

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION

UNITED STATES OF AMERICA,)

)

Plaintiff,)

CIVIL ACTION NO. 2:13cv44

)

v.)

)

TEXAS CHAMPION BANK,)

)

Defendant.)

)

CONSENT ORDER

I. INTRODUCTION

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 Texas Champion Bank ("Texas Champion" or "the 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, Texas Champion agrees to develop and establish 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 non-discriminatory manner consistent with

the requirements of ECOA. Texas Champion also shall compensate its Hispanic borrowers of unsecured consumer loans.

There has been no factual finding or adjudication with respect to any matter alleged by the United States. Accordingly, the execution of this Order is not, and is not to be considered as, an admission or finding of any violation of ECOA by Texas Champion. Texas Champion 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 non-discriminatory 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 shall provide a resolution of the allegations of the United States in a manner consistent with Texas Champion's legitimate business interests.

II. BACKGROUND

Texas Champion is based in Alice, Texas, with corporate offices in Corpus Christi. The bank operates thirteen branches in South Texas in the area around Corpus Christi and San Antonio. As of the 2010 census, the population of Alice was approximately 19,100 and 85% Hispanic. The Corpus Christi and San Antonio Metropolitan Statistical Areas also have substantial Hispanic populations, 58% and 54% respectively. As of December 31, 2010, Texas Champion had assets of \$345.5 million and deposits of \$269.3 million. The bank is owned by Mesquite Financial Services, Inc., a one-bank holding company. Texas Champion is subject to the regulatory authority of the Federal Deposit Insurance Corporation ("FDIC").

Beginning in March 2010, the FDIC conducted an examination of the lending practices of Texas Champion to evaluate compliance with ECOA. Based on analysis of the average rates of

interest that the bank charged between 2009 and 2010 for unsecured consumer loans, the FDIC found reason to believe that Texas Champion had displayed a pattern or practice of discrimination on the basis of national origin against Hispanic borrowers. On December 6, 2010, following the examination described above, the FDIC referred the lending practices of Texas Champion 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 Texas Champion has charged higher interest rates on unsecured consumer loans to Hispanic borrowers as compared to non-Hispanic borrowers from January 1, 2006 to May 31, 2010. The Complaint alleges that during this time period, the higher rates of interest that Texas Champion charged to Hispanic borrowers for unsecured consumer loans were a result of Texas Champion's policy or practice of giving its employees broad subjective discretion in setting the interest rate for unsecured consumer loan transactions. 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 or more of Texas Champion's branch offices. The Complaint alleges that prior to June 1, 2010, Texas Champion did not properly instruct its loan officers regarding their obligation to treat prospective customers without regard to national origin, and the bank failed to supervise or monitor the performance of its loan officers effectively to provide compliance with fair lending laws. The Complaint alleges that prior to June 1, 2010, Texas Champion's policy or practice of giving its employees broad subjective discretion in handling every aspect of the unsecured consumer loan transaction was not justified by business necessity or legitimate business interests.

III. TERMS OF ORDER

1. Unless otherwise stated herein, the remedial provisions of this Order shall be implemented within ninety (90) days of the Effective Date of this Order and shall continue throughout its term. The Effective Date of this Order shall 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 all residential real estate construction financing that are owner-occupied 1-4 family mortgage loans, automobile financing, home improvement loans, mortgage loans, and unsecured consumer loans.

A. General Prohibitory Injunction

3. Texas Champion, 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. Texas Champion retains the discretion to take any additional actions that it believes are appropriate to achieve the goals of this Order. Nothing in this Order will require Texas Champion to make unsafe or unsound loans or to require loans to be originated or priced based upon the national origin of the borrower or prospective borrower.

B. Pricing Policies and Procedures

5. In 2010, Texas Champion began to develop uniform pricing policies and procedures for unsecured consumer loans. Texas Champion shall further revise these pricing policies to include the following: (1) standards for collecting applications, current financial documents, and credit reports for all borrowers for the loans covered by this Order; (2) standards for maintaining loan files for the loans covered by this Order; and (3) a uniform pricing matrix or matrices for the loans covered by this Order. Each uniform pricing matrix or matrices must set forth objective, non-discriminatory standards for determining interest rates for the loans covered by this Order and, if the bank elects to retain a discretionary element in its loan pricing, must include: (i) limits on the amount by which the interest rate may deviate, either upward or downward, from the rate as determined by the matrix or matrices; (ii) the factors that a loan officer or bank official may consider in the exercise of that discretion; (iii) a requirement that each loan file must include written documentation of the factors set forth in the pricing matrix or matrices and, where the final interest rate varies from the published rate, the factors relied on in connection with an individual loan application and how those factors affected the pricing decision; and (iv) a requirement that before an interest rate is fixed, loan officers must inform applicants in writing that the rate is determined by a variety of factors and may be negotiable within limits set by the loan policies.

6. Texas Champion will provide a copy of its revised loan pricing policies to counsel for 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 loan pricing policies to raise any objections to them, and if it raises any, the parties shall confer to resolve their differences. In the event they

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 loan pricing policies will not go into effect.

7. Texas Champion shall require all loan officers and employees who originate loans covered by this Order to comply with its pricing policies, once approved by the United States. Texas Champion also shall 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 non-discriminatory reason for any disparities between Hispanic and non-Hispanic borrowers and steps to provide 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 shall be provided to the borrower of any overcharge or the rate may be adjusted prospectively. All reviews shall be documented and kept in the loan files.

8. During the term of this Order, Texas Champion may change its loan pricing policies as set forth in paragraph 5 upon written advance notice to the United States, which shall 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 shall obtain the position of Texas Champion'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. Texas Champion shall not implement the change(s) during such a dispute.

C. Monitoring Program

9. Within ninety (90) days of the Effective Date of this Order, Texas Champion shall have in place a monitoring program designed to provide compliance with this Order. The

program shall be designed to monitor the bank's loans for potential disparities based on national origin. At a minimum, Texas Champion shall monitor the interest rates of its loan products covered by this Order. The program also shall require a quarterly review by senior managers. Each such quarterly review shall be documented and presented to Texas Champion's Board of Directors, or a committee thereof, 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, Texas Champion shall attempt to determine the reason(s) for those disparities and shall promptly take corrective action to address disparities that are not justified by a legitimate business need. Corrective action shall include, as warranted, financial remediation for borrowers, further modifications to Texas Champion's pricing policies and/or monitoring programs as appropriate, and education, discipline, or termination of employee(s). Texas Champion shall document all such disparities, determinations, and actions taken and shall 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, Texas Champion shall require the employee or branch manager to explain the non-discriminatory reason(s) for those disparities. If there is no reasonable, non-national origin-based explanation for the noted disparities, Texas Champion shall require the employee or branch manager to take prompt corrective action to address the disparities.

10. If the United States raises any objections to Texas Champion's determinations or remedial actions, the parties shall 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

11. Texas Champion shall provide a copy of the policies it utilizes to implement paragraphs 5-8 of this Order and descriptions of the monitoring programs required under paragraphs 9-10 to the United States within ninety (90) days of the Effective Date of this Order. The United States shall 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 shall obtain the position of Texas Champion'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.

E. Borrower Notices

12. Texas Champion shall 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).

13. Texas Champion shall require its employees who originate loans covered by this Order to provide to the borrower a notice of non-discrimination that provides substantially the same information as is contained in Appendix A. This disclosure shall 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 Texas Champion. This disclosure shall be made as early

as practicable but not later than the time of the loan application (unless the application is made by telephone).

F. Equal Credit Opportunity Training Program

14. Within ninety (90) days of the Effective Date of this Order, Texas Champion shall provide equal credit opportunity training to its management officials engaged in lending or who oversee loan officers, 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, Texas Champion shall 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, Texas Champion shall provide annual training to covered employees with respect to his or her responsibilities and obligations under ECOA and this Order.

15. Texas Champion shall 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 who participates in the origination of the bank's loans covered by this Order shall be provided access to a copy of this Order and given an opportunity to have any questions answered, and shall sign the acknowledgment form statement (Appendix B) within ten (10) days of beginning his or her employment in that position.

16. The content of this training program shall be approved in advance by the United States. Texas Champion shall bear all costs associated with the training.

G. Satisfaction of the United States' Claims for Monetary Relief

17. Texas Champion shall deposit in an interest-bearing escrow account the total sum of \$700,000 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 "Texas Champion Bank for the benefit of affected persons pursuant to Order of the Court in Civil Action No. [xxx]". Texas Champion shall 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 shall become part of the Settlement Fund and be utilized and disposed of as set forth herein.

18. Within thirty (30) days of the Effective Date of this Order, the United States shall request any information it believes shall assist in identifying affected persons and determining any damages. Texas Champion shall, 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 Texas Champion's control, the bank shall, within thirty (30) days of receipt of such request, supply any data in its control that identifies other parties that may have the information.

19. The United States shall, 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.

20. Within ninety (90) days of the Effective Date of this Order, the United States shall provide to Texas Champion a list of affected persons and an amount each individual shall receive from the Settlement Fund to compensate for monetary damages these persons may have suffered, subject to the conditions set forth in paragraph 21. Texas Champion shall have sixty (60) days from receipt of such list in which to review the list and the United States shall consider in good faith any issues raised by the bank.

21. 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 22-23, 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 Texas Champion 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 Texas Champion collectively to the affected persons shall not exceed the amount of the Settlement Fund, including accrued interest.

22. Texas Champion shall, no later than sixty (60) days after receiving the compensation list referred to in paragraph 20, notify each identified person eligible for compensation by a letter (using its reasonable best efforts to locate each person). The form of this letter shall be subject to the review and approval of the United States. At a minimum, the letter shall 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 shall be enclosed with the notice along with an addressed and postage-paid return envelope. Each letter shall identify the loan(s) the bank originated to the identified person. The letter shall explain the complaint resolution program referenced in paragraph 27 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. Texas Champion shall 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.

23. Texas Champion shall issue checks in the amount indicated on the compensation list to all identified persons who execute and return the releases. Texas Champion shall issue and mail such checks no later than twenty-one (21) days after the receipt of the release. Texas Champion shall 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. For the twelve (12) month period after the initial notifications are sent to affected persons pursuant to paragraph 22, Texas Champion shall provide the United States with a quarterly 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.

24. All money not distributed to allegedly affected persons from the Settlement Fund, including accrued interest, within one year of the date the initial notifications are sent to persons

deemed to be affected by the United States 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 educational programs targeted at Hispanic potential and former borrowers in communities where the Complaint alleges significant discrimination occurred against Hispanic borrowers. Recipient(s) of such funds must not be related to Texas Champion, Texas Champion's parent, or any entity owned by Texas Champion. Texas Champion shall consult with and obtain the approval of the United States in selecting recipient(s) of these funds and the amount each organization will receive.

25. The parties shall obtain the Court's approval for the organizations to receive funds and the amount to be distributed to each prior to distribution provided by Paragraph 24. The parties shall provide the Court with information regarding how the proposed organizations meet the requirements set forth in Paragraph 24. Texas Champion shall require each recipient to submit to the Court, the bank, and the United States a report detailing that funds are utilized for the purposes identified in Paragraph 24 within one year after the funds are distributed. For any recipient that does not provide such a report, Texas Champion shall require that the funds be returned to it for redistribution to the other organization(s) approved to receive funds.

26. Texas Champion shall not be entitled a set-off, or any other reduction, of the amount of payments to affected persons because of any debts owed by the identified persons. The bank also shall not refuse to make a payment based on a release of legal claims or loan modification previously signed by any affected persons.

H. Complaint Resolution Program

27. During the period of this Order, Texas Champion shall maintain a complaint resolution program to address consumer complaints alleging discrimination regarding loans originated by the bank. Documentation regarding this complaint resolution program, including documentation of individual complaints and resolutions, if any, shall be made available to the United States on a quarterly basis and included in the reports referenced in paragraph 29. This program will not review complaints concerning the Settlement Fund provided by Paragraphs 17-26. A person shall not be deemed ineligible for the complaint resolution program on the basis of having executed the release described in paragraph 21(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

28. For the duration of this Order, Texas Champion 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.

29. Within six months of the effective date of this Order, Texas Champion shall 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 shall be filed on the first anniversary of this Order. Thereafter, Texas Champion shall submit a report on each subsequent anniversary of the date of the Order for the term of the Order describing the actions taken in compliance with the provisions of the Order. The report shall 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, Texas Champion shall attach to the annual reports representative copies of training material and disseminated pursuant to this Order.

V. ADMINISTRATION

30. The Order shall terminate (a) three (3) months after the submission of Texas Champion's fourth 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.

31. 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.

32. In the event that Mesquite Financial Services, Inc. seeks to engage in a merger or sale of substantially all of its assets during the term of this Order, Texas Champion will provide written notice to the United States at the same time that notice is provided to its regulator.

33. In the event that any disputes arise about the interpretation of or compliance with the terms of this Order, the parties shall endeavor in good faith to resolve any such dispute between themselves before bringing it to this Court for resolution. The parties agree that if it either reasonably believes that the other party failed to comply with any obligation under this Order, it shall 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 Texas Champion to perform in a timely manner any act

required by this Order or an act by Texas Champion, 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.

34. The parties agree that, as of the date of the entry of this Consent Order, 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 (ESI), or things related to the matters described above, the party is no longer required to maintain such litigation hold. Nothing in this paragraph relieves either party of any other obligations imposed by this Order.

35. Nothing in this Order shall excuse the bank's compliance with any currently or subsequently effective provision of law or order of a regulator with authority over Texas Champion that imposes additional obligations on the bank.

36. Texas Champion's compliance with the terms of this Order shall 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 shall bear its own costs and attorney's fees associated with this litigation.

37. The Order does not create any third-party beneficiaries.

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

SO APPROVED AND ORDERED, this 5th day of March, 2013.

Nelva Gayle Rona
United States District Judge

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

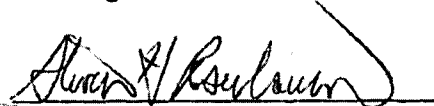
For the United States:

KENNETH MAGIDSON
United States Attorney
Southern District of Texas

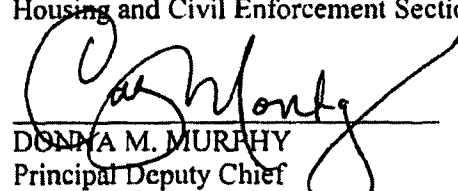


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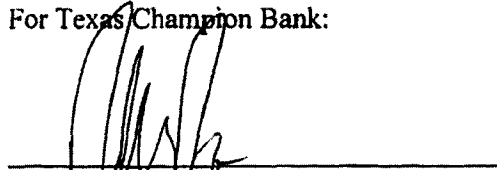


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APPENDIX A

**We do Business in Accordance with
Federal Fair Lending Laws**

**UNDER THE EQUAL CREDIT OPPORTUNITY
ACT, IT IS ILLEGAL TO DISCRIMINATE IN ANY
CREDIT TRANSACTION:**

**On the basis of race, color, national origin, religion,
sex, marital status, or age;**

Because income is from public assistance; or

**Because a right has been exercised under the Federal
Consumer Credit Protection Laws.**

**IF YOU BELIEVE YOU HAVE BEEN
DISCRIMINATED AGAINST, YOU SHOULD SEND
A COMPLAINT TO:**

**FDIC Consumer Response Center
1100 Walnut Street, Box #11
Kansas City, MO 64106
Tel.: 1-877-275-3342
<http://www.fdic.gov/consumers/>**

OR

**U.S. Department of Justice
Civil Rights Division
Housing and Civil Enforcement
Section
Washington, DC 20530
Tel: 1-800-896-7743
<http://www.usdoj.gov/crt/housing>**

APPENDIX B

Officer and Employee Acknowledgment

I acknowledge that on _____, I was provided copies of the Consent Order entered by the Court in United States v. Texas Champion Bank (S.D. Tex.), and the loan policies developed pursuant thereto. I have read and I believe that I understand these documents and have had my questions about these documents answered. I believe I understand the Bank's legal responsibilities and shall seek to assist the Bank's compliance with those responsibilities.

Signature

Print Name

Job Title

Date

APPENDIX C

Officer and Employee Training Certification

I certify that on _____, I received training with respect to my responsibilities under the Consent Order entered by the Court in United States v. Texas Champion Bank (S.D. Tex.), and the federal fair lending laws. I have had the opportunity to have my questions about them answered. I believe I understand the Bank's legal responsibilities not to discriminate under the federal fair lending laws, including the Equal Credit Opportunity Act, and shall seek to assist the Bank's compliance with those responsibilities.

Signature

Print Name

Job Title

Date

APPENDIX D

Release

In consideration for the parties' agreement to the terms of the Consent Order entered in United States v. Texas Champion Bank (S.D. Tex.), and the payment to me of \$ _____, pursuant to the Consent Order and effective upon that payment, I hereby release and forever discharge all claims, rights, remedies, and recoveries related to the facts of credit discrimination in the origination of unsecured consumer loans at issue in the matter referenced above, and release and forever discharge all claims, rights, remedies, and recoveries arising from credit discrimination alleged in that matter in connection with the origination, pricing, terms, and conditions of my loan(s), known and unknown, up to and including the date of execution of this release.

I understand that this releases those claims, rights, remedies and recoveries against Texas Champion Bank, and against any and all related entities, parents, predecessors, successors, subsidiaries, and affiliates, and against any and all of their past and present directors, officers, agents, managers, supervisors, shareholders, and employees and their heirs, executors, administrators, successors in interest, or assigns.

Executed this ____ day of _____, ____.

Signature

Print Name

Address