

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

| | | |
|---------------------------|---|-----|
| UNITED STATES OF AMERICA, |) | |
| |) | |
| Plaintiff, |) | |
| |) | No. |
| v. |) | |
| |) | |
| EVERGREEN BANK GROUP, |) | |
| |) | |
| Defendant. |) | |
| _____ |) | |

CONSENT ORDER

I. INTRODUCTION

This Consent Order (“the Order”) is submitted jointly by the parties for the approval of and entry by the Court. The Order resolves the claims of the United States that Evergreen Bank Group (“Evergreen” or “Lender”) engaged in a pattern or practice of conduct in violation of the Equal Credit Opportunity Act (ECOA), 15 U.S.C. §§ 1691-1691f, by discriminating on the basis of race and national origin in the extension of credit.

There has been no factual finding or adjudication with respect to any matter alleged by the United States. The parties have entered into the Order to avoid the risks, expense, and burdens of litigation and to resolve voluntarily the claims in the United States’ Complaint of Evergreen’s alleged violation of the ECOA. Accordingly, the execution of the Order is not, and is not to be considered as, an admission or finding of any violation of the ECOA by Evergreen.

II. BACKGROUND

Evergreen is a state-chartered bank headquartered in Oak Brook, Illinois with approximately \$500 million in assets. Since 2007, its FreedomRoad Financial unit has

specialized in making motorcycle loans to buyers across the country by establishing relationships with motorcycle manufacturers and dealers. In recent years, it has annually originated between 6,000 and 12,000 motorcycle loans through a network of roughly 400 motorcycle dealers located in all 50 states, and it partners with several motorcycle manufacturers as their preferred lender.

The Federal Deposit Insurance Corporation (FDIC) conducted an examination of Evergreen for compliance with ECOA and its implementing regulation, Regulation B. On March 12, 2013, the FDIC referred Evergreen to the United States Attorney General pursuant to Section 706(g) of the ECOA based on the FDIC's finding that it had reason to believe Defendant has engaged in a pattern or practice of lending discrimination in violation of the Section 701(a) of the ECOA. On April 11, 2013, the United States Department of Justice initiated an investigation under the ECOA of Evergreen's pricing of motorcycle loans.

In its Complaint, the United States alleges that between January 1, 2011 and March 9, 2014, Evergreen engaged in a pattern or practice of discrimination on the basis of race and national origin in violation of the ECOA based on the interest rate "dealer markup"—the difference between Evergreen's buy rate and the contract rate—paid by African-American and Hispanic borrowers who obtained motorcycle loans funded by Evergreen. Effective March 10, 2014, Evergreen eliminated the ability of its dealers to obtain markups, and it began compensating all dealers based on a set percentage of the loan principal.

Evergreen asserts that at all times it has treated each of its customers fairly and without regard to race or national origin. Evergreen enters this settlement for the purpose of avoiding contested litigation with the United States and instead to devote its resources to serving its customers. Evergreen contends that a calculation of disparities needs to compare similarly situated customers and include relevant explanatory factors such as creditworthiness, differences

in essential transactional details such as whether the vehicle is new or used and the geographic area in which it was purchased, and the selling dealer. The dealer markup policy previously followed by Evergreen is common in the indirect vehicle lending industry and has been for decades. Evergreen has not been informed that the United States contends that Evergreen or any of its employees engaged in any intentional discrimination or disparate treatment of minorities.

In its Complaint, the United States alleges the dealer markups were separate from, and not controlled by, the adjustments for creditworthiness and other objective criteria related to borrower risk already reflected in the buy rate that Evergreen communicate to dealers. No Evergreen policy directed dealers to consider creditworthiness or other objective criteria related to borrower risk for a second time, after they had already been considered in setting the buy rate, in determining interest rate markups. Accordingly, the United States alleges it is improper to adjust the ethnic and racial interest rate markup disparities for creditworthiness and other objective criteria related to borrower risk.

Under the provisions of the Order, Evergreen agrees to maintain policies and procedures that have been designed to ensure that the interest rate on motorcycle loans is set in a nondiscriminatory manner consistent with the ECOA. In addition, Evergreen will compensate certain African-American and Hispanic borrowers.

III. INJUNCTIVE RELIEF

1. Consistent with the Order, Defendant is enjoined from engaging in any act or practice that discriminates on the basis of race or national origin in any aspect of the pricing of motorcycle loans in violation of the ECOA, 15 U.S.C. § 1691(a)(1), and Regulation B, 12 C.F.R. pt. 1002.

2. During the pendency of the Order, starting no later than one hundred and twenty (120) days of the Effective Date, Defendant shall implement a dealer compensation policy conforming with one (1) of the three (3) options detailed below:

Option One

a) Defendant will limit dealer discretion in setting the contract rate to one hundred and thirty (130) basis points for retail installment contracts with terms of sixty (60) months or less, one hundred and fifteen (115) basis points for retail installment contracts with terms greater than sixty (60) months and less than or equal to seventy-two (72) months, and one hundred (100) basis points for retail installment contracts with terms greater than seventy-two (72) months.¹

Defendant is not precluded from including in its compensation policies an additional nondiscretionary component of dealer compensation consistent with applicable laws. Defendant may provide entirely nondiscretionary dealer compensation to some dealers (consistent with subparagraph a of Option Two, described below) while it provides discretionary compensation to other dealers consistent with Option One, so long as all loans purchased from a particular dealer are compensated using only one of the two compensation systems.

i. Defendant shall establish a pre-set rate of dealer participation that Defendant will require dealers to include in all credit offers that the dealer extends to customers (“Standard Dealer Participation Rate”), such that:

A. The Standard Dealer Participation Rate cannot exceed one hundred and thirty (130) basis points for retail installment contracts with terms of sixty (60) months or less, one

¹ “Dealer discretion” includes the entire range of dealer deviation from Lender’s risk-based buy rate, whether exercised by increasing or decreasing the buy rate, such as by altering the interest rate or buying down the rate. “Dealer discretion” does not include Lender discretion to modify the buy rate. “Dealer discretion” does not include a dealer’s buying down of the buy rate with respect to all consumers to the extent such special offers are clearly advertised to all consumers.

hundred and fifteen (115) basis points for retail installment contracts with terms greater than sixty (60) months and less than or equal to seventy-two (72) months, and one hundred (100) basis points for retail installment contracts with terms greater than seventy-two (72) months.

B. Defendant may allow dealers to include a single, set dealer participation rate lower than the Standard Dealer Participation Rate for particular loan types and/or channels or for all loans purchased from a particular dealership.

C. Defendant may allow dealers to include a dealer participation rate lower than the Standard Dealer Participation Rate based on a lawful exception pursuant to the fair lending policies and procedures as set forth below.

ii. To the extent Defendant allows exceptions to the Standard Dealer Participation Rate, to ensure consistency with the requirements of the ECOA, Defendant shall establish policies and procedures for those exceptions subject to the non-objection of the United States. The policies and procedures for such exceptions should include the following elements:

A. Granting Exceptions: Policies and procedures that specifically define the circumstances when Lender allows downward departures from the Standard Dealer Participation Rate.

B. Documenting Exceptions: Policies and procedures that require on a loan-by-loan basis, documentation appropriate for each specific exception that is, at a minimum, sufficient to effectively monitor compliance with the exceptions policies. Such documentation should be sufficient not only to explain the basis for granting any exception to the Standard Dealer Participation Rate, but also to provide details and/or documentation of the particular circumstances of the exception.

C. Record Retention: Policies and procedures for documentation retention requirements that, at a minimum, comply with the requirements of Regulation B.

b) Defendant will maintain general compliance management systems reasonably designed to assure compliance with all relevant federal consumer financial laws, including the ECOA.

i. This will include Defendant sending regular notices to all dealers explaining the ECOA, stating Defendant's expectation with respect to ECOA compliance, and articulating the dealer's obligation to price retail installment contracts in a non-discriminatory manner.

c) Defendant will develop and maintain a compliance management system to monitor dealer compliance with setting contracts at the Standard Dealer Participation Rate and any exceptions thereto to ensure they comply with the conditions for exceptions to the Standard Dealer Participation Rate. This will include:

i. Training to dealers about Defendant's exceptions policies and procedures;

ii. Regular monitoring of dealers' exceptions to the Standard Dealer Participation Rate, including documentation of those exceptions;

iii. Periodic audits for compliance with all policies and procedures relevant to granting exceptions to the Standard Dealer Participation Rate and to test for and identify fair lending risk; and

iv. Appropriate corrective action for a dealer's noncompliance with Defendant's exceptions policies and procedures, culminating in the restriction or elimination of dealers' ability to exercise discretion in setting a consumer's contract rate or exclusion of dealers from future transactions with Lender.

d) Defendant shall submit data on its indirect motorcycle lending portfolio to the United States, at its request, semiannually for analysis and monitoring.

Option 2:

a) Defendant will maintain policies that do not allow dealers any discretion to set the contract rate subject to the non-objection of the United States. Defendant will satisfy the requirements of this subparagraph by maintaining the non-discretionary dealer compensation policy it implemented on March 10, 2014.²

b) Defendant will maintain general compliance management systems reasonably designed to assure compliance with all relevant federal consumer financial laws, including the ECOA.

i. This will include Defendant sending regular notices to all dealers explaining the ECOA, stating Defendant's expectation with respect to ECOA compliance, and articulating the dealer's obligation to price retail installment contracts in a non-discriminatory manner.

c) Defendant will not have to review or remunerate for dealer markup disparities for African Americans or Hispanics resulting from dealer discretion in setting the contract rate, because there is no such discretion. Defendant will not have to maintain a compliance management system to monitor dealer exceptions because dealers do not have such discretion.

Option 3:

a) Dealer discretion in setting the contract rate will be limited to Defendant's limits effective on March 9, 2014.

² Specifically, this sentence refers to Defendant's policy to compensate all dealers for all motorcycle loans as described under the heading "Flat Fee Schedule" on FreedomRoad Financial's Dealer Rate Sheet with a listed effective date of March 10, 2014 and provided to the United States on August 15, 2014, and to enforce the "[n]o mark-up on rates allowed" policy listed on that Rate Sheet.

b) Defendant will implement and maintain a robust compliance management system to identify and promptly remediate fair lending risk resulting from dealer discretion in setting the contract rate. The compliance management system shall be subject to the non-objection of the United States and shall, at a minimum, include:

i. Regular notices to all dealers explaining the ECOA, stating Defendant's expectation with respect to ECOA compliance, and articulating the dealer's obligation to price retail installment contracts in a non-discriminatory manner, including in exercising discretion to set a consumer's contract rate when such discretion is permitted;

ii. Quarterly analysis of dealer-specific retail installment contract pricing data for disparities on a prohibited basis resulting from Defendant's dealer compensation policy;

iii. Quarterly and annual analysis of portfolio-wide retail installment contract pricing data for disparities on a prohibited basis resulting from Defendant's dealer compensation policy that reflects the same methods and controls the United States applied in its analytical method, unless the United States approves the use of additional controls or methodological changes proposed by Defendant;

iv. Appropriate corrective action with respect to dealers who are identified in the quarterly analysis of dealer-specific retail installment contract pricing data for disparities on a prohibited basis, or otherwise identified, culminating in the restriction or elimination of dealers' ability to exercise discretion in setting a consumer's contract rate or exclusion of dealers from future transactions with Defendant; and remuneration of affected consumers, within sixty (60) days of analysis that identifies statistically significant disparities in dealer markup on a prohibited basis within an individual dealer's transactions with Lender;

v. For Hispanics and African Americans, remuneration of affected consumers for each year of the Order, if portfolio-wide analysis described above for the preceding year identifies statistically significant dealer markup disparities for that group at the rate agreed upon by the parties. Defendant shall remunerate affected consumers using the same methods and controls the United States applied in its analytical method; and

vi. Specific timeframes and deadlines for implementation of the steps described above.

c) Defendant shall submit data on its indirect motorcycle lending portfolio to the United States, at its request, quarterly for analysis and monitoring.

3. Defendant will notify the United States within thirty (30) days of the Effective Date which one (1) of the three (3) options detailed in paragraph 2 it has chosen to implement, and it will provide the United States with copies of the adopted dealer compensation policy prior to its implementation. Within seventy-five (75) days of the Effective Date, Defendant will submit all policies, procedures and/or systems for which paragraph 2 requires Defendant to obtain the non-objection of the United States. The United States shall make a determination of non-objection or direct Defendant to make revisions. In the event that the United States directs Defendant to make revisions, Defendant shall make the revisions and resubmit the policy to the United States within ten (10) days.

4. At any time during the pendency of the Order, Defendant may revise its dealer compensation policy, including choosing a different one (1) of the three (3) options detailed in paragraph 2, so long as the revised policy conforms to one (1) of the three (3) options detailed in paragraph 2. Defendant will notify the United States at least thirty (30) days before implementing a different one (1) of the three (3) options detailed in paragraph 2, and it will

provide the United States with copies of the revised dealer compensation policy prior to its implementation. Defendant shall not implement the revised dealer compensation policy until obtaining all non-objections of the United States required by the chosen option.

IV. MONETARY PROVISIONS

5. Within thirty (30) days of the Effective Date, Defendant shall deposit into an interest-bearing escrow account three hundred ninety-five thousand dollars (\$395,000.00), which represents the amount of total consumer monetary and other damages alleged by the United States to have been caused by the practices described in the Complaint between January 1, 2011 and March 9, 2014. This will constitute the Settlement Fund. Defendant shall provide written verification of the deposit to the United States within five (5) days of depositing the funds described in this paragraph. Any interest that accrues will become part of the Settlement Fund and will be utilized and disposed of as set forth herein. Any taxes, costs, or other fees incurred by the Settlement Fund shall be paid by Defendant.

6. Within sixty (60) days of the Effective Date, Defendant shall enter into a contract retaining an Independent Settlement Administrator (“Administrator”) to conduct the activities set forth in paragraphs 8 through 15. The selection of the Administrator and the terms of the Administrator’s contract related to the Administrator’s duties pursuant to the Order shall be subject to the non-objection of the United States. Defendant shall bear all costs and expenses of the Administrator. Defendant’s contract with the Administrator shall require the Administrator to comply with the provisions of the Order as applicable to the Administrator. The Administrator’s contract shall require the Administrator to work cooperatively with Defendant and the United States in the conduct of its activities, including reporting regularly to and providing all reasonably requested information to the United States. The Administrator’s

contract shall require the Administrator to comply with all confidentiality and privacy restrictions applicable to the party who supplied the information and data to the Administrator.

7. In the event that the United States has reason to believe that the Administrator is not materially complying with the terms of its contract with Defendant, Defendant shall present for review and determination of non-objection a course of action to effectuate the Administrator's material compliance with its contract with Defendant. The United States shall make a determination of non-objection to the course of action or direct Defendant to revise it. In the event that the United States directs revisions, Defendant shall make the revisions and resubmit the course of action to the United States within thirty (30) days. Upon notification that the United States has made a determination of non-objection, Defendant shall implement the course of action. In the event that the United States and Defendant are unable to agree upon the terms of a contract or a course of action to effect the Administrator's material compliance with its contract with Defendant, the parties may present the matter to the Court. The Court shall determine whether the contract is sufficient to require the Administrator's full compliance with the provisions of the Order as applicable to the Administrator, or that the Administrator is materially complying with the terms of its contract with Defendant, and it shall direct Defendant to remedy promptly any deficiencies it finds.

8. The Administrator's contract shall require the Administrator, as part of its operations, to establish cost-free means for affected consumers to contact it, including an email address, a website, a toll-free telephone number, and means for persons with disabilities to communicate effectively, including TTY. The Administrator's contract shall require the Administrator to make all reasonable efforts to provide effective translation services to affected consumers, including but not limited to providing live English and Spanish language-speaking

operators to speak to affected consumers who call the toll-free telephone number and request a live operator, and providing Spanish language interpretations and translations for communications with affected consumers.

9. The United States shall jointly provide to the Administrator and Defendant a list of loans with consumers that the United States has determined are eligible to receive monetary relief pursuant to the Order based on the information and data provided by Defendant during the course of the United States' investigation. The total amount of the Settlement Fund shall not be altered based on the number of listed loans.

10. Within thirty (30) days after the date the United States provides the list of loans referenced in paragraph 9, Defendant will provide to the United States and the Administrator the name, most recent mailing address in its servicing records, Social Security number, and other information as requested for the primary borrower and each co-borrower (if any) on each listed loan ("Identified Borrower"). Such information and data shall be used by the United States and the Administrator only for the law enforcement purposes of implementing the Order. The total amount of the Settlement Fund shall not be altered based on the number of Identified Borrowers.

11. After receipt of all the information required to be provided by paragraph 10, the United States shall provide Defendant and the Administrator with the initial estimate of the amount each Identified Borrower will receive from the Settlement Fund. No individual, agency, or entity may request that the Court, the United States, Defendant, or the Administrator review the selection of Identified Borrowers or the amount to be received. The total amount of the Settlement Fund shall not be altered based on the amounts that Identified Borrowers receive.

12. The Administrator's contract shall require the Administrator to adopt effective methods, as requested by the United States, to confirm the identities and eligibility of, and obtain

the Release at Exhibit A from, Identified Borrowers and provide to the United States a list of Identified Borrowers whose identities and eligibility have been confirmed and from whom the Release has been obtained (“Confirmed Borrower”) within two hundred and seventy (270) days from the date the United States provides the information described in paragraph 11.

13. Within sixty (60) days after the date the Administrator provides to the United States the list of Confirmed Borrowers, the United States shall provide to the Administrator a list containing the final payment amount for each Confirmed Borrower. The total amount of the Settlement Fund shall not be altered based on the number of Confirmed Borrowers or the amounts they receive. No individual, agency, or entity may request that the Court, the United States, Defendant, or the Administrator review the final payment amounts.

14. The Administrator’s contract shall require the Administrator to deliver payment to each Confirmed Borrower in the amount determined by the United States as described in paragraph 13 within forty-five (45) days. The Administrator’s contract shall also require the Administrator to skip trace and redeliver any payment that is returned to the Administrator as undeliverable, or not deposited within six (6) months.

15. The Administrator’s contract shall require the Administrator to maintain the cost-free means for consumers to contact it described in paragraph 8 and finalize distribution of the final payments described in paragraphs 13 and 14 within twelve (12) months from the date the United States provides the list of final payment amounts to the Administrator in accordance with paragraph 13. Confirmed Borrowers shall have until that date to request reissuance of payments that have not been deposited.

16. The details regarding administration of the Settlement Fund set forth in paragraphs 6 through 15 can be modified by agreement of the United States and Defendant

without further Court approval. Payments from the Settlement Fund to Confirmed Borrowers collectively shall not exceed the amount of the Settlement Fund, including accrued interest.

17. Defendant will not be entitled to a set-off, or any other reduction, of the amount of final payments to Confirmed Borrowers because of any debts owed by the Confirmed Borrowers. Defendant also will not refuse to make a payment based on a release of legal claims or account modification previously signed by any Confirmed Borrowers.

18. In the event that the amount of redress provided to Confirmed Borrowers after the Administrator completes distribution of funds is less than the amount of the Settlement Fund (including accrued interest), Defendant is ordered to distribute all remaining money in the Settlement Fund to one or more organizations that provide services including credit counseling (including assistance in preventing repossession); legal representation of borrowers seeking to prevent repossession; financial literacy; and other related programs targeted at African-American and Hispanic potential and former motor vehicle loan borrowers (“Organization”). Before selecting the qualified Organization(s), Defendant will obtain proposals from the Organization(s) on how the funds will be used consistent with the above-stated purpose, submit such proposals to the United States, and consult with and obtain the non-objection of the United States. Defendant will submit the proposals from the Organization(s) to the United States within thirty (30) days of when the Administrator finalizes distribution of the final payments described in paragraphs 13 and 14, or twelve (12) months from the date the United States provides the list of final payment amounts to the Administrator in accordance with paragraph 13, whichever is earlier. The United States and Defendant may request modification of the proposals before approving the Organization(s). Organization(s) must not be related to Defendant.

19. The parties shall obtain the Court's approval for the Organization(s) and the amount to be distributed to each prior to distribution provided by paragraph 18. The parties shall provide the Court with information regarding how the proposed organizations meet the requirements set forth in paragraph 18. Defendant shall require each Organization to submit to the Defendant and the United States a report detailing that funds are utilized for the purposes identified in Paragraph 18 within one year after the funds are distributed and every year thereafter until the funds are exhausted.

V. EVALUATING AND MONITORING COMPLIANCE

20. For the duration of the Order, Defendant shall retain all records relating to its obligations hereunder as well as its compliance activities as set forth herein. The United States shall have the right to review and copy such records upon request, including electronic data for loans secured by motorcycles during the duration of the Order. Defendant shall also retain all consumer complaints related to its motorcycle lending alleging discrimination (whether received directly or indirectly, such as through a third party), and any responses to those complaints or requests.

21. In addition to the submission of any other plans or reports specified in the Order, Defendant shall submit semi-annual reports to the United States on its progress in completing the requirements of the Order. Each such report shall provide a complete account of Defendant's actions to comply with each requirement of the Order during the previous six (6) months, an objective assessment of the extent to which each quantifiable obligation was met, an explanation of why any particular component fell short of meeting its goal for the previous six (6) months, and any recommendations for additional actions to achieve the goals of the Order. Defendant

shall submit its first report no later than one hundred and eighty (180) days after the Effective Date, and every one hundred and eighty (180) days thereafter for so long as the Order is in effect.

VI. ADMINISTRATIVE PROVISIONS

22. The Effective Date of the Order (“the Effective Date”) shall be the date on which it is approved and entered by the Court. Unless otherwise stated herein, the remedial provisions of the Order shall be implemented within thirty (30) days of the Effective Date and shall continue throughout its term.

23. The Order shall terminate after the submission of Defendant’s sixth semi-annual report due under paragraph 21 to the United States, except that if all the actions required by paragraphs 5 through 19 have not been completed, paragraphs 5 to 19 and this Section will continue in effect until the actions required by paragraphs 5 through 19 have been completed. Notwithstanding the above, the Order may be extended further upon motion of the United States to the Court, for good cause shown.

24. Any time limits for performance fixed by the Order may be extended by mutual written agreement of the parties. Except as provided by paragraph 16, other modifications to the Order may be made only upon approval of the Court, upon motion by either party. The parties recognize that there may be changes in relevant and material factual circumstances during the duration of the Order that may impact the accomplishment of its goals. The parties agree to work cooperatively to discuss and negotiate in good faith regarding any proposed modifications to the Order resulting therefrom.

25. In the event that any disputes arise about the interpretation of or compliance with the terms of the Order, the parties will endeavor in good faith to resolve any such dispute between themselves before bringing it to the Court for resolution. The parties agree that if either

reasonably believes that the other party has failed to comply with any obligation under the Order, it will provide written notice thereof and allow a period of at least thirty (30) days to discuss a voluntary resolution of the alleged violation before presenting the matter to the Court. In the event of either a failure by Defendant to perform in a timely manner any act required by the Order or an act by Defendant in violation of any provision hereof, the United States may move the Court to impose any remedy authorized by law or equity, including attorneys' fees and costs.

26. Unless otherwise directed in writing by the United States, all submissions, requests, communications, consents, or other documents relating to the Order shall be in writing and shall be sent by overnight courier (not the U.S. Postal Service), as follows:

To the United States:

Chief
Housing and Civil Enforcement Section
Civil Rights Division,
U.S. Department of Justice,
1800 G Street NW, Suite 7002
Washington, DC 20006
Attn: DJ 188-23-38

To Defendant:

General Counsel
Evergreen Bank Group
1515 West 22nd Street, 12th Floor
Oak Brook, IL 60523

27. Except as set forth in paragraph 28, the provisions of the Order shall not bar, estop, or otherwise prevent the United States, or any federal or state agency or department, from taking any other action against Defendant.

28. Defendant's compliance with the terms of the Order shall fully and finally resolve all of Defendant's potential liability for all ECOA claims of the United States Attorney General for discriminating on the basis of race or national origin that have been or might have been

asserted by the United States Attorney General based on the practices described in the Complaint, to the extent such practices occurred prior to the Effective Date, and are known to the Department of Justice as of the Effective Date. Notwithstanding the foregoing, the practices alleged in the Complaint may be utilized by the United States in future enforcement actions against Defendant, including without limitation, to establish a pattern or practice of violations or the continuation of a pattern or practice of violations. This release shall not preclude or affect any right of the United States to determine and ensure compliance with the terms and provisions of the Order, or to seek penalties for any violations thereof.

29. The parties agree that, as of the Effective Date, litigation is not “reasonably foreseeable” concerning the matters described above. To the extent that either party previously implemented a litigation hold to preserve documents, electronically stored information, or things related to the matters described above, it is no longer required to maintain such litigation hold. Nothing in this paragraph relieves either party of any other obligations imposed by the Order.

30. The Order shall be binding on Defendant, including all its officers, employees, agents, assignees, and successors in interest, and all those in active concert or participation with any of them. In the event Defendant 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, Defendant shall obtain the written accession of the successor or assign to any obligations remaining under the Order for its remaining term with respect to the specific operations transferred or assigned. For purposes of this paragraph, the requirements relating to the transfer or assignment of “operations” do not include the transfer or assignment of portions of Defendant’s portfolio of loans to an independent third party entity.

31. Nothing in the Order will excuse Defendant's compliance with any currently or subsequently effective provision of law or order of a regulator with authority over Defendant that imposes additional obligations on it.

32. The Order is enforceable only by the parties. No person or entity is intended to be a third party beneficiary of the provisions of the Order for purposes of any civil, criminal, or administrative action, and accordingly, no person or entity may assert a claim or right as a beneficiary or protected class under the Order.

33. Each party to the Order shall bear its own costs and attorney's fees associated with this litigation.

34. The Court shall retain jurisdiction for the duration of the Order to enforce its terms, after which time the case shall be dismissed with prejudice.

SO ORDERED, this ____ day of _____, _____.

UNITED STATES DISTRICT JUDGE

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

LORETTA E. LYNCH
Attorney General

ZACHARY T. FARDON
United States Attorney
Northern District of Illinois

/s/ Vanita Gupta
VANITA GUPTA
Principal Deputy Assistant Attorney General
Civil Rights Division

/s/ Patrick W. Johnson
PATRICK W. JOHNSON
Assistant United States Attorney
Northern District of Illinois
219 South Dearborn Street
9th Floor
Chicago, Illinois 60604
Tel.: (312) 353-5327
Fax: (312) 886-3501
Patrick.Johnson2@usdoj.gov

/s/ Steven H. Rosenbaum
STEVEN H. ROSENBAUM
Chief
Civil Rights Division
Housing and Civil Enforcement Section

/s/ Jon M. Seward
JON M. SEWARD
Deputy Chief

/s/ Daniel P. Mosteller
DANIEL P. MOSTELLER
Trial Attorney
United States Department of Justice
Civil Rights Division
Housing and Civil Enforcement Section
950 Pennsylvania Avenue, N.W. – NWB
Washington, DC 20530
Tel.: (202) 514-4713
Fax: (202) 514-1116
Daniel.Mosteller@usdoj.gov

For Defendant:

/s/ Michael B. Mierzewski (by consent)
MICHAEL B. MIERZEWSKI
Arnold & Porter LLP
555 Twelfth Street, N.W.
Washington, DC 20004
Tel.: (202) 942-5995
Fax: (202) 942-5999
Michael.Mierzewski@aporter.com

EXHIBIT A

RELEASE

In consideration for the parties' agreement to the terms of the Consent Order entered by the United States District Court for the Northern District of Illinois in United States v. Evergreen Bank Group, and the payment to me of an amount not less than \$ [AMOUNT], I hereby release and forever discharge all claims, arising prior to the date of this Release, related to the facts at issue in the litigation referenced above and related to the alleged violation of the Equal Credit Opportunity Act, that I may have against Evergreen Bank Group and all related entities, parents, predecessors, successors, subsidiaries, and affiliates and all of its past and present directors, officers, agents, managers, supervisors, shareholders, and employees and its heirs, executors, administrators, successors or assigns.

Executed this _____ day of _____, 20__.

SIGNATURE: _____

PRINT NAME: _____

ADDRESS: _____