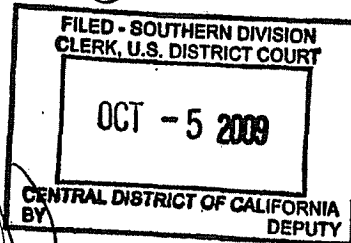


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24 Attorneys for Plaintiff

15 **IN THE UNITED STATES DISTRICT COURT**
16 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**
17 **SOUTHERN DIVISION**

17 **UNITED STATES OF AMERICA,**

18 **Plaintiff,**

19 **v.**

20 **METROPOLITAN HOME**
21 **MORTGAGE, INC.,**
22 **a corporation,**
23 **also d/b/a WHOLESALE HOME**
24 **LENDERS,**

25 **Defendant.**

SA CV09-0936-DOC(RNBx)

Civil Action No.

26 **STIPULATED FINAL JUDGMENT AND ORDER FOR CIVIL**
27 **PENALTIES,**
28 **PERMANENT INJUNCTION AND OTHER EQUITABLE RELIEF**

Plaintiff, the United States of America, acting upon notification and authorization to the Attorney General by the Federal Trade Commission ("FTC" or

Stipulated Judgment - Metropolitan

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U.S. DISTRICT COURT
CENTRAL DISTRICT OF CALIF.
LOS ANGELES
BY

1 “Commission”), is concurrently filing its Complaint herein, which alleges that
2 Defendant Metropolitan Home Mortgage, Inc., also doing business as Wholesale
3 Home Lenders has engaged in violations of the Fair Credit Reporting Act
4 (“FCRA”), 15 U.S.C. §§ 1681-1681x. Defendant has agreed to entry of this
5 Stipulated Final Judgment and Order for Civil Penalties, Permanent Injunction, and
6 Other Equitable Relief (“Order”) to resolve all matters in dispute in this action
7 without trial or adjudication of any issue of law or fact herein and without
8 Defendant admitting the truth of, or liability for, any of the matters alleged in the
9 Complaint. Defendant has waived service of the Summons and Complaint.

10 **THEREFORE, IT IS HEREBY ORDERED, ADJUDGED, AND**
11 **DECREED** as follows:

12 **FINDINGS**

- 13 1. This Court has jurisdiction over the subject matter of this case and
14 over Defendant.
- 15 2. Venue in this district is proper under 28 U.S.C. §§ 1391(b) - (c), 28
16 U.S.C. § 1395(a), and 15 U.S.C. § 53(b).
- 17 3. The Complaint states a claim upon which relief may be granted
18 against Defendant under sections 5(a), 13(b), and 16(a) of the Federal
19 Trade Commission Act, 15 U.S.C. §§ 45(a), 53(b), and 56(a);
20 sections 615 and 621 of the Fair Credit Reporting Act, 15 U.S.C. §§
21 1681m and 1681s; and the Prescreen Opt-Out Notice Rule, 16 C.F.R.
22 Part 642, promulgated pursuant to section 615(d)(2) of the FCRA, 15
23 U.S.C. § 1681m(d)(2).
- 24 4. This agreement is for settlement purposes only and does not constitute
25 an admission by Defendant that the law has been violated as alleged
26 or that any of the facts alleged, other than the jurisdictional facts, are
27

1 true. This agreement constitutes the final resolution of all the
2 allegations and claims in the complaint.

3 5. Defendant waives:

- 4 a. all rights to seek appellate review or otherwise challenge or
5 contest the validity of this Order;
6 b. any claim Defendant may have against the Commission, its
7 employees, representatives, or agents that relate to the matter
8 stated herein; and
9 c. all claims under the Equal Access to Justice Act, 28 U.S.C. §
10 2412, as amended by Pub. L. 104-121, 110 Stat. 847, 863-64
11 (1996); and (d) any rights to attorneys' fees that may arise
12 under said provision of law.

13 6. Entry of this Order is in the public interest.

14 7. For the purpose of this Order:

- 15 a. "Defendant" means Metropolitan Home Mortgage, Inc.
16 ("Metropolitan"), also doing business as Wholesale Home
17 Lenders ("Wholesale"), and its successors and assigns.
18 b. The definitions set forth in the FCRA, 15 U.S.C. §§ 1681a, *et*
19 *seq.* and the Prescreen Opt-Out Notice Rule, 16 C.F.R. Part
20 642, shall apply.

21 **ORDER**

22 **I. CIVIL PENALTY**

23 **IT IS ORDERED** that Defendant shall pay to Plaintiff, pursuant to section
24 621(a) of the FCRA, 15 U.S.C. § 1681s(a), a civil penalty in the amount of Twenty
25 Thousand Dollars (\$20,000) as follows:
26
27

1 A. Defendant shall make this payment within ten (10) business days of the date
2 of entry of this Order by electronic fund transfer or cashier's check in
3 accordance with instructions provided by the Office of Consumer Litigation,
4 Civil Division, U.S. Department of Justice, Washington, D.C. 20530, for
5 appropriate disposition.

6 B. In the event of any default in payment, which default continues for ten (10)
7 days beyond the due date of payment, the entire unpaid penalty, together
8 with interest, as computed pursuant to 28 U.S.C. § 1961, from the date of
9 default to the date of payment, shall immediately become due and payable;

10 C. This judgment represents a civil penalty owed to the United States
11 Government and is not compensation for actual pecuniary loss, and,
12 therefore, it is not subject to discharge under the Bankruptcy Code pursuant
13 to 11 U.S.C. § 523(a)(7).

14 D. Proceedings initiated under this Part to collect any unpaid civil penalty are in
15 addition to, and not in lieu of, any other civil or criminal penalties that may
16 be provided by law, including any other proceedings Plaintiff may initiate to
17 enforce this Order.

18 E. Defendant relinquishes all dominion, control, and title to the funds paid to
19 the fullest extent permitted by law. Defendant shall make no claim to or
20 demand return of the funds, directly or indirectly, through counsel or
21 otherwise.

22 **II. PROHIBITED BUSINESS ACTIVITIES**

23 **IT IS FURTHER ORDERED** that Defendant, and its officers, agents,
24 servants, employees, and all persons or entities in active concert or participation
25 with any of them, who receive actual notice of this Order by personal service or
26 otherwise, whether acting directly or through any business entity, corporation,
27

1 subsidiary, division, affiliate, or other device, in connection with the making of any
2 "firm offer of credit or insurance" as that term is defined in section 603(l) of the
3 FCRA, 15 U.S.C. § 1681a(l), are hereby permanently restrained and enjoined from
4 failing to comply with the Prescreen Opt-Out Notice Rule, 16 C.F.R. Part 642,
5 which establishes the format, type size, and manner of the notices to consumers
6 required pursuant to section 615(d) of the FCRA, 15 U.S.C. § 1681m(d), informing
7 consumers of their right to opt out of having their consumer report information
8 used to send them unsolicited offers of credit or insurance.

9 **III. COMPLIANCE MONITORING**

10 **IT IS FURTHER ORDERED** that, for the purpose of monitoring and
11 investigating compliance with any provision of this Order:

- 12 A. Within ten (10) days of receipt of written notice from a representative of the
13 Commission, Defendant shall submit additional written reports, which are
14 true and accurate and sworn to under penalty of perjury; produce documents
15 for inspection and copying; appear for deposition; and/or provide entry
16 during normal business hours to any business location in Defendant's
17 possession or direct or indirect control to inspect the business operation;
- 18 B. In addition, the Commission is authorized to use all other lawful means,
19 including but not limited to, obtaining discovery from any person, without
20 further leave of court, using the procedures prescribed by Fed. R. Civ. P. 30,
21 31, 33, 34, 36, 45 and 69; and
- 22 C. Defendant shall permit representatives of the Commission to interview any
23 employer, consultant, independent contractor, representative, agent, or
24 employee who has agreed to such an interview, relating in any way to any
25 conduct subject to this Order. The person interviewed may have counsel
26 present.

1 have complied and are complying with this Order. This report shall include,
2 but not be limited to:

- 3 1. A copy of each acknowledgment of receipt of this Order, obtained
- 4 pursuant to the Section titled "Distribution of Order;" and
- 5 2. Any other changes required to be reported under Subsection A of this
- 6 section.

7 C. Defendant shall notify the Commission of the filing of a bankruptcy
8 petition by such Defendant within fifteen (15) days of filing.

9 D. For the purposes of this Order, Defendant shall, unless otherwise directed
10 by the Commission's authorized representatives, send by overnight courier
11 all reports and notifications required by this Order to the Commission, to
12 the following address:

13 Associate Director for Enforcement
14 Federal Trade Commission
15 600 Pennsylvania Avenue, N.W., Room NJ-2122
Washington, DC 20580
RE: FTC v. Wholesale Home Mortgage

16 *Provided*, that, in lieu of overnight courier, Defendant may send such reports
17 or notifications by first-class mail, but only if Defendant contemporaneously
18 sends an electronic version of such report or notification to the Commission
19 at: DEBrief@ftc.gov.

20 E. For purposes of compliance reporting and monitoring required by this
21 Order, the Commission is authorized to communicate directly with
22 Defendant.

23 V. RECORD KEEPING PROVISIONS

24 **IT IS FURTHER ORDERED** that, for a period of eight (8) years from the
25 date of entry of this Order, Defendant and its agents, employees, officers,
26 corporations, and those persons in active concert or participation with them who
27

1 receive actual notice of this Order by personal service or otherwise, are hereby
2 restrained and enjoined from failing to create and retain the following records:

- 3 A. A copy of each separate and materially distinct written prescreened
4 solicitation sent to consumers and any related promotional materials sent to
5 consumers,
6 B. Written procedures to ensure that consumers who have opted out of
7 receiving prescreened solicitations will not receive prescreened solicitations,
8 and
9 C. All records and documents necessary to demonstrate full compliance with
10 each provision of this Order, including but not limited to, copies of
11 acknowledgments of receipt of this Order required by the Sections titled
12 "Distribution of Order" and "Acknowledgement of Receipt of Order" and all
13 reports submitted to the FTC pursuant to the Section titled "Compliance
14 Reporting."

15
16 **VI. DISTRIBUTION OF ORDER**

17 **IT IS FURTHER ORDERED** that, for a period of five (5) years from the
18 date of service of this Order, Defendant shall deliver copies of this Order as
19 directed below:

- 20 A. Defendant must deliver a copy of this Order to (1) all of its principals,
21 officers, directors, and managers; (2) all of its employees, agents, and
22 representatives who engage in conduct related to the subject matter of this
23 Order; and (3) any business entity resulting from any change in structure set
24 forth in Subsection A of the Section titled "Compliance Reporting." For
25 current personnel, delivery shall be within five (5) days of service of this
26 Order upon Defendant. For new personnel, delivery shall occur prior to
27 them assuming their responsibilities. For any business entity resulting from

1 any change in structure set forth in Subsection A of the Section titled
2 "Compliance Reporting," delivery shall be at least ten (10) days prior to the
3 change in structure.

4 B. Defendant must secure a signed and dated statement acknowledging receipt
5 of the Order, within thirty (30) days of delivery, from all persons receiving a
6 copy of the Order pursuant to this Section.

7 **VII. ACKNOWLEDGMENT OF RECEIPT OF ORDER**

8 **IT IS FURTHER ORDERED** that Defendant, within five (5) business days
9 of receipt of this Order as entered by the Court, must submit to the Commission a
10 truthful sworn statement acknowledging receipt of this Order.

11 **VIII. RETENTION OF JURISDICTION**

12 **IT IS FURTHER ORDERED** that this Court shall retain jurisdiction
13 of this matter for purposes of construction, modification, and enforcement of this
14 Order.

15 **IX. COSTS AND ATTORNEYS' FEES**

16 **IT IS FURTHER ORDERED** that each party shall bear its own costs
17 and attorneys' fees incurred in connection with this action.

18 **IT IS SO ORDERED:**

19
20 Dated this 5 day of October, 2009

21 Alward O. Carter
22

23 UNITED STATES DISTRICT JUDGE


24 The parties, by their respective counsel, hereby consent to the terms and
25 conditions of the Stipulated Order as set forth above and consent to the entry
26 thereof.
27

1 FOR THE PLAINTIFF
2 UNITED STATES OF AMERICA:

3 TONY WEST
4 Assistant Attorney General
5 Civil Division
6 United States Department of Justice

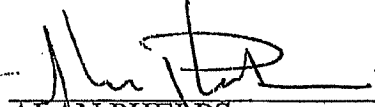
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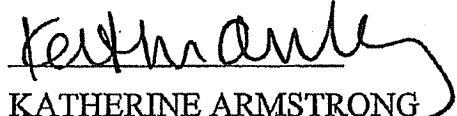
FOR THE FEDERAL TRADE COMMISSION



JESSICA RICH
Acting Associate Director
Division of Privacy and Identity Protection



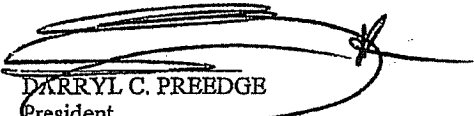
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Assistant Director
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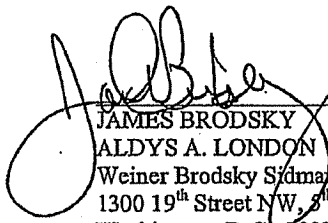
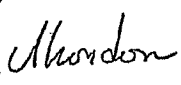


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FOR THE DEFENDANT:


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President
Metropolitan Home Mortgage, Inc.

 
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REASONS FOR SETTLEMENT

This statement accompanies the final order executed by defendant Metropolitan Home Mortgage, Inc., doing business as Wholesale Home Lenders. The final order enjoins Metropolitan Home Mortgage, Inc. from violating the Fair Credit Reporting Act's ("FCRA") Prescreen Opt-Out Notice Rule ("Prescreen Rule"). The final order also requires that entry of a judgment in the amount of \$20,000 as a civil penalty be entered against defendant for violations of the FCRA and the Prescreen Rule.

Pursuant to Section 5(m)(3) of the Federal Trade Commission Act ("FTC Act"), as amended, 15 U.S.C. § 45(m)(3), the Commission hereby sets forth its reasons for settlement by entry of a Stipulated Final Judgment and Order for Civil Penalties, Permanent Injunction, and Other Equitable Relief ("final order").

On the basis of the allegations contained in the complaint, and the statutory factors in the FCRA and the FTC Act, the Commission believes that the civil penalty judgment of \$20,000 constitutes an appropriate amount on which to base the settlement, and that the provisions enjoining defendant from violating Prescreen Rule should ensure defendant's future compliance with the law. With entry of the final order, the time and expense of litigation will be avoided.

For the foregoing reasons, the Commission believes that the settlement by entry of the attached final order is justified and well within the public interest.