

UNITED STATES OF AMERICA  
DEPARTMENT OF THE TREASURY  
OFFICE OF THE COMPTROLLER OF THE CURRENCY

_____	)	
In the Matter of	)	
	)	OCC AA-EC-2016-42
<b>KIRK N. DOWDELL</b> , former Chief Executive Officer	)	
	)	
Golden Pacific Bank, N.A.	)	
Sacramento, California	)	
_____	)	

**NOTICE OF CHARGES FOR PROHIBITION AND RESTITUTION**  
**NOTICE OF ASSESSMENT OF A CIVIL MONEY PENALTY**

Take notice that on a date to be determined by the Administrative Law Judge, a hearing will commence in the Eastern District of California, or such other location to be determined by the Administrative Law Judge, pursuant to 12 U.S.C. §§ 1818(b), (e) and (i), concerning the charges set forth herein to determine whether Orders should be issued against Kirk N. Dowdell (“Respondent”), a former Chief Executive Officer (“CEO”) of Golden Pacific Bank, N.A., Sacramento, California (“Bank”),<sup>1</sup> by the Office of the Comptroller of the Currency (“OCC”), prohibiting Respondent from participating in any manner in the conduct of the affairs of any federally insured depository institution or any other institution, credit union, agency or entity referred to in 12 U.S.C. § 1818(e), and requiring Respondent to make restitution and to pay a civil money penalty.

The OCC intends to order Respondent to reimburse the Bank for losses in the amount of at least twenty nine thousand nine hundred and seventy three dollars (\$29,973), pursuant to 12 U.S.C. § 1818(b)(6). Moreover, after having considered the factors set forth in 12 U.S.C. § 1818(i)(2)(G), the Comptroller of the Currency (“Comptroller”) hereby assesses a civil money

<sup>1</sup> At all times relevant to this Notice of Charges, the Bank was headquartered in Marysville, California, but is now headquartered in Sacramento, California.

penalty in the amount of twenty-five thousand dollars (\$25,000) 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 a Civil Money Penalty (“Notice”), the Comptroller charges the following:

## **ARTICLE I**

### **JURISDICTION**

At all times relevant to the charges set forth below:

- (1) The Bank was an “insured depository institution” as defined in 12 U.S.C. § 1813(c)(2).
- (2) Respondent was an 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. § 1813(i)(3).
- (3) The Bank was 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) 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 12 U.S.C. §§ 1818(b), (e), and (i).

## **ARTICLE II**

### **BACKGROUND**

(5) This Article repeats and re-alleges all previous Articles in this Notice.

(6) Respondent served as CEO of the Bank from 2010 until his termination for cause on or about August 16, 2013.

(7) The Bank terminated Respondent for cause because of Respondent's use of the Bank's credit card for his personal expenses without reimbursing the Bank.

(8) As the CEO, Respondent was obligated to comply with all applicable laws and regulations and to otherwise carry out his duties and responsibilities in a safe and sound manner.

(9) As the CEO, 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 interests of the Bank, and ensure the Bank's and his own compliance with banking laws and regulations.

(b) The fiduciary duty of loyalty required that Respondent disclose material information to the Bank's Board of Directors ("Board") and refrain from engaging in self-dealing at the expense of the Bank.

(10) As the CEO of the Bank, Respondent knew that he owed fiduciary duties of care and loyalty to the Bank.

(11) During the relevant time period, Respondent was an "executive officer" and an "insider" for purposes of 12 C.F.R. Part 215.

(12) During the relevant time period, the Bank was a “member bank” for purposes of 12 C.F.R. Part 215.

(13) At all relevant times, Respondent knew of the requirements of 12 C.F.R. Part 215.

### ARTICLE III

**RESPONDENT VIOLATED LAWS AND REGULATIONS, RECKLESSLY ENGAGED IN UNSAFE OR UNSOUND PRACTICES, AND BREACHED HIS FIDUCIARY DUTIES BY USING HIS BANK-OWNED CREDIT CARD FOR PERSONAL EXPENSES WITHOUT REIMBURSING THE BANK**

(14) This Article repeats and re-alleges all previous Articles in this Notice.

(15) As described herein, Respondent violated laws and regulations, recklessly engaged in unsafe or unsound practices, and breached his fiduciary duties by using his Bank-owned credit card for personal expenses without reimbursing the Bank.

**The use and administration of Bank Cards**

(16) During the relevant time period, the Bank provided its CEO, President, and certain other authorized employees with a Bank-owned credit card to be used for Bank business expenses (“Bank Card”).

(17) The Bank’s Expense Control Policy governed the use of Bank Cards during the relevant time period.

(18) As the CEO of the Bank, Respondent knew or should have known about the Bank’s Expense Control Policy.

(19) Under the Bank’s Expense Control Policy, all employees who obtained a Bank Card were required to keep current on all charges due, as this affects the Bank’s credit score.

(20) Under the Bank’s Expense Control Policy, each employee provided with a Bank Card was required to submit, on a monthly basis, a “Personal Expense Report” form attached to each monthly account statement and account for all charges billed, along with receipts for all

expenses charged. Employees were required to submit approved Personal Expense Reports to the Bank's Finance Department within ten (10) days from the statement date.

(21) The Bank's President would review and approve the Respondent's monthly expense report, and Respondent would review and approve the President's expense report.

(22) The President reported to Respondent.

(23) Under the Bank's Expense Control Policy, any unapproved and/or personal charges were the responsibility of the employee incurring the charge.

(24) The Bank's practice for having employees reimburse the Bank for personal charges they made to their Bank Card was to have the employee submit a personal check payable to the Bank simultaneously with the Personal Expense Report.

**Respondent's Charges to his Bank Card and Failures to Reimburse the Bank**

(25) Between approximately August 2012 and August 2013, Respondent used his Bank Card for personal expenses (non-Bank business expenses) without reimbursing the Bank. Such personal expenses totaled at least \$29,973 and included, but were not limited to, charges for:

- (a) Travel, lodging, and entertainment during scheduled personal vacations;
- (b) meals at restaurants that generally occurred after 7 p.m., near his personal residence, and/or on weekends, with no related business appointment on his work calendar;
- (c) fitness clubs;
- (d) college application fees;
- (e) groceries;
- (f) department store purchases;

- (g) wine;
- (h) online games; and
- (i) Apple iTunes store purchases.

(26) Respondent did not submit completed monthly Personal Expense Reports or provide corresponding receipts for any of his Bank Card charges from August 2012 through Respondent's termination in August 2013.

(27) On or about October 5, 2012, the Internal Revenue Service ("IRS") notified the Bank of a Federal tax lien against Respondent for \$267,643.23, and the IRS began garnishing Respondent's monthly Bank wages.

(28) In or around late 2012, the Bank's President asked Respondent to either take care of the IRS lien or disclose the existence of the lien to the Chairman of the Board. Approximately two weeks later, Respondent represented to the Bank's President that the lien was taken care of when, in fact, it was not.

(29) Respondent's misrepresentation that he had taken care of the IRS tax lien and failure to disclose it to the Board deprived the Board of information material to determine whether to continue to provide Respondent with a Bank Card.

(30) The Bank paid all charges, including the personal expenses totaling at least \$29,973, referenced above, that Respondent incurred on his Bank Card between approximately August 2012 and August 2013.

(31) An outsourced internal audit of the Bank was scheduled to begin in June 2013. The Bank's President, CFO, and Vice President/Controller continually urged Respondent to complete his expense reports and provide reimbursement to the Bank in advance of this audit. Respondent did not comply with these directives and continued to use his Bank Card for his

personal expenses without submitting monthly Personal Expense Reports or reimbursing the Bank.

(32) In or around July 2013, the Board hired third parties (thus incurring expenses) to conduct an independent investigation, led by a Special Committee, into Respondent's use of his Bank Card.

(33) In or around August 2013, during the Bank's investigation, Respondent admitted that he:

- (a) used his Bank Card for personal expenses;
- (b) was not current on submitting Personal Expense Reports for charges on his Bank Card; and
- (c) had not reimbursed the Bank for the personal expenses that he charged on his Bank Card dating back to 2012.

(34) Respondent did not provide payment for a July 11, 2013 invoice from the Bank requesting repayment for \$22,992.74 in charges.

(35) Respondent did not comply with the Special Committee's directive to complete outstanding expense reports and repay personal expenses by July 29, 2013.

(36) Prior to his termination in August 2013, Respondent did not reimburse the Bank for the personal expenses totaling at least \$29,973 that he incurred on his Bank Card between approximately August 2012 and August 2013.

(37) To date, Respondent has not reimbursed the Bank for the personal expenses totaling at least \$29,973 that he incurred on his Bank Card between approximately August 2012 and August 2013.

(38) Respondent violated 18 U.S.C. § 656 by embezzling, abstracting, purloining, or willfully misapplying at least \$29,973 in Bank funds for his personal expenses without reimbursing the Bank.

(39) Respondent caused the Bank to violate 12 U.S.C. § 375a and 12 C.F.R. § 215.4(a)(1) because he received an extension of credit that was not made on substantially the same terms as for non-insiders and presented other unfavorable features due to the fact that the Bank did not charge interest or late fees between approximately August 2012 and August 2013.

(40) Respondent knowingly received an unauthorized extension of credit from the Bank in violation of 12 U.S.C. § 375a and 12 C.F.R. § 215.6 by using his Bank Card for personal expenses (non-Bank business expenses) without reimbursing the Bank.

#### **ARTICLE IV**

##### **LEGAL BASES FOR REQUESTED RELIEF**

(41) This Article repeats and re-alleges all previous Articles in this Notice.

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

(a) Respondent violated laws and regulations, including 12 U.S.C. § 375a, 18 U.S.C. § 656, and 12 C.F.R. §§ 215.4(a)(1) and 215.6; engaged in unsafe or unsound practices in conducting the affairs of the Bank; and/or breached his fiduciary duties 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 duties involved personal dishonesty and/or demonstrated a willful or continuing disregard for the safety or soundness of the Bank.

(43) By reason of Respondent's misconduct as described in Article III, the Comptroller seeks an Order for Restitution against Respondent pursuant to 12 U.S.C. § 1818(b)(6)(A) on the following grounds:

(a) Respondent violated laws and regulations, including 12 U.S.C. § 375a, 18 U.S.C. § 656, and 12 C.F.R. §§ 215.4(a)(1) and 215.6; and engaged in unsafe or unsound practices in conducting the affairs of the Bank.

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

(44) By reason of Respondent's misconduct as described in Article III, the Comptroller seeks imposition of a civil money penalty against Respondent pursuant to 12 U.S.C. § 1818(i)(2)(A) because Respondent violated laws and regulations, including 12 U.S.C. § 375a, 18 U.S.C. § 656, and 12 C.F.R. §§ 215.4(a)(1) and 215.6.

(45) By reason of Respondent's misconduct as described in Article III, 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 laws and regulations, including 12 U.S.C. § 375a, 18 U.S.C. § 656, and 12 C.F.R. §§ 215.4(a)(1) and 215.6, recklessly engaged in unsafe or unsound practices in conducting the affairs of the Bank, 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.

## ARTICLE V

### **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, VA 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, 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 Comptroller'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, VA 22226-3500. Respondent is encouraged to file any request electronically with the Office of Financial Institution Adjudication at [ofia@fdic.gov](mailto: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, Washington, D.C. 20219, [HearingClerk@occ.treas.gov](mailto: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 Comptroller 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 at least twenty nine thousand nine hundred and seventy three dollars (\$29,973) pursuant to 12 U.S.C. § 1818(b); and an Order for a Civil Money Penalty Assessment in the amount of twenty five thousand dollars (\$25,000) against Respondent pursuant to 12 U.S.C. § 1818(i).

Witness, my hand on behalf of the Office of the Comptroller of the Currency, given at Washington, D.C. this 11<sup>th</sup> day of July, 2016.

s/Michael R. Brickman  
Michael R. Brickman  
Deputy Comptroller for Special Supervision