

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

In the Matter of:)	
)	
Carrie Tolstedt)	AA-EC-2019-82
Former Head of the Community Bank)	
)	
Claudia Russ Anderson)	AA-EC-2019-81
Former Community Bank Group Risk Officer)	
)	
James Strother)	AA-EC-2019-70
Former General Counsel)	
)	
David Julian)	AA-EC-2019-71
Former Chief Auditor)	
)	
Paul McLinko)	AA-EC-2019-72
Former Executive Audit Director)	
)	
Wells Fargo Bank, N.A.)	
Sioux Falls, South Dakota)	
)	

NOTICE OF CHARGES FOR ORDERS OF PROHIBITION AND ORDERS TO CEASE AND DESIST AND NOTICE OF ASSESSMENTS OF A CIVIL MONEY PENALTY

Take notice that on a date to be determined by the Administrative Law Judge (“ALJ”), a hearing will commence in the District of South Dakota, unless the parties consent to another place, pursuant to 12 U.S.C. § 1818, concerning the charges set forth herein to determine whether the Comptroller of the Currency (“Comptroller”) should issue: Orders of Prohibition pursuant to 12 U.S.C. § 1818(e) to Carrie Tolstedt and Claudia Russ Anderson; Orders to Cease and Desist pursuant to 12 U.S.C. § 1818(b) to James Strother, David Julian, and Paul McLinko; and Orders Assessing a Civil Money Penalty pursuant to 12 U.S.C. § 1818(i) to each of the Respondents, individually.

After taking into account the financial resources and any good faith of Respondents, 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 Respondents’ views, the Office of the Comptroller of the Currency (“OCC”) hereby assesses the following civil money penalties, pursuant to 12 U.S.C. § 1818(i):

Carrie Tolstedt	Twenty-Five Million Dollars (\$25,000,000)
Claudia Russ Anderson	Five Million Dollars (\$5,000,000)
James Strother	Five Million Dollars (\$5,000,000)
David Julian	Two Million Dollars (\$2,000,000)
Paul McLinko	Five Hundred Thousand Dollars (\$500,000)

These penalties are payable to the Treasurer of the United States. Pursuant to 12 U.S.C. § 1818(i)(2)(F), the ALJ may recommend and the Comptroller may decide to increase the amount of the civil money penalties assessed herein, consistent with the law and the evidence presented during the proceedings.

The hearing afforded Respondents 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 Orders of Prohibition and Orders to Cease and Desist, and Notice of Assessments of a Civil Money Penalty (“Notice”), the OCC charges the following:¹

¹ Pursuant to 12 C.F.R. § 19.33(b), Enforcement Counsel is filing under seal an unredacted version of the Notice of Charges concurrently with this version.

ARTICLE I

THE COMMUNITY BANK PROMOTED AND MAINTAINED A BUSINESS MODEL THAT INCENTIVIZED EMPLOYEES TO ENGAGE IN SERIOUS MISCONDUCT FOR MANY YEARS

(1) At all times relevant to the Notice, Wells Fargo Bank, N.A., Sioux Falls, South Dakota (“Bank”) was a national banking association within the meaning of 12 U.S.C. § 1813(q)(1)(A) and an “insured depository institution” as defined in 12 U.S.C. § 1813(c)(2).

(2) The Community Bank was and is the Bank’s largest line of business and houses the Bank’s retail branch network.

(3) The Community Bank had a systemic and well-known problem with sales practices misconduct that persisted for at least 14 years, beginning no later than 2002.

(4) The term “sales practices misconduct,” as used in this Notice, refers to the practices of Bank employees issuing a product or service to a customer without the customer’s consent, transferring customer funds without the customer’s consent, or obtaining a customer’s consent by making false or misleading representations.

(5) The root cause of the sales practices misconduct problem was the Community Bank’s business model, which imposed intentionally unreasonable sales goals and unreasonable pressure on its employees to meet those goals and fostered an atmosphere that perpetuated improper and illegal conduct. Community Bank management intimidated and badgered employees to meet unattainable sales goals year after year, including by monitoring employees daily or hourly and reporting their sales performance to their managers, subjecting employees to hazing-like abuse, and threatening to terminate and actually terminating employees for failure to meet the goals.

(6) The Community Bank’s business model was highly profitable because it resulted in a greater number of legitimate sales than would have been possible without the unreasonable sales goals and sales pressure. The unauthorized products and services that were issued to customers also resulted in a financial benefit to Respondents and the Bank. The Bank touted a metric known as “cross-sell,” or the “cross-sell ratio,” that measured the number of products sold per household. The unauthorized products and services issued to customers inflated the cross-sell metric and resulted in enhanced stock price. The Bank tolerated pervasive sales practices misconduct as an acceptable side effect of the Community Bank’s profitable sales model, and declined to implement effective controls to catch systemic misconduct. Instead, to avoid upsetting a financially profitable business model, senior executives, including Respondents, turned a blind eye to illegal and improper conduct across the entire Community Bank. The Bank had better tools and systems to detect employees who did not meet unreasonable sales goals than it did to catch employees who engaged in sales practices misconduct. To the extent the Bank did implement controls, the Bank intentionally designed and maintained controls to catch only the most egregious instances of the illegal conduct that was pervasive throughout the Community Bank. In short, Bank senior executives favored profits and other market rewards over taking action to stop the systemic issuance of unauthorized products and services to customers.

(7) The Community Bank’s business model and the senior leaders of the Bank presented a stark dilemma to employees every day for 14 years: they could engage in sales practices misconduct—much of which was illegal—to meet their goals, or they could struggle to meet their goals and face adverse consequences, including losing their jobs.

(8) The Community Bank’s business model caused hundreds of thousands of employees to engage in numerous types of sales practices misconduct, including:

- a. opening and issuing millions of unauthorized checking and savings accounts, debit cards, and credit cards;
 - b. transferring customer funds between accounts without customer consent, a practice the Bank refers to as “simulated funding”;
 - c. misrepresenting to customers that certain products were available only in packages with other products, known as “bundling”;
 - d. enrolling customers in online banking and online bill-pay without consent, known as “pinning”;
 - e. delaying the opening of requested accounts and other products to the next sales reporting period, known as “sandbagging”; and
 - f. accessing and falsifying personal customer account information without authorization such as customer phone numbers, home addresses, and email addresses.
- (9) The Respondents in this proceeding are:
- a. Carrie Tolstedt, the former Head of the Community Bank, who reported to the Chief Executive Officer (“CEO”);
 - b. Claudia Russ Anderson, the former Community Bank Group Risk Officer, who reported to Respondent Tolstedt;
 - c. James Strother, the former General Counsel, who reported to the CEO;
 - d. David Julian, the former Chief Auditor, who reported to the Audit and Examination Committee of the Board and administratively to the CEO; and
 - e. Paul McLinko, the former Executive Audit Director responsible for Community Bank audits, who reported to Respondent Julian.

(10) The Bank had three lines of defense which, together with the Law Department, were tasked with controlling and managing risk. The Community Bank was the first line of defense. Corporate Risk was the second line of defense. Audit was the third line of defense. The Law Department often performed both first line and second line of defense activities.

(11) The most senior executives of the Bank were members of a group called the Operating Committee, which included the CEO and his direct reports, including Respondents Tolstedt, Strother, and Julian.

(12) During the OCC's investigation of the Bank's sales practices misconduct, the OCC subpoenaed each Respondent to testify. In sworn testimony before the OCC, Respondents Strother, Julian, and McLinko admitted that the Bank had a systemic sales practices misconduct problem rooted in the Community Bank's business model.

(13) In testimony before the OCC, Respondents Tolstedt and Russ Anderson asserted their Fifth Amendment right against self-incrimination and accordingly refused to answer all substantive questions about sales practices misconduct.

(14) In sworn testimony before the OCC, former CEO John Stumpf admitted, based on the information presented to him during his testimony, that the Community Bank had a systemic sales practices misconduct problem from the early 2000s until sales goals were eliminated in October of 2016. He further testified that Respondents Tolstedt and Russ Anderson bore "significant responsibility" for the existence and continuation of this problem:

(15) Specifically, former CEO Stumpf testified:

Q Okay. Is it fair to say that a systemic problem, as you understand the dictionary definition, means a problem that is inherent in the system, the business model of the company, and can only be corrected by changing the system or the business model of the company?

A I would agree with that statement.

Q Okay. Given that definition, do you believe that Wells Fargo Community Bank had a systemic problem with sales practice misconduct, from the early 2000s on until the time you eliminated sales goals in October of 2016?

A As I sit here today --

Q Yes, sir.

A -- considering the definition that I looked up and learning the things I've learned here the last few days, I would agree, it was a systemic problem in the Community Bank.

Q Okay, thank you. And if it is a systemic problem in the Community Bank, starting from the early 2000s up until September of 2016, wouldn't the head of the Community Bank, Ms. Tolstedt, bear a significant responsibility for the existence and the continuation of this systemic problem?

A I would agree with that.

Q And wouldn't Ms. Claudia Russ Anderson, the Group Risk Officer for the Community Bank, bear a significant responsibility for the existence and continuation of that problem?

A I would agree with that statement.

(16) The systemic sales practices misconduct persisted for years due to the failures of Bank senior executives and failures in the checks and balances that were supposed to be provided by the Law Department and Audit. The Law Department and Audit—that is, Respondents Strother, Julian, and McLinko—had a responsibility to ensure incentive compensation plans were designed and operated in accordance with Bank policy, evaluate risk and ensure it was adequately managed and escalated, advise whether the Community Bank was operating in conformance with laws and regulations, or identify and detail significant or systemic problems in audit reports. None of the Respondents who held leadership roles in those departments adequately performed their responsibilities with respect to the sales practices misconduct problem.

(17) Senior executives at the Bank acknowledge what was known or should have been known all along: that sales practices misconduct was a significant and systemic problem, and sales goals were unattainable and a significant part of the root cause of the sales practices

misconduct problem. For example, Respondent Strother agreed in testimony before the OCC that “even after [sales goals] were lowered, even with the pressure and even with the cheating, people still can’t meet them.”

(18) In sworn testimony before the OCC, Respondent Julian agreed that the Community Bank had a serious systemic issue with sales practices misconduct and that he would characterize the root cause of the problem as “the goals were unattainable or unreasonable, and the pressure to meet those unattainable goals was severe.”

(19) In sworn testimony before the OCC, Respondent McLinko agreed that there was a systemic sales practices misconduct problem in the branch environment of the Community Bank and “the sales goals and incentive processes were certainly two areas that contributed significantly to the issue, the pressure for the sales goals.”

(20) In sworn testimony before the OCC, the Bank’s former Chief Administrative Officer and Director of Human Resources admitted that the Community Bank had a systemic sales practices misconduct problem rooted in unreasonable sales goals, and that the Bank’s response “to this problem was slow and incremental, and ultimately not effective until 2016[.]”

(21) In 2017, the Independent Directors of the Board of Wells Fargo & Company, the Bank’s holding company (“Company”), issued a Sales Practices Investigation Report (“Board Report”). The Board Report concluded that “the only way definitively to address the broken sales model and the root cause of sales practices abuses was to emphasize other metrics for performance and to abandon exerting pressure through sales goals and sales-driven incentive programs.”

(22) The Board Report found that the Community Bank’s sales goals were “untenable,” “unrealistic,” and “unattainable.”

(23) The Board Report found that, even after the Community Bank made mid-year downward adjustments to sales goals in 2013 and 2014, “they were still set at an unachievable level.”

(24) In October 2016, a former Operating Committee member acknowledged the Bank had a serious and pervasive culture problem that was as basic as failing to recognize right from wrong: “We did not serve John Stumpf well. During his testimony he said we didn’t have a culture problem. We do: we have a culture problem in the Community Bank and we have a cultural problem at the [Operating Committee] level where we didn’t challenge/push Carrie [Tolstedt] hard enough. . . . Our people opened unauthorized accounts. This is like lying and stealing, which your mother taught you was really bad.”

(25) Everything that the OCC learned in the course of its investigation of the Bank’s sales practices misconduct regarding the root cause, scope, duration, and severity of the problem, as well as the inadequacy of the controls, was available to Respondents long before September 2016.

(26) For more than 14 years, the systemic sales practices misconduct resulted in compromise of customer accounts, misuse of customer personal information, and actual financial harm to consumers. As of November 2019, the Bank has refunded at least \$42.9 million to customers in connection with its review of sales practices.

(27) All Respondents profited personally from the improper business model.

(28) It took a massive failure on the part of the senior management of the Community Bank, the Law Department, and Audit for the sales practices misconduct problem to become as severe and pervasive as it was and last as long as it did.

The Sales Practices Misconduct Problem Was Well-Known for Years

(29) The sales practices misconduct problem and its root cause were well-known for years throughout the Bank, including by Respondents.

(30) Employees often and consistently complained that the sales goals were unrealistic and unreasonable, but to no avail.

(31) For years, employees and customers tried in vain to alert senior leaders to the growing and continuing sales practices misconduct problem.

(32) From 2006 through 2014, total EthicsLine complaints received from employees increased year-over-year.

(33) Each year, nearly half of all EthicsLine cases investigated by Corporate Investigations related to employee sales integrity violations.

- a. The Bank's Sales Quality Manual defined sales integrity violations as "manipulations and/or misrepresentations of sales, service or referrals and reporting of sales, service or referrals in an attempt to receive compensation or to meet sales and service goals."

(34) In a September 2016 email, a senior Bank executive wrote: "I just read the 19 [EthicsLine] sales practice allegations, and at least 50 percent are exactly both pressure and greed related. It made my hair curl."

(35) As early as 2007, lack of customer consent was a primary allegation in EthicsLine complaints from employees.

(36) The Bank's former CEO agreed in testimony before the OCC that employees did all they could to complain about the unreasonable sales goals to Bank senior leadership in numerous ways over many years, by calling the EthicsLine, sending emails, holding protests, and

approaching newspapers. He further stated that the senior leadership team, and not the employees, is to blame for the Bank not moving fast enough to address the sales practices misconduct problem.

(37) In sworn testimony before the OCC, the Bank's former Chief Administrative Officer and Director of Human Resources agreed that employees sent letters, emails, and EthicsLine complaints about pressure and "gaming" for many years.

(38) The Bank's former Chief Administrative Officer and Director of Human Resources agreed in sworn testimony before the OCC that by 2016 she and the rest of the Operating Committee, which included Respondents Strother and Julian, understood that employee complaints about "insane pressure to meet sales goals were, in fact, valid complaints that reflected what was actually going on in the Community Bank for many years."

(39) A 2010 employee complaint to Respondents Tolstedt and Strother explained: "Surely, you must be aware that you will reach a sales number to be achieved that will force the staff to cheat to obtain it. You have reached that point." The employee complaint proclaimed to Bank senior leadership, including Respondents Tolstedt and Strother: "[T]he noose around our necks ha[s] tightened: we have been told we must achieve the required solutions goals or [we] will be terminated. This type of practice guarantees high turnover, a managerial staff of bullying taskmasters, [and] bankers who are really financial molesters [and] cheaters"

(40) A 2012 employee complaint sent to Respondents Tolstedt and Strother explained: "When employees are required to meet unreasonable numbers, they are *forced* into inappropriate activity to keep their jobs. . . . Wells Fargo is playing a shell game – they are rewarding employees for fake accounts and will terminate them if they find out this is the case. Yet management will chastise and come very close to verbal abuse and put employees on written

notice if they are honest and do not open fake accounts to meet these unreasonable goals. The termination ax is suspended over our head one way or another; meet unreasonable goals or you will be terminated, cheat to meet the unreasonable goals and you will be terminated when caught. . . . I am NOT writing this letter to bring an investigation on my store, my district, my region – that is not where the root of the problem lies. It lies on upper management who has increased the goals to the ‘must cheat to achieve’ level.” (emphasis in original).

(41) Another employee wrote to the CEO’s office and to a senior leader in the Community Bank in 2013 that “I was in the 1991 Gulf War This is sad and hard for me to say, but I had less stress in the 1991 Gulf War than working for Wells Fargo.”

(42) A 2013 employee complaint sent to Respondent Tolstedt explained employee sentiments: “Make your goals at any cost to the team member or customer – this is our environment. . . . I cant [sic] sleep at night or look in the mirror. Too much pressure, feels like we have to treat team members poorly or walk a very grey line to meet expectations.”

(43) Customers also contacted senior leaders on many occasions. The Bank received tens of thousands of customer calls alleging lack of consent.

- a. From December 2013 through September 2015, the Bank received at least 5,000 customer complaints related to lack of consent.

(44) For example, one customer wrote to the CEO’s office in 2012: “My rights as a customer have been violated and I feel extremely vulnerable.”

(45) In 2013, a customer wrote to Respondent Strother: “I am beyond angry. To me, this is a form of identity theft.”

(46) In a 2014 complaint forwarded to Respondent Russ Anderson, a customer pointed out: “If I were to take a [stranger’s] information and apply for credit cards with it, I would go to

jail. It is morally and legally criminal. In a world where a credit score controls many important aspects of your life, it is truly scary that an employee of a financial institution can manipulate my information and assert himself into my personal and financial life.”

(47) Customers and employees wrote letters and emails detailing the sales practices misconduct problem *to senior executives with the authority and responsibility to address it*. Nonetheless, the sales practices misconduct problem persisted because senior management, including Respondents, blamed individual employees for the problem, refused to address the actual root cause, downplayed the problem’s seriousness and scope, and failed to provide accurate and complete reporting on the problem.

(48) The unauthorized activity was so systemic and pervasive that even senior leaders were not immune to being affected by sales practices misconduct. What should have been a call to action was merely brushed off. In the first half of 2012, a former Operating Committee member’s wife received two debit cards in the mail she did not request. He raised this to the Head of the Community Bank, Respondent Tolstedt. Respondent Tolstedt later asked the former Operating Committee member to stop telling the story because she thought it reflected poorly on the Community Bank. Saving face prevailed over determining and fixing the root cause of the sales practices misconduct problem.

(49) In 2014, an acquaintance of the CEO raised concerns to Bank officials “about some debit cards he received in the mail without consent.”

(50) At all times relevant to the Notice, Corporate Investigations was a department within the Bank responsible for investigating employee misconduct.

(51) Respondents ignored or minimized warnings regarding sales practices misconduct for years.

(52) A report prepared by Corporate Investigations in 2004 (“2004 Investigation Report”) identified instances of misconduct, in which employees were “gaming” the Community Bank’s sales plan by, among other things, opening products without customer authorization and signing customers up for products they would never know about or use. The report found: “In almost every case [the employees] related they ‘gamed’ the system in order to preserve their employment based on the fact they are expected to meet certain goals or lose their job.” The 2004 Investigation Report recommended that the Bank remove the threat of employee termination if goals are not met.

- a. The 2004 Investigation Report found that between 2000 and 2004, gaming cases increased 979% and associated terminations had increased 962%.
- b. The 2004 Investigation Report also found that gaming cases were “geographically consistent corporate-wide.”

(53) The sales practices misconduct problem as described in the 2004 Investigation Report existed at the Bank until the elimination of sales goals in the Community Bank in October 2016.

(54) In 2009, a manager in Corporate Investigations wrote: “[W]e have heard for years that the sales pressure is the cause [of sales practices misconduct], and I for one do not doubt it for a minute. A standard line we hear is ‘I can play by the rules and get fired for not making unrealistic goals or I can cheat and hope I don’t get caught’.”

(55) In the fall of 2013, the *Los Angeles Times* published articles detailing the scope and root cause of the sales practices misconduct problem. Respondents were well aware of the articles and by 2013 at the latest had no excuse not to take immediate and decisive action to address a longstanding problem that plagued the largest line of business at the Bank.

(56) Despite knowledge of the sales practices misconduct problem, its root cause, and its duration, there was great reluctance by senior management to make any meaningful changes to the business model because the Community Bank was tremendously profitable and central to the Bank's success.

- a. The CEO wrote: "The Community Bank is 'Rome' in our company—all roads lead to and from it."
- b. Between 2010 and 2016, approximately 55 to 60% of the Company's average annual profits were attributable to the Community Bank.

(57) A former Chief Security Officer of the Bank testified before the OCC that the sales practices misconduct problem persisted for as long as it did because "the [B]ank was very profitable and doing very well," and senior leadership perceived sales practices misconduct to involve few employee terminations and negligible loss to the Bank.

(58) All Respondents were well compensated over a period of years, with much of their compensation equity-based, and all profited personally from the improper business model. The Community Bank's unreasonably high sales goals and pressure increased the profitability and purported cross-sell success of the entire Bank, which directly increased their incentive compensation and equity awards.

- a. Respondent Tolstedt received millions of dollars annually in incentive compensation, based in part on the profitability of the Bank. Respondent Tolstedt's compensation awards explicitly took into account the Community Bank's achievement of record cross-sell ratios.

- b. Respondents Russ Anderson, Strother, Julian, and McLinko also received significant annual incentive compensation based in part on the Bank's financial performance.

The Community Bank's Sales Goals Were Unreasonable

(59) The Bank maintained and publicly reported a metric known as the "cross-sell ratio," a measure of products sold per customer household, as a driver of future revenue. The more products sold to existing households, the more money the Bank would earn from each relationship and the less likely those customers would exit their relationship with the Bank.

(60) The financial industry and the Bank considered Wells Fargo to be "the king of cross-sell."

(61) By 2002, the Bank began proclaiming a goal to sell at least eight products to every customer. Bank mantras included "Going for Gr-Eight" and "Eight is Great."

(62) From the early 2000s, the Community Bank pushed an aggressive sales model that increased cross-sell growth by requiring double-digit annual sales growth over the prior year's sales performance, or "run rate."

- a. For example, the Community Bank developed its 2012 sales plan during 2011. The total number of products and services sold in 2011 was the base upon which the Community Bank expected and planned for growth in 2012.
- b. An email exchange between Respondent Tolstedt and one of her managers from 2002 illustrates the emphasis on aggressive goals. The executive proposed a plan that provided for a 4% increase in sales. Respondent Tolstedt told the executive in an email marked as high importance: "the front end guidance was a minimum of 10%." She further stated: "[w]ould you do me a huge favor and change your sales

plan to reflect a growth rate of between 10% and 15%.” Respondent Tolstedt forwarded the email to the CEO stating: “[j]ust so you know I won’t let them get away with this!!! ... we need to ensure they [referring to the sales plans] are equally hard across all regions.”

- c. In 2011, Respondent Tolstedt told regional leaders that the “Street rewards us for . . . cross-sell and HH [household] cross-sell [s]o expects us to excel here.”

(63) The Community Bank increased sales goals each year based on the prior year’s sales. Due to rampant sales practices misconduct, annual sales included large numbers of accounts and products that were unauthorized or otherwise the result of sales practices misconduct.

(64) Sales practices misconduct artificially inflated annual product sales, increasing the pressure on employees and compounding the problem because employees would be expected to sell even more products in the next year.

(65) Sales practices misconduct also artificially inflated the cross-sell metric. The Bank touted the cross-sell metric as an indicator of its success and a reason for enhanced stock price.

(66) In a presentation shared with Respondent Tolstedt, the Community Bank’s Group Finance Officer wrote that sales growth milestones in 2008 were: “‘breaking the envelope,’ driven by what we considered wild, almost unimaginable, assumptions.”

- a. The presentation informed Respondent Tolstedt that to reach the corporate goal of eight products per household, *the Bank needed to increase its sales goals by double digits every year.*

(67) The Community Bank increased sales goals every year from 2002 until 2013.

(68) The Board Report found that, even after the Community Bank lowered sales goals mid-year in 2013 and 2014, “they were still set at an unachievable level.”

(69) The incentive compensation plans in the Community Bank were based upon these unreasonable sales goals.

There Was Excessive Pressure on Employees to Meet Unreasonable Sales Goals

(70) Employees opened and issued products and services without customer consent and altered and misused customers’ personal information because the Community Bank’s business model imposed unreasonable goals on its employees and management applied extreme pressure and threatened corrective action, up to and including termination, if the employees failed to meet their goals.

(71) Employees investigated for engaging in sales practices misconduct consistently expressed to investigators that they committed the misconduct because they feared they could and would be fired for failing to meet the goals.

(72) It was common knowledge within the Bank that employees who could not meet sales goals could and would be terminated.

(73) A former Chief Administrative Officer from 2005 to 2015 testified before the OCC that it was “common knowledge” at the Bank that employees who failed to meet their sales goals would be terminated. She explained that the Bank “was a sales organization, and if people weren’t meeting their goals, either they were terminated or they quit generally.”

(74) The Bank’s former Chief Security Officer testified before the OCC that the Bank’s policy was “meet your quota . . . or be terminated” and that this policy “forced employees to do things against their own will.”

(75) Employees' fear of being terminated for not meeting unreasonable sales goals was justified. From 2011 through third quarter 2016, the Bank terminated approximately 8,520 employees for sales performance issues, including failure to meet sales goals.

- a. As an example, a store manager received a formal warning in July 2011 because her store achieved only 98% and 90% of her store's sales goals in the first two quarters of that year, respectively. The formal warning stated: "If your sales performance does not improve to an acceptable level, further action up to and including termination of employment may result."

(76) In some cases, even employees who exceeded their sales goals could and did receive corrective action for their sales performance. An investigations manager wrote in a 2009 email: "[W]e are hearing the [local regional president] has told or insinuated that everyone must make 120% of their goals, no exceptions. We have been made aware that some team members have actually be[en] form[ally] counseled for making [104%] and 110% of their goals. In addition we discovered that one manager was getting ready to terminate a banker for being at 105%."

(77) Employees' incentive compensation and promotional opportunities depended on their ability to meet the unreasonable sales goals.

(78) A former Operating Committee member testified before the OCC that there came a time when everybody at the Bank understood that the pressure that management applied on employees to meet unreasonably high sales goals was too much.

(79) Pressure on employees was exacerbated by stack ranking (which ranked from best to worst performing in sales), aggressive sales campaigns, and demoralizing and hazing management techniques.

(80) Sales performance data was available down to the individual employee and branch level and was made available to all of Community Bank.

- a. Management could track whether employees met their goals on a daily and real-time basis.

(81) The Board Report found that Community Bank's sales performance stack rankings, and its determination of employees' incentive compensation and promotional opportunities relative to sales goals, created "intense pressure to perform"

(82) Besides being subject to the stress and fear of losing their jobs, employees were subjected to a sales culture of intimidation and hazed by management to motivate them to meet their sales goals. The Community Bank implemented the following philosophy to drive sales results: "A whole bunch of management gurus say you need BHAGs – bold, hairy, audacious goals. That's a technique of management – to give troops a goal that looks unattainable and flog them heavily. And according to that line of thought, you will do better chasing a BHAG than you will a reasonable objective." Management within the Community Bank implemented aggressive "flogging" techniques, including:

- a. Running the "gauntlet," wherein local managers were required to run between rows of their peers and announce their area's sales performance, subjecting them to criticism and ridicule if their performance was poor.
- b. Threatening direct reports with termination and other corrective actions for not meeting the unreasonable sales goals: "[y]ou struggle – you're gone."; "[s]ome of you truly need a miracle today to get back on track. Most of you should be embarrassed by your numbers. Your numbers ARE your measure of success- don't fool yourselves. You are defined by your goal achievement. If you are

afraid to produce because you think you're going to get fired, we have a much bigger problem.”

- c. Warning employees that if they did not achieve sales goals, they would be “transferred to a store where someone had been shot and killed” and if they did not make enough appointments they would be “forced to walk out in the hot sun around the block.”
- d. Having multiple daily calls with management to discuss sales performance. Low performers typically were called out in front of their peers and asked to explain how they would improve their sales performance: “Be adults and get your asses on our calls. It’s pathetic that I have to remind you all. And everyone se[ems] to have an excuse. Go work at Walmart if you cannot handle any of the aforementioned. Thank you.”

(83) From 2003 through 2013, the Community Bank promoted an annual sales campaign known as “Jump into January,” which ran from January through March of each year.

- a. As part of this campaign, Community Bank imposed higher-than-normal sales goals from January through March.
- b. The monthly sales goal during Jump into January was set as high as 12% of the yearly total.
- c. According to the Board Report, over time Jump into January became “a breeding ground for bad behavior”

(84) The pressure imposed on employees by Jump into January and the campaign’s impact on increased sales practices misconduct was widely known within the Community Bank. The Bank had data capabilities to show a strong correlation between Jump into January and sales

practices misconduct. Nonetheless, the Jump into January campaign continued until around 2013.

(85) The aggressive sales culture resulted in significant employee turnover, approximately 35% annually. The high turnover rate in the Community Bank indicated that sales pressure was excessive and was driving employee separations.

- a. The turnover rate in the retail branch network was significantly higher than in peer banks.
- b. Respondent Tolstedt and her management team justified the high turnover rate by comparing it to that of retail companies like Macy's and Target rather than other banks.

(86) Employees remained under pressure to meet unreasonable sales goals until October 2016, when the sales goals in the Community Bank were officially eliminated. Only *after* sales goals in the Community Bank were eliminated in October 2016 did the Bank issue internal guidance stating that terminations for failure to meet sales goals would not be permitted.

The Controls Were Intentionally Designed to Prevent Detection of the Overwhelming Majority of Sales Practices Misconduct

(87) For the entirety of the relevant period until the elimination of sales goals in October 2016, the Bank's controls related to sales practices were severely deficient in that they were intentionally designed to neither prevent nor detect the vast majority of sales practices misconduct.

(88) Given the Community Bank's business model, every customer-facing employee had both powerful motive and opportunity to engage in sales practices misconduct. The motive arose from unreasonable goals and pressure to meet them; the opportunity was presented by Bank systems that made it unlikely employees would be caught. First, the Bank's computer

systems did not require evidence of customer consent when employees issued products and services. Second, for most types of misconduct, an employee could only get caught for sales practices misconduct if another employee learned of the misconduct and blew the whistle, or if a customer became aware of the unauthorized products or services and complained. Only after approximately 2012 did the Bank begin monitoring a few types of sales practices misconduct, but even then, employees were referred for investigation only if they engaged in sales practices misconduct so frequently that they appeared on the Community Bank's list of the most egregious offenders (top 0.01 or top 0.05% of total offenders).

(89) Despite knowing that sales practices misconduct was pervasive in the Community Bank, Bank management had a disincentive to detect the majority of violators because doing so would require additional terminations, expose the gravity of the misconduct, and undermine the notion that sales practices misconduct was limited to a few "bad apples."

(90) Employees were much more likely to be disciplined or fired for failing to meet their sales goals—against which they were tracked daily and measured in real time—than for engaging in sales practices misconduct.

(91) The Bank's Head of Corporate Investigations testified before the OCC that there was nearly a 100% chance an employee's boss would know if she failed to meet her sales goals, but the chances were very small that an employee would be caught for issuing an unauthorized product or service. She testified:

Q Okay. So if [employees] were doing it when nobody is watching, and they don't do it enough to trigger the outlier thresholds that you've had, the chances of them getting caught is very small?

A Yes. I would agree.

(92) There were four general mechanisms the Bank employed to detect sales practices misconduct. Three were reactive tools that relied on employees or customers to surface problems: 1) an employee complaint hotline known as the EthicsLine, 2) employee complaints sent directly to senior management or others within the Bank, and 3) customer complaints. The fourth tool involved using data analytics to detect activity indicative of sales practices misconduct, referred to as “proactive monitoring.” The Bank did not employ proactive monitoring until around 2012; before then, the only way the Bank detected sales practices misconduct was if a customer or a Bank employee happened to report it.

(93) Investigations of sales practices misconduct were also inexplicably limited. For example, an employee accused of sales practices misconduct by a customer was only investigated in connection with a customer complaint if “polling” of *other customers* of the same employee revealed other similar incidents of misconduct.

(94) The proactive monitoring instituted around 2012 was intentionally designed to catch only a miniscule amount of sales practices misconduct.

- a. The group within the Community Bank that performed proactive monitoring was known as the Sales and Service Conduct Oversight Team (“SSCOT”). That team intentionally only flagged the most egregious offenders in sales practices misconduct (top 0.01 or top 0.05%) for follow-up investigation.

(95) The Bank could have lowered the thresholds for detecting sales practices misconduct, but doing so would have resulted in the identification of additional illegal activity, inundating the Bank with investigations of employee misconduct and resulting in additional employee terminations. The Bank did not want this outcome.

(96) The former Chief Security Officer and Head of Corporate Investigations testified before the OCC that Community Bank senior leadership “absolutely” wanted to minimize terminations even if there was strong evidence that the employee engaged in sales practices misconduct.

(97) The Community Bank’s proactive monitoring focused primarily on only two of the many types of sales practices misconduct: simulated funding (unauthorized transfer of customer funds) and phone number changes (altering personal customer contact information in the Bank’s records). The Community Bank did not proactively monitor the many other types of sales practices misconduct, including pinning, bundling, sandbagging, and significantly, the issuance of unauthorized debit and credit cards.

(98) In the summer and fall of 2013, SSCOT conducted an analysis to detect instances of simulated funding and of employees changing customer phone numbers without authorization in Los Angeles/Orange County, and then across the regional footprint, using a screening mechanism to identify only the most egregious patterns of red flag sales activity. For example, for conduct likely exhibiting simulated funding, SSCOT used criteria of *50 or more accounts in five months or more than 10 percent of total accounts opened in four months*, where the account was funded with a single transfer of funds from an existing account to a new account, and then transferred back to the originating accounts within *one day*, with no further activity in the new account. The Bank effectively decided it would not investigate this red flag activity if it happened 49 times, but only when it reached 50 instances. By contrast, if an employee missed their sales goal targets, Bank systems reported such results to managers, who were expected to follow up with employees.

(99) This analysis by SSCOT in the summer and fall of 2013 to identify only the most egregious patterns of red flag sales activity for simulated funding and phone number changes led to an initial round of investigations that resulted in terminations of approximately 35 employees in the fall of 2013. Some of the terminated employees discussed the sales practices misconduct problem with the *Los Angeles Times*.

(100) In October 2013, the *Los Angeles Times* published an article under the headline, “Wells Fargo Fires Workers Accused of Cheating on Sales Goals.” The article reported that the Bank had fired 30 employees in the Los Angeles region for “open[ing] accounts that were never used and attempt[ing] to manipulate customer-satisfaction surveys.” The article further reported that “the pressure to meet sales goals was intense” and that there were cases of forged customer signatures and accounts opened without customer knowledge.

(101) In December 2013, the *Los Angeles Times* published a second article, with the headline: “Wells Fargo’s Pressure-Cooker Sales Culture Comes at a Cost.” The article stated it was based on interviews with 28 former and seven current employees *across nine states*. This article reported that employees were threatened with termination if they failed to meet their sales goals.

(102) The *Los Angeles Times* articles about the Bank’s sales culture and its impact on sales practices misconduct were well-known throughout the Bank and the Community Bank, including by Respondents.

(103) Instead of increasing monitoring of sales practices misconduct, following the *Los Angeles Times* articles, the Community Bank paused proactive monitoring in an effort to limit the large number of employee terminations for sales practices misconduct.

- a. Proactive monitoring, the only tool in effect at the Bank to proactively detect known illegal activity and other misconduct, was paused from December 2013 until approximately July 2014.

(104) When SSCOT resumed proactive monitoring in July 2014, the Community Bank's detection threshold identified only those employees in the 99.99% (top 0.01%) of activity that was a "red flag" for simulated funding. The Bank literally could not have chosen a lower threshold.

(105) The effect of applying the 99.99% threshold was as follows: although approximately **30,000 employees per month** exhibited activity that was a red flag for simulated funding, which was just one of the many types of sales practices misconduct, SSCOT only referred for investigation the top 0.01% of those employees, who had the most activity indicative of simulated funding, or an average of three employees per month. Put another way, while 30,000 employees per month engaged in activity that was indicative of *just one type of sales practices misconduct*, the Bank decided to devote resources to investigate only three employees per month.

(106) From April 2015 through October 2016, the Community Bank's thresholds were lowered slightly to detect employees in the 99.95th percentile of activity that was a red flag for simulated funding. The Bank never set the threshold detection levels lower than this percentile.

- a. Lowering the threshold monitoring criteria slightly to the 99.95th percentile resulted in the identification of approximately 15 to 18 employees per month.

(107) The former Chief Security Officer and Head of Corporate Investigations testified before the OCC that the number of employees terminated for sales practices misconduct was only the "tip of the iceberg" because the Bank did little or no proactive monitoring.

The Magnitude of Illegal Activity Over 14 Years was Immense

(108) The Bank’s Head of Corporate Investigations agreed that given the Community Bank’s business model and the controls that existed at the Bank, every customer-facing employee had a daily temptation and opportunity to cheat. She testified before the OCC that given the amount of pressure that existed at the Bank, it would not be surprising “that there is going to be a high percentage of people that will cheat.”

(109) Over 14 years, hundreds of thousands of Community Bank employees succumbed to the intense pressure to perform and engaged in sales practices misconduct.

(110) The former Chief Security Officer and Head of Corporate Investigations illustrated the scope of the sales practices misconduct problem and the woefully inadequate controls in a 2013 email to a former Operating Committee member: “As you know, Sales Integrity is a huge challenge.” He went on to explain that in order to aid law enforcement, they established “a few ‘undercover’ accounts, ... but the accounts are not tied to a ‘real’ person. Within 24 hours of the accounts being opened, two different community bank team members saw them and ordered debit cards for the customers, attesting in the system that they had spoken to the customers. Geeeee. All I could do is shake my head.”

(111) The Community Bank’s business model, and the sales practices misconduct it caused, led to millions of products, services, and transactions that were unauthorized or sold as a result of misrepresentation, and the firing of thousands of employees for failure to meet unreasonable sales goals.

(112) In August 2017, Bank consultant PricewaterhouseCoopers (“PwC”) determined that Bank employees opened approximately 3.5 million potentially unauthorized accounts between January 2009 and September 2016.

(113) As of December 2015, the Bank had over 12 million accounts that had been inactive for 12 months, including nearly 7 million inactive debit cards.

(114) From January 2011 through September 2016, the Bank terminated over 5,300 employees for engaging in improper sales practices.

(115) The 5,300 terminations, however, were just the tip of the iceberg. Given the Community Bank's business model and the Bank's severely deficient controls, unsurprisingly the total number of employees who actually engaged in sales practices misconduct far exceeded the total number of employees terminated for it.

(116) [REDACTED]

a. [REDACTED]

(117) The Bank's ability to detect simulated funding through data analytics was much greater than its ability to detect other types of misconduct such as opening unauthorized accounts and issuing unauthorized debit and credit cards to customers.

(118) The Bank's Head of Corporate Investigations testified that her department was unable to identify through data analytics behavior such as issuing unauthorized debit cards and credit cards, bundling, pinning, and sandbagging.

(119) Even if the Bank was just as effective at identifying other types of sales practices misconduct as it was simulated funding, it would mean that although the Bank terminated 5,300 employees for sales practices misconduct, hundreds of thousands of employees likely engaged in such misconduct.

Inaccurate and Misleading Reporting on the Sales Practices Misconduct Problem to the Board and the OCC

(120) Even after the Community Bank's sales practices misconduct problem became a national news story in October and December 2013, Respondents in the Community Bank, the Law Department, and Audit failed to take actions consistent with their respective responsibilities to identify, correct, and/or escalate the sales practices misconduct problem.

(121) The information reported in the *Los Angeles Times* articles in October and December 2013 reflected what Respondents already knew for years or should have known about the sales practices misconduct problem and its root cause.

(122) None of the Respondents ever escalated the 14-year sales practices misconduct problem to the Board or the OCC.

(123) In May 2015, the Los Angeles City Attorney filed suit against the Bank, alleging that the Community Bank engaged in unlawful sales practices, including opening unauthorized accounts for customers, pinning, bundling, and sandbagging, to meet unrealistic sales goals, resulting in customer harm and violations of state consumer protection laws.

(124) Even after Respondents Tolstedt and Russ Anderson were directed to inform the Board and the OCC about the sales practices misconduct problem, they provided false, misleading, and incomplete reporting on the root cause, duration, and scope of the problem, and the adequacy of the controls.

(125) In February 2015, the OCC commenced an examination of operational risk and cross-sell oversight within the Community Bank.

- a. As a result of the examination, the OCC issued a Matter Requiring Attention related to sales practices to the Community Bank in April 2015.
- b. The OCC uses Matters Requiring Attention to communicate concern about a bank's deficient practices to a bank's board of directors and management.
- c. The sales practices Matter Requiring Attention found that the Community Bank "lack[ed] a formalized governance framework to oversee sales practices" and warned that the consequence of inaction included "heightened reputation risk and possible negative publicity."

(126) Respondent Tolstedt and her leadership team, including Respondent Russ Anderson, with assistance from the Law Department, prepared written materials for a meeting of the Risk Committee of the Board covering sales practices on May 19, 2015 ("May 19, 2015 Memo"). The May 19, 2015 Memo was false, misleading, and incomplete.

- a. For example, the May 19, 2015 Memo falsely ascribed the root cause of the sales practices misconduct problem to "intentional team member misconduct based on the fact that only a small percentage of Retail Banking team members engaged in the outlier behavior." The materials did not reveal that "outlier behavior" referred to only the most egregious misconduct detected by applying the highly restrictive 99.99 and 99.95% thresholds to only a limited set of misconduct.
- b. As another example, the May 19, 2015 Memo falsely stated that the Bank's controls were effective.

(127) The same false, misleading, and incomplete materials were provided to the OCC during its review of sales practices at the Bank.

(128) In May 2015, when Respondent Tolstedt provided to the CEO for his review a draft memorandum for the Risk Committee of the Board, the CEO advised that the committee was interested in information on the number of products sold without customer consent and termination figures. Nonetheless, despite the CEO's instructions, the final memorandum provided to the Risk Committee of the Board and to the OCC omitted such key information that would have aided in the Board's and the OCC's understanding of the magnitude of the sales practices misconduct problem.

(129) The former CEO provided the following testimony before the OCC:

Q Okay. Sitting here today, sir, do you agree that this [May 19, 2015] memo misleads the Board, whether intentionally or not, it misleads the Board about the scope of the problem, the root cause of the problem, and the adequacy of the bank's controls.

A I would agree with that.

...

Q Sir, we were discussing the May memo to the Board. Would you agree that, if that – since that May memo was also presented to the OCC, then that May memo was also misleading to the OCC on the root cause, the extent of the problem, . . . and the adequacy of the bank's controls?

A I would agree with that.

The Sales Practices Misconduct Problem was Resolved Only After Intense Congressional and Public Scrutiny

(130) In June 2015, the OCC issued five new Matters Requiring Attention to the Bank related to sales practices risk management.

(131) In July 2016, the OCC issued a Supervisory Letter to the Bank, concluding the Bank had engaged in unsafe or unsound practices.

(132) On September 8, 2016, the OCC, the Consumer Financial Protection Bureau, and the Los Angeles City Attorney issued fines and penalties against the Bank related to sales practices misconduct, totaling \$185 million. The OCC also issued a Consent Order requiring corrective action and ordered the Bank to remediate customers who were harmed by the Bank's unsafe or unsound sales practices and to establish an enterprise-wide sales practices risk management and oversight program to prevent and detect unsafe or unsound sales practices.

(133) In the wake of the September 2016 actions, a former Operating Committee member wrote the following about what the CEO should communicate to Bank employees: "Don't: ... Tout our culture. Something is broken. Do: Admit that we had an incentive compensation system that was poorly designed, poorly monitored and managed and allowed to remain in place too long."

(134) By October 2016, Operating Committee members, which then included Respondents Strother and Julian, held the following view: "Don't say there was nothing wrong with our culture. At least in the case of parts of the Community Bank, to suggest so just ignores a reality that everyone knows... there was insane pressure on people to produce 'widgets'/ new account sales."

(135) In October 2016, the Bank—under intense pressure from the public and Congress—finally eliminated sales goals for Community Bank employees, fundamentally changing the decade-long business model on which it had been built.

(136) In public testimony before the United States Senate Committee on Banking, Housing, and Urban Affairs in October 2017, CEO Sloan acknowledged that the sales and incentive plans in the Community Bank had been "just stupid."

(137) Until sales goals were eliminated, however, Respondents Tolstedt and Russ Anderson continued to blame the sales practices misconduct problem on a small percent of “bad apple” employees.

(138) The Board Report criticized the Law Department and Audit regarding their handling of sales practices misconduct, in addition to the Head of the Community Bank and the Group Risk Officer of the Community Bank.

(139) The former Chief Security Officer and Head of Corporate Investigations testified before the OCC that “it took an act of Congress for the company to change.”

ARTICLE II

THE SALES PRACTICES MISCONDUCT PROBLEM RESULTED IN SERIOUS ILLEGAL ACTIVITY BY BANK EMPLOYEES

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

(141) Sales practices misconduct resulted in violations of criminal laws, including:

- a. 18 U.S.C. § 656 (misapplication of bank funds);
- b. 18 U.S.C. § 1005 (false records);
- c. 18 U.S.C. § 1028(a)(7) (identity theft); and
- d. 18 U.S.C. § 1344(2) (bank fraud).

(142) Sales practices misconduct resulted in violations of consumer laws and regulations, including:

- a. 15 U.S.C. § 45(a) (Unfair and Deceptive Acts and Practices);
- b. 12 C.F.R. § 1030.4(a) (Regulation DD/Truth in Savings); and
- c. 12 C.F.R. § 1026.12(a) (Regulation Z/Truth in Lending).

(143) Respondent Strother, the former General Counsel, testified before the OCC that opening unauthorized accounts or transferring customer funds without consent constitutes

violations of numerous laws and regulations. He stated that “for sure it is [an] unfair and deceptive practice There are laws in every state that prohibit that” in addition to federal laws. He also agreed that such practices constitute “fraud” and “falsification of bank records.”

(144) Employees who engaged in simulated funding, which entails transferring customer funds from one account to another without customer consent, willfully misapplied customer funds with the intent to represent falsely in the Bank’s systems that the account had been funded by the customer.

(145) Employees who opened unauthorized accounts or issued unauthorized credit cards and debit cards made false representations in Bank systems to deceive the Bank about the customer’s consent to open or issue the products. The false representations by employees enabled them to obtain benefits (or avoid negative consequences) for their managers or themselves, including sales credit, improved performance management outcomes, and incentive compensation.

- a. In opening or issuing such unauthorized accounts or products, employees knowingly entered customer identification information, such as driver’s license information, date of birth, or other data, in Bank computer systems without the customer’s consent.
- b. To avoid disclosing the fact of an unauthorized account opening or an unauthorized credit card issuance, employees failed to provide customers with required account-opening disclosures.

(146) Various forms of sales practices misconduct involved false representations by employees in Bank systems that were intended to deceive the Bank into counting unauthorized

accounts, services, or funds transfers as valid for purposes of sales credit, performance management, and incentive compensation.

(147) Employees engaged in sales practices misconduct made material misrepresentations or omissions to consumers that were likely to mislead them about the products and services involved in the misconduct. Employees also engaged in acts or practices that caused or were likely to cause substantial consumer injury that customers could not reasonably avoid.

ARTICLE III

OPERATING COMMITTEE MEMBERS AND SENIOR EXECUTIVES FAILED TO FULFILL THEIR RESPONSIBILITIES, WHICH ENABLED THE SALES PRACTICES MISCONDUCT PROBLEM TO PERSIST

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

(149) The Bank had multiple policies and management committees that were designed to detect, address, and escalate the sales practices misconduct problem. These policies and committees entrusted Respondents Tolstedt, Russ Anderson, Strother, and Julian with the authority and responsibility to address the sales practices misconduct problem. In reality, the Respondents did no such thing. These policies and committees, due to the actions and inactions of the Respondents who served on them, failed in all respects to address the sales practices misconduct problem.

(150) All incentive compensation plans at the Bank were required to comply with the Bank's Incentive Compensation Risk Management Policy, adopted in 2011.

- a. The Incentive Compensation Risk Management Policy imposed oversight responsibilities on the Head of the Community Bank, the Community Bank Group Risk Officer, and the Law Department.

(151) Respondents Tolstedt, Russ Anderson, Strother, and Julian served on important management committees with responsibilities for identifying, managing, and escalating sales practices misconduct.

(152) Respondents Strother and Julian were members of the Bank's Incentive Compensation Steering Committee, later renamed the Incentive Compensation Committee.

(153) As Incentive Compensation Committee members, Respondents Strother and Julian were responsible for providing "oversight around the design and administration of the Business Line incentive plans, and lead[ing] Wells Fargo's enterprise efforts to enhance incentive compensation practices throughout the company."

(154) Respondents Strother and Julian failed to fulfill their responsibilities on the Incentive Compensation Committee.

(155) Respondents Strother and Julian were members of the Bank's Enterprise Risk Management Committee.

- a. As Enterprise Risk Management Committee members, Respondents Strother and Julian were responsible for "understand[ing] and evaluat[ing] risk, address[ing] escalated issues, and provid[ing] active oversight of risk mitigation." Further, the Enterprise Risk Management Committee could escalate any issue to the Operating Committee or the CEO, and reported quarterly to the Operating Committee and Risk Committee of the Board.

(156) Respondents Strother and Julian failed to fulfill their responsibilities on the Enterprise Risk Management Committee.

(157) Respondents Strother and Julian were members of the Team Member Misconduct Executive Committee.

- a. The Team Member Misconduct Executive Committee charter states that the “committee consists of senior executives who share responsibility for the appropriate management of team member misconduct and internal fraud matters” and the “Committee was formed to look at issues more broadly across the company rather than individual situations.”
- b. The purpose of the Team Member Misconduct Executive Committee was to “provide a forum for Wells Fargo executive management to provide leadership, oversight and direction related to team member misconduct and internal fraud risk management.”

(158) Respondents Strother and Julian failed to fulfill their responsibilities on the Team Member Misconduct Executive Committee.

(159) Respondents Strother and Julian were members of the Ethics Committee.

- a. The Ethics Committee was responsible for the content of the Code of Ethics and overseeing the policy and interpretation of the Code.
- b. The Code of Ethics contained a section on “Sales Incentive programs.”
- c. Respondents Strother and Julian received reporting regarding increases in sales integrity violations in Ethics Committee meetings.

(160) Respondents Strother and Julian failed to fulfill their responsibilities on the Ethics Committee.

(161) Respondents Tolstedt and Russ Anderson were members of the Community Bank Risk Management Committee.

- a. According to its charter, the primary responsibility of the Community Bank Risk Management Committee was to understand the Community Bank’s risk profile

and “to work with management across Community Banking to ensure risks are managed effectively.”

(162) Respondents Tolstedt and Russ Anderson failed to fulfill their responsibilities on the Community Bank Risk Management Committee.

(163) Sales practices misconduct, including trends and volumes, was a topic of discussion in meetings of the Enterprise Risk Management Committee, Team Member Misconduct Executive Committee, Ethics Committee, and the Community Bank Risk Management Committee.

(164) These committees provided their membership, including several Respondents, a recurring source of information regarding sales practices misconduct in the Community Bank.

- a. In 2011, sales practices misconduct was identified as a “key scenario” for risk in two separate meeting packages for the Community Bank Risk Management Committee.
- b. In February 2013, the Team Member Misconduct Executive Committee received a presentation that showed that “sales integrity violations” was the second-most common category of employee investigations.
- c. In August 2013, the Team Member Misconduct Executive Committee received data that approximately half of the over 7,000 EthicsLine complaints investigated by Corporate Investigations related to sales integrity violations and that the number of sales integrity cases was increasing.
- d. The Chief Security Officer and Head of Corporate Investigations reported in the August 2013 meeting of the Ethics Committee that “Sales Integrity issues are

most prevalent – there needs to be continued focus in this area” and that most EthicsLine reports are “associated with Sales Integrity Issues.”

- e. In an April 9, 2014 Enterprise Risk Management Committee meeting, Community Bank leadership informed the committee, including Respondents Strother and Julian, that one to two percent of Community Bank employees (1,000 to 2,000) were terminated each year for sales practices-related wrongdoing.

(165) Despite the information received about sales practices misconduct at these committee meetings, Respondents did not act to address the sales practices misconduct problem consistent with their responsibilities.

ARTICLE IV

THE SALES PRACTICES MISCONDUCT PROBLEM RESULTED IN SERIOUS FINANCIAL HARM AND REPUTATIONAL DAMAGE TO THE BANK

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

(167) The sales practices misconduct problem caused enormous and ongoing financial losses and other damage to the Bank.

(168) A former CEO of the Company estimated the total financial impact of sales practices misconduct on the Company and Bank to be in the “tens of billions of dollars.”

(169) The Bank agreed to settlements totaling \$185 million with the OCC, Consumer Financial Protection Bureau, and Los Angeles City Attorney.

(170) The independent directors of the Board retained a law firm to conduct an investigation of sales practices misconduct at the Bank. The Bank has paid the law firm more than \$70 million in connection with its representation of the independent directors in matters related to sales practices, including the investigation.

(171) The Bank has also paid more than \$97 million to consultants in connection with sales practices matters.

(172) The Bank instituted a voluntary mediation program related to sales practices issues, and has paid more than \$13 million in expenses.

(173) On June 14, 2018, the U.S. District Court for the Northern District of California approved a \$142 million settlement in a class action lawsuit for all individuals in whose name the Bank opened an unauthorized account or submitted an unauthorized application, among other things.

(174) Sales practices misconduct has also resulted in other damage, including downgraded credit ratings, reduced shareholder return, and reputational harm.

(175) In 2017, the Bank fell to last place in a bank reputation survey conducted by *American Banker/Reputation Institute*. According to the *American Banker*, the Bank's reputation score "went into freefall . . . [and was] by far the lowest of any bank."

(176) In explaining how the Bank's sales practices misconduct problem "so clearly harmed [the Bank's] reputation," a former CEO of the Bank testified before the OCC: "Well, prior to [the sales practices scandal], Wells Fargo had a very stellar reputation in terms of serving our customers, serving all of our stakeholders. And because of the mistakes that we made related to sales practices, we saw significant criticism on the part of a number of those stakeholders."

(177) The Bank's sales practices have been the subject of unflattering news reports in the years after the *Los Angeles Times* articles and the settlements.

- a. In September 2016, the *Wall Street Journal* reported that "[m]anagers suggested to employees that they hunt for sales prospects at bus stops and retirement homes"

- b. *The Chicago Tribune* ran a story in October 2016 that reported an employee “and [his] colleagues seized every opportunity to open sham accounts for Latinos, many of them recent immigrants.”
- c. In November 2017, the *Financial Times* published a special report on the Bank’s sales practices in which one former employee admitted “he found himself roaming the aisles at Petco, the animal-supplies store, trying to persuade dog-grooming specialists to sign up for small-business services.”

(178) In 2018, the Bank launched a marketing campaign called “Re-Established,” to rehabilitate its reputation from the negative effects of sales practices misconduct.

(179) The “Re-Established” marketing campaign cost hundreds of millions of dollars.

(180) Credit rating agencies have downgraded the Bank’s rating and outlook due, in part, to sales practices misconduct.

(181) The sales practices misconduct problem has negatively affected the Company’s stock price.

(182) Whereas peer institutions’ stock prices—and the broader stock market—have experienced over 10 percent growth since the sales practices settlements on September 8, 2016, the Company’s stock price has seen little or no growth.

(183) The Bank continues to experience financial and reputational harm related to sales practices misconduct.

(184) In August 2019, the Company estimated in a quarterly securities filing that it could face \$3.9 billion in additional losses from potential legal action related to sales practices misconduct and other issues.

(185) In fourth quarter 2019, the Bank disclosed a “\$1.6 billion discrete litigation accrual (not tax deductible) for previously disclosed retail sales practices matters.”

ARTICLE V

RESPONDENT TOLSTEDT VIOLATED LAWS AND REGULATIONS, RECKLESSLY ENGAGED IN UNSAFE OR UNSOUND PRACTICES, AND BREACHED HER FIDUCIARY DUTY

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

(187) Respondent Tolstedt was the Head of the Community Bank and an Operating Committee member from 2007 until July 2016.

(188) From approximately 2002 until 2007, Respondent Tolstedt was the Community Bank’s Head of Regional Banking, responsible for the Community Bank’s retail branch network.

(189) From 2007 to 2016, Respondent Tolstedt reported to the CEO.

(190) Respondent Tolstedt was a member of the Bank’s Board from at least 2006 through 2014.

(191) Following Respondent Tolstedt’s resignation, the Bank’s Board terminated her for cause in 2017 in connection with her role in the sales practices misconduct problem in the Community Bank.

(192) Respondent Tolstedt 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)).

(193) The OCC is the “appropriate Federal banking agency” as that term is defined in 12 U.S.C. § 1813(q) and is authorized to initiate and maintain these prohibition and civil money penalty actions against Respondent Tolstedt pursuant to 12 U.S.C. § 1818(e) and (i).

Respondent Tolstedt is Directly and Significantly Responsible for the Community Bank's Business Model that Incentivized Systemic Sales Practices Misconduct for Over a Decade

(194) During Respondent Tolstedt's sworn testimony before the OCC, she asserted her Fifth Amendment right against self-incrimination and refused to answer all substantive questions, including those related to the allegations in this Article.

(195) Respondent Tolstedt was the leader of the Community Bank or its retail branch network during the entirety of the sales practices misconduct problem.

(196) Respondent Tolstedt is significantly responsible for the systemic sales practices misconduct problem that existed in the Community Bank for at least 14 years.

(197) Respondent Tolstedt developed, implemented, promoted, and enforced the Community Bank's business model.

(198) The Community Bank's business model imposed unreasonable sales goals on its employees, along with unreasonable pressure to meet such goals.

(199) The business model incentivized and caused hundreds of thousands of Community Bank employees to engage in sales practices misconduct.

(200) Under the Bank's Incentive Compensation Risk Management Policy, Respondent Tolstedt was accountable for all incentive compensation outcomes in the Community Bank.

- a. The Incentive Compensation Risk Management Policy also required Respondent Tolstedt to ensure that incentive compensation arrangements appropriately balanced risk and reward.

(201) Respondent Tolstedt failed to fulfill her responsibilities under the Incentive Compensation Risk Management Policy.

(202) Respondent Tolstedt was responsible for effective risk management in the Community Bank.

(203) During the entirety of Respondent Tolstedt's leadership, the Community Bank's controls were intentionally designed neither to prevent nor detect the vast majority of sales practices misconduct.

(204) From no later than 2002 through 2016, Respondent Tolstedt knew that the Community Bank's business model incentivized illegal sales practices misconduct.

(205) By 2003, Respondent Tolstedt recognized the Community Bank's sales plan as "very, very aggressive." She stated in an email: "[w]e think instead of 50-50 plan (50% not meeting and 50% exceeding with some reasonable distribution), we have a 35%-65% plan or 35% chance of exceeding and 65% going under plan. AND, we debated whether this was a 25-75 plan so you can see we have been aggressive."

(206) Despite continued warnings from senior regional leaders, Corporate Investigations, and Bank employees about ongoing sales practices misconduct across the Community Bank and its root cause, Respondent Tolstedt demanded double-digit annual sales growth and required regions to grow cross-sell, which entailed selling additional products and services to existing customers.

(207) Under Respondent Tolstedt's direction, between 2004 and 2012, the Community Bank almost always increased its sales goals by greater than 10 percent annually.

(208) Respondent Tolstedt knew that the increases in sales goals every year were based on the prior year's sales performance, or "run rate," which was tainted by sales practices misconduct.

(209) Under Respondent Tolstedt's direction, the Community Bank implemented a campaign known as "Jump into January," which led to increased sales pressure, including denying employees the use of any personal time off, calling employees multiple times a day to

check on sales numbers, and requiring employees to stay late or work additional days to meet their goals.

(210) Despite receiving ongoing information about sales practices misconduct caused by unreasonable pressure to meet the unreasonable sales goals, Respondent Tolstedt resisted any meaningful changes to the Community Bank's business model.

- a. Respondent Tolstedt continued to emphasize sales and cross-sell growth in the face of increasing sales practices misconduct.
- b. Respondent Tolstedt accepted only marginal and incremental changes to the sales goals and incentive compensation plans.
- c. In 2015, Respondent Tolstedt objected to the elimination of sales goals in the Community Bank.
- d. The root cause of sales practices misconduct in the Community Bank's business model was not addressed until the elimination of sales goals in October 2016, after Respondent Tolstedt's departure from the Bank.

(211) Respondent Tolstedt failed to properly supervise Community Bank management, including leaders who imposed unreasonable pressure on employees to meet unreasonable sales goals.

(212) Respondent Tolstedt never removed the threat of termination for employees' failure to meet the unreasonable sales goals.

(213) In contrast, Respondent Tolstedt continually sought to *limit* the number of terminations for sales practices misconduct, but made no similar effort to reduce terminations for not meeting unreasonable sales goals.

(214) Throughout her tenure, Respondent Tolstedt did not initiate efforts by the Community Bank to remediate the harm caused to customers by sales practices misconduct.

(215) As stated in the Board Report: “[t]here is no evidence that Tolstedt showed serious concern about the effects of improper sales practices on Wells Fargo’s customers or that she initiated efforts to evaluate or remediate customer harm.”

(216) While serving as the Head of the Community Bank, Respondent Tolstedt had the authority to fully address and eliminate sales practices misconduct within the Community Bank. She failed to do so during the entirety of her tenure in her role.

Respondent Tolstedt Downplayed the Severity of the Sales Practices Misconduct Problem and Provided False and Misleading Reporting about the Problem to the Board and the OCC

(217) Not only did Respondent Tolstedt fail to address and escalate systemic sales practices misconduct, she downplayed its seriousness and scope and actively discouraged and objected to the reporting of information related to sales practices misconduct to the Enterprise Risk Management Committee, the Board, and the OCC.

(218) Respondent Tolstedt blamed individual employees for the sales practices misconduct problem and refused to acknowledge the unreasonable sales goals as the root cause of the problem.

(219) Respondent Tolstedt found it acceptable that the Community Bank terminated approximately 1,000 employees for sales practices misconduct every year.

(220) When forced to present on sales practices to the Board, Respondent Tolstedt provided false, misleading, and incomplete information about all aspects of the sales practices misconduct problem.

(221) Respondent Tolstedt first presented to the Board on sales practices on or around April 28, 2015, and only after being so directed.

- a. During the April 2015 presentation, Respondent Tolstedt failed to inform the Risk Committee of the Board about critical aspects of the sales practices misconduct problem.
- b. For example, Respondent Tolstedt failed to inform the Risk Committee that the sales practices misconduct problem was widespread, and failed to inform the Committee of its root cause, duration, and scope.

(222) The former Chair of the Risk Committee of the Board testified that Respondent Tolstedt's April 2015 presentation "went very poorly. It did not address what I had asked to be addressed . . . What is the scope and substance of the sales practice issue? And in this meeting, Tolstedt presented all these belts and suspenders and efforts to ensure that misdeeds would not occur. And that wasn't the question. . . . we walked away from there no better informed than when we walked in about the scope and substance [of the problem.]"

(223) On or around May 4, 2015, the Los Angeles City Attorney filed a lawsuit against the Bank regarding sales practices.

(224) The Risk Committee of the Board directed Tolstedt to make another presentation on sales practices in May 2015.

(225) Respondent Tolstedt was directly involved in preparing the May 19, 2015 Memo and supervised its preparation.

(226) The verbal and written information regarding sales practices that Respondent Tolstedt supplied to the Risk Committee of the Board for the May 19, 2015 meeting was false, misleading, and incomplete.

- a. During the May 2015 presentation to the Risk Committee of the Board, Respondent Tolstedt *again* failed to inform the Committee about critical aspects of the sales practices misconduct problem.
- b. For example, Respondent Tolstedt failed to inform the Risk Committee that the sales practices misconduct problem was widespread, and failed to inform the Committee of its root cause, duration, and scope.

(227) The false, misleading, and incomplete May 19, 2015 Memo that accompanied the May 2015 presentation to the Risk Committee of the Board was provided to the OCC.

(228) The Board Report found: “[b]y 2015, many Board members believed that [Respondent Tolstedt] was intentionally understating the problem which she had helped to create.”

(229) Respondent Tolstedt allowed her team to provide false, misleading, and incomplete information about sales practices misconduct to the OCC during the course of its examinations of sales practices.

(230) Respondent Tolstedt never informed the Board about the inadequate controls to prevent and detect sales practices misconduct.

(231) Respondent Tolstedt never informed the OCC about the inadequate controls to prevent and detect sales practices misconduct.

(232) Respondent Tolstedt attended a full Board meeting held on or around June 23, 2015. In that meeting, the Chair of the Risk Committee of the Board stated: “the Risk Committee’s focus includes the motivating factors for team members who may have engaged in improper conduct, compliance implications . . .” Respondent Tolstedt failed to inform the Board

that unreasonable pressure to meet unreasonable sales goals motivated employees to engage in sales practices misconduct.

(233) A former Operating Committee member asked Respondent Tolstedt to present at a Board meeting to be held on or around October 26-27, 2015 regarding sales practices. Respondent Tolstedt resisted the request and asked if she would be fired if she did not present to the Board.

(234) Respondent Tolstedt ultimately did present at the Board meeting held on or around October 26-27, 2015. At this meeting, she failed *again* to inform the Board about critical aspects of the sales practices misconduct problem. She failed to inform the Board that the sales practices misconduct problem was widespread, and failed to inform the Board of its root cause, duration, and scope.

(235) In testimony before the OCC, the former Chair of the Risk Committee of the Board described Respondent Tolstedt's presentation to the Board in October 2015 as follows: "my personal reaction was that it was kind of as if it was some sort of a nuanced change[] that needed to take place within the Community Bank to affect the appropriate practices as opposed to this is really a serious issue. There was no recognition within those remarks of the extent or seriousness of the matter. So I had a very negative personal reaction. . . . I just said [Respondent Tolstedt's presentation] was – well, excuse my language. I think I had called it a piece of shit."

(236) Despite knowledge to the contrary, at no point in any of her presentations to the Board did Respondent Tolstedt attribute the sales practices misconduct problem to the Community Bank's business model.

(237) Despite knowledge to the contrary, at no point in any of her presentations to the Board did Respondent Tolstedt attribute the sales practices misconduct problem to the

unreasonable pressure, unreasonable sales goals, employees' fear of termination for not meeting the unreasonable sales goals, and the inadequate controls for preventing and detecting the misconduct.

(238) At no point in any of the Community Bank's reporting to the OCC on sales practices did Respondent Tolstedt or her subordinates attribute the sales practices misconduct problem to unreasonable sales goals, unreasonable pressure, employees' fear of termination for not meeting the unreasonable sales goals, and the inadequate controls for preventing and detecting the misconduct.

* * *

(239) By reason of Respondent Tolstedt's misconduct, the OCC seeks a Prohibition Order against Respondent Tolstedt pursuant to 12 U.S.C. § 1818(e) on the following grounds:

- a. Respondent Tolstedt violated laws and regulations, including: 18 U.S.C. §§ 656, 1005, 1028(a)(7), 1344(2); 15 U.S.C. § 45(a); 12 C.F.R. § 1030.4(a) (Regulation DD/Truth in Savings) and 12 C.F.R. § 1026.12(a) (Regulation Z/Truth in Lending); engaged in unsafe or unsound practices in conducting the affairs of the Bank; and breached her fiduciary duties to the Bank;
- b. By reason of Respondent Tolstedt's misconduct, the Bank suffered financial loss or other damage; Respondent Tolstedt received financial gain or other benefit; and Respondent Tolstedt's misconduct prejudiced the interests of depositors; and
- c. Respondent Tolstedt's violations of laws and regulations, unsafe or unsound practices, and breaches of fiduciary duties involved personal dishonesty and demonstrated a willful or continuing disregard for the safety or soundness of the Bank.

(240) By reason of Respondent Tolstedt's misconduct, the OCC assesses a civil money penalty against Respondent Tolstedt pursuant to 12 U.S.C. § 1818(i) on the following grounds:

- a. Respondent Tolstedt violated laws and regulations, including: 18 U.S.C. §§ 656, 1005, 1028(a)(7), 1344(2); 15 U.S.C. § 45(a); 12 C.F.R. § 1030.4(a) and 12 C.F.R. § 1026.12(a); recklessly engaged in unsafe or unsound practices in conducting the affairs of the Bank; and breached her fiduciary duties to the Bank;
- b. Respondent Tolstedt's violations, practices, and breaches of her fiduciary duties were part of a pattern of misconduct, resulted in pecuniary gain or other benefit to her, and caused more than minimal loss to the Bank.

ARTICLE VI

RESPONDENT RUSS ANDERSON VIOLATED LAWS AND REGULATIONS, RECKLESSLY ENGAGED IN UNSAFE OR UNSOUND PRACTICES, AND BREACHED HER FIDUCIARY DUTY TO THE BANK

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

(242) Respondent Russ Anderson served as the Community Bank's Group Risk Officer from 2004 until August 2016. Respondent Russ Anderson reported to Respondent Tolstedt from 2006 through 2015.

(243) In or around February 2017, Respondent was terminated for cause in connection with her role in the sales practices misconduct problem in the Community Bank.

(244) During Respondent Russ Anderson's sworn testimony before the OCC, she asserted her Fifth Amendment right against self-incrimination and refused to answer all substantive questions, including those related to the allegations in this Article.

(245) Respondent Russ Anderson 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)).

(246) The OCC is the “appropriate Federal banking agency” as that term is defined in 12 U.S.C. § 1813(q) and is authorized to initiate and maintain these prohibition and civil money penalty actions against Respondent Russ Anderson pursuant to 12 U.S.C. § 1818(e) and (i).

Respondent Russ Anderson Failed in Her Responsibilities as Group Risk Officer

(247) As the Community Bank’s Group Risk Officer, Respondent Russ Anderson led the first line of defense in the Community Bank with responsibility for risk management and controls, including with respect to sales practices.

(248) Respondent Russ Anderson failed to fulfill her responsibilities as Group Risk Officer with respect to the sales practices misconduct problem.

(249) Respondent Russ Anderson knew that the Community Bank’s business model—placing unreasonable pressure on employees to meet unattainable sales goals—was the root cause of the sales practices misconduct problem, and understood that employees engaged in sales practices misconduct to maintain their employment.

- a. By February 2013, Respondent Russ Anderson could not identify any midlevel to senior leader in the Community Bank who had both “good sales production” and either good or significantly improved sales quality.

(250) Respondent Russ Anderson also understood that the sales practices misconduct problem could result in millions of dollars in losses to the Bank, as well as other harm such as loss of trust and confidence and loss of revenue.

(251) Respondent Russ Anderson's failures as the Group Risk Officer enabled sales practices misconduct to persist.

(252) Respondent Russ Anderson failed to ensure the Community Bank addressed the sales practices misconduct problem and its root cause, and failed to escalate and accurately report the problem and its root cause to the Enterprise Risk Management Committee, the Board, and the OCC.

(253) Under the Incentive Compensation Risk Management Policy, Respondent Russ Anderson had "to provide independent reviews of incentive compensation arrangements and balancing features used" and was "accountable to Wells Fargo's Chief Risk Officer to ensure appropriate balance is achieved."

(254) Respondent Russ Anderson failed to fulfill her responsibilities under the Incentive Compensation Risk Management Policy.

(255) Respondent sponsored and was a member of the Community Bank's Risk Management Committee, which was responsible for "work[ing] with management across Community Banking to ensure risks are managed effectively."

(256) Respondent failed to fulfill her responsibilities on this committee.

(257) The Board Report concluded that "Russ Anderson's performance fell far short of what was expected and required of the senior risk officer in the Community Bank."

Respondent Russ Anderson Failed to Ensure the Community Bank's Controls were Reasonably Designed to Prevent and Detect Sales Practices Misconduct

(258) Respondent Russ Anderson was responsible for the Community Bank's controls.

(259) By 2007 at the latest, Respondent Russ Anderson knew or should have known that lack of customer consent for products was a primary sales integrity issue, but she

nevertheless failed to ensure throughout her tenure as Group Risk Officer that the Community Bank had adequate controls to capture customer consent for Bank products.

(260) SSCOT, the group within the Community Bank responsible for detecting sales practices misconduct and conducting proactive monitoring, reported to Respondent Russ Anderson from January 2012 through 2016.

(261) Respondent Russ Anderson failed to ensure the Community Bank's controls, including SSCOT's proactive monitoring, were reasonably designed to prevent and detect sales practices misconduct.

(262) Respondent Russ Anderson agreed to a six-month pause of SSCOT's proactive monitoring of sales practices misconduct in 2013 and 2014.

(263) Respondent Russ Anderson thereafter approved SSCOT's use of proactive monitoring thresholds designed to identify only the most egregious violators who engaged in sales practices misconduct.

(264) The former head of the Bank's Financial Crimes Risk Management department testified before the OCC that he informed Respondent Russ Anderson that applying restrictive monitoring thresholds only managed the number of employees identified, as opposed to managing sales practices risk itself. He testified that Russ Anderson responded: "if [SSCOT] changed or dramatically changed their monitoring thresholds that they would have ... many, many more identified team members than they could reasonably handle."

(265) Respondent Russ Anderson resisted suggestions by others to broaden the restrictive thresholds for simulated funding and phone number changes.

(266) Respondent Russ Anderson failed to ensure the Community Bank proactively monitored other types of known sales practices misconduct, such as pinning, bundling, sandbagging, and significantly, the issuance of unauthorized debit and credit cards.

(267) The former Chief Security Officer and Head of Corporate Investigations testified before the OCC that he specifically advised Respondent Russ Anderson that the number of employees caught and terminated for sales practices misconduct was just the “tip of the iceberg” because of the lack of robust proactive monitoring.

Respondent Russ Anderson Failed to Escalate and Accurately Report the Sales Practices Misconduct Problem and its Root Cause to the Enterprise Risk Management Committee and the Board

(268) Respondent Russ Anderson failed to escalate and accurately report the Community Bank’s sales practices misconduct problem and its root cause to the Enterprise Risk Management Committee and the Board.

(269) The Board Report found that Respondent Russ Anderson “exhibited a lack of transparency and failed to escalate sales integrity issues and related terminations to Wells Fargo’s Board of Directors and the [Enterprise Risk Management Committee]” and “minimized and obscured issues in reporting on the Community Bank, including sales practices.”

(270) Respondent Russ Anderson presented to the Enterprise Risk Management Committee on April 9, 2014.

(271) At the April 9, 2014 Enterprise Risk Management Committee meeting, Respondent Russ Anderson told the committee that:

- a. the Community Bank’s business model did not incent inappropriate behavior;
 - b. “management tries to stress a balanced message of sales, service, and quality”;
- and

c. “the Sales Quality team looks at a manager’s track record prior to an individual being promoted.”

d. Those representations were false or misleading.

(272) Despite knowledge to the contrary, Respondent Russ Anderson failed to inform the Enterprise Risk Management Committee that the Community Bank’s business model was the root cause of the sales practices misconduct problem.

(273) Respondent Russ Anderson failed to inform the Enterprise Risk Management Committee that she was unable to identify any midlevel to senior leader in the Community Bank who maintained both “good sales production” and either good or significantly improved sales quality, despite having this knowledge in February 2013.

(274) The Board Report found that Respondent Russ Anderson’s April 9, 2014 presentation to the Enterprise Risk Management Committee “did not provide a forthright description and assessment of the [sales practices misconduct] problem.”

(275) Respondent Russ Anderson assisted in preparing the May 19, 2015 Memo to the Risk Committee of the Board, which was also provided to the OCC.

(276) Respondent Russ Anderson knew the May 19, 2015 Memo contained false, misleading, and incomplete information about critical aspects of sales practices misconduct in the Community Bank, including the root cause of the problem, its scope, and the adequacy of controls (which the May 19, 2015 Memo falsely described as “robust”).

(277) Respondent Russ Anderson failed to correct the false, misleading, and incomplete information in the May 19, 2015 Memo.

(278) Instead, Respondent Russ Anderson successfully advocated for the removal of material employee termination data related to sales practices misconduct from the memo.

Respondent Russ Anderson Made False and Misleading Statements to the OCC

(279) Respondent Russ Anderson knowingly and willfully made several false and misleading statements to OCC examiners during the February 2015 and May 2015 examinations and regularly sought to limit the extent of information the Bank provided to the OCC.

(280) On April 4, 2014, Corporate Risk provided feedback on Respondent Russ Anderson's written presentation to the Enterprise Risk Management Committee, requesting more content on the "current state" of sales practices. Respondent Russ Anderson responded that she was "worried about putting something like that into a deck. I'd rather we did that verbally because this deck is subject to the regulators [sic] review."

(281) Respondent Russ Anderson participated in a February 10, 2015 conference call with the OCC ("February 2015 OCC Call").

(282) On the February 2015 OCC Call, an OCC examiner asked whether pressure to meet baseline sales goals was significant and contributed to employee turnover. Respondent Russ Anderson told the OCC that "no one loses their job because they did not meet sales goals."

(283) Respondent Russ Anderson also told OCC examiners on the February 2015 OCC Call "that customers are not cross-sold any products without first going through a formal needs assessment discussion with a banker," suggesting that all products were sold with customer consent.

(284) On April 9, 2015, in response to a question from another Community Bank leader regarding what information to include in a submission to the Risk Committee of the Board, Respondent Russ Anderson stated that she "would not add anything more than what we have in the document. We're still forming and storming and since this document will also go to the OCC[,] I would prefer we keep it to a minimum."

(285) In April 2015, an SSCOT manager who reported directly to Respondent Russ Anderson shared with her Facebook posts from a former Bank branch manager. The posts stated: “[Wells Fargo management] have created a toxic atmosphere of sales goals that forces employees to sell products [customers] don’t want. They literally say ‘every customer needs a credit card.’ . . . If there is ever a company as disgusting and unethical as this one, I dare you to find it.”

(286) The next month, Respondent Russ Anderson participated in a May 14, 2015 meeting with the OCC (“May 2015 OCC Meeting”).

(287) Respondent Russ Anderson told examiners during the May 2015 OCC Meeting that interviews with employees “did not lead to conclusions about sales pressure,” that she does not “hear” about pressure from personal bankers “at all,” and that “people are positive and pleased.”

(288) Respondent Russ Anderson also told examiners during the May 2015 OCC Meeting that the “[m]ost important thing is we found something, we were proactive, we did something, and the preponderance were non-customer impact.”

(289) Respondent Russ Anderson continued to instruct her staff after these meetings to limit the information provided to the OCC regarding sales practices.

- a. For example, in June 2015, the Bank was in the process of compiling information for the OCC on the topic of capturing customer consent for Bank products. Although her staff advised her that the OCC requested information regarding signature requirements for deposit products, on June 24, 2015 Respondent Russ Anderson commented in an email that the OCC “did not ask about deposits and

we shouldn't add it. I'll edit it out when they [Respondent Russ Anderson's staff] send it."

(290) Respondent Russ Anderson's false and misleading statements and other conduct obstructed the OCC's examinations of the Bank.

* * *

(291) By reason of Respondent Russ Anderson's misconduct, the OCC seeks a Prohibition Order against Respondent Russ Anderson pursuant to 12 U.S.C. § 1818(e) on the following grounds:

- a. Respondent Russ Anderson violated laws and regulations, including: 18 U.S.C. §§ 656, 1001(a) (false statements), 1005, 1028(a)(7), 1344(2), 1517 (obstruction of a bank examination); 15 U.S.C. § 45(a); 12 C.F.R. § 1030.4(a) and 12 C.F.R. § 1026.12(a); engaged in unsafe or unsound practices in conducting the affairs of the Bank; and breached her fiduciary duties to the Bank;
- b. By reason of Respondent Russ Anderson's misconduct, the Bank suffered financial loss or other damage; Respondent Russ Anderson received financial gain or other benefit; and Respondent Russ Anderson's misconduct prejudiced the interests of depositors; and
- c. Respondent Russ Anderson's violations of laws and regulations, unsafe or unsound practices, and breaches of fiduciary duties involved personal dishonesty and demonstrated a willful or continuing disregard for the safety or soundness of the Bank.

(292) By reason of Respondent Russ Anderson’s misconduct, the OCC assesses a civil money penalty against Respondent Russ Anderson pursuant to 12 U.S.C. § 1818(i) on the following grounds:

- a. Respondent Russ Anderson violated laws and regulations, including: 18 U.S.C. §§ 656, 1001(a), 1005, 1028(a)(7), 1344(2), 1517; 15 U.S.C. § 45(a); 12 C.F.R. § 1030.4(a) and 12 C.F.R. § 1026.12(a); recklessly engaged in unsafe or unsound practices in conducting the affairs of the Bank; and breached her fiduciary duties to the Bank;
- b. Respondent Russ Anderson’s violations, practices, and breaches of her fiduciary duties were part of a pattern of misconduct, resulted in pecuniary gain or other benefit to her, and caused more than minimal loss to the Bank.

ARTICLE VII

RESPONDENT STROTHER RECKLESSLY ENGAGED IN UNSAFE OR UNSOUND PRACTICES AND BREACHED HIS FIDUCIARY DUTY

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

(294) Respondent Strother served as General Counsel and a member of the Operating Committee from 2004 until his retirement in March 2017.

(295) From 2008 through 2016, Respondent Strother reported to the CEO.

(296) Respondent Strother 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)).

(297) The OCC is the “appropriate Federal banking agency” as that term is defined in 12 U.S.C. § 1813(q) and is authorized to initiate and maintain these cease and desist and civil money penalty actions against Respondent Strother pursuant to 12 U.S.C. § 1818(b) and (i).

(298) As General Counsel, Respondent Strother was the principal legal advisor for the Bank and was responsible for:

- a. ensuring the Bank complied with laws and regulations, operated in a safe and sound manner, and maintained controls reasonably designed to prevent and detect misconduct;
- b. supervising and managing the activities of the Law Department; and
- c. escalating to senior management and the Board risk issues that could impact the Bank's compliance with laws and regulations and safety and soundness requirements.

(299) From the beginning of Respondent Strother's tenure as General Counsel in 2004 until the Bank's elimination of sales goals in October 2016, Community Bank employees engaged in repeated, pervasive, and widespread illegal conduct in order to meet unreasonable sales goals and maintain their jobs. The Law Department knew of this conduct for the entirety of Respondent Strother's tenure as General Counsel, and Respondent knew of this conduct by no later than 2011. Despite his and the Law Department's knowledge of the problem, Respondent Strother took no meaningful action to correct the sales practices misconduct problem. He also failed to advise the Board or the CEO that the Community Bank's business model incentivized widespread illegal conduct. Instead, until sales goals were eliminated in October 2016, the Law Department partnered with the Community Bank in preserving the business model that resulted in hundreds of thousands of employees committing violations of laws and regulations.

(300) Additionally, during Respondent Strother's tenure as General Counsel, the Bank designed and maintained controls to catch only the most egregious instances of the illegal conduct. The Law Department Respondent Strother supervised knew of the Community Bank's

deficient controls during his tenure as General Counsel. Respondent Strother should have known of the deficient controls [REDACTED]

[REDACTED] Despite his and the Law Department's knowledge, Respondent Strother did nothing to ensure that the Bank maintained controls that were reasonably designed to prevent and detect widespread illegal activity or to advise the Board or the CEO that the controls were severely deficient and needed to be changed.

(301) Throughout Respondent Strother's tenure as General Counsel, multiple sources supplied him with information regarding the extent, scope, and root cause of sales practices misconduct and the Bank's deficient controls. Those sources included: the attorneys who worked for him in the Law Department; various management committees on which he was a member; and employees across Community Bank regions who wrote letters and emails to him and other members of the Operating Committee expressing concern about pressure to meet unreasonable sales goals causing illegal activity across the Bank and pleading for change. Regardless of the amount of information Respondent Strother received about sales practices misconduct, he took no meaningful action to address the problem or inform the Board or the CEO about the problem.

(302) The Bank's elimination of sales goals in the Community Bank in October 2016 had nothing to do with any advice from Respondent Strother or the Law Department. He never advised that the Community Bank's business model was broken or that it was a significant contributor to massive illegal activity and catastrophic reputational damage for the Bank.

(303) Not only did Respondent Strother fail to properly escalate the sales practices misconduct problem to the Board or the CEO, he provided the Board with false, misleading, and incomplete information about sales practices misconduct even after the May 2015 Los Angeles

City Attorney's lawsuit. Respondent Strother provided that same information to the OCC.

Respondent Strother never corrected the false, misleading, and incomplete information provided to the Board and the OCC about sales practices misconduct.

The Systemic Sales Practices Misconduct Problem Existed for Nearly the Entirety of Respondent Strother's Tenure as General Counsel

(304) The systemic sales practices misconduct problem existed from the beginning of Respondent Strother's tenure as General Counsel in 2004 and continued until sales goals in the Community Bank were eliminated in October 2016.

(305) Respondent Strother understood sales practices misconduct to constitute criminal activity, including fraud, falsification of bank records, and—in certain states in which the Bank operated—identity theft. Moreover, he understood sales practices misconduct to violate laws prohibiting unfair or deceptive acts or practices.

(306) [REDACTED]

[REDACTED]

[REDACTED]

(307) By no later than 2011, Respondent Strother had adequate information to identify the systemic nature of the sales practices misconduct problem, its root cause, and the legal implications for the Bank.

(308) The Law Department was the repository of critical and comprehensive information concerning all aspects of sales practices misconduct in the Community Bank, including the unreasonable sales goals, unreasonable pressure, and intentionally inadequate controls.

(309) Throughout Respondent Strother's tenure as General Counsel, he and the Law Department he supervised received ongoing information from various sources regarding the

extent, scope, and root cause of sales practices misconduct, as well as the severely deficient controls.

(310) Respondent Strother was a member of the Team Member Misconduct Executive Committee, Incentive Compensation Committee, and the Enterprise Risk Management Committee, and was Chair of the Bank's Ethics Committee.

- a. As Chair of the Bank's Ethics Committee, Respondent Strother knew that approximately half of EthicsLine complaints each year related to sales integrity violations. Respondent Strother testified before the OCC that the EthicsLine data he received was indicative of a "large problem."
- b. At an October 2012 Ethics Committee meeting, the former Chief Security Officer and Head of Corporate Investigations reported that "[c]oncern continues for sales integrity cases as the volume continues to increase in Community Banking. . . . There's a need to be mindful of this activity; EthicsLine calls are up 16% over last year. 50% of calls are related to sales integrity."
- c. At an August 2013 Team Member Misconduct Executive Committee meeting, Respondent Strother received a presentation that highlighted important misconduct considerations, including whether the controls were "allowing to[o] much opportunity" for employees to commit misconduct and whether the line of business "creat[ed] an environment whereby the [employee] must commit misconduct." At that meeting, the former Chief Security Officer and Head of Corporate Investigations warned: "[t]oo much opportunity or too much personal or business pressure can sway most anyone."

d. In an April 9, 2014 Enterprise Risk Management Committee meeting, Respondent Strother learned that one to two percent of Community Bank employees (1,000 to 2,000) were terminated each year for sales practices-related wrongdoing.

(311) Employees wrote letters and emails to Respondent Strother and other members of the Operating Committee expressing concern about pressure to meet unreasonable sales goals causing illegal activity across the Community Bank.

(312) The Board Report described the attorneys who worked in the Law Department, particularly those in the Employment Law Section and the Litigation & Workout Division, as having “significant involvement with sales integrity issues.”

(313) The 2004 Investigation Report that Respondent Strother’s Deputy General Counsel received noted that “[w]hen terminated team members challenge Wells Fargo through the legal system’s unemployment hearing process the court’s decisions almost exclusively rule in favor of the former team member. For example, in the state of Washington in the past three years Wells Fargo has not won a single decision. This is typical nationwide. Several judges have made disparaging comments about the sales incentive plans and one was quoted directly saying rhetorically *‘You[’re] supposed to be a bank, not a used car lot.’*”

(314) Employment lawyers in the Law Department were aware of and advised on investigations and individual and mass termination decisions related to sales practices misconduct, as well as any subsequent employment litigation arising out of those terminations.

a. [REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]

[REDACTED]

(315) The Board Report found that by 2011, employment lawyers “recognize[d] sales pressure in the Community Bank environment as a root cause of gaming cases.”

(316) Over the course of 14 years, attorneys in the Law Department participated in various cross-functional teams formed specifically to address rampant sales practices misconduct. For example:

- a. Law Department attorneys, including the Deputy General Counsel, participated in a sales integrity task force that existed from 2002 through 2004. The task force was formed to address rapidly rising rates of sales practices misconduct that was “occurring in all regions.” The task force recognized that the Community Bank’s incentive compensation plans “may encourage inappropriate sales behaviors”;
- b. A former Chief Security Officer provided the Deputy General Counsel with a copy of the 2004 Investigation Report, which explained that instances of gaming were rapidly increasing and “geographically consistent corporate-wide,” and that employees engaged in misconduct because they feared “losing their jobs for not meeting performance expectations”;
- c. Beginning in May 2011, three attorneys in the Law Department were assigned to participate in another sales integrity task force. The task force concluded that “the sales culture, sales plan pressure, local performance expectations and messaging create fear among team member populations”; and

- d. Attorneys participated on a cross-functional team called the Core Team, created after the 2013 *Los Angeles Times* articles to ensure consistency in termination decisions for sales practices misconduct.

(317) During Respondent Strother's tenure, attorneys in the Law Department he supervised were aware of and advised on the methodology used by the Community Bank to detect sales practices misconduct, including the severely deficient proactive monitoring thresholds designed to identify only the most egregious illegal activity.

Respondent Strother and the Law Department He Supervised Played a Critical Role in Enabling Ongoing Illegal Activity in the Community Bank

(318) Respondent Strother and the Law Department he supervised were aware of the longstanding sales practices misconduct problem and did nothing meaningful to address it. Instead, Respondent Strother and the Law Department were instrumental in maintaining the Community Bank's business model that resulted in rampant criminal and legal violations.

Respondent Strother and the Law Department:

- a. failed to adequately oversee employee misconduct and approved the Community Bank's incentive compensation plans consisting of unreasonable sales goals;
- b. [REDACTED]
- c. protected the Community Bank's ability to terminate employees for not meeting the unreasonable sales goals; and
- d. obtained an exception to the Bank's insurance coverage to allow individuals who engaged in sales practices misconduct to remain employed.

Respondent Strother Failed to Provide Adequate Oversight Regarding Employee Misconduct and Incentive Compensation Plans Consisting of Unreasonable Sales Goals

(319) As a member of the Incentive Compensation Committee from approximately 2010 through 2015, Respondent Strother was directly responsible for the Community Bank's

deficient incentive compensation system. The Incentive Compensation Committee, including Respondent Strother, failed to provide oversight over the Community Bank’s incentive compensation plans, which consisted of unreasonable sales goals and were a significant root cause of systemic illegal activity across the Community Bank for years.

(320) Respondent Strother agreed in testimony before the OCC that the Bank “had an incentive compensation system that was poorly designed, poorly monitored and managed and allowed to remain in place too long.” Respondent Strother was responsible for overseeing the Bank’s incentive compensation system.

(321) It was common knowledge at the Bank that the root cause of sales practices misconduct was the unreasonable sales goals and the extreme pressure on employees to meet those goals. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

(322) Throughout Respondent Strother’s tenure as General Counsel, the Law Department he supervised reviewed and approved the Community Bank’s incentive compensation plans consisting of unreasonable sales goals.

(323) In November 2013, the Head of Community Bank Human Resources stated: “we will need to present all of our IC [incentive compensation] plans to . . . legal for review and approval before we can implement them.”

(324) In July 2011, the Company and Wells Fargo Financial, Inc., a financial subsidiary of the Company, entered into a Consent Order with the Board of Governors of the Federal Reserve System (“Federal Reserve Order”).

- a. Respondent Strother signed the Federal Reserve Order as the only representative for the Company.
- b. The Federal Reserve Order stated that Wells Fargo Financial employees engaged in the misconduct at issue “in order to meet sales performance standards or receive incentive compensation” and that Wells Fargo Financial’s controls were inadequate to prevent and detect the misconduct.
- c. Sixteen branch level employees of Wells Fargo Financial were prohibited from employment in the banking industry in connection with the Federal Reserve Order.
- d. The Bank created the Team Member Misconduct Executive Committee, of which Respondent Strother was a member, to ensure the causes of misconduct in Wells Fargo Financial were not also contributing to problems in other lines of business.

(325) Respondent Strother agreed in sworn testimony before the OCC that as General Counsel he had “a role to play in trying to assure that the problems that [gave] rise to the Federal Reserve’s consent order [were] not happening in other [lines of business].” He failed in that role.

(326) As Respondent Strother himself agreed in sworn testimony before the OCC, the problems that gave rise to the Federal Reserve Order were “very similar” to the sales practices misconduct issues in the Community Bank.

(327) In fact, the sales practices misconduct problem in the Community Bank was not only similar to, but far exceeded in magnitude the issues that had occurred in Wells Fargo Financial. Respondent Strother repeatedly received EthicsLine reports demonstrating this fact in the months and years following the Federal Reserve Order.

Continued Use of Intentionally Inadequate Controls

(328) [REDACTED]

[REDACTED]

(329) [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

(330) [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] A pause in proactive monitoring hindered detection of additional employees engaged in sales practices misconduct. The Law Department, under Respondent Strother’s supervision, never followed through to ensure the Community Bank was in fact addressing the root causes of sales practices misconduct and taking appropriate action.

(331) [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

(332) [REDACTED]

[REDACTED]

[REDACTED]

(333) Respondent Strother testified before the OCC that the fact that the 99.99 and 99.95% proactive monitoring thresholds only identified 3 to 18 employees per month was “stunning.” [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

(334) [REDACTED]

[REDACTED]

[REDACTED] Respondent Strother undertook no effort to ensure the Bank’s controls to prevent and detect sales practices misconduct were legally sufficient.

(335) Respondent Strother and senior members of the Law Department he supervised prepared the CEO for his testimony before Congress in September 2016.

(336) The CEO expected those executives who prepared him for his Congressional testimony “to be fully candid with [him] and give [him] all the information that [he] or Congress requested[.]”

(337) Respondent Strother and the Law Department failed to appropriately or adequately prepare and advise the CEO in connection with his testimony in multiple respects, including with respect to SSCOT’s proactive monitoring of sales practices misconduct.

(338) In prepared testimony presented to the United States Senate Committee on Banking, Housing, and Urban Affairs on September 20, 2016, the CEO testified that SSCOT

engaged “in proactive monitoring of data analytics, specifically for the purpose of rooting out sales practice violations.”

- a. Respondent Strother attended the CEO’s Congressional testimony.
- b. Respondent Strother, who prepared the CEO for his Congressional testimony, knew or should have known that SSCOT’s proactive monitoring was never done for the purpose of “rooting out” sales practices misconduct; to the contrary, the thresholds SSCOT used were intended and designed to detect only a tiny fraction of sales practices misconduct.

c. [REDACTED]

d. [REDACTED]

(339) [REDACTED]

[REDACTED]

(340) The CEO testified before the OCC:

Q And would you have expected the people who were assisting you with preparing this [Congressional] testimony, who knew what the thresholds were and knew what SSCOT was doing, to have alerted you about this subject before you presented this testimony?

A Assuming they knew –

Q Yes, sir.

A -- and assuming it would have come to them, I would have expected them to opine on this issue.

Q Okay. And would you have expected whoever did the scrub [review of the Congressional testimony] afterwards, if they knew about the thresholds, to have alerted you about this point?

A Yes, to that.

(341) [REDACTED]

[REDACTED]

[REDACTED]

(342) [REDACTED]

[REDACTED]

Respondent Strother and the Law Department he Supervised Protected the Community Bank's Ability to Terminate Employees for Not Meeting the Unreasonable Sales Goals

(343) The Community Bank's practice of terminating employees for failing to meet unreasonable sales goals imposed extreme pressure on employees and resulted in systemic illegal activity.

(344) Terminating employees for failing to meet unreasonable sales goals was an important aspect of the Community Bank's business model. During Respondent Strother's tenure as General Counsel, neither the Law Department nor Respondent Strother ever advised the Bank that it should remove the threat of termination for not meeting unreasonable sales goals.

[REDACTED] an Exception to the Bank's Insurance Coverage Allowing Individuals Who Engaged in Sales Practices Misconduct to Remain Employed

(345) Under Respondent Strother's supervision, the Law Department successfully aided the Community Bank's efforts to avoid terminating employees for sales practices misconduct. As a result, employees continued to be terminated for failing to meet the unreasonable sales goals, while employees who engaged in illegal activity to meet the unreasonable sales goals could continue their employment at the Bank.

(346) Beginning no later than 2002, senior leaders in the Community Bank repeatedly engaged the Law Department to obtain an exception to the Bank's fidelity bond in order to limit the number of terminations for sales practices misconduct.

(347) Fidelity bonds are insurance policies that insure banks against losses caused by dishonest acts of their employees. Federal law requires national banks to maintain adequate fidelity bond coverage over its employees. Under the Bank’s previous fidelity bond policy, employees were not bondable if they engaged in dishonest acts, such as sales practices misconduct, and therefore had to be terminated.

(348) In 2002, nearly an entire branch in Colorado engaged in a form of gaming involving issuing debit cards without customer consent and improper teller referrals. As the Board Report explains: “[r]ather than terminate everyone [] involved, which would have eliminated most of the branch’s tellers and personal bankers, Wells Fargo sought and obtained an exception to the fidelity bond from its underwriter. Employment Law Section attorneys advised in connection with the incident.” Terminating an entire branch en masse in 2002 would have brought unwanted public attention to and exposed the sales practices misconduct problem, much like the terminations that resulted in the *Los Angeles Times* articles in 2013. Neither the Law Department nor the Community Bank wanted this outcome.

(349) In 2016, the Bank ultimately obtained an exception to the fidelity bond such that it was no longer required to terminate employees who engaged in dishonest acts, provided the employee caused loss to the Bank of \$5,000 or less.

(350) [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

(351) [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

- a. [REDACTED]

(352) In April 2016, the Law Department succeeded in obtaining this exception to the fidelity bond.

(353) Respondent Strother knew or should have known that rather than changing the business model, the Community Bank pursued avenues to *avoid* terminating employees who engaged in sales practices misconduct to meet the sales goals and limit publicity of this fact to avoid public or regulatory scrutiny—and sought and obtained the Law Department’s assistance in doing so.

Respondent Strother Failed to Escalate to the Board and Properly Advise Them on the Legal Risks of Sales Practices Misconduct

(354) Hundreds of thousands of employees in the Bank’s largest line of business engaged in systemic illegal activity for 14 years. The Law Department allowed and enabled this systemic illegal activity to persist.

(355) The Law Department that Respondent Strother supervised knew about the root cause and scope of sales practices misconduct during the entire time the problem existed, which coincided with his tenure as General Counsel. Respondent Strother himself recognized the “systemic nature of sales practice[s] misconduct [by] Fall 2013.” Nevertheless, he failed to

escalate the sales practices misconduct problem to the Board and the CEO. Regardless of the amount of information supplied to him about the sales practices misconduct problem, at no point during his tenure as General Counsel did Respondent Strother advise the Board and the CEO that the Community Bank's business model *motivated* employees to break the law, that the business model needed to be changed, and that the Bank's controls were inadequate and not reasonably designed to prevent and detect serious legal violations associated with sales practices misconduct.

(356) The former Chair of the Risk Committee of the Board testified before the OCC about sales practices misconduct: "I felt the legal department was not doing a very good job keeping the Board advised of matters the Board should be advised about."

(357) [REDACTED]

(358) Respondent failed to share information about the duration of sales practices misconduct with the Board.

(359) Shortly after the Los Angeles City Attorney lawsuit, Respondent Strother submitted the May 19, 2015 Memo to the Risk Committee of the Board, which contained false, misleading, and incomplete information about critical aspects of sales practices misconduct in the Community Bank, including the scope, extent, duration, and root cause of the problem, and the adequacy of controls used to prevent and detect illegal activity.

(360) The May 19, 2015 Memo represented that only 230 Bank employees had been terminated in connection with the Bank's review of sales practices misconduct.

(361) Due to his role as General Counsel and his participation on the Enterprise Risk Management Committee, Respondent Strother knew no later than April 2014 that the Community Bank terminated 1,000-2,000 employees per year for engaging in sales practices-related wrongdoing.

(362) Respondent Strother failed to ensure that the May 19, 2015 Memo accurately represented the scope of sales practices misconduct in the Community Bank.

(363) [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Nevertheless, Respondent Strother submitted the false, misleading, and incomplete final version to the Risk Committee. The inclusion of threshold information in the May 19, 2015 Memo would have alerted the Risk Committee to the false, misleading, and incomplete content in the memo.

(364) Respondent Strother knew or should have known that the May 19, 2015 Memo contained false, misleading, and incomplete information about critical aspects of the sales practices misconduct problem.

(365) On May 18, 2015, Respondent Strother transmitted the false, misleading, and incomplete May 19, 2015 Memo to the OCC.

(366) Respondent Strother acknowledges that attorneys in the Law Department he supervised drafted the May 19, 2015 Memo along with the Community Bank.

(367) By May 19, 2015, the day after Respondent Strother submitted the memo to the OCC, he knew that the information contained in the May 19, 2015 Memo was misleading.

(368) [REDACTED]

[REDACTED]

[REDACTED]

a. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

b. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

c. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

(369) Respondent Strother testified before the OCC that the root cause of sales practices misconduct as described in the May 19, 2015 Memo (“intentional team member misconduct based on the fact that only a small percentage of Retail Banking team members engaged in the outlier behavior”) was not the only root cause. He stated: “[k]nowing what I know today, I could understand why someone might feel misled [sic]. . . . I would say one root cause was intentional

team member misconduct. Another root cause was sales goals that were difficult to meet and too inflexible and too centrally based. . . . And it's true, that is true, intentional team member misconduct is one of the causes but -- and it's a root cause, but there -- I don't know if you have to boil it down to one or not but they did. And I think that it's not accurate."

(370) [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

(371) [REDACTED]

[REDACTED]

(372) In July 2015, Respondent Strother met with senior OCC officials and discussed sales practices. When another Operating Committee member represented to the OCC that the number of Bank employees terminated for sales practices misconduct had grown to 260, Respondent Strother failed to inform the OCC that in fact, the Bank had terminated thousands of employees for such misconduct.

(373) [REDACTED]

[REDACTED]

[REDACTED]

(374) Following the May 2015 Risk Committee meeting [REDACTED]

[REDACTED],

Respondent Strother failed to take any reasonable steps to address sales practices misconduct or the deficient controls. Indeed, he failed to inquire about or challenge the restrictive criteria the Community Bank was using to detect sales practices misconduct, even after this information was supplied to him.

(375) [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

(376) Nevertheless, Respondent Strother never informed the Board about the root cause of sales practices misconduct and the problem’s scope, or the Community Bank’s 99.99 and 99.95% thresholds to detect limited types of sales practices misconduct. Furthermore, the restrictive thresholds remained in place through October 2016.

* * *

(377) By reason of Respondent Strother’s misconduct, the OCC seeks a Cease and Desist Order against Respondent Strother pursuant to 12 U.S.C. § 1818(b) on the grounds that he engaged in unsafe or unsound practices in conducting the affairs of the Bank.

(378) By reason of Respondent Strother’s misconduct, the OCC assesses a civil money penalty against Respondent Strother pursuant to 12 U.S.C. § 1818(i) on the following grounds:

- a. Respondent Strother recklessly engaged in unsafe or unsound practices in conducting the affairs of the Bank; and breached his fiduciary duties to the Bank;
- b. Respondent Strother's unsafe or unsound practices and breaches of his fiduciary duties were part of a pattern of misconduct, resulted in pecuniary gain or other benefit to him, and caused more than minimal loss to the Bank.

ARTICLE VIII

RESPONDENT JULIAN RECKLESSLY ENGAGED IN UNSAFE OR UNSOUND PRACTICES AND BREACHED HIS FIDUCIARY DUTY

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

(380) Respondent Julian was the Chief Auditor and head of Audit from March 2012 to October 2018.

(381) As Chief Auditor, Respondent Julian reported directly to the Chair of the Audit and Examination Committee of the Board.

(382) Respondent Julian also reported administratively to the CEO.

(383) During his tenure as Chief Auditor, Respondent Julian was a member of the: Operating Committee; Enterprise Risk Management Committee; Incentive Compensation Committee; Ethics Committee; and Team Member Misconduct Executive Committee.

(384) In or around October 2018, the Bank placed Respondent Julian on administrative leave.

(385) In or around October 2019, Respondent Julian retired from the Bank.

(386) Respondent Julian was an officer of the Bank and 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)).

(387) The OCC is the “appropriate Federal banking agency” as that term is defined in 12 U.S.C. § 1813(q) and is authorized to initiate and maintain these cease and desist and civil money penalty actions against Respondent Julian pursuant to 12 U.S.C. § 1818(b) and (i).

Respondent Julian’s Responsibilities

(388) Audit’s charter defined its scope of work to be “determin[ing] if the [Bank’s] risk management, systems of control, and governance processes are adequate and functioning as intended.”

(389) Respondent Julian testified before the OCC: “Audit’s role is to come in and to assess the adequacy of those controls to ensure that . . . they’re working as appropriate. And if not, then to provide . . . comment, provide issues, raise concerns to management, raise concerns to the Board[.]”

(390) Audit’s charter further specified that its work was to ensure:

- a. “Fraud risk management is effectively managed and the company’s customers and internal resources are protected”;
- b. “Reputation risk is effectively managed and the company’s brand protected”;
- c. “Compensation programs incent appropriate and desired behavior”;
- d. “[E]mployees’ actions are in compliance with the policies, standards, procedures, and applicable laws and regulations.”

(391) Respondent Julian was responsible for ensuring that Audit adequately executed its duties.

(392) Respondent Julian was responsible for the accuracy and completeness of audits, including those of the Community Bank.

Respondent Julian Knew About Sales Practices Misconduct for Years

(393) Between 2012 and 2016, Respondent Julian was well-informed of sales practices misconduct issues, volumes, and trends through his role as Chief Auditor, his membership on various management committees, and employee complaints.

(394) As Chief Auditor, Respondent Julian had unrestricted access to all functions, records, property, and personnel in the Bank, including the Community Bank.

(395) Respondent Julian knew or should have known about the Community Bank’s sales practices misconduct problem by no later than 2012.

(396) Respondent Julian admitted in his sworn statement before the OCC that beginning in 2012 he was informed of the sales practices misconduct problem by various sources, including Corporate Investigations, the Team Member Misconduct Executive Committee, the Ethics Committee, and news articles.

(397) For example, in March 2013 he wrote to Respondent McLinko that the Chief Security Officer and Head of Corporate Investigations “is presenting some data and Community Banking has a lot of issues [related to team member fraud] each year[.]”

(398) Respondent Julian routinely received information on sales practices through the Team Member Misconduct Executive Committee, the Ethics Committee, and the Enterprise Risk Management Committee.

- a. In February 2013, the Team Member Misconduct Executive Committee—including Respondent Julian—received a presentation that showed that “sales integrity violations” was the second-most common category of employee investigations.

- b. In August 2013, the Team Member Misconduct Executive Committee—including Respondent Julian—received data that approximately half of the over 7,000 EthicsLine complaints investigated by Corporate Investigations related to sales integrity violations and that the number of sales integrity cases was increasing.
- c. At the same Team Member Misconduct Executive Committee meeting, Respondent Julian received a presentation that highlighted important misconduct considerations, including whether the controls were “allowing to[o] much opportunity” for employees to commit misconduct and whether the line of business “creat[ed] an environment whereby the [employee] must commit misconduct.” At that meeting, the former Chief Security Officer and Head of Corporate Investigations warned: “[t]oo much opportunity or too much personal or business pressure can sway most anyone.”
- d. The Chief Security Officer and Head of Corporate Investigations reported to the Ethics Committee, including Respondent Julian, in August 2013 that “Sales Integrity issues are most prevalent – there needs to be continued focus in this area” and that most EthicsLine reports are “associated with Sales Integrity Issues.”
- e. In an April 9, 2014 Enterprise Risk Management Committee meeting, Community Bank leadership informed the committee, including Respondent Julian, that one to two percent of Community Bank employees (1,000 to 2,000) were terminated each year for sales practices-related wrongdoing.
- f. Respondent Julian took no meaningful action after receiving any of this information.

(399) Respondent Julian also received information related to sales practices from Corporate Investigations, which had reported to Audit until 2012. By no later than 2002, Corporate Investigations knew about the sales practices misconduct problem and its root cause.

(400) Respondent Julian explained in an email to the OCC: “audit methodology includes contacting Corporate Investigations at the beginning of each audit to determine if there are any cases/trends related to the area under review.”

(401) In February 2011, Corporate Investigations met with Audit and informed auditors about case volumes and trends related to sales practices, including the number of terminations and that “customer consent” was the number one issue.

(402) In July 2012, the Chief Security Officer and Head of Corporate Investigations informed Respondent Julian: “[O]ur data continues to highlight a concerning trend in the area of Sales Integrity – from the increase in EthicsLine reports, to the increase in executive complaint letters / OCC referral, and increases in confirmed fraud, thus, we need to continue to escalate this issue with senior leadership. . . . Our data continues to point to a very negative trend.” The Chief Security Officer and Head of Corporate Investigations also informed Respondent Julian in the email that Respondent Russ Anderson, the Community Bank’s Group Risk Officer, was “minimizing” the seriousness of the problem to executive management.

- a. Respondent Julian took no meaningful actions in response to this email.
- b. Respondent Julian never addressed the Chief Security Officer’s warnings in his July 2012 email that there was a “very negative trend” related to sales practices or that Respondent Russ Anderson was minimizing negative information being submitted to executive management.

- c. Respondent Julian admitted in his sworn testimony before the OCC that a competent auditor receiving this email should have investigated the matter further and determined if the claims were true.

(403) Beginning in 2012, Corporate Investigations also periodically emailed Respondent Julian to notify him of EthicsLine complaints alleging sales practices misconduct.

(404) Respondent Julian also was aware of the *Los Angeles Times* articles at the end of 2013 alleging sales practices misconduct within the Community Bank. The Chief Security Officer and Head of Corporate Investigations emailed the first article to Respondent Julian and explained it was a “big deal[.]”

- a. Respondent Julian took no meaningful action in response to the *Los Angeles Times* articles.

(405) Respondent Julian testified before the OCC that, after reading the articles, he started “thinking that, gosh, is there a problem?”

Respondent Julian Failed to Identify and Escalate the Sales Practices Misconduct Problem

(406) Respondent Julian failed to fulfill his responsibilities under Audit’s charter and failed to abide by his own description of Audit’s function as the third line of defense.

(407) Respondent Julian failed to ensure that: fraud risk management and reputation risk were effectively managed; compensation programs incented appropriate and desired behavior; and employees’ actions complied with policies, standards, procedures, and applicable laws and regulations.

(408) Respondent Julian and Audit failed to ask basic questions about the Bank’s controls to prevent and detect sales practices misconduct, which would have exposed the magnitude of the problem and the severely deficient controls.

(409) Respondent Julian failed to ensure that Audit conducted a meaningful review of sales practices in the Community Bank.

(410) Respondent Julian admitted in sworn testimony before the OCC that the Community Bank had a significant, systemic problem with sales practices misconduct.

(411) Under Respondent Julian's leadership, Audit never criticized the Community Bank for its systemic sales practices misconduct problem or identified its root cause in any audit report, despite all the information he received that the Community Bank had a widespread problem. In so doing, Respondent Julian is responsible for perpetuating the Community Bank's systemic sales practices misconduct problem.

(412) Respondent Julian failed to identify and escalate the sales practices misconduct problem to the Audit and Examination Committee, the full Board, or any of the committees on which he served. Respondent Julian's reports to the Audit and Examination Committee never identified the systemic sales practices misconduct problem at the Community Bank.

(413) Despite all the information he received indicating a serious and pervasive sales practices misconduct problem, in each of the audits conducted between 2012 and 2016 that involved aspects of sales practices misconduct, Audit, under Respondent Julian's leadership, awarded high ratings to the Community Bank.

(414) Respondent Julian acknowledged in his sworn statement before the OCC that he would now consider the Community Bank's controls over sales practices misconduct from 2012 to 2016 to be "unsatisfactory," the lowest possible rating that Audit could issue at that time.

(415) In October 2012, Audit issued a report finding that internal controls for incentive compensation within the regional bank (consisting of the retail branch network) were "effective," the highest possible rating .

(416) In December 2013, the Community Bank received an “effective” rating—the highest possible rating—for its sales quality / sales integrity internal controls.

(417) In June 2015, the OCC issued five Matters Requiring Attention related to sales practices. One Matter Requiring Attention required Audit to “reassess their coverage of sales practices and provide an enterprise view.”

(418) In response to the Matter Requiring Attention, Audit indicated that it was committed to maintaining independence and developing a comprehensive audit approach with respect to sales practices.

(419) Audit committed that it would be “engaged with the various LOBs (lines of business) as they develop and implement corrective actions to the Enterprise Sales Practices MRA’s. ... Issue monitoring and validation, reviewing governance processes and enhanced policy, monitoring of projects/initiatives to enhance Enterprise Sales Practices compliance, and obtaining an understanding of key activities and functions performed to ensure compliance with enterprise sales practices along with their sustainability.”

(420) Notwithstanding all of the commitments which Audit made, Audit continued to award high ratings to the Community Bank related to sales practices during a time when sales practices misconduct continued to be rampant.

(421) Even in March 2016, after the Los Angeles City Attorney’s lawsuit and the five Matters Requiring Attention from the OCC, Audit rated the Community Bank’s system of internal controls related to customer account opening as “effective.”

(422) Throughout his tenure as Chief Auditor, Respondent Julian failed to effectively audit the Community Bank related to sales practices misconduct.

(423) At no point prior to October 2016 did Respondent Julian identify through Audit's work the systemic nature of the sales practices misconduct problem or the inadequate controls for preventing and detecting the misconduct.

(424) These failures allowed the problem to persist for years and prevented the Board from being accurately informed on the topic.

(425) Corporate Human Resources and Corporate Risk explicitly relied on Audit's work and findings in preparing annual incentive compensation risk memoranda. These memoranda were submitted to the CEO and the Human Resources Committee of the Board, and later provided to the OCC.

(426) The memoranda were supposed to incorporate risk outcomes into incentive compensation recommendations for senior management.

(427) From 2014 through 2016, these memoranda rated Community Bank's risk management in connection with sales practices as "satisfactory," the highest possible assessment, and recommended no impacts to Respondent Tolsted's compensation.

(428) Respondent Julian's and Audit's failure to effectively audit the Community Bank and identify the systemic nature of sales practices misconduct resulted in incentive compensation risk memoranda that falsely portrayed the Community Bank to be adequately handling the problem.

(429) This false information was submitted to the CEO and the Human Resources Committee of the Board, and was also provided to the OCC.

(430) Likewise, Respondent Julian told the Risk Committee of the Board during its May 2015 meeting that Audit had reviewed sales practices in the Community Bank and had not found a systemic problem.

(431) Respondent Julian admitted in his sworn statement before the OCC that he and Audit should have done more related to sales practices.

- a. Respondent Julian testified: “. . . I would agree that audit didn’t do as good a job certainly as it should have done within the context of sales practices. I believe we could have done better and should have done better”

(432) Respondent Julian testified that, subsequent to the elimination of sales goals, Audit performed work that determined that the Community Bank had a significant and systemic problem with sales practices misconduct and that the root cause was unreasonable sales goals and unreasonable pressure to meet those goals. Yet, he never identified these problems when it mattered.

(433) Respondent Julian admitted that his team could have requested information on the levels of sales goals, how often employees were monitored against their goals, the numbers of employees terminated for sales practices misconduct, and the number of employees terminated for failing to meet sales goals.

- a. Respondent Julian testified: “Given that, I should have ensured that my team and, therefore, that I was more informed, that my team would have looked further into the matters, the issues, or followed up in some capacity.”

(434) In sworn testimony before the OCC, Respondent Julian was unable to posit any reasonable explanation for why Audit, under his leadership, did not do more than it did with respect to the sales practices misconduct problem in the Community Bank.

(435) Respondent Julian himself asked his staff in a September 2016 email about sales practices misconduct: “Where was audit while this activity was taking place? To be honest, I’m not sure how to answer this but am sure the A[udit and] E[xamination] Committee will and

should be asking.” Respondent Julian testified that he never received a “good answer about where was audit.”

* * *

(436) By reason of Respondent Julian’s misconduct, the OCC seeks a Cease and Desist Order against Respondent Julian pursuant to 12 U.S.C. § 1818(b) on the grounds that Respondent Julian engaged in unsafe or unsound practices in conducting the affairs of the Bank.

(437) By reason of Respondent Julian’s misconduct, the OCC assesses a civil money penalty against Respondent Julian pursuant to 12 U.S.C. § 1818(i) on the following grounds:

- a. Respondent Julian recklessly engaged in unsafe or unsound practices in conducting the affairs of the Bank; and breached his fiduciary duties to the Bank;
- b. Respondent Julian’s practices and breaches of his fiduciary duties were part of a pattern of misconduct, resulted in pecuniary gain or other benefit to him, and caused more than minimal loss to the Bank.

ARTICLE IX

RESPONDENT McLINKO RECKLESSLY ENGAGED IN UNSAFE OR UNSOUND PRACTICES AND BREACHED HIS FIDUCIARY DUTY

(438) This Article repeats and realleges all Articles in the Notice.

(439) From approximately 2011 to 2017, Respondent McLinko was an Executive Audit Director at the Bank, responsible for auditing the Community Bank.

(440) From March 2012 to 2018, Respondent McLinko reported to Respondent Julian.

(441) Respondent McLinko retired from the Bank on or around April 2019.

(442) Respondent McLinko 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)).

(443) The OCC is the “appropriate Federal banking agency” as that term is defined in 12 U.S.C. § 1813(q) and is authorized to initiate and maintain these cease and desist and civil money penalty actions against Respondent McLinko pursuant to 12 U.S.C. § 1818(b) and (i).

Respondent McLinko Had Responsibility for Community Bank Audits

(444) Beginning in 2011, Respondent McLinko was responsible for overseeing all Community Bank audits, which included setting the audit strategy, reviewing and approving draft audit reports, complying with Audit’s charter, and providing credible challenge to Community Bank management.

(445) Respondent McLinko was responsible for ensuring that the Community Bank’s audit team adequately executed their duties consistent with Audit’s responsibilities.

(446) Respondent McLinko was responsible for the accuracy and completeness of the Community Bank’s audits.

Respondent McLinko Knew of the Sales Practices Misconduct Problem for Years

(447) Respondent McLinko had access to all functions, records, property, and personnel in the Bank, including sales goals, incentive compensation plans, termination data, customer complaints, and EthicsLine reporting.

(448) From no later than 2011, Respondent McLinko knew or should have known about the systemic sales practices misconduct problem in the Community Bank and its root cause.

(449) Respondent McLinko was a member of the Community Bank’s Internal Fraud Committee. As part of that committee, he received reporting from Corporate Investigations that there were thousands of sales integrity cases each year, including thousands of investigations related to lack of customer consent for products and services.

(450) By no later than 2002, Corporate Investigations knew about the sales practices misconduct problem and its root cause.

(451) Respondent McLinko explained in an email he drafted for Respondent Julian: “audit methodology includes contacting Corporate Investigations at the beginning of each audit to determine if there are any cases/trends related to the area under review.”

(452) In January 2011, the Chief Security Officer and Head of Corporate Investigations informed Respondent McLinko: “Community Bank sales integrity issue has resulted in two arrests. This is highly unusual but reinforces the fact that this type of activity is unlawful and certainly poses a significant reputation risk to our company.”

a. Respondent McLinko took no meaningful action in response to this email.

(453) In February 2011, Corporate Investigations met with Audit and informed auditors on case volumes and trends related to sales practices, including the number of terminations and cases and that “customer consent” was the number one issue. Corporate Investigations also informed Audit that some of the Community Bank’s controls with respect to sales practices amounted to “the fox guarding the hen house.”

(454) In July 2011, the Chief Security Officer and Head of Corporate Investigations again informed Respondent McLinko that “Sales Integrity cases continue to surge.”

a. Respondent McLinko took no meaningful action in response to this email.

(455) In July 2012, the Chief Security Officer and Head of Corporate Investigations again informed Respondent McLinko that the Bank’s data “continues to highlight a concerning trend in the area of [s]ales [i]ntegrity – from the increase in EthicsLine reports, to the increase in executive complaint letters/OCC referrals, and increases in confirmed fraud” and that Respondent Russ Anderson “minimiz[ed] the negative information being submitted to executive

management.” The Chief Security Officer and Head of Corporate Investigations concluded: “we need to continue to escalate this issue with senior leadership” and stated the data “continues to point to a very negative trend.”

- a. Respondent McLinko took no meaningful action in response to this email.

(456) In January 2013, an auditor who reported to Respondent McLinko told him that sales integrity “is still [the Chief Security Officer’s] #1 concern.” In that same email, the auditor wrote: “I questioned [the Chief Security Officer] as to whether they had discussed root cause for some of the items listed above and was it related to sales pressure. He said he felt a lot of it was related to the sales goals and pressure. He feels there’s an issue that [Regional Bank] is trying to work through but not a lot of people want to address it with [Respondent Tolstedt].”

- a. Respondent McLinko took no meaningful action in response to this email.

(457) Respondent McLinko also was aware of the *Los Angeles Times* articles at the end of 2013. The Chief Security Officer and Head of Corporate Investigations emailed him the first article and explained it was a “big deal[.]”

- a. Respondent McLinko took no meaningful action in response to the *Los Angeles Times* articles.

Respondent McLinko Failed to Identify and Escalate the Sales Practices Misconduct Problem in Audit Reports

(458) Respondent McLinko failed to fulfill his audit responsibilities with respect to the sales practices misconduct problem.

(459) Respondent McLinko admitted in sworn testimony before the OCC that the Community Bank had a systemic problem with sales practices misconduct.

(460) Respondent McLinko further admitted in his sworn testimony before the OCC that this systemic sales practices misconduct problem persisted until sales goals were eliminated in October 2016.

(461) Respondent McLinko admitted that although the systemic sales practices misconduct problem existed throughout his tenure as Executive Audit Director with responsibility for auditing the Community Bank, none of the Community Bank's audits identified this problem. In fact, when asked whether Audit ever rated *anything* in Community Bank as unsatisfactory, Respondent McLinko replied: "Nothing I can think of."

(462) Under Respondent McLinko's leadership, the Community Bank audit team never criticized the Community Bank for its systemic sales practices misconduct problem or identified its root cause in any audit report. In so doing, Respondent McLinko allowed the Community Bank's systemic sales practices misconduct problem to persist.

(463) In each of the audits conducted between 2012 and 2016 that involved aspects of sales practices misconduct, the Community Bank audit team under Respondent McLinko's leadership awarded high ratings to the Community Bank.

(464) In October 2012, Audit issued a report finding internal controls for incentive compensation within the regional bank to be "effective."

(465) In December 2013, the Community Bank received an "effective" rating—the highest possible rating—for its sales quality / sales integrity internal controls.

(466) In June 2015, the OCC issued five Matters Requiring Attention related to sales practices. One Matter Requiring Attention required Audit to "reassess their coverage of sales practices and provide an enterprise view."

(467) In response to the Matter Requiring Attention, Audit indicated that it was committed to maintaining independence and developing a comprehensive audit approach with respect to sales practices. The response to the Matter Requiring Attention designated Respondent McLinko as the “accountable executive.”

(468) The commitments for which Respondent McLinko was the “accountable executive” included being “engaged with the various LOBs (lines of business) as they develop and implement corrective actions to the Enterprise Sales Practices MRA’s. ... Issue monitoring and validation, reviewing governance processes and enhanced policy, monitoring of projects/initiatives to enhance Enterprise Sales Practices compliance, and obtaining an understanding of key activities and functions performed to ensure compliance with enterprise sales practices along with their sustainability.”

(469) Notwithstanding all of the commitments which Audit made and for which Respondent McLinko was the “accountable executive,” the Community Bank audit team under Respondent McLinko’s leadership continued to award high ratings to the Community Bank.

- a. In March 2016, following the Los Angeles City Attorney’s lawsuit and the five Matters Requiring Attention from the OCC, Audit rated the Community Bank’s system of internal controls related to customer account opening as “effective.”

(470) Far from identifying and escalating the sales practices misconduct problem in the Community Bank in audit reports, Respondent McLinko personally praised Respondent Tolstedt for her and the Community Bank’s quality of risk management.

- a. In March 2016, Respondent McLinko told Respondent Tolstedt that “[w]hile many groups talk about risk management, [Respondent Tolstedt] and [her] team live it.”

- b. In July 2016, Respondent McLinko told Respondent Tolstedt: “[i]t’s rare to find a business leader who takes risk management as seriously as you do.”

(471) In April 2016, Respondent McLinko told Respondent Russ Anderson: “I’d appreciate it if you don’t mention audit and the risk culture topic together when and if you approach the subject with the regulators.”

(472) In a September 2016 email about sales practices misconduct, Respondent Julian asked his staff, including Respondent McLinko: “Where was audit while this activity was taking place? To be honest, I’m not sure how to answer this but am sure the A[udit and] E[xamination] Committee will and should be asking.” Neither Respondent McLinko, nor anyone else in Audit, was able to provide Respondent Julian with an adequate answer to the question: “Where was audit while this activity was taking place?”

* * *

(473) By reason of Respondent McLinko’s misconduct, the OCC seeks a Cease and Desist Order against Respondent McLinko pursuant to 12 U.S.C. § 1818(b) on the grounds that Respondent McLinko engaged in unsafe or unsound practices in conducting the affairs of the Bank.

(474) By reason of Respondent McLinko’s misconduct, the OCC assesses a civil money penalty against Respondent McLinko pursuant to 12 U.S.C. § 1818(i) on the following grounds:

- a. Respondent McLinko recklessly engaged in unsafe or unsound practices in conducting the affairs of the Bank; and breached his fiduciary duties to the Bank;
- b. Respondent McLinko’s practices and breaches of his fiduciary duties were part of a pattern of misconduct, resulted in pecuniary gain or other benefit to him, and caused more than minimal loss to the Bank.

ANSWER AND OPPORTUNITY FOR HEARING

Respondents are each 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 (“OFIA”), 3501 North Fairfax Drive, Suite D8115A, Arlington, VA 22226-3500. Respondents are encouraged to file any Answer electronically with OFIA 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, DC 20219, hearingclerk@occ.treas.gov, and with the attorneys whose names appear 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.**

Respondents are also each directed to file a written request for a hearing before the Comptroller, along with a written Answer, concerning the Civil Money Penalty assessment contained in this Notice within twenty (20) days after the 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 OFIA, 3501 North Fairfax Drive, Suite D8115A, Arlington, VA 22226-3500. Respondents are encouraged to file any request electronically with OFIA 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, Washington, D.C. 20219, hearingclerk@occ.treas.gov, and with the attorneys whose names appear 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 the Respondent pursuant to 12 U.S.C. § 1818(i).

PRAYER FOR RELIEF

The OCC prays for relief in the form of the issuance:

<ul style="list-style-type: none">• to Respondent Tolstedt of an Order of Prohibition pursuant to 12 U.S.C. § 1818(e) and an Order Assessing a Civil Money Penalty in the amount of Twenty-Five Million Dollars (\$25,000,000) pursuant to 12 U.S.C. § 1818(i)
<ul style="list-style-type: none">• to Respondent Russ Anderson of an Order of Prohibition pursuant to 12 U.S.C. § 1818(e) and an Order Assessing a Civil Money Penalty in the amount of Five Million Dollars (\$5,000,000) pursuant to 12 U.S.C. § 1818(i)
<ul style="list-style-type: none">• to Respondent Strother of an Order to Cease and Desist pursuant to 12 U.S.C. § 1818(b) and an Order Assessing a Civil Money Penalty in the amount of Five Million Dollars (\$5,000,000) pursuant to 12 U.S.C. § 1818(i)
<ul style="list-style-type: none">• to Respondent Julian of an Order to Cease and Desist pursuant to 12 U.S.C. § 1818(b) and an Order Assessing a Civil Money Penalty in the amount of Two Million Dollars (\$2,000,000) pursuant to 12 U.S.C. § 1818(i)
<ul style="list-style-type: none">• to Respondent McLinko of an Order to Cease and Desist pursuant to 12 U.S.C. § 1818(b) and an Order Assessing a Civil Money Penalty in the amount of Five Hundred Thousand Dollars (\$500,000) pursuant to 12 U.S.C. § 1818(i)

Witness, my hand on behalf of the OCC, given at Washington, DC this 23rd day of January, 2020.

/s/ Greg Coleman

Gregory J. Coleman
Deputy Comptroller
Large Bank Supervision