

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

<b>In the Matter of:</b>	)	
Daniel Roberts	)	
Chairman of the Board, President, and Chief Executive	)	AA-EC-12-10
Officer	)	
Merchants Bank of California, N.A.	)	
Carson, CA	)	

**CONSENT ORDER**

**WHEREAS**, the Comptroller of the Currency of the United States of America (“Comptroller”) intends to initiate cease and desist and civil money penalty proceedings against Daniel Roberts (“Respondent”) pursuant to 12 U.S.C. § 1818(b) and (i) on the basis of Respondent’s activities while the Chairman of the Board, President, and Chief Executive Officer of Merchants Bank of California, N.A., Carson, California (“Bank”); and

**WHEREAS**, in the interest of cooperation and to avoid the costs associated with future administrative and judicial proceedings with respect to the above matter, Respondent, without admitting or denying any wrongdoing, desires to enter into this Consent Order (“Order”) issued pursuant to 12 U.S.C. § 1818(b) and (i);

**NOW, THEREFORE**, in consideration of the above premises, it is stipulated by and between the Comptroller, through his duly authorized representative, and Respondent that:

Initials: DKR  
Date: 06/04/12

## ARTICLE I

### JURISDICTION

(1) The Bank is a national banking association, chartered and examined by the Comptroller, pursuant to the National Bank Act of 1864, as amended, 12 U.S.C. § 1 et seq. Accordingly, the Bank is an “insured depository institution” as that term is defined in 12 U.S.C. § 1813(c)(2).

(2) Respondent was the Chairman of the Board, President, and Chief Executive Officer of the Bank and is 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) Pursuant to 12 U.S.C. § 1813(q), the Comptroller is the “appropriate Federal banking agency” to maintain an enforcement proceeding against institution-affiliated parties. Therefore, Respondent is subject to the authority of the Comptroller to initiate and maintain cease and desist and civil money penalty proceedings against him pursuant to 12 U.S.C. § 1818(b) and (i).

## ARTICLE II

### COMPTROLLER’S FINDINGS

Pursuant to the authority vested in him by the Federal Deposit Insurance Act, as amended, 12 U.S.C. § 1818, the Comptroller hereby finds, and Respondent neither admits nor denies, the following:

(1) While serving as the Bank’s Chairman of the Board, President, and Chief Executive Officer, Respondent caused, brought about, participated in, counseled, or aided or abetted the

Bank's violations of 12 U.S.C. § 84, 12 U.S.C. § 371c-1, 12 C.F.R. Part 32, and 12 C.F.R. Part 215 and engaged in unsafe or unsound banking practices. Such violations of laws and regulations and unsafe or unsound practices resulted in personal gain to Respondent.

### ARTICLE III

#### PERSONAL CEASE AND DESIST ORDER

Pursuant to the authority vested in him by the Federal Deposit Insurance Act, as amended, 12 U.S.C. § 1818, the Comptroller hereby ORDERS that:

(1) Whenever Respondent is employed by, or is offered employment at, an insured depository institution (as defined in 12 U.S.C. § 1813(c)(2)) or becomes an institution-affiliated party within the meaning of 12 U.S.C. § 1813(u), Respondent shall:

- (a) Comply fully with all laws, regulations, and policies applicable to any insured depository institution with which he is or may become affiliated;
- (b) Avoid engaging in any unsafe or unsound practices, as that term is used in Title 12 of the United States Code;
- (c) Fulfill the fiduciary duties of loyalty and care owed to any insured depository institution with which he is or may become affiliated and shall, at all times, avoid placing his own interests above those of the institution;
- (d) Abstain from all discussions of the merits of the matter and recuse himself from all votes and decisions on any matter before the Board of Directors if Respondent may experience a direct or indirect benefit in connection with the matter, apart from the benefit experienced by directors, employees, or

stockholders generally of the institution and take all reasonable steps to ensure that his disclosure, abstention and recusal are reflected in the board minutes of the insured depository institution;

- (e) Provide the Board of Directors of the insured depository institution of which Respondent is currently an institution-affiliated party with a copy of this Order. Respondent shall provide written certification of compliance with this paragraph to the Director, Enforcement and Compliance Division, Office of the Comptroller of the Currency, 250 E Street, SW, Washington, DC 20219, within ten (10) days of execution of this Order; and
- (f) With respect to any future employment, prior to becoming an institution-affiliated party, provide the President or Chief Executive Officer of the insured depository institution with a copy of this Order. Respondent shall provide written notice of such acceptance to the Director, Enforcement and Compliance Division, Office of the Comptroller of the Currency, 250 E Street, SW, Washington, DC 20219, along with a written certification of his compliance with this paragraph within ten (10) days after acceptance of such position.

(2) Respondent shall receive appropriate training within six (6) months of the date of the execution of this Order regarding the requirements of and the Bank's compliance with 12 U.S.C. § 84 (lending limits), 12 U.S.C. § 371c-1 (restrictions on transactions with affiliates), 12 C.F.R. Part 32 (lending limits), and 12 C.F.R. Part 215 (Regulation O). Respondent shall

provide written certification of compliance with this paragraph to the Assistant Deputy Comptroller, Office of the Comptroller of the Currency, Santa Ana Field Office, 1551 North Tustin Ave., Ste.1050, Santa Ana, CA 92705-8661, within ten (10) days after such training is completed.

(3) If, at any time, Respondent is uncertain whether a situation implicates paragraph (1) of this Article, or if Respondent is uncertain about his duties arising from such paragraphs, he shall obtain, at his own expense, and abide by the written advice of counsel regarding his duties and responsibilities with respect to the matter. To comply with this paragraph, Respondent shall engage counsel who is in no way affiliated with the institution; and who has never been subject to any formal sanctions by any Federal banking agency, either by agency order or consent, as disclosed on the banking agencies' websites.

(4) This Order shall be enforceable to the same extent and in the same manner as an effective and outstanding order that has been issued and has become final pursuant to 12 U.S.C. § 1818(b).

#### ARTICLE IV

##### ORDER FOR CIVIL MONEY PENALTY

(1) Respondent hereby consents to the payment of a civil money penalty in the amount of Thirty Five Thousand Dollars (\$ 35,000.00), which shall be paid as follows: (a) Seventeen Thousand Five Hundred Dollars (\$ 17,500.00) upon execution of this Order and (b) Seventeen Thousand Five Hundred Dollars (\$ 17,500.00) within ninety (90) days of the date of execution of this Order.

(2) Respondent shall make payments by cashier's check or money order made payable to the Treasurer of the United States and shall deliver the payment to: Comptroller of the Currency, P.O. Box 979012, St. Louis, Missouri 63197-9000. The docket number of this case (AA-EC-12-10) shall be entered on all checks. Respondent shall provide a photocopy of each check to the Director, Enforcement and Compliance Division, Office of the Comptroller of the Currency, 250 E Street, SW, Washington, DC 20219.

(3) If Respondent fails to comply with any provision of this Order, then the entire balance of the civil money penalty amount described in this Article shall become immediately due and payable.

(4) This Order shall be enforceable to the same extent and in the same manner as an effective and outstanding order that has been issued and has become final pursuant to 12 U.S.C. §§ 1818(h) and (i) (as amended).

(5) Within seven (7) days from the issuance of this Order, Respondent shall notify the Director of the Enforcement and Compliance Division ("Enforcement Director") of the address of his current place of residence, by completing the form attached hereto as Appendix A.

(6) Until the civil money penalty is paid in full, upon each and every subsequent change in place of residence, if any, Respondent shall notify the Enforcement Director of his new address within seven (7) days of such change in address.

ARTICLE V

BANKRUPTCY

(1) If Respondent files for bankruptcy protection, Respondent shall notify the Enforcement Director within ten (10) days of the filing and shall provide a copy of the filing to the Enforcement Director.

(2) In any bankruptcy proceeding in which it is or may be contended that Respondent's obligation to pay a civil money penalty pursuant to this Order is subject to discharge, Respondent will in no manner contest the assertion of the Comptroller or any agent, officer or representative of the United States, pursuant to 11 U.S.C. § 523(a) or otherwise, that the civil money penalty in the Order arises out of acts which result in claims not dischargeable in bankruptcy.

ARTICLE VI

WAIVERS

(1) By executing this Order, Respondent waives:

- (a) the right to the issuance of Notice of Charges for Issuance of an Order to Cease and Desist and Notice of Assessment of a Civil Money Penalty under 12 U.S.C. § 1818(b) and (i);
- (b) all rights to a hearing and a final agency decision pursuant to 12 U.S.C. § 1818(b) and (i) and 12 C.F.R. Part 19;
- (c) all rights to seek judicial review of this Order;
- (d) all rights in any way to contest the validity of this Order; and

(e) any and all claims for fees, costs or expenses against the Comptroller, or any of his agents or employees, related in any way to this enforcement matter or this Order, whether arising under common law or under the terms of any statute, including, but not limited to, the Equal Access to Justice Act, 5 U.S.C. § 504 and 28 U.S.C. § 2412.

(2) Respondent shall not cause, participate in or authorize the Bank (or any subsidiary or affiliate thereof) to incur, directly or indirectly, any expense for the payment of the civil money penalty under this Order, or any legal (or other professional) expense relative to the negotiation and issuance of this Order except as permitted by 12 C.F.R. § 7.2014 and Part 359; and Respondent shall not, directly or indirectly, obtain or accept any indemnification (or other reimbursement) from the Bank (or any subsidiary or affiliate thereof) with respect to such amounts except as permitted by 12 C.F.R. § 7.2014 and Part 359.

(3) Respondent acknowledges that he has read and understands the premises and obligations of this Order and declares that no separate promise or inducement of any kind has been made by the Comptroller, his agents or employees to cause or induce Respondent to agree to consent to the issuance of this Order and/or to execute this Order.

(4) This Order constitutes a settlement of cease and desist and civil money penalty proceedings arising out of the specific acts, omissions, or violations described in the Comptroller's Findings (Article II of this Order). However, the specific acts, omissions, or violations described in Article II may be used by the OCC in future enforcement actions to establish a pattern or practice of misconduct or the continuation of a pattern or practice of misconduct.

(5) It is further agreed that the provisions of this Order shall not be construed as an adjudication on the merits and, except as set forth above in paragraph 0, shall not inhibit, estop, bar, or otherwise prevent the Comptroller from taking any action affecting Respondent if, at any time, he deems it appropriate to do so to fulfill the responsibilities placed upon him by the several laws of the United States of America.

(6) Respondent understands that nothing herein shall preclude any proceedings brought by the Comptroller to enforce the terms of this Order, and that nothing herein constitutes, nor shall Respondent contend that it constitutes, a waiver of any right, power, or authority of any other representatives of the United States or agencies thereof, including the Department of Justice, to bring other actions deemed appropriate.

**IN TESTIMONY WHEREOF**, the undersigned have hereunto set their hands.

/s/ Kristina B. Whittaker  
Kristina B. Whittaker  
Deputy Comptroller for Special Supervision

6/27/12  
Date

/s/ Daniel Roberts  
Daniel Roberts

04 June 2012  
Date

Initials: DKR  
Date: 06/04/12