UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

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| UNITED STATES OF AMERICA, | ) | |
| | ) | |
| | ) | |
| Plaintiff, | ) | CIVIL ACTION NO. SA-11-CV-488 |
| | ) | |
| | ) | |
| v. | ) | |
| | ) | |
| | ) | |
| NIXON STATE BANK, | ) | |
| | ) | |
| | ) | |
| Defendant. | ) | |
| | ) | |

**UNOPPOSED MOTION FOR ENTRY OF CONSENT ORDER**

Plaintiff, the United States of America, respectfully requests that the Court enter the Consent Order attached to this unopposed motion. In support of this request, the United States states the following:[1]

1. This Court possesses jurisdiction over this action pursuant to 28 U.S.C. § 1345 and 15 U.S.C. §1691e(h).

2. The parties seek to settle this action and consent to the Court's entry of the proposed Consent Order filed herewith.

3. The United States believes that the proposed Consent Order is a just, fair, and equitable resolution of the allegations in the Complaint, which was also filed on June 17, 2011.

[1] Counsel for Nixon State Bank has signed the proposed Consent Order on behalf of Nixon State Bank and represented that Nixon State Bank does not oppose this motion for entry of the proposed Consent Order.

WHEREFORE, the United States respectfully requests that the Court sign and enter the attached Consent Order.

Respectfully submitted,

STEVEN H. ROSENBAUM
Chief
Housing and Civil Enforcement Section
Civil Right Division

/s/Robert Shaw-Meadow
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/s/ Coty R. Miller
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**CERTIFICATE OF SERVICE**

I hereby certify that on June 17, 2011 a copy of the foregoing pleading was filed electronically with the Clerk of the Court to be served by operation of the Court's electronic filing system and also was sent via electronic mail transmission to the following counsel of record:

John Delionado
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Mellon Financial Center
1111 Brickell Avenue, Suite 2500
Miami, Florida 33131
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/s/Robert Shaw-Meadow
Assistant United States Attorney

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

| | | |
|---|---|---|
| UNITED STATES OF AMERICA, | ) | |
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| Plaintiff, | ) | CIVIL ACTION NO. SA-CV-11-488 |
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| | ) | |
| NIXON STATE 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 Nixon State Bank ("Nixon" 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, Nixon agrees to develop and establish uniform pricing policies and procedures designed to ensure 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. Nixon also will 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 Nixon. Nixon 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 will provide a resolution of the allegations of the United States in a manner consistent with Nixon's legitimate business interests.

## II. BACKGROUND

Chartered in 1906, Nixon is an independent community bank situated in the rural community of Nixon, Texas. The population of Nixon is approximately 2,186 persons, of which over 60% are Hispanic. According to the 2000 Census, the per capita income of Nixon is $10,135. Other than the original Nixon location, the bank has two other branches: one in La Vernia, Texas (estimated population 931) and one in China Grove, Texas (estimated population 1,247), which are also part of the San Antonio MSA. The Nixon and La Vernia branches are roughly the same size by assets and deposits, while the China Grove branch is approximately half the size of each of the other branches. Nixon offers a wide range of loan products, including mortgage loans, consumer loans, commercial loans, and agriculture loans. The bank originates its loans exclusively through loan officers at its three branch offices. As of September 30, 2009, the bank had total assets of $68.88 million and total equity capital of $6.65 million. Nixon is subject to the regulatory authority of the Federal Deposit Insurance Corporation ("FDIC").

Beginning in 2008, the FDIC conducted an examination of the lending practices of Nixon to evaluate compliance with ECOA. Based on analysis of the average rates of interest that Nixon charged in 2007 and 2008 for unsecured consumer loans, the FDIC found reason to believe that

Nixon had displayed a pattern or practice of discrimination on the basis of national origin against Hispanic borrowers. On April 14, 2010, following the examination described above, the FDIC referred the lending practices of Nixon 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 Nixon has charged higher interest rates on unsecured consumer loans to Hispanic borrowers as compared to non-Hispanic borrowers from at least 2006 through December 31, 2009. The Complaint alleges that prior to 2010, the higher rates of interest that Nixon charged to Hispanic borrowers for unsecured consumer loans are a result of Nixon's policy or practice of giving its employees broad subjective discretion in every aspect of the unsecured consumer loan transaction, from the information collected at the application stage to setting the interest rate. 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 of Nixon's three branch offices. The Complaint alleges that prior to 2010, Nixon did not properly instruct its loan officers regarding their obligation to treat prospective customers without regard to national origin, and the bank has failed to supervise or monitor the performance of its loan officers effectively to ensure compliance with fair lending laws. The Complaint alleges that prior to 2010, Nixon's policy or practice of giving its employees broad subjective discretion in handling every aspect of the unsecured consumer loan transaction is not justified by business necessity or legitimate business interests.

## III. TERMS OF ORDER

1. Unless otherwise stated herein, the remedial provisions of this Order will be implemented within ninety (90) days of the Effective Date of this Order and will continue

throughout its term. The Effective Date of this Order will 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 the following: auto purchase, secured (except for commercial and agricultural loans), unsecured, home purchase, home improvement, lot, construction, and certificate of deposit backed loans.

**A. General Prohibitory Injunction**

3. Nixon, 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. Nixon retains the discretion to take any additional actions that it believes are appropriate to achieve the goals of this Order.

**B. Pricing Policies and Procedures**

5. In 2009, Nixon began to develop uniform pricing policies and procedures for unsecured consumer loans. Nixon will 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 for the loans covered

by this Order. The uniform pricing matrix 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; (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 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. Nixon 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 and the United States will obtain the position of Nixon's regulator with respect to such 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. Nixon will require all loan officers and employees who originate loans covered by this Order to comply with the pricing policies, once approved by the United States. Nixon also will 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

taking steps to ensure 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 will be provided to the borrower. All reviews shall be documented and kept in the loan files.

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

**C. <u>Monitoring Program</u>**

9. Within ninety (90) days of the Effective Date of this Order, Nixon will have in place a monitoring program designed to ensure compliance with this Order. The program will be designed to monitor the bank's loans for potential disparities based on national origin. At a minimum, Nixon will monitor the interest rates of its loan products covered by this Order. The program also will require a quarterly review by senior managers. Each such quarterly review will be documented and presented to Nixon's Board of Directors 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, Nixon will attempt to determine the reason(s) for those

disparities and will promptly take corrective action to address disparities that are attributable to a policy or practice of Nixon and not justified by a legitimate business need. Corrective action will include, as warranted, financial remediation for borrowers, further modifications to Nixon's pricing policies and/or monitoring programs as appropriate, and education, discipline, or termination of employee(s). Nixon will document all such disparities, determinations, and actions taken and will 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, Nixon will 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, Nixon will require the employee or branch manager to take prompt corrective action to address the disparities.

10. If the United States raises any objections to Nixon's determinations or remedial actions, the parties will 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. <u>Notification to the United States and Right to Object</u>**

11. Nixon will 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 will 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 will

obtain the position of Nixon'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. Nixon will 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. Nixon will require its employees who originate loans covered by this Order to provide a notice of non-discrimination that provides substantially the same information as is contained in Appendix A. This disclosure will 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 Nixon. This disclosure shall be made as early as practicable but not later than the time of the loan application.

**F. Equal Credit Opportunity Training Program**

14. Within ninety (90) days of the Effective Date of this Order, Nixon will provide equal credit opportunity training to its management officials, 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, Nixon will 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, Nixon will provide annual training to covered employees with respect to his or her responsibilities and obligations under ECOA and this Order.

15. Nixon will 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 with substantive responsibility relating to the bank's loan programs covered by this Order will be provided access to a copy of this Order and given an opportunity to have any questions answered, and will 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 will be approved in advance by the United States. Nixon will bear all costs associated with the training.

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

17. Nixon will deposit in an interest-bearing escrow account the total sum of $91,600 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 "Nixon State Bank for the benefit of affected persons pursuant to Order of the Court in Civil Action No. [xxx]". Nixon will 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 will 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 will request any information it believes will assist in identifying affected persons and determining any damages. Nixon will, 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 Nixon's control, the bank will, within thirty (30) days of receipt of such request, supply any data in its control that identifies other parties that may have that the information.

19. The United States will, 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 will provide to Nixon a list of affected persons and an amount each individual will receive from the Settlement Fund to compensate for monetary damages these persons may have suffered, subject to the conditions set forth in paragraph 21. Nixon will have sixty (60) days from receipt of such list in which to review the list and the United States will 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 Nixon 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 Nixon collectively to the affected persons shall not exceed the amount of the Settlement Fund, including accrued interest.

22. Nixon will, 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 will be subject to the review and approval of the United States. At a minimum, the letter will 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 will be enclosed with the notice along with an addressed and postage-paid return envelope. Each letter will identify the loan(s) the bank originated to the identified person. The letter will explain the complaint resolution program referenced in paragraph 26 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. Nixon will 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. Nixon will issue checks in the amount indicated on the compensation list to all identified persons who execute and return the releases. Nixon will issue and mail such checks no later than twenty-one (21) days after the receipt of the release. Nixon will 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. Nixon will provide, as part of the reporting required in paragraph 28, an

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. Any moneys not distributed 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 will be distributed to qualified organization(s) that provide credit counseling, financial literacy, and other related educational programs targeted at Hispanic borrowers. Nixon will consult with and obtain the approval of the United States in selecting recipient(s) of these funds, and the parties shall obtain the Court's approval prior to distribution of the fund. To the maximum extent practicable, these funds will be directed to organizations that work with borrowers living in the San Antonio MSA, where Nixon's branches are located.

**H. <u>Complaint Resolution Program</u>**

25. During the period of this Order, Nixon will maintain a complaint resolution program to address consumer complaints alleging discrimination regarding loans originated by Nixon. Documentation regarding this complaint resolution program, including documentation of individual complaints and resolutions, if any, will be made available to the United States on a quarterly basis and included in the reports referenced in paragraph 27. A person will 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

26. For the duration of this Order, Nixon will retain all records relating to its obligations hereunder as well as its compliance activities as set forth herein. The United States will have the right to review and copy such records upon request.

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

## V. ADMINISTRATION

28. The Order will terminate (a) three (3) months after the submission of Nixon'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.

29. 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.

30. In the event that any disputes arise about the interpretation of or compliance with the terms of this Order, the parties will 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 will 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 Nixon to perform in a timely manner any act required by this Order or an act by Nixon, 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.

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

32. Nixon's compliance with the terms of this Order will 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 will bear its own costs and attorney's fees associated with this litigation.

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

SO APPROVED AND ORDERED, this ___ day of _____, 2011.

_____
UNITED STATES DISTRICT JUDGE

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

For the United States:

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United States Attorney
Western District of Texas

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Deputy Chief
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For Nixon State Bank:

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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. Nixon State Bank (W.D. Tex.), and the loan policies developed pursuant thereto. I have read and understand these documents and have had my questions about these documents answered. I believe I understand my legal responsibilities and shall comply 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. Nixon State Bank (W.D. Tex.), and the federal fair lending laws. I have had the opportunity to have my questions about them answered. I believe I understand my legal responsibilities not to discriminate under the federal fair lending laws, including the Equal Credit Opportunity Act, and shall comply 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. Nixon State Bank (W.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 litigation referenced above, and release and forever discharge all claims, rights, remedies, and recoveries arising from credit discrimination alleged in that litigation in connection with the origination 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 Nixon State 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