

OCC AA-EC-2016-27

The OCC intends to order Respondent to reimburse the Bank for losses in the amount of one million six hundred thousand dollars (\$1,600,000). Moreover, after taking into account the financial resources and any good faith of the Respondent, the gravity of the violations, the

history of previous violations, and such other matters as justice may require, as required by 12 U.S.C. § 1818(i)(2)(G), and after soliciting and giving full consideration to Respondent's views, the Comptroller of the Currency ("Comptroller") hereby assesses a civil money penalty in the amount of one hundred seventy-five thousand dollars (\$175,000) against Respondent, pursuant to the provisions of 12 U.S.C. § 1818(i). This penalty is payable to the Treasurer of the United States.

The hearing afforded Respondent shall be open to the public unless the Comptroller, in his discretion, determines that holding an open hearing would be contrary to the public interest.

In support of this Notice of Charges for Prohibition and Restitution and Notice of Assessment of Civil Money Penalty ("Notice"), the OCC charges the following:

ARTICLE I

JURISDICTION

At all times relevant to the charges set forth below:

- (1) The Bank is an "insured depository institution" as defined in 12 U.S.C. § 1813(c)(2).
- (2) Respondent was a director and officer of the Bank, and was an "institution-affiliated party" of the Bank as that term is defined in 12 U.S.C. § 1813(u), having served in such capacity within six (6) years from the date hereof. *See* 12 U.S.C. § 1818(i)(3).
- (3) The Bank is a national banking association within the meaning of 12 U.S.C. § 1813(q)(1)(A), and is chartered and examined by the OCC. *See* 12 U.S.C. § 1 *et seq.*
- (4) Accordingly, the OCC is the "appropriate Federal banking agency" as that term is defined in 12 U.S.C. § 1813(q) and is therefore authorized to initiate and maintain this

prohibition, restitution, and civil money penalty action against Respondent pursuant to 12 U.S.C. § 1818(b), (e), and (i).

ARTICLE II

BACKGROUND

Background at the Bank

(5) The Bank is a wholly-owned subsidiary of Waupaca Bancorporation, Inc. (“WBC”), a bank holding company that owns no other insured depository institutions.

(6) Since at least 2010, the Bank’s headquarters has been located in Wisconsin, and the Bank’s branches have been located in Wisconsin and Texas.

(7) During at least 2010 through September 2012, the Bank had ten directors on its Board of Directors (“Board”). In or around September 2012, an eleventh director joined the Bank’s Board.

(8) As of December 31, 2010, the Bank’s total assets were approximately \$747 million.

(9) As of December 31, 2015, the Bank’s total assets were approximately \$548 million.

(10) On June 7, 2013, the Bank entered into a Formal Agreement with the OCC (“Formal Agreement”) as a result of the OCC’s identification of “unsafe or unsound practices and violations of regulations relating to credit administration practices, appraisals and valuations, the allowance for loan and lease loss methodology, information technology, and risk monitoring at the Bank.”

(11) On December 17, 2014, the Bank entered into a Consent Order with the OCC (“Consent Order”), which replaced the Formal Agreement, as a result of “unsafe or unsound banking practices relating to asset quality and management, violations of law and regulation, and for the failure to comply with the Formal Agreement.” The Consent Order included provisions that required the Board to develop an action plan addressing “procedures to ensure that Consolidated Reports of Condition and Income (“Call Reports”) and other regulatory reports are accurate”; to develop a compensation program that is “market-based, reasonable, and proportionate to the services rendered”; and to adopt a conflict of interest policy that addressed the “avoidance of conflicts of interest and breaches of fiduciary duty,” the “disclosure of actual and potential conflicts of interest to the Board,” “parameters for the reimbursement of expenses claimed by executive officers or directors,” and “policies and procedures on the use of Bank-guaranteed or Bank-issued credit cards for use by Insiders or Directors, including a proscription on the use of such cards for expenses unrelated to the Bank or for non-Insiders should the Bank establish Bank-guaranteed or Bank-issued credit cards.”

Respondent’s Duties and Responsibilities at the Bank

(12) Respondent served as a Director, President, and CEO of the Bank uninterrupted from August 1979 through May 31, 2016.

(13) Respondent served as Chairman of the Bank uninterrupted from 2005 through May 2016.

(14) In his roles, Respondent was obligated to comply with all applicable laws and regulations, to ensure an effective system of internal controls, and to otherwise carry out his duties and responsibilities in a safe and sound manner.

- (15) In his roles, Respondent owed fiduciary duties of care and loyalty to the Bank.
- (a) The fiduciary duty of care required that Respondent act in good faith, with the care an ordinarily prudent person in a like position would exercise under similar circumstances, and in a manner reasonably believed to be in the best interest of the Bank, and ensure the Bank's compliance with laws and regulations.
- (b) The fiduciary duty of loyalty required that Respondent disclose material information to the Bank's Board and refrain from engaging in self-dealing at the expense of the Bank. The duty of loyalty further required Respondent to disclose the existence, nature, and extent of any conflicts of interest with the Bank, refrain from discussing, voting, or having any other involvement on matters where Respondent had a conflict of interest, and to place the interests of the Bank ahead of Respondent's own personal interests at all times.

Respondent's Influence at the Bank

- (16) As of December 31, 2013, Respondent, his wife, and his family together owned approximately 20 percent of WBC's stock.
- (17) Respondent and his wife alone owned approximately 18 percent of WBC's stock.
- (18) In 2013, the Bank engaged an outside consultant to conduct a management study. The outside consultant's report for this study is dated October 28, 2013 ("2013 Promontory Report").
- (19) The 2013 Promontory Report stated that Respondent was "the dominant influence in all aspects of Bank operations," Respondent's decisions were "rarely challenged credibly by other executive members of the Bank," and Respondent's "prior resistance to acknowledging and

implementing separation of duties and traditional controls has exposed the Bank to elevated risk.”

(20) On October 31, 2007, Respondent signed a document entitled “Director Agreement” on behalf of both WBC and himself.

(21) The Director Agreement stated that a two-thirds affirmative vote was required for Respondent’s employment at the Bank or WBC to be terminated or for Respondent’s salary to be reduced at either the Bank or WBC.

(22) During at least January 2010 through December 2013, Respondent proposed memberships for Board committees.

(23) The Board generally approved Respondent’s proposals with regard to Board committee memberships.

(24) During at least 2013, Respondent was a member of eleven of the fifteen Board committees.

(25) Respondent also attended the meetings of the audit committee, one of the four Board committees of which he was not a member.

(26) In June 2013, Respondent hired his son-in-law as Controller at the Bank and Respondent’s future successor.

(27) The Board did not vote to approve Respondent’s son-in-law as Respondent’s future successor prior to Respondent hiring his son-in-law.

(28) Respondent did not talk to or interview other candidates for the position of Respondent’s future successor before selecting his son-in-law.

(29) Respondent’s son-in-law was the third-highest paid employee at the Bank even though he had never been employed as an officer or director of an insured depository institution.

(30) Respondent's son-in-law left the Bank and moved back to Texas in 2014.

(31) Respondent caused the Bank to purchase his son-in-law and daughter's house in Wisconsin.

(32) Respondent allowed his daughter to work for the Bank remotely after she moved to Texas, even though she had full-time employment elsewhere.

(33) Respondent's daughter's annual salary from the Bank in 2014 was approximately \$80,000. Respondent's daughter's annual salary from the Bank subsequently decreased to \$60,000.

Bank-Paid Personal Expenses

(34) Beginning some time prior to 2009, the Bank paid some personal expenses of directors, officers, and employees in addition to their normal salary and bonus ("Bank-paid personal expenses"). The Bank-paid personal expenses included, but were not limited to, personal travel at the Bank's expense.

(35) The Board did not have a written policy concerning Bank-paid personal expenses until late 2014.

(36) Respondent determined which directors, officers, and employees received Bank-paid personal expenses.

(37) Respondent incurred and caused the Bank to pay some of his personal expenses.

(38) Respondent incurred and caused the Bank to pay him more Bank-paid personal expenses than he provided any other director, officer, or employee at the Bank.

ARTICLE III

RESPONDENT CAUSED THE BANK TO PAY HIM EXCESSIVE COMPENSATION

(39) This Article repeats and realleges all previous Articles in this Notice.

(40) During at least October 2010 through December 2013, the Bank's executive compensation committee, a Board committee, was responsible for determining salaries and bonuses for executive officers, including Respondent.

(41) Following action by the executive compensation committee, the Board then approved the Bank's overall salary and bonus expense as part of the budgeting process.

(42) During the relevant period, the executive compensation committee was comprised of five Bank directors.

(43) During at least October 2010 through December 2013, only one member of the executive compensation committee was an independent outside director free from conflicts of interest.

(44) The other four members of the executive compensation committee were: Respondent; the Executive Vice President of the Bank who reported directly to Respondent; Director A; and Director B.

(45) In May 2010, Director A and her husband loaned approximately \$900,000 to Respondent.

(46) In January 2012, Director A's husband additionally loaned approximately \$2 million to Respondent.

(47) During May 2010 through at least December 2014, these loans were outstanding.

(48) Neither Respondent nor Director A disclosed their lending relationship to the executive compensation committee or the Board until 2014 or later.

(49) Director B was the Bank's legal officer until his retirement in July 2009.

(50) Respondent arranged for Director B to continue to receive a reduced salary from the Bank following his retirement until at least October 2014.

(51) The other directors on the Board were not aware that Director B continued to receive a salary until October 2014.

(52) During at least 2010 through 2012, Respondent caused the Bank to provide Bank-paid personal expenses to all members of the executive compensation committee, primarily in the form of Bank-paid personal travel.

(53) Bank-paid personal expenses were not part of Board directors' normal compensation.

(54) During at least 2010 through 2012, Respondent did not disclose to the Board that these directors received Bank-paid personal expenses.

(55) During at least 2010 through 2013, Respondent knew that the executive compensation committee was not made up of individuals who were independent and disinterested in decisions related to Respondent's compensation.

(56) During at least 2010 through 2013, Respondent did not disclose to the Board that the executive compensation committee was not made up of individuals who were independent and disinterested in decisions related to Respondent's compensation.

(57) During at least 2010 through 2013, Respondent failed to ensure that the executive compensation committee was made up of individuals who were independent and disinterested in decisions related to Respondent's compensation.

(58) During at least October 2010 through December 2013, Respondent proposed what salary and bonus he should be paid, presented those amounts to the executive compensation committee, and participated in any committee discussions.

(59) During at least October 2010 through December 2013, Respondent voted on his own compensation as a member of the executive compensation committee.

(60) During at least October 2010 through December 2013, Respondent voted on his own compensation as a Board member during the budgeting process.

(61) For the years 2010 through 2014, Respondent's compensation included:

<u>Year</u>	<u>Base Salary</u>	<u>Bonus</u>	<u>Total</u>
2010	\$548,000	\$100,000	\$648,000
2011	\$600,000	\$100,000	\$700,000
2012	\$650,000	\$175,000	\$825,000
2013	\$700,000	-	\$700,000
2014	\$700,000	-	\$700,000
Total (2010-2014)	\$3,198,000	\$375,000	\$3,573,000

(62) In addition to his salary and bonuses, Respondent received Bank-paid benefits, including but not limited to:

- (a) Board membership and Board committee membership fees, which totaled \$59,500 in 2013;
- (b) One hundred (100) percent match to the Bank's 401(k) plan;
- (c) Use of a new Bank-owned vehicle every three years (in or around 2011, the Bank provided Respondent with a Cadillac Escalade purchased for approximately \$86,565), the Bank's payment of insurance, fuel, and maintenance of the vehicle, and the Bank's transfer of the vehicle's title to Respondent upon the Bank's purchase of a new Bank-owned vehicle for Respondent's use;

- (d) Provision of two cell phones, three iPads, and plans for these devices costing approximately \$500 per month during 2010 through 2013;
- (e) Waupaca Country Club membership; and
- (f) The Bank's payment of approximately \$8,051 of Respondent's personal legal expenses associated with an OCC enforcement action against Respondent based on Respondent's actions as a director of another national bank. Following regulatory criticism, Respondent repaid the Bank.

(63) During at least 2010 through 2013, Respondent also incurred and caused the Bank to pay additional personal expenses.

(64) During the years 2010 through 2013, Respondent received Bank-paid personal expenses in annual amounts totaling at least:

<u>Year</u>	<u>Bank-Paid Personal Expenses</u>
2010	\$159,253
2011	\$260,287
2012	\$698,503
2013	\$502,470
Total (2010-2013)	\$1,620,514

(65) During at least October 2010 through December 2013, Respondent did not disclose his additional Bank-paid personal expenses to the executive compensation committee or the Board.

(66) During at least October 2010 through December 2013, Respondent failed to ensure that his Bank-paid personal expenses were considered when his compensation was determined by the executive compensation committee or the Board.

(67) Respondent's total compensation in 2010, 2011, 2012, 2013, and 2014, as described in Paragraphs (61) and (64), totaled at least \$5,193,514.

(68) An independent compensation study, dated October 29, 2013 (“TTG Compensation Study”), stated “pay levels are generally considered to be competitive if they fall within a reasonable proximity to the market, in general +/- 20%.”

(69) The TTG Compensation Study found that Respondent’s 2013 compensation deviated beyond this range. The study, which did not consider Respondent’s Bank-paid personal expenses or other benefits, found that Respondent’s 2013 base salary was 85 percent above the market 75th percentile base salary (\$377,886).

(70) During at least 2010 through 2013, Respondent engaged in fraudulent acts and omissions, breaches of trust and his fiduciary duty, and insider abuse with regard to the Bank.

(71) Based on the factors enumerated in 12 C.F.R. Part 30, Appendix A, Respondent’s compensation in 2011, 2012, and 2013, was unreasonable and disproportionate to the services performed, and was excessive.

(72) By reason of the foregoing conduct described in this Article, Respondent recklessly engaged in unsafe or unsound practices in conducting the affairs of the Bank and/or breached his fiduciary duties to the Bank. Respondent also acted with personal dishonesty and a willful and continuing disregard for the safety or soundness of the Bank that constituted a pattern of misconduct, during an extended period of time, that caused the Bank loss and from which he received a benefit.

ARTICLE IV

RESPONDENT CAUSED THE BANK TO PAY HIS PERSONAL EXPENSES

(73) This Article repeats and realleges all previous Articles in this Notice.

(74) During at least 2010 through 2013, Respondent caused the Bank to pay his personal expenses.

(75) During at least 2010 through 2013, Respondent's Bank-paid personal expenses totaled at least \$1,620,514.

(76) Respondent's Bank-paid personal expenses are separate from and in addition to legitimate business expenses incurred by Respondent and paid for by the Bank.

(77) Respondent also failed to provide the Bank with proper documentation to support the characterization of his business expenses as business expenses.

(78) Failure to properly document business expenses hinders and impedes the review of whether expenses were business expenses, and may result in the categorization of personal expenses as business expenses.

(79) During at least 2010 through 2013, the Bank's Board did not approve in advance the provision of Bank-paid personal expenses.

(80) During at least 2010 through 2013, Respondent did not obtain prior approval from the Board, or an independent person in the Bank authorized by the Board to approve Bank-paid personal expenses, prior to incurring and causing the Bank to pay some of his personal expenses.

Reporting Bank-Paid Personal Expenses to the Board

Annual Miscellaneous Expense Letters

(81) Historically, the Board received an annual letter, around September of each year, reporting on the Bank's miscellaneous expenses ("Miscellaneous Expense Letter"). These letters were usually one or two pages in length.

(82) During at least 1987 through 2000, Respondent drafted, signed, and provided the Miscellaneous Expense Letters to the Board.

(83) During 2001 through 2013, the Bank's Cashier drafted, signed, and provided the annual Miscellaneous Expense Letter to the Board.

(84) The Miscellaneous Expense Letters submitted by the Bank's Cashier during 2001 through 2013 were similar to the Miscellaneous Expense Letters previously submitted by Respondent.

(85) The Miscellaneous Expense Letters submitted by the Bank's Cashier stated they included "a summary of various items that could be called miscellaneous expenses, which is the combination of conventions and meetings, public and business promotions, and sundry expenses."

(86) At least some of the expenses listed in the Miscellaneous Expense Letters were business expenses.

(87) The Miscellaneous Expense Letters submitted by the Bank's Cashier during 2010 through 2013 listed five categories: (1) Entertainment, Trips, and Waupaca Country Club, (2) Candy, (3) Schools and Meetings, (4) Business Deposit Slips, and (5) Miscellaneous.

(88) The Miscellaneous Expense Letters included only an aggregate dollar amount for each of the five categories and an approximate total.

(89) The Miscellaneous Expense Letters submitted by the Bank's Cashier stated "these expenses, in many cases, benefit only the employees or officers, or sometimes the directors. They provide little or no direct benefit to the bank, and must be looked at as an additional compensation."

(90) The Miscellaneous Expense Letters submitted by the Bank's Cashier during 2010 through 2013 did not include details on Bank-paid personal expenses, what those Bank-paid

personal expenses were, the volume of Bank-paid personal expenses, the recipients of Bank-paid personal expenses, or the nature of recipients' Bank-paid personal expenses.

(91) In an April 9, 2013, report issued by the Bank's external auditor, the external auditor discussed these Miscellaneous Expense Letters: "Management presented us with copies of letters reporting these expenditures to the Board on an annual basis. Although there was a level of reporting of these expenses, the reporting is not typical of what we see in similar instances."

(92) The approximate totals of expenses listed in the Miscellaneous Expense Letters submitted by the Bank's Cashier during 2010 through 2013 were \$489,838, \$361,964, \$701,021, and \$649,686, respectively.

(93) The annual Miscellaneous Expense Letters submitted during at least 2010 through 2013 only listed expenses paid year to date in that calendar year.

(94) Because the Miscellaneous Expense Letters were generally submitted in either August or September of each year, the Miscellaneous Expense Letters submitted to the Board during at least 2010 through 2013 did not include any Bank-paid personal expenses paid in the fourth quarter.

(95) During at least 2010 through 2013, fourth quarter Bank-paid personal expenses were not separately approved by the Board.

(96) During at least 2010 through 2013, when the annual Miscellaneous Expense Letters were submitted to the Board, Respondent failed to disclose additional details about the Bank-paid personal expenses covered by the letters.

(97) Respondent did not disclose that he benefited from Bank-paid personal expenses when the Miscellaneous Expense Letters were submitted to the Board.

(98) During at least 2010 through 2013, Respondent voted to approve the Bank-paid personal expenses contained in the annual Miscellaneous Expense Letters, many of which were his own.

(99) During at least 2010 through 2013, the other directors who voted to approve the annual Miscellaneous Expense Letters did not know the volume or nature of Respondent's Bank-paid personal expenses when they voted to approve the annual Miscellaneous Expense Letters.

(100) Other than the annual Miscellaneous Expense Letters, there were no Board approvals of Bank-paid personal expenses until March 2013.

Monthly Expense Reports

(101) In addition to the annual Miscellaneous Expense Letters, a monthly expense report was provided to the Board as a part of the package of materials provided to the directors prior to each monthly Board meeting.

(102) The monthly expense report covered the Bank's monthly expenses, including Bank-paid personal expenses.

(103) The monthly expense reports did not identify Bank-paid personal expenses, what those Bank-paid personal expenses were, the volume of Bank-paid personal expenses, the recipients of Bank-paid personal expenses, or the nature of recipients' Bank-paid personal expenses.

(104) During at least 2010 through 2013, when the monthly expense reports were submitted to the Board, Respondent failed to disclose additional details about the Bank-paid personal expenses covered by the reports.

(105) Respondent did not disclose that he benefited from Bank-paid personal expenses when the monthly expense reports were submitted to the Board.

(106) During at least 2010 through 2013, the other directors did not know the volume or nature of Respondent's Bank-paid personal expenses when they reviewed the monthly expense reports.

March 2013 Prior Approval

(107) In March 2013, the Bank's internal auditor submitted a letter to the Board that discussed Bank-paid personal expenses ("Internal Auditor Letter").

(108) In the Internal Auditor Letter, the Bank's internal auditor stated he "did some research to make sure there that there was nothing nefarious in the activities in question."

(109) In the Internal Auditor Letter, the Bank's internal auditor recommended authorizing Respondent in advance to disburse Bank-paid personal expenses. The letter recommended the range of \$750,000 to \$1 million.

(110) In the Internal Auditor Letter, the Bank's internal auditor did not recommend instituting any controls over the Respondent's disbursement of this range of funds, including controls over the Respondent incurring and causing the Bank to pay some of his personal expenses.

(111) The Internal Auditor Letter did not contain details on Bank-paid personal expenses, what those Bank-paid personal expenses were, the volume of Bank-paid personal expenses, each of the recipients of Bank-paid personal expenses, or the nature of recipients' Bank-paid personal expenses.

(112) Following receipt of the Internal Auditor Letter, the Board voted to approve authorizing Respondent in advance to disburse \$750,000 to \$1 million for Bank-paid personal expenses.

(113) The Board did not institute controls over the Respondent's provision of Bank-paid personal expenses, even to himself.

(114) When the Board considered the Internal Auditor Letter and its recommendation, Respondent did not disclose additional details about the Bank-paid personal expenses he provided himself or others.

(115) At the time of the vote, the other directors did not know the volume or nature of Respondent's Bank-paid personal expenses.

(116) Respondent voted to approve the motion to authorize himself to provide \$750,000 to \$1 million in Bank-paid personal expenses, even though he would receive some of those Bank-paid personal expenses.

(117) Respondent drafted the Internal Auditor Letter. He then instructed the internal auditor, who reported to him, to review and submit the letter to the Board.

(118) Respondent did not disclose to the Board his role in creating the Internal Auditor Letter.

(119) The Bank's internal auditor also assisted the Bank's Cashier in overseeing the implementation and operations of the Bank-paid personal expenses.

(120) Respondent did not disclose to the Board the fact that he provided Bank-paid personal expenses to the Bank's internal auditor. For example, the internal auditor and his wife went to the Bahamas in March 2013, the same month the internal auditor submitted the Internal Auditor Letter to the Board.

(121) Respondent did not disclose to the Board the fact that he awarded the Bank's internal auditor \$1,000 in cash from Bank funds the same day the internal auditor submitted the Internal Auditor Letter.

Respondent's Bank-Paid Personal Expenses

Bank's Payment of Respondent's Personal Expenses Charged to Credit Cards

(122) During at least December 2009 through December 2013, the Bank provided corporate credit cards to Respondent.

(123) During at least December 2009 through December 2013, Respondent charged or caused to be charged personal expenses to Bank-issued and personal credit cards.

(124) Respondent caused the Bank to pay credit card bills that included charges for Respondent's Bank-paid personal expenses.

(125) In 2010, Respondent's Bank-paid personal expenses included the Bank's payment of approximately \$159,253 of Respondent's personal expenses through its payment of credit card bills. The majority of Respondent's personal expenses related to personal travel for Respondent, his wife, and his family.

(126) Examples of personal travel in 2010 that Respondent caused the Bank to pay through its payment of credit card bills include, but are not limited to:

(a) Respondent charged to his Bank-issued credit card \$26,097 in personal expenses when he and his wife traveled to Tucson, AZ in January and February 2010. Expenses on this trip include, but are not necessarily limited to, \$4,222 for airfare and \$21,874 for lodging at Canyon Ranch, a luxury resort.

(b) Respondent charged to Bank-issued credit cards \$21,629 in personal expenses when he and his wife traveled to San Antonio, TX, Houston, TX, Dallas, TX, and Tucson, AZ in March and April 2010. Expenses on this trip include, but are not necessarily limited to, \$5,924 for airfare, \$4,229 for lodging in San

Antonio and Houston, \$7,570 for lodging at Canyon Ranch, and \$3,007 for a rental car, limousines, and taxicabs.

(c) Respondent charged to his Bank-issued credit cards \$15,350 in personal expenses when he and his wife traveled to New York, NY and Charlotte, NC in May and June 2010. Expenses on this trip include, but are not necessarily limited to, \$3,178 for airfare, \$8,356 to stay at the Mandarin Oriental in New York, and \$3,600 for event tickets and restaurants in New York.

(d) Respondent charged to his Bank-issued credit card \$19,091 in personal expenses when he and his wife traveled to Orlando, FL in November 2010. Expenses on this trip include, but are not necessarily limited to, \$3,014 for airfare and \$16,076 for lodging and entertainment at Walt Disney World Resorts.

(127) Respondent did not provide a written business justification or supporting documentation for these 2010 Bank-paid personal expenses when they were incurred or paid.

(128) Respondent did not seek or obtain Board approval for these 2010 Bank-paid personal expenses prior to making the charges or having the Bank pay the credit card bills.

(129) Respondent never disclosed details about the Bank's payment of these 2010 Bank-paid personal expenses to the Board.

(130) In 2011, Respondent's Bank-paid personal expenses included the Bank's payment of approximately \$258,257 of Respondent's personal expenses through its payment of credit card bills. The majority of Respondent's personal expenses related to personal travel for Respondent, his wife, and his family.

(131) Examples of personal travel in 2011 that Respondent caused the Bank to pay through its payment of credit card bills include, but are not limited to:

- (a) Respondent charged to his Bank-issued credit card \$12,182 in personal expenses when he and his wife traveled to Chicago, IL and New York, NY in January 2011. Expenses on this trip include, but are not necessarily limited to, \$4,535 for airfare, \$982 for lodging at the Four Seasons in Chicago, and \$6,537 for lodging at the Trump International Hotel in New York.
- (b) Respondent charged to his Bank-issued credit cards \$35,017 in personal expenses when he and his wife traveled to Tucson, AZ and Los Angeles, CA in January and February 2011. Expenses on this trip include, but are not necessarily limited to, \$7,249 for airfare, \$16,682 for lodging at Canyon Ranch in Tucson, and \$10,854 for lodging at the J.W. Marriott and lodging and concierge services at the Ritz Carlton in Los Angeles.
- (c) Respondent charged to his Bank-issued credit card \$33,142 in personal expenses when he and his wife traveled to Chicago, IL and New York, NY in April 2011. Expenses on this trip include, but are not necessarily limited to, \$3,510 for airfare, \$4,147 for lodging at the Four Seasons, restaurants, and theater tickets in Chicago, and \$25,485 for lodging at the Mandarin Oriental, restaurants, and theater tickets in New York.
- (d) Respondent charged to his Bank-issued credit card \$14,794 in personal expenses when he, his wife, and five additional family members traveled to Houston, TX in May 2011. Expenses on this trip include, but are not necessarily limited to, \$9,615 for airfare, \$3,162 for lodging, and \$2,015 for a rental car and limousine services.

(e) Respondent charged to his Bank-issued credit card \$47,228 in personal expenses when he and his wife traveled to Tanzania, Charlotte, NC, Dallas, TX, and New York, NY in October and November 2011. Expenses on this trip include, but are not necessarily limited to, \$20,746 for airfare, \$16,164 for lodging and a luxury travel company's services in Tanzania, and \$9,499 for lodging at Trump International Hotel in New York, NY.

(132) Respondent did not provide a written business justification or supporting documentation for these 2011 Bank-paid personal expenses when they were incurred or paid.

(133) Respondent did not seek or obtain Board approval for these 2011 Bank-paid personal expenses prior to making the charges or having the Bank pay the credit card bills.

(134) Respondent never disclosed details about the Bank's payment of these 2011 Bank-paid personal expenses to the Board.

(135) In 2012, Respondent's Bank-paid personal expenses included the Bank's payment of approximately \$637,503 of Respondent's personal expenses through its payment of credit card bills. The majority of Respondent's personal expenses related to personal travel for Respondent, his wife, and his family.

(136) Examples of personal travel in 2012 that Respondent caused the Bank to pay through its payment of credit card bills include, but are not limited to:

(a) Respondent charged to his Bank-issued credit cards \$21,237 in personal expenses when he and his wife traveled to Tucson, AZ in February 2012.

Expenses on this trip include, but are not necessarily limited to, \$5,215 for airfare and \$14,626 for lodging at the Canyon Ranch.

(b) Respondent charged to his Bank-issued credit card and personal credit card \$147,986 in personal expenses when he, his son-in-law, two additional family members, the Respondent's pastor, Director B, and a Bank employee traveled to Tanzania in February 2012. Expenses on this trip include, but are not necessarily limited to, \$84,478 for airfare, \$55,602 for safari expenses, and \$7,888 for travel insurance.

(c) Respondent charged to his Bank-issued credit card \$47,522 in personal expenses when he, his wife, and twelve additional family members traveled to St. Maarten in April 2012. Expenses on this trip include, but are not necessarily limited to, \$13,259 for airfare, \$27,856 for lodging in villas in St. Maarten, and \$5,280 for lodging at the Ritz-Carlton in Grand Cayman;

(d) Respondent charged to his Bank-issued and personal credit card \$236,251 in personal expenses when he, his wife, six additional family members, and Director A and her husband traveled to Tanzania in October 2012. Expenses on this trip include, but are not necessarily limited to, \$93,560 for airfare, \$124,845 for safari expenses, and \$16,210 for travel insurance.

(e) Respondent charged to his Bank-issued credit card \$109,037 in personal expenses when he, his wife, nine additional family members, Bank Director C and his wife, and two friends traveled to New York, NY in November and December 2012. Expenses on this trip include, but are not necessarily limited to, \$13,579 for airfare, \$82,500 for lodging at the Trump International Hotel and Phillips Club, \$8,067.11 for meals, \$2,270.78 for shopping and event tickets, and \$2,620.04 for limousine services.

(137) Respondent did not provide a written business justification or supporting documentation for these 2012 Bank-paid personal expenses when they were incurred or paid.

(138) Respondent did not seek or obtain Board approval for these 2012 Bank-paid personal expenses prior to making the charges or having the Bank pay the credit card bills.

(139) Respondent never disclosed details about the Bank's payment of these 2012 Bank-paid personal expenses to the Board.

(140) In 2013, Respondent's Bank-paid personal expenses included the Bank's payment of approximately \$175,790 of Respondent's personal expenses through its payment of credit card bills. The majority of Respondent's personal expenses related to personal travel for Respondent, his wife, and his family.

(141) Examples of personal travel in 2013 that Respondent caused the Bank to pay through its payment of credit card bills include, but are not limited to:

(a) Respondent charged to his Bank-issued credit cards \$13,161 in personal expenses when he and his wife traveled to Orlando, FL, Houston, TX, and Dallas, TX in December 2012 and January 2013. Expenses on this trip include, but are not necessarily limited to, \$4,248 for airfare, \$6,241 for lodging at Disney, and \$2,559 for a rental car, limousine services, and a taxi.

(b) Respondent charged to his Bank-issued credit card and to his wife's and his daughter's personal credit cards \$93,637 in personal expenses when he, his wife, and four additional family members traveled to Grand Cayman and New York, NY in March and April 2013. Expenses on this trip include, but are not necessarily limited to, \$13,937 for airfare, \$43,150 for lodging at the Ritz-Carlton

in Grand Cayman, \$34,349 for lodging at the Trump International Hotel in New York, and \$1,645 for shopping, food, and childcare services in New York.

(142) Respondent did not provide a written business justification or supporting documentation for these 2013 Bank-paid personal expenses when they were incurred or paid.

(143) Respondent did not seek or obtain Board approval for these 2013 Bank-paid personal expenses prior to making the charges or having the Bank pay the credit card bills.

(144) Respondent never disclosed details about the Bank's payment of these 2013 Bank-paid personal expenses to the Board.

(145) Respondent caused the Bank to pay at least \$1,230,834 of his Bank-paid personal expenses during at least December 2009 through December 2013 by causing his personal expenses to be charged to a credit card and having the Bank pay the credit card bill.

(146) The Miscellaneous Expense Letters submitted during at least 2010 through 2013 did not include details about the Bank's payment of credit card bills containing Respondent's personal expenses. The letters did not describe the volume or nature of Respondent's personal expenses.

(147) During at least 2010 through 2013, the other directors who voted to approve the annual Miscellaneous Expense Letters did not know the volume or nature of Respondent's personal expenses charged to credit cards and paid by the Bank when they voted to approve the annual Miscellaneous Expense Letters.

Bank's Disbursement of Cash to Respondent

(148) On multiple occasions during at least 2010 through 2013, Respondent caused the Bank to disburse him cash.

(149) In 2011, Respondent caused the Bank to disburse him at least \$2,000 in cash.

(150) In 2012, Respondent caused the Bank to disburse him at least \$26,000 in cash.

(151) In 2013, Respondent caused the Bank to disburse him at least \$5,750 in cash.

(152) During at least 2010 through 2013, Respondent caused the Bank to disburse him at least \$33,750 in cash.

(153) Respondent knew that the cash would be disbursed from Bank funds, not his personal accounts.

(154) Respondent did not provide a written business justification or supporting documentation for these cash disbursements when they were made.

(155) Respondent did not seek or obtain Board approval prior to causing these cash disbursements to be made.

(156) Respondent never disclosed to the Board that the Bank disbursed cash to him.

(157) Respondent never disclosed to the Board that cash disbursements were a form of Bank-paid personal expenses.

(158) The Miscellaneous Expense Letters submitted during at least 2010 through 2013 did not include details about the Bank's disbursement of cash to Respondent. The letters did not describe the volume, frequency, or purpose of these cash disbursements.

(159) During at least 2010 through 2013, the other directors who voted to approve the annual Miscellaneous Expense Letters did not know the volume, frequency, or purpose of these cash disbursements when they voted to approve the annual Miscellaneous Expense Letters.

Bank's Payment of Respondent's Medical Expenses

(160) On March 20, 2012, Respondent received \$35,000 from the Bank to reimburse Respondent for personal medical expenses.

(161) Respondent did not provide a written business justification or supporting documentation for the payment of his medical expenses.

(162) Respondent did not seek or obtain Board approval prior to the Bank's payment of his personal medical expenses.

(163) Respondent never disclosed to the Board that the Bank paid these expenses.

(164) Respondent never disclosed to the Board that the payment of his medical expenses were a form of Bank-paid personal expenses.

(165) The Miscellaneous Expense Letters submitted during at least 2010 through 2013 did not include details about the Bank's payment of Respondent's personal medical expenses.

(166) During at least 2010 through 2013, the other directors who voted to approve the annual Miscellaneous Expense Letters did not know the Bank paid for Respondent's personal medical expenses.

Bank's Payment of Respondent's Personal Income Taxes Resulting from Bank-Paid Personal Expenses

(167) During at least 2010 through 2012, the Bank treated Bank-paid personal expenses as a non-deductible business expense that was not taxable income to the individual.

(168) On April 9, 2013, the Bank's external auditor issued a report stating "Our audit procedures found the Company [Bank] was paying certain business and trip expenses for various employees, directors, and some community members which were being classified as nondeductible by the Bank for tax purposes. Although these expenses were classified as nondeductible, those expenses which could not be substantiated for business purposes but were essentially payment of additional benefits to the employees and directors were not correctly reported for tax purposes as taxable compensation to those individuals."

(169) In 2013, the Bank issued amended W-2 or 1099 forms to the individuals, including Respondent, who had received Bank-paid personal expenses in 2010, 2011, and 2012.

(170) In March 2013, Respondent sent a memo to affected individuals and the Board stating that the Bank would be providing revised W-2s or 1099s to individuals who received Bank-paid personal expenses in 2012. In this memo, Respondent stated “it is my intention to accrue for enough extra expenses so as to cover the taxes on fringe benefits [the Bank-paid personal expenses] . . . these taxes will be reported in the fringe benefit letter [the Miscellaneous Expense Letter] the board will receive sometime in the 4th quarter of this year.”

(171) In June 2013, Respondent sent a letter to affected individuals and the Board stating that the Bank would be providing revised W-2s or 1099s to individuals who received Bank-paid personal expenses in 2010 and 2011. In this letter, Respondent stated “It is my intention to accrue for enough expenses as to cover the taxes on the 2013 fringe benefits [Bank-paid personal expenses], and distribute those checks. The amount of these taxes will be reported in the fringe benefit letter [Miscellaneous Expense Letter] the board will receive sometime in the 4th quarter of this year.”

(172) Respondent caused the Bank to pay personal income taxes for many, but not all, of the recipients of Bank-paid personal expenses who had incurred personal income taxes as a result of those Bank-paid personal expenses.

(173) On July 30, 2013, Respondent caused the Bank to provide him \$320,930 to pay his personal income taxes resulting from the characterization of his Bank-paid personal expenses as taxable income.

(174) Respondent did not seek or obtain Board approval prior to the Bank’s payment of his personal income taxes.

(175) The September 30, 2013, Miscellaneous Expense Letter submitted to the Board did not indicate that the Bank had paid Respondent's income taxes resulting from the Bank-paid personal expenses or contain details on the Bank's payment of individuals' income taxes, such as recipients or dollar amounts.

(176) Respondent did not provide details about the Bank's payment of his personal income taxes when the September 30, 2013, Miscellaneous Expense Letter was submitted to the Board.

(177) The other directors who voted to approve the September 30, 2013, Miscellaneous Expense Letter did not know the amount the Bank paid for Respondent's personal income taxes resulting from Respondent's receipt of Bank-paid personal expenses.

* * *

(178) During at least 2010 through 2013, Respondent caused the Bank to provide him with at least \$1,620,000 in Bank-paid personal expenses:

Expense Type	2010	2011	2012	2013	Total
Credit Card	\$159,253	\$258,287	\$637,503	\$175,790	\$1,230,834
Cash	-	\$2,000	\$26,000	\$5,750	\$33,750
Other Expenses	-	-	\$35,000	-	\$35,000
Taxes	-	-	-	\$320,930	\$320,930
Annual Totals	\$159,253	\$260,287	\$698,503	\$502,470	\$1,620,514

(179) By reason of the foregoing conduct described in this Article, Respondent recklessly engaged in unsafe or unsound practices in conducting the affairs of the Bank; breached his fiduciary duties to the Bank; and/or engaged in a violations of law and regulation, including 18 U.S.C. § 656. Respondent also acted with personal dishonesty and a willful and continuing disregard for the safety or soundness of the Bank that constituted a pattern of misconduct, during an extended period of time, that caused the Bank loss and from which he received a benefit.

ARTICLE V

RESPONDENT CAUSED FALSE ENTRIES IN THE BANK'S BOOKS AND RECORDS

(180) This Article repeats and realleges all previous Articles in this Notice.

Respondent Caused Material Errors in the Bank's Call Reports

(181) For each calendar quarter in 2010, 2011, 2012, and 2013, the Bank filed a Call Report.

(182) The Call Reports for these quarters categorized the Bank-paid personal expenses as a Bank operating expense on Line 7d of Schedule RI instead of as a salary expense on Line 7a of Schedule RI.

(183) The categorization of Bank-paid personal expenses on Line 7d instead of Line 7a caused the Bank's Call Reports to be materially inaccurate.

(184) The categorization of Bank-paid personal expenses on Line 7d caused the Call Reports, which were public filings, to understate the Bank's salary expenses.

(185) Respondent knew that the Bank-paid personal expenses were compensation.

(186) Respondent controlled the distribution of Bank-paid personal expenses.

(187) Respondent was involved in determining salary and bonuses for all Bank employees and approving that amount as part of the budget process.

(188) Respondent was aware of the Bank's overall compensation expense.

(189) Respondent knew, or should have known, that the amount of compensation reported on Line 7a of the Bank's Call Reports was understated and materially inaccurate.

(190) Respondent reviewed, signed, and certified most of the Bank's Call Reports filed during this period as true and correct to the best of his knowledge and belief.

Respondent Caused the Bank to Book Bank-Paid Personal Expenses Contrary to the Requirements of GAAP

(191) Respondent caused the Bank to accrue for Bank-paid personal expenses on a monthly basis rather than directly expense Bank-paid personal expenses to the Bank's profit and loss at the time the expenses were paid.

(192) Regardless of the amount the Bank actually spent on Bank-paid personal expenses, the Bank's books and records showed a fixed amount of Bank-paid personal expenses.

(193) Accruing for the Bank-paid personal expenses was not in accordance with Generally Accepted Accounting Principles ("GAAP").

(194) On at least one occasion, Respondent caused the Bank's accrual account to have a negative balance.

(195) On February 20, 2012, the Bank's Cashier paid the \$61,079 outstanding balance on the Respondent's personal credit card.

(196) On February 27, 2012, the Bank received a statement in the amount of \$146,035 for one of Respondent's Bank-issued credit cards.

(197) On February 27, 2012, the Bank's Cashier sent Respondent an email asking if the expenses on the second credit card statement were banking or personal, and indicated that the two month accrual (the year to date accrual) for Bank-paid personal expenses was used to pay the \$61,079 credit card statement.

(198) On February 29, 2012, Respondent replied to the Cashier's email with three emails. The first email stated "Please pay." The second email stated "Use the accrual accounts, and level off over 6 months or so." The third email stated "O [sic] know the accounts will go negative."

(199) Following receipt of Respondent's instructions, the Cashier paid the second credit card bill and increased the accrual over the next six months to cover the cost of the bill.

(200) Allowing the accrual account to go negative meant that the full amount of the second credit card bill would not show up on the Bank's bottom line in the profit and loss at the time of the expense.

(201) Allowing the accrual account to go negative resulted in the Bank's books and records, including records presented to the Board, understating the amount of Bank-paid personal expenses.

(202) By reason of the foregoing conduct described in this Article, Respondent recklessly engaged in unsafe or unsound practices in conducting the affairs of the Bank; breached his fiduciary duties to the Bank; and/or engaged in a violations of law and regulation, including 12 U.S.C. § 161 and 18 U.S.C. § 1005. Respondent also acted with personal dishonesty and a willful and continuing disregard for the safety or soundness of the Bank that constituted a pattern of misconduct, during an extended period of time, that caused the Bank loss and from which he received a benefit.

ARTICLE VI

LEGAL BASES FOR REQUESTED RELIEF

(203) This Article repeats and realleges all previous Articles in this Notice.

(204) By reason of Respondent's misconduct as described in Articles III, IV, and V, the Comptroller seeks a Prohibition Order against Respondent pursuant to 12 U.S.C. § 1818(e) on the following grounds:

(a) Respondent violated the law, including 12 U.S.C. § 161 and 18 U.S.C. §§ 656 and 1005, engaged in unsafe or unsound practices, and/or breached his fiduciary duty to the Bank;

(b) By reason of Respondent's misconduct, the Bank suffered financial loss or other damage and/or Respondent received financial gain or other benefit; and

(c) Respondent's violations, unsafe or unsound practices, and/or breaches of fiduciary duty involved personal dishonesty and/or demonstrated a willful or continuing disregard for the safety and soundness of the Bank.

(205) By reason of Respondent's misconduct as described in Articles III, IV, and V, the Comptroller seeks an Order for Restitution against Respondent pursuant to 12 U.S.C.

§ 1818(b)(6) on the following grounds:

(a) Respondent violated the law, including 12 U.S.C. § 161 and 18 U.S.C. §§ 656 and 1005, and/or engaged in unsafe or unsound practices; and

(b) Respondent's violations and/or unsafe or unsound practices involved reckless disregard for the law and/or resulted in Respondent's unjust enrichment.

(206) By reason of Respondent's misconduct as described in Articles IV, and V, the Comptroller seeks imposition of a civil money penalty against Respondent pursuant to 12 U.S.C.

§ 1818(i)(2)(A) because Respondent violated the law, including 12 U.S.C. § 161 and 18 U.S.C. §§ 656 and 1005.

(207) By reason of Respondent's misconduct as described in Articles III, IV, and V, the Comptroller seeks imposition of a civil money penalty against Respondent pursuant to 12 U.S.C.

§ 1818(i)(2)(B) on the following grounds:

- (a) Respondent violated the law, including 12 U.S.C. § 161 and 18 U.S.C. §§ 656 and 1005, recklessly engaged in unsafe or unsound practices, and/or breached his fiduciary duties to the Bank; and
- (b) Respondent's violations, practices, and/or breaches of his fiduciary duties were part of a pattern of misconduct, resulted in pecuniary gain or other benefit to Respondent, and/or caused more than minimal loss to the Bank.

Answer and Opportunity for Hearing

Respondent is directed to file a written Answer to this Notice within twenty (20) days from the date of service of this Notice in accordance with 12 C.F.R. § 19.19(a) and (b). The original and one copy of any Answer shall be filed with the Office of Financial Institution Adjudication, 3501 North Fairfax Drive, Suite VS-D8113, Arlington, Virginia 22226-3500. Respondent is encouraged to file any Answer electronically with the Office of Financial Institution Adjudication at ofia@fdic.gov. A copy of any Answer shall also be filed with the Hearing Clerk, Office of the Chief Counsel, Office of the Comptroller of the Currency, 400 7th Street SW, Washington, D.C. 20219, HearingClerk@occ.treas.gov, and with the attorney whose name appears on the accompanying certificate of service. **Failure to answer within this time period shall constitute a waiver of the right to appear and contest the allegations contained in this Notice, and shall, upon the OCC's motion, cause the Administrative Law Judge or the Comptroller to find the facts in this Notice to be as alleged, upon which an appropriate order may be issued.**

Respondent is also directed to file a written request for a hearing before the Comptroller, along with the written Answer, concerning the Civil Money Penalty assessment contained in this

Notice within twenty (20) days after date of service of this Notice, in accordance with 12 U.S.C. § 1818(i) and 12 C.F.R. § 19.19(a) and (b). The original and one copy of any request shall be filed, along with the written Answer, with the Office of Financial Institution Adjudication, 3501 North Fairfax Drive, Suite VS-D8113, Arlington, Virginia 22226-3500. Respondent is encouraged to file any request electronically with the Office of Financial Institution Adjudication at ofia@fdic.gov. A copy of any request, along with the written Answer, shall also be served on the Hearing Clerk, Office of the Chief Counsel, Office of the Comptroller of the Currency, 400 7th Street SW, Washington, D.C. 20219, HearingClerk@occ.treas.gov, and with the attorney whose name appears on the accompanying certificate of service. **Failure to request a hearing within this time period shall cause this assessment to constitute a final and unappealable order for a civil money penalty against Respondent pursuant to 12 U.S.C. § 1818(i).**

PRAYER FOR RELIEF

The OCC prays for relief in the form of the issuance of an Order of Prohibition pursuant to 12 U.S.C. § 1818(e), an Order Requiring Restitution in the amount of one million six hundred thousand dollars (\$1,600,000) pursuant to 12 U.S.C. § 1818(b)(6), and an Order of Civil Money Penalty Assessment in the amount of one hundred seventy-five thousand dollars (\$175,000) against Respondent pursuant to 12 U.S.C. § 1818(i).

Witness, my hand on behalf of the OCC, given at Washington, D.C., this 30th day of June, 2016.

/s/Michael R. Brickman

Michael R. Brickman
Deputy Comptroller for Special Supervision