

1 Katherine M. Worthman
 2 Rebecca J.K. Gelfond
 3 Shou Wang
 4 kworthman@ftc.gov; rgelfond@ftc.gov;
 5 swang@ftc.gov
 6 Federal Trade Commission
 7 600 Pennsylvania Avenue, NW
 8 Mail Stop NJ-3158
 9 Washington, DC 20580
 10 Tel: (202) 326-2764 (Worthman)
 11 Tel: (202) 326-2219 (Gelfond)
 12 Tel: (202) 326-3791 (Wang)
 13 Fax: (202) 326-3768

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8 Raymond McKown (Local Counsel)
 9 rmckown@ftc.gov
 10 California Bar No. 150975
 11 Federal Trade Commission
 12 10877 Wilshire Blvd., Ste. 700
 13 Los Angeles, CA 90024
 14 Tel: (310) 824-4325
 15 Fax: (310) 824-4380

Attorneys for Plaintiff FTC

13 Paul W. Sweeney, Jr. (SBN 112511)
 14 paul.sweeney@klgates.com
 15 Bradley W. Gunning (SBN 251732)
 16 brad.gunning@klgates.com
 17 K&L Gates LLP
 18 10100 Santa Monica Boulevard
 19 Seventh Floor
 20 Los Angeles, California 90067
 21 Telephone: 310.552.5000
 22 Facsimile: 310.552.5001

Attorneys for Defendants Golden Empire Mortgage, Inc. and Howard D. Kootstra

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

FEDERAL TRADE COMMISSION,

Plaintiff,

vs.

GOLDEN EMPIRE MORTGAGE, INC.,
et al.,

Defendants.

Case No. CV 09-03227 CAS (SHx)

**STIPULATED FINAL JUDGMENT
AND ORDER FOR PERMANENT
INJUNCTION AND OTHER
EQUITABLE RELIEF**

Assigned to Honorable Christina A.
Snyder

1 Plaintiff, the Federal Trade Commission (“FTC” or “Commission”), has filed a
2 First Amended Complaint for Permanent Injunction and Other Equitable Relief
3 (“Amended Complaint”), pursuant to Sections 5(a), 13(b), and 19 of the Federal Trade
4 Commission Act (“FTC Act”), 15 U.S.C. §§ 45(a), 53(b), and 57b; Section 704(c) of
5 the Equal Credit Opportunity Act (“ECOA”), 15 U.S.C. § 1691c(c); and Section
6 202.16(a)(2) of its implementing Federal Reserve Board Regulation B (“Regulation
7 B”), 12 C.F.R. § 202.16(a)(2).

8 The Amended Complaint alleges that Defendants Golden Empire Mortgage, Inc.
9 (“GEM” or the “Company”) and Howard D. Kootstra (the “Individual Defendant”)
10 (collectively “Defendants”) have violated Section 5(a) of the FTC Act, 15 U.S.C.
11 § 45(a), Section 701(a) of the ECOA, 15 U.S.C. § 1691(a), and Section 202.4 of its
12 implementing Regulation B, 12 C.F.R. § 202.4.

13 The parties, by and through their respective counsel, have agreed to entry of this
14 Stipulated Final Judgment and Order for Permanent Injunction and Other Equitable
15 Relief (“Order”) by this Court, without trial or adjudication of any issue of fact or law,
16 to settle and resolve all matters of dispute arising from the conduct alleged in the
17 Amended Complaint. Defendants deny that they have discriminated unlawfully.
18 Plaintiff and Defendants waive all rights to seek judicial review or otherwise challenge
19 or contest the validity of this Order, and Defendants waive any right that may arise
20 under the Equal Access to Justice Act, 28 U.S.C. § 2412.

21 The parties having requested the Court to enter this Order, it is therefore
22 ORDERED, ADJUDGED, AND DECREED as follows:

FINDINGS

- 23 1. This Court has jurisdiction over the subject matter and over the parties.
- 24 2. The Amended Complaint states a claim upon which relief may be granted
25 against Defendants under Sections 5(a), 13(b), and 19 of the FTC Act, 15 U.S.C.
26 §§ 45(a), 53(b), and 57b; and under the ECOA, 15 U.S.C. §§ 1691–1691f, and
27 Regulation B, 12 C.F.R. pt. 202.

1 3. The activities of Defendants are in or affecting commerce, as “commerce”
2 is defined in Section 4 of the FTC Act, 15 U.S.C. § 44, as amended.

3 4. GEM is a “creditor” as defined in Regulation B, 12 C.F.R. § 202.2(l). For
4 purposes of this action only, the Individual Defendant does not dispute the
5 Commission’s allegation that he is a “creditor” as defined in Regulation B.

6 5. The parties, by and through their counsel, have agreed that entry of this
7 Order resolves all matters in dispute between them arising from the facts and
8 circumstances alleged in the Amended Complaint in this action, up to the date of entry
9 of this Order.

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

ORDER

I. DEFINITIONS

11
12 For purposes of this Order:

13 1. “applicant” is synonymous in meaning and equal in scope to the definition
14 of the term in § 202.2 of Regulation B, and means any person who requests or who has
15 received an extension of credit from a creditor, and includes any person who is or may
16 become contractually liable regarding an extension of credit, including guarantors,
17 sureties, endorsers and similar parties;

18 2. “branch” means any of the offices from which GEM loan originators
19 originate loans, including GEM’s headquarters office;

20 3. “branch manager” means any GEM employee with supervisory authority
21 over any branch;

22 4. “credit transaction” is synonymous in meaning and equal in scope to the
23 definition of the term in § 202.2 of Regulation B, and means every aspect of an
24 applicant’s dealings with a creditor regarding an application for credit or an existing
25 extension of credit (including, but not limited to, information requirements;
26 investigation procedures; standards of creditworthiness; terms of credit; furnishing of
27 credit information; revocation, alteration, or termination of credit; and collection
28 procedures);

1 5. “creditor” is synonymous in meaning and equal in scope to the definition
2 of the term in § 202.2 of Regulation B, and means a person who, in the ordinary course
3 of business, regularly participates in a credit decision, including setting the terms of
4 credit; and including a creditor’s assignee, transferee, or subrogee who so participates;
5 and including a person who, in the ordinary course of business, regularly refers
6 applicants or prospective applicants to creditors, or selects or offers to select creditors
7 to whom requests for credit may be made;

8 6. “Defendants” means Defendant Golden Empire Mortgage, Inc. and
9 Defendant Howard D. Kootstra, individually, collectively, or in any combination;

10 7. “discount point” means a percentage of the total mortgage loan amount,
11 normally paid at closing, that the borrower pays to reduce the interest rate on the loan;

12 8. “ECOA” means the Equal Credit Opportunity Act, 15 U.S.C. §§ 1691–
13 1691f, as amended;

14 9. “GEM” means Golden Empire Mortgage, Inc., a corporation, and its
15 successors and assigns;

16 10. “loan” means a mortgage loan;

17 11. “loan officer” means any GEM loan originator who is not a branch
18 manager;

19 12. “Loan Officer Prices” mean the prices of mortgage loans generated by
20 GEM’s electronic pricing system; Loan Officer Prices do not vary across branches;

21 13. “loan originator” means any employee of GEM who originates mortgage
22 loans on GEM’s behalf, including but not limited to loan officers and branch
23 managers;

24 14. “mortgage loan” means any closed-end loan secured or to be secured by
25 residential real property;

26 15. “overage” means the amount by which the revenue from a loan
27 origination exceeds the Required Revenue. It is the sum, when positive, of the
28 following items which can be positive (+) or negative (–) as indicated below:

(i) the amount of branch fees above (+) or below (–) the Standard

1 Branch Fees;

2 (ii) the amount of origination fee above (+) or below (-) the Standard
3 Origination Fee;

4 (iii) the amount of Loan Officer Price above (+) or below (-) the par
5 rate;

6 (iv) any and all discount points paid by the borrower (+);

7 (v) any and all rebates or credits paid to the borrower by GEM, its
8 branch or loan originator (-);

9 (vi) any and all fees charged to an applicant by GEM, its branch or loan
10 originator that are not Standard Branch Fees, the Standard
11 Origination Fee or Pass-Through Fees (+); and

12 (vii) any and all fees paid by GEM, a branch, or loan originator to one or
13 more third parties on behalf of the applicant without reimbursement
14 from the applicant (-);

15 Nothing in the above definition shall permit the double-counting of any fees, points,
16 rebates or credits;

17 16. "Pass-Through Fee" means any fee charged to an applicant by GEM
18 which GEM paid in total to a third party for services that the third party rendered to the
19 applicant in connection with the loan origination;

20 17. "par rate" means the lowest interest rate for which no discount points are
21 required for an applicant to obtain that rate; a par rate loan has the Loan Officer Price
22 of 100;

23 18. "point" means one percent of the amount of the mortgage loan;

24 19. "Regulation B" refers to Federal Reserve Board Regulation B, 12 C.F.R.
25 pt. 202, as amended;

26 20. "Required Revenue" shall consist of the sum of the following: (1) the par
27 rate, (2) any and all Standard Branch Fees, (3) and the Standard Origination Fee;

28 21. "Standard Branch Fees" mean the two sets of standardized fees, one for
conventional loans and another for government-insured loans (*i.e.*, FHA, VA, FSA,

1 RHS), that do not vary across branches. GEM may alter Standard Branch Fees,
2 provided that the amount of Standard Branch Fees does not vary across branches;

3 22. "Standard Origination Fee" means the standardized fee that does not vary
4 across branches. Currently, GEM's Standard Origination Fee is one percent (1%) of
5 an applicant's loan amount, but GEM may alter the Standard Origination Fee, provided
6 that the Standard Origination Fee does not vary across branches;

7 23. "underage" means the amount by which the revenue from a loan
8 origination is less than the Required Revenue. It is the sum, when negative, of the
9 following items which can be positive (+) or negative (-) as indicated below:

- 10 (i) the amount of branch fees above (+) or below (-) the Standard
11 Branch Fees;
- 12 (ii) the amount of origination fee above (+) or below (-) the Standard
13 Origination Fee;
- 14 (iii) the amount of Loan Officer Price above (+) or below (-) the par
15 rate;
- 16 (iv) any and all discount points paid by the borrower (+);
- 17 (v) any and all rebates or credits paid to the borrower by GEM, its
18 branch or loan originator (-);
- 19 (vi) any and all fees charged to an applicant by GEM, its branch or loan
20 originator that are not Standard Branch Fees, the Standard
21 Origination Fee or Pass-Through Fees (+); and
- 22 (vii) any and all fees paid by GEM, a branch, or loan originator to one or
23 more third parties on behalf of the applicant without reimbursement
24 from the applicant (-);

25 Nothing in the above definition shall permit the double-counting of any fees, points,
26 rebates or credits.

26 **II. INJUNCTION**

27 **IT IS THEREFORE ORDERED** that Defendants, and each of them, their
28 successors and assigns, and their officers, agents, servants, and employees, and all

1 persons in active concert or participation with any one or more of them who receive
2 actual notice of this Order by personal service or otherwise, directly or through any
3 partnership, corporation, subsidiary, division or other device, are hereby permanently
4 restrained and enjoined from:

5 A. Engaging in any act or practice that discriminates against an applicant on
6 the basis of national origin regarding any aspect of a credit transaction, including but
7 not limited to originating, approving, or funding mortgage loans for which Hispanic
8 applicants pay higher prices than non-Hispanic White applicants in violation of the
9 ECOA or Regulation B; and

10 B. Failing otherwise to comply with the ECOA and Regulation B.

11 **III. PRICING POLICY AND PROCEDURE**

12 **IT IS FURTHER ORDERED** that, within sixty (60) days from the date of
13 entry of the Order and for a period of three (3) years thereafter, GEM and its
14 successors and assigns is hereby restrained and enjoined from:

15 A. Failing to designate a single senior manager as its fair lending compliance
16 officer;

17 B. Failing to implement Standard Branch Fees, that do not vary across
18 branches, for conventional and government-insured loans;

19 C. Charging any applicant an underage of more than one-half percent (0.5%)
20 of an applicant's loan amount; *provided that* GEM may charge an applicant an
21 underage of more than one-half percent (0.5%) of the applicant's loan amount if the
22 loan originator for that mortgage loan creates a contemporaneous written narrative
23 record of the reason(s) for the underage and causes that written record and all
24 supporting documentation to be included with GEM's records of the mortgage loan. In
25 the event that the reason is the business necessity of matching a lower competing offer,
26 the supporting documentation shall include a copy of the competing offer or a
27 contemporaneous written narrative record explaining why such documentation was not
28 obtained;

1 D. Charging any applicant an overage that is greater than one percent (1%) of
2 an applicant's loan amount;

3 E. Charging any applicant an overage of more than one-half percent (0.5%)
4 of an applicant's loan amount; *provided that* GEM may charge an applicant an overage
5 of more than one-half percent (0.5%) of the applicant's loan amount but less than one
6 percent (1%) if the loan originator for that mortgage loan (a) creates a
7 contemporaneous written narrative record of the reason(s) for the overage that
8 sufficiently describes the reason(s) for the overage and causes that contemporaneous
9 written record and all supporting documentation to be included with GEM's records of
10 the mortgage loan; and (b) obtains written and dated approval for the overage from the
11 fair lending compliance officer prior to closing; and

12 F. Failing to review, on a quarterly basis, the price of each loan originated.
13 If the overage on any loan exceeds one percent (1%) of an applicant's loan amount, the
14 excess will be refunded to the borrower. GEM also will review the required written
15 justifications for overages and underages greater than one-half percent (0.5%) of an
16 applicant's loan amount to ensure that the reason(s) for each such overage and
17 underage do not violate the ECOA or Regulation B. At the request of counsel for the
18 Commission and within thirty (30) days of the request, GEM shall produce loan files
19 of all loans that have overages or underages exceeding one-half percent (0.5%) with
20 the written documentation described in Sections III.C and III.E.

21 **IV. FAIR LENDING POLICY AND MONITORING PROGRAM**

22 **IT IS FURTHER ORDERED** that, in order to ensure GEM's uniform pricing
23 of mortgage loans in compliance with the ECOA and Regulation B, GEM is hereby
24 restrained and enjoined from failing to:

25 A. Conduct periodic fair lending monitoring analyses and reviews analyzing
26 loans originated on or after GEM's implementation of the Pricing Policy and
27 Procedure described in Section III through December 31, 2013; the initial review shall
28 be conducted on or before November 30, 2010, and subsequent reviews shall be

1 conducted at least annually, with the last review conducted on or before March 15,
2 2014;

3 B. As part of the monitoring program, conduct two separate statistical
4 analyses to identify whether GEM charged higher mortgage loan prices to Hispanic
5 applicants in violation of the ECOA or Regulation B. One analysis will examine the
6 Annual Percentage Rate (“APR”) of loans of non-Hispanic White applicants as
7 compared to the APR of loans of Hispanic applicants. The other analysis will examine
8 the overages and underages (as a percentage of loan amounts) of loans of non-Hispanic
9 White applicants as compared to Hispanic applicants.

10 For the APR analysis, GEM shall use only the following controls in its
11 statistical model:

- 12 (a) Government/conventional
- 13 (b) Refinance/purchase
- 14 (c) Owner occupancy
- 15 (d) Existence of co-applicant
- 16 (e) Loan amount
- 17 (f) Lien status
- 18 (g) Action date
- 19 (h) Credit score
 - 20 a. < 520
 - 21 b. $520 \leq \text{Credit Score} < 540$
 - 22 c. $540 \leq \text{Credit Score} < 560$
 - 23 d. $560 \leq \text{Credit Score} < 580$
 - 24 e. $580 \leq \text{Credit Score} < 600$
 - 25 f. $600 \leq \text{Credit Score} < 620$
 - 26 g. $620 \leq \text{Credit Score} < 640$
 - 27 h. $640 \leq \text{Credit Score} < 660$
 - 28 i. $660 \leq \text{Credit Score} < 680$
 - j. $680 \leq \text{Credit Score} < 700$

1 k. $700 \leq \text{Credit Score} < 720$

2 l. $720 \leq \text{Credit Score} < 740$

3 m. Credit score missing

4 (i) Documentation type

5 (j) Adjustable/fixed rate

6 (k) Existence of balloon payment

7 (l) 6 month index

8 (m) Interest-only

9 (n) Prepayment penalty

10 (o) Term

11 (p) Loan-to-value (LTV)

12 (q) Debt-to-income (DTI)

13 (r) Cashout

14 (s) Metropolitan Statistical Area (MSA) only if reflected on
investor rate sheets

15 (t) Investor

16 (u) Rate lock period

17 (v) Standard Branch Fees

18 With 60 days' notice to counsel for the Commission, GEM may add additional
19 borrower or loan characteristics as controls to the foregoing APR analysis if such
20 borrower or loan characteristics are used as factors in calculating the risk-based price
21 of the loan by GEM's investors. The notice must include evidence that GEM's
22 investors are including the proposed additional factors when calculating the risk-based
23 price of the loan.

24 For the overage/underage analysis, GEM shall use only the following
25 controls:

26 (a) Refinance/purchase

27 (b) Piggyback

28 (c) Loan amount

1 (d) Government/conventional

2 C. Submit a summary of the results of the initial and annual statistical
3 analyses identified in Section IV.B, along with copies of the data, computer programs,
4 and statistical output necessary to independently replicate those results, as well as the
5 price investors paid for each originated loan, to the Commission within thirty (30) days
6 of their completion. If such summary results reveal statistically significant disparities,
7 GEM shall make available within thirty (30) days for the Commission's inspection
8 additional materials related to the disparities at issue, including the loan-level
9 documentation of the reasons for overages and underages, as required by GEM's loan
10 pricing policy set forth in Sections III.C and III.E; and

11 D. Develop and implement policies and procedures for taking appropriate
12 remedial measures if the analyses described in Section IV.B reveal statistically
13 significant disparities in prices charged to Hispanic applicants as compared to non-
14 Hispanic White applicants that are not explained by a business necessity as reflected in
15 the loan-level documentation of the reasons for overages and underages required under
16 Sections III.C and III.E. In the event that either analysis set forth in Section IV.B
17 reveals statistically significant pricing disparities that are not explained by a business
18 necessity as reflected in the loan-level documentation of the reasons for overages and
19 underages required under Sections III.C and III.E, appropriate remedial measures shall
20 include, but are not limited to, one or more of the following: providing redress to
21 affected borrowers; providing verbal or written counseling to loan originators;
22 providing fair lending re-training; enhancing the scrutiny of loans originated by the
23 applicable branch and/or loan originator; limiting or eliminating pricing discretion at
24 the applicable branch, by the applicable loan originator, or as otherwise appropriate;
25 and terminating employment. GEM shall report within 30 days of the completion of
26 the analyses required by Section IV.B the remedial measures that it employed in
27 response to each analysis.

28 **V. FAIR LENDING TRAINING**

1 **IT IS FURTHER ORDERED** that, within ninety (90) days of the entry of this
2 Order and for a period of three (3) years from the date of entry of this Order,
3 Defendants are hereby enjoined from failing to:

4 A. Establish and implement a fair lending training program. The fair lending
5 training under the program will be conducted by an independent qualified third party.
6 The training may be presented live, by video conference, or through a computer-based
7 format;

8 B. Require all existing GEM senior corporate management, loan officers,
9 branch managers, and other personnel such as underwriters, funders, and loan
10 processors whose job responsibilities present fair lending risk to participate in and
11 complete the fair lending training program;

12 C. Require all branch managers and loan originators hired after the date of
13 this Order to receive training within forty-five (45) days of their start date. The
14 training for newly-hired branch managers and loan originators is not required to be in
15 the same format as the training for existing employees but shall cover the same
16 content;

17 D. Ensure that the fair lending training program addresses the following:

18 (i) All aspects of the prohibition against discrimination in Section
19 701(a) of the ECOA, 15 U.S.C. § 1691(a), and Section 202.4 of Regulation B, 12
20 C.F.R. § 202.4;

21 (ii) Defendants' pricing policy set forth in Section III, including but not
22 limited to the limitations on overages and underages and the required documentation of
23 the reason(s) for exceeding, where permitted, those limitations; and

24 (iii) Defendants' fair lending monitoring program and the associated
25 corrective actions set forth in Section IV; and

26 E. At the conclusion of a fair lending training session, securing from each
27 participant a signed statement acknowledging that he or she has completed the fair
28 lending training. This statement shall be substantially in the form of Appendix A (Fair
Lending Training Acknowledgment).

1 **VI. DATA INTEGRITY**

2 **IT IS FURTHER ORDERED** that, for a period of three (3) years from the date
3 of entry of the Order, Defendants are hereby enjoined from failing to establish and
4 implement, within sixty (60) days of the entry of this Order, and thereafter to
5 continuously operate and maintain a comprehensive data integrity program that is
6 designed to ensure the accuracy and completeness of the data and other information
7 that the Company collects regarding mortgage loan applicants, loan originator
8 compensation, and mortgage pricing, including the data necessary to conduct the
9 analyses identified in Section IV.B reliably and accurately. The content and
10 implementation of this program must be fully documented in writing, and Defendants
11 shall ensure that any data integrity problems that may arise are promptly and
12 thoroughly corrected.

13 **VII. CONSUMER REDRESS**

14 **IT IS FURTHER ORDERED** that:

15 A. Judgment is hereby entered jointly and severally against Defendants and
16 in favor of the FTC in the amount of five million five hundred thousand dollars
17 (\$5,500,000) as equitable monetary relief.

18 B. The judgment against Defendants shall be suspended in part and subject
19 to Section VIII of this Order, *provided that* GEM shall pay to the Commission the sum
20 of one million five hundred thousand dollars (\$1,500,000) within 10 days of the entry
21 of this Order by electronic transfer, pursuant to instructions to be provided by counsel
22 to the FTC.

23 C. All funds paid pursuant to Subsection B of this Section shall be deposited
24 into a fund administered by the Commission or its agent to be used to provide
25 equitable relief, including but not limited to consumer redress and any attendant
26 expenses for the administration of any redress fund. The FTC shall have sole
27 discretion in choosing an independent administrator to administer any redress program,
28 and in determining which borrowers are eligible for redress as well as the amounts to
be paid. If the FTC determines in its sole discretion that direct redress to borrowers is

1 wholly or partially impracticable or if funds remain after redress is completed, the
2 Commission may apply any remaining funds for such other equitable relief (including
3 consumer information remedies) as it determines to be reasonably related to
4 Defendants' practices alleged in the Amended Complaint. Any funds not used for
5 such equitable relief shall be deposited into the United States Treasury as
6 disgorgement. Defendants shall have no right to challenge the FTC's choice of
7 remedies under this Section.

8 D. In order to facilitate redress pursuant to this Section, no later than ten (10)
9 business days after the date of entry of this Order, GEM shall deliver to the Associate
10 Director for Financial Practices, Bureau of Consumer Protection, Federal Trade
11 Commission, in a compatible electronic format (as determined by counsel for the
12 Commission):

13 1. Data comprising the full name, last known mailing address, last
14 known home and work telephone numbers, entity to which the loan was sold, and loan
15 number for each Hispanic applicant who obtained a mortgage loan through GEM's
16 retail lending business during the period January 1, 2006 through December 31, 2009;
17 and

18 2. A sworn statement signed by a responsible GEM official that the
19 data constitutes true, accurate, and complete data of all such applicants in its files.

20 E. In the event that GEM defaults on any obligation to make a payment set
21 forth in this Section, the entire unpaid amount set forth in Section VII.A together with
22 interest, computed pursuant to 28 U.S.C. § 1961(a) from the date of default to the date
23 of payment, shall immediately become due and payable from Defendants.

24 Notwithstanding any other provision of this Order, Defendants agree that if GEM fails
25 to meet any payment obligation set forth in this Section, Defendants shall be liable for
26 the costs and attorneys' fees incurred by Plaintiff, the FTC, or its agents in any
27 attempts to collect amounts due pursuant to this Order.

28 F. Defendants relinquish all dominion, control, and title to the funds paid
pursuant to this Section to the fullest extent permitted by law. Defendants shall make

1 no claim to or demand for return of the funds, directly or indirectly, through counsel or
2 otherwise.

3 G. Defendants agree that the facts as alleged in the Amended Complaint filed
4 in this action shall be taken as true without further proof in any bankruptcy case or
5 subsequent civil litigation pursued by the Commission solely to enforce its rights to
6 any payment or money judgment pursuant to this Order, including but not limited to a
7 nondischargeability complaint in any bankruptcy case.

8 **VIII. RIGHT TO REOPEN**

9 **IT IS FURTHER ORDERED** that:

10 A. The FTC's agreement to this Order, requiring that the judgment be
11 suspended for less than the full amount of the judgment, is expressly premised upon
12 the truthfulness, accuracy and completeness of Defendants' financial condition, as
13 represented in Defendants' sworn financial statements, the supporting documents
14 submitted to the Commission, and compliance with Section VII of this Order. The
15 financial statements contain material information upon which the FTC relied in
16 negotiating and agreeing to this Order. If, upon motion by the FTC, this Court finds
17 that Defendants failed to disclose any material asset or materially misstated the value
18 of any asset in the financial statements described above, made any other material
19 misstatement or omission in the financial statements described above, or that
20 Defendants violated Section VII of this Order in any material respect, the Court shall
21 enter judgment in the amount of \$5.5 million dollars (\$5,500,000) in equitable
22 monetary relief against Defendants, plus interest computed at the rate prescribed in 28
23 U.S.C. § 1961(a) which shall immediately begin to accrue, less any amounts
previously paid by Defendants to the Commission. *Provided, however, that:*

- 24 1. In all other respects this Order shall remain in full force and effect
25 unless otherwise ordered by the Court; and
- 26 2. Proceedings instituted under this Section would be in addition to,
27 and not in lieu of, any other civil or criminal remedies as may be
28

1 provided by law, including any other proceedings that the FTC may
2 initiate to enforce this Order.

3 B. Each party shall bear its own costs and attorneys' fees incurred in
4 connection with any action brought pursuant to Section VIII.

5 C. For the sole purpose of any subsequent proceedings to enforce payments
6 required by this Order, including but not limited to, a non-dischargeability action filed
7 in a bankruptcy proceeding, Defendants waive any right to contest the allegations in
8 the Amended Complaint.

9 **IX. COMPLIANCE REPORTING**

10 **IT IS FURTHER ORDERED** that, in order that compliance with the
11 provisions of this Order may be monitored:

12 A. Within sixty (60) days after the date of entry of this Order, and by the
13 anniversary date of this Order for a period of three (3) years, Defendants shall provide
14 a written report to the FTC, which is true and accurate and sworn to under penalty of
15 perjury, setting forth in detail the manner and form in which they have complied and
16 are complying with this Order. This report shall include, but not be limited to:

17 1. For the Individual Defendant:

18 a. Current contact information, including permanent mailing
19 address, business address and telephone number. The Individual Defendant shall
20 notify the FTC of any changes in the Individual Defendant's contact information,
21 within ten (10) days of the date of such change;

22 b. Current employment status (including self-employment) that
23 involves mortgage lending and the Individual Defendant's ownership in any business
24 entity engaged in mortgage lending (not including GEM). The Individual Defendant
25 shall notify the FTC of any changes in the Individual Defendant's employment status
26 (including self-employment) that involves mortgage lending, and any change in the
27 Individual Defendant's ownership in any business entity engaged in mortgage lending,
28 within ten (10) days of the date of such change. Such notice shall include the name
and address of each such business that the Individual Defendant is affiliated with,

1 employed by, creates or forms, or performs services for; a detailed description of the
2 nature of the business; and a detailed description of the Individual Defendant's duties
3 and responsibilities in connection with the business or employment; and

4 2. Defendants shall notify the Commission of any changes in the
5 structure of GEM or any business entity engaged in mortgage lending that any
6 Defendant directly or indirectly controls, or has an ownership interest in, that may
7 affect compliance obligations arising under this Order, including but not limited to:
8 incorporation or other organization; a dissolution, assignment, sale, merger, or other
9 action; the creation or dissolution of a subsidiary, parent, or affiliate that engages in
10 any acts or practices subject to this Order; or a change in the business name or address,
11 at least thirty (30) days prior to such change, provided that, with respect to any
12 proposed change in the business entity about which a Defendant learns less than thirty
13 (30) days prior to the date such action is to take place, such Defendant shall notify the
14 Commission as soon as is practicable after obtaining such knowledge.

15 3. For all Defendants:

16 a. A copy of each acknowledgment of receipt of this Order,
17 obtained pursuant to the Section titled "Distribution of Order;"

18 b. Such Defendant's efforts to comply with the requirements of
19 this Order, an assessment as to the extent to which each requirement was met, and an
20 explanation as to why any particular requirement was not met; and

21 c. A copy of each signed statement acknowledging completion
22 of fair lending training, as described in Section V.

23 B. Each Defendant shall notify the Commission of the filing of a bankruptcy
24 petition by such Defendant within fifteen (15) days of filing.

25 C. For the purposes of this Order, Defendants shall, unless otherwise directed
26 by the Commission's authorized representatives, send by overnight courier all reports
27 and notifications required by this Order to the Commission, to the following address:

28 Associate Director for Enforcement

 Federal Trade Commission

1 600 Pennsylvania Avenue, N.W., Room NJ-2122

2 Washington, D.C. 20580

3 Re: **FTC v. Golden Empire Mortgage, Inc. & Howard D. Kootstra**

4 *Provided that*, in lieu of overnight courier, Defendants may send such reports or
5 notifications by first-class mail, but only if Defendants contemporaneously send an
6 electronic version of such report or notification to the Commission at:

7 DEBrief@ftc.gov

8 D. For purposes of the compliance reporting and monitoring required by this
9 Order, the Commission is authorized to communicate directly with each Defendant.
10 Defendants do not hereby waive their right to counsel in all communications with the
11 Commission.

12 **X. COMPLIANCE MONITORING**

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

15 A. Within twenty (20) days of receipt of written notice from a representative
16 of the Commission, Defendants each shall submit additional written reports, which are
17 true and accurate and sworn to under penalty of perjury; produce documents for
18 inspection and copying; appear for deposition; and provide entry during normal
19 business hours to any business location in each Defendant's possession or direct or
20 indirect control to inspect the business operation;

21 B. In addition, the Commission is authorized to use all other lawful means,
22 including but not limited to:

23 1. obtaining discovery from any person, without further leave of court,
24 using the procedures prescribed by Fed. R. Civ. P. 30, 31, 33, 34, 36, 45 and 69;

25 2. testing on behalf of the Commission wherein testers pose as
26 consumers and suppliers to Defendants, their employees, or any other entity managed
27 or controlled in whole or in part by any Defendant, without the necessity of
28 identification or prior notice; and

1 C. Defendants each shall permit representatives of the Commission to
2 interview any employer, consultant, independent contractor, representative, agent, or
3 former or current employee who has agreed to such an interview, relating in any way
4 to any conduct subject to this Order, *provided that*, advance notice is provided to
5 Defendants by the Commission prior to any such interview of Defendants' current
6 employee(s). The person interviewed may have counsel present.

7 *Provided, however, that* nothing in this Order shall limit the Commission's
8 lawful use of compulsory process, pursuant to Sections 9 and 20 of the FTC Act, 15
9 U.S.C. §§ 49, 57b-1, to obtain any documentary material, tangible things, testimony, or
10 information relevant to unfair or deceptive acts or practices in or affecting commerce
11 (within the meaning of 15 U.S.C. § 45(a)(1) and 15 U.S.C. § 1691c(c)).

12 **XI. RECORD KEEPING**

13 **IT IS FURTHER ORDERED** that, for a period of four (4) years from the date
14 of entry of this Order, Defendants and their agents, employees, officers, corporations,
15 and those persons in active concert or participation with them who receive actual
16 notice of this Order by personal service or otherwise, are hereby restrained and
17 enjoined from failing to create and retain the following records:

18 A. Personnel records accurately reflecting: the name, address, and telephone
19 number of each person employed in any capacity by such business, including as an
20 independent contractor; that person's job title or position; the date upon which the
21 person commenced work; and the date and reason for the person's termination, if
22 applicable;

23 B. Customer files containing credit transaction information concerning all
24 borrowers and applicants;

25 C. All business and accounting records and documents necessary to
26 demonstrate full compliance with each provision of this Order, including but not
27 limited to, copies of acknowledgments of receipt of this order required by the Sections
28 titled "Distribution of Order" and "Acknowledgment of Receipt of Order" and all
reports submitted to the FTC pursuant to the Section titled "Compliance Reporting;"

1 D. Complaints and refund requests (whether received directly, indirectly, or
2 through any third party) and any responses to those complaints or requests; and

3 E. Copies of all sales scripts, training materials, advertisements, or other
4 marketing materials.

5 *Provided, however, that* nothing in this Section shall relieve Defendants of their
6 obligation to preserve records under Section 202.12 of Regulation B.

7 **XII. DISTRIBUTION OF ORDER**

8 **IT IS FURTHER ORDERED** that, for a period of three (3) years from the date
9 of entry of this Order, Defendants shall deliver copies of this Order as directed below:

10 A. GEM must deliver a copy of this Order to (1) all of its principals, officers,
11 directors, and managers; (2) all of its employees, agents, and representatives who
12 engage in conduct related to the subject matter of the Order; and (3) any business
13 entity resulting from any change in structure set forth in Subsection (A)(2) of the
14 Section titled “Compliance Reporting.” For current personnel, delivery shall be within
15 five (5) days of service of this Order upon GEM. For new personnel, delivery shall
16 occur prior to them assuming their responsibilities. For any business entity resulting
17 from any change in structure set forth in Subsection (A)(2) of the Section titled
18 “Compliance Reporting,” delivery shall be at least ten (10) days prior to the change in
19 structure.

20 B. The Individual Defendant as control person: For any business engaged in
21 mortgage lending (other than GEM) that the Individual Defendant controls, directly or
22 indirectly, or in which the Individual Defendant has a majority ownership interest, the
23 Individual Defendant must deliver a copy of this Order to (1) all principals, officers,
24 directors, and managers of that business; (2) all employees, agents, and representatives
25 of that business who engage in conduct related to the subject matter of the Order; and
26 (3) any business entity resulting from any change in structure set forth in Subsection
27 A(2) of the Section titled “Compliance Reporting.” For current personnel, delivery
28 shall be within five (5) days of service of this Order upon the Individual Defendant.
For new personnel, delivery shall occur prior to them assuming their responsibilities.

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

4 C. The Individual Defendant as employee or non-control person: For any
5 business engaged in mortgage lending (other than GEM) where the Individual
6 Defendant is not a controlling person of the business but otherwise engages in conduct
7 related to the subject matter of this Order, the Individual Defendant must deliver a
8 copy of this Order to all principals and managers of such business before engaging in
9 such conduct.

10 D. Defendants must secure a signed and dated statement acknowledging
11 receipt of a copy of this Order, within thirty (30) days of delivery, from all persons
12 receiving a copy of this Order pursuant to this Section.

13 **XIII. ACKNOWLEDGMENT OF RECEIPT OF ORDER**

14 **IT IS FURTHER ORDERED** that Defendants, within five (5) business days of
15 receipt of the Order as entered by the Court, must submit to the Commission a truthful
16 sworn statement acknowledging receipt of the Order.

17 **XIV. RETENTION OF JURISDICTION**

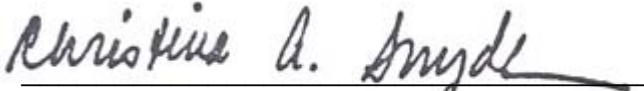
18 **IT IS FURTHER ORDERED** that this Court shall retain jurisdiction of this
19 matter for purposes of construction, modification and enforcement of this Order.

20 **XV. FINAL JUDGMENT AND ORDER**

21 The parties, by their respective counsel, hereby consent to the terms and
22 conditions of the Order as set forth above and consent to the entry thereof.

23 **SO ORDERED.**

24 Dated this 23rd day of September, 2010.

25 
26 _____
27 HONORABLE CHRISTINA A. SNYDER
28 UNITED STATES DISTRICT JUDGE

1 **SO STIPULATED AND AGREED:**

2 **FOR PLAINTIFF FEDERAL TRADE COMMISSION:**

3
4 _____ Dated: _____

5 KATHERINE M. WORTHMAN
6 REBECCA J.K. GELFOND
7 SHOU WANG
8 kworthman@ftc.gov; rgelfond@ftc.gov; swang@ftc.gov
9 Federal Trade Commission
10 Bureau of Consumer Protection
11 Division of Financial Practices
12 600 Pennsylvania Avenue, NW
13 Mail Stop NJ-3158
14 Washington, D.C. 20580
15 Tel: (202) 326-2000
16 Fax: (202) 326-3768

17 *Attorneys for Plaintiff FTC*

1 **FOR DEFENDANTS GOLDEN EMPIRE MORTGAGE, INC. AND HOWARD**
2 **D. KOOTSTRA:**

3 _____ Dated: _____

4 HOWARD D. KOOTSTRA, individually and
5 on behalf of Golden Empire Mortgage, Inc.

6 _____ Dated: _____

7 PAUL W. SWEENEY, JR.
8 BRADLEY W. GUNNING

9 *Admitted Pro Hac Vice*

10 PAUL F. HANCOCK
11 K&L Gates LLP
12 Wachovia Financial Center, Suite 3900
200 South Biscayne Boulevard
Miami, FL 33131
Telephone: 305.539.3300
Facsimile: 305.358.7095

13 ELENA GRIGERA BABINECZ
14 K&L Gates LLP
Four Embarcadero Center, Suite 1200
San Francisco, CA 94111
15 Telephone: 415.882.8200
16 Facsimile: 415.882.8220

17 MELISSA SANCHEZ MALPASS
18 K& L Gates LLP
1601 K Street NW
Washington, D.C. 20006
19 Telephone: 202.778.9000
Facsimile: 202.778.9100

20 *Attorneys for Defendants Golden Empire Mortgage, Inc. & Howard D. Kootstra*

APPENDIX A

Fair Lending Training Acknowledgment

I acknowledge that on _____, 20____, I received fair lending training with respect to my responsibilities under the Stipulated Final Judgment and Order for Permanent Injunction and Other Equitable Relief entered by the Court in *Federal Trade Commission v. Golden Empire Mortgage, et al.*, (C.D. Cal.), and the federal and applicable state fair lending laws. I have had the opportunity to have my questions about them answered. I understand my legal responsibilities not to discriminate under the federal fair lending laws, including the Equal Credit Opportunity Act and Regulation B, and shall comply with those responsibilities.

Signature

Print Name

Job Title

Date