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

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

REPORT AND RECOMMENDATION - EXECUTIVE SUMMARY

What follows is a summary of three reports containing recommendations to the Comptroller based on administrative enforcement proceedings conducted between late 2020 and the spring of 2022. Those proceedings commenced with the issuance of a Notice of Charges filed against, inter alia, David Julian, Claudia Russ Anderson, and Paul McLinko. The three reports and recommendations were filed simultaneously with this Executive Summary.

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3) Ms. Russ Anderson, as the Community Bank's Group Risk Officer, failed to timely identify the root cause of team member sales practices misconduct in the Community Bank, failed to exercise credible challenge to the Community Bank's head (Carrie Tolstedt) regarding risk management controls relating to sales practices, failed to timely and independently evaluate the effectiveness of Community Bank's risk management controls, and failed to identify, address, and escalate risk management control failures that threatened the safety, soundness, and reputation of Wells Fargo Bank, N.A. 20

4) Mr. McLinko, as the WFAS Executive Audit Director assigned to the Community Bank, failed to timely identify the root cause of team member sales practices misconduct in the Community Bank, failed to provide credible challenge when evaluating the effectiveness of Community Bank's risk management controls, and failed to identify, address, and escalate risk management control failures that threatened the safety, soundness, and reputation of the Bank. ... 28

5) Between 2013 and 2016, Mr. Julian, Ms. Russ Anderson, and Mr. McLinko, separately and collectively engaged in unsafe or unsound banking practices by individually failing to identify and effectively address inadequate controls over known issues of risks related to sales goals pressure in the Community Bank, knowingly and purposefully failing to escalate known issues related to those ineffective controls, misleading regulators regarding the efficacy of controls over risks related to sales goals pressure, thereby advancing their individual pecuniary interests over the safety, soundness, and reputational interests of Wells Fargo Bank, N.A. and its holding company, Wells Fargo & Company, and breaching fiduciary duties each owed to the Bank. Further, Ms. Russ Anderson's efforts to restrict material information from being disseminated among the Bank's senior leaders, the WF&C Board of Directors, and federal regulators violated federal statutes and regulations. ... 37

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1. Nature of the Case

This is an administrative enforcement action taken by the Office of the Comptroller of the Currency and initiated through a Notice of Charges (Notice) that was issued on January 23, 2020, by its Deputy Comptroller for Large Bank Supervision, Gregory J. Coleman. The enforcement action was taken against three senior bankers formerly affiliated with Wells Fargo Bank, N.A. (WFB-NA or the Bank). The action was taken pursuant to the federal Administrative Procedure Act as authorized by the Federal Deposit Insurance Act and uniform procedural rules of the Office of the Comptroller of the Currency (the OCC).

The facts summarized here are based solely on evidence in the record, including testimony and documentary evidence taken during a hearing that began on September 13, 2021 in Sioux Falls, South Dakota and continued through intermittent presentations that concluded on January 6, 2022. After 35 days of sworn testimony and the presentation of documentary evidence, the parties presented their arguments through final briefs filed on June 26, 2022.

This Executive Summary summarizes the contents of three separate reports that were filed along with this Summary. Each report contains findings of fact that I have made based on the record presented by the parties. Those reports also contain conclusions of law applying those facts to each banker; and include my recommendations regarding the allegations presented through the Notice of Charges.

Through the Notice of Charges, the OCC identified David Julian as the Bank's Chief Auditor. It identified Claudia Russ Anderson as the Group Risk Officer for the Bank's Community Banking group. It identified Paul McLinko as a direct report of Mr. Julian and the Executive Audit Director for the Bank's Community Banking group.

The Notice advised Ms. Russ Anderson that the OCC contends her conduct as Group Risk Officer constituted violations of law, constituted unsafe or unsound practices, and breached fiduciary duties she owed to the Bank. The Notice seeks an order prohibiting her from engaging in regulated banking activity.

The Notice advised Mr. Julian and Mr. McLinko that the OCC contends their conduct as Chief Auditor and Executive Audit Director (respectively) constituted unsafe or unsound practices and breached fiduciary duties each owed to the Bank. There is no allegation that either Mr. Julian or Mr. McLinko violated any statute or regulation. The Notice seeks orders that they cease and desist engaging in certain prohibited activity.

The Notice further assessed civil money penalties against each banker.

Each banker answered the Notice by separately denying they engaged in unsafe or

unsound banking practices, and denying that they breached any fiduciary duties owed to the Bank. Ms. Russ Anderson further denied that her conduct constituted violations of law.

My recommendations are that the Comptroller issue a prohibition order against Ms. Russ Anderson as proposed in the Notice of Charges, along with an order that Ms. Russ Anderson pay a $10 million civil money penalty.

Although the Notice of Charges seeks a cease and desist order be issued regarding Mr. Julian, and while the evidence supports the issuance of such an order as was presented in the Notice of Charges, I recommend the Comptroller issue a prohibition order against Mr. Julian, based on inculpatory evidence that was not available to the Comptroller at the time the Notice of Charges was issued. Alternatively, I recommend the Comptroller issue a cease and desist order against Mr. Julian, as proposed in the Notice of Charges. I also recommend an order that Mr. Julian pay a $7 million civil money penalty.

I recommend the Comptroller issue a cease and desist order against Mr. McLinko, as proposed in the Notice of Charges, along with an order that he pay a $1.5 million civil money penalty.

2. Five Conditions Leading to the Charges

Five key conditions led to the presentation of charges against Mr. Julian, Ms. Russ Anderson, and Mr. McLinko.

First, Bank employees working in the Bank's Community Banking unit, who were referred to as team members, engaged in sales practices misconduct throughout the relevant period – which for the purposes of these Reports and this Executive Summary was the beginning of 2013 to the end of 2016. During the relevant period, such misconduct was widespread throughout the Bank's branch system, and materially threatened the safety, soundness, and reputation of Wells Fargo Bank, N.A. and its holding company, Wells Fargo & Company.

Second, as Chief Auditor, Mr. Julian failed to timely identify the root cause of team member sales practices misconduct in the Community Bank, failed to provide credible challenge to Community Bank's risk control managers, failed to timely evaluate the effectiveness of Community Bank's risk management controls, and failed to identify, address, and escalate risk management control failures that threatened the safety, soundness, and reputation of Wells Fargo Bank, N.A.

Third, as the Community Bank's Group Risk Officer, Ms. Russ Anderson failed to timely identify the root cause of team member sales practices misconduct in the Community Bank, failed to timely and independently evaluate the effectiveness of Community Bank's risk management controls, and failed to identify, address, and escalate risk management control failures that threatened the safety, soundness, and reputation of Wells Fargo Bank, N.A. Aligned with her failure to act in the best interest of the Bank, Ms. Russ Anderson violated federal laws relating to the required disclosure of material information to the Bank's Board of Directors and federal bank examiners engaged in the examination of the Bank.

Fourth, as the Community Bank's Executive Audit Director, Mr. McLinko failed to

timely identify the root cause of team member sales practices misconduct in the Community Bank, failed to provide credible challenge when evaluating the effectiveness of Community Bank's risk management controls, and failed to identify, address, and escalate risk management control failures that threatened the safety, soundness, and reputation of the Bank.

Fifth, throughout the relevant period, Ms. Russ Anderson, Mr. Julian, and Mr. McLinko separately and collectively engaged in unsafe or unsound banking practices by individually failing to identify and effectively address known issues of risks related to sales goals pressure in the Community Bank, knowingly and purposefully failed to escalate known issues related to those risks, misleading regulators and members of the Bank's Board of Directors regarding the efficacy of controls over risks related to sales goals pressure, and advanced their individual pecuniary interests over the safety, soundness, and reputational interests of Wells Fargo Bank, N.A. and its holding company, Wells Fargo & Company, thereby breaching fiduciary duties each owed to the Bank. Further, Ms. Russ Anderson's efforts to restrict material information from being disseminated among the Bank's senior leaders and the WF&C Board of Directors constituted violation of federal laws.

1) Community Bank team members engaged in sales practices misconduct that threatened the safety, soundness, and reputation of Wells Fargo Bank, N.A.

The Community Bank's sales goals and accompanying management pressure during the relevant period led thousands of its employees to engage in: (1) unlawful conduct to attain sales through fraud, identity theft, and the falsification of bank records; and (2) unethical practices to sell products of no or low value to Bank customers, while believing that the customers did not actually need the products.

Collectively, many of these practices were referred to within Wells Fargo as "gaming." "Gaming" was a term generally known at the Bank. It referred to employees' manipulation or misrepresentation of sales to meet sales goals, receive incentive compensation, or avoid negative consequences such as reprimands or termination.

Gaming strategies varied widely, and included using existing customer identities—without the customer's consent—to open checking and savings, debit card, credit card, bill pay, and global remittance accounts in the customer's name. Many widespread forms of gaming constituted violations of federal criminal law. Examples of gaming practices engaged in by Wells Fargo employees included:

a. Employees created false records and forged customers' signatures on account opening documents to open accounts that were not authorized by customers.

b. After opening debit cards using customers' personal information without consent, employees falsely created a personal identification number (PIN) to activate the unauthorized debit card. Employees often did so because the Community Bank rewarded them for opening online banking profiles, which required a debit card PIN to be activated.

c. In a practice known as "simulated funding," employees created false records by opening unauthorized checking and savings accounts to hit sales goals. They then transferred funds to the unauthorized account to meet the funding criteria required to receive credit for

"selling" the new account. To achieve this "simulated funding," employees often moved funds from existing accounts of the customers without their consent.

Millions of accounts reflected transfers of funds between two accounts that were equal in amount to the product-specific minimum amount for opening the later account and that thereafter had no further activity on the later account; many of these accounts were subject to simulated funding. In many other instances, employees used their own funds or other methods to simulate actual funding of accounts that they had opened without customer consent.

d. Employees opened unauthorized consumer and business credit card accounts without customer authorization by submitting applications for credit cards in customers' names using customers' personal information.

e. Employees opened bill-pay products without customer authorization. Employees also encouraged customers to make test or "token" payments from their bill-pay accounts to obtain employee sales credit (which was only awarded for bill-pay accounts that had made a payment).

f. Employees at times altered the customer phone numbers, email addresses, or physical addresses on account opening documents. In some instances, employees did so to prevent the customers from finding out about unauthorized accounts. They also did so to prevent customers from being contacted by the Company in customer satisfaction surveys.

Millions of customer accounts falsely reflected a Wells Fargo email address as the customer's own personal email address, or contained a generic and incorrect customer phone number, or were falsely linked to a Wells Fargo branch or Wells Fargo employee's home address. Employees also intentionally persuaded customers to open accounts and financial products that the customers authorized but which the employees knew the customers did not actually want, need, or intend to use. There were many ways in which employees convinced customers to open these unnecessary accounts, including by opening accounts for friends and family members who did not want them and by encouraging customers to open unnecessary, duplicate checking or savings accounts or credit or debit cards.

2) Mr. Julian, as the Bank's Chief Auditor and serving as the head of the Bank's third line of defense, failed to timely identify the root cause of team member sales practices misconduct in the Community Bank, failed to provide credible challenge to Community Bank's risk control managers, failed to timely evaluate the effectiveness of Community Bank's risk management controls, and failed to timely identify, address, and escalate risk management control failures that threatened the safety, soundness, and reputation of Wells Fargo Bank, N.A.

The Bank's Third Line of Defense – Audit or Audit & Examination (A&E) – was responsible for providing an independent assessment of the Bank's risk framework and internal control systems to the Board of Directors. As the head of Audit, Mr. Julian was accountable to the Board, receiving day-to-day oversight from the Bank's CEO. During the relevant period, the scope of Audit's responsibilities under Mr. Julian included providing assurance that the Bank's lines of business complied with Bank policies and standards. Audit also provided the Board with assurance regarding the effectiveness of the Bank's independent risk management function, and

regarding the completeness and accuracy of information being provided to the Board.

Mr. Julian claimed that he was not subject to the jurisdiction of the OCC, asserting that he was not employed by Wells Fargo Bank, N.A. (which is supervised by the OCC), but was instead an employee of the Bank's holding company, Wells Fargo & Company (which is supervised by the Federal Reserve Board). He later claimed that he was a Bank employee only some of the time. No weight is given to Mr. Julian's claims regarding his employment, as those claims are contradicted by preponderant evidence in the record. Continuously throughout the relevant period, Mr. Julian was an officer and an employee of Wells Fargo Bank, N.A., and was subject to the OCC's jurisdiction.

Wells Fargo Audit Services (WFAS) under Mr. Julian had the duty to provide an independent assurance and advisory function to A&E. Through its assurance and advisory work, WFAS was required to help the Bank accomplish its objectives by bringing a systematic and disciplined approach to evaluate and improve the effectiveness of enterprise governance, risk management, and control processes across the enterprise.

The role of WFAS was to perform audit work designed to provide assurance to management and to the Board that the controls that management oversaw were working as intended or as designed. WFAS was expected to serve as a change agent to ensure risk issues were identified, escalated, and resolved. Under Mr. Julian's direction, the various audit groups that had direct engagement with the various lines of business were expected to assure the Bank that the lines of business were addressing the risks associated with those lines of business, by ensuring that the lines of business escalated reportable issues by bringing the issues to the attention of senior management where appropriate and by ultimately resolving the issues so identified.

Mr. McLinko, as the Community Bank's Executive Audit Director, was the head of Community Banking and Operations (CBO), the audit group assigned to the Community Bank line of business, and he reported directly to Mr. Julian.

Whether through control testing, project engagements, or business monitoring activities, WFAS and the CBO were required to provide assurance to the Wells Fargo & Company (WF&C) Board of Directors that the Community Bank's management was addressing the risk issues and that Community Banking's controls were working appropriately.

Throughout the relevant period, WFAS employed a dynamic audit program in order to accomplish its mission. Under its Charter, WFAS was expected to assure that the Board's governance system had been adequately designed and was in compliance with all regulatory requirements. This included assuring that the Board adhered to key governance documents and was receiving appropriate, accurate, and timely information.

The Internal Audit Department recognized the Institute of Internal Auditors' definition of Internal Audit and adhered to the International Standards for the Professional Practice of Internal Auditing and the Code of Ethics of the Institute of Internal Auditors. Pursuant to the WFAS Audit Charter, the mission and purpose of Internal Audit was to serve as a provider of independent, objective assurance and consulting services delivered through a highly competent

and diverse team.

As a business partner, Internal Audit was required to help the Company accomplish its objectives by bringing a systematic and disciplined approach to evaluate and improve the effectiveness of risk management, control, and governance processes.

Through its assurance and consulting work, Audit:

- Conducted tests and provided conclusive reporting regarding the health of the risk management and internal control structure within the Company;

- Advised management on risk-based management practices and controls in the design of new business products and processes, including timely involvement in product and system development, operations changes, and strategic initiatives to ensure risks are identified at an early stage;

- Functioned as a change agent to ensure risk issues were timely escalated and resolved; and

- Functioned as a source of talent and a training ground for other areas in the Company.

The scope of Internal Audit's work was to determine if the Company's risk management, systems of control, and governance processes, were adequate and functioning as intended. Audit was responsible for assuring that the controls were working as intended and that there were governance processes in place to manage the risk that the business unit was accountable for managing. This included risks associated with sales practices misconduct by Community Banking's team members throughout the relevant period.

The Audit Charter imposed upon WFAS the obligation to assure that Corporate Governance functions and processes provided adequate direction and oversight. Both Mr. Julian and Mr. McLinko were required to make sure that an appropriate culture, including risk culture, had been established, understood, and consistently complied with across the Community Bank line of business.

WFB-NA had a Vision and Values statement, and WFAS was expected to assure that such vision and values were appropriately understood throughout the Community Bank and enterprise-wide, and that there was an appropriate tone at the top by management and by risk owners with respect to managing risks. The Community Bank was one such risk owner, and it owned all risks associated with sales practices misconduct by its team members. This required that WFAS make sure that there was appropriate training and awareness of the culture that was expected through that vision and those values. Sales practices misconduct by Community Bank team members, as described above, violated that vision and those values.

The WFAS Charter required Mr. Julian (at the enterprise level – across all Bank business lines) and Mr. McLinko (at the Community Bank level) to assess the risk culture within the relevant lines of business, through dialogue with the various risk owners. This assessment required Mr. Julian and Mr. McLinko to identify issues or potential issues and communicate those to the Community Bank (in Mr. McLinko's case) or to any business line, including the

Community Bank (in Mr. Julian's case) – and determine whether the line of business was responsive in addressing those issues, determining: did they provide the right level of resources and urgency depending on the nature of the issue, or did they ignore it?

Mr. Julian, at the enterprise-wide level, and Mr. McLinko at the Community Bank line of business level, were required to assure the Bank's Board of Directors that the Community Bank's objectives were aligned with both the Bank's mission and its risk appetite. Both Mr. Julian and Mr. McLinko were required to assure that communication systems were in place to share information with stakeholders, including employees, customers, shareholders, regulators, and community governance regarding this alignment.

Mr. Julian was required to assure that the enterprise-wide risk management systems had been adequately designed to ensure that all risks, including emerging risks, were appropriately identified and managed, and that risk approvals, acceptances, and escalations were appropriately identified and administered. Sales practices misconduct by Community Bank team members as described above constituted such a risk.

In this context, escalation would be part of the risk management system that recognized the fact that the Bank's written policies could not account for every possible situation. To address situations not covered by written Bank policies, or to request a change to the Bank's policies or the related standards, or to recommend an alternative practice, fraud managers including Ms. Russ Anderson, Mr. Julian, and Mr. McLinko were required to contact the correlated policy manager; the policy manager was then required to work with the requesting business to address the business's needs and escalate the request as necessary.

Under the escalation protocols mandated by the Bank's Code of Ethics, all employees – including Ms. Russ Anderson, Mr. Julian, and Mr. McLinko – were required to partner as needed with other Ethics Code administrators within the line of business, Employee Relations, HR, HR Policy, the Law Department, and the Compliance & Operational Risk Manager for the line of business, to ensure consistent interpretation and application of the Code.

The chief operational risk officer was authorized to approve policy changes or alternative implementation practices for certain businesses after consulting with senior executive business management, GROs, and appropriate corporate and business subject matter experts. If needed, matters were then to be escalated to the Enterprise Risk Management Committee or Wells Fargo's Operating Committee for resolution.

In addition to testing these various control environments, Mr. Julian (at the enterprise-wide level) and Mr. McLinko (for Community Banking) were required to assess the design of the control environment to assure that the control environment that had been designed and implemented by the risk owner had been appropriately designed, and that the design took into consideration appropriate information, such as emerging risks, risk approval, risk appetite, and risk acceptance. Sales practices misconduct by Community Bank team members was throughout the relevant period a risk that exceeded the Bank's risk appetite.

Throughout 2013 to 2016, Mr. Julian presented Audit's annual dynamic plan to the A&E Committee. Through these presentations, Mr. Julian was required to assure the Committee that

an adequate ongoing risk identification process was in place – one that reliably would respond proactively to changes in strategic risk factors and risk profiles as enterprise events occurred. By 2013, sales practices misconduct by Community Bank team members no longer was an emerging risk but was a risk known to senior bank management, including Mr. Julian, Mr. McLinko, and Ms. Russ Anderson.

Audit leadership under Mr. Julian (at the enterprise level) and Mr. McLinko (at the Community Bank level) was expected to remain informed of enterprise and risk assessable business unit (RABU) activities, including sales practices. Through their respective leadership teams, Mr. Julian and Mr. McLinko were required to adjust resource deployment to areas of heightened importance, including those areas showing signs of present control stress or those that could deteriorate in the future.

In the case where new or emerging risks might impact multiple Bank Operating Committee Groups (OCGs) or could result in substantial reputational damage, or could result in criticism by regulators or the media, or could lead to significant financial impacts, legal ramifications or interference with the normal operations of the business, those risks were to be escalated, which is to say that both Mr. Julian and Mr. McLinko were required to bring those risks to the attention of the WF&C Audit Management Committee for further evaluation.

Under WFAS's Charter, business monitoring was expected to be a vital part of the ongoing risk identification activity. Such monitoring was supposed to include continuous risk assessments, analyses of business reporting and metrics, and issue follow-up. It also was expected to include a call awareness program from a variety of internal and external sources to keep apprised of new and emerging risks. Documentation was required for all forms of business monitoring.

Business monitoring engagements were assurance engagements that were a collection of ongoing activities conducted to validate issue remediation, to monitor ongoing and emerging risk activities and to achieve general awareness of the businesses we audit. The results of business monitoring were to be used in ongoing annual dynamic audit plan analysis.

There were five types of business-monitoring activities: Continuous Risk Assessment (CRA), Risk-Assessable Business Unit (RABU) Risk Review, Issue Validation, Call/Awareness Program, and Leverage.

Continuous Risk Assessments were performed on a more continuous basis. They refer to activities intended to identify and assess risks by examining trends and comparisons within a single process or system, as compared to its own past performance or against other established targets.

CRA testing was linked to a specific Process, Risk, or Control and *was to be documented on the Documentation workpaper*.

RABU Risk Review business monitoring was a semi-annual review in which the RABU Owner was responsible for evaluating the risk profile and other activities related to the RABU. *The RABU Risk Review Checklist was to be used to guide the RABU Owner through the required activities and to document comments and conclusion from those activities*.

Issue Validation business monitoring involved validation of prior audit issues and could be performed as part of the business monitoring engagement. Issue Validation testing *was to be documented on the Issue form in Issue Track.*

Call/Awareness Program business monitoring was established for most RABUs and was designed to monitor activities and maintain an understanding of the risks in a RABU. The nature and extent of business monitoring activities was different for each RABU and took into account the RABU risk ratings and other planned engagements. It could involve business-partner awareness meetings, committee meetings, and analyses of business reporting and metrics. Call/Awareness activities were linked to the Audit Call Program form and *were to be documented on the Meeting/Awareness workpaper.*

Leveraging in this context was the process by which the results of testing performed by Risk Management/Control Testing groups throughout Wells Fargo could be relied upon and leveraged or used by WFAS without WFAS auditors having to do the work. Leveraging was permissible only if specific requirements were met. Policies governing the leveraging of Risk Management or Control Testing groups were available in a separate Policy Manual document. Leverage testing was linked to a specific Process, Risk, or Control audit, and *was to be documented on a Documentation workpaper.*

As distinct from business monitoring, the Audit teams – through the leadership of Mr. Julian WFAS-wide and the CBO team under the leadership of Mr. McLinko – were supposed to use results from risk management and control testing groups when certain criteria were met, focusing on audit independence, competence, supervision, authoritative reporting, and timely issue follow-up, in order to provide an ongoing assessment of risk.

At the enterprise level, Mr. Julian had a duty to assure the adequacy of the enterprise's risk management – to assure that reputation risk was effectively managed and the Bank's brand was protected. Mr. McLinko had that same duty with respect to the Community Bank.

Reputation risk with respect to a control environment of the management of risk was a byproduct of how well the controls were functioning. WFAS's role at the enterprise level (for Mr. Julian) and at Community Banking (for Mr. McLinko) was assuring that controls were designed appropriately and were working as intended.

Under Mr. Julian's leadership, WFAS was required to assure that the organization's compensation programs incented the appropriate and desired behavior, specifically within risk and reward. Audit's role with respect to that was to assure that there was an appropriate governance model providing oversight for the compensation programs that were implemented and managed by the various lines of business.

Under Mr. Julian's leadership, WFAS was also expected to make sure there was an appropriate governance model – that is, a model in which the people who should be designing compensation incentive programs were designing them, assuring that there were effective review programs in place, and assuring that there was a governance structure through which the programs incented appropriate behavior. Where sales goals incented inappropriate behavior by Community Bank's team members, Mr. Julian had a duty to determine the adequacy of the

governance structure that supported those incentives, so that he could assure the A&E Committee members that sales goals did not encourage sales practices misconduct.

Under Mr. Julian's leadership, WFAS was required to assure that the Bank's policies were sound and strong and that employees' actions were in compliance with the policies, standards, procedures, and applicable laws and regulations. As such, it was important for both Mr. Julian and Mr. McLinko to test for Community Bank's compliance with the various policies, standards, procedures, applicable rules, and oversight of the management of that risk. At the enterprise level (for Mr. Julian) and at the Community Bank (for Mr. McLinko), Audit was expected to test compliance with those various policies or standards that the business unit or units developed. To do so, both Mr. Julian and Mr. McLinko had a duty to understand the compensation incentives program, the Bank's ethical rules and its Vision and Values statement, and the rules, regulations, and applicable Bank procedures related to the Community Bank's sales practices.

Given the dynamic nature of the scope of WFAS audits, changes that may be detected during the implementation of an individual audit or an annual Audit Plan could create opportunities for improving management profitability and the organization's reputation. Such opportunities could arise when there was a deficit in risk management – when something was ineffective or not working as intended. These opportunities for improvement were then supposed to be communicated – escalated – to the appropriate level of management by Mr. Julian (at the enterprise level) and by Mr. McLinko (for the Community Bank). Because the issue of sales practices misconduct arose during the relevant period, both Mr. Julian and Mr. McLinko had the fiduciary duty to bring the issue of sales practices misconduct to the relevant level of management. This included the duty to bring the relevant issue to the committees Mr. Julian and Mr. McLinko served on – whether their service was as a voting member or a non-voting member.

As Chief Auditor, Mr. Julian was accountable to the Bank's Audit Management Committee and its Audit & Examination Committee. In this capacity, Mr. Julian had the responsibility to provide annual individual opinions and assessments of credit, market, and operational risk management. He also had the responsibility to report significant issues related to the processes for controlling the activities of the Bank. This included reporting to these Committees potential improvements to those processes and providing information about significant measurement goals and results.

Mr. Julian testified that in his view, these reporting requirements applied only to the extent that he was aware of something that in his professional judgment rose to the level of being significant. Further, Mr. Julian expressed the view that he did not bear responsibility as Chief Auditor to escalate an issue if the business unit itself was escalating that issue, and neither did the rest of WFAS Internal Audit. Under this view, Mr. Julian disavowed any duty to escalate known issues to either the A&E Committee or the Management Committee if there was any evidence that the issue was being escalated by anyone else. **Acting in furtherance of these views constituted, under the facts presented, unsafe or unsound banking practices and a breach of the fiduciary duties Mr. Julian owed to the Bank.**

Under the WFAS Charter, Mr. Julian had the responsibility to develop and employ a dynamic annual audit plan to be submitted to the A&E Committee for its review and approval, using an appropriate risk-based methodology. Such an audit plan needed to identify any risks or control concerns identified by management, ensuring it effectively responded to and addressed new and emerging risks or hot topics in a timely fashion. By early 2013, Corporate Investigations had identified risks arising from an increasing number of sales practices misconduct cases by Community Bank team members and had provided information about those risks to Ms. Russ Anderson, Mr. Julian and Mr. McLinko.

Mr. Julian testified that he would discuss issues with the A&E Committee, but only to the extent that he was personally aware of an emerging risk or issue and was aware that it was an issue specific to a particular line of business. Mr. Julian disavowed any duty to report to either the A&E Committee or the Management Committee emerging risk issues if the issues were not specific to a particular line of business. **Under the facts shown in the record, acting in furtherance of these views constituted unsafe or unsound banking practices and a breach of the fiduciary duties Mr. Julian owed to the Bank.**

Under the WFAS Charter, Mr. Julian had the responsibility to coordinate with and provide oversight of other control and monitoring functions (risk management, compliance, security, legal, ethics, environmental, external audit). He was also required to consider the scope of work of the Bank's external auditors and regulators, as appropriate, for the purpose of providing optimal audit coverage to the organization at a reasonable overall cost.

Under the WFAS Charter, Mr. Julian (at the enterprise level) and Mr. McLinko (for the Community Bank) had the authority to leverage control and monitoring efforts when appropriate. Mr. Julian testified that to the extent those control activities were being performed by the first and second lines of defense appropriately and reasonably, there were opportunities for Audit to leverage that work. In such cases, Audit under Mr. Julian would not necessarily have WFAS perform the same kind of work that these control functions in the first or second lines of defense were doing. Mr. Julian opined that this authority also permitted WFAS and the CBO auditors to leverage – and thus not independently perform – work that was being done, or would be done in the future, by the OCC. **Under the facts presented, acting in furtherance of these views constituted unsafe or unsound banking practices and a breach of the fiduciary duties Mr. Julian owed to the Bank.**

Under the WFAS Charter, Mr. Julian (at the enterprise level) and Mr. McLinko (for Community Banking) both had the responsibility to ensure that effective corrective actions were timely taken to strengthen reported control weaknesses or uncontrolled risks. Both also were required to assist in the investigation of significant suspected fraudulent activities within the organization. Sales practices misconduct by Community Bank team members included fraudulent activity and indicated both weaknesses in risk management controls and the presence of uncontrolled risks related to such misconduct.

Mr. Julian had the responsibility to employ a Quality Assurance and Improvement Plan that covered all aspects of the internal audit activity and continuously monitored its effectiveness. To facilitate this function, Mr. Julian, Mr. McLinko, and all of the WFAS staff had

unrestricted access to all of the Bank's functions, records, property, and personnel.

Mr. Julian testified that this provision meant that to the extent Audit deemed it necessary to have access to certain information to execute its work, Audit had the authority to ask for and receive that information. Despite this responsibility and grant of authority, Mr. Julian testified that he personally would never ask for access to records, stating that such requests would come only from auditors who were performing the audits. **Under the facts presented, acting in furtherance of these views constituted unsafe or unsound banking practices and constituted a breach of fiduciary duties Mr. Julian owed to the Bank.**

Under the WFAS Audit Charter, Mr. Julian, Mr. McLinko, and every member of the staff of WFAS had full and free access to the A&E Committee, providing a path for escalation from WFAS to the A&E Committee. Mr. Julian and his staff also were expressly authorized to obtain the assistance of personnel in units of the organization where Internal Audit performed their audits in order to accomplish audit objectives.

While WFAS auditors were not authorized to perform any operational duties for the organization or its affiliates, this limitation did not apply to operational duties performed by Corporate Security (later Corporate Investigations). In addition, while not authorized to direct the activities of any organization employee not employed by the internal auditing department, Mr. Julian, Mr. McLinko and their respective staff members were expressly authorized to direct such employees who have been appropriately assigned to auditing teams or to otherwise assist the internal auditors.

Mr. Julian's Duties Based on Committee Membership

Apart from responsibilities arising from his role as the Bank's Chief Auditor, Mr. Julian had responsibilities and correlated fiduciary duties arising from his membership in Bank committees.

Operating Committee Group

Wells Fargo & Company maintained an enterprise-wide leadership group – the Operating Committee Group (OCG) – that was made up of senior Bank employees who directly reported to the holding company's Chief Executive Officer (John Stumpf at the start of the relevant period, and Tim Sloan thereafter). These direct reports were responsible for managing their own respective Operating Committee Group. Thus, Carrie Tolstedt was the head of the Community Bank's Operating Committee Group, of which Mr. Julian was a member. Chaired by the CEO, the OCG was an executive-level committee that had high-level decision-making authority and met weekly to provide strategic leadership.

Mr. Julian's failure to promptly report to the OCG known control issues related to sales practices misconduct by Community Bank team members constituted unsafe or unsound banking practices and a breach of the fiduciary duty he owed to the Bank.

Enterprise Risk Management Committee

Mr. Julian was a member of the Bank's Enterprise Risk Management Committee (ERMC). Chaired by Wells Fargo Bank, N.A.'s Chief Risk Officer (Michael Loughlin), the

purpose of the Committee was to oversee the management of all risks across Wells Fargo, specifically with emphasis on credit, market, institutional, and operational risks. The Committee reviewed both current and emerging risks during the relevant period and was an enterprise-wide oversight committee that supplemented the primary committees that focused on specific risks or risk types.

The ERMC monitored company-wide risks and was expected to serve as an escalation point for risk-related concerns, including reviews when a breach of the Bank's risk appetite metric occurred. Throughout the relevant period, known sales practices misconduct by Community Bank's team members presented risk-related concerns and reflected breaches of the Bank's risk appetite.

The Committee was obliged to inform and advise senior management and the Board and was expected to meet ten times per year. Through the Committee, each member had the responsibility to understand and evaluate risk, address escalated issues, and provide active oversight of risk mitigation. As a member of the Committee, Mr. Julian had the obligation to understand the risks associated with team member sales practices misconduct and the duty to promptly escalate risk issues related to such misconduct to the Bank's Operating Committee and its Board of Directors.

Committee members were required to understand and evaluate risk. To this end, through the Committee each member had a duty to assess, on a quarterly basis, Wells Fargo's current risk profile relative to its correlated risk appetite across risk types, businesses, and activities. They needed to understand current risk exposures and correlations at the consolidated level and determine whether an appropriate balance existed between risk and return. They further needed to identify and evaluate emerging material risks and trends in risk taking over time and across the enterprise.

Committee members also had a duty to address escalated issues. To this end, Committee members were the most senior governing body to which operational risk were to be escalated. Through its members, the Committee was required to assess, for each escalated issue, the degree to which the risk owner had assessed, controlled, and mitigated the risks in question. Through its Chair, the Committee was authorized to recommend further actions to be taken by the risk owner and could require oversight of the issue by the ERMC or by a designated risk or management committee. The Committee had the discretion to further escalate any issue to the Operating Committee or the CEO.

The Committee was required to provide active oversight of risk mitigation. To this end, the body was required to review the adequacy of risk management resources, skills, and capabilities across the enterprise. It was required to initiate a review of any business activity it believed could create undue risk to WF&C, including, for example, new products or new businesses. It was required to ensure that corrective actions were in place to address material breakdowns of internal controls or risk management processes and assign monitoring responsibility through resolution. It also was empowered to convene ad hoc meetings to review information, and provide feedback and direction, during a crisis situation.

The Committee through its members was required to inform and advise senior management and the Board through quarterly reporting. The Committee reported to the Operating Committee and the Board's Risk Committee, and had an affirmative duty to report on the most significant existing and emerging risks. Nothing in the Committee's Charter, however, limited this duty to reporting on only those risks considered to be widespread or systemic. Further, nothing in the Charter limited the issues to those relating to substantiated claims processed by Corporate Security, particularly where those claims – whether or not substantiated – identified emerging potential risks. The Committee further was required to provide a status report on previously identified risk management concerns, initiatives, and escalated issues.

Meetings of the Committee were to include, as appropriate, presentations and analyses from business managers invited to address the Committee – for example, to present an issue that has been escalated to the ERMC or to discuss a specific emerging risk. The Committee also provided a forum for discussions of risk management matters, emerging issues, and trends. The Chair of the Committee presided over the meetings, established the content of the meeting agendas, and ensured that decisions were timely made. If agreement was not reached among members, the Chair was required to ensure that the issue was escalated appropriately – for example, to the Operating Committee, CEO, or the Risk Committee of the Board.

The February 5, 2013 ERMC Charter identified the Chief Auditor as a voting member of the ERMC, whose participation may not be delegated and whose presence would be counted towards the total required for quorum purposes. The record thus reflects that Mr. Julian was a voting member until his non-voting status was established through the ERMC's December 6, 2013 Charter. No weight is given to Mr. Julian's testimony that he was a non-voting member of the Committee throughout all of 2014 to 2016, as that testimony is contradicted by preponderant evidence in the record.

As Chair of the ERMC, Chief Risk Officer Michael Loughlin would take the information from ERMC meetings that identified significant and emerging risks and would ensure that such information was sent to the Operating Committee as well as the Board of Directors. Nothing in the Charter limited this responsibility to reporting only those risks that were identified as systemic.

There is no documentary evidence from the minutes of the March 19, 2014 ERMC meeting indicating that either Mr. Julian or Ms. Russ Anderson provided Committee members with information they possessed about the widespread nature of sales practices misconduct attributable to Community Banking team members, nor with respect to Mr. Julian's understanding (or his lack of understanding) about the root cause of such misconduct.

Specifically, there was no discussion during this meeting about the known true nature of sales goals – other than the report that representatives of the Community Bank *denied* the possibility that sales goals were driving sales practices misconduct. This denial was a false one, as both Mr. Julian and Ms. Russ Anderson were aware by March 19, 2014 that sales goals likely were driving sales practices misconduct by Community Bank team members.

The minutes further reflect that although both were present at the meeting, neither Ms.

Russ Anderson nor Mr. Julian sought to discuss sales practices misconduct as a significant or emerging risk. **The failure of Ms. Russ Anderson and Mr. Julian to fully report on known issues related to sales practices misconduct by Community Bank team members during this meeting constituted unsafe or unsound banking practices and a breach of the fiduciary duties both owed to the Bank.**

Team Member Misconduct Committee

The purpose of the Team Member Misconduct Executive Committee (TMMEC) 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. The Committee was expected to ensure that the Bank had appropriate team member misconduct-related policies, business processes, and program components that were designed to identify and mitigate associated risks and ensure that misconduct incidents were appropriately investigated and resolved.

Mr. Julian was one of seven voting members of the TMMEC. Although Mr. Julian testified that he was not permitted to make management-type decisions for the Committee, the Committee through its members had a duty to review team-member misconduct trend reports and determine any required action items. This included the duty to review specific team member misconduct or fraud occurrences deemed significant by Corporate Investigations. **Acting in furtherance of his views regarding what he believed were limitations of his duty under the Charter of this Committee constituted, under the facts presented, unsafe or unsound banking practices and a breach of the fiduciary duties Mr. Julian owed to the Bank.**

The Committee had a duty to review and resolve any outstanding investigation resolution issues escalated by the senior leadership of the line of business. This included the duty to review emerging trends and determine any required action items, and review any concerns or issues identified by Committee membership, Audit or the Financial Crimes Corporate Risk Management Program, and determine any required action.

Sales practices misconduct by Community Bank's team members constituted both an emerging trend (with respect to some of the more innovative gaming conduct) and a present trend (with respect to other more established forms of gaming, including simulated funding and interference with quality-control customer satisfaction polling). **Mr. Julian's failure to promptly report to the TMMEC on known issues related to sales practices misconduct by Community Bank team members constituted unsafe or unsound banking practices and a breach of the fiduciary duty he owed to the Bank.**

The Committee had the obligation to review and reassess the adequacy of the Committee's Charter and the adequacy of the team member misconduct and internal fraud investigations program. It had the duty to ensure that there were policies and processes in place for adequately responding to the results of investigations. It was obliged to ensure that there were policies and processes in place for incidents to be appropriately categorized as isolated or indicative of prevalent control breakdowns.

The Committee had a duty to ensure that policies and processes were in place for

corrective action, including remediation taken in response to the results of the investigations. It had a duty to ensure that a periodic review of policies and procedures was performed and ensure that there were policies and procedures in place for quarterly risk assessments to be adequately performed by qualified personnel independent of the business lines.

During the relevant period, the lack of control testing for customer consent related to the opening of accounts by Community Bank team members led to the need for corrective action once the customer discovered the misconduct. **Mr. Julian's failure to promptly report to the TMMEC on known control issues related to remediation following sales practices misconduct by Community Bank team members constituted unsafe or unsound banking practices and a breach of the fiduciary duty he owed to the Bank.**

Ethics Committee

Mr. Julian was a member of the Ethics Committee. The Committee was a WF&C management committee intended to provide oversight on governance activities of the Bank's ethics program. It was responsible for administering and interpreting the Wells Fargo Code of Ethics and Business Conduct, as well as approving its content. Members of the Committee were responsible for the content of the Code and overseeing its policy and interpretation.

Under the 2016 version of the Ethics Committee Charter, the Committee was sponsored by and operated under the authority of the Audit & Examination Committee of WF&C's Board of Directors, as well as the Operating Committee, which collectively authorized it to perform the oversight responsibilities described in the Charter.

Under this Charter, committee members were required to provide significant issue management oversight and review of significant ethical and business conduct issues that may have a material impact on the Company's operations or reputation, including oversight of resolution, proposed corrective actions, and identified program gaps or other control weaknesses. They were required to review and ensure appropriate management resolution of allegations involving significant violations of business conduct law or regulation. Whereas the 2014 Charter was silent with respect to the Chief Auditor's voting status within the Committee, the 2016 Charter expressly identified the Chief Auditor as a non-voting member.

Under the 2016 Charter, Committee members were required to review and evaluate emerging ethics, business conduct, and conflicts of interest issues and trends in response to changes in business strategy risk, along with regulatory and legal requirements. They were required to assess the implications for business objectives, strategies, and practices. Committee members were required to periodically review and advise the Head of Global Ethics & Integrity on the adequacy and effectiveness of the Company's ethics, business conduct, and conflicts of interest risk management programs. This included the Bank's policies, programs, and applicable Global Ethics & Integrity risk management practices, and the promotion of an ethical culture across the enterprise.

Committee members were required to review business conduct activity to include enterprise and line-of-business-specific investigative key activity (such as case totals, case type activity, related terminations, or resignations) and EthicsLine activities, which included issues

related to sales practices by Community Bank team members.

Committee members were also required to review specific business conduct or fraud incidents, to include cases involving EthicsLine allegations, whistleblower complaints, issues escalated by the business compliance teams, and unethical or misconduct identified by Global Ethics & Integrity oversight activities.

The 2016 Charter provided that for each escalated issue, the Committee had the authority to assess the degree to which the risk owner had identified, assessed, controlled, mitigated the issue at hand, and could require further actions to be taken by the risk owner as well as further oversight of the issue by the Committee.

As of 2016, Committee members constituted the most senior management-level risk governance committee to which key ethics, business conduct, and conflicts of interest risk issues were to be escalated. These issues included business conduct that was likely to cause material adverse impact to customers, or to the Company's reputation, and issues likely to be discussed with the Company's regulators. The issues also included those that, based on a reasonable manager's judgment, could adversely affect the Company. **Mr. Julian's failure to promptly report to the Ethics Committee known control issues related to sales practices misconduct by Community Bank team members constituted unsafe or unsound banking practices and a breach of the fiduciary duties he owed to the Bank.**

Incentive Compensation Committee

From 2013 until June 15, 2015, Mr. Julian served as a voting member of the Incentive Compensation Steering Committee (which later became known as the Incentive Compensation Committee) at WF&C. Chaired by the head of Corporate Human Resources, the Committee led Wells Fargo's efforts to enhance incentive compensation practices throughout the Company.

Although Mr. Julian testified that he was not permitted to make management-type decisions for the Committee, nothing in the Committee Charter contained such limiting language. He also denied that the Incentive Compensation Steering Committee was ever responsible for directing or managing changes to incentive compensation plans. **Acting in furtherance of these views constituted, under the facts presented, unsafe or unsound banking practices and a breach of the fiduciary duties Mr. Julian owed to the Bank.**

Under its Charter, the oversight and decision-making authority of the Committee included overseeing the development of enterprise-wide standards for the design and administration of the Company's incentive compensation plans, as well as monitoring the implementation of appropriate actions for enhancing the Company's incentive compensation programs to better align with the Federal Reserve Guidance.

Pursuant to the May 7, 2015 Incentive Compensation Risk Management (ICRM) Policy, WF&C established four compensation objectives: pay for performance; the promotion of a culture of risk management that avoids unnecessary or excessive risk taking; the goal of attracting and retaining talent with competitive pay; and aligning employee interests with shareholder interests.

The ICRM Policy required that Wells Fargo (1) ensure it had effective incentive compensation arrangements that supported the long-term strength of the organization by providing team member incentives that appropriately balanced risk and financial results; (2) ensured that incentive arrangements were compatible with effective controls and risk management; (3) enforced strong corporate governance – including active and effective oversight by the company's Board of Directors; and (4) disclose the structure of its incentive-based compensation arrangements to governance bodies and regulators in accordance with applicable laws and regulations. **Mr. Julian's failure to promptly report to the Incentive Compensation Committee on known issues concerning the Community Bank's risk management control failures related to sales goals pressure and sales practices misconduct by Community Bank team members during this meeting constituted unsafe or unsound banking practices and a breach of the fiduciary duties he owed to the Bank.**

The minutes of the July 8, 2015 meeting of the Incentive Compensation Committee reflect that as part of the reviews conducted under the ICRM Program, enhancement opportunities were identified, including the need to add rigor around risk metrics.

Notwithstanding the responsibilities of Committee members as established through its Charter, Mr. Julian claimed that he had no role in the ultimate decisions regarding specific compensation. **Acting in furtherance of these views constituted, under the facts presented, unsafe or unsound banking practices and a breach of the fiduciary duties Mr. Julian owed to the Bank.**

During its July 8, 2015 meeting, the Committee received a report that the OCC had issued five Matters Requiring Attention (MRA) that related to Enterprise Sales Practices, including compensation-related requirements. The Enterprise Sales Practices MRA provided that compensation programs needed to be reviewed to protect against incenting inappropriate behavior and that Corporate Risk needed to review the reasonableness of incentive compensation programs for all Enterprise Sales activities. **Mr. Julian's failure to report to the Incentive Compensation Committee on known issues related to inadequate and ineffective risk management controls over the Community Bank's sales incentives program as it related to sales practices misconduct by Community Bank team members during this meeting constituted unsafe or unsound banking practices and a breach of the fiduciary duties he owed to the Bank.**

3) Ms. Russ Anderson, as the Community Bank's Group Risk Officer, failed to timely identify the root cause of team member sales practices misconduct in the Community Bank, failed to exercise credible challenge to the Community Bank's head (Carrie Tolstedt) regarding risk management controls relating to sales practices, failed to timely and independently evaluate the effectiveness of Community Bank's risk management controls, and failed to identify, address, and escalate risk management control failures that threatened the safety, soundness, and reputation of Wells Fargo Bank, N.A.

Wells Fargo & Company and Wells Fargo Bank, N.A. employed a "Three Lines of Defense" risk management system throughout the relevant period. The First Line of Defense refers to the Line of Business (LOB) organizations, including Community Bank, which was led

by Ms. Tolstedt. The Second Line of Defense refers to the corporate risk function as well as other second line of defense activities, like HR and Legal. Audit was the Third Line of Defense.

Ms. Russ Anderson was in the first line of defense and had responsibility for ensuring that risks were timely identified, measured, monitored, and controlled. This duty included the obligation to identify sales practices risks within the Community Bank, identify the root cause(s) of risks associated with sales practices misconduct by Community Bank team members, establish controls to mitigate those risks to within the risk appetite set by Community Bank and Wells Fargo Bank, N.A., and address and escalate risk-related issues that had the potential to adversely affect the safety, soundness, and reputation of Wells Fargo Bank, N.A.

As the Community Bank's Group Risk Officer, Ms. Russ Anderson worked with Corporate Risk, along with Human Resources, the Law Department, Social Responsibility, Public Relations, and Corporate Controllers, to provide standards, support, and oversight to ensure effective understanding and management of all risk, including associated strategic and reputation risk, across Wells Fargo. As the GRO for the Community Bank, Ms. Russ Anderson reported to the Chief Risk Officer for WFB-NA, Michael Loughlin, who reported to the Bank's Board of Directors.

Wells Fargo Audit Services was the Third Line of Defense (TLOD) for WFB-NA. As Executive Audit Director assigned to the Community Bank, Mr. McLinko was the head of the Community Bank's Third Line of Defense. As EAD, Mr. McLinko was the head of the Audit Group of WFAS that had responsibilities for providing audit oversight for that Line of Business. As Chief Auditor, Mr. Julian was the head of WFB-NA's Third Line of Defense.

The First Line of Defense – Lines of Business & Administrative Functions – was responsible for taking, identifying, assessing, managing, and controlling the risks it generated. For example, opening a savings account for a customer without securing the customer's consent and without informing the customer gives rise to the risk that the customer will object, complain, and mistrust the Bank. As the First Line of Defense, leaders of the Community Bank "owned" that risk and were accountable to Senior Management and the WF&C Board of Directors to ensure that the risk complied with the Bank's risk appetite. In her role as GRO for the Community Bank, Ms. Russ Anderson had the responsibility to ensure that risks were managed appropriately and, if not, escalate those issues to the Chief Risk Officer, Mr. Loughlin.

This principle of risk management required adherence to the Bank's risk framework, risk appetite, and concentration limits. The Community Bank LOB was one of the Bank's First Lines of Defense. As head of Community Bank, Carrie Tolstedt was the head of the Community Bank's First Line of Defense. The Community Bank, through Ms. Tolstedt, was expected to design risk management controls for the Community Bank. In this context, risk management controls should have assured that the risks are being managed within the parameters of the risk appetite that the line of business and WFB-NA had adopted.

Risk appetite here refers to the aggregate level and type of risk the Board of Directors and management were willing to assume to achieve the Bank's strategic objectives and business plan, consistent with applicable capital, liquidity, and other regulatory requirements. At the Line of

Business level, risk appetite was the level of risk that the line of business was willing to accept and the level of risk that the LOB was expected to build controls for, in order to mitigate the risk to meet the Company's risk appetite. By definition and as practiced, sales practices misconduct attributed to Community Bank team members during the relevant period exceeded the Bank's risk appetite, and should have exceeded the risk appetite of the Community Bank.

According to its Risk Management Framework, the Board of Directors and its seven standing committees played an active role in overseeing and guiding the company's overall approach to risk management. The Risk Management Framework provided that a key component of this approach was its Statement of Risk Appetite, which was developed and refined by the Bank's senior management, with updates reviewed and approved at least annually by the Board.

In addition to the Bank's risk appetite, each line of business was responsible for defining its risk appetite and developing risk appetite metrics for that line of business, consistent with the Bank's own risk appetite statement. By as late as April 2015, however, the Community Bank had not set a risk appetite. **As Community Bank's Group Risk Officer, Ms. Russ Anderson's failure between 2013 and 2015 to promptly escalate the Community Bank's failure to set a risk appetite, under the facts presented, constituted an unsafe or unsound banking practice and constituted a breach of the fiduciary duties Ms. Russ Anderson owed to the Bank.**

While WFAS could not set Community Bank's risk appetite and could not design the internal controls for the Community Bank, it was responsible for testing the controls that assured the Community Bank's compliance with the risk appetite of the Bank and the Line of Business, and for testing the risks that are being managed. It also was required to assure the effectiveness of those controls against the stated risk appetite of the Bank and the Line of Business. **As Chief Auditor and as Executive Audit Director for Community Bank, respectively, the failure of Mr. Julian and Mr. McLinko between 2013 and 2015 to promptly escalate the Community Bank's failure to set a risk appetite, under the facts presented, constituted unsafe or unsound banking practices and a breach the of fiduciary duties Mr. Julian and Mr. McLinko respectively owed to the Bank.**

Through the OCC's Supervisory Letter WFC 2015-07, the OCC directed Ms. Tolstedt, as Senior Executive Vice President for Community Banking, to establish risk appetite metrics specific to monitoring the sales practices activities of the Community Bank, as well as appropriately reporting and escalating issues as needed.

Between 2013 and 2016, Ms. Russ Anderson, as the Community Bank's GRO, failed to provide credible challenge to the controls used by Community Bank for monitoring sales practices activities, and the controls for reporting and escalating of issues related to sales practices misconduct by Community Bank team members. **Ms. Russ Anderson's failure to provide credible challenge to the Community Bank's monitoring of sales practices activity, under the facts presented, constituted an unsafe or unsound banking practice and a breach of the fiduciary duties Ms. Russ Anderson owed to the Bank**.

To be effective, the line-of-business risk management process must recognize good risk management behaviors and also hold individuals accountable for poor risk management

behaviors. This corporate risk model enables risk managers to respond both quickly and appropriately to changing risk conditions, and assumes those managers have a deep knowledge of the business context in which the risk originates. Such required knowledge includes a thorough understanding of incentive compensation plans in order to evaluate whether risks associated with compensation incentives falls within the Bank's risk appetite.

Throughout the relevant period, Ms. Russ Anderson as the Community Bank's GRO needed to provide credible challenge to risk controls in the Community Bank. If risk controls failed to reflect and enforce the Bank's risk appetite, it was Ms. Russ Anderson's responsibility to identify those failed controls and take steps to ensure the first line of defense acted to enforce the Bank's risk appetite. **Ms. Russ Anderson's failure to provide credible challenge to the Community Bank's risk controls, under the facts presented, constituted an unsafe or unsound banking practice and a breach of the fiduciary duties Ms. Russ Anderson owed to the Bank.**

Ms. Russ Anderson's Duties Based on Committee Membership

Apart from responsibilities arising from her role as the Community Bank's Group Risk Officer, Ms. Russ Anderson had responsibilities and correlated fiduciary duties arising from her membership in Bank committees. The record reflects that Ms. Russ Anderson attended more than 90 percent of all meetings of these committees.

Ms. Russ Anderson was a member of the Core Team, the Community Banking Risk Management Committee, the Operational Risk Committee, the Regulatory Compliance Risk Management Committee, the Operational Risk Management Committee, the Bank Secrecy and Anti-Money Laundering Risk Committee, and the Sales Tracking Risk Steering Committee.

As Community Banking's Group Risk Officer (GRO), Ms. Russ Anderson served as Chair of the Community Banking Risk Management Committee (CBRMC). The purpose of the CBRMC was to oversee the management of operational and compliance risks inherent in the Community Banking lines of business. This included the development of appropriate risk identification, measurement and mitigation strategies and reporting, all consistent with Wells Fargo's policies, processes, and procedures.

The Committee's primary responsibility during the relevant period was to understand Community Banking's operational risk profile and to work with management across Community Banking to ensure risks were effectively managed. In her role as Chair of the Community Banking RMC, it was Ms. Russ Anderson's duty to inform members of the Committee about both systemic problems and control breakdowns in the Community Bank. Nothing in the Committee's Charter limited this duty to reporting only those control breakdowns that had been shown to be systemic in nature.

As GRO for Community Banking, Ms. Russ Anderson presided over meetings of the CBRMC, established the content of meeting agendas, and was expected to ensure that responsibility was assigned for each initiative undertaken by the CBRMC. As Chair, Ms. Russ Anderson had the responsibility to ensure that the CBRMC reviewed and assessed the adequacy of the Community Bank's RMC charter annually.

Each member of the Community Bank's RMC was required to understand and evaluate current and emerging material risks, examine trends, and assess the strategic implications for business objectives and risk management practices. Each member was required to weigh the relationship between risks, identify combinations of exposures that may change the operational risk portfolio, and determine whether an appropriate balance existed between risks and rewards. They also needed to review and evaluate risk appetite metrics and direct action for metrics found to be inconsistent with the Community Bank's risk appetite and that of the Bank enterprise-wide.

Pursuant to its 2013 Charter, the Committee was required to initiate or direct the initiation of discussion, escalation, or other measures with the appropriate person or forum about any current or emerging risk, trend, business practice, or other business or environmental factors. They were required to ensure that corrective actions be taken to address any material breakdown of internal controls and assign monitoring responsibility through resolution. Nothing in the Charter limited the duty to initiate such discussion to only those risks shown to be widespread or systemic in scope or nature.

The Committee was required to oversee and approve acceptance for high-risk activities, products and markets. Members of the Committee served as the ultimate approval authority for new high-risk products and material changes to existing products in the Community Bank's lines of business.

The Committee had the authority to establish, modify, or eliminate Community Banking risk management programs as needed, in collaboration with the corporate Operational Risk Group. Its members were required to ensure that appropriate policies, procedures, and processes existed for adequately identifying, measuring, managing, and reporting risks across Community Banking. To do so, members of the Committee had the duty to review, validate, interpret, and provide guidance to Community Banking business units regarding regulatory and operational risk requirements.

The scope of Committee oversight included, but was not limited to, significant new strategies, vendors, business continuity planning, losses, major projects (including implementation and readiness assessment), risk self-assessments, key regulatory and legal issues, conflicts of interest, security, privacy, and reputational risk. This included risks related to sales practices misconduct by Community Bank team members. Committee members had the responsibility to review the status of previously identified risk management concerns and initiatives, and inform, advise, and educate Community Banking leadership about risk management strategies, initiatives, and related matters.

Under the 2015 CBRMC Charter, the Committee was identified as a risk governance committee, the purpose of which was to oversee the management of key risk types to which the Community Bank was exposed. The risk types identified in the 2015 Charter included credit, compliance, operational, BSA/AML, model, strategic, emerging, reputational, and cross-functional risks. As was true with the 2013 Charter, under the 2015 Charter the Committee was designated as the primary management-level forum for the consideration of the highest priority risk issues resident in Community Banking. Sales practices misconduct attributed to Community Bank's team members during the relevant period posed compliance risk, as well as reputational

and cross-functional risks to the Bank.

Under the 2015 Charter, as members of the Committee, both Ms. Russ Anderson (as a voting member) and Mr. McLinko (as a non-voting member) were required to support and assist Wells Fargo's Enterprise Risk Management Committee in carrying out its risk oversight responsibilities. The CBRMC's primary responsibility was to understand Community Banking's risk profile and to work with management across Community Banking to ensure risks are managed effectively. This included oversight of the development of appropriate risk identification.

Under the 2015 Charter, issues that were to be escalated to the Committee included triggers of Community Banking's risk appetite metric boundaries. Sales practices misconduct by Community Bank team members fell within this trigger. Escalation to the Committee also was required for violations of Community Banking's risk management limits and group-level policies. Events likely to cause material adverse impact to customers, or to the Company's reputation or financial results, also needed to be escalated, as were issues that were likely to be discussed with the Company's regulators, as well as new potential issues identified by the Company's supervisors (including issues identified through any potential or actual MRAs and MRIAs). Escalation to the Committee also was required for any other matters that, based upon a reasonable manager's judgment, may adversely affect the Company. Nothing in the 2015 Charter limited the duty to escalate to risks shown to be systemic, or to *confirmed* cases processed by Corporate Investigations.

The Committee was required to initiate or direct the initiation of discussion, escalation, or other measures with the appropriate person or forum about any current or emerging risk, trend, business practice, or other business or environmental factors. It also was to require that corrective actions be taken to address any material breakdown of Community Banking's internal controls, and it was expected to assign monitoring responsibility for those corrective actions, from inception to resolution. **Ms. Russ Anderson's failure to timely discuss with members of the CBRMC known issues related to sales practices misconduct by Community Bank team members and her failure to require appropriate corrective action regarding known team member misconduct constituted unsafe or unsound banking practices and a breach of the fiduciary duty she owed to the Bank.**

The Committee was required to escalate matters that require decision-making from a more senior level of the Company to the Head of Community Banking, the Chief Risk Officer, and the relevant members of Corporate Risk, or to the ERMC as appropriate. The Committee at its discretion also could further escalate issues that required decision-making from a more senior level of the Company. For each escalated issue, the 2015 Charter provided that the Committee had the authority to assess the degree to which a risk owner has identified, assessed, controlled, and mitigated the issue at hand, and could require further actions to be taken by the risk owner and require oversight of the issue by the Committee or a designated individual. **Ms. Russ Anderson's failure to timely escalate from the CBRMC known issues related to sales practices misconduct by Community Bank team members constituted unsafe or unsound banking practices and a breach of the fiduciary duty she owed to the Bank.**

The Regional Banking Risk Committee

Ms. Russ Anderson was on the Regional Banking Risk Committee throughout the relevant period. She also served on the Risk Committee for each line of business in Community Banking.

The Fraud Risk Committee

Mr. McLinko and Ms. Russ Anderson both served on the Internal Fraud Risk Committee. As such, Ms. Russ Anderson had fiduciary duties arising not only in her capacity as Community Bank's GRO but also based on the responsibilities assigned to each member of the Fraud Risk Committee.

The Committee had been established by the Corporate Investigations (CI) group in 2013, met twice a year, and was led in 2013 by Michael Bacon of CI.

Most of the senior leaders of the Community Bank were members of this committee. Members of the Community Bank's Internal Fraud Committee were charged with ensuring that internal fraud risks were appropriately managed in the Community Bank.

The stated purpose of the August 1, 2013 Corporate Fraud Risk Management Policy was to promote accountability, measurability, partnership, and transparency of fraud risk management at Wells Fargo by setting the structure and expectations for business fraud risk management programs. The Policy identified those particularly responsible for its implementation to include business, fraud, and operational risk managers at the business, group, and corporate levels. Unauthorized gaming activities (including simulated funding and no-consent account opening) by Community Bank team members presented business-fraud risk issues and operational risk issues over which the Fraud Risk Committee had oversight responsibilities.

As a Group Risk Officer for the Community Bank, Ms. Russ Anderson was responsible for opining on the adequacy of internal and external fraud risk-management controls that the first line of defense had put in place, and providing credible challenge to the business lines they oversee regarding those controls. Most notably here, this required Ms. Russ Anderson to provide credible challenge to Ms. Tolstedt's ineffective controls over the management of risk issues related to Community Banking.

Ms. Russ Anderson's failure to raise within the Fraud Risk Committee known risk issues related to controls over sales practices misconduct and her failure to provide timely credible challenge relating to the first line of defense's controls over sales practices misconduct by Community Bank team members constituted unsafe or unsound banking practices and a breach of the fiduciary duty she owed to the Bank.

The Evolving Model Steering Committee

Ms. Russ Anderson was on the Evolving Model Steering Committee. The Evolving Model was a program that focused on how to evolve the Community Bank, and specifically the Regional Banking model. The Committee was expected to improve controls designed to detect and prevent sales integrity violations during the pause of what Ms. Russ Anderson called

proactive monitoring, which occurred between November 2013 and July 2014.

All of the Regional Banking executives were involved with the work of the Committee, as were representatives of Corporate Risk, Legal, HR, and Community Banking.

The Committee sought to determine what needed to change in light of known sales misconduct practices. Committee members were aware that the Bank was expected to lose $13.5 billion in revenue through Dodd-Frank. Committee members sought to determine what needed to be enhanced, changed, or completely redone in light of this anticipated loss of revenue.

Ms. Russ Anderson's failure to timely raise within the Committee known issues related to sales practices misconduct by Community Bank team members, and her failure to provide credible challenge during these meetings to address known control issues regarding team member sales practices misconduct, constituted unsafe or unsound banking practices and a breach of the fiduciary duty she owed to the Bank.

The Incentive Compensation Risk Committee

Ms. Russ Anderson was on the Incentive Compensation Risk Committee (ICRM) and was familiar with the Bank's incentive-compensation risk management policy. That policy addressed how the incentive compensation programs would run through the risk groups and through Legal for credible challenge and for any alterations as needed. Ms. Russ Anderson had the duty to provide credible challenge to the process and to what the recommendations were. As part of her responsibilities, Ms. Russ Anderson participated in the approval of incentive compensation plans for the Bank during 2013 to 2016.

To fulfill these responsibilities, Ms. Russ Anderson met with HR representatives and, in some instances, with the business managers, and evaluated their recommendations about incentive compensation and any related risks. Only when she was satisfied with those recommendations would she approve the incentive compensation plan from a risk perspective.

Ms. Russ Anderson also served on the Community Bank's ICRM Steering Committee. Members of the Committee met on an ad hoc basis if changes to any incentive program were needed. The Committee members would meet with the incentive professionals, review the programs that they were proposing, and challenge their thought processes.

Ms. Russ Anderson had the duty to provide credible challenge to ensure that risks related to the Community Bank's incentive compensation plan were balanced. At no time during the relevant period did Ms. Russ Anderson advocate for the elimination of sales goals. Ms. Russ Anderson denied having the responsibility as GRO to advocate for wholesale or fundamental changes to the Community Bank's business model, even though she believed that sales goals should be lowered in 2013 – not because the goals were causing employees to engage in sales practices misconduct, but because employees were not able to meet their sales goals. **Acting in furtherance of these views constituted, under the facts presented, unsafe or unsound banking practices and a breach of the fiduciary duties Ms. Russ Anderson owed to the Bank.**

It was incumbent upon Ms. Russ Anderson to ensure that the modifications to the sales

goals were sufficient to address the sales practices misconduct problem in the Community Bank. At no time during the relevant period, however, did Ms. Russ Anderson tell Mr. Loughlin that the incentive compensation plans in the Community Bank consisted of unreasonable goals. **Acting in furtherance of these views constituted, under the facts presented, unsafe or unsound banking practices and a breach of the fiduciary duties Ms. Russ Anderson owed to the Bank.**

4) Mr. McLinko, as the WFAS Executive Audit Director assigned to the Community Bank, failed to timely identify the root cause of team member sales practices misconduct in the Community Bank, failed to provide credible challenge when evaluating the effectiveness of Community Bank's risk management controls, and failed to identify, address, and escalate risk management control failures that threatened the safety, soundness, and reputation of the Bank.

Mr. McLinko was one of nine direct reports to Chief Auditor David Julian during the relevant period. As the Executive Audit Director (EAD) responsible for Community Banking and Operations (CBO), Mr. McLinko's audit responsibilities extended to all business units in CBO – including Deposit Products, Virtual Channels (the Bank's online portal), Regional Banking, Customer Connections (the Bank's call center), Business Banking, and Global Remittance. During the relevant period, 60 to 70 percent of all audit work under Mr. McLinko's direction was devoted to the Community Bank versus the Operations Group.

Although credit cards could be sold at the branch, Mr. McLinko took the position that neither he nor the CBO audit team had responsibility for auditing credit card services.

Mr. McLinko became the EAD of both the Community Bank and its Operations Group in the middle of 2012, remaining in those positions until 2017. The CBO was the audit group that was responsible for auditing the Community Bank as well as auditing the operations component of technology and operations group. In this capacity, the CBO group was responsible for auditing the Regional Bank, which included the stores of the retail branch network of the Community Bank.

Through the Notice of Charges, the Comptroller alleged that throughout the relevant period, 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.

A hallmark of an independent, effective, informed, and engaged sales practices risk management function is the degree to which audit team members at all levels, and across all areas, feel empowered to prudently question the propriety of business, support, and risk management decisions as well as key strategic initiatives with a view towards ensuring the appropriate balance of risk-taking and reward. Under the Company's Risk Governance document, credible challenge was defined as the communication of an alternative view, opinion, or strategy developed through expertise and professional judgment to challenge business or enterprise strategies, policies, products, practices, and controls.

Credible challenge may also take the form of the offering of ideas or alternative strategies

that may be equally or more effective in mitigating risk. Throughout the relevant period, credible challenge was critical to the success of each of Wells Fargo's three lines of defense. To be successful, credible challenge required team members to have the necessary expertise, understand the company's sales practices risk-generating activities, build relationships, be good listeners, be informed about risks and issues, and communicate openly, honestly, and directly.

The Notice of Charges alleged that Mr. McLinko was responsible for ensuring that the Community Bank's audit team adequately executed their duties consistent with Audit's responsibilities. It alleged that Mr. McLinko was responsible for the accuracy and completeness of the Community Bank's audits. It further alleged that Mr. 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. In addition, it further alleged that throughout the relevant period, Mr. McLinko knew or should have known about the systemic sales practices misconduct problem in the Community Bank and its root cause.

Through the Notice of Charges, the Comptroller alleged the Community Bank was and is the Bank's largest line of business and houses the Bank's retail branch network. The Notice alleged the Community Bank had a systemic and well-known problem with sales practices misconduct throughout the relevant period. It alleged that sales practices misconduct, as used in the 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.

The Notice alleged that 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. It alleged that 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.

The Notice alleged that 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. It alleged the unauthorized products and services that were issued to customers also resulted in a financial benefit to Mr. McLinko, Ms. Russ Anderson, Mr. Julian, and the Bank.

The Notice alleged that the Bank touted a metric known as "cross-sell," or the "cross-sell ratio," that measured the number of products sold per household. It alleged that the unauthorized products and services issued to customers inflated the cross-sell metric and resulted in an enhanced stock price. It alleged that 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 Ms. Russ Anderson, Mr. Julian, and Mr. McLinko, turned a blind eye to illegal and improper conduct across the entire

Community Bank.

In 2013, WFAS transitioned to a new methodology to increase transparency in audit work and results and ensure coverage of all businesses and their associated activities. In February 2014, there were 116 RABUs [Risk Assessable Business Units] in the business hierarchy – and WFAS aligned the RABUs to the corresponding Operating Committee Group. Under the process framework implemented in 2013, WFAS reported that it would be able to identify common business activities that could warrant cross-enterprise reviews as well as provide the ability to analyze trend data throughout the enterprise. The process level represented the business activities performed and defined the point at which audit work can be performed. WFAS used the process level in defining the "auditable" segments of the company and for reporting and analytics.

Under the "process level," once the business unit or RABU had been identified and the company's business activities had been confirmed, WFAS would begin building the comprehensive inventory of which activities or processes were performed within each business unit. It was at this individual process level that WFAS could most easily measure and understand the risks that an activity poses to the business. In 2014, WFAS had 2,159 RABU-processes within its audit universe, and within this universe it performed a risk assessment to determine the level of risk and frequency with which the business activity should be audited.

As one of WFAS's Executive Audit Directors, Mr. McLinko was part of the Audit Management Committee (AMC), which was responsible for setting WFAS's strategy, including the enterprise-wide resourcing plan, the audit methodology plan, and training. All EADs for WFAS were on the AMC, as was Mr. Julian.

Mr. McLinko denied that the CBO was responsible for auditing the EthicsLine unit in the Bank's Second Line of Defense. He asserted that during the relevant period, Andrew Shipley had responsibility for Corporate Finance, which included HR activities. Mr. McLinko stated that Mr. Shipley's group took over the responsibilities for auditing incentive compensation Wells Fargo-wide. Mr. McLinko testified that he thought Mr. Shipley's group also was responsible for auditing EthicsLine, but did not know this for certain. According to Mr. McLinko, the CBO also was not responsible for auditing Corporate Investigations.

Between 30 and 35 auditors worked in the CBO group in 2013, including Senior Audit Managers (SAM) Bart Deese, Janet Malvitz, and Mark Teuschler. This number grew to between 40 and 45 between 2013 and 2016. Under Mr. McLinko's leadership, SAMs had the responsibility for developing the Community Bank's annual audit plan around those business units that they had responsibility for auditing. Once that plan was developed, SAMs then would be involved in the planning, the execution, and the reporting on the audit work that was done. All of this was done under Mr. McLinko's direct supervision.

Under Mr. McLinko's leadership, an Auditor in Charge would be responsible for one audit at a time; a supervisor would have two or more audits going on at the time; the supervisor then reported to a SAM. Mr. McLinko denied that he was involved with performing the work of these subordinates, and opined that he had no responsibility for scoping audits – where scoping means that the auditor or audit team makes a decision on what it is they wish to audit. **Acting in**

furtherance of these views constituted, under the facts presented, unsafe or unsound banking practices and a breach of the fiduciary duties Mr. McLinko owed to the Bank.

Throughout the relevant period, under WFAS's own policies, Mr. McLinko was always responsible for the accuracy of the audit work performed by his team. Mr. McLinko, however, neither completed nor reviewed audit workpapers – where workpapers are the documentation that supports the audit activities for the audit being performed. Under Mr. McLinko's leadership, either an Auditor in Charge or a supervisor was responsible for reviewing workpapers, and then a sample of workpapers would be secondarily reviewed by the SAM.

Under Mr. McLinko's leadership, the same was true with audit reports – he neither completed nor reviewed audit reports prepared by CBO staff members. Mr. McLinko relied fully on the work of the auditors working below him. He based this reliance on his view that WFAS auditors were highly credentialed with CIA, CPAs, and other designations. Notwithstanding the concerns that Mr. Julian reported regarding the questionable quality of WFAS auditors in 2013, Mr. McLinko supported his opinion on the basis that the auditors in WFAS had the training that they were required to have and many of them had spent years in auditing the Community Bank operations areas. Mr. McLinko opined that his responsibility for finalizing and releasing audit reports was limited, such that he would wait for either a SAM or supervisor to inform him that a report was completed – without indicating that he had any duty to read the completed report. **Acting in furtherance of these views constituted, under the facts presented, unsafe or unsound banking practices and a breach of the fiduciary duties Mr. McLinko owed to the Bank.**

Ms. Russ Anderson led the Community Bank's Risk Group, which monitored allegations, ethics, and related issues. The Sales Quality Report Card (SQRC) was a report that the GRO produced for the Risk Council that listed metrics and thresholds that could be reviewed by the senior leaders of the Community Bank for branch activities, including sales-type activities at the branch.

Mr. McLinko was unable to describe the CBO's review of the SQRC in 2013 other than to affirm that such a review was performed, without offering details about how it was performed or what results were reported.

Mr. McLinko was a member of the Audit Management Committee. Starting in 2014, Mr. McLinko was a member of the Community Bank Risk Management Committee and the Community Bank Internal Fraud Committee. Although he asserted that his was a nonvoting position on the Community Bank Internal Fraud Committee, beyond that testimony nothing in the record supports this assertion.

Mr. McLinko's Duties Based on Committee Membership

Audit Management Committee

The Audit Management Committee (AMC) used a top-down assessment at the Operating Committee Group (OCG) level to assist in determining resource allocations for audit activities related to each OCG. In 2013, Mr. McLinko was responsible for the Community Bank Operating Committee Group, that is, he was the OCG's "owner."

OCG owner responsibilities included completing the Strategic Risk Assessment and Enterprise Risk Management Assessment (ERMA) for the OCG. He also was required to determine resource allocation for the OCG within the collective AMC. He was responsible for escalating significant deficiencies and changes in resource allocation to the AMC. He was expected to assess applicable processes, risks, and controls to the OCG support functions, create an annual audit plan based on the OCG and enterprise risk profiles, and establish business monitoring and A&E-related escalation associated with the OCG.

The Policy Manual applicable to Mr. McLinko's responsibilities as the Community Bank's EAD provided that the Executive Audit Director and SAMs were responsible for determining how the WFAS resources are deployed by identifying the specific risk-assessable business units (RABUs) in the Community Bank, and how the processes are to be scheduled for the OCG concerning the determination of what to audit in any given year.

Notwithstanding this distribution of responsibilities, Mr. McLinko asserted that under his leadership, only the managers determined the resources for any given audit year – he denied having a role in this determination. There is, however, no support for Mr. McLinko's assertion that under the Policy Manual the SAMs are the only individuals who determined resource allocations under an audit plan, given that the Manual expressly assigned these responsibilities to both the EAD and the SAM. **Acting in furtherance of his views to the contrary constituted, under the facts presented, unsafe or unsound banking practices and a breach of the fiduciary duties Mr. McLinko owed to the Bank.**

During Mr. McLinko's tenure, auditors in an audit engagement were required to analyze identified exceptions to risk controls to determine if there was a lack of effective control, and were required to identify any systemic material control weakness or deficiency.

During the relevant period, an "Audit Issue" form was to be prepared if an exception or issue was significant enough to report to management, documented by facts or empirical data (and not just opinions), and by evidence that was sufficient, competent, and relevant, objectively developed without bias or preconceived ideas, and convincing enough to compel action to correct the exception.

As part of issue identification, the Policy Manual required auditors to be diligent in developing issues so the issue was logical, reasonable, compelling, and would motivate corrective action. All issues, when fully developed, were to include or have considered the six elements of a well-designed issue: (1) Background, (2) Criteria, (3) Condition, (4) Root Cause, (5) Risk (Effect), and (6) Recommendation.

Under the Bank's Policy Manual, all potential issues were to be communicated to the business partner as soon as they are detected. Timely escalation of issues was critical to the audit process. In this context, risk was any exposure that the auditable unit encounters because the condition exists – both the probability and impact of the difference. This was the portion of the Issue that was to convince the business partner and higher management that the issue, if permitted to continue, will cause or has the potential to cause serious harm and cost more than the action needed to correct the problem. In economy and efficiency issues, the risk was usually

measured in dollars. In adequacy and effectiveness issues, the risk was usually the inability to accomplish some desired or mandated end result.

Mr. McLinko's failure to raise to the AMC known issues in his role as a member of the Committee, his failure to fully develop issues related to sales practices misconduct by Community Bank team members, his failure to present to the AMC timely information about the background of the issues, his failure to report on the criteria being used to identify sales practices misconduct, his failure to provide timely information about the then-current and emerging control conditions known to relate to the misconduct, his failure to identify the root cause of such misconduct, notably with respect to the Community Bank's incentive compensation plan, his failure to report promptly on the risks associated with this misconduct and the effects such misconduct likely would have on the Bank's reputation, and his failure to propose an efficacious recommendation to the Bank's leadership and to the leadership at the Community Bank to address these issues and remediate the Bank's customers, all constituted unsafe or unsound banking practices and were breaches of the fiduciary duties Mr. McLinko owed to the Bank.

Community Banking Internal Fraud Committee

Mr. McLinko served on the Internal Fraud Committee (IFC), although the Committee was not a committee of WFAS and thus was outside of the third line of defense. As such, Mr. McLinko had fiduciary duties arising not only in his capacity as a member of the third line of defense, but also based on the responsibilities assigned to each member of the Community Bank's IFC.

The stated purpose of the IFC August 1, 2013 Corporate Fraud Risk Management Policy was to promote accountability, measurability, partnership, and transparency of fraud risk management at Wells Fargo by setting the structure and expectations for business fraud risk management programs. The Policy identified those managers who were particularly responsible for its implementation, including business, fraud, and operational risk managers at the business, group, and corporate levels.

Each Wells Fargo business was responsible for managing internal and external fraud risk in a consistent and effective manner, in order to protect the Bank's customers, its shareholders, and the Company. In this context, the Community Banking unit was expected to manage internal and external fraud risk in order to protect both the Bank's customers and the holding company's shareholders. Both Carrie Tolstedt, as the head of the Community Bank, and Ms. Russ Anderson, as Community Bank's Chief Risk Officer, had the duty to accomplish the mission of Community Banking's IFC, acting as the unit's first line of defense. Mr. McLinko likewise shared in that duty, acting as the unit's third line of defense.

Standards and requirements for the businesses were to be set by Corporate Fraud Risk Management (CFRM), a part of Financial Crimes Risk Management (FRCM). CFRM monitored and oversaw the management of these risks on a company-wide basis.

Mr. McLinko had distinct responsibilities both as a member of Community Banking's IFC and as an auditor in WFAS. As a member of Community Banking's IFC, Mr. McLinko was

required to ensure that all stakeholders who shared responsibility for internal fraud risk management received appropriate reporting and had a forum to address team member misconduct matters, including misconduct related to sales practices.

The IFC was expected to assist the GRO (Ms. Russ Anderson) in addressing internal fraud matters specific to Community Banking's business practices and processes. In this way, Mr. McLinko had a duty to provide credible challenge where controls regarding team member misconduct were ineffective or non-existent. The IFC also was accountable to the Team Member Misconduct Executive Committee (TMMEC).

CSI (Corporate Security Investigations, also referred to as Corporate Security and Corporate Investigations) chaired each IFC, facilitated meetings to be held at least semi-annually, and was required to provide the Committee with Internal Fraud reporting.

As a member of both the IFC and WFAS, Mr. McLinko had duties that went beyond general operational risk management roles and responsibilities. As the CBO leader for WFAS, Mr. McLinko was required to ensure that his team independently evaluated the fraud controls that the Community Bank's management designed and implemented, including direct business controls. His team performed direct audits of business fraud programs and controls over those programs and was expected to communicate fraud-related audit findings to Corporate Fraud Risk Management. His team was expected to consult with Corporate Fraud Risk Management as necessary regarding information that may address fraud risk or controls, particularly if the extant controls did not appear to be working.

In this context, fraud was any deliberate misrepresentation that may cause another person or entity to suffer damages, usually monetary loss. Wells Fargo distinguished between two major types of fraud: internal and external. Misrepresentation was any false or misleading representation or concealment of a fact.

"True Name Fraud" was fraud that occurred when an individual materially misrepresented his or her identity by using identifying information that was the valid identity of another real individual. A team member misrepresenting his or her identity by using a customer's identifying information would be an example of true name fraud. Team member gaming included such misrepresentations.

"Internal Fraud" was any event in which any suspected or known fraud operator is a team member or managed resources hired by Wells Fargo, who committed fraud during the course of his or her employment, or conducted, enabled, or contributed to fraud. All of the gaming activities attributed to Community Bank's team members constituted internal fraud, including activities countenanced by branch managers and regional directors.

In February 2013 Mr. Bacon, then head of the Bank's Corporate Investigations team, led the inaugural meeting of the Community Banking Internal Fraud Committee, which Mr. McLinko attended, as did all of Mr. McLinko's SAMs.

The agenda for this meeting anticipated discussions regarding a line-of-business update, where the topics included the presentation of an overview of corporate fraud policy objectives, goals and objectives specific to lines of business, a description of the responsibilities of

Committee members, a report on the Team Member Misconduct Executive Committee (TMMEC) at the Corporate level, and a discussion of numerous other committees, teams, processes, and specific functions relating to the identification of Team Member roles – as team members, as customers, and as individuals. The agenda also anticipated a review of 2013 Corporate Investigation Key Activities related to the Community Bank and Regional Banking.

Mr. McLinko stated that while he would at least review or scan some of the reporting that he received as a member of this committee, he did not believe it was incumbent upon him to pay attention to all of the reporting that he received. **Acting in furtherance of these views constituted, under the facts presented, unsafe or unsound banking practices and a breach of the fiduciary duties Mr. McLinko owed to the Bank.**

During the August 12, 2013 meeting of the Community Banking Internal Fraud Committee, Corporate Investigations (through Mr. Bacon) reported on investigations concerning sales integrity violations. Included in the attachments provided in advance of the meeting were dashboard presentations showing Corporate Investigations activities, including those concerning Sales Integrity violations. The data presented through these attachments indicated an increase in sales integrity violations as well as an increase in Code of Ethics violations in Community Banking and Regional Banking between March and June 2013.

Notwithstanding the duties he had as both the EAD for Community Bank and as a member of the IFC, Mr. McLinko opined that he had no obligation to pay attention to all of the reporting that he received from Corporate Investigations as a member of the IFC.

Mr. McLinko's failure as a member of the Community Bank's IFC to read the reports presented by Corporate Investigations regarding fraud related to Community Bank team members and sales practices misconduct, his failure to raise known control issues regarding team member sales practices misconduct in the Community Bank, his failure to present to the IFC timely information about the background of these issues, his failure to seek out and identify the root cause of such misconduct, and his failure to propose an efficacious recommendation to the IFC and to Bank's leadership to address these issues and remediate the Bank's customers, all constituted unsafe or unsound banking practices and were breaches of the fiduciary duties Mr. McLinko owed to the Bank.

Wells Fargo Code of Ethics Administrator

For at least part of the relevant period, Mr. McLinko was a Wells Fargo Code of Ethics Administrator. In this position, Mr. McLinko had the duty to review different types of ethics-related information that came to the Bank, and as such, it was important for him to be familiar with the Wells Fargo Code of Ethics.

On August 25, 2013, Julie Grotnes sent to both Mr. McLinko and Mr. Julian the Wells Fargo Code of Ethics Administrator Annual Training materials, dated August 26, 2013. Ms. Grotnes wrote that the attachment held the meeting materials for the Code of Ethics Administrators quarterly meeting for the third quarter of 2013.

In the meeting materials, Corporate Security through Michael Bacon provided an Update

reporting on Investigation Trends. In his Update, Mr. Bacon informed Mr. Julian and Mr. McLinko that there was a 7% increase in reported cases being investigated by Corporate Security, as well as general increases in allegations against team members that included allegations involving potential sales integrity violations, falsification of records, general Code of Ethics issues, and Information Security Policy violations.

As the Ethics Administrator for the Community Bank, Mr. McLinko was considered a Subject Matter Expert on the Bank's Code of Ethics. In this capacity, Mr. McLinko was expected to maintain oversight of the processes by which the Code is administered in the Community Bank. He was expected to have a broad perspective of the Community Bank's business, he needed to be aware of ethics-related issues typical to this line of business and be accessible to team members, and he needed to have the ability to exercise independent judgment when faced with ethics questions.

Primary principles of the Code of Ethics required employees to serve Wells Fargo's best interests, to know and understand the job, to act in an honest, ethical and legal manner, to conduct Wells Fargo's business and community involvement in compliance with all applicable laws, rules and regulations, to comply with Wells Fargo's policies and procedures, to use good judgment and common sense in decision-making and dealings with others, to report any actual or potential problems in Wells Fargo's services, operations, relationships with customers or officials, to promptly report any violations or potential violations of this Code, applicable laws, rules or regulations, or of accounting standards or controls, and to protect and ensure the efficient use of Wells Fargo's assets.

In this context, acting with honesty required providing complete and accurate information, maintaining accurate records, following incentive program guidelines, and avoiding undue influence. The Bank's Code of Ethics required the preservation of confidentiality and the protection of the private, personal, and proprietary information of all customers, vendors, and team members. Included in this was a prohibition against accessing confidential customer information without a specific business purpose. Team members who engaged in the gaming activities described above and the branch and regional managers who acted in concert with those team members breached Wells Fargo's Code of Ethics.

The Code included an escalation process that required Mr. McLinko to collaborate with other Code Administrators within his line of business, or with HR, ER, HR Policy, the Law Department, or his Line of Business Compliance and Operational Risk Manager to ensure consistent interpretation and application of the Code.

Mr. McLinko's failure as the Community Bank's Ethics Administrator to raise during the quarterly meetings of the Bank's Ethics Administrators known ethics issues regarding team member sales practices misconduct in the Community Bank, his failure to provide timely information to the Administrators about the background of these issues – including the known failure of risk controls being maintained by Community Bank's first line of defense, his failure to seek out and identify the root cause(s) of such misconduct as it related to the Bank's Code of Ethics, and his failure to propose an efficacious recommendation regarding ethics violations related to sale practices misconduct, all

constituted unsafe or unsound banking practices and were breaches of the fiduciary duties Mr. McLinko owed to the Bank.

The Dynamic Audit Planning Process

The CBO under Mr. McLinko's direction followed a dynamic audit planning process, in which every year the WFAS audit teams assigned to the Community Bank were tasked with reviewing the processes of their Operating Committee Group, and the Community Bank's risk-assessable business units (RABUs) to ensure that those were the right processes to be involved. Having a dynamic audit plan meant that the CBO's annual audit plan for the Community Bank could be adjusted after it was approved, at any time during the audit plan year, to address any changes in the risk environment.

With respect to risk analysis, WFAS under Mr. Julian and the CBO under Mr. McLinko employed a risk-based audit approach. There was a methodology that was part of WFAS's standard operating procedures, rating a process as high-, medium-, or low-risk, and based on that criteria, the auditors would select a risk for inclusion in the year's audit plan.

In 2013, Mr. McLinko's team performed audits that related to sales controls and processes related to sales practices in the Community Bank. Mr. McLinko denied personally doing any of the testing in connection with those audits, stating that such testing was led by the SAMs and that the same was true with respect to scoping for the audits.

Internal Audit was a function that reviewed the system of internal controls around regulatory compliance. It played a critical role in informing the Board of Directors about the effectiveness of the Bank's internal controls and risk management. Team member conduct that violated safe and sound banking practices, including those described above as gaming within the Community Bank, involved the risk of regulatory noncompliance. Where Community Banking's controls over such risk were not effective, both the first and third lines of Community Banking's defense engaged in unsafe or unsound banking practices.

Under the leadership of both Mr. Julian and Mr. McLinko, Audit also played a critical role regarding laws and regulations, in reviewing the controls over the design of it and the effectiveness of the controls over the regulations. WFAS conducted reviews of the system of internal control around regulatory compliance. It played a critical role in informing the Board about the effectiveness of the Bank's internal controls and risk management.

Because Mr. Julian and Mr. McLinko were responsible for assuring the risk management controls in place at the Community Bank effectively addressed risks associated with gaming practices of team members, their individual failure to identify what problems existed, the root cause of those problems, and what the effect of the problem was or could be, their individual failure to offer recommendations for correcting the problem, and their individual failure to inform the Bank's A&E Committee, its Enterprise Risk Management Committee, and its Board of Directors about the known material deficiencies of the risk management controls in place at the Community Bank, constituted unsafe or unsound banking practices and breaches of the fiduciary duties each owed to the Bank.

5) Between 2013 and 2016, Mr. Julian, Ms. Russ Anderson, and Mr. McLinko,

separately and collectively engaged in unsafe or unsound banking practices by individually failing to identify and effectively address inadequate controls over known issues of risks related to sales goals pressure in the Community Bank, knowingly and purposefully failing to escalate known issues related to those ineffective controls, misleading regulators regarding the efficacy of controls over risks related to sales goals pressure, thereby advancing their individual pecuniary interests over the safety, soundness, and reputational interests of Wells Fargo Bank, N.A. and its holding company, Wells Fargo & Company, and breaching fiduciary duties each owed to the Bank. Further, Ms. Russ Anderson's efforts to restrict material information from being disseminated among the Bank's senior leaders, the WF&C Board of Directors, and federal regulators violated federal statutes and regulations.

3. Requirements to Support a Section 8(e) Prohibition Order

The Federal Deposit Insurance Act authorizes the entry of a prohibition order barring future participation in the conduct of the affairs of any insured depository institution when the appropriate federal banking agency finds (1) that a party affiliated with an insured institution violated any law or regulation, engaged or participated in any unsafe or unsound practice, or breached a fiduciary duty; (2) that the violation, practice, or breach caused the bank to suffer or probably suffer financial loss or other damage, prejudices or could prejudice depositors' interests, or gives the party financial gain or other benefit; and (3) that the misconduct involves personal dishonesty or demonstrates willful or continuing disregard for the safety or soundness of the bank. These three prongs of the prohibition action are known respectively as "misconduct," "effects," and "culpability." For each prong, any one of multiple alternative grounds can support an adverse finding.

Thus, the "misconduct" prong may be satisfied by a finding of violation of law or regulation, unsafe or unsound practices, or breach of fiduciary duty.

Likewise, the "effects" prong may be satisfied by a finding that by reason of the misconduct, the bank has suffered or will probably suffer financial loss or other damage; the interests of the bank's depositors have been or could be prejudiced; or such party has received financial gain or other benefit. It is satisfied by evidence of either potential or actual loss to the financial institution, and the exact amount of harm need not be proven.

And the "culpability" prong may be satisfied by a finding of personal dishonesty or willful or continuing disregard for the safety or soundness of" the bank. The personal dishonesty element is satisfied when a person disguises wrongdoing from the institution's board and regulators or fails to disclose material information. Both the personal dishonesty and willful or continuous disregard elements require some showing of scienter. Willful disregard is shown by deliberate conduct that exposed the bank to abnormal risk of loss or harm contrary to prudent banking practices, and continuing disregard requires conduct over a period of time with heedless indifference to the prospective consequences.

Ms. Russ Anderson

Preponderant credible evidence has established that Ms. Russ Anderson is an institution-affiliated party and that the Office of the Comptroller of the Currency is the appropriate Federal banking agency as provided for under the Federal Deposit Insurance Act.

Preponderant credible evidence presented during the hearing in this matter established that during the relevant period Ms. Russ Anderson:

> Concealed accurate information and provided incomplete information detailing the termination of team members for sales practices violations during the OCC's 2015 examinations of the Community Bank, in violation of 18 U.S.C. § 1001(a)(1);
>
> Falsely described her risk management efforts as proactive, falsely averred that those efforts led to the discovery of sales practices misconduct during the OCC's 2015 examinations of the Community Bank, and falsely averred that the preponderance of the instances of misconduct did not have customer impact, in violation of 18 U.S.C. § 1001(a)(1);
>
> Failed to disclose facts establishing a connection between incentive compensation tied to sales goals and sales practices misconduct by Community Bank team members during the OCC's 2015 examinations of the Community Bank in violation of 18 U.S.C. § 1001(a)(1);
>
> Actively participated in the preparation and submission of misleading documents relied upon by the OCC examiners during the February and May 2015 examinations regarding sales practices misconduct in the Community Bank, specifically, in violation 18 U.S.C. § 1001(a)(1), (2), and (3);
>
> Actively participated in the preparation and submission of the May 19, 2015 memorandum regarding sales conduct oversight relied upon by the OCC examiners and members of the Risk Committee of the WF&C Board of Directors, where through her participation in writing and editing this memo, Ms. Russ Anderson failed to timely disclose known existing deficiencies in risk management and control breakdowns related to sales practices misconduct by Community Bank team members, in violation of 18 U.S.C. § 1001(a)(1), (2), and (3);
>
> Appeared at the May 14, 2015 meeting with OCC examiners and falsely under-reported the volume of terminations for sales practices misconduct, in violation of 18 U.S.C. § 1001(a)(1);
>
> Appeared at the May 19, 2015 Risk Committee meeting and provided information that was at times incomplete, inaccurate, and materially misleading, in violation of 18 U.S.C. § 1001(a)(1);
>
> Failed to assure that the Community Bank implemented effective controls for detecting and preventing team members from submitting entries falsely purporting to represent sales to consenting customers, thereby aiding in the team members' violation of 18 U.S.C. § 1005;
>
> Failed to assure that the Community Bank implemented effective controls for

detecting and preventing simulated funding – i.e., the practice of moving customer funds without customer consent to make it appear as if customers had funded their accounts – thereby aiding in the team members' violation of 18 U.S.C. § 656, which prohibits bankers from distributing funds under a record that misrepresents the true state of the record with the intent that bank officials, bank examiners, or the FDIC will be deceived;

Failed to assure that the Community Bank implemented effective controls for detecting and preventing team members from using customer identification information to open unauthorized accounts or bank products, thereby aiding in the team members' violation of 18 U.S.C. § 1028(a)(7) (Identity Theft), which prohibits bankers from knowingly using a means of identification of another person in connection with any violation of Federal law used in a manner affecting interstate commerce;

Failed to disclose to OCC examiners the known scope of sales practices misconduct during the February 2015 examinations by falsely reporting that no Community Bank team members' employment was terminated due to failing to meet sales goals, and by underreporting the number of Bank employees whose employment had been terminated due to sales practices misconduct, thereby obstructing the February 2015 examination in violation of 18 U.S.C. § 1517;

Failed to assure that the Community Bank implemented effective controls for detecting and preventing team members from opening accounts without customer authorization or from engaging in simulated funding, thereby aiding in the team members' violation of 15 U.S.C. § 45(a) (Unfair or Deceptive Acts or Practices), which prohibits unfair or deceptive practices in or affecting interstate commerce;

Failed to assure that the Community Bank implemented effective controls for detecting and preventing team members from opening credit card accounts without customer consent, thereby aiding in the team members' violation of 12 C.F.R. § 1026 (Truth in Lending – Regulation Z), which prohibits issuing a credit card in the absence of an oral or written request for such card and requires that the bank provide specific account-opening disclosures before the first transaction is made; and

Failed to assure that the Community Bank implemented effective controls for detecting and preventing team members from opening checking or savings accounts without customer consent, thereby aiding in the team members' violation of 12 C.F.R. § 1030 (Truth in Savings – Regulation DD), which requires the depository institution to furnish specific account-opening disclosures before an account is opened or service is provided.

Upon a sufficient showing that Ms. Russ Anderson violated federal laws, the "misconduct" prong has been met. Independent of this showing, preponderant credible evidence established Ms. Russ Anderson engaged in unsafe or unsound practices and breached fiduciary duties she owed to the Bank, as noted above.

Preponderant credible evidence established that the violation of laws, unsafe or unsound practices, and breaches of fiduciary duties both probably would cause and actually caused the

Bank to suffer loss, including financial and reputational loss, prejudiced depositors' interests, and gave financial gain and other benefits to Ms. Russ Anderson, meeting the "effects" prong.

Preponderant credible evidence established that the violation of laws, unsafe or unsound practices, and breaches of the fiduciary duties she owed to the Bank occurred under conditions that involved Ms. Russ Anderson's personal dishonesty and demonstrated her willful or continuing disregard for the safety or soundness of the Bank.

Upon such evidence, cause has been shown to recommend the issuance of a prohibition order against Ms. Russ Anderson, as proposed in the Notice of Charges.

Mr. Julian

Preponderant credible evidence has established that Mr. Julian is an institution-affiliated party and that the Office of the Comptroller of the Currency is the appropriate Federal banking agency as provided for under the Federal Deposit Insurance Act.

Preponderant credible evidence presented during the hearing in this matter (as detailed above) established that during the relevant period Mr. Julian engaged and participated in unsafe or unsound practices and breached the fiduciary duties he owed to the Bank.

Preponderant credible evidence established that Mr. Julian's unsafe or unsound practices and his breaches of the fiduciary duties he owed to the Bank both probably would cause and actually caused the Bank to suffer loss, including financial and reputational loss, prejudiced depositors' interests, and gave financial gain and other benefits to Mr. Julian, meeting the "effects" prong.

Preponderant credible evidence established that the unsafe or unsound practices and breaches of the fiduciary duties he owed to the Bank occurred under conditions that involved Mr. Julian's personal dishonesty and demonstrated his willful or continuing disregard for the safety or soundness of the Bank.

Upon such evidence, cause has been shown to recommend the issuance of a prohibition order against Mr. Julian.

4. Cease and Desist

Preponderant credible evidence has established that both Mr. Julian and Mr. McLinko are institution-affiliated parties and the Office of the Comptroller of the Currency is the appropriate Federal banking agency as provided for under the Federal Deposit Insurance Act.

If, in the opinion of the Office of the Comptroller of the Currency, Mr. Julian or Mr. McLinko engaged in an unsafe or unsound practice in conducting the business of the Bank, upon sufficient notice and after a hearing the Comptroller may pursuant to 12 U.S.C. § 1818(b)(1) issue and serve upon them orders to cease and desist from any such practice.

Action, or lack of action, is unsafe or unsound if it is contrary to generally accepted standards of prudent operation, the possible consequences of which, if continued, would be

abnormal risk or loss or damage to an institution, its shareholders, or the agencies administering the insurance funds. The objectives of a cease and desist order are twofold: to correct existing conditions and to prevent the recurrence of unsafe or unsound practices and violations of law in the future. An order to cease and desist from abandoned practices is in the nature of a safeguard for the future.

Preponderant credible evidence presented through the hearing in this matter and as detailed above established that both Mr. Julian and Mr. McLinko separately and individually engaged in conduct that was contrary to generally accepted standards of prudent operation, the possible consequences of which, if continued, would be abnormal risk or loss or damage to the Bank, its holding company and the holding company's shareholders, or the agencies administering the insurance funds.

Upon such findings, cause has been shown to recommend the issuance of cease and desist orders individually against Mr. Julian and Mr. McLinko, as proposed in the Notice of Charges and as presented in the post-hearing briefs submitted on behalf of the OCC.

5. Civil Money Penalty

Through the Notice of Charges, the Comptroller proposed to assess Tier 2 civil money penalties against Respondents Ms. Russ Anderson, Mr. Julian, and Mr. McLinko. Tier 1 penalties are available upon sufficient evidence establishing that a Respondent violated any law or regulation. Tier 2 penalties are available upon sufficient evidence establishing that the Respondent violated laws or recklessly engaged in unsafe or unsound practices in conducting the Bank's business, or breached any fiduciary duty owed to the Bank, if the violation of law, unsafe practice, or breach of duty was part of a pattern of misconduct, or caused or was likely to cause more than a minimal loss to the Bank, or resulted in pecuniary gain or other benefit to the Respondent. In this context, conduct is reckless if it is done in disregard of and evidences a conscious indifference to a known or obvious risk of a substantial harm. If a Respondent was aware of a risk of substantial harm but did not act to appropriately address or mitigate that risk, or took only perfunctory steps, that conduct is reckless.

Preponderant evidence presented during the hearing and as noted above established that each Respondent continuously, repeatedly, and recklessly engaged in unsafe or unsound practices. With respect to Ms. Russ Anderson, preponderant evidence also established that she violated Federal laws in conducting the affairs of the Bank. The evidence further established that each Respondent breached fiduciary duties they owed to the Bank, under conditions that constituted a pattern of misconduct, where those conditions were likely to cause and did in fact cause more than a minimal loss to the Bank, while also resulting in pecuniary gain and other benefits to each Respondent.

Upon such evidence cause has been shown establishing a basis to impose either a Tier 1 or Tier 2 civil money penalty upon Ms. Russ Anderson, and a Tier 2 penalty upon Mr. Julian and Mr. McLinko.

For conduct occurring between November 10, 2008 and November 1, 2015, the maximum per day Tier 2 penalty was $37,500 for each day that the misconduct continued. That

penalty was $51,222 per day from November 2, 2015 to September 30, 2016, and beyond.

6. Assessment of Civil Money Penalties

The OCC considers a number of statutory and interagency factors in determining the amount of a civil money penalty to assess to an individual. These include: (1) the size of the financial resources; (2) the good faith of the person; (3) the gravity of the violation; (4) the history of previous violations; (5) such other matters as justice may require; (6) evidence that the violations were intentional or committed with disregard of the law or consequences to the institution; (7) the duration and frequency of the misconduct; (8) the continuation of the misconduct after the respondent was notified or, alternatively, its immediate cessation and correction; (9) the failure to cooperate with the agency in effecting early resolution of the problem; (10) concealment of the misconduct; (11) any threat of loss, actual loss, or other harm to the institution, including harm to the public confidence in the institution, and the degree of such harm; (12) the respondent's financial gain or other benefit from the misconduct; (13) any restitution paid by the respondent for the losses; (14) any history of previous misconduct, particularly where similar to the actions under consideration; (15) previous criticism of the institution or individual for similar actions; (16) presence or absence of a compliance program and its effectiveness; (17) tendency to engage in violations of law, unsafe or unsound practices, or breaches of fiduciary duties; and (18) the existence of agreements, commitments, orders, or conditions imposed in writing intended to prevent violations.

Upon a sufficient showing that each of these factors were considered by the OCC when arriving at such assessments, and upon a separate review of the evidence presented by the parties during the hearing relating to each of these factors, sufficient cause has been shown to recommend the issuance of orders assessing civil money penalties of $10 million against Ms. Russ Anderson, $7 million against Mr. Julian, and $1.5 million against Mr. McLinko.

7. Key Factual Findings

1) Beginning in not later than January 2013, each of the Respondents had actual notice that controls put in place by Community Bank's first line of defense were not effective against risks related to sales practices misconduct by Community Bank's team members.

2) Between January 2013 and mid-2016, the number of Bank products per household was the key metric through which the Bank benefitted through increased revenue and customer retention. The metric was critical to the Bank's reputation because it was disclosed in SEC filings and was closely watched by investors and analysts.

3) In February 2015, the OCC notified WFAS and Ms. Russ Anderson that, between January 2013 and February 2015, oversight of the Community Bank's cross-sell activities lacked transparency and needed to be formalized in a governing framework that described roles and responsibilities, lines of reporting, escalation protocols, incentive compensation oversight, and quality assurance processes. Further, the OCC noted that the lack of a comprehensive governance framework could expose the Community Bank to heightened reputation risk through negative publicity, and that without a more formal structure it would be difficult to ensure compliance with the Bank's values, goals for achieving customer satisfaction, and strategic and

financial objectives.

4) Between January 2013 and mid-2016, sales practices violations were widespread and driven by a systemic disconnect between incentives available to team members and team members' ethical and legal obligations.

5) Between January 2013 and mid-2016, each of the Respondents failed to identify control deficiencies in Community Bank's incentive compensation programs and the relationship between those programs and sales practices misconduct by Community Bank's team members.

6) Between January 2013 and mid-2016, each of the Respondents failed to provide credible challenge to the Community Bank's leadership (including Carrie Tolstedt) regarding the Community Bank's risk culture.

7) Between January 2013 and mid-2016, each of the Respondents failed to take effective measures to determine the root cause of sales practices misconduct by Community Bank's team members.

8) Between January 2013 and mid-2016, each of the Respondents failed to effectively escalate risk issues related to sales practices misconduct by Community Bank team members and controls over such misconduct.

9) Between late 2013 (with the publication of two LA Times articles regarding sales practices pressure and related misconduct by team members of the Community Bank) and mid-2016, each of the Respondents failed to take meaningful action to escalate known issues regarding controls over sales risk management and sales risk culture in the Community Bank.

10) By late 2013, sales practices misconduct by Community Bank team members was widespread in scope and nature, and persisted as a material risk to the safety and soundness of the Bank throughout 2014 to 2016. Between 2013 and mid-2016, each Respondent persistently and knowingly failed to address known risk-management control failures in the Community Bank, exposing the Bank to financial, reputational, and regulatory risk that exceeded the Bank's risk appetite.

11) Through the independent analysis by PwC commissioned by the Bank in 2015 and completed in 2017, the Bank learned that at least 1.8 million potentially unauthorized accounts were opened between 2013 and 2016, and that simulated funding occurred across the Bank's nationwide branch network and was not limited to Los Angeles or Orange County, California.

12) In 2016, the Bank's Corporate Risk unit determined that as of November 2016, 40,600 team members had potentially engaged in simulated funding and that at the time of this determination there were 19,900 currently employed team members who had potentially engaged in such misconduct.

13) Between 2013 and mid-2016, the risks associated with sales practices misconduct by Community Bank team members exceeded and contravened the Bank's established risk appetite.

14) Throughout 2014 to mid-2016, each of the Respondents were aware of the scope and nature of the risk, including regulatory and reputational risk, associated with sales practices misconduct by Community Bank team members, and knew of control failures within Community Bank's first line of defense related to that risk.

15) Throughout 2013 to mid-2016, each of the Respondents failed to exercise credible challenge to known deficiencies in controls that had been put in place under the direction of Ms. Tolstedt that were supposed to detect and prevent sales practices misconduct by Community Bank team members.

16) Between late 2013 and mid-2016, each of the Respondents concealed from members of the Bank's Audit & Examination Committee, its Enterprise Risk Management Committee, its Board of Directors, and OCC examiners the extent of sales practices misconduct being committed by Community Bank team members and the inadequacy of controls related to such misconduct.

17) Throughout 2013 to mid-2016, each of the Respondents failed to take effective measures to identify the root cause of the risks associated with sales practices misconduct by Community Bank's team members.

18) Throughout 2013 to mid-2016, each of the Respondents failed to take sufficient measures to assure that effective preventative and detective controls tied to team member sales practices misconduct were in place at the Community Bank.

Respondent Julian

19) Throughout 2013 to mid-2016, Respondent Julian failed to effectively supervise WFAS staff members and failed to provide credible challenge regarding the management of risks associated with team member sales practices misconduct in the Community Bank. **This conduct constituted unsafe or unsound practice and violated the fiduciary duties Mr. Julian owed to the Bank.**

20) Starting no later than January 2013, Corporate Investigations (through Michael Bacon and his direct reports) provided Respondent Julian with copies of EthicsLine complaints regarding sales integrity. These included: a team member reported that a Phone Banker in El Monte, California opened a customer account without the customer's consent (in January 2013); a team member reported that management in a Deltona, Florida branch may be encouraging an unethical and stressful sales environment by setting district sales goals that led team members to fear losing their jobs (in October 2013); a team member reported that two customers in Pasadena, Texas received credit cards that they did not request (in October 2013); a customer from Salt Lake City, Utah reported to the Bank's Ethics Line that she received a debit card for a new account that she did not open and did not want (in November 2013); a team member reported that a banker in Hockessin, Delaware opened accounts for a customer that the customer said he did not authorize or want (in January 2014); a team member reported that a Regional President in Long Branch, New Jersey threatened team members, directing that they must reach 200% of their sales goals at any cost on a daily basis (in March 2014).

21) Having read the team members' allegations, it was clear to Respondent Julian that

there was a culture in the retail Bank that was putting undue pressure on team members to reach goals that were either unattainable or very challenging, that this pressure led to team members opening unauthorized accounts, and that this pressure was coming from senior officials at the Bank.

22) Although he received these email messages from Corporate Investigations, which was headed by Michael Bacon at the time, Respondent Julian never discussed the messages or followed up with Mr. Bacon, opining that investigating the validity of these claims was the role assigned to Mr. Bacon and Corporate Investigations. **Acting in furtherance of this opinion constituted unsafe or unsound banking practices and violated the fiduciary duties Mr. Julian owed to the Bank.**

23) Based on what he knew as of May 2018 (when he gave sworn testimony to the OCC), Respondent Julian believed the Bank relied too much on reactive controls to identify instances where team members inappropriately opened accounts, finding that these were detective, after-the-fact controls.

24) Whether or not a customer realized a financial harm, at a minimum a bank suffers the risk of reputational injury when a customer learned that an account had been opened that the customer did not want or request.

25) Although he was aware of reports of sales practices misconduct from across the bank branch system, Respondent Julian took no steps in early 2013 to determine the true scope and reach of such misconduct, nor did he determine whether Community Bank's first line of defense had effective controls in place that would determine the root cause of such misconduct, nor did he take steps to determine whether the first line of defense had controls to assure the culture in the Community Bank adhered to the Bank's Vision and Values. **Failing to take such steps constituted unsafe or unsound banking practices and violated the fiduciary duties Mr. Julian owed to the Bank.**

26) Notwithstanding the information supplied to him by Corporate Investigations throughout early 2013, and notwithstanding the absence of any assurance that the risk management controls at the Community Bank were effective with respect to the risks associated with sales practices misconduct, Respondent Julian reported to the A&E Committee on February 26, 2013, that overall risk management was Generally Effective. **Failing to report the absence of any assurance that those controls were effective constituted unsafe or unsound banking practices and violated the fiduciary duties Mr. Julian owed to the Bank.**

27) As a member of the Team Member Misconduct Executive Committee (TMMEC), Respondent Julian received a report on March 4, 2013 providing data showing that sales integrity violations were the second-most common Corporate Investigations case. In this context, sales integrity violations included the manipulation or misrepresentation of sales or referrals in order to receive compensation or to meet sales goals, and included unethical or illegal behavior, including issues involving the lack of customer consent.

28) Respondent Julian took no action responsive to the March 4, 2013 report to determine which laws or regulations were implicated, nor did he seek to determine which of the

sales-integrity violation categories were most prevalent. **Failing to take such action constituted unsafe or unsound banking practices and violated fiduciary duties Mr. Julian owed to the Bank.**

29) On October 3, 2013, the LA Times published an article written by E. Scott Reckard 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 opening accounts that were never used and attempting to manipulate customer-satisfaction surveys. The article further reported the pressure to meet sales goals was intense and that there were known cases of forged customer signatures and accounts opened without customer knowledge.

30) On December 21, 2013, the LA Times published a second article, also by Mr. Reckard, 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.

31) Upon reading the two LA Times articles in late 2013, Respondent Julian understood there was a problem with Community Bank's sales practices misconduct.

32) On May 4, 2015, the City Attorney of Los Angeles sued the Bank in connection with the Community Bank's sales practices. The Complaint alleged that Wells Fargo & Company and Wells Fargo Bank, N.A. had for years victimized their customers by using pernicious and often illegal sales tactics to maintain high levels of sales of their banking and financial products. It alleged the banking business model employed by Wells Fargo was based on selling customers multiple banking products. It alleged that in order to achieve its goal of selling products and services to each customer, Wells Fargo imposed unrealistic sales quotas on its employees and adopted policies that drove them to engage in fraudulent behavior to meet those unreachable goals.

The lawsuit alleged that as a result, Wells Fargo's employees engaged in unfair, unlawful, and fraudulent conduct, including opening customer accounts, and issuing credit cards, without authorization. It alleged that on the rare occasions when Wells Fargo did take action against its employees for unethical sales conduct, Wells Fargo further victimized its customers by failing to inform them of the breaches, refund fees they were owed, or otherwise remedy the injuries that Wells Fargo and its bankers had caused. It alleged that Wells Fargo had engineered a virtual fee-generating machine, through which its customers were harmed, its employees took the blame, and Wells Fargo reaped the profits.

33) Respondent Julian became convinced there was a systemic issue with sales practices misconduct sometime after the filing of the City's lawsuit in May 2015, but never went to the Bank's Board to escalate the issue. **Failing to take such action constituted unsafe or unsound banking practices and violated fiduciary duties Mr. Julian owed to the Bank.**

34) Respondent Julian refrained from escalating the systemic sales practices misconduct issue to the Board because he believed that management and the Board were already

being made aware of it from other sources. **Acting in furtherance of this belief constituted, under the facts presented, unsafe or unsound banking practices and constituted a breach of fiduciary duties Mr. Julian owed to the Bank.**

35) When OCC examiners completed their annual examination of WFAS in September 2015, they required WFAS to test the Community Bank's first line of defense for compliance with high-risk laws and regulations, develop an audit strategy that regularly assesses the effectiveness of Regulatory Compliance Risk Management (RCRM) as the second line of defense, and report all WFAS-identified deficiencies to the Audit & Examination Committee, with a report to the Committee describing the severity of the deficiencies and the corrective actions associated with the deficiencies.

36) In October 2015, Respondent Julian's staff reported to him that in the staff's opinion, management of the risks associated with the Community Bank's sales conduct, practices, and the consumer business model needed improvement and presented a high risk of impact to the Bank – and that the risk was increasing. Through this opinion, the WFAS staff indicated the Bank was vulnerable to material or significant losses to current or anticipated earnings, capital, reputation, or regulatory violations. The staff's opinion that this risk management needed improvement meant that current risk management was not fully effective or did not balance risk and reward.

37) An independent sales practices assessment commissioned by the Board in mid-2015 and shared with Respondent Julian resulted in an October 2015 report finding the Community Bank's first line of defense did not have a uniform way of evidencing sufficient control over sales practices issues; that many bankers felt pressure to meet sales targets that they perceived to be unreasonable and that this may occur at the potential expense of sales quality; that the Company's Vision and Values were not fully understood or incorporated by team members; that there was no consistent process or governance model to ensure all customer complaints were captured, monitored, addressed, and reported across the Community Bank; that eligibility thresholds under the Community Bank's incentive compensation plan may have been misaligned with store traffic and customer demand; and that cases that should be reported through the Company's Ethics Line were not being documented or captured.

38) In September 2015, the Board commissioned an independent analysis of one form of sales practices misconduct – simulated funding – to determine the number of accounts that may have been subject to such activity and to report on the harm – primarily financial harm – related to such activity. The analysis, issued on December 18, 2015 and received by Respondent Julian on December 22, 2015, identified two types of harm: primary financial harm, where customers paid account fees directly on the unauthorized account as well as indirectly through the Bank's set-off process; and secondary financial harm, which was defined as net overdraft fees paid by the customer on his or her authorized account that was depleted, however temporarily, to achieve the simulated funding, or due to the Bank's set-off process.

39) In November 2016, the OCC completed an examination of the Bank's Talent Management and Incentive Compensation programs. Through this examination, the examiners found the Bank's incentive compensation program was weak and in need of improvement.

Examiners found weaknesses in the design and execution of compensation and performance management practices and found that management lacked a holistic and cohesive testing, monitoring, and validation strategy that would ensure risks were identified and well controlled. It found that performance management and incentive compensation decisions did not adequately and consistently incorporate adverse risk outcomes or conduct issues. It found that other control functions, including risk, compliance, and audit, should have a more prominent role in incentive compensation design and risk management. In addition, it found that these weaknesses had exposed the Bank to increased operational, compliance, regulatory, and reputational risks, and were considered unsafe or unsound banking practices.

40) Notwithstanding the fund of information available to him throughout 2013 to 2015, for four years starting in 2013 Respondent Julian failed to identify control deficiencies in Community Bank's first line of defense, failed to assure that WFAS audit activity would detect and document the efficacy of controls over ongoing sales practices misconduct issues in the Community Bank, failed to escalate to senior Bank management and the Board issues related to internal control deficiencies in Community Bank's first line of defense, failed to adequately supervise senior leaders of WFAS to assure resources were timely being directed to detect and remediate control deficiencies in the Community Bank, failed to effectively manage internal audit to ensure that it added value to the Bank, failed to assure that adequate steps were taken to identify the root cause(s) of sales practices misconduct by Community Bank team members, and failed to assess risks related to customer consent, customer complaints, and incentive compensation between 2013 and 2016. **The failure to take such action constituted unsafe or unsound banking practices and constituted a breach of the fiduciary duties that Mr. Julian owed to the Bank.**

41) Notwithstanding Audit's role as an independent line of defense with the duty to provide credible challenge to risk management measures taken by the first and second lines of defense, Respondent Julian believed that when risk management work responsive to the LA Times articles was performed between 2013 and 2016 by the first and second lines of defense, Audit had no duty to step in to examine risk management activity that had been directed by the Bank's Board of Directors. **Acting in furtherance of this belief constituted, under the facts presented, unsafe or unsound banking practices and constituted a breach of fiduciary duties Mr. Julian owed to the Bank.**

42) Notwithstanding Audit's responsibility to identify the root cause of risk management issues in each of the Bank's lines of business, Respondent Julian believed that when the Chair of the Bank's Risk Committee directed the Bank's Chief Risk Officer to identify the root cause of issues raised by the LA Times articles, WFAS was not required to identify the root cause of the sales practices issues because tasking WFAS with identifying the root cause of those issues would not be consistent with WFAS's responsibilities. Mr. Julian believed that if a business unit identified an issue, or if an issue was identified by Corporate Investigations, it was the responsibility of the business unit, not WFAS, to identify the root cause. **Acting in furtherance of these beliefs constituted, under the facts presented, unsafe or unsound banking practices and constituted a breach of the fiduciary duties Mr. Julian owed to the Bank.**

43) Respondent Julian's fiduciary duties arose not only because of his position as the Bank's Chief Auditor, but also through the mandates of the committees he was a member of. Those duties included governance, oversight, and risk management responsibilities assigned to the Operating Committee Group, the Enterprise Risk Management Committee (ERMC), the Team Member Misconduct Executive Committee (TMMEC), the Incentive Compensation Committee (ICC), and the Ethics Committee. As a member of these committees, Mr. Julian had fiduciary responsibilities based on the mission of each committee. His presence on these committees gave him the opportunity and the duty to gather information concerning risk activities. With that information, he had the duty to establish the proper internal audit scope related to those activities. **The failure to gather such information and establish the proper internal audit scope related to those activities constituted unsafe or unsound banking practices and constituted a breach of fiduciary duties Mr. Julian owed to the Bank.**

44) By March 2013, Respondent Julian learned through his membership on the TMMEC that Community Bank had significant issues related to fraud by its team members. By August 2013, Mr. Julian learned through his membership in the Ethics Committee that Community Bank had the highest number of EthicsLine reports per 1,000 team members and most were associated with sales integrity issues. By April 2014, Mr. Julian learned through his membership in the ERMC that Community Bank terminated between 1,000 and 2,000 employees each year for sales practices-related misconduct. Through a report to the Ethics Committee in October 2015, Mr. Julian learned that Financial Crimes Manager Loretta Sperle anticipated an uptick in sales-practices financial crimes cases in 2016 due to the implementation of customer complaint processes. As a member of the ICC, Mr. Julian had the responsibility to review all incentive compensation plans to provide oversight around both the design of those plans and the outcomes of the plans, to assure the Board that the plans did not incent risk taking that went beyond the Bank's risk appetite and that of the Community Bank. Notwithstanding the scope of the ICC's mission, at no time did Mr. Julian provide governance oversight regarding incentive compensation plans governing Community Bank team members. **The failure to provide such governance constituted unsafe or unsound banking practices and constituted a breach of fiduciary duties Mr. Julian owed to the Bank.**

45) As a member of these committees, Respondent Julian had fiduciary duties that included addressing risk issues that were, or should have been, made known to committee members, escalating the issues where appropriate, and ensuring that the issues were promptly resolved. Notwithstanding the fiduciary duties associated with his membership in these committees, throughout 2013 to 2016 Mr. Julian persistently failed to present to members of these committees material information regarding the mismanagement of sales practice risk controls by Community Bank's first line of defense. **The failure to present such information constituted unsafe or unsound banking practices and constituted a breach of fiduciary duties Mr. Julian owed to the Bank.**

46) Mr. Julian knew that the primary risks associated with internal audit functions are operational, compliance, strategic, and reputation. He knew that reductions in internal audit's effectiveness could increase risk in all categories. By June 2015, he knew that the consequences of WFAS's failure to identify sales practices issues in a timely manner increased compliance,

legal, and reputational risks. He knew that WFAS could have and should have challenged more, dug deeper, and investigated further. He knew that had WFAS done so, it could have identified the root cause of the problem, helped the Bank put a stop to the problem, and prevented the losses sustained by the Bank. **Mr. Julian's failure to detect sales practices-misconduct risk control weaknesses in a timely manner subjected the Bank to abnormal risk, loss, and damage, were unsafe or unsound banking practices, and constituted a breach of the fiduciary duties Mr. Julian owed to the Bank.**

47) Mr. Julian's failure to take effective steps to identify and address sales practices misconduct in the Community Bank persisted over four years, and expressed itself as a pattern of misconduct, one that included willful neglect of the duty to familiarize himself with the scope and nature of sales practices misconduct by Community Bank's team members and extant controls related to such misconduct, willful failure to disclose through escalation information establishing the root cause of such misconduct, and willful failure to supervise senior audit leaders in WFAS to ensure their compliance with regulatory and professional audit standards.

48) Mr. Julian's failure to take effective steps to identify and address sales practices misconduct in the Community Bank was likely to cause and did cause, more than a minimal loss to the Bank. Those losses included the Bank's payment of civil penalties and criminal fines, and costs the Bank bore to rebuild trust with the holding company's shareholders, customers, the public, and regulators. Those losses and costs continue, as the Bank continues to remediate its present and past customers.

49) Through Mr. Julian's failure to disclose the inadequacy of the Community Bank's risk management control processes, sales practice misconduct by Community Bank team members continued throughout 2013 to 2016. During this time, because the problem was unaddressed and hidden from the public and myriad stakeholders, Mr. Julian was able to retain his employment and receive the benefits of being a highly regarded and compensated member of the Bank's senior officer staff.

Although the Community Bank's business model incented misconduct, it was profitable throughout the relevant period, which benefited Mr. Julian during that same period. In addition to being able to retain his position as the Bank's Chief Auditor, by allowing the misconduct to proliferate Mr. Julian benefited from bonus payments and stock increases that were directly tied to the Bank's financial performance. As long as the true risks associated with such misconduct were withheld from the Bank's A&E Committee, its Enterprise Risk Management Committee, the Bank's Board of Directors, and the OCC (and other regulators), Mr. Julian, month by month from 2013 through 2016, received the material financial and other benefits that came from such non-disclosure.

50) Preponderant evidence presented during the hearing established that Mr. Julian is an institution-affiliated party, that the Bank is a financial institution as that term is used in the Federal Deposit Insurance Act, and that the OCC is the appropriate Federal regulator authorized to issue cease and desist orders under the FDI Act.

51) Preponderant evidence presented during the hearing established that during the

relevant period Mr. Julian engaged in unsafe and unsound practices in conducting the business of the Bank and breached fiduciary duties he owed to the Bank (misconduct), sufficient to warrant the issuance of the cease and desist order as proposed by Enforcement Counsel in their post-hearing brief.

52) Preponderant evidence presented during the hearing also established that the unsafe or unsound practices and the breaches of the fiduciary duties Mr. Julian owed to the Bank caused the Bank to suffer reputational and financial loss, prejudiced depositors' interests, and gave Mr. Julian financial gain or other benefit (effect). Preponderant evidence also established that Mr. Julian's misconduct involved his personal dishonesty and demonstrated his willful or continuing disregard for the safety or soundness of the Bank (culpability).

53) After taking into account each of the statutory and regulatory factors relevant to the assessment of civil money penalties in this context, preponderant evidence presented during the hearing established cause to assess a $7 million civil money penalty against Mr. Julian.

Respondent Russ Anderson

54) In the Community Bank, it was Ms. Russ Anderson's responsibility as Group Risk Officer to focus on reputation management and keep the Community Banking lines of business out of trouble by identifying and mitigating key operating risks in the businesses. She also had the responsibility to build a culture of accountability with strong controls that help ensure no material operational losses. Throughout 2013 to 2016, Respondent Russ Anderson failed to provide to Community Bank's first line of defense credible challenge regarding the management of risks associated with team member sales practices misconduct. **Ms. Russ Anderson's failure to provide such credible challenge constituted unsafe or unsound banking practices and a breach of the fiduciary duties she owed the Bank.**

55) Throughout 2013 to 2016, Respondent Russ Anderson failed to identify ineffective preventative or detective controls regarding sales practices misconduct by Community Bank team members. **Ms. Russ Anderson's failure to identify these ineffective controls constituted unsafe or unsound banking practice and a breach of the fiduciary duties she owed the Bank.**

56) Throughout 2013 to 2016, Respondent Russ Anderson withheld from the Bank's Chief Risk Officer and its Corporate Risk team material information regarding the true scope and nature of the Community Bank team members' sales practices misconduct, the ineffectiveness of controls related to such misconduct, and the threat such misconduct posed to the Bank's safety, soundness, and reputation. **Ms. Russ Anderson's failure to provide such information constituted unsafe or unsound banking practice and a breach of fiduciary duties she owed the Bank.**

57) In January 2013 Glen Najvar – one of Ms. Russ Anderson's direct subordinates – provided an analysis for Ms. Russ Anderson regarding sales quality and sales integrity operational risk. In this context, sales quality referred to sales and referral concerns stemming from general product design considerations, training needs, lack of clarity, and systematic deficiencies that can range from individual team member-level misconduct to enterprise-wide

level deficiencies. Sales integrity was a subset of sales quality that typically involved the manipulation or misrepresentation of sales or referrals in order to receive compensation to meet sales goals, and included unethical or illegal behavior (or both).

In advance of Ms. Russ Anderson's participation in a Sales Quality & Operational Risk meeting to be held in Dallas in 2013, Mr. Najvar identified examples of potential sales quality issues, including where a team member places a customer into accounts, possibly multiple unnecessary accounts, which do not meet the customer's financial needs. He reported this could result from a team member acting alone or possibly from management direction. He added that the practice of encouraging a customer to open multiple accounts could greatly concern a customer about the security of their accounts.

Mr. Najvar described another example of a Sales Quality issue arising where a new account was *opened* for a customer in a situation where the *conversion* of an existing account would have been more appropriate. He noted that while a team member may act alone in such a case, the misconduct might stem from management direction so that the team member and the branch received sales credit. He noted that this could adversely affect the customer if the customer had auto-debits set up on a debit card that was closed, or it could affect bill-pay options in the event a checking account was closed.

Mr. Najvar provided two potential sales integrity examples: first, where an account is sold to a customer without their knowledge or consent, and second, where the team member falsifies bank records or systems or forges signatures on documents. In the first instance, Mr. Najvar reported that this could arise as a result of a team member seeking additional incentive sales credit as a result of feeling pressure to meet sales goals, or it could result from the team member misinterpreting management advice that all customers should have a debit card in their wallet or purse.

In the second instance, Mr. Najvar reported that falsifying or forging signatures can occur, for example, when a manager instructs their team members to open business accounts for non-business customers so as to garner higher profit for the bank branch; or when a team member encourages a customer who is not a college student to open a college student checking account (thereby avoiding checking account fees) and the team member thereafter unilaterally updates the Bank's records, falsely stating the customer is a college student.

58) Respondent Russ Anderson knew as early as February 2013 that cause existed to believe that sales practices misconduct by Community Bank team members was directly related to pressure team members felt in order to meet sales goals, receive compensation, and continue in their employment.

59) By mid-May 2013, Respondent Russ Anderson had received a May 9, 2013 report (sent to CEO Stumpf and forwarded to Ms. Russ Anderson) from an incumbent branch manager in the Bank's Northern Ocean District of New Jersey alleging unethical practices that included falsifying driver licenses for customers in order to open accounts, and averring that upper leadership was responsible for encouraging the misconduct. The report was also presented to the Bank's Corporate Investigations unit through its head, Michael Bacon, who informed Ms. Russ

Anderson that the report was not a total surprise and that the Bank had noted significant similar issues in the market.

Upon receipt of the branch manager's report, the Sales Quality group under Ms. Russ Anderson's direction conducted a comprehensive overview of all eleven bank branches in the Northern Ocean District and found potential consent concerns in six of the eleven stores related to products including checking and savings accounts, debit and credit cards, and online banking. Consent concerns were indicative of team-member sales misconduct involving both opening accounts without obtaining customer consent and the practice known as simulated funding.

60) By October 2013 Respondent Russ Anderson had received substantial information about possible simulated funding where initial research by Corporate Investigations established cause to believe sales practices misconduct was directly related to Community Bank's individual and bank branch sales goals, and cause to believe team members were altering customer phone numbers in order to avoid receiving negative customer ratings from the Bank's Gallup Poll customer satisfaction surveys. Corporate Investigations through Mr. Bacon reported that team members also sought to avoid quality-control calls to customers by the Bank's Gallup pollsters that were designed to follow up with the customer following the sale of products by the team member, particularly in those cases where the team member did not disclose to the customer the opening of those accounts.

61) By November 2013, independent of what had been disclosed through the first of the two LA Times articles, Respondent Russ Anderson had received reports from senior leaders in the Community Bank's human resources unit advising her that team members were engaging in misconduct out of fear that if they failed to meet sales and service goals they faced termination; and that many lower-paid short-tenured employees were engaging in misconduct that was either encouraged or studiously ignored by bank branch management in order to meet goals and keep their jobs.

62) In addition to reports by senior members of the Community Bank's human resources group, Respondent Russ Anderson received the analysis by her direct report, Rebecca Rawson, who was the head of the Sales and Service Conduct Oversight Team (SSCOT) and held the opinion in May 2013 that sales goals were too high. Ms. Rawson believed that if sales goals existed and if the team member felt the goals were unattainable, the increasing risk would be a big factor.

63) Substantial and preponderant evidence established that Respondent Russ Anderson knew in 2013 that there was pressure to meet sales goals, that the sales goals were unattainable, that this caused a significant cohort of team members and their supervisors to engage in sales practices misconduct, and that extant controls put in place by the Community Bank's first line of defense addressing risks associated with such pressure were not effective.

64) After the LA Times articles were published in October and December 2013, the Bank formed a "Core Team." The Core Team was a cross-functional group that included Ms. Russ Anderson and was created to ensure consistency in employee termination decisions in the wake of the LA Times articles.

65) Notwithstanding her possession of substantial information regarding a possible – and likely – correlation between sales goals and team member misconduct, and notwithstanding her role as a member of the Core Team, Respondent Russ Anderson failed to conduct or commission any root cause analysis of sales practices misconduct by Community Bank team members throughout 2013 to 2016. **Ms. Russ Anderson's failure to such an analysis constituted unsafe or unsound banking practice and a breach of the fiduciary duties she owed the Bank.**

66) Notwithstanding her possession of such information, throughout 2013 to 2016 Respondent Russ Anderson failed to conduct or commission any customer harm analysis, failed to implement effective controls relating to the risks associated with customer consent (and the lack thereof), and failed to identify and then escalate to senior management information regarding known risk-control weaknesses regarding risks associated with failing to remediate customers harmed by sales practices misconduct. **Ms. Russ Anderson's failure to conduct such an analysis and escalate the findings of such an analysis constituted unsafe or unsound banking practice and a breach of the fiduciary duties she owed the Bank.**

67) During her presentation to the Enterprise Risk Management Committee (ERMC) on April 9, 2014, Respondent Russ Anderson withheld material information related to the widespread scope and nature of sales practices misconduct being committed by Community Bank team members; falsely represented that the Community Bank's incentive compensation program did not encourage sales practices misconduct; failed to disclose the connection between Community Banking's sales goals and team member misconduct; and falsely represented that controls tied to the risks associated with such misconduct that had been implemented by the Bank's first and second lines of defense were in place and were effective. **Ms. Russ Anderson's failure to provide complete and accurate information during this meeting constituted unsafe or unsound banking practice and a breach of the fiduciary duties she owed the Bank.**

68) During meetings of the Board's Risk Committee on April 28 and May 19, 2015, and of the full Board on October 27, 2015, Respondent Russ Anderson continued to withhold from the Bank's risk managers the material facts that she had withheld during the April 9, 2014 ERMC meeting. **Ms. Russ Anderson's failure to provide complete and accurate information during these meetings constituted unsafe or unsound banking practice and a breach of the fiduciary duties she owed the Bank.**

69) After the publication of the two LA Times articles in 2013, Respondent Russ Anderson imposed reactive protocols that employed detection and investigation thresholds through which only an artificially small percentage of team members would be identified as engaging in reportable sales practices misconduct.

70) Using the results of these inadequate detection protocols, Respondent Russ Anderson provided materially incomplete and misleading information to the Bank's Risk Committee and the OCC during the Committee's May 19, 2015 meeting, information that failed to disclose the true nature and extent of team member misconduct and the associated risks to the Bank's safety, soundness, and reputation. **Ms. Russ Anderson's failure to provide complete**

and accurate information during this meeting constituted unsafe or unsound banking practice and a breach of the fiduciary duties she owed the Bank.

71) Although through her position as Group Risk Officer for Community Banking Respondent Russ Anderson had the opportunity and responsibility to escalate to the Risk Committee any concerns relating to Community Bank team member sales practices misconduct, Ms. Russ Anderson failed to disclose during the May 19, 2015 Risk Committee meeting the known inadequacy of controls over the risks of such misconduct, failed to disclose the use of 99.99% and 99.95% thresholds to detect such misconduct, failed to disclose the true root cause of the problem, falsely attributed action by isolated outlier team members as the source of the problem, and failed to disclose the relationship between Community Banking's sales goals incentive program and sales practices misconduct. **Ms. Russ Anderson's failure to provide these disclosures during this meeting constituted unsafe or unsound banking practice and a breach of the fiduciary duties she owed the Bank.**

72) In April 2015, shortly before discussing with the OCC's examiners sales practices misconduct attributed to Community Bank team members, Respondent Russ Anderson received a report of a protest in St. Paul, Minnesota that was focused on sales pressure-related issues, with features common to reports she received in 2014 regarding sales pressure petitions and a sales quality investigation in Williamsburg, Virginia. She also received from her direct reports copies of Facebook posts from April 20 and 27, 2015 detailing complaints by a former store manager in New Jersey regarding unreasonable sales goals and pressure forcing employees to sell unneeded Bank products.

18 U.S.C. § 1001(a)(1) prohibits any knowing and willful conduct that falsifies, conceals, or covers up by any trick, scheme or device a material fact. 18 U.S.C. § 1001(a)(2) prohibits making any materially false, fictitious, or fraudulent statement or representation. 18 U.S.C. § 1001(a)(3) prohibits making or using any false writing or document knowing the same to contain materially false, fictitious, or fraudulent statements.

During the OCC's 2015 examinations of the Community Bank, Respondent Russ Anderson violated 18 U.S.C. § 1001(a)(1) by willfully concealing from federal bank examiners facts material to the February 2015 OCC Examination (1) that would contradict Ms. Russ Anderson's false averments (1) that no Community Bank team member loses their job because they do not meet sales goals; (2) that Community Bank customers are not cross-sold any products without first going through a formal needs assessment discussion with a banker and providing their consent to the cross-sell; (3) that the impact of sales goals expectations on employee turnover was not significant; (4) that interviews with employees did not lead to any conclusion about the impact of sales pressure; (5) that sales pressure was not an underlying issue related to risk management in the Community Bank; and (6) that she did not hear about sales pressure at all. **Ms. Russ Anderson's failure to provide complete and accurate information during this examination constituted unsafe or unsound banking practice and a breach of the fiduciary duties she owed the Bank.**

73) Preponderant evidence presented through this administrative enforcement action supports the finding that Respondent Russ Anderson falsely told OCC examiners during the

February 2015 examination that no one's employment was terminated because they did not meet sales goals. Preponderant evidence also supports the finding that Ms. Russ Anderson gave false testimony during the evidentiary hearing. This testimony related to responses Ms. Russ Anderson gave to OCC examiners during the February 2015 exam and in particular during discussions with examiners on February 10 and 19, 2015. **Ms. Russ Anderson's failure to provide complete and honest answers during this testimony constituted a breach of the fiduciary duties she owed the Bank.**

Contemporaneous notes by examiners reflect that during the February 2015 examination Ms. Russ Anderson made the unconditioned statement that no one loses their job because they do not meet sales goals. During the hearing and now through proposed findings of fact advanced by her Counsel, however, Ms. Russ Anderson and her Counsel of record claim that she told the OCC that no one loses their job *solely* for not meeting sales goals.

Preponderant evidence establishing that this testimony misrepresented what Ms. Russ Anderson told the OCC in February 2015 includes: (1) undisputed evidence that on February 10, 2015, when an examiner asked whether pressure to meet baseline sales goals was sufficient and contributed to employee turnover, Ms. Russ Anderson responded that no one loses their jobs because they do not meet sales goals; (2) that she provided the same response during her pre-hearing deposition taken in advance of the evidentiary hearing; (3) that OCC examiner notes written contemporaneously to a February 19, 2015 meeting reflect Ms. Russ Anderson gave the same response; (4) that through a March 31, 2015 email to Ms. Russ Anderson, Examiner Hudson presented to Ms. Russ Anderson a recap of what Ms. Russ Anderson had averred – that no one is terminated for failing to meet sales goals – and Ms. Russ Anderson did not dispute making the statement and did not seek to correct the presentation; (5) that through responses she provided to the OCC in her response to the 15-Day Letter preceding the issuance of the Notice of Charges Ms. Russ Anderson through Counsel gave the same response; and (6) that in the course of the hearing itself, Ms. Russ Anderson first testified that she told the examiners that no employees were terminated for not meeting their sales goals.

Upon this evidentiary base, I find Ms. Russ Anderson's present claim, advanced first in her hearing testimony and later through the findings of fact and conclusions of law her Counsel proposed, averring that Ms. Russ Anderson told the OCC in February 2015 that the Company did not terminate employees solely for not meeting sales goals, falsely represents what Ms. Russ Anderson told the OCC in February 2015, and that the falsehood is material to the claims and issues presented in this administrative enforcement action.

I find that through that part of her testimony averring that her prior statements were conditioned by the word "solely", Ms. Russ Anderson falsely reported what she told the OCC; and I find that by advancing as a proposed factual finding that Ms. Russ Anderson conditioned her prior statements by the word "solely" Counsel for Ms. Russ Anderson offered a submission that was self-evidently not well grounded in fact.

I find further that by repeatedly informing the OCC that no one loses their job due to not meeting sales goals, Ms. Russ Anderson knowingly misrepresented the truth on a matter material to this enforcement action.

74) During the February 2015 examination, Respondent Russ Anderson told OCC examiners that Community Bank's customers were not cross-sold any products without first going through a formal needs assessment discussion with a banker, a process that took about one hour. This averment was included in the examiners' contemporaneous reports, and was not paired with any condition under which such an assessment would be dispensed with if the customer did not want to complete the assessment.

During the hearing and through her proposed findings of fact, however, Ms. Russ Anderson averred that such an assessment was provided unless the customer indicated they did not want an assessment or the circumstances indicated an assessment was not necessary. She also acknowledged during the hearing that no assessment would be given in those cases where accounts were opened without the customer's knowledge or consent, or in those cases involving simulated funding.

Upon this evidentiary base, I find Ms. Russ Anderson's averments to the OCC in February 2015 that customers were not cross-sold any products without first going through a formal needs assessment discussion with a banker falsely represented what Ms. Russ Anderson knew to be the case, and that the falsehood is material to the claims and issues presented in this administrative enforcement action.

I find that through that part of her testimony averring that her prior averment was conditioned by a provision dispensing with the assessment if the customer did not want it or if conditions did not warrant making such an assessment, Ms. Russ Anderson falsely described what she told the OCC in February 2015; and that by advancing as a proposed factual finding that Ms. Russ Anderson included such a condition in her discussions with the OCC in February 2015, Counsel for Ms. Russ Anderson offered a submission that self-evidently was not well grounded in fact.

75) By concealing accurate information and providing incomplete information detailing the termination of team members for sales practices violations during the OCC's 2015 examinations of the Community Bank, Respondent Russ Anderson violated 18 U.S.C. § 1001(a)(1) by willfully concealing from federal bank examiners facts material to the May 2015 OCC examination that would have provided a materially more complete understanding regarding terminations, expanding on her averment that there were 190 terminations for simulated funding (30 from 2013 and 160 from 2014), when she knew that sales goal-related terminations were not limited to those based on simulated funding and knew there were between 1,000 and 2,000 sales integrity violation terminations annually.

76) By describing her risk management efforts as proactive and averring that those efforts led to the discovery of sales practices misconduct during the OCC's 2015 examinations of the Community Bank, and by averring that the preponderance of the instances of misconduct did not have customer impact, Respondent Russ Anderson violated 18 U.S.C. § 1001(a)(1) by willfully concealing from federal bank examiners facts material to the May 2015 OCC Examination that would have established that those efforts were predominantly reactive and were not proactive, that those efforts were largely ineffective, and that customers were in fact adversely affected by team members' practices, where those practices included misusing

personal customer information, falsifying customer Bank records, preventing controls that relied on customer polling, and altering customers' personal information stored with the Bank.

77) By failing to disclose facts establishing a connection between incentive compensation tied to sales goals and sales practices misconduct by Community Bank team members during the OCC's 2015 examinations of the Community Bank, Respondent Russ Anderson violated 18 U.S.C. § 1001(a)(1) by willfully concealing from federal bank examiners facts material to the May 2015 OCC examination that would have established that the root cause of such misconduct was pressure due to unreasonable sales goals Community Bank's management imposed upon its team members.

78) Respondent Russ Anderson violated 18 U.S.C. § 1001(a)(1), (2), and (3) by actively participating in the preparation and submission of misleading documents relied upon by the OCC examiners during the February and May 2015 examinations regarding sales practices misconduct in the Community Bank, specifically: (1) concealing from the OCC examiners the inadequacy of controls used to detect and prevent sales practices misconduct by Community Bank team members, withholding from examiners the 99.99% and 99.95% thresholds used to identify misconduct after being directed to describe how simulated funding was detected, and withholding that simulated funding typically involved the team member moving customer funds without customer consent; (2) concealing from the OCC examiners information about the root cause of employee terminations for sales practice misconduct; by failing to conduct a root cause analysis that would determine (or rule out) any connections among sales goals, compensation incentives, and misconduct; and failing to disclose to the OCC's examiners information already presented to her regarding anecdotal reports of widespread sales practice misconduct that would show trends that suggested those connections; (3) personally directing the removal of, and concealment from OCC examiners, information tending to establish the inadequacy of existing risk management controls in the Community Bank's first and second lines of defense, through instructions she gave to Jason MacDuff on April 4, 2014 – not to provide Enterprise Risk Management Committee members information about Community Bank's risk management practices that were known to not work well – and expressly doing so because she knew the deck containing that information would be seen by the OCC's examiners; (4) personally approving the suggestion by Jannien Weiner on February 12, 2015 to delete references to "consent" risk issues and withhold from the examiners all notes, minutes, materials or anything else when responding to OCC questions related to Project Clarity; (5) personally directing Mr. MacDuff on April 9, 2015 that information that would have provided detailed content of what was required in response to a pending MRA, information that was being provided to the Bank's Risk Committee in advance of its April 28, 2015 meeting, be kept to a minimum because it would be provided not only to Committee members but also to the Bank's regulators – with the result that the presentation based on those materials failed to disclose to the Risk Committee and the OCC critical facts regarding risks related to ongoing team member sales practices; and (6) personally directing her subordinates on June 24, 2015 during their response to OCC examiners' inquiry into customer complaint follow-up, to withhold from the OCC examiners material information that would have disclosed that the Community Bank had little follow-up process for missing signatures on deposit accounts.

79) Respondent Russ Anderson violated 18 U.S.C. § 1001(a)(1), (2), and (3) by actively participating in the preparation and submission of the May 19, 2015 memorandum regarding sales conduct oversight relied upon by the OCC examiners and members of the Risk Committee of the WF&C Board of Directors, where through her participation in writing and editing this memo, Ms. Russ Anderson failed to timely disclose known existing deficiencies in risk management and control breakdowns related to sales practices misconduct by Community Bank team members, knowing that those deficiencies permitted the perpetuation of team member misconduct that could cause and had already caused substantial harm to the Bank; failed to escalate to the Committee information disclosing the true scope and nature of such misconduct; and permitted the memo to go forward falsely reporting that the improper sales practices were not caused by deficiencies in Community Bank's controls or by material problems with its business model and falsely attributing such misconduct to a limited cohort of outlier team members engaged in intentional misconduct, making no reference to the true widespread scope of the misconduct and its correlation with Community Bank's sales pressure and incentive compensation program.

80) Respondent Russ Anderson violated 18 U.S.C. § 1001(a)(1) by appearing at the May 14, 2015 meeting with OCC examiners and falsely under-reporting the volume of terminations for sales practices misconduct; falsely reporting that sales practices issues were isolated to the Los Angeles and Orange County, California locations; falsely reporting that most of those terminations were due to phone number changes (used to evade quality-control polling) and invalid teller referrals, while failing to accurately report that most team member terminations were based on banker misconduct involving lack of customer consent; and concealing from examiners material information indicating a correlation between unreasonable sales goals imposed by first line management at Community Bank and team member sales practices misconduct.

81) Respondent Russ Anderson violated 18 U.S.C. § 1001(a)(1) by appearing at the May 19, 2015 Risk Committee meeting and providing information that was at times incomplete, inaccurate, and materially misleading, including: failing to disclose the known root cause of sales practices misconduct by Community Bank team members; falsely reporting there had been a dramatic reduction in inappropriate practices during the past year; opining without a sufficient factual basis that first and second line defenses contributed to a significant reduction in inappropriate practices; and failing to disclose the use of misconduct-detection thresholds that materially limited the likelihood that team member misconduct would be identified and addressed.

82) By failing to ensure that the Community Bank implemented effective controls for detecting and preventing team members from submitting entries falsely purporting to represent sales to consenting customers, Respondent Russ Anderson aided in the team members' violation of 18 U.S.C. § 1005, which prohibits bankers from making any false entry in any statement of the bank with the intent to deceive any officer of such bank.

83) By failing to ensure that the Community Bank implemented effective controls for detecting and preventing simulated funding – i.e., the practice of moving funds among accounts

without customer consent to make it appear as if customers had funded their accounts – Respondent Russ Anderson aided in the team members' violation of 18 U.S.C. § 656, which prohibits bankers from distributing funds under a record that misrepresents the true state of the record with the intent that bank officials, bank examiners, or the FDIC will be deceived.

84) By failing to ensure that the Community Bank implemented effective controls for detecting and preventing team members from using customer identification information to open unauthorized accounts or bank products, Respondent Russ Anderson aided in the team members' violation of 18 U.S.C. § 1028(a)(7) (Identity Theft), which prohibits bankers from knowingly using a means of identification of another person in connection with any violation of Federal law used in a manner affecting interstate commerce.

85) By failing to disclose to OCC examiners the known scope of sales practices misconduct during the February 2015 examinations, by falsely reporting that no Community Bank team members' employment was terminated due to failing to meet sales goals, and by underreporting the number of Bank employees whose employment had been terminated due to sales practices misconduct, Respondent Russ Anderson obstructed the February 2015 examination. By corruptly obstructing or corruptly attempting to obstruct the OCC's examination – where corruptly means that the conduct is voluntarily and intentionally engaged in and is engaged in with the bad purpose of accomplishing an unlawful end or result, Respondent Russ Anderson violated 18 U.S.C. § 1517.

86) By failing to ensure that the Community Bank implemented effective controls for detecting and preventing team members from opening accounts without customer authorization or from engaging in simulated funding, Respondent Russ Anderson aided in the team members' violation of 15 U.S.C. § 45(a) (Unfair or Deceptive Acts or Practices), which prohibits unfair or deceptive practices in or affecting interstate commerce.

87) By failing to ensure that the Community Bank implemented effective controls for detecting and preventing team members from opening credit card accounts without customer consent, Respondent Russ Anderson aided in the team members' violation of 12 C.F.R. § 1026 (Truth in Lending – Regulation Z), which prohibits issuing a credit card in the absence of an oral or written request for such card and requires that the bank provide specific account-opening disclosures before the first transaction is made.

88) By failing to ensure that the Community Bank implemented effective controls for detecting and preventing team members from opening checking or savings accounts without customer consent, Respondent Russ Anderson aided in the team members' violation of 12 C.F.R. § 1030 (Truth in Savings – Regulation DD), which requires the depository institution to furnish specific account-opening disclosures before an account is opened or service is provided.

89) By providing misleading and incomplete information to the Bank's senior risk managers from early 2014 to late 2016, including members of the Bank's Board and its Risk Committee, Respondent Russ Anderson materially interfered with the Bank's ability to understand the true root cause of sales practices misconduct by Community Bank team members, preventing timely measures to effectively respond to the risks related to such misconduct.

Through this interference, Ms. Russ Anderson engaged in unsafe or unsound banking practice and breached fiduciary duties she owed to the Bank.

90) By concealing the true nature and scope of sales practices misconduct by the Community Bank's team members, and by failing to implement meaningful and effective controls to detect and prevent such misconduct, Respondent Russ Anderson delayed an effective response to the problem, and contributed to conditions that led to losses by the Bank – both financial and reputational losses – sustained through lawsuits leading to civil judgments and settlements, and costs incurred by the Bank in the course of investigating such misconduct and the harm caused to the Bank's customers. **Through this conduct, Ms. Russ Anderson engaged in unsafe or unsound banking practice and breached fiduciary duties she owed to the Bank.**

91) By failing to ensure that the implementation of effective detective and preventative controls to address sales practices misconduct by Community Bank team members, and by obstructing the regulatory process by providing false, misleading and incomplete information to the OCC, Respondent Russ Anderson materially contributed to damage to the Bank's reputation and prejudiced the interests of the Bank's depositors and other customers by failing to assure the security of customer information. **Through this conduct, Ms. Russ Anderson engaged in unsafe or unsound banking practice and breached fiduciary duties she owed to the Bank.**

92) Although the Bank's use of unreasonable sales goals and extreme pressure was unsustainable, during the period from 2013 to 2016 it was highly profitable, as revenue and net income increased as a result of team members seeking to reach those goals. Respondent Russ Anderson's compensation was based in part on cash bonuses and equity compensation that were tied to the Company's financial performance. Ms. Russ Anderson directly benefited from the Bank's increased revenue attributable to the team members' sales practices misconduct, as her compensation increased in line with increases in the Bank's revenue and net income. Ms. Russ Anderson indirectly benefited from her failure to implement effective detective and preventative controls in that she was able to continue her employment only as long as the true scope and nature of team member sales practices misconduct, and evidence regarding her efforts to minimize the scope and nature of such misconduct, was not discovered. Once the true scope of the issue became known to the Bank's Board, Ms. Russ Anderson's employment was terminated for cause shown.

93) Respondent Russ Anderson's concealment of the failure of Community Bank's detective and preventative controls, her false characterization of the scope and nature of risks related to team member sales practices misconduct, and her failure to timely escalate material sales practices risk issues to the OCC's examiners, to the Chief Risk Officer, to members of the Core Group, to members of Operational, Regional, and Community Banking Risk Management Committees, the Fraud Risk Committee, the Sales Tracking Risk Steering Committee, the Evolving Model Steering Committee, and the Incentive Compensation Risk Committee was the result of her deliberate determination to withhold such information with utter lack of attention to the Bank's safety, soundness, and reputation, and evidenced a willingness to turn a blind eye to the Bank's interest in the face of known risks – risks that had been brought to her attention by no

later than 2013 through Mr. Bacon and reporting from Corporate Investigations, from her own direct subordinates, and from OCC examiners.

94) Between 2013 and 2016, Respondent Russ Anderson's ongoing failure to provide credible challenge to the Community Bank's incentive compensation program, her failure to establish effective detective and preventative controls addressing known risk issues related to sales practices by Community Bank managers and team members, her concealment and repeated false characterizations of the scope and nature of the risks associated with sales practices misconduct in the Community Bank, all continued over four years and evidenced Ms. Russ Anderson's indifference to the risks that had already been demonstrated and the potential for continuing and increasing harm to the Bank for as long as unreasonable sales goals continued.

95) Preponderant evidence presented during the hearing established that Ms. Russ Anderson is an institution-affiliated party, that the Bank is a financial institution as that term is used in the Federal Deposit Insurance Act, and that the OCC is the appropriate Federal regulator authorized to issue prohibition orders under the FDI Act.

96) Preponderant evidence presented during the hearing established that Ms. Russ Anderson has violated federal laws in conducting the business of the Bank; that she engaged in unsafe or unsound practices and breached fiduciary duties she owed to the Bank; that the Bank has suffered and will probably continue to suffer financial loss or other damage by reason of Ms. Russ Anderson's misconduct; that Ms. Russ Anderson's misconduct could have prejudiced and did prejudice the Bank's depositors, and her misconduct resulted in financial gain or other benefit to her; and her misconduct involved both her personal dishonesty and her willful or continuing disregard for the safety or soundness of the Bank.

97) After taking into account each of the statutory and regulatory factors relevant to the assessment of civil money penalties in this context, preponderant evidence presented during the hearing established cause to assess a $10 million civil money penalty against Ms. Russ Anderson.

Respondent McLinko

98) Respondent McLinko was an officer and employee of the Bank throughout the relevant period.

99) Under heightened standards applicable to the Bank during the relevant period, the Community Bank's audit plan prepared under Mr. McLinko's direction during the relevant period had to take into account the Bank's risk profile, emerging risks, and issues.

100) Respondent McLinko failed to provide credible challenge regarding the first and second lines of defense management of risks associated with team member sales practices misconduct in the Community Bank throughout the relevant period. **Through this conduct, Mr. McLinko engaged in unsafe or unsound banking practice and breached fiduciary duties he owed to the Bank.**

101) Through his sworn responses to questions presented to him prior to the issuance

of the Notice of Charges, Mr. 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 two areas that contributed significantly to the issue.

102) On January 3, 2013, the head of Corporate Investigations, Michael Bacon, gave notice to Mr. McLinko that Sales Integrity was his number one concern; that Ms. Russ Anderson, as Community Banking's Group Risk Officer, needed to be more proactive in some areas of reporting related to sales integrity and compliance; that there were many cases involving unfunded opening of personal and business accounts; that there needed to be more proactive monitoring of non-resident alien accounts opened by team members and instances of duplicate addresses across customers and accounts, as well as duplicate social security numbers, suspicious (or nonexistent) driver license entries, and opening college accounts where the customer was not a college student. In this context, a team member engaged in sales integrity violations if they manipulated or misrepresented sales or referrals in order to receive compensation or to meet sales goals. In addition, it would be considered fraud if a team member opened an account without customer consent.

103) Corporate Investigations identified eight categories of sales integrity violations that it tracked:

Customer Consent – Allegations of the booking or sale of any banking product without the knowledge or official direct consent of the primary customer and joint account/product holder.

False Entries Violations – Allegations of entering false identification, expiration dates, or other false information in order to open accounts; with or without customer consent.

Fictitious Customer – Includes any product application where a falsified identification and or social security number is used to mask the true identity of the account holder.

Online Banking – Pinning online banking with or without customer consent and activating online banking and/or ID Theft Protection.

Product Manipulation – Waiving fees or adjusting products to open sales for unqualified customers; steering customers into products they are not qualified for or it is not in their best interest to have.

Funding Manipulation – Allegations of team members funding new or existing accounts for the purpose of sales goals.

Reassignment of Sales Credit – Allegations of one team member making referral contacts or product sales and reassigning the credit(s) to another team member in need of sales.

Referrals – Invalid sales referrals gained by directing traffic, or inappropriately received by another team member when an actual sales referral was not made.

A final category recognized the possibility of sales integrity matters that do not easily fall into one of the other categories.

104) Mr. Bacon further gave Mr. McLinko notice (through off-the-record

conversations with Mr. McLinko's direct report, Bart Deese, during a January 3, 2013 meeting, which Mr. Deese contemporaneously then related to Mr. McLinko) that cases being researched by Corporate Investigations revealed that employee turnover at the Regional Bank business line of Community Banking was higher than ever and employee-relations issues and Regional Bank ethics line calls were at an all-time high, contributing to Mr. Bacon's assessment that year-end sales integrity cases and terminations in Regional Banking also would be at an all-time high.

105) Upon receiving Mr. Deese's report relaying the information provided by Mr. Bacon during the January 2, 2013 meeting, Mr. McLinko was unconcerned about Mr. Bacon's identifying sales integrity as his number one concern; was not concerned that sales integrity cases and terminations in Regional Banking would be at an all-time high; and was not concerned that Mr. Bacon felt the root cause of the issue was related to sales goals and sales pressure. Nor did Mr. McLinko believe that this information indicated widespread or systemic problems related to sales practices misconduct. **Acting in furtherance of these opinions under the conditions that were present during the relevant period constituted unsafe or unsound banking practice and a breach of the fiduciary duties Mr. McLinko owed to the Bank.**

106) According to him, Mr. McLinko's lack of concern was based on the fact that neither Mr. Deese nor any other of his reports ever told him they had concerns about a widespread or systemic problem; that his team was already in the process of analyzing sales practices; that the cases Mr. Bacon brought to his attention were not confirmed cases but instead were cases being investigated; and that nothing in Mr. Bacon's presentation inferred that Mr. McLinko's team should be looking into the root cause of the problem. **Acting in furtherance of these opinions under the conditions that were present during the relevant period constituted unsafe or unsound banking practice and a breach of the fiduciary duties Mr. McLinko owed to the Bank.**

107) Under Mr. McLinko's direction, as of March 2013 the CBO team's review of fraud by Community Bank team members consisted of control testing of the Store Operations Control Review (SOCR) and a control testing audit of Sales Quality/Sales Integrity – both performed on a 24 month cycle with the former having been performed in 2012 and the latter set to be performed in 2013. In addition, there were indirect reviews where the CBO team might find fraud, including audits related to customer complaints and incentive compensation, but Mr. McLinko considered these reviews unlikely to find potential fraud.

108) SOCR was a group of first-line-of-defense analysts supervised by Ms. Russ Anderson whose members went to branch locations each year and reported on branch activities. Every two years Mr. McLinko's CBO team would audit SOCR operations. Although SOCR was supervised by Ms. Russ Anderson and not directed or supervised by WFAS, Mr. McLinko, or the CBO team, Mr. McLinko used metrics and data gathered by SOCR analysts between 2013 and early 2015, rather than conducting an independent audit of the effectiveness of risk controls that the first line of defense relied upon regarding risks related to sales practices and branch activities, asserting, without support, that such leveraging was specifically permitted under the WFAS Policy and Procedures Manual – a practice the OCC's examiners characterized as inexplicable. **Through this conduct, Mr. McLinko failed to maintain the professional independence**

required of the third line of defense, failed to exercise credible challenge to question the efficacy of SOCR operations as a risk-management control in the branches. In this way, Mr. McLinko engaged in unsafe or unsound banking practices and breached the fiduciary duties he owed to the Bank.

109) By the time the WFAS Audit Engagement Report on Community Banking – Regional Banking SOCR was issued on March 30, 2015, the CBO audit team found the SOCR quality assurance function "Needs Improvement" to ensure testing is sufficient, relevant, and reliable. This rating was given because this was the second time in the CBO's auditing of this internal control that the team found that the internal controls were not working as they were supposed to. Because this was the second time, it constituted a high-risk issue. Given that this was a major component of what SOCR did, in the audit team's opinion the component warranted a "Needs Improvement" rating. At this point, WFAS and the CBO ended the practice of relying on – *i.e.*, "leveraging" – SOCR quality controls. The record reflects that under Mr. McLinko's direction, from at least the beginning of 2013 to early 2015, the CBO team was not independent of the Community Bank's first line of defense and instead was dependent on the SOCR program, while failing to independently ensure the availability of good complaints data and failing to ensure effective controls over the Community Bank's incentive compensation program. **Through this conduct, Mr. McLinko engaged in unsafe or unsound banking practices and breached the fiduciary duties he owed to the Bank.**

110) Mr. McLinko was aware of the October 3, 2013 LA Times article, and claims to have read every word of it. He represented that after reading the article he did not have any understanding about whether this sort of misconduct was happening across the Community Bank, despite receiving repeated reports by Corporate Investigations and Mr. Bacon throughout the first nine months of 2013 indicating the geographically widespread nature of the type of misconduct reported by the Times. Mr. McLinko also read the second article, which was published on December 21, 2013, and which reported that relentless pressure on team members to sell Bank products had battered employee morale, and led to ethical breaches by team members, customer complaints, and labor lawsuits.

111) Through a Corporate Investigations Significant Investigation Notification (SIN) dated October 9, 2013, CI provided Mr. Deese, Mr. McLinko, and the CBO team notice of an allegation that 25 team members located in southern California had engaged in simulated funding using falsified entries made to meet individual and store sales goals, and that team members had deployed over 100 telephone number changes to avoid a negative rating from Gallup poll surveys, knowing that such actions were against Bank policy and occurred to meet quarterly sales goals; and that the team members reported that they did so following guidance from managers and after watching other team members engage in such misconduct.

112) Mr. McLinko understood the SIN related to the LA Times article but did not review the whole thing. He was not concerned about the information in the SIN because he understood there was a control process in place that detected the issue and many other people were provided copies of the SIN, including Legal, the Corporate Risk Program, and Operations Risk. Although Mr. Deese escalated the matter by bringing it to Mr. McLinko's attention, Mr.

McLinko never escalated the issue. At no time after the two articles did Mr. McLinko inform the Board of Directors about the audit issues that related to the information in the articles. **Through this conduct, Mr. McLinko engaged in unsafe or unsound banking practices and breached the fiduciary duties he owed to the Bank.**

113) After the articles were published, Mr. McLinko personally never tried to gain a thorough understanding of the proactive monitoring thresholds that were being used to identify wrongdoers in the Community Bank. In particular, Mr. McLinko never reached out after the articles were published to ask of Ms. Rawson how the Community Bank's proactive monitoring thresholds worked. Similarly, he never had a conversation with Ms. Russ Anderson about the thresholds being used with the controls put in place by Ms. Russ Anderson's Sales Quality group. There is no substantial evidence in the record that at the time the SIN was issued, Mr. McLinko took *any* steps to understand any control process that may have been in place relating to this issue (other than the Sales Quality Group led by Ms. Russ Anderson for the first line of defense). **Through this conduct, Mr. McLinko engaged in unsafe or unsound banking practices and breached the fiduciary duties he owed to the Bank.**

114) Based on reports provided to him by Corporate Investigations, Mr. McLinko knew in April 2014 that sales practices misconduct had been identified as a significant or noteworthy risk in early 2014.

115) Respondent McLinko failed to identify and escalate the widespread sales practices misconduct problem in the Community Bank and failed to determine the root cause or causes of the problem throughout the relevant period. **Through this conduct, Mr. McLinko engaged in unsafe or unsound banking practices and breached the fiduciary duties he owed to the Bank.**

116) Under Mr. McLinko's direction, in December 2013, WFAS Community Banking issued its Regional Banking Sales Quality/Sales Integrity Audit Engagement Report. This was an example of a "control" audit testing. The Regional Sales Quality/Sales Integrity Group (later called the Sales and Service Conduct Oversight Team (SSCOT)) reported up through Ms. Russ Anderson. The objective of this internal audit was to determine if Community Banking's risk management, system of controls, and governance processes were adequate and functioning as intended.

In this Audit Report, the system of internal controls within the Group were rated Effective, and it was reported that controls in place adequately mitigated the risks associated with sales quality allegations, case management, service management, and reporting processes. The control processes around Community Banking's customer polling process – how all of that information flowed through the system and went to the right areas – were tested through this audit, and no issues were identified relating to SSCOT's customer polling processes.

117) Although Audit awarded an Effective rating through this 2013 Audit Engagement Report, it also reported that when the Regional Banking Sales Quality team closed a case, there were instances where the allegation or case did not warrant reporting to Corporate Investigations, even though there was evidence of banker non-compliance with proper sales procedures. In these

instances, the Sales Quality team issued emails to regional management instructing them to perform coaching/provide training to the applicable team member.

During the previous twelve months, approximately 48 percent of allegations worked by the Sales Quality team resulted in training emails. The Audit Engagement Report found that under Ms. Russ Anderson's leadership, the Sales Quality Group did not have a process in place to ensure that management received the email and provided the coaching/training. Further, the monthly regional sales reports, including metrics on cases resulting in training email notifications, did not differentiate between first-time and second-time training notifications. Because there was a pervasive and widespread sales practices misconduct problem in the Community Bank at this time, SSCOT's proactive monitoring and behavioral trend processing controls were not fully effective. Under Mr. McLinko's leadership, the CBO unit of WFAS did not do another control testing of SSCOT's proactive monitoring process before the sales goals were eliminated in October 2016.

118) Part of WFAS's job was to evaluate independently the internal controls over the Community Bank's anti-fraud program. However, Respondent McLinko denied that it was Audit's responsibility to find fraud, asserting that there were other groups within the businesses – including Corporate Investigations – that had that role. **Through this conduct, Mr. McLinko engaged in unsafe or unsound banking practices and breached the fiduciary duties he owed to the Bank.**

119) For at least part of the relevant period, Mr. McLinko was a Wells Fargo Code of Ethics Administrator. In this position, he had the duty to review different types of information and be familiar with the Wells Fargo Code of Ethics. Notwithstanding this duty, Mr. McLinko opined that it was not his role to look into the details of Code of Ethics violations. Further, notwithstanding this duty, Mr. McLinko stated the he was not familiar with the process by which Ms. Russ Anderson's Sales Quality team determined which EthicsLine allegations should be referred to Corporate Investigations for review. **Through this conduct, Mr. McLinko engaged in unsafe or unsound banking practice and breached fiduciary duties he owed to the Bank.**

120) Notwithstanding the information Mr. McLinko had been presented after the publication of the LA Times articles, along with the detailed reports of sales practices misconduct reported by Corporate Investigations pertaining to sales pressure and cross sell practices by Community Banking, the 2014 Audit Plan he presented for Community Banking provided for cross-sell audits of the Bank's Wholesale division and its Wealth, Brokerage, and Retirement division – but not one covering the Community Bank. The only justification for excluding Community Banking from cross-sell audits in 2014 was presented *not by Mr. McLinko* but by Ms. Russ Anderson, who claimed the Community Bank was the Bank's main distribution channel and – without providing any supporting documentation – asserted that cross-sell could not be separated or distinguished from overall sales activities. There is no evidence that either Mr. Julian or Mr. McLinko provided credible challenge to this claim, and there is insufficient reliable evidence establishing the truth of the claim. **Through this conduct, Mr. McLinko engaged in unsafe or unsound banking practices and breached the fiduciary duties he owed to the Bank.**

121) Through the March 5, 2014 Meeting Agenda for the Community Banking Semi-Annual Internal Fraud Committee Meeting, Corporate Investigations reported that due to the complexity of Regional Banking investigations and the unusually high volume of net new cases in the 4Q 2013, many of the metrics were subject to change significantly in the next quarter; that the increase in falsification was due primarily to the inappropriate changing of customer contact information; and that sales integrity key activity was mixed but was expected to increase due to proactive initiatives. Although nothing in the Meeting Agenda identified the root cause (or a root cause) of team member sales practices misconduct, Mr. McLinko was not concerned, opining without providing reliable supporting evidence that the control environment around proactive monitoring by Community Bank's first line of defense was improving – while admitting that he did not have a thorough understanding of the monitoring thresholds that were being used to identify wrongdoers in the Community Bank. **Through this conduct, Mr. McLinko engaged in unsafe or unsound banking practices and breached the fiduciary duties he owed to the Bank.**

122) During the relevant period, operational risk was defined as all risks (excluding credit and market) traditionally relating to loss prevention and team member behavior, including sales quality/sales integrity, internal fraud, and ethics violations.

123) When employees engaged in sales practices misconduct during the relevant period, this posed operational risk, reputational risk, regulatory risk, and compliance risk for the Bank.

124) In a May 9, 2013 correspondence sent anonymously [under the name "Mule"] to CEO John Stumpf, and to the head of Community Banking, Ms. Tolstedt, and then forwarded to Ms. Russ Anderson, the sender wrote:

> Good morning Mr. Stumpf,
>
> I am a current Branch Manager in the North Ocean District in New Jersey. I have some serious concerns about the leadership in our market. There is a huge amount of unethical practices going on within the market. We are being coerced to open checking accounts so the market is at goal, when the branches are closed. I have emails printed out, showing the threats of being placed on corrective action and showing that we must put a DDA on the system and to call when we get it. Until then I assume, we would just keep working into the night? It is my understanding that we cannot open any DDAs without customers being present with signatures am [*sic*] funding. There are branches where bankers are falsifying Drivers Licenses for customers just to get an account. I could go on for hours with the knowledge and things I have seen.
>
> It's amusing that the upper leadership within South Jersey cannot understand why the Sales Quality can't be brought under control, when they are the ones driving the train off the tracks. I do not know what direction to take anymore. I know of so many things going on in the market it's scary. There are managers leaving for lunch and coming back drunk, and working at a car dealership during Wells Fargo time. Over time I have accumulated quite

> some evidence and reported it to the ethics line.
>
> I am a proud employee of Wells Fargo. I put Wells Fargo before my family sometimes. However, I am questioning would Wells Fargo have my back? From what I see I do not believe so. I am looking into contacting the media to let customers be aware of the predatory sales practices. I believe that most of the employees will do the same if I spoke with them about it.
>
> I respect Wells Fargo and yourself, Mr. Stumpf – make the change.

125) Under Ms. Russ Anderson's direction in response to the averments in this correspondence, Sales Quality conducted a comprehensive overview of all 11 stores in the Northern Ocean District (S NJ Region), and data findings yielded potential consent concerns in 6 of the 11 stores (products ranging from checking/savings, Debit Cards, Credit Cards, and Online Banking).

126) Although aware of this correspondence, Mr. McLinko did not conclude there was a systemic problem with sales practices in the Community Bank. **Acting (or failing to act) in furtherance of this view constituted, under the facts presented, unsafe or unsound banking practices and a breach of the fiduciary duties Mr. Julian owed to the Bank.**

127) Through an August 20, 2013 email, Marty Weber of Corporate Investigations reported to Mr. McLinko that with data through August 15, 2013, Corporate Investigations found that sales integrity cases were widespread – with double-digit percentage increases in Sales Integrity Violations and double-digit increases in investigations generally throughout the nation. Although addressed to him, Mr. McLinko could not recall reviewing the documents provided by Mr. Weber. Stephanie Wardlaw provided Mr. McLinko evidence of similar increases in the West Coast Region in an August 19, 2013 email; and Gregory Harmon provided Mr. McLinko evidence of similar increases in the Pacific Midwest Region in an April 2, 2014 email. Mr. McLinko, however, did not read the information in these transmissions, and thus did not conclude there was a systemic sales practices misconduct problem in the Community Bank. **Through this conduct, Mr. McLinko engaged in unsafe or unsound banking practices and breached the fiduciary duties he owed to the Bank**

128) The December 11, 2013 WFAS Audit Engagement Report regarding Community Banking was prepared by the CBO under Mr. McLinko's direction and was issued more than two months after the first LA Times article regarding Wells Fargo's sales practices misconduct. Nothing in this Audit Engagement Report touched upon sales practices in the Community Bank. Although he knew of the risk issues related to sales practices misconduct by Community Bank team members throughout 2013 – including those identified by Mr. Bacon throughout the first nine months of 2013 and the October 3, 2013 article in the LA Times, Mr. McLinko permitted the issuance of the December 11, 2013 Audit Engagement Report without identifying the issues related to sales practices misconduct, without identifying the root cause of those issues, and without noting the failure of both the CBO audit team and Community Bank's first line of defense to identify the root cause or causes of this misconduct. **Through this conduct, Mr.**

McLinko engaged in unsafe or unsound banking practices and breached the fiduciary duties he owed to the Bank.

129) Through a January 7, 2016 memo prepared by Senior Audit Manager Regina McCadney, one of Mr. McLinko's direct reports, WFAS provided a preliminary Issue and Recommendation Memo regarding Regional Banking Account Opening (Audit #150618) to Katherine Noakes, Operational Risk Consultant for the Regional Banking Compliance and Operational Risk (RBCOR) group, which was part of the Bank's second line of defense and provided oversight of the Bank's Fraud Risk Management Program. Through this Memo, CBO senior auditors identified two issues warranting attention by WFAS and Mr. McLinko's CBO team.

The first concerned the opening of accounts after a negative Quality Customer response was returned – where subsequent opening of such an account required the approval of a manager at least one level higher than the store manager, who was required to provide a reason for the approval. WFAS auditors found a high rate of non-compliance (where the approving manager provided no reason for the approval). The root cause identified by WFAS auditors was that the override documentation procedures were not consistently communicated to bankers and that bankers might be disregarding the requirement because they were motivated to open accounts in order to meet their sales goals.

The second issue concerned customers who reportedly opened accounts but did not fund them. WFAS auditors reported that no effort was being made to follow up with the customer to obtain the minimum funding amount. They noted that bankers received incentives on these accounts, even if the account is not funded. They noted that a Rolling Funding Rate report provided information about customers who have not funded their new account – but that this information was not being used to follow up on the new account.

The auditors reported that closure of accounts because minimum funding requirements were not met resulted in a loss of potential revenue and did not support corporate priorities related to growing revenue and reducing expenses.

The auditors opined that the current incentive structure might result in a negative impact on customer experience and Wells Fargo's reputation. The auditors identified the root cause of this issue as crediting bankers for opening unfunded accounts, which limited the motivation to follow-up with the potential customer. They recommended crediting the banker only when the deposit account met the minimum funding requirements.

Notwithstanding these two issues, Mr. McLinko approved a March 2016 Audit Engagement Report regarding Audit #150618 that found Regional Banking's internal controls over the Originate and Set Up Account and User Access processes and controls to be "Effective". Noting the issue that customer-approval override requirements were not consistently followed, the Report recommended *eliminating* that part of the process that required approval documentation, even though that requirement was perceived as a *control function*.

Also noteworthy is the absence in Mr. McLinko's March 2016 Engagement Report of *any* mention of the second issue that WFAS auditors had brought to Mr. McLinko's attention

concerning incentives that were the root cause behind unfunded accounts. As the EAD responsible for this Report, Mr. McLinko was accountable for withholding from RBCOR and the Bank's second line of defense material information about this second issue. **Mr. McLinko's failure to assure the funding issue and its root cause were timely brought to the attention of RBCOR constituted unsafe and unsound banking practices and a breach of the fiduciary duties he owed to the Bank.**

130) Notwithstanding the repeated red flags raised by Mr. Bacon and Corporate Investigations, and despite his understanding of the widespread nature of sales practices misconduct and fraudulent banking conduct by Community Bank team members throughout the relevant period, and notwithstanding his failure to assure the Bank that he understood the nature and scope of such misconduct and could confirm that the Community Bank's first line of defense had identified the root cause of the misconduct and had in place effective controls to mitigate the problem, Mr. McLinko reported that Community Bank's risk management, controls, and culture were "Satisfactory". This was true throughout 2013 to 2015 and was manifested through the Community Bank and TOG Operations Team Updates issued in April 2014 and February, April, and June 2015; through the Audit Engagement Report on Regional Banking's Fraud Risk Management dated March 10, 2014; through the Audit Engagement Report on Wells Fargo Customer Connection – Account Opening and Fulfillment dated May 9, 2014; and through the Audit Engagement Report on Regional Banking – In-Store Customer Complaints dated June 20, 2014. **Through this conduct, Mr. McLinko engaged in unsafe or unsound banking practices and breached the fiduciary duties he owed to the Bank.**

131) Notwithstanding his understanding of the risks to the Bank that pressure to meet sales goals faced by Community Bank team members presented, Mr. McLinko throughout the relevant period failed to exercise credible challenge with respect to Community Banking's first-line-of-defense controls that were expected to mitigate against those risks, while concealing from the Bank's Board of Directors the root cause of those risks and the inadequacy of the Community Bank's controls over those risks. **Through this conduct, Mr. McLinko engaged in unsafe or unsound banking practices and breached the fiduciary duties he owed to the Bank.**

132) Respondent McLinko failed to manage audit activity by members of the CBO audit team so as to assure the Bank's Board and its risk management team that risks associated with sales practice misconduct by Community Bank team members were identified, that the root causes understood, and that the controls that the Community Bank's first line of defense relied upon to mitigate those risks were effective. This failure included the failure to effectively and independently audit the Community Bank's controls over such risks, the decision to narrow the scope of the 2016 Regional Bank Account Opening audit so that sales practices risks were excluded, the failure to escalate the lack of risk appetite standards in the Community Bank between 2013 and 2015, the failure to understand and effectively audit the Community Bank's cross-sell metric, the failure to effectively and independently audit branch activity, the decision to rely on ineffective first-line-of-defense risk management controls over branch activity, the failure to audit the Community Bank's compliance with unfair or deceptive acts or practices (UDAP) and unfair, deceptive, or abusive acts or practices (UDAAP), and the failure to allocate WFAS's resources to adequately audit the Community Bank's sales practices. **Through this**

conduct, Mr. McLinko engaged in unsafe or unsound banking practices and breached the fiduciary duties he owed to the Bank.

133) Respondent McLinko failed to maintain independence and objectivity in his relations with the head of the Community Bank, Ms. Tolstedt, and the Community Bank's Group Risk Officer, Ms. Russ Anderson. This included his strong endorsements of Ms. Tolstedt's risk management practices notwithstanding his review of the independent audit report indicating that more than 1.4 million accounts had potentially been subject to simulated funding and notwithstanding his review of the 2016 report by the OCC examiners finding the Community Bank's sales practices risk management was unsafe or unsound. It also included his cloying praise of both Ms. Tolstedt and Ms. Russ Anderson in correspondence exchanged throughout 2013 to 2016, at a time when neither Ms. Tolstedt nor Ms. Russ Anderson were willing to acknowledge the root cause of team member misconduct. It also included Mr. McLinko's determination that both Ms. Tolstedt and Ms. Russ Anderson should consider the audit work of the CBO under Mr. McLinko to be more of a partnership and less as that between an auditor and the business unit being audited. It also included the deference Mr. McLinko gave to Ms. Russ Anderson during the February 9, 2015 meeting with the OCC's examiners, during which only Ms. Russ Anderson spoke in response to questions about the adequacy of risk controls in the Community Bank – questions that Mr. McLinko could have and should have been able to respond to but did not. **Through this conduct, Mr. McLinko engaged in unsafe or unsound banking practices and breached the fiduciary duties he owed to the Bank.**

134) Respondent McLinko actively avoided providing information to the OCC regarding the efficacy of the Community Bank's risk controls, including controls that would detect risks related to culture in the Community Bank. Blurring the line of independence that should exist between the Community Bank's first and third lines of defense, Mr. McLinko urged Ms. Russ Anderson to provide responses to the OCC's questions that did not mention audit and the risk culture topic together. **Through this conduct, Mr. McLinko engaged in unsafe or unsound banking practices and breached the fiduciary duties he owed to the Bank.**

135) Respondent McLinko followed a protocol that assured Ms. Russ Anderson and Ms. Tolstedt that they would not be surprised by any presentation he would make to the OCC's examiners. Through this protocol, Mr. McLinko would disclose in advance of any proceeding related to Community Banking the contents of any presentation he might make to the Board or to the OCC examiners, granting to Ms. Russ Anderson and Ms. Tolstedt the opportunity to suggest changes to any presentation. **Through this conduct, Mr. McLinko failed to maintain Audit's independence from the Community Bank's first line of defense, engaged in unsafe or unsound banking practices, and breached the fiduciary duties he owed to the Bank.**

136) Respondent McLinko's failure to identify and escalate the systemic sales practices misconduct problem perpetuated the existence of the problem throughout the relevant period. **Through this conduct, Mr. McLinko engaged in unsafe or unsound banking practice and breached fiduciary duties he owed to the Bank.**

137) Preponderant evidence presented during the hearing established that Mr. McLinko is an institution-affiliated party, that the Bank is a financial institution as that term is

used in the Federal Deposit Insurance Act, and that the OCC is the appropriate Federal regulator authorized to issue cease and desist orders under the FDI Act.

138) Preponderant evidence presented during the hearing established that Mr. McLinko has engaged in unsafe and unsound practices in conducting the business of the Bank, sufficient to warrant the issuance of a cease and desist order as proposed by Enforcement Counsel in their post-hearing brief.

139) Preponderant evidence presented during the hearing established (1) that Mr. McLinko engaged in misconduct by engaging in unsafe or unsound practices and breaching the fiduciary duties he owed to the Bank (thus satisfying the statutory misconduct element); (2) that the Bank has suffered and will probably continue to suffer financial loss or other damage by reason of Mr. McLinko's misconduct; that Mr. McLinko's misconduct could have prejudiced and did prejudice the Bank's depositors; and that his misconduct resulted in financial gain or other benefit to him (effect); and (3) that his misconduct involved his willful or continuing disregard for the safety or soundness of the Bank (culpability).

140) After taking into account each of the statutory and regulatory factors relevant to the assessment of civil money penalties in this context, preponderant evidence presented during the hearing established cause to assess a $1.5 million civil money penalty against Mr. McLinko.

It is so ordered.

Date: December 5, 2022

Christopher B. McNeil, JD, PhD
U.S. Administrative Law Judge
Office of Financial Institution Adjudication

CERTIFICATE OF SERVICE

On December 5, 2022, I served by email transmission a copy of the foregoing Recommended Decision – Executive Summary upon:

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