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FILED - SOUTHERN DIVISION  
CLERK, U.S. DISTRICT COURT  
OCT - 5 2009  
CENTRAL DISTRICT OF CALIFORNIA  
BY

*[Handwritten signature]*

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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  
19 **Plaintiff,**  
20  
21 **v.**  
22 **METROPOLITAN HOME**  
23 **MORTGAGE, INC.,**  
24 **a corporation,**  
25 **also d/b/a WHOLESALE HOME**  
26 **LENDERS,**  
27 **Defendant.**

**SA CV09-0936-DOC(RNBx)**

**Civil Action No.**

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

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

Stipulated Judgment - Metropolitan

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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:

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

#### 7                                   **IV. COMPLIANCE REPORTING**

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

- 10 A.     For a period of five (5) years from the date of entry of this Order, Defendant  
11 shall notify the Commission of any change in structure or any business  
12 entity that Defendant directly or indirectly controls, or has an ownership  
13 interest in, that may affect compliance obligations arising under this Order,  
14 including but not limited to: incorporation or other organization; a  
15 dissolution, assignment, sale, merger, or other action; the creation or  
16 dissolution of a subsidiary, parent, or affiliate that engages in any acts or  
17 practices subject to this Order; or a change in the business name or address,  
18 at least thirty (30) days prior to such change, *provided that*, with respect to  
19 any proposed change in the business entity about which Defendant learns  
20 less than thirty (30) days prior to the date such action is to take place, such  
21 Defendant shall notify the Commission as soon as practicable after obtaining  
22 such knowledge.
- 23 B.     One hundred eighty (180) days after the date of entry of this Order and  
24 annually thereafter for a period of five (5) years, Defendant shall provide a  
25 written report to the FTC, which is true and accurate and sworn to under  
26 penalty of perjury, setting forth in detail the manner and form in which they  
27

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  
16 Washington, DC 20580  
17 RE: FTC v. Wholesale Home Mortgage

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

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

#### 25 **V. RECORD KEEPING PROVISIONS**

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

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 Alavid O. Carter

22  
23 UNITED STATES DISTRICT JUDGE

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

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

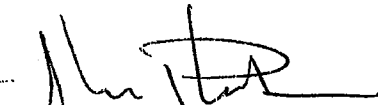
7 THOMAS P. O'BRIEN  
8 United States Attorney  
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10 LEE WEIDMAN  
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24 EUGENE M. THIROLF  
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26 Office of Consumer Litigation

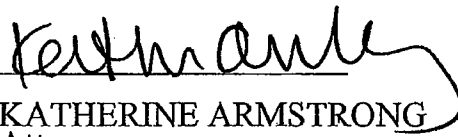
27 KENNETH L. JOST  
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1 FOR THE FEDERAL TRADE COMMISSION

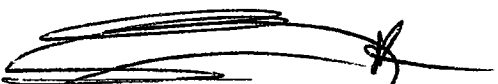
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3   
4  
5 JESSICA RICH  
6 Acting Associate Director  
7 Division of Privacy and Identity Protection

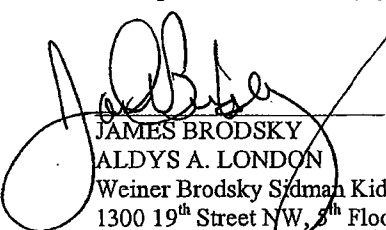
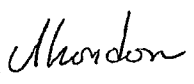
8  
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10 REBECCA E. KUEHN  
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FOR THE DEFNDANT:

  
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President  
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ALDYS A. LONDON  
Weiner Brodsky Sidman Kider PC  
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Washington, D.C. 20036  
Tel: (202) 628 2000  
Fax: (202) 628 2011

## 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.