.   For each loan closed, RPM would make a deposit into the loan officer’s  
10 expense account if the revenue exceeded the sum of the branch fees (fees charged at the  
11 branch level for operating the business) and the upfront commission the loan officer  
12 earned on the loan.  
13

14           23.   Loan officers thus could cause greater deposits to be made into their  
15 individual expense accounts by placing consumers into higher-interest-rate loans.  
16

17                           Employee Expense Accounts Fund Loan Officer Bonuses

18           24.   A loan officer’s ability to draw on funds in her employee-expense account  
19 turned on her profitability – that is, whether she had a positive balance in her expense  
20 account.  
21

22           25.   Each loan officer with a positive account balance was able to withdraw  
23 funds from her employee-expense account for, among other things, deferred  
24 compensation in the form of bonuses.  
25

26           26.   After the Compensation Rule became effective, RPM began paying loan  
27 officers periodic bonuses from the existing balances in the employee-expense accounts.  
28

1 RPM initially paid the bonuses on a quarterly basis, but eventually moved to monthly  
2 payouts.

3 27. RPM paid bonuses only to loan officers who had funds in their employee-  
4 expense accounts. With few exceptions, a loan officer generally would not receive a  
5 bonus that exceeded the amount in her employee-expense account.  
6

7 28. Indeed, for loan officers who received bonuses, the amount was strongly  
8 correlated with the balances in their individual employee-expense accounts.  
9

10 29. In 2011 alone, RPM paid millions of dollars in periodic bonuses to its loan  
11 officers from their employee-expense accounts.  
12

### 13 Employee Expense Accounts Serve as Point Banks

14 30. RPM also permitted loan officers to withdraw funds from the employee-  
15 expense accounts to grant “price concessions” to consumers, including interest-rate  
16 discounts and credits for RESPA-tolerance cures and appraisal costs.  
17

18 31. By granting certain consumers interest-rate discounts or other credits, loan  
19 officers were able to close and earn commissions on deals they would have otherwise  
20 lost.  
21

22 32. In 2011, RPM permitted loan officers to tap funds in their employee-expense  
23 accounts to subsidize more than 1,000 interest-rate discounts, resulting in more than one  
24 million dollars in withdrawals from the employee-expense accounts.  
25  
26  
27  
28

1 33. From 2011 through 2013, RPM permitted loan officers to tap funds in their  
2 employee-expense accounts to subsidize more than one million dollars in credits to  
3 certain consumers for RESPA-tolerance cures or appraisal costs.  
4

5 Employee Expense Accounts Fund Commission Resets

6 34. Although RPM continued to use employee-expense accounts to grant pricing  
7 concessions, RPM stopped paying loan officers bonuses from employee-expense  
8 accounts at the end of 2011.  
9

10 35. Starting then, RPM continued to deposit loan profits into individual  
11 employee-expense accounts, but allowed loan officers to use those funds to cover the cost  
12 of individual commission-rate resets (the Commission Resets). In this way, loan officers  
13 used the employee-expense accounts to give themselves raises on future loan  
14 transactions.  
15

16 36. Typically, a significant increase in a loan officer's commission rate would  
17 render a loan unprofitable for RPM. If a loan officer's commission exceeded the total  
18 revenue the loan generated on the secondary market, the transaction would result in an  
19 "underage," or financial loss to RPM.  
20  
21

22 37. The Commission Resets did not cause RPM to lose money because the  
23 underages were covered by withdrawals from the employee-expense accounts.  
24

25 38. By financing the Commission Resets with individual employee expense-  
26 account funds, RPM allowed loan officers to convert profits from earlier high-interest  
27 loans into commission income.  
28



1 39. RPM encouraged loan officers to adjust commission settings to ensure that  
2 funds in their employee-expense accounts were paid out to them as commission income.

3 40. From 2012 through 2013, RPM's loan officers made thousands of  
4 Commission Resets that were financed with funds in their employee-expense accounts.  
5

6 41. During this same period, RPM permitted its loan officers to withdraw about  
7 55% of the existing employee expense-account balances to pay for millions of dollars in  
8 supplemental commissions and pricing-concession subsidies.  
9

10 Hirt Designed, Implemented, Authorized,  
11 and Benefitted From the Unlawful Payments

12 42. At all times material to this Complaint, Hirt has co-owned RPM. As a co-  
13 owner, Hirt benefitted from the increased volume of high-profit loans that resulted from  
14 the employee-expense-account plan's financial incentives to loan officers.  
15

16 43. At all times material to this Complaint, Hirt has served as RPM's CEO and  
17 as a member of RPM's two-person Board of Directors. RPM's Branch Operations report  
18 directly to Hirt. RPM's compliance, finance, and accounting divisions report directly to  
19 Hirt. These divisions were responsible for the tracking and payment of funds in the  
20 employee-expense accounts.  
21

22 44. In 2011, Hirt served on the RPM committee that determined the monthly  
23 loan-officer bonuses to be paid out of employee-expense accounts.  
24

25 45. Hirt was responsible for managing the design and implementation of RPM's  
26 employee-expense-account plan, including all unlawful compensation paid out of it.  
27  
28

**Count I**

*Defendants' Violations of the Compensation Rule  
(Bonus Payments)*

1  
2  
3 46. The Bureau realleges and incorporates by reference paragraphs 1-45.

4  
5 47. The Compensation Rule provides that “[i]n connection with a consumer  
6 credit transaction secured by a dwelling, no loan originator shall receive and no person  
7 shall pay to a loan originator, directly or indirectly, compensation in the amount that is  
8 based on any of the transaction’s terms or conditions.” 12 C.F.R. § 1026.36(d)(1)(i)  
9 (2011) (revised 2014).  
10

11 48. RPM and Hirt are both “persons” under the Compensation Rule. 12 C.F.R.  
12 § 1026.36(d)(1)(i) (2011) (revised 2014).  
13

14 49. Each of RPM’s loan officers is a “loan originator” under the Compensation  
15 Rule. 12 C.F.R. § 1026.36(a)(1)(i) (2011) (revised 2014).  
16

17 50. From April 2011 through January 2012, Hirt managed the design and  
18 implementation of RPM’s expense-account plan that paid RPM’s loan officers periodic  
19 bonuses that were based on terms or conditions of consumer-credit transactions secured  
20 by a dwelling, in violation of 12 C.F.R. § 1026.36(d)(1)(i) (2011) (revised 2014).  
21

22 51. Defendants paid 511 periodic bonuses in amounts that varied based on the  
23 terms or conditions of consumer-credit transactions secured by a dwelling.  
24

25 52. Each periodic bonus payment made by Defendants to its loan officers  
26 constitutes a discrete violation of the Compensation Rule, 12 C.F.R. § 1026.36(d)(1)(i)  
27 (2011) (revised 2014).  
28

**Count II**

*Defendants' Violations of the Compensation Rule  
(Pricing Concessions)*

53. The Bureau realleges and incorporates by reference paragraphs 1-45.

54. From April 2011 through December 2013, Hirt managed the design and implementation of RPM's expense-account plan that permitted RPM's loan officers to withdraw expense-account funds that were derived from the interest rates those loan officers charged consumers.

55. Those expense-account funds were used to finance pricing concessions that allowed loan officers to close and earn commissions on loans they would otherwise have lost. Therefore, the funds used for the pricing concessions were prohibited compensation in violation of 12 C.F.R. § 1026.36(d)(1)(i) (2011) (revised 2014).

56. Defendants permitted loan officers to make thousands of withdrawals from their expense accounts to support thousands of pricing concessions during this period.

57. Each loan transaction involving a pricing concession constitutes a discrete violation of the Compensation Rule, 12 C.F.R. § 1026.36(d)(1)(i) (2011) (revised 2014).

**Count III**

*Defendants' Violations of the Compensation Rule  
(Commission Resets)*

58. The Bureau realleges and incorporates by reference paragraphs 1-45.

59. From January 2012 through December 2013, Hirt managed the design and implementation of RPM's expense-account plan that allowed RPM's loan officers to



**Demand for Relief**

The Bureau requests that the Court:

- a. permanently enjoin Defendants from committing future violations of the Compensation Rule, 12 C.F.R. § 1026.36, the CFPA, 12 U.S.C. § 5536, and any other provision of “Federal consumer financial law,” as defined by 12 U.S.C. § 5481(14);
- b. grant additional injunctive relief as the Court may deem just and proper;
- c. order Defendants to pay redress to consumers harmed by their unlawful conduct;
- d. order Defendants to disgorge all ill-gotten gains;
- e. impose on Defendants a civil money penalty;
- f. award costs against Defendants; and
- g. award additional relief as the Court may determine to be just and proper.

Dated: June 4, 2015

Respectfully Submitted,

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/s/ Thomas G. Ward  
Thomas G. Ward (IL Bar #6291011)  
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