

FEDERAL DEPOSIT INSURANCE CORPORATION

WASHINGTON, D.C.

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	)	
In the Matter of	)	CONSENT ORDER FOR
	)	RESTITUTION AND ORDER
SEATTLE BANK	)	TO PAY CIVIL MONEY PENALTY
SEATTLE, WASHINGTON	)	
	)	
(INSURED STATE NONMEMBER BANK)	)	FDIC-11-403b
_____	)	FDIC-11-363k

The Federal Deposit Insurance Corporation (“FDIC”) is the appropriate Federal banking agency under section 3(q) of the Federal Deposit Insurance Act (“Act”), 12 U.S.C. § 1813(q), for Seattle Bank, Seattle, Washington (“Bank”).

The FDIC has reason to believe that between April 1, 2008 and March 31, 2009 (the “Covered Period”) the Bank engaged in unsafe and unsound practices and activities in violation of the Equal Credit Opportunity Act (“ECOA”), 15 U.S.C. § 1691(a)(1), and the Federal Reserve implementing regulation, 12 C.F.R. § 202.4(a) (“Regulation B”); and the Fair Housing Act (“FHA”), 42 U.S.C. § 3605, and the Department of Housing and Urban Development implementing regulation, 24 C.F.R. § 100.110, in connection with the Bank’s mortgage subsidiary, Seattle Mortgage Company (“SMC”).

The Bank, by and through its duly elected and currently acting Board of Directors (“Board”), has executed a Stipulation to the Issuance of a Consent Order for Restitution and Order to Pay Civil Money Penalty (“Stipulation”), dated September 27, 2011, that is accepted by the FDIC. With the Stipulation, the Bank has consented, without admitting or denying any charges of unsafe or unsound banking practices or violations of law or regulations, to the

issuance of this Consent Order for Restitution and Order to Pay Civil Money Penalty (collectively, “Order”) by the FDIC.

Having determined that the requirements for issuance of an order under sections 8(b) and 8(i) of the Act, 12 U.S.C. §§ 1818(b) & (i), have been satisfied, the FDIC hereby orders the Bank to take the following actions.

## **I. CONSENT ORDER FOR RESTITUTION**

### **A. Reserve Account**

Within 10 days from the date of this Order, the Bank shall reserve or deposit into a segregated deposit account (“Reserve Account”) an amount not less than \$65,000 (sixty-five thousand dollars). The Bank shall make all restitution payments required by this Order, regardless of whether the total of such payments exceeds the initial funding of the Reserve Account. Funds remaining in the Reserve Account shall revert to the Bank after all restitution payments required by this Order have been satisfied, as determined by the Regional Director of the FDIC’s San Francisco Regional Office (“Regional Director”).

### **B. Independent Certified Public Accounting Firm**

1. The Bank shall retain, at its expense, its independent certified public accounting firm (“Firm”) to determine compliance with the Restitution Plan set forth in paragraph I.C. below. The Firm shall determine compliance in accordance with the attestation standards established by the American Institute of Certified Public Accounts for agreed-upon procedures for engagements (“Attestation Standards”), and provide the reports called for in paragraph I.C.5. of this Order.

2. No later than 20 days from the issuance of this Order, the Bank shall submit the proposed agreed-upon procedures to the Regional Director for non-objection.

3. The engagement letter between the Bank and the Firm shall grant the FDIC access to the Firm's staff, work papers, and materials prepared in the course of the Firm's engagement and preparation of the reports required by this Order.

C. Restitution Plan

1. Within 60 days from the date of this Order, the Bank shall prepare a comprehensive restitution plan ("Restitution Plan) addressing the elements described in the subparagraphs below. The Bank shall submit the Restitution Plan to the Regional Director for review, comment, and non-objection prior to implementation.

2. The Restitution Plan shall require the following restitution and equitable relief for all SMC customers of Hispanic descent whose government, first-lien home purchase loans on owner-occupied 1 to 4 family site-built dwellings were originated between April 1, 2008 and March 31, 2009 ("affected borrowers"):

(a) The Bank shall provide reimbursement to affected borrowers in cash of an amount calculated as follows:

**Loan Amount** multiplied by the difference between the **Total Branch Discretionary Fees (% of Loan Amount)** for each Hispanic loan and the **Non-Hispanic White Average Total Branch Discretionary Fee (% of Loan Amount)**

(b) For all affected borrowers, the Bank shall provide an advisement of their rights under ECOA and Regulation B after obtaining the FDIC's approval on the proposed language to be used for the notification.

3. Within 30 days of receipt of non-objection from the Regional Director, the Bank shall implement the Restitution Plan. Any required cash restitution amount shall be

provided in the form of an official or Bank check or as a credit to the affected borrower's account as affected borrowers are identified. The checks and credits issued by the Bank shall not limit the consumers' rights in any way.

4. The Firm hired by the Bank pursuant to paragraph I.B. of this Order shall verify that the Bank accurately identified the affected borrowers and correctly made restitution as appropriate.

5. The Firm shall prepare a detailed written report of the processes and procedures by which the Bank determined the restitution amounts described in paragraph I.C.2. of this Order. The report shall also include the following: the total number of affected borrowers and the total amount of restitution made under the Restitution Plan. The report shall be submitted to the Regional Director for his review, comment, and non-objection within 60 days after the Bank has completed implementation of the Restitution Plan.

6. The Bank shall retain all records pertaining to the Restitution Plan, including but not limited to: documentation of the processes and procedures used to determine the affected borrowers; the names, contact, and account information of the affected borrowers; any mailing records; and any documentation that the appropriate restitution and equitable relief were made.

D. Mailing Restitution

When the Bank makes cash restitution by official or Bank check made payable to affected borrowers, it shall send the check by United States Postal Service first-class mail, address correction service requested, to the affected borrower's last address as maintained by the Bank's records. The Bank shall make reasonable attempts to obtain a current address for any affected borrower whose notification letter and/or restitution check is returned for any reason,

using standard address search methodologies, and shall promptly re-mail all returned letters and/or restitution checks to current addresses, if any. If the restitution check for any affected borrower is returned to the Bank after such second mailing by the Bank, or if a current mailing address cannot be identified using standard address search methodologies, the Bank shall retain the restitution amount of such affected borrower for a period of three-hundred sixty (360) days from the date the restitution check was originally mailed, during which period such amount may be claimed by such affected borrower upon appropriate proof of identity. After such time, these monies will be disposed of in accordance with the Restitution Plan.

## **II. CONSENT ORDER**

### **A. Additional Loan Review**

1. Within 30 days of the date of this Order, the Bank shall prepare a plan for loan analysis (“Loan Review Plan”) to determine whether any additional borrowers may have been charged higher fees on any prohibited basis as a result of the Bank’s discretionary pricing practice during the period specified in paragraph II.A.2. below. The Loan Review Plan shall also include the agreed-upon procedures that will be utilized for the analysis required by paragraph II.B. of this Order. The Bank shall submit the Loan Review Plan to the Regional Director for review comment, and non-objection prior to implementation.

2. The Loan Review Plan shall include the review and analysis of the Bank’s loan products including conventional and government home purchase, home improvement, home refinance, and manufactured housing loans originated between January 1, 2008 and September 30, 2010, as directed by the FDIC.

B. Independent Analysis of Findings

The Bank's analysis required by paragraph II.A. of this Order shall be analyzed by the Firm in accordance with the Attestation Standards, and such analysis shall be at the expense of the Bank. The FDIC shall have access to the Firm's staff, work papers, and materials prepared in the course of the Firm's engagement and preparation of the analysis required by this paragraph.

C. Report of Findings

Within 120 days of the date of this Order the Bank shall report the results of its analysis and all findings made by the Firm as well as providing the raw data used, to the Regional Director.

### **III. ORDER TO PAY CIVIL MONEY PENALTY**

It is further ordered, that by reason of the alleged unsafe and unsound practices and violations of law and regulations during the Covered Period, and after taking into account the Consent Order for Restitution, the appropriateness of the penalty with respect to the financial resources and good faith of the Bank, the gravity of the conduct by the Bank, the history of previous conduct by the Bank, and such other matters as justice may require, pursuant to section 8(i)(2) of the Act, 12 U.S.C. § 1818(i)(2), a civil money penalty of \$40,000 is assessed against the Bank. The Bank shall pay the civil money penalty to the Treasury of the United States.

### **IV. NOTIFICATION AND REPORTING REQUIREMENTS**

A. Progress Reports

On or before the 30<sup>th</sup> day after the end of every calendar quarter following the effective date of this Order, the Bank shall furnish written progress reports to the Regional Director which

detail the form and manner of any actions taken to secure compliance with this Order and the results thereof. The Bank may discontinue submitting such reports when the corrections required by this Order have been accomplished and the Regional Director has expressly released the Bank in writing from making any further reports.

B. Shareholder Notification

Following the effective date of this Order, the Bank shall send to its shareholder(s) or otherwise furnish a description of this Order in conjunction with the Bank's next shareholder communication and with its notice or proxy statement preceding the Bank's next shareholder meeting. The description shall fully describe this Order in all material respects. The description and accompanying communication, statement, or notice shall be sent to the FDIC, Accounting and Securities Section, 550 17<sup>th</sup> St. NW, Washington, D.C. 20429, at least 20 days prior to dissemination to shareholders. Any changes requested to be made by the FDIC shall be made prior to dissemination of the description, communication, notice, or statement.

**V. SAVINGS CLAUSE AND EFFECTIVE DATE OF ORDER**

The provisions of this Order shall not bar, estop, or otherwise prevent the FDIC, or any other federal or state agency or department from taking any other action against the Bank or any of the Bank's current or former institution-affiliated parties as that term is defined in section 3(u) of the Act, 12 U.S.C. § 1813(u).

This Order will become effective upon its issuance by the FDIC. The provisions of this Order shall be binding on the Bank, its institution-affiliated parties, and any successors and assigns thereof. The provisions of this Order shall remain effective and enforceable except to the

extent that, and until such time as, any provisions of this Order shall have been modified, terminated, suspended, or set aside by the FDIC.

Pursuant to delegated authority.

Dated at Washington, D.C., this 17<sup>th</sup> day of October, 2011.

/s/

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Sylvia Plunkett  
Senior Deputy Director  
Division of Depositor and Consumer Protection