

**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

**RECOMMENDED DECISION – CLAUDIA RUSS ANDERSON
Temporarily Sealed until December 30, 2022**

What follows is the Administrative Law Judge’s recommended decision, recommended findings of fact, recommended conclusions of law, and proposed order in the matter of Claudia Russ Anderson, who served as the Group Risk Officer for the Community Bank at Wells Fargo Bank, N.A. between January 2013 and December 2016.

The recommendations and the proposed order are based on proceedings initiated through the OCC’s issuance of a Notice of Charges presented against Ms. Russ Anderson. Among the charges and in the record that has been developed based on those charges are documents and testimony that may include confidential supervisory information and for other reasons may be restricted from the public. Without making any determination whether those restrictions are

applicable here, this Recommended Decision is submitted to the OCC and the parties under temporary seal. The sealing of this Recommended Decision will expire on December 30, 2022, at which point the Decision will be available as a public record unless the OCC determines that all or part of the Decision may be withheld from the public.

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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 that was issued on January 23, 2020, by the OCC’s 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 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.

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.¹

The Notice advised Ms. Russ Anderson that the OCC contends her conduct as Group Risk Officer constituted violations of law, constituted unsafe or unsound practice, 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 practice and breached the 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

¹ The Notice of Charges included charges against Carrie Tolstedt, Former Head of the Community Bank, and James Strother, former General Counsel. Those charges are not addressed through this Recommended Decision.

they cease and desist engaging in certain prohibited activity.

The Notice further assessed civil money penalties against each banker.

Ms. Russ Anderson answered the Notice by denying she engaged in unsafe or unsound banking practices, and denying that she breached any fiduciary duties owed to the Bank.

Upon preponderant evidence supporting the factual allegations in the Notice of Charges against Ms. Russ Anderson, I recommend the Comptroller issue a prohibition order against her, as proposed in the Notice of Charges and as supplemented by the post-hearing submissions by Enforcement Counsel. I also recommend an order that Ms. Russ Anderson pay a \$10 million civil money penalty.

2. 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 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.

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 failing 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 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, 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.²

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.³

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.⁴ 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.⁵

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.⁶

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

² Enforcement Counsel's Motion for Summary Disposition (EC MSD) Ex. 1 (Deferred Prosecution Agreement) at Exhibit A (Statement of Facts) at ¶14.

³ EC MSD Ex. 1 at Ex. A at ¶16.

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

from existing accounts of the customers without their consent.⁷

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.⁸

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.⁹

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).¹⁰

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.¹¹

Millions of customer accounts falsely reflected a Wells Fargo email address as the customer's own personal email address, 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.¹²

Community Bank Senior Leadership Knew the Unlawful and Unethical Misconduct was Widespread and that Sales Goals and Pressure Were the Root Cause

Beginning as early as 2002, when a group of employees was fired from a branch in Fort Collins, Colorado, for sales gaming, Community Bank senior leadership became aware that employees were engaged in unlawful and unethical sales practices, that gaming conduct was

⁷ *Id.*.

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.* at ¶17.

increasing over time, and that these practices were the result of onerous sales goals and management pressure to meet those sales goals.¹³

That information was reported to Community Bank senior leadership by multiple channels.¹⁴ Those channels included Wells Fargo’s internal investigations unit, the Community Bank’s own internal sales quality oversight unit, and managers leading the Community Bank’s geographic regions, as well as regular complaints by lower-level employees and Wells Fargo customers reporting serious sales practices violations.¹⁵

For example, in 2005 a corporate investigations manager described the problem as “spiraling out of control.”¹⁶ This reporting continued through 2016, and generally emphasized increases in various forms of sales practices misconduct.¹⁷ By 2012, certain of the RBEs and their direct reports, Regional Presidents, were regularly raising objections about the sales plans.¹⁸

These objections included objections regarding the levels at which the plans were set, the types and categories of products for which they incented sales, the accompanying pressure, the resulting no- or low-value accounts, and unlawful and unethical sales practices at the Community Bank.¹⁹ These complaints specifically articulated that the sales goals were too high and incented Community Bank employees to sell a significant number of low quality or valueless duplicate products, sometimes through misconduct.²⁰ Similar complaints continued to be made until 2016.²¹

In November 2013, a member of the senior staff wrote, “I really question the value of adding growth to secondary checking in regions that have very high rates to begin with. Based on what we know about the quality of those accounts it seems like we would want to keep their secondary DDA flat or down”²² A year earlier, another senior staff member suggested eliminating any incentive payments tied to accounts that never funded, debit cards that were never used, and more than one demand deposit account per customer per day.²³

¹³ *Id.* at ¶19.

¹⁴ *Id.* at ¶20.

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.* at ¶21.

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.*

²² *Id.*

²³ *Id.* at ¶22.

Community Bank Senior Leadership Exacerbated the Sales Practices Problem and Concealed Material Facts

Even though Community Bank employees often did not meet the sales goals—or met them by selling products and accounts customers neither wanted nor needed—Community Bank senior leadership increased the sales plans nearly every year through 2013.²⁴ Pressure to meet those ever-increasing plans also increased during this time period.²⁵

Even after 2012, when Wells Fargo began regularly retroactively lowering goals during the sales year in recognition that the goals were unachievable, employees still largely missed the lowered goals, an indication that they continued to be too high.²⁶ Despite knowledge of the widespread sales practices problems, including the pervasive illegal and unethical conduct tied to the sales goals, Community Bank senior leadership failed to take sufficient action to prevent and reduce the incidence of unlawful and unethical sales practices.²⁷

Certain Community Bank leaders also impeded scrutiny of sales practices by Wells Fargo’s primary regulator, the Office of the Comptroller of Currency (“OCC”).²⁸ During OCC examinations in February and May 2015, the OCC was given information that minimized the amount of sales pressure within the Community Bank and the size and scope of Wells Fargo’s sales practices problem.²⁹

On numerous occasions, Community Bank senior leadership also made statements and gave assurances to the Company’s management and Board of Directors that minimized the scope of the sales practices problem and led key gatekeepers to believe the root cause of the issue was individual misconduct rather than the sales model itself.³⁰ Until approximately 2015, Community Bank senior leadership viewed negative sales quality and integrity as a necessary byproduct of the increased sales and as merely the cost of doing business.³¹ They nonetheless failed to advise key gatekeepers of the significant risks that the nonneeds-based selling posed to the Company.³²

Scope of the Unlawful and Unethical Misconduct

²⁴ *Id.* at ¶24.

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Id.* at ¶25.

²⁸ *Id.* at ¶27.

²⁹ *Id.*.

³⁰ *Id.* at ¶28.

³¹ *Id.*

³² *Id.*

Between 2011 and 2016, tens of thousands of employees were the subject of allegations of unethical sales practices.³³ During this period, the Company referred more than 23,000 employees for sales practices investigation and terminated over 5,300 employees for customer-facing sales ethics violations, including, in many cases, for falsifying bank records.³⁴ Thousands of additional employees received disciplinary action short of termination or resigned prior to the conclusion of the Company's investigations into their sales practices.³⁵

Almost all of the terminations and resignations were of Community Bank employees at the branch level, rather than managers outside of the branches or senior leadership within the Community Bank.³⁶ From 2002 to 2016, Wells Fargo opened millions of accounts or financial products that were unauthorized or fraudulent.³⁷ During that same time period, Wells Fargo employees also opened significant numbers of additional unneeded, unwanted, or otherwise low value products that were not consistent with Wells Fargo's purported needs-based selling model.³⁸

Wells Fargo collected millions of dollars in fees and interest to which the Company was not entitled, harmed the credit ratings of certain customers, and unlawfully misused customers' sensitive personal information (including customers' means of identification).³⁹ In general, the unauthorized, fraudulent, unneeded, and unwanted accounts were created as a result of the Community Bank's systemic sales pressure and excessive sales goals.⁴⁰

Impact of Sales Practices Misconduct on Cross-Sell Disclosures

Accounts and financial products opened without customer consent or pursuant to gaming practices were included by the Company in the Community Bank cross-sell metric until such accounts were eventually closed for lack of use.⁴¹ When Community Bank senior leadership set employee sales goals at a level to achieve year-over-year sales growth, it rarely took into consideration that the base level of sales included accounts or financial products resulting from unlawful misconduct or gaming.⁴² This had the effect of imposing additional pressure on employees to continue gaming practices.⁴³

³³*Id.* at ¶30.

³⁴ *Id.*

³⁵ *Id.*

³⁶ *Id.* at ¶31.

³⁷ *Id.* at ¶32.

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ *Id.* at ¶33.

⁴² *Id.*

⁴³*Id.*

Like the accounts and financial products lacking customer consent, accounts and financial products that were never or seldom used by customers were also included by the Company in the Community Bank cross-sell metric until such accounts were eventually closed for lack of use, at which time those accounts were removed from the cross-sell metric.⁴⁴ In some cases (like checking or savings accounts), the unused accounts were closed relatively quickly (usually within 90 days if unfunded), but in other cases (like debit cards, the largest product category included in the cross-sell metric, or bill pay, another large contributor to cross-sell), the unused accounts remained open without activity for up to four years.⁴⁵

From 2012 to 2016, Wells Fargo failed to disclose to investors that the Community Bank's sales model had caused widespread unlawful and unethical sales practices misconduct that was at odds with its investor disclosures regarding needs-based selling and that the publicly reported cross-sell metric included significant numbers of unused or unauthorized accounts.⁴⁶ Certain Community Bank senior executives who reviewed or approved the disclosures knew, or were reckless in not knowing, that these disclosures were misleading or incomplete.⁴⁷ At the end of 2012, the Community Bank decided to add existing global remittance accounts to the calculation of the cross-sell metric over the course of 2013.⁴⁸ It did so by excluding inactive global remittance accounts, in a manner inconsistent with prior practice.⁴⁹ It was never disclosed to investors that the product was added to the metric.⁵⁰

By the end of 2013, the cross-sell metric had grown by .11 since the prior year.⁵¹ However, .04 of that growth resulted from the addition of global remittance, and the remaining growth was attributable to an increase in accounts and financial products that had been inactive for at least 365 days.⁵² Nonetheless, WFC's FY 2013 Form 10-K, filed February 2014, touted that the Community Bank had achieved record cross-sell over the prior year.⁵³

Nonetheless, despite the addition of a new product, by late 2013 and early 2014, quarter-over-quarter growth in the cross-sell metric had flattened, significantly because of a slowdown in

⁴⁴ *Id.* at ¶34.

⁴⁵ *Id.*

⁴⁶ *Id.* at ¶35.

⁴⁷ *Id.*

⁴⁸ *Id.* at ¶36.

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² *Id.*

⁵³ *Id.*

sales growth as a result of, among other things, the Community Bank’s belated efforts to impose increased controls to curb misconduct resulting from aggressive sales goals.⁵⁴

Community Bank executives knew that the metric included many products that were not used by customers. Wells Fargo’s inclusion of the word “used” to describe the accounts was therefore misleading.⁵⁵ Several months after changing its disclosure that described how the cross-sell metric was calculated to characterize the metric as “products used,” Community Bank senior leadership began to develop an alternative metric to capture products that had been used.⁵⁶The Community Bank referred to this metric internally as “active cross-sell.”⁵⁷

In developing the active cross-sell metric, Community Bank senior leadership recognized that as many as ten percent of accounts included in the cross-sell metric had not been used within the previous 12 months.⁵⁸ The Community Bank considered releasing this alternative metric to investors, but never did so, in part because of concerns raised that its release would cause investors to ask questions about Wells Fargo’s historical sales practices.⁵⁹

Following the Company’s announcement of the September 2016 settlements with the OCC, the Consumer Financial Protection Bureau, and the City of Los Angeles that confirmed publicly for the first time the scale of the sales practices misconduct within the Community Bank, as well as the widespread media and political criticism of the Company that resulted, Wells Fargo’s stock experienced three significant stock drops that translated into an approximately \$7.8 billion decrease in market capitalization.⁶⁰

2) 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 (Ms. 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.

3. Summary of the Evidence

Background on Bank Supervision Generally

⁵⁴ *Id.* at ¶37.

⁵⁵ *Id.* at ¶40.

⁵⁶ *Id.* at ¶41.

⁵⁷ *Id.*

⁵⁸ *Id.*

⁵⁹ *Id.*

⁶⁰ *Id.* at ¶42.

Examiner Coleman reported that the OCC supervises the largest banks and thrifts subject to its supervision within the Large Bank Supervision division (“LBS”).⁶¹ Within the OCC, an institution supervised by LBS is referred to as a “large bank.”⁶² The OCC has “resident” teams of LBS examiners stationed on-site at each large bank. Those examiners, led by an examiner-in-charge, supervise the institution and regularly assess different areas of a bank, including various components of its safety and soundness, risk management, and compliance with laws and regulations.⁶³

Examiner Coleman reported that the OCC uses a risk-based approach to determine its supervision strategy, prioritizing higher-risk activities and functions of the banks to assess the banks’ safety and soundness and operation in compliance with applicable laws and regulations. Supervisory strategies are set in advance for each fiscal year.⁶⁴

The OCC supervisory process relies on transparency and open communication for its effectiveness. OCC examiners request information from bank management at the inception of each supervisory activity in order to assess the area under examination, and the OCC expects bank management to provide accurate and complete information in response to such requests.⁶⁵ Further, the effectiveness of the supervisory process requires that bank management be transparent about examination-related risks, issues, and problems for areas being examined by the OCC.⁶⁶

Examiner Coleman reported that although the OCC has a dedicated staff of examiners assigned to each large bank, the number of OCC examiners is dwarfed by the number of control function staff at each large bank, including the bank’s risk management, compliance, legal, and audit personnel, among others.⁶⁷ The number of OCC examiners assigned to Wells Fargo between 2010 and 2016 generally ranged from 60 to 85 dedicated examiners. By way of comparison, Wells Fargo had more than 1,400 people in its audit department, more than 1,000 in its law department, and several thousand staff across its risk management function.⁶⁸ Each of those control function units or departments has an important role in ensuring the safe and sound operation of the Bank and its compliance with laws and regulations.⁶⁹

⁶¹ EC MSD Ex. 257 (Report of NBE Coleman) at ¶13.

⁶² *Id.*

⁶³ *Id.*

⁶⁴ *Id.* at ¶14.

⁶⁵ *Id.* at ¶15.

⁶⁶ *Id.* at ¶15.

⁶⁷ *Id.* at ¶16.

⁶⁸ *Id.*

⁶⁹ *Id.*

Examiner Coleman reported that one of the ways the OCC and financial institutions refer to effective risk management within an institution is by reference to a framework known as the three lines of defense.⁷⁰ He reported that this framework is well laid out in OCC guidance:

The three lines of defense model explains governance and roles among the bank's business units, support functions, and the internal audit function from a risk management perspective. First line of defense risk management activities take place at the frontline units where risks are created. The second line of defense risk management activities occur in an area or function separate from the frontline unit, sometimes referred to as independent risk management. It oversees and assesses frontline units' risk management activities.

The internal audit function is often referred to as the third line of defense in this model. In its primary responsibility of providing independent assurance and challenge, the internal audit function assesses the effectiveness of the policies, processes, personnel, and control systems created in the first and second lines of defense.⁷¹

Examiner Coleman reported that it is the responsibility of all three lines of defense to keep the Board of Directors informed of the Bank's risk management practices to allow the Board to provide credible challenge to management's recommendations and decisions.⁷²

Bank Examiner Analyses

Pursuant to the OCC's Uniform Rules of Practice and Procedure, if the contents of a report of examination or reports of supervisory activity or visitation contain relevant, material, and reliable evidence that is not unduly repetitive, the evidence is admissible to the fullest extent authorized by the Administrative Procedure Act and other applicable law.⁷³

National Bank Examiner for the OCC Elizabeth Candy became the Corporate Risk Team Lead on the OCC's Wells Fargo supervision team in March 2018 and continues to serve in this role.⁷⁴ As the Corporate Risk Team Lead, she was and is responsible for planning, coordinating, and monitoring supervisory activities, and leading examinations and reviews of the Bank.⁷⁵ She drafts and reviews reports of examinations, Supervisory Letters, and Conclusion Memos and

⁷⁰ *Id.* at ¶17.

⁷¹ *Id.* at ¶17, quoting Comptroller's Handbook, Internal and External Audits at 2 (December 2016), OCC-SP1107962.

⁷² EC MSD Ex. 257 (Report of NBE Coleman) at ¶17, citing Wells Fargo Risk Management Framework, Published July 2014, OCC-WF-SP-04791987.

⁷³ 12 C.F.R. § 19.36.

⁷⁴ EC MSD Ex. 269 (Report of NBE Candy) at ¶10.

⁷⁵ *Id.*

oversees the preparation of such documents by other team members.⁷⁶ She also drafts and reviews progress reports for Enforcement Actions and Matters Requiring Attention (MRAs).⁷⁷

Her job involves assessing the adequacy of those Bank functions and establishing the OCC's supervision strategy for those areas.⁷⁸ She is also responsible for evaluating the adequacy of, and safety and soundness of, risk management and corporate governance functions, including the role of the Bank's Board of Directors, management committee structure, and policies and procedures.⁷⁹ She also identifies and evaluates systemic risks and trends, analyze data and reporting, and participates in discussions with bank management throughout the OCC's supervisory activities.⁸⁰

She assumed responsibility as the Acting Enterprise Risk Management Team Lead on August 16, 2020. In this role, she assesses the adequacy of Bank management and the Board.⁸¹ Her responsibilities include evaluating the following areas of the Bank: enterprise risk management, audit, internal controls, incentive compensation, legal, and human resources.⁸² She oversees an examination team in Large Bank Supervision focused on various risk areas and serves as an advisor to the Examiner-in-Charge and other OCC officials.⁸³ She provides analysis and advice on the planning and conduct of examinations and reviews, preparation of reports of examination and Supervisory Letters, and presentations of findings and recommendations to senior management at the Bank and the OCC.⁸⁴ She meets with and communicates regularly with senior Bank management, OCC staff, and other Bank regulators to discuss supervisory conclusions, share information, and resolve concerns.⁸⁵

Examiner Candy has twelve years of professional examiner experience at the OCC, including extensive experience in the supervision of community, midsize, and large banks, problem banks, application of safety and soundness principles to bank operations, corporate governance, risk management, and controls.⁸⁶ She joined the OCC in 2008, was an examiner in Midsize and Community Bank Supervision with the OCC for six years, from June 2008 through

⁷⁶ *Id.* at ¶11.

⁷⁷ *Id.* at ¶10.

⁷⁸ *Id.*

⁷⁹ *Id.*

⁸⁰ *Id.*

⁸¹ *Id.* at ¶11.

⁸² *Id.*

⁸³ *Id.*

⁸⁴ *Id.*

⁸⁵ *Id.*

⁸⁶ *Id.* at ¶3.

April 2014, before transferring to the OCC's Large Bank Supervision.⁸⁷ During her tenure there, she participated in over 100 midsize and community bank examinations, as well as examinations of large banks, including Wells Fargo.

In her positions with Midsize and Community Bank Supervision at the OCC, Examiner Candy served as both Acting Examiner-in-Charge and Examiner-in-Charge for multiple problem banks with significant control, compliance, Bank and Secrecy Act ("BSA"), asset quality, and management deficiencies. These were banks with a composite rating of "3" or worse under the Uniform Financial Institutions Rating System of the Federal Financial Institutions Examination Council.⁸⁸

Examiner Candy reported that she holds the following opinions as a National Bank Examiner.⁸⁹

From no later than 2002 until October 2016, the Community Bank pursued a business model premised on unreasonable sales goals coupled with extreme pressure on its employees to meet these goals.⁹⁰ Leadership focused on increasing the cross-sell ratio year over year at all cost, instead of ensuring that Wells Fargo customers received only the products they wanted, needed, and requested.⁹¹ The pressure included the threat of disciplinary action and termination as well as actual termination for failure to meet the unreasonable goals and contributed to hostile working conditions with managers sometimes embarrassing employees or forcing them to work overtime.⁹²

In addition, the Community Bank's controls were severely deficient and intentionally so.⁹³ This business model was recklessly unsafe or unsound and resulted in a severe and systemic sales practices misconduct problem.⁹⁴ (The term "sales practices misconduct," as used in her report, 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.)⁹⁵

Sales practices misconduct, or issuing products to customers without their consent or obtaining the customer's consent by making false or misleading representations, is an unsafe or unsound banking practice and violates laws and regulations. Those laws and regulations include:

⁸⁷ *Id.*

⁸⁸ *Id.*

⁸⁹ *Id.* at page 6.

⁹⁰ *Id.* at ¶16.

⁹¹ *Id.*

⁹² *Id.*

⁹³ *Id.*

⁹⁴ *Id.*

⁹⁵ *Id.* at ¶16 (a).

18 U.S.C. §§ 656 (theft/misapplication by bank employee), 1005 (false entries), 1028(a)(7) (identity theft), and 1344(2) (bank fraud); 15 U.S.C. § 45(a) (unfair or deceptive acts and practices); 12 C.F.R. § 1030.4(a) (Regulation DD/Truth in Savings); and 12 C.F.R. § 1026.12(a) (Regulation Z/Truth in Lending).⁹⁶

The incentive compensation program and plans in the Community Bank were deficient in both design and implementation, as well as testing, oversight, and challenge, and resulted in employees engaging in sales practices misconduct over the course of fourteen years. This was recklessly unsafe or unsound and exposed the Bank to increased operational, compliance, regulatory, legal, reputational and financial risks.⁹⁷

The Bank's controls to prevent and detect sales practices misconduct were inadequate and the Bank's risk management of its sales practices and the sales practices themselves, were recklessly unsafe or unsound.⁹⁸

Sales practices misconduct was pervasive in the Community Bank and involved tens of thousands, if not hundreds of thousands, of Bank employees issuing millions of products to customers without their consent.⁹⁹

It took a massive and prolonged failure by Respondents for the sales practices misconduct problem to become as severe and pervasive as it was and last as long as it did.¹⁰⁰ The Respondents knew, or should have known, that sales practices misconduct in the Community Bank was widespread, systemic, and the high-pressure environment and aggressive sales goals contributed to the root cause.¹⁰¹

In 2014, National Bank Examiner Jennifer Crosthwaite participated in a number of examinations related to Incentive Compensation, Compliance, and Operational Risk and issued Supervisory Letters highlighting issues in each area.¹⁰² In February 2015, she and the Operations

⁹⁶ *Id.* at ¶17.

⁹⁷ *Id.* at ¶18.

⁹⁸ *Id.* at ¶19.

⁹⁹ *Id.* at ¶20.

¹⁰⁰ *Id.* at ¶21.

¹⁰¹ *Id.*

¹⁰² EC MSD Ex. 268 (Report of NBE Crosthwaite) at ¶9. Examiner Crosthwaite has been the Enterprise Risk Management Team Lead for Wells Fargo since May 2013. In that role, she directs a team of between eight and ten OCC examiners and oversee supervisory efforts at Wells Fargo in the areas of Corporate Risk, Audit, Legal, Human Resources, Reputation Risk, Strategic Risk, Model Risk, Counterparty Credit Risk, and International Risk. Among other things, she regularly meets with Bank senior management to cover key current topics, emerging risks, and issues identified through the OCC's ongoing examination work, and provides clear and detailed feedback to the Bank in the form of Supervisory Letters. She also assists the Examiner-In-Charge in providing input into the Quarterly Management Report, the annual Report of Exam ("ROE"), the Quarterly Risk Assessments, and the supervisory strategies of the Bank. She serves as an expert advisor for the field examining staff of Large Bank Supervision ("LBS") and as an advisor to the Examiner-in-Charge ("EIC"), the Deputy Comptroller for LBS, and

and Compliance Team Leads examined the Community Bank’s governance processes with a focus on sales practices.¹⁰³ The result of the February 2015 examination was an April 2015 Supervisory Letter including an MRA on sales practices governance.¹⁰⁴

During the February 2015 exam, Examiner Crosthwaite was told that only 20 or 30 people had been terminated in connection with an investigation that was limited geographically to Los Angeles/Orange County.¹⁰⁵ After the City of Los Angeles filed its lawsuit against the Bank for sales practices related misconduct in May 2015, she led a targeted examination of the Community Bank specifically related to the allegations in the lawsuit.¹⁰⁶

In conjunction with the examiners from the Operations and Compliance group, the ERM examiners examined the Community Bank, sampled a number of EthicsLine and customer complaints, and reviewed termination files and notes.¹⁰⁷ It was during this period that she learned, for the first time, that over 230 individuals had been terminated across the Bank (not just in Los Angeles/Orange County) for engaging in simulated funding and changing customer phone numbers.¹⁰⁸ This 230 number was drastically higher than what the Bank had previously reported to the OCC during the February 2015 exam.¹⁰⁹ She then realized that the sales practices problem was more severe and pervasive than what management, including Respondents, had communicated to the OCC.¹¹⁰ She learned that sales practices was much more than just simulated funding and phone number changes.¹¹¹

Some examples of other types of sales practices misconduct that the OCC’s examiners discovered were: opening unauthorized deposit accounts (and in some instances 40 or 50 accounts for one individual), issuing multiple credit and debit cards without consent, and targeting the deceptive practices on protected classes.¹¹²

Community Bank Management also had a practice of pushing two checking and two savings accounts on customers (known as the “2 for 2” campaign).¹¹³ Examiners reviewed over

other OCC officials. She participated in the OCC’s examinations and investigations of the Bank’s sales practices. Id. at ¶2.

¹⁰³ EC MSD Ex. 268 (Report of NBE Crosthwaite) at ¶9.

¹⁰⁴ *Id.*

¹⁰⁵ *Id.* at ¶10.

¹⁰⁶ *Id.*

¹⁰⁷ *Id.*

¹⁰⁸ *Id.*

¹⁰⁹ *Id.*

¹¹⁰ *Id.*

¹¹¹ *Id.*

¹¹² *Id.*

¹¹³ *Id.*

300 EthicsLine complaints and a sizeable number of customer complaints, which provided detailed accounts of pervasive unsafe or unsound and fraudulent sales practices misconduct.¹¹⁴ The Bank's EthicsLine is a 24-hour hotline and website program that serves as the primary method for employees to anonymously voice complaints, including reporting possible violations of the Bank's Code of Ethics, violations of law, and suspicious conduct involving other employees.¹¹⁵

The examination resulted in a Supervisory Letter with five MRAs that addressed the three lines of defense (the Community Bank, Corporate Risk, and Internal Audit), incentive compensation, and complaint systems.¹¹⁶ The Supervisory Letter highlighted the aggressive sales culture and lack of effective Bank oversight, controls, and supervision.¹¹⁷ It also highlighted that there was a lack of transparency in the front-line Community Bank leadership team.¹¹⁸ This Supervisory Letter required the Bank to assess root cause and hire an independent consultant to assess customer harm. The Bank retained Accenture and PricewaterhouseCoopers ("PwC") for this work, respectively.¹¹⁹

Throughout the targeted examination in May 2015, the EIC and Examiner Crosthwaite informed the Bank's Chief Corporate Risk Officer that the OCC did not want Respondent Russ Anderson taking the lead on providing information to the OCC.¹²⁰ The EIC and Examiner Crosthwaite requested that the independent Corporate Risk function of the Bank take the lead on coordinating responses to OCC information requests, on scheduling meetings, and on ensuring that the OCC received all such requested information.¹²¹ They made this request because the information that the Community Bank had provided to the OCC previously was not consistent with the information in the City of Los Angeles lawsuit.¹²² At this time, based upon Examiner Crosthwaite's interactions throughout early 2015, she was very concerned that Community Bank leadership, and specifically Respondent Russ Anderson, was not fully transparent in meetings with OCC examiners.¹²³

In July 2015, the OCC commented on sales practices in its annual Report of Examination ("ROE"),

¹¹⁴ *Id.*

¹¹⁵ *Id.*

¹¹⁶ *Id.*

¹¹⁷ *Id.*

¹¹⁸ *Id.*

¹¹⁹ *Id.*

¹²⁰ *Id.* at ¶11.

¹²¹ *Id.*x

¹²² *Id.*

¹²³ *Id.*

The Bank needs to proactively control reputational risks through more effective compliance and operational risk programs. This included a reference to our continued assessment of the LA lawsuit, which alleges branch misconduct resulting in customer harm, our early findings suggest management should have responded more proactively to independently investigate the initial allegations. Management needs to ensure that matters such as these are fully and transparently investigated, harmed customers are remediated, bank employees are properly trained, incentive programs do not encourage the alleged behavior, and controls are in place to identify and resolve potential or emerging issues.¹²⁴

In February 2016, the OCC received the results of the PricewaterhouseCoopers (PwC) report, which confirmed that sales practices misconduct was occurring on systemic scale and affected more than 1.5 million customer accounts.¹²⁵ The PwC report, combined with the Accenture findings, confirmed the systemic nature of sales practices misconduct.¹²⁶

The OCC issued a Supervisory Letter in July 2016, finding that the sales practices misconduct problem at Wells Fargo was unsafe or unsound.¹²⁷ The July 2016 Supervisory Letter ultimately supported the Sales Practices Consent Order issued against the Bank in September 2016.¹²⁸ By August 2017, the number of accounts that had been opened between January 2009 and September 2016 in a manner consistent with simulated funding had ballooned to 3.5 million customer accounts.¹²⁹

Examiner Candy opined that through their actions and inactions, each Respondent engaged in recklessly unsafe or unsound practices that enabled the sales practices misconduct problem to exist and continue. Each Respondent also breached his/her fiduciary duties.¹³⁰

As the Group Risk Officer for the Community Bank, Respondent Russ Anderson had a primary responsibility to properly identify, quantify and control all risks in the Community Bank's operations.¹³¹ Audit—that is, Respondents Julian and McLinko—had a responsibility to ensure incentive compensation plans were designed and operated in accordance with Bank policy, evaluate risk and controls and ensure it was adequately managed and escalated, advise whether the Community Bank was operating in conformance with laws and regulations, or

¹²⁴ *Id.* at ¶12.

¹²⁵ *Id.* at ¶13.

¹²⁶ *Id.*

¹²⁷ *Id.*

¹²⁸ *Id.*

¹²⁹ *Id.* at ¶¶13, 52.

¹³⁰ EC MSD Ex. 269 (Report of NBE Candy) at ¶22.

¹³¹ *Id.* at ¶23.

identify and detail significant or systemic problems in audit reports.¹³² None of the Respondents, each of whom held leadership roles in those departments, adequately performed their responsibilities with respect to the sales practices misconduct problem.¹³³ Examiner Candy opined that all three Respondents failed in their responsibilities.¹³⁴

Examiner Candy opined that Respondent Russ Anderson failed to execute her risk management, control, and escalation responsibilities as the Group Risk Officer, the Chairperson of the Community Bank Risk Management Committee, and under the Bank's own policies;¹³⁵ and that her conduct was recklessly unsafe or unsound and was done in disregard of or evidenced a conscious indifference to a known or obvious risk of substantial harm.¹³⁶ Examiner Candy opined that Respondent Russ Anderson's conduct constituted a breach of her fiduciary duty.¹³⁷

Examiner Candy opined that Respondent Russ Anderson's failure to escalate the sales practices misconduct problem was recklessly unsafe or unsound and constituted a breach of her fiduciary duty,¹³⁸ and that her false, misleading, and incomplete reporting to the Enterprise Risk Management Committee, the Board, and the OCC was recklessly unsafe or unsound and constituted a breach of her fiduciary duty.¹³⁹

Examiner Candy opined that Respondent Russ Anderson violated laws and regulations, including by causing, participating in, counseling, or aiding and abetting the following violations: 18 U.S.C. §§ 656 (theft/misapplication by bank employee), 1001(a) (false statements), 1005 (false entries), 1028(a)(7) (identity theft), 1344(2) (bank fraud), and 1517 (obstruction of bank exam); 15 U.S.C. § 45(a) (unfair or deceptive practices); 12 C.F.R. § 1030.4(a) (Regulation DD/Truth in Savings); and 12 C.F.R. § 1026.12(a) (Regulation Z/Truth in Lending).¹⁴⁰

Examiner Candy opined that Respondent Russ Anderson's violations of laws and regulations, unsafe or unsound practices, and breaches of fiduciary duties involved personal dishonesty and demonstrated a willful or continuing disregard for the safety or soundness of the Bank.¹⁴¹

¹³² *Id.*

¹³³ *Id.*

¹³⁴ *Id.*

¹³⁵ *Id.* at ¶24.

¹³⁶ *Id.*

¹³⁷ *Id.*

¹³⁸ *Id.* at ¶25.

¹³⁹ *Id.* at ¶26.

¹⁴⁰ *Id.* at ¶27.

¹⁴¹ *Id.* at ¶28.

Ms. Russ Anderson's Employment Status

Ms. Russ Anderson identified a copy of her resume, supplying her relevant educational and professional background.¹⁴² Ms. Russ Anderson testified that she began banking employment with the predecessor to Norwest as a bank trainee in Duluth, Minnesota.¹⁴³ She worked in the mailroom, learned bank operations, worked in the teller area, worked in consumer lending and as a consumer banker.¹⁴⁴ Following promotions to the commercial loan department, she and her husband adopted their first son, and upon this, she “step[ped] away from [her] position at [the] bank” and then returned to Norwest, working in the commercial loan workout department from 1987 through 1992.¹⁴⁵ After taking leave upon the adoption of their second child, she returned and was promoted to deputy and then senior chief credit officer; promoted in 1996 to a “corporate officer job” and when “Norwest purchased Wells Fargo” in 1998 she “remained in the corporate credit office in that integration.”¹⁴⁶

Ms. Russ Anderson testified that upon that integration she spent the first four years “helping with the credit pieces of it”.¹⁴⁷ She said that the “legacy of Wells Fargo did not do middle market lending, and that was my background, so I helped with acquisitions and with middle market credits.”¹⁴⁸ She said in 2002 John Stumpf, who was then head of Wells Fargo’s Community Bank, asked her to be his credit officer for the Community Bank, “which is where all of the middle market lending occurred.”¹⁴⁹ She testified then spent “about a year and a half” working on the relationship between the Bank and the OCC, and “was successful in rebuilding the trust between the OCC and Wells Fargo.”¹⁵⁰

After this, upon noting an “emerging issue called operational risk and regulatory compliance,” Ms. Russ Anderson asked Mr. Stumpf to “hire someone for to manage it [*sic*] like you do for credit”.¹⁵¹ She said Mr. Stumpf “told me I had [the] job” so she “left my credit organization and I created the – what was then the Chief Risk Officer role, me and my administrative assistant, and started building an organization from there.”¹⁵²

¹⁴² Tr. (Russ Anderson) at 9267; R. Ex. 1824.

¹⁴³ Tr. (Russ Anderson) at 9260.

¹⁴⁴ *Id.* at 9260-61.

¹⁴⁵ *Id.* at 9262.

¹⁴⁶ *Id.* at 9263.

¹⁴⁷ *Id.*

¹⁴⁸ *Id.*

¹⁴⁹ *Id.*

¹⁵⁰ *Id.* at 9264.

¹⁵¹ *Id.*

¹⁵² *Id.*

Ms. Russ Anderson testified that in 2008 Wells Fargo purchased Wachovia, “which then doubled the size of the Bank and made it a systematically important financial institution [SIFI].”¹⁵³ She said they spent three years integrating the two banks, a process that she described as “very complicated, as you can imagine, not only geographically but culturally different to integrate”.¹⁵⁴

Ms. Russ Anderson testified that after the merger, her “role expanded substantially over that time as the risks expanded. We now had things like vendor management, incentive comp[ensation]¹⁵⁵ risk committee, data management.”¹⁵⁶ She testified there was a “multitude of topics and risks that we were now responsible for, and particularly in Community Banking, because I had the Internet Bank, the call centers, the branches, the deposit product group, small business lending,” things that were “really important and embedded in those business lines.”¹⁵⁷

Ms. Russ Anderson testified that the head of HR, Debra Paterson, and Carrie Tolstedt, head of Community Banking, “thought it would be a good idea” to move the oversight of Sales Practices Misconduct to Ms. Russ Anderson’s organization.¹⁵⁸ Ms. Russ Anderson “took it as a direct report of mine, because it was a very important topic. And I felt it needed my hands-on oversight in the beginning to really get the vision going in the right direction.”¹⁵⁹

Ms. Russ Anderson testified that she kept that job until January 2016, when she “took SSCOT [Community Banking Sales and Service Conduct Oversight] and the Complaints Group and I married them up together under Paula Herzberg.”¹⁶⁰ She said Ms. Herzberg “was a direct report of mine, but I took two groups and brought them together and brought in a senior leader over the two.”¹⁶¹

Ms. Russ Anderson testified that as of October 3, 2013 [through 2016], she was employed at Wells Fargo Corporation as the Group Risk Officer (GRO) of Community Banking.¹⁶² In this capacity, Ms. Russ Anderson had responsibility for sales practices misconduct in the Community Bank.¹⁶³ Ms. Russ Anderson left the Bank at the end of August

¹⁵³ *Id.*

¹⁵⁴ *Id.* at 9265.

¹⁵⁵ See Respondents’ Amended Revised Errata Days 9 – 38” – page 75. Ordered through Second Supplemental Order.

¹⁵⁶ Tr. (Russ Anderson) at 9265.

¹⁵⁷ *Id.* at 9265-66.

¹⁵⁸ *Id.* at 9266.

¹⁵⁹ *Id.*

¹⁶⁰ *Id.* at 9267.

¹⁶¹ *Id.*

¹⁶² *Id.* at 9250-51.

¹⁶³ *Id.* at 9251.

2016 after more than 36 years of service.¹⁶⁴ She testified at that time, “my job was all-encompassing” and when she was needed to care for her parents she requested a six-month leave of absence “to be able to spend more time with them.”¹⁶⁵ Later in her testimony, she acknowledged, “[the Bank] terminated me for cause.”¹⁶⁶

Ms. Russ Anderson’s Reporting Relationships

Ms. Russ Anderson testified that in 2013 she along with about 15 others reported directly to Carrie Tolstedt, the Senior Executive Vice President of Community Banking.¹⁶⁷ She testified she also reported to CRO Loughlin on a dotted-line basis, and understood that as Community Banking’s GRO if she faced resistance from Ms. Tolstedt she had an escalation path to Mr. Loughlin in Corporate Risk.¹⁶⁸

Three Lines of Defense

Wells Fargo & Company and Wells Fargo Bank, N.A. employed a “Three Lines of Defense” risk management system throughout the relevant period.¹⁶⁹ The First Line of Defense refers to the Line of Business (LOB) organizations, including Community Bank.¹⁷⁰ The Second Line of Business refers to “the corporate risk function as well as a few other second line of defense activities, like HR and Legal.”¹⁷¹ WFAS’s Internal Audit was the Third Line of Defense.¹⁷²

The First Line of Defense – “**Lines of Business & Administrative Functions**” – is responsible “for taking, identifying, assessing, managing, and controlling the risks it generates.”¹⁷³ It “owns” risk and is accountable to Senior Management and the WF&C Board of

¹⁶⁴ *Id.* at 9259-60.

¹⁶⁵ *Id.* at 9259.

¹⁶⁶ Tr. (Russ Anderson) at 9500; 10140; OCC Ex. 2126: “Upon completion of an internal investigation, in a unanimous decision, the Wells Fargo Board of Directors concluded that there is cause to terminate your employment, effective February 21, 2017, because you engaged in prohibited conduct in violation of Company policy, including the Company’s Code of Ethics and Business Conduct.”

¹⁶⁷ Tr. (Russ Anderson) at 9268, 9547.

¹⁶⁸ *Id.* at 9547.

¹⁶⁹ Tr. (Julian) at 5936.

¹⁷⁰ *Id.*

¹⁷¹ *Id.*

¹⁷² *Id.*

¹⁷³ R. Ex. 1780 at 41.

Directors.¹⁷⁴ This principle requires “adherence to risk framework, risk appetite and concentration limits, etc.”¹⁷⁵

Through the March 4, 2013 report, “Wells Fargo’s Risk Management Framework,” Chief Risk Officer Loughlin described the first line of defense in these terms:

First line of defense: Lines of business.

We believe placing risk identification, assessment, monitoring, ownership, management, and mitigation as close as possible to the source of risk improves risk management effectiveness and efficiencies. . . . 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.¹⁷⁶

Ms. Russ Anderson testified that she agreed with the statement that the corporate structural model enables risk managers to respond both quickly and appropriately to changing risk conditions, and to do so with deep knowledge of the business context in which the risk originates.¹⁷⁷ She agreed that she needed to understand the culture in the Community Bank; and needed to understand the sales goals in the Community Bank, “[a]t a high level or good enough level”.¹⁷⁸ When asked whether she needed to understand incentive compensation plans in the Community Bank, Ms. Russ Anderson deflected, responding, “I needed to understand that the incentive compensation plan had been credibly challenged and that the risks and rewards were adequate.”¹⁷⁹

The Second Line of Defense – “**Corporate Risk**” – is responsible for “establishing and enforcing Wells Fargo’s Risk Management Framework.”¹⁸⁰ It “oversees risk” and is [a]ccountable to the Board, with day-to-day oversight” from the CEO.¹⁸¹ It established and enforced risk management policies, standards, tools, methodologies and programs, provides oversight of risks across all businesses and functions, and performs “independent risk monitoring and reporting.”¹⁸²

CRO Loughlin described the second line of defense in these terms:

¹⁷⁴ *Id.*

¹⁷⁵ *Id.*

¹⁷⁶ Tr. (Russ Anderson) at 9453; OCC Ex. 1553 at 7-8.

¹⁷⁷ Tr. (Russ Anderson) at 9544; OCC Ex. 1553 at 7.

¹⁷⁸ Tr. (Russ Anderson) at 9545.

¹⁷⁹ *Id.*

¹⁸⁰ R. Ex. 1780 at 41.

¹⁸¹ *Id.*

¹⁸² *Id.*

Second line of defense: Corporate functions.

Corporate Risk, Human Resources, the Law Department, Social Responsibility, Public Relations, and Corporate Controllers provide company-wide leadership, standards, support, and oversight to ensure effective understanding and management of all risk, including associated strategic and reputation risk, across Wells Fargo.¹⁸³

The Third Line of Defense – “**Audit**” or “**Audit and Examination**” – was responsible “for providing an independent assessment of the risk framework and internal control systems to the Board.”¹⁸⁴ It is accountable to the Board, with day-to-day oversight from the CEO.¹⁸⁵ The scope of Audit includes “[c]ompliance with policies and standards,” the “effectiveness of the independent risk management function,” and “[c]ompleteness and accuracy of information.”¹⁸⁶

CRO Loughlin described the third line of defense in these terms:

Third line of defense: Wells Fargo Audit Services

[WFAS] is an independent assurance and advisory function that reports directly to the Audit & Examination (A&E) Committee of the Board of Directors. Through its assurance and advisory work, WFAS helps the company accomplish its objectives by bringing a systematic, disciplined approach to evaluate and improve the effectiveness of enterprise governance, risk management, and control processes across the enterprise.¹⁸⁷

Mr. Julian testified that the Wells Fargo Community Bank LOB was one of the Bank’s First Line of Defense, and Paul McLinko was the head of the Audit Group that had responsibilities for providing audit oversight for that Line of Business.¹⁸⁸

Mr. Julian described the Internal Audit function served by WFAS in these terms:

Principally, the role of Audit -- especially within an organization the size of Wells Fargo Corporation [*sic*], the role of Audit was to perform audit work to provide assurance to management and to the Board that the controls that management oversaw were, in fact, working as intended or as designed.¹⁸⁹

¹⁸³ OCC Ex. 1553 at 8.

¹⁸⁴ R. Ex. 1780 at 41.

¹⁸⁵ *Id.*

¹⁸⁶ *Id.*

¹⁸⁷ OCC Ex. 1553 at 8.

¹⁸⁸ Tr. (Julian) at 5988.

¹⁸⁹ *Id.* at 5936.

Mr. Julian testified that the First Line of Defense (and not WFAS) was expected to design risk management controls for the Community Bank.¹⁹⁰ In this context, risk management controls “are intended to be designed to assure that the risks are being managed within the parameters of the risk appetite that the line of business has adopted.”¹⁹¹ Mr. Julian testified that the Community Bank, and not WFAS, was expected to set the “risk appetite” for the Community Bank line of business.¹⁹²

Risk Appetite

Risk appetite “means the aggregate level and types of risk the board of directors and management are willing to assume to achieve a covered bank’s strategic objectives and business plan, consistent with applicable capital, liquidity, and other regulatory requirements.”¹⁹³

According to its Risk Management Framework, the holding company’s Board of Directors and its seven standing committees “play an active role in overseeing and guiding the company’s overall approach to risk management.”¹⁹⁴ The Framework provides that a key component of this approach is its Statement of Risk Appetite, “which is developed and refined by senior management, with updates reviewed and approved at least annually by the Board.”¹⁹⁵

The Framework provides thus with respect to risk appetite:

Generally, the statement of risk appetite serves to guide business and risk leaders as they manage risk on a daily basis. It describes the nature and magnitude of risks that the company is willing to assume in pursuit of its strategic objectives, and is composed of qualitative and quantitative parameters for certain individual risk types (*e.g.* financial, capital, liquidity, credit, counterparty, market, model, operational, compliance, reputational). It also contains specific financial ranges which the company does not want to exceed or fall below over time (*e.g.*, ROE, ROA, efficiency ratio). Moreover, the enterprise statement of risk appetite informs individual legal entity, group, and in some cases LOB-specific statements of risk appetite, which the company has developed for its five risk-generating groups and Wells Fargo Bank, N.A., the company’s principle banking subsidiary. The metrics

¹⁹⁰ Tr. (Julian) at 5937.

¹⁹¹ *Id.* at 5938.

¹⁹² *Id.*

¹⁹³ OCC Ex. 931 at 114 (12 CFR Ch. 1, Pt. 30, App. D at I (E)(10).

¹⁹⁴ Resp. Ex. 482, Wells Fargo & Company, Corporate Risk, Wells Fargo Risk Management Framework, Second Edition, published July 2014, at 12.

¹⁹⁵ *Id.*

included in the group and legal entity statements are harmonized with the enterprise level metrics to ensure consistency, where appropriate.¹⁹⁶

Mr. Julian testified, “risk appetite” is “a level of risk that the line of business is willing to accept and the level of risk which they’re expected to build controls to mitigate down to.”¹⁹⁷ He testified that although the “lines of business were responsible for developing risk appetite metrics,” by as late as April 2015 he was aware that the Community Bank had not set a risk appetite.¹⁹⁸ According to Mr. Julian, the Corporate and Risk Governance section of the OCC’s Handbook places on Community Bank’s First Line of Defense, rather than the Third Line of Defense, the responsibility for identifying, assessing, controlling and mitigating the risks associated with the Community Bank’s business activities consistent with the established risk appetite.¹⁹⁹

Through the OCC’s Supervisory Letter WFC 2015-07, the OCC directed Carrie Tolstedt, Senior Executive Vice President for Community Banking to “establish risk appetite metrics specific to monitoring the sales practices activities as well as appropriately reporting and escalating as needed.”²⁰⁰ Mr. Julian reiterated that WFAS played no role in setting the risk appetite for the Community Bank.²⁰¹ Elaborating on this point, Mr. Julian testified that “[i]t would be inappropriate for WFAS to set the appetite, because WFAS was providing audit work and testing the controls against such appetite”.²⁰²

Risk appetite for the Community Bank was supposed to be set by the Line of Business – in this case, by Community Bank’s First Line of Defense.²⁰³ While WFAS would not set Community Bank’s risk appetite, it was responsible for “the testing of the controls and the testing of the risks that are being managed,” and would “evaluate the effectiveness of those controls against the stated risk appetite of the Line of Business.”²⁰⁴

¹⁹⁶ *Id.*

¹⁹⁷ Tr. (Julian) at 5945.

¹⁹⁸ *Id.* at 6643-44; R. Ex. 654 at 3.

¹⁹⁹ Tr. (Julian) at 5955-56.

²⁰⁰ *Id.* at 6644.

²⁰¹ *Id.* at 5943-44, citing R. Ex. 482, Wells Fargo & Company, Corporate Risk, Wells Fargo Risk Management Framework, Second Edition, published July 2014: “The Board is also responsible for the oversight of Wells Fargo’s risk management organization. In this capacity, the Board oversees senior management’s efforts to ensure that the risk management organization and Wells Fargo Audit Services are adequately staffed and maintain the appropriate stature within the company. Accordingly, the Board reviews senior management reports on staffing levels and expertise in these areas and requires that both the CRO and Chief Auditor report directly to Board-level committees.” *Id.* at 13.

²⁰² Tr. (Julian) at 5938.

²⁰³ *Id.* at 5944, 5959, citing Resp. Exhibit 482 (Wells Fargo & Company, Corporate Risk, Wells Fargo Risk Management Framework), at 24 - Organizational Structure of the First Line of Defense.

²⁰⁴ Tr. (Julian) at 5944.

Code of Ethics & Business Conduct

Pursuant to the Wells Fargo Code of Ethics, the Code is applicable to Wells Fargo & Company and each of its subsidiaries, including Wells Fargo Bank, N.A., and “every Wells Fargo team member.”²⁰⁵

Risks Associated with Sales Practices Misconduct

Mr. Julian testified that the risks associated with Sales Practices Misconduct were not limited to the Community Bank.²⁰⁶ He explained, “sales practices activities or the risk of sales practices activities also has the potential or the risk across other lines of business groups outside the Community Bank business group.”²⁰⁷

Mr. Julian as Chief Auditor said his role during the relevant period was to engage with EADs (including Mr. McLinko) “over the various lines of business to understand the engagement that they were performing with respect to sales practices”.²⁰⁸ His reason for doing so was that he needed to “have an understanding and a level of assurance that they were aware of sales practice risk”.²⁰⁹ With that understanding, Mr. Julian said he expected the EADs to incorporate that risk “into their various audit plans.”²¹⁰ He added, however, that during the relevant period, none of the EADs executed any audit engagements.²¹¹

The Role of the WF&C Ethics Line

Mr. Julian testified that the WF&C EthicsLine was a “process by which Team Members could either anonymously or, if they so choose, identify themselves, but to raise concerns they may have with respect to ethics allegations.”²¹²

He testified that at no time during his tenure as Chief Auditor did he have any concerns about whether the complaints he reviewed were being appropriately processed.²¹³ He said at some point he learned from Michael Bacon, who headed up Corporate Investigations, that approximately fifteen to twenty percent of the complaints received through the EthicsLine were substantiated after investigation.²¹⁴

²⁰⁵ R. Ex. 6638 at 1-2.

²⁰⁶ Tr. (Julian) at 5989.

²⁰⁷ *Id.*

²⁰⁸ *Id.* at 5990.

²⁰⁹ *Id.*

²¹⁰ *Id.*

²¹¹ *Id.*.

²¹² *Id.* at 6144.

²¹³ *Id.* at 6145.

²¹⁴ *Id.* at 6146.

Mr. Julian testified that he received EthicsLine reports from Ms. Russ Anderson’s direct reports throughout 2013 to 2016, but drew no conclusion that sales integrity violations or sales practices misconduct in the Community Bank were widespread or systemic.²¹⁵ Nevertheless, he identified six EthicsLine allegations that he received during his tenure as Chief Auditor.²¹⁶

- In a January 28, 2013 email to Mr. Julian, Katie Hall (Dallas TX) wrote regarding “Accounting Irregularities – EthicsLine Report.”²¹⁷ She wrote:

It appears the customer, [L. I.], is reporting that she went into a Salt Lake City, UT branch because she received a debit card for a new account that she did not open. [L.] stated that [D.G.] (Personal Banker) helped her understand why the account was opened, but she still does not want it.²¹⁸

- In a January 28, 2013 email to Mr. Julian, Katie Hall (Dallas TX) wrote regarding “Auditing Irregularities – EthicsLine Report.”²¹⁹ She wrote:

[J.D.] (Phone Banker in El Monte, CA) reported that [K.W.] (Business Payroll Services Sales Representative in Salem, OR) opened an account for [L.E.] (customer) without her consent. [J.] also stated that there is a question about a donation of \$850, which [E.] stated she has not received. [J.] said the customer wishes to have the account closed; however, she is not a signer.²²⁰

She also wrote that the EthicsLine web report “will not be logged for Board reporting, as the allegation does not seem to involve a material misrepresentation of an audit engagement or malicious behavior of either internal or external auditors. The allegation seems to involve concerns related to account opening procedures.”²²¹

- In an October 28, 2013 email to Mr. Julian, Katie Hall (Dallas TX) wrote regarding “Retaliation – EthicsLine Report.”²²² She wrote that the attached EthicsLine web report “will not be logged for Board reporting, as the allegation seems related to the sales environment created by a District Manager.”²²³ She wrote:

²¹⁵ *Id.* at 6316-17.

²¹⁶ *Id.* at 6148.

²¹⁷ OCC Ex. 1588 at 1.

²¹⁸ *Id.*

²¹⁹ *Id.* at 1.

²²⁰ *Id.*

²²¹ *Id.*

²²² OCC Ex. 1586 at 1.

²²³ *Id.*

An anonymous Team Member reported that [S.T.] (Community Banking District Manager in Deltona, FL) may be encouraging an unethical and stressful sales environment by personally setting district sales goals that exceed stated sales goals in personal banker and CSSR sale matrices. The Team Member stated that [S.] requires personal bankers and CSSRs in her district to have 10 approved credit cards each per week; however, the personal banker matrix only requires 18 for the quarter, and the CSSR matrix does not require any credit production goals (loans or credit cards). The Team Member also stated that personal bankers are supposed to average 3 appointments per day based on their matrix; however, [S.] is requiring them to average 6 per day. The Team Member said they feel bullied into meeting the goals because they are told they will receive documented coaching if they do not meet these goals. The Team Member stated that he/she is concerned because the constant harassment and threat of being written up for not meeting [S.'] goals I creating an unhealthy work environment and could lead to unethical practices by team members in fear of losing their jobs.

The Team Member stated that his/her manager shared that [S.] has already advised him to issue the Team Member an informal write-up for not meeting credit goals. The Team Member said he/she fears being identified for making this report since he/she is the only individual singled out as not meeting sales goals.²²⁴

In the same email, Katie Hall noted further that she “was able to locate five additional EthicsLine reports for Deltona, FL related to sales integrity concerns received between 9/10/2013 and 10/14/2013.” She wrote that three of the five “have been referred to Sales Quality for research,” and two “have been referred to Corporate Investigations and are currently being investigated”.²²⁵

- In an October 29, 2013 email to Mr. Julian, Katie Hall (Dallas TX) wrote regarding “Accounting Irregularities – EthicsLine Report.”²²⁶ She wrote:

An anonymous Team Member reported that two customers (no names provided) received credit cards that they did not request. The anonymous Team Member included in the report that [D.G.] (Personal Banker in Pasadena, TX) is responsible and that [R.S.] (Community Banking District Manager) was made aware of the issue.²²⁷

²²⁴ OCC Ex. 1586 at 1.

²²⁵ *Id.*

²²⁶ OCC Ex. 1587 at 1.

²²⁷ *Id.*

- In a January 14, 2014 email to Mr. Julian, Katie Hall (Dallas TX) wrote regarding “Accounting Irregularities – EthicsLine Report.”²²⁸ She wrote:
 [B.M.] (Phone aBanker in El Monte, CA) reported that a banker in Hockessin, DE (no name provided) opened accounts for a customer (no name provided) that the customer said he did not authorize or want.²²⁹
- In a March 3, 2014 email to Mr. Julian, Katie Hall (Dallas TX) wrote regarding “Accounting Irregularities – EthicsLine Report.”²³⁰ She wrote that an anonymous Team Member reported that a president in a Long Beach, New Jersey branch “‘threatens’ the Team and tells them they must hit 200% of their sales goal at any cost on a daily basis.”²³¹

The Team Member stated that bankers and tellers are required to stay late to make sales calls if they have not met their goal for the day. The Team Member indicated that they are treated like “garbage” and the situation makes him/her want to leave the company.²³²

Mr. Julian testified that none of these documents indicated to him that sales integrity violations and sales practices misconduct in the Community Bank were widespread and systemic.²³³ In support of this response, Mr. Julian said these allegations had “not yet [been] substantiated” and that he subsequently learned that “80 percent . . . were found to be unfounded.”²³⁴ Without stating how he came to this conclusion, he stated that the six allegations were, in his view, “isolated incidences in the sense that each one was an individual allegation.”²³⁵

Ms. Russ Anderson’s Roles and Responsibilities – as Group Risk Officer for Community Banking

Ms. Russ Anderson testified that she was the head of the Sales Quality team in Community Banking, and had been throughout the relevant period.²³⁶ She also had responsibility for Community Banking’s Bank Secrecy Act and Money Laundering (BSA/AML) team, which covered “all of the 6,000 branches and the money laundering opportunities that could happen in

²²⁸ OCC Ex. 1589 at 1.

²²⁹ *Id.*

²³⁰ OCC Ex. 1590 at 1.

²³¹ *Id.*

²³² *Id.*

²³³ Tr. (Julian) at 6148.

²³⁴ *Id.*

²³⁵ *Id.*

²³⁶ Tr. (Russ Anderson) at 9269.

the stores or in the branches”.²³⁷ She also was “very focused on data management and information security.”²³⁸ She testified that the Internet “was one of our business lines, and so making sure we weren’t getting third parties stealing data from the Bank or compromising customers’ accounts was very important.”²³⁹

Ms. Russ Anderson testified that she had responsibilities for working with the OCC and the CFPB, the latter of which was “a new regulator that I was dealing with and helping”.²⁴⁰ She also reported, “model risk management . . . took a big piece of time.”²⁴¹ She added, “through the branch network, we sold just about every product that Wells Fargo had.”²⁴²

Ms. Russ Anderson testified that as Group Risk Officer (GRO) for Community Banking, “I had to make sure that all of those products were appropriately designed and that the controls were appropriate, whether it was a credit card coming from one of the other business groups at Wells Fargo or a deposit account that was coming through one of the product groups under Community Banking.”²⁴³

Ms. Russ Anderson identified performance reviews reflecting her responsibilities as Community Banking’s GRO for the years 2013 through 2016.²⁴⁴ Through this series of self-assessments, Ms. Russ Anderson described the role she played in the Bank’s risk management. The reviews establish that Ms. Russ Anderson was “accountable to ensure effective and efficient risk management in the Community Banking lines of business and to support effective and efficient risk management in aggregate at the enterprise level.”²⁴⁵ They establish that Ms. Russ Anderson needed to “ensure that Community Banking is aware of, and adhering to, the OCC’s Heightened Expectations (now known as Heightened Standards) Guidance as well as all other regulatory guidance that may be issued in our work to become “Strong” in our risk management practices.”²⁴⁶

Ms. Russ Anderson testified that she agreed that during the relevant period, “operational risk” was defined as “all risks excluding credit and market, inclusive of risks we have traditionally viewed as basic business risks such new product and technology development, staffing incentives, execution risk, loss prevention and team member behavior (sales

²³⁷ *Id.* at 9269.

²³⁸ *Id.*

²³⁹ *Id.* at 9269-70.

²⁴⁰ *Id.* at 9270.

²⁴¹ *Id.*

²⁴² *Id.*

²⁴³ *Id.*

²⁴⁴ *Id.* at 9514; R. Ex. 5214 (2013); R. Ex. 7256 (2014); OCC Ex. 626 (2015); and R. Ex. 13780 (2016).

²⁴⁵ R. Ex. 7256 at 1.

²⁴⁶ *Id.*

quality/sales integrity, internal fraud, ethics violations, etc.).”²⁴⁷ Ms. Russ Anderson testified that 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.²⁴⁸

Through the 2013 performance review, Ms. Russ Anderson reported that it was her responsibility to “[f]ocus on reputation management and keep the Community Banking lines of business out of trouble by identifying and mitigating key operating risks in the businesses.”²⁴⁹ She further identified her responsibility to “[b]uild a culture of accountability with strong controls that help ensure no material operational losses.”²⁵⁰

One of the events that occurred during the 2013 performance year started with a May 9, 2013 letter sent anonymously [under the name “Mule”] to CEO John Stumpf and head of Community Banking, Ms. Tolsted.²⁵¹ Once received, Ms. Tolsted forwarded the emailed letter to Ms. Russ Anderson, and Ms. Russ Anderson forwarded it to Michael Bacon (for Corporate Security) and Cindy Walker (SVP – Manager, Sales Quality), with a request that both look at what had been sent.²⁵²

The letter from Mule reads as follows:

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 and [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

²⁴⁷ *Id.* at 9520; R. Ex. 7256 at 1.

²⁴⁸ Tr. (Russ Anderson) at 9520-22.

²⁴⁹ *Id.* at 9536; R. Ex. 5214 at 3.

²⁵⁰ R. Ex. 5214 at 3.

²⁵¹ Tr. (Russ Anderson) at 10118; OCC Ex. 261.

²⁵² OCC Ex. 261 at 4.

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 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.²⁵³

Presented with this correspondence, Mr. Bacon wrote in response to Ms. Russ Anderson's email.²⁵⁴ He reported, "We have had significant issues in this market, so not a total surprise. Cases are 2 to 1 compared to rest of the northeast and up 36% since same time period last year. We will research EthicsLine reports and we will send an email to the address to see if we can't get more specifics."²⁵⁵

When questioned during cross-examination about her reaction to this letter, Ms. Russ Anderson responded, "I didn't know what to think since this came from an unknown person, which is why I forwarded it up the chain to Michael Bacon and Cindy Walker to do some research."²⁵⁶ She testified that she did, however, consider Mr. Bacon's information to be truthful.²⁵⁷

Elaborating, Ms. Russ Anderson testified:

As is shown in the rest of the email, there was a lot of work done around this particular complaint in addition to reaching back out through systems to speak to the Mule, who didn't provide any further information, never responded back to corporate investigations or the SSCOT team.²⁵⁸

Ms. Walker responded as well, suggesting:

Let's have Glen and Mike touch base to work out a game plan. We can start some research regarding pattern of EL allegations and analysis from the respective area. Mike can convey any additional detail he acquires from the letter writer – 'mule' – interesting!

²⁵³ OCC Ex. 261 at 5.

²⁵⁴ *Id.* at 4.

²⁵⁵ *Id.*

²⁵⁶ Tr. (Russ Anderson) at 10120.

²⁵⁷ *Id.* at 10121.

²⁵⁸ *Id.* at 10122.

I am aware that we continue to have issues specific to the NJ footprint and in fact were in the process of partnering with Mike to discuss with Michelle Lee SQ and CI trends. Before we do that I would like to see what surfaces from the analysis relevant to this letter.²⁵⁹

After Ms. Russ Anderson expressed support for Ms. Walker’s plan, a follow up message indicated that an investigator had spoken with Mule. Notwithstanding Ms. Russ Anderson’s averment that she did not know what to think about the letter because it came from an unknown person, there is nothing in the record suggesting the correspondent was anything other than what he claimed to be – a Branch Manager in the North Ocean District in New Jersey. The investigator reported, however, that she did not receive such documentation from Mule.²⁶⁰

Glen Najvar, Project Management Manager, reported that 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).”²⁶¹

Further, the “initial review indicates that ~20 team members will require polling to be conducted” and “SQ will be escalating the preparation of the case file/polling and re-convene with Corporate Investigations to share findings once completed.”²⁶² The record is silent, however, regarding any further steps taken by Ms. Russ Anderson to determine the root cause of the concerns presented by the Mule’s letter to Mr. Stumpf.²⁶³

Regarding complaints from the Bank’s customers, the 2013 Performance Review reported that Ms. Russ Anderson would “[e]volve compliance to address the quality of the customer experience, including a strong focus on prevention, strong front-end advice and guidance and operationally excellent business processes that encourage and support compliance, without compromising the effectiveness of traditional tools.”²⁶⁴

The reviews established that effective and efficient risk management “also includes providing policy and program recommendations to the Chief Risk Officer and Enterprise Risk Group leaders and working with them to ensure that corporate policies and the requirements of corporate risk management programs are followed in the businesses (i.e., compliance, fair and responsible banking, complaint management, BSA/AML, information security, model risk, et

²⁵⁹ OCC Ex. 261 at 4.

²⁶⁰ *Id.* at 1.

²⁶¹ *Id.*.

²⁶² *Id.*

²⁶³ See R. Ex. 5214, R. Ex. 7256.

²⁶⁴ R. Ex. 5214 at 4.

al.)”²⁶⁵ Ms. Russ Anderson testified that during the relevant period she viewed as critically important for her to execute her responsibilities in compliant with Bank policies.²⁶⁶

The reviews establish a series of deliverables on core enterprise risk commitments, including making sure that risk management systems “are aligned with the model risk management framework and policy”, providing “credible challenge to the Community Banking lines of business” consistent with Wells Fargo’s Vision and Values and risk appetite, collaborating with key stakeholders to “ensure that the appropriate parties are informed in a timely manner” on material issues, providing “timely and accurate opinions on the state of the risk”, ensuring Community Banking lines of business “understand, appropriately manage, and meaningfully report on risk and issues”, providing “insightful, actionable, timely analytics”, and managing “risk/compliance initiatives to timely results that solve real business problems.”²⁶⁷ WF&S defined “credible challenge” as the “communication of an alternate view, opinion, or strategy developed through expertise and professional judgment to challenge business or enterprise strategies, policies, products, practices and controls.”²⁶⁸

Ms. Russ Anderson testified that under the deliverables in her 2014 performance review, it was “a responsibility of mine and of all the people at Wells Fargo” to ensure the security of all customer information.²⁶⁹ She agreed that when employees changed the customer email addresses and phone numbers in the Bank’s records, that if done without customer consent it constituted a misuse of customer information, but “I don’t know that I would have said that it seriously compromised it, but it compromised it, yes.”²⁷⁰

Ms. Russ Anderson testified that each of these deliverables were important aspects of her job responsibilities as GRO, including ensuring transparency with the Enterprise Risk Management Committee (ERMC).²⁷¹ She qualified that testimony, however, by opining that her responsibilities arose only “[w]hen I was invited to present to them”.²⁷² **Acting in furtherance of this opinion under the conditions that were present during the relevant period constituted unsafe or unsound banking practice and a breach of the fiduciary duties Ms. Russ Anderson owed to the Bank.**

The 2014 MBO included a requirement that Ms. Russ Anderson “[p]rioritize, attend and actively participate in key risk management meetings – including but not limited to Model Risk Executive Steering Committee, Monthly meetings with Mike Loughlin, CORC, and the weekly

²⁶⁵ R. Ex. 7256 at 1.

²⁶⁶ Tr. (Russ Anderson) at 9522.

²⁶⁷ R. Ex. 7256 at 1.

²⁶⁸ R. Ex. 11373 at 9.

²⁶⁹ Tr. (Russ Anderson) at 9529.

²⁷⁰ *Id.* at 9530; R. Ex. 7256 at 2.

²⁷¹ Tr. (Russ Anderson) at 9523.

²⁷² *Id.* at 9524.

operational risk management leadership meetings.”²⁷³ She testified that it was important for her to be transparent with ERMC and its members, but only those “who I had interaction with, but I didn’t have interaction with the Committee unless invited.”²⁷⁴ The 2015 performance review included Ms. Russ Anderson’s further representation that, without limitation, she “[e]nsured results” of corrective actions for MRAs and audit examines “were communicated to Chief Risk Officer, CBRM Management, Risk Management Committee Members, and executive team, via the monthly CB Risk Letter.”²⁷⁵

Similarly, although she acknowledged that she had a responsibility to ensure transparency with the OCC, Ms. Russ Anderson qualified the responsibilities she had with the Bank’s Board of Directors, opining that her responsibility for transparency with the Board was “[t]hrough my managers, yes. But not for me. I didn’t meet with the Board.”²⁷⁶ Asked directly whether she believed that she – not her managers – was responsible for ensuring transparency with the Board, Ms. Russ Anderson replied: “Yes, if I were invited to the Board meeting.”²⁷⁷ **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 Ms. Russ Anderson owed to the Bank.**

Further, when asked if she believed that during the relevant period as GRO she was responsible for building a culture of accountability with strong controls to prevent sales practices misconduct – as set forth in the 2014 MBOs – Ms. Russ Anderson denied having that responsibility, answering “I don’t believe you could prevent sales practices misconduct, so I would have to say no.”²⁷⁸ **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 Ms. Russ Anderson owed to the Bank.**

Ms. Russ Anderson then added to that answer, responding, “I believe it was my responsibility to build controls to prevent sales practices misconduct from occurring, but it’s impossible to prevent all sales practices misconduct.”²⁷⁹

Ms. Russ Anderson acknowledged that throughout the relevant period the Bank had to deliver products and services in compliance with laws and regulations.²⁸⁰ She agreed that during the relevant period it was her responsibility to provide timely and accurate information to the

²⁷³ R. Ex. 7256 at 10.

²⁷⁴ Tr. (Russ Anderson) at 9524-25.

²⁷⁵ OCC Ex. 626 at 6-7.

²⁷⁶ Tr. (Russ Anderson) at 9525.

²⁷⁷ *Id.*

²⁷⁸ *Id.* at 9531.

²⁷⁹ *Id.*

²⁸⁰ *Id.* at 9515.

OCC about whether sales practices risk was adequately managed.²⁸¹ She agreed that it would have been a violation of laws and regulations for Bank employees to transfer customer funds or issue products and services to customers without their consent.²⁸²

Ms. Russ Anderson agreed that during the relevant period sales practices misconduct was a material issue for the Bank.²⁸³ She testified, however, that during the relevant period she did not believe simulated funding was a type of fraud: “I didn’t think of it in those terms.”²⁸⁴ Further, even during her testimony, when asked whether it was fraud for an employee to move customer funds without their consent, Ms. Russ Anderson responded, “I do not at this point in time.”²⁸⁵ She testified, however, that during the relevant period she believed an employee obtaining a customer’s consent by making false and misleading representations violated laws and regulations.²⁸⁶

Although she agreed that ensuring effective and efficient risk management in the Community Bank with respect to sales practices misconduct was a critical aspect of her job during the relevant period, Ms. Russ Anderson testified that in relation to the amount of time she spent on each of these responsibilities, sales quality or sales practices misconduct “was not the top priority in 2013.”²⁸⁷ She testified that it “certainly was within the top five priorities, but depending on what other people’s priorities were[, s]ometimes my priorities had to change to theirs.”²⁸⁸ She added that it “never went off my radar” and that throughout the relevant period they “were always up in the top five.”²⁸⁹

Ms. Russ Anderson’s 2015 performance review incorporated the material provisions of the two prior reviews, and required that she “[e]nsure issues management data is completed, accurate and timely. Root cause understood and solutions are sustainable. Repeat issues/finding will be scrutinized.”²⁹⁰ It included Ms. Russ Anderson’s statement that “[e]fficient reporting routines create a foundation for evaluating performance, supporting business decisions, and satisfying external reporting requirements. Delivering quality unbiased information in a timely manner is an integral part of our successful Risk Management program.”²⁹¹

²⁸¹ *Id.* at 9529.

²⁸² *Id.* at 9516.

²⁸³ *Id.* at 9526.

²⁸⁴ *Id.* at 9516.

²⁸⁵ *Id.* at 9518.

²⁸⁶ *Id.*

²⁸⁷ *Id.* at 9272, 9519.

²⁸⁸ *Id.* at 9272.

²⁸⁹ *Id.*

²⁹⁰ *Id.* at 9537; OCC Ex. 626 at 5.

²⁹¹ OCC Ex. 626 at 6.

Ms. Russ Anderson testified that she agreed that throughout the relevant period it was important for her to timely inform the OCC, the ERMC (through its members), and Mr. Loughlin of existing problems in the Community Bank with respect to sales practices misconduct.²⁹² She denied, however, believing that sales practices misconduct continued to be a significant problems for the Bank from 2013 to 2016.²⁹³

Ms. Russ Anderson testified that she believed the failure on her part as GRO to timely disclose existing deficiencies in risk management in Community Banking with respect to sales practices misconduct could cause substantial harm to the Bank.²⁹⁴ Further, she testified that if the “control was significant enough,” the GRO’s failure to timely disclose control breakdown with respect to sales practices misconduct could cause substantial harm to the Bank.²⁹⁵

Ms. Russ Anderson testified that she viewed it to be her responsibility to provide timely and accurate information to members of the ERMC about whether sales practices risk was adequately managed in the Community Bank, but opined that responsibility extended to the Committee only “if I was invited to the [ERMC] meeting.”²⁹⁶ She offered no authority to support this opinion. Similarly, Ms. Russ Anderson viewed her responsibility to provide timely and accurate information to the Board of Directors about whether sales practices risk was adequately managed “[o]nly if I were invited to the Board meeting.”²⁹⁷ **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 Ms. Russ Anderson owed to the Bank.**

Among the 2014 deliverables, Ms. Russ Anderson was responsible to “[k]eep Carrie Tolstedt, Mike Loughlin, Enterprise Risk Program Managers, and Business Heads aware of issues of concern.”²⁹⁸ Despite this, when asked, “From 2013 to 2016, did you consider it an important part of your job to accurately inform the Enterprise Risk Management Committee about whether incentive compensation plans in the Community Bank appropriately balanced risk and rewards, Ms. Russ Anderson answered, “I did not.”²⁹⁹ She testified that if she found those plans did not adequately balance risk and reward she “would have told Mike Loughlin, who was the head of the [ERMC].”³⁰⁰ **Acting in furtherance of these opinions under the conditions**

²⁹² Tr. (Russ Anderson) at 9526-27.

²⁹³ *Id.* at 9527.

²⁹⁴ *Id.*

²⁹⁵ *Id.* at 9527-28.

²⁹⁶ *Id.* at 9528.

²⁹⁷ *Id.*

²⁹⁸ R. Ex. 7256 at 10.

²⁹⁹ Tr. (Russ Anderson) at 9533-34.

³⁰⁰ *Id.* at 9534.

that were present during the relevant period constituted unsafe or unsound banking practice and a breach of the fiduciary duties Ms. Russ Anderson owed to the Bank.

In contrast to this testimony, Ms. Russ Anderson wrote in her 2016 review that she ensured results of corrective actions regarding MRAs “were communicated to Head of Community Banking, Wells Fargo Chief Risk Officer, CBRM Management, Risk Management Committee members, and executive team, via the monthly CB Risk Letter.”³⁰¹

Ms. Russ Anderson testified that she considered it an important part of her job to accurately inform the OCC about whether incentive compensation plans in the Community Bank appropriate balanced risk and reward, but only “if I felt that were true”.³⁰² The 2014 review further reflected that it was her responsibility to “[u]nderstand the sales processes and incentive structures in Community Banking lines of business and the risk they present; provide credible challenge where appropriate to ensure we are not inadvertently incenting the wrong behavior.”³⁰³

Among the 2016 self-identified deliverables, Ms. Russ Anderson included, “Establish sales practices to ensure principled sales behavior. Understand the risk and provide credible challenge as appropriate.”³⁰⁴ Further, she included, “[e]volve compliance to continuously improve the quality of the customer experience, while ensuring customer protection by establishing and enforcing effective front-end controls” and ensuring that “customer information security is a priority.”³⁰⁵ In describing collaborations, Ms. Russ Anderson reported, “Partner with [second line of defense], peer [group risk officer] organizations, business executives/partners, and WFAS to create a collaborative and effective Risk Management community. We will create and evaluate opportunities for program improvements and effectiveness across the enterprise, eliminating low value risk management processes without compromising prudent risk management.”³⁰⁶

Through the 2016 review, Ms. Russ Anderson reported that she “[r]epresented Community Banking on various risk committees, including the Operational Risk Management Committee, the Information Risk Management Subcommittee, the Payments Risk Oversight Committee, the Information Security Risk Management Committee, the Identity & Access Management Oversight Group, the Cyber Defense Initiatives Update, the Data Loss Prevention Advisory Group, the Third Party Risk Council, the Business Process Risk Management Advisory Group, the Basel/CCAR Working Group, and the Technology Risk SLoD Update meetings.”³⁰⁷ She also reported meeting quarterly with OCC “to provide updates on trends and interested

³⁰¹ R. Ex. 13780 at 17.

³⁰² Tr. (Russ Anderson) at 9534.

³⁰³ R. Ex. 7526 at 4.

³⁰⁴ Tr. (Russ Anderson) at 9359; R. Ex. 13780 at 1.

³⁰⁵ R. Ex. 13780 at 1.

³⁰⁶ *Id.* at 7.

³⁰⁷ *Id.* at 10.

projects”, with WFAS “to discuss existing audits”, and reported serving “as Community Banking liaison to the Corporate Risk Program Office to facilitate uniform and timely status updates regarding the activities required to comply with the Sales Practices MRA.”³⁰⁸

Complaint Management

Without specifying when the changes took place, Ms. Russ Anderson testified that her responsibilities differed from what they were before 2013 to what they became between 2013 and 2016.³⁰⁹

Ms. Russ Anderson testified that as GRO for Community Banking, about 100 team members reported to her in 2013, and that number increased to over 500 by the end of her tenure.³¹⁰ She described changes in her responsibilities between those years in these terms:

Well, they changed in terms of what we've been talking about as the risks that became inherent in an organization the size of Wells Fargo, the risks that were needed to be managed went up with that. We were also working diligently on how to do complaint management better across the whole company. That just wasn't a Community Banking topic, but it was across the whole company. So getting complaints became a major work product. And so -- and like I said before, some of the other things, like the one that I would never have thought I would have had is model risk management. That became a very important topic.³¹¹

Ms. Russ Anderson testified that customer complaints “would have come in from the regulators or directly to Wells Fargo.”³¹² Asked whether the number of customer complaints had an influence on her determination that there was not a systemic sales practices problem, Ms. Russ Anderson testified:

Absolutely, because customer complaints -- our customers are very good about complaining. Always have been. And should be. That's their right to tell you when you're not doing things correctly. And when we looked at the level of complaints we as an institution were getting and the corporate group for complaints compared those to what the CFPB was getting from other financial institutions, we were no better or worse. And I can hardly remember in my career when the OCC ombudsman's office was getting complaints that

³⁰⁸ *Id.* at 11, 16.

³⁰⁹ Tr. (Russ Anderson) at 9273.

³¹⁰ *Id.*

³¹¹ *Id.* at 9273-74.

³¹² *Id.* at 9388-89.

there were [near]³¹³ to any. And then what was coming out of our executive office was minimal.³¹⁴

Risk Management

Ms. Russ Anderson described “model risk management” in these terms:

So, model risk management is you run models all over a financial institution. Just about anywhere. And you use models to determine what your overdraft activity might be and what the loss rates are in that. You run models on what kind of platform somebody's going to want on their phone. You run models -- financial models, those are the big models. And I had never been involved with model risk management, but one of our competitor banks had a fallout around models, and there was a real problem. So the regulators came to all the large banks and said, what's your model risk management process and policy. And people didn't really have a solid one, so we had to create one. And then I had to create testing around people's models to prove that the models were solid. So that was brand new. I had to hire a bunch of people to do that for me.³¹⁵

The record reflects that risk management at Wells Fargo Bank, N.A., “is essential to achieving our vision and a key component of the culture” at the Bank.³¹⁶ The Bank’s philosophy of risk management included the point that “no activity or person is beyond oversight and challenging our colleagues is something expected of us all.”³¹⁷

In early 2013, in preparation for a presentation she was to make before the Bank’s Regional Banking leadership, Ms. Russ Anderson asked Jason MacDuff to provide feedback about an overview of the Bank’s risk management philosophy.³¹⁸ Mr. MacDuff wrote that she might “review the consequences for inaction or ‘turning a blind eye’ – they’re real as seen by actions taken against many competitors.”³¹⁹

Mr. MacDuff added:

You might then close with your confidence in our team; we all want to do the right thing and sometimes our team members genuinely don’t know or

³¹³ Corrected via 22-03-07 Respondents’ Amended Revised Errata Days 9-38 at 76. Ordered via Second Supplemental Order Regarding Hearing Transcript Errata.

³¹⁴ Tr. (Russ Anderson) at 9389.

³¹⁵ *Id.* at 9274.

³¹⁶ OCC Ex. 50 at 4.

³¹⁷ *Id.*

³¹⁸ *Id.*.

³¹⁹ *Id.*

understand. If no one tells them otherwise, they may feel what they're doing is condoned. It's on all of us to ensure clarity, that the leaders we manage know their accountability for speaking up before punitive action may need to occur.³²⁰

Ms. Russ Anderson's Roles and Responsibilities – Committee Membership

The record is not clear whether all of Ms. Russ Anderson's committee memberships have been identified. When prompted to testify about the committees she sat on, she responded, "I'll give you a highlight because there were a lot of them. Wells Fargo liked committees."³²¹ Ms. Russ Anderson added that she "attended more than 90 percent" of all of the meetings of these committees.³²²

The Community Banking Risk Management Committee

Ms. Russ Anderson testified that as Community Banking's Chief Risk Officer, she was Chair of the Community Banking Risk Management Committee (CBRMC).³²³ Under the 2013 Charter, the purpose of the CBRMC was "to oversee the management of operational and compliance risks inherent in the Community Banking lines of business. This includes the development of appropriate risk identification, measurement and mitigation strategies and reporting, consistent with Wells Fargo's policies, processes and procedures."³²⁴

Effective January 2013, under its Charter 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 are managed effectively."³²⁵

Membership under the 2013 Charter included the head of Community Banking (Ms. Tolstedt), the Community Banking Group Risk Officer (Ms. Russ Anderson) as Chairperson, and eight other members – there was no mention of the presence of a representative from Wells Fargo Audit Services in this list of Committee members.³²⁶

Ms. Russ Anderson testified that in her role as Chair of the Community Banking RMC, it was her responsibility to inform members of the Committee about both systemic problems and control breakdowns in the Community Bank.³²⁷ She testified that she considered the CBRMC an important committee at the Bank, but testified it was her responsibility to inform the Committee

³²⁰ OCC Ex. 50 at 4.

³²¹ Tr. (Russ Anderson) at 9274-75.

³²² *Id.* at 9275.

³²³ Tr. (Russ Anderson) at 9275, 9769; R. Ex. 5214 at 8; OCC Ex. 660 at 1.

³²⁴ OCC Ex. 660 at 1.

³²⁵ *Id.*

³²⁶ *Id.* at 2.

³²⁷ Tr. (Russ Anderson) at 9770.

about pervasive and widespread misconduct in the Community Bank only “[i]f I believed there was some”.³²⁸

Under its 2013 Charter the Community Banking RMC was to meet quarterly “or as frequently as the Committee will deem necessary.”³²⁹ As GRO for Community Banking, Ms. Russ Anderson presided over meetings of the CBRMC, would establish the content of meeting agendas, would ensure that “responsibility is assigned for each initiative undertaken” by the RMC, and would ensure that the RMC “reviews and assesses the adequacy of the Community Banking RMC charter annually.”³³⁰

Pursuant to its 2013 Charter, members of the Community Banking RMC were required to understand and evaluate “current emerging material risks”, “examine trends”, and “assess the strategic implications for business objectives and risk management practices.”³³¹ Each member was required to “[w]eigh the relationship between risks; identify combinations of exposures that may change the operational risk portfolio and determine whether an appropriate balance exists between risks and rewards”.³³² They also needed to review and evaluate “risk appetite metrics” and direct action “for metrics out of tolerance”.³³³

Pursuant to its 2013 Charter, each member of the CBRMC was required to “[i]nitiate 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” and require that “corrective actions be taken to address any material breakdown of internal controls and assign monitoring responsibility through resolution.”³³⁴

Pursuant to its 2013 Charter, each member of the RMC was required to oversee and approve “acceptance for high-risk activities, products and markets”.³³⁵ Member of the Committee “[s]erve as the ultimate approval authority for new high-risk products and material changes to existing products, as defined and required by Wells Fargo’s policy.”³³⁶

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.”³³⁷ It was required to ensure that appropriate policies, procedures and processes “exist

³²⁸ *Id.* at 9771.

³²⁹ OCC Ex. 660 at 2.

³³⁰ *Id.*

³³¹ *Id.* at 1.

³³² *Id.*

³³³ *Id.*

³³⁴ *Id.*

³³⁵ *Id.*

³³⁶ *Id.*

³³⁷ *Id.*

for adequately identifying, measuring, managing and reporting risks across Community Banking”, and review, validate, interpret and provide guidance to Community Banking business unit “regarding regulatory and operational risk requirements.”³³⁸

Pursuant to the 2013 Charter:

The scope of reviews and oversight would include, but not be 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.”³³⁹

Nothing in the Charter limited these responsibilities to risks that were either systemic or widespread.

The 2013 Charter also required Committee members to review the status of previously identified risk management concerns and initiatives and “[i]nform, advise and educate the Community Banking leadership about risk management strategies, initiatives and related matters”.³⁴⁰

Mr. McLinko identified the March 24, 2015 Community Banking Risk Management Committee Charter, and testified that he was a non-voting member of the Community Bank Risk Management Committee.³⁴¹ When asked during cross-examination whether as a member of the Committee he believed it was incumbent upon him to ensure that the Community Bank’s risks were managed effectively, he responded that it was his responsibility to “understand the risk and ensure that Internal Audit . . . had the audit programs for that.”³⁴²

Under the 2015 CBRMC Charter, the Committee is identified as a “risk governance committee the purpose of which is to oversee the management of Key Risk Types to which the Group is exposed, in particular: credit, compliance, operational, BSA/AML, model, strategic, emerging, reputational, and cross-functional risks.”³⁴³ The 2015 Charter provided that the Committee “shall serve as the primary management-level forum for the consideration of the highest priority risk issues resident in Community Banking.”³⁴⁴

The 2015 Charter stated, “critically, the Committee shall support and assist Wells Fargo’s Enterprise Risk Management Committee (ERMC) in carrying out its risk oversight

³³⁸ *Id.*

³³⁹ *Id.*

³⁴⁰ *Id.*

³⁴¹ Tr. (McLinko) at 8467, 8471; R. Ex. 11556.

³⁴² Tr. (McLinko) at 8471.

³⁴³ R. Ex. 11556 at 1.

³⁴⁴ *Id.*

responsibilities.”³⁴⁵ The CBRMC’s primary responsibility “is to understand Community Banking’s risk profile and to work with management across Community Banking to ensure risks are managed effectively.”³⁴⁶ The 2015 Charter provided that this included, “oversight of the development of appropriate risk identification, measurement and mitigation strategies and report, consistent with Wells Fargo’s policies, processes, and procedures.”³⁴⁷

The 2015 Charter expressly identified Mr. McLinko as Community Banking’s Executive Audit Director, as a non-voting member of the Committee.³⁴⁸ It identified Ms. Russ Anderson as Chair and a voting member, as Community Banking Group Risk Officer.³⁴⁹ It identified Ms. Tolstedt as a voting member, as Head of Community Banking. It prohibited delegation of member participation “except for occasional instances when a member is unable to attend a meeting and an agenda item requires specific representation from the member’s area.”³⁵⁰

Under the 2015 Charter, issues that could be escalated to the Committee included but were not limited to:

- Triggers of Community Banking’s risk appetite metric boundaries, as required
- Violations of Community Banking’s risk management limits, as required
- Violations of Group-level policies, as required;
- Events likely to cause material adverse impact to customers, or to the Company’s reputation or financial results, as required;
- Issues that are likely to be discussed with the Company’s regulators as well as potentially new issues identified by the Company’s supervisors (e.g., forthcoming/potential MRAs and MRIAs), as required; and
- Other matters that, based upon a reasonable manager’s judgment, may adversely impact the Company.³⁵¹

Nothing in this Charter limited issues to those that were known or thought to be widespread or systemic.

Under the 2015 Charter, the Committee “shall 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.”³⁵²

³⁴⁵ R. Ex. 11556 at 1.

³⁴⁶ *Id.*

³⁴⁷ *Id.*

³⁴⁸ *Id.* at 4-5.

³⁴⁹ *Id.* at 5.

³⁵⁰ R. Ex. 11556 at 4.

³⁵¹ *Id.* at 2.

³⁵² *Id.*

Under the 2015 Charter, the Committee “shall require that corrective actions be taken to address any material breakdown of internal controls and assign monitoring responsibility through resolution.”³⁵³

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 member of Corporate Risk, or to the ERMC as appropriate.”³⁵⁴ The Committee “may further escalate issues that require decision-making from a more senior level of the Company, at its discretion”.³⁵⁵

For each escalated issue, the 2015 Charter provided that the Committee “shall have the authority to assess the degree to which the risk owner has identified, assessed, controlled, and mitigated the issue at hand” and “may require further actions to be taken by the risk owner and may require oversight of the issue by the Committee or a designated individual.”³⁵⁶ The 2015 Charter provided that the Committee may “[i]nform, advise, and educate the Community Banking leadership about risk management strategies, initiatives and related matters.”³⁵⁷

The 2015 Charter provided that the Committee “shall aggregate and report regularly to the Head of Community Banking and the ERMC information that is sufficient to understand (a) the risk position of the Group, and (b) the performance of Community Banking’s Group Risk Organization.”³⁵⁸ The 2015 Charter provided further that “periodic and/or ad hoc reports to the Committee on the risk types it oversees are provided by varying committees/forums and/or team members, each of which may escalate key issues and/or issue remediation plans to the Committee for its consideration and/or further escalation. Additional reporting or information on risk issues may be requested by voting members or the Chairperson as needed.”³⁵⁹

The Incentive Compensation Risk Committee

Ms. Russ Anderson testified that she was on the Incentive Compensation Risk Committee.³⁶⁰ She testified that she was familiar with the incentive compensation risk management policy, and described the policy as one “that was written by the second line of defense for the Company on how the incentive compensation programs would run through the risk groups, through Legal, for credible challenge and for any alterations as needed.”³⁶¹ She

³⁵³ R. Ex. 11556 at 2.

³⁵⁴ *Id.* at 3.

³⁵⁵ *Id.* at 2.

³⁵⁶ *Id.*

³⁵⁷ *Id.*

³⁵⁸ *Id.* at 3.

³⁵⁹ *Id.*

³⁶⁰ Tr. (Russ Anderson) at 9275.

³⁶¹ *Id.* at 9278.

testified that her responsibility was “to provide credible challenge to the process and to what the recommendations were.”³⁶²

Without identifying which committee, if any, was involved (at this point in the record Ms. Russ Anderson referred to the Incentive Compensation Risk Committee, the Community Bank ICRM Steering Committee, and the ICRM Committee), Ms. Russ Anderson testified that as part of her responsibilities, she was involved with the approval of incentive compensation plans for the Bank during 2013 to 2016.³⁶³

Elaborating, Ms. Russ Anderson testified:

Well, similar to what I was just speaking to, on the -- and it's not just the branch network. It was any of the -- any of the places that paid incentive, I would meet with the HR individuals. And in a couple of instances, the business manager, if they were a small enough group, and walk through all of their recommendations, push back where it was appropriate, have legal weigh in where it was appropriate. And then either get the answers I wanted or send them back for more information. And then ultimately, when satisfied, approve from a risk perspective that the balances were there.³⁶⁴

Ms. Russ Anderson was asked whether she ever provided Mr. Loughlin with independent assessments of the Bank’s incentive compensation arrangements, and responded, “I did.”³⁶⁵

It should be noted that this answer contradicts findings entered on July 20, 2021.³⁶⁶ In the Statement of Material Fact (Russ Anderson) No. 95 presented in Enforcement Counsel’s Summary Disposition Motion, Enforcement Counsel presented as a material and uncontroverted fact that Respondent Russ Anderson failed to provide to the Bank’s Chief Risk Officer, Michael Loughlin, independent assessments of Community Bank’s incentive compensation and whether it had the requisite balancing features as required by the Bank’s own ICRM Policy.³⁶⁷

In her Opposition to the Motion, Ms. Russ Anderson responded that it was undisputed that she testified that she never directly addressed incentive compensation and balancing features, but disputed the claim generally because she “believed the balancing features were sufficient to disincant sales practices misconduct,” citing prior her testimony, given on January 13, 2021, at 68:16-20.

That testimony was as follows:

³⁶² *Id.* at 9278.

³⁶³ *Id.* at 9279.

³⁶⁴ *Id.* at 9280.

³⁶⁵ *Id.* at 9281.

³⁶⁶ See Objection, Tr. (Russ Anderson) at 9280-81.

³⁶⁷ MSD Ex. 290B (Loughlin Tr.) at 478:7-11; MSD Ex. 269 (NBE Candy Expert Report) at ¶ 61; MSD Ex. 266 (Russ Anderson Dep. Tr.) at 67:23-68:2.

Q: Do you believe it now, that incentive compensation plans in the community bank in retrospect did not adequately balance risk and reward?

A: The incentive compensation plans in the community bank were not designed for – and particularly I'll talk about it at the branch level -- were never designed for a banker or a teller to make a ton of money. So that was never -- I would -- I would never -- I never believed then, nor do I believe now that the incentive compensation plan would incent a person at the branch level to do -- to -- to commit incentive -- to commit sales practice misconduct.³⁶⁸

Based on this response, I found for the purposes of summary disposition, and continue to find, that Ms. Russ Anderson has presented an insufficient factual basis to establish a dispute on this factual question. Accordingly, the Recommended Decision will include a factual finding as to Respondent Russ Anderson that preponderant substantial evidence establishes that she failed to provide to the Bank's Chief Risk Officer Michael Loughlin independent assessments of Community Bank's incentive compensation and whether it had the requisite balancing features as required by the Bank's own ICRM Policy. **Under the conditions that were present during the relevant period this constituted unsafe or unsound banking practice and a breach of the fiduciary duties Ms. Russ Anderson owed to the Bank.**

Ms. Russ Anderson testified that throughout the relevant period she did not believe the incentive compensation plans needed to be adjusted.³⁶⁹ She opined, “[t]here might have been tweaks during the course of the year that the line of business brought to us, but no material changes.”³⁷⁰

During direct examination, Ms. Russ Anderson was asked whether there came a time when she believed sales goals should have been lowered.³⁷¹ Her answer was not responsive to the question asked. She testified:

In 2012, it became apparent in some of the data that we were seeing that the sales goals that had been set in 2011 for 2012 were not going to be attainable. At the time those goals were set, the implications of the Dodd-Frank and the overdraft fee changes, which totaled about \$13.5 billion to Community Banking's revenue were unknown, and they had a very material effect on the financial plan and then [on]³⁷² the goals also.³⁷³

³⁶⁸ MSD Ex. 266 at 68:16-20.

³⁶⁹ Tr. (Russ Anderson) at 9281.

³⁷⁰ *Id.* at 9281-82.

³⁷¹ *Id.* at 9282.

³⁷² Via “22-03-07 Respondents’ Amended Revised Errata Day 9-38” on page 75. Ordered by Second Supplemental Order.

³⁷³ Tr. (Russ Anderson) at 9282.

The answer is wholly silent with respect to the 2013 to 2016 relevant period. Further, while through this the answer she opined that some of the data indicated goals that had been set “were not going to be attainable,”³⁷⁴ the answer offered no evidence that Ms. Russ Anderson believed those goals should have been lowered.

Ms. Russ Anderson identified a brief email exchange dated September 11, 2015 between herself and Matthew Raphaelson, Head of Strategic Planning and Finance for the Community Banking Group.³⁷⁵ In the first message, Mr. Raphaelson reported on being debriefed on the “Performance Management call this a.m.”³⁷⁶ Interpreting the perspective of an attendee on that call, Mr. Raphaelson said “it sounds like the RP’s stance is: all the goals are bad [and] we just need to ‘fix the goals’ (whatever that means) and then all other issues including conduct risk largely go away and those that remain they know how to manage.”³⁷⁷

In her response later that day, Ms. Russ Anderson wrote, “I was only able to attend part of the call due to a conflict but the part I was able to attend there certainly seemed to be controversy. I think the leadership team is looking for a new path forward but not sure they can articulate what that is.”³⁷⁸

Ms. Russ Anderson testified that she understood the phone call under discussion was to talk about performance management, and that “within that call, we were talking about the [incentive compensation] plan and I think sales goals probably.”³⁷⁹ She testified that the controversy she referred to was that “the Regional Banking executives were frustrated and that . . . there seemed to be a mismatch between what Tyson was reporting to them and what they wanted to hear.”³⁸⁰ She added, “Regional Banking executives were very good about saying what was bad in their mind, but they were not ever very good about saying, here is how we should move forward.”³⁸¹

Ms. Russ Anderson denied that the document constituted an acknowledgement that the sales goals were bad, and disputed the testimony of Examiner Candy to the effect that the document showed Ms. Russ Anderson was reckless because, despite this knowledge, the goals remained unreasonable and Ms. Russ Anderson failed to take appropriate action.³⁸²

³⁷⁴ *Id.* at 9282.

³⁷⁵ *Id.* at 9400; OCC Ex. 1215U.

³⁷⁶ OCC Ex. 1215U at 1.

³⁷⁷ *Id.*

³⁷⁸ *Id.*

³⁷⁹ Tr. (Russ Anderson) at 9402-03.

³⁸⁰ *Id.* at 9404.

³⁸¹ *Id.*

³⁸² *Id.* at 9405.

Elaborating, Ms. Russ Anderson testified that she did not think the sales goals were unreasonable,³⁸³ and she disputed testimony from Examiner Candy to the effect that Ms. Russ Anderson never challenged sales goals.³⁸⁴ Elaborating, Ms. Russ Anderson testified without offering any supporting documentation:

I challenged the sales goals in all the appropriate settings, sometimes on [one-on-ones]³⁸⁵, sometimes in large group settings where we were with Carrie's leadership team talking about it. When it was appropriate and I was in a phone call or a one-on-one or in a large meeting, if it was controversial, if the sales goal -- because there's not just one sales goal, there's all the different products, if it appeared that there was controversy around it, I would voice my opinion.³⁸⁶

Ms. Russ Anderson recalled Examiner Candy testifying that she had reviewed thousands of documents in this case, and found that Ms. Russ Anderson never meaningfully challenged the sales goals.³⁸⁷ In response to questioning by her Counsel during direct examination, Ms. Russ Anderson responded, “[f]rom emails, that’s probably accurate.”³⁸⁸

The Fraud Risk Committee

Ms. Russ Anderson testified that she was on the Fraud Risk Committee.³⁸⁹ She testified that it was her practice to review reporting she received on the Internal Fraud Committee, and opined that the Committee was a helpful and important committee.³⁹⁰ She testified that, “broadly speaking,” she understood that as a member of the Internal Fraud Committee she was charged with ensuring that internal fraud risks were appropriately managed in the Community Bank.³⁹¹

As a Group Risk Officer, Ms. Russ Anderson had specific duties: “Group Risk Officers (GROs) and their delegates are responsible for opining on the adequacy of internal and external fraud risk management and providing credible challenge to the businesses they oversee.”³⁹²

³⁸³ *Id.* at 9406.

³⁸⁴ *Id.*

³⁸⁵ Via “22-03-07 Respondents’ Amended Revised Errata Day 9-38” on page 76. Ordered by Second Supplemental Order.

³⁸⁶ Tr. (Russ Anderson) at 9407.

³⁸⁷ *Id.*

³⁸⁸ *Id.*

³⁸⁹ *Id.* at 9275.

³⁹⁰ *Id.* at 9547-48.

³⁹¹ *Id.* at 9548.

³⁹² OCC Ex. 1272 (Fraud Risk Management Policy, August 1, 2013) at 7.

Mr. McLinko testified that he was a member of the Community Bank’s Internal Fraud Committee.³⁹³ With respect to his membership in the Committee, Mr. McLinko testified, “most of the senior leaders within Community Bank were there.”³⁹⁴ He testified that the Committee was established by the Corporate Investigations group in 2013 – so it was not a Committee of WFAS – and that it met twice a year and Mr. Bacon “led the meeting.”³⁹⁵

Mr. McLinko identified the Corporate Fraud Risk Management Policy, dated August 1, 2013.³⁹⁶ The Policy’s stated purpose “is 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.”³⁹⁷ It identified those “particularly responsible for its implementation” to include “business, fraud, and operational risk managers at the business, group, and corporate levels.”³⁹⁸

Under the Policy, “[e]ach Wells Fargo business is responsible for managing internal and external fraud risk in a consistent and effective manner, in order to protect our customers, shareholders, and the company.”³⁹⁹ “Standards and requirements for the businesses” are set by Corporate Fraud Risk Management (CFRM), a part of Financial Crimes Risk Management (FRCM).⁴⁰⁰ CFRM “monitors and oversees the management of these risks on a company-wide basis.”⁴⁰¹

The Policy reflected that Mr. McLinko had responsibilities both as a member of Community Banking’s Internal Fraud Committee (IFC) and as an auditor in Wells Fargo Audit Services.⁴⁰² As a Business Internal Fraud Committee, the Policy directed members in Community Banking’s IFC to “ensure that all stakeholders who share responsibility for internal fraud risk management receive appropriate reporting and have a forum to address broad team member misconduct matters. The IFC assists the GRO in addressing internal fraud matters specific to business practices and processes.”⁴⁰³ The Policy provides that IFCs “are accountable to the Team Member Misconduct Executive Committee (TMMEC).” CSI (Corporate Security

³⁹³ Tr. (McLinko) at 8461.

³⁹⁴ *Id.* at 7919.

³⁹⁵ *Id.* at 7918-19.

³⁹⁶ OCC Ex. 1272.

³⁹⁷ *Id.* at 1.

³⁹⁸ *Id.*

³⁹⁹ *Id.*

⁴⁰⁰ *Id.*

⁴⁰¹ *Id.*

⁴⁰² *Id.* at 5, 7.

⁴⁰³ *Id.* at 5.

Investigations) “chairs each IFC, facilitates meetings held at least semi-annually, and provides the committee with Internal Fraud reporting.”⁴⁰⁴

As a member of WFAS, Mr. McLinko had duties “in addition to general operational risk management roles and responsibilities”.⁴⁰⁵ The Policy provided that WFAS:

- Provides independent evaluation of the fraud controls that management has designed and implemented, including direct business controls
- Performs direct audits of business fraud programs and controls
- Communicates fraud-related audit findings to Corporate Fraud Risk Management
- Consults with Corporate Fraud Risk Management as necessary, during the annual audit planning cycle as well as during individual audits, regarding information that may address fraud risk or controls⁴⁰⁶

The Policy addressed “Escalation” in these terms:

Policy cannot account for every possible situation. To address situations not covered by policy, request a change to this policy or the related standards, or recommend and [*sic*] alternative practice, fraud managers contact the policy manager indicated on the last page of this document [Jim Richards, Chief Operational Risk Officer at Revision Date 8/1/2013]. The policy manager will work with the requesting business to address the business’s needs and escalate the request as necessary.

The chief operational risk officer may 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 will be escalated to the Enterprise Risk Management Committee or Wells Fargo’s Operating Committee for resolution.⁴⁰⁷

The Policy defined “Fraud” as “[a] deliberate misrepresentation which may cause another person or entity to suffer damages, usually monetary loss. Wells Fargo distinguishes between two major types of fraud: internal and external.”⁴⁰⁸ It defines “Misrepresentation” as “false or misleading representation or concealment of a fact”; it defines “True Name Fraud” as “fraud that occurs when an individual materially misrepresents his or her identity by using identifying

⁴⁰⁴ *Id.*

⁴⁰⁵ *Id.* at 7.

⁴⁰⁶ *Id.*

⁴⁰⁷ *Id.* at 8, 10.

⁴⁰⁸ *Id.* at 8.

information that is the valid identity of another real individual”]; and defines “Internal Fraud” thus:

An event in which any suspected or known fraud operator is a team member or managed resources hired by Wells Fargo, who:

- Commits misconduct meeting the definition of fraud, during the course of his or her employment
- Is a customer who may have committed fraud
- Colludes with a customer who may have committed fraud
- Conducts, enables, or contributes to fraud⁴⁰⁹

Membership in other Risk-Management Committees

Ms. Russ Anderson testified that she was on the Operational Risk Committee, the Regional Banking Risk Committee, the Risk Committee for each line of business in the Community Bank, 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.⁴¹⁰

The Evolving Model Steering Committee

Ms. Russ Anderson testified that she was on the Evolving Model Steering Committee.⁴¹¹ She said the evolving model “was a program process that was started up, Jason MacDuff ran it, but at Carrie’s behest, where we were working on how do you evolve the Community Bank, and specifically the Regional Banking model.”⁴¹² She testified that this was one of “several things” she did to improve controls designed to detect and prevent sales integrity violations during the pause of proactive monitoring⁴¹³ (between November 2013 and July 2014). The evolving model “had started, so we were looking at, you know, what there were around controls that we could tighten up.”⁴¹⁴

Ms. Russ Anderson testified that while the initial concept for the evolving model came from Ms. Tolstedt, Matthew Raphaelson and Jason MacDuff, after she, Debra Patterson, and a Regional Banking executive, Laura Schulte were brought on board “the people who worked on it was vast” and included people from Corporate Risk, Legal, HR, and Community Banking – “all

⁴⁰⁹ OCC Ex. 1272 at 9.

⁴¹⁰ Tr. (Russ Anderson) at 9275.

⁴¹¹ *Id.*

⁴¹² *Id.* at 9367.

⁴¹³ *Id.*

⁴¹⁴ *Id.*

of the Regional Banking executives would have been involved.”⁴¹⁵ The Committee was to address potential loss of Bank revenue that was anticipated following the passage of the Dodd-Frank legislation.

Ms. Russ Anderson testified that the evolving model examined:

[w]hat parts and pieces needed to change in the light of these - of the sales mispractice conducts we were seeing? What needed to change, because you, you know, were reducing sales goals? What needed to change because you lost \$13.5 billion in revenue through Dodd-Frank and the overdraft changes. So it was really a compass about, you know, what in the Regional Banking world needed to be enhanced or changed or completely redone. And everything was open for conversations, whether it was banker positions, incentives, sales goals, the number of branches we were going to have to open. All of that was open for discussion.⁴¹⁶

Ms. Russ Anderson testified that she and others had been on a mission to visit with three of the European Union banks located in London to “talk with them about the impacts of eliminating sales goals.”⁴¹⁷ She stated that during this trip she learned, “elimination of sales goals . . . did not 100 percent do away with sales practices misconduct. That there were still sales practices misconduct going on.”⁴¹⁸

The Community Bank ICRM Steering Committee

Although not mentioned during her initial testimony, through leading questioning by her Counsel during direct examination Ms. Russ Anderson testified that she was on the Community Bank ICRM steering committee.⁴¹⁹ She testified that the ICRM steering committee – consisting of “Debra Patterson, who was head of HR when it started, and then Tracy Kidd afterward, Matthew Raphaelson and myself” would meet once a year “when the business groups were developing their incentive programs.”⁴²⁰

Ms. Russ Anderson testified that “during the course of the year” the Committee “would meet on an ad hoc basis if changes to any incentive program needed to be made.”⁴²¹ She said the three of them “would meet with the incentive professionals and really walk through the programs

⁴¹⁵ *Id.* at 9368.

⁴¹⁶ *Id.* at 9367.

⁴¹⁷ *Id.* at 9399.

⁴¹⁸ *Id.*

⁴¹⁹ *Id.* at 9275-78.

⁴²⁰ *Id.* at 9278-79.

⁴²¹ *Id.* at 9279.

that they were proposing and challenge their thought processes and, if necessary, send them back to do more analysis.”⁴²²

Referring now to questions about the ICRM Committee meeting (possibly the ICRM Steering Committee or the Incentive Compensation Risk Committee⁴²³), Ms. Russ Anderson testified that the Committee was led by “the incentive comp HR personnel, which changed over time.”⁴²⁴

Through leading questioning by her Counsel during direct examination, Ms. Russ Anderson testified that she provided credible challenge to ensure that risks related to the businesses’ incentive compensation plan were balanced.⁴²⁵ She offered no documentary evidence to support this assertion, and admitted that she never had a one-on-one conversation with Ms. Tolstedt indicating a need to modify sales goals in the Community Bank because the sale goals were causing employees to engage in sales practices misconduct.⁴²⁶ She further admitted she never told Mr. Loughlin that the incentive compensation plans in the Community Bank did not adequately balance risk and reward.⁴²⁷

Testimony given by a witness during direct examination generally should not be based on leading questions. The test of a "leading question" is whether it suggests the answer desired by the examiner.⁴²⁸ The examiner in this case was Attorney Douglas Kelley, Ms. Russ Anderson’s Julian’s trial counsel. The essential test of a leading question is whether it so suggests to the witness the specific tenor of the reply desired by counsel that such a reply is likely to be given irrespective of an actual memory; the evil to be avoided is that of supplying a false memory for the witness.⁴²⁹

There are three possible consequences of the leading question: (1) it can be very helpful in expediting the trial on matters that are indisputably preliminary or uncontested, or for refreshing memory or facilitating clear testimony from witnesses with language limitations; (2) it can amount to a minor and harmless violation of the prohibition against leading in that the answers elicited are not dispositive or otherwise critical; or (3) it can be unfair in that it supplies

⁴²² *Id.* at 9279.

⁴²³ *Id.* at 9275.

⁴²⁴ *Id.* at 9279.

⁴²⁵ *Id.*

⁴²⁶ *Id.* at 9628.

⁴²⁷ *Id.*

⁴²⁸ *U.S. v. Hansen*, 256 F. Supp. 2d 65 (D. Mass. 2003), *aff'd*, 434 F.3d 92, 69 Fed. R. Evid. Serv. 262 (1st Cir. 2006).

⁴²⁹ *U. S. v. O'Brien*, 618 F.2d 1234, 5 Fed. R. Evid. Serv. 1236 (7th Cir. 1980).

the witness with dispositive or otherwise critical answers, and usurps the elements of credibility the jury should be entitled to assess.⁴³⁰

Given that the leading question here would have the witness assume she understood what “credible challenge” meant in this context and could recall instances where she engaged in such challenge under conditions relevant to the charges against Ms. Russ Anderson. Mr. Kelley’s question supplied Ms. Russ Anderson with a dispositive and otherwise critical answer, and usurped the elements of credibility. There is little evidentiary substance to be gained by this form of questioning, yet it is a form repeatedly used, particularly with respect to the testimony of Ms. Russ Anderson by Mr. Kelley.

Ms. Russ Anderson’s failure to speak directly with Ms. Tolstedt indicating a need to modify sales goals in the Community Bank and her failure to tell Mr. Loughlin that the incentive compensation plans in the Community Bank did not adequately balance risk and reward constituted unsafe or unsound banking practice and a breach of the fiduciary duties Ms. Russ Anderson owed to the Bank.

Ms. Russ Anderson testified that as of 2013, she did not believe that sales goals in the Community Bank should be eliminated, and that the same was true in 2014; but that in 2015 “we were doing research as to whether or not it would make sense to start a pilot on . . . reducing or doing away sales goals”.⁴³¹ Ms. Russ Anderson testified, however, that she did not have an opinion on doing away sales goals in either 2015 or 2016, and as a result never advocated for the elimination of sales goals.⁴³² **This conduct constituted unsafe or unsound banking practice and a breach of the fiduciary duties Ms. Russ Anderson owed to the Bank.**

Ms. Russ Anderson testified that she considered that as the Group Risk Officer her responsibilities under the Bank’s Incentive Compensation Risk Management policy to be important.⁴³³ She denied, however, having the responsibility as GRO to advocate for wholesale or fundamental changes to the Community Bank’s business model.⁴³⁴ **Acting in furtherance of this opinion under the conditions that were present during the relevant period constituted unsafe or unsound banking practice and a breach of the fiduciary duties Ms. Russ Anderson owed to the Bank.**

Ms. Russ Anderson testified that, based on conversations she had with regional executives, Tyson Pyles, and Michael Raphaelson, she believed that sales goals should be

⁴³⁰ A Minnesota CLE Deskbook, Judge Gordon Shumaker (Ret.) Rulings on Evidence An Evidentiary Manual for Minnesota Trial Judges and Judicial Officers (and Attorneys!) 2013 last accessed on November 16, 2022 at <https://blogpendleton.files.wordpress.com/2020/04/schmaker-on-evidence.pdf>

⁴³¹ Tr. (Russ Anderson) at 9622.

⁴³² *Id.* at 9623-24.

⁴³³ *Id.* at 9625.

⁴³⁴ *Id.* at 9641-42.

lowered in 2013.⁴³⁵ She testified that she did not know if the concerns raised by Mr. Pyles or Mr. Raphaelson were legitimate or not, but “that the leadership team was looking for a new path, but they didn’t know how to get there.”⁴³⁶ She testified that she thought in 2013 that sales goals should be lowered – not because the goals were causing employees to engage in sales practices misconduct, but because employees “were not able to meet their sales goals.”⁴³⁷

Ms. Russ Anderson testified that it was incumbent upon her to ensure that the modifications to the sales goals were sufficient to address the sales practices misconduct problem in the Community Bank.⁴³⁸ Ms. Russ Anderson admitted, however, that she never told Mr. Loughlin that the incentive compensation plans in the Community Bank consisted of unreasonable goals, adding that this was because “I did not believe that to be true.”⁴³⁹ She testified that at no time from 2013 to 2016 did she believe that the sales goals in the Community Bank needed to be significantly reduced, and as a result, never advocated for significant reductions to the sales goals.⁴⁴⁰ **Acting in furtherance of this opinion under the conditions that were present during the relevant period constituted unsafe or unsound banking practice and a breach of the fiduciary duties Ms. Russ Anderson owed to the Bank.**

Ms. Russ Anderson acknowledged that as Group Risk Officer she would review for approval the Regional Bank’s incentive compensation plans.⁴⁴¹ Ms. Russ Anderson identified a May 12, 2014 email chain among Ms. Tolstedt, Hope Hardison, Tim Sloan and John Shrewsbury describing “from a second line of defense and appropriate governance perspective” adjustments being made to the “sales plan and banker goals for the first six month[s],” adjusting “solutions plans down 3.7% on a full year but adjusted only for Q1 and Q2”, leaving unchanged the incentive goals for tellers, service managers, or RBPBs “as performance in plan has remained very strong.”⁴⁴² The email chain includes the statement that the plan changes had been reviewed and approved by Community Bank Compliance/Risk.⁴⁴³

⁴³⁵ *Id.* at 9626.

⁴³⁶ *Id.* at 9640; OCC Ex. 1215U. Similar concerns were presented in an undated memo regarding “2014 plan thoughts” by Robert W. Myers, who addressed debit cards, stating, “We need to sell 1.19 consumer debit cards for every CCDA in 2014. . . . We would need to open about 500,000 debit cards from our existing portfolio of DDAs yet we don’t have that many HHs in West Coast without a debit card.” OCC Ex. 1460. The memo has a handwritten notation that Lisa Stevens shared this memo with Ms. Russ Anderson on October 9, 2013, but Ms. Russ Anderson testified she had no recollection of either a discussion with Ms. Stevens or receipt of the memo. Tr. (Russ Anderson) at 9644-49.

⁴³⁷ Tr. (Russ Anderson) at 9627.

⁴³⁸ *Id.* at 9641-42.

⁴³⁹ *Id.* at 9628

⁴⁴⁰ *Id.* at 9629.

⁴⁴¹ *Id.* at 9633; OCC Ex. 1663.

⁴⁴² R. Ex. 17863 at 1.

⁴⁴³ *Id.* at 2.

Ms. Russ Anderson's Interaction with the OCC's Examiners

Ms. Russ Anderson testified that in 2002 John Stumpf, who was then head of Wells Fargo's Community Bank, asked her to be his credit officer for the Community Bank.⁴⁴⁴ She testified:

One of the primary objectives he wanted me to work on was to rebuild the relationship with the OCC. There was a fissure between the OCC credit examiners and Community Banking. And so he asked me if I would work on that relationship, because obviously it was a very important one. And so I spent about a year and a half on that and was successful in rebuilding the trust between the OCC and Wells Fargo.⁴⁴⁵

Ms. Russ Anderson testified that as Group Risk Officer for Community Banking she "had the heightened expectations work with the OCC, which really consumed a lot of our activities as a SIFI [systemically important financial institution] now. There were just a lot more things that needed reporting."⁴⁴⁶ She noted that when she referred to heightened expectations, she was referring to the Dodd-Frank legislation that "came out of the financial crisis, the big impact on Community Bank had to do with the transfer fees through the debit cards."⁴⁴⁷

Elaborating, she testified:

At the time of the financial crisis, the Federal Reserve designated certain financial institutions as systemically important financial institutions, so that if they failed, it would significantly harm the economy of the United States of America. And so Wells Fargo, with the integration of Wachovia, became a systemically important financial institution. So there was a lot more reporting that went along with that around risk management, risk appetite, you know, what kind of appetite for these risks did you have. And those all started at the group risk officer level with our business groups and then rolled up through to Mike Loughlin and the Board for reporting, and to the regulators, obviously.⁴⁴⁸

Ms. Russ Anderson testified that during the relevant period she would meet with the Examiner-in-Charge and the senior OCC staff once a month, namely with OCC Examiners Chris

⁴⁴⁴ *Id.* at 9263.

⁴⁴⁵ *Id.* at 9263-64.

⁴⁴⁶ *Id.* at 9270.

⁴⁴⁷ *Id.* at 9271.

⁴⁴⁸ *Id.* at 9272.

Moses, Jennifer Crosthwaite, Scott Wilson, [Dianne]⁴⁴⁹ Sirek, and “whoever the EIC was”.⁴⁵⁰ She testified that during these meetings she would reach out and ask “for a list of items that they wished to speak about, and then I would have two or three on my agenda of things that were going on in my group and . . . what new activities were we doing, what findings we might be having in . . . really any areas.”⁴⁵¹

Ms. Russ Anderson testified that she met with OCC examiners monthly from January 2013 to 2015, and then “not quite as often” in 2016, adding that some meetings included “the CFPB and the Fed”.⁴⁵² During cross-examination, Ms. Russ Anderson agreed that she was always in a position to answer questions and could provide information in advance of and during her meetings with the OCC (unless they had a question during a meeting “and I had to go back and get information for them”).⁴⁵³ When asked if she had ample opportunity to inform OCC examiners about information known to her related to sales practices misconduct in the Community Bank, Ms. Russ Anderson responded, “[i]f it was material, yes.”⁴⁵⁴ She agreed that she was obligated to be both truthful and transparent with the OCC, and that she could not provide misleading information to the OCC.⁴⁵⁵

Ms. Russ Anderson testified that in addition, “Carrie Tolstedt and I met with the senior folks once a quarter where Carrie would talk about financials and other activities that were going on in the Community Bank plus whatever they would bring to our discussions.”⁴⁵⁶ She denied, however, receiving any feedback during the relevant period from the OCC regarding sales practices misconduct during these meetings.⁴⁵⁷

Ms. Russ Anderson acknowledged that if throughout the relevant period she failed to provide transparent information to the OCC about sales practices misconduct in the Community Bank, or failed to provide complete information about the extent of sales pressure in the regional branches or the adequacy of controls to prevent or detect such misconduct, that would hinder the OCC’s visibility into the sales practices misconduct problem and hinder its ability to accurately determine whether the Bank was complying with laws and regulations.⁴⁵⁸

⁴⁴⁹ Via “22-03-07 Respondents’ Amended Revised Errata Day 9-38” on page 75. Ordered by Second Supplemental Order.

⁴⁵⁰ Tr. (Russ Anderson) at 9276.

⁴⁵¹ *Id.* at 9276-77.

⁴⁵² *Id.* at 9772-73.

⁴⁵³ *Id.* at 9773.

⁴⁵⁴ *Id.*

⁴⁵⁵ *Id.* at 9773-74.

⁴⁵⁶ *Id.* at 9277.

⁴⁵⁷ *Id.*

⁴⁵⁸ *Id.* at 9775-78.

When asked during cross-examination whether failing to provide complete information to the OCC about the volume of terminations for sales practice misconduct would hinder the OCC's visibility into the sales practices misconduct problem and hinder its ability to accurately determine whether the Bank was complying with laws and regulations, Ms. Russ Anderson responded, "I believe the OCC knew that information, so I don't know . . . that I could have hindered it since they knew the information."⁴⁵⁹ **Acting in furtherance of this opinion under the conditions that were present during the relevant period constituted unsafe or unsound banking practice and a breach of the fiduciary duties Ms. Russ Anderson owed to the Bank.**

Ms. Russ Anderson denied trying to keep information away from the OCC.⁴⁶⁰ During cross-examination Ms. Russ Anderson was presented with an email chain between herself and Jannien Weiner from November 2013.⁴⁶¹ In the initial exchange, the OCC through Tai Nguyen presented to Ms. Weiner a "[l]ist of Community Bank UDAP items for follow up during 2014."⁴⁶² Ms. Weiner then forwarded the list to Ms. Russ Anderson and Jay Christoff, reporting that this "looks like the list they plan on monitoring/following in 2014", adding that "Tai asked for a quarterly call to address these UDAP [unfair or deceptive acts and practices] items."⁴⁶³

There were fourteen bulleted items in Mr. Nguyen's list.⁴⁶⁴ Mr. Nguyen stated that during "our Community Bank UDAP examination this year, we obtained a high-level understanding of key components of Community Banking UDAP compliance program" and in the quarterly updates in 2014, sought "to know the level of coordination between Community Bank and the Office of Fair Lending and Responsible Banking of Regulatory Risk Management and any enhancements to the program to allow us to assess the effectiveness of the program."⁴⁶⁵

Two of the bulleted items were "Community Bank cross sell program" and "Retail Banking sales program".⁴⁶⁶ An email exchange followed determining when a meeting could be scheduled and who should participate, with Ms. Weiner writing, "I'd like to run through the list with the 'owners' before the meeting so you feel 'prepped'".⁴⁶⁷ In response later on November 20, 2013, Ms. Russ Anderson wrote to Ms. Weiner and Mr. Christoff, "Ok – but I would like to

⁴⁵⁹ *Id.* at 9778.

⁴⁶⁰ *Id.* at 9779.

⁴⁶¹ *Id.* at 9780; OCC Ex. 93.

⁴⁶² OCC Ex. 93 at 5.

⁴⁶³ *Id.* at 4.

⁴⁶⁴ *Id.*

⁴⁶⁵ *Id.*

⁴⁶⁶ *Id.*

⁴⁶⁷ *Id.* at 1.

talk with you two first, as I am not on board with some of his requests/terminology – like the cross sell one . . . and the ‘sales program’ one.”⁴⁶⁸

Ms. Russ Anderson denied this exchange showed that she was concerned with the OCC’s requests specific to the cross-sell program and the sales program.⁴⁶⁹ She testified that what she said was “I was not on board with it, because cross-sell meant I needed to bring in other partners. My team could not talk about that. And the same with the sales program. I would have needed to bring in other partners outside of my risk group to talk about that.”⁴⁷⁰

Ms. Russ Anderson’s Relationship with WF&C’s Legal Department – Applying the Attorney-Client Privilege

Throughout the administrative hearing, questions arose regarding the need to restrict public access to communication between Community Banking leaders, including Ms. Russ Anderson, and the Wells Fargo & Company Legal Department.⁴⁷¹ One such question was presented during Ms. Russ Anderson’s testimony.⁴⁷²

During her testimony, Ms. Russ Anderson identified an email chain that began on November 6, 2013 with a message sent by Christine Meuers, an attorney with WF&C’s Legal Department, to Michael Bacon, head of Corporate Security, with a copy to Laura Hurley, Hope Hardison (for HR), and Deanna Lindquist and David Otsuka (both of Legal).⁴⁷³

In her testimony, Ms. Russ Anderson identified the email chain in connection with a question presented to her by her Counsel during direct examination.⁴⁷⁴ The question was whether anyone outside of SSCOT reviewed the thresholds that were put in place during 2013 to 2016, and Ms. Russ Anderson responded that the thresholds were reviewed by the Legal Department as “a stakeholder in terms of setting the thresholds”, along with HR, the Deposit Product Groups, and Corporate Investigations, and supported that testimony by presenting the email as evidence.⁴⁷⁵

During the hearing on January 3, 2022, a representative from WF&C, Patrick Kelley, asserted two things regarding the email chain: first, that the Bank “does consider this privileged,”

⁴⁶⁸ OCC Ex. 93 at 1.

⁴⁶⁹ Tr. (Russ Anderson) at 9781.

⁴⁷⁰ *Id.* at 9781-82.

⁴⁷¹ See, e.g., application by Patrick Kelley on behalf of Wells Fargo & Company to close to the public the evidentiary hearing conducted on January 3, 2022 upon Respondent Russ Anderson’s discussion of OCC Exhibit 1362.

⁴⁷² Tr. (Russ Anderson) at 9306-07.

⁴⁷³ OCC Ex. 1362 at 1-2.

⁴⁷⁴ Tr. (Russ Anderson) at 9306-07.

⁴⁷⁵ *Id.* at 9308.

and sought to confirm that the document would not be shown publicly during the hearing.⁴⁷⁶ After this was confirmed to be the case, Mr. Kelley requested, “that the session be closed for testimony about the privileged document.”⁴⁷⁷ That request was denied.⁴⁷⁸

The reason for denying Mr. Kelley’s request to close the hearing based on the Bank’s claim of attorney/client privilege is that the email exchange between Ms. Meuers and Mr. Bacon did not contain information protected by the attorney/client privilege (ACP).

Not all communication between a corporate attorney like Ms. Meuers and a corporate employee like Mr. Bacon qualifies for protection under the ACP. Broadly, the attorney-client privilege protects “confidential communication[s] between attorney and client . . . made for the purpose of obtaining or providing legal advice.”⁴⁷⁹

In so doing, it “covers both (i) those communications in which an attorney gives legal advice; and (ii) those communications in which the client informs the attorney of facts that the attorney needs to understand the problem and provide legal advice.”⁴⁸⁰

An example illustrates the point: In an exchange of email messages between Ms. Russ Anderson’s subordinates working at the Community Bank’s Sales and Service Conduct Oversight Team [SSCOT], a banker wrote directly to CEO John Stumpf in 2016, raising concerns about “unreasonable performance expectations.”⁴⁸¹ The “Agency Referred Complaint,” or ARC, was routed first to Wells Fargo Virtual Channels to Corporate Employee Relations, was sent from there to Corporate HR – Enterprise Employee Relations, and went from there to Community Banking Sales and Service Conduct Oversight.⁴⁸²

Throughout the chain, there is no suggestion that the contents were subject to the attorney-client privilege, and nothing in the text suggested the ACP applied.⁴⁸³ At the final stage in the chain, Rebecca Rawson for SSCOT forwarded the conclusions to Ms. Russ Anderson, and to David Otsuka, “copying you as to place under ACP.”⁴⁸⁴ Nothing in the exchange suggested Ms. Rawson was responding to or seeking legal advice.

⁴⁷⁶ Tr. (Russ Anderson) at 9307.

⁴⁷⁷ *Id.*

⁴⁷⁸ *Id.*

⁴⁷⁹ *FTC v. Boehringer Ingelheim Pharm., Inc.*, 892 F.3d 1264, 1267 (D.C. Cir. 2018) (“*Boehringer II*”).

⁴⁸⁰ *Id.*

⁴⁸¹ OCC Ex. 111 at 6.

⁴⁸² *Id.* at 2-7.

⁴⁸³ *Id.* at 1-7.

⁴⁸⁴ *Id.* at 1.

The purpose of the privilege is “to encourage full and frank communication between attorneys and their clients and thereby promote broader public interests in the observance of law and the administration of justice.”⁴⁸⁵

In the corporate context such as with the Bank, “[t]he attorney-client privilege covers . . . communications between an attorney and . . . any corporate employee acting at the direction of corporate superiors in order to secure legal advice for the corporation.”⁴⁸⁶

The “attorney” for this purpose may be either in-house counsel or outside counsel.⁴⁸⁷ Similarly, with respect to the federal government, “the ‘client’ may be the agency and the attorney may be an agency lawyer.”⁴⁸⁸ In either case, “the privilege protects only those disclosures necessary to obtain [or provide] informed legal advice which might not have been made absent the privilege.”⁴⁸⁹

Not all substantive communications with attorneys are protected by the attorney-client privilege.⁴⁹⁰ “[C]onsultation with one admitted to the bar but not in that other person’s role as a lawyer is not protected.”⁴⁹¹ An attorney’s “advice on political, strategic, or policy issues,” for example, “would not be shielded from disclosure.”⁴⁹² “[O]rdinary business communications between non-attorneys with an attorney or attorneys as additional recipients” are likewise not privileged.⁴⁹³

“Parties, including corporations, may not shield otherwise discoverable documents from disclosure by including an attorney on a distribution list.”⁴⁹⁴ Furthermore, if a communication with an attorney has both a business purpose and a legal purpose, the court must “determine

⁴⁸⁵ *Swidler & Berlin v. United States*, 524 U.S. 399, 403 (1998) (internal quotation marks and citation omitted).

⁴⁸⁶ *EEOC v. George Wash. Univ.*, 502 F. Supp. 3d 62, 020 WL 6504573, at *79 (D.D.C. Nov. 5, 2020) (internal quotation marks and citation omitted).

⁴⁸⁷ *Boehringer II*, 892 F.3d at 1267.

⁴⁸⁸ *Tax Analysts v. IRS*, 117 F.3d 607, 618 (D.C. Cir. 1997).

⁴⁸⁹ *Coastal States Gas Corp. v. Dep’t of Energy*, 617 F.2d 854, 862 (D.C. Cir. 1980) (quoting *Fisher v. United States*, 425 U.S. 391, 403 (1976)).

⁴⁹⁰ See *EEOC v. BDO USA, LLP*, 876 F.3d 690, 696 (5th Cir. 2017) (“There is no presumption that a company’s communications with counsel are privileged.”).

⁴⁹¹ *Center for Public Integrity v. Dep’t of Defense*, 486 F. Supp. 3d 317, 341 (D.D.C. 2020) (quoting *In re Lindsey*, 148 F.3d 1100, 1106 (D.C. Cir. 1998) (per curiam)).

⁴⁹² *Id.* (quoting *In re Lindsey*, 148 F.3d at 1106). See, e.g., Tr. (Russ Anderson) at 9312-14 and R. Ex. 4840 (regarding discussion of termination thresholds).

⁴⁹³ *United States ex. rel. Barko v. Halliburton Co.*, 74 F. Supp. 3d 183, 189 (D.D.C. 2014) (no protection where “attorneys were merely incidental recipients of communications made for ordinary business purposes”).

⁴⁹⁴ *Id.* at 188.

whether obtaining or providing legal advice was *one of* the significant purposes of the attorney-client communication.”⁴⁹⁵ If not, the communication is not privileged.⁴⁹⁶

As noted above, Ms. Russ Anderson presented the email chain in support of her testimony that she was not alone in considering the thresholds that would be appropriate in identifying “egregious potential simulated funding activity.”⁴⁹⁷ The initial email in this chain was sent by Ms. Meuers to Mr. Bacon (of Corporate Investigations) with copies to Laura Hurley and Hope Hardison.⁴⁹⁸

Ms. Meuers begins by reporting to Mr. Bacon that she met with “Pat, Hope, and Laura . . . to discuss the LA/OC situation and how these issues can be managed more centrally going forward given the regulatory and reputation risks.”⁴⁹⁹ Nothing in this suggests providing legal advice was a purpose of the communication. Any ambiguity about the purpose of the communication was eliminated when it became clear that Ms. Meuers was offering advice on political, strategic, or policy issues rather than offering or responding to a request for legal advice.

She wrote:

You currently have the sales integrity investigation pending throughout the LA/OC (Phase 2), now expanded to the rest of the footprint for egregious potential simulated funding activity. These are all part of the business process that is driven by Claudia’s Sales Quality team and referred to your CI team for investigation. The criteria Claudia’s team has been using (*e.g.*, egregious filter for simulated funding) should continue to be used and the criteria or thresholds should not change – I understand that you all agreed to this yesterday morning in your call.

A “core team” of you, Chris G., David O., Crystal, Lupe, Debra, Glen, Tanya and Claudia will be meeting weekly to monitor investigative process, discuss findings and communicate to appropriate stakeholders. We would like this core team to also cover and review any sales integrity issues that may arise outside of Claudia’s team’s process and are being handled by CI. For example, we are aware that unrelated investigations have surfaced in IA, NE and NJ.

⁴⁹⁵ *Boehringer II*, 892 F.3d at 1268 (internal quotation marks and citation omitted) (emphasis in original).

⁴⁹⁶ See Order Regarding Respondents’ Motions for Orders to Seal Submissions Filed In Opposition To Enforcement Counsel’s Motions for Summary Disposition, issued May 10, 2021, at 14-16 and citations to authorities therein.

⁴⁹⁷ OCC Ex. 1362 at 1.

⁴⁹⁸ *Id.*

⁴⁹⁹ *Id.*

As you work through these cases, in order to ensure appropriate escalation and transparency, Pat and Hope have asked that Laura Hurley and I be looped in for final approval as major milestones are met (e.g., any recommendations to terminate **more than one TM in a store**, to expand investigation scope, to change criteria or the like). This way we will be able to address press impact and other enterprise implications.

Give me or Hope a call if you'd like to discuss further. Thanks, Christine.⁵⁰⁰

The second email link in this chain redoubled the showing that the exchange was not seeking or providing legal advice, where Ms. Meuers wrote to Mr. Bacon, "Michael, due to some confusion as to the minimum thresholds here, please see correction in e-mail below. We will want the matter escalated if there is a recommendation to terminate more than one TM in a store."⁵⁰¹

After examining the email exchange between Ms. Meuers and Mr. Bacon, I determined that through this exchange Ms. Meuers provided advice on political, strategic, or policy issues, and that obtaining or providing legal advice was not one of the significant purposes of the exchange. That determination was the basis for denying the Bank's request to close the session to the public.

Publication of the LA Times Articles in 2013

In an email chain that began on October 3 and ended on October 4, 2013, Mr. Bacon alerted Ms. Russ Anderson and others that the L.A. Times had published an article (providing a copy of the same, dated October 3, 2013 by E. Scott Reckard) about Wells Fargo's termination of the employment of about 30 branch employees in the L.A. area "who tried to meet sales goals by opening accounts that were never used."⁵⁰²

The October 3, 2013 article quoted a Bank representative, Gary Kishner, as stating "We found a breakdown in a small number of our team members" who were "trying to take shortcuts to make sales goals".⁵⁰³ "One of the fired employees said that in some cases signatures were forged and customers had accounts opened in their names without their knowledge."⁵⁰⁴ "The employee, who spoke to The Times on condition of anonymity pending a meeting with an attorney, said the pressure to meet sales goals was intense at Wells Fargo. At times, managers required workers to stay late calling their friends and family members if they failed to open enough accounts during the day."⁵⁰⁵

⁵⁰⁰ OCC Ex. 1362 at 1-2, emphasis *sic*.

⁵⁰¹ *Id.* at 1.

⁵⁰² R. Ex. 330 at 2.

⁵⁰³ *Id.* at 3.

⁵⁰⁴ *Id.*

⁵⁰⁵ *Id.*

In her response to Mr. Bacon's initial email, Respondent Russ Anderson asked Mr. Bacon to "give me some context. I wasn't aware of this situation."⁵⁰⁶ In responding to Ms. Russ Anderson, Mr. Bacon wrote:

I am shocked that this is already out. I thought terms would occur today or next week. This is an interesting one – it started with RP running some reports with SQ and identifying they had a regional issue with simulated funding then it expanded into more. I believe they detected that TMs were falsifying the customers [*sic*] preferences, primarily putting in false phone numbers do [*sic*] they couldn't be contacted by [G]allop. I will get you more details shortly.⁵⁰⁷

In his forwarding of the email chain on October 4, 2013, Mr. Bacon wrote, "FYI only – big deal and very interesting article at bottom of chain."⁵⁰⁸

Within the email chain, Mr. Bacon wrote to Justin Richards, with copies to Patrick Russ and Bart Deese, writing that a Team Member "went to media during the investigation."⁵⁰⁹ Mr. Bacon advised Mr. Richards to "keep this on the radar, since what we found in LA may be found elsewhere, so at some point we will be asking SQ to review other regions."⁵¹⁰ As Mr. Bacon noted, nothing about the article established that the issues presented by the reporting were limited to the Los Angeles or Orange County, California branches.

Ms. Russ Anderson testified that she learned about the October 3, 2013 article when it came out.⁵¹¹ She described the L.A. Times articles as "terrible for the Bank".⁵¹² She testified that the articles "outlined practices that were contrary to the Values and the Vision of the Bank, that the core of Wells Fargo was the customer. Everything that Wells Fargo did was for the customer, and those articles were completely contrary to that vision and that value that I had been part of for more than 30 years."⁵¹³

Asked about her reaction to first article, she responded:

Well, first I was surprised because I didn't know that the terminations had happened. Corporate Investigations and HR hadn't circled back with my team or anyone. But, secondly, I was very surprised at the allegations in the article

⁵⁰⁶ R. Ex. 330 at 2.

⁵⁰⁷ *Id.* at 1.

⁵⁰⁸ *Id.*

⁵⁰⁹ *Id.*

⁵¹⁰ *Id.*

⁵¹¹ Tr. (Russ Anderson) at 9253.

⁵¹² *Id.* at 9257.

⁵¹³ *Id.* at 9257-58.

about undue pressure from management in the local branches on some of the team members.⁵¹⁴

Asked what influence the articles had on her plans to prevent and detect sales practices misconduct, Ms. Russ Anderson stated she “wanted to double down on it”, wanted to “move faster and expand across the footprint with the pilot so that we could see if this was something that was only in the L.A. area”, and if “it was that predominant across the footprint, what did we need to do to figure out why people were doing it . . . what was causing bankers to have that behavior.”⁵¹⁵ Not included in her response was any indication that she would be providing credible challenge to whatever risk management controls were in place in the Community Bank regarding sales practices misconduct.

The October 9, 2013 Significant Investigations Notification

The record includes a copy of a Significant Investigation Notification (SIN) dated October 9, 2013, from Corporate Investigations to Ms. Russ Anderson and others.⁵¹⁶ Mr. Julian described these as a formal notification that WF&C’s Corporate Investigations unit would use “to notify internally certain specific management of potential issues that they were investigating or had investigated.”⁵¹⁷ He identified the SIN dated October 9, 2013 regarding a September 13, 2013 receipt by CI of an email referral from Sales Quality regarding allegations of “25 Team Members from various AU’s located in Southern CA for possible Simulated Funding” and noting that further research “was conducted by Sales Quality that was requested by Regional President John Sotoodeh which identified 177 bankers for possible Simulated Funding at various AUs mostly in the San Fernando Valley.”⁵¹⁸

The report included the allegations that “Simulated Funding falsified entries were made to meet individual and store sales goals” and “[p]hone number changes were made to avoid a negative rating from Gallup poll surveys.”⁵¹⁹ Upon conducting 35 interviews the report found that “most confessed” to Simulated Funding and knew “their actions were against WFB policy” and occurred “to meet quarterly sales goals.”⁵²⁰

The report noted:

A high number on phone number and preference changes were also identified by Sales Quality and additional research was requested by the LOB. Initial research discovered 9 stores that had over 100 telephone

⁵¹⁴ *Id.* at 9253-54.

⁵¹⁵ *Id.* at 9254.

⁵¹⁶ R. Ex. 866.

⁵¹⁷ Tr. (Julian) at 6259.

⁵¹⁸ R. Ex. 866 at 1.

⁵¹⁹ *Id.* at 2.

⁵²⁰ *Id.* at 2.

number changes for May-July. One store was identified to have over 1,000 phone number changes.⁵²¹

Further, the report stated the team member were “[f]ollowing manager and/or prior manager’s guidance”, that they “learned from observing/talking to other team members”, that they “had customer’s [*sic*] fund accounts with a \$50 deposit and then withdraw from atm”, and that they attempted to “contact customer with unfunded accounts but would resort to auto transfers w/o customer consent to meet goals timely”.⁵²²

Investigators found that most of the interviewees confessed to changing phone numbers and preference changes to avoid negative surveys, and that they had “[d]eveloped a signal to alert management on a possible negative customer experience”, and “[p]osted stickies on monitors with customer’s name/account number [and at the] [e]nd of [the] day management would collect stickies and change digits on phone number,” with an average of 15-40 per day, and with new tellers being “coached to explain, if asked” (noting there was a “large population of agricultural workers that change phone numbers often”).⁵²³

Findings reported in the SIN included that “Management instructed them that it was acceptable”, “[t]here was a big emphasis on obtaining perfect scores”, “one bad score out of the five categories equaled a bad survey and he felt he would lose his job”, “[n]ot obtaining perfect scores would mess with everyone’s bonuses and recognition”, “co-workers would know if someone received a bad score and would say things like you’re messing with my money”, members would “chang[e] the numbers trying to protect the branch”, and “[b]ad surveys equal a manager talking to you and sending you to training”.⁵²⁴ One team member reported that he knew the conduct was wrong “but did not report it because he knew it would not be confidential.”⁵²⁵ Elaborating, the team member “explained that he reported policy issues to MSC who informed the branch that he reported issues [and] he felt betrayed and his trust was taken for granted.”⁵²⁶ The investigators emphasized, “we are now seeing a **pattern of denials despite the significant facts**”.⁵²⁷

The investigation identified two store managers and one district manager as being implicated by the team members who were interviewed.⁵²⁸

⁵²¹ *Id.* at 2.

⁵²² *Id.* at 3.

⁵²³ *Id.*

⁵²⁴ *Id.* at 4.

⁵²⁵ *Id.* at 5.

⁵²⁶ *Id.*

⁵²⁷ *Id.* (emphasis *sic*).

⁵²⁸ *Id.* at 4.

The record includes a copy of an October 9, 2013 email chain among Ken Zimmerman, Carrie Tolstedt, and Claudia Russ Anderson, stating that during “our normal brainstorming about top/emerging risks” Chief Auditor “Julian raised the LA/OC issue and concerns about sales practices.”⁵²⁹ Ms. Tolstedt’s email response was brief: “Why in the world does someone not come to me directly. Really upsets me that they talk around me but do not come directly to me. It has to stop. Thanks, Ken.”⁵³⁰ But when Mr. Zimmerman responded by saying there was “nothing accusatory in the discussion” and explained that the “nature of the [ERMC] process is that folks are supposed to bring up things that we should keep an eye on . . . even if we don’t have all the facts,” Ms. Tolstedt was emphatic that “It should not go into a document as an emerging risk without the facts.”⁵³¹ The record here, however, established by preponderant evidence that by October 2013 sales practices misconduct by the Community Bank’s team members was emerging as a material risk to the Bank, and in some instances had established itself as a fully realized threat to the safety and soundness of the Bank.

The L.A. Times published a second article on December 21, 2013.⁵³² Through this article the reporter, E. Scott Reckard, presented the results of interviews he conducted with 28 former and seven current Wells Fargo employees “who worked at bank branches in nine states, including California.”⁵³³ Nothing about this reporting suggested the issues being reported were limited in geographic location to California.

The lede for the article was “Wells Fargo branch manager Rita Murillo came to dread the phone calls.”⁵³⁴ Mr. Reckard reported, “Regional bosses required hourly conferences on her Florida branch’s progress toward daily quotas for opening accounts and selling customers extras such as overdraft protection. Employees who lagged behind had to stay late and work weekends to meet goals, Murillo said.”⁵³⁵ “Then came the threats: Anyone falling short after two months would be fired.”⁵³⁶ Murillo reported that she resigned from her Wells Fargo branch in the Ft. Myers area in 2010, even though she had no other job and her husband wasn’t working at the time. The couple ended up losing their home. She told the Times: “It all seemed worth the chance and the risk, rather than to deal with the mental abuse. . . . Just thinking about it gives me palpitations and a stomachache.”⁵³⁷

⁵²⁹ R. Ex. 17865 at 2.

⁵³⁰ *Id.* at 1.

⁵³¹ *Id.*

⁵³² Tr. (Julian) at 6312, R. Ex. 5250.

⁵³³ R. Ex. 5250 at 1.

⁵³⁴ *Id.*

⁵³⁵ *Id.*

⁵³⁶ *Id.*

⁵³⁷ *Id.* at 3.

The reporter wrote:

Wells Fargo & Co. is the nation's leader in selling add-on services to its customers. The giant San Francisco bank brags in earnings reports of its prowess in 'cross-selling' financial products such as checking and savings accounts, credit cards, mortgages and wealth management. In addition to generating fees and profits, those services keep customers tied to the bank and less likely to jump to competitors.⁵³⁸

The Times investigation found that the "relentless pressure to sell has battered employee morale and led to ethical breaches, customer complaints and labor lawsuits".⁵³⁹ It found that to meet quotas, "employees have opened unneeded accounts for customers, ordered credit cards without customers' permission and forged client signatures on paperwork."⁵⁴⁰ A former business specialist said, "employees would open premium checking accounts for Latino immigrants, enabling them to send money across the border at no charge. Those accounts could be opened with just \$50, but customers were supposed to have at least \$25,000 on deposit within three months or pay a \$30 monthly charge."⁵⁴¹

One former business manager at a Canoga Park, California branch said, "managers there coached workers on how to inflate sales numbers."⁵⁴² He told the Times, "the manager would greet the staff each morning with a daily quota for products such as credit cards or direct-deposit accounts. To fail meant staying after hours, begging friends and family to sign up for services".⁵⁴³ He told the Times his manager "would say: 'I don't care how you do it – but do it, or else you're not going home.'"⁵⁴⁴ He said branch and district managers "told him to falsify the phone numbers of angry customers so they couldn't be reached for the bank's satisfaction surveys."⁵⁴⁵

In addition to opening duplicate accounts, workers "used a bank database to identify customers who had been pre-approved for credit cards – then ordered the plastic without asking them".⁵⁴⁶ One former branch manager who worked in the Pacific Northwest discovered that employees "had talked a homeless woman into opening six checking and savings accounts with

⁵³⁸ *Id.*.

⁵³⁹ *Id.*

⁵⁴⁰ *Id.*

⁵⁴¹ *Id.* at 4.

⁵⁴² *Id.* at 1.

⁵⁴³ *Id.* at 4.

⁵⁴⁴ *Id.*

⁵⁴⁵ *Id.*

⁵⁴⁶ *Id.* at 1.

fees totaling \$39 a month.”⁵⁴⁷ The manager told the Times “It’s all manipulation. We are taught exactly how to sell multiple accounts. . . . It sounds good, but in reality it doesn’t benefit most customers.”⁵⁴⁸

A branch manager with 14 years of service with Wells Fargo quit in February 2013, reporting, “she retired early because employees were expected to force ‘unneeded and unwanted’ products on customers to satisfy sales targets.”⁵⁴⁹ She is quoted as saying, “I could no longer do these unethical practices nor coach my team to do them either”.⁵⁵⁰

The article reported that the Bank “expects staffers to sell at least four financial products to 80% of their customers,” but “top Wells Fargo executives exhort employees to shoot for the ‘Great 8’ – an average of eight financial products per household.”⁵⁵¹ The former branch manager from the Pacific Northwest told the Times that “branch managers are expected to commit to 120% of the daily quotas,” and the results “were reviewed at day’s end on a conference call with managers from across the region.”⁵⁵² He told the Times, “If you do not make your goal, you are severely chastised and embarrassed in front of 60-plus managers in your area by the Community Banking president”.⁵⁵³

The article said that by some measures, Wells Fargo is “the nation’s biggest retail bank, with more than 6,300 offices and a market valuation of \$237 billion.”⁵⁵⁴ The article reported that the Bank’s branch employees “receive ethics training and are compensated mainly in salary, not bonuses,” but that “[t]ellers earn about 3% in incentive pay linked to sales and customer service, . . . while personal bankers typically derive about 15% to 20% of total earning from these payments.”⁵⁵⁵

The article quoted an independent bank consultant, Michael Moebis, stating that Wells Fargo “is a master at this, . . . No other bank can touch them.”⁵⁵⁶ The article reported the “pressure to meet sales goals starts with supervisors,” and that that branch managers in California “have filed five related lawsuits alleging that the bank failed to pay them overtime. The extra hours were spent laboring to meet sales targets”.⁵⁵⁷ Two other recently filed lawsuits

⁵⁴⁷ R. Ex. 5250 at 2.

⁵⁴⁸ *Id.*

⁵⁴⁹ *Id.* at 3.

⁵⁵⁰ *Id.*

⁵⁵¹ *Id.*

⁵⁵² *Id.*

⁵⁵³ *Id.*

⁵⁵⁴ *Id.*

⁵⁵⁵ *Id.* at 2.

⁵⁵⁶ *Id.* at 3.

⁵⁵⁷ *Id.* at 2.

alleged that Wells Fargo employees “opened accounts or credit lines for customers without their authorization”.⁵⁵⁸

One former customer filed suit on September 11, 2013 in Los Angeles County Superior Court alleging that three Wells Fargo employees “used his birth date and Social Security number to open accounts in his name and those of fictitious businesses. At least one employee forged his signature several times”.⁵⁵⁹ The customer alleged that the employees “put their own addresses on the accounts so he wouldn’t know about it. . . . It showed up on his credit report – that’s how he found out.”⁵⁶⁰

A former bank employee filed suit on October 3, 2013, alleging that she was wrongfully fired “after following her manager’s directions to open accounts in the names of family members.”⁵⁶¹

The article reported that Wells Fargo carefully tracks account openings and “lucrative add-ons.” The documents, dated from 2011 through October 2013, “include a 10-page report tracking sales of overdraft protection at more than 300 Southland branches from Ventura to Victorville; a spreadsheet of daily performance by personal bankers in 21 sales categories, and widely distributed emails urging laggard branches to boost sales and require employees to stay after hours for telemarketing sessions.”⁵⁶²

Mr. Julian testified that he read the December 2013 article and found it to be “[c]oncerning to the extent that, if true, you don’t want leadership – that type of pressure being placed on Team Members or that type of activity.”⁵⁶³ He added that it was concerning “to the extent that there were allegations being made that needed to be further investigated,” but that he believed those allegations were being investigated.⁵⁶⁴

Mr. Julian also noted that the Bank’s holding company issued a weekly “communications update” to members of the Board of Directors and its Operating Committee members – and that the update from December 23, 2013 included the following statement: “Los Angeles Times: The paper’s expected feature about the sales culture at our Community Bank stores ran on Sunday (12/22). We are prepared for any follow up media inquiries that could result, but as of that evening we have received no calls from reporters.”⁵⁶⁵

⁵⁵⁸ *Id.* at 2.

⁵⁵⁹ *Id.* at 4.

⁵⁶⁰ *Id.*

⁵⁶¹ *Id.*

⁵⁶² R. Ex. 5250 at 3.

⁵⁶³ Tr. (Julian) at 6312.

⁵⁶⁴ *Id.* at 6313.

⁵⁶⁵ *Id.* at 6314-15; R. Exs. 5242 and 5255.

Community Banking First Line of Defense – Case 5721, November 5, 2013

Ms. Russ Anderson identified an email exchange dated November 5, 2013 through which Quality Assurance Manager Monique Baxter-Larsen brought to the attention of Rebecca Rawson and Glen Najvar (both direct reports of Ms. Russ Anderson) Case 5721.⁵⁶⁶ Through this transmission, Ms. Baxter-Larsen forwarded “call notes” from Quality Assurance Analyst Erica Martel, reporting on a telephone call with [MK] and [LK].⁵⁶⁷

The polling analyst, Ms. Martel, reported:

I asked customer MK if she recalled speaking with banker [A] at the Coldwater Canyon location back in August in regards to possibly applying for a line of credit and she said “he offered it but I declined where are calling from again we have a huge file on this and I want your information.” I gave her my information and then asked can you share more on what happened and she said “you know I think we got caught up in that whole thing that hit the LA Times about bankers opening accounts, we have been in contact with the reporter who wrote the article and shared with him what happened to us, the reporter told us we aren’t the only customers of Wells Fargo who have reached out to him.”

She went on to explain that she never wanted a line of credit and declined it when it was offered[;] they had only gone into the bank to make a mortgage payment. [MK] also shared that the banker had put two applications in for her husband without his permission but both of them had declined. At this point she put her husband on the line and I asked for his full name and he stated that it was [LK]. He explained he had found out that they had applied two times for a line of credit for him and both times they declined. He said he had never given permission for either time. He said “this has been a mess[;] I had to put in 2 full days to get things straightened out with the credit bureaus and Wells Fargo has done nothing to help, when I called the branch manager he hung [up] on me.” He also shared that he wrote a letter to John Stumpf who wrote back to him that the branch manager would be reaching out to him but this never did happen.⁵⁶⁸

Upon receipt of Ms. Martel’s message, Ms. Baxter-Larson forwarded it to Ms. Rawson, who delivered it to Ms. Russ Anderson on November 5, 2013.⁵⁶⁹ Providing additional context,

⁵⁶⁶ Tr. (Russ Anderson) at 10074-75; OCC Ex. 282.

⁵⁶⁷ OCC Ex. 282 at 2.

⁵⁶⁸ *Id.*

⁵⁶⁹ *Id.* at 1-2.

Ms. Rawson wrote, “Due to the sensitive nature of what has been happening in LA, I thought you would want to be aware of this conversation.”⁵⁷⁰

Ms. Russ Anderson wrote in response, “Do we know if the customer has to sign documents?” to which Ms. Rawson responded, “The customer is not required to sign for personal lines of credit.”⁵⁷¹ In her response later that day, Ms. Russ Anderson wrote, “Thanks. Seems like a bad practice.”⁵⁷²

Presented with this exchange during cross-examination, Ms. Russ Anderson confirmed that she believed not requiring signatures was a “bad practice” – not only for personal lines of credit but also for debit cards, checking accounts, and savings accounts: “I was focusing on first lines and loans, credit cards, but debit cards came as a deposit product piece.”⁵⁷³ As such, Ms. Russ Anderson agreed that it was concerning when a customer’s signature is not obtained for those products.⁵⁷⁴

Notwithstanding this testimony, Ms. Russ Anderson effectively maintained a policy of *not* requiring signatures on these products. Ms. Russ Anderson identified an email exchange from June 19 to 21, 2015, among Lisa Sheffield (Enterprise Risk Manager), herself, Jay Christoff, Rebecca Rawson, Paula Herzberg, Loretta Sperle, Camie Keilen, Justin Richards, Alana Sears, Keb Byers, and Kris Klos in which the subject was “Follow-up items from the OCC meeting on Complaints, Ethics Line Referrals and the SSCOT process on 6/19[2015]”.⁵⁷⁵

The initial message included a list of times “from today’s discussion” and reported that the OCC would like to whether there were signatures on file for certain named cases, and reported that the “OCC had a general policy and procedure question around requirements for signatures and in cases where they were not obtained, are there controls or checks and balances to confirm whether a signature was there or not”.⁵⁷⁶

Mr. Christoff responded to Ms. Russ Anderson and others, reporting that OCC Examiner Moses “at the very end of the call wanted to ensure what our procedure was on Credit Card signatures and had admittedly not read the response you provided yesterday.”⁵⁷⁷ He wrote that he “did not want to step into that without the experts on the call. I think there [*sic*] question is, what

⁵⁷⁰ OCC Ex. 282 at 1.

⁵⁷¹ *Id.*

⁵⁷² *Id.*

⁵⁷³ Tr. (Russ Anderson) at 10076-77.

⁵⁷⁴ *Id.* at 10078.

⁵⁷⁵ *Id.* at 10080; OCC Ex. 883 at 3.

⁵⁷⁶ OCC Ex. 883 at 3.

⁵⁷⁷ *Id.* at 2.

do we do when signatures are required and not in file when a customer complains about unauthorized opening.”⁵⁷⁸

Ms. Russ Anderson responded directly to Mr. Christoff (cc to the others):

It is a bit difficult to respond because we will process an application without a signature (since it is not required by law) unless the applicant is under the age of 21. There are a lot of reasons the signature is not captured at the pin pad (like the pin pad is down). So if the customer complains and there is not a signature there isn't anything we 'do' about it.⁵⁷⁹

During cross-examination regarding this exchange, Ms. Russ Anderson was clearly defensive with respect to her instruction to her staff that there is nothing the Bank will do when a customer complains about an account opening without the customer's signature. When she was asked “And this response reflected your honest beliefs at the time, right?” to which Ms. Russ Anderson responded, “What do you mean by honest beliefs?”⁵⁸⁰ To the next questions, “You were honest in this email to Mr. Christoff, correct?” Ms. Russ Anderson responded, “Which parts?”⁵⁸¹

Responding to Mr. Christoff for SSCOT, Rebecca Rawson responded:

Up until the recent Signature Capture Initiative, SSCOT did not look for signatures on credit card sales as part of our research process. In April 2015, SSCOT obtained access to signature data for credit card sales and incorporated looking for signatures captured on credit cards as part of our case research related to inquiries on credit card consent.⁵⁸²

Responding for Corporate Investigations, Loretta Sperle wrote:

The response is yes, CI will look for signatures when we are assessing a sales incentive case, but up until guidance was sent out in 7/14 clarifying phone sales and service rules, accounts were being opened without signatures more frequently, and the lack of a signature on an application did not necessarily indicate an issue regarding customer consent. That would be considered along with the other facts/evidence in the case. Also, as previously noted signatures on credit card applications were not required until recently.⁵⁸³

Corporate Security Report – November 18, 2013, Lumberton, North Carolina

⁵⁷⁸ OCC Ex. 883 at 2.

⁵⁷⁹ *Id.*

⁵⁸⁰ Tr. (Russ Anderson) at 10081.

⁵⁸¹ *Id.*

⁵⁸² OCC Ex. 883 at 1.

⁵⁸³ *Id.*

In an email dated November 18, 2013, Corporate Security head Michael Bacon provided Ms. Russ Anderson, David Otsuka, Rebecca Rawson, Debra Paterson, Susan Nelson and others a report “related to the changing of customer phone numbers by two Lumberton, NC TMs.”⁵⁸⁴ Mr. Bacon stated, “[b]oth admitted to changing customer phone numbers in order to prevent customers from being contacted.”⁵⁸⁵

In response to Mr. Bacon’s request for comment or agreement related to an attachment to this email message, Ms. Russ Anderson wrote:

I am not sure how to feel about this one. It seems to me that there must be some underlying issue for changing the numbers. Did we talk to the store manager or other team members to see if there was pressure to do this? I cannot imagine why the second team member would start this all on her own.⁵⁸⁶

In a response to the messages from Mr. Bacon and Ms. Russ Anderson, Community Banking’s HR Manager, Ms. Nelson, wrote:

Changing phone numbers, for me, falls into the teller referrals domain in terms of potential pressure on team members to avoid getting less than a “5 out of 5” score on WOW surveys and impacting them with aggressive performance coaching/disciplinary action. A similar issue already hit our e-mail boxes and I believe this is going to be an ongoing item. My preference is to take handle [*sic*] this like teller referrals and for the company to set a clear direction on how we will handle on a go-forward basis, rather than keep dealing with these on a case by case basis.⁵⁸⁷

In a response to Ms. Nelson’s message, Community Banking’s ER Manager, Glen Chambers wrote in support of Ms. Nelson’s analysis:

I agree with Susan, this is similar to the teller referral domain in terms of potential pressure on TMs. Also, it seems odd that no one introduced this to the second Teller and yet she knew exactly what to do. Second, we see this more often than not; TM perceived threats/pressure behind the motive which might come from the TM’s fear of termination. TM store peer pressure or by something the manager said. I also agree with Claudia that it would be helpful to question the managers and other TMs, if for no other reason than to let them know this is not an acceptable action on their part.⁵⁸⁸

⁵⁸⁴ OCC Ex. 1363 at 3.

⁵⁸⁵ *Id.*

⁵⁸⁶ *Id.* at 2.

⁵⁸⁷ *Id.*

⁵⁸⁸ *Id.* at 1.

Both Ms. Nelson and Mr. Chambers expressed a clear desire not to deal with these on a case-by-case basis, urging that Ms. Russ Anderson act to have the Bank issue clear instructions on how to handle these issues going forward.

Ms. Russ Anderson, responding to whether she had reason to question Mr. Chambers' analysis that team members' fear, and threats and pressures were motivating employee misconduct, responded that he was expressing "his opinion about it," and "[h]e's talking about perceived threats or pressure not actual".⁵⁸⁹ She acknowledged, however, "I do not believe he was being dishonest."⁵⁹⁰

Responding to the messages, Community Banking Head of Human Resources Debra Paterson wrote:

I'm with Glen and Susan. [REDACTED]

[REDACTED] Also, just an FYI, the continual feedback we get is that ICP is not driving this behavior. It's sales and service goals and performance – fear of losing the job or being perceived as not "cutting it." Not the ICP.⁵⁹¹

Ms. Russ Anderson testified that she trusted Ms. Paterson's opinion, agreeing that she was the most senior human resources leader in the Community Bank.⁵⁹² Ms. Russ Anderson testified that she had no reason to believe Ms. Paterson was being dishonest with her about what she was advising in this email message.⁵⁹³ But when asked during cross-examination whether she had any reason to believe Ms. Paterson was being untruthful with respect to the statement that the "continual feedback" that HR had been receiving by November 2013 was that fear of losing the job due to sales and service goals, Ms. Russ Anderson responded, "I had no basis to not believe her or to believe her", notwithstanding that the email message was sent not long after the first LA Times article was published.⁵⁹⁴ It should be noted that nothing in Ms. Paterson's response suggested she disagreed with the responses provided by Mr. Chambers or Ms. Nelson, or that indicated or suggested that Community Banking's HR had no termination code for failure to meet sales goals, and nothing that would suggest Ms. Paterson believed no one was terminated for failing to meet sales goals.⁵⁹⁵

The preponderant evidence in the record established that contrary to her stated opinion, Ms. Russ Anderson had reason to believe what Ms. Paterson, Mr. Chambers, and Ms. Nelson had reported to her regarding the significant, if not sole cause for the reported sales practices

⁵⁸⁹ Tr. (Russ Anderson) at 9577.

⁵⁹⁰ *Id.* at 9578.

⁵⁹¹ OCC Ex. 1363 at 1.

⁵⁹² Tr. (Russ Anderson) at 9578.

⁵⁹³ *Id.* at 9580.

⁵⁹⁴ *Id.*

⁵⁹⁵ OCC Ex. 1363 at 1.

misconduct were the Community Bank’s sales and service goals and performance standards. **Acting in furtherance of this opinion under the conditions that were present during the relevant period constituted unsafe or unsound banking practice and a breach of the fiduciary duties Ms. Russ Anderson owed to the Bank.**

Ms. Russ Anderson was asked whether, subsequent to her receipt of the email exchange, she did any independent research about why employees engaged in sales practices misconduct; and she responded: “The research was being done through the core team, through conversations with Corporate Investigations, through conversations with others, but I did not myself go out and do an investigation”.⁵⁹⁶ There is no evidence in the record that Ms. Russ Anderson credibly challenged the risk-management controls that were then in place in the Community Bank regarding sales practices misconduct by team members. **Under the conditions that were present during the relevant period, this failure to act constituted unsafe or unsound banking practice and a breach of the fiduciary duties Ms. Russ Anderson owed to the Bank.**

Ms. Russ Anderson did not share this information with CRO Loughlin, testifying that she would have informed CRO Loughlin about the continual feedback described in this email exchange only if “through my conversations with Debra Paterson I had felt that was the case, then I would have”.⁵⁹⁷ She added that she “did not have the facts to take” information about this continual feedback to either CRO Loughlin or the ERMC.⁵⁹⁸ She dismissed the import of the email chain as “opinions” and stated that she “then needed to take and talk to Debra Paterson as the head of HR for Community Banking and ask specific questions. Based on that conversation, I did not feel that it needed to be escalated to Mike Loughlin.”⁵⁹⁹ For the same reason she did not feel it was incumbent upon her as the Group Risk Officer to inform either the OCC or the WF&C Board of Directors about this continual feedback that sales and service goals and performance and fear of losing their jobs was driving employees to engage in misconduct.⁶⁰⁰ **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 Ms. Russ Anderson owed to the Bank.**

Investigation Debrief – November 19, 2013, Philadelphia, Pennsylvania

On November 19, 2013, Bob Thomas of WF&C’s Corporate Investigations issued an Investigation Debrief concerning a Bank branch located in Philadelphia, Pennsylvania.⁶⁰¹

⁵⁹⁶ Tr. (Russ Anderson) at 9583.

⁵⁹⁷ *Id.* at 9584.

⁵⁹⁸ *Id.*

⁵⁹⁹ *Id.* at 9585.

⁶⁰⁰ *Id.*

⁶⁰¹ R. Ex. 5037.

Recipients included Ms. Russ Anderson, Michael Bacon (of Corporate Investigations), Rebecca Rawson, Debra Patterson, Susan Nelson, and David Otsuka.⁶⁰²

Mr. Thomas reported that the investigation followed the Bank's receipt of a customer complaint, that "she had received a debit card and was enrolled in OLB without her consent."⁶⁰³

Mr. Thomas reported that the investigation that followed included an interview with Team Member [NR] (TMNR), who admitted to "issuing debit cards without customer consent", enrolling customers in OLB [on-line banking] without consent and subsequently activating the OLBs by issuing PIN Only service, creating a User ID and PW and answering the Security Questions."⁶⁰⁴ TMNR also admitted to sending customer names and numbers "to Service Manager [AJ] so that her Tellers could submit Referrals."⁶⁰⁵

Mr. Thomas reported that TMNR completed CSSR training in December 2012, and was assigned to the Philadelphia branch.⁶⁰⁶ He reported that when she started working at that branch, Store Manager NP "told her that he wanted accounts opened in packages which included a checking account, savings account, debit card and OLB."⁶⁰⁷ TMNR reported that Store Manager NP "told her that even if a customer did not consent she was to issue a debit card and enroll the customer in OLB. In addition, [NP] told her to activate the OLBs and walked her through the activation process, which included answering the security questions."⁶⁰⁸

Mr. Thomas reported that TMNR stated, "other Bankers in the branch, CSSR [BJ] and PB [JV], were issuing debit cards without consent as well as enrolling and activating customer OLBs."⁶⁰⁹ TMNR reported that Service Manager [AJ] had asked her and [BJ] to give her customer information for accounts that they had opened so that her tellers could be 'paid out' for the quarter for teller Referrals. TMNR stated that she agreed to help because they were her teammates."⁶¹⁰ She stated that she "remembered in her training that she was told that the customer needed to give consent before an account was opened" but that "wasn't how it worked in the branch where she had worked" and that she "was the new person in the branch" and "did not want to rock the boat" and "wanted to fit in."⁶¹¹

⁶⁰² Tr. (Russ Anderson) at 9560; R. Ex. 5037 at 1.

⁶⁰³ R. Ex. 5037 at 1.

⁶⁰⁴ *Id.*

⁶⁰⁵ *Id.*

⁶⁰⁶ R. Ex. 5037 at 2.

⁶⁰⁷ *Id.*

⁶⁰⁸ *Id.*

⁶⁰⁹ *Id.*

⁶¹⁰ *Id.*

⁶¹¹ *Id.*

Mr. Thomas reported that TMNR stated that she did not use the Ethics Line to report the bad behavior “because she had a bad experience with her last employer when she used their Ethics Line and it got back to the person she had reported that she had made the call.”⁶¹²

Mr. Thomas reported that research into the allegations incorporated a WFCI review of emails between Service Manager AJ, TMNR, BJ, and JV.⁶¹³ WFCI also requested a Sales Quality Review of Teller Referrals at the Philadelphia and OLB enrollments by Service Manager AJ, Store Manager NP, TMNR, and JV.⁶¹⁴ Further, “DCG Fraud Operations also provided information regarding suspected unauthorized OLB activations by WF TMs.”⁶¹⁵

Mr. Thomas reported the email review disclosed seven emails from TMNR to Service Manager AJ that listed customer names and account numbers, and that Service Manager AJ’s response “indicated that the customer information had been distributed to her tellers.”⁶¹⁶ Further, Sales Quality “confirmed that three of [Service Manager AJ’s] tellers had submitted Referrals for the customers named in TMNR’s emails.”⁶¹⁷

Mr. Thomas reported that CI interviewed Service Manager AJ who admitted asking her Tellers to submit invalid Referrals, giving this description:

She had bent the rules regarding Referrals because her tellers were struggling to get their solution Referrals. TMNR was a team player who had wanted to help with the Referrals so TMNR sent her customer names and CNs of accounts that she had opened so that her tellers could submit Referrals for the customers. At the time that she had received the customers’ information from TMNR she distributed the customer names between her tellers. TMNR helped them and they helped TMNR with other Referrals that the tellers generated. She did not remember the details concerning the customers named in the TMNR emails. It could have been a combination of walk-ins and accounts that TMNR had opened either in the branch or off-site. Her branch had very little traffic and most of their customers lived in the apartment building where the branch was located. Many of the customers were seniors. Solutions were very difficult to get.⁶¹⁸

⁶¹² R. Ex. 5037 at 2.

⁶¹³ *Id.*

⁶¹⁴ *Id.*

⁶¹⁵ *Id.*

⁶¹⁶ *Id.* at 3.

⁶¹⁷ *Id.*

⁶¹⁸ *Id.* at 4.

Mr. Thomas reported that following a discussion with Ann Cox, Employee Relations Manager, there was agreement that Service Manager AJ's employment should be terminated.⁶¹⁹

Mr. Thomas reported that CI interviewed Store Manager NP, who admitted that when BJ and TMNR started at his branch, he told them that he wanted account packages opened, giving this description:

Even if the customer did not want a Debit Card or Online Banking he told them to include it in the package by enrolling the customer. He showed each of them how to activate Online Banking. He showed them how to obtain a PIN Only. He told them to use the email address provided by the customer on SVP. If the customer did not have an email address on their profile, his Bankers used an email address that included the zip code of the branch. He showed them how to set up the User Name and Pass Word to activate the account. He did not tell them to answer the Security Questions.⁶²⁰

Mr. Thomas reported that during the interview, Store Manager NP continued the above practices until he received an email from MSC Barbara Romanoff, who was responding to a complaint that Service Manager AJ had enrolled and activated an online banking account without consent. NP stated upon receipt of Ms. Romanoff's email (the date of which he could not state for sure) he told his Bankers "that they needed the customer's consent to enroll in Online Banking and they could not activate a customer's Online Banking."⁶²¹

NP also reported that he "did not follow up to ensure that his Bankers were no longer enrolling customers without consent," but "he assumed that because the branch was not meeting its sales goals they were no longer doing the enrollments and activations without consent."⁶²² NP "did not give a reason why, as Store Manager, he did not address his suspicions concerning the invalid Referrals."⁶²³

Mr. Thomas reported that following a discussion with Ann Cox, Employee Relations Manager, there was agreement that Store Manager NP's employment should be terminated.⁶²⁴

Mr. Thomas reported key findings included the following issues had been identified in the Investigation Debrief:

- Tellers admitted to submitting Referrals without speaking to customers.

⁶¹⁹ *Id.* at 8.

⁶²⁰ *Id.* at 6.

⁶²¹ *Id.*

⁶²² *Id.*

⁶²³ *Id.*

⁶²⁴ *Id.* at 7.

- Service Manager admitted to bending the rules and forwarding to her Tellers Customer names and CNs for accounts opened by CSSR so that Referrals could be submitted.
 - Two CSSRs admitted to forwarding customer names and CNs to the Service Manager and/or to the Tellers so that they could submit invalid Referrals.
 - Two CSSRs and the former Store Manager admitted to enrolling customers in OLB without consent and activating OLBs.
 - Two CSSRs admitted to issuing Debit Cards without customer consent.
 - Former Store Manager admitted to telling two CSSRs to issue Debit Cards without customer consent.
 - Former Store Manager admitted to telling his CSSR's [sic] to enroll customers in OLB without consent and to activate OLBs without customer knowledge.
 - An email review by WFCI disclosed seven emails had been sent from a CSSR to the Service Manager that listed Customer Names and CNs. The Service Manager's email responses indicated that the customer information had been distributed to her tellers. SQ confirmed that three of the Service Manager's Tellers had submitted Referrals for the customers named in CSSR's emails.
 - SQ, independent of the customers listed in the CSSR's emails, reviewed Referrals for the tellers and subsequently conducted polling. Five additional customers substantiated invalid Referrals between the Tellers.
 - The seven TMs who have been implicated acknowledged taking required Sales Integrity and Code of Ethics training courses.⁶²⁵

In addition to recommending that the employment of the Service Manager and Store Manager should be terminated, Mr. Thomas reported termination recommendations for a teller hired in 1995, who had admitted to submitting invalid referrals; a teller hired in 1983, who had admitted to submitting invalid referrals; and a teller hired in 2010 who had admitted to submitting invalid referrals.⁶²⁶ The report reflected recommendations that TMNR and BJ be given final warnings – after noting both had been instructed to engage in misconduct by the Store Manager.⁶²⁷

Notwithstanding the scope of the investigations and the details presented through the Investigation Debrief, when asked whether she had reason to doubt that there was a great emphasis on “making the numbers” in branches outside of LA/OC, Ms. Russ Anderson responded, “I have no evidence to say one way or the other. This is one person’s comment.”⁶²⁸

⁶²⁵ *Id.* at 6-7.

⁶²⁶ *Id.* at 7-8.

⁶²⁷ *Id.* at 8.

⁶²⁸ Tr. (Russ Anderson) at 9562.

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 Ms. Russ Anderson owed to the Bank.

Ms. Russ Anderson testified “I don’t remember this particular one. It’s been a long time. And again, this is one person’s comment, and it would not have led me to believe that that was a 6,000-storewide thought process. This is one person’s – store manager’s opinion.”⁶²⁹

Similarly, after noting that the seven team members acknowledged taking the required Sales Integrity and Code of Ethics training courses, when asked whether this indicated to her that employees were engaging in sales practices misconduct notwithstanding whatever training they received, Ms. Russ Anderson responded, “[a]gain, not remembering this document, but all team members took training and Code of Ethics training, and team members in multiple places in the Company violated the Company’s policies regardless of the training they took.”⁶³⁰ Ms. Russ Anderson confirmed that she understood this to be the case throughout the relevant period.⁶³¹

November 27, 2013 - The Role of the Sales and Services Conduct Oversight Team (SSCOT) and Proactive Monitoring

Ms. Russ Anderson testified that the Sales and Services Conduct Oversight Team conducted proactive monitoring in the Community Bank in 2013.⁶³² She testified that SSCOT was preceded by the Sales Quality Committee.⁶³³

Ms. Russ Anderson characterized the technology when she took over the team as “antiquated”, that “they never had a real review of their processes”, and so “it took a long time from the time an EthicsLine allegation came in for it to go through their processes to even determine if it had merit.”⁶³⁴ She said, “a lot of times these activities would start out as a cold, and the next thing you know, you have pneumonia.”⁶³⁵

Ms. Russ Anderson testified that SSCOT did not itself conduct investigations, but that the groups within the Bank that did so were Human Resources and Corporate Investigations.⁶³⁶ She testified that as GRO for Community Banking, she considered Corporate Investigations to be an important department, and that viewpoints from CI regarding what was causing employees to engage in sales practices misconduct were important.⁶³⁷ She explained that CI interviewed

⁶²⁹ *Id.* at 9563.

⁶³⁰ *Id.* at 9564.

⁶³¹ *Id.*

⁶³² *Id.* at 9251.

⁶³³ *Id.* at 9548

⁶³⁴ *Id.* at 9283.

⁶³⁵ *Id.*

⁶³⁶ *Id.* at 9549.

⁶³⁷ *Id.*

employees accused of wrongdoing to understand why they engaged in sales practices misconduct, and that because of this activity the CI viewpoints were important.⁶³⁸

Ms. Russ Anderson testified that when she assumed responsibility for the Sales Quality team she received regular information about sales practices misconduct and sales integrity violations.⁶³⁹ She testified that apart from proactive monitoring, the Bank was relying solely on EthicsLine allegations, customer complaints, and other reactive analyses; and acknowledged that throughout 2013 and 2014 the Community Bank did not have an effective customer complaint tracking system with respect to sales practices misconduct; and that there was improved tracking “in the latter part of 2015 and into 2016”, describing the effectiveness by then at “at least 60 to 75 percent.”⁶⁴⁰

Ms. Russ Anderson testified that proactive monitoring in this context “was a concept that I formed when the SSCOT team moved [to] me in January of 2012, as I wanted to look beyond just the reactive data that they were getting to try and find misconduct at its very earliest stages.”⁶⁴¹ She testified that when she took over the Sales Quality team, “there were about 20 individuals. And they were only reactive to the data they got in mostly from the EthicsLine, but a little bit from other places.”⁶⁴² Ms. Russ Anderson testified that the effectiveness of reactive controls “lagged” – but that she knew in the fall of 2013 how to proactively identify employees who engaged in simulated funding and phone number changes.⁶⁴³

Ms. Russ Anderson identified an email exchange between herself and Michael Bacon, head of Corporate Investigations, dated November 27, 2013 (from Mr. Bacon to Rebecca Rawson), and from Ms. Rawson to Mr. Bacon (cc: Ms. Russ Anderson).⁶⁴⁴

In the first message, Mr. Bacon asked Ms. Rawson to prepare, “a one page debrief on where all the Sim funding and Phone number changes are occurring”.⁶⁴⁵ After the summary was prepared he sought to “discuss adding some of the key findings from the cases already worked.”⁶⁴⁶ He referred to a request presented during a committee call the day before in which Debra Paterson asked for such a summary.⁶⁴⁷ He stated that “a key point made during the call is

⁶³⁸ *Id.* at 9549-50.

⁶³⁹ *Id.* at 9656.

⁶⁴⁰ *Id.* at 9657.

⁶⁴¹ *Id.* at 9251; see “22-03-07 Respondents’ Amended Revised Errata Day 9-38” on page 75. Ordered by Second Supplemental Order.

⁶⁴² Tr. (Russ Anderson) at 9282.

⁶⁴³ *Id.* at 9658.

⁶⁴⁴ OCC Ex. 1031.

⁶⁴⁵ *Id.* at 2.

⁶⁴⁶ *Id.*

⁶⁴⁷ *Id.*

we have enough of a sample that we (whomever) should have enough information to formulate a remediation plan.”⁶⁴⁸ He explained that this “was driven by the news of the new data and that the behavior is clearly continuing,” and rhetorically asked, “do we really need a monthly report to tell us we have a systemic issue?”⁶⁴⁹

Ms. Russ Anderson acknowledged that this exchange occurred a month and a half after the publication of the first LA Times article.⁶⁵⁰ She testified that the discussion about simulated funding and phone number changes “was the proactive monitoring”.⁶⁵¹

Despite having testified as to the importance of the work and views of those in Corporate Investigations, when asked whether she regarded Mr. Bacon’s email as an important communication from the head of CI, Ms. Russ Anderson responded, “Not to me.”⁶⁵² **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 Ms. Russ Anderson owed to the Bank.**

Despite understanding that the discussion related to the proactive monitoring that she was responsible for, Ms. Russ Anderson testified “I don’t know what call he’s talking about or what Debra was working on, so I . . . didn’t think – I don’t remember the email. And sitting here today, I don’t know what phone calls they’re talking about or any of that.”⁶⁵³

In response to a question whether she found concerning Mr. Bacon’s point that simulated funding and phone number changes were clearly continuing, Ms. Russ Anderson responded,

Since this was only the second batch of proactive monitoring information that we had pulled, I was not surprised. We were expanding what we were looking at. It was not all just in the same place, so of course you’re going to see more. We were looking for more. So, no, it didn’t bother me.⁶⁵⁴

When asked whether she had any reason to doubt Mr. Bacon’s finding that there was a systemic issue, Ms. Russ Anderson answered,

I did not believe it was a systemic issue, and I did not believe that Michael was right. Again, going to my previous answer, this was activity we were specifically looking for. We had just started to expand the proactive monitoring outside of L.A./OC, and we didn’t know how big it was. So for

⁶⁴⁸ OCC Ex. 1031 at 2.

⁶⁴⁹ *Id.*

⁶⁵⁰ Tr. (Russ Anderson) at 9551.

⁶⁵¹ *Id.* at 9552-53.

⁶⁵² *Id.* at 9553-54.

⁶⁵³ *Id.* at 9554.

⁶⁵⁴ *Id.* at 9555.

something to be systemic, it has to be very broad-based. There was no data point here to come to that conclusion.⁶⁵⁵

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 Ms. Russ Anderson owed to the Bank.

Acknowledging that Corporate Investigations was the department that was investigating sales practices misconduct and was performing interviews with Bank employees, Ms. Russ Anderson nevertheless dismissed the point Mr. Bacon was making – that as of November 2013 the sales practices misconduct problem in Community Banking was systemic – testifying only that this “was Michael Bacon’s opinion.”⁶⁵⁶ **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 Ms. Russ Anderson owed to the Bank.**

Two further points should be noted regarding this email chain. The first is that in her response to Mr. Bacon, Ms. Rawson described the employees who had been identified for potential simulated funding and phone number changes as “outliers”.⁶⁵⁷ She reported to Mr. Bacon that “Legal is still reviewing the 2nd round” and once she hears back from Legal “we will determine next steps.”⁶⁵⁸

The second point is that in her response to Mr. Bacon and Ms. Rawson, Ms. Russ Anderson did not claim that there was, in fact, a need for a monthly report “to tell us we have a systemic issue” – but instead wrote that “whatever we prepare should be at the direction of legal” – apparently concluding that Mr. Bacon’s request for a summary would not be respected unless such a summary was generated “at the direction” of the WF&C Legal Department.⁶⁵⁹ **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 Ms. Russ Anderson owed to the Bank.**

Ms. Russ Anderson testified that proactive monitoring “began in 2013” and said several times she visited the teams located in Sacramento and in San Antonio.⁶⁶⁰ “I would go to Sacramento and spend almost a week there at a time. The first year, I would go probably every six weeks” and the team would “advise me of the changes they were making.”⁶⁶¹ She testified,

⁶⁵⁵ *Id.* at 9556.

⁶⁵⁶ *Id.* at 9556.

⁶⁵⁷ OCC Ex. 1031 at 1.

⁶⁵⁸ *Id.*

⁶⁵⁹ *Id.*

⁶⁶⁰ Tr. (Russ Anderson) at 9251, 9283.

⁶⁶¹ *Id.* at 9284.

“when we started into ’13, I felt that the day-to-day work that they were doing was going to be done very efficiently, and then we could start this pilot on the proactive monitoring.”⁶⁶²

Elaborating on the proactive monitoring process, Ms. Russ Anderson testified:

So when I inherited the team in January of 2012, I spent time getting to know the team. They were small, about 20 employees. And it was very evident that the work they did was based on information they received in primarily from the EthicsLine, but from other sources, and that it was just a reaction to that data. Their technology was old. Their processes needed help, and so we spent the first year really upgrading technology, upgrading our processes. I brought in a process improvement team to help them, building out some more of their resources to help with that. So -- and all the while talking with the current manager at that time about moving to proactive monitoring.⁶⁶³

Ms. Russ Anderson testified that changes she made to the Sales Quality team when she took it over from Cindy Walker (when Ms. Walker “decided to retire in early 2013”) included “upgrading some of the positions” and “just improved everything”, giving the staff “all the tools that they would need to be successful.”⁶⁶⁴ She said she “had a real desire once I understood what work that the Sales Quality team was doing, to advance their work so that we could really look for activity in its infancy rather than waiting until it was full blown and being able to get out and train the bankers and the management on why that behavior was not appropriate.”⁶⁶⁵

Ms. Russ Anderson said it was her idea to do proactive monitoring at Community Bank, and described a pilot project initiated in May 2013 upon the hiring of Rebecca Rawson to serve as the head of SSCOT.⁶⁶⁶ Under management by objective (MBO), Ms. Rawson was to “start the first pilot on proactive monitoring.”⁶⁶⁷

Elaborating, Ms. Russ Anderson testified:

We started it in the late summer of 2013. One of the areas that was evolving and we were getting information through our deposit product group partners of activity that was evolving in a negative way was simulated funding. So we decided that that was a topic that we would like to first look at. The analytics around that showed that the first place we should do our pilot was in the LA/OC market, because that's where an abundance of the activity was

⁶⁶² *Id.* at 9284.

⁶⁶³ *Id.* at 9251-52.

⁶⁶⁴ *Id.* at 9284-86.

⁶⁶⁵ *Id.* at 9302.

⁶⁶⁶ *Id.* at 9252, 9303.

⁶⁶⁷ *Id.* at 9252.

happening. And so we kicked it off. The data went to corporate investigations, and their results were evident in September of 2013.⁶⁶⁸

Ms. Russ Anderson described Ms. Rawson as having “been through the branch system who knew what it was like to be a banker, a store manager or a branch manager.”⁶⁶⁹ She described another hire, Paula Bernardo, as bringing “an immense amount of expertise at SSCOT around statistics and modeling”.⁶⁷⁰ She testified that she heard Ms. Bernardo’s testimony in this administrative proceeding, disagreed with nothing Ms. Bernardo said, and stated “[t]here’s very little that I could add to what Paula testified to.”⁶⁷¹

Ms. Russ Anderson testified, “particularly in Regional Banking . . . we always tried to do things in a pilot or test phase, test and learn. Doing something wide-scale could disrupt your customer base, and it could really disrupt your team members.”⁶⁷²

Elaborating on this point, Ms. Russ Anderson testified:

And so since we have never done anything like this, we didn't think there was another financial institution in America who had done anything like it, we really wanted to take baby steps and figure out what worked, what didn't work. Because if you go small and it's not working, you can pull back really fast. If you just blow it out there, it's hard to pull it back over those many branches and team members.⁶⁷³

Ms. Russ Anderson testified that she limited the goal of the 2013 pilot project to looking at “activity, potential simulated funding activity in the LA/OC market.”⁶⁷⁴ She said she picked that market because it “was always a market that if there was behaviors going on that you wouldn’t want to happen, LA/OC was generally a place that you could find it”, adding “we could get the most learnings there.”⁶⁷⁵

Ms. Russ Anderson testified that SSCOT needed “behavioral” data.⁶⁷⁶ Elaborating, Ms. Russ Anderson said the data looked “for types of activities that may look – may be perfectly normal, like opening the account, or money goes in, money goes out, but that could lead to sales

⁶⁶⁸ *Id.* at 9253.

⁶⁶⁹ *Id.* at 9286.

⁶⁷⁰ *Id.* at 9287.

⁶⁷¹ *Id.* at 9305.

⁶⁷² *Id.* at 9303.

⁶⁷³ *Id.* at 9304.

⁶⁷⁴ *Id.*

⁶⁷⁵ *Id.*

⁶⁷⁶ *Id.* at 9287.

practices misconduct behaviors because the banker is manipulating things.”⁶⁷⁷ She testified that they also looked “for information as it related to signature capture” because “there were outliers in some of the branches of people who didn’t get the signatures captured” so the SSCOT team “got data from the deposit product group, from the EthicsLine, from the Complaints Group, from the regulators’ complaints, store management – or branch management could have sent them information.”⁶⁷⁸ In this testimony, Ms. Russ Anderson presented no evidence that the practice of failing to capture signatures was limited to “outliers”. Preponderant evidence in the record set forth above established that no such limitation existed during the relevant period.

Ms. Russ Anderson defined a “sales integrity violation” as follows:

My definition of a sales integrity violation means that the banker or teller did not have a -- that there were issues with how the sale was done. It could be that I went in as a customer, I saw the banker, I opened an account, but then the banker said, oh, you the teller, you need another referral. I'm going to give you that -- I'm going to give you that referral even though I as the customer never spoke to the teller. That's a sales integrity violation. There was no integrity in that. So all of the other pieces of sales practices misconduct plus other things is how I add into that the -- that there's an integrity issue.⁶⁷⁹

Asked to describe what SSCOT would do if they found evidence of potential sales practices misconduct, Ms. Russ Anderson testified:

They would -- after they had put it through their filtering system in their processes that they had negotiated with Corporate Investigations and HR, if it reached certain hurdles or certain attributes, it would go to Corporate Investigations and/or HR.

If it hit other attributes, they would send information back to the line management saying this banker needs to have additional training, here's the training they need to do. And thanks by some good work done by audit, we built a return loop back to SSCOT that if the banker didn't do the training, it was escalated to the next level manager to the next level manager to the next level manager.

If a banker got two trainings, okay, now this is twice in this period of time that we're saying that that banker needs training, it would have been sent to HR or other places to say, wait a minute, if the training is happening but it's not taking, we need to maybe have you guys investigate further.⁶⁸⁰

⁶⁷⁷ *Id.* at 9287.

⁶⁷⁸ *Id.* at 9287-88.

⁶⁷⁹ *Id.* at 9288.

⁶⁸⁰ *Id.* at 9289.

Ms. Russ Anderson testified that she disagreed with testimony to the effect that given the high rate of turnover, training was ineffective.⁶⁸¹ Elaborating, Ms. Russ Anderson stated:

Well, the turnover rate in Regional Bank, you have to dissect what it really is. We had the highest level of turnover at the teller line, and turnover numbers can be very confusing between did the person actually leave Wells Fargo, or a term we use as churning, did they move to a new position in Wells Fargo. And so people would talk about turnover that would actually include people who got a different job at the bank and didn't leave the employment of Wells Fargo. So the training was an integral part of what we did at Wells Fargo and very important for bankers and tellers to understand, especially people who had not worked in the banking industry before. You know, that's why we had the quality sale, you know, manual and we had all sorts of training and the ethical speaking and just days and days of training new team members would have, plus ongoing training throughout the year.⁶⁸²

When questioned about how SSCOT processed an EthicsLine allegation that had a sales practices misconduct or sales integrity issue, Ms. Russ Anderson testified, "it goes directly to SSCOT."⁶⁸³

Ms. Russ Anderson testified that "the Sales Quality Team would have been the first place where all" of the original EthicsLine allegations were "read and filtered."⁶⁸⁴ She testified that in those cases where the EthicsLine complaint had either a sales practices misconduct or sales integrity issue in it, the following process was followed:

If there's enough information, even if it's anonymous, they will then go to their other databases and pull information to see, okay, does that banker have -- is there some items out around signature capture with this banker or other activities with this banker that don't look quite right compared to other people in his market. And then they can do one of two things. If it's -- if it's very clear, very, very clear, they can send it direct to corporate investigations. If it's not quite so clear, they could send it to the polling team, and then the polling team would do their work. And then if polling confirmed the issue, then it would go to Corporate Investigations. If they couldn't, then it would go back to say, you know, this banker needs some training on this topic.⁶⁸⁵

Ms. Russ Anderson testified that she disagreed with testimony to the effect that polling

⁶⁸¹ *Id.* at 9381.

⁶⁸² *Id.* at 9382.

⁶⁸³ *Id.* at 9290.

⁶⁸⁴ *Id.* at 9294.

⁶⁸⁵ *Id.* at 9290-91.

was not robust or effective.⁶⁸⁶ Elaborating on this point, she stated:

Well, polling had its limitations. There's no question about that. But it did provide a lot of good information. And it was just one of the tools that was used by SSCOT to determine if behavior -- if the behavior occurred or not. And so for me, it was one of the tools in the toolbox that you used to determine if a banker needed to be referred to Corporate Investigations.⁶⁸⁷

Ms. Russ Anderson also disagreed with testimony to the effect that she allowed SSCOT to have an arbitrary threshold for polling.⁶⁸⁸ In support, she stated:

The number that was used in the polling team was based on long discussions with Corporate Investigations. And you may recall from [Paula Bernardo's] testimony, over time, they would do analytics and make a recommendation to Corporate Investigations that perhaps they could lower that number to two, but Corporate Investigations always felt that three was the appropriate number. It gave them enough information to start an investigation. But I would like to make something clear, Mr. Kelley. If a polling call was made and the team member in SSCOT felt that that one call was enough, they could refer that team member to corporate investigations. They did not have to get to three. Three was the agreed parameter. But if you made one phone call and it was very clear that that team member had done something wrong, it would go directly to Corporate Investigations.⁶⁸⁹

Asked by her Counsel during direct examination whether she read EthicsLine allegations during the relevant period, Ms. Russ Anderson responded, "I did", adding that "when my SSCOT manager would find an allegation that she felt needed to come to my attention", Ms. Russ Anderson would read the ones sent by the manager and would discuss these with the manager.⁶⁹⁰ She testified that she would then "always ask [the manager] if she would please circle back with me after they had done more research and after Corporate Investigations had completed their work."⁶⁹¹

This response is materially incomplete when taken in conjunction with related evidence already in the record.

In the Statement of Material Fact (Russ Anderson) No. 173 submitted in support of the Motion for Summary Disposition, Enforcement Counsel averred, "While thousands of

⁶⁸⁶ *Id.* at 9379.

⁶⁸⁷ *Id.* at 9379-80.

⁶⁸⁸ *Id.* at 9380.

⁶⁸⁹ *Id.* at 9380-81

⁶⁹⁰ Tr. (Russ Anderson) at 9293.

⁶⁹¹ *Id.* at 9294.

employees flooded the EthicsLine warning senior leadership for years about the retail branch environment of significant pressure to meet unreasonable sales goals and resulting misconduct, Respondent Russ Anderson “did not make a habit of reading the EthicsLine allegations that came in. I had a pretty busy job. That would have been not a wise use of my time.”⁶⁹²

In her response to this factual claim, Ms. Russ Anderson did not dispute that she testified as presented, but clarified that she would “read the ones that [her] SSCOT team felt were important for [her] to know about” because the EthicsLine complaints contain “a broad variety of information” and so she “depended on [her] team, who did get EthicsLine allegations, to point situations out to [her] that they felt were noteworthy.”⁶⁹³

Upon findings presented in the Summary Disposition Order, the Recommended Decision will include a factual finding as to Respondent Russ Anderson that while thousands of employees flooded the EthicsLine warning senior leadership for years about the retail branch environment of significant pressure to meet unreasonable sales goals and resulting misconduct, Respondent Russ Anderson “did not make a habit of reading the EthicsLine allegations that came in. I had a pretty busy job. That would have been not a wise use of my time.” **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 Ms. Russ Anderson owed to the Bank.**

During direct examination by her Counsel, Ms. Russ Anderson was offered the opportunity to respond to testimony by Examiner Candy, whom Counsel stated had expressed the belief that Ms. Russ Anderson’s role as Group Risk Officer required her to read EthicsLine allegations.⁶⁹⁴ Ms. Russ Anderson responded:

Given the volume of the EthicsLine violations that came in, and I had a team who was trained in reading them and knowing how to gather the data around them and that they knew to escalate to me which ones were worthy of escalation for me to read and understand, I didn’t believe that it was prudent for me to spend the time it would take to read all of those allegations. And plus, I don’t know what I would have done with the data, because I didn’t – I couldn’t pull the analysis like my team could.⁶⁹⁵

Citing no supporting evidence, Ms. Russ Anderson testified that “somewhere between 80 to 85 percent” of EthicsLine allegations “could never be confirmed as a sales integrity

⁶⁹² MSD Ex. 266 (Russ Anderson Dep. Tr.) at 58:13-16.

⁶⁹³ Russ Anderson’s SMF at No. 173, quoting from MSD Ex. 266 (Russ Anderson Dep. Tr.) at 58:5-59:8.

⁶⁹⁴ Tr. (Russ Anderson) at 9294.

⁶⁹⁵ *Id.* at 9295.

violation.”⁶⁹⁶ She differentiated EthicsLine allegations from confirmed sales integrity violations in these terms:

There are lots and lots of allegations that come in, like I said, and they can look and read like just about anything. And so you have to take that raw data and analyze it and add more of what you know to it to determine if it's a potential allegation -- a potential sales violation. When you get to that point and you've met the criteria that Corporate Investigations has made for them saying they'd take it, because there's protocols in place, then you hand it to Corporate Investigations. And only corporate investigations can then do the research and determine if it was an actual violation. The SSCOT team doesn't make that determination.⁶⁹⁷

Ms. Russ Anderson testified customer complaints, as distinguished from EthicsLine complaints, were fewer in number and could be collected at the branch level, or could come from the Bank's call center, the executive call-center complaint team, and through the OCC or CFPB.⁶⁹⁸ She testified that in those cases where the complaint was from a consumer and not from the EthicsLine, and had either a sales practices misconduct or sales integrity issue in it, the following process was followed:

The ones that would go to the complaint group in the call centers, again, sometimes I would get a complaint directly to me, not often, and I would send those directly to Carrie Mulligan in the complaint group and her team. Their team always called the customer directly and tried to get more of the facts around what had occurred. And then if that -- if the complaints person -- first of all, the idea was always to try to resolve the issue. But if in that issue there was a banker misconduct, that would be referred to -- generally directly to corporate investigations, but sometimes to the SSCOT team. It was Wells Fargo practice in the call centers to attempt to resolve -- if you called in about a fee, the call center banker was trained to resolve that fee issue.⁶⁹⁹

Ms. Russ Anderson offered a “real-life experience” that happened to her, where “one of my accounts was inadvertently charged a monthly fee, and so I just called the call center and I talked to the banker about it. And the banker looks at the rest of my accounts and says, ‘Oh, yes, that’s an error. I will refund that fee.’ Done. And it doesn’t – I mean it doesn’t elevate to the

⁶⁹⁶ *Id.* at 9293.

⁶⁹⁷ *Id.* at 9292.

⁶⁹⁸ *Id.* at 9291.

⁶⁹⁹ *Id.* at 9296.

point of a complaint.”⁷⁰⁰ She added that if the banker had not refunded the fee, “and I had escalated to their manager, that now becomes a complaint.”⁷⁰¹

Ms. Russ Anderson testified she received reports from the Customer Connection and Call Center Executive Complaint Department at least quarterly and reviewed all of them.⁷⁰² Notwithstanding the volume of reports or allegations of sales integrity violations filed during the relevant period, Ms. Russ Anderson denied the problem was systemic and concluded the reports about sales integrity violations during the relevant period “was a small problem. It was not in the top issues that they worked with.”⁷⁰³ **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 Ms. Russ Anderson owed to the Bank.**

Ms. Russ Anderson testified that with respect to the “worst outcome” that could follow from the cases SSCOT gathered data on and transferred to either HR or Corporate Investigations was that “they would terminate team members.”⁷⁰⁴ The second “is that they could refer it back to Human Resources or to the line because they couldn’t find an absolute issue, but they thought there should be training.”⁷⁰⁵ She testified, “the third one sometimes was the team member would resign prior to the investigation being completed.”⁷⁰⁶ She testified that the decision to terminate a team member was made either by HR or Corporate Investigations, but that SSCOT “had no control over that.”⁷⁰⁷ She also testified that she was “not in the feedback loop” from either Corporate Investigations or Human Resources regarding terminations.⁷⁰⁸

Ms. Russ Anderson then qualified that answer, testifying that Corporate Investigations or HR “would make their decisions, and unless there was controversy, in which case I would be brought in if there was controversy, they would just – it would just be part . . . of the practice.”⁷⁰⁹

Ms. Russ Anderson testified that if Corporate Investigations opens an investigation “they have a set period of time to complete the investigation.”⁷¹⁰ If CI filed a Suspicious Activity

⁷⁰⁰ *Id.* at 9295-96.

⁷⁰¹ *Id.* at 9296.

⁷⁰² *Id.* at 9297.

⁷⁰³ *Id.* at 9297-98

⁷⁰⁴ *Id.* at 9298.

⁷⁰⁵ *Id.*

⁷⁰⁶ *Id.*

⁷⁰⁷ *Id.* at 9298-99.

⁷⁰⁸ *Id.* at 9299.

⁷⁰⁹ *Id.*

⁷¹⁰ *Id.* at 9300.

Report (SAR) with FinCEN and “if they don’t get it filed in that 30-day window, now they are . . . out of FinCEN’s requirements. So they will go ahead and file the SAR even though the investigation’s not completed.”⁷¹¹ Responding to the allegation – described through leading questioning during direct examination by her Counsel – that she downplayed information, when asked whether SARs were part of her disagreement with Michael Bacon and Corporate Investigations, Ms. Russ Anderson testified:

It had to do with the reporting. One of the pieces of data that Michael would report was that SARs had gone up, or whatever it might be. And what I requested from Michael is let's talk about the why it has gone up. Is it really that many more team members who have done bad and nefarious things, or is it because you couldn't complete your investigation in time, you had to file the SAR, and so that -- because you don't have enough staff, and that's why you had to file the SAR. And so the fact that they went up or not was not as important to me as the why. And so Michael and I had disagreements about changing from just elevator analysis to really telling me why something's happening so the data would mean something to me.⁷¹²

Ms. Russ Anderson testified that SARs “could go to the FBI” and as a result, an employee “could be investigated by the FBI.”⁷¹³ She agreed, however, that if “simulated funding means that they were taking money from a customer’s account to another customer’s account, yes, that’s illegal.”⁷¹⁴

As noted above, Ms. Russ Anderson provided testimony to the effect that she did not act alone when establishing thresholds to be used for referring cases to Corporate Investigations.⁷¹⁵ The record reflects that by November 2013 the sales integrity investigation pending throughout the LA/OC are had “now expanded to the rest of the footprint for egregious potential simulated funding activity.”⁷¹⁶ The investigations were “all part of the business process that is driven by Claudia’s Sales Quality team and referred to your CI team for investigation.”⁷¹⁷ Ms. Russ

⁷¹¹ *Id.* at 9300.

⁷¹² *Id.* at 9301-02.

⁷¹³ *Id.* at 9302.

⁷¹⁴ *Id.* at 9669.

⁷¹⁵ See section, Ms. Russ Anderson’s Relationship with WF&C’s Legal Department – Applying the Attorney Client Privilege, above.

⁷¹⁶ OCC Ex. 1362 at 1.

⁷¹⁷ *Id.*

Anderson's team had been using and would continue to use the "egregious filter for simulated funding".⁷¹⁸

Without providing any documentation to support the claim, Ms. Russ Anderson testified that she had discussed with Corporate Investigations changing these thresholds – and was told that "if the thresholds were not set at an appropriate level, the volume of potential misconduct that would go to them for research could overwhelm their current staffing levels" and could have the same effect with the filing of SARs.⁷¹⁹ She said she had the same conversations with HR, again without providing any documentation in support of this claim.⁷²⁰ Preponderant reliable evidence in the record does not support Ms. Russ Anderson's factual claim that anyone at Corporate Investigations told her that if the thresholds were not set at an appropriate level, the volume of potential misconduct that would go to them for research could overwhelm Corporate Investigations' current staffing levels. The record includes probative evidence tending to demonstrate that Ms. Russ Anderson's testimony on this point is misleading.

As a member of the Core Team Ms. Russ Anderson acknowledged receipt of a November 5, 2013 email exchange regarding Sales Quality Core Team.⁷²¹ The initial message was from Mr. Otsuka, who provided this summary of the discussion, in pertinent part:

Claudia provided some history about Sales Quality processes. Before Sales Quality moved under Claudia, that function was more reactionary to Ethics Line complaints and other externally raised issues. Beginning around January 2012, this function became more proactive. If Sales Quality saw hot spots or emerging trends, they will look across the footprint. Based on the findings in LA/OC, an outlier report was run, which resulted in 49 team members across the footprint showing up on that report.

* * *

Michael [Bacon, Head of Corporate Investigations] noted that the thresholds for simulated funding and phone number changes are fairly high (*e.g.*, 50 phone number changes). Claudia indicated that Sales Quality will not be expanding research into this activity, *i.e.*, won't be looking to change these thresholds regarding simulated funding or phone number changes. Regarding other types of behavior, Sales Quality will follow its normal processes.⁷²²

Ms. Russ Anderson testified that "at this point in the pilot, it was not appropriate" to identify and refer for investigation those employees who engaged in simulated funding or phone

⁷¹⁸ OCC Ex. 1362 at 2.

⁷¹⁹ Tr. (Russ Anderson) at 9309.

⁷²⁰ *Id.*

⁷²¹ *Id.* at 9663; OCC Ex. 1546.

⁷²² OCC Ex. 1546 at 2.

number changing fewer than 50 times.⁷²³ **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 Ms. Russ Anderson owed to the Bank.**

Nothing in these notes indicated Mr. Bacon expressed any concern about his staff being overwhelmed should the thresholds be lowered to produce more referrals to CI for sales practices misconduct by Community Banking team members; and nothing suggested CI or Mr. Bacon resisted changing the thresholds in that direction.

To the contrary, the notes reflect that Ms. Russ Anderson actively and definitively resisted Mr. Bacon's suggestion that the current threshold – which would trigger a referral to CI only for team members who were suspected of engaging in 50 or more instances of misconduct – was too high. **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 Ms. Russ Anderson owed to the Bank.**

Given the opportunity during her testimony to respond to the notes and confirm that the notes are silent about CI being overwhelmed should the thresholds be changed, Ms. Russ Anderson responded, "I don't know that he didn't say that in the meeting. These are merely notes."⁷²⁴

Given that Ms. Russ Anderson thanked Mr. Otsuka for his reporting regarding what was discussed during this initial meeting of the Core Team and made no contemporaneous effort to challenge or contradict Mr. Otsuka's notes from the meeting, I find preponderant probative evidence established that as early as November 2013, Ms. Russ Anderson actively prevented adjusting the thresholds in a way that would have permitted a more in-depth analysis of the scope of sales practices misconduct (specifically: simulated funding and phone number changing) by Community Bank team members. **Such conduct constituted unsafe or unsound banking practice and a breach of the fiduciary duties Ms. Russ Anderson owed to the Bank.**

Ms. Russ Anderson testified that Paula Bernardo reported directly to Rebecca Rawson, and that Ms. Bernardo headed the Data Analytics team – the team that would be responsible for "gathering the data analyzing the data and determining what team members should be forwarded over to Corporate Investigations and HR."⁷²⁵

Ms. Russ Anderson testified that as of November 5, 2013, it was her belief that "legal had made it clear through the Core Team to me that they were going to manage the threshold numbers."⁷²⁶ Although not a distributee in the email chain, Ms. Russ Anderson identified an email exchange sent from Legal (by David Otsuka):

⁷²³ Tr. (Russ Anderson) at 9667-68.

⁷²⁴ *Id.* at 9665.

⁷²⁵ *Id.* at 9309, 9684.

⁷²⁶ *Id.* at 9314; R. Ex. 4840.

[REDACTED]

Mr. Otsuka identified Ms. Russ Anderson as a member of the “Core Team” “that is meeting weekly to discuss and coordinate.”⁷²⁸ He described the decision “to terminate employment based on phone number changes” and reported terminations based on “a very high number of phone number changes of 1-3 digits during a three month period: 162, 138, 165, and 46. The one who had 46 changes had a pattern of swapping the 4th and 6th digits. Investigations then followed up by calling a sample of numbers and in most instances they were wrong numbers or dial tones.”⁷²⁹

[REDACTED]

Through this email message, Mr. Otsuka does refer to thresholds, but not in a way that suggested *Legal* was controlling or setting the threshold.

[REDACTED]

The import was the thresholds set by Ms. Russ Anderson for use in LA/OC were used across the enterprise and that Legal would “discuss and coordinate” with members of the Core Team, which included Ms. Russ Anderson. The message did not, however, suggest Legal was determining threshold policies for the investigation. Preponderant reliable evidence adduced during the hearing established that Ms. Russ Anderson, and not Legal, set the thresholds being discussed here.

“Staging,” in this context, did not refer to setting thresholds that would drive when a case would be referred to either Corporate Investigations or HR. Ms. Russ Anderson testified that by “staging” the terminations of the remaining cases, she understood that “Legal did not want mass – didn’t want the same termination – I call it mass, but the number of terminations occurring in

⁷²⁷ R. Ex. 4840 at 2.

⁷²⁸ *Id.*

⁷²⁹ *Id.*

⁷³⁰ *Id.*

⁷³¹ *Id.*

the same way in which it had been done which led to the first LA [Times] article. That they wanted them done in a very defined way, and so they were driving that behavior.”⁷³² She added that Legal did not seek her input on the timing of terminations.⁷³³

One month before the publication of the first L.A. Times article, Regional Services Manager for LA/OC, Janice Dollar, presented to Paula Bernardo (Ms. Russ Anderson’s direct report for Data Analysis in SSCOT) an analysis of data reflecting possible simulation of funding and changing of customer privacy preferences occurring in May through July 2013.⁷³⁴ This data was then provided by Leslie Hicks-Veal to the head of Corporate Security, Mr. Bacon, in an email message sent on September 5, 2013.

In relaying the data analysis, Ms. Hicks-Veal provided the following narrative:

I just wanted to give you a heads up of a pending case that is coming our way in SoCal. The Lead Region President John Sotoodeh requested a Sales Quality report of possible simulation of funding by bankers in his region. Attached is the spreadsheet that we have been reviewing the last few days with his Regional Presidents, H.R. Business Partner Manager and HMs. Russ Anderson. At this time the Line is debating what criteria they will use as a go forward standard for the team members they are asking us to speak with. At this time they identified 177 bankers showing signs of simulated funding. If we look at the absolute egregious team members we are looking at approx. 19 team members that we will need to speak with. The 19 if I’m not mistaken are based on the fact that 10% of the accounts opened as well as 10 accounts show evidence of funds in and out transfers in one day consecutively during a 4 month period.

To make matters worse, one of John’s RP’s requested a report of all team members that have changed the privacy preference on accounts for the last few months. The numbers don’t look great for this matter either. S.Q. is currently working on putting a spreadsheet together that would list all team members that changed the privacy preferences as well as changed either 1-3 digits of a customer’s telephone number. Right now we are looking at 9 stores that have made over 100 telephone number changes for May – July. We believe the reasons for the changes are to prevent the customer from being contacted by Gallop Poll.

I just wanted to bring this to your attention in case your phone starts ringing.⁷³⁵

⁷³² Tr. (Russ Anderson) at 9315.

⁷³³ *Id.*

⁷³⁴ R. Ex. 4588 at 1-2.

⁷³⁵ *Id.* at 1.

When presented with this exhibit and asked during cross-examination whether it concerned her at the time that only the absolutely egregious team members were referred to Corporate Investigations as part of the simulated funding Proactive Monitoring pilot, Ms. Russ Anderson responded, “No, because within that 177, there could have been a large majority of those that were false positives.”⁷³⁶ **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 Ms. Russ Anderson owed to the Bank.**

When asked not to speculate and asked to confirm that the only way she would know if there were any false positives was to do an investigation, Ms. Russ Anderson acknowledged, “[i]f you wanted to do all 177, yes.”⁷³⁷

Ms. Russ Anderson acknowledged that expanding the thresholds would mean there would be more team members identified for potential misconduct and referred to Corporate Investigations for investigation.⁷³⁸ When asked whether it concerned her that there was more potential sales practices misconduct in the Bank’s largest line of business than the Investigations department would have the capacity to investigate, Ms. Russ Anderson responded:

What I was concerned about was that if we went down the percentage too quickly, we had two issues: One, Corporate Investigations would be overwhelmed and couldn't do the investigations quickly enough; and, two, that swept up in that larger pool of team members were going to be a significant amount of false positives. And so moving the percentage down at a chunk basis until you figured out where the cross was, where the axis would cross, was my other consideration.⁷³⁹

Further, while positing that CI would be “overwhelmed” by the large number of cases referred for investigation, Ms. Russ Anderson testified this did not indicate that there was something deeply wrong with the Community Bank’s business model – stating, again without documentary evidence to support the claim – that “there would be a raft of false positives in there, and that that would overwhelm Corporate Investigations.”⁷⁴⁰ Nothing in the record supports the proposition that there would be a “raft” of false positives that would “overwhelm” Corporate Investigations if the thresholds for CI referrals were changed. **Acting in furtherance of these opinions by refusing to adjust the “proactive” monitoring thresholds under the conditions that were present during the relevant period constituted unsafe or unsound**

⁷³⁶ Tr. (Russ Anderson) at 9660.

⁷³⁷ *Id.* at 9661.

⁷³⁸ *Id.* at 9673.

⁷³⁹ *Id.* at 9673-74.

⁷⁴⁰ *Id.* at 9674.

banking practice and a breach of the fiduciary duties Ms. Russ Anderson owed to the Bank.

Ms. Russ Anderson acknowledged that as GRO for Community Banking she had a responsibility to understand the effectiveness of the thresholds, and to determine whether the thresholds monitored sales practices risk.⁷⁴¹ She further acknowledged that she was responsible for ensuring that SSCOT’s methodology was effective to detect sales practices misconduct from 2013 to 2016.⁷⁴² **Ms. Russ Anderson’s failure to ensure that SSCOT’s methodology was effective to detect sales practices misconduct during the relevant period constituted unsafe or unsound banking practice and a breach of the fiduciary duties Ms. Russ Anderson owed to the Bank.**

Core Team Analyses – December 5, 2013

Ms. Russ Anderson testified that she was a member of the Core Team and believed the work of that team was necessary to the Bank.⁷⁴³ She said it was necessary because “I believed that the people in the Legal Department and the Corporate HR and places like that were trying to have some understanding around the termination decisions that were being made.”⁷⁴⁴ She testified that because the materials the Core Team received about sales practices misconduct in the Community Bank were “based on investigations that were conducted,” the materials were important sources of information.⁷⁴⁵

Pursuant to its responsibilities regarding the evaluation of allegations of sales practices misconduct by Community Bank team members, the Core Team reviewed a December 5, 2013 email from Mr. Otsuka that presented a series of cases – from Florida, Maryland, Pennsylvania, North Carolina, New York, and Connecticut.⁷⁴⁶ Ms. Russ Anderson testified that she had routine discussions with members of the Bank’s HR department regarding sales practice misconduct, including those who were part of the Core Team.⁷⁴⁷ She testified the Core Team members shared with her their views about why employees engaged in such misconduct – “there was an exchange of ideas and concepts, yes” and that she valued their insights.⁷⁴⁸

The December 5, 2013 email chain reflected input from Core Team members regarding the cases presented, [REDACTED]

⁷⁴¹ Tr. (Russ Anderson) at 9675.

⁷⁴² *Id.*

⁷⁴³ *Id.* at 9739.

⁷⁴⁴ *Id.*

⁷⁴⁵ *Id.* at 9739-40.

⁷⁴⁶ *Id.* at 9587-88; OCC Ex. 1366.

⁷⁴⁷ Tr. (Russ Anderson) at 9586.

⁷⁴⁸ *Id.*

Anderson responded, “I don’t know that.”⁷⁵⁶ **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 Ms. Russ Anderson owed to the Bank.**

Pausing Proactive Monitoring – November 2013

Ms. Russ Anderson testified that “[a]round the time of the L.A. article, individuals in Corporate HR and Legal put a pause on the proactive monitoring.”⁷⁵⁷ She testified that she learned about the pause during a phone call in late November or early December 2013 with Pat Callahan, then Chief Administrative Officer of Wells Fargo.⁷⁵⁸ She said she “was not at all happy about” the pause, that it was “very disappointing to me” because she felt the proactive monitoring was “a good process and one that we should move forward on with all due haste.”⁷⁵⁹

On further questioning, Ms. Russ Anderson testified that the pause actually began around November 2013, at the direction of Pat Callahan.⁷⁶⁰ Ms. Russ Anderson testified that it “wasn’t really clear what the pause was and who was supposed to be doing what” – disputing the premise that pausing proactive monitoring would be appropriate only if she used the time to really understand the root cause of sales practice issues.⁷⁶¹

This, however, was the message explicitly presented by Hope Hardison in a December 23, 2013 email to Ms. Russ Anderson – who wrote:

My understanding was that we had agreed to work through the Sales Quality reports already run and refer them to CI, but that with respect to future reporting we were hitting the pause button while the CB team and partners work to uncover the root causes and implement recommendations. With respect to pausing the Sales Quality proactive reporting, [REDACTED] that provided we are using the time to really understand and address the root causes of the issue and taking appropriate action in response to our findings, we can pause. Once new programs are in place we would certainly resume testing to evaluate their effectiveness.⁷⁶²

⁷⁵⁶ *Id.* at 9590.

⁷⁵⁷ *Id.* at 9254.

⁷⁵⁸ *Id.* at 9329, 9328-29.

⁷⁵⁹ *Id.* at 9255.

⁷⁶⁰ *Id.*

⁷⁶¹ *Id.*

⁷⁶² OCC Ex. 1142 at 1.

Ms. Russ Anderson acknowledged that she read this email, but that “there were a lot of emails”; but nevertheless she took it seriously.⁷⁶³ She disagreed, however, that the message indicated it was incumbent upon her as the Group Risk Officer to understand what needed to be done during the pause – testifying instead that “the ‘we’ in here is Pat and Hope and me. . . . not just me as the Group Risk Officer”.⁷⁶⁴ When asked during cross-examination “Okay. But the ‘we’ includes you, the Group Risk Officer, right?” Ms. Russ Anderson responded, “It’s not how I read it at the time. But I would agree to that now.”⁷⁶⁵

Ms. Russ Anderson testified she did not know what either Ms. Callahan or Ms. Hardison was doing at this time to identify and address the root cause of sales practices misconduct.⁷⁶⁶ Ms. Russ Anderson also testified that she did not recall ever telling either Mr. Julian or Mr. McLinko that she was working during this time to identify and address the root cause of sales practices misconduct.⁷⁶⁷

Ms. Russ Anderson testified, “[w]e had invested a lot of time and energy. And it was sort of my baby. And I thought that pausing it, we would lose momentum on what we had started.”⁷⁶⁸ She said she then called Carrie Tolstedt, expressed her discomfort with the pause, and Ms. Tolstedt “reiterated that this is what Pat and Hope Hardison . . . and Legal needed us to do, and so I followed their orders.”⁷⁶⁹ She testified that “if the Law Department had – their analysis talked extensively about what the pause would mean, and that putting the pause in place was legally okay to do, because we were going to be doing this work on determining root cause and understanding activities that had led up to the terminations.”⁷⁷⁰

Ms. Russ Anderson testified that pausing proactive monitoring meant that SSCOT would stop looking proactively for the most egregious offenders of simulated funding and phone number changes and referring those employees to Corporate Investigations.⁷⁷¹ She testified that she was uncomfortable with the pause because she believed it hindered detection of additional employees who engaged in sales practices misconduct.⁷⁷² Without contradicting the premise that the pause was instituted so that she as GRO could determine the root cause of sales practices

⁷⁶³ *Id.* at 9696.

⁷⁶⁴ *Id.*

⁷⁶⁵ *Id.*

⁷⁶⁶ *Id.* at 9696-97.

⁷⁶⁷ *Id.* at 9697.

⁷⁶⁸ *Id.* at 9330.

⁷⁶⁹ *Id.* at 9331.

⁷⁷⁰ *Id.* 9333-34.

⁷⁷¹ *Id.* at 9687.

⁷⁷² *Id.*

misconduct, Ms. Russ Anderson testified the pause further hindered her ability to apprise senior leadership of the sales practices misconduct problem.⁷⁷³

Notwithstanding these concerns, Ms. Russ Anderson acknowledged that she failed to tell members of the Enterprise Risk Management Committee at the April 9, 2014 meeting that she was uncomfortable with pausing proactive monitoring; or that the pause hindered SSCOT's ability to detect additional sales misconduct; or that it hindered her from being able to apprise senior leadership of the depth and breadth of the potential misconduct.⁷⁷⁴ She testified this was because "Pat Callahan and Hope Hardison and Mike Loughlin were on the Committee."⁷⁷⁵ Offering no documentary evidence to support the factual claim, Ms. Russ Anderson testified that she did not raise the pause with the ERMCM because its members "knew about the pause and they knew how I felt about the pause."⁷⁷⁶ She acknowledged that there were others on the Committee, but that she did not "think it was necessary to tell them" and it "was not part of the conversation."⁷⁷⁷ **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 Ms. Russ Anderson owed to the Bank.**

Ms. Russ Anderson also acknowledged that there was no lookback conducted of sales practices misconduct that occurred prior to April 2014.⁷⁷⁸ She testified that she did not inform the ERMCM about this – but that there were others on the Committee, including members from Legal, who she said knew about this.⁷⁷⁹ She offered no documentary evidence to support this factual claim.

During her testimony regarding the disagreement she had – with Legal, HR, and Ms. Tolstedt – concerning the propriety of pausing the proactive monitoring of sales practices misconduct, Ms. Russ Anderson identified a series of email message chains.⁷⁸⁰ In a November 25, 2013 exchange among senior staff for HR, Corporate Security, and Legal, HR Manager Susan Nelson raised concerns about "multiple tm terms" (presumably referring to multiple team member terminations).⁷⁸¹ She wrote, "As I'm chatting with the line HRBPs, I think we really need to put together something documenting roles and responsibilities around handling these

⁷⁷³ Tr. (Russ Anderson) at 9687.

⁷⁷⁴ *Id.* at 9688.

⁷⁷⁵ *Id.*

⁷⁷⁶ *Id.*

⁷⁷⁷ *Id.* at 9689.

⁷⁷⁸ *Id.*

⁷⁷⁹ *Id.* at 9690.

⁷⁸⁰ *Id.* at 9434-37; OCC Ex. 1365; R. Ex. 17697; OCC Ex. 1367.

⁷⁸¹ OCC Ex. 1365 at 7.

multiple tm terms. It's not feeling really coordinated and I'm worried that things are going to fall through the cracks. Just an unintended consequence of this new process, I think."⁷⁸²

Later on November 25, 2013,

Ms. Russ Anderson "agreed to put a pause on what they do proactively (*i.e.*, the sales quality reports they run) through the end of the year."⁷⁸³ Ms. Russ Anderson "would still respond reactively to all the stuff that comes through the Ethics Line, customer complaints, from regulators and the like."⁷⁸⁴

"with respect to the 109 that came up on the simulated funding/phone number report they just ran, they would need to move forward. She's agreed they wouldn't have to be referred to Investigations this week.

The "109" refers to "the next grouping of team members that the SSCOT team had sent to Corporate Investigations," as reflected in a report contained in a November 26, 2013 email message from Mr. Otsuka to Ms. Meuers and Ms. Hurley.⁷⁸⁶ The report reflects Simulated Funding cases throughout the country (Simulated Funding reported in Eastern: 6, West Coast: 19; Western Mountain: 13 – including LA/OC, Arizona/Idaho, San Francisco Bay Regional Banking; Northeast; Nevada Community Banking; and Utah Community Banking; and Phone Number Changes reported in West Coast: 28, Eastern: 18; Western Mountain: 14; Mountain Midwest: 13; Southwest: 4, including LA/OC, Arizona/Idaho; Northeast; San Francisco Regional Bay; Mid Atlantic; Colorado Regional; Greater Bay Area Regional; Minnesota/Great Lakes; Nevada Community Banking; Houston Community Banking; Southeast; Iowa/Illinois Regional Banking; Alaska Community Banking; Carolinas; Dakota Regional Banking; Florida; New Mexico/Western Border; Northern and Central California; Southern California; Utah Community Banking; and Washington Retail Banking.⁷⁸⁷

Ms. Russ Anderson testified that she told Mr. Otsuka that she wanted these cases processed because "the work had been done, and we needed in our protocols to move those to Corporate Investigations, who were anticipating that work."⁷⁸⁸ She said she discussed the pause in proactive monitoring "extensively" with the other Core Team members – including Mr. Otsuka, Christine Meuers, [Crystal] Silva, Rebecca Rawson, Susan Nelson, Laura Hurley, and

⁷⁸² OCC Ex. 1365 at 7.

⁷⁸³ *Id.* at 4.

⁷⁸⁴ *Id.*

⁷⁸⁵ *Id.* at 7.

⁷⁸⁶ Tr. (Russ Anderson) at 9337; OCC Ex. 1365 at 1,3.

⁷⁸⁷ OCC Ex. 1365 at 1-2.

⁷⁸⁸ Tr. (Russ Anderson) at 9337.

Debra Patterson.⁷⁸⁹ She testified that she understood the purpose of the Core Team was “that we were going to be reviewing the recommendations that Corporate Investigations would have around terminations of individuals in the branches through the data that they got from SSCOT.”⁷⁹⁰

Ms. Russ Anderson testified that two issues were discussed in particular: the length of the pause, and whether there would be a “lookback” period.⁷⁹¹ She stated lookback was an issue “because the pause was in effect, there was this whole period of time where the activity was going on but we were not gathering that data. So the idea of the lookback was that we would actually go back and start at the period of time that the last data was gathered and pull it forward, and that we would work that data and try to catch up.”⁷⁹² She said while she was in favor of the lookback period, “the Law Department was not at all in favor of us doing that.”⁷⁹³

Ms. Russ Anderson identified an email message dated December 3, 2013 from Mr. Otsuka to Ms. Meuers and Ms. Hurley in which Mr. Otsuka briefed the recipients on a Core Team call made earlier that day.⁷⁹⁴ The message reported Ms. Russ Anderson was not on the call but that “we’re going to be moving forward with the most recent Sales Quality Report that was run by Claudia’s team” (the 109).⁷⁹⁵ Mr. Otsuka also reported agreement “on the following revised thresholds, which will better manage volume, and hopefully focus us all better on higher impact situations.”⁷⁹⁶

The revised thresholds were set as follows:

- We’ll continue to review any simulated funding/phone number change issues in LA/OC.
- Outside of LA/OC, we’ll review simulated funding/phone number change issues if the recommendation from Investigations is termination of 3 or more team members in a Store.
- If the issue doesn’t pertain to simulated funding/phone number change issues, we’ll review if the recommendation from Investigations is termination of 5 or more team members.



⁷⁸⁹ Tr. (Russ Anderson) at 9337-41; see also, “In re Tolstedt-EC’s 2d Revised Hrg Transcript Errata Sheet” on page 29. Ordered by Second Supplemental Order (correcting Ms. Silva’s fist name).

⁷⁹⁰ Tr. (Russ Anderson) at 9341.

⁷⁹¹ *Id.*

⁷⁹² *Id.* at 9342.

⁷⁹³ *Id.*

⁷⁹⁴ R. Ex. 17697 at 1.

⁷⁹⁵ *Id.*

⁷⁹⁶ *Id.*



Ms. Russ Anderson testified that she discussed the longer pause [REDACTED] in a phone call with Hope Hardison and Pat Callahan, that she was “unhappy with not being able to start the proactive monitoring again on January the 1st and that I disagreed quite vehemently with their desire for the proactive monitoring to be stopped for an unknown period of time.”⁷⁹⁸ Regarding the look back period, Ms. Russ Anderson testified – without offering documentary evidence to support the factual claim – that the “Core Team was not in favor of it. Neither Legal nor HR thought that it would be a good idea to do a look back, that . . . it could overwhelm Corporate Investigations, and that they would just as soon move forward instead of looking back.”⁷⁹⁹

Ms. Russ Anderson testified she expressed her disagreement because “if we did a look back, that we could have learnings from and also who, if the behavior turned out to be true, needed to be disciplined.”⁸⁰⁰ She added that while she advocated the 109 be processed, HR felt that “if we went through with the 109, that the terminations would be very disruptive and wanted it to stay – those 109 to stay on pause and not finish the investigations on them.”⁸⁰¹

Ms. Russ Anderson identified an email chain dated December 19, 2013 among Core Team members regarding “Moving from reactive to proactive”.⁸⁰² In the first message, Susan Nelson expressed the view that “[t]his is feeling very, very time sensitive to me. I’m so worried that the flood gates are opening up again and I’m feeling a little like Nero playing my violin while Rome is burning.”⁸⁰³ She wrote “I’m not sure how many more hours we can all continue to

⁷⁹⁷ R. Ex. 17697 at 1.

⁷⁹⁸ Tr. (Russ Anderson) at 9344.

⁷⁹⁹ *Id.*

⁸⁰⁰ *Id.* at 9345.

⁸⁰¹ *Id.*

⁸⁰² *Id.*; OCC Ex. 1367.

⁸⁰³ OCC Ex. 1367 at 5.

invest in Core Group meetings to hammer through same issues – different names again and again.”⁸⁰⁴ Expressing a desire “to move the dialogue forward a little”, Ms. Nelson identified initiatives she wanted to discuss, anticipating that “Corporate Investigations’ hiatus on running sales integrity reporting” will end and the end of December.⁸⁰⁵

Ms. Russ Anderson testified that with all of these emails and conversations, she “was feeling pressure to not move forward with the proactive monitoring and not doing a lookback. There was preponderance of opinion by Legal and senior HR people not to do it.”⁸⁰⁶ Ms. Russ Anderson acknowledged, however, that she did not inform the ERMC about the decision not to have a lookback period.⁸⁰⁷

Notwithstanding the “preponderance of opinion” cited by Ms. Russ Anderson in her testimony, the record reflects that on December 19, 2013, Ms. Russ Anderson “basically announced on today’s Core Team call that she’s resuming proactive reporting (using a look back period) starting 1/1/14.”⁸⁰⁸

The point was addressed in greater detail in Ms. Meuers’ email to Hope Hardison on December 20, 2013:

Hope -- Just wanted you to be aware of this development, as it is different than what we had discussed previously. My understanding was that we had agreed to work through the Sales Quality reports already run and refer them to CI, but that with respect to future reporting we were hitting the pause button while the CB team and partners work to uncover the root causes and implement recommendations. With respect to pausing the Sales Quality proactive reporting, [REDACTED] that provided we are using the time to really understand and address the root causes of the issue and taking appropriate action in response to our findings, we can pause. Once new programs are in place we would certainly resume testing to evaluate their effectiveness. Can you please check in with Claudia to level set on this?⁸¹⁰

⁸⁰⁴ OCC Ex. 1367 at 5.

⁸⁰⁵ *Id.* at 3.

⁸⁰⁶ Tr. (Russ Anderson) at 9349.

⁸⁰⁷ *Id.* at 9690.

⁸⁰⁸ OCC Ex. 2468 at 1.

⁸⁰⁹ *Id.*

⁸¹⁰ *Id.*

Ms. Russ Anderson testified that a “level set” refers to being “all of like mind,” and through the Core Team call on December 19, 2013, she “was making it clear that we were going to resume our proactive work on January 1, and that we were going to use a look back period to go back to where we had stopped and move forward.”⁸¹¹ When asked whether there was a discussion about finding the root cause, Ms. Russ Anderson answered, “it was mentioned. There was not a robust conversation.”⁸¹² When asked who was supposed to find out the root cause, Ms. Russ Anderson responded, “[m]y understanding was that it was going to be addressed through Corporate HR and Legal with help from the Core Team.”⁸¹³ **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 Ms. Russ Anderson owed to the Bank.**

Ms. Russ Anderson identified an email exchange between herself and Ms. Hardison dated December 23, 2013, where Ms. Hardison “wanted to check in with” Ms. Russ Anderson on the “Sales Quality detective reporting.”⁸¹⁴ Ms. Hardison wrote that her understanding was that “we had agreed to work through the Sales Quality reports already run and refer them to CI, but that with respect to future reporting we were hitting the pause button while the CB team and partners work to uncover the root causes and implement recommendations.”⁸¹⁵

Ms. Russ Anderson testified that finding root causes was being addressed in this message, but she was still advocating for a resumption of proactive monitoring effective January 1, 2014.⁸¹⁶

Elaborating on her reasoning regarding her rejection of Ms. Hardison’s approach, Ms. Russ Anderson testified:

To me, the proactive monitoring work we were doing is what you needed in order to feed any new programs whatever she might have been thinking about and to help you work on root causes, because there's never just one root cause. But without that continued work, I felt we would be working in a vacuum, that we would be having stale data. You wouldn't know what the behavior was continuing to do and what the data would tell you.⁸¹⁷

⁸¹¹ Tr. (Russ Anderson) at 9351.

⁸¹² *Id.* at 9352.

⁸¹³ *Id.* at 9354-55.

⁸¹⁴ *Id.* at 9355-56; OCC Ex. 1142 at 1.

⁸¹⁵ OCC Ex. 1142 at 1.

⁸¹⁶ Tr. (Russ Anderson) at 9358-59.

⁸¹⁷ *Id.* at 9359.

Ms. Russ Anderson testified that she spoke later that day with Ms. Hardison, Pat Callahan[] and Debra Paterson, who were “adamant” that resuming the proactive reporting “was not going to happen.”⁸¹⁸

The initiatives Ms. Nelson wanted to discuss included possible changes to new hire training.⁸¹⁹ She wrote, “it may be a good idea to look at how we’re doing [NHO and new hire training] and what resources we can/should provide to [Shelley] to throw a spotlight on ethics and integrity”.⁸²⁰ (Emphasis *sic.*) She suggested “we do some hard copy materials delivery directly to new team members to reinforce what is done in the classroom or that the team member ‘receives’ via a direction to go read something on TeamWorks.”⁸²¹ (Emphasis *sic.*)

On this point, Ms. Nelson advocated creating “some common core and common training for Investigations (and maybe also for us) around sales integrity training/materials.”⁸²² She wrote:

I recall that we had one Investigations report where the investigator asked 2 tellers if they were familiar with the Sales Integrity Manual and they said “no.” I just learned yesterday (mea culpa) that the Sales Integrity Manual isn’t shared with individual contributors, only store managers. A small but important point if we’re using this question to determine whether we have grounds to terminate someone based upon knowledge of policy.⁸²³

Ms. Russ Anderson responded almost immediately, stating

Susan – that is not correct. First, it is called the Sales Quality Manual and Sales Integrity EKOD and they are required by ALL store team members at hire and again annually. During the EKOD they certify that they have read the manual. Not sure who was misinformed but you can let them know that that is not correct.⁸²⁴

The record reflects, however, that Ms. Nelson was not “misinformed” about team member access to the Manual. Ms. Nelson advocated hard copy materials delivered directly to team members; and Ms. Russ Anderson wrote that the only access to the Manual during training is “virtual” so “in the training they click on a link and read the manual.”⁸²⁵ Ms. Russ Anderson

⁸¹⁸ Tr. (Russ Anderson) at 9360, see also “22-03-07 Respondents’ Amended Revised Errata Day 9-38” on page 76. Ordered by Second Supplemental Order.

⁸¹⁹ OCC Ex. 1367 at 4.

⁸²⁰ *Id.*

⁸²¹ *Id.*

⁸²² *Id.* at 3.

⁸²³ *Id.*

⁸²⁴ *Id.* at 2.

⁸²⁵ *Id.* at 1.

opined that she “cannot imagine we would go back to paper”, which is precisely what Ms. Nelson had been advocating.⁸²⁶

The exchange ended with Debra Paterson suggesting, “[p]erhaps we need to have them review it in classroom, have some Ethically Speaking discussion or scenarios around it and then make sure they know where the link is to refer to it once back in their stores if necessary.”⁸²⁷

Ms. Nelson also advocated planning a session “with key leaders to dig deeper into the root causes of sales integrity problems across the footprint.”⁸²⁸ Further, she suggested that “[i]f we can influence CI at all, I’d like to see some core and common data in the investigation reports that are coming to the Core team”.⁸²⁹ She identified the need to see hiring dates, dates in position, and confirmation that all relevant training had been completed – for every team member investigated, and she wanted the same data for their service or store manager.⁸³⁰

Ms. Nelson also wanted to see “actual volume numbers of issues under investigation.”⁸³¹

Elaborating on this point, Ms. Nelson wrote:

There is an in-built assumption that someone was flagged based on broad-based front-end guidance being used on sales integrity reporting. However, since that front-end guidance is pretty broad, I’d like to see actual numbers/percentages to get a feel for bigger picture. How many/percent of inappropriate referrals or simulated funding of accounts.⁸³²

Ms. Nelson noted, “we rolled out Ethically Speaking materials late in 2013. Not sure what the core and common strategy is around delivering these on an ongoing basis in 2014? Would love to see the strategy/plan. And if we don’t have one, let’s build one.”⁸³³

Ms. Russ Anderson testified that the problem Ms. Tolstedt and others were focused on “were the number of team members that had been terminated in the initial LA/OC terminations that ended up in the newspaper. And they wanted, at their levels, to take a step back and see if they could determine a root cause of the activity.”⁸³⁴ “They thought that the number of terminations, as reported in the L.A. Times article, was . . . not good for the Bank’s reputation, and so they wanted to take a look at the processes we were using and if there was a root cause to

⁸²⁶ OCC Ex. 1367 at 1.

⁸²⁷ *Id.*

⁸²⁸ *Id.* at 4.

⁸²⁹ *Id.* at 5.

⁸³⁰ *Id.* at 4.

⁸³¹ *Id.*

⁸³² *Id.*

⁸³³ *Id.*

⁸³⁴ Tr. (Russ Anderson) at 9331.

the issue.”⁸³⁵ She testified that in her December 19, 2013 email, Ms. Nelson was expressing that “HR was very concerned that if we did this look back to go back and look at the behaviors that the bankers had, that there would be involuntary terminations through that data, and she . . . didn’t want to advocate for that.”⁸³⁶

Ms. Russ Anderson testified that she “wanted to start up right away in January 2014,” but the pause ended and the pilot went forward in April 2014.⁸³⁷ Asked whether she agreed with testimony attributed by her Counsel during direct examination to Examiner Candy that the immediate action Ms. Russ Anderson took after the second L.A. Times article in December 2013 was to pause proactive monitoring for seven months, Ms. Russ Anderson said she did not agree with it – testifying that “Ms. Candy is mistaken that I’m the one who took the pause. . . . the pause was taken at the direction of the senior leadership of Wells Fargo.”⁸³⁸ She also disagreed with any testimony suggesting that the pause in proactive monitoring was ultimately her responsibility, because she “had been directed by the Chief Administrative Officer of the Company, the head of HR for the Company, [her] own boss, and Legal to do this pause. I could not summarily go against their direction.”⁸³⁹

It should be noted that there is substantial evidence establishing the pause on the Community Bank’s proactive monitoring of simulated funding and phone number changes did not end until July 2014, in that SSCOT did not begin to refer cases generated from the proactive monitoring reports to Corporate Investigations until then.⁸⁴⁰

Further, there is substantial evidence establishing that there was no lookback conducted of potential simulated funding and phone number changes that occurred prior to April 2014.⁸⁴¹ Ms. Russ Anderson later clarified her answer, testifying that the “data started being collected in April of 2014 because they used 90 days’ worth of data before they started – before they moved the data to Corporate Investigations.”⁸⁴² Corporate Investigations thus did not receive Community Bank’s data until July of 2014, at which time, Ms. Russ Anderson testified, they “started their interviews in the branches.”⁸⁴³

⁸³⁵ Tr. (Russ Anderson) at 9331-32.

⁸³⁶ *Id.* at 9347-48.

⁸³⁷ *Id.* at 9255, 9332.

⁸³⁸ *Id.* at 9363-64.

⁸³⁹ *Id.* at 9364.

⁸⁴⁰ See Enforcement Counsel’s Motion for Summary Disposition, Statement of Material Facts (MSD, SMF) (Russ Anderson) No. 202 and (Julian and McLinko) No. 161, responses thereto.

⁸⁴¹ Tr. (Russ Anderson) at 9360; see also MSD, SMF (Russ Anderson) No. 202 and (Julian and McLinko) No. 161.

⁸⁴² Tr. (Russ Anderson) at 9255.

⁸⁴³ *Id.* at 9255-56; 9360.

Ms. Russ Anderson testified that her team would turn over to Corporate Investigations data being collected during the pause period.⁸⁴⁴ She identified a January 30, 2014 email she sent to Ms. Callahan, Ms. Hardison, and Ms. Paterson that advised the recipients that soon her team “will be receiving from the Deposit Products Group some data that we need to analyze and, potentially, turn over to Corporate Investigations.”⁸⁴⁵ She testified that there were “several data points that we would get in from the Deposit Product Group”, adding that Ken Zimmerman “had a very robust analytics group, and they analyzed all sorts of things and activities in the deposit space.”⁸⁴⁶ She said that Paula Bernardo’s group within SSCOT “would use and manipulate” the data “to look for trends of behaviors, rolling funding rates, short cycle validations.”⁸⁴⁷ She testified that there “would also have been simulated funding, potential simulated funding activity in there.”⁸⁴⁸

Ms. Russ Anderson testified that she wrote the email to make the recipients aware that the data showing simulated funding activity was coming not from proactive monitoring but through reactive work, and she wanted the recipients to “be aware of the fact that I wasn’t going behind their back” but that there “could be some simulated funding activity in there that could lead to terminations.”⁸⁴⁹

Project Clarity

Ms. Russ Anderson testified that during the seven-month pause of SSCOT’s proactive monitoring, apart from participating in the Evolving Model project,⁸⁵⁰ she also worked on Project Clarity, which related to signature capture and customer consent.⁸⁵¹ She testified that the lack of a customer signature did not necessarily indicate the lack of consent by the customer.⁸⁵² She said “you had a level of where – where you were okay with not getting the signature.”⁸⁵³ “So let’s say you had 98 percent signature capture, the other 2 percent you’re okay with not getting, because you have things like ADA [Americans with Disabilities Act] restrictions.”⁸⁵⁴

Elaborating on this point, Ms. Russ Anderson testified:

⁸⁴⁴ Tr. (Russ Anderson) at 9363; OCC Ex. 1143.

⁸⁴⁵ OCC Ex. 1143 at 1.

⁸⁴⁶ Tr. (Russ Anderson) at 9362

⁸⁴⁷ *Id.*

⁸⁴⁸ *Id.*

⁸⁴⁹ *Id.* at 9363.

⁸⁵⁰ *Id.* at 9275.

⁸⁵¹ *Id.* at 9369.

⁸⁵² *Id.* at 9373.

⁸⁵³ *Id.*

⁸⁵⁴ *Id.* at 9373-74.

You have customers who know you really, really well and would call on the phone and say, hey, Claudia, can you open this account for me? So you open the account. You didn't get a signature capture. It could be I went in, but I wanted the account in my husband's name and my name, so they have my signature but they don't have my husband's signature. There's a myriad of reasons. And now with phone bank and the Internet, we don't capture signatures on accounts that are opened in those two channels.⁸⁵⁵

Responding to leading questioning by her Counsel during direct examination, Ms. Russ Anderson testified that it is “extraordinarily difficult” to change something as much as just saying you have to have a signature on a piece of paper in the Community Bank, “because you have to start off with the technology pieces and build those, and you have to change all of your processes.”⁸⁵⁶ Stating, “it can be a customer experience issue, which is why, up until, you know, the '13, '14 timeline, our product partners preferred that we really not press for customer signatures.”⁸⁵⁷ **Acting in deference to product partner preference under the conditions that required credible challenge regarding customer consent and signature capture constituted unsafe or unsound banking practice and a breach of the fiduciary duties Ms. Russ Anderson owed to the Bank.**

Ms. Russ Anderson testified that she disagreed with testimony to the effect that requiring a signature to show authorization of a credit card is a simple control to implement.⁸⁵⁸ Elaborating on this point, Ms. Russ Anderson testified:

As I stated earlier, signature capture is one of those items that you can build a process as good as you can, but you're never going to be perfect at it, because you have some limitations. So you set -- you set a percentage that you're comfortable with. To me, it's like at the teller line. You're always going [to] have some cash loss at the teller line. You just have to know what the limits are that you're comfortable with that risk. And that's what happens with signature capture.”⁸⁵⁹

Ms. Russ Anderson testified that when she found out, “we were not capturing signatures on credit – well, we were capturing as many as we could. But the reason I got for why we weren't doing it for every credit card was because the credit card law did not require it.”⁸⁶⁰ She testified, “no one wanted” to require customer signatures on credit card applications: “They

⁸⁵⁵ *Id.* at 9374.

⁸⁵⁶ *Id.* at 9375.

⁸⁵⁷ *Id.*

⁸⁵⁸ *Id.* at 9376-77.

⁸⁵⁹ *Id.* at 9377. See also “22-03-07 Respondents’ Amended Revised Errata Day 9-38” on page 76. Ordered by Second Supplemental Order.

⁸⁶⁰ Tr. (Russ Anderson) at 9377,

didn't think it was necessary. They felt that the fact that it wasn't required by law made it unnecessary. Nobody wanted to spend the technology dollars. And people feared that it would compromise the account opening process at the banker desk, that it would slow things down.”⁸⁶¹

Although she testified that signatures were not required until 2015, Ms. Russ Anderson testified without providing supporting documentation that she “took a lot of hits, but I persevered” and used “a lot of my political capital to get it done,” because “capturing credit card signatures is really important so that you know if there's a dispute, that they signed up for that credit card.”⁸⁶²

Ms. Russ Anderson testified that the concept behind Project Clarity had to do with signature capture and customer understanding: “the concept was, are we clear with the customer – are we clear and is the customer clear about the product and service that they're wanting and getting?”⁸⁶³ Without providing details about signature capture, Ms. Russ Anderson testified that during the pause Project Clarity “was continuing to roll out” and after starting as “paper-based” it now is “actually built into the bankers' systems.”⁸⁶⁴ She said now when an account is opened over the phone, “you've captured the person saying ‘yes, I want that account. And on the Internet, you're the one who is putting in your data. But in the branches, physically, you still sign.”⁸⁶⁵

This description of Project Clarity is inconsistent with the minutes of the OCC's February 10, 2015 meeting with Ms. Russ Anderson. The minutes of that meeting, which the OCC called to provide Community Banking staff the opportunity to present information on the Conduct Risk Framework for the Operational Risk and Cross Sell Examination, reflects the following: “Project Clarity is work they are doing that clarifies what channels the customer will come through. They prefer they go through their local branches and use the 800 number secondary to in person/local branches.”⁸⁶⁶

Regarding credit card customer signatures – a project she worked on – “we started requiring them in 2015, and it was fully rolled out before I left in 2016.”⁸⁶⁷ Notwithstanding the lack of customer signatures during the relevant period, through leading questioning by her Counsel during direct examination, Ms. Russ Anderson testified without offering supporting documentation that as a result of her work around signature requirements and consent, she saw

⁸⁶¹ *Id.* at 9378-79.

⁸⁶² *Id.*

⁸⁶³ *Id.* at 9369.

⁸⁶⁴ *Id.*

⁸⁶⁵ *Id.* at 9374-75.

⁸⁶⁶ OCC Ex. 1771 at 3.

⁸⁶⁷ Tr. (Russ Anderson) at 9375.

“significant” improvements between 2013 and 2016, averring, “I don’t remember the percentages, but consent issues went down quite materially.”⁸⁶⁸

Mystery Shopping

Ms. Russ Anderson testified that through the mystery shopping program, “you hire a third-party firm and they bring in individuals who act just like a customer. You would not know. So they go into the branch, they sit with a banker, and they experience – they go in with all different kinds of product that they desire. They go through the whole account opening process with the banker.”⁸⁶⁹

Ms. Russ Anderson testified that the shopper would then provide feedback “as to did they feel pressured? Did they get all the right information?”⁸⁷⁰ Through leading questioning by her Counsel during direct examination Ms. Russ Anderson testified that it was “sort of” like an undercover sting, and she “was very excited about” it.⁸⁷¹

The Quality Sales Report Card

Ms. Russ Anderson testified, “during the pause, we were continuing to evolve the Quality Sales Report Card [QSRC] and use it [to] help us understand quality of sales as well as behaviors.”⁸⁷²

So it was -- it was kind of growing up, and I was using it now -- because the data was good, I could use it now as a tool when we were talking about promotions, people speaking at conferences, people going to the annual conference. We would look at their quality sale report card and determine if they met the criteria for being promoted or being a speaker or what it might be.⁸⁷³

Elaborating, Ms. Russ Anderson testified:

And it really was another mechanism of providing information to the Regional Banking branches, and really importantly, to the senior leadership of Regional Banking about the quality of the sales that were occurring. So it captured things like signature capture. It did things like rolling funding rates. It really gave information to the executives to show -- I think they started out with four and we would add things. But items that could indicate that the -- they had quality of sale issues. And if you have quality of sale issues, then

⁸⁶⁸ Tr. (Russ Anderson) at 9375.

⁸⁶⁹ *Id.* at 9370.

⁸⁷⁰ *Id.*

⁸⁷¹ *Id.*

⁸⁷² *Id.* at 9371.

⁸⁷³ *Id.*

perhaps do you have other -- you know, is there something else wrong with that -- with that sale.⁸⁷⁴

Ms. Russ Anderson identified an email exchange from February 2013 between herself and Jason MacDuff regarding her preparation for a presentation she was to make before the Bank's Regional Banking Leadership.⁸⁷⁵ In the exchange, Mr. MacDuff inquired whether Ms. Russ Anderson's presentation on risk management might include a presentation by "a mid-senior leader to come share some of their practices and processes with their teams".⁸⁷⁶ He qualified this by suggesting that such a presenter would need to have "good QSRC or recent significant improvement".⁸⁷⁷

In her response to this suggestion, Ms. Russ Anderson wrote that while she appreciated Mr. MacDuff's feedback, "I don't expect a mid to senior person to talk because quite frankly we couldn't find one whose stats were credible (hate to say that)".⁸⁷⁸

Presented with the opportunity to explain why she wrote this, Ms. Russ Anderson testified during direct examination:

Because the Quality Sales Report Card, which Jason in the previous email was saying, you know, do you have anybody in the quality sales report card who shows really good numbers. My issue was that the Quality Sales Report Card was not even 10 months old yet, and there was a lot of movement in the numbers within the Quality Sales Report Card, which was why we weren't using it other than as an informational document at this point in time. And my biggest fear was that if I used the data in that report and I asked someone to come and speak and that person actually had really poor scores, you know, two months later as we continued to work the data, I was going to lose a lot of credibility with the leadership team for putting someone up on the stage who really was not doing the positive activity that we were saying they did.⁸⁷⁹

When asked to respond to Examiner Candy's testimony about this email exchange, Ms. Russ Anderson responded, "I think she's misinterpreted my message" and "didn't understand what my concerns were."⁸⁸⁰ Ms. Russ Anderson testified that she and Ms. Tolstedt would talk about sales qualitative and quantitative measurements in discussing the promotion of executives

⁸⁷⁴ *Id.* at 9382-83.

⁸⁷⁵ *Id.* at 9385; OCC Ex. 50.

⁸⁷⁶ OCC Ex. 50 at 4.

⁸⁷⁷ *Id.*

⁸⁷⁸ *Id.* at 3.

⁸⁷⁹ Tr. (Russ Anderson) at 9386-87.

⁸⁸⁰ *Id.* at 9387.

to higher-level jobs, and would use the QSRC “to help in advancement decisions for members of the Regional Bank”.⁸⁸¹

During cross-examination, Ms. Russ Anderson agreed that that from 2013 to 2016 the QSRC was not a control that prevented employees from engaging in sales practices misconduct.⁸⁸² She testified that she understood, however, that it could have been used as a control to detect such misconduct, while acknowledging that having a poor QSRC score would not result in an employee being terminated.⁸⁸³

Ms. Russ Anderson testified that the “quality of [the] sales report card wasn’t even a year old, and the data was still being – I don’t want to – massaged so that we could really use it to mean something. So that’s what this means.”⁸⁸⁴

When asked during cross-examination whether this concerned her at the time, Ms. Russ Anderson responded, “No. Because we were getting close.”⁸⁸⁵ Asked whether it concerned her that she could not find a single mid to senior leader by this point in February 2013, Ms. Russ Anderson responded, “It did not, because I did not have the data to do that.”⁸⁸⁶ Asked to assume the premise that the sales goals were reasonable, Ms. Russ Anderson was asked during cross-examination whether she would expect to find at least one mid to senior leader who was able to meet sales goals and had even an improvement in the QSRC, Ms. Russ Anderson responded, “I don’t know. I didn’t think about it.”⁸⁸⁷

The record reflects, however, that in February 2013 Ms. Russ Anderson did think about the issue, at some length, and that her testimony to the contrary was false.⁸⁸⁸ In an Instant Message exchange – a copy of which Ms. Russ Anderson sent to herself on February 11, 2013 – Ms. Russ Anderson and Ken Zimmerman were discussing the content of the deck Ms. Russ Anderson would be presenting to the Regional Bank leadership conference.⁸⁸⁹ Regarding the deck she had prepared, Ms. Russ Anderson wrote to Mr. Zimmerman, “this is painful. I am afraid Jason [MacDuff] and team are going to rip my deck apart. It is different from others.”⁸⁹⁰

⁸⁸¹ *Id.* at 9480.

⁸⁸² *Id.* at 9753.

⁸⁸³ *Id.* at 9753.

⁸⁸⁴ *Id.* at 9764

⁸⁸⁵ *Id.*

⁸⁸⁶ *Id.* at 9765.

⁸⁸⁷ *Id.*

⁸⁸⁸ *Id.*; OCC Ex. 1192.

⁸⁸⁹ Tr. (Russ Anderson) at 9766.

⁸⁹⁰ OCC Ex. 1192 at 1.

Elaborating on this concern, Ms. Russ Anderson wrote, “Jason is trying to tell me how to do my presentation. If they had a vision I sure as heck wish they had told me before I put 30 hours into the darn deck”, to which Mr. Zimmerman responded, “oops, sorry”.⁸⁹¹

Responding to Mr. Zimmerman, Ms. Russ Anderson wrote, “oh – it will be okay but you can’t make my topic all warm and fuzzy and guide these SENIOR leaders by the nose that they have to lead around sales quality. They want me to give examples of how to do it. UGH!”⁸⁹² Mr. Zimmerman responded, “maybe enlist Chip. He can explain that all you have to do is tank your sales.”⁸⁹³ Ms. Russ Anderson wrote in response, “LOL! That is just it – they want me to find someone who is growing sales while having spotless sales quality. Yup – not gonna happen.”⁸⁹⁴

During cross-examination, Ms. Russ Anderson denied that this reflected her frustration about having to perform her job of ensuring the Community Bank adequately managed sales practices risk – responding, “I was being very tongue-in-cheek with Mr. Zimmerman.”⁸⁹⁵ Ms. Russ Anderson also denied that the only way in February 2013 to have clean quality sales would be for a senior leader to “tank” their sales.⁸⁹⁶

Whether or not she was being “tongue-in-cheek” in her exchanges with Mr. Zimmerman, preponderant reliable evidence demonstrated Ms. Russ Anderson’s claim that she did not think about the difficulty in finding at least one mid to senior leader who was able to meet sales goals and had an improvement in the QSRC was a false claim, one that eroded her reliability as a witness with respect to the interrelationship between meeting sales goals and having a QSRC score that could serve as a positive example.

Ms. Russ Anderson identified an October 13, 2014 email exchange between herself and Ms. Rawson regarding the results of the third quarter 2014 QSRC.⁸⁹⁷ The report reflected that for the third quarter, “all District Managers were Acceptable on the QSRC measure for incentives.”⁸⁹⁸ Asked how she feels about this report, Ms. Rawson responded, “Well, the optimist in me would like to think that every district in the Regional Bank has dramatically improved their quality of sales; however the realist in me believes that this validates the need for

⁸⁹¹ OCC Ex. 1192 at 2.

⁸⁹² *Id.*

⁸⁹³ *Id.*

⁸⁹⁴ *Id.*

⁸⁹⁵ Tr. (Russ Anderson) at 9767.

⁸⁹⁶ *Id.* at 9767-68.

⁸⁹⁷ *Id.* at 9756; R. Ex. 6993.

⁸⁹⁸ R. Ex. 6993 at 2.

the work that is underway to further evolve the QSRC.”⁸⁹⁹ Ms. Russ Anderson’s only response to this suggestion for further study was, “mind meld with me . . .”.⁹⁰⁰

February 4, 2014 Ethics Line Allegation – Phone Number Changes from October to December 2013

In an email exchange dated February 4, 2014, Rebecca Rawson provided to Ms. Russ Anderson an email transmission from SSOCT Project Management Manager Glen Najvar⁹⁰¹ in which Mr. Najvar reported on an Ethics Line allegation.⁹⁰² The record reflects that Ms. Rawson forwarded the message to Ms. Russ Anderson on February 3, 2014.⁹⁰³

Mr. Najvar stated the complaint stated:

At a one-on-one with store manager and DM, store visits and small talk conversations with Lana or [Sunset Vermont Store Manager AT] they always advised [*sic*] bankers to change phone numbers for clients and manipulate the system for sales incentives too. . . . I’m tired of hearing co workers and friends that are good [assets] to the company being force[d] to do things that by politics have to get done in order to keep your job. . . but most of all Lana knowing about what’s going on and its [*sic*] not only us . . . its [*sic*] the whole district and store managers and [Area President LM] that know what’s going on . . . since they care so much about CE . . . [unfortunately] nothing ever happens to them and its [*sic*] the first ones in line the only ones that always get let go!⁹⁰⁴

Attributing “High” importance to the message, Mr. Najvar wrote that this Ethics Line report specifically identified the DM (SB), but since the complaint mentioned AT and LM by name, they were added to the complaint.

Mr. Najvar then gave this accounting:

Data revealed that 5,542 phone number changes occurred within the District from October-December 2013. Of these, 891 (16%) were where phone numbers were changed by 1 to 3 digits (this was the methodology used in the recent Behavior Trend Analysis).⁹⁰⁵

⁸⁹⁹ R. Ex. 6993 at 1.

⁹⁰⁰ *Id.* See also OCC Ex. 135, 1/6/16 email exchange between Ms. Russ Anderson and Ms. Rawson reflecting tolerance for unfunded accounts when awarding and “Acceptable Score” based on 75% 30 day RFR and 10% Funded/Depleted.” *Id.* at 1.

⁹⁰¹ Tr. (Russ Anderson) at 9618.

⁹⁰² *Id.* at 9591; OCC Ex. 289.

⁹⁰³ Tr. (Russ Anderson) at 9591; OCC Ex. 289 at 2.

⁹⁰⁴ OCC Ex. 289 at 2.

⁹⁰⁵ *Id.*

Mr. Najvar presented these findings to Ms. Rawson (who forwarded them on February 3, 2014 to Ms. Russ Anderson):

Sunset Vermont (AU 740) had more than half of the 1 to 3 digit phone number changes (currently 5 team members have pending SQ allegations for phone number changes as a result of the recent Behavioral Trend Analysis conducted by SQ)

All other stores reflect data that speaks to phone number changes occurring throughout the District.⁹⁰⁶

Mr. Najvar concluded by reporting that he “spoke with Leslie Hicks-Veal in CI and shared all of these findings. It was agreed that Sales Quality refer the allegations directly to CI for their review; SQ referred the case file today.”⁹⁰⁷

Upon receiving the message from Ms. Rawson, Ms. Russ Anderson responded that it was “[b]eyond interesting” and asked Ms. Rawson “[s]hould we send this to David also?”⁹⁰⁸

During cross-examination, Ms. Russ Anderson denied remembering the allegation.⁹⁰⁹ Given the opportunity to respond whether she did or did not believe the allegation by the employee that “I’m tired of hearing coworkers and friends that are good assets to the company being forced to do things that by politics have to get done in order to keep your job,” Ms. Russ Anderson responded, “I didn’t have evidence to believe it was true or not. This was an allegation that would [have] need[ed] to be investigated.”⁹¹⁰ When asked whether she knew what results came from such investigation, Ms. Russ Anderson responded, “Not off the top of my head, no.”⁹¹¹

Ms. Russ Anderson’s Presentation to the March 19, 2014 ERM C Meeting

Mr. Julian identified the minutes for the March 19, 2014 ERM C meeting and the agenda for the April 9, 2014 committee meeting.⁹¹² He said Claudia Russ Anderson and Jason MacDuff were in San Francisco and made presentations on behalf of the Community Bank, and he participated by telephone.⁹¹³ He said members of the Committee “wanted an update specifically

⁹⁰⁶ OCC Ex. 289 at 3.

⁹⁰⁷ *Id.*

⁹⁰⁸ *Id.* at 1.

⁹⁰⁹ Tr. (Russ Anderson) at 9616.

⁹¹⁰ *Id.* at 9617. See “22-03-07 Respondents’ Amended Revised Errata Day 9-38” on page 77. Ordered by Second Supplemental Order.

⁹¹¹ Tr. (Russ Anderson) at 9617.

⁹¹² Tr. (Julian) at 6458; R. Ex. 20347 (and duplicate at OCC Ex. 1438).

⁹¹³ Tr. (Julian) at 6460.

related to the work that the Community Bank was doing” with respect to the issues that had been raised in the L.A. Times article.⁹¹⁴

According to Mr. Julian, Ms. Russ Anderson and Mr. MacDuff provided the ERM members “with a high-level overview of the activity that the Community Bank was engaged in with respect to the L.A. Times['] article, the fact that 35 Team Members had been terminated and the sales pressure allegations that were raised in the articles.”⁹¹⁵ He said he found the overview “was consistent with information that I had received previously”, and that because the “controls are what identified the initial 35 Team Members,” he had “no reason not to believe that the controls were working.”⁹¹⁶

In the record of their presentation to the ERM on March 19, 2014, Mr. MacDuff “discussed ways team members may manipulate the sales or service programs for their benefit and the processes and controls in place to identify that behavior.”⁹¹⁷ When asked how inappropriate behavior is identified early and whether managers are rewarded for proper coaching of their teams, Ms. Russ Anderson “noted there is a Sales Quality team that reviews ethic line referrals and outliers in performance metrics.”⁹¹⁸ She also pointed to monitoring activity performed by “Deposit Products Group and Corporate Security”.⁹¹⁹

When asked whether the current model incents inappropriate behavior, the minutes reflect, “the Community Banking team doesn’t believe that is the case.”⁹²⁰ The minutes reflect that “[t]he committee discussion also focused on holding managers accountable in cases of team member wrongdoing and possible recommendations to improve the model, such as reducing turnover and increasing the tenure of store managers before moving them to their next role.”⁹²¹

These minutes are wholly silent with respect to Ms. Russ Anderson providing Committee members with information about the widespread nature of sales practices misconduct, and with respect to the root cause of such misconduct. Specifically, Ms. Russ Anderson said nothing about the true nature of sales goals – other than to report that she denied the possibility that sales goals were driving sales practices misconduct.⁹²² The minutes further reflect that although both were

⁹¹⁴ Tr. (Julian) at 6460.

⁹¹⁵ Tr. (Julian) at 6462. See also “22-03-07 Respondents’ Amended Revised Errata Day 9-38” on page 48. Ordered by Second Supplemental Order.

⁹¹⁶ Tr. (Julian) at 6463

⁹¹⁷ R. Ex. 20347 at 1.

⁹¹⁸ *Id.*

⁹¹⁹ *Id.*

⁹²⁰ *Id.*

⁹²¹ *Id.*

⁹²² *Id.*

present at the meeting, neither Ms. Russ Anderson nor Mr. Julian sought to discuss sales practices misconduct as a significant or emerging risk.⁹²³

Ms. Russ Anderson acknowledged that people got promoted at Wells Fargo because they were successful at sales. “It’s a sales organization.”⁹²⁴ She denied, however, knowing in 2014 that people in the Regional Bank got promoted because they were successful at sales; and did not recall whether SSCOT reviewed the track record of a branch manager before the manager got promoted.⁹²⁵

Ms. Russ Anderson’s Presentation to the April 9, 2014 ERM Meeting

Analysis of Sales Quality Allegations Concerning Lack of Customer Consent

Approximately three months before the Enterprise Risk Management Committee was due to meet in April 2014, Ms. Russ Anderson and Rebecca Rawson sought analyses regarding trends in Sales Quality allegations involving sales practices in the Community Bank.⁹²⁶ In particular, Ms. Russ Anderson sought information regarding whether customer consent was an issue presented in Ethics Line complaints in 2013.⁹²⁷

At Ms. Rawson’s direction, Glen Najvar (both are members of SSCOT) provided a report examining trends in Sales Quality allegations data through December 17, 2013.⁹²⁸ Mr. Najvar reported that overall Sales Quality “has seen an increase in Q4 2013 allegation volumes vs. Q4 2012.”⁹²⁹ He reported a “17% increase in volumes in Q4 2013 vs. Q1-Q3 2013 cumulatively.”

Mr. Najvar wrote, “[a]ll RBE regions and most Lead RP regions are up in the number of allegations reported” when comparing total Q4 2013 vs. total Q4 2012 allegations.⁹³⁰ He provided a breakdown showing the Pacific Midwest was up 42% Year over Year (YOY); Eastern was up 30%; Western Mountain was up 24%; and Southwest was up 20%.

Mr. Najvar also looked for geographic concentrations, and reported that when “looking at the Lead RP areas for total Q4 2013 vs. total Q4 2012 allegations, no real concentration here either as most regions are up”, reporting that LA-OC was up Q4 YOY 49%, placing them “in the ‘middle of the pack’ for those regions that increased.”⁹³¹ He summarized, finding “allegations as

⁹²³ R. Ex. 20347 at 2.

⁹²⁴ Tr. (Russ Anderson) at 9724, quoting OCC Ex. 2509 (Russ Anderson deposition of January 13, 2021) at 22.

⁹²⁵ Tr. (Russ Anderson) at 9722-24; but see OCC Ex. 154, email exchange between Ms. Russ Anderson and Tracy Kidd dated May 18, 2016 indicating “we only get sales quality reviews for [District Managers] and above.”

⁹²⁶ Tr. (Russ Anderson) at 9730; OCC Ex. 288.

⁹²⁷ Tr. (Russ Anderson) at 9730; OCC Ex. 288 at 1.

⁹²⁸ OCC Ex. 288 at 5.

⁹²⁹ *Id.*

⁹³⁰ *Id.*

⁹³¹ *Id.*

a whole are up; not just concentrated in LA-OC. Out of the 24 Lead RP areas, all experienced increases with the exception of 6 Lead RP regions in Q4 2.013 vs. Q4 2.012.”⁹³²

Upon receipt of Mr. Najvar’s analysis, Ms. Rawson on January 16, 2014 forwarded the same to Ms. Russ Anderson, who wrote that it “looks like most regions are up in Q4 allegations. There does not seem to be any significant outliers.”⁹³³

Upon receipt of Ms. Rawson’s transmission, Ms. Russ Anderson asked first, “what are the allegations looking like in for 2013 vs. 2012”; and second, “if we categorized the allegations how would they look YOY?”⁹³⁴

Mr. Najvar responded as follows:

Year over Year SQ allegation volumes comparing 2012 to 2013 reflect a 3% increase in total SQ allegations (7,983 total allegations in 2013 vs. 7,714 in 2012). To offer additional context, this is attributed to the volumes increase that SQ experienced in Q4 of 2013. In Q4 2013 SQ allegations volumes increased 34% over Q4 2.012 (Q4 2013=2,119 vs. Q4 2012=1,581). All RBE regions reflected spikes in Q4 2013 vs. Q4 2012 (Pacific Midwest had the highest Q4 YOY increase of 45% and Southwest had the lowest at 22%)

The overall YOY 2012 vs. 2013 allegation volumes are as follows:

Eastern: 13% increase
Pacific Midwest: 2% decrease
Southwest: 5% decrease
Western Mountain: 8% decrease

When categorizing allegations by product the following key trends have been identified YOY 2012 vs. 2013:

Credit Card up 53% (528 in 2012 vs. 806 in 2013)
Teller Referrals up 33% (568 in 2012 vs. 755 in 2013)
Line of Credit up 205% (87 in 2012 vs. 265 in 2013)
Online/Bill Pay up 14% (392 in 2012 vs. 448 in 2013)
Checking and Savings down 11% (5,881 in 2012 vs. 5,217 in 2013)⁹³⁵

⁹³² OCC Ex. 288 at 6.

⁹³³ *Id.* at 5.

⁹³⁴ *Id.* at 4.

⁹³⁵ *Id.* at 3.

Upon her receipt of this categorization of trends in Sales Quality allegations regarding specific sales practices misconduct, Ms. Russ Anderson directed one further analysis, asking Mr. Najvar to report on whether, “[o]f the products listed were the allegations re: consent?”⁹³⁶

In an email dated January 24, 2014, Mr. Najvar responded that “for the most part, yes” and added that “the percentages are relatively the same for both 2012 and 2013”.⁹³⁷ He provided the following information, showing that customer consent was identified as an issue in the majority of all Sales Quality Ethics Line allegations received in 2013, versus the same data from 2012:

When categorizing allegations by product the following key trends have been identified YOY 2012 vs. 2013:

- **Credit Card up 53%** (528 in 2012 vs. 806 in 2013)
 - ~90% of Credit Card allegations reference consent (others are procedural, i.e.: allegation advising team members sharing the best practice of selling CC's as Overdraft Protection)
- **Teller Referrals up 33%** (568 in 2012 vs. 755 in 2013)
 - Unrelated to product consent by the banker, but most all of Teller Referral allegations speak to Teller's entering unwarranted Teller Referrals without having spoken to a customer
- **Line of Credit (LOC) up 205%** (87 in 2012 vs. 265 in 2013)
 - ~90% of LOC allegations reference consent (others are procedural, i.e.: customer agreed to product, but didn't realize there was a fee)
- **Online/Bill Pay up 14%** (392 in 2012 vs. 448 in 2013)
 - ~80% of Online/Bill Pay allegations reference consent (others are procedural, i.e.: reports of token bill payments where customer consented to do so)
- **Checking and Savings down 11%** (5,881 in 2012 vs. 5,217 in 2013)
 - ~70% of Checking/Savings reference consent (others are procedural, i.e.: team members selling duplicate checking and savings accounts and customers agreeing to do so even though it's alleged they didn't really need them)⁹³⁸

After thanking Mr. Najvar, Ms. Russ Anderson sought to confirm that the referrals were “straight up Ethics Line complaints vs. the proactive work we were doing” – and Mr. Najvar confirmed this, writing on January 24, 2014 that “the vast majority of ‘referral’ complaints do

⁹³⁶ *Id.* at 3.

⁹³⁷ *Id.* at 2.

⁹³⁸ *Id.*

come from the Ethics Line, but we do see some reported to SQ by HR Advisors as well (team members opting to call and report the concern via HRA rather than calling the Ethics Line”.⁹³⁹

Ms. Russ Anderson testified that she did not recall getting the email chain reflected here.⁹⁴⁰ She said she had no reason to doubt the honesty of either Ms. Rawson or Mr. Najvar, but when asked whether she believed the emails she responded, “I don’t know how I felt about it.”⁹⁴¹ Calling into question her reliability as a historian with respect to facts material to this issue, when asked during cross-examination why she requested Mr. Najvar analyze the extent to which customer consent was identified as an issue in these Ethics Line allegations, Ms. Russ Anderson responded, “I don’t recall.”⁹⁴²

Notwithstanding that the analyses presented by Mr. Najvar through Ms. Rawson as reflected in these email messages established that customer consent was consistently and persistently the dominant issue raised through the Ethics Line allegations, when asked during cross-examination whether she believed it was incumbent upon her to inform the ERMC at the April 9, 2014 meeting that most Sales Quality allegations related to lack of customer consent – and that in the Bank’s largest line of business Sales Quality allegations relating to a lack of customer consent were not limited to the LA/OC area – Ms. Russ Anderson responded without elaboration or explanation, “I did not”.⁹⁴³ **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 Ms. Russ Anderson owed to the Bank.**

Ms. Russ Anderson’s Report to the ERMC on April 9, 2014

Through leading questioning by her Counsel during direct examination, Ms. Russ Anderson acknowledged she had a responsibility as Group Risk Officer for Community Banking to escalate risk management issues to Mr. Loughlin.⁹⁴⁴ She testified that Keb Byers instructed her to present at the April 9, 2014 ERMC meeting.⁹⁴⁵ She testified that she believed her ERMC presentation was very important and that she took seriously the presentation she gave.⁹⁴⁶ She testified that at no time during her service as Group Risk Officer did she ever believe that it was

⁹³⁹ OCC Ex. 288 at 1.

⁹⁴⁰ Tr. (Russ Anderson) at 9731.

⁹⁴¹ *Id.* at 9731-33.

⁹⁴² *Id.* at 9732.

⁹⁴³ *Id.* at 9734-35.

⁹⁴⁴ *Id.* at 9477.

⁹⁴⁵ *Id.* at 9698.

⁹⁴⁶ *Id.*

acceptable to provide false or misleading information to the ERMC, notwithstanding that she participated while at the airport in Phoenix.⁹⁴⁷

Ms. Russ Anderson recalled testimony from Ms. Callahan to the effect that “we, as individuals, would escalate [information] to our supervisors, our managers, those in our reporting chain in anticipation that they would then escalate them”; and that in her own case she would be reporting to Mr. Loughlin and Ms. Tolstedt.⁹⁴⁸

In response to leading questioning by her Counsel during direct examination Ms. Russ Anderson added, however, that it was not her practice to provide information to either Mr. Loughlin or Ms. Tolstedt that they were already aware of, because it “would have been redundant.”⁹⁴⁹ **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 Ms. Russ Anderson owed to the Bank.**

During cross-examination, Ms. Russ Anderson acknowledged that “if it was germane to the conversation,” she had an obligation to inform members of the Committee of existing problems in the Community Bank with respect to sales practices misconduct, and be fully transparent and candid with the ERMC members, notwithstanding whatever information she thought the members already had.⁹⁵⁰

Without pointing to any specific evidence in support, Ms. Russ Anderson testified she met those responsibilities by sending a monthly business letter to Mr. Loughlin and Ms. Tolstedt, and that she had monthly one-on-one meetings with Mr. Loughlin during which she would “talk to him about risk issues.”⁹⁵¹ She testified there would be monthly Group Risk Officer meetings with him; and that she and Mr. Loughlin “talked and emailed if not daily, certainly multiple times a week when we would talk about risk issues within the Bank, in general, not just the Community Bank. So lots – lots of opportunities and mechanisms.”⁹⁵²

Without identifying any specific evidence in support, Ms. Russ Anderson testified that she also escalated risk issues regarding sales pressure misconduct or sales practices misconduct with Ms. Tolstedt.⁹⁵³ She testified that as one of Ms. Tolstedt’s direct reports “she and I talked often about risks.”⁹⁵⁴ She testified that she would talk to Ms. Tolstedt about “items that my SSCOT team had sent to me from the EthicsLine or if something came through a complaint

⁹⁴⁷ *Id.* at 9698-99.

⁹⁴⁸ *Id.* at 9482.

⁹⁴⁹ *Id.* at 9483.

⁹⁵⁰ *Id.* at 9700-01.

⁹⁵¹ *Id.* at 9478

⁹⁵² *Id.*

⁹⁵³ *Id.* at 9479.

⁹⁵⁴ *Id.*

channel or if I was out in a region and talking to people, if I heard thoughts, I would talk to her about those.”⁹⁵⁵

Ms. Russ Anderson testified that in advance of the April 9, 2014 ERMC meeting she did not talk directly with Mr. Loughlin about what he wanted her to cover but that instead she learned from Mr. MacDuff what the ERMC wanted to hear.⁹⁵⁶ She testified that through this, it was her understanding that the Committee “wanted to hear about the activities in the Regional Bank on what we were doing around sales practices.”⁹⁵⁷

I find this answer to be misleading and materially incomplete. The record reflects that Mr. MacDuff was not the only source providing Ms. Russ Anderson with information about what the Committee wanted to discuss on April 9, 2014. In an email exchange with Mr. MacDuff and Ms. Russ Anderson, Chris Mathews⁹⁵⁸ on April 4, 2014 provided a summary of feedback of Ms. Russ Anderson’s “Evolving Model” deck from Stephanie Painter⁹⁵⁹ and Keb [presumably Byers⁹⁶⁰] that “they want more in the ERMC deck”.⁹⁶¹

Ms. Mathews provided copies of an email exchange between herself and Ms. Painter where Ms. Painter wrote “Keb’s feedback was along the lines of sharing what’s different? He said [the existing deck of materials] is heavy on the things we are going to be doing going forward, but doesn’t really address what doesn’t work well today in our existing sales practices.”⁹⁶²

Ms. Painter wrote,

The discussion with Mike [presumably Loughlin] originated out of the “team member misconduct committee” and I think he and Keb were looking for the committee to have insight into understanding the current state vs. future state. That will help call out what is actually a change from past practices in order to achieve the vision of earning all our customers’ business and help them succeed financially.⁹⁶³

The record thus reflects that while Mr. MacDuff provided some information about what the ERMC wanted for its April 9, 2014 meeting, the focus of the meeting had been described in much greater detail by Ms. Painter and Ms. Mathews, both of whom represented to Ms. Russ

⁹⁵⁵ *Id.* at 9479.

⁹⁵⁶ *Id.* at 9408.

⁹⁵⁷ *Id.* at 9409.

⁹⁵⁸ *Id.* at 9411; Ms. Mathews is identified as a project manager who worked for Mr. MacDuff.

⁹⁵⁹ Tr. (Russ Anderson) at 9411; Ms. Painter is identified as working for Keb Byers in Mike Loughlin’s organization who “helped Keb with putting together the ERMC materials.”

⁹⁶⁰ See Tr. (Russ Anderson) at 9411.

⁹⁶¹ OCC ex. 60 at 2.

⁹⁶² *Id.* at 2-3.

⁹⁶³ *Id.* at 3.

Anderson that the Committee was looking to see “what doesn’t work well today in our existing sales practices”.⁹⁶⁴

Ms. Russ Anderson acknowledged that while Mr. MacDuff was “the primary presenter” during the meeting “because he was physically present in the room”, she had seniority over him, and he was not the Group Risk Officer in the Community Bank, was not a member of the SSCOT or the Core Team, did not report directly to Ms. Tolstedt, and did not lead the first line of defense.⁹⁶⁵

Ms. Russ Anderson testified that she was not a member of the Team Member Misconduct Committee and “didn’t know what the discussion was”.⁹⁶⁶ From this email exchange it was clear, however, that both Ms. Mathews and Ms. Painter expected changes to the Evolving Model deck – that both Ms. Russ Anderson and Mr. MacDuff would need to review and approve the changes by April 6, 2014.⁹⁶⁷ Ms. Mathews wrote to Ms. Painter that she is “open to what you have to share and will see what can be done”, noting that she would be meeting with Mr. MacDuff at 7 a.m. the next day.⁹⁶⁸

When presented with the email chain, including Ms. Painter’s report of what Mr. Loughlin and Mr. Byers wanted to be discussed in the April 9 meeting, Ms. Russ Anderson responded to Mr. MacDuff and Ms. Mathews “I am worried about putting something like that into a deck. I’d rather we did that verbally because this deck is subject to the regulator’s review.”⁹⁶⁹

Ms. Russ Anderson explained this statement with the following testimony:

What I had in my mind when I wrote this, which wasn't very eloquent, was that there are a lot of things that were changing along the way. We were -- we were changing controls. We were changing procedures. We were changing a lot of things. And to put that information in this short period of time into this presentation I felt could backfire on us, because I've learned in my career that presentations don't just go to the group you think they're going to go to. They go all over the place. And you can't give context. So what I was hoping was we would do it verbally. It would be in the minutes. Then that way the OCC or the Fed or whoever, CFPB would get the presentation,

⁹⁶⁴ *Id.* at 2.

⁹⁶⁵ Tr. (Russ Anderson) at 9701-02.

⁹⁶⁶ *Id.* at 9414

⁹⁶⁷ OCC ex. 60 at 3.

⁹⁶⁸ *Id.*

⁹⁶⁹ *Id.* at 1.

they would get the minutes from the meeting and they would get the complete picture that way.⁹⁷⁰

During cross-examination, when presented with evidence showing that Mr. Byers' direction that she provide information about what was not going well in existing sales practices came to her on April 4, in advance of a meeting scheduled for April 9 – Ms. Russ Anderson was asked whether she expected sales practices to change much in the five days between the email and the meeting – and responded “It was not what would have happened in that period of time. What I was concerned about was after the April 9 forward and people would look at the deck a month from now, which was not untypical of regulators looking at decks months after they were written and coming back with boatloads of questions.”⁹⁷¹ She testified that in such a case, regulators “had made assumptions that aren't correct, and then you have to spend a lot of time reeling it back and rebuilding it.”⁹⁷²

During cross-examination, Ms. Russ Anderson acknowledged that the email reported what Mr. Byers thought the Committee wanted to have insight to – into what did not work well in existing sales practices.⁹⁷³ She said she knew the ERMC was asking that she provide information as of April 2014 about what did not work well around sales practices.⁹⁷⁴ She testified that she understood the instruction to her was to update the written presentation with information about what did not work well in existing sales practices, and that she assumed no one from the OCC would be attending the April 9, 2014 ERMC meeting.⁹⁷⁵ She acknowledged, however, that in April 2014 she believed the OCC had a right to know what did not work well in existing sales practices in the Bank's largest line of business.⁹⁷⁶

Ms. Russ Anderson denied that the email reflected her concern that updating the written deck with information about what did not work well in existing sales practices was because it would go to the OCC, calling the message “a poorly written email, but that was not what my concern was.”⁹⁷⁷ Ms. Russ Anderson acknowledged that the request for information about what was not working well was transmitted on April 4 in advance of the April 9 meeting.⁹⁷⁸ She testified that “Jason and I were both running at 100 miles per hour” and “we had a very short period of time to put that information and turn this deck around.”⁹⁷⁹ She testified she was

⁹⁷⁰ *Id.* at 9415.

⁹⁷¹ *Id.* at 9709.

⁹⁷² *Id.* at 9710.

⁹⁷³ *Id.* at 9704.

⁹⁷⁴ *Id.* at 9710.

⁹⁷⁵ *Id.* at 9706.

⁹⁷⁶ *Id.*

⁹⁷⁷ *Id.* at 9707.

⁹⁷⁸ *Id.* at 9709.

⁹⁷⁹ *Id.* at 9708.

concerned that “we would slap some things on a piece of paper, that they would not be vetted well, and this presentation then would go to a lot of different places, and that the context of those conversations of that – that would not go with it. And sometime down the road, it would have a blowback at me.”⁹⁸⁰

Ms. Russ Anderson testified that she was not trying to hide things from the OCC and testified that Mr. MacDuff apparently agreed with Ms. Russ Anderson’s proposal to not include information about “what doesn’t work well” – as he responded that this “was my instinct as well” and proposed to “speak to the what’s working well and what are the areas of opportunity.”⁹⁸¹ He sought Ms. Russ Anderson’s approval to describe the “‘Current state’ in our business is always evolving and we must triangulate around several quantitative and qualitative indicators to assess and continually update responses accordingly. Really important they understand this. Make sense?”⁹⁸²

Apparently Ms. Russ Anderson’s response was to respond by telephone, so the record lacks any written memoranda regarding whether Ms. Russ Anderson agreed with Mr. MacDuff’s proposed strategy.⁹⁸³ The record does have Ms. Russ Anderson’s testimony on the point:

Well, Jason and I had an exchange -- well, we -- of like mind about it. It's very difficult to put that sort of a thing into a document like this, because the facts change of what's working and what's not working pretty rapidly. And so I was hesitant, given the limited time we had, to: A, present; and, B, get this information into the deck and vetted, to put a lot more information into the presentation.⁹⁸⁴

Through her testimony, Ms. Russ Anderson offered a series of reasons why she and Mr. MacDuff would not provide information about what wasn’t working in Community Banking: that she was too busy, that too little time was allocated for a proper response, and that she didn’t know what Mr. Loughlin wanted her to cover. **Failing to provide to the Committee material information requested by the Committee constituted unsafe or unsound banking practice and a breach of the fiduciary duties Ms. Russ Anderson owed to the Bank.**

Ms. Russ Anderson averred that it would have been challenging to change the Evolving Model deck because “Jason and I, first, we were in different time zones. But also, you know, it was very busy.”⁹⁸⁵ She testified that she “wasn’t quite sure what [Keb Byers] was talking about” when using the phrase “what doesn’t really work well”, and added “as I tried to figure it out, what I thought they might want to know is are there items in the sales process that could be

⁹⁸⁰ *Id.* at 9708.

⁹⁸¹ *Id.* at 9416; OCC ex. 60 at 1.

⁹⁸² OCC ex. 60 at 1.

⁹⁸³ *Id.*

⁹⁸⁴ Tr. (Russ Anderson) at 9413.

⁹⁸⁵ *Id.* at 9412.

changed or that were looking to change that are just not – aren't a good fit.”⁹⁸⁶ She acknowledged that both Ms. Painter and Ms. Mathews wrote that Mr. Byers was looking at “what doesn't work well today” but said this did not particularly clarify the matter.⁹⁸⁷

Ms. Russ Anderson testified she understood 25 minutes had been allotted for her presentation, and that she expected it “to be a high-level meeting where we were going to provide the Committee with information, certainly answer questions, if they had them for us.”⁹⁸⁸ She testified that Mr. MacDuff prepared the materials and she “did some editing.”⁹⁸⁹ She testified that she was not physically present, that she was in the airport in Phoenix participating by cell phone, but that Mr. MacDuff was present with the Committee.⁹⁹⁰

Ms. Russ Anderson testified that while the information was not in the deck, she planned to share with Committee members what did not work well orally – rather than putting it in writing in the deck: She testified, “I felt it was better, since things were moving fast at this point in time, to have that as a verbal conversation with the ERMC where it would be in the minutes of the ERMC, which would go with the presentation to the regulators . . . and they would see the complete story.”⁹⁹¹

During cross-examination, however, Ms. Russ Anderson acknowledged that what she told the Committee was that the business model did not incent inappropriate behavior, and that the controls were adequate, and did not tell the Committee members anything about unreasonable or unattainable sales goals, or about the pressure placed on employees to meet sales goals – because she believed that information was not pertinent.⁹⁹² **Ms. Russ Anderson's presentation omitted material information and contained false and misleading information, and constituted unsafe or unsound banking practice and a breach of the fiduciary duties Ms. Russ Anderson owed to the Bank.** She testified that throughout the meeting, she did not tell the ERMC members about what did not work well with existing sales practices as she had been directed to do, because “the conversation never got to that place. The Committee – some Committee members took the discussion other places.”⁹⁹³

Ms. Russ Anderson acknowledged that prior to the April 2014 ERMC meeting she knew about “hotspots” where employees faced significant pressure to meet unreasonable sales goals – but that this “was not part of the conversation. It wasn't pertinent at the time, and it was known

⁹⁸⁶ *Id.* at 9413.

⁹⁸⁷ *Id.* at 9414.

⁹⁸⁸ *Id.* at 9409.

⁹⁸⁹ *Id.*

⁹⁹⁰ *Id.* at 9409-10.

⁹⁹¹ *Id.* at 9708.

⁹⁹² *Id.* at 9713-14.

⁹⁹³ *Id.* at 9714.

to many people on the Committee already.”⁹⁹⁴ **Ms. Russ Anderson’s failure to report on what she knew about hotspots, where employees faced significant pressure to meet unreasonable sales goals constituted unsafe or unsound banking practice and a breach of the fiduciary duties Ms. Russ Anderson owed to the Bank.**

Ms. Russ Anderson disagreed with testimony that her desire not to put information about “what doesn’t work” into the deck to be used to present to the ERMCM constituted unsafe or unsound conduct, or that it was completely inappropriate to withhold the requested information, or that it was very alarming because at the time the ERMCM was trying to understand what didn’t work well in the model.⁹⁹⁵

Ms. Russ Anderson admitted that she was aware the OCC would get the written deck – the deck lacking information requested by Mr. Byers and Mr. Loughlin about what was not working in the Community Banking sales practices as of April 2014.⁹⁹⁶ When asked why – given that she averred she was uncomfortable with the pause in proactive monitoring – she did not put those concerns in the written deck so that the Bank’s primary regulator would see it, Ms. Russ Anderson responded, “Because I’d already told the OCC about the pause.”⁹⁹⁷ There was, however, no documentary evidence supporting this testimony – no evidence in the litigation of Ms. Russ Anderson having ever told the OCC about her discomfort on the pause in proactive monitoring.⁹⁹⁸

Mr. Julian acknowledged that the scope of the April 9, 2014 ERMCM meeting was not limited to termination for sales practices misconduct – that such misconduct was “one type of wrongdoing” but the presentation “was about the controls overall, not just sales practices” – it “also touched on sales integrity and other kinds of violations.”⁹⁹⁹

In response to a question presented to Mr. Julian by Mr. Loughlin, Mr. Julian reported, “1,000 to 2,000 per year Team Members in Community Bank were being terminated for wrongdoing.”¹⁰⁰⁰ He noted the figure was for all forms of wrongdoing, not just sales practices misconduct, and could reflect terminations based on “not showing up for work”, “short teller drawers”, or “other violations of Wells Fargo code of ethics.”¹⁰⁰¹ Because the figure represented

⁹⁹⁴ *Id.* at 9715.

⁹⁹⁵ *Id.* at 9412-14, 9416-17.

⁹⁹⁶ *Id.* at 9716.

⁹⁹⁷ *Id.*

⁹⁹⁸ *Id.* at 9718.

⁹⁹⁹ Tr. (Julian) at 6464.

¹⁰⁰⁰ *Id.* at 6465.

¹⁰⁰¹ *Id.* at 6466.

“1 to 2 percent of the Community Bank Team Members . . . it didn’t occur to me to be a significant number”.¹⁰⁰²

Mr. Julian testified that during the ERMC meeting the question whether the current business model of the Community Bank incentivized misconduct did not come up.¹⁰⁰³ Evidence in the record suggests this is a misleading and inaccurate answer.

Through leading questioning by her Counsel during direct examination, Ms. Russ Anderson testified that she told the ERMC in April 2014 that the Bank’s controls to address sales practices misconduct were adequate, adding that she continues to believe this to be true today.¹⁰⁰⁴ **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 Ms. Russ Anderson owed to the Bank.**

Ms. Russ Anderson testified, “Jason started his presentation and didn’t get very far before a couple of the Committee members started peppering him with questions.”¹⁰⁰⁵ She recalled Hope Hardison asking several questions, and Mr. Loughlin asked a question about terminations.¹⁰⁰⁶ Ms. Russ Anderson testified that in response to Mr. Loughlin’s question about how many people were terminated for wrongdoing, Mr. MacDuff responded “it was between 1- to 2,000 team members per year.”¹⁰⁰⁷

The record reflects that in their Motion for Summary Disposition, Enforcement Counsel’s Statement of Material Fact (Russ Anderson) No. 334 alleged that at the April 9, 2014 Enterprise Risk Management Committee meeting, Respondent Russ Anderson told the Committee that:

- a. the Community Bank’s business model did not incent inappropriate behavior;
- b. “management tries to stress a balanced message of sales, service, and quality”; and
- c. “the Sales Quality team looks at a manager’s track record prior to an individual being promoted.”¹⁰⁰⁸

Ms. Russ Anderson in her response to this factual allegation in Enforcement Counsel’s summary disposition motion did not dispute that the quoted statements reflect what she told the

¹⁰⁰² *Id.* at 6466.

¹⁰⁰³ *Id.*

¹⁰⁰⁴ Tr. (Russ Anderson) at 9388.

¹⁰⁰⁵ *Id.* at 9418

¹⁰⁰⁶ *Id.*

¹⁰⁰⁷ *Id.* at 9421.

¹⁰⁰⁸ See Notice of Charges at ¶ 271 and Russ Anderson Amended Answer ¶ 271; MSD Ex. 28; MSD Ex. 290A (Loughlin Tr.) at 156:23- 157:10.

Committee, but averred the Statement did not include everything that was discussed at the meeting.

From this exchange, I found that at the April 9, 2014 Enterprise Risk Management Committee meeting, Ms. Russ Anderson told the Committee that the Community Bank's business model did not incent inappropriate behavior; that "management tries to stress a balanced message of sales, service, and quality"; and "the Sales Quality team looks at a manager's track record prior to an individual being promoted."

Ms. Russ Anderson testified that by April 2014, she was already a member of the Core Team, that the Team met weekly, that she was reviewing sales practices misconduct cases from Corporate Investigations, that occasionally she was getting investigation debriefs explaining why employees engaged in the various types of sales practices misconduct.¹⁰⁰⁹ She acknowledged reporting to the Committee that 1 to 2 percent of Community Bank employees - 1,000 to 2,000, were terminated each year for sales practices-related wrongdoing.¹⁰¹⁰ She further acknowledged that she knew as of April 2014 that the head of Corporate Investigations believed there was a systemic issue regarding sales practices misconduct.¹⁰¹¹

During the hearing, Ms. Russ Anderson testified that she understood that the *Wells Fargo* "business model" was "to provide the best products and services available in the financial services industry to our customers and potential customers".¹⁰¹² Through this testimony, Ms. Russ Anderson did not differentiate between the business model of Community Banking (which is what her prior testimony referred to) and that of Wells Fargo Bank, N.A., or WF&C. Ms. Russ Anderson's amended answer expressly admitted that she told the ERMC members on April 9, 2014 that the *Community Bank's* business model did not incent inappropriate behavior.¹⁰¹³

Ms. Russ Anderson stated, "having sales goals and having incentives are tactics that you use in a model, but they're not – to me, it's not the model. Wells Fargo's stated model always was to be the best in the financial services industry with the best products and the best service."¹⁰¹⁴

Ms. Russ Anderson disagreed with testimony that the business model used unreasonable sales goals and unbearable pressure to meet those sales goals.¹⁰¹⁵ She testified that she did not believe "that there was undue pressure in the – across the organization."¹⁰¹⁶ She also testified

¹⁰⁰⁹ Tr. (Russ Anderson) at 9720.

¹⁰¹⁰ *Id.* at 9721.

¹⁰¹¹ *Id.* at 9719-20.

¹⁰¹² *Id.*

¹⁰¹³ Notice of Charges at ¶ 271 and Russ Anderson Amended Answer ¶ 271.

¹⁰¹⁴ Tr. (Russ Anderson) at 9420.

¹⁰¹⁵ *Id.* at 9420-21.

¹⁰¹⁶ *Id.* at 9421.

that she could not imagine that there was one control she could have implemented to change the business model.¹⁰¹⁷ **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 Ms. Russ Anderson owed to the Bank.**

Ms. Russ Anderson testified that she still does not believe sales practices misconduct to have been systemic. In support she stated: “I have no evidence then or during my whole tenure that it was a systemic issue. I did not see complaints from our consumers, which if it had been would have been – they would have been quite rampant.”¹⁰¹⁸ She testified, “the data that I was looking at, it did not show that we had systemic sales practices issues from the behaviors of – that Corporate Investigations and SSCOT we were looking at. There was not data there that would lead me to believe that it was systemic.”¹⁰¹⁹ **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 Ms. Russ Anderson owed to the Bank.**

The April 29, 2014 ERM C Meeting

Immediately after Mr. MacDuff and Ms. Russ Anderson made their presentation to the ERM C on April 9, 2014, Mr. MacDuff forwarded to Ms. Russ Anderson an email chain reflecting an exchange between him and Mary Mack (President and Head of Wells Fargo Advisors).¹⁰²⁰ Responding to her message “Nice job on a tough subject”, Mr. MacDuff thanked her and wrote, “I was pretty shaky towards the end and then I heard your friendly voice and it calmed me right down.”¹⁰²¹ He stated he “knew it was going to be tough; knew we were set up stay [sic] in the generalities and be lectured given they allotted us 25 minutes on something very complex.”¹⁰²²

Ms. Russ Anderson testified that this exchange meant, “when you only have 25 minutes in a committee meeting like this where there’s a number of people, you need to stay in generalities, because it wasn’t a roll-up-your-sleeves session and get into details.”¹⁰²³

Mr. MacDuff continued in his response to Ms. Mack:

My job was to define how we think about it, acknowledge we’re not perfect and perfection is impossible, and illustrate why that is and then jump into what we’re doing about it specifically (which we never got to). Hopefully we

¹⁰¹⁷ *Id.* at 9421.

¹⁰¹⁸ *Id.* at 9388.

¹⁰¹⁹ *Id.* at 9388-89.

¹⁰²⁰ *Id.* at 9422-23; OCC Ex. 1470.

¹⁰²¹ OCC Ex. 1470 at 1-2.

¹⁰²² *Id.* at 1.

¹⁰²³ Tr. (Russ Anderson) at 9423-24.

put them in a frame of – if you really want to help its [*sic*] time to roll-up the sleeves and dig-into the specifics. Hopefully we can have that discussion next time. But let me say, that was not fun and I really appreciate the note.¹⁰²⁴

Ms. Mack wrote back shortly thereafter, describing his presentation as “authentic” and stating, “Mike [Loughlin] wants to get you back and the next time is the time for specifics.”¹⁰²⁵ Mr. MacDuff then forwarded to Ms. Russ Anderson Ms. Mack’s message, saying, “Mary is a good friend to us,” and telling Ms. Russ Anderson, “Mike wants us back to do specifics” and asking whether Ms. Russ Anderson has “met with her team that does their fiduciary testing, etc.?”¹⁰²⁶

Instead of directly responding to Mr. MacDuff’s question about whether she had met with Ms. Mack’s fiduciary testing team, Ms. Russ Anderson wrote, “But, yes a good idea and Mary is a good, good friend to CB. I admire and respect her a lot.”¹⁰²⁷ Ms. Russ Anderson testified that his response was that “it would be a really great idea” to follow Mr. Loughlin’s request to return to provide specific information.¹⁰²⁸

Ms. Russ Anderson testified that shortly after the April 9, 2014 ERMC meeting she sent an email to Mr. Byers, Mr. Loughlin, and Ms. Klos.¹⁰²⁹ She wrote, “Jason and I look forward to being able to come back and go into greater detail with the committee than time permitted today.”¹⁰³⁰

Although not raised in this message, Ms. Russ Anderson testified that she wrote the email in reaction to what happened during the ERMC meeting on April 9: “I felt that there were a lot of questions that weren’t answered and misinformation, and so – or misunderstanding, I should say. So I wanted to have an opportunity to go back to the Risk Committee and really do a deeper dive with them this time.”¹⁰³¹

Mr. Byers responded shortly thereafter, confirming that the Risk Committee Chair, Rick Hernandez, “has specifically request [*sic*] this topic be presented at the Tuesday, April 29th meeting in San Antonio, Texas (7 a.m. CT). It will probably need to be a combination of you and Carrie presenting.”¹⁰³² Mr. Byers identified specific topics that had been mentioned during the April 9th meeting, stating the “deck will need to be updated to capture issues and concerns we

¹⁰²⁴ OCC Ex. 1470 at 2.

¹⁰²⁵ *Id.* at 1.

¹⁰²⁶ *Id.*

¹⁰²⁷ *Id.*

¹⁰²⁸ Tr. (Russ Anderson) at 9424.

¹⁰²⁹ *Id.* at 9425; OCC Ex. 1228.

¹⁰³⁰ OCC Ex. 1228 at 1.

¹⁰³¹ Tr. (Russ Anderson) at 9425-26.

¹⁰³² OCC Ex. 1228 at 1.

have around sales practices today that are being addressed.”¹⁰³³ These included “Team Member turnover, Store Manager tenor, customer interactions, scorecard enhancements, Ethics Line data analysis, etc.”¹⁰³⁴

Through questioning by her Counsel during direct examination, Ms. Russ Anderson was asked why she failed to disclose the unreasonable or unattainable sales goals at the April 9th meeting, and she responded, “It was not pertinent.”¹⁰³⁵ **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 Ms. Russ Anderson owed to the Bank.**

She was asked why she failed to inform the Committee about pressure placed on employees to meet sales goals at that meeting, and she responded, “It was not pertinent.”¹⁰³⁶ **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 Ms. Russ Anderson owed to the Bank.**

She was asked why she failed to inform the Committee of the pause on proactive monitoring at that meeting, and she responded, “It was not pertinent.”¹⁰³⁷ **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 Ms. Russ Anderson owed to the Bank.**

She was asked why she failed to inform the ERM C that she was uncomfortable with that pause, and she responded, “It was not pertinent.”¹⁰³⁸ **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 Ms. Russ Anderson owed to the Bank.**

Ms. Russ Anderson denied attempting to conceal any information from the OCC during the April 9th meeting. Elaborating, she testified:

There would have been no reason for me to conceal any information from any of the regulators, particularly the OCC. The deck was complete, and then there were minutes of the meeting of the things that we were going to discuss verbally. So that would have been a complete package that the OCC would

¹⁰³³ OCC Ex. 1228 at 1.

¹⁰³⁴ *Id.*

¹⁰³⁵ Tr. (Russ Anderson) at 9429.

¹⁰³⁶ *Id.*

¹⁰³⁷ *Id.* at 9430.

¹⁰³⁸ *Id.*

have gotten together and one package to look at the minutes and look at the data in the deck.¹⁰³⁹

Although the record reflects the issues were to be presented to both the ERM and the Board of Governors on April 29, 2014, Ms. Russ Anderson testified that she was never invited back to the ERM and had “no idea” why.¹⁰⁴⁰

The Evolution of Controls

In general, the Bank relied on three mechanisms to identify employees who engaged in sales practices misconduct: (1) employee reported allegations through the EthicsLine, to Human Resources, or to management, when the report was deemed sufficiently credible to warrant further review; (2) customer complaints, only if subsequent “polling” of other customers of the same employee revealed other similar incidents of misconduct; and (3) “proactive monitoring,” which involved the use of data analytics to identify patterns of “red flag” sales activity.¹⁰⁴¹ The first two detection methods were reactive and relied on another employee or a customer becoming aware of improper activity and reporting it.¹⁰⁴² The third detection method was, in Examiner Candy’s opinion, inadequate as it only identified patterns of activity for certain types of misconduct.¹⁰⁴³

In an email dated August 3, 2012, the former Head of Sales Quality, Cindy Walker, acknowledged that the controls relied on employees and customers reporting misconduct rather than active monitoring to detect misconduct:

The Sales Quality (SQ) business model has always been predicated upon being “reactive” by design. That is, researching and vetting incoming EthicsLine allegations, Phone Bank allegations and the like. Monitoring and/or additional reporting activities would not necessarily be effective or in scope considering the business intent.¹⁰⁴⁴

During her supervisory review, Examiner Candy found that SSCOT’s research process was not robust nor effective, and ultimately many allegations were not properly investigated as a result.¹⁰⁴⁵ Bank documents show that between 2012 and 2013, the Sales and Service Conduct Oversight Team (SSCOT— SSCOT was formerly known as Sales Quality), a group within the Community Bank that reported to Respondent Russ Anderson, began “proactively monitoring” some types of sales practices misconduct, including changes to customer phone numbers in the

¹⁰³⁹ Tr. (Russ Anderson) at 9430-31.

¹⁰⁴⁰ *Id.* at 9428.

¹⁰⁴¹ EC MSD Ex. 269 (Report of NBE Candy) at ¶72.

¹⁰⁴² *Id.*

¹⁰⁴³ *Id.*

¹⁰⁴⁴ *Id.* at ¶73, citing email from Marty Weber to Michael Bacon et. al. (Aug. 8, 2012) (OCC-WF-SP-06076695).

¹⁰⁴⁵ EC MSD Ex. 269 (Report of NBE Candy) at ¶74.

Bank’s system and a practice the Bank referred to as “simulated funding.”¹⁰⁴⁶ The activity that the Bank described as “simulated funding” involves a banker making fraudulent or unauthorized transfers of money from one account to another without the customer’s consent to make it appear as if the customer had funded the account.¹⁰⁴⁷

Bank documents show that in the summer and fall of 2013, SSCOT conducted an analysis to detect simulated funding and phone number changes in the Los Angeles/Orange County and then across the Regional Bank footprint, using criteria to identify “extreme outlier” activity.¹⁰⁴⁸ For conduct likely exhibiting simulated funding, SSCOT used criteria of 50 or more accounts in five months or more than 10 percent of total accounts opened in four months, where the account was funded with a single transfer of funds from an existing accounts to a new account, and then transferred back to the originating accounts within 1 day, with no further activity in the new account.¹⁰⁴⁹ The practical effect of using this methodology was that if activity exhibiting simulated funded was done to 49 accounts in five months, it was not detected through proactive monitoring.¹⁰⁵⁰

This proactive monitoring was used to identify only egregious patterns of red flag activity for simulated funding and led to an initial round of investigation and termination of approximately 30 employees in fall 2013, some of whom complained to the Los Angeles Times.¹⁰⁵¹ In October 2013, the Los Angeles Times reported, “the pressure to meet sales goals was intense at Wells Fargo. At times, managers required workers to stay in the branch after the close of business, calling their friends and family members, if they failed to open enough accounts during the day.”¹⁰⁵² In December 2013, the Los Angeles Times published a second article identifying that the sales practices misconduct was not limited to Los Angeles:

To meet quotas, employees have opened unneeded accounts for customers, ordered credit cards without customers’ permission and forged client signatures on paperwork. . . . These conclusions emerge from a review of internal bank documents and court records, and from interviews with 28 former and seven current Wells Fargo employees who worked at bank branches in nine states, including California.¹⁰⁵³

¹⁰⁴⁶ EC MSD Ex. 269 (Report of NBE Candy) at ¶75.

¹⁰⁴⁷ *Id.*

¹⁰⁴⁸ *Id.* at ¶76.

¹⁰⁴⁹ *Id.*

¹⁰⁵⁰ EC MSD Ex. 269 (Report of NBE Candy) at ¶76, citing email from David Otsuka to Debra Patterson et. al. (Nov. 18, 2013) (OCC-WF-SP-06925140); Email from Glen Najvar to Michael Moore et. al. (Sept. 13, 2013) (OCC-WF-SP-08387599).

¹⁰⁵¹ EC MSD Ex. 269 (Report of NBE Candy) at ¶77.

¹⁰⁵² *Id.*

¹⁰⁵³ *Id.*

Pause on Proactive Monitoring

Following the Los Angeles Times articles, SSCOT “paused” proactive monitoring until July 2014, purportedly to allow the Community Bank to identify and address the root cause of the misconduct.¹⁰⁵⁴ It was evident that the misconduct was widespread and continued monitoring could inundate the Community Bank with investigations and terminations.¹⁰⁵⁵ However, by 2013 the root cause of sales practices misconduct was well known by the Community Bank, the Law Department, and Audit.¹⁰⁵⁶

The Community Bank paused proactive monitoring for approximately seven months, from December 2013 through July 2014.¹⁰⁵⁷ Based on her review of the evidence, Examiner Candy opined that at the time the Community Bank instituted the pause on proactive monitoring, the root cause had been well known within the Bank.¹⁰⁵⁸ Many Bank witnesses testified that no one ever suggested any cause for employees to engage in sales practices misconduct other than the pressure on employees to meet sales goals in order to keep their jobs, and to a lesser extent to earn incentive compensation.¹⁰⁵⁹

From her review of Bank documents during the investigation and litigation, Examiner Candy opined that the pause on proactive monitoring was intended to limit the number of terminations for sales practices misconduct to avoid reputational harm to the Bank from negative publicity.¹⁰⁶⁰ In her opinion as a National Bank Examiner, this was not a prudent nor acceptable reason to pause proactive monitoring.¹⁰⁶¹

Controls Following the Pause

In July 2014, SSCOT resumed proactive monitoring for simulated funding, applying a new criteria of identifying employees in the 99.99th percent (top 0.01 percent) of Bank team members who met “red flag” activity for simulated funding in one month.¹⁰⁶² Based on Bank documents, approximately 30,000 employees exhibited characteristics of “red flag” activity for

¹⁰⁵⁴ *Id.* at ¶78.

¹⁰⁵⁵ EC MSD Ex. 269 (Report of NBE Candy) at ¶78, citing Email from Christine Meuers to Hope Hardison et. al. (Dec. 2, 2013) (OCC-WF-SP-07373388).

¹⁰⁵⁶ EC MSD Ex. 269 (Report of NBE Candy) at ¶78.

¹⁰⁵⁷ *Id.* at ¶80, citing Email from Paula Herzberg to Rebecca Rawson et. al. (Sept. 13, 2016) (OCC-WF-SP-07687489).

¹⁰⁵⁸ EC MSD Ex. 269 (Report of NBE Candy) at ¶81.

¹⁰⁵⁹ *Id.*

¹⁰⁶⁰ *Id.* at ¶82.

¹⁰⁶¹ *Id.*

¹⁰⁶² *Id.* at ¶83, citing Email from Deanna Lindquist to Crystal Silva et. al. (Oct. 22, 2015) (OCC-WF-SP-07916406); Email from Glen Najvar to David Otsuka (July 7, 2014) (OCC-WF-SP-08205606).

simulated funding in one month.¹⁰⁶³ However, due to the 99.99th percent threshold SSCOT used to identify potential simulated funding, SSCOT identified only 3 employees per month (i.e., 0.01 percent of 30,000 Community Bank team members) for investigation.¹⁰⁶⁴ The Community Bank referred to these employees as “outliers.”¹⁰⁶⁵ Examiner Candy opined that this was grossly insufficient – opining that only reviewing 0.01 percent of the “red flag” activity in any given month is nowhere near a sufficient control for identifying potential simulated funding.¹⁰⁶⁶

Beyond simulated funding, SSCOT used 99.99th percent as its threshold for proactive monitoring for the vast majority of sales activity monitored.¹⁰⁶⁷ In April 2015, the Community Bank’s threshold was lowered slightly to detect employees in the 99.95th percentile of activity that was a red flag for simulated funding.¹⁰⁶⁸ The 99.95th percent threshold involved an employee engaging in approximately 10.3 monthly occurrences of red flag activity for simulated funding.¹⁰⁶⁹ Lowering the threshold monitoring criteria slightly to the 99.95th percentile resulted in the identification of approximately 15 to 18 employees engaging in simulated funding per month.¹⁰⁷⁰ However, the Bank’s data shows that 45 percent of employees had at least one instance of red flag activity for simulated funding per month.¹⁰⁷¹

OCC National Bank Examiner Gregory Coleman reported that during the May 2015 Risk Committee meeting, Board members expressed concerns about the adequacy of the high threshold that had been used in the 2013 investigation, namely the requirement that employees had made 50 or more telephone number changes to trigger review.¹⁰⁷² Examiner Coleman

¹⁰⁶³ *Id.* at ¶84.

¹⁰⁶⁴ *Id.*

¹⁰⁶⁵ *Id.*

¹⁰⁶⁶ *Id.*

¹⁰⁶⁷ *Id.* at ¶85.

¹⁰⁶⁸ *Id.* at ¶86, citing Email from Deanna Lindquist to Crystal Silva et. al. (Oct. 22, 2015) (OCC-WF-SP-07916406); Email from Paula Herzberg to Rebecca Rawson et. al. (Sept. 13, 2016) (OCC-WF-SP-07687489).

¹⁰⁶⁹ EC MSD Ex. 269 (Report of NBE Candy) at ¶86, citing Email from David Otsuka to Rebecca Rawson et. al. (Sept. 21, 2015) (OCC-SP0613052).

¹⁰⁷⁰ EC MSD Ex. 269 (Report of NBE Candy) at ¶86, citing Email from Deanna Lindquist to Crystal Silva et. al. (Oct. 22, 2015) (OCC-WF-SP-07916406).

¹⁰⁷¹ EC MSD Ex. 269 (Report of NBE Candy) at ¶86, citing Email from David Otsuka to Rebecca Rawson et. al. (Sept. 21, 2015) (OCC-SP0613052).

¹⁰⁷² EC MSD Ex. 257 (Report of NBE Coleman) at ¶90 citing Strother Tr. 28:7-24 (December 18, 2018), OCC-SP00047742. Gregory J. Coleman is a Deputy Comptroller of Large Bank Supervision for the OCC. He became a commissioned National Bank Examiner in 1994 and Federal Thrift Regulator in 2013. As Deputy Comptroller of Large Bank Supervision, he is responsible for effectively supervising a portfolio of 8 financial institutions totaling \$2.8 trillion in assets, as well as leading, mentoring, and managing a staff of 170 examiners and support personnel. Among other things, his responsibilities include setting examination strategy and overseeing the OCC’s supervision and personnel management for the institutions in his portfolio. He also reviews and confirms the OCC’s findings and conclusions on safety and soundness, legal and regulatory violations, and fiduciary duty expectations, and deliver such findings to the directors and senior management of the institutions he oversees. From

reported that despite these concerns about Community Bank thresholds, Respondent Russ Anderson, who presented at the meeting, failed to advise the Risk Committee of the 99.99 and 99.95 percent thresholds then being used to identify other types of misconduct.¹⁰⁷³

In April 2015, an SSCOT manager who reported directly to Respondent Russ Anderson shared with Respondent Russ Anderson Facebook posts from a former Bank branch manager.¹⁰⁷⁴ The posts stated, “[Wells Fargo management] have created a toxic atmosphere of sales goals that forces employees to sell products [customers] don’t want. They literally say ‘every customer needs a credit card.’ . . . If there is ever a company as disgusting and unethical as this one, I dare you to find it.”¹⁰⁷⁵

Examiner Smith reported that she is aware of several meetings where Respondent Russ Anderson was not transparent with the OCC’s examination team.¹⁰⁷⁶ For example, Examiner Smith reported that notwithstanding her obvious knowledge about sales pressure, including terminations for not meeting sales goals, Respondent Russ Anderson told the OCC at a February 10, 2015 meeting, “no one loses their job because they did not meet sales goals.”¹⁰⁷⁷ And she told examiners during a May 14, 2015 meeting with the OCC that interviews with employees “did not lead to a conclusion about sales pressure,” that she does not “hear” about pressure from personal bankers “at all,” and that “people are positive and pleased.”¹⁰⁷⁸

Examiner Smith reported that as early as November 2008, Respondent Russ Anderson was informed the “vast majority of customer consent sales integrity cases are directly related” to the fact that no customer signature is required for opening accounts.¹⁰⁷⁹ Yet, according to

approximately September 2015 to September 2019, he was the Deputy Comptroller of Large Bank Supervision responsible for overseeing the supervision of Wells Fargo Bank, N.A. Sioux Falls, South Dakota (“Wells Fargo” or “Bank”). Even after the management of the Bank moved out of his portfolio, he continued to participate in the OCC’s investigation of the Bank’s sales practices and receive periodic updates on the investigation status, consistent with the role of a senior manager. He has thirty-one years of professional experience at the OCC and Promontory Financial Group, including extensive experience in the government and private sector in the supervision and risk management of large, complex financial institutions. EC MSD Ex. 257 (Report of NBE Coleman) at ¶¶1-4, 6.

¹⁰⁷³ EC MSD Ex. 257 (Report of NBE Coleman) at ¶90, citing Minutes of the Meeting of the Risk Committee of the Board of Directors of Wells Fargo & Company held on May 19, 2015, OCC-WF-SP-08676318.

¹⁰⁷⁴ EC MSD Ex. 267 (Report of NBE Smith) at ¶111.

¹⁰⁷⁵ EC MSD Ex. 267 (Report of NBE Smith) at ¶111, quoting E-mail from Rawson to Russ Anderson, FYI ONLY | FW: SNJ FACEBOOK POSTS (RP & AP NAMED) (OCCWF-SP-04792164).

¹⁰⁷⁶ EC MSD Ex. 267 (Report of NBE Smith) at ¶112.

¹⁰⁷⁷ EC MSD Ex. 267 (Report of NBE Smith) at ¶112, citing Conclusion Memorandum, Community Bank Operational Risk Exam: Cross Sell/Sales Practices (Feb. 19, 2015) (OCC-SP0125161).

¹⁰⁷⁸ EC MSD Ex. 267 (Report of NBE Smith) at ¶112, quoting Meeting Notes, Discussion with CB GRO Claudia Russ Anderson surrounding Sales Practices (May 14, 2015) (OCC-SP0067064).

¹⁰⁷⁹ EC MSD Ex. 267 (Report of NBE Smith) at ¶113, quoting E-mail from Pyles to Russ Anderson, RE: SS&D Parking Lot File Pickup Notification (OCC-WF-SP-05012541).

Examiner Smith, the Community Bank continued to permit employees to issue products without a signature requirement.¹⁰⁸⁰

Examiner Smith reported that although Respondent Russ Anderson was aware of the risks posed to the Bank by sales practices misconduct, the SSCOT, under her supervision, employed a proactive monitoring threshold for simulated funding designed to capture only “extreme outliers” or the worst of the worst offenders.¹⁰⁸¹ She reported that Respondent Russ Anderson had previously assented to a months-long pause in 2013 and 2014 of the only proactive monitoring the Bank was doing to identify simulated funding.¹⁰⁸² She reported that the Bank lacked the means to proactively identify many other types of sales practices misconduct, including the issuance of unauthorized debit cards.¹⁰⁸³

Examiner Smith reported that notwithstanding her knowledge about the inadequacy of the Bank’s sales practices controls, for which she was directly responsible, Respondent Russ Anderson was involved in the preparation and presentation of the May 2015 memorandum to the Risk Committee of the Board of Directors that stated the Bank’s sales practices controls were “robust.”¹⁰⁸⁴ The memo stated that the root cause of sales practices misconduct was “intentional team member misconduct,” and that there was “a dramatic reduction in inappropriate practices in the past year,” without disclosing the high thresholds SSCOT used to identify wrongdoers.¹⁰⁸⁵ The memorandum was also provided to the OCC.¹⁰⁸⁶

Examiner Smith opined that Respondent Russ Anderson engaged in violations of law, unsafe or unsound practices, and breaches of her fiduciary duty by failing to ensure that the Bank adequately managed sales practices risk, which allowed the Bank’s sales practices misconduct problem to continue unabated for many years, and failed in performing the most basic elements of her job.¹⁰⁸⁷

Examiner Smith further opined that Respondent Russ Anderson engaged in violations of law, unsafe or unsound practices, and breaches of her fiduciary duty by misleading and providing

¹⁰⁸⁰ EC MSD Ex. 267 (Report of NBE Smith) at ¶114.

¹⁰⁸¹ *Id.* at ¶115, quoting E-mail from Rawson to Russ Anderson, FOR REVIEW | FW: SIM FUNDING & Phone Change outliers for OTHER AREAS—PROPOSED E-MAIL PART 3 (Oct. 25, 2013) (OCC-WF-SP-07037285).

¹⁰⁸² EC MSD Ex. 267 (Report of NBE Smith) at ¶115, citing E-mail from Russ Anderson to Callahan et al. Sales Quality work (Jan. 30, 2014) (OCC-SP00009142).

¹⁰⁸³ EC MSD Ex. 267 (Report of NBE Smith) at ¶115.

¹⁰⁸⁴ *Id.* at ¶116, quoting Memorandum from Strother to Risk Committee WFC Board of Directors, Board Risk Committee Agenda Item (May 19, 2015) (OCC-WF-SP-07083821).

¹⁰⁸⁵ EC MSD Ex. 267 (Report of NBE Smith) at ¶117, quoting Memorandum from Strother to Risk Committee WFC Board of Directors, Board Risk Committee Agenda Item (May 19, 2015) (OCC-WF-SP-07083821) at 3, 5.

¹⁰⁸⁶ EC MSD Ex. 267 (Report of NBE Smith) at ¶118.

¹⁰⁸⁷ *Id.*

false information to the Board of Directors and the OCC and obstructing the OCC's examination process; that Respondent Russ Anderson recklessly engaged in the aforementioned unsafe or unsound practices, and that Respondent Russ Anderson's violations, practices, and breaches constituted a pattern of misconduct, involved personal dishonesty, and demonstrated a willful and continuing disregard for the Bank's safety and soundness.¹⁰⁸⁸

In late 2016, in response to an OCC MRA and the work of consultant PricewaterhouseCoopers regarding the volume of accounts that had likely been affected by simulated funding, the Bank's Financial Crimes Risk Management department conducted its own analysis of potential simulated funding.¹⁰⁸⁹ This analysis concluded that from May 2011 through July 2015, "387,000 accounts were opened by 41,000 Team Members that were more likely than not simulated funding."¹⁰⁹⁰

Examiner Candy reported that the Bank's SSCOT continued to use the 99.95th percentile threshold until sales goals were eliminated in October 2016.¹⁰⁹¹ She opined that using the 99.95th percentile, although slightly better than the 99.99th percentile, is also grossly insufficient given the amount of "red flag" activity.¹⁰⁹²

The Bank's Controls to Prevent and Detect Sales Practices Misconduct were Inadequate

Examiner Candy reported that effective internal controls provide bankers and examiners reasonable assurance that bank operations are efficient and effective, risk management systems are effective, and the bank complies with banking laws and regulations, internal policies, and internal procedures.¹⁰⁹³ She added that senior management is supposed to oversee and provide leadership and direction for the communication and monitoring of control policies, practices, and processes.¹⁰⁹⁴

Examiner Candy opined that the Bank's controls to prevent and detect sales practices misconduct were inadequate and the Bank's risk management of its sales practices and the sales practices themselves were recklessly unsafe or unsound.¹⁰⁹⁵ She reported that designing and implementing controls reasonably designed to prevent and detect misconduct or illegal activity is

¹⁰⁸⁸ EC MSD Ex. 267 (Report of NBE Smith) at ¶¶119-20.

¹⁰⁸⁹ EC MSD Ex. 257 (Report of NBE Coleman) at ¶66

¹⁰⁹⁰ *Id.*, quoting FCRM Report at 1, OCC-WF-SP-08515940.

¹⁰⁹¹ EC MSD Ex. 269 (Report of NBE Candy) at ¶87.

¹⁰⁹² *Id.*

¹⁰⁹³ *Id.* at ¶88, citing Office of the Comptroller of the Currency, Comptroller's Handbook, Internal Control at 2 (Jan. 2001).

¹⁰⁹⁴ *Id.*, citing Office of the Comptroller of the Currency, Comptroller's Handbook, Internal Control at 2, 16 (Jan. 2001).

¹⁰⁹⁵ EC MSD Ex. 269 (Report of NBE Candy) at ¶89.

a critical part of effective risk management and internal controls,¹⁰⁹⁶ adding that generally accepted standards of prudent operation require banks to manage risks and implement and maintain controls reasonably designed to prevent and detect misconduct.¹⁰⁹⁷ She reported that ineffective sales practices risk management increases the potential of financial loss, litigation, regulatory risk, reputational damage, conduct risk, and operational and compliance risks.¹⁰⁹⁸

As explained in the OCC's Corporate and Risk Governance, Comptroller's Handbook:

A responsible corporate culture and a sound risk culture are the foundation of an effective corporate and risk governance framework and help form a positive perception of the bank. A bank that fails to implement effective corporate and risk governance principles and practices may hinder the bank's competitiveness and adversely affect the bank's ability to establish new relationships and services or to continue servicing existing relationships. Departures from effective corporate and risk governance principles and practices cast doubt on the integrity of the bank's board and management. History shows that such departures can affect the entire financial services sector and the broader economy.¹⁰⁹⁹

Examiner Candy opined that in addition to its inadequate detective controls, the Bank's controls to prevent sales practices misconduct were insufficient.¹¹⁰⁰ For example, the Bank did not require a customer signature—*i.e.*, evidence of customer consent—to open a debit card.¹¹⁰¹ The Bank began requiring a customer signature to open a credit card only in 2015.¹¹⁰² On November 3, 2008, the former Head of Sales Quality wrote the following email to Respondent Russ Anderson:

Many of our product groups in the early 90's lobbied to remove the signature requirements because they slowed down the account opening process and carried a back room cost of filing and storing the paper application. The vast majority of customer consent sales integrity cases are directly related to this issue. This is why we have been pressing so hard for PIN or E-Signature Consent on ALL product sales. If we had a requirement that all product or

¹⁰⁹⁶ EC MSD Ex. 269 (Report of NBE Candy) at ¶89.

¹⁰⁹⁷ *Id.*

¹⁰⁹⁸ *Id.*

¹⁰⁹⁹ *Id.* at ¶88, quoting Office of the Comptroller of the Currency, Comptroller's Handbook, Safety and Soundness, Corporate and Risk Governance at 3 (July 2016).

¹¹⁰⁰ EC MSD Ex. 269 (Report of NBE Candy) at ¶90.

¹¹⁰¹ *Id.*

¹¹⁰² *Id.*

services had one or the other, then most of our consent issues would become moot.¹¹⁰³

The Head of SSCOT, who reported to Respondent Russ Anderson, testified that the Bank's systems enabled employees to engage in sales practices misconduct.¹¹⁰⁴ Rebecca Rawson explained in sworn testimony that the Bank's systems allowed employees to issue debit and credit cards to customers without their signatures or consent, which she determined was a control failure:

Q Okay. So I take it the bank had a policy that you should not issue credit cards or debit cards without the customer's consent?

A Correct.

Q All right. But the system allowed team members to actually issue credit cards and debit cards without the customer's consent or the customer's signature?

A I think that is right.

Q Okay. And you view that as a failure in controls?

A I think that is fair.¹¹⁰⁵

Based on the evidence that she reviewed, Examiner Candy opined that the Bank's controls to detect sales practices misconduct were also insufficient.¹¹⁰⁶ She reported that a bank should investigate transactions that it considers a "red flag" for misconduct,¹¹⁰⁷ adding that is particularly true where, as here, the suspected misconduct constitutes illegal and even criminal activity.¹¹⁰⁸

Examiner Candy reported that the Bank's use of the term "simulated funding" to refer to the activity described in this report does not change the fact that the activity constitutes fraud and falsification of bank records as well as a violation of 15 U.S.C. § 45(a) (Unfair and Deceptive Acts and Practices or UDAP).¹¹⁰⁹ She reported that other types of sales practices misconduct

¹¹⁰³ EC MSD Ex. 269 (Report of NBE Candy) at ¶90, quoting Email from Tyson Pyles to Claudia Russ Anderson (Nov. 3, 2008) (OCC-WF-SP-05012541).

¹¹⁰⁴ EC MSD Ex. 269 (Report of NBE Candy) at ¶90.

¹¹⁰⁵ *Id.* at ¶91, quoting Rawson Tr. 50:11-19 (July 26, 2018).

¹¹⁰⁶ EC MSD Ex. 269 (Report of NBE Candy) at ¶92.

¹¹⁰⁷ *Id.*

¹¹⁰⁸ *Id.*

¹¹⁰⁹ *Id.*

similarly constitute illegal and criminal activity, for example opening a savings account without customer authorization involves falsifying bank records and UDAP.¹¹¹⁰

Examiner Candy reported that the evidence shows that SSCOT determined that every month approximately 30,000 employees, or 45 percent of its employees, engaged in an activity that the Bank itself considered to be a “red flag” for illegal behavior.¹¹¹¹ Examiner Candy reported, however, that the Bank investigated only 3 employees per month during the period it was using the 99.99 percent threshold, and only approximately 15-18 employees per month when the Bank used the 99.95 percent threshold.¹¹¹² Examiner Candy opined that this is far too few.¹¹¹³

Examiner Candy was the lead OCC examiner who reviewed the Bank’s earnings for three years and was responsible for understanding the drivers of the enterprise and the major business line income and expense streams.¹¹¹⁴ She understood that at least one of the justifications for the chosen thresholds was that the Bank believed it lacked resources to investigate additional misconduct and expanding the thresholds would yield many false positives.¹¹¹⁵ Examiner Candy opined that neither rationale is appropriate, and both demonstrate that the Bank did not have adequate risk management over sales practices.¹¹¹⁶

Examiner Candy opined that the lack of resources to conduct necessary investigations is simply not an excuse for any bank, let alone a bank with the size and resources of Wells Fargo.¹¹¹⁷ She noted that Wells Fargo was posting record earnings quarter after quarter during that period.¹¹¹⁸ Moreover, she reported, a simple phone call to the customer asking whether he or she opened an account, moved a certain amount of money into it, and then moved back the same amount within one day and conducted no further activity on the new account, could suffice to investigate the issue.¹¹¹⁹

Examiner Candy determined that the chosen thresholds were intentionally restrictive so as to allow the Bank to manage the *outcome* (that is, manage the number of employees identified), not the *risk*.¹¹²⁰ She reported that the restrictive thresholds limited the number of

¹¹¹⁰ *Id.* at ¶92.

¹¹¹¹ *Id.* at ¶93.

¹¹¹² *Id.*

¹¹¹³ *Id.*

¹¹¹⁴ *Id.* at ¶94.

¹¹¹⁵ *Id.*

¹¹¹⁶ *Id.*

¹¹¹⁷ *Id.*

¹¹¹⁸ *Id.*

¹¹¹⁹ *Id.*

¹¹²⁰ *Id.*

investigations and terminations for sales practices misconduct, rather than managing the risk.¹¹²¹ And she opined that that is not consistent with prudent and effective risk management.¹¹²²

Examiner Candy opined that the fact that the Bank was identifying more “red flag” activity than it had the capacity to investigate is a strong indicator that there was a serious and systemic sales practices misconduct problem in the Community Bank.¹¹²³ She reported that this is particularly so given the narrow criteria used to identify “red flag” activity (involving back-and-forth movement of funds between accounts within 24 hours, which in Examiner Candy’s view is not indicative of customer-authorized activity).¹¹²⁴

Moreover, she opined that the evidence indicates that the Community Bank lacked the ability to identify the following types of sales practices misconduct using data analytics (and thus relied on reactive channels only to detect such misconduct): bundling; pinning; sandbagging; and the opening of unauthorized debit cards and credit cards.¹¹²⁵

Examiner Candy reported that the detected “red flag” activity, the majority of which the Bank chose not to investigate, did not even come close to reflecting the full universe of sales practices misconduct at the Bank.¹¹²⁶ She noted that the Bank determined each month 30,000 of its employees engaged in an activity that was a red flag for just one of the various types of sales practice misconduct, and she opined that this should have alerted Bank leadership, including the Group Risk Officer and Audit, that there was a serious and systemic problem with sales practices misconduct in the Community Bank’s model.¹¹²⁷

Examiner Candy opined that this should have alerted them that the problem was not attributable to rogue employees but to the Community Bank’s business model and operations.¹¹²⁸ She reported that rather than changing the profitable model, the Bank investigated three employees per month, and later fifteen to eighteen employees, out of the 30,000 employees identified per month who engaged in the “red flag” activity.¹¹²⁹

¹¹²¹ *Id.*

¹¹²² *Id.* at ¶95.

¹¹²³ *Id.*

¹¹²⁴ *Id.*

¹¹²⁵ *Id.*

¹¹²⁶ *Id.*

¹¹²⁷ *Id.*

¹¹²⁸ *Id.*

¹¹²⁹ *Id.*

Examiner Candy reported that authoritative sources within the Bank knowledgeable on the red flag activity and the detection methodologies gave testimony that shows the Bank's detection approach was inappropriate.¹¹³⁰

For example, the head of SSCOT, testified as follows:

Q I take it you would agree that the Bank's analysis shows that about 45 percent of the employees engaged in red flag activity, is that correct?

A Correct.

Q All right. And you also agree that the Bank was only investigating 18 of those? A Correct.

Q All right. And you thought that was problematic?

A Correct.

Q And Ms. Sperle, the head of corporate investigation, also thought it was problematic?

A I believe she did.¹¹³¹

The Head of SSCOT admitted that the proactive monitoring demonstrated that the Bank's other two reactive methods for detecting sales practices misconduct (methods that relied on employees and customers reporting misconduct) were ineffective.¹¹³² That is because the reactive methods generally failed to identify even the "worst of the worst" actors, who then triggered the 99.99% and 99.95% thresholds.¹¹³³ Accordingly, it follows that the reactive controls were also ineffective in detecting employees who engaged in the red flag activity with less frequency given that they did not detect even the most egregious offenders.¹¹³⁴

Specifically, the Head of SSCOT testified as follows:

Q And for the most part, the number of people that met that threshold had not been caught by the Bank's other methods for identifying misconduct?

A Correct.

Q All right. So, if these other methods were not effective in identifying people who are at the top fraction of the top one percent of people engaged in the misconduct, it would fall into a mathematical certainty that

¹¹³⁰ *Id.* at ¶96.

¹¹³¹ *Id.*, quoting Rawson Tr. 188:3-16 (July 26, 2018).

¹¹³² EC MSD Ex. 269 (Report of NBE Candy) at ¶97.

¹¹³³ *Id.*

¹¹³⁴ *Id.*

they really would not be effective if people engaged in this misconduct who are in the 50th percentile or 60th percentile, correct?

A Correct.¹¹³⁵

Examiner Candy reported that the Bank had better systems and tools to detect employees who did not meet sales goals than it did employees who engaged in sales practices misconduct.¹¹³⁶ She reported that the risk of termination for employees who did not meet sales goals far exceeded that of being investigated and terminated for sales practices misconduct.¹¹³⁷ She found that the Community Bank management had the ability to track sales at a very granular level and would call the branches multiple times a day with an update on sales activity.¹¹³⁸

Examiner Candy reported that this contrasted sharply with the insufficient and infrequent sales quality and proactive monitoring reporting.¹¹³⁹ She opined that the high pressure and aggressive sales goal business model contributed to an environment with high inherent risk for compliance.¹¹⁴⁰ She reported that despite this, Respondent Russ Anderson failed to implement sufficient preventative and detective controls, which ultimately pushed the residual risk to unacceptable levels.¹¹⁴¹

As an example, Examiner Candy noted that Loretta Kay Sperle, the former Head of Corporate Investigations, testified before the OCC that there was a significant likelihood that an employee's manager would know if the employee failed to meet her sales goals because the Community Bank tracked that; by contrast, the chances that an employee would be caught for issuing an unauthorized product or service were very small.¹¹⁴²

She testified:

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

A Yes. I would agree.¹¹⁴³

The Bank's Controls Were Intentionally Inadequate

¹¹³⁵ *Id.*, quoting Rawson Tr. 211:7-20 (July 26, 2018).

¹¹³⁶ *Id.* at ¶98.

¹¹³⁷ *Id.*

¹¹³⁸ *Id.*

¹¹³⁹ *Id.*

¹¹⁴⁰ *Id.*

¹¹⁴¹ *Id.*

¹¹⁴² *Id.*

¹¹⁴³ *Id.*, quoting Loretta Kay Sperle Tr. 158:15-20 (February 13, 2018) (EC MSD Ex. 299).

Based on Bank documents and sworn testimony that Examiner Candy reviewed, she concluded that the Bank’s senior leaders did not want to identify and terminate additional employees for sales practices misconduct, beyond those identified through the reactive methods and the restrictive proactive monitoring methodology described above, in part because of the negative publicity that terminations were expected to generate.¹¹⁴⁴

Examiner Candy reported that ongoing mass terminations would have undermined the Bank’s arguments that were presented to the Board and OCC examiners: (1) the misconduct was caused by “bad apple” employees engaging in intentional misconduct, as opposed to a defect in the business model, and (2) corrective measures implemented by the Community Bank were effectively resolving the problem.¹¹⁴⁵ She opined that Respondent Russ Anderson’s failure to implement effective controls, and the failure to identify employees engaged in sales practice misconduct to reduce terminations or to manage reputation risk, was unsafe or unsound and was inconsistent with the role of a Group Risk Officer.¹¹⁴⁶

Examiner Candy reported that the Bank’s former Director of Investigations and Chief Security Officer Michael Bacon saw common schemes indicative of misconduct that could have easily been detected if the Bank had looked for them.¹¹⁴⁷ She reported that in 2012 or 2013, he advocated for proactive monitoring of other types of sales practices activities, such as: employees or customers with excessive accounts (*e.g.*, hundreds of accounts) registered to the same address; college credit cards issued to non-college students; and Bank employees with inappropriate business accounts.¹¹⁴⁸ She reported that the former Chief Security Officer testified that he offered suggestions for proactive monitoring primarily to Respondent Russ Anderson, but also to Operating Committee members.

Examiner Candy reported that in his testimony, Mr. Bacon stated that there was resistance to more investigations due to fear of finding more misconduct that would lead to additional terminations.¹¹⁴⁹ She reported that the former Chief Security Officer testified that the “lack of being proactive” was a “reoccurring theme” and he informed Respondent Russ Anderson that the employees identified and terminated for sales practices misconduct were the

¹¹⁴⁴ *Id.* at ¶99.

¹¹⁴⁵ *Id.*

¹¹⁴⁶ *Id.*

¹¹⁴⁷ *Id.* at ¶100, citing Michael Bacon Tr. 120:7-127:19 (May 4, 2018) (EC MSD Ex. 295).

¹¹⁴⁸ EC MSD Ex. 269 (Report of NBE Candy) at ¶100.

¹¹⁴⁹ *Id.*, citing Bacon Tr. 120:7-127:19 (May 4, 2018).

“tip of the iceberg.”¹¹⁵⁰ She reported that he emphasized to her and others that a decline in terminations did not necessarily indicate less misconduct because the Bank was not proactive.¹¹⁵¹

The former Chief Security Officer testified before the OCC that Community Bank senior leadership, including Respondent Russ Anderson, “absolutely” wanted to minimize terminations even if there was strong evidence that the employee engaged in sales practices misconduct.¹¹⁵²

James Richards, the Head of the Bank’s Financial Crimes Risk Management (“FCRM”) department, testified before the OCC, “using a percentage threshold does not necessarily address the actual risk. So if you’re pulling down a two percent or .01 percent or .05 percent that’s managing the output more than it is managing the risk.”¹¹⁵³ He testified that he explained this to Respondent Russ Anderson and offered members of his analytics team to assist SSCOT’s monitoring, but she refused. He testified that Respondent Russ Anderson responded that if “SSCOT changed or dramatically changed their monitoring thresholds that they would have, and I can’t recall her phrase, but many, many more identified team members than they could reasonably handle.”¹¹⁵⁴

Resumption of SSOCR’s Proactive Monitoring of Simulated Funding Activity in July 2014

After the Community Bank’s Sales and Services Conduct Oversight Team (SSCOT) resumed sending data to WF&C’s Corporate Investigations group in July 2014, Corporate Investigations identified 35 team members in Los Angeles “and approximately another 250 across the footprint with about 70 percent of those terminations being for phone number changes and 30 percent for simulated funding.”¹¹⁵⁵ Ms. Russ Anderson testified that she believed “without proactive monitoring, we never would have understood . . . what was going on with the simulated funding.”

Elaborating on this point, she testified:

And over time, I believe that it helped reduce the number of instances of simulated funding, because we were finding it -- we were training bankers better around it and senior leadership was looking for the behavior, more readily looking for the behavior than they had. So I think proactive

¹¹⁵⁰ EC MSD Ex. 269 (Report of NBE Candy) at ¶100 quoting Bacon Tr. 105:25-106:19; 121:23-122:15 (May 4, 2018).

¹¹⁵¹ EC MSD Ex. 269 (Report of NBE Candy) at ¶100, citing Bacon Tr. 105:25-106:19; 121:23-122:15 (May 4, 2018).

¹¹⁵² EC MSD Ex. 269 (Report of NBE Candy) at ¶100, quoting Bacon Tr. 61:16-63:13 (May 4, 2018).

¹¹⁵³ EC MSD Ex. 269 (Report of NBE Candy) at ¶100, quoting James Richards Tr. 139:3-140:17 (May 4, 2018) (EC MSD Ex. 298).

¹¹⁵⁴ EC MSD Ex. 269 (Report of NBE Candy) at ¶100, quoting Richards Tr. 146:5-149:24 (May 1, 2018).

¹¹⁵⁵ Tr. (Russ Anderson) at 9256.

monitoring had a significant impact on the reduction of proactive monitoring [as spoken] [simulated funding].¹¹⁵⁶

Ms. Russ Anderson did not dispute that initially proactive monitoring set a threshold of 99.99 percent.¹¹⁵⁷ She identified a July 3, 2014 email message from Glen Najvar to Mr. Bacon and others asking the recipients to note that “beginning in May 2014 (as this behavior is now a part of SSCOT internal monitoring) the ‘threshold’ has been changed to included outlying team members considered in the 99.9% percentile as approved by Claudia Russ Anderson.”¹¹⁵⁸

When asked through leading questioning by her Counsel during direct examination whether she intentionally set the threshold there to capture only the most egregious cases of sales integrity violations to minimize the scope of the sales practices problem at the Bank, Ms. Russ Anderson responded:

We did not do – that was not the reason that we set them at the levels that we did. It was a statistically valid sample, and it was meant to be used in the pilot as such, always with the understanding that we could continue to expand as we learned more.¹¹⁵⁹

Ms. Russ Anderson disputed the assertion that with this threshold SSCOT was referring for investigation only one out of every 10,000 employees who exhibited red flag activity for simulated funding.¹¹⁶⁰ She disputed that under the threshold in July 2014, 30,000 employees were identified per month who exhibits activity that was a red flag for simulated funding.¹¹⁶¹ She testified that the 30,000 team members “was the number of team members that had . . . had a sale in that month.”¹¹⁶²

Elaborating, Ms. Russ Anderson testified:

Those 30,000 team members did not exhibit potential simulated funding. The SSCOT team took that 30,000 team members that had a sale, overlaid what potential simulated funding activity would look like, took out the ones that had none of that activity, which I think was some 55 percent, and then took the rest and put more filters on it to see how many times that activity could

¹¹⁵⁶ *Id.* at 9256-57. See Via “22-03-07 Respondents’ Amended Revised Errata Day 9-38” on page 75. Ordered by Second Supplemental Order.

¹¹⁵⁷ Tr. (Russ Anderson) at 9322.

¹¹⁵⁸ *Id.*; OCC Ex. 1370.

¹¹⁵⁹ Tr. (Russ Anderson) at 9322.

¹¹⁶⁰ *Id.* at 9322-23.

¹¹⁶¹ Tr. (Russ Anderson) at 9322-23.

¹¹⁶² *Id.* at 9323.

have occurred. And so the base is not 30,000. The base is something way smaller than 30,000.¹¹⁶³

Ms. Russ Anderson testified that she believes the thresholds were appropriate throughout the relevant period.¹¹⁶⁴ In support, she stated, “[w]e were continuing to find behaviors. The behaviors were reducing, and so as the behaviors reduced, we lowered the percentage. And so because the number of instances were going down, it showed that, you know, it was working. The proactive monitoring was working.”¹¹⁶⁵ Explaining the change in April 2015, Ms. Russ Anderson testified that “if you get to a place, which I think we got to, a level where, like, you know what, now we need to go down another notch, which is why we did the research and said let’s go to 99.95.”¹¹⁶⁶

Through leading questioning by her Counsel during direct examination, Ms. Russ Anderson testified that she “completely believed” there was a deterrent effect about having Corporate Investigations going into the field and investigating these sales practices misconduct that resulted from SSCOT’s research.¹¹⁶⁷

Asked by her Counsel during direct examination to describe what she did during 2013 and 2014 with respect to controls around sales practices misconduct, Ms. Russ Anderson testified:

We did create more training around for the store bankers, for the branch bankers. We created an Ethically Speaking course as well as the quality sales manual. We -- I worked extensively -- I had to use a lot of political capital around signature capture, because it was not something that people were in favor of. I went out and spoke across the footprint two straight years several times a year to groups of people at the branch level and middle market. I talked extensively with the senior regional leadership about the data we had and how were they using the data and teaching them, you know, how to look for things that would help them manage the risks within their regions.¹¹⁶⁸

Ms. Russ Anderson identified a June 19, 2015 email chain among Kris Klos, Rebecca Rawson, herself and others regarding the need to follow up on discussion items raised during the OCC’s meeting on Complaints, Ethics Line Referrals, and the SSCOT Process held that day.¹¹⁶⁹ One of the items requiring action reflected, “the OCC had a general policy and procedure

¹¹⁶³ *Id.* at 9323-24.

¹¹⁶⁴ *Id.* at 9324.

¹¹⁶⁵ *Id.*

¹¹⁶⁶ *Id.*

¹¹⁶⁷ *Id.* at 9324-25.

¹¹⁶⁸ *Id.* at 9372-73.

¹¹⁶⁹ *Id.* at 10018; OCC Ex. 223.

question around requirements for signatures, and in cases where they were not obtained, are there controls or checks and balances to confirm whether a signature was there or not.”¹¹⁷⁰

When asked whether she believed this was an important question from the OCC, Ms. Russ Anderson responded, “I would have thought so, yes.”¹¹⁷¹ She testified she believed she had an obligation to provide a complete response, and that it would not be appropriate for her to err on the side of under-inclusion when providing information to the OCC.¹¹⁷² In her responsive email, Ms. Russ Anderson wrote to the distributees “We also need to be clear with OCC IF a signature is required by law or not.”¹¹⁷³

Ms. Russ Anderson apparently determined that the June 19, 2015 meeting sought information only about credit products and not deposit accounts: In the email exchange, Camie Keilen wrote to one of Ms. Russ Anderson’s direct reports – Paula Herzberg – on June 23, 2015 that she was “attempting to get the narrative pulled together for the OCC’s four outstanding questions that did not get answered in last Friday’s call.”¹¹⁷⁴ Ms. Keilen provided a copy of the four questions and drafts of the answers, stating for Question #4, “we think we just need to explain to the OCC generally what if any signature requirements were in place during the period of time these complaints in question came in versus what has changed since then.”¹¹⁷⁵

In her draft, Ms. Keilen provided a response that described signature requirements for consumer credit products, stating she “lifted language directly from the Messenger article that went out on April 3, 2015 as it relates to consumer credit products.”¹¹⁷⁶

For deposit products, Ms. Keilen’s draft was as follows:

For deposits, we reached out to Donna See in DSSG and she explained that the signature requirements that were in place back then (during the period coinciding with the complaints) have not changed as of today. Though there is some sort of technical exception process in place when signatures are not on file, which should require team members to obtain those signatures, those controls unfortunately did not stop a few of the deposit accounts in question from being opened and activated. **We have asked Donna to put the explanation into a narrative and will get the entire document back to you**

¹¹⁷⁰ OCC Ex. 223 at 1.

¹¹⁷¹ Tr. (Russ Anderson) at 10018.

¹¹⁷² *Id.* at 10018-19.

¹¹⁷³ OCC Ex. 223 at 1.

¹¹⁷⁴ R. Ex. 1720 at 3.

¹¹⁷⁵ *Id.* at 3-4.

¹¹⁷⁶ *Id.* at 4.

in case you have any edits or suggestions. We will be sending a draft of whatever we have to Claudia first thing in the morning so she can review.¹¹⁷⁷

This response thus interpreted the OCC’s request for information to apply to credit and deposit accounts – not just credit accounts. Later the same day, however, Ms. Herzberg wrote to Ms. Keilen, stating, “I was not aware that the OCC asked about deposit accounts as well [as credit applications], but that is a bit different in terms of signatures.”¹¹⁷⁸ She asked Ms. Keilen, “Did this request also expect us to cover back end processes designed to follow up on missing signatures (such as credit card applications for those under 21)?”¹¹⁷⁹

The response to Ms. Herzberg’s question came from Justin Richards, Complaints Program Manager for Community Banking Risk Management: “Yes, I think the scope of their questions are related to both deposit and credit products as well as the back-end processes to review exceptions.”¹¹⁸⁰ In forwarding to Ms. Herzberg the draft response – addressing both credit and deposit products – Mr. Richards expressed his concern about the completeness of the draft regarding deposit accounts, writing, “this clearly lacks details on the process for obtaining signatures for deposits but provides details on the exception process.”¹¹⁸¹

That draft read as follows:

When opening or maintaining a deposit account without the required legal documents, information, or customer signature, a Technical Exception (TE) is generated. TEs are issued 15 days after the account opening or maintenance transaction was completed. This allows sufficient time for documents scanned to Operations to be added to the image library then reviewed for accuracy and supporting documentation. If a TE is generated for missing signatures for account opened the banker is informed and an account application is mailed to the customer asking for them to return a signed copy. Reports listing all TEs are sent to store management monthly via Minding the Store portal.¹¹⁸²

Shortly after receiving Mr. Richards’ draft, Ms. Herzberg wrote back to him, Ms. Keilen, and Jay Christoff:

To be clear there really isn’t much of a follow up process for missing signatures on deposit accounts that I am aware of . . . this topic has come up numerous times and it is pretty much the same at most banks. It happens more

¹¹⁷⁷ R. Ex. 1720 at 4 (emphasis *sic*).

¹¹⁷⁸ *Id.* at 3.

¹¹⁷⁹ *Id.*

¹¹⁸⁰ *Id.* at 2.

¹¹⁸¹ *Id.*

¹¹⁸² *Id.*

often in the phone channel, of course, [REDACTED]

[REDACTED] If they haven't specifically asked about deposit accounts, I really wonder if we should go there.¹¹⁸³

After describing the PIN PAD process used in credit card applications, Ms. Herzberg identified two instances where a PIN PAD signature might not have been captured: "(1) the PIN PAD is not functioning; or (2) it is bypassed assumedly because the customer cannot sign it (disability, etc.)." She wrote that if this occurs the banker is to "print a form and have the customer sign it, then fax it to Card Operations."¹¹⁸⁴ She added, "[w]e did not provide this level of detail to the OCC, as we agreed to keep our initial response high level."¹¹⁸⁵

Ms. Herzberg concluded the message with the following admonition: "We would not want to include anything about phone sales, as these really weren't allowed by policy, but we found they were occurring and took steps to clarify policy, etc."¹¹⁸⁶

Ms. Russ Anderson responded directly – but only to Ms. Herzberg – stating "[The OCC] did not ask about deposits and we shouldn't add it. I'll edit it out when they send it."¹¹⁸⁷ **Acting in furtherance of this opinion under the conditions that were present during the relevant period constituted unsafe or unsound banking practice and a breach of the fiduciary duties Ms. Russ Anderson owed to the Bank.**

During cross-examination, when asked whether she saw that Mr. Richards had confirmed that the scope of the OCC's questions included both deposit and credit products, Ms. Russ Anderson responded, "What I see is something that was his opinion that that's what the question was about. We had a debate as to whether or not that was what they were asking for."¹¹⁸⁸ The record includes no suggestion, however, that Ms. Russ Anderson sought to clarify from the OCC whether Mr. Richards' "opinion" about the scope of the OCC's question was as narrowly drawn as she believed it to be.

Asked during cross-examination why she elected to edit out the draft regarding deposit accounts, Ms. Russ Anderson responded:

For a couple of reasons. One, we had been getting criticized by the OCC for sending too much information and not being responsive to their requests in this period of time. And so Paula and I -- as you can see in the one above it,

¹¹⁸³ R. Ex. 1720 at 1.

¹¹⁸⁴ *Id.*

¹¹⁸⁵ *Id.* at 1-2.

¹¹⁸⁶ *Id.* at 2.

¹¹⁸⁷ *Id.* at 1.

¹¹⁸⁸ Tr. (Russ Anderson) at 10023-24

she agrees with me. We were trying to be responsive to the OCC, not overwhelm them with information they did not ask for. And also we had -- these were two kind of junior people who had not had a lot of experience with the OCC before, and so we were trying to ensure that what was being sent to the OCC was responsive and not just loading up stuff in the SharePoint site, which they had a criti- -- they were asking us and criticizing us about doing.¹¹⁸⁹

She added that while she thought Mr. Richards and Ms. Keilen wanted to be transparent, that “they thought that was what the OCC wanted” Ms. Russ Anderson and Ms. Herzberg “had a different interpretation of the request.”¹¹⁹⁰ Ms. Russ Anderson denied, however, seeking to edit out the deposit accounts information in order to prevent the OCC from seeing Ms. Herzberg’s statement that there was no follow-up process for missing signatures on deposit accounts.¹¹⁹¹

Investigation Debrief Escalation Assessment (IDEA) – November 10, 2014 Corpus Christi, Texas

On November 10, 2014 Corporate Investigations through Ron Castillo provided an Investigation Debrief Escalation Assessment to Ms. Russ Anderson and others,¹¹⁹² with a copy to Mr. McLinko and others. When asked during cross-examination whether she paid attention to the location of IDEA reports, Ms. Russ Anderson responded that she “would have read where they were,” but could not remember whether she paid attention to the location of the misconduct.¹¹⁹³ Nothing in this IDEA supported the factual premise that by late 2014 sales practices misconduct was limited to the L.A./Orange County branch offices of the Community Bank.

Each of the eleven cases reported in this IDEA arose from banker activity in the Calallen branch located in Corpus Christi, Texas.¹¹⁹⁴ The investigation “was initiated upon receiving information of Sales Integrity Violations through multiple sources, to wit: anonymous complaint, a Human Resources Climate Survey, and Sales Quality polling.”¹¹⁹⁵

The allegation of misconduct by Personal Banker [JB] is as follows:

An investigation into the activity of Personal Banker JB, located at the Calallen branch, was predicated upon receiving polling results from Sales Quality (SQ) for the third time this year. SQ polled (4/1/14 – 6/30/14) due to

¹¹⁸⁹ *Id.* at 10024-25.

¹¹⁹⁰ *Id.* at 10025.

¹¹⁹¹ *Id.* at 10026.

¹¹⁹² *Id.* at 9741; OCC Ex. 881.

¹¹⁹³ Tr. (Russ Anderson) at 9742-43.

¹¹⁹⁴ OCC Ex. 881 at 1.

¹¹⁹⁵ *Id.*

an anonymous complaint which alleged the following: debit/credit cards were issued/ordered without consent, debit cards and PIN numbers mailed to the branch, and simulated funding. Polling results returned one substantiation from a customer who was polled and confirmed that an account was opened without consent. Data pulled resulted in the following stats: 21 out of 26 credit cards issued to customers are used; 73 out of 275 checking/savings accounts are missing signatures within 30 days; 59 out of 99 online banking activated by JB are not used, 25 accounts opened have in and out funding / 9 of the accounts have in & out funding within 1 day.

Previous SQ polling on JB returned the following:

- 3/13/2014 – SQ polled (11/2013 – 1/2014) as a result of an Ethics Line (EL) complaint on opening accounts without consent. One customer substantiated that JB opened a minor checking account without the minor being present.
- 3/3/2014 – SQ polled (11/2013 – 1/2014) as a result of an EL complaint on opening accounts without consent. One customer substantiated the allegation.
- 9/6/2013 – SQ polled (10/2013 – 12/2013) due to D.M. info that JB ordered debit cards without consent. 5 customers substantiated that JB ordered debit cards on a business account that they are signers on. (HR decided to keep JB as per direction of management.)
- 8/15/2013 – SQ polled (8/2013) as a result of a customer complaint that JB opened accounts without consent. One customer substantiated that JB ordered three debit cards without consent.¹¹⁹⁶

The Investigations Summary reports that JB “originally confessed to opening accounts via telephonic consent, however when questioned he changed his response and stated he had not done that since the rule changed and was unable to provide the date when the rule changed. JB is current with his Code of Ethics and Sales Integrity training.”¹¹⁹⁷

The IDEA identified six tellers who confessed to sales practices misconduct – *i.e.*, “activity that is in direct violation of the Sales Quality Manual”.¹¹⁹⁸ In each case the investigators found that “Management directed tellers to engage in” such activity.¹¹⁹⁹ In addition, in each case, after taking this into account, the recommended resolution was to retain the team member “due to undue influence.”¹²⁰⁰ The recommendation for JB, however, was termination of his

¹¹⁹⁶ OCC Ex. 881 at 2.

¹¹⁹⁷ *Id.* at 4.

¹¹⁹⁸ *Id.* at 5-6.

¹¹⁹⁹ *Id.* at 5.

¹²⁰⁰ *Id.*

employment based on a finding of “opening checking/savings accounts, credit/debit cards without consent. Simulated funding.”¹²⁰¹ The Case Conclusion included the following: “The pattern of submitting inappropriate off-site teller referrals by Calallen team members is attributable to the culture that was intentionally cemented by management; through their misdirection and significant deviation of explicit company policy.”

The IDEA investigation found that allegations of management directing inappropriate telling referrals “were substantiated” and recommended the termination of employment of Store Manager [EL] for directing team members to obtain and submit inappropriate teller referrals, and District Manager [RH] for directing the Store Manager to act in this way.¹²⁰² No termination was recommended for the branch Service Manager [JP] upon a report that he “confessed to directing tellers with obtaining and submitting referrals from off-site businesses, at the direction of EL.”¹²⁰³ The report found that “since [JP] was a Service Manager in training under EL from April 2014 to October 2014, he had no reason to question her direction. Although he has taken the sales integrity training since he began work at Wells Fargo, Perez did not recall going over this specific rule.”¹²⁰⁴

When asked during cross-examination whether the location of the IDEA report indicated the pervasive nature of sales practices misconduct in the Community Bank, Ms. Russ Anderson responded, “not necessarily,” because “we had 6,000 branches, so a singular location didn’t indicate to me a systemic nature of issues.”¹²⁰⁵ With respect to JB in particular, Ms. Russ Anderson agreed the allegations presented were serious, but that she had no reason to disagree with the protocols under which referral to Corporate Investigations only took place if three customers substantiated the original allegation of misconduct.¹²⁰⁶ **Acting in furtherance of this opinion under the conditions that were present during the relevant period constituted unsafe or unsound banking practice and a breach of the fiduciary duties Ms. Russ Anderson owed to the Bank.**

During cross-examination Ms. Russ Anderson recalled testifying that meetings of the Core Team were difficult, explaining that during the meetings Core Team members were making decisions about team members’ lives and their careers.¹²⁰⁷ Asked if she cared so much about team members and their lives why she did not advocate for the elimination of sales goals from 2013 to 2016, Ms. Russ Anderson responded, “I didn’t think about that. And if I had, it would

¹²⁰¹ *Id.* at 8.

¹²⁰² *Id.* at 6-7.

¹²⁰³ *Id.* at 7.

¹²⁰⁴ *Id.*

¹²⁰⁵ Tr. (Russ Anderson) at 9743.

¹²⁰⁶ *Id.* at 9745-46.

¹²⁰⁷ *Id.* at 9748.

not have – I didn’t believe it would have solved the problem.”¹²⁰⁸ She acknowledged, however, that testifying now she “couldn’t tell you” what the root cause for sales practices misconduct was in 2013 – but that she “worked on getting customer consent. We worked on customer clarity. We worked on additional training. We worked on . . . the quality of sale report card.”¹²⁰⁹

Ms. Russ Anderson testified that by 2014 “one of the root causes was lack of customer consent” in that “bankers weren’t getting consent.”¹²¹⁰ Asked what the root cause was for that behavior, Ms. Russ Anderson responded, “I don’t know.”¹²¹¹ **Acting in furtherance of this opinion under the conditions that were present during the relevant period constituted unsafe or unsound banking practice and a breach of the fiduciary duties Ms. Russ Anderson owed to the Bank.**

Asked what the root cause was for sales practices in 2015 or 2016, Ms. Russ Anderson responded, “I can’t tell you while I’m sitting here.”¹²¹² **Acting in furtherance of this opinion under the conditions that were present during the relevant period constituted unsafe or unsound banking practice and a breach of the fiduciary duties Ms. Russ Anderson owed to the Bank.**

OCC’s February 2015 Examination – Community Banking Operational Risk Management

Mr. Julian identified the January 7, 2015 Request Letter addressed to Carrie Tolstedt as Senior Executive Vice President of Community Banking, sent from National Bank Examiner Christine Moses of the OCC.¹²¹³ The Letter announced the OCC’s intention to conduct an examination of Community Banking operational risk management to begin on February 2, 2015.¹²¹⁴

The scope of the examination was to include an assessment of the level of oversight and reporting within the first line of defense, an evaluation of the appropriateness of governance policies and procedures, business processes, quality and sufficiency of staff to monitor, challenge, and conduct controls testing, and a review of the Community Bank’s cross sell oversight activities.¹²¹⁵

Asked what the term “cross-sell” means, Mr. Julian responded that “[c]ross-sell within Wells Fargo was the practice of providing customers with different products . . . that the company offered, offering customers different products that was [sic] believed that would be

¹²⁰⁸ *Id.*

¹²⁰⁹ *Id.* at 9750-51.

¹²¹⁰ *Id.* at 9751-52.

¹²¹¹ *Id.* at 9752.

¹²¹² *Id.*

¹²¹³ Tr. (Julian) at 6623; R. Ex. 7383.

¹²¹⁴ R. Ex. 7383 at 1.

¹²¹⁵ *Id.*

valuable to them.”¹²¹⁶ He described the “cross-sell metric” as a metric “by which the number of products that a customer had or had . . . obtained were provided across various lines or within a line of business.”¹²¹⁷

Asked how, during the relevant time, cross-sell related to the Community Bank’s revenue, Mr. Julian responded:

Well, it was really inherent in the entire business. So when you think of the Community Bank and the Community Bank's customers, the business of the Community Bank was providing customers with various products that would be useful and valuable to the customer. So it was really a -- somewhat at core of the Community Bank's business.¹²¹⁸

Mr. Julian added that during the relevant period, WFAS lacked the ability to distinguish cross-sell from the Community Bank’s overall sales activities – because cross-sell “was inherent in the business practices.”¹²¹⁹ He testified that as a result, WFAS could not conduct a cross-sell specific review of the Community Bank analogous to audits conducted for other businesses.¹²²⁰

The inability of WFAS to conduct an analogous cross-sell specific review of the Community Bank was discussed between the OCC and Claudia Russ Andersons, as Operations Risk and Compliance Manager.¹²²¹ The Supporting Comments for the February 23, 2015 Conclusion Memo reflects the initial meeting on cross sell took place on February 4, 2014.¹²²² During that meeting, Ms. Russ Anderson explained to the OCC that in the Community Bank, “the focus is on selling customers additional products to enhance the ‘mutual exchange of value’ between customers and the bank. Customers benefit through additional utility, service, and convenience; the bank benefits through increased revenue and customer retention.”¹²²³

Ms. Russ Anderson’s Participation in the February 9, 2015 OCC Meeting Regarding WFAS Community Bank Sales Coverage

During cross-examination Ms. Russ Anderson identified an email chain running from February 6 to 9, 2015.¹²²⁴ In the chain, Jannien Weiner was corresponding with OCC Examiner

¹²¹⁶ Tr. (Julian) at 6624.

¹²¹⁷ *Id.* at 6624.

¹²¹⁸ *Id.* at 6625.

¹²¹⁹ *Id.*

¹²²⁰ *Id.* at 6625-26.

¹²²¹ R. Ex. 18918 at 2.

¹²²² *Id.*

¹²²³ *Id.*

¹²²⁴ Tr. (Russ Anderson) at 9783; R. Ex. 7694.

Hudson, who was seeking a meeting to discuss “new products and strategic planning” in addition to meetings regarding Sales Practices and Enterprise Global Services.¹²²⁵

Seeking clarification of the scope of the strategic planning meeting, Ms. Weiner wrote to Examiner Hudson: “do you mean how PSRM fit into an overall strategic plan?” to which Examiner Hudson responded, “No.”¹²²⁶ Responding to Ms. Weiner’s request for more information about the scope of the Strategic Planning part of the February 2015 exam, Examiner Grover provided the following:

- Please provide Community Bank’s Three-Year Strategic Plan, or the supporting Strategic Planning Template – even if it is in Draft status – showing specific strategic initiatives, trends and risks.
- Given the high level of operational risk inherent in the Community Banking landscape (large number of stores, products, team members, geographic span, retail distribution network, etc.), please outline major risk management efforts that are designed to mitigate operational risks associated with meeting strategic goals.
- What are the communication mechanisms (i.e., meetings, oversight) that Claudia and her Risk Group utilize to 1) keep abreast of strategic business plans, and 2) provide input or challenge into strategic decisions?
 - Provide examples, if any, where the GRO team has challenged strategic business proposals/decisions.¹²²⁷

Ms. Russ Anderson acknowledged during cross-examination that sales practices misconduct posed operational risks for the Bank, and that she understood this to be the case from 2013 to 2016.¹²²⁸ She also acknowledged receiving from Ms. Weiner Examiner Grover’s response at the start of the February 2015 examination, and agreed that it was pretty specific.¹²²⁹

Ms. Russ Anderson testified that in her view, this request by the OCC was “completely out of scope” of the examination, while acknowledging that the OCC was entitled to make whatever requests it wanted from Ms. Russ Anderson and her staff.¹²³⁰ Nevertheless, the final entry in the email chain was a message from Ms. Russ Anderson that “Jannien and I are going to talk to OCC this week and try to kill this.”¹²³¹ **Acting in furtherance of this opinion under the conditions that were present during the relevant period constituted unsafe or unsound**

¹²²⁵ R. Ex. 7694 at 7.

¹²²⁶ R. Ex. 7694 at 6.

¹²²⁷ *Id.* at 5.

¹²²⁸ Tr. (Russ Anderson) at 9785.

¹²²⁹ *Id.* at 9785-86.

¹²³⁰ *Id.* at 9786-87.

¹²³¹ R. Ex. 7694 at 1.

banking practice and a breach of the fiduciary duties Ms. Russ Anderson owed to the Bank.

Provided with the opportunity to explain this statement, Ms. Russ Anderson testified that “you’ve missed a very important email on page 2 where we were also talking with the people in Corporate about the strategic plan that the Corporation was working on and that they wanted us to work with – through them to the OCC.”¹²³²

Those messages, however, do not establish that anyone in Corporate wanted Ms. Russ Anderson to work through them with the OCC regarding the Community Bank’s strategic plan. Little weight can be given to Ms. Russ Anderson’s factual claim, and the testimony indicates a tendency to deflect when answering questions during cross-examination. The message from Carole Anderson (February 9, 2015) to Ms. Russ Anderson and Ms. Weiner was – in response to Ms. Russ Anderson’s question “Is there a template the company gave us to use, Ms. Russ Anderson responded:

Yes, the document that Osanna just sent out (you’re copied, not Jannien) is a partial completed view of what the working team as [*sic*] completed to date. Again, neither Matthew or Jason have seen it before this. I would not feel comfortable sending it in without them, let alone Carrie, not having seen this. And again, it’s a partial doc in that various financials, opening strategic sections, and industry analysis piece [*sic*] are not in this version she sent.¹²³³

Nothing in the exchange supports Ms. Russ Anderson’s testimony that “the conversation that Osanna and her boss had with [Examiner] Chris Moses, and this was removed from our exam” or that “we were also talking with the people in Corporate about the strategic plan that the Corporation was working on” and that Corporate “wanted us to work . . . through them to the OCC.”¹²³⁴ Moreover, there is no evidence that Ms. Russ Anderson sought to exercise credible challenge to risk-management controls that Community Banking’s first line of defense relied upon. **Acting in furtherance of this opinion under the conditions that were present during the relevant period constituted unsafe or unsound banking practice and a breach of the fiduciary duties Ms. Russ Anderson owed to the Bank.**

From the record it is clear the OCC sought the strategic plan as it existed at the start of the February 2015 exam, even if in draft form and even if presented as a template. It is clear that Ms. Russ Anderson knew the February 2015 examination would focus on operational risk, an area of her responsibility throughout the relevant period.¹²³⁵ Ms. Russ Anderson’s claim that she did not want to kill the request is not supported by reliable or substantial evidence. Nothing in the record supports Ms. Russ Anderson’s testimony that what she wanted to do “was remove the

¹²³² Tr. (Russ Anderson) at 9787.

¹²³³ R. Ex. 7694 at 2.

¹²³⁴ Tr. (Russ Anderson) at 9787.

¹²³⁵ *Id.* at 9788.

entire request from the exam because it was not activities that the Corporation had formed policies and processes around.”¹²³⁶ **Acting in furtherance of this opinion under the conditions that were present during the relevant period constituted unsafe or unsound banking practice and a breach of the fiduciary duties Ms. Russ Anderson owed to the Bank.**

OCC’s February 2015 Examination of Community Bank

Julian testified he received and read Supervisory Letter WFC 2015-07, the OCC through Examiner in Charge Bradley K. Linskens reported to Carrie Tolstedt, Community Bank’s Senior Executive Vice President, findings from the OCC’s February 2015 examination of Community Bank.¹²³⁷ Through this report, although rating Community Bank’s operational risk management “effective” and thus awarding its highest rating, the OCC found that the “[l]ack of a comprehensive governance framework exposes CB to heightened reputation risk and possible negative publicity. Without a formalized structure, it is difficult to demonstrate compliance with the firm’s values and goals while meeting strategic and financial objectives.”¹²³⁸

The February 2015 Exam prompted the OCC to require the Community Bank to “establish an overarching framework and formalize current practices in policy.”¹²³⁹ To address existing deficits the OCC issued an MRA requiring the Community Bank’s policies and framework to, inter alia, define “escalation protocols and address the timing and reporting of information of CB’s sales activities to the CB Risk Management Committee” and define “appropriate sales practices and alignment with corporate values, goals, and mission statements.”¹²⁴⁰ The Community Bank was expressly required to “[d]ocument compensation and incentive plans along with processes used to identify and prevent inappropriate sales conduct [and] [o]utline sales expectations for CB employees consistent with monitoring incentives for sales misconduct and employee turnover.”¹²⁴¹

The Examination report states that “GRO Russ Anderson agreed to address the corrective actions”, apparently without disagreeing with the findings.¹²⁴²

Mr. Julian identified a January 7, 2015 Request Letter addressed to Carrie Tolstedt as Senior Executive Vice President of Community Banking, sent from National Bank Examiner Christine Moses of the OCC.¹²⁴³ The Letter announced the OCC’s intention to conduct an

¹²³⁶ *Id.*

¹²³⁷ Tr. (Julian) at 6643; R. Ex. 654.

¹²³⁸ R. Ex. 654 at 3.

¹²³⁹ *Id.*

¹²⁴⁰ *Id.*

¹²⁴¹ *Id.*

¹²⁴² *Id.*

¹²⁴³ Tr. (Julian) at 6623; R. Ex. 7383.

examination of Community Banking operational risk management to begin on February 2, 2015.¹²⁴⁴

The scope of the examination was to include an assessment of the level of oversight and reporting within the first line of defense, an evaluation of the appropriateness of governance policies and procedures, business processes, quality and sufficiency of staff to monitor, challenge, and conduct controls testing, and a review of the Community Bank's cross sell oversight activities.¹²⁴⁵

The inability of WFAS to conduct an analogous cross-sell specific review of the Community Bank was discussed between the OCC and Claudia Russ Anderson, as Operations Risk and Compliance Manager.¹²⁴⁶ The Supporting Comments for the February 23, 2015 Conclusion Memo reflects the initial meeting on cross sell took place on February 4, 2014.¹²⁴⁷

During that meeting, Ms. Russ Anderson explained to the OCC that in the Community Bank, "the focus is on selling customers additional products to enhance the 'mutual exchange of value' between customers and the bank. Customers benefit through additional utility, service, and convenience; the bank benefits through increased revenue and customer retention."¹²⁴⁸

The notes from that meeting reflect that Ms. Russ Anderson told the OCC, "team members do have referral and sales goals but meeting these is only part of the review and evaluation process."¹²⁴⁹ Referral fees paid to team members are capped to keep incentive to sell products in check and keep the focus on customer service."¹²⁵⁰ She identified the "number of WFB products per household" as "the key metric" and reported the "most common products are checking accounts and debit cards."¹²⁵¹ Other products included credit cards, on-line bill pay, and investment products.¹²⁵²

The Conclusion Memorandum reported that as of "4Q14, the retail bank cross-sell metric was 6.17 (number of WFB products held/number of WFB retail bank households)."¹²⁵³ The "Retail Bank Cross Sell Steering Committee oversees metric data and customer calculation," and the Conclusion Memorandum described the work of the Committee – notably its data governance – as "critical" because "the metric is disclosed in SEC filings and is closely watched

¹²⁴⁴ R. Ex. 7383 at 1.

¹²⁴⁵ R. Ex. 7383 at 1.

¹²⁴⁶ R. Ex. 18918 at 2.

¹²⁴⁷ *Id.*

¹²⁴⁸ *Id.*

¹²⁴⁹ *Id.* at 3.

¹²⁵⁰ *Id.*

¹²⁵¹ *Id.*

¹²⁵² *Id.*

¹²⁵³ *Id.*

by investors, analysts, etc.”¹²⁵⁴ Notwithstanding the importance of the work of the Committee, the Committee “is not a governance committee and does not have a charter or keep minutes.”¹²⁵⁵

The Conclusion Memorandum lacked audit reports of the Community Bank’s cross sell; it had, however, audit reports of cross sell done in the Wholesale group and the Wealth, Brokerage, and Retirement (WBR) group.¹²⁵⁶ Although it lacked an audit report from the Community Bank, the Memorandum reflected that the OCC held a conference call on February 9, 2015 with WFAS personnel, including the Executive Audit Director Paul McLinko and Senior Audit Manager Bart Dees, to review WFAS Community Bank Sales Coverage.¹²⁵⁷

The Memorandum noted that WFAS’s audit reports regarding cross sell in both the Wholesale and WBR groups “focused on cross sell as a separate activity, assessing governance, internal controls, oversight, revenue derived from cross sell.”¹²⁵⁸ The Memo reported that “WFAS has not conducted a similarly structured review” of cross sell in the Community Bank.¹²⁵⁹

According to Mr. Swanson and Mr. Declue, at this point in the February 9, 2015 conference call, Ms. Russ Anderson and Mr. MacDuff “interjected and reiterated that in CB, cross sell is not a separate activity that can broken out and governed as a stand-alone activity. CB is the bank’s main distribution channel and governance over cross sell is part of overall governance over products. Messrs. McLinko and Deese did not disagree or offer additional comments on this subject.”¹²⁶⁰

The Conclusions identified four main areas of WFAS’s sales coverage for the Community Bank: sales and account opening, incentive compensation, sales quality (monitoring conduct and handling complaints), and the accuracy of reporting the cross sell metric.¹²⁶¹

In their Conclusions, Mr. Swanson and Mr. Declue reported that while the Community Bank’s oversight processes “provide generally effective oversight of the [Community Bank’s] cross sell activities,” the current process “lacks transparency and needs to be formalized in a governing framework that describes roles and responsibilities, lines of reporting, escalation protocols, incentive compensation oversight, and quality assurance processes.”¹²⁶² Further, the Memo concludes that the “[I]ack of a comprehensive governance framework can expose the CB

¹²⁵⁴ *Id.*

¹²⁵⁵ *Id.*

¹²⁵⁶ *Id.*

¹²⁵⁷ *Id.*

¹²⁵⁸ *Id.*

¹²⁵⁹ *Id.*

¹²⁶⁰ *Id.*

¹²⁶¹ *Id.* at 3-4.

¹²⁶² R. Ex. 18918 at 1.

to heightened reputation risk through negative publicity. Without a more formal structure it is more difficult to ensure compliance with the firm's values and goals for achieving customer satisfaction and strategic and financial objectives."¹²⁶³

Ms. Russ Anderson acknowledged being invited to and attending the February 9, 2015 meeting with the OCC.¹²⁶⁴ Meeting Notes reflect Ms. Russ Anderson stating that in Community Banking, "cross sell is 100 percent of revenue."¹²⁶⁵ For this meeting, the stated purpose was to permit Paul McLinko and Bart Deese "to present information on WFAS Community Bank Sales Coverage".¹²⁶⁶ Notwithstanding that the Examiners asked Mr. McLinko and Mr. Deese "why cross sell was not reviewed the same way by WFAS in CMBK" as with Wholesale and WRB, the Meeting Notes report that Ms. Russ Anderson answered the question rather than either Mr. McLinko or Mr. Deese (both of whom represented WFAS in the discussion).¹²⁶⁷

Responding to leading questioning by her Counsel during direct examination, Ms. Russ Anderson denied that she intended to "hijack" the meeting.¹²⁶⁸ Without acknowledging the active role Ms. Russ Anderson is reported to have played during the meeting, after admitting this "was a meeting for Audit", she testified, "it was an exam of the Community Bank so I was there – I typically sat in on all of the meetings, so this was just another meeting."¹²⁶⁹

During cross-examination Ms. Russ Anderson testified that Jannien Weiner "was in charge of the invites," but that she understood this was supposed to be a meeting between OCC examiners and members from WFAS.¹²⁷⁰ Responding to leading questioning by her Counsel during direct examination, Ms. Russ Anderson testified that she did not think she was compromising the independence of Audit by attending this meeting.¹²⁷¹

Without explanation but directly contradicting the contents of the OCC's Meeting Notes for the February 9th meeting, Ms. Russ Anderson testified that Audit is "a standalone oversight group from the Community Bank, and I would never have stepped in to answer for them. I mean, it was their meeting and . . . the discussion about Audit was for Audit to discuss, not me."¹²⁷² I find preponderant reliable evidence establishes, however, that Ms. Russ Anderson did in fact step in and answer for Audit in responding to the OCC's questions about why Community Banking

¹²⁶³ *Id.*

¹²⁶⁴ Tr. (Russ Anderson) at 9431, 9433-34; R. Exs. 7389, 7409.

¹²⁶⁵ OCC Ex. 1740 at 1.

¹²⁶⁶ *Id.*

¹²⁶⁷ *Id.*

¹²⁶⁸ Tr. (Russ Anderson) at 9435-36.

¹²⁶⁹ *Id.* at 9436.

¹²⁷⁰ *Id.* at 9789-90.

¹²⁷¹ *Id.* at 9436.

¹²⁷² *Id.*

cross sell was not reviewed by WFAS in the same way that WFAS audited cross sell by Wholesale and WRB.¹²⁷³ This testimony eroded the reliability of Ms. Russ Anderson’s testimony relating to her role in promoting the otherwise unfounded notion that cross sell by Community Banking could not be audited.

During cross-examination Ms. Russ Anderson acknowledged that regardless of whether or not she was supposed to come to this meeting, she had an obligation to provide accurate information to the OCC and had to be transparent with that information.¹²⁷⁴ She acknowledged that she understood the Community Bank’s incentive compensation program was a topic at this meeting and acknowledged that during the meeting she stated that the impact of sales goals expectations on employee turnover is monitored through exit interviews and is not significant.¹²⁷⁵ She acknowledged further, however, that when she said this, she was aware there were hotspots where employees faced significant pressure to meet unreasonable sales goals.¹²⁷⁶

The Notes from the February 9th meeting state that Ms. Russ Anderson and Mr. MacDuff told the OCC that because Community Banking “is the bank’s main distribution channel, cross sell cannot be separated or distinguished from overall sales activities.”¹²⁷⁷ The Notes reported that in Community Banking, WFAS’s audit coverage “is of ‘sales practices’ rather than cross sell.”¹²⁷⁸ They distinguished this from Wholesale and WBR audits, which were in fact “specifically focused on cross sell as a separate, distinct activity.”¹²⁷⁹

The February 9th Meeting Notes reflect that Ms. Russ Anderson told the OCC, “incentive compensation plans are capped to balance the incentives for sales vis-à-vis customer service. She added that the impact of sales goals expectations on employee turnover is monitored through exit interviews and that it is not significant.”¹²⁸⁰

The February 9th Meeting Notes report that WFAS through Paul McLinko and Bart Deese “participates in weekly status meetings that monitor CMBK compliance with corporate policy changes. Monitors WFCC complaint production monthly; complaint processing audit done in 2012. Audit of complaints planned for 2015.”¹²⁸¹

The February 9th Meeting Notes reflect that WFAS (again through Mr. McLinko and Mr. Deese) “[p]articipates in RB Cross Sell Steering Committee Quarterly Meetings. The committee

¹²⁷³ OCC Ex. 1740 at 1.

¹²⁷⁴ Tr. (Russ Anderson) at 9790.

¹²⁷⁵ *Id.* at 9791.

¹²⁷⁶ *Id.*

¹²⁷⁷ OCC Ex. 1740 at 1-2.

¹²⁷⁸ *Id.* at 2.

¹²⁷⁹ *Id.*

¹²⁸⁰ *Id.* at 1.

¹²⁸¹ *Id.* at 2.

oversees the data integrity of the cross sell metric, including what data should be included in the calculation.”¹²⁸² The Meeting Notes reflect, however, that Ms. Russ Anderson “clarified” this statement in the following terms:

In response to an OCC question, Ms. Russ Anderson clarified that this steering committee oversees the cross sell metric but is not an overall CMBK cross sell governance committee. There is no such committee and she does not believe a separate cross sell governance committee would add any value. CB embeds risk professionals in the decision making process. Do have long-term goals, but target cross-sell is eight products per relationship (because it rhymes with great); internally stated that CB wants to grow the metric over time, do not give forward guidance on metrics to investors. Governance committee within CB is more tactical than strategic.¹²⁸³

Ten days after the February 9th meeting in which Ms. Russ Anderson, Mr. McLinko, and Mr. Deese met with the OCC as part of the examination into WFAS’s Community Bank Sales Coverage, Mr. McLinko provided Ms. Russ Anderson with a written summary of a second meeting between Mr. McLinko, Mr. Deese, and OCC Examiners Grover and Declue (and a third examiner, Kevin [presumably Swanson]).¹²⁸⁴

Mr. McLinko wrote:

As stated in their email to us asking for the meeting, they wanted to spend a few minutes to understand our coverage of “Community Bank”. That in itself tells me that they don’t have an understanding of the depth and breadth of the Community Bank and/or audit coverage. They started by asking some specific questions about Community Bank (e.g., sales committee structures, sales governance, sales metrics, etc.). I took that opportunity to tell them (after we had emailed them asking them to go to you) to make all such inquiries specifically relating to Community Bank process with you and your team. They agreed.

We met for probably an hour and the short story from what I heard them say was (and I’ll put it in the words of the Risk Framework): they have pulled the “Priority Sub-Risk” of Sales Practices from the Key Risk Type of “Cross Functional Risk”; and since they are in looking at Community Banking, they are asking framework questions related to **Risk Appetite** for both sales and cross sell, **Governance** for both, **Policies and Procedures** for both, **Reporting** for both, and **Organization/People** (including compensation) for

¹²⁸² OCC Ex. 1740 at 2.

¹²⁸³ *Id.*

¹²⁸⁴ Tr. (Russ Anderson) at 9839; OCC Ex. 1070 at 1.

both. As you know, they've also spread some of the questions Enterprise wide and not just Community Bank.

We provided them with links to four or five of our audit workpaper databases relating to Account Opening, Sales, Sales Quality, etc. Interesting point is they said they were hoping to wrap up over the next two days. We can't even get through all our workpapers in 2 days so not really sure how they are going to do it.

Anyway, just wanted to provide you with some additional perspective.¹²⁸⁵

Six weeks after Mr. McLinko sent this message to Ms. Russ Anderson, Ms. Russ Anderson responded as follows:

This is why I ended up the sales practices MRA. They waited until the end of the exam to think about 'sales practices', didn't have time to ask questions or allow us to provide details. Heck of a way to run a railroad.¹²⁸⁶

Through cross-examination, Ms. Russ Anderson acknowledged that WFAS was supposed to be independent of Community Banking – that Audit (through Mr. McLinko) should be independent of the first line of defense, and she averred – notwithstanding testimony establishing the contrary – that she would never step in and answer for them.¹²⁸⁷ Ms. Russ Anderson testified that she did not remember whether she asked Mr. McLinko to provide this report or whether it was something he did on his own volition, adding, “We crossed information back and forth all the time.”¹²⁸⁸

There is no substantial evidence justifying Mr. McLinko's disclosures shown here – including identifying the workpaper databases WFAS was providing the OCC and detailing the areas of inquiry the OCC was pursuing through Audit relating to Community Banking. As such these disclosures constituted a breach of the independence Audit must maintain as the third line of defense.

Ms. Russ Anderson's Participation in the OCC's February 10, 2015 Conduct Risk Framework for the Operational Risk and Cross Sell Examination

Ms. Russ Anderson identified a February 10, 2015 email chain through which the OCC (by Kevin Swanson) provided Ms. Russ Anderson, Jason MacDuff, Rebecca Rawson and others a list of specific topics the OCC wanted to cover during their meeting later that day.¹²⁸⁹ The list included:

¹²⁸⁵ OCC Ex. 1070 at 1, emphasis *sic*.

¹²⁸⁶ *Id.*

¹²⁸⁷ Tr. (Russ Anderson) at 9838; OCC Ex. 1740 at 1.

¹²⁸⁸ Tr. (Russ Anderson) at 9839.

¹²⁸⁹ *Id.* at 9798; OCC Ex. 2955.

- Overview of the governance process for sales practices in Community Banking.
- April 9, 2014 Claudia Russ Anderson/Jason MacDuff presentation (with deck) to ERMC: Discuss presentation and proposed changes.
- Controls and monitoring processes for identifying inappropriate behavior.
- Incentive Compensation Policy; process for ensuring that inappropriate behavior is captured and reviewed in performance reviews, scorecards, etc.
- Testing to ensure that the incentive program encourages appropriate behavior.
- Monitoring MIS; Minding-the-Store metrics and role of the Risk Council.
- Copy of Risk Council charter.
- Roles of the various monitoring groups (SSCOT, Deposit Products, Corporate Investigations, etc.).
- Testing process for customer suitability of products sold by team members.
- OCC meeting with Mike Loughlin 2/5/15; Changes to compensation in CB; Book on Sales Practices, Project Clarity.¹²⁹⁰

During cross-examination, upon being presented with this email exchange, Ms. Russ Anderson was asked whether from this she understood that information about controls and monitoring processes for identifying inappropriate behavior was material to the OCC's February 2015 examination; and responded, "I don't know if it was material."¹²⁹¹ She also could not say whether the OCC's inquiry into whether the incentive compensation program encourages appropriate behavior was "material" and could not answer even whether the information was important.¹²⁹² **Acting in furtherance of this opinion under the conditions that were present during the relevant period constituted unsafe or unsound banking practice and a breach of the fiduciary duties Ms. Russ Anderson owed to the Bank.**

In her prehearing Declaration, Ms. Russ Anderson admitted that at no time during the February 2015 examination did she disclose the thresholds used in SSCOT's proactive monitoring, averring that the OCC did not ask any questions about thresholds and stating that she "had no reason to believe that thresholds were relevant to our discussions because thresholds were a standard practice when managing data."¹²⁹³ **Acting in furtherance of this opinion under the conditions that were present during the relevant period constituted unsafe or unsound**

¹²⁹⁰ OCC Ex. 2955 at 1-2.

¹²⁹¹ Tr. (Russ Anderson) at 9799-800.

¹²⁹² *Id.* at 9801.

¹²⁹³ OCC Ex. 2279 at ¶29.

banking practice and a breach of the fiduciary duties Ms. Russ Anderson owed to the Bank.

The averment that the OCC did not ask any questions about thresholds is contradicted by the OCC’s February 10, 2015 Meeting Notes, which reflects, “Examiners inquired about testing for first line of defense (QA) for sales quality – and “Management responded that there are the scorecards, and the SOCR process, they review behaviors, etc. However, there is not a formal test for this area.”¹²⁹⁴

Ms. Russ Anderson acknowledged that she was present during Ms. Rawson’s presentation to the Examiners.¹²⁹⁵ In the Meeting Notes, Ms. Rawson is reported as describing the Quality of Sale Report Card (QSRC) as outlining areas in need of additional employee training: “These reports are at the store level and above. The report cards influence incentives for district level managers and above. This gives them a heads up on any emerging trends.”¹²⁹⁶

Ms. Russ Anderson testified that this is a truncated representation of Ms. Rawson’s presentation, and admitted that by the time of this meeting Ms. Russ Anderson knew that the QSRC could be manipulated, but stated (without supporting evidence) that “we were putting – we had controls to help mitigate that.”¹²⁹⁷ When asked whether she should have shared this information with the OCC Ms. Russ Anderson responded, “I don’t know that we didn’t”, adding that the meeting notes “are not my notes.”¹²⁹⁸ She testified, “I do not remember if Rebecca spoke to it – I don’t remember she did, I don’t remember she didn’t.”¹²⁹⁹

The Meeting Notes from the OCC’s February 10, 2015 report that Community Banking staff “began the meeting to present information on the Conduct Risk Framework for the Operational Risk and Cross Sell Exam.”¹³⁰⁰ The Meeting Notes report that Ms. Russ Anderson “opened the meeting” and stated “there is no one mecca around sales practices. Instead, the bank has established a certain culture that dictates practices.”¹³⁰¹

On the question of incentive compensation, Mr. MacDuff is reported as stating, “they think of it broadly as to how to manage performance. They think about two things – the controls around practices (and how they recognize performance), and the implementation of the plan.”¹³⁰²

¹²⁹⁴ OCC Ex. 1771 at 3.

¹²⁹⁵ Tr. (Russ Anderson) at 9813.

¹²⁹⁶ OCC Ex. 1771 at 3.

¹²⁹⁷ Tr. (Russ Anderson) at 9814.

¹²⁹⁸ *Id.*

¹²⁹⁹ *Id.* at 9815.

¹³⁰⁰ OCC Ex. 1771 at 1.

¹³⁰¹ *Id.*

¹³⁰² *Id.*

The Meeting Notes report that the Store Operations Control Reviews (SOCR) process “is also factored into the incentive program.”¹³⁰³

In response to OCC questions about “how the Bank makes sure the customer is clear on what they purchased,” Mr. MacDuff responded the Bank uses “disclosures and surveys. Then they use indicators that tell them how well they delivered the product and to what extent the customer is using the product.”¹³⁰⁴

Ms. Russ Anderson acknowledged saying at one of the February 2015 meetings that the customers are not cross-sold any products without first going through a formal needs assessment.¹³⁰⁵ The record reflects that this was not a complete or accurate answer.

Elaborating and expanding on that answer, Ms. Russ Anderson testified:

[I]f a customer comes into the branch network and they want to speak to a banker about a product, the banker -- and this is a little more sophisticated now. But back then in 2015, the banker had a paper format, paper forms that they would do a needs assessment to make sure that since the customer wasn't clear what they wanted, that they could help them through that needs assessment to make sure that that was the right checking account or the right credit card or the home equity loan versus referring them to the mortgage company.

Partway through that process, they would do what they called a mid-session review, where the manager -- the banker would talk to the manager, and the manager would make sure that the banker was doing what they said they were doing. Again, this was all paper. It wasn't in the computer yet. So that's what I was referring to. But if a customer walked in and said, hey, I absolutely need a checking account, I only need one. I already know what I want, I've got 15 minutes, let's get the account open, you're not going to stop the customer and do a complete needs assessment in that case. You'd lose the customer.¹³⁰⁶

Ms. Russ Anderson denied that she intended to mislead the OCC when she made the statement during the February 2015 meeting: “I thought I was answering the question that they had asked me, so that’s the detail that I gave them.”¹³⁰⁷ **Ms. Russ Anderson’s false representation to the OCC examiners that customers are not cross-sold any products without first going through a formal needs assessment a breach of the fiduciary duties Ms. Russ Anderson owed to the Bank.**

¹³⁰³ OCC Ex. 1771 at 3.

¹³⁰⁴ *Id.* at 1-2.

¹³⁰⁵ Tr. (Russ Anderson) at 9439-40.

¹³⁰⁶ *Id.* at 9440.

¹³⁰⁷ *Id.* at 9441.

Ms. Russ Anderson acknowledged that she had the obligation to correct any inaccurate, non-transparent, or incomplete statement made by a subordinate during this meeting.¹³⁰⁸ During cross-examination, Ms. Russ Anderson was presented with an excerpt of the Meeting Notes that reported, “Examiners asked how the Bank makes sure the customer is clear on what they purchased – Bank answered that they use disclosures and surveys.”¹³⁰⁹ When asked whether she believed she had an obligation to tell examiners at this meeting that employees issued products and services to customers without their consent, Ms. Russ Anderson replied, “No.”¹³¹⁰ **Acting in furtherance of this opinion under the conditions that were present during the relevant period constituted unsafe or unsound banking practice and a breach of the fiduciary duties Ms. Russ Anderson owed to the Bank.** She admitted, however, that by this point, she knew that regardless of whatever needs assessment was supposed to be done, employees engaged in simulated funding – which she testified she knew was illegal.¹³¹¹

During cross-examination, Ms. Russ Anderson reviewed the Meeting Notes that reported that if a banker opens up a product (like a credit card) and the customer did not request it, then the banker is terminated immediately.¹³¹² Responding to questioning during cross-examination to the effect that by this point Ms. Russ Anderson knew that unless an employee or a customer reported the misconduct the Bank would not know that a product was opened for a customer without consent – Ms. Russ Anderson responded that she “didn’t know if there were other controls behind the scenes that would have caught it. I can’t answer that definitively. I don’t know that those were the only two ways.”¹³¹³ **Ms. Russ Anderson’s failure to remain fully informed about the Community Bank’s customer-consent risk management controls constituted unsafe or unsound banking practice and a breach of the fiduciary duties Ms. Russ Anderson owed to the Bank.**

Through further cross-examination Ms. Russ Anderson acknowledged knowing about reactive channels like Ethics Line and customer complaints, and knew about proactive monitoring, but testified that she did not know “all of the controls that credit card had behind the scenes that could have detected it and sent it forward. So in the world in which I operated in, you are correct. What I can’t tell you is what might have happened in the control systems that the credit card people owned, because they had a lot.”¹³¹⁴ Ms. Russ Anderson acknowledged her

¹³⁰⁸ Tr. (Russ Anderson) at 9801-02.

¹³⁰⁹ *Id.* at 9802-03.

¹³¹⁰ *Id.* at 9803.

¹³¹¹ *Id.* at 9804.

¹³¹² *Id.* at 9806.

¹³¹³ *Id.*

¹³¹⁴ *Id.* at 9807.

own prior statement, however, that while not a problem exclusively for the Community Bank, “[c]omplaint tracking was a companywide issue” during the relevant period.¹³¹⁵

The February 10th Meeting Notes include a report that “[t]he incentive plan is not meant for everyone and it is not a requirement for keeping your job.”¹³¹⁶ Although the question does not appear in the Meeting Notes, through leading questioning by her Counsel during direct examination Ms. Russ Anderson testified that she was asked a question about sales goals and said in response that no one loses their job because they did not meet sales goals.¹³¹⁷ When invited to elaborate on this response, Ms. Russ Anderson testified: “I had had conversations with Debra Paterson, who was the senior HR professional at Community Banking sometime before this, and asked that specific question, and she emphatically said it did not occur and that, in fact, there was not a code in the HR system for such a termination.”¹³¹⁸

During cross-examination, however, Ms. Russ Anderson acknowledged that in prior testimony she knew that a team member’s failure to meet sales goals could have been one of the reasons for termination – but that the termination would not have been based solely on not meeting sales goals. “There could have been other reasons, including not meeting sales goals, but not meeting sales goals would not be the only reason.”¹³¹⁹ Reminded of her testimony to the effect that Ms. Paterson “emphatically said” such terminations did not occur, during cross-examination she was asked, “[b]ut you always understood that employees could be terminated for failing to meet sales goals, it just could not be the sole reason, correct?” Ms. Russ Anderson responded, “I didn’t nuance it that clearly.”¹³²⁰

Ms. Russ Anderson was asked: “Do you remember Examiner Candy testifying that you should have advocated for a formal policy that a team member could not be fired for failing to meet sales goals?” and responded that she recalled that testimony.¹³²¹ Acknowledging that she did not during the February 10th meeting talk about terminations related to the intense focus on meeting sales goals, Ms. Russ Anderson was asked what she thought about Examiner Candy’s testimony.¹³²²

Ms. Russ Anderson responded, “since I didn’t believe that team members were being terminated for not meeting sales goals, I wouldn’t have considered having a policy to say

¹³¹⁵ Tr. (Russ Anderson) at 9809; OCC Ex. 2279 at ¶40.

¹³¹⁶ OCC Ex. 1771 at 2.

¹³¹⁷ Tr. (Russ Anderson) at 9437.

¹³¹⁸ *Id.* at 9438.

¹³¹⁹ *Id.* at 9569, quoting OCC Ex. 2509 (1/12/21 deposition of Ms. Russ Anderson) at 52, lines 1-5.

¹³²⁰ Tr. (Russ Anderson) at 9571.

¹³²¹ *Id.* at 9438.

¹³²² *Id.* at 9439.

that.”¹³²³ She added an anecdote involving a family member, leading to the conclusion that she “could not, in good conscience, work for a company that would terminate people for not meeting sales goals. . . . It’s an abomination to me.”¹³²⁴

Ms. Russ Anderson later amended her answer – during cross-examination she changed her answer: “Let me correct my testimony. I meant solely for not meeting sales goals.”¹³²⁵ In further cross-examination, the following exchange took place:

Q: So it's your testimony now under oath that you always knew as the group risk officer of the Community Bank that employees could be terminated for not meeting sales goals, it just could not be the sole reason, correct?

A. It would have been under performance standards. So were you coming late to work, were you showing up drunk, were you -- excuse me -- stealing money, were you, you know... But solely for not meeting sales goals, which was the question that was given to me, that is the answer, yes.

Q. Okay. And I'm really not talking to you about anybody coming in to work drunk. My question is very simple. You always understood from 2013 to 2016 that employees could be terminated in the Regional Bank for not meeting sales goals, it just could not be the only reason for the termination, correct?

A. Or the preponderate reason.¹³²⁶

One of the purposes of an evidentiary hearing is to “enable the finder of fact to evaluate the credibility of witnesses by seeing ‘the witness's physical reactions to questions, to assess the witness's demeanor, and to hear the tone of the witness's voice’”.¹³²⁷ Further, “factors other than demeanor and inflection go into the decision whether or not to believe a witness. Documents or objective evidence may contradict the witness’ story; or the story itself may be so internally inconsistent or implausible on its face that a reasonable factfinder would not credit it.”¹³²⁸

Factors for assessing the credibility of a witness include (1) the opportunity and ability of the witness to see or hear or know the things testified to; (2) the witness's memory; (3) the

¹³²³ Tr. (Russ Anderson) at 9438.

¹³²⁴ *Id.* at 9439.

¹³²⁵ *Id.* at 9567.

¹³²⁶ *Id.* at 9568. See also, OCC Ex. 2509 (1/13/21 deposition of Ms. Russ Anderson) at p. 51, line 14 through p. 53, line 13.

¹³²⁷ *Vickers v. Smith*, No. 115CV00129SABPC, 2019 WL 1367784, at *5 (E.D. Cal. Mar. 26, 2019) (quoting *United States v. Mejia*, 69 F.3d 309, 315 (9th Cir. 1995); *Conservation Cong. v. United States Forest Serv.*, No. CV 2:15-00249 WBS AC, 2016 WL 3126116, at *5 (E.D. Cal. June 2, 2016) (evidentiary hearings “enable the court to listen to the witnesses’ testimony, observe their demeanor, assess their credibility, and resolve the disputed issues of fact regarding defendant's motivations based on the totality of the evidence”).

¹³²⁸ *Anderson v. City of Bessemer City*, 470 U.S. 564, 575 (1985).

witness's manner while testifying; (4) the witness's interest in the outcome of the case, if any; (5) the witness's bias or prejudice, if any; (6) whether other evidence contradicted the witness's testimony; (7) the reasonableness of the witness's testimony in light of all the evidence; and (8) any other factors that bear on believability.¹³²⁹

Preponderant evidence adduced during the hearing compels the conclusion that Ms. Russ Anderson's testimony – that she told the examiners no employee was terminated solely for failing to meet sales goals – was false; that instead when she met with the examiners she represented to them that no employees were terminated for failing to meet sales goals – without qualifying the claim as she did during her testimony.

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

¹³²⁹ *Cuevas Espinoza v. Hatton*, No. 10CV397-WQH-BGS, 2020 WL 434269, at *32 (S.D. Cal. Jan. 28, 2020), citing Ninth Circuit Manual of Model Civil Jury Instructions 1.14 (2017 ed.).

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.

In a written exchange between Examiners Moses and Crosthwaite later on February 10th, Examiner Crosthwaite wrote that the Sales Practice call "went fine . . . but we all agreed again after call . . . Claudia and Co not Transparent . . . very difficult . . . it's like pulling teeth . . . her theme was that they were not making improvements to the sales process that the process is constantly evolving . . . and never really acknowledged why they were at the ERMC (Mike made them come)." ¹³³⁰ Examiner Crosthwaite wrote that Ms. Russ Anderson "acknowledged the sales book but kind of downplayed all of Mike's comments . . . and only briefly talked about Project Clarity . . . Biggest issue is testing . . . do they really do anything in the ILOD proactively related to sales practices outside the whistleblower line. . . she kind of said no. . ." ¹³³¹

During cross-examination Ms. Russ Anderson testified that she "believed the sales process evolved" but did not remember this conversation. ¹³³² It is not clear that Ms. Russ Anderson was able to provide reliable testimony regarding how far the sales process had evolved by May 2015. During cross-examination Ms. Russ Anderson identified a June 5, 2015 email exchange among Jim Richards, Keb Byers, Michael Loughlin, and others regarding the Sales Practices Update being presented to the OCC. ¹³³³ Through this email, Mr. Byers provided a summary of his meeting with the OCC, during which time the OCC discussed "their review of 260 Ethics Line allegations." ¹³³⁴

¹³³⁰ R. Ex. 7713 at 1.

¹³³¹ *Id.*

¹³³² Tr. (Russ Anderson) at 9817.

¹³³³ Tr. (Russ Anderson) at 10103; OCC Ex. 71.

¹³³⁴ OCC Ex. 71 at 3.

In his summary, Mr. Byers wrote to Mr. Loughlin the following description of the OCC's reaction to these allegations:

They [the OCC Examiners] know these are allegations, however they found many (45) of these to be “truthful”, “egregious”, and “frightening”. They categorized into four themes: 1) general sales pressure (excessive manager pressure to sell, calling family and friends to hit sales goals, 2) taking advantage of a protected class (target disabled/Down Syndrome/elderly), 3) inappropriate practices (‘2 for 2 promo’ – bundling, adding additional products to meet sales goals), and 4) credit card. The OCC repeated that you, John, Carrie and I should read all these allegations – specifically the ‘raw data’ and not a summary from first line Community Bank Group Risk.¹³³⁵

The summary included a preview of the five MRAs that would be issued shortly thereafter, reporting that the OCC thinks “it takes too much time for the first line to process and analyze complaints/allegations today” and thinks “the first line should also implement ‘mystery shopping’.”¹³³⁶

Presented with this exchange during cross-examination, Ms. Russ Anderson was asked “So by this point in June 2015, the Community Bank, in fact, had not implemented a mystery shopping program, correct?” to which she responded, “I don’t recall when – if we had or not. It seemed to me we had. We were in the process of starting it, but I don’t remember when we actually started it.”¹³³⁷ When, in a follow-up question she was asked, “You agree that mystery shopping had not been implemented at this point in June 2015, since the OCC was requiring the first line to implement the program, Ms. Russ Anderson responded, “I would agree that we had not implemented it yet, but I believe we were in the process of forming a concept around it and starting to look at companies who would do it.”¹³³⁸

The February 10th Meeting Notes report, “[a]n employee’s compliance with the basic rules and standards is determined by the unit manager. Managers work with HR on this if someone appears to not meet the standards.”¹³³⁹ Further, “[i]f a banker opens up a product (like a credit card) and the customer did not request it, then the banker is terminated immediately.”¹³⁴⁰ Further, “Sales Tracking Steering Committee (STS system) is an application mainframe that houses data related to sales. All new products are vetted through this Committee. Management stated they will provide the last 6 months of meeting minutes for our review.”¹³⁴¹

¹³³⁵ *Id.*

¹³³⁶ *Id.*

¹³³⁷ Tr. (Russ Anderson) at 10105.

¹³³⁸ *Id.* at 10106.

¹³³⁹ OCC Ex. 1771 at 2.

¹³⁴⁰ *Id.*

¹³⁴¹ OCC Ex. 1771 at 2-3.

The February 10th Meeting Notes include a report from Rebecca Rawson regarding Regional Banking Sales & Service Conduct Oversight (SSCOT).¹³⁴² The minutes reflect Ms. Rawson reported that SSCOT “researches allegations related to internal integrity/ethics issues (reported internally, not coming from customers).”¹³⁴³

The report continues:

The majority of allegations come from the internal ethics line (80%). A smaller portion comes from HR, the phone bank, corporate investigations, etc. About 6% of issues are coming from proactive efforts. They consider the research process a “training opportunity” (it is not a determination of guilt). The unit has a “polling team” that is a group of non-exempt employees that call customers asking about their service experience (it is a discrete way to gather information from customers). If the research supports the allegation, then it is sent to corporate investigations.¹³⁴⁴

According to the Meeting Notes for the February 10th meeting, the Quality of Sale Report Card (QSRC) “outlines areas in need of additional employee training. These reports are at the store level and above. The report cards influence incentives for district level managers and above. This gives them a heads up on any emerging trends.”¹³⁴⁵

Ms. Russ Anderson identified an email exchange between herself and Jannien Weiner from February 12 to 13, 2015 – during the OCC’s February Operational Risk and Sales Practices Examination.¹³⁴⁶ The exchange begins with a request by Ms. Weiner to Dan Messamore, for Community Bank’s Customer and Store Experience – Ms. Weiner wrote, “the OCC requested a recap of the scope and status for project Clarity in conjunction with the ongoing exam.”¹³⁴⁷

Mr. Messamore responded two days later, with an email addressed to Ms. Weiner and copied to Ms. Russ Anderson, Jason MacDuff, and Wendy Tazelaar.¹³⁴⁸

Mr. Messamore wrote:

Following is a response to OCC’s request for a recap of the scope and status of our Clarity Initiative. Jannien we would like to exclude the status section below as it may generate more questions but felt it was probably necessary

¹³⁴² *Id.* at 3.

¹³⁴³ *Id.*

¹³⁴⁴ *Id.*

¹³⁴⁵ *Id.*

¹³⁴⁶ Tr. (Russ Anderson) at 9820; OCC Ex. 934.

¹³⁴⁷ OCC Ex. 934 at 3.

¹³⁴⁸ *Id.* at 2.

given the request. Please delete this section if you think you can based on the conversations.¹³⁴⁹

Ms. Russ Anderson acknowledged that Mr. Messamore was referring to “the clarity initiative that was being run by Dan and Wendy Tazelaar. So what this outlines is what their initiative was about”.¹³⁵⁰

Responding to the OCC’s request, Mr. Messamore’s draft provided background:

Early in 2014, CB implemented a strategy that would allow for addressing original “consent” risks in a nimble fashion, this evolved to a process that would support addressing emerging risks related to the Customer Experience in the stores. Clarity topics can be sourced from various support and LOB groups, but are vetted & approved for inclusion through the Community Banking Clarity Oversight Committee.¹³⁵¹

Mr. Messamore’s draft provided six bulleted points describing the approach taken with this initiative, and a “Status” section indicating that the “[t]eam is in place and the process has been evolving over the last 4 quarters.”¹³⁵² Specific examples of topics covered included “outbound sales clarity, appropriate survey management clarity, and highlighting emerging metrics added to the Sales Quality Report Card”, and a list of “[f]uture topics” that included “clarity around customer authentication processes, proper handling of complaints and inquiries and other types of customer contact processes.”¹³⁵³

In forwarding the draft to Ms. Russ Anderson, Ms. Weiner recommended striking the whole “Status” section, and recommended not providing the OCC with “notes, minutes, materials, or anything else at this point.”¹³⁵⁴ She wrote: “I’m sure they have plenty to work with now. I do fear they will ask to see monitoring reports, #6. Let me know your thoughts.”¹³⁵⁵ During cross-examination, Ms. Russ Anderson testified that she supported this approach in responding to the OCC’s request for information about the Clarity Initiative.¹³⁵⁶

Ms. Russ Anderson also acknowledged making the following change to the draft:

CB implemented a strategy that would allow for addressing ~~original ‘consent’ risks in a nimble fashion, this evolved to a process that would support~~

¹³⁴⁹ OCC Ex. 934 at 2.

¹³⁵⁰ Tr. (Russ Anderson) at 9823.

¹³⁵¹ OCC Ex. 934 at 2.

¹³⁵² *Id.*

¹³⁵³ *Id.*

¹³⁵⁴ Tr. (Russ Anderson) at 9826-27; OCC Ex. 934 at 1.

¹³⁵⁵ OCC Ex. 934 at 1. The reference to “#6” is to the sixth bulleted “Approach” item: “Create monitoring and follow up as appropriate.” *Id.*

¹³⁵⁶ Tr. (Russ Anderson) at 9825.

addressing emerging risks related to the Customer Experience in the stores.¹³⁵⁷

Ms. Russ Anderson testified that “I don’t know why I deleted that one piece, but I deleted it.”¹³⁵⁸ She denied, however, deleting it because she did not want the OCC examiners to know about customer consent issues in the Community Bank.¹³⁵⁹ After testifying that the OCC already knew about customer consent issues, Ms. Russ Anderson was asked during cross-examination “So why did you delete it?” and Ms. Russ Anderson responded, “I don’t remember.”¹³⁶⁰ **Acting as reflected in the record constituted unsafe or unsound banking practice and a breach of the fiduciary duties Ms. Russ Anderson owed to the Bank.**

WFAS Audit Engagement Report: Community Banking – Regional Banking (RB-SOCR) March 30, 2015

Through its Audit Engagement Report of March 30, 2015, WFAS notified the Community Bank that the quality assurance functions of the Regional Banking Store Operations Control Review (SOCR) and its Business Banking Operations Control Review (BOCR) needed improvement.¹³⁶¹ Prior to this time, WFAS “use[d] the results of SOCR/BOCR as part of our Leverage Program in determining annual audit coverage.”¹³⁶² Its March 30, 2015 report included reviews of Governance and Structure; Review Execution; Independence/Objectivity; Competency; and Management Reporting.¹³⁶³

In addition, the audit program included “five processes specifically reviewed by the SOCR/BOCR team.” These processes “correlate to the WFAS processes of move money, account setup, service customers and accounts, receiving/posting payments, and manage physical security.”¹³⁶⁴ The audit report noted, however, that the review “did not test the effectiveness of the store controls but rather assessed if the QA function is performed as intended.”¹³⁶⁵

While finding controls related to SOCR/BOCR’s governance, structure, independence and objectivity “are adequate to ensure appropriate coverage of business operational and regulatory risks,” WFAS found “accuracy and completeness of program execution and supervisory review ‘Needs Improvement’ to ensure testing is sufficient, relevant, and

¹³⁵⁷ OCC Ex. 934 at 1.

¹³⁵⁸ Tr. (Russ Anderson) at 9827.

¹³⁵⁹ *Id.*

¹³⁶⁰ *Id.*

¹³⁶¹ R. Ex. 523 at 2.

¹³⁶² *Id.*

¹³⁶³ *Id.*

¹³⁶⁴ *Id.*

¹³⁶⁵ *Id.*

reliable.”¹³⁶⁶ The fact that impact and severity of the issue was rated by WFAS as “High” indicated the auditor’s judgment that the issue “needs a higher level of senior management attention with an increased urgency to address it.”¹³⁶⁷

The auditors noted in particular “issues regarding sampling, missed errors (*i.e.*, errors identified by WFAS, but not by SOCR/BOCR), inadequate workpaper documentation, inadequate supervision and review of work papers, and ineffective methods used to evidence and provide feedback to QAAs.”¹³⁶⁸ Based on these findings, going forward from March 2015, at Mr. McLinko’s recommendation WFAS “began performing its own testing and eventually designed processes to do in-branch work itself.”¹³⁶⁹

Mr. Julian testified that up to this point, WFAS “leveraged the work that SOCR and BOCR was [*sic*] doing with respect to SOCR and BOCR actually going into the stores and into the banking centers to perform control testing”; while WFAS would only “audit the governance that those groups were employing to perform those activities.”¹³⁷⁰ He testified that up to this point, WFAS “wasn’t personally or specifically going into the branches or the banking centers to perform the work, where Audit was leveraging the work of those two units.”¹³⁷¹

When asked why WFAS used the work of the SOCR and BOCR units rather than directly and independently going into Community Bank’s branches and stores, Mr. Julian responded only that “that’s the practice that had been employed” when he came on board as Chief Auditor.”¹³⁷² Without offering any supporting documentation establishing what he actually knew about this mode of audit coverage, he said “based on what I knew, [I] didn’t have any concerns about leveraging their activities, because I knew that [WFAS] was assessing their work and concluding that [WFAS] could rely on their work.”¹³⁷³

Mr. Julian described this approach as “an opportunity to leverage work that was going on already” by the first line of defense, adding, “it wouldn’t have made a lot of sense for Audit to duplicate that work”.¹³⁷⁴ Asked on direct examination whether Wells Fargo was unique in leveraging in-store first line of defense functions like SOCR and BOCR, Mr. Julian responded, again without supporting documentation, that “probably 50/50. Some of the peer banks chose to do that work themselves, meaning within their audit group. . . . [but] the majority of the larger

¹³⁶⁶ R. Ex. 523 at 2.

¹³⁶⁷ Tr. (Julian) at 6668-69.

¹³⁶⁸ R. Ex. 523 at 2.

¹³⁶⁹ Tr. (Julian) at 6670.

¹³⁷⁰ *Id.* at 6663.

¹³⁷¹ *Id.*

¹³⁷² *Id.*

¹³⁷³ *Id.*

¹³⁷⁴ *Id.* at 6664.

banks, the three or four sort of mega banks at the time were generally more aligned with [WFAS] in that practice.”¹³⁷⁵

Asked on direct examination whether WFAS Audit relied on other first line of defense testing functions, Mr. Julian responded, again without any supporting documentation and without reference to IIA standards for audit independence:

Absolutely. Throughout the -- I'm sorry. Excuse me. Throughout the company, there were a number of different testing activities that went on, not just in the first line, but also in the second line -- excuse me -- where audit would rely on those activities. Corporate investigations, as we discussed, is another activity that rather than audit performing the investigations themselves, they would rely on corporate investigations to perform that work and would be able to leverage it. So there were a number of different activities that Wells Fargo Audit Services would leverage with respect to control testing and control-type activities.¹³⁷⁶

March 2015 MRAs - Community Banking FLOD Risk Management of Sales Practices

Ms. Russ Anderson testified that the OCC issued two Matters Requiring Attention (MRAs) following the February 2015 exam.¹³⁷⁷ She identified a March 26, 2015 email from Examiner Hudson to herself containing draft versions of the two MRAs.¹³⁷⁸

Examiner Hudson prefaced the message as follows:

We are presenting these MRAs in **draft** to you as they are still subject to final review internally. At this stage, providing this information is no longer an opportunity to discuss MRA vs no MRA. Our intent in sharing with you is to ensure factual accuracy and to obtain a commitment that you will address the corrective actions.¹³⁷⁹

One of the MRAs concerned the lack of formal oversight and governance of “offshoring activities specific to its business” and is not related to this administrative enforcement action.¹³⁸⁰

The second MRA concerned Community Banking’s first line of defense (FLOD) risk management of sales practices, where the stated concern was that Community Banking, “lacks a formalized governance framework to oversee sales practices.”¹³⁸¹

¹³⁷⁵ Tr. (Julian) at 6665-66.

¹³⁷⁶ *Id.* at 6666.

¹³⁷⁷ Tr. (Russ Anderson) at 9441.

¹³⁷⁸ *Id.* at 9441-42; OCC Ex. 2962.

¹³⁷⁹ OCC Ex. 2962 at 4, emphasis *sic*.

¹³⁸⁰ *Id.*

¹³⁸¹ OCC Ex. 2962 at 4.

The draft MRA identified the **cause for this concern** in these terms:

The GRO [Group Risk Officer] function oversees sales activities through CB's Risk Committee and Regional Banking Risk Council, a customer survey and polling process, a Sales and Service Conduct Oversight Program, and a sales quality manual. Each process operates separately and has a unique role associated with CB's sales practices. However, the current oversight program lacks transparency because CB has not brought them together under a formal governance framework.¹³⁸²

The draft MRA identified the following **consequences of inaction**:

Lack of a comprehensive governance framework exposes CB to heightened reputation risk and possible negative publicity. Without a formalized structure, it is difficult to demonstrate compliance with the firm's values and goals while meeting strategic and financial objectives.¹³⁸³

The draft MRA described the **need for corrective action** in these terms:

Given the importance of sales activities to the firm, the expectations placed on CB employees to meet sales goals, and the overall risk associated with sales activities, CB risk management must establish an overarching framework and formalize current practices in policy.¹³⁸⁴

The draft MRA **identified the corrective action needed** – specifically that the Policy and Framework should:

- Describe the scope of CB's sales activities, overall goals for the program, and the roles and responsibilities of each line of business involved in the oversight process.
- Define escalation protocols and address the timing and reporting of information of CB's sales activities to the Enterprise Risk Committee and the Board of Directors' Risk Committee.
- Define appropriate sales practices and alignment with corporate values, goals, and mission statements.
- Document compensation and incentive plans along with processes used to identify and prevent inappropriate sales conduct. Outline sales expectations for CB employees consistent with minimizing incentives for sales misconduct and employee turnover.
- Describe the roles of Human Resources, the Law Department, and CB Risk Management in ensuring that compensation plans address HR regulations,

¹³⁸² *Id.*

¹³⁸³ *Id.* at 5.

¹³⁸⁴ *Id.*

identify issues and concerns related to reputational risk, and provide authority and line of sight to CB Risk Management into sales practices and compensation across the CB.

- Describe the referral process and assign responsibility for compliance with CB’s sales policy through to the end of the customer’s experience with the firm regardless of where the final sales transaction occurs.
- Provide for an effective quality assurance function, including key metrics used in the monitoring process.¹³⁸⁵

In her March 26, 2015 draft, Examiner Hudson stated that her “intent in sharing with you is to ensure factual accuracy and to obtain a commitment that [Ms. Russ Anderson] will address the corrective actions.”¹³⁸⁶ Ms. Russ Anderson testified that she understood these were the reasons Examiner Hudson provided the draft.¹³⁸⁷ As such, it is noteworthy to identify those factual premises that were not controverted, as well as those about which Ms. Russ Anderson had comments, questions, or concerns.

Ms. Russ Anderson testified that when she received an MRA she considered it a serious issue and therefore, “I gave it all my attention.”¹³⁸⁸ She added that it was not unusual for the OCC to provide a draft MRA before it was officially promulgated – that it “was always my experience that the OCC would send a draft so that we could make sure that between the OCC and my case, the receiving party, that it accurately reflected their views and what we could do.”¹³⁸⁹

In her response (provided after the OCC extended briefly the response time due to Ms. Russ Anderson’s being “bedridden all weekend with high fever and flu like symptoms”), Ms. Russ Anderson did not dispute that as of March 2015 the GRO function oversaw sales activities through four activities:

1. CB’s Risk Committee and Regional Banking Risk Council,
2. A customer survey and polling process
3. A Sales and Service Conduct Oversight Program, and
4. A sales quality manual.¹³⁹⁰

Ms. Russ Anderson did not dispute that as of March 2015 each process operated separately and had a unique role associated with CB’s sales practices.¹³⁹¹

¹³⁸⁵ *Id.*

¹³⁸⁶ *Id.*

¹³⁸⁷ Tr. (Russ Anderson) at 9835.

¹³⁸⁸ *Id.* at 9442.

¹³⁸⁹ *Id.*

¹³⁹⁰ OCC Ex. 2962 at 3-4.

¹³⁹¹ OCC Ex. 2962 at 2.

Ms. Russ Anderson did not dispute that as of March 2015 the current oversight program lacked transparency because Community Banking had not brought them together under a formal governance framework.¹³⁹² **Failing to take effective steps to assure such transparency constituted unsafe or unsound banking practice and a breach of the fiduciary duties Ms. Russ Anderson owed to the Bank.**

Ms. Russ Anderson did not dispute that as of March 2015 the lack of a comprehensive governance framework exposed Community Banking to heightened reputation risk and possible negative publicity; and that without a formalized structure, it was difficult to demonstrate compliance with the firm’s values and goals while meeting strategic and financial objectives.¹³⁹³ **Failing to take effective steps to assure the establishment of such a comprehensive governance framework constituted unsafe or unsound banking practice and a breach of the fiduciary duties Ms. Russ Anderson owed to the Bank.**

Ms. Russ Anderson did not dispute that given the importance of sales activities to the firm, the expectations placed on CB employees to meet sales goals, and the overall risk associated with sales activities, CB risk management needed to but had not yet establish an overarching framework and formalize current practices in policy.¹³⁹⁴ **Failing to take effective steps to assure the establishment of such an overarching framework constituted unsafe or unsound banking practice and a breach of the fiduciary duties Ms. Russ Anderson owed to the Bank.**

Ms. Russ Anderson did not dispute that the Community Bank’s Risk Management Policy and Framework needed to describe the scope of Community Banking sales activities, the overall goals for the program, and the roles and responsibilities of each line of business involved in the oversight process, but that as of March 2015 it did not do so.¹³⁹⁵ **Failing to take effective steps to assure the Policy and Framework described the scope of Community Banking sales activities, the goals for the program, and the roles and responsibilities of each line of business involved in the Community Bank’s oversight process constituted unsafe or unsound banking practice and a breach of the fiduciary duties Ms. Russ Anderson owed to the Bank.**

Ms. Russ Anderson did not dispute that the Community Bank’s Risk Management Policy and Framework needed to define escalation protocols and address the timing and reporting of information of CB’s sales activities to the Enterprise Risk Committee and the Board of Directors’ Risk Committee, but that as of March 2015 it did not do so.¹³⁹⁶ **Failing to take**

¹³⁹² *Id.*

¹³⁹³ *Id.*

¹³⁹⁴ *Id.* See OCC Ex. 2962 at 2, where Ms. Russ Anderson reports that Corporate Risk (which is not part of Community Banking) “has recently kicked off an initiative to develop the Cross-Functional Risk functional framework, which includes the priority sub-risk of Sales Practices.”

¹³⁹⁵ OCC Ex. 2962 at 2.

¹³⁹⁶ OCC Ex. 2962 at 2.

effective steps to assure that the Policy and Framework defined escalation protocols and addressed the timing and reporting of information of Community Banking’s sales activities to the Enterprise Risk Committee and the Board of Directors’ Risk Committee constituted unsafe or unsound banking practice and a breach of the fiduciary duties Ms. Russ Anderson owed to the Bank.

Ms. Russ Anderson did not dispute that the Community Bank’s Risk Management Policy and Framework needed to define appropriate sales practices and alignment with corporate values, goals, and mission statements, but that as of March 2015 it did not do so.¹³⁹⁷ **Failing to take effective steps to assure that the Community Bank’s Risk Management Policy and Framework defined appropriate sales practices and alignment with corporate values constituted unsafe or unsound banking practice and a breach of the fiduciary duties Ms. Russ Anderson owed to the Bank.**

Ms. Russ Anderson did not dispute that the Community Bank’s Risk Management Policy and Framework needed to document compensation and incentive plans along with processes used to identify and prevent inappropriate sales conduct, but that as of March 2015 it did not do so.¹³⁹⁸ **Failing to take effective steps to assure that the Community Bank’s Risk Management Policy and Framework documented compensation and incentive plans along with processes used to identify and prevent inappropriate sales conduct constituted unsafe or unsound banking practice and a breach of the fiduciary duties Ms. Russ Anderson owed to the Bank.**

Ms. Russ Anderson reported that she was not certain she understood what the sentence “Outline sales expectations for CB employees consistent with minimizing incentives for sales misconduct and employee turnover” meant and asked for clarification.¹³⁹⁹

Examiner Hudson responded, with the following explanation:

In May 2014 ERMC, the committee asked whether the current sales model incents improper behavior and the response from CB was you did not believe so. What our bullet point is getting at is that you should define sales expectations/sales goals for each type of employee. We believe this is already happening, so you should incorporate these by reference into the framework. However, more importantly, we want you to evaluate these sales goals and the pressure (the great eight) put on employees, which has in the past (as indicated in a December 2013 LA Times Article) lead them to either (1) engage in improper behavior, or (2) resign. In other words, have you struck the right balance between (1) increasing sales and (2) controlling the incentives for improper behavior and turnover? We think this is the same question asked by the committee. We would expect analysis, something more

¹³⁹⁷ *Id.*

¹³⁹⁸ *Id.*

¹³⁹⁹ *Id.*

substantive than just assertions, that the sales model does not incent improper behavior or that no one is terminated for failing to meet sales goals, as indicated during the exam. If that analysis shows the opposite then have plans in place to control sales misconduct and employee turnover from failure to meet sales goals.¹⁴⁰⁰

Ms. Russ Anderson did not dispute that the Community Bank’s Risk Management Policy and Framework needed to describe the roles of Human Resources, the Law Department, and Community Banking’s Risk Management in ensuring that compensation plans address HR regulations, identify significant issues and concerns related to reputational risk, and provide authority and line of sight to Community Banking Risk Management into sales practices and compensation across the Community Bank, but that as of March 2015 it did not do so.¹⁴⁰¹

Ms. Russ Anderson did not dispute that the Community Bank’s Risk Management Policy and Framework needed to describe the referral process and assign responsibility for compliance with Community Banking’s sales policy through to the end of the customer’s experience with the firm, regardless of where the final sales transaction occurs – but that as of March 2015 it did not do so.¹⁴⁰² She clarified, however, that the Framework needed to describe the referral process and assign responsibility for compliance with Community Banking’s sales *integrity* policy – explaining that the sales integrity policy “was created and implemented in 2014”, and then explaining that “[w]hen a referral is made to partners such as WBR, CLG and Wholesale for products and services not delivered end-to-end by CB compliance control and accountability is transferred to the appropriate GRO.”¹⁴⁰³ In commenting on this sentence, Examiner Moses wrote to Examiner Hudson that the edits suggested by Ms. Russ Anderson would result in a sentence that “is not an action but a statement of fact” and added, “I still think we need something.”¹⁴⁰⁴

Ms. Russ Anderson did not dispute that the Community Bank’s Risk Management Policy and Framework needed to provide for an effective quality assurance function, including key metrics used in the monitoring process, but that as of March 2015 it did not do so.¹⁴⁰⁵ **Failing to take effective steps to assure that the Community Bank’s Risk Management Policy and Framework provided for an effective quality assurance function constituted unsafe or unsound banking practice and a breach of the fiduciary duties Ms. Russ Anderson owed to the Bank.**

¹⁴⁰⁰ OCC Ex. 3000 at 1; also at OCC Ex. 2973 at 2.

¹⁴⁰¹ OCC Ex. 2962 at 2.

¹⁴⁰² *Id.*

¹⁴⁰³ *Id.*

¹⁴⁰⁴ Tr. (Russ Anderson) at 9837; OCC Ex. 2973 at 4.

¹⁴⁰⁵ OCC Ex. 2962 at 5.

Examiner Hudson's draft MRA concerning CB FLOD Risk Management – Sales Practices was sent to Ms. Russ Anderson in an email dated March 26, 2015 at 8:34 a.m. ET.¹⁴⁰⁶ In an email to Carrie Tolstedt dated March 31, 2015 at 6:20 p.m., Ms. Russ Anderson wrote, in full, “Wow is all I can say.”¹⁴⁰⁷ Three hours later Ms. Tolstedt wrote, “Let’s talk” and followed that five minutes later asking “Did they bring up the LA article during the meetings?” and Ms. Russ Anderson responded, “Not even once. None of the items in her response to me. We were never given an opportunity to know about or respond to their concerns. I feel like they ran out of exam time so they made it into an MRA.”¹⁴⁰⁸

During cross-examination, after noting that Ms. Russ Anderson wrote to Ms. Tolstedt that the examiners did not raise the LA Times article, Ms. Russ Anderson was asked “Shouldn’t you have raised the LA Times article to the OCC examiners, and responded, “Should I have? No.”¹⁴⁰⁹ **Acting in furtherance of this opinion under the conditions that were present during the relevant period constituted unsafe or unsound banking practice and a breach of the fiduciary duties Ms. Russ Anderson owed to the Bank.**

When asked whether she believed the sales practices MRA from the OCC was warranted, Ms. Russ Anderson responded, “No” without elaboration.¹⁴¹⁰ When asked whether she ever conducted the analysis as directed by Examiner Hudson, Ms. Russ Anderson responded, “I did not direct for it to happen,” adding, “we did not do this analysis because the MRA was rescinded.”¹⁴¹¹ It should be noted the MRA remained in effect between April 3, 2015 and June 26, 2015.¹⁴¹² Ms. Russ Anderson provided no rationale for failing to act – failing even to begin work on the initial MRA – between those dates. **Failing to take such action constituted unsafe or unsound banking practice and a breach of the fiduciary duties Ms. Russ Anderson owed to the Bank.**

Changing the Thresholds for Referral to Corporate Investigations

Ms. Russ Anderson testified the thresholds used for referrals to Corporate Investigations changed in the summer of 2014 and again in April 2015.¹⁴¹³ She said Legal, “ran the Core Team” and led to these changes.¹⁴¹⁴ Without offering documentary evidence in support of the

¹⁴⁰⁶ OCC Ex. 624 at 5.

¹⁴⁰⁷ *Id.* at 2.

¹⁴⁰⁸ *Id.* at 1-2.

¹⁴⁰⁹ Tr. (Russ Anderson) at 9834.

¹⁴¹⁰ *Id.* at 9833.

¹⁴¹¹ *Id.*

¹⁴¹² OCC Ex. 1239 at 8.

¹⁴¹³ Tr. (Russ Anderson) at 9316.

¹⁴¹⁴ *Id.* at 9317.

assertion, through leading questioning by her Counsel during direct examination Ms. Russ Anderson testified that she considered the directives she received from Legal to be things she must follow.¹⁴¹⁵ “In April 2014, [the thresholds] were changed to the 99.99, and then there was a longer analysis done by Legal for the 2015 change, which brought it down to 99.95.”¹⁴¹⁶

Ms. Russ Anderson provided inconsistent testimony, however, regarding the role members of WF&C’s Legal Department had in controlling the thresholds used when making referrals to Corporate Investigations, rendering that testimony less than fully reliable.

During cross-examination when asked whether as Group Risk Officer she was responsible for effective risk management in the Community Bank with respect to sales practices misconduct, Ms. Russ Anderson responded, “I shared that responsibility with others, but, yes.”¹⁴¹⁷ When asked whether she was responsible for ensuring that the controls adequately managed sales practices risk, Ms. Russ Anderson responded, “Yes. Along with others.”¹⁴¹⁸ When asked about her, personally, and not others, Ms. Russ Anderson responded, “I understand. But that’s a complete answer, ‘with others’.” When asked whether she understood that she was the Group Risk Officer of the Community Bank from 2013 to 2016 and not the lawyers, Ms. Russ Anderson responded, “That is correct.”¹⁴¹⁹

Ms. Russ Anderson acknowledged that she was the one who led the first line of defense at the Community Bank, not the lawyers, and acknowledged that the lawyers were not in the first line of defense, adding, “the lawyers were important partners, but I was the first line of defense for Community Banking, yes.”¹⁴²⁰ Ms. Russ Anderson also acknowledged that during the relevant period, SSCOT reported to her and not to the lawyers, and that there was only one Group Risk Officer on the Core Team – herself, and knew she could not delegate her risk responsibilities to the Law Department.¹⁴²¹

When asked during the hearing if she disagreed with Legal’s views about what the thresholds should be whether she had the authority to veto them, Ms. Russ Anderson responded simply, “No.”¹⁴²² That testimony is directly inconsistent with testimony Ms. Russ Anderson provided under oath during a prehearing deposition taken on January 21, 2021.¹⁴²³

During that deposition, the following exchange took place:

¹⁴¹⁵ *Id.* at 9318.

¹⁴¹⁶ *Id.* at 9317.

¹⁴¹⁷ *Id.* at 9650.

¹⁴¹⁸ *Id.*

¹⁴¹⁹ *Id.* at 9651.

¹⁴²⁰ *Id.*

¹⁴²¹ *Id.* at 9651-52.

¹⁴²² *Id.* at 9653.

¹⁴²³ OCC Ex. 2509.

Q [by Enforcement Counsel]: Okay, Did you think that the thresholds for simulated funding and phone number changes were fairly high? Did you agree with Mr. Bacon?

A [by Ms. Russ Anderson]: I think in a normal operation, where we had finished the pilot and were in normal operating procedure, yes, the threshold would have been lower. But at this point in time, since we were in a test-and-learn mode, I felt that they were appropriate and I think that we were – that that thought process was further confirmed in 2015, [REDACTED]

Q: Okay. You kept – you keep mentioning Legal, but you were the head of SSCOT, correct?

A: Yes. But at this point in time, legal was running quite a bit of the activity.

Q: Okay. But had you disagreed with Legal’s views on what the threshold should be, you had the authority to veto them; right? You could have said, we need to look beyond the 99.95 threshold if you wanted to, correct?

A: If I felt that their analysis was flawed, yes.¹⁴²⁴

Ms. Russ Anderson testified that in April 2015 “there were actually two changes made.”¹⁴²⁵

One, the -- how the money in and out was managed -- was looked at was expanded, so it was debits in and out, it was auto transfers in and out. It was a whole bunch of stuff in and out other than just cash in and out, which is what it had been. Then it was also lowered to the 99.95.¹⁴²⁶

Ms. Russ Anderson testified that between April and July 2014, “the Core Team would have continued to have been meeting and working on issues that Corporate Investigations brought forward.”¹⁴²⁷ She averred – again without referring to any supporting documentation – that “there were analysis [*sic*] done by the Legal Department on the threshold, and so the thresholds were changed to the 99.99 percent level for SSCOT to use to look at the – to send the data to CI.”¹⁴²⁸ She stated that “across the footprint” “[t]here were approximately an additional 250 terminations from that work” based on phone number changes (70%) and simulated funding (30%).¹⁴²⁹

¹⁴²⁴ OCC Ex. 2509 (RA Deposition, January 13, 2021 at 233-34).

¹⁴²⁵ Tr. (Russ Anderson) at 9318.

¹⁴²⁶ *Id.*

¹⁴²⁷ *Id.* at 9365.

¹⁴²⁸ *Id.* at 9365.

¹⁴²⁹ *Id.* at 9365-66.

Ms. Russ Anderson testified that she considered these findings “an important data point” because “when you look at the harm, customer harm in particular, in the simulated funding, the activity wasn’t – the activity was not as high as some of the data might have indicated.”¹⁴³⁰ She testified that it was her view that “in the area of simulated funding, the number of terminations out of the data that was given to Corporate Investigations . . . was small . . . in my mind. It was low.”¹⁴³¹

Through leading questioning by her Counsel in direct examination, Ms. Russ Anderson testified that the issue of false positives in terms of setting the thresholds was an important consideration to her.¹⁴³²

Elaborating on this response, Ms. Russ Anderson testified:

Primarily, and there are multiple reasons, but primarily the reason you want to minimize the number of false positives is because if you have an overabundance of false positives in your data, you're going to impact innocent team members who are going to have to be identified and interviewed by corporate investigations, which would be a terrible experience. Two, you have now overwhelmed your system with information, and when you don't have enough resources to manage that, you get bogged down. And, third, it - - you're not getting to the real behavior if you have a lot of false positives. So if you can limit the amount of false positives, and, in particular, when we were at this pilot stage if you could limit the number of false positives, then you can really get to an understanding of why this behavior is occurring by this level of team members.¹⁴³³

Through leading questioning by her Counsel during direct examination, Ms. Russ Anderson testified that she did not want too many false positives relating to SARs reports.¹⁴³⁴ Without referring to any supporting documentary evidence, Ms. Russ Anderson testified, “Because if now you've overwhelmed the system with too many false positives and corporate investigations can't get to those, but they're now in their case file, in their database, then they would be filing SARs on team members who were -- wouldn't -- didn't do that behavior, although the data looked like it had.”¹⁴³⁵

Ms. Russ Anderson recalled Examiner Candy’s testimony to the effect that it would be “extremely easy” to address the false positives issue, that “All Ms. Russ Anderson and her group

¹⁴³⁰ *Id.* at 9366.

¹⁴³¹ *Id.* at 9366-67.

¹⁴³² *Id.* at 9318.

¹⁴³³ *Id.* at 9318-19.

¹⁴³⁴ *Id.* at 9319.

¹⁴³⁵ *Id.* at 9320.

had to do was literally pick up the phone and call the customer.”¹⁴³⁶ Responding to this testimony, Ms. Russ Anderson stated “It’s not nearly as simple as that sounds.”¹⁴³⁷ She said to “set up a call center to do something like that would take quite a bit of time.”¹⁴³⁸ She testified that “we have trained our customers that we won’t call them. That if they get a call from someone saying they’re from Wells Fargo that, you know, it could be a spam.”¹⁴³⁹ She testified that “Wells Fargo does not do outbound sales calling.”¹⁴⁴⁰

This testimony is materially misleading. Ms. Russ Anderson’s statement that Wells Fargo “does not do outbound sales calling” is a deflection – drawing attention from the Examiner’s point that confirming an allegation by contacting the affected customer would have facilitated a determination of whether the allegation had merit. Such a call would not be a “sales call”. Further, Ms. Russ Anderson’s testimony that the Bank trains customers “that we won’t call them” likewise is misleading, as it sidesteps the practice used by SSCOT’s own polling team members, who called customers as part of their proactive monitoring.¹⁴⁴¹

Ms. Russ Anderson identified a May 29, 2015 email chain between Ms. Rawson and Reed Ramsay and herself through which Ms. Rawson provided the following “criteria and definition used for Simulated Funding monitoring”:

Outlier criteria: Total number of accounts that met the account’s funding criteria that also meet the following:

- Funds are transferred for a specific dollar amount from an existing account and deposited into the new account
- Subsequently a withdrawal transfer of the same dollar amount was transferred back into originating (existing) account
- Both transaction need to occur within 2 business days (For example, the deposit today and the withdrawal tomorrow)¹⁴⁴²

She wrote that for the “Outlier threshold,” “Review is completed on outliers at or above the 99.99 percentile of team members with at least one sale for the period reviewed.”¹⁴⁴³

¹⁴³⁶ *Id.*

¹⁴³⁷ *Id.*

¹⁴³⁸ *Id.*

¹⁴³⁹ *Id.* at 9321.

¹⁴⁴⁰ *Id.*

¹⁴⁴¹ See *id.* at 9677: “Q [by Enforcement Counsel] But you definitely knew that your own polling team in SSCOT called customers, right?” A: [by RA]: “Yes.”

¹⁴⁴² OCC Ex. 316 at 2.

¹⁴⁴³ *Id.* at 2.

Ms. Rawson wrote that this monthly testing had been in place since September 2014.¹⁴⁴⁴ She also added the note that “Bankers that make up the top 0.01% of all bankers within regional bank with accounts that qualify for potential simulated funding are considered outliers.”¹⁴⁴⁵ When asked whether she believed it would be important to tell the OCC about this definition of what constituted an outlier, Ms. Russ Anderson responded “I don’t know that I didn’t tell them. I don’t have a recollection of having a conversation one way or the other with them about it.”¹⁴⁴⁶

Adding Phone Number Changing to SSCOT’s Proactive Monitoring

Without specifying when the process was modified, Ms. Russ Anderson testified that proactive monitoring changed after she talked with the LA/OC Regional President, Dave DiCristofaro.¹⁴⁴⁷ She testified “he was all on board with doing the proactive monitoring, but he mentioned to the team that he was seeing phone number changes, and he thought that was because people wanted to avoid the Gallup survey polls.”¹⁴⁴⁸

Elaborating on this point, Ms. Russ Anderson testified:

So the Gallup survey is that they would choose a random number of people to call and then have you rate the service of your visit in the branch that day. I'm sure that all of us get some of those from different things. So if a team member felt that the customer had had a bad experience and they didn't want to get a bad score, they would flip a number in the telephone -- in the telephone numbers. And that was particularly difficult, because at that point, you couldn't call cell phones, so all you could call were land lines. So it was even lessening the number of customers that could be called. So the team said to David, yes, we could add phone number changes, and so they did.¹⁴⁴⁹

Ms. Russ Anderson testified that when the pilot project was modified to test for phone number changes, it resulted in 70 percent terminations for that misconduct, versus 30 percent for simulated funding.¹⁴⁵⁰ She stated that during the pause, “we worked very actively with Gallup to move to emails, which was a much better response. And they also changed it from being an individual score to team scores. So two big changes that we made with the Gallup surveys.”¹⁴⁵¹

¹⁴⁴⁴ *Id.* at 1.

¹⁴⁴⁵ *Id.*

¹⁴⁴⁶ Tr. (Russ Anderson) at 9685-86.

¹⁴⁴⁷ *Id.* at 9325.

¹⁴⁴⁸ *Id.*

¹⁴⁴⁹ *Id.* at 9325-26.

¹⁴⁵⁰ *Id.* at 9326.

¹⁴⁵¹ Tr. (Russ Anderson) at 9371-72. See also, “22-03-07 Respondents’ Amended Revised Errata Day 9-38” on page 76. Ordered by Second Supplemental Order.

Asked on direct examination by her Counsel whether she thought the changes had an effect on the number of instances of phone number changes, Ms. Russ Anderson responded: “It materially changed it, because bankers and tellers no longer had to worry about if I had a bad interaction with a customer at the teller line or anything like that. They no longer had to worry about someone's phone number – you know, people calling on the phone.”¹⁴⁵²

Notwithstanding the significance of phone number changing, Ms. Russ Anderson acknowledged that for those customers whose phone numbers had been changed, she never ensured that the customer’s phone number was changed back to the right number in the Bank’s system; nor did she know if customers were ever informed about the simulated funding – the transferring of funds between the customers’ accounts.¹⁴⁵³ [REDACTED]

[REDACTED] May 11, 2015 email, Ms. Russ Anderson wrote: “I have to say I do not recall that we went back and tried to change phone numbers.”¹⁴⁵⁴ Similarly, Ms. Russ Anderson’s direct report, Rebecca Rawson wrote:

SSCOT did not take any action relating to correcting the customer phone numbers or determining what accounts that were funded through simulated funding were not wanted and closing them. Regarding the accounts that were funded through simulated funding, the fact that funding was simulated may not mean that the customer does not want or intend to use the account. It would be a case by case review and may require a conversation with the customer to understand if the account was consented to.¹⁴⁵⁵

Although the record reflects that SSCOT maintained a polling team who would routinely contact customers by phone, there is no evidence in the record that by mid-2015 anyone from SSCOT actually engaged in the type of conversation Ms. Rawson alluded to here.¹⁴⁵⁶ The record also reflects that Ms. Russ Anderson did not find the lack of these corrective actions by SSCOT to be problematic.¹⁴⁵⁷ **Failing to take such action constituted unsafe or unsound banking practice and a breach of the fiduciary duties Ms. Russ Anderson owed to the Bank.**

Corporate Security Activities – 2014 compared to 2013

Ms. Russ Anderson testified that sales integrity cases decreased from 2013 to 2016.¹⁴⁵⁸ In support, she identified the Corporate Security Activities report that compared 2014 activities to

¹⁴⁵² Tr. (Russ Anderson) at 9372.

¹⁴⁵³ *Id.* at 9678-79; R. Ex. 8736.

¹⁴⁵⁴ R. Ex. 8736 at 1.

¹⁴⁵⁵ *Id.*

¹⁴⁵⁶ Tr. (Russ Anderson) at 9677.

¹⁴⁵⁷ *Id.* at 9682.

¹⁴⁵⁸ Tr. (Russ Anderson) at 9390.

those in 2013.¹⁴⁵⁹ Ms. Russ Anderson testified that the report, compiled by Corporate Investigations, reported a reduction in Sales Integrity Violations by 16 percent and a 29 percent reduction in Customer Consent cases, from 2013 to 2014.¹⁴⁶⁰ From this report, Ms. Russ Anderson concluded that “the work we were doing around lots of activities, not just one thing, and controls that we were putting in place, that Sales Integrity Violations were down, and even more importantly, customer consent issues were down.”¹⁴⁶¹

Elaborating on this response, Ms. Russ Anderson testified that the information was important because “it shows that our customers were actively saying they wanted the product, which then would tell me that the simulated funding that we were seeing was also going to be reducing, because we were getting more consent for the customer’s account.”¹⁴⁶² She also noted an 18 percent reduction in Sales Integrity violations in all West Coast regions, along with an eight percent reduction in fraud cases in Southern California, LA Metro, and Orange County.¹⁴⁶³

On cross-examination, however, Ms. Russ Anderson acknowledged that while she was comforted that there was a decrease in sales practices misconduct in 2014, she knew that she had paused proactive monitoring of sales practices misconduct for seven months and knew there was no lookback of sales practices misconduct prior to April 2014.¹⁴⁶⁴ She also acknowledged that during the pause SSCOT reverted entirely to the reactive methods for identifying sales practices misconduct during the pause – but averred, “they were also getting more sophisticated reporting through Ken Zimmerman that they were using to do their analysis.”¹⁴⁶⁵

Ms. Russ Anderson also identified data regarding terminations, going from 824 in 2013 to 999 in 2014.¹⁴⁶⁶ This, Ms. Russ Anderson asserted, “would reflect those terminations that we had done over the rest of the footprint. So there was a spike through the proactive monitoring.”¹⁴⁶⁷

The report further reflected an enterprise-wide 19 percent increase in Funding Manipulation,¹⁴⁶⁸ in the Southern California/LA Metro/Orange County regions, a 46 percent

¹⁴⁵⁹ *Id.*; R. Ex. 7273.

¹⁴⁶⁰ Tr. (Russ Anderson) at 9391.

¹⁴⁶¹ *Id.* at 9391-92.

¹⁴⁶² *Id.* at 9392. See, “22-03-07 Respondents’ Amended Revised Errata Day 9-38” on page 76. Ordered by Second Supplemental Order.

¹⁴⁶³ Tr. (Russ Anderson) at 9393; R. Ex. 7273 at 3.

¹⁴⁶⁴ *Id.* at 9691.

¹⁴⁶⁵ *Id.*

¹⁴⁶⁶ *Id.* at 9392; R. Ex. 7273 at 2.

¹⁴⁶⁷ Tr. (Russ Anderson) at 9392.

¹⁴⁶⁸ R. Ex. 7273 at 1.

increase in Falsification,¹⁴⁶⁹ a 28 percent increase in Customer Account Fraud,¹⁴⁷⁰ and a 100 percent increase in Retaliation against Whistleblowers;¹⁴⁷¹ and in the Montana-Wyoming regions a 42% increase in Sales Integrity Violations, a 200% increase in Customer Consent cases, and a 57% increase in Falsification.¹⁴⁷² Increases in Sales Integrity violations were reported in the Greater Bay Area (False Entries/CIP violations – up 55%);¹⁴⁷³ and reported increases in Sales Integrity Violations overall, up 25% in San Francisco Bay;¹⁴⁷⁴ up overall in Oregon (9%),¹⁴⁷⁵ in All Great Plains Regions (10%),¹⁴⁷⁶ in Iowa and Illinois (24%),¹⁴⁷⁷ in Dakota Territory (6%),¹⁴⁷⁸ and Nebraska (33%).¹⁴⁷⁹

Ms. Russ Anderson identified a similar report by Corporate Investigations covering changes from the first quarter of 2014 to the first quarter of 2015.¹⁴⁸⁰ She noted reductions in overall Sales Integrity Violations (down 17%) and Customer Consent (down 42%)¹⁴⁸¹ Ms. Russ Anderson attributed the reductions to several things: “We were putting in additional controls. We had better reporting. Senior leadership was certainly paying more attention. There had been some reduction in sales goals and the proactive monitoring.”¹⁴⁸²

The report also identified areas where cases were increasing. There was an enterprise-wide 31% increase in False Entries/CIP Violations,¹⁴⁸³ a 91% increase in Funding Manipulation,¹⁴⁸⁴ and a 100% increase in Retaliation against Whistleblowers.¹⁴⁸⁵

¹⁴⁶⁹ *Id.* at 5.

¹⁴⁷⁰ *Id.*

¹⁴⁷¹ *Id.*

¹⁴⁷² *Id.* at 14.

¹⁴⁷³ *Id.* at 5.

¹⁴⁷⁴ *Id.* at 7.

¹⁴⁷⁵ *Id.* at 9.

¹⁴⁷⁶ *Id.* at 20.

¹⁴⁷⁷ *Id.* at 22.

¹⁴⁷⁸ *Id.* at 23.

¹⁴⁷⁹ *Id.* at 24.

¹⁴⁸⁰ Tr. (Russ Anderson) at 9395; R. Ex. 9894.

¹⁴⁸¹ R. Ex. 9894 at 2.

¹⁴⁸² Tr. (Russ Anderson) at 9397.

¹⁴⁸³ R. Ex. 9894 at 2.

¹⁴⁸⁴ *Id.*

¹⁴⁸⁵ *Id.* at 5.

Ms. Russ Anderson did not discuss the case types where increases were reported, but expressed the view that it is not possible to eliminate all sales practices misconduct.¹⁴⁸⁶ Elaborating, she testified:

I believe that it is impossible to get rid of all sales practices misconduct, because you are dealing with humans. And humans do things that you're not always going to understand. So in business, you just have to have some acceptance that people are going to sometimes do the wrong thing, whether it's a banker or a teller or a loan officer or whoever it may be.¹⁴⁸⁷

She denied this meant that she was tolerating misconduct:

I wouldn't say tolerating it. You have to just understand that it's going [to] happen and make business decisions around what does zero tolerance mean, right? So zero tolerance -- to get to a zero tolerance sales practices misconduct, there's going to be a lot of evidence in there that's not -- that's the -- I'm sorry. I just lost my word -- that is not the activity. It just looks like the activity, but once you get into it, you find out that it's a false positive. So if you -- there's a place where your number of real activity and the ones that look like it but aren't cross, and if you try to go to zero, you're going to impact a lot of innocent team members and your investigative work.¹⁴⁸⁸

April 2015 WF&C Risk Committee Meeting

Ms. Russ Anderson acknowledged during cross-examination that she was on an April 8-10, 2015 email chain the participants of which were reviewing a draft submission for the April 2015 Risk Management Committee.¹⁴⁸⁹ She testified that she assisted Ms. Tolstedt by editing the documents that would go to the Risk Committee of the Board for the April 2015 Risk Committee meeting.¹⁴⁹⁰

In the first message of this chain, Mr. MacDuff wrote to Ms. Russ Anderson and others that he was providing “the latest for your review”, and posed two questions:

1. After reading the Supervisory Letter from the OCC, I made some updates to the last page covering the MRA but elected not to add the detailed content of what's required in the response. I just wonder if it's too soon to be that specific with the Board (can certainly provide more specifics later). Let me know what you think.

¹⁴⁸⁶ Tr. (Russ Anderson) at 9397.

¹⁴⁸⁷ *Id.* at 9397-98.

¹⁴⁸⁸ *Id.* at 9398. See “22-03-07 Respondents’ Amended Revised Errata Day 9-38” on page 76. Ordered by Second Supplemental Order.

¹⁴⁸⁹ Tr. (Russ Anderson) at 9736; OCC Ex. 952.

¹⁴⁹⁰ Tr. (Russ Anderson) at 9841.

2. Wondering if we're missing some content that outlines our response, specifically, for when a pattern or practice is discovered. In the LA Times talking points, we said when we see something to discover a trend not in keeping with our high standards of ethics or integrity we act and that can include terminations (paraphrasing). Just wonder if we need to be more specific about the actions we take.¹⁴⁹¹

Ms. Russ Anderson responded to Mr. MacDuff's first question as follows: "I would not add anything more than what we have in the document. We're still forming and storming and since this document will also go to the OCC I would prefer we keep it to a minimum."¹⁴⁹² With respect to Mr. MacDuff's second question, Ms. Russ Anderson wrote: "Good question. If we added something I'd make it no more than two sentences. I think more than that and we look defensive. Is there something from the 12/13 talking points we could repurpose here?"¹⁴⁹³

Presented with this exchange during cross-examination, Ms. Russ Anderson repeated her prior testimony that she understood the Bank's relationship with the OCC was very important, and recalled her testimony that she was worried in April 2014 that the deck being presented to the ERMC at the April 9, 2014 meeting would be subject to regulator review.¹⁴⁹⁴ When asked whether, now in 2015, she believed the substantive content going to the OCC should be kept to a minimum, Ms. Russ Anderson did not dispute this characterization but justified her comments, "[b]ecause we were still putting our response together to that MRA to the OCC. They had not seen my full response yet."¹⁴⁹⁵

Ms. Russ Anderson also identified an April 24, 2015 email chain through which the draft Board Presentation – April 2015 – Community Banking Prep, Conduct Risk Segment – was circulated to Ms. Tolstedt, Mr. MacDuff, herself and others.¹⁴⁹⁶ Although Ms. Russ Anderson testified that she had no recollection of the email chain or the attachments, she was shown as a distributee of the chain and the circulated draft provided talking points for Ms. Tolstedt's presentation for the April 28, 2015 Risk Committee meeting.¹⁴⁹⁷

In the final message, dated April 24, 2015, Carole Anderson provided Ms. Tolstedt, Ms. Russ Anderson, and others "the prep doc we worked on for you for the Board meeting next week."¹⁴⁹⁸

¹⁴⁹¹ OCC Ex. 952 at 3.

¹⁴⁹² *Id.* at 2.

¹⁴⁹³ *Id.*

¹⁴⁹⁴ Tr. (Russ Anderson) at 9735.

¹⁴⁹⁵ *Id.* at 9737-38.

¹⁴⁹⁶ *Id.* at 9843-44; OCC Exs. 1701 & 1702

¹⁴⁹⁷ Tr. (Russ Anderson) at 9844.

¹⁴⁹⁸ OCC Ex. 1701 at 1.

Notwithstanding that by this time the OCC had directed Ms. Russ Anderson to evaluate the sales goals and the pressure in the Community Bank, Ms. Russ Anderson could not recall if she was satisfied with Ms. Tolstedt's talking points to the Risk Committee for the April 28, 2015 meeting, noting only that the instructions referred to "were rescinded."¹⁴⁹⁹

Included in the talking points for Mr. Tolstedt's presentation were the following:

At Wells Fargo we have a culture that invites dialogue. This is a place where our team members feel comfortable telling us how they feel and that is extremely valuable.

Our retail bank household cross-sell was 6.13 products per household in February 2015, compared to 6.17 in February 2014 and November 2014.

Managing sales practices conduct risk is a continual improvement process, and we will be making changes to programs every year; examples of potential next phase efforts include developing common sense promotion eligibility standards (e.g., time in position and AU, minimum performance "gates") which platform FTE and manager positions must achieve before eligibility to post for their next position.¹⁵⁰⁰

In the section of the talking points about "other possible topics that may come up," Ms. Tolstedt's staff included the following:

Risk structure – are additional resources needed in this space?

- Potentially; we have already reallocated resources either directly in the GRO team or other areas to further document and augment risk management practices.
- Additional resources may be needed depending on regulatory action.¹⁵⁰¹

By the time this draft circulated among Ms. Tolstedt's direct reports, including Ms. Russ Anderson, the OCC had identified concerns regarding sales practices misconduct – concerns that were not disclosed in the draft report that had been shared with Ms. Russ Anderson. Although Ms. Russ Anderson testified she did not recall reading the draft talking points, Mr. MacDuff wrote in an April 13, 2015 email that she had "read like 15 times now" so she probably could wait "until we hear back from Corporate and Legal" before reading it again.¹⁵⁰² **Failing to assure that the concerns the OCC had identified regarding sales practices misconduct were part of this draft and part of the final report constituted unsafe or unsound banking practice and a breach of the fiduciary duties Ms. Russ Anderson owed to the Bank.**

¹⁴⁹⁹ Tr. (Russ Anderson) at 9844.

¹⁵⁰⁰ OCC ex. 1702 at 5-6.

¹⁵⁰¹ *Id.* at 6.

¹⁵⁰² Tr. (Russ Anderson) at 9847; OCC 717 at 1.

In circulating the draft to Ms. Russ Anderson, Mr. Loughlin, Mr. Byers, and others, Mr. MacDuff wrote:

Please find the latest DRAFT memo on sales practices conduct risk attached. We welcome your feedback and insight into how this meets your objectives for this topic with the Risk Committee of the Board. This would go out in advance to the Committee members and Carrie can then answer questions (after a quick verbal overview if you'd like).

In the document, we tried to lay out the approach to managing risk including by how to think about the ongoing nature of the risk itself and the evolving nature of how we manage it, and the key actions we've taken over the last year to 18 months – with results in many areas indicating improvement. We've also tried to develop the content consistent with what's been shared in either documents or conversations with the OCC and the Fed.¹⁵⁰³

Included in the concerns the OCC brought to Ms. Russ Anderson's attention in writing one month before the April 2015 meeting of the Board's Risk Committee but not included in the draft of Ms. Tolstedt's talking points were the facts – not disputed by Ms. Russ Anderson – that as of March 2015 the current oversight program lacked transparency because Community Banking had not brought them together under a formal governance framework;¹⁵⁰⁴ the lack of a comprehensive governance framework exposed Community Banking to heightened reputation risk and possible negative publicity; and that without a formalized structure, it was difficult to demonstrate compliance with the firm's values and goals while meeting strategic and financial objectives;¹⁵⁰⁵ that given the importance of sales activities to the firm, the expectations placed on CB employees to meet sales goals, and the overall risk associated with sales activities, CB risk management needed to but had not yet establish an overarching framework and formalize current practices in policy;¹⁵⁰⁶ that the Community Bank's Risk Management Policy and Framework needed to describe the scope of Community Banking sales activities, the overall goals for the program, and the roles and responsibilities of each line of business involved in the oversight process, but that as of March 2015 it did not do so;¹⁵⁰⁷ that the Community Bank's Risk Management Policy and Framework needed to define escalation protocols and address the timing and reporting of information of CB's sales activities to the Enterprise Risk Committee and the Board of Directors' Risk Committee, but that as of March 2015 it did not do so;¹⁵⁰⁸ that the Community Bank's Risk Management Policy and Framework needed to define appropriate sales practices and alignment with corporate values, goals, and mission statements, but that as of

¹⁵⁰³ OCC Ex. 717 at 1-2.

¹⁵⁰⁴ OCC Ex. 2962 at 2.

¹⁵⁰⁵ *Id.* at 5.

¹⁵⁰⁶ OCC Ex. 2962 at 5. See OCC Ex. 2962 at 2.

¹⁵⁰⁷ OCC Ex. 2962 at 2.

¹⁵⁰⁸ *Id.*

March 2015 it did not do so;¹⁵⁰⁹ and that the Community Bank’s Risk Management Policy and Framework needed to document compensation and incentive plans along with processes used to identify and prevent inappropriate sales conduct, but that as of March 2015 it did not do so.¹⁵¹⁰

Mr. Julian testified that he attended all but the end of the Board’s Risk Committee meeting held on April 28, 2015.¹⁵¹¹ He was present for the presentation by Carrie Tolstedt, who provided “an overview of the Community Bank’s Group Risk Management practices.”¹⁵¹² Asked how he felt during the presentation, Mr. Julian responded that while it “appeared to be at a very high level,” he was “[n]ot sure that it was fully responsive to what at least I understood the Committee’s intents were for getting information.”¹⁵¹³ He added that after the meeting he heard, he thinks from Mr. Loughlin, that “the Committee members weren’t pleased.”¹⁵¹⁴ After being led to provide this testimony by his Counsel during direct examination, Mr. Julian testified that it was not his impression that the Risk Committee members believed that the sales practices issues needed no further attention on their part.”¹⁵¹⁵

According to the minutes, during that part of the her presentation which Mr. Julian attended, Ms. Tolstedt represented that the “high inherent risk level within the business” should be attributed to “a number of factors, including the size, turnover, experience level and distributed nature of the group’s team members, the high volume of transactions, and the mass market segment supported by the business.”¹⁵¹⁶

Ms. Tolstedt explained that the Community Bank “manages risk by using a multi-layered approach that is supplemented by ongoing monitoring and continuous efforts to enhance risk management practices.”¹⁵¹⁷ She discussed areas of focus, including “products and services training efforts for team members, the adoption of a simpler product set that is easily understood by customers, the monitoring of metrics, and the impact of performance management systems and compensation plans on business conduct.”¹⁵¹⁸

Nothing in her presentation suggested that either Ms. Russ Anderson or WFAS provided credible challenge to the risk management measures Ms. Tolstedt described during this meeting. She reported, “investigations are undertaken to conduct a root cause analysis of conduct risk

¹⁵⁰⁹ *Id.*

¹⁵¹⁰ *Id.*

¹⁵¹¹ Tr. (Julian) at 6694; OCC Ex. 1101-R.

¹⁵¹² Tr. (Julian) at 6695.

¹⁵¹³ *Id.*

¹⁵¹⁴ *Id.*

¹⁵¹⁵ *Id.*

¹⁵¹⁶ OCC Ex. 1101-R at 1-2.

¹⁵¹⁷ OCC Ex. 1101-R at 2.

¹⁵¹⁸ *Id.*

matters and in some cases the investigations may result in the termination of team members.”¹⁵¹⁹ Further, she noted that the business-conduct risk team “conducts a final root cause analysis to evaluate whether new controls or team member communications are needed and products and services are reviewed to evaluate potential areas where risk may arise.”¹⁵²⁰ There is nothing in the minutes, however, suggesting Ms. Russ Anderson or WFAS had undertaken or had plans to undertake an analysis to determine if the Community Bank’s testing controls effectively addressed the identification of root causes for sales practices misconduct within the Community Bank.

Ms. Tolstedt reported that the Community Banking risk management team “regularly reviews sales reports and that if an unusual increase in sales activity for a particular product is identified, then the team conducts an investigation with the support of product specialist partners.”¹⁵²¹ There is no suggestion, however, that either Ms. Russ Anderson or WFAS provided any support with respect to testing controls employed by the Community Bank’s Risk Management Team.

Ms. Tolstedt reported that “over the years” “changes and other enhancements to business practices and organizational structure” included “the decision to move the reporting of the business conduct risk team to the Group Risk Officer,” which Ms. Tolstedt reported “enhanced oversight practices”.¹⁵²² There is no indication that either Ms. Russ Anderson or WFAS ever determined whether this change to the Community Bank’s business structure was an effective enhancement with regard to the Community Bank’s risk management processes.

WFAS’s Noteworthy Risk Issues - May 2015

The May 2015 WFAS Noteworthy Risk Issues report included the statement that:

Sales Practices continues to be a significant risk to the Company. In April 2015, Community Banking received an MRA from the OCC noting the lack of a formal governance framework over sales practices. In addition, the city of Los Angeles has filed a lawsuit alleging that improper sales practices and sales goals harmed customers.¹⁵²³

Then, copying and pasting from the February 2015 Noteworthy Risk Issues report, the report stated:

Ensuring we are providing products that provide real benefit to the customer, are sold in the appropriate manner with the proper sales incentives, and are

¹⁵¹⁹ *Id.*

¹⁵²⁰ *Id.*

¹⁵²¹ *Id.*

¹⁵²² *Id.* at 3.

¹⁵²³ R. Ex. 538 at 1.

delivered with high operational excellence is key in this environment to reducing our risk.¹⁵²⁴

The report concludes with the following: “We are working to build out additional second line of defense oversight of Sales Practices. Community Banking has launched a project to specifically address the OCC’s feedback, and Corporate Risk is currently outlining an enhanced governance approach over sales practices.”¹⁵²⁵

City of Los Angeles Complaint – May 4, 2015

On May 4, 2015, acting on behalf of the State of California the Los Angeles City Attorney filed suit in the Superior Court for the County of Los Angeles, naming as Defendants both WF&C and Wells Fargo Bank, N.A.¹⁵²⁶ The suit sought equitable relief and civil penalties against the Defendants for violations of the California Unfair Competition Law for Gaming and for Failure to Provide Notice of Data Breach.¹⁵²⁷

In its lead allegation, the City presented the following narrative:

For years, Wells Fargo & Company and Wells Fargo Bank, National Association (collectively “Wells Fargo”) have victimized their customers by using pernicious and often illegal sales tactics to maintain high levels of sales of their banking and financial products. The banking business model employed by Wells Fargo is based on selling customers multiple banking products, which Wells Fargo calls “solutions.” In order to achieve its goal of selling a high number of “solutions to each customer, Wells Fargo imposes unrealistic sales quotas on its employees, and has adopted policies that have, predictably and naturally, driven its bankers to engage in fraudulent behavior to meet those unreachable goals. As a result, Wells Fargo’s employees have engaged in unfair, unlawful, and fraudulent conduct, including opening customer accounts, and issuing credit cards, without authorization. Wells Fargo has known about and encouraged these practices for years. It has done little, if anything, to discourage its employees behavior and protect its customers. Worse, 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 have caused. The result is that Wells Fargo has engineered a

¹⁵²⁴ *Id.*; see also OCC Ex. 1098 at 2; and R. Ex. 19357 (ERMC Memo to WF&C Board of Directors and Operating Committee, January 22, 2014, at 1.

¹⁵²⁵ R. Ex. 538 at 1.

¹⁵²⁶ R. Ex. 168.

¹⁵²⁷ *Id.* at 1.

virtual fee-generating machine, through which its customers are harmed, its employees take the blame, and Wells Fargo reaps the profits.¹⁵²⁸

Noteworthy for the purposes of this Recommendation are the following allegations:

From Complaint, ¶ 4:

Wells Fargo boasts about the average number of products held by its customers, currently approximately six bank accounts or financial products per customer. Wells Fargo seeks to increase this to an average of eight bank accounts or financial products per account holder, a company goal Wells Fargo calls the “Gr-eight” initiative.¹⁵²⁹

From Complaint, ¶5:

Wells Fargo quotas are difficult for many bankers to meet without resorting to the abusive and fraudulent tactics described further below. . . . Those failing to meet daily sales quotas are approached by management, and often reprimanded and/or told to “do whatever it takes” to meet their individual sales quotas. Consequently, Wells Fargo managers and bankers have for years engaged in practices called “gaming.” Gaming consists of, among other things, opening and manipulating fee-generating customer accounts through often unfair, fraudulent, and unlawful means, such as omitting signatures and adding unwanted secondary accounts to primary accounts without permission.¹⁵³⁰

From Complaint, ¶6.

Wells Fargo’s gaming practices have caused significant stress to, and hardship and financial losses for, its customers. Specifically, Wells Fargo has (a) withdrawn money from customers’ authorized accounts to pay for the fees assessed by Wells Fargo on unauthorized accounts opened in the customers’ names; (b) placed customers into collections when the unauthorized withdrawals from customer accounts went unpaid; (c) placed derogatory information in credit reports when unauthorized fees went unpaid; (d) denied customers access to their funds while Wells Fargo stockpiled account applications; and (e) caused customers to purchase identity theft protections.¹⁵³¹

From Complaint, ¶8.

¹⁵²⁸ *Id.* at 3.

¹⁵²⁹ *Id.* at 4.

¹⁵³⁰ *Id.* at 4.

¹⁵³¹ *Id.* at 5.

While Wells Fargo has ostensibly terminated a small number of employees who have engaged in gaming, other employees have been rewarded for these practices, and even promoted, perpetuating the problem. Moreover, Wells Fargo has continued to impose the same companywide goals of attaining as many accounts as possible at any expense, thereby fostering the practice of gaming. Wells Fargo thus puts its employees between a rock and a hard place, forcing them to choose between keeping their jobs and opening unauthorized accounts.¹⁵³²

The Complaint alleged violations of specific state laws. These included willfully obtaining personal identifying information for unlawful purposes – including obtaining or attempting to obtain credit, goods, or services without the consent of that person;¹⁵³³ being a party to a fraudulent conveyance;¹⁵³⁴ knowingly accessing and without permission using data to execute a scheme to defraud or wrongfully obtain money,¹⁵³⁵ and knowingly accessing and without permission making use of customer information.¹⁵³⁶

The Complaint alleged specific *unfair* business acts, including violations of:

established public policy of the State of California which, among other things, seeks to ensure that: all monetary contracts are duly authorized by each party; all bank accounts are authorized and agreed to by the customer in whose name the bank account is opened; residents of the state are not harmed in their credit reports by acts not actually performed, or debts not actually incurred by that resident; personal information of an individual is not improperly obtained and used for an unlawful purpose; and that when personal information is obtained without authority, that the person whose information was obtained is informed immediately.¹⁵³⁷

The Complaint alleged specific *fraudulent* business practices, including using misrepresentations, deception, and concealment of material information to view customers' personal information, open unauthorized accounts in its customers' names, and then fail to reveal to the customers that their personal information was compromised.¹⁵³⁸

¹⁵³² *Id.* at 5.

¹⁵³³ *Id.* at 16, ¶55, citing California Business and Professions Code § 17200, et seq., and Penal Code section 530.5, subdivision (a).

¹⁵³⁴ R. Ex. 168 at 16, ¶55, citing Penal Code section 531.

¹⁵³⁵ R. Ex. 168 at 16, ¶55, citing Penal Code section 502, subdivision (c)(1).

¹⁵³⁶ R. Ex. 168 at 16, ¶55, citing 15 United States Code 680, et seq. and rules and regulations promulgated thereunder.

¹⁵³⁷ R. Ex. 168 at 17, ¶56.

¹⁵³⁸ *Id.* at 17-18, ¶56.

GRO Transparency with the OCC: May 14, 2015 Meeting

Ms. Russ Anderson recalled testifying that she never intentionally obstructed OCC examinations.¹⁵³⁹ During cross-examination, Ms. Russ Anderson was shown Meeting Notes prepared by Examiner Hudson dated May 14, 2015, reflecting a discussion with “CB GRO Claudia Russ Anderson surrounding Sales Practices.”¹⁵⁴⁰ After acknowledging that she recalled meeting with the OCC examiners once over the phone in May 2015 – right around the time the LA City Attorney sued the Bank – Ms. Russ Anderson was presented with a copy of the Meeting Notes prepared by Examiner Hudson.¹⁵⁴¹ Ms. Russ Anderson did not recall reviewing these notes.¹⁵⁴²

The Meeting Notes reflect Ms. Russ Anderson responded to a series of questions regarding sales practices misconduct at Community Banking.¹⁵⁴³ The notes begin:

In late 3Q or early 4Q 2013, the Sales and Services Conduct Oversight team under Rebecca Rawson found sales funding integrity activities in the Los Angeles-Orange County (LA/OC) region. There were conversations with the regional vice president at the time. He expressed concern that team members were changing phone numbers by a digit or two. This information was handed over to Corporate Investigations, which found a number of team members in the 30+ range admitted to simulated-funding. Those employees were terminated for cause and marked “not eligible” for rehire. Some employees voluntarily resigned but their record was still marked for cause and rehire ineligible. The individuals terminated were primarily Personal Banker I and IIs in Personal Banking. There was a smattering of complicit store managers.¹⁵⁴⁴

The Notes include a description of simulated funding (“when a banker opens an account a customer did not ask for and uses his/her own funds by putting, in example, \$25 in an account” or when a customer “wants an account with funds coming from one account to another but the funds are expected to be put back into the original account after a certain period. The account appears funded for active use but the account is not used.”)

Ms. Russ Anderson answered the question “How is it detected” with the following explanation, according to the Meeting Notes: “They work with the Deposit Products Group (DPG) who uses analytics with exact filters. DPG looks at the activity and Quality Sales Report

¹⁵³⁹ Tr. (Russ Anderson) at 9978.

¹⁵⁴⁰ *Id.* at 9978-79; OCC Ex. 1734.

¹⁵⁴¹ Tr. (Russ Anderson) at 9979.

¹⁵⁴² *Id.* at 9980.

¹⁵⁴³ OCC Ex. 1734 at 1-4.

¹⁵⁴⁴ *Id.* at 1.

Card metric. They can see increases or decreases in that type of simulated funding. Scans occur regularly.”¹⁵⁴⁵

This answer is silent regarding the thresholds SSCOT was using to detect simulated funding. During cross-examination, Ms. Russ Anderson agreed that “How is [simulated funding] detected?” was a pretty specific question”, but when asked “you did not believe you should have disclosed the 99.99 percent threshold to the OCC, Ms. Russ Anderson responded, “It didn’t occur to me to do that, so, no, I didn’t.”¹⁵⁴⁶ **Failing to disclose to the OCC the 99.99 percent threshold constituted unsafe or unsound banking practice and a breach of the fiduciary duties Ms. Russ Anderson owed to the Bank.**

Ms. Russ Anderson testified that she was proud of the thresholds, but asserted – without offering any supporting documentation, “This is one meeting in 2015. In 2013 when we were going to start the proactive monitoring, I told the OCC about it, and I told them how we were going to work it.”¹⁵⁴⁷

Through questioning during cross examination, Ms. Russ Anderson acknowledged being directly asked by the OCC about how simulated funding was detected – and remained silent about these thresholds. In her prior written Declaration, however, Ms. Russ Anderson averred, “I advised the OCC Wells Fargo supervisory team of our proactive monitoring efforts. I was never asked by the OCC Wells Fargo supervisory team about specific methodology for gathering data, including whether thresholds were being used. I would have gladly shared this information if they had thought it was important enough to ask about.”¹⁵⁴⁸

Nothing in the prior written Declaration, however, supports this averment: Ms. Russ Anderson testified, “this is referring more closely to the February exam. My recollection is when – in 2013 when we were talking about proactive monitoring, we talked about that we would use thresholds.”¹⁵⁴⁹ She acknowledged, however, that this is not what she put in her Declaration.¹⁵⁵⁰ **Failing to provide such information to the OCC constituted unsafe or unsound banking practice and a breach of the fiduciary duties Ms. Russ Anderson owed to the Bank.**

Presented with the question: “Did you look into why the preponderance of cases were isolated to the LA area?” the notes report Ms. Russ Anderson responded without answering the question, “General Practices in place that see an issue in store or district then interview the store

¹⁵⁴⁵ OCC Ex. 1734 at 1-2.

¹⁵⁴⁶ Tr. (Russ Anderson) at 9980-81.

¹⁵⁴⁷ *Id.* at 9981.

¹⁵⁴⁸ OCC Ex. 2279 at ¶28.

¹⁵⁴⁹ Tr. (Russ Anderson) at 9982.

¹⁵⁵⁰ *Id.* at 9883.

manager to see if there's a district manager issue. Problem has to be pretty systemic and intentional to fire a district manager."¹⁵⁵¹

Presented with the question: "Who did interviews?" the notes report that Ms. Russ Anderson responded Corporate Investigations (CI). "CB GRO looked to substantiate Ethics Line complaint by trying to reach customers as a service call to generically get a sense of yes there was a need and they asked for the referral. That call looks for inappropriate behavior to support the Ethics Line calls. CB GRO does not get involved after forwarding information to CI but gets feedback from CI on outcome of investigations."¹⁵⁵²

Presented with the question: "Is HR involved in terminations?" the notes report that Ms. Russ Anderson responded, "Claudia is not familiar. HMs. Russ Anderson can tell you."¹⁵⁵³

Presented with the question: "Was there customer harm?" the notes report that Ms. Russ Anderson responded, "Depends upon reason for termination. The phone number changes and referrals have no customer harm since related to falsifying bank records."¹⁵⁵⁴ **Failing to recognize customer harm related to team member falsification of bank records constituted unsafe or unsound banking practice and a breach of the fiduciary duties Ms. Russ Anderson owed to the Bank.**

Presented with the question: "How much harm related to the 190 team member terminations?" the notes report that Ms. Russ Anderson responded, "Don't know. Keb stated that this information will be in the data being consolidated. A high number of these terminations were related to the changing of telephone numbers."¹⁵⁵⁵

Presented with the question: "How many team members given a formal warning?" the notes report that Ms. Russ Anderson responded, "Don't know. Those previously given warnings is data Claudia doesn't recall."¹⁵⁵⁶

Presented with the question: "Did you document for root cause analysis?" the notes report that Ms. Russ Anderson responded:

Not in the formal sense, not a paper per se. The group was in process of changing from phone number Gallup poll surveys to email surveys at the time of terminations. They were getting an adverse selection of surveys that would get kicked back due to people using cell phones and no longer having a land

¹⁵⁵¹ OCC Ex. 1734 at 2.

¹⁵⁵² *Id.*

¹⁵⁵³ *Id.*

¹⁵⁵⁴ OCC Ex. 1734 at 2. *But see* 10014-15; R. Ex. 10074, email exchange including Ms. Russ Anderson describing potential direct financial harm associated with selling or opening multiple accounts to or for the same customer, risking incurring unnecessary account fees.

¹⁵⁵⁵ OCC Ex. 1734 at 2.

¹⁵⁵⁶ *Id.*

line. They changed in July 2014 to email Gallup surveys but it was in the works in 2013.

Directly influence by the bad behavior of those terminated was the change in reporting. They used to report results at the individual banker level but now changed to the store level.

Interviews did not lead to a conclusion about sales pressure. This was not an underlying issue but looking at 2012 and 2013 incentive plans. They continue to iterate incentive plan. Try to tell people you can't pull 15 levers at once, go for what has the biggest bank. The number of allegations in Ethics declined and no preponderance of issues discovered in interviews.¹⁵⁵⁷

Failing to document for root cause analysis constituted unsafe or unsound banking practice and a breach of the fiduciary duties Ms. Russ Anderson owed to the Bank.

When asked whether she ever told anyone in Audit, including either Mr. Julian or Mr. McLinko, that she was conducting a root cause analysis, Ms. Russ Anderson responded only that "I don't recall."¹⁵⁵⁸ Further, nothing in Ms. Russ Anderson's response as reported in these Meeting Notes had anything to do with why employees issues products and services to customers without their consent.¹⁵⁵⁹

Presented with the question: "Terminations since?" the notes report that Ms. Russ Anderson deflected without answering the question, stating "The body of work was into 2014. All didn't happen in 2013 since more team members were interviewed than were terminated. Met once a week in forum and had conversations. The body of work went through most of 2014."¹⁵⁶⁰

Presented with the question "Can we see terminations for sales practices?" the notes report that Ms. Russ Anderson responded, "Don't know. There were team members terminated outside of that work. Look at those in the body of work and then those in business as usual terminations. Claudia would have to bucket those and there are lots of reasons for terminations. Keb stated that Jason MacDuff is working on a document."¹⁵⁶¹ **Failing to assure transparency regarding terminations for sales practices constituted unsafe or unsound banking practice and a breach of the fiduciary duties Ms. Russ Anderson owed to the Bank.**

Presented with the question: "Customer calls?" the notes report that Ms. Russ Anderson responded:

¹⁵⁵⁷ OCC Ex. 1734 at 2.

¹⁵⁵⁸ Tr. (Russ Anderson) at 9983-84.

¹⁵⁵⁹ OCC Ex. 1734 at 2.

¹⁵⁶⁰ *Id.* at 3.

¹⁵⁶¹ OCC Ex. 1734 at 3.

Customer calls into service center. Service banker would ask if he/she wants account to be closed and may refund fees. If customer says yes that that's what occurs. If service banker cannot satisfy customer then the complaint is escalated to the executive office. If customer's happy then it won't show up as an escalation in the database today. Data will be captured and analyzed. CB under Jay Christoff or Camie Keillen is building out the analytics group.¹⁵⁶²

Presented with the question: "Do certain complaints come in escalated?" the notes report that Ms. Russ Anderson responded: "Only direct letters to Carrie or John unless an agency complaint. Just into WF will not automatically be escalated but have plans in place with new policy. Agency complaints are regulatory, federal or state that consumer complained to for resolution."¹⁵⁶³

Presented with the question: "When is rollout of CB Complaints Program?" the notes report that Ms. Russ Anderson responded, "Not until YE 2016. New policy is effective June 1, 2015 and will stage rollout until compliant at end of 2016. During this process, they will figure escalation and make sure adequate staff is in place. They don't want to be understaffed."¹⁵⁶⁴

When presented with the question: "Talk about 40% of complaints from UDAAP related to sales practices. We looked at trends and noticed a big spike in 4Q14. May have to look at the details behind that information and sample some of those complaints" the notes report Ms. Russ Anderson responded, "4th quarter was the rollout of the pilot."¹⁵⁶⁵

When presented with the question: "How do you hold team members accountable?" the notes report that Ms. Russ Anderson deflected and did not answer the question asked but responded, "CB recognized they were promoting store managers to bigger stores too quickly vs back in the day where you had years under you before being promoted. Promoted from asst manager to store manager to[o] fast. CB looking at how much time in the role before promoting them. Tracy & others looked to revisit before."¹⁵⁶⁶

When presented with the question: "What is 8.25 Solutions Initiative Compensation for Personal Banker I & II?" the notes report Ms. Russ Anderson responded, "Average sales per day. Talk with Tracy about quarterly packages."¹⁵⁶⁷

When presented with the question: "Service calls?" the notes report that Ms. Russ Anderson responded, "Tracked or logged into complaints database on a limited basis. They

¹⁵⁶² *Id.*

¹⁵⁶³ *Id.*

¹⁵⁶⁴ *Id.*

¹⁵⁶⁵ *Id.*

¹⁵⁶⁶ *Id.*

¹⁵⁶⁷ OCC Ex. 1734 at 3.

capture how many fees are reversed. LA Times article customer quoted had fees waived almost consistently. They can tell that on a customer-by-customer basis. They have people look at that data.”¹⁵⁶⁸

When presented with the question: “Any Ethics Line call increases since article?” the notes report that Ms. Russ Anderson responded, “She (Rebecca Rawson) did not indicate an uptick but Ethics Line calls go to a third party vendor.”¹⁵⁶⁹

When presented with the question: “Any dialogue with Personal Bankers who indicate they are under pressure?” the notes report that Ms. Russ Anderson responded: “Claudia doesn’t hear that at all. She’s been at leadership summits and people are positive and please with what they hear and feel. Everybody isn’t pristine. They don’t have volume of negative activity. They have people that come to work where they deal with unsavory characters but this is the reason for detective and preventative controls.”¹⁵⁷⁰

The record reflects, however, that this response is not consistent with preponderant and reliable evidence in the record. Ms. Russ Anderson identified an April 10-13, 2015 email chain that included Ms. Russ Anderson as a distributee, between Ms. Russ Anderson and Mr. Otsuka.¹⁵⁷¹ Through this exchange, Mr. Otsuka provided to Ms. Russ Anderson, Rebecca Rawson, Loretta Sperle (CI), Susan Nelson (HR) and others a description of agenda items to be discussed during the April 14, 2015 Core Team meeting.¹⁵⁷² In a follow-up email on April 13, 2015, Mr. Otsuka added an item to the agenda regarding “today’s protest activity in St. Paul, which focused in large part on sales pressure-related issues”.¹⁵⁷³

In this transmission, Mr. Otsuka provided the distributees with the “summary that Richele Messick, in Communications, circulated. She works out of the building where the rally/press conference took place:

Just a quick update that the St. Paul rally/protest occurred. I was able to attend and they brought two buses, totaling around 50 individuals. They set up outside on a plaza where there is a prominent WF sign on the building. They were very organized with a podium, speakers, microphone – cardboard signs read “We heart tellers,” “Bank workers organizing for change,” “Bank workers say better banks today,” etc. They had about six different speakers including Michael Lewis the WF team member quoted in *The Guardian* article and Thiago Marques an employee from a different bank in NJ who

¹⁵⁶⁸ *Id.* at 3-4.

¹⁵⁶⁹ *Id.* at 4. The record reflects the third party vendor is or was The Network, Inc. See OCC Ex. 2192 at 5, “Client Instructions”.

¹⁵⁷⁰ OCC Ex. 1734 at 4.

¹⁵⁷¹ Tr. (Russ Anderson) at 9987; OCC Ex. 3004.

¹⁵⁷² OCC Ex. 3004 at 2.

¹⁵⁷³ *Id.* at 1.

was also quoted in the article. They focused on pay, sales goals, workers forced into unethical behavior and that US Bank and WF refuse to work with Somali MSBs/remit money to Somalia.¹⁵⁷⁴

Confirming her receipt and review of the transmission, later on April 13, 2015 Ms. Russ Anderson circulated a message to all distributees, “just for everyone’s FYI the article is not factually correct.”¹⁵⁷⁵

Ms. Russ Anderson acknowledged that she was based in St. Paul at the time, but said that it did not concern her that there was a protest in Minnesota involving 50 individuals which focused in large part on sales pressure. When asked about her averment that she did not hear that about sales practices pressure, Ms. Russ Anderson responded that while “sales pressure was a topic in the Core Team” “if you read the entirety of my response to the OCC’s question, it had to do with my being out in the regions talking to regional personnel and that what the feedback I had been getting was that they had not been feeling the pressure” and that “the changes that we had been making were very positive”.¹⁵⁷⁶

Further, the record reflects that several months before the Minnesota protest Ms. Russ Anderson participated in a May 2014 meeting with the Core Team where the agenda expressly related to “sales pressure petitions floating around.”¹⁵⁷⁷ Ms. Russ Anderson testified that she was concerned about the sales pressure petitions being circulated in 2014 and she “wanted to be part of the conversation” with Core Team members about these petitions.¹⁵⁷⁸

The record also includes an Investigation Debrief dated March 24, 2015, which contradicts the response Ms. Russ Anderson provided to the OCC during the May 14, 2015 meeting. Having read the question presented and Ms. Russ Anderson’s answer, and having reviewed the relevant record here, I find the answer Ms. Russ Anderson provided during the May 14, 2015 meeting lacked candor and transparency, as it was clear from the May 2014 and April 2015 email exchanges and from Ms. Russ Anderson’s own testimony regarding her discussions with Core Team members that she was indeed aware of bankers who were experiencing sales pressure.

Ms. Russ Anderson testified that when she learned about the Minnesota protest, this indicated to her, “there was still some pressure, but not excessive pressure.”¹⁵⁷⁹ She testified she reached this conclusion based on talking to “people when I was in the regions, giving – at conferences and talking about risk management, talking about sales quality, talking about all

¹⁵⁷⁴ OCC Ex. 3004 at 1.

¹⁵⁷⁵ *Id.*

¹⁵⁷⁶ Tr. (Russ Anderson) at 9988-89.

¹⁵⁷⁷ *Id.* at 9996; OCC Ex. 1549.

¹⁵⁷⁸ Tr. (Russ Anderson) at 9996; OCC Ex. 1549 at 1.

¹⁵⁷⁹ Tr. (Russ Anderson) at 9991.

those things.”¹⁵⁸⁰ Ms. Russ Anderson acknowledged, however, that when asked to name a single individual whom she met who told her that there was no sales pressure Ms. Russ Anderson could not do so – not during her deposition in January 2021 nor during the hearing in January 2022.¹⁵⁸¹

When asked during cross-examination whether it was appropriate to tell the OCC that she had not heard about sales pressure when she had been specifically informed about a sales pressure protest in Minnesota, Ms. Russ Anderson deflected, stating: “This was a protest of people that I don’t know if they were team members. I don’t know who they were.”¹⁵⁸² She added that 50 people “did not offset what I had been out talking to people about”, adding, “I don’t know if they’re just people who like to protest. I have no idea what made up that group of people” while acknowledging that she took no steps to find out.¹⁵⁸³ **Failing to take effective action to find out what these bankers were protesting constituted unsafe or unsound banking practice and a breach of the fiduciary duties Ms. Russ Anderson owed to the Bank.**

When presented with the question: “Is there escalation beyond ERM C meeting in April 2014 and Carrie presentation to ERM C in April 2015, any presentations to the Board?” the notes report that Ms. Russ Anderson responded,

Conversations may be happening at A&E. She was asked to come to ERM C at that time in April 2014 with Jason MacDuff. They continue to think about and led to final meeting. Keb stated the meetings with ERM C were going to take place in January but wanted to get through the cyber review. They did have a good discussion with Mike and ongoing meeting with him. They had standard reporting to the A&E and meetings with Yvette. HR Committee is where turnover or investigations would be addressed.¹⁵⁸⁴

When presented with the question, “Anything else pertinent?” the notes report that Ms. Russ Anderson responded, “Most important thing is we found something, we were proactive, we did something, and the preponderance were non-customer impact. Claudia’s available to have a conversation on anything else. [Examiner] Chris [Moses] stated that we need to have the facts to back up that there was no customer impact.”¹⁵⁸⁵ **Failing to establish whether in fact a preponderance of sales practices misconduct were “non-customer impact” constituted unsafe or unsound banking practice and a breach of the fiduciary duties Ms. Russ Anderson owed to the Bank.**

¹⁵⁸⁰ *Id.* at 9992.

¹⁵⁸¹ *Id.* at 9989, 9992.

¹⁵⁸² *Id.* at 9990.

¹⁵⁸³ *Id.*

¹⁵⁸⁴ OCC Ex. 1734 at 4.

¹⁵⁸⁵ OCC Ex. 1734 at 4.

Customer harm

During cross-examination Ms. Russ Anderson acknowledged that at no time between 2013 and 2016 did she do any analysis to determine whether customers were harmed as a result of sales practices misconduct.¹⁵⁸⁶ When asked whether a bank employee’s misuse of customer information has an impact on the customer, Ms. Russ Anderson responded, “It can. I was not focused on that part.”¹⁵⁸⁷ Similarly, when asked whether there is customer impact when a bank employee issues products and services without their consent, Ms. Russ Anderson responded, “It can. . . . I don’t know if this is what I actually said, but in my head was customer harm and the terms of were they financially harmed. And this was May of 2015.”¹⁵⁸⁸ **Failing to include within the scope of customer harm those harms that did not directly result in financial harm constituted unsafe or unsound banking practice and a breach of the fiduciary duties Ms. Russ Anderson owed to the Bank.**

It should be noted that the record includes three documents establishing that Ms. Russ Anderson’s response to this question lacked transparency and candor, as there were matters pertinent to the examination that Ms. Russ Anderson knew about but did not share with the OCC.

The first was information contained in a March 24, 2015 Investigation Debrief that was addressed to Ms. Russ Anderson and others from Isabelle Mercado of Corporate Investigations.¹⁵⁸⁹ Through this Debrief Ms. Russ Anderson was informed about a series of *confirmed* incidents involving sales practices misconduct, under conditions that warranted making a report to the OCC’s Examiners.¹⁵⁹⁰

One substantiated allegation associated 99 examples where team member [ME] moved funds in and out of the accounts within one day, indicating “possible simulation of funding”, “195 checking/savings/debit cards that were disqualified and banker did not receive sales credit due to short term usage or the existing client’s accounts were closed and duplicate new accounts were opened”, and credit card sales that “raised red flags due to lack of usage and/or mother’s maiden name listed same as client’s last name that would suggest team member opened credit products without customer consent.”¹⁵⁹¹

During the investigation, Corporate Investigation conducted customer polling related to debit cards issued without consent, substantiating the allegations in three such interviews.¹⁵⁹² In

¹⁵⁸⁶ Tr. (Russ Anderson) at 10007.

¹⁵⁸⁷ *Id.* at 10006.

¹⁵⁸⁸ *Id.*

¹⁵⁸⁹ *Id.* at 9999; R. Ex. 9028.

¹⁵⁹⁰ R. Ex. 9028 at 1-10.

¹⁵⁹¹ R. Ex. 9028 at 2.

¹⁵⁹² *Id.*

addition to customer polling, CI conducted polling for six team members, “which resulted in 16 customer contacts with 5 substantiated consent issues.”¹⁵⁹³

In the interview summary of one team member ([SM]), Sales Quality “conducted polling related to debit cards issued without consent” and reported three clients substantiated the allegation and established that one customer’s account history “shows a pattern of simulated funding.”¹⁵⁹⁴ The team member “denied any wrong doing and would not supply a voluntary written statement,” but “admitted to sales pressure.” The Debrief recommended termination after noting that additional research was completed after the interview and showed [SM] processing an ATM withdrawal in the amount of \$200 using [customer SK’s] ATM/Debit card.”¹⁵⁹⁵

When asked whether she had any reason to doubt Corporate Investigation’s findings in this Debrief, Ms. Russ Anderson responded, “What they’re stating is what the banker told them. I don’t know that that was their findings. They’re just reporting what the banker said.”¹⁵⁹⁶ This last statement is patently false, given the evidence presented through the Debrief – which included in specific detail accounts opened and not used by the customer and a narrative from the customer stating she opened one account, not the three shown in the Debrief.

Second, apart from the Investigation Debrief, Ms. Russ Anderson also was aware of postings on social media implicating the culture of sales practices pressure at Community Banking threatened the Bank’s reputation. In an email Rebecca Rawson sent on April 27, 2015, Ms. Rawson provided Ms. Russ Anderson with a copy of an email chain initiated by Jessica Kaczor, Wells Fargo Area President, VP – SNJ-Jersey Shore Market dated April 26, 2015.¹⁵⁹⁷

Ms. Kaczor initiated the chain by providing Estelle Matthews with an attachment showing a Facebook screenshot; and Ms. Matthews in turn forwarded the attachment to Denise Dennis, Wells Fargo Employee Relations Senior Consultant.¹⁵⁹⁸ Ms. Dennis forwarded the attachment to Glen Najvar, Quality Assurance Manager for Sales and Service Conduct Oversight, among others.¹⁵⁹⁹ Mr. Najvar asked Adam Curry of Sales and Service Conduct Oversight to “kindly post this image into the pending SSCOT case [2. . .]” and provided a copy of the attachment to Ms. Rawson, who forwarded the attachment to Ms. Russ Anderson.¹⁶⁰⁰

¹⁵⁹³ *Id.*

¹⁵⁹⁴ *Id.*

¹⁵⁹⁵ *Id.* at 4.

¹⁵⁹⁶ Tr. (Russ Anderson) at 10000.

¹⁵⁹⁷ *Id.* at 10002; OCC Ex. 865.

¹⁵⁹⁸ OCC Ex. 865 at 2.

¹⁵⁹⁹ OCC Ex. 865 at 1.

¹⁶⁰⁰ *Id.*

The screenshot of the Facebook page presented a post from Eric Humphrey, a “former store manager (Neptune Store – NJ)”.¹⁶⁰¹ In her email message to Ms. Dennis, Ms. Matthews wrote, “Please read the attachment. Eric is busy again.”¹⁶⁰²

Mr. Humphrey’s post from April 27, 2015 read, in pertinent part:

FUN TIP! . . .

Entering a Wells Fargo building on the first few days of the month is an invitation to possibly be harassed and tricked into sales. See what the leadership (Jessica Kaczor) has her area do is set sales appointments that are equal to 150-200% of a daily goal or she will encourage shortening the business days in the month (so for example a month with 20 business days would be treated as one with just 16) which is how they get around 150 and 200% anymore because HR already told them that was a violation.

This is most prominent in the first 3 days of every month and especially the first week in a quarter. If employees fail to report out enough appointments to hit 150-200% of their sales quotas five days in advance, the team then has their work/life balance held hostage until they meet that quota with the expectation being that if you book over y our quota, you should hit your quota.

This tactic is reasonable with reasonable sales goals. But when every team member has to come in with 4 checking accounts every day (3 team members equal 12 accounts and I promise you 12 people are not walking in the door wanting to open accounts nor are 12 willing to set an appointment to do so every day).

So what happens? “Sir/Madame, you are getting a fee in your account or you are missing this service. We need to switch your account number to make sure you have everything you need.” – this is the game folks. Hate me for calling it out all you want but that’s reality, harsh and in your face.¹⁶⁰³

[PJS] posted a response shortly after the original post, writing, “or ash will just open accounts for you and say he’ll close them after 30 days”, to which Mr. Humphrey responded, “That’s another! They will tell you we just need to keep the account open for 30 days to make sure nothing else is going in[,] which isn’t true. It’s because they only receive sales credit for the account on its 30th day of being open”.¹⁶⁰⁴

¹⁶⁰¹ *Id.*

¹⁶⁰² *Id.* at 2.

¹⁶⁰³ OCC Ex. 866 at 1.

¹⁶⁰⁴ OCC Ex. 866 at 1.

Presented with this screenshot during cross-examination, when asked if she remembered this April 27, 2015 post from a team member about unreasonable sales goals, Ms. Russ Anderson responded, “I don’t know if this person was a team member. It was sent by a team member up through . . . the chain.”¹⁶⁰⁵ This answer is patently false – as the attachment was sent through a chain that expressly identified the person posting the message was a former Store Manager from the Neptune Store in New Jersey.¹⁶⁰⁶

Given the strident tone used by Mr. Humphrey, and given the public nature of the forum he chose to write in (and apparently not for the first time), the message represented a clear and present threat to Wells Fargo’s reputation in the community, and was indicative of a culture that presented reputational risk to the Bank. Ms. Russ Anderson’s failure to bring the Facebook posting to the OCC’s attention during the May 14, 2015 meeting with the OCC after being asked whether there was any other pertinent information regarding sales practices pressure – constituted a material lack of transparency and candor, and is probative evidence establishing that Ms. Russ Anderson obstructed the OCC’s examination into sales practices pressure at the Community Bank. **Failing to effectively address the issues raised in this exchange constituted unsafe or unsound banking practice and a breach of the fiduciary duties Ms. Russ Anderson owed to the Bank.**

Third, apart from concerns that she should have brought to the OCC’s attention the results presented in the Investigation Debrief and the Facebook posting, Ms. Russ Anderson also withheld information indicating a material issue regarding how team members were abusing customer email addresses when opening accounts without customer consent.

In March 2015, Ms. Russ Anderson and the Core Team had examined “a significant issue . . . relating to bankers changing email addresses of customers, seemingly for the purpose of acknowledging online banking in order to get sales credit.”¹⁶⁰⁷

Rebecca Rawson explained the nature of this kind of team member misconduct as it related to sales practices misconduct:

What we think is occurring is that the team member is changing the email address in the customer’s profile to an email address that belongs to the team member. The team member is then having the customer enroll into online banking (or the team member is enrolling on behalf of the customer) than the team member is obtaining the email validation code that is sent to the email address that is listed in the customer profile and either providing the code to the customer to activate the online enrollment or going in on behalf of the customer and entering the validation code.¹⁶⁰⁸

¹⁶⁰⁵ Tr. (Russ Anderson) at 10002.

¹⁶⁰⁶ OCC Ex. 865 at 1.

¹⁶⁰⁷ R. Ex. 8343 at 6.

¹⁶⁰⁸ R. Ex. 8343 at 3.

Ms. Russ Anderson responded to Ms. Rawson's explanation, stating, "I just spoke with Carrie and she is aware of our next steps and is supportive."¹⁶⁰⁹ The Core Team's response was to "begin review of this behavior with all team members with 15 or more occurrences . . . within the last 90 days".¹⁶¹⁰

Ms. Russ Anderson testified that this type of misconduct was a significant concern for her in March 2015, agreeing during cross-examination that when bankers change customer email addresses in the Bank's systems this constituted misuse of customer personal information.¹⁶¹¹ She denied, however, that the fact that team members who had engaged in this misconduct were not limited to any specific region meant that the sales practice misconduct was systemic.¹⁶¹² The record reflects that notwithstanding that she knew the practice raised serious consent issues, Ms. Russ Anderson did not disclose the practice during the May 14, 2015 meeting with the OCC.¹⁶¹³ **The failure to promptly report to the OCC a known sales practices misconduct issue, whether or not the practices were systemic, constituted unsafe or unsound banking practice and a breach of the fiduciary duties Ms. Russ Anderson owed to the Bank.**

Materials Provided to the WF&C Risk Committee - May 19, 2015

Ms. Russ Anderson testified that there was a meeting of the Board's Risk Committee held on May 19, 2015, and identified an email dated May 16, 2015 she sent to Jason MacDuff and members of WF&C's Legal Department.¹⁶¹⁴ Through an attachment to the email message, Mr. MacDuff provided Ms. Russ Anderson with what Mr. MacDuff wrote was the latest draft of a memo that was to be presented to the Board Risk Committee for the May 19th meeting.¹⁶¹⁵

Ms. Russ Anderson testified that "the L.A. lawsuit had just been filed," and she understood that "the Risk Committee of the Board was interested in understanding about the issues in L.A. and the reasons for the lawsuit."¹⁶¹⁶ She said "Legal primarily was in charge of the memo, [and] Carrie Tolstedt, Jason MacDuff, others" including herself and "HR people probably".¹⁶¹⁷

Ms. Russ Anderson testified that she had been asked to read the draft memo and "to provide any edits as need be or comments on the content. Pretty standard."¹⁶¹⁸ She added, "I'm a

¹⁶⁰⁹ *Id.* at 1.

¹⁶¹⁰ *Id.* at 7.

¹⁶¹¹ Tr. (Russ Anderson) at 10010.

¹⁶¹² *Id.* at 10011.

¹⁶¹³ See, OCC Ex. 1734.

¹⁶¹⁴ Tr. (Russ Anderson) at 9450; OCC Ex. 171.

¹⁶¹⁵ OCC Ex. 171 at 1.

¹⁶¹⁶ Tr. (Russ Anderson) at 9448.

¹⁶¹⁷ Tr. (Russ Anderson) at 9449-50.

¹⁶¹⁸ *Id.* at 9453.

pretty good editor, so people look to me to help with edits.”¹⁶¹⁹ She recalled that her edits were “innocuous, at best. There was nothing substantial.”¹⁶²⁰ Preponderant evidence in the record establishes this answer lacked candor, was incomplete, and was misleading.

Ms. Russ Anderson identified two email chains that preceded the Risk Committee meeting by three days, between herself and Jason MacDuff and others, through which Mr. MacDuff provided the latest draft of their memo to the Board Risk Committee along with Ms. Russ Anderson’s “edits/comments”.¹⁶²¹ She identified a draft of the memo providing “Team Member Metrics” indicating that for Sales Integrity Violations – Team Member Terminations/Resignations, the “Involuntary team member turnover related to ‘sales integrity’ violations divided by total headcount in Retail Banking in any given year” showed a “trend” of “~1% of total Retail Banking workforce in 2013 and 2014”, with a “target” of “1 to 2% of total workforce in any given year.”¹⁶²²

From this draft, Ms. Russ Anderson testified through cross-examination that even though some of the conduct that fell under the umbrella of sales integrity violations – and thus constituted illegal activity – Ms. Russ Anderson agreed with the trend; but that she did not know how the 1 percent figure was removed from the final draft of the May 19, 2015 memo.¹⁶²³

Through a series of documents identified by Ms. Russ Anderson, the record reflects that during the drafting process, Ms. Russ Anderson raised questions about “the areas that are deemed ‘sales integrity’ violations.”¹⁶²⁴ At this point, however, Ms. Sperle, head of Corporate Investigations, had provided Ms. Russ Anderson with a spreadsheet explicitly identifying the categories of misconduct identified within the umbrella of sales integrity violations.¹⁶²⁵

Mr. MacDuff had written that Ms. Sperle “is probably the best person to comment on the underlying data as it comes from her team.”¹⁶²⁶ Ms. Sperle wrote the “metrics represents all allegations of sales integrity violations investigated by Corporate Investigations in those time periods, and the term[inations]/resignations that resulted either due to confirmed fraud or a confirmed policy violation.”¹⁶²⁷

Notwithstanding her receipt of this data from a source shown to be reliable, when asked whether Ms. Russ Anderson had reason to question the accuracy of the terminations data for

¹⁶¹⁹ *Id.*

¹⁶²⁰ *Id.*

¹⁶²¹ OCC Exs. 171, 172.

¹⁶²² OCC Ex. 172 at 6.

¹⁶²³ Tr. (Russ Anderson) at 9922-23.

¹⁶²⁴ OCC Ex. 825 at 1.

¹⁶²⁵ OCC Ex. 1232.

¹⁶²⁶ OCC Ex. 825 at 1.

¹⁶²⁷ OCC Ex. 825 at 1.

what Corporate Investigations identified as sales integrity violations, after acknowledging that CI had the right to categorize whatever conduct they believed was appropriate to be under the umbrella of sales integrity violations, Ms. Russ Anderson responded, “I always had a disagreement on one of those categories.”¹⁶²⁸

After testifying that she believed the Risk Committee had the right to know how many employees had been terminated due to confirmed fraud or a confirmed policy violation stemming from confirmed fraud, confirmed policy violations, or sales integrity violations, Ms. Russ Anderson was the only distributee on the email chain who voiced concerns about categorizing certain conduct as sales integrity violations.¹⁶²⁹

Ms. Russ Anderson acknowledged that three days before the Risk Committee meeting, Ms. Russ Anderson was specifically informed by Corporate Investigations and by Jason MacDuff that 1,064 team members “were terminated for lack of customer consent across the footprint”, along with another 128 people were terminated for simulated funding (or “funding manipulation”).¹⁶³⁰ Ms. Russ Anderson testified that she had no reason to doubt the figures in the Excel spreadsheet prepared by Ms. Sperle, showing that the largest category for team member terminations was for lack of customer consent.¹⁶³¹

When presented with the native Excel spreadsheet showing the categorizations of CI cases, broken down to reflect defined categories (such as Funding Manipulations” and “Reassignment of Sales Credit”), Ms. Russ Anderson testified that while she received the spreadsheet in real time, “I can’t tell you that I went to that tab. I generally stayed on the first tab.”¹⁶³² **Failing to familiarize herself with the results of the CI cases breakdown constituted unsafe or unsound banking practice and a breach of the fiduciary duties Ms. Russ Anderson owed to the Bank.**

When asked to acknowledge that the spreadsheet identified by year specific types of misconduct involving the lack of customer consent, and showing that sales integrity violations were not limited to any one region, Ms. Russ Anderson responded, “Again, I didn’t go this deep into the data” despite having earlier testified that she reviewed the spreadsheet very carefully.¹⁶³³

Similarly, having previously testified that she was concerned with the limits of Ethics Line allegations because they were unconfirmed, Ms. Russ Anderson acknowledged that the spreadsheet showed confirmed cases – that most of confirmed cases of sales integrity violations

¹⁶²⁸ Tr. (Russ Anderson) at 9926; 9943; See OCC Ex. 1300 regarding the category through which CIP violations were categorized as sales integrity violations.

¹⁶²⁹ OCC Exs. 825, 1231, 1232.

¹⁶³⁰ Tr. (Russ Anderson) at 9945-46.

¹⁶³¹ *Id.* at 9945; OCC Ex. 1231.

¹⁶³² Tr. (Russ Anderson) at 9932.

¹⁶³³ Tr. (Russ Anderson) at 9931, 9934.

related to the lack of consent – but testified, “I can’t recall if I – if that was – if I knew that or didn’t know it. If it was on this sheet and I read it, then I knew it.”¹⁶³⁴

Ms. Russ Anderson specifically could not recall if, when she reviewed the spreadsheet, she paid attention to the fact that from 2013 until the first quarter of 2015, there were a total of 1,064 employee terminations just for lack of customer consent – where these did not even include terminations for simulated funding.¹⁶³⁵

Notwithstanding the data presented in this spreadsheet, when asked whether she believed the Risk Committee had the right to learn from her, as the Community Bank’s Group Risk Officer, that 1,064 team members were terminated for lack of customer consent, Ms. Russ Anderson opined, “I did not” on the basis that the May 19, 2015 memo to the Risk Committee, “was talking about what occurred in the proactive monitoring work, and that was the data that was being used, I think, in the other memo, not this memo, but whatever the other memo was that we have with the charts and that in it.” [sic]¹⁶³⁶ **Acting in furtherance of this opinion constituted unsafe or unsound banking practice and a breach of the fiduciary duties Ms. Russ Anderson owed to the Bank.**

Given the ambiguity and opacity of this response, Enforcement Counsel sought a more clear and direct answer, with the question: “Ms. Russ Anderson, let’s call a spade a spade. As a senior risk professional in the Bank’s largest line of business, you didn’t believe that it was prudent to inform the Risk Committee of the Board that there were over a thousand terminations from 2013 to the first quarter of 2015 just for lack of customer consent?” to which Ms. Russ Anderson responded: “This [May 19, 2015] memo – that was not the intent of this memo. So, no, I did not think it would be prudent to put it in there.”¹⁶³⁷ **Failing to inform the Risk Committee of the number of terminations based on lack of customer consent constituted unsafe or unsound banking practice and a breach of the fiduciary duties Ms. Russ Anderson owed to the Bank.**

She added that OCC examiners had a right to that information but conditioned her answer thus: “if it was part of our conversations.”¹⁶³⁸ **Failing to inform the OCC of the number of terminations based on lack of customer consent – regardless of whether it was “part of our conversations” – constituted unsafe or unsound banking practice and a breach of the fiduciary duties Ms. Russ Anderson owed to the Bank.**

¹⁶³⁴ *Id.* at 9935.

¹⁶³⁵ *Id.* at 9936.

¹⁶³⁶ *Id.* at 9937, 9946.

¹⁶³⁷ *Id.* at 9947.

¹⁶³⁸ Tr. (Russ Anderson) at 9938; see “22-03-07 Respondents’ Amended Revised Errata Day 9-38” on page 78. Ordered by Second Supplemental Order.

The record as noted above reflects that Ms. Russ Anderson was actively involved in preparing and editing the report that the Legal Department (through Mr. Strother) provided to members of the Board Risk Committee.¹⁶³⁹ She testified she “saw the entire package once before it went to the Board” and also reviewed the May 19, 2015 memo that went to the OCC.¹⁶⁴⁰

Ms. Russ Anderson testified that she viewed her role in providing her opinion in her review of these memos as being important, that she had a duty as Group Risk Officer to act in the best interest of the Bank, and had a duty to ensure that the substantive content of the memo was accurate.¹⁶⁴¹ She said she understood the reason for the May 19, 2015 meeting of the Risk Committee of the Board was the lawsuit filed by the Los Angeles City Attorney in connection with sales practices.¹⁶⁴²

Ms. Russ Anderson testified that even though she knew the QSRC metrics could be manipulated, she did not think it would be prudent to inform the Risk Committee of this fact – including that the branches could fail two out of the four QSRC metrics and would still end up with an overall acceptable rating.¹⁶⁴³ **Failing to inform the Bank’s Risk Committee of known weaknesses in the QSRC metrics constituted unsafe or unsound banking practice and a breach of the fiduciary duties Ms. Russ Anderson owed to the Bank.**

Ms. Russ Anderson testified that even though she knew in 2013 that there were around 4,261 EthicsLine allegations of sales integrity and 3,809 allegations in 2014, these figures did not alarm her because she “looked at the EthicsLine as a place where employees could feel the most comfortable of making comments, complaints, recommendations. They could do it in an anonymous way or they could do it in a way that we could check back with them when the activity was going on.”¹⁶⁴⁴ She said the complaint numbers did not alarm her because although

¹⁶³⁹ Tr. (Russ Anderson) at 9853-54; OCC Ex. 973 (5/15/15 email chain among Jason MacDuff and Carrie Tolstedt, et al): “Deanna had Pat, John, Lisa and Claudia review the LA/OC investigation write up.” *Id.* at 1; 9857; OCC Ex. 170 (Sales Conduct Oversight & Corporate Security Investigation draft reflecting Ms. Russ Anderson’s comment that she thought it was an “overstatement” where the draft stated: “The SSCOT is comprised of dedicated risk management professionals who understand Regional Banking programs and systems and who work to ensure understand our commitment to our customers is reflected in our products and services, how we deliver our products and services, and Regional Banking programs and systems.” *Id.* at 1; 9857; OCC Ex. 169 (5/16/15 10:11 a.m. email chain among Ms. Russ Anderson and Deanna Lindquist (Legal), Jason MacDuff and others (Ms. Russ Anderson provided “Edits to the first document.”) *Id.* at 1; 9859; OCC Ex. 171 (5/16/15 10:39 a.m. email chain among Ms. Russ Anderson, Deanna Lindquist *et al.* from Ms. Russ Anderson, “My edits/comments.” *Id.* at 1; 9859; OCC Ex. 172 (Draft Memo to the Risk Committee WFC Board of Directors re: Retail Banking product and service delivery conduct risk management dated May 19, 2015); 9862; OCC Ex. 173 (5/16/15 6:39 p.m. email chain among Ms. Russ Anderson, Deanna Lindquist, et al. (Ms. Russ Anderson provided “Thoughts/edits. Not much new from me.”) *Id.* at 1; 9863-64; OCC Ex. 174 (Memo DRAFT); 9879; OCC Ex. 745.

¹⁶⁴⁰ Tr. (Russ Anderson) at 9851.

¹⁶⁴¹ *Id.* at 9852-53.

¹⁶⁴² *Id.* at 9853.

¹⁶⁴³ *Id.* at 9864.

¹⁶⁴⁴ *Id.* at 9865-66.

sales practices misconduct in one such behavior, “sales integrity violations encompasses a lot of different behaviors.”¹⁶⁴⁵ **Failing to effectively respond to EthicsLine allegations pertaining to sales integrity violations constituted, under the conditions present during the relevant period, unsafe or unsound banking practice and a breach of the fiduciary duties Ms. Russ Anderson owed to the Bank.**

Ms. Russ Anderson testified that she understood she had a duty as Group Risk Officer to correct anything in the May 19, 2015 memo that was “false or incorrect”, or misleading, or not transparent about the scope of sales practices misconduct or the adequacy of controls to prevent or detect sales practices misconduct in the Community Bank.¹⁶⁴⁶

Ms. Russ Anderson admitted that she was the only Community Bank GRO who worked on the May 19, 2015 memo, but denied having a duty as the GRO to ensure that the May 19, 2015 memo was transparent about where in the Bank’s retail branch network sales practices misconduct occurred, because, “it wasn’t part of the memo.”¹⁶⁴⁷ She also denied having a duty to ensure the memo was transparent about the volume of terminations for sales integrity violations, or about whether the sales goals in the Community Bank were unreasonable, or about whether the culture in the branches was consistent with the Bank’s Vision and Values.¹⁶⁴⁸ **Failing to provide transparent reporting regarding network sales practices or sales integrity misconduct or the imposition of unreasonable sales goals in the Community Bank constituted unsafe or unsound banking practice and a breach of the fiduciary duties Ms. Russ Anderson owed to the Bank.**

Ms. Russ Anderson admitted that while working on the May 19, 2015 memo, she was knowledgeable in SSCOT operations, what methodology and thresholds SSCOT used in its proactive monitoring, and knew what the controls were to prevent and detect sales practices misconduct.¹⁶⁴⁹ She also admitted knowing what criteria was used (including SSCOT’s Behavioral Trend Analysis) to detect simulated funding and phone number changes in the LA/OC area that resulted in the LA Times articles.¹⁶⁵⁰ She admitted knowing which misconduct SSCOT proactively monitored and which misconduct it did not monitor.¹⁶⁵¹

Ms. Russ Anderson testified that she knew that by May 2015, the Board’s Risk Committee members were interested in the controls to prevent and detect sales practices

¹⁶⁴⁵ *Id.* at 9866.

¹⁶⁴⁶ *Id.* at 9867-69.

¹⁶⁴⁷ *Id.* at 9869, 9872.

¹⁶⁴⁸ *Id.* at 9870-71.

¹⁶⁴⁹ *Id.* at 9872-73.

¹⁶⁵⁰ *Id.* at 9874.

¹⁶⁵¹ *Id.* at 9875.

misconduct, the scope of sales practices misconduct (as it related to the LA/OC area) and in understanding why employees engaged in sales practices misconduct.¹⁶⁵²

Directly addressing this point, there was in the final version of the memo, the version provided to the Committee members, a headlined section titled: “Was a root cause analysis performed and, if so, what were the lessons learned?”¹⁶⁵³

The text for this section reported as follows:

The root cause was determined to be intentional team member misconduct based on the fact that only a small percentage of Retail Banking team members engaged in the outlier behavior at issue in the investigation, and when interviewed, many of them acknowledged that they received proper training and understood the conduct violated bank policies. We also determined that our controls were effective in detecting this behavior. The simulated funding activity was detected by footprint-wide data analysis and reporting that information to the line of business, followed by investigation into team member misconduct. The phone number change issue was surfaced by line management, which resulted in footprint-wide data analysis, followed by investigation into team member misconduct.¹⁶⁵⁴

Ms. Russ Anderson acknowledged that this was the “one-liner” she referred to earlier in her testimony.¹⁶⁵⁵ She denied originating the language here, averring it was her belief that Legal did so.¹⁶⁵⁶ She testified that she believed intentional team member misconduct was “one of the root causes”.¹⁶⁵⁷ **Under the conditions that existed when she reviewed the final version of this memo, approving language that reported the root cause of sales practices misconduct was intentional team member misconduct while withholding information about the role of unreasonable sales goals constituted unsafe or unsound banking practice and a breach of the fiduciary duties Ms. Russ Anderson owed to the Bank.**

Asked by her counsel during direct examination whether she understood her role to include ensuring the root cause of sales practices misconduct was understood and resolved, Ms. Russ Anderson answered, “No.” She added that she was “one of a group of people who would have needed to have worked on that.”¹⁶⁵⁸ She said she would “have to work with Finance and with the HR people and actually even with Corporate, who would be setting goals for the

¹⁶⁵² *Id.* at 9877-79.

¹⁶⁵³ *Id.* at 9882; OCC Ex. 1299 at 3.

¹⁶⁵⁴ OCC 1299R at 3.

¹⁶⁵⁵ Tr. (Russ Anderson) at 9456.

¹⁶⁵⁶ *Id.* at 9456-57.

¹⁶⁵⁷ *Id.* at 9457.

¹⁶⁵⁸ *Id.* at 9468-69.

Community Bank.”¹⁶⁵⁹ **Failing to take effective steps to ensure the root cause of sales practices misconduct was understood and resolved constituted unsafe or unsound banking practice and a breach of the fiduciary duties Ms. Russ Anderson owed to the Bank.**

Asked during cross-examination how long it took her to determine the root cause was intentional team member misconduct, Ms. Russ Anderson responded, “I don’t recall.”¹⁶⁶⁰ Asked whether it took her a year and a half to make this determination, Ms. Russ Anderson responded, “I don’t recall.”¹⁶⁶¹ Asked in view of all of the enhancements and the evolving model work that was being done, and all of the training and evaluations she and her team were doing, whether the only conclusion about the root cause she reached after a year and a half was intentional team member misconduct, Ms. Russ Anderson responded, “I don’t recall.”¹⁶⁶² When asked whether she believed that it was appropriate for her not to inform the Committee about the role of sales pressure in the sales practices misconduct problem or team members’ fear of termination if they did not meet sales goals, Ms. Russ Anderson responded, “I don’t recall.”¹⁶⁶³ Given the scope of her testimony on direct examination, Ms. Russ Anderson’s inability to answer these questions calls into question her ability to serve as a reliable historian of facts material to how and when she arrived at her conclusions regarding the root cause of team member sales practices misconduct.

Notwithstanding the MRA, the uncontroverted facts established following Examiner Hudson’s written inquiries presented in March 2015, when asked whether she believed it was appropriate not to inform the Risk Committee in May 2015 of the Board about deficiencies in the Community Bank’s business model, Ms. Russ Anderson responded, “I did not believe there were any deficiencies, so no.”¹⁶⁶⁴ **Failing to recognize deficiencies in the Community Bank’s business model related to risk management controls over sales practices misconduct constituted unsafe or unsound banking practice and a breach of the fiduciary duties Ms. Russ Anderson owed to the Bank.**

Ms. Russ Anderson testified that she understood the memo’s report declaring that the root cause was “determined to be intentional team member misconduct” was based on that only a small percentage of retail banking members engaged in the outlier behavior at issue in the investigation, and that in this context the finding of “outlier behavior” referred to employees who fell within SSCOT’s thresholds.¹⁶⁶⁵ Ms. Russ Anderson acknowledged, however, that the memo

¹⁶⁵⁹ *Id.* at 9469.

¹⁶⁶⁰ *Id.* at 9887.

¹⁶⁶¹ *Id.*

¹⁶⁶² *Id.*

¹⁶⁶³ *Id.* at 9888-89.

¹⁶⁶⁴ *Id.* at 9887.

¹⁶⁶⁵ *Id.* at 9889.

to the Risk Committee did not define the methodology SSCOT used to identify outlier behavior.¹⁶⁶⁶

Ms. Russ Anderson acknowledged that between 2013 and 2016 she was responsible for controls with respect to sales practices misconduct, and testified that she agreed with the statement in the memo that “We also determined that our controls were effective in detecting this behavior.”¹⁶⁶⁷ Ms. Russ Anderson testified that she felt she had no obligation to tell members of the Committee what the controls were for detecting sales practices misconduct, stating, “I didn’t think that it was responsive to what the Risk Committee was looking for.”¹⁶⁶⁸ **Failing to fully inform the Risk Committee of the controls used by the Community Bank to detect sales practices misconduct – including the limitations of those controls – constituted unsafe or unsound banking practice and a breach of the fiduciary duties Ms. Russ Anderson owed to the Bank.**

Ms. Russ Anderson identified an October 28-29, 2013 email chain among Leif Nygaard, Rebecca Rawson, herself and others pertaining to “potential simulated funding and potential falsification of customer phone numbers.”¹⁶⁶⁹ In a message sent on Ms. Russ Anderson’s behalf, Angie Meacham wrote:

Recently Sales Quality conducted “Behavioral Trend Analyses” regarding the potential simulated funding of checking and savings accounts as well as potential falsification of customer phone numbers (possibly to circumvent 11 Ways to Wow Customer Surveys) across the Regional Bank. Sales Quality collaborated with various partners in regards to data findings (HR/ER, Corporate Investigations, and Legal). All parties agreed that Sales Quality cases should be opened on those team members that were considered “outliers” and referred to Corporate Investigations for further review. Sales Quality will continue to monitor these trends.¹⁶⁷⁰

An “outlier” for potential simulated funding were identified where the team member had “50 or more instances” of where “Account X was opened; Account X was funded by virtue of an auto transfer from Account Y; and within one day funds were auto transferred from Account X back to Account Y leaving Account X with a \$0 or possibly a negative balance; and Account X had no further funding activity within the 60 day RFR measurement period.”¹⁶⁷¹

¹⁶⁶⁶ *Id.* at 9890.

¹⁶⁶⁷ *Id.*

¹⁶⁶⁸ *Id.* at 9891.

¹⁶⁶⁹ *Id.* at 9893; OCC Ex. 280.

¹⁶⁷⁰ OCC Ex. 280 at 1.

¹⁶⁷¹ OCC Ex. 280 at 2.

In response the following day, Mr. Nygaard wrote, “Just curious regarding the 50+ for phone numbers changed 1-3 digits. 50 certainly is a lot, do we envision lowering that number in the future (whether that may be over a 3-month period, or a smaller X per month)?”¹⁶⁷²

On October 29, 2013, copying Ms. Russ Anderson, Ms. Rawson wrote in response that this “is the first slice of data. Sales Quality will be running this report monthly and will most likely be reviewing thresholds to go below the 50+.”¹⁶⁷³

During cross-examination Ms. Russ Anderson agreed with Mr. Nygaard’s observation regarding the “50+” threshold, describing this as, “a sizable number, yes.”¹⁶⁷⁴ Nevertheless, when Ms. Russ Anderson was asked whether she believed the Risk Committee had a right to know that to be considered an outlier for simulated funding, an employee had to have 50 or more instances of activity indicative of simulated funding over a five-month period, and responded, “from back in 2013, no I did not.”¹⁶⁷⁵ **Under the conditions that existed in the Community Bank in 2013, failing to inform the Risk Committee of her reliance on a 50-or-more-instances threshold constituted unsafe or unsound banking practice and a breach of the fiduciary duties Ms. Russ Anderson owed to the Bank.**

The May 19, 2015 memo to the Board’s Risk Committee reported further that in order to “foster teamwork in our bank branches” Community Banking stopped reporting individual team member performance as measured by the Gallup customer satisfaction surveys – measuring results “at a branch level, but no longer report[ing] individual team member performance.”¹⁶⁷⁶

The memo reported further, “we confirmed that issues raised by the three customers identified by LA Times had been resolved in the normal course.”¹⁶⁷⁷ This is a materially misleading statement – the issues raised by the customers included Community Banking team members opening accounts without customer consent.¹⁶⁷⁸ The memo reported the only resolution was to determine that the fees complained about by the three customers had been reversed.¹⁶⁷⁹ The issues raised by these customer complaints directly concerned sales practices misconduct, and those issues were not addressed “in the normal course”.¹⁶⁸⁰

In the section titled “What are the protocols in Retail Banking for ongoing monitoring of sales practices, including measurements?” the memo states “[t]he SSCOT continues to monitor

¹⁶⁷² *Id.* at 1.

¹⁶⁷³ *Id.*

¹⁶⁷⁴ Tr. (Russ Anderson) at 9895.

¹⁶⁷⁵ *Id.* at 9893-94.

¹⁶⁷⁶ OCC Ex.1299R at 4..

¹⁶⁷⁷ *Id.* at 5.

¹⁶⁷⁸ *Id.*

¹⁶⁷⁹ *Id.*

¹⁶⁸⁰ OCC Ex.1299R at 5.

simulated funding and phone number change activity and escalates outlier team member activity through the Sales & Service Conduct Oversight Allegation Process for further research, investigation, and corrective action when appropriate.”¹⁶⁸¹

In addition, the memo states,

More broadly, the SSCOT continues to examine data and trends and ensure actions are taken as appropriate. This includes responding to sales and service conduct issues referred to the SSCOT by, for example, the Ethics Line or product teams. This includes distribution of Quality of Sale Report Cards (QSRC), which measures various quality metrics for Retail Banking and is intended to provide management with trends surrounding key quality of sales indicators. SSCOT also conducts robust Proactive Monitoring to reduce inappropriate sales behaviors through early detection. The SSCOT remains committed to continuing to refine its processes to better detect team member activity indicative of improper conduct.¹⁶⁸²

What this response does not do is fully disclose the material measurement protocols. When asked during cross-examination whether she understood in real time that the Risk Committee of the Board specifically asked about measurements, Ms. Russ Anderson responded, “I don’t know that I knew that.”¹⁶⁸³ Ms. Russ Anderson acknowledged that at this time, she knew that SSCOT had identified three team members, described them as outliers for simulated funding, and did so by applying the 99.99 percent threshold.¹⁶⁸⁴ Ms. Russ Anderson acknowledged that only using these measurement protocols did there appear to be a dramatic reduction in inappropriate practices.¹⁶⁸⁵ **Failing to fully inform the Risk Committee of the material measurement protocols SSCOT used constituted unsafe or unsound banking practice and a breach of the fiduciary duties Ms. Russ Anderson owed to the Bank.**

Notwithstanding the application of these thresholds and in the face of her knowledge of the broader scope and volume of sales practices misconduct, Ms. Russ Anderson testified that she believed then and believes today the report was transparent – that “for simulated funding through the proactive monitoring work, I believe we gave the Committee what was truthful,” and when asked whether she believed it was honest to tell the Risk Committee of the Board in the May 19, 2015 memo that there was a dramatic reduction in inappropriate practices because only three people were identified as outliers for simulated funding, Ms. Russ Anderson responded, “Yes, I do.”¹⁶⁸⁶

¹⁶⁸¹ *Id.* at 5-6.

¹⁶⁸² *Id.* at 6.

¹⁶⁸³ Tr. (Russ Anderson) at 9897.

¹⁶⁸⁴ *Id.* at 9898.

¹⁶⁸⁵ *Id.* at 9898-99.

¹⁶⁸⁶ *Id.* at 9899.

Ms. Russ Anderson acknowledged that the memo does not disclose that the immediate action that was taken after the L.A. Times articles were published was the pause in proactive monitoring.¹⁶⁸⁷ When asked whether she put the word “robust” in this text, Ms. Russ Anderson responded that she did not, but neither did she ask to take it out, averring that she thought the word was accurate and stating she believed the 99.99 percent threshold, and later the 99.95 percent threshold, both constituted robust proactive monitoring.¹⁶⁸⁸ **Failing to provide credible challenge to the memo’s failure to report the pause in proactive monitoring and its characterization of the reporting threshold as “robust” constituted unsafe or unsound banking practice and a breach of the fiduciary duties Ms. Russ Anderson owed to the Bank.**

During cross-examination, Ms. Russ Anderson admitted she did not inform the Risk Committee through this memo that she was uncomfortable with the pause, averring, “the information was no longer timely.”¹⁶⁸⁹ During cross-examination, Ms. Russ Anderson denied that proactive monitoring and polling were ever used together, rejecting the premise and testifying, “if it was happening, I was completely unaware and I would not have agreed to it” because “it would have been contrary to the whole point of doing the proactive monitoring.”¹⁶⁹⁰

When asked whether what SSCOT was doing stopped employees from issuing products and services to customers without consent, Ms. Russ Anderson responded: “I actually think the work we did, did stop team members from doing it by knowing that if they did, other team members -- they are watching other team members or heard of other team members being terminated. So, yes, I do think it prevented it from happening.”¹⁶⁹¹ In a follow-up question, Ms. Russ Anderson was asked, “By watching the three people that were referred to corporate investigations, it would have stopped other people from engaging in simulated funding?” Ms. Russ Anderson responded, “my answer is yes” even though she knew proactive monitoring would not physically stop an employee from engaging in sales practices misconduct like opening an unauthorized checking account for a customer.¹⁶⁹² Given the record as a whole, no weight can be given to Ms. Russ Anderson’s assertion that what SSCOT was doing actually stopped employees from engaging in sales practices misconduct. Further, her answer eroded her reliability as a witness with respect to the role SSCOT played in preventing sales practices misconduct by the Community Bank’s team members.

When asked during cross-examination whether she believed this report significantly understated the scope of sales practice misconduct in the Community Bank, Ms. Russ Anderson responded, “I didn’t think about it that way, so I – it wasn’t . . . the intent of the paragraph. So if

¹⁶⁸⁷ *Id.* at 9885.

¹⁶⁸⁸ *Id.* at 9462-63, 9917-18.

¹⁶⁸⁹ *Id.* at 9886.

¹⁶⁹⁰ *Id.* at 9919-20.

¹⁶⁹¹ *Id.* at 9915.

¹⁶⁹² *Id.* at 9915-16.

it did, it was unintentional.”¹⁶⁹³ When asked, however, whether she believed the report provided the Risk Committee with complete information about the scope of simulated funding, Ms. Russ Anderson responded, “No.” and added that “that wasn’t the intent. We were talking about proactive monitoring of simulated funding.”¹⁶⁹⁴ She then denied that the paragraph significantly understated the scope of sales practices misconduct in the Community Bank, and testified she believed there was in fact a dramatic reduction in inappropriate sales practices between 2013 and the time this memo was presented to the Risk Committee.¹⁶⁹⁵ **Failing to provide the Risk Committee with complete and material information about the scope of simulated funding constituted unsafe or unsound banking practice and a breach of the fiduciary duties Ms. Russ Anderson owed to the Bank.**

Elaborating, Ms. Russ Anderson testified: “You’ve misstated the document. The document was referring to the proactive monitoring. If the document had been talking about all potential simulated funding, then it would have understated it, yes. But that was not the point of the document.”¹⁶⁹⁶ Given the record as a whole, no weight can be given to this averment, and the averment erodes Ms. Russ Anderson’s reliability as a witness regarding the import of the document as it related to potential simulated funding.

During cross-examination, Ms. Russ Anderson identified an email exchange on which she was a distributee, between Jim Richards – then head of Corporate Financial Crimes Risk Management – and Carrie Tolstedt, as head of Community Banking.¹⁶⁹⁷ Mr. Richards stated in the initial message that the focus of an upcoming A&E Committee meeting was on “BSA/AML and Community Banking,” but Mr. Richards wrote, “Community Banking should not come up during my A&E presentation.”¹⁶⁹⁸ In his email, Mr. Richards was defending a position regarding Audit’s opinion that the BSA/AML program be downgraded from Satisfactory to Needs Improvement.¹⁶⁹⁹

In explaining what he believed Community Banking should not come up, Mr. Richards wrote:

The only place I could see Community Banking coming up is the third paragraph on page 6 of my materials where I write that “we are terminating more than fourteen Team Members each working day.” I don’t believe the Board has ever seen that statistic. I write that I just took over Corporate

¹⁶⁹³ *Id.* at 9901-02.

¹⁶⁹⁴ *Id.* at 9900-01.

¹⁶⁹⁵ *Id.* at 9903-06.

¹⁶⁹⁶ *Id.* at 9902.

¹⁶⁹⁷ *Id.* at 9906; OCC Ex. 1264.

¹⁶⁹⁸ OCC Ex. 1264 at 3.

¹⁶⁹⁹ *Id.*

Security/Corporate investigations and need to dig into this more and understand root causes.¹⁷⁰⁰

Although Ms. Russ Anderson was part of this exchange only through a CC, she responded to Mr. Richards, asking “do we know what makes up that statistic in terms of ‘reason’ for termination?” and Mr. Richards responded later that day: “No we don’t know what makes up that statistic, other than ‘almost all’ are Community Banking (when told that, I knew there wasn’t a lot of precision in the data).”¹⁷⁰¹

Ms. Tolstedt then responded to both Mr. Richards and Ms. Russ Anderson, still later that day, providing this background in response to Mr. Richards’ query:

The last time I looked into this the term[inations]/resignations fell into three broad categories. It’s been over a year since I studied this so it is not current info and from my best memory and could have some inaccuracy. I can get specifics and facts that we can share but not on a Saturday. Many of the term[inations] are around operations issues (teller cash differences, forced balances). Recall, we have around 75,000 team members in our store, either teller or line platform. The number of transactions we do in the teller line are around 635 million per year. I am not sure how much cash that is transaction per year but it is knowable.

1. Sales (I think this was around 1,000 to 1,200 in 2013) with the changes we made in teller referrals this should go down – also, the number of allegations coming from the ethics line has gone down year over year.
2. Falsifications – mostly forced balancing.
3. Teller cash differences – I think this is the largest category of the three.¹⁷⁰²

The following day Ms. Russ Anderson responded to Ms. Tolstedt and Mr. Richards, writing: “Carrie, your recollection is correct and nothing really has changed. This is the same data Corporate Investigations has been reporting for quite some time. Now that CI reports into Jim and his team we’ll work with them to better frame the data.”¹⁷⁰³

During cross-examination, Ms. Russ Anderson acknowledged that she understood Ms. Tolstedt’s data to reflect that the statement “I think this was around 1,000 to 1200 in 2013” referred to sales integrity violations.¹⁷⁰⁴ Ms. Russ Anderson acknowledged that she knew by 2013 that approximately 1,000 employees were terminated every year for sales integrity

¹⁷⁰⁰ OCC Ex. 1264 at 3.

¹⁷⁰¹ *Id.* at 2.

¹⁷⁰² *Id.* at 1.

¹⁷⁰³ *Id.*

¹⁷⁰⁴ *Id.* at 9909.

violations.¹⁷⁰⁵ Ms. Russ Anderson also acknowledged that her statement that “your recollection is correct and nothing has really changed” was an honest response to Mr. Tolstedt’s statement – that “in terms of terminations, that’s correct.”¹⁷⁰⁶

Ms. Russ Anderson acknowledged that nothing in this exchange indicated Ms. Russ Anderson told Ms. Tolstedt that there was a dramatic reduction in inappropriate practices; or that she did not correct Ms. Tolstedt by saying there were only three people identified as outliers for simulated funding.¹⁷⁰⁷

When asked whether it alarmed her that from 2013 to 2015 nothing really had changed with respect to terminations for sales practices violations, Ms. Russ Anderson responded, “I didn’t think about it. I’m sorry.”¹⁷⁰⁸ She added: “sales integrity violations included a lot of different things, so no, it didn’t bother me.”¹⁷⁰⁹ She said, “It didn’t go up. If it had gone up it would have bothered me. But no, the fact that it was relatively the same number didn’t bother me.”¹⁷¹⁰

During cross-examination, presented with her statement that “nothing has really changed”, Ms. Russ Anderson was asked whether this indicated to her that firing employees who engaged in sales integrity violations and replacing them with new ones was not an effective solution to the sales integrity problem in the Community Bank, Ms. Russ Anderson avoided answering the question, responding only, “that topic was not part of this email chain.”¹⁷¹¹ Further, when asked whether this indicated that revamping training to team members did not address the root cause of sales practices misconduct, Ms. Russ Anderson again avoided answering the questions, responding that “that is not what I meant by that statement.”¹⁷¹²

When asked by her Counsel during direct examination whether the memo made any mention of customer consent issues dominating the Ethics Line, Ms. Russ Anderson responded, “No sir, it did not” and when asked why she did not insist that it be put in there Ms. Russ Anderson responded, without elaboration, “It was not pertinent.”¹⁷¹³ **Failing to take customer consent into account in this memo constituted unsafe or unsound banking practice and a breach of the fiduciary duties Ms. Russ Anderson owed to the Bank.**

¹⁷⁰⁵ *Id.* at 9913.

¹⁷⁰⁶ *Id.* at 9909-10

¹⁷⁰⁷ *Id.* at 9910.

¹⁷⁰⁸ *Id.*

¹⁷⁰⁹ *Id.*

¹⁷¹⁰ *Id.* at 9910-11.

¹⁷¹¹ *Id.* at 9911.

¹⁷¹² *Id.* at 9912.

¹⁷¹³ *Id.* at 9457.

Through leading questioning by her Counsel during direct examination, Ms. Russ Anderson testified she believed she fulfilled her responsibilities as GRO in helping to prepare the memo, and that she “absolutely” did not believe the memo intended to downplay the gravity of sales practices misconduct.¹⁷¹⁴ Elaborating, she testified:

It was -- the opportunity -- the lawsuit had been filed. There was a need to present data to the Risk Committee of the Board, and that's what the intent of this was; to tell the Risk Committee of the Board what was occurring and -- at least in our part of it, and how many team members had been impacted in the work that had been done on simulated funding and phone number changes. And it accurately reflected, I believe, what the Risk Committee of the Board asked for.¹⁷¹⁵

May 19, 2015 WF&C Board Risk Committee Meeting

Ms. Russ Anderson identified the memorandum she had edited that had been presented to the Risk Committee in advance of the May 19, 2015 meeting.¹⁷¹⁶ An agenda accompanied the materials, prepared by WF&C’s General Counsel, Jim Strother.¹⁷¹⁷

The agenda identified three documents that were part of the presentation:

- (1) ‘Sales Conduct Oversight & Corporate Security Investigation,’ which summarizes the 2013/2014 sales and service integrity investigation, Retail Banking oversight of sales and service activity generally, and actions taken to respond to the issues identified;
- (2) A memorandum (subject line, “Retail Banking product and service delivery conduct risk management”) that provides more detail around the multi-layered approach to product and service delivery conduct risk management; and
- (3) A memorandum (subject line, “Sales Practices Lawsuits”) that summarizes the Los Angeles City Attorney’s lawsuit, the putative nationwide consumer protection class action filed last week, and a putative California wage and hour class action also filed last week that refers extensively to sales pressure.¹⁷¹⁸

The Sales Conduct Oversight & Corporate Security Investigation report referred to a 2013-2014 investigation, stating that the Community Bank’s Compliance and Operational Risk

¹⁷¹⁴ *Id.* at 9463.

¹⁷¹⁵ *Id.* at 9463.

¹⁷¹⁶ *Id.* at 9454-55; OCC Ex. 1299R.

¹⁷¹⁷ OCC Ex. 1299R at 1.

¹⁷¹⁸ OCC Ex. 1299R at 1.

Management Group included a function “that is focused on oversight of sales and service activity in our bank branches.”¹⁷¹⁹ The report continued:

This function is the Sales and Service Conduct Oversight Team (SSCOT), which reports to the Community Bank Group Risk Officer. As part of its proactive monitoring work, the SSCOT generates reports to identify team member conduct that is inconsistent with Wells Fargo’s Visions and Values. In the summer of 2013, to monitor compliance with the requirement that deposit accounts are funded by the client, the SSCOT generated a report to identify any activity indicative of simulated funding across Retail Banking. Simulated funding is prohibited conduct that may involve a banker transferring money between a customer’s accounts to make it appear as if a certain account is funded. This report indicated that a small percentage of our team members may have engaged in this prohibited conduct.¹⁷²⁰

The report provided data regarding terminations by Corporate Investigations following the publication of the first of two L.A. Times articles, where the terminations resulted from customer phone number changes or simulated funding.¹⁷²¹

Under the heading, “What immediate actions did Wells Fargo take in response [to] the LA/OC findings,” the report led with “Extension of the investigation to the remainder of the footprint.”¹⁷²² Without disclosing that proactive monitoring had been put on hold, the report stated:

Extension of the investigation to the remainder of the footprint: In November 2013, the SSCOT performed a footprint-wide Behavioral Trends Analysis to identify instances of outlier activity with respect to potential simulated funding and customer phone number changes across Retail Banking. This expanded investigation continued into 2014 and resulted in one-hundred and fifty eight (158) team member separations (primarily terminations) for engaging in customer phone number changes, simulated funding or both.¹⁷²³

Without elaboration, when asked by her Counsel during direct examination why the memo did not inform members of the Risk Committee that SSCOT had paused proactive monitoring during the period described in this part of the memo, Ms. Russ Anderson responded simply, “It wasn’t pertinent.”¹⁷²⁴ Again without elaboration, when asked by her Counsel why she did not mention in the memo that she was opposed to the pause, Ms. Russ Anderson responded,

¹⁷¹⁹ *Id.* at 2.

¹⁷²⁰ *Id.*

¹⁷²¹ *Id.*

¹⁷²² *Id.* at 3.

¹⁷²³ *Id.*

¹⁷²⁴ *Id.* at 9454.

“It was not pertinent.”¹⁷²⁵ When asked whether the memo discussed the root cause of sales practices misconduct, Ms. Russ Anderson responded, “No, sir. Well, actually, there was a one-liner in there, I think. I can’t – I don’t -- it was somewhere in one of those packages”.¹⁷²⁶ **Failing to disclose to the Risk Committee the limitations of SSCOT’s proactive monitoring and the failure to identify the root cause of sales practices misconduct by the Community Bank’s team members constituted unsafe or unsound banking practice and a breach of the fiduciary duties Ms. Russ Anderson owed to the Bank.**

Ms. Russ Anderson testified that she was in San Francisco with Carrie Tolstedt, Jim Strother and others, and participated in the May 19, 2015 meeting of the Wells Fargo & Company Risk Committee.¹⁷²⁷ She said, “very soon into the conversation, the Board started asking a lot of questions, and . . . the tone was difficult.”¹⁷²⁸ She testified the Board members were “unhappy, strident” and when “someone asked a question about thresholds, to which I started to answer, David Otsuka fully answered.”¹⁷²⁹ She added, “in my career, it was a very disturbing meeting.”¹⁷³⁰

Elaborating on this statement, Ms. Russ Anderson testified that she had never been in a situation where senior executives “were in a meeting where the Board was so obviously angry.”¹⁷³¹

Ms. Russ Anderson identified the minutes of the May 19, 2015 Risk Committee meeting.¹⁷³² Those minutes reflect the members of the Committee received reports from Ms. Russ Anderson and Ms. Tolstedt on “the nature and scope of internal investigations and monitoring of sales practices and resulting team member terminations or resignations.”¹⁷³³ The minutes reflect that management “also discussed with the Committee the nature of potential customer impacts, its evaluation of the appropriateness of the Company’s compensation practices and performance evaluation tools, internal audit activity relating to sales practices, and matter escalation channels within management and to the Board.”¹⁷³⁴

Before Ms. Tolstedt and Ms. Russ Anderson left the meeting, the Committee “requested that management provide the directors with additional information on prior reporting to the

¹⁷²⁵ *Id.*

¹⁷²⁶ *Id.*

¹⁷²⁷ *Id.* at 9463-64.

¹⁷²⁸ *Id.* at 9465.

¹⁷²⁹ *Id.*

¹⁷³⁰ *Id.*

¹⁷³¹ *Id.* at 9465-66.

¹⁷³² *Id.* at 9954; R. Ex. 156.

¹⁷³³ R. Ex. 156 at 1.

¹⁷³⁴ R. Ex. 156 at 1-2.

Board and its committees relating to sales practices, and Mr. Dean requested that management attend a future Human Resources Committee meeting to discuss Community Banking's incentive programs."¹⁷³⁵

Ms. Russ Anderson testified that she recalled the Committee members were critical of the threshold concept – but that she “did not think they were correct. I thought they didn't understand the concept” regarding SSCOT's use of thresholds to detect sales practices misconduct.¹⁷³⁶ Ms. Russ Anderson acknowledged that during the relevant period, SSCOT reported to her and was the group that used the thresholds; and the fact that she was the one responsible for controls to detect sales practices misconduct.¹⁷³⁷ **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 Ms. Russ Anderson owed to the Bank.**

Despite the knowledge that the Board was dissatisfied with the threshold concept, when asked whether SSCOT continued using the 99.95 percent threshold until her exit from the Bank, Ms. Russ Anderson deflected, answering that she was comfortable applying the 99.95 threshold to detect simulated funding, and that the “threshold at 99.95 was the one that was approved and instituted by the Law Department. I followed their legal opinion in that matter.”¹⁷³⁸ Given the record in this proceeding, I find no weight can be given to the suggestion by Ms. Russ Anderson that she did not set the threshold in question.

Ms. Russ Anderson testified that from her own observations during the meeting, the Board members were unhappy about the lawsuit from the City of Los Angeles, and asked a lot of very pointed and strident questions.¹⁷³⁹ She denied, however, the averment that the Board wanted to get to the bottom of the sales practices misconduct issues in the Community Bank, stating “I don't know that I knew that”, averring that it was her understanding that “the Board wanted to understand about the lawsuit.”¹⁷⁴⁰ She testified that since she “wasn't in Legal . . . [she didn't] know how long they may or may not have known about that lawsuit.”¹⁷⁴¹ She denied knowing that the Board wanted to know about the scope of sales practices misconduct in the Community Bank, about the adequacy of controls, or about the volume of sales practices misconduct in the Community Bank.¹⁷⁴² Given the record as a whole, particularly her description of the meeting and given the paucity of information provided by the memo she helped create, no weight can be

¹⁷³⁵ *Id.* at 2.

¹⁷³⁶ Tr. (Russ Anderson) at 9964-65.

¹⁷³⁷ *Id.* at 9965-66.

¹⁷³⁸ *Id.* at 9965, 9968.

¹⁷³⁹ *Id.* at 9955.

¹⁷⁴⁰ *Id.*

¹⁷⁴¹ *Id.* at 9956.

¹⁷⁴² *Id.* at 9956-57.

given to Ms. Russ Anderson's denial that she knew the Board wanted to know about the scope of sales practices misconduct in the Community Bank, the inadequacy of controls, or the scope of the sales practices misconduct in the Community Bank.

Ms. Russ Anderson acknowledged that she had an obligation to provide complete information to the Risk Committee during the meeting, concerning (1) the adequacy of the Bank's controls around sales practices, (2) the methodology SSCOT was using to detect simulated funding, and (3) how widespread sales practices misconduct was in the Community Bank.¹⁷⁴³ She denied, however, having any responsibility to inform the Committee at the May 19, 2015 meeting about the polling methodology SSCOT used – because “it wasn't relevant to the discussion with the Board.”¹⁷⁴⁴ **Acting in furtherance of this opinion under the conditions that were present during the relevant period constituted unsafe or unsound banking practice and a breach of the fiduciary duties Ms. Russ Anderson owed to the Bank.**

She also denied having any duty to supply accurate information to the Committee about the reasonableness of the sales pressure, because “[i]t was not part of the discussion.”¹⁷⁴⁵ For the same reason, Ms. Russ Anderson also denied having any responsibility to supply members of the Committee with accurate information about the culture in the retail branch network of the Community Bank.¹⁷⁴⁶ **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 Ms. Russ Anderson owed to the Bank.**

Ms. Russ Anderson described her role in the process that led up to the meeting as “a supporting role in helping to prepare Carrie for the meeting and anyone else who needed my help, but I was not . . . the primary person and . . . I had no idea that I would be answering any questions when I went in there.”¹⁷⁴⁷ Through leading questioning presented by her Counsel during direct examination, Ms. Russ Anderson testified that she did not believe the presentation was either misleading or incomplete.¹⁷⁴⁸ Given the record as a whole, no weight can be given to this testimony, as the preponderant evidence established that the presentation was both incomplete and misleading.

Elaborating, Ms. Russ Anderson testified, “I believe that the conversation was to be about the L.A. lawsuit and what had happened and what we had been doing up to that point in time. And I think that the presentation answered all those questions.”¹⁷⁴⁹ Ms. Russ Anderson denied any claim that she was ultimately responsible for either the memo or the presentation, testifying

¹⁷⁴³ *Id.* at 9950-52.

¹⁷⁴⁴ *Id.* at 9951.

¹⁷⁴⁵ *Id.*

¹⁷⁴⁶ *Id.* at 9952.

¹⁷⁴⁷ *Id.* at 9467.

¹⁷⁴⁸ *Id.*

¹⁷⁴⁹ *Id.* at 9467.

she did not have the power to make final edits and that the presentation “was requested by the chairperson of the Risk Committee of the Board of Mr. Strother and Ms. Carrie Tolstedt [*sic*].”¹⁷⁵⁰

Ms. Russ Anderson testified that while she played a “minor” role during the May 19, 2015 Risk Committee meeting and “responded to one” question from the Committee members, she did not consider the volume of sales practices misconduct in the Community Bank to be significant relative to the number of team members employed in the retail branch network.¹⁷⁵¹

Ms. Russ Anderson identified Mr. Augliera’s handwritten notes of the meeting, and acknowledged that during the meeting she “answered a question on thresholds.”¹⁷⁵² Those notes reflect that regarding Risk, “2013 – investigation team to Claudia that does proactive looking for behaviors. Funding not for client. Started investigating simulated funding and phone number changes. Two rounds of work in 2013, 35 TM terminated, 10 resigned, 21 terminated, six resigned.”¹⁷⁵³ Ms. Russ Anderson testified that these notes were “roughly” consistent with her memory of what she told the Risk Committee during the May 19th meeting.¹⁷⁵⁴ Where the notes report that she said, “75,000 looking at every TM,” Ms. Russ Anderson testified that she did not recall “that I said 75,000, but if this is what he wrote. I don’t know.”¹⁷⁵⁵

Also roughly consistent with her memory were Mr. Augliera’s notes, “November 2013 expanded to the rest of footprint. 2014 researched terminations and resignations, 158 TM over period of time, 230 TM fired or 70% phone number changes”.¹⁷⁵⁶ She also did not recall saying, as reflected in these notes, that SSCOT picked a threshold and “looked at every TM 100%” – testifying only that she remembered “telling them that we picked a threshold and we looked at team members within that threshold. I don’t remember the 75,000 piece.”¹⁷⁵⁷ At an earlier point in her testimony, Ms. Russ Anderson stated that it was Mr. Otsuka who disclosed the 99.99 percent threshold during the meeting, and that the threshold she disclosed was the “50[+] filter.”¹⁷⁵⁸

Ms. Russ Anderson acknowledged that she knew at that time that SSCOT was not looking at every team member 100 percent – that by this point she was sending to Corporate

¹⁷⁵⁰ *Id.* at 9468.

¹⁷⁵¹ *Id.* at 9958.

¹⁷⁵² Tr. (Russ Anderson) at 9958; OCC Ex. 2158 at 5.

¹⁷⁵³ Tr. (Russ Anderson) at 9960; OCC Ex. 2158 at 5.

¹⁷⁵⁴ Tr. (Russ Anderson) at 9961; OCC Ex. 2158 at 5.

¹⁷⁵⁵ Tr. (Russ Anderson) at 9961; OCC Ex. 2158 at 5.

¹⁷⁵⁶ Tr. (Russ Anderson) at 9961; OCC Ex. 2158 at 5.

¹⁷⁵⁷ Tr. (Russ Anderson) at 9962; OCC Ex. 2158 at 5.

¹⁷⁵⁸ Tr. (Russ Anderson) at 9964. See OCC Ex. 791 at 3, “For the initial investigation that began in the Fall 2013 (LA/OC and then across the footprint, there was a 50 or more threshold applied to a 5 month period of time. That investigation took us well into 2014.” *Id.*

Investigations only at the top .05 percent of employees – the “top outlier[s]” – who engaged in potential simulated funding.¹⁷⁵⁹ **Ms. Russ Anderson’s misrepresentation to the Committee of looking at every team member 100 percent a breach of the fiduciary duties Ms. Russ Anderson owed to the Bank.**

She also acknowledged knowing at the time that she was not doing proactive monitoring on other behaviors like bundling, pinning, sandbagging, and unauthorized debit or credit cards – on the basis that from 2013 to 2015 SSCOT’s proactive monitoring was “in a pilot phase” because of the pause and “other things that were taken out of my control”.¹⁷⁶⁰ **Ms. Russ Anderson’s failure to disclose the material limits of SSCOT’s proactive monitoring constituted unsafe or unsound banking practice and a breach of the fiduciary duties Ms. Russ Anderson owed to the Bank.**

Through the summary disposition process, Ms. Russ Anderson did not dispute that the Memo she edited and Mr. Strother presented to the Board made no mention of unreasonable or unattainable sales goals; significant (or any) pressure to meet sales goals; employees’ fear of termination if sales goals are not met; and employees being placed on corrective action and/or terminated for not meeting sales goals; the pause on proactive monitoring of simulated funding and phone number changes; or the proactive monitoring methodology or the 99.99 or 99.95 percent thresholds. **Ms. Russ Anderson’s failure to disclose these limitations constituted unsafe or unsound banking practice and a breach of the fiduciary duties Ms. Russ Anderson owed to the Bank.**

She disputed the claim that sales goals were omitted because the May 19, 2015 Memo contains references to modifications of sales policies and sales goals, and gave an example, the discussion of efforts to tie sales practices and goals to Vision and Values and business conduct expectations at all levels with improved consistency in communications;¹⁷⁶¹ averring that references adjustments to goals in connection with an initiative relating to incentive compensation plans;¹⁷⁶² and disputed the claim that alleged pressure to meet sales goals is not mentioned at all because allegations of pressure to meet sales goals are discussed in relation to the Los Angeles lawsuit.¹⁷⁶³

Through the summary disposition process I found uncontroverted that the Memo made no mention of employees’ fear of termination if sales goals are not met; or employees being placed on corrective action and/or terminated for not meeting sales goals; or the pause on proactive monitoring of simulated funding and phone number changes; or the proactive monitoring methodology or the 99.99 or 99.95 percent thresholds. **Ms. Russ Anderson’s failure to disclose**

¹⁷⁵⁹ Tr. (Russ Anderson) at 9962.

¹⁷⁶⁰ *Id.* at 9963.

¹⁷⁶¹ Russ Anderson’s SMF at No. 375 citing MSD Ex. 155 at 12.

¹⁷⁶² Russ Anderson’s SMF at No. 375 citing MSD Ex. 155 at 13.

¹⁷⁶³ Russ Anderson’s SMF at No. 375 citing MSD Ex. 155 at 19-23.

these limitations constituted unsafe or unsound banking practice and a breach of the fiduciary duties Ms. Russ Anderson owed to the Bank.

I also found that in her Response to Statement No. 374, Ms. Russ Anderson sufficiently demonstrated a factual controversy exists regarding whether the Memo addressed all of the issues relating to Respondent Russ Anderson's fiduciary duties owed to the Bank, including alleged pressure to meet sales goals. As noted above, that factual controversy has now been addressed through the presentation of testimony and documentary evidence during the hearing. **Ms. Russ Anderson's failure to disclose to the Risk Committee the pressure to meet sales goals constituted unsafe or unsound banking practice and a breach of the fiduciary duties Ms. Russ Anderson owed to the Bank.**

Through the summary disposition process Enforcement Counsel alleged that the May 19, 2015 Memo did not discuss the issuance of debit cards or credit cards without customer consent, bundling, pinning, sandbagging, and other forms of sales practices misconduct.¹⁷⁶⁴ Ms. Russ Anderson disputed the claim, averring that the May 19, 2015 memo discusses issuance of debit cards or credit cards without consumer consent, bundling, pinning, sandbagging, and other forms of sales practices misconduct in the context of the Los Angeles lawsuit's allegations.¹⁷⁶⁵ As noted above, that factual controversy has now been addressed through the presentation of testimony and documentary evidence during the hearing. **Ms. Russ Anderson's failure to disclose to the Risk Committee these limitations constituted unsafe or unsound banking practice and a breach of the fiduciary duties Ms. Russ Anderson owed to the Bank.**

Supervisory Letter WFC 2015-36 - Incentive Compensation Program in the Community Bank Failed to Balance Risk and Reward

Through a June 26, 2015 Supervisory Letter, the OCC's Examiner in Charge for Wells Fargo Bank, N.A., Bradley Linskens, reported to the Bank's CEO, that "Wells Fargo's management and oversight of Enterprise Sales Practices is weak and needs to improve."¹⁷⁶⁶

Examiner Candy participated in the OCC's May 2015 ongoing supervisory activity of the Bank's sales practices that resulted in Supervisory Letter (SL) 2015-36.¹⁷⁶⁷ The review was prompted by the City of Los Angeles lawsuit filed against Wells Fargo on May 4, 2015. SL 2015-36 specified that the OCC's review focused on the events in 2013 that led to the initial employee terminations for sales practices, the investigation of employee misconduct that followed, and overall changes in governance intended to improve the Bank's practices.¹⁷⁶⁸ The Operating Committee consisted of the Chief Executive Officer and his direct reports.¹⁷⁶⁹ SL

¹⁷⁶⁴ Enforcement Counsel's Statement of Material Fact (ECSMF) (Russ Anderson) No. 378, MSD Ex.155.

¹⁷⁶⁵ MSD Ex. 155 (materials for the Risk Committee meeting to be held on May 19, 2015) at 19.

¹⁷⁶⁶ OCC Ex. 1239 at 2.

¹⁷⁶⁷ EC MSD Ex. 269 (Report of NBE Candy) at ¶37.

¹⁷⁶⁸ EC MSD Ex. 269 (Report of NBE Candy) at ¶37.

¹⁷⁶⁹ *Id.*

2015-36 concluded that the Bank's management and oversight of Enterprise Sales Practices risk was weak and needed to improve.¹⁷⁷⁰

During that review, Examiner Candy performed work to better understand the Bank's controls related to sales practices.¹⁷⁷¹ She reviewed customer and employee complaints and identified themes from those complaints.¹⁷⁷² Based on her work on the May 2015 review, she concluded that the Community Bank had a problem with sales practices misconduct and identified weakness in the Bank's controls.¹⁷⁷³ However, she did not have clear visibility into the extent, severity, and duration of the sales practices misconduct problem until further supervisory work and Examiner Candy's participation in the investigation.¹⁷⁷⁴

SL 2015-36 notes that "[o]f the 2,856 sales integrity cases [in 2014], 43% involved lack of customer consent for a product."¹⁷⁷⁵ She noted that in her work sampling customer complaints, "in many cases there was no method to prove customer consent in the form of a signature for either the deposit or credit card product."¹⁷⁷⁶

Based on her review of employee complaints made through the Bank's EthicsLine, Examiner Candy identified the following themes: sales pressure; taking advantage of a protected classes (e.g., age/elderly); and the selling of unwanted deposit or credit products.¹⁷⁷⁷ Review of customer complaints revealed similar themes.¹⁷⁷⁸ She found the complaints to be credible, and found that the Community Bank did not have adequate controls to proactively identify these types of misconduct, nor did they complete adequate follow-up or investigation of the allegations.¹⁷⁷⁹

The May 2015 review resulted in the issuance of five MRAs, discussed in more detail below.¹⁷⁸⁰ One of the MRAs identified deficiencies in the Bank's controls over complaints.¹⁷⁸¹ The review determined that the Bank did not have an effective customer complaint process and

¹⁷⁷⁰ *Id.*

¹⁷⁷¹ *Id.* at ¶67.

¹⁷⁷² *Id.*

¹⁷⁷³ *Id.*

¹⁷⁷⁴ *Id.*

¹⁷⁷⁵ *Id.*, citing OCC Supervisory Letter WFC 2015-36 (June 25, 2015) (OCC-WF-SP-07084578).

¹⁷⁷⁶ EC MSD Ex. 269 (Report of NBE Candy) at ¶67, citing OCC Supervisory Letter WFC 2015-36 (June 25, 2015) (OCC-WF-SP-07084578) at 3.

¹⁷⁷⁷ EC MSD Ex. 269 (Report of NBE Candy) at ¶68, citing OCC Supervisory Letter WFC 2015-36 (June 25, 2015) (OCC-WF-SP-07084578), at 3.

¹⁷⁷⁸ EC MSD Ex. 269 (Report of NBE Candy) at ¶68.

¹⁷⁷⁹ *Id.*

¹⁷⁸⁰ *Id.* at ¶69.

¹⁷⁸¹ *Id.*

required management to reassess the customer complaint process “since it is critical to promoting compliance with laws and regulations and reducing reputation risk.”¹⁷⁸² One of the MRAs also identified deficiencies in Audit’s coverage of sales practices, finding that “no significant issues were identified or escalated as a result of [Audit’s] work, and the group has not completed a comprehensive review of sales practices across the enterprise.”¹⁷⁸³

After the OCC issued the five MRAs in June 2015, the OCC continued its review of sales practices risk, ultimately issuing SL 2016-36 on July 18, 2016.¹⁷⁸⁴ Examiner Candy participated in the ongoing review that culminated in the issuance of SL 2016-36.¹⁷⁸⁵ SL 2016-36 documents the following conclusions, with which she agrees:

The practice of opening deposit accounts without authorization, the practice of moving funds without customer consent (simulated funding) and the failure to timely refund or remediate fees charged are considered unsafe or unsound banking practices.¹⁷⁸⁶

The widespread and unauthorized opening of credit card accounts without consent . . . is considered an unsafe or unsound banking practices. The root causes include excessive sales pressure and the absence of a control process that required documentation of explicit customer consent.¹⁷⁸⁷

Aggressive sales pressure, coupled with lack of adequate risk management oversight, fostered inappropriate and possibly fraudulent behavior by employees. This behavior included the opening of unwanted deposit and credit card accounts and the practice of moving funds without customer consent (simulated funding), which resulted in customer harm, hundreds of terminated employees. . . .¹⁷⁸⁸ In addition, the risks from these sales practices were not adequately managed.”¹⁷⁸⁹

Our own review of incentive compensation programs and sales goals confirmed the aggressive sales pressure. For example, Gold, Silver, and

¹⁷⁸² *Id.*, citing OCC Supervisory Letter WFC 2015-36 (June 25, 2015) (OCC-WF-SP-07084578) at 4.

¹⁷⁸³ EC MSD Ex. 269 (Report of NBE Candy) at ¶69, citing OCC Supervisory Letter WFC 2015-36 (June 25, 2015) (OCC-WF-SP-07084578) at 2.

¹⁷⁸⁴ EC MSD Ex. 269 (Report of NBE Candy) at ¶70, citing OCC Supervisory Letter WFC 2016-36 (July 18, 2016) (OCC-WF-SP-07169362).

¹⁷⁸⁵ EC MSD Ex. 269 (Report of NBE Candy) at ¶70.

¹⁷⁸⁶ *Id.*

¹⁷⁸⁷ *Id.*

¹⁷⁸⁸ *Id.*

¹⁷⁸⁹ *Id.*

Bronze programs were in place to encourage employees to meet sales goals, with Gold requiring 13 daily ‘solutions’ or products sold per day.¹⁷⁹⁰

Weaknesses in internal controls and management information systems including a lack of robust first, second and third lines of defense risk management programs.¹⁷⁹¹

SL 2015-36 also concluded that “[t]here also exists only limited monitoring and oversight by the second (Corporate Risk, Human Resources, Compliance, and Legal) and third lines of defense [Audit.]”¹⁷⁹² SL 2015-36 specifically noted, “Cross-selling, if not properly governed, can lead to excessive sales pressure on employees to meet sales goals and achieve financial incentives. Incentive compensation is a key factor in motivating employee behavior and should be reevaluated across all sales activities enterprise-wide given these events.”¹⁷⁹³ SL 2015-36 required the Bank to review compensation programs to protect against incenting inappropriate behavior.¹⁷⁹⁴

The OCC uses Matters Requiring Attention (MRAs) to communicate concern about a bank’s deficient practices to a bank’s board of directors and management.¹⁷⁹⁵ An MRA is a significant supervisory action and must be taken seriously and addressed by bank management.¹⁷⁹⁶

All incentive compensation plans at the Bank, including the Community Bank, were required to comply with the Bank’s Incentive Compensation Risk Management Policy (“ICRM Policy”) dated July 13, 2011,¹⁷⁹⁷ and amended on November 27, 2012.¹⁷⁹⁸ The ICRM Policy was the primary policy that governs the Bank’s incentive compensation arrangements.¹⁷⁹⁹

¹⁷⁹⁰ *Id.*

¹⁷⁹¹ *Id.*

¹⁷⁹² *Id.*

¹⁷⁹³ *Id.*

¹⁷⁹⁴ *Id.*

¹⁷⁹⁵ *Id.* at ¶38.

¹⁷⁹⁶ *Id.* at ¶41.

¹⁷⁹⁷ EC MSD Ex. 269 (Report of NBE Candy) at ¶41, citing Wells Fargo & Co., Incentive Compensation Risk Management Policy (July 13, 2011) (OCC-WF-SP-05434513).

¹⁷⁹⁸ EC MSD Ex. 269 (Report of NBE Candy) at ¶41, citing Fargo & Co., Incentive Compensation Risk Management Policy (July 13, 2011) (OCC-WF-SP-05434513).

¹⁷⁹⁹ EC MSD Ex. 269 (Report of NBE Candy) at ¶42.

The Bank's ICRM Policy "applies to any Wells Fargo business that pays team members under an incentive compensation arrangement. It covers both domestic and international team members in all jurisdictions where Wells Fargo does business."¹⁸⁰⁰

The ICRM Policy states:

The purpose of the Incentive Compensation Risk Management Policy is to help ensure that Wells Fargo's incentive compensation arrangements are aligned with appropriate risk taking – which is to balance short-term performance goals with the long-term strength and stability of the company.¹⁸⁰¹

The amended ICRM Policy issued on November 28, 2012 states:

Incentive-based compensation arrangements should balance risk and financial rewards in a manner that does not provide our team members with an incentive to take inappropriate risks that could lead to material financial, operational, or reputational risk for the company.¹⁸⁰²

Generally accepted standards of prudent operation and the Bank's own ICRM Policy required incentive compensation arrangements to balance risk and reward in a manner that does not encourage team members to expose Wells Fargo to imprudent risks.¹⁸⁰³

The Wells Fargo Risk Management Framework also emphasized the importance of a sound incentive compensation program.¹⁸⁰⁴ It states:

Wells Fargo's incentive-based compensation practices balance risk and financial reward in a manner that incentivizes team members to take appropriate risks they understand and avoid taking risks they do not understand or that exceed risk appetite. To this end, the Incentive Compensation Risk Management (ICRM) program was developed to manage risk in incentive-based compensation arrangements throughout Wells Fargo. The ICRM principles and requirements are fundamental and strictly adhered to, guiding both general and tailored compensation practices. The balance of risk and reward is, and always will be, a top priority.¹⁸⁰⁵

The Human Resources Committee of the Board received a presentation on the ICRM Policy in February 2012. The presentation stated, "[t]he ICRM Program has been broadened to

¹⁸⁰⁰ *Id.* at ¶43.

¹⁸⁰¹ *Id.*

¹⁸⁰² *Id.*

¹⁸⁰³ *Id.* at ¶44.

¹⁸⁰⁴ *Id.* at ¶45.

¹⁸⁰⁵ EC MSD Ex. 269 (Report of NBE Candy) at ¶45, citing Wells Fargo Bank, N.A., Wells Fargo Risk Management Framework, at 10-11 (July 2014) (OCC-WF-SP-04791987).

be the single risk management program for all incentive compensation related matters across the enterprise.”¹⁸⁰⁶

After determining Community Bank’s incentive compensation practice did not conform to the Bank’s own ICRM Policy and Fraud Risk Management Framework, Examiner Candy conducted additional review of sales goals.¹⁸⁰⁷ During this review, she discovered that from 2002 through 2016, the sales goals in the Community Bank were unreasonable.¹⁸⁰⁸ They were unreasonable in part because they could not be met by reasonable and diligent efforts and incentivized employees to engage in sales practices misconduct—improper, unethical, and illegal activity—to meet them.¹⁸⁰⁹

The Community Bank’s sales model was predicated on double-digit annual sales growth over the prior year’s sales performance, a concept known as “run rate.”¹⁸¹⁰ The current year’s sales plan served as the baseline for each successive year’s sales goals, and sales goals were increased each year.¹⁸¹¹ So, for example: the Community Bank’s 2012 sales plan derived from the 2011 sales performance, and required team members to sell a greater number of products and services than they had sold in 2011; by extension, the Bank’s 2013 sales plan was derived from the Bank’s 2012 sales performance, which required team members to sell a greater number of products and services than they had sold in 2012.¹⁸¹²

However, sales practices misconduct artificially inflated the run rate, making sales goals increasingly unattainable every year.¹⁸¹³ The Community Bank’s sales run rate was tainted by sales practices misconduct; each year’s sales performance numbers reflected products and services that were opened for and issued to customers without their knowledge and consent or obtained through false statements and misrepresentations. This made it even harder to achieve the sales goals through legal and ethical means in every subsequent year.¹⁸¹⁴

The Independent Directors of the Board of Wells Fargo & Company, the Bank’s holding company, conducted an investigation to understand the root cause of improper sales practices in

¹⁸⁰⁶ EC MSD Ex. 269 (Report of NBE Candy) at ¶46, citing Wells Fargo Bank, N.A., *Incentive Compensation Risk Management Program 2011 Program Update*, Human Resources Committee, at 2 (Feb. 28, 2012) (OCC-WF-SP-07644598).

¹⁸⁰⁷ EC MSD Ex. 269 (Report of NBE Candy) at ¶48.

¹⁸⁰⁸ *Id.*

¹⁸⁰⁹ *Id.*

¹⁸¹⁰ *Id.*

¹⁸¹¹ *Id.*

¹⁸¹² *Id.*

¹⁸¹³ *Id.*

¹⁸¹⁴ *Id.*

the Community Bank (“Board Report”).¹⁸¹⁵ The Board Report explained the run rate as such: “[t]he problem built on itself: attaining growth when the prior year’s sales included a large number of low quality accounts meant that even more low quality accounts had to be opened to hit the increased target.”¹⁸¹⁶

The Board Report found that the Community Bank’s sales goals were “untenable,” “unrealistic,” and “unattainable.”¹⁸¹⁷ The Board Report found that, even after the Community Bank made mid-year downward adjustments to sales goals in 2013 and 2014, “they were still set at an unachievable level.”¹⁸¹⁸ These findings are consistent with Examiner Candy’s own conclusions based on her supervisory work and evidence she reviewed during the investigation and litigation.¹⁸¹⁹

In October 2015, Accenture, a firm hired by the Bank in response to MRAs issued by the OCC in June 2015, issued a report.¹⁸²⁰ The report stated, “despite recent reductions in store sales goals,” employees “continue to feel pressure to meet sales targets that many team members perceive to be unreasonable, and this may occur at the potential expense of sales quality.”

Accenture also observed based on its review that even in 2015, “sales goals have not been met since 2013 (even after accounting for adjustment made throughout the year to improve achievement rates).”¹⁸²¹ However, even though sales goals were lowered in 2013, sales practices misconduct in the Community Bank continued to be significant (as discussed in this report), employees still could not meet sales goals, further highlighting that they were unreasonable.¹⁸²²

Ms. Russ Anderson testified that she read the Supervisory Letter, and acknowledged that she served as the primary point of contact with the OCC for its examinations of Community Banking’s first line of defense.¹⁸²³ She testified that she understood throughout the relevant period that transparency with the OCC was of utmost importance, that the lack of transparency would increase compliance risk, reputational risk, and operational risk to the Bank.¹⁸²⁴

¹⁸¹⁵ *Id.*, citing Independent Directors of the Board of Wells Fargo & Company, Sales Practices Investigation Report (Apr. 10, 2017), available at <https://www08.wellsfargomedia.com/assets/pdf/about/investor-relations/presentations/2017/board-report.pdf> [hereinafter Board Report].

¹⁸¹⁶ EC MSD Ex. 269 (Report of NBE Candy) at ¶48, citing *Board Report* at 41.

¹⁸¹⁷ *Id.* at ¶49, citing *Board Report* at 5, 19, 39.

¹⁸¹⁸ *Id.*, citing *Board Report* at 45.

¹⁸¹⁹ EC MSD Ex. 269 (Report of NBE Candy) at ¶49.

¹⁸²⁰ *Id.* at ¶50.

¹⁸²¹ *Id.*, citing Accenture, *Wells Fargo Sales Practices Assessment – Community Banking Sales Practices Report: Observations and Recommendations* (Oct. 2015) (OCC-SP1140359).

¹⁸²² EC MSD Ex. 269 (Report of NBE Candy) at ¶50.

¹⁸²³ Tr. (Russ Anderson) at 10028-30; OCC Ex. 1239.

¹⁸²⁴ Tr. (Russ Anderson) at 10030-31.

Among the conclusions relating to the first line of defense, the Letter stated:

There has been and continues to remain an overall lack of transparency at the first line of defense regarding past investigations and ongoing controls and monitoring processes. There also exists only limited monitoring and oversight by the second (Corporate Risk, Human Resources, Compliance, and Legal) and the third line of defense.¹⁸²⁵

Broadly stated, the conclusions included the following:

The bank's Vision and Values' strategy emphasizes "cross-selling" – the process of offering customers the products and services they need to help them succeed financially. Cross-selling, if not properly governed can lead to excessive sales pressures on employees to meet sales goals and achieve financial incentives. Incentive compensation is a key factor in motivating employee behavior, and should be reevaluated across all sales activities enterprise-wide given these events. In addition, the communication of cross-sell is very apparent in annual reports, quarterly earnings calls, and investor presentations. Communication of this strategy needs to have the proper balance.¹⁸²⁶

Specific to the second line of defense, the Letter stated:

Management needs to accelerate the build-out of an enterprise-wide SLOD for Enterprise Sales Practices. The risk governance framework outlining this cross-functional risk area needs to address governance, staffing, roles and responsibilities, reporting, and testing and validation. The framework should also define escalation protocols and address the timing and reporting of sales practices information to the Board, Board level committees (i.e., the A&E Committee, Risk Committee), and executive management. Risk appetite metrics need to be established at the enterprise and group levels and, at a minimum, include indicators to highlight inappropriate sales practices, customer surveys, employee and customer complaints, Corporate Investigations metrics, SAR filing, and employee turnover at more granular levels.

As part of this process, management needs to reassess the Ethics Line and customer complaint investigative processes by establishing full independence from the first line and ensuring referrals and complaints are reviewed timely.¹⁸²⁷

¹⁸²⁵ OCC Ex. 1239 at 2.

¹⁸²⁶ *Id.*

¹⁸²⁷ OCC Ex. 1239 at 3.

Specific to the first line of defense, the Letter built on what was presented regarding the second line of defense:

Consistent with the SLOD, the FLOD needs to establish a governance framework that clearly defines roles and responsibilities, committee governance, escalation protocols, risk appetite metrics and testing and validation functions. This framework needs to include the establishment of an effective oversight, testing/quality assurance function of branch (store) sales practices.¹⁸²⁸

It bears noting that despite the admonition from the OCC through this Letter that Ms. Russ Anderson and the first line of defense needed to establish a governance framework consistent with the Bank's second line of defense, the record reflects significant antipathy by Ms. Russ Anderson in the first line of defense against the principal actors in the Bank's second line of defense, continuing into the following year.

Ms. Russ Anderson identified a March 10, 2016 email exchange between herself and Ron DiGiacomo – Executive Vice President and Deputy Chief Compliance Risk Management (RCRM) for WF&C – a functional part of the second line of defense.¹⁸²⁹ Through the first message in the chain, Mr. DiGiacomo provided Ms. Russ Anderson a PowerPoint presentation regarding “Potential Sales Practices Complaints Analysis”.¹⁸³⁰

Shortly after receiving the presentation, Ms. Russ Anderson wrote to Mr. DiGiacomo, stating, “I have to be honest that had we known this was going to the OCC without my and Carrie's final approval we would not have agreed to some of the content. Somewhere this process broke down and I would like for you and I to debrief when I get back from [paid time off].”¹⁸³¹

Mr. DiGiacomo wrote back shortly thereafter, “This was well understood by all working on the deck. It is a RCRM deliverable under the response to MRA #3 to the SL on Sales Practices.”¹⁸³²

Indeed, the third MRA included the following predicate in support of the RCRM deliverable:

Extended timelines to implement Regulatory Compliance Risk Management's (RCRM) revised Enterprise Complaints Management Policy (Policy), published in May 2014, is not scheduled to take until year-end 2016.

¹⁸²⁸ *Id.* at 4.

¹⁸²⁹ Tr. (Russ Anderson) at 10031; OCC Ex. 146.

¹⁸³⁰ OCC Ex. 146 at 4.

¹⁸³¹ *Id.*

¹⁸³² *Id.* at 3.

This implementation plan appears excessive given the importance to the bank of an enterprise program.¹⁸³³

Notwithstanding this, Ms. Russ Anderson wrote to Mr. DiGiacomo, “neither Paula nor I had that understanding.”¹⁸³⁴ Having been copied on this message from Ms. Russ Anderson to Mr. DiGiacomo, Ms. Herzberg confirmed what Mr. DiGiacomo had written,

It is true I was told it was an OCC deliverable . . . the work that is, not the deck. In retrospect, I should have asked more explicitly about what would be shared. I feel like they already had every bit of this information in the deck from various meetings and updates they have been invited to. So, the reality is that would have done it with or without our help . . . and were willing to.¹⁸³⁵

Ms. Russ Anderson promptly responded to Ms. Herzberg: “I am just worried that it isn’t going to be represented by ANYONE who knows anything. What a bs situation . . . I feel like it is all about them and not about the firm.”¹⁸³⁶

To this, Ms. Herzberg responded,

Well, Joe’s plan today is to defer any conversation about the actions to the meeting next week that he has scheduled with them . . . and he is adding me to that meeting. This kind of thing makes me really worried about what we share with the SLOD . . . it’s not Joe I’m worried about.¹⁸³⁷

Ms. Russ Anderson agreed, writing:

Same here. If they gave us full disclosure as to their intent I would not care about what I gave them. It is because they take stuff and don’t fully disclose what they are going to do with it that makes me crazy. If the OCC goes crazy it is us that the crap will hit. You did the right thing – they did not give you full disclosure. If they had you would have said ‘wait – this is old or let me check with Jason.’ Something!¹⁸³⁸

Although nothing in this email exchange supports the premise, Ms. Russ Anderson testified that she was concerned “the information that went to the OCC was incorrect.”¹⁸³⁹ Offering no evidence in support of the premise that incorrect information went to the OCC, Ms.

¹⁸³³ OCC Ex. 1239 at 7.

¹⁸³⁴ OCC Ex. 146 at 3.

¹⁸³⁵ *Id.*

¹⁸³⁶ *Id.* at 2.

¹⁸³⁷ *Id.*

¹⁸³⁸ *Id.* at 2.

¹⁸³⁹ Tr. (Russ Anderson) at 10033.

Russ Anderson testified that the document that Mr. DiGiacomo had taken to the OCC “did not have correct information about items within the Community Bank. They did not give us an opportunity to correct those items before they went to the OCC.”¹⁸⁴⁰

Ms. Russ Anderson denied that she was concerned she might face criticism from the OCC, averring, “what I worried about was that if someone represented on my behalf and it was incorrect, then it was my reputation and my word that was going to be a subject to criticism.”¹⁸⁴¹

Preponderant evidence establishes this representation is unreliable and therefore is rejected. When presented with the Regulatory Compliance Risk Management (RCRM) report on Potential Sales Practices Complaints Analysis of Products Sold in Branches – the report referred to in Ms. Russ Anderson’s email exchange with Ms. Herzberg, Ms. Russ Anderson was unable to identify any inaccuracies, testifying, “I don’t remember the content anymore.”¹⁸⁴² In the absence of substantial evidence in support of Ms. Russ Anderson’s assertion that avoiding regulatory criticism was not a motivation, the assertion is given no weight.

It also bears noting that the RCRM report in question included a graphic presentation based on data from January 1, 2014 to September 30, 2015 indicating widespread, nationwide volume of sales practices complaints – an image that in and of itself indicates system-wide complaints of sales practices misconduct.¹⁸⁴³ Of particular note were observations that “[i]n more than 75% of the reviewed potential sales practices complaints for savings accounts, customers stated that accounts were opened without customer authorization” and “[m]ore than 50% of the reviewed Banker notes indicate that in-question savings accounts were opened simultaneously with Checking accounts.”¹⁸⁴⁴ Any claim from this point forward denying that sales practices misconduct was systemic and widespread is unfounded and is rejected as not supported by preponderant reliable evidence.

Other relevant observations from the RCRM report that indicate systemic problems related to sales practices misconduct include the operational issue that the “[s]ystem of record notes were not sufficient to affirm consistent escalation of potential sales practice issues” and “potential gaps in cross-organizational alignment and sharing of sales practice related data.”¹⁸⁴⁵ From this record, I find unreliable Ms. Russ Anderson’s testimony that the contents of the RCRM report did not indicate the widespread or systemic nature of sales practices misconduct between January 2014 and September 2015.¹⁸⁴⁶

¹⁸⁴⁰ *Id.* at 10037.

¹⁸⁴¹ *Id.*

¹⁸⁴² *Id.* at 10040.

¹⁸⁴³ OCC Ex. 1896 at 39.

¹⁸⁴⁴ *Id.* at 27.

¹⁸⁴⁵ OCC Ex. 1896 at 17.

¹⁸⁴⁶ Tr. (Russ Anderson) at 10042.

June 26, 2015: Five MRAs

The Supervisory Letter contained five Matters Requiring Attention (MRAs), requiring the attention of all three lines of defense.¹⁸⁴⁷

In the MRA titled “**Enterprise Sales Practices – Corporate**” the OCC stated the following concern:

Wells Fargo’s strong emphasis on “cross-sell”, combined with inadequate controls and oversight, promoted inappropriate employee behavior that is still being quantified and may yet be occurring. Internal assessments lacked reasonable independence and did not consider customer harm.¹⁸⁴⁸

The OCC identified the following cause related to this concern: “Corporate emphasis on product sales and ‘cross-selling’ without an appropriate control or oversight structure.”¹⁸⁴⁹

Through his August 10, 2015 response to Mr. Linskens, Mr. Loughlin did not dispute the cause statement and committed to the OCC that the scope of WFAS’s work would include:

monitoring and validation, reviewing governance processes and enhanced policy, monitoring of projects/initiatives to enhance Enterprise Sales Practices compliance, and obtaining an understanding of key activities and functions performed to ensure compliance with enterprise sales practices along with their sustainability. WFAS anticipates quarterly status reports will be prepared, beginning the fourth quarter of 2015 and continue to our first ERMA.¹⁸⁵⁰

In the MRA titled “**Enterprise Sales Practices – Second Line of Defense**” the OCC stated the following concern:

Wells Fargo does not have an Enterprise Sales Practices oversight program. The bank’s approach is heavily reliant on decentralized first line of defense identification and escalation of potential issues.¹⁸⁵¹

The OCC identified the following cause related to this concern: “Although identified as an area needing attention, management focused on higher priorities based on available resources (i.e., the build-out of operational and liquidity risk frameworks).”¹⁸⁵²

Through Wells Fargo’s August 10, 2015 response to MRA#2, Mr. Loughlin committed to implementing a “process for enhancing evaluation of sales practices risk as related to incentive

¹⁸⁴⁷ Tr. (Julian) at 6744; OCC Ex. 1239 at 3-9.

¹⁸⁴⁸ OCC Ex. 1239 at 6.

¹⁸⁴⁹ *Id.*

¹⁸⁵⁰ OCC Ex. 705 at 11.

¹⁸⁵¹ OCC Ex. 1239 at 6.

¹⁸⁵² *Id.*

compensation design and administration and related performance management practices.”¹⁸⁵³ He told the OCC that the “ICC will provide oversight around the design and administration of the sales incentive plans and will report to the HRC regarding risk management practices in this area.”¹⁸⁵⁴

Under MRA#2, the OCC required WF&C to “[r]eassess both the EthicsLine and customer complaints investigative process, establish full independence from the first line, and ensure referrals and complaints are reviewed in a timely manner.”¹⁸⁵⁵

In a June 5, 2015 email exchange circulated among Mr. Loughlin, Mr. Byers, Ms. Hollingsworth (RCRM), Mr. Richards (BSA) and Ms. Klos two weeks before the Bank formally received the five MRAs, Mr. Byers summarized what the OCC examiners had discussed with him relevant to the upcoming MRAs.¹⁸⁵⁶ Mr. Byers reported that before going through each MRA, he and the OCC examiners “spent time discussing their review of 260 Ethics Line allegations.”¹⁸⁵⁷ He reported the examiners understood these were allegations, but from their reading of the 260 reports the examiners “found many (45) of these to be ‘truthful’, ‘egregious’, and ‘frightening’.”¹⁸⁵⁸ The OCC then recommended Mr. Byers, Ms. Tolstedt, and Mr. Loughlin “read all these allegations – specifically the ‘raw data’ and not a summary from the first line Community Bank Group Risk.”¹⁸⁵⁹

Ms. Russ Anderson acknowledged that reading these allegations was a function of her team – but opined without elaboration that it was not important to read raw data from the Ethics Line.¹⁸⁶⁰ **Acting in furtherance of this opinion under the conditions that were present during the relevant period constituted unsafe or unsound banking practice and a breach of the fiduciary duties Ms. Russ Anderson owed to the Bank.**

It should be noted that – perhaps because of Ms. Russ Anderson’s opinion that neither she nor her team needed to read raw data from the Ethics Line – Mr. Richards reported through the June 5, 2015 email exchange that the OCC examiners “want risk appetite metrics at both the enterprise and group level.”¹⁸⁶¹ Mr. Richards wrote there was “[n]othing surprising” about this corrective item, but continued: “however *they want the analysis of ethics line allegations and complaints moved to the 2nd line*. Similar to above, they want Corporate Risk to review all 260

¹⁸⁵³ OCC Ex. 705 at 7.

¹⁸⁵⁴ *Id.*

¹⁸⁵⁵ Tr. (Julian) at 6822; OCC Ex. 705 at 6.

¹⁸⁵⁶ Tr. (Russ Anderson) at 10106; OCC Ex. 71.

¹⁸⁵⁷ OCC Ex. 71 at 3.

¹⁸⁵⁸ *Id.*

¹⁸⁵⁹ *Id.*

¹⁸⁶⁰ Tr. (Russ Anderson) at 10106.

¹⁸⁶¹ OCC Ex. 71 at 2.

allegations and complete an assessment and report back to the OCC and the Risk Committee.”¹⁸⁶²

No one participating in this email exchange raised concerns (or expressed surprise) about the OCC’s directive to relieve Ms. Russ Anderson of her responsibility for Ethics Line analyses – although Mr. Richards noted that “Community Banking often challenges our characterization of Sales Integrity.”¹⁸⁶³

Along the same lines, the record reflects intransigence on Ms. Russ Anderson’s part when leaders of the second line of defense sought information relating to case dispositions relating to the Community Bank. In the two weeks leading up to the OCC’s issuance of the five MRAs, OCC Examiner Crosthwaite sought information about “repeat offenders” and a “timeline, from beginning to end if possible including Corporate Investigations work, on how long it takes to research, investigate, and fully disposition a complaint or ethics line allegation.”¹⁸⁶⁴

When Mr. Byers (for the second line of defense) sought information about these items, Ms. Russ Anderson responded without answering his questions, and when Mr. Byers asked “Do we not just have the numbers readily available?” Ms. Russ Anderson responded, “I don’t know Keb. We have a really small team so I can’t commit until I connect with Rebecca. Sorry.”¹⁸⁶⁵

There is no substantial evidence in the record supporting any claim by Ms. Russ Anderson that she could not produce the requested information due to having a “really small team”. Upon the record as a whole, I find Ms. Russ Anderson’s response to Mr. Byers disingenuous and entitled to no evidentiary weight.

When Mr. Richards followed up with an email to Ms. Rawson asking for a breakdown of cases closed as “non-issue” by Research without polling, and other data, rather than providing the requested data Ms. Russ Anderson responded to his request by writing: “We do. Why?”¹⁸⁶⁶ Mr. Richards responded, “So I understand the process, and know what comes to us, and how long it takes to get to us.”¹⁸⁶⁷

Shortly thereafter Ms. Rawson wrote directly and only to Ms. Russ Anderson asking, “would you like me to convey the requested information to Jim or should I hold off? I can have Paula pull and have it ready tomorrow morning in the event it is needed.”¹⁸⁶⁸

¹⁸⁶² *Id.* (emphasis *sic*).

¹⁸⁶³ *Id.* 1.

¹⁸⁶⁴ Tr. (Russ Anderson) at 10113; R. Ex. 9489 at 8.

¹⁸⁶⁵ R. Ex. 9489 at 7.

¹⁸⁶⁶ R. Ex. 9489 at 4.

¹⁸⁶⁷ *Id.* at 3.

¹⁸⁶⁸ *Id.*

Ms. Russ Anderson responded – not to have Ms. Rawson provide the requested information, but directed her to “reach out and ask him if he would like a tutorial on how the team works and the protocols between the two groups. Otherwise it’s just data.”¹⁸⁶⁹ Ms. Russ Anderson apparently withheld the requested data, as she wrote directly and only to Ms. Rawson, “He’s slightly irritated at me but I really don’t want to just throw out data without context.”¹⁸⁷⁰

In his August 10, 2015 response to MRA#2, Mr. Loughlin reported to the OCC that while “Corporate HR is the owner of incentive compensation policies and is responsible for the oversight of incentive compensation risk management efforts,” Corporate HR “partners with Enterprise Risk” to ensure “incentive compensation risks (including reputational issues and potential customer harm related to sales practices and employee conduct” are adequately understood and appropriately addressed.”¹⁸⁷¹

Mr. Julian testified that in response to MRA #2, WF&C’s Corporate Risk Group published a Sales Practices Risk Governance Document dated November 2015.¹⁸⁷² Through this Governance Document, WF&S defined “credible challenge” as the “communication of an alternate view, opinion, or strategy developed through expertise and professional judgment to challenge business or enterprise strategies, policies, products, practices and controls.”¹⁸⁷³

According to the Governance Document, “Group Risk Officers (GROs), who lead the Group Risk organizations embedded in the Company’s sales practices risk-generating Groups, exercise credible challenge through various means, including by raising concerns to Group management and escalating issues to CERG [Corporate Enterprise Risk Group] in a timely manner, and in particular its SPO [Sales Practices Oversight] unit in addition to certain components of the Chief Administrative Office, the Law Department, and certain Corporate Risk functions.”¹⁸⁷⁴

Further, the Governance Document required “all team members to escalate sales practices risk issues that necessitate specific reporting or decision making (particularly as it relates to remedial actions) to a higher level of the management or committee structure for consideration.”¹⁸⁷⁵

The Governance Document identified specific sales practices risk escalation events and the escalation model – so, for example, sales practices that are compensation-related are to be escalated through the escalation path outlined in the ICRM policy; and from there to the Sales

¹⁸⁶⁹ *Id.* at 2.

¹⁸⁷⁰ *Id.* at 1.

¹⁸⁷¹ OCC Ex. 705 at 7.

¹⁸⁷² Tr. (Julian) at 6816; R. Ex. 11373.

¹⁸⁷³ R. Ex. 11373 at 9.

¹⁸⁷⁴ R. Ex. 11373 at 9.

¹⁸⁷⁵ *Id.* at 21.

Practices Oversight unit established through the Governance Document; and from there to the Head of Enterprise Risk; and from there to the ERMC, and then to the Risk Committee.¹⁸⁷⁶

Without elaboration, Mr. Julian testified that while the Governance Document was designed “as a forward-looking document talking about what actions and activities and responsibilities, many of the practices that were – had been in place prior to this document were embedded or embodied into this, so it wasn’t all new.”¹⁸⁷⁷ Through leading questioning by his Counsel during direct examination, Mr. Julian testified that the Governance Document references the fact that Corporate Risk was establishing a new approach with regard to sales practices risk at this time.¹⁸⁷⁸

According to the Governance Document, customer complaints and Unfair, Deceptive, or Abusive Acts or Practices (UDAAP) issues were to be escalated through the path outlined in the RCRM Policy, internal fraud through the path outlined in the Financial Crimes Risk Functional Framework, ethical issues through the Reputation Risk Framework – and all proceed from there to the Sales Practices Oversight Unit, using the same path as that used for incentive compensation issues.¹⁸⁷⁹

Also in the MRA titled “**Enterprise Sales Practices – Second Line of Defense**” the OCC stated the following concern regarding “**Complaints**”:

Extended timelines to implement Regulatory Compliance Risk Management’s (RCRM) revised Enterprise Complaints Management Policy (Policy), published in May 2014, is not scheduled to take until year-end 2016. This implementation plan appears excessive given the importance to the bank of an enterprise program.¹⁸⁸⁰

The OCC identified the following cause related to this concern: “A decentralized complaints process, multiple complaints systems, and a need to capture verbal complaints systematically will require an extended period of time.”¹⁸⁸¹

Mr. Julian testified that the second line of defense “developed a program to – again – to more centralize the intake process for customer complaints as well as enhance the reporting of

¹⁸⁷⁶ *Id.* at 22, Figures 3 and 4.

¹⁸⁷⁷ Tr. (Julian) at 6820-21.

¹⁸⁷⁸ Tr. (Julian) at 6912.

¹⁸⁷⁹ R. Ex. 11373 at 22, Figure 4.

¹⁸⁸⁰ OCC Ex. 1239 at 7.

¹⁸⁸¹ *Id.*

customer complaints.”¹⁸⁸² He said they “also evaluated the adequacy of the controls and built in controls that were necessary in the building out of that process and program.”¹⁸⁸³

In the MRA titled “**Community Bank Group – Sales Practices**” the OCC rescinded (effective June 26, 2015) the *Community Bank Risk Management – Sales Practices MRA* issued in Supervisory Letter 2015-07 on April 3, 2015, replacing that Letter with this MRA. The present MRA stated the following concern:

The Community Bank (CB) Group lacks a formalized governance process to oversee Sales Practices and does not have an effective oversight and testing of branch (store) sales practices.¹⁸⁸⁴

The OCC identified the following cause related to this concern: “Current governance processes are managed separately within the CB group and none address actual ‘in branch’ (store) monitoring of employee sales practices.”¹⁸⁸⁵

When asked on direct examination whom he understood this MRA to be directed at, Mr. Julian responded:

To the Community Bank risk management group. It was very common for MRAs to be directed to specific businesses or specific lines of defense and not imply that Wells Fargo Audit Services was responsible for addressing the MRA or necessarily criticism of Wells Fargo services with respect to that MRA.¹⁸⁸⁶

According to Mr. Julian, “the risk management function within the Community Bank was tasked with enhancing its oversight and quality assurance and testing programs with respect to sales practices within the branch stores.”¹⁸⁸⁷ Mr. Julian acknowledged that this MRA required the Community Bank to establish “effective oversight and a testing/quality assurance function of branch (store) activities.”¹⁸⁸⁸ Asked through leading questions on direct examination if he knew whether the first line of defense took meaningful steps to perform its commitment under this

¹⁸⁸² Tr. (Julian) at 6824.

¹⁸⁸³ *Id.* at 6825.

¹⁸⁸⁴ OCC Ex. 1239 at 8.

¹⁸⁸⁵ *Id.*

¹⁸⁸⁶ Tr. (Julian) at 6747; 6825; see also, “22-03-07 Respondents’ Amended Revised Errata Day 9-38” on page 53. Ordered by Second Supplemental Order.

¹⁸⁸⁷ Tr. (Julian) at 6825-26.

¹⁸⁸⁸ *Id.* at 6826; OCC Ex. 705 at 10.

MRA provision, Mr. Julian responded, without providing any details, “they enhanced their program and their governance policies and quality assurance functions.”¹⁸⁸⁹

Similarly, Mr. Julian acknowledged the MRA required the Community Bank to describe “the referral process and assign responsibility for compliance with CB’s sales integrity policy,” and testified – again without providing details – that they “applied a significant amount of resources to address this issue and built out the program.”¹⁸⁹⁰

In MRA #5, titled “**Audit**,” the OCC stated the following concern:

Wells Fargo Audit Services (WFAS) did not identify the issues noted in this Supervisory Letter and past coverage did not provide an enterprise view of sales practices.¹⁸⁹¹

The OCC identified the following cause related to this concern: “WFAS coverage included various aspects of sales practices in individual audits, but did not aggregate these aspects into an enterprise view.”¹⁸⁹² It required WFAS to “[r]eassess their coverage of sales practices and provide an enterprise view (i.e., Enterprise Risk Management Assessment (ERMA) of Enterprise Sales Practices.”¹⁸⁹³

In the Supervisory Letter, EIC Linskens stated:

There has been and continues to remain an overall lack of transparency at the first line of defense regarding past investigations and ongoing control and monitoring processes. There also exists only limited monitoring and oversight by the second (Corporate Risk, Human Resources, Compliance, and Legal) and third lines of defense. . . . [WFAS] related coverage included 12 audits addressing elements of sales practices between 2013 and 2015. However, no significant issues were identified or escalated as a result of that work, and the group has not completed a comprehensive review of sales practices across the enterprise.¹⁸⁹⁴

Through MRA #5, WFAS was charged with reassessing their coverage of sales practices “and provide an enterprise view (i.e., Enterprise Risk Management Assessment (ERMA) of Enterprise Sales Practices.”¹⁸⁹⁵ According to Mr. Loughlin’s response to the MRA #5, “WFAS

¹⁸⁸⁹ Tr. (Julian) at 6826.

¹⁸⁹⁰ *Id.* at 6826-27.

¹⁸⁹¹ OCC Ex. 1239 at 8.

¹⁸⁹² *Id.* at 9.

¹⁸⁹³ *Id.*

¹⁸⁹⁴ OCC Ex. 1239 at 2.

¹⁸⁹⁵ Tr. (Julian) at 6830; OCC Ex. 705 at 11.

will be engaged with the various LOBs as they develop and implement corrective actions to the Enterprise Sales Practices MRAs.”¹⁸⁹⁶

Mr. Julian testified that WFAS responded to this task in the following way:

So WFAS was engaged in dialogue with the various first and second line of defense folks who were tasked with implementing the responses to the MRA No. 1 through 4 to fully understand what those groups were doing and to building out the risk management framework, to building out the governance, to changing controls and processes, to understand all of that so that then Wells Fargo Audit Services could then reassess Wells Fargo Audit Service’s coverage in light of all of those changes that were going on. At the same time, there were two third parties that were engaged, Accenture and PwC. So Wells Fargo Audit Services was engaged to understand the work that those two groups were doing, to the extent that that work should influence that Wells Fargo Audit Services was doing. And assessing through all of that its enterprise risk management view of sales practices.¹⁸⁹⁷

Mr. Julian noted that the Supervisory Letter included a report that Corporate Risk “identified in early 2014 the need to establish a second line of defense framework for Sales Practices.”¹⁸⁹⁸ Asked what that was referring to, Mr. Julian testified:

So prior to the L.A. Times article back in 2013 and the escalation of sales practices risk -- corporate risk didn't have a risk framework, if you will, for evaluating and providing governance over sales practices. And as the sales practices matter became communicated and was being worked on, corporate investigations determined that they should develop a framework specific to sales practices risk.¹⁸⁹⁹

According to Mr. Julian in response to leading questioning by his Counsel during direct examination, this meant the second line of defense – Corporate Risk – “owned” the responsibility for building out the risk framework.¹⁹⁰⁰

Asked during direct examination to describe what he observed in terms of the Bank management’s efforts to implement the corrective actions described in the June 2015 Supervisory Letter, Mr. Julian responded in generalities: “Corrective actions were identified.

¹⁸⁹⁶ OCC Ex. 705 at 11.

¹⁸⁹⁷ Tr. (Julian) at 6831; see also, “22-03-07 Respondents’ Amended Revised Errata Day 9-38” on page 53. Ordered by Second Supplemental Order.

¹⁸⁹⁸ Tr. (Julian) at 6741; OCC Ex. 1239 at 2.

¹⁸⁹⁹ Tr. (Julian) at 6741. See also, “22-03-07 Respondents’ Amended Revised Errata Day 9-38” on page 52. Ordered by Second Supplemental Order.

¹⁹⁰⁰ Tr. (Julian) at 6741.

Various plans were developed to address the issues. Again, a significant amount of resources. Really no money spared, no resources spared to address the issues.”¹⁹⁰¹

Mr. Loughlin, Chief Risk Officer for WF&C, provided a more detailed description of the Bank’s responses to the Supervisory Letter in a letter to EIC Linskens dated August 10, 2015.¹⁹⁰² Nowhere in his response did Mr. Loughlin dispute the factual claims presented through the Supervisory Letter, nor did he disagree with the cause statements or that the actions required by the OCC were warranted.¹⁹⁰³

Mr. Loughlin identified specific actions relating to the functions of WF&A’s Incentive Compensation Risk Management (ICRM) Program, which was managed by Corporate Human Resources and was “overseen by the Company’s Incentive Compensation Committee”, which committee included Mr. Julian.¹⁹⁰⁴ Mr. Loughlin reported that key ICRM Program enhancements would include developing and implementing “methodology to incorporate sales practices risk metrics/outcomes as input into incentive compensation decisions for the Sales Practices Group”, and expanding the ICRM governance framework “to include broader review of sales roles and evaluations of sales practices, including leveraging the oversight roles of the ICC [the Company’s Incentive Compensation Committee] and HRC [the Human Resources Committee].”¹⁹⁰⁵

In addition, WF&C engaged Accenture to complete an independent review of Enterprise Sales Practices, “with particular focus on Community Bank, Home Lending, and certain activities of Wells Fargo Advisors.”¹⁹⁰⁶ Among the scope of Accenture’s work in this engagement was a review of “Controls and Monitoring, including Ethics Line”.¹⁹⁰⁷

WF&C entered into a separate independent review with PricewaterhouseCoopers (PwC) “to complete an independent review that will assess quantification of potential customer harm related to the specific allegations in the Los Angeles litigation as well as a review to assess any broader enterprise concerns.”¹⁹⁰⁸

Mr. Loughlin reported that Corporate HR “in partnership with key stakeholders” would develop protocols to identify “whether any inappropriate behavior involving the sale of bank products by a bank employee and resulting in the termination of employment has the potential

¹⁹⁰¹ *Id.* at 6786-87.

¹⁹⁰² *Id.* at 6805-06; OCC Ex. 705.

¹⁹⁰³ OCC Ex. 705 at 1-12.

¹⁹⁰⁴ *Id.* at 2.

¹⁹⁰⁵ *Id.* at 3.

¹⁹⁰⁶ *Id.* at 3.

¹⁹⁰⁷ *Id.* at 4. See also OCC Ex. 195 (email summarizing Carol Dubie’s call with Ms. Russ Anderson and Jason MacDuff, expressing her “big worry” that “the CFPB is very interested, along with the OCC and the Fed, who she says are ready to send the report off to DC and ‘tear it apart’”). *Id.* at 3.

¹⁹⁰⁸ OCC Ex. 705 at 4.

for customer harm.”¹⁹⁰⁹ He reported that the lines of business, along with “its Law Department and Regulatory Compliance Risk Management (RCRM) partners, will determine the existence of, and appropriate remediation for any customer harm.”¹⁹¹⁰ He specifically indicated that responsive action will include “partnering with Corporate Risk, [WFAS], and other key stakeholders to develop appropriate reporting” of handling the review of team member misconduct resulting in termination”.¹⁹¹¹

Asked through leading questioning by his Counsel during direct examination whether Corporate HR was taking meaningful action in response to the June 2015 Supervisory Letter and its five MRAs, Mr. Julian responded “Yes. I felt their response was appropriate and that they were taking action to implement the response.”¹⁹¹²

Asked to describe how Corporate HR and WFAS were “partnering” in response to the MRAs, Mr. Julian responded, “Mostly working with WFAS as WFAS would monitor and assess the reporting that was being developed. They were getting advice, consultation, if you will, from WFAS to the extent that WFAS had a view whether it was responsive and appropriate reporting.”¹⁹¹³ Mr. Julian offered no documentation supporting this statement, and testified that he himself was not personally providing the services he attributed to WFAS.¹⁹¹⁴

Mr. Loughlin reported that WF&C would establish “an anonymous survey, testing, and analysis program (in store) to ensure our store team members are exhibiting appropriate sales and service conduct.”¹⁹¹⁵ After identifying Ms. Russ Anderson as the accountable executive, Mr. Loughlin reported that “[k]ey risk metrics to support analysis of effective sales practices activities will be developed by December 31, 2015” and that the Community Bank would “leverage the Community Bank Risk Management Committee to report, monitor and escalate sales practices activities and issues to the second line of defense and WFAS as appropriate.”¹⁹¹⁶

Mr. Julian also acknowledged that WFAS “did not audit branches directly” but instead “leveraged” work performed by “several first-line control functions” which WFAS audited every two years.¹⁹¹⁷ He identified SOCR, the Community Bank’s “internal quality assurance team,” as providing a “control function” by rating each retail branch location.¹⁹¹⁸ Subsequent to a WFAS

¹⁹⁰⁹ *Id.*

¹⁹¹⁰ *Id.*

¹⁹¹¹ *Id.*

¹⁹¹² Tr. (Julian) at 6812.

¹⁹¹³ *Id.* at 6813.

¹⁹¹⁴ *Id.*

¹⁹¹⁵ OCC Ex. 705 at 10.

¹⁹¹⁶ OCC Ex. 705 at 10.

¹⁹¹⁷ OCC Ex. 1938 at 10 (page 8 of the Response).

¹⁹¹⁸ *Id.*

audit of SOCR in 2014, WFAS “discontinued its reliance on SOCR and began conducting its own branch reviews.”¹⁹¹⁹

Notwithstanding that WFAS did not audit Community Bank’s branches directly, Mr. Julian denied the claim – attributed to OCC’s Senior Deputy Comptroller Gregory Coleman – that WFAS audit scopes were specifically not designed to audit the sales practices issue.¹⁹²⁰ The assertion by the OCC is also related to the Conclusion Memorandum of February 23, 2015, which reported that WFAS has not conducted a structured review of cross sell in the Community Bank (like the ones performed for Wholesale and WRB)¹⁹²¹ and noted Ms. Russ Anderson’s insistence during the February 9, 2015 conference call that Community Bank’s “cross sell is not a separate activity that can be broken out and governed as a stand-alone activity” and noted no disagreement from WFAS’s Mr. McLinko.¹⁹²²

The record reflects that at least as of April 2015, the OCC recognized that Community Bank “is the Bank’s main distribution channel, thus sales of products are an integral part of the group’s activities.”¹⁹²³ This was the stated reason the OCC “evaluated CB sales practices oversight instead of cross sell.”¹⁹²⁴

July 13, 2015 Report of Examination on Risks Present at Wells Fargo Bank, N.A.

In the July 13, 2015 ROE, the OCC, through Bradley Linskens as Examiner in Charge and Ron Pasch as Deputy Comptroller, identified the need to proactively control the Bank’s reputational risks through “more effective compliance and operational risk programs.”¹⁹²⁵

Elaborating on this point, the ROE included the following:

Two recent example [including the Los Angeles sales practices lawsuit] involved employee misconduct, actual or alleged, on a scale that is difficult to reconcile with management’s perceptions of the risk culture within the firm. While we continue to assess the LA lawsuit, which alleges branch misconduct resulting in customer harm, our early findings suggest management should have responded more proactively to independently investigate the initial allegations. Management needs to ensure that matters such as these are fully and transparently investigated, harmed customers are remediated, bank employees are properly trained, incentive programs do not

¹⁹¹⁹ *Id.*

¹⁹²⁰ Tr. (Julian) at 6632.

¹⁹²¹ R. Ex. 18918 at 3.

¹⁹²² *Id.*

¹⁹²³ Tr. (Julian) at 6636; R. Ex. 8347 at 3.

¹⁹²⁴ R. Ex. 8347 at 3.

¹⁹²⁵ R. Ex. 10015 at 5.

encourage the alleged behavior, and controls are in place to identify and resolve potential or emerging issues.¹⁹²⁶

Asked during direct examination what steps were taken after the Bank received Supervisory Letter WFC 2015-26, Mr. Julian responded:

Senior-level resources across all three lines of defense were tasked with developing responses to the MRAs. A senior-level person within corporate risk was tasked with coordinating the response. And, again, a significant amount of resources were applied to developing an appropriate response to the MRAs.¹⁹²⁷

He identified an email chain that began with the OCC's email transmitting the June 26, 2015 Supervisory Letter to CEO John Stumpf, with copies to Mr. Julian and Ms. Russ Anderson among others.¹⁹²⁸

WFAS's Presentation to the A&E Committee: July 28, 2015

Mr. Julian identified the minutes of the WF&C A&E Committee meeting of July 28, 2015, which meeting he said he attended.¹⁹²⁹ He also identified the WFAS Second Quarter 2015 Summary that was submitted to members of the Committee in advance of the meeting.¹⁹³⁰

The minutes of the July 28, 2015 meeting include an oral record of Mr. Julian's report to the Committee.¹⁹³¹ The minutes are silent with respect to *any* issues regarding sales practices misconduct attributed to team members of the Community Bank.¹⁹³² The Report identified two engagements as unsatisfactory – Specialized Lending Services & Trust, and Unix Security – neither of which identified either the Community Bank or sales practices misconduct.¹⁹³³ It identified 40 rated projects or initiatives for 2Q15 – none of which concerned controls related to sales practices misconduct by team members at the Community Bank.¹⁹³⁴

In his testimony about the contents of the July 2015 Summary, Mr. Julian asserted that the written Summary “communicated that the risk in the Community Bank remained heightened and increasing related to reputational and regulatory environment, specifically calling out the

¹⁹²⁶ R. Ex. 10015 at 5.

¹⁹²⁷ Tr. (Julian) at 6787.

¹⁹²⁸ *Id.*; R. Ex. 1039 at 4.

¹⁹²⁹ Tr. (Julian) at 6800; R. Ex. 20486.

¹⁹³⁰ Tr. (Julian) at 6801-02; R. Ex. 10038 (Summary), which appears to be a color version of the black and white version of the Summary found at OCC Ex. 2157; R. Ex. 10067 (transmittal email).

¹⁹³¹ R. Ex. 20486 at 1-2.

¹⁹³² *Id.* at 2.

¹⁹³³ R. Ex. 10038 at 3.

¹⁹³⁴ *Id.* at 12.

issuance to the City of Los Angeles lawsuit related to alleged improper sales practices, the issuance of the OCC report related to enterprise sales practices.”¹⁹³⁵

The written July 2015 Summary included the following:

Community Banking

Risk in Community Banking remains heightened and increasing related to reputation and regulatory environment. Ongoing media and regulatory scrutiny place additional pressure on management to ensure customers have a positive experience in all channels. This was especially evident in the second quarter with the recent issuance of the city of Los Angeles lawsuit alleging improper sales practices, along with the issuance of the OCC report related to enterprise sales practices. WFAS will be working with management as they develop their formal responses to the issues. In addition, we will monitor corrective actions related to enterprise sales practices, including those impacting Community Banking, and adjust our audit plan as warranted. The efforts of Community Banking, along with the large number of corporate initiatives impacting the business, continue to be a challenge and strain existing resources.¹⁹³⁶

This Summary closely aligns with the Summary presented in August 2014, which described the risk trend as “stable.”¹⁹³⁷ With no reference to the failure of either WFAS or the Community Bank to identify the root cause of sales practices misconduct by Community Bank team member reported by the Times article, the August 2014 Quarterly Report included the following:

Community Banking risk remains heightened related to reputation and regulatory change. Ongoing media and regulatory scrutiny place additional pressure to ensure customers have a positive experience in all channels including stores, call centers, digital channels, and ATMs. This includes meeting the technology needs of the millennial generation as well as competing with non-bank entities.

The risk trend is stable, and Community Banking has taken appropriate measures to continuously evaluate and enhance channel usability to meet the needs of the customer. Additionally, Community Banking continues to evaluate product offerings, pricing, and sales strategies to ensure customers are obtaining the products and services that help them achieve their financial goals.¹⁹³⁸

¹⁹³⁵ Tr. (Julian) at 6911.

¹⁹³⁶ OCC Ex. 2157 at 25.

¹⁹³⁷ R. Ex. 6584 at 20.

¹⁹³⁸ R. Ex. 6584 at 20.

In the “mid-year review,” the Second Quarter 2015 Summary recognized that the “audit plan is dynamic throughout the year,” and avers “WFAS performs a mid-year review as part of our audit methodology to ensure our audit plan remains focused on key and/or emerging risk areas and adequate resources are available to complete the audit plan.”¹⁹³⁹

Notwithstanding that neither Internal Audit nor the first or second lines of defense had identified one or more root causes for the sales practices misconduct issues raised by the 2013 L.A. Times articles or the 2015 city of Los Angeles lawsuit, the Second Quarter 2015 Summary stated “WFAS management is comfortable with progress to date towards the original plan presented at the February 24, 2015, A&E Committee meeting.”¹⁹⁴⁰

Notwithstanding that the 2015 Summary expressly found that “WFAS needs to reassess their coverage of sales practices at an enterprise level and develop an Enterprise Risk Management Assessment (ERMA) process for sales practices,”¹⁹⁴¹ the mid-year review reported only the need to “expand focus on activities such as consent order remediation, BSA/AML, Volker, regulatory reporting, and cybersecurity,” but made no mention of the need to test the efficacy of first and second line of defense controls in place at the Community Bank relating to sales practices misconduct issues.¹⁹⁴²

September 2015 – Sales Practice Oversight Report Out

By September 2015, data analyzed by the Sales Practice Oversight Working Group established that customer consent, unnecessary or inappropriate accounts, deceiving or misleading customers, and referrals were the top four allegation types in the May 2015 Corporate Investigations sample.¹⁹⁴³

The Working Group reported that the intake of EthicsLine allegations for the month of May 2015 “was 21% higher than in the subsequent 3 months” and “a higher percentage of the overall allegations (+12.7%) were directly routed from the vendor to SSCOT for research.”¹⁹⁴⁴ The Working Group Report stated its “completed work efforts to date” included “Completion of Corporate Investigation’s (CI) review of 282 sales practices allegations from the month of May [2015]”.¹⁹⁴⁵ When asked whether at the time of this report she was concerned by the findings, Ms. Russ Anderson responded, “I don’t recall” but agreed that as the Group Risk Officer for

¹⁹³⁹ OCC Ex. 2157 at 36.

¹⁹⁴⁰ *Id.*

¹⁹⁴¹ *Id.* at 43.

¹⁹⁴² *Id.* at 36.

¹⁹⁴³ R. Ex. 10730 at 2.

¹⁹⁴⁴ R. Ex. 10730 at 2.

¹⁹⁴⁵ *Id.*

Community Banking she had an obligation to pay attention to the themes coming out of the Ethics Line.¹⁹⁴⁶

Acknowledging that the June 26, 2015 MRAs included matters concerning how EthicsLine complaints were being analyzed, Ms. Russ Anderson confirmed her receipt and review of the Working Group’s report and testified that she was “paying the same amount of attention” to what employees were reporting through the Ethics Line as she had before receiving the OCC’s June 26, 2015 Supervisory Letter – that she was being “[a]s careful as I always had.”¹⁹⁴⁷

The Working Group Report included a report by the Compliance Oversight Group – whose objective was “to complete review of 150 ‘sales practice/integrity allegations reported in June 2015 from the EthicsLine and identify high level themes across the sample set.”¹⁹⁴⁸

Ms. Russ Anderson acknowledged that SSCOT referred only a small percentage of sales practices allegations to Corporate Investigations for investigation.¹⁹⁴⁹

Among the high-level themes were allegations that included:

1. Open[ing] accounts for customers who do not know accounts have been opened for them.
2. Convinc[ing] customers to open accounts they do not need[.]
3. Explain[ing] to customers that a new account is necessary when an account conversion is appropriate and can be done so without cost or fee to the customer.
4. Opening savings accounts for minors by convincing them the account [*sic*] were necessary.
5. Accounts opened by [team members] for themselves or family members that have zero balances.
6. Tak[ing] advantage of mentally handicapped customers and open[ing] credit card accounts and transfer[ring] funds to pay off other financial institution credit cards with lower debt.
7. [O]pen[ing] joint accounts for customers where one or more of the joint account holders is not present.
8. Maintaining old accounts when fraud has been detected; convincing customers to keep accounts open after fraud when not justified.

¹⁹⁴⁶ Tr. (Russ Anderson) at 10064.

¹⁹⁴⁷ *Id.* at 10061; R Exs. 10279, 10730.

¹⁹⁴⁸ R. Ex. 10730 at 5.

¹⁹⁴⁹ Tr. (Russ Anderson) at 10065; R. Ex. 10730 at 6: May 2015: 8%; June 2015: 8%; July: 5%; August: <1%.

9. Referring calls to call center to open accounts that are not requested by the customer or for which the customer does not need or understand or for which they do not qualify.¹⁹⁵⁰

October 26-27, 2015 Meeting of the WF&C Board of Directors

Ms. Russ Anderson stated that as late as September 2015, she was aware that Regional Bank executives continued to have concerns with sales goals associated with secondary deposit products – specifically about secondary debit cards not being activated.¹⁹⁵¹

The record reflects that Ms. Russ Anderson appeared before the WF&C Board of Directors during a regular meeting of the Board on October 26, 2015.¹⁹⁵² Ms. Russ Anderson testified that she had no recollection of speaking during the meeting, suggesting that she currently is a poor historian with respect to recalling her past communication with the Board.

The minutes of the meeting reflect that she – along with Ms. Tolstedt and Mr. MacDuff – responded to directors’ questions regarding Community Banking’s efforts, including questions about team member turnover and comparisons with peers, the response of lower levels of management to recent sales practices enhancements, team member engagement, the timing of the implementation of the performance management and reward systems changes, other activities that could relate to sales practices risk, and Community Banking’s research on the practices of other financial services firms.¹⁹⁵³

Throughout the time Ms. Russ Anderson was present during this Board meeting, Ms. Tolstedt presented information to the Board regarding the Community Bank’s “continuing efforts since 2013, and prior to the publication of the Los Angeles Times article, to evolve its model for product and service delivery with the goals to continue to improve the team member and customer experience, enhance organic growth, and reduce conduct risk”.¹⁹⁵⁴

Ms. Tolstedt’s presentation “focused on Community Banking’s process for setting solutions goals and the performance management and rewards systems . . . including actions to ensure solutions goals are set and administered fairly and do not contribute to undue pressure such as by establishing a solutions planning committee that includes the second line of

¹⁹⁵⁰ R. Ex. 10730 at 5.

¹⁹⁵¹ Tr. (Russ Anderson) at 9638; OCC Ex. 193.

¹⁹⁵² Tr. (Russ Anderson) at 9977; OCC Ex. 1102 at 6.

¹⁹⁵³ OCC Ex. 1102 at 7.

¹⁹⁵⁴ *Id.* at 6.

defense.”¹⁹⁵⁵ (The record reflects that “solutions” in this context referred to products team members sold to bank customers.¹⁹⁵⁶)

The minutes reflect Ms. Tolstedt also “reviewed various ways in which Community Banking is adjusting, or is considering potential changes to, its performance management and rewards plans.”¹⁹⁵⁷

Included in her presentation to the Board were Ms. Tolstedt’s comments on:

areas of focus, including providing greater support and resources to the field in managing sales practices risk, enhancing monitoring capabilities and implementing risk appetite metrics, improving the adequacy of preventative and detective controls, and implementing a new retail sore conduct risk review team which will, among other things, conduct unannounced store visits to evaluate effectiveness of the program.¹⁹⁵⁸

February 2, 2016 Review of Internal Investigations of Confirmed Fraud – January 2013 through January 2016

Ms. Russ Anderson identified a February 2, 2016 mail message from Jim Richards, head of Financial Crimes Risk Management.¹⁹⁵⁹ Through this transmission, Mr. Richards shared with Ms. Russ Anderson and others the results of an analysis by his analytics team – which looked at three years of terminations “relating to cases involving confirmed fraud determinations”.¹⁹⁶⁰ While not limited to sales practices fraud by Community Banking team members, the analysis identified 9,168 such terminations between January 2013 and January 2016.¹⁹⁶¹ One of the findings was that over 95% of the terminations “involved amounts below \$5,000.”¹⁹⁶² This was the case with all of the 3,477 Sales Integrity cases during the referenced period.¹⁹⁶³

When asked whether it concerned her that between January 2013 and January 2016 there were 3,477 terminations of team members for Sales Integrity violations involving confirmed fraud, Ms. Russ Anderson responded, “It did not. This was Jim Richards’ report. I don’t know what he pulled to come up with this data. But those numbers didn’t concern me, no. There was

¹⁹⁵⁵ OCC Ex. 1102 at 6.

¹⁹⁵⁶ R. Ex. 168 at 3.

¹⁹⁵⁷ OCC Ex. 1102 at 6.

¹⁹⁵⁸ *Id.* at 6-7.

¹⁹⁵⁹ Tr. (Russ Anderson) at 10068; R. Ex. 11871.

¹⁹⁶⁰ Tr. (Russ Anderson) at 10070; R. Ex. 11871 at 1.

¹⁹⁶¹ R. Ex. 11871 at 1.

¹⁹⁶² *Id.*

¹⁹⁶³ *Id.*; R. Ex. 11872 at 1.

no fraud loss. There's no dollar loss.”¹⁹⁶⁴ **Acting in furtherance of this opinion under the conditions that were present during the relevant period constituted unsafe or unsound banking practice and a breach of the fiduciary duties Ms. Russ Anderson owed to the Bank.**

Magnitude of Sales Practices Misconduct

Examiner Candy reported that the OCC's investigation revealed that the scope of misconduct dramatically exceeded what has been publicly reported even during the September 2016 Congressional inquiries, what was reported to the Board in real time, and what was disclosed to the OCC during its examinations.¹⁹⁶⁵ Examiner Candy opined that given the business model in the Community Bank, the duration of the sales practices misconduct problem, and the quality of the preventative and detective controls for sales practices misconduct, a significant number of Community Bank customer-interfacing employees engaged in sales practices misconduct.¹⁹⁶⁶

Examiner Candy reported that in August 2017, Bank consultant PricewaterhouseCoopers determined that Bank employees opened approximately 3.5 million potentially unauthorized accounts between January 2009 and September 2016.¹⁹⁶⁷ She reported that Bank documents show that as of January 2016, the Community Bank allowed employees to have approximately 30 percent of the new accounts they opened to remain unfunded; they would still be eligible to receive sales credit for the unfunded accounts.¹⁹⁶⁸ She reported that it is likely that some employees would only engage in simulated funding if they had exhausted other types of misconduct (which the Bank did not have the capabilities to proactively detect) but were still unable to meet their goals.¹⁹⁶⁹ Thus, only employees who had exhausted other opportunities to invent sales but were still short on sales goals were most likely to resort to “simulated funding.”¹⁹⁷⁰

Examiner Candy noted that in the DOJ Statement of Facts, the Bank itself admitted to the volume of sales practices misconduct:

The Community Bank's onerous sales goals and accompanying management pressure led thousands of its employees to engage in: (1) unlawful conduct to attain sales through fraud, identity theft, falsification of bank records, and (2) unethical practices to sell products of no or low value to the customer, while

¹⁹⁶⁴ Tr. (Russ Anderson) at 10072.

¹⁹⁶⁵ EC MSD Ex. 269 (Report of NBE Candy) at ¶101.

¹⁹⁶⁶ *Id.*

¹⁹⁶⁷ *Id.* at ¶102.

¹⁹⁶⁸ *Id.* at ¶107.

¹⁹⁶⁹ *Id.*

¹⁹⁷⁰ *Id.*

believing that the customer did not actually need the account and was not going to use the account.¹⁹⁷¹

Millions of secondary accounts and products were opened from 2002 to 2016, and many of these were never used by customers.¹⁹⁷²

Between 2011 and 2016, tens of thousands of employees were the subject of allegations of unethical sales practices. During this period, the Company referred more than 23,000 employees for sales practices investigation and terminated over 5,300 employees for customer-facing sales ethics violations, including, in many cases, for falsifying bank records. Thousands of additional employees received disciplinary action short of termination or resigned prior to the conclusion of the Company's investigations into their sales practices.¹⁹⁷³

From 2002 to 2016, Wells Fargo opened millions of accounts or financial products that were unauthorized or fraudulent.¹⁹⁷⁴

Millions of non-Wells Fargo-employee customer accounts reflected a Wells Fargo email address as the customer's email address, contained a generic and incorrect customer phone number, or were linked to a Wells Fargo branch or Wells Fargo employee's home address.¹⁹⁷⁵

¹⁹⁷¹ EC MSD Ex. 269 (Report of NBE Candy) at ¶110, quoting Press Release, U.S. Attorney's Office for the Central District of California, Wells Fargo Agrees to Pay \$3 Billion to Resolve Criminal and Civil Investigations into Sales Practices (Feb. 21, 2020); Wells Fargo Deferred Prosecution Agreement and Exhibit A, Statement of Facts (Feb. 20, 2020), at A-1 through A-16, ¶ 15 (Feb. 21, 2020) (Bank admitting to criminal violations resulting from sales practices misconduct, the root cause, scope, and duration of the problem, and the knowledge of Community Bank senior leadership).

¹⁹⁷² EC MSD Ex. 269 (Report of NBE Candy) at ¶110, quoting Press Release, U.S. Attorney's Office for the Central District of California, Wells Fargo Agrees to Pay \$3 Billion to Resolve Criminal and Civil Investigations into Sales Practices (Feb. 21, 2020); Wells Fargo Deferred Prosecution Agreement and Exhibit A, Statement of Facts (Feb. 20, 2020) ¶ 17.

¹⁹⁷³ EC MSD Ex. 269 (Report of NBE Candy) at ¶110, quoting Press Release, U.S. Attorney's Office for the Central District of California, Wells Fargo Agrees to Pay \$3 Billion to Resolve Criminal and Civil Investigations into Sales Practices (Feb. 21, 2020); Wells Fargo Deferred Prosecution Agreement and Exhibit A, Statement of Facts (Feb. 20, 2020) ¶ 30.

¹⁹⁷⁴ EC MSD Ex. 269 (Report of NBE Candy) at ¶110, quoting Press Release, U.S. Attorney's Office for the Central District of California, Wells Fargo Agrees to Pay \$3 Billion to Resolve Criminal and Civil Investigations into Sales Practices (Feb. 21, 2020); Wells Fargo Deferred Prosecution Agreement and Exhibit A, Statement of Facts (Feb. 20, 2020) ¶ 32.

¹⁹⁷⁵ EC MSD Ex. 269 (Report of NBE Candy) at ¶110, quoting Press Release, U.S. Attorney's Office for the Central District of California, Wells Fargo Agrees to Pay \$3 Billion to Resolve Criminal and Civil Investigations into Sales Practices (Feb. 21, 2020); Wells Fargo Deferred Prosecution Agreement and Exhibit A, Statement of Facts (Feb. 20, 2020) ¶ 16.

Examiner Candy reported that “millions” of non-Wells Fargo-employee customer account documents were not delivered to the customer but were sent to the team member or Bank premises indicates both the immense magnitude of the misconduct and the inadequate controls.¹⁹⁷⁶ She opined that this demonstrates the systematic nature of the misconduct and the detrimental impact of the high sales goals and high-pressure business model.¹⁹⁷⁷ She added that in an October 2013 email, a senior Community Bank executive stated, “Basically we are closing about 90% of the accounts we open within 12 months. Not something to broadcast but ‘something’ is going on.”¹⁹⁷⁸

Examiner Candy reported that anecdotal evidence also illustrated the pervasiveness of sales practices misconduct.¹⁹⁷⁹ She found that every customer-interfacing employee had a powerful motive and opportunity to engage in sales practices misconduct.¹⁹⁸⁰ She found the motive arose from fear of disciplinary action up to and including termination if they did not meet the unreasonable sales goals, or the desire to earn incentive compensation.¹⁹⁸¹ She also found that the opportunity arose from the inadequate controls as detailed in this report.¹⁹⁸² Given this motive and opportunity, the Bank’s own data and analysis, the duration of sales practices misconduct, and her experience, training, and commission as a National Bank Examiner, it is Examiner Candy’s opinion and conclusion that sales practices misconduct was pervasive in the Community Bank and involved tens of thousands, if not hundreds of thousands, of Bank employees issuing millions of products to customers without their consent.¹⁹⁸³

February 5, 2016 Agency-Referred Complaint to CEO John Stumpf

Through an anonymous email message sent on February 5, 2016, an Agency-Referred Complaint (ARC) referenced the Greater Texas North District, complaining about unreasonable performance expectations.¹⁹⁸⁴ The banker’s complaints and allegations in the ARC had been sent directly to CEO John Stumpf.¹⁹⁸⁵ Later that day, Employee Relations Leader Glen Chambers

¹⁹⁷⁶ EC MSD Ex. 269 (Report of NBE Candy) at ¶111.

¹⁹⁷⁷ *Id.*

¹⁹⁷⁸ *Id.* at ¶112, quoting Email from Laura Schulte to Shelly Freeman (Oct. 18, 2013) (OCC-WF-SP-05365262).

¹⁹⁷⁹ EC MSD Ex. 269 (Report of NBE Candy) at ¶113.

¹⁹⁸⁰ *Id.* at ¶114.

¹⁹⁸¹ *Id.*

¹⁹⁸² *Id.*

¹⁹⁸³ *Id.*

¹⁹⁸⁴ Tr. (Russ Anderson) at 9618; OCC Ex. 111 at 6-7.

¹⁹⁸⁵ OCC Ex. 111 at 5.

forwarded the ARC to Rebecca Rawson, asking that Ms. Rawson “see if SSCOT wants to look into this matter first.”¹⁹⁸⁶

Three days later Ms. Rawson responded, letting Mr. Chambers know that “SSCOT will open a case and commence research on the district named in the letter.”¹⁹⁸⁷ On February 23, 2016, Ms. Rawson received an email indicating Thomas Fox had “initial findings relating to this allegation” and asked Ms. Rawson when she would like to review those findings.¹⁹⁸⁸ Responding that it would be “difficult to find time to connect by phone this week,” Ms. Rawson asked that Mr. Fox “convey findings via email”.¹⁹⁸⁹

Complying with this request, Mr. Fox wrote in response, in pertinent part: “Overall the Lubbock Area Retail Banking District does not appear to be an outlier compared to the other Districts within the Greater Texas North Retail Banking Division with regards to quality of sale indicators (activation and closures) related to credit products.”¹⁹⁹⁰ Ms. Rawson then forwarded Mr. Fox’s response to Glen Najvar, Senior Investigative Agent for SSCOT¹⁹⁹¹

At the end of March 2016, Mr. Najvar provided an update regarding the ARC. In pertinent part, after identifying five districts and five district manager, he wrote:

The allegation stated DM’s [*sic*] “sent down an order” for every banker to submit a minimum of two credit applications per day on average. It went on to state that if bankers did not meet this “quota” there was a possibility of being placed on Performance Improvement Plans or potentially even the possibility of termination.¹⁹⁹²

Mr. Najvar’s March 30, 2016 email to Ms. Rawson included copies of emails that had been included in the ARC, and Mr. Najvar’s “Additional Information”:

- II has supplied the six email examples above as they reference credit applications which were mentioned in the letter to John Stumpf. Based on some of the email content; [*sic*] it appears there could be credence to the allegation.
- II spoke with a seasoned team member, considered credible, within the market. This team member was adamant that they remain anonymous as they feared retaliation. This team member advised II that there was an expectation in the market for bankers to average 2 credit applications per day or that credit

¹⁹⁸⁶ OCC Ex. 111 at 6.

¹⁹⁸⁷ *Id.*

¹⁹⁸⁸ *Id.* at 5.

¹⁹⁸⁹ *Id.*

¹⁹⁹⁰ *Id.* at 4.

¹⁹⁹¹ *Id.*

¹⁹⁹² *Id.* at 1.

applications were expected on 30% of their total interactions (corroborates some of the content contained within supplied emails). This team member expressed that this was creating an immense amount of stress for bankers.

- The case within II will be closed as referred to ER due to ER concerns. II recommends SSCOT consider closing their case as referred to ER as well with this email being considered the referral notice to ER.¹⁹⁹³

On April 27, 2016, through an email reflecting “High Importance”, Ms. Rawson forwarded to Ms. Russ Anderson the email chain, “per our conversation today.”¹⁹⁹⁴ During her testimony, however, Ms. Russ Anderson stated she did not recall the conversation with Ms. Rawson, and did not know “that we had a debrief on it.”¹⁹⁹⁵ From the record as a whole this response indicates Ms. Russ Anderson was a poor historian regarding conversations she had with her direct report, Ms. Rawson, with respect to matters of high importance brought to her attention in April 2016.

Asked whether she had any reason to doubt that even as late as April 2016 employees faced unreasonable performance expectations with respect to sales goals, Ms. Russ Anderson responded, “I believe I’ve testified in the past that we had hotspots where people had unreasonable performance expectations”, identifying LA/OC, New Jersey, Arizona, and Texas as “the primary ones” as “regions that would have hotspots” – something she acknowledged knowing about from 2013 to 2016.¹⁹⁹⁶

Ms. Russ Anderson identified an email exchange from April 2016 through which she and others responded to a request by Steven Herfindahl of SSCOT for “the quarter by quarter breakdown of the allegations that were put into the buckets of consent and account openings for 2015”.¹⁹⁹⁷ Within the exchange, Ms. Russ Anderson asked Ms. Rawson whether “we saw a decrease in those two categories or a steady state?” and Ms. Rawson responded, “Consent seems to be decreasing slightly.”¹⁹⁹⁸

When asked whether it concerned her at the time that the behaviors identified in Mr. Herfindahl’s chart involving customer consent-based sales practices misconduct continued to occur in 2016 with only a slight decrease, Ms. Russ Anderson did not answer the question, deflecting by responding, “these are cases to the EthicsLine. They have not been proven allegations yet. The fact that there are decreasing allegations I thought was a good thing, but it

¹⁹⁹³ OCC Ex. 111 at 3.

¹⁹⁹⁴ *Id.* at 1.

¹⁹⁹⁵ Tr. (Russ Anderson) at 9620.

¹⁹⁹⁶ *Id.* at 9620-21.

¹⁹⁹⁷ *Id.* at 10084; R. Ex. 388 at 9.

¹⁹⁹⁸ R. Ex. 388 at 5.

doesn't necessarily mean that the cases that Corporate Investigations works – that's where the real information comes from.”¹⁹⁹⁹

Through the exchange, however, Ms. Russ Anderson requested and received data showing just the allegations, and through this when asked “by this point, regardless of whatever was done with respect to signature capture, SSCOT continued to find instances indicative of lack of customer consent, correct?” Ms. Russ Anderson responded, “that it could be indicated, yes” and found a “significant increase (+175% year over year)” of internal monitoring volumes.²⁰⁰⁰

Ms. Russ Anderson acknowledged that if the reduction to sales goals were sufficient and the evolving model work was effective, she would expect to see a significant decrease in improper sales behavior.²⁰⁰¹ She pointed to data analyses showing “consent inquiries have decreased 11 percent” and stated “[t]he reason the internal monitoring volume increased by 175 percent is because they added new metrics to what they were monitoring.”²⁰⁰²

When asked whether it concerned her at the time that the more metrics that were added to SSCOT's monitoring, the more bad behavior was identified, Ms. Russ Anderson did not answer the question, deflecting by responding, “We were doing more proactive monitoring. You would always find more behaviors.”²⁰⁰³ When asked whether she would expect to continue to find more bad behaviors if the root cause had been addressed, Ms. Russ Anderson responded without answering the question, stating, “These were allegations or potential behaviors. We had no idea if they were yet proven.”²⁰⁰⁴

Similarly, in a Core Team member email exchange from October 2015, the team reviewed a series of confirmed allegations of sales practices misconduct by Community Banking team members, and upon her review of the slate of cases, Ms. Russ Anderson wrote – two years after the publication of the first L.A. Times article, “In the case where there is no customer harm – such are referrals – I am also ok not putting them on admin leave. What is amazing to me is that we still have the behavior after all this time.”²⁰⁰⁵ Elaborating, Ms. Russ Anderson testified that this said that “email changes, you know, continued to occur even with all of the controls we were putting in place.”²⁰⁰⁶ She denied that this meant the controls were wholly inadequate, but “could continue to be strengthened.”²⁰⁰⁷

¹⁹⁹⁹ Tr. (Russ Anderson) at 10088.

²⁰⁰⁰ *Id.* at 10090.

²⁰⁰¹ *Id.* at 10092.

²⁰⁰² *Id.* at 10093.

²⁰⁰³ *Id.*

²⁰⁰⁴ *Id.*.

²⁰⁰⁵ *Id.* at 10095; R. Ex. 10942 at 1.

²⁰⁰⁶ Tr. (Russ Anderson) at 10097.

²⁰⁰⁷ *Id.*

February 12, 2016 Risk Assessment Summary by Hope Hardison (HR) and Michael Loughlin (CRO)

Mr. Julian identified a Risk Assessment Summary provided to CEO Stumpf on February 12, 2016 by Hope Hardison (Director of Human Resources) and Michael Loughlin (Chief Risk Officer).²⁰⁰⁸

The Risk Assessment Summary included a list of “key risk issues” as of 2016, one of which related to Sales Practices (without limiting the risks to the Community Bank).²⁰⁰⁹ Mr. Julian testified that while he recognized the Summary he did not see it other than as part of this enforcement litigation, and had no role in either reviewing or approving the Summary.²⁰¹⁰

The Summary identified Claudia Russ Anderson among those with accountability for the sales practices issue.²⁰¹¹ The Summary rated the sales practices issue at Community Bank as “improvement needed”, describing the issue as “Top OCC issue with 5 MRAs related to Tone at the Top, FLOD, SLOD, and Customer Complaint. Current litigation related to Community Banking, ongoing customer remediation.”²⁰¹²

It described the impact as “reputational and regulatory risks for Wells Fargo resulting from this issue.”²⁰¹³ It identified the resolution as follows: “Significant work has been accomplished to address the MRAs, but a lot still needs to be completed in a short timeframe for completion. Acceptable and steady progress is evidenced with all open corrective actions.”²⁰¹⁴

Community Banking Enterprise Risk Management Assessment (ERMA) - 2015 (issued March 8, 2016)

On March 8, 2016, WFAS, through Paul McLinko, Executive Audit Director, issued its 2015 Community Banking Enterprise Risk Management Assessment.²⁰¹⁵ Mr. Julian testified the process of developing the Community Bank ERMA was led by Paul McLinko and was “bottoms up” where “each line of business prepared their line of business ERMAs” – so “this was a result of that work that they prepared and were presenting it to their respective line of business management.”²⁰¹⁶

²⁰⁰⁸ Tr. (Julian) at 6942; OCC Ex. 689.

²⁰⁰⁹ OCC Ex. 689.

²⁰¹⁰ Tr. (Julian) at 6942-43.

²⁰¹¹ OCC Ex. 689 at 7.

²⁰¹² *Id.*

²⁰¹³ *Id.*

²⁰¹⁴ *Id.*

²⁰¹⁵ OCC Ex. 750.

²⁰¹⁶ Tr. (Julian) at 6959.

The Assessment reports that it is “designed to evaluate the adequacy of risk management within CB for those risks that could impact their ability to effectively meet their business objective.”²⁰¹⁷ The overall assessment was that “risk management practices are effective in anticipating and escalating issues and emerging risks, as necessary.”²⁰¹⁸ The Assessment found that “[m]odel risk processes and controls are effectively designed, implemented, and have demonstrated sustainability during 2015.”²⁰¹⁹

The Assessment included commentary regarding the five MRAs then pending:

In 2015, the OCC issued five MRAs related to enterprise sales practices covering all lines of defense; one of which was issued specifically to Community Banking. In addition, two of the MRAs have corrective action components that specifically relate to incentive compensation. Management recognizes the significance of these issues and their impact on reputation. Since mid-2013, CB has been on a multi-year journey to evolve their model for product and service delivery. Progress continues to be made in these areas. Management has also begun multiple initiatives to address the Sales Practices MRAs. These include, but are not limited to enhanced Store Operations and Control Review (SOCR) questions, implementation of mystery shopping, customer complaint policy implementation and enhanced performance management plans. In addition, management is expanding sales practices oversight in areas such as enhanced reporting, trending, ethics line procedures, training and risk management (e.g., Regional Services, RB Compliance and Operational Risk, and Sales & Service Conduct and Oversight teams, Conduct Risk Committee, etc.). Combined these activities have a positive impact on the risk management environment.²⁰²⁰

The Assessment included notice that Wells Fargo “deferred its 2015 annual risk self-assessment completed by the first line of defense.”²⁰²¹ Elaborating, the Assessment reported that “2015 was a year of significant change and transition for the Company with the implementation of various functional frameworks, significant initiatives across Corporate Risk including Compliance, BSA/AML, and Operational Risk as well as technology changes used to support the self-assessment process.”²⁰²² The stated rationale included the following:

An objective of the 2015 risk-assessment effort was to align it with the Corporate Risk Management Framework. Functional frameworks, a critical

²⁰¹⁷ OCC Ex. 750 at 1.

²⁰¹⁸ *Id.*

²⁰¹⁹ *Id.* at 2.

²⁰²⁰ *Id.* at 3.

²⁰²¹ *Id.* at 23.

²⁰²² *Id.*

element in defining the first line responsibilities for the key risk types, continued to be developed and implemented throughout 2015. There were also other significant initiatives across Corporate Risk that created a high level of change across the organization. It was determined that there would be more value in doing the first line risk-self-assessment when the functional frameworks were further matured, and the initiatives were further implemented.²⁰²³

WFAS's Presentation to the A&E Committee: April 25, 2016

Mr. Julian testified that he made a presentation during the A&E Committee's April 25, 2016 meeting, and identified the minutes from that meeting.²⁰²⁴ The minutes reflect that Mr. Julian "commented on the positive trends for the month, including a decline in the number of open MRAs and no MRAs that were reopened."²⁰²⁵

The minutes reflect that Mark Links "presented a report on the [WFAS] 2015 Enterprise Risk Management (ERM) Assessment" but nothing in the minutes indicated that Board members were presented with the recently issued 2015 Community Banking Enterprise Risk Management Assessment.²⁰²⁶ Mr. Julian testified that Mr. Links was an Executive Audit Director with primary audit oversight of Corporate Risk, who "headed up the overall process for developing the enterprise-wide ERMA assessment."²⁰²⁷

The 2015 ERMA that Mr. Links presented to the A&E Board on April 25, 2016 concluded that as of December 31, 2015, Enterprise Risk Management at WF&C "needs improvement" under a rating system using three ratings – satisfactory, needs improvement, or weak.²⁰²⁸ In its report on Organizational Risk, the Assessment found "the second line of defense needs to continue implementing new governance requirements. Challenges remain for the first line of defense in oversight, risk identification, risk assessment, operational risk, testing, and program maturity/sustainability, as shown by High related issues and regulatory concerns (i.e., MRAs and [Matters Requiring Immediate Attention]). First line of defense operational risk management practices are evolving and work remains to align practices with the enhanced framework."²⁰²⁹

Mr. Julian identified a Sales Practices MRA Status Update dated April 29, 2016 from Paul McLinko and others to Claudia Russ Anderson and others providing a summary of

²⁰²³ *Id.*

²⁰²⁴ Tr. (Julian) at 6961; R. Ex. 20631.

²⁰²⁵ R. Ex. 20631 at 4.

²⁰²⁶ Tr. (Julian) at 6965; R. Ex. 20631 at 4-5.

²⁰²⁷ Tr. (Julian) at 6965.

²⁰²⁸ R. Ex. 1144 at 2.

²⁰²⁹ *Id.* at 2-3.

corrective actions relating to the five MRAs issued in 2015.²⁰³⁰ The Update included in its “highlights” section that “management developed a dashboard to track the corrective action plan and progress.”²⁰³¹

The Update also noted that “Management has extended due dates on four corrective actions related to the independent evaluation of allegations of inappropriate behavior, risk appetite metrics, root cause analysis of sales integrity violations, and identifying complaints involving UDAP. These corrective actions are associated with MRAs 1, 2, and 3.”²⁰³²

May 3, 2016 Core Committee Meeting Regarding Root Cause of Sales Practices Misconduct

Ms. Russ Anderson testified that she was on the Core Committee.²⁰³³ As previously noted, Ms. Russ Anderson testified that through the May 19, 2015 materials presented to the Risk Committee of the WF&C Board of Directors, the Core Committee’s Sales Conduct Oversight & Corporate Security Investigation report stated “[t]he root cause [of sales practices misconduct] was determined to be intentional team member misconduct based on the fact that only a small percentage of Retail Banking team members engaged in the outlier behavior”.²⁰³⁴ Preponderant reliable evidence in the record established that this was a false and materially misleading statement.

While denying she wrote the language appearing in the report, she acknowledged editing the material in advance of its distribution to the Committee members.²⁰³⁵ She testified that she believed intentional team member misconduct was “one of the root causes”.²⁰³⁶

Twelve months later, a member of the Core Committee, David Otsuka, presented a proposed agenda for the Committee’s May 3, 2016 meeting.²⁰³⁷

[REDACTED]

²⁰³⁰ Tr. (Julian) at 6973; R. Ex. 1062 (Memo); R. Ex. 12478 (transmittal email from Paul McLinko to David Julian).

²⁰³¹ R. Ex. 1062 at 1.

²⁰³² *Id.* at 2.

²⁰³³ Tr. (Russ Anderson) at 9275. The Core Committee also is referred to as the Core Team. See, e.g., OCC Ex. 251 at 4: “Middletown, Delaware follow up: Background: Simulation of funding that was previously considered by the Core Team. . . . Initial review by the Core Committee expressed concern”

²⁰³⁴ Tr. (Russ Anderson) at 9456; OCC Ex. 1299 at 3.

²⁰³⁵ Tr. (Russ Anderson) at 9409.

²⁰³⁶ *Id.* at 9457.

²⁰³⁷ OCC Ex. 251.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

²⁰³⁸ OCC Ex. 251 at 6.

²⁰³⁹ *Id.*

²⁰⁴⁰ *Id.*

²⁰⁴¹ *Id.*

²⁰⁴² *Id.*

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²⁰⁴³ OCC Ex. 251 at 4.

Ms. Russ Anderson identified the agenda advanced by Mr. Otsuka²⁰⁴⁴ She said the Core Team meetings “occurred every Tuesday,” and described them as being “very difficult” because “we were making decisions about team members’ careers, people’s lives and it was very, very hard. For me, it was hard.”²⁰⁴⁵

Reflecting on the cases presented in the agenda, Ms. Russ Anderson testified that for “some of the recommendations that were being provided by Corporate Investigations, I had a different thought on what the outcome should be.”²⁰⁴⁶ Elaborating, Ms. Russ Anderson testified that she “felt that the team members who were particularly ones who were young may have been trained incorrectly and that we should try to find a way to give them another chance. And that’s what I recollect from these; that I didn’t agree with every one of these termination recommendations.”²⁰⁴⁷ This is reflected in the email chain, where Ms. Russ Anderson wrote to Mr. Otsuka, Ms. Herzberg, and Ms. Rawson “Can we talk about the emails at the bottom of the chain? I have some opposing thought on sending these.”²⁰⁴⁸

In her response to Mr. Otsuka’s proposed agenda, Ms. Russ Anderson wrote, “I am not convinced we are getting to the root of the issue in terms of ‘why’ this keeps happening.”²⁰⁴⁹ She added, “I might be totally over reacting here but I really feel like we are missing something after all this time and I think it is that we aren’t going high enough in the food chain, as it were, to understand the messaging that is coming down to the stores.”²⁰⁵⁰

Expounding on her email to Mr. Otsuka, Ms. Russ Anderson testified that she found “in talking with some of the Senior Regional Banking executives and Regional Presidents that they didn’t feel like they needed to carry their message down to the store level.”²⁰⁵¹ She testified she had been “rebuffed” by some of those executives, who told her when she brought these concerns to their attention that “they were overstepping their managers and that they did not want to do that.”²⁰⁵² She testified that she wondered “if we’ve stagnated ourselves here at the district manager level in looking, and now we need to start looking at what messaging is coming from area presidents or regional presidents or lead regional presidents. . . is there a message breakage

²⁰⁴⁴ Tr. (Russ Anderson) at 9469-70.

²⁰⁴⁵ *Id.* at 9471.

²⁰⁴⁶ *Id.* at 9472.

²⁰⁴⁷ *Id.*

²⁰⁴⁸ OCC Ex. 251 at 2.

²⁰⁴⁹ *Id.* at 1.

²⁰⁵⁰ *Id.*

²⁰⁵¹ Tr. (Russ Anderson) at 9474.

²⁰⁵² *Id.* at 9475.

somewhere in the continuum?”²⁰⁵³ There is no substantial evidence that Ms. Russ Anderson engaged in credible challenge in her response to being rebuffed by these executives.

Asked by her Counsel during direct examination why was she still asking questions about root cause for sales practices in May of 2016, Ms. Russ Anderson responded:

We had been solving root causes along the way. There were things that we had solved for, important things we had solved for, including changing sales goals and things like that. But there was still, in my mind, something that we were missing. I could have been completely wrong, which is why I said to David, I might be totally overreacting. But I just had a sense that -- that there was still something we needed to figure out.²⁰⁵⁴

Ms. Russ Anderson dismissed the premise, advanced by Examiner Candy, that it would have been possible to determine that pressure to meet sales goals was the root cause of the sales practices misconduct by looking to a sample of EthicsLine allegations.²⁰⁵⁵ Ms. Russ Anderson testified that she did not think it would be possible to make such a determination.²⁰⁵⁶

Explaining this response, Ms. Russ Anderson testified:

Because they are just that; they're allegations. Many of them are anonymous, and until you can really bring forth data and look at the data, it's hard to know if that's just a team member being -- complaining for complaining's sake, which happens, or if it's really "We've got a problem." So you can't -- I just think it's -- I just don't think that you can sit and read EthicsLine allegations in and of themselves and do nothing else and determine what the root cause is. It's too simplistic.²⁰⁵⁷

Acting in furtherance of this opinion under the conditions that were present during the relevant period constituted unsafe or unsound banking practice and a breach of the fiduciary duties Ms. Russ Anderson owed to the Bank.

It should be noted that related to the May 2015 examination by the OCC, on June 1, 2015 Ms. Russ Anderson provided a sample of EthicsLine call reports.²⁰⁵⁸ Initially Ms. Russ Anderson testified “I honestly don’t remember” whether she actually read the samples; she then changed her answer to, “I did, yes.”²⁰⁵⁹

²⁰⁵³ Tr. (Russ Anderson) at 9475.

²⁰⁵⁴ *Id.*

²⁰⁵⁵ *Id.* at 9476.

²⁰⁵⁶ *Id.*

²⁰⁵⁷ *Id.*

²⁰⁵⁸ *Id.* at 10116; OCC Ex. 2192.

²⁰⁵⁹ Tr. (Russ Anderson) at 10117.

Each of the samples alleged Sales Incentive Program Violations.²⁰⁶⁰

From **Placentia, California**, on May 9, 2015 the anonymous EthicsLine caller identified a Banker, RP, and claimed to have witnessed “on numerous occasions” from March 2015 to the present, where RP “would forge customers initials on the customized summaries. Management does not say anything because she ‘produces’ numbers for the branch to make management and herself look good.”²⁰⁶¹

From **Wayzata, Minnesota** on May 9, 2015 the EthicsLine caller, [PY], reported, “It appears that a new account was opened with an existing account could have been converted. Customer did not know why the old account had not been closed. Management has not been notified as past instances similar reports have led to no perceived action.”²⁰⁶²

From **Idaho Falls, Idaho** on May 9, 2015, an anonymous EthicsLine caller reported that on January 2, 2014:

three accounts were opened up for customer [RH] by Store Manager [AW] without RH’s authorization. This was brought to caller’s attention on 5/9/15 when RH visited his/her branch. After speaking with RH, caller found out that RH had been in the branch and had discussed opening accounts, but had had to leave before actually going through with it. Copies of his identification were made on that day. However, he never signed for the accounts nor funded them. He was not aware of the accounts until he was notified that they were overdrawn.

AW opened up checking account *196 and savings accounts *505 and *086. RH is currently interested in opening up an account. Caller would like for the company to investigate and reverse the fees and charge off so that RH is not penalized for what AW did.²⁰⁶³

From **Bremerton, Washington** on May 9, 2015, an anonymous caller reported that the customer:

came into the Bremerton banking location very upset because he had been talking about opening a secured credit card with [Business Specialist CP]. He had not agreed to open up the card and came into the branch very confused because he did not have any money in his account. It appears that the card was opened up without his consent. This caused him to be in a very tight spot

²⁰⁶⁰ OCC Ex. 2192 at 2-17.

²⁰⁶¹ *Id.* at 2.

²⁰⁶² *Id.* at 3.

²⁰⁶³ *Id.* at 4.

because he did not have access to the funds he needed for the day because the card was in processing.²⁰⁶⁴

From **Lansdale, Pennsylvania** on May 9, 2015 an anonymous customer:

called in today 5/9/15 to check balances on accounts, in talking to the customer she told me she had two accounts and a 3rd that was closed due to fraud. I reviewed accounts and old account had not been closed, and did not have lost/stolen fraud holds placed on it at this time. When asked she told me that there were unauthorized transactions coming thru her original account and that banker told her she needed to close account and open a new one. No hold was placed on accounts allowing fraud to continue to come in, account was not submitted to close, and customer was convinced to open two new accounts thinking that fraud was [happening] and we were taking care of the problem.

In doing so the banker also took money from account to make opening deposits in new accounts. Causing overdraft fees and a negative balance that is not coverable by balances now because customer was misinformed. I submitted to relink debit cards because branch employee opened a debit card as well for new accounts and did not link things the way the customer was told. Causing money to come out of unexpected linkage. Customer was in good spirits about this issue but was very confused with situation and is concerned because money is still owed against original account that should have been closed now. [Note: the EthicsLine caller was not identified, nor was the customer, nor was any banker identified as a Reported Individual.]²⁰⁶⁵

From **Denver, Colorado** on May 9, 2015, an anonymous EthicsLine caller reported:

On 4/22/2015 Customer [WN], who is 17 years old, went into this location. WN had a joint account with his parents. Since he was turning 18, Personal Banker [CW] advised him to open a regular account. CW opened a checking account and savings account for him.

On 5/19/2015 WN's father, [EN], came into the caller's branch (1601 Blake Street, Denver Colorado 80202) because his son had complained that he was sat down for more than an hour and CW had opened an account for him. EN also asked what happened with \$600 that were removed from the account. The caller checked the accounts. He/She was able to see that the \$600 were put into WN's new account. The caller told EN that a banking representative will call him on 5/11/2015 to further speak to him.

²⁰⁶⁴ *Id.* at 6.

²⁰⁶⁵ *Id.* at 7.

The same day, he/she spoke to District Manager [JV] about the incident. JV advised the caller to call the hotline. The caller wants to document the issue.²⁰⁶⁶

From **Croydon, Pennsylvania** on May 9, 2015, an anonymous EthicsLine caller reported, "Customer called and stated she opened a joint account in the branch without the other signer present, and was given an instant card for herself as well as the joint holder. The joint holder lives in another state."²⁰⁶⁷

From **Salem, Oregon/Dallas, Texas** on May 9, 2015 EthicsLine caller [TM, Phone Banker] reported that customer [CH] from Dallas, Texas:

called in today to order some checks. During the authentication process I asked for her online banking username. She stated that she had no idea, that she has never had a computer and had never signed up for the service. I needed to further authenticate her as I proceeded with the order for checks. I asked her for her savings account number. She told me that she does not have one, and never had one. I continued to service the call and order her checks.²⁰⁶⁸

From **Salem, Oregon/Americus, Georgia** on May 9, 2015 anonymous EthicsLine caller reported:

Customer [MW] called in highly upset because she was talked into opening a new checking account. She stated that this hurt her and she thought WF was helping her. She stated she wanted to go back to her ONE checking account and her ONE savings account' however, she has 2 savings accounts and claims the only account that was newly opened was checking account #*913. Claims that she was not advised that by using her new account's debit card would pull funds from her old checking and old savings.²⁰⁶⁹

From **Fairfield, California** on May 9, 2015, EthicsLine caller [RW] reported:

Customer called phone bank due to getting 2 debit cards and was unsure as to why, when we found out they were to her children[s']checking accounts[.] She then told me she only went into the bank to make a \$200 deposit into her son's savings account[.] No other information was discussed[.] When I researched what had happened, the banker made a change to her checking accounts and sent out the debit cards[.] The customer stated that she has had

²⁰⁶⁶ *Id.* at 9.

²⁰⁶⁷ *Id.* at 11

²⁰⁶⁸ *Id.* at 12.

²⁰⁶⁹ *Id.* at 14.

many problems with this specific branch previously and wanted to file complaints about how they do business[.]²⁰⁷⁰

When asked wither she concluded that pressure to meet sales goals was not a predominant theme in the EthicsLine samples that she read, Ms. Russ Anderson responded, “I can’t remember what I thought.”²⁰⁷¹

Ms. Russ Anderson denied any assertion that by the time proactive monitoring had been paused the root cause was well known to her.²⁰⁷² She added that even as she presently testified she did not have a view of what the root cause was for sales practices misconduct.²⁰⁷³ She added she believes “that there are multiple root causes and that you have to work each one as you find them.”²⁰⁷⁴ **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 Ms. Russ Anderson owed to the Bank.**

Supervisory Letter WFC 2016-36: OCC Review of Enterprise Sales Practices

On July 18, 2016, the OCC through Bradley Linskens as Examiner in Charge, Large Bank Supervision, issued Supervisory Letter WFC 2016-36, providing WF&C with the OCC’s review of enterprise sales practices.²⁰⁷⁵ Through this Supervisory Letter, the OCC noted that in June 2015 the OCC identified “a number of deficiencies in internal controls and monitoring processes at the first, second, and third lines of defense that resulted in improper and imprudent sales practices.”²⁰⁷⁶

Following the issuance of the June 2015 Supervisory Letter, the OCC reported reviewing the Regulatory Compliance Risk Management’s (RCRM) analysis of sales practices complaints related to products sold in branches; a sample of sales integrity cases from Corporate investigations that resulted in employee terminations; a sample of employee sales integrity allegations made to the Bank’s employee ethics line and investigation by the Community Bank’s Sales and Service Conduct Oversight Team (SSCOT); Accenture’s review of sales practices in Community Banking, among other lines, and PwC’s independent reviews of customer harm associated with inappropriate sales behavior.²⁰⁷⁷

Upon such review, the OCC concluded the Bank “engaged in unsafe and unsound banking practices based on findings in SL 2015 and further supported by our reviews” of the

²⁰⁷⁰ *Id.* at 16.

²⁰⁷¹ Tr. (Russ Anderson) at 10117.

²⁰⁷² *Id.* at 9476-77.

²⁰⁷³ *Id.* at 9477.

²⁰⁷⁴ *Id.* at 9477.

²⁰⁷⁵ Tr. (Julian) at 6987; OCC Ex. 805.

²⁰⁷⁶ OCC Ex. 805 at 1, citing OCC Supervisory Letter 2015-36 (SL 2015).

²⁰⁷⁷ OCC Ex. 805 at 1-2.

additional information noted above.²⁰⁷⁸ It found “[a]ggressive sales pressure,” along with the “lack of adequate risk management oversight, fostered inappropriate and possibly fraudulent behavior by employees.”²⁰⁷⁹ It found “evidence of sales pressure and inappropriate behavior resulting from the Bank’s lack of sound risk management policies, procedures, and controls related to its sales practices.”²⁰⁸⁰

Enterprise culture was reported in these terms:

For decades, the Bank’s Vision and Values statement emphasized “cross-selling” – the process of offering customers the products and services they need to help them succeed financially. While cross-selling itself may not be a supervisory concern, the practice at the Bank was not properly governed, which led to excessive pressure on employees to sell more products to meet sales goals and achieve financial incentives.

In addition, the risks from these sales practices were not adequately managed. Evidence reveals that many times cross-selling was done without considering whether the products were appropriate for or even wanted by the customer. The Accenture assessment also confirmed aggressive sales goals and inappropriate supervisory practices in the CB. These concerns included sales goals that put undue pressure on front-line employees, as well as incentive compensation programs that often were misaligned with local branch traffic, staff turnover and customer demand.²⁰⁸¹

The 2016 report found SL 2015 “highlighted a number of weaknesses in internal controls and management information systems including a lack of robust first, second and third lines of defense risk management programs.”²⁰⁸²

The 2016 Letter reported, “[t]he practice of opening deposit accounts without authorization, the practice of moving funds without customer consent (simulated funding) and the failure to timely refund or remediate fees charged are considered unsafe or unsound banking practices.”²⁰⁸³ It noted the issues presented in the 2015 Letter still had not been resolved:

Our review of a sample of Ethics Line referrals reflects allegations of inappropriate and unethical employee behavior and suggests there still may be too much pressure on store employees to meet sales goals. Noted themes from the allegations we reviewed were sales pressure, taking advantage of

²⁰⁷⁸ OCC Ex. 805 at 2.

²⁰⁷⁹ *Id.*

²⁰⁸⁰ *Id.*

²⁰⁸¹ *Id.*

²⁰⁸² *Id.* at 3.

²⁰⁸³ *Id.*

protected classes (e.g., age/elderly), and the selling of unwanted deposit or credit products, particularly credit cards. Our limited samples of customer complaints as well as the OCC's Customer Assistance Group (CAG) and CFPB complaints, identified similar themes and further evidence that the Bank engaged in the unsafe and unsound practice of failing to adequately monitor and control sales practices to prevent such inappropriate employee behavior.²⁰⁸⁴

The OCC identified the root causes of the “widespread and unauthorized opening of credit card accounts without consent” included “excessive sales pressure and the absence of a control process that required documentation of explicit customer consent.”²⁰⁸⁵

Mr. Julian identified the response by Mr. Loughlin, presented in a letter dated July 29, 2016.²⁰⁸⁶ Through this letter, Mr. Loughlin asserted Wells Fargo Bank, N.A., “risk management of sales practices and the specifically identified issues in the Supervisory Letter were not, and are not, unsafe or unsound.”²⁰⁸⁷ Mr. Loughlin used the definition of “unsafe or unsound practice” as “any action or omission, which 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.”²⁰⁸⁸

Mr. Loughlin did not dispute that sales practices misconduct occurred: “We are deeply committed to our customers, and we acknowledge and regret that some customers were negatively impacted by the sales practices identified in the Supervisory Letters.”²⁰⁸⁹ According to Mr. Loughlin, however, “the identified sales practice issues do not present an abnormal risk of loss to the Bank or its shareholders, were self-identified, and the Bank has taken significant corrective action both independently and in response to the 2015 Supervisory Letter.”²⁰⁹⁰

Through leading questioning by his Counsel during direct examination, Mr. Julian testified that at the time Mr. Loughlin sent the July 29, 2016 letter, he agreed that based on the information available to him at the time, that Wells Fargo Bank, N.A., had made significant progress on MRA action items and fundamentally improved the Bank's sales practices risk oversight.²⁰⁹¹

²⁰⁸⁴ *Id.* at 4.

²⁰⁸⁵ *Id.*

²⁰⁸⁶ Tr. (Julian) at 7003; R. Ex. 1192.

²⁰⁸⁷ R. Ex. 1192 at 1.

²⁰⁸⁸ R. Ex. 1192 at 1 n.1, quoting *In the Matter of Patrick Adams*, OCC AA-EC-11-50 and OCC Policies and Procedures Manual (“PPM”) 5000-7 (February 26, 2016).

²⁰⁸⁹ R. Ex. 1192 at 1.

²⁰⁹⁰ *Id.* at 2.

²⁰⁹¹ Tr. (Julian) at 7003.

The letter reports, “[a] key principle of the Incentive Compensation Risk Management (ICRM) Program is that incentive compensation should balance risk and financial reward in a manner that does not provide team members with an incentive to exhibit inappropriate sales conduct.”²⁰⁹² The letter continues: “Corporate HR, through the ICRM Program and in partnership with the appropriate Enterprise Risk and Compliance functions including Sales Practices Oversight (SPO), the Law Department, and others, continues to evaluate sales practice risk in connection with the design and administration of incentive compensation as well as related performance management practices within the LOBs, including team member sales goals.”²⁰⁹³

Mr. Julian did not dispute Mr. Loughlin’s representation that as of the issuance of this letter, neither WFAS nor any other entity at Wells Fargo Bank, N.A. had determined the root cause of the issues presented by the 2013 L.A. Times articles or the 2014 city of Los Angeles lawsuit. Mr. Loughlin reported, “SPO is currently conducting the root cause [of sales integrity violations] analysis and will provide an update to executive management and the Risk Committee. This analysis is being developed by reviewing the results and recommendations of the independent reviews as well as through discussions with senior leaders in both the first and second lines of defense.”²⁰⁹⁴

Sales Practices MRA Status Update – July 29, 2016

Mr. Julian identified a Sales Practices MRA Status Update dated July 29, 2016 from Paul McLinko and others to Claudia Russ Anderson and others, which provided a summary of corrective actions relating to the five MRAs issued in 2015.²⁰⁹⁵ He testified that WFAS team members provided updates as the report was being prepared, and the “had communications with them as to the conclusions drawn here.”²⁰⁹⁶ He added, however, that the update “was specifically with respect to the work that the first and second line were responsible for doing with respect to MRA No. 1 through 4,” and that he did none of the work that led to the generation of this Status Update.²⁰⁹⁷

The Status Update reflected, “key corrective actions are not scheduled to be completed until the fourth quarter 2016”, resulting in an Overall Rating of “Yellow”.²⁰⁹⁸ In this context, Yellow indicated “potential risk of schedule delay or missed milestones”, “incomplete action plans to address issues”, “implementation plan requires improvement to fully mitigate risks”,

²⁰⁹² R. Ex. 1192 at 6.

²⁰⁹³ *Id.*

²⁰⁹⁴ *Id.* at 12.

²⁰⁹⁵ Tr. (Julian) at 6973; R. Ex. 13164 (Memo).

²⁰⁹⁶ Tr. (Julian) at 7005.

²⁰⁹⁷ *Id.* at 7005-06.

²⁰⁹⁸ R. Ex. 13164 at 1.

“identified environmental factors (internal or external) have the potential to impact the timely implementation of this effort.”²⁰⁹⁹

One of the “key milestones,” relating to the sales practice oversight by the second line of defense, was to “[e]stablish initial risk appetite metrics for Community Banking”.²¹⁰⁰ Through the Status Update, WFAS reported that it now “believes that a complaint metric should be included in order to effectively assess Sales Practices risk within Community Banking” but described other initial metrics presented through the Update “are a good starting point.”²¹⁰¹

Another bulleted point relating to MRA #2 and the second line of defense was to “[r]eassess EthicsLine and customer complaints investigative processes.”²¹⁰² The Update reported, “[p]lanning for the Ethics Line audit is scheduled to start in July 2016 [sic].”²¹⁰³ The Update reported that as “part of the overall planning for this audit, we will determine our testing approach as specifically related to the validation of EthicsLine portion of this corrective action. WFAS is also developing our validation testing approach for the customer complaints investigative processes.”²¹⁰⁴

Podium Day – September 8, 2016

Through leading questioning by his Counsel during direct examination, Mr. Julian identified September 8, 2016, as the day the OCC Consent Order and L.A. City Attorney lawsuit regarding sales practices were publicly settled, with significant media reaction.²¹⁰⁵ He recalled, “there was a significant amount of activity, discussions, dialogues going on around that day.”²¹⁰⁶

September 13, 2016: WF&C Eliminated All Sales Goals and Sales Incentives for Retail Banking Team Members

Mr. Julian recalled that on September 13, 2016, Wells Fargo & Company announced that it would eliminate all sales goals and sales incentives for retail banking team members.²¹⁰⁷

PwC Analysis of Deposit Accounts for Potential Simulated Funding Behavior – September 14, 2017

Mr. Julian identified the analysis by PricewaterhouseCoopers that examined deposit account data to identify “potential customers and accounts that possess attributes, account

²⁰⁹⁹ R. Ex. 13164 at 5.

²¹⁰⁰ *Id.* at 3.

²¹⁰¹ *Id.*

²¹⁰² *Id.*

²¹⁰³ *Id.*

²¹⁰⁴ *Id.*

²¹⁰⁵ Tr. (Julian) at 7008-09.

²¹⁰⁶ *Id.* at 7008.

²¹⁰⁷ Tr. (Julian) at 7020.

activity, and/or characteristics consistent with certain allegedly improper sales practices” and perform “mutually agreed-upon analyses that generate potential financial impact scenarios for such identified customers.”²¹⁰⁸

The Analysis identified potential primary harm as including account fees paid by the customer directly on unauthorized accounts and indirectly through the Bank’s set-off process or through overdraft protection transfers – including monthly account service fees, overdraft fees and overdraft protection fees, non-Wells ATM fees, and “all other fees including check order fees, direct deposit advance fees, and analysis fees.”²¹⁰⁹

The Analysis reported the data included false positive accounts – where the accounts have “characteristics consistent with the simulated funding allegations – yet nevertheless represent authorized customer accounts.”²¹¹⁰ The Analysis reported that through discussions with the business, “such accounts may be legitimately opened by customers in order to minimize overall monthly service fees.”²¹¹¹ As part of PwC’s validation testing of the data analytics, “we manually reviewed the transaction details on hundreds of sampled accounts to: (1) confirm the implementation accuracy of the quantification methodology, and (2) to confirm the absence of any unexpected outcomes of the methodology as applied to these accounts. The results of this testing met these two objectives.”²¹¹² Mr. Julian testified that WFAS did not attempt to validate whether the assumptions that PwC used would, in fact, identify potentially unauthorized accounts.²¹¹³

The Analysis found that from a starting account population in 2013 of 20,634,301 consumer and business deposit accounts, there were 469,243 accounts that possessed characteristics of simulated funding.²¹¹⁴ The Analysis found that of this population, 21,033 “had fees consistent with the potential primary customer financial harm definition.”²¹¹⁵

The Board of Directors’ Sales Practices Investigation Report

On April 10, 2017, the Independent Directors of the Board of Wells Fargo issued its Sales Practices Investigation Report (“Board Report”).²¹¹⁶ Examiner Tanya Smith was the

²¹⁰⁸ Tr. (Julian) at 7059; OCC Ex. 1636E at 4.

²¹⁰⁹ OCC Ex. 1636E at 13.

²¹¹⁰ *Id.* at 7.

²¹¹¹ *Id.*

²¹¹² *Id.* at 12.

²¹¹³ Tr. (Julian) at 7062.

²¹¹⁴ OCC Ex. 1636E at 14.

²¹¹⁵ *Id.*

²¹¹⁶ EC MSD Ex. 280 (Independent Directors of the Board of Wells Fargo & Company, Sales Practices Investigation Report, dated April 17, 2017).

Bank's Acting Examiner-in-Charge at the time.²¹¹⁷ The Board Report found that the "root cause of sales practice failures was the distortion of the Community Bank's sales culture and performance management system, which, when combined with aggressive sales management, created pressure on employees to sell unwanted or unneeded products to customers and, in some cases, to open unauthorized accounts."²¹¹⁸ It continued: "the only way definitively to address the broken sales model and the root cause of sales practice abuses was to emphasize other metrics for performance and to abandon exerting pressure through sales goals and sales-driven incentive programs."²¹¹⁹

The Board Report identified deficiencies in the Law Department, Audit, and Community Bank Risk. The Board Report found:

Russ Anderson's performance fell far short of what was expected and required of the senior risk officer in the Community Bank. Russ Anderson failed to adequately assess and advocate for changes in the business practices that resulted in sales integrity violations. She also did not adequately address customer harm arising from improper sales practices.²¹²⁰

Between 2011 and 2016, Wells Fargo Audit Services ("Audit") conducted periodic audits that touched on sales practice issues within the Community Bank. These audits generally found that processes and controls designed to

²¹¹⁷ Examiner Smith is the current Examiner-in-Charge of Wells Fargo Bank, N.A., Sioux Falls, South Dakota in Large Bank Supervision at the Office of the Comptroller of the Currency. She became Wells Fargo's Acting Examiner-in-Charge in March 2017 and has served as its permanent Examiner-in-Charge since July 2017. As Wells Fargo's Examiner-in-Charge, she manages a team of approximately 80 OCC examiners and other employees covering all aspects of the Bank's daily supervision. Her supervisory responsibilities include establishing regulatory and supervisory expectations on major programs through discussions with the Chief Executive Officer and other senior executives, providing clear feedback on progress against Enforcement Actions and Matters Requiring Attention, evaluating the Bank's systems and controls to determine the Risk Assessment and CAMELS ratings, preparing the Report of Examination and the annual comprehensive risk assessment ("CORE"), and regularly communicating with the Board about supervisory findings and priorities. Among other things, she is responsible for developing and supporting the supervisory strategy for this large, complex, multinational institution with multiple risk, regulatory, and control deficiencies, including those related to legal, audit, compliance, risk, governance, and sales practices. From March 2017 onwards, she participated in the OCC's examinations and investigation of the Bank's sales practices. She has over 27-years of professional experience at the OCC, the Federal Deposit Insurance Corporation ("FDIC"), and the International Monetary Fund ("IMF"), including extensive experience in the supervision of large, complex, multinational banks. EC MSD Ex. 267 (Report of Examiner Smith) at ¶¶1-3.

²¹¹⁸ EC MSD Ex. 267 (Report of NBE Smith) at ¶51, quoting Independent Directors of the Board of Wells Fargo & Company, Sales Practices Investigation Report, at 8 (Apr. 10, 2017) ("Board Report"), available at <https://www08.wellsfargomedia.com/assets/pdf/about/investorrelations/presentations/2017/board-report.pdf>.

²¹¹⁹ EC MSD Ex. 267 (Report of NBE Smith) at ¶51, quoting Independent Directors of the Board of Wells Fargo & Company, Sales Practices Investigation Report, at 8 (Apr. 10, 2017) ("Board Report"), available at <https://www08.wellsfargomedia.com/assets/pdf/about/investorrelations/presentations/2017/board-report.pdf>.

²¹²⁰ Independent Directors of the Board of Wells Fargo & Company, Sales Practices Investigation Report, at 8 (Apr. 10, 2017) ("Board Report"), available at <https://www08.wellsfargomedia.com/assets/pdf/about/investorrelations/presentations/2017/board-report.pdf> at 49.

detect, investigate and remediate sales practice violations were effective at mitigating sales practice-related risks. In addition to auditing these detective functions, Audit also reviewed the Community Bank's compensation plans and found that their design did not promote unethical behavior.²¹²¹

Notwithstanding the growing awareness of the reputational risk associated with mass terminations, and the fact that many of these incidents involved unauthorized products or accounts, the perception persisted in the Law Department that sales integrity issues involved 'gaming' the Community Bank's incentive programs and not conduct affecting customers. That led them to underestimate the need to escalate and more directly manage sales integrity issues.²¹²²

Respondent Julian was a member of the Operating Committee at the time the Board Report was issued and had the opportunity to review and correct any factual errors in the report prior to its issuance.²¹²³ Examiner Smith interacted with Respondent Julian at the time of the Board Report's issuance, asked him for his feedback on the Board Report, and does not recall him expressing *any* concerns about the accuracy of the report or any disagreement with any of its findings or conclusions.²¹²⁴

Examiner Smith opined that Respondents' current assertion that the Bank fabricated or exaggerated its sales practices problem in the Board Report is implausible on its face.²¹²⁵ In her 27 years of professional experience as a bank examiner, Examiner Smith has never observed or even heard of any board exaggerating a significant problem to the extreme detriment to the institution.²¹²⁶

In addition, in this instance the Board engaged outside counsel to independently look at the facts and circumstances that form the basis of the final report.²¹²⁷ Examiner Smith's team reviewed a number of documents and interview notes that the outside counsel gathered as part of the Board investigation and found the work and the conclusions to be credible, comprehensive,

²¹²¹ Independent Directors of the Board of Wells Fargo & Company, Sales Practices Investigation Report, at 8 (Apr. 10, 2017) ("Board Report"), available at <https://www08.wellsfargomedia.com/assets/pdf/about/investorrelations/presentations/2017/board-report.pdf> at 91.

²¹²² EC MSD Ex. 267 (Report of NBE Smith) at ¶52, quoting Independent Directors of the Board of Wells Fargo & Company, Sales Practices Investigation Report, at 8 (Apr. 10, 2017) ("Board Report"), available at <https://www08.wellsfargomedia.com/assets/pdf/about/investorrelations/presentations/2017/board-report.pdf> at 75.

²¹²³ EC MSD Ex. 267 (Report of NBE Smith) at ¶53.

²¹²⁴ *Id.*

²¹²⁵ *Id.* at ¶54.

²¹²⁶ *Id.*

²¹²⁷ *Id.*

and not exaggerated.²¹²⁸ Examiner Smith reported that the OCC’s examination work and the subsequent investigation revealed that the sales practices misconduct problem was even worse than what was detailed in the Board Report.²¹²⁹

On February 21, 2020, the Bank agreed to pay \$3 billion to resolve criminal and civil investigations with the Department of Justice and the Securities and Exchange Commission into sales practices “involving the opening of millions of accounts without customer authorization.”²¹³⁰ Wells Fargo agreed that the factual statements contained within the Statement of Facts to the Deferred Prosecution Agreement (“DOJ Statement of Facts”) are true and accurate. The DOJ Statement of Facts described the sales goals as “onerous” and “aggressive.”²¹³¹

In her report, Examiner Candy noted the following:

Corporate culture refers to the norms and values that drive behaviors within an organization. An appropriate corporate culture for a bank is one that does not condone or encourage imprudent risk taking, unethical behavior, or the circumvention of laws, regulations, or safe and sound policies and procedures in pursuit of profits or business objectives. Office of the Comptroller of the Currency, Comptroller’s Handbook, Safety and Soundness, Corporate and Risk Governance at 13 (July 2016).²¹³²

Based on her work in the supervision of the Bank and evidence she reviewed during the investigation and litigation, Examiner Candy concluded that employees engaged in sales practices misconduct because they feared disciplinary action up to and including termination if they did not meet the unreasonable sales goals and that this environment and aggressive sales culture existed in the Community Bank from 2002 through 2016.²¹³³ Employees also engaged in sales practices misconduct to earn incentive compensation.

Based on her training, experience, and commission as a National Bank Examiner, Examiner Candy reported that incentive compensation arrangements require effective oversight,

²¹²⁸ *Id.* at ¶54.

²¹²⁹ *Id.*

²¹³⁰ EC MSD Ex. 269 (Report of NBE Candy) at ¶51, quoting Press Release 20-035, U.S. Dep’t of Justice, Central District of California, Wells Fargo Agrees to Pay \$3 Billion to Resolve Criminal and Civil Investigations into Sales Practices Involving the Opening of Millions of Accounts Without Customer Authorization (Feb. 21, 2020), <https://www.justice.gov/usao-cdca/pr/wells-fargo-agrees-pay-3-billion-resolvecriminal-and-civil-investigations-sales>.

²¹³¹ EC MSD Ex. 269 (Report of NBE Candy) at ¶50, citing Press Release, U.S. Attorney's Office for the Central District of California, Wells Fargo Agrees to Pay \$3 Billion to Resolve Criminal and Civil Investigations into Sales Practices (Feb. 21, 2020); Wells Fargo Deferred Prosecution Agreement and Exhibit A, Statement of Facts (Feb. 20, 2020).

²¹³² EC MSD Ex. 269 (Report of NBE Candy) at ¶52.

²¹³³ *Id.* at ¶53

governance, controls, and risk management and she concluded that the incentive compensation plans in the Community Bank overemphasized unreasonable sales goals and did not appropriately balance financial risk and reward.²¹³⁴ The incentive compensation arrangements in the Community Bank incentivized employees to engage in sales practices misconduct.²¹³⁵ The incentive compensation arrangements also incentivized store or branch managers to encourage, or turn a blind eye to, sales practices misconduct.²¹³⁶

At the Bank, incentive compensation and performance management went hand in hand. The sales and incentive plans were commonly referred to as 50/50 plans because there was an expectation that only half the regions would be able to meet them. Although in theory incentive compensation arrangements should reward superior performance and employees should not suffer employment consequences for failing to achieve incentive compensation goals, in practice this is not what happened in the Community Bank.²¹³⁷

For employees, failure to meet sales goals under the incentive compensation plans carried with it both the risk of not obtaining incentive compensation and poor performance reviews, including the risk of disciplinary action and termination.²¹³⁸ As the Board Report concluded, “performance management and incentive plans added significant additional risk to the sales model.”²¹³⁹ Moreover, promotions and advancement within the Community Bank were based primarily on employees’ ability to generate sales and meet the unreasonable sales goals.²¹⁴⁰ This contributed to the high-pressure culture within the Community Bank and gave the impression that the Bank and senior management valued sales at all cost – including above ethics and the customer’s best interest.²¹⁴¹

The incentive compensation plans rewarded employees for sales of secondary products (e.g., a second checking or savings account or additional debit cards).²¹⁴² An outsized portion of conduct risk was associated with sales of secondary products. As the Bank acknowledged in the DOJ Statement of Facts, “[m]illions of secondary accounts and products were opened from 2002

²¹³⁴ *Id.* at ¶54.

²¹³⁵ *Id.*

²¹³⁶ *Id.*

²¹³⁷ *Id.*

²¹³⁸ *Id.* at ¶55.

²¹³⁹ *Id.* at ¶54, citing Board Report at 27.

²¹⁴⁰ EC MSD Ex. 269 (Report of NBE Candy) at ¶55.

²¹⁴¹ *Id.*

²¹⁴² *Id.* at ¶56.

to 2016, and many of these were never used by customers.”²¹⁴³ The Board Report explained that Community Bank

[r]egional leadership was unsuccessful in having their concerns about secondary checking accounts addressed even as late as 2015. In that year, one regional leader wrote an email continuing to advocate the removal of secondary accounts from incentive compensation plans, saying he and other leaders should “fight the good fight every year – especially since I think one day we will be asked why it was part of the goal process to begin with.”²¹⁴⁴

The Board Report found that incentive compensation “contributed to problematic behavior by over-weighting sales as against customer service or other factors.”²¹⁴⁵ Based on an extensive investigation, the Board Report determined that “the only way definitively to address the broken sales model and the root cause of sales practice abuses was to emphasize other metrics for performance and to abandon exerting pressure through sales goals and sales-driven incentive programs.”²¹⁴⁶ The Board Report described the incentive compensation program as “misaligned” and in January 2017, the Bank put in place a new incentive program that focused on customer service rather than selling products.²¹⁴⁷ Examiner Candy’s conclusions match those found in the Board Report.²¹⁴⁸

It is Examiner Candy’s opinion as a National Bank Examiner that the incentive compensation program and plans in the Community Bank were deficient in both design and implementation and resulted in employees engaging in sales practices misconduct.²¹⁴⁹ This was recklessly unsafe or unsound and exposed the Bank to increased operational, compliance, regulatory, legal, reputational and financial risks.²¹⁵⁰

OCC Supervisory Letter WFC 2016-49: Sales Practices Governance and Reporting Review

Through a Supervisory Letter dated September 21, 2017, the OCC summarized the results of its Sales Practice Governance and Reporting review that began in November 2016.²¹⁵¹ Describing SL 2015-36 (issued June 2015) as the baseline for the 2017 Letter, the OCC reflected

²¹⁴³ *Id.*, citing Press Release, U.S. Attorney's Office for the Central District of California, Wells Fargo Agrees to Pay \$3 Billion to Resolve Criminal and Civil Investigations into Sales Practices (Feb. 21, 2020); Wells Fargo Deferred Prosecution Agreement and Exhibit A, Statement of Facts (Feb. 20, 2020).

²¹⁴⁴ EC MSD Ex. 269 (Report of NBE Candy) at ¶57, citing *Board Report* at 41 n.17.

²¹⁴⁵ EC MSD Ex. 269 (Report of NBE Candy) at ¶58, citing *Board Report* at 7

²¹⁴⁶ EC MSD Ex. 269 (Report of NBE Candy) at ¶58, citing *Board Report* at 8.

²¹⁴⁷ EC MSD Ex. 269 (Report of NBE Candy) at ¶58, citing *Board Report* at 8.

²¹⁴⁸ EC MSD Ex. 269 (Report of NBE Candy) at ¶58.

²¹⁴⁹ *Id.* at ¶59.

²¹⁵⁰ *Id.*

²¹⁵¹ Tr. (Julian) at 7062; OCC Ex. 1689 at 1.

that in June 2015 the OCC had concluded “that sales practices oversight was weak and in need of improvement.”²¹⁵² The 2015 Letter included five MRAs across each of the three lines of defense, and “highlighted a number of breakdowns in governance, risk management, incentive compensation, reporting, and controls.”²¹⁵³

The 2017 Letter noted that in July 2016, the OCC issued SL 2016-36, “citing the sales practices activities as unsafe or unsound.”²¹⁵⁴ Drawing from data gathered through independent consultant reports and the ongoing work of its examiners, the OCC “identified that aggressive sales pressure combined with a lack of adequate risk management oversight resulted in unsafe or unsound practices.”²¹⁵⁵ This work led in September 2016 to the Sales Practices Consent Order, which was announced in conjunction with the CFPB Consent Order and the Bank’s settlement with the Los Angeles City Attorney.²¹⁵⁶

Subsequent to the issuance of the 2016 Consent Order, the OCC sought to assess “who at the executive management level knew about sales practices issues, when they became aware of the problems, and what if any actions these individuals took to address or escalate the issues to the Board and the [OCC].”²¹⁵⁷ The 2017 Letter considered Board committee meeting packages, Community Bank committee meeting packages, EthicsLine and customer complaints, termination notes, Suspicious Activity Reports, and over 400,000 emails.²¹⁵⁸

Through this assessment, the OCC evaluated “who was held accountable for the unsafe or unsound and/or lack of adequate supervision or escalation.”²¹⁵⁹ The assessment leading to the 2017 Letter focused on Community Banking, which the OCC found was “responsible for retail sales and branch operations”.²¹⁶⁰ It also evaluated the role of the Board of Directors and the former CEO; along with the Law Department, Human Resources, Audit, and Corporate Risk, “given their oversight and/or control function responsibilities.”²¹⁶¹ The assessment also evaluated employee terminations, EthicsLine allegations, and claims of retaliation.²¹⁶²

²¹⁵² OCC Ex. 1689 at 1.

²¹⁵³ *Id.*

²¹⁵⁴ *Id.* at 2.

²¹⁵⁵ *Id.*

²¹⁵⁶ *Id.*

²¹⁵⁷ *Id.*

²¹⁵⁸ *Id.* at 1.

²¹⁵⁹ *Id.* at 2.

²¹⁶⁰ *Id.*

²¹⁶¹ *Id.*

²¹⁶² *Id.*

In its supporting comments, the Letter identified the failure of former CEO John Stumpf to provide effective oversight of Community Banking.²¹⁶³ It reported, “the CB management team implemented aggressive sales goals and a poorly designed incentive compensation program which resulted in widespread unethical activity, significant customer harm and reputational damage to the bank.”²¹⁶⁴

The Letter noted the following in the history of the material issues:

In June of 2013, as a result of an increasing number of whistleblower emails regarding sales practices to the CEO, the Sales and Service Conduct Oversight Team (SSCOT) in the first line of defense launched an investigation into allegations of simulated funding in LA and Orange County (LA/OC). The bank initially terminated 30 employees in the LA/OC area and then launched a larger investigation across the company into simulated funding. As a result of the investigation, the bank terminated approximately 230 team members in total throughout 2014. None of this information was escalated to the OCC or the Board in 2013 or 2014. In February 2015, the OCC conducted a CB examination with a focus on sales practices governance to follow up on the claims of sales pressure. Multiple interviews were conducted with [Carrie] Tolstedt, [Claudia] Russ Anderson (Group Risk Officer), [Jason] MacDuff (Head of Strategic Planning) and a number of her direct reports. There was no mention of the 230 terminations related to simulated funding, or the larger issue of sales practices related terminations across the company.

In April 2015, Tolstedt presented to the Risk Committee of the Board on sales practices for the first time. There was no mention of the LA/OC investigation or the numbers of team members terminated on an annual basis. The focus was on the “Evolving Model” – the end to end improvement process developed to address some sales practices concerns. Just one month later, Tolstedt was again asked to present in response to the LA lawsuit that was filed on May 4, 2015. Her presentation focused only on the 230 terminated as a result of the LA/OC investigation with no mention of the larger body of terminations related to sales integrity issues. The root cause of the problem was summarized as a few rogue employees violating bank policy and the risk management team being aggressive in detecting and terminating team members engaging in conduct that violated CB policies. There was no mention of the history behind sales pressure, unattainable product goals, whistleblower complaints, SOX matters, or related class action lawsuits.

²¹⁶³ OCC Ex. 1689 at 6.

²¹⁶⁴ *Id.* at 7.

Tolstedt and Russ Anderson pushed back on the second and third lines of defense and were resistant to challenge and oversight by these groups. Tolstedt never voluntarily escalated sales practices issues, and when she did present at the Board level, the presentations were high level and viewed by many Board members as misleading. There was also a culture, pattern, and practice in the CB of redacting, minimizing and deleting material information that went to the Board or regulators. In an email exchange between Russ Anderson, Tolstedt, and various members of the Law Department on May 16, 2015, there were conversations about what to include in the Board presentation. A phone meeting was held later that evening and a decision was made to delete termination data from the presentation, which showed the CB was terminating one percent of team members annually. That same package was presented to the OCC as a part of our request for information for the May 2015 review, and CB leadership never provided this termination data despite OCC requests. In interviews with Russ Anderson, she stated to the OCC that sales pressure was not an underlying issue for increased turnover and terminations.²¹⁶⁵

In its conclusions, the OCC reported the following:

Since at least 2011, Wells Fargo's (WF) executive and senior management teams failed to adequately address widespread sales practices issues originating in CB [Community Banking], and the Board of Directors failed in their oversight duties by inadequately challenging senior leadership. CB management enforced an aggressive sales culture that resulted in team members selling unwanted products to customers and opening unauthorized accounts. The former CEO was slow to react, depending instead on Wells Fargo's strong market perception, exceptional financial performance, and overall balance sheet strength. He failed to properly supervise the head of the CB and did not address known problems with leadership in that Group over an extended period of time. Additionally, the decentralized corporate structure, most notably within Corporate Risk and HR, exacerbated the problem and provided the CB with undue independence and limited accountability.

The control functions also failed in their responsibilities. Executives in the Law Department, HR, Corporate Risk and Audit were aware of sales practices issues at least as early as 2011 through whistleblower complaints and adverse sales integrity metrics, but did not escalate the situation to the Board or regulators in a timely manner. Management and the Board need to move much more quickly to identify and address critical issues. The Law Department and Corporate Risk must work more closely together to

²¹⁶⁵ OCC Ex. 1689 at 7-8.

understand the broader risks contained in systemic legal issues and to ensure that the root cause of the issues are appropriately analyzed.

Escalation to and transparency with the Board of Directors and OCC is poor and must improve. CB management repeatedly failed to properly escalate the growing concerns around sales practices to the Board of Directors and the OCC. We found that CB management, primarily the head of CB and the Group Risk Officer, along with the Law Department and HR, engaged in a pattern and practice of minimizing and downplaying termination information and redacting information from OCC requests, ERMC presentations, and employee exit interviews and surveys.

Unsafe or unsound sales practices have been identified in a number of areas within the bank, indicating that while the most significant problems were in the CB, the culture of poor behavior went beyond just the CB. Issues have been identified in Insurance, Merchant Services, and Private Banking. We also identified several instances of potential retaliation when team members escalated issues. Management needs to ensure that the new Sales Practices Governance and Oversight function captures sales practices activity across the company and addresses supervision, escalation and governance committees to ensure new products and incentive compensation plans are properly structured. Investigations are ongoing in a number of these areas and management should continue to keep the OCC apprised of findings and ensure remediation plans are consistent where appropriate and approved by a designated Board Committee.²¹⁶⁶

Mr. Julian testified that after the LA Times articles came out, “there was a significant amount of work going on around sales practices. But none of that work indicated to me that the controls managing sales practices activity was weak.”²¹⁶⁷ He added, “In fact, as I’ve stated before, controls related to sales practices activity are what identified the issues and resulted in investigations and ultimately terminations of team members for that practice.”²¹⁶⁸

Asked what his biggest concern with regard to risk in the enterprise, Mr. Julian responded:

To the extent certainly a risk is deemed significant or material in some manner, my first concern is to make sure and assure that appropriate levels of management and, to the extent appropriate, the board is aware of the risk

²¹⁶⁶ *Id.* at 2-3.

²¹⁶⁷ Tr. (Julian) at 7065-66.

²¹⁶⁸ *Id.* at 7066.

so that management and the board can take steps to address the risk. Probably my biggest concern is – you know, that it doesn't get escalated.²¹⁶⁹

Mr. Julian testified that when comparing when Audit engages in business monitoring versus having Audit test controls, “in order to provide assurance that controls are working effectively and as intended, then audit will scope in – they will develop a scope of certain tests to go in and test those controls to be able to determine if those controls are working as intended. So they would perform specific tests that will provide them overview as to whether the controls are appropriately working.”²¹⁷⁰

In addition to issuing new MRAs regarding Legal Governance and Oversight, Attorney Client Privilege Use and Oversight, and Suspicious Activity Reports, the 2017 Letter required the Bank to “formally adopt and implement enterprise-wide policies, procedures, and reporting for the exit interview process.”²¹⁷¹ It described the current exit interview process as “informal and not implemented consistently through the enterprise.”²¹⁷² The Letter reported that “[i]t was clear from this review that had management had a robust process in place to analyze and escalate this information, the issues would have surfaced much sooner.”²¹⁷³ After noting that Community Banking now has a process in place to reach out to team members for exit interviews, the Letter reported the process “is not formalized in written policy and does not extend beyond the CB.”²¹⁷⁴ The OCC required that Management “ensure that exit interview information is used to identify and report on trends, problem spots and issues across the geographies.”²¹⁷⁵

OCC Requirements for a Heightened Standards Safety and Soundness Plan

In a letter dated July 28, 2015, the OCC through its Examiner in Charge for Large Bank Supervision, Bradley Linskens, reported that it had determined that Wells Fargo Bank, N.A. “has failed to satisfy the safety and soundness standards contained in the OCC Guidelines Establishing Heightened Standards for Certain Large Insured National Banks”.²¹⁷⁶ The letter noted that enforcement actions and MRAs existed to address some of the weaknesses in the Bank’s compliance program, “recent compliance-related issues noted by various regulatory agencies, including the OCC, indicate significant actions remain to establish a fully effective compliance program.”²¹⁷⁷

²¹⁶⁹ *Id.* at 7066.

²¹⁷⁰ *Id.* at 7067.

²¹⁷¹ OCC Ex. 1689 at 5.

²¹⁷² *Id.*

²¹⁷³ *Id.*

²¹⁷⁴ *Id.*

²¹⁷⁵ *Id.*

²¹⁷⁶ OCC Ex. 2060 at 1.

²¹⁷⁷ *Id.*

The OCC noted here that while the “primary basis for finding that the Bank is not in compliance with Appendix D relates to deficiencies in the Bank’s RCRM [Regulatory Compliance Risk Management], the Part 30 Plan must take into consideration the interdependencies of all three lines of defense to ensure that weaknesses in front line risk management or Internal Audit practices don’t undermine the effectiveness of actions taken to improve RCRM.”²¹⁷⁸

Ms. Russ Anderson’s Response to the OCC’s 15-day Letter

Ms. Russ Anderson testified that she accepts responsibility for her role in handling sales practices misconduct, but testified that even now, she has no regrets about how sales practices misconduct was handled at the Community Bank.²¹⁷⁹ Prompted by her Counsel during direct examination, Ms. Russ Anderson clarified her answer to say “The only regret I have is that we didn’t go faster.”²¹⁸⁰ Through leading questioning by her Counsel during direct examination, Ms. Russ Anderson denied intentionally making false statements to bank examiners, denied intentionally obstructing bank examinations, denied intentionally downplaying information relating to the problem.²¹⁸¹

Ms. Russ Anderson rejected testimony to the effect that it was not a concern to her that elderly people and racial ethnicities had been mistreated, testifying:

I believe in my deepest part of me that everyone needs to be treated equally and that no one should [be] preyed upon. I have many family members who that could apply to, including our youngest son Ryan, who is transgender male. And I could never work for a corporation that preyed on anyone who was disadvantaged or less sophisticated. And so those -- those concepts that Ms. Candy testified to are completely inaccurate.²¹⁸²

Ms. Russ Anderson opined that knowing what she knows now, she did not act in an unsafe or unsound manner and did not act recklessly.²¹⁸³ She said she had never before been cited for any unsafe or unsound practices or breaches of fiduciary duty, nor had she been criticized by any regulator for actions similar to those at issue in this enforcement action.²¹⁸⁴

Asked if she had any regrets about what happened at Wells Fargo, Ms. Russ Anderson testified:

²¹⁷⁸ OCC Ex. 2060 at 2, n. 1.

²¹⁷⁹ Tr. (Russ Anderson) at 9257-58.

²¹⁸⁰ *Id.* at 9257.

²¹⁸¹ *Id.* at 9258.

²¹⁸² Tr. (Russ Anderson) at 9510. See also, “22-03-07 Respondents’ Amended Revised Errata Day 9-38” on page 77. Ordered by Second Supplemental Order.

²¹⁸³ Tr. (Russ Anderson) at 9510-11.

²¹⁸⁴ *Id.* at 9511.

My primary regret would be, one, we didn't maybe move faster. And, two, I wish that maybe we -- I could have kept better records of everything to show everything we were doing. But we were working fast and furious, and sometimes emails don't say what you need them to say, and sometimes documentation is not always kept. But I think overall we did the very best we knew how.²¹⁸⁵

Ms. Russ Anderson testified that the damage to the Bank was “devastating” to her, that the Bank “was like a family”, that “it hurts. I still consider it my company.”²¹⁸⁶

The Importance of the Community Bank to WFC

WFC is a financial holding company and a bank holding company registered under the Bank Holding Company Act of 1956.²¹⁸⁷ WFC’s principal business is to act as a holding company for its subsidiaries.²¹⁸⁸ As of December 31, 2019, Wells Fargo Bank, N.A. was WFC’s principal subsidiary with assets of \$1.7 trillion, or 89 percent of WFC’s assets.²¹⁸⁹ WFC admitted that the Community Bank “contributed more than half (and in some years more than two-thirds) of the Company’s revenue from 2007 through 2016.”²¹⁹⁰

Not only did the Bank generate more than half of WFC’s revenue, it also provided important synergies to all parts of the corporation.²¹⁹¹ “The Community Bank also made referrals to other units in WFC regarding mortgages, lines of credit, credit cards, investment products (including brokerage products), insurance products, safe deposit boxes and a variety of other banking products.”²¹⁹²

The Bank and the OCC’s Wells Fargo examination team concluded that while the cross-sell business model was the root cause of unacceptable levels of misconduct, it was also financially beneficial and increased WFC’s stock price.²¹⁹³

²¹⁸⁵ Tr. (Russ Anderson) at 9511.

²¹⁸⁶ *Id.* at 9511-12.

²¹⁸⁷ EC MSD Ex. 658 (Report of Dr. Pocock) at ¶44, citing Wells Fargo & Co., Annual Report (Form 10-K) at 1 (Feb. 27, 2020).

²¹⁸⁸ EC MSD Ex. 658 (Report of Dr. Pocock) at ¶44, citing Wells Fargo & Co., Annual Report (Form 10-K) at 1 (Feb. 27, 2020).

²¹⁸⁹ EC MSD Ex. 658 (Report of Dr. Pocock) at ¶44, citing Wells Fargo & Co., Annual Report (Form 10-K) at 1 (Feb. 27, 2020).

²¹⁹⁰ EC MSD Ex. 658 (Report of Dr. Pocock) at ¶45, citing Deferred Prosecution Agreement at A-1.

²¹⁹¹ EC MSD Ex. 658 (Report of Dr. Pocock) at ¶46.

²¹⁹² *Id.*, citing Deferred Prosecution Agreement at A-2/

²¹⁹³ EC MSD Ex. 658 (Report of Dr. Pocock) at ¶47.

The scope of the scandal was publicized with the September 8, 2016 Announcement of the OCC's and CFPB's enforcement actions against the Bank.²¹⁹⁴ However, the Bank and OCC examiners concluded that the Bank suffered, and continues to suffer, reputational and financial harm that adversely affected WFC's stock price.²¹⁹⁵

In testimony before the OCC, the Bank's former CEO, Timothy Sloan, testified about the financial impact of the sales practices misconduct scandal on the Bank as follows:

Q Overall, what's the best estimate that you have on the total financial impact of the sales practices scandal on the company or the bank?

A Oh it would be in the tens of billions of dollars, when you add -- the most significant impact was one that we were referring to earlier, and that was the impact of the stock price. We really missed out on recovery.²¹⁹⁶

The stock price analysis Dr. Pocock performed provides significant evidence that the Bank and OCC examiners are correct with respect to both propositions.²¹⁹⁷ Dr. Pocock found that the Bank and its senior managers benefitted greatly from the impermissible but profitable cross-sell business model during the many years that the model was in effect.²¹⁹⁸ He also found, however, that the Bank suffered, and continues to suffer, staggering reputational and financial harm following the public disclosure of the Bank's sales practices misconduct on September 8, 2016 and the scandal that ensued.²¹⁹⁹

From his analysis, Dr. Pocock opined that there is significant evidence that the Bank and its senior managers benefitted greatly from preserving and implementing the profitable but impermissible cross-sell business model for over fourteen years, and that the Bank suffered, and is still suffering, great reputational and financial harm from the scandal, that the impermissible cross-sell business model caused.²²⁰⁰

Examiner Smith reported that the sales practices misconduct problem has also led to volatility in the membership of the Board of Directors and of individuals in senior executive management positions.²²⁰¹

²¹⁹⁴ EC MSD Ex. 658 (Report of Dr. Pocock) at ¶48.

²¹⁹⁵ *Id.*

²¹⁹⁶ *Id.* at ¶49, quoting Sworn Statement of Timothy Sloan at 260:8-16 (July 11, 2019) (OCC-SP00048394).

²¹⁹⁷ EC MSD Ex. 658 (Report of Dr. Pocock) at ¶50.

²¹⁹⁸ *Id.*

²¹⁹⁹ *Id.*

²²⁰⁰ *Id.* at ¶66.

²²⁰¹ EC MSD Ex. 267 (Report of NBE Smith) at ¶150.

Examiner Smith reported that in 2017, the Bank fell to last place in a bank reputation survey conducted by American Banker/Reputation Institute.²²⁰² According to the American Banker, the Bank's reputation score "went into free fall . . . [and was] by far the lowest of any bank."²²⁰³ The Bank's own research showed that its favorability ratings significantly trailed its peers and that it remained "near the bottom" in terms of trust.²²⁰⁴

Examiner Smith reported that the sales practices misconduct problem also had negative business impacts on the Bank. As Ms. Mack testified, the scandal hampered the ability of the Community Bank to attract customers.²²⁰⁵

Examiner Smith reported that the sale practices misconduct problems are ongoing²²⁰⁶ and have led to significant customer harm and breaches of customer trust.²²⁰⁷ She also reported that the sales model also had a significant impact on Bank employees.²²⁰⁸ She opined that the intentionally unreasonable sales goals and extreme pressure to meet those goals led employees to engage in violations of laws (including criminal laws pertaining to fraud, identity theft, and the falsification of bank records), regulations, and Bank policy, and the Bank fired more than 5,300 employees for engaging in sales practices misconduct between 2011 and 2015.²²⁰⁹ She reported that during that same period, over 8,100 employees were terminated from not meeting sales goals.²²¹⁰ Examiner Smith opined that all of the Community Bank's employees over a 14-year period were victimized by intentionally unreasonable goals and extreme pressure to meet those goals.²²¹¹

From these findings, Examiner Smith opined that Respondents' misconduct caused the Bank to suffer material financial loss and reputational damage.²²¹² It is also her opinion that the

²²⁰² *Id.* at ¶151.

²²⁰³ *Id.*

²²⁰⁴ *Id.*, quoting 2017 reputation survey: Banks avoid the Wells Fargo drag, American Banker, Sean Spósito, (Jun. 27, 2017) available at <https://www.americanbanker.com/news/2017-bank-reputation-survey>, last accessed November 16, 2022.

²²⁰⁵ EC MSD Ex. 267 (Report of NBE Smith) at ¶152, quoting Mack Tr. at 241:16-242:1.

²²⁰⁶ EC MSD Ex. 267 (Report of NBE Smith) at ¶153.

²²⁰⁷ *Id.* at ¶154.

²²⁰⁸ *Id.* at ¶155.

²²⁰⁹ *Id.*, citing Consent Order, In re Wells Fargo Bank, N.A., No. 2016-CFPB-0015 (Sept. 8, 2016) (CFPB), available at https://files.consumerfinance.gov/f/documents/092016_cfpb_WFBconsentorder.pdf; Statement of John G. Stumpf, Chairman and Chief Executive Officer, Wells Fargo & Co., Hearing before the Committee on Banking, Housing, and Urban Affairs, U.S. Senate, 114th Congress (Sept. 20, 2016) (OCC-SP0111168).

²²¹⁰ EC MSD Ex. 267 (Report of NBE Smith) at ¶155, citing E-mail from Matthews to Huss, USE THIS VERSION: Updated with totals: Data Request: terms due to sales performance (Sept. 27, 2016) (OCC-SP00034166).

²²¹¹ EC MSD Ex. 267 (Report of NBE Smith) at ¶155.

²²¹² *Id.* at ¶156.

Bank has yet to recover from the reputational damage caused by sales practices, and that the reputational harm as well as the improper sales practices resulted in actual or prospective prejudice to the Bank's depositors.²²¹³

Each Respondent Received Personal Gain or Other Benefit from Their Misconduct

Examiner Candy opined that each Respondent's misconduct conferred personal gain or other benefit to them.²²¹⁴ As explained above, she reported that the sales practices misconduct problem persisted because its root cause, the unreasonable goals and extreme pressure, also was the very basis for the financial success of the business model.²²¹⁵ She reported that the Community Bank was the largest line of business at the Bank and was the driver of growth for the Bank and the key to its publicly touted cross-sell success.²²¹⁶

Examiner Candy opined that as senior executives at the Bank, Respondents reaped the benefits of that success in the form of compensation, substantial bonuses, and long-term equity awards.²²¹⁷ She reported that as WFC's share price increased during their tenures, so did their effective compensation.²²¹⁸ Further, she reported that cash bonuses were also substantial and linked to both the Respondents' individual performance as well as the performance of the bank.²²¹⁹

Examiner Smith reported that Respondents' improper actions and inactions allowed the Bank's impermissible, but profitable, sales model to continue for many years.²²²⁰ As senior executives of the Bank, they benefitted financially from the unsafe and unsound business model that their misconduct preserved and perpetuated because their compensation was based in part on the Bank's financial performance.²²²¹ Upon these findings, Examiner Smith opined that the Respondents received financial gain or other benefits by reason of their misconduct.²²²²

Respondents' Misconduct Caused Financial Losses and Reputational Damage to the Bank as Well as Harm to its Customers and Employees

²²¹³ *Id.* at ¶157.

²²¹⁴ EC MSD Ex. 269 (Report of NBE Candy) at ¶211.

²²¹⁵ *Id.* at ¶212.

²²¹⁶ *Id.*

²²¹⁷ *Id.* at ¶213.

²²¹⁸ *Id.*

²²¹⁹ *Id.*

²²²⁰ EC MSD Ex. 267 (Report of NBE Smith) at ¶146.

²²²¹ *Id.*

²²²² *Id.* at ¶147.

Examiner Candy reported that when the sales practices scandal was publicized, the Bank suffered and continues to suffer massive financial loss and reputational damage.²²²³ Examiner Smith reported that the sales practices misconduct problem caused enormous and ongoing financial losses and other damage to Wells Fargo.²²²⁴ She reported that a former CEO of Wells Fargo estimated the total financial impact of sales practices misconduct on the Bank to be in the “tens of billions of dollars.”²²²⁵

Examiner Smith reported that the Bank has to date paid roughly \$3.83 billion in fines and penalties to the OCC, CFPB, City Attorney of Los Angeles, the U.S. Department of Justice, the Securities and Exchange Commission, and state Attorneys General to settle sales practices-related matters.²²²⁶ She reported that the Bank has paid roughly \$622 million in civil settlements related to sales practices and expended at least \$160 million in payments to law firms and consultants in connection with sales practices.²²²⁷

Examiner Smith reported that the Bank also incurred significant expenses to rehabilitate its image and rebuild trust with its customers.²²²⁸ She reported that in 2018, the Bank launched a marketing and outreach campaign, “Re-Established,” that cost the Bank hundreds of millions of dollars.²²²⁹ She reported that on February 2, 2018 the Board of Governors of the Federal Reserve imposed an “asset cap” on Wells Fargo, which she opined has had a significant financial impact on the Bank by limiting the Bank’s ability to increase in asset size.²²³⁰

In its public announcement of the action, the Federal Reserve noted that the asset cap was being imposed in response “to recent and widespread consumer abuses and other compliance breakdowns by Wells Fargo”²²³¹ and that it would remain in effect until WFC sufficiently

²²²³ EC MSD Ex. 269 (Report of NBE Candy) at ¶214.

²²²⁴ EC MSD Ex. 267 (Report of NBE Smith) at ¶148.

²²²⁵ *Id.*, quoting Sworn Statement of Timothy Sloan at 260:8-261:3 (July 11, 2019) (OCC-SP00048394).

²²²⁶ EC MSD Ex. 267 (Report of NBE Smith) at ¶148, citing Wells Fargo & Company, Form 10-Q, at 124-25 (Aug. 4, 2020), available at <https://www08.wellsfargomedia.com/assets/pdf/about/investor-relations/sec-filings/2020/second-quarter-10q.pdf>; Wells Fargo & Company, Form 10-Q, at 124-25 (Nov. 3, 2016), available at <https://www08.wellsfargomedia.com/assets/pdf/about/investor-relations/sec-filings/2016/third-quarter-10q.pdf>.

²²²⁷ EC MSD Ex. 267 (Report of NBE Smith) at ¶148, citing Wells Fargo & Company, Form 10-Q, at 124-25 (Aug. 4, 2020), available at <https://www08.wellsfargomedia.com/assets/pdf/about/investor-relations/sec-filings/2020/second-quarter-10q.pdf>; and Declaration of Scott W. Champion (Apr. 24, 2018) (OCC-WF-SP-06584570).

²²²⁸ EC MSD Ex. 267 (Report of NBE Smith) at ¶148.

²²²⁹ *Id.*, citing Sworn Statement of Hope Hardison at 36:14-38:18 (Aug. 16, 2018).

²²³⁰ EC MSD Ex. 267 (Report of NBE Smith) at ¶148, citing Order to Cease and Desist Issued Upon Consent Pursuant to the Federal Deposit Insurance Act, as Amended, In re Wells Fargo & Co., Docket No. 18-007-B-HC (Feb. 2, 2018) (FRB); EC MSD Ex. 658 (Report of Dr. Pocock) at ¶58.

²²³¹ EC MSD Ex. 658 (Report of Dr. Pocock) at ¶58 citing Federal Reserve Board of Governors, Press Release (Feb. 2, 2020), *available at* <https://www.federalreserve.gov/newsevents/pressreleases/enforcement20180202a.htm>.

improves its governance and risk management.²²³² She reported that as of the date of November 20, 2020, the asset cap remained in place.²²³³

Examiner Smith reported that the asset cap imposed on WFC is one of, if not the, costliest penalties ever.²²³⁴ She reported that from February 2, 2018 through December 31, 2019:

- a. WFC's stock price declined by 16.0 percent;
- b. JPMorgan's stock price increased by 22.0 percent;
- c. Bank of America's stock price increased by 10.2 percent;
- d. Citigroup's stock price increased by 3.7 percent; and
- e. The S&P 500 Financials sector index increased by 5.0 percent.²²³⁵

Dr. Pocock reported that his stock analysis demonstrates that WFC far outperformed its peers for many years prior to September 8, 2016, and significantly underperformed its peers ever since that day.²²³⁶ He opined that it would not be reasonable nor plausible to attribute this to a coincidence.²²³⁷

Examiner Smith reported that the Company's stock price has significantly lagged its peers since September 8, 2016, the date of the sales practices settlements with the OCC, CFPB, and City Attorney of Los Angeles.²²³⁸ Examiner Smith also opined that the Bank subsequently suffered immense reputational damage as a result of the sales practices misconduct problem.²²³⁹

Evidence Regarding the \$10 Million Civil Money Penalty

The record reflects that when the OCC presented Ms. Russ Anderson with the 15-day letter, it included a request that she provide a personal financial statement to accompany any response to the letter, and included a form designed for that purpose.²²⁴⁰ Through Counsel, Ms. Russ Anderson represented that after she determined that the statement was not required, she did not provide the statement, on the ground that she and her counsel did not think there was a

²²³² EC MSD Ex. 658 (Report of Dr. Pocock) at ¶58.

²²³³ *Id.*

²²³⁴ *Id.*, citing American Banker, "Wells Fargo asset cap is now one of the costliest bank penalties," (Aug. 24, 2020), available at <https://www.americanbanker.com/articles/wells-fargo-asset-cap-is-now-one-of-the-costliest-bank-penalties>.

²²³⁵ EC MSD Ex. 267 (Report of NBE Smith) at ¶58.

²²³⁶ *Id.* at ¶65.

²²³⁷ *Id.*

²²³⁸ *Id.* at ¶148.

²²³⁹ *Id.* at ¶149.

²²⁴⁰ Tr. (Russ Anderson) at 9500-01.

possibility of settlement at that level.²²⁴¹ Responding to two separate discovery requests, Ms. Russ Anderson supplied the OCC with all tax returns and supporting schedules for the years 2014 through 2019, and all documents relating to any equity compensation awarded to her.²²⁴²

Ms. Russ Anderson testified that she could not write a check as of the day of her testimony to pay the civil money penalty.²²⁴³ She testified that prior to testifying she reviewed her bank and mortgage statements, statements from the investment firm, her 401(k), and “those types of things.”²²⁴⁴ She testified except as noted, that the values were as of September 30, 2021 – the last date that she had actual month-end statements; and that for the value of real estate she “went on Zillow.com.”²²⁴⁵

Ms. Russ Anderson testified that she “was extraordinarily careful” in calculating these amounts, “and did the calculations multiple times to make sure that I had it correct.”²²⁴⁶ She produced a financial statement through which she reported approximately \$7.1 million in total assets before taxes, which would be reduced to “approximately \$4 million and change” if the assets were liquidated and taxes paid on the sales.²²⁴⁷

Upon objection by Enforcement Counsel on the ground that the statement was not shown to be reliable, the statement – produced for the first time during the hearing – was not admitted and the objection was sustained.²²⁴⁸ In further testimony, Ms. Russ Anderson responded to her Counsel’s question “so if you do your tax liquidation cost, what was that again?” by testifying “I believe \$4.7 million. \$5.3 million. Just the number. I apologize. The tax number would be \$1,862,394.”²²⁴⁹ Asked by her Counsel “so after adjusting for taxes, so tax affecting this, what does that leave you with the final net worth?” Ms. Russ Anderson responded, “\$5,324,910.”²²⁵⁰

Notwithstanding the care described in this response, Ms. Russ Anderson acknowledged during cross-examination that in February 2017 she sold property she owned at 9620 Whistling Valley Trail in Lake Elmo, Minnesota for approximately \$950,000 but did not disclose that in the financial statement she presented during the hearing nor during direct examination.²²⁵¹ Upon

²²⁴¹ Tr. (Russ Anderson) at 9501.

²²⁴² *Id.*

²²⁴³ *Id.* at 9484.

²²⁴⁴ *Id.*

²²⁴⁵ *Id.* at 9485.

²²⁴⁶ *Id.* at 9502.

²²⁴⁷ *Id.* at 9504.

²²⁴⁸ *Id.* at 9505-06.

²²⁴⁹ *Id.* at 9506.

²²⁵⁰ *Id.*

²²⁵¹ *Id.* at 10136; R. Ex. 20974.

considering the record as a whole, I find the testimony regarding Ms. Russ Anderson’s financial statement is unreliable and entitled to little weight.

Ms. Russ Anderson testified that her salary, not including other forms of compensation, was \$350,000 per year in 2016 when she left Wells Fargo.²²⁵² Without providing any documentation in support, she said she receives \$19,000 per year as interest or dividends “through my retirement assets”, that she is the sole owner of a supplemental 401(d) from which she receives approximately “\$10,000 a year in Wells Fargo stock”, that this amount fluctuates “based on the price of Wells Fargo stock at the time it’s issued,” that she expects five more payments from that account that she cannot accelerate, and that it “ceases” after that.²²⁵³

Without providing any documentation in support, Ms. Russ Anderson testified she receives approximately \$330,000 as income from a deferred compensation plan and expects five more payments from that plan that she cannot accelerate, and then “there is no more funds”.²²⁵⁴ She testified she receives “about \$5,000 per year” relating to a legacy pension from Norwest Bank; and that she estimates she can expect \$393,000 in income in 2021.²²⁵⁵

Ms. Russ Anderson testified that she expects to rely on her 401(k), the IRAs, and Social Security retirement benefits when the five-year payments end.²²⁵⁶ Without providing any documentation in support, she testified the approximate current value of the 401(k) account as of November 30, 2021 was \$3.4 million, but if she were to withdraw funds from that account she would be subject to a combined state and federal tax rate of “about 40 percent.”²²⁵⁷

Without providing any documentation in support, Ms. Russ Anderson testified that she is the sole owner of an IRA, which as of November 20, 2021 held “approximately \$707,000” and which would likewise be subject to combined state and federal income taxes at the rate of approximately 40 percent.²²⁵⁸

Ms. Russ Anderson testified that her husband, William Anderson, has an individual retirement account on which she is the beneficiary, valued as of a date not specified at about \$112,000 and subject to taxes at a rate not specified, payable only upon Mr. Anderson’s death.²²⁵⁹

Without providing any documentation in support, Ms. Russ Anderson testified that she has a life insurance policy with “approximately \$52,000 of cash value”, and that her husband as a

²²⁵² *Id.* at 9485.

²²⁵³ *Id.* at 9485-86.

²²⁵⁴ *Id.* at 9487.

²²⁵⁵ *Id.*

²²⁵⁶ *Id.* at 9488.

²²⁵⁷ *Id.*

²²⁵⁸ *Id.* at 9489.

²²⁵⁹ *Id.*

life insurance policy with approximately \$12,000 cash value, where the premiums are being paid through that cash value.²²⁶⁰

Without providing any documentation in support, Ms. Russ Anderson testified that she owns her home jointly with her husband, that the property is located in Lake Elmo, Minnesota with a current approximate property value of \$532,000, that there is a mortgage loan of approximately \$325,000 remaining.²²⁶¹

Without providing any documentation in support, Ms. Russ Anderson testified that she owns a home in Longwood, Florida, which she bought at \$220,000 and which she said is worth \$355,000 today, where her sister and her sister's husband reside, after caring for Ms. Russ Anderson's parents.²²⁶² Ms. Russ Anderson testified that she made "around \$20,000 worth" of capital improvements on the property and receives rent from her sister and brother-in-law, who "pay what they can afford, which does not cover our expenses."²²⁶³

Without providing any documentation in support, Ms. Russ Anderson testified that a trust in her husband's name owns a townhome in Lake Elmo, Minnesota that she bought for \$348,000 and is worth \$400,000 now.²²⁶⁴ Ms. Russ Anderson testified that her oldest son "is on the autism spectrum and holds down a fairly minimum wage job at Walmart," and resides in that townhome, that a roommate rents one of the rooms, but that this son "can't afford much" she provides this housing for him.²²⁶⁵ She testified that since there is no mortgage on the property, the rent paid by the roommate "covers about dollar for dollar what our expenses are."²²⁶⁶ She added that if required to liquidate the real estate, she would have to pay a six percent commission to the real estate agent.²²⁶⁷

Ms. Russ Anderson testified that her husband "started staying home with our kids in 1989 and does not really have a retirement program."²²⁶⁸ She testified that 20 years ago they started working with their family attorney "to build up some assets in Bill's name for his retirement and to just give him some assets."²²⁶⁹ Without providing any documentation in support, Ms. Russ Anderson testified that as of November 30, 2021 the value of the trust's investment account was \$1.2 million, with a cost basis of about \$970,000 – which would be subject to tax liabilities at a

²²⁶⁰ *Id.* at 9490.

²²⁶¹ *Id.* at 9491, 9506.

²²⁶² *Id.*) at 9491-92.

²²⁶³ *Id.* at 9492-93.

²²⁶⁴ *Id.* at 9493-94, 9498.

²²⁶⁵ *Id.* at 9493-94.

²²⁶⁶ *Id.* at 9494.

²²⁶⁷ *Id.* at 9496.

²²⁶⁸ *Id.* at 9494.

²²⁶⁹ *Id.* at 9494-95.

29 percent rate if withdrawn.²²⁷⁰ The trust has a savings account of approximately \$79,000 and \$5,000 in a checking account.²²⁷¹ She testified that the balance of her Wells Fargo bank savings account as of November 30, 2021 was approximately \$232,000, and that “the household account – the trust account, but we pay the household bills, was approximately \$5,000 and another account was approximately \$6,000.”²²⁷²

Ms. Russ Anderson testified she had about \$14,000 in credit card debt.²²⁷³ Ms. Russ Anderson subsequently testified that “revolving accounts” debt was approximately \$8,000.²²⁷⁴

Ms. Russ Anderson testified she had “nonfinancial assets” worth “around \$150,000.”²²⁷⁵ She then testified that total liabilities were \$333,759 and net worth before tax adjustments was \$6,853,545, and – after subtracting tax impacts – a net worth of \$4,991,151.²²⁷⁶ In the absence of documentation to support this testimony, little weight is given to Ms. Russ Anderson’s testimony regarding her income and assets.

Ms. Russ Anderson responded to testimony from Mr. Reep regarding equity compensation she has or will receive from Wells Fargo.²²⁷⁷ Ms. Russ Anderson testified that after she “pulled the statements and did the calculations,” she determined that the equity compensation analysis presented through the spreadsheet prepared by Mr. Reep was off by \$3.1 million.²²⁷⁸ She testified that it was her understanding the aggregate value of the equity compensation that was canceled by the Bank was “\$1.8 million as of that date” and that the Bank canceled that compensation because “[the Bank] terminated me for cause.”²²⁷⁹

After noting that United States Code Section 1818(i) allows a judge to consider matters as justice may require, Ms. Russ Anderson testified:

Your Honor, to pay a \$10 million or even a \$5 million civil money penalty would wipe my husband and I out in its entirety. And I have -- I have spent my life being someone who you could count on and was truthful and honest.

²²⁷⁰ *Id.* at 9495-96.

²²⁷¹ *Id.* at 9496.

²²⁷² *Id.*

²²⁷³ *Id.* at 9497.

²²⁷⁴ *Id.* at 9506.

²²⁷⁵ *Id.* at 9497.

²²⁷⁶ *Id.* at 9507.

²²⁷⁷ *Id.* at 9498-99; OCC Ex. 2941.

²²⁷⁸ Tr. (Russ Anderson) at 9499.

²²⁷⁹ *Id.* at 9500, 10140; OCC Ex. 2126: “Upon completion of an internal investigation, in a unanimous decision, the Wells Fargo Board of Directors concluded that there is cause to terminate your employment, effective February 21, 2017, because you engaged in prohibited conduct in violation of Company policy, including the Company’s Code of Ethics and Business Conduct.”

I apologize. This has been a very difficult time for my family and -- because it goes to the core of who I am. I do not believe that these civil money penalties are fair, and I absolutely could not pay them. I would have to -- I don't know how I would do it. There's nothing there.²²⁸⁰

Ms. Russ Anderson added her husband “is not able to work in a material way,” and that if she had to liquidate her property she would have to find a way to keep her oldest son where he is because “to upset that would put him in a spin” due to health issues; and the harm to her sister “would be immeasurable to me.”²²⁸¹

Ms. Russ Anderson averred that what she described as a “massive civil penalty Enforcement Counsel seeks is not justified by law.”²²⁸² In support, she noted that second tier Civil Monetary Penalties require proof of “misconduct” which requires a “violation of law, breach of fiduciary duty, or recklessly engaging in an unsafe or unsound practice,”²²⁸³ and “effects,” as evidenced by either a pattern of misconduct or conduct which caused or was likely to cause more than minimal loss to the institution, or which resulted in a gain or benefit to the respondent.²²⁸⁴

The record reflects that Enforcement Counsel has by preponderant evidence established that Respondent Russ Anderson violated the law, breached fiduciary duties she owed to the Bank, and recklessly engaged in unsafe and unsound banking practices.

Preponderant evidence also established that Ms. Russ Anderson engaged in a pattern of misconduct; engaged in conduct that was likely to cause and did in fact cause more than minimal loss to the Bank; and established that her conduct resulted in gain and benefit to her.

Respondent asserted that the “massive civil penalty Enforcement Counsel seeks is also “contrary to law.”²²⁸⁵ She noted that when assessing the amount of second tier civil money penalties, Enforcement Counsel must consider the following factors: 1) the size of financial resources and good faith of the bank officer; 2) the gravity of the violation; 3) the history of previous violations and 4) such other factors as justice may require.²²⁸⁶

²²⁸⁰ Tr. (Russ Anderson) at 9508.

²²⁸¹ *Id.* at 9508-09.

²²⁸² Respondent Claudia Russ Anderson’s Memorandum of Law in Opposition to Motion for Summary Disposition at 134.

²²⁸³ *Id.*, quoting 12 U.S.C. § 1818(i)(2)(B)(i).

²²⁸⁴ Respondent Claudia Russ Anderson’s Memorandum of Law in Opposition to Motion for Summary Disposition at 134, quoting 12 U.S.C. § 1818(i)(2)(B)(ii).

²²⁸⁵ Respondent Claudia Russ Anderson’s Memorandum of Law in Opposition to Motion for Summary Disposition at 135.

²²⁸⁶ *Id.*, citing 12 U.S.C. § 1818(i)(2)(G).

The record in this enforcement proceeding includes evidence describing Respondent Russ Anderson's financial resources, and evidence demonstrating the absence of Respondent's good faith – both in her dealings with the Bank and its Board, and in her dealings with the OCC. The record establishes the gravity of the violations that can properly be attributed to Respondent. The record establishes Respondent has had no prior disciplinary charges brought against her, but had been provided repeated prior notices by OCC examiners of unsafe practices that needed her attention. And the record establishes that the OCC's examiners have considered other factors – including those mandated under Interagency Policy described below – as justice requires.²²⁸⁷

As noted by Respondent Russ Anderson, when evaluating the matter for the purpose of assessing a civil money penalty, the OCC's examiners were required to consider whether the violations were intentional, the duration and frequency of the violations, whether there is evidence of Respondent's failure to cooperate with the agency and evidence of concealment by Respondent, any previous admonishments not to engage in such conduct, the threat of or actual loss to bank, and evidence of financial gain or benefit to the participant."²²⁸⁸

The record in this enforcement proceeding establishes that Respondent's violations were intentional; the record describes and documents the duration and frequency of the violations; preponderant evidence established Respondent's repeated and material failure to cooperate with the OCC; there were repeated instances where Respondent concealed from the Bank's Board and from the OCC's examiners information that was material to the Bank's safety and soundness; there was substantial evidence of previous admonishments by OCC examiners directed at Respondent that brought safety and soundness concerns to her attention; there is substantial evidence of both the threat of loss and the fact of actual loss sustained by the Bank occasioned by Respondent's failure to address the safety and soundness concerns raised by the examiners; and there was substantial evidence establishing that Respondent realized financial gain and other benefits while engaging in unsafe and unsound banking practices. (As used in this context, evidence is substantial if it is relevant and a reasonable person would deem it adequate to support the ultimate conclusion.²²⁸⁹)

Respondent asserted that consideration of the multiple civil penalty factors includes both objective factors and factors more dependent on subjective impressions.²²⁹⁰ The hearing

²²⁸⁷ Interagency Policy Regarding the Assessment of Civil Monetary Penalties by the Federal Financial Institutions Regulatory Agencies, 63 Fed. Reg. 30,226-227.

²²⁸⁸ Respondent Claudia Russ Anderson's Memorandum of Law in Opposition to Motion for Summary Disposition at 135, quoting *Michael v. F.D.I.C.*, 687 F.3d 337, 355 (7th Cir. 2012).

²²⁸⁹ *Michael v. F.D.I.C.*, 687 F.3d 337, 348 (7th Cir. 2012), citing *Grubb v. FDIC*, 34 F.3d 956, 961 (10th Cir.1994).

²²⁹⁰ Respondent Claudia Russ Anderson's Memorandum of Law in Opposition to Motion for Summary Disposition at 136, citing *In the Matter of Jiampietro* (Order dated June 5, 2017 at 84). Note that Respondent Russ Anderson supported the footnoted legal premise by citing to an Order without providing sufficient information to permit a determination of whether the cited authority actually supports the premise. The citation does not identify

conducted from September 2021 to January 2022 provided a forum permitting Ms. Russ Anderson to present evidence that would permit the evaluation of both objective and subjective impressions.

Respondent Russ Anderson posits that Enforcement Counsel may not impose civil monetary penalties that are arbitrary, capricious, an abuse of discretion, or contrary to law.²²⁹¹ She cites in support *Michael v. F.D.I.C.*²²⁹²

In *Michael*, the Court of Appeals affirmed the FDIC’s prohibition order, providing the following context:

Congress has provided the FDIC Board with the authority to ban bank officers and directors from participation in the operation of a federally insured depository institution when the bankers' actions threaten the integrity of the industry. The Board imposed that harsh sanction here after concluding that the Michaels engaged in repeated acts of self-dealing and unsafe and unsound banking practices. The Board found, upon adopting the ALJ's a findings, that common theme emerges when examining all three interrelated, complicated, and overlapping transactions: “Respondents exploited their positions as Bank directors, deliberately overstated the value of assets, and concealed their true financial interest to entice lenders and investors to fund their business ventures.” The Michaels' complicity in any one of these transactions, the Board found, was sufficient to support removal.²²⁹³

As was the case in *Michael*, preponderant evidence adduced during this enforcement proceeding established Ms. Russ Anderson was involved in repeated acts of concealment that prevented the Bank’s Board of Directors from taking appropriate curative action against the

the forum that issued the Order and bears no indicia establishing that the Order was issued by a decision-maker authorized to render final decisions for the forum. Pursuant to the February 13, 2020 Order to Attend Scheduling Conference and Supplemental Prehearing Orders, only the applicable regulatory agency may enter final decisions and establish precedential determinations in cases presented to adjudicators at the Office of Financial Institution Adjudication. As such, citations to authority using as precedent orders and recommended decisions from OFIA should be limited to those in which the agency has considered and approved the ALJ’s order or recommended decision. Respondent Russ Anderson has made no showing that any agency has approved the cited Order. Further, the February 13, 2020 Order required that any citation to authority where the repository of the authority is other than Westlaw (Thomson Reuters) shall be accompanied by a copy of the authority. No such copy was supplied. Accordingly, no weight is given to the legal premise supported by the unidentified Order.

²²⁹¹ Respondent Claudia Russ Anderson’s Memorandum of Law in Opposition to Motion for Summary Disposition at 136, citing *Michael v. F.D.I.C.*, 687 F.3d 337, at 348.

²²⁹² Respondent Claudia Russ Anderson’s Memorandum of Law in Opposition to Motion for Summary Disposition at 136.

²²⁹³ *Michael v. F.D.I.C.*, 687 F.3d 337, 348 (7th Cir. 2012).

damage being caused by business practices misconduct known to Respondent. She exploited her position as Risk Manager by minimizing the extent and scope of that misconduct, and by concealing the true scope, nature, and extent of the misconduct from OCC examiners and the Bank's Board. As was the case in *Michael*, Respondent Russ Anderson's complicity in the concealment of this misconduct is sufficient to support an order of prohibition.

Respondent Russ Anderson asserts that in determining civil penalties, "the amount of ill-gotten gain and the financial loss to customers are 'especially pertinent factors.'"²²⁹⁴ In support of this assertion, Respondent relies upon the Court of Appeals' holding in *R&W Technical Services Ltd.*²²⁹⁵ In that case, which applied civil money penalties under the Commodity and Exchange Act, the Court of Appeals followed a line of cases that have "rejected the notion that uniform sanctions must be imposed by an administrative agency for similar violations."²²⁹⁶

The Court of Appeals set aside the CFTS's penalty upon determining that the Commodity Futures Trading Commission "had no evidence of customer losses" but nevertheless assessed a \$2.735 million sanction "based on estimated gross revenues".²²⁹⁷ "When a penalty is designed for deterrence and not restitution," the Court of Appeals held, "the proper measure of gain to the defendant is net profits, not gross revenues."²²⁹⁸

It is true that the OCC's penalty in this enforcement action was designed for deterrence and not restitution. That, however, is the only material similarity between the CFTS case and the present case. The CFTS case applied regulations and statutes applicable to the Commodities and Exchange Act²²⁹⁹ and not those applicable under the FDI Act. Nothing in the record of the present administrative enforcement action suggests or establishes that the OCC's civil money penalty assessment was based on gross revenues that were attributed as gains realized by Ms. Russ Anderson. Accordingly, the holding in the CFTS case does not support Respondent's assertion that either the amount of ill-gotten gains or financial loss to customers are pertinent factors here.

²²⁹⁴ Respondent Claudia Russ Anderson's Memorandum of Law in Opposition to Motion for Summary Disposition at 136, quoting *R&W Technical Services Ltd. V. Commodity Futures Trading Comm'n*, 205 F.3d 165, 178 (5th Cir. 2000), *cert. denied*, 531 U.S. 817 (Oct. 2, 2000).

²²⁹⁵ Respondent Claudia Russ Anderson's Memorandum of Law in Opposition to Motion for Summary Disposition at 136.

²²⁹⁶ *R&W Tech. Servs. Ltd. v. Commodity Futures Trading Comm'n*, 205 F.3d 165, 178 (5th Cir. 2000), citing *Butz v. Glover Livestock Comm. Co.*, 411 U.S. 182, 187, 93 S.Ct. 1455, 36 L.Ed.2d 142 (1973); *Monieson v. CFTC*, 996 F.2d 852, 864 (7th Cir. 1993).

²²⁹⁷ *R&W Tech. Servs. Ltd.*, 205 F.3d at 178.

²²⁹⁸ *Id.*

²²⁹⁹ *Id.*

Ms. Russ Anderson posits that Enforcement Counsel must “specify and prove what days the violations occurred in order to impose civil penalties on a per day basis.”²³⁰⁰ In support, she cited *Southern Union Co.*, in which the Supreme Court considered the jury’s role in setting a fine.

In *Southern Union Co.*, the Court held:

Under 42 U.S.C. § 6928(d), the fact that will ultimately determine the maximum fine Southern Union faces is the number of days the company violated the statute. Such a finding is not fairly characterized as merely “quantifying the harm” Southern Union caused. Rather, it is a determination that for each given day, the Government has proved that Southern Union committed all of the acts constituting the offense.²³⁰¹

The record in the present case reflects that OCC Examiner Smith conformed with the Court’s analysis in *Southern Union Co.*: she identified a starting date of January 1, 2005 and an ending date of September 30, 2016, gave sufficient reasons for using those starting and ending dates, and noted the applicable maximum penalties that could be imposed between January 1, 2005 and November 1, 2015, and the revised maximum applicable for November 2, 2015 through September 30, 2016; and applied those maximums using the relevant dates.²³⁰²

Ms. Russ Anderson avers that the \$10 million penalty Enforcement Counsel seeks is not justified under the applicable factors,²³⁰³ and in support averred that she is 63 years old and retired, and the civil penalty Enforcement Counsel seeks “exceeds her financial resources.”²³⁰⁴ She supported this factual premise, and the averment that she is “unable to pay a \$10 million civil penalty, which would render her destitute,”²³⁰⁵ with a citation to the Declaration she filed in opposition to Enforcement Counsel’s summary disposition motion.²³⁰⁶

In the paragraph of her Declaration cited in support of this factual claim, Ms. Russ Anderson said simply “I am 63 years old and fully retired. The civil penalty OCC seeks far

²³⁰⁰ Respondent Claudia Russ Anderson’s Memorandum of Law in Opposition to Motion for Summary Disposition at 136, citing *Southern Union Co. v. U.S.*, 567 U.S. 343, 359 (2012),

²³⁰¹ *S. Union Co. v. United States*, 567 U.S. 343, 359, 132 S. Ct. 2344, 2356, 183 L. Ed. 2d 318 (2012).

²³⁰² MSD-231 (Decl. of Examiner Smith) at ¶¶10-11.

²³⁰³ Respondent Claudia Russ Anderson’s Memorandum of Law in Opposition to Motion for Summary Disposition at 136.

²³⁰⁴ *Id.*, citing RAMF0001 (Russ Anderson Decl.) ¶ 48.

²³⁰⁵ Respondent Claudia Russ Anderson’s Memorandum of Law in Opposition to Motion for Summary Disposition at 136.

²³⁰⁶ Respondent Claudia Russ Anderson’s Memorandum of Law in Opposition to Motion for Summary Disposition at 136, citing RAMF0001 (Russ Anderson Decl.) ¶ 48.

exceeds my financial resources.”²³⁰⁷ Ms. Russ Anderson averred that because they had copies of her income tax returns, Enforcement Counsel were aware of – but failed to consider – that a substantial portion of Ms. Russ Anderson’s compensation went to taxes and expenses²³⁰⁸

There is in the record, however, an insufficient factual basis to permit a determination of Ms. Russ Anderson’s financial resources, most notably those resources that are not based on current income. There is thus insufficient evidence to support her averment that the \$10 million civil penalty constitutes “an extremely harsh penalty, the financial equivalent of the death penalty,” that “rises to the level of arbitrary, capricious and abusive.”²³⁰⁹

Ms. Russ Anderson had sufficient opportunity through the administrative hearing process to demonstrate the true state of her financial resources. She did not rebut Examiner Smith’s determination that her compensation at Wells Fargo was in “the millions,” nor did she dispute that Examiner Smith took into consideration compensation she forfeited or the Bank withheld when determining the \$10 million assessment.²³¹⁰

Ms. Russ Anderson argues that Enforcement Counsel “has failed to establish civil penalties for each day of Ms. Russ Anderson’s tenure as risk officer.”²³¹¹ She asserts that “[t]he only specific allegedly wrongful acts relied on by Enforcement Counsel . . . are the following relatively minimal number of acts: (1) April 2014 Enterprise Risk Management Committee meeting,²³¹² and (2) statements to the OCC in 2015.”²³¹³

Upon these premises, she asserts that “the only affirmative misconduct alleged against Ms. Russ Anderson specifying the day the violation occurred did not occur until April 2014, roughly two years before she left Wells Fargo”²³¹⁴ and that any civil penalty imposed “needs to take into account the limited time frame of the alleged misconduct.”²³¹⁵ Ignoring the continuing

²³⁰⁷ RAMF0001 (Russ Anderson Decl.) ¶ 48.

²³⁰⁸ Respondent Claudia Russ Anderson’s Memorandum of Law in Opposition to Motion for Summary Disposition at 143.

²³⁰⁹ *Id.* at 136, citing *Dazzio v. F.D.I.C.*, 970 F.2d 71, 78 (5th Cir. 1992) (reversing \$175,000 civil penalty against bank officer where regulator failed to introduce or consider sufficient evidence of what civil penalty he could afford to pay); *Merritt v. U.S.*, 960 F.2d 15, 18 (2nd Cir. 1992) (reversing civil penalty where agency failed to introduce or consider evidence of respondent’s ability to pay).

²³¹⁰ MSD-231 (Decl. of Examiner Smith) at ¶60.

²³¹¹ Respondent Claudia Russ Anderson’s Memorandum of Law in Opposition to Motion for Summary Disposition at 142.

²³¹² *Id.*, citing Smith Decl. at 12, ¶ 27.

²³¹³ Respondent Claudia Russ Anderson’s Memorandum of Law in Opposition to Motion for Summary Disposition at 142, citing Smith Decl. at 14, ¶ 29

²³¹⁴ Respondent Claudia Russ Anderson’s Memorandum of Law in Opposition to Motion for Summary Disposition at 142.

²³¹⁵ *Id.*

nature of her failure to disclose what she knew of the sales practices misconduct, she asserted, “there is no basis for imposing penalties for each and every day of her tenure as risk officer.”²³¹⁶

It bears noting that the record reflects a significant pattern of misleading and deceptive practices by Ms. Russ Anderson that goes beyond the two incidents identified above. Even limiting the analysis to the two incidents identified here, the record reflects that the “relatively minimal number of acts” had a long-lasting negative effect and constituted unattenuated breaches of fiduciary duties Ms. Russ Anderson owed to the Bank.

Evidence regarding the misconduct occurring before, during, and after the April 2014 Enterprise Risk Management Committee meeting included Examiner Candy’s observation that despite having knowledge to the contrary, Ms. Russ Anderson in the April 2014 presentation to the Bank’s ERMC told the Committee that the Community Bank’s business model did not incent inappropriate behavior.²³¹⁷ The record reflects that this was a patently false statement regarding a material issue, and that it had a continuing adverse effect on the Bank lasting until at least September 30, 2016.

Examiner Candy reported that Bank management needed to understand the risks generated by this activity so that it could design and implement controls that effectively manage the risk. As the Group Risk Officer, Ms. Russ Anderson’s primary responsibility was to ensure that the Community Bank properly managed all risks inherent in its operations. She was also responsible for ensuring that the Community Bank implemented adequate controls commensurate with the risk inherent in those operations.

Examiner Candy reported that Ms. Russ Anderson served as Chairperson of the Community Banking Risk Management Committee from at least 2011 until August 2016, and was responsible for understanding the Community Bank’s “operational risk profile and [] work[ing] with management across Community Banking to ensure risks are managed effectively.” Examiner Candy reported that throughout the relevant four years (from 2013 to 2016), sales practices risk was not managed effectively. She opined that Ms. Russ Anderson failed to fulfill her responsibilities with respect to the sales practices misconduct problem and that this was recklessly unsafe or unsound and a breach of her fiduciary duty that continued unabated between 2005 and 2016.

Examiner Candy reported that the Community Bank’s sales practices misconduct problem existed during the entire time that Ms. Russ Anderson served as the Group Risk Officer. She opined that the Community Bank did not adequately address the sales practices misconduct problem during her tenure and she did not advocate for fundamental changes to the business model. She found that the Bank Board’s Report accurately concluded that: “Russ Anderson’s performance fell far short of what was expected and required of the senior risk officer in the

²³¹⁶ *Id.*

²³¹⁷ EC MSD Ex. 269 (Report of NBE Candy) at ¶126, citing Minutes, Enterprise Risk Management Committee (April 9, 2014) (OCC-WF-SP-06400169).

Community Bank. Russ Anderson failed to adequately assess and advocate for changes in the business practices that resulted in sales integrity violations.”

Examiner Candy opined that Ms. Russ Anderson also is responsible for significant deficiencies in the Bank’s risk management and controls, which enabled ongoing legal violations by Bank employees. She reported that Ms. Russ Anderson did not ensure that incentive compensation plans adequately balanced risk and reward as required by the Incentive Compensation Risk Management Policy. She reported that the threat of employee termination and disciplinary action and actual terminations for failing to meet sales goals continued until October 2016.

Examiner Candy reported that it is her understanding that to this day, Ms. Russ Anderson maintains that employees were not terminated for failing to meet sales goals and that the controls were adequate. Examiner Candy opined that Ms. Russ Anderson failed to escalate the sales practices misconduct problem and that this was recklessly unsafe or unsound and constituted a breach of her fiduciary duty.

Examiner Candy reported that generally accepted standards of prudent operation require risk officers to identify risk in the line of business and ensure appropriate action is taken to mitigate and address the risk. She opined that Ms. Russ Anderson acted contrary to generally accepted standards of prudent operation by protecting the Community Bank’s business model instead of challenging or correcting it. She reported that Ms. Russ Anderson never escalated or accurately reported on sales practices misconduct and its root cause, duration, and scope, and the adequacy of controls to the Chief Risk Officer, Enterprise Risk Management Committee, the Board, or the OCC.

Examiner Candy reported that instead, Ms. Russ Anderson attempted to protect the Community Bank from external scrutiny, rather than properly identifying, controlling, reporting, and escalating risks. She opined that Ms. Russ Anderson’s false, misleading, and incomplete reporting to the Enterprise Risk Management Committee, the Board, and the OCC was recklessly unsafe or unsound and constituted a breach of fiduciary duties Respondent owed to the Bank. She reported that “[i]nformation should give directors a complete and accurate overview of the bank’s condition, activities, and issues. Management is responsible for being transparent and providing information in a meaningful format.”

Examiner Candy opined that Ms. Russ Anderson’s reporting lacked this requisite transparency, candor, and completeness of information. She reported that despite having knowledge to the contrary, Ms. Russ Anderson in the April 2014 presentation to the Bank’s Enterprise Risk Management Committee told the Committee that the Community Bank’s

business model did not incent inappropriate behavior. Examiner Candy opined that this is a false statement and demonstrates Ms. Russ Anderson's personal dishonesty.²³¹⁸

Examiner Candy reported that Ms. Russ Anderson also reviewed and edited the May 19, 2015 Memo that Mr. Strother submitted to the Risk Committee of the Board and the OCC.²³¹⁹ Examiner Crosthwaite reported that the May 19, 2015 Memo was false, misleading, and incomplete.²³²⁰ Based on her 24 years of experience as a national bank examiner, Examiner Crosthwaite opined that as the Community Bank's Group Risk Officer Ms. Russ Anderson failed to fulfill her fiduciary duty and responsibilities as the first line of defense responsible for risk management and controls.²³²¹

Examiner Crosthwaite reported that banks are required to have sound risk management policies, procedures, and controls related to all aspects of the bank, including those areas of the bank that may pose, or have posed, heightened risks such as in the case of Wells Fargo Community Bank's sales practices.²³²² She noted that the Bank had various policies and procedures in place that touched on various aspects of sales practices misconduct.²³²³

Examiner Crosthwaite reported that Ms. Russ Anderson had responsibility for ensuring the adequacy and appropriateness of the Community Bank's risk management and controls.²³²⁴ Under the Bank's Incentive Compensation Risk Management Policy, Ms. Russ Anderson was required to ensure that incentive compensation plans appropriately balanced risk and reward, as well as provide independent reviews of incentive compensation arrangements.²³²⁵ Ms. Russ Anderson admitted that "she had some, but not the sole, authority to address or investigate sales practices misconduct . . ." ²³²⁶ Notwithstanding that both the problem and its root cause were identified and well known by at least 2004, the Community Bank and Ms. Russ Anderson took no meaningful action.²³²⁷

²³¹⁸ EC MSD Ex. 269 (Report of NBE Candy) at ¶126.

²³¹⁹ *Id.*

²³²⁰ EC MSD Ex. 268 (Report of NBE Crosthwaite) at ¶108.

²³²¹ *Id.*

²³²² *Id.*

²³²³ *Id.*

²³²⁴ *Id.* at ¶109.

²³²⁵ *v* at ¶110.

²³²⁶ *Id.*

²³²⁷ *Id.* at ¶111.

The Bank Board’s Report stated: “Despite the recognition by 2004 of both the increasing scope of sales practice issues and their association with sales incentives, the problem continued to grow.”²³²⁸

Examiner Crosthwaite reported that national bank examiners rely on information provided to them and communications with bank personnel and bank management during the course of supervisory activities and examinations.²³²⁹ Examiner Crosthwaite reported that any bank employee is expected to be forthcoming, transparent, and candid in all communications with management, management committees, the board of directors, and its regulators, including the OCC, both orally and in writing.²³³⁰

Examiner Crosthwaite reported that management is required to be transparent and provide comprehensive and accurate information to senior management, the board, and the OCC. She reported that transparency and truthful communication between the banker and regulator is of utmost importance for banks of all sizes.²³³¹ She reported that it is imperative to the examination process that exams are conducted honestly and impartially, free from deceit, craft, dishonesty, trickery, unlawful impairment, impediment, and obstruction.²³³² She reported that the level of transparency by bank management with senior management, the board, and the regulator influence and can hinder the bank’s reputation with shareholders, regulators, customers, other stakeholders, and the community at large.²³³³

Ms. Russ Anderson was the OCC’s primary point of contact during the February 2015 Exam, given that the examination focused on her risk organization in the Community Bank.²³³⁴ She was responsible for ensuring that accurate, complete, and transparent information related to sales practices was being provided to the OCC.²³³⁵

Examiner Crosthwaite opined, and stated the documents she reviewed demonstrate, that Respondent Russ Anderson intentionally and consistently misled the OCC and the Board on the scope, root cause, the adequacy of the controls and the longstanding nature of the sales practices misconduct problem,²³³⁶ averring that Ms. Russ Anderson made several false and misleading statements during the February 2015 and May 2015 examinations and regularly sought to limit

²³²⁸ *Id.* at ¶111.

²³²⁹ *Id.* at ¶112.

²³³⁰ *Id.*

²³³¹ *Id.* at ¶113.

²³³² *Id.* at ¶114.

²³³³ *Id.*

²³³⁴ *Id.* at ¶115.

²³³⁵ *Id.* at ¶116.

²³³⁶ *Id.* at ¶117.

the extent of information the Bank provided to Examiner Crosthwaite and others at the OCC.²³³⁷ In support of these opinions, Examiner Crosthwaite noted the following:

- a. In June of 2013, as a result of an increasing number of whistleblower emails regarding sales practices to the CEO, the Bank launched an investigation into allegations of simulated funding in Los Angeles and Orange County.²³³⁸ In October and December 2013, the Los Angeles Times published two articles outlining the Bank’s “pressure cooker” sales environment.²³³⁹ As a result of that investigation, the Bank terminated approximately 230 team members. None of this information was escalated to the OCC or the Board during 2013 or 2014 by Respondent Russ Anderson.²³⁴⁰ The OCC learned about the 230 team members from Legal in their response to the OCC’s request letter for the May 2015 investigation.²³⁴¹ In February 2015, the OCC conducted a Community Bank examination with a focus on Sales Practices governance.²³⁴² OCC examiners conducted multiple interviews with Respondent Tolstedt, Respondent Russ Anderson, and a number of Tolstedt’s direct reports.²³⁴³ Respondent Russ Anderson did not mention the 2013 Los Angeles and Orange County investigation into simulated funding or the larger body of terminations.²³⁴⁴
- b. On April 4, 2014, Corporate Risk provided feedback on Respondent Russ Anderson’s written presentation to the Enterprise Risk Management Committee, requesting more content on the “current state” of sales practices. Respondent Russ Anderson responded that she was “worried about putting something like that into a deck. I’d rather we did that verbally because this deck is subject to the regulators [*sic*] review.”²³⁴⁵
- c. Respondent Russ Anderson participated in a February 10, 2015 conference call with the OCC.²³⁴⁶ On the February 2015 OCC Call, an OCC examiner asked whether pressure to meet baseline sales goals was significant and contributed to employee turnover.²³⁴⁷ Respondent Russ Anderson told the OCC that “no one

²³³⁷ *Id.* at ¶117.

²³³⁸ *Id.* at ¶118.

²³³⁹ *Id.*

²³⁴⁰ *Id.*

²³⁴¹ *Id.*

²³⁴² *Id.*

²³⁴³ *Id.*

²³⁴⁴ *Id.*

²³⁴⁵ *Id.* at ¶117.

²³⁴⁶ *Id.* at ¶118.

²³⁴⁷ *Id.*

loses their job because they did not meet sales goals.”²³⁴⁸ This was demonstrably false.²³⁴⁹ Through Examiner Crosthwaite’s work on the February 2017 email review, her team found evidence that the Bank had terminated over 8,520 people between 2011 and 2016 for not meeting sales goals.²³⁵⁰

- d. Respondent Russ Anderson told examiners during the May 2015 OCC Meeting that interviews with employees “did not lead to conclusions about sales pressure,” that she does not “hear” about pressure from personal bankers “at all,” and that “people are positive and pleased.”²³⁵¹ However, during the OCC’s 2017 email review, examiners learned that the problem existed as early as 2002, and that for over 14 years, there was significant pressure, and double-digit increase in sales goals.²³⁵²

Examiner Hudson participated in a February 10, 2015 teleconference between OCC examination staff and Respondent Russ Anderson.²³⁵³ Before the meeting, the OCC provided a list of topics and questions to be covered at the meeting, including: On the February 10, 2015 OCC call, incentive compensation was discussed.²³⁵⁴ Examiner Hudson reported that Respondent Russ Anderson did not identify any concerns with incentive compensation at this meeting, did not discuss the risk created by the incentive compensation plans, and did not discuss whether such risks were adequately managed.²³⁵⁵ Examiner Hudson reported that she expected that Respondent Russ Anderson, a senior Risk Officer, would understand whether a bank’s incentive compensation program appropriately balances risk and reward because to do so is part of understanding, identifying, escalating, and addressing risks tied to incentive compensation.²³⁵⁶

- “April 9, 2014 Claudia Russ-Anderson/Jason MacDuff presentation (with deck) to ERM [Enterprise Risk Management Committee]: Discuss presentation and proposed changes.”
- “Controls and monitoring processes for identifying inappropriate behavior.”
- “Testing to ensure that the incentive program encourages appropriate behavior.”²³⁵⁷

²³⁴⁸ *Id.*

²³⁴⁹ *Id.*

²³⁵⁰ *Id.*

²³⁵¹ *Id.*

²³⁵² *Id.*

²³⁵³ EC MSD Ex. 270 (Report of NBE Hudson) at ¶33.

²³⁵⁴ *Id.*

²³⁵⁵ *Id.* at ¶34.

²³⁵⁶ *Id.*

²³⁵⁷ *Id.* at ¶33, citing Email from Jill Charron to Kevin Swanson and attached notes (February 13, 2015) (OCC-SP0711664).

On the February 10, 2015 Call, OCC examiners asked whether pressure to meet baseline sales goals was significant and contributed to employee turnover. Respondent Russ Anderson interjected and stated, “no one loses their job because they did not meet sales goals.”²³⁵⁸ Examiner Hudson reported that she later learned this statement was demonstrably false.²³⁵⁹

On the February 10, 2015 Call, OCC examiners asked how the Bank ensures that the customer understands what they purchased.²³⁶⁰ The answer Respondent Russ Anderson provided was that the Bank uses disclosures and surveys, and then they use indicators that tell them how well they delivered the product and to what extent the customer is using the product.²³⁶¹ Examiners were told that Rebecca Rawson’s team manages that process.²³⁶²

No one on the February 10, 2015 Call, including Respondent Russ Anderson, or in any other meeting during the OCC’s February 2015 Exam, told the OCC about Bank products the team members opened for customers that customers did not consent to or that customers did not need or want.²³⁶³ During the February 2015 Exam, the OCC asked how the Bank determines that customers only received products that they want.²³⁶⁴ Respondent Russ Anderson and her staff responded that the Bank does a customer needs assessment to make sure customers receive products they want and also use Gallup surveys to gauge customer satisfactions.²³⁶⁵

On the February 10, 2015 Call, Bank employees told OCC examiners that if a banker opens up a product (like a credit card) and the customer did not request it, then the banker is terminated immediately, and that if a teller puts in a referral that they did not earn, and the store manager knew (or should have known), then the store manager is fired.²³⁶⁶ The messaging from Respondent Russ Anderson and her team on the February 10, 2015 Call was that the Bank was effective in detecting inappropriate sales conduct and took swift disciplinary action.²³⁶⁷

On the February 10, 2015 Call, OCC examiners also asked whether there was a first line of defense process, including monitoring and MIS (management information system), to assess

²³⁵⁸ Citing Conclusion Memorandum from Kevin Swanson to Karin Hudson (Feb. 19, 2015) (OCC-SP0125161).

²³⁵⁹ EC MSD Ex. 270 (Report of NBE Hudson) at ¶35.

²³⁶⁰ *Id.* at ¶36.

²³⁶¹ *Id.*

²³⁶² EC MSD Ex. 270 (Report of NBE Hudson) at ¶36. Rebecca Rawson reported to Respondent Russ Anderson and managed the Sales and Service Conduct Oversight Team (“SSCOT”) in the Community Bank. *Id.*

²³⁶³ EC MSD Ex. 270 (Report of NBE Hudson) at ¶36

²³⁶⁴ *Id.*

²³⁶⁵ EC MSD Ex. 270 (Report of NBE Hudson) at ¶36, citing Email from Jill Charron to Kevin Swanson and attached notes (February 13, 2015) (OCC-SP0711664).

²³⁶⁶ EC MSD Ex. 270 (Report of NBE Hudson) at ¶37.

²³⁶⁷ *Id.*, citing Email from Jill Charron to Kevin Swanson and attached notes (February 13, 2015) (OCC-SP0711664).

overall sales quality and sales behavior.²³⁶⁸ Respondent Russ Anderson responded that there was no overall process.²³⁶⁹ Respondent Russ Anderson also stated on the February 10, 2015 Call that customers are not cross-sold any products without first going through a formal needs assessment discussion with a banker, a process that takes about one hour.²³⁷⁰ This remark from Respondent Russ Anderson suggested that customers were only provided products that they needed and consented to.²³⁷¹

At no point during the February 10, 2015 Call or at any point during the February 2015 Exam did Respondent Russ Anderson inform the OCC about any proactive monitoring threshold used by Sales and Service Conduct Oversight Team (“SSCOT”), a group within the Community Bank that reported to Respondent Russ Anderson.²³⁷² Specifically, at no point did Respondent Russ Anderson inform the OCC of the 99.99% threshold used by SSCOT in its proactive monitoring to detect sales practices misconduct and address the most egregious offenders.²³⁷³

The threshold was not communicated to the OCC even though OCC examiners asked about controls and monitoring during the February 2015 Exam. SSCOT reported to Respondent Russ Anderson.

If the Community Bank was using thresholds to detect sales practices misconduct, it was Examiner Candy’s expectation as a National Bank Examiner is that Respondent Russ Anderson should have informed the OCC and answered the OCC’s questions honestly, transparently, and fully.²³⁷⁴ At this meeting, SSCOT’s work was a topic of discussion, yet the proactive monitoring criteria used by SSCOT was not disclosed to the OCC. Examiner Candy reported that Russ Anderson’s failure to disclose the manner in which the Bank monitored for sales practice misconduct at a meeting where the OCC had probed this area impeded the OCC’s examination into the adequacy of the Bank’s existing controls to identify sales practices misconduct.²³⁷⁵

Respondent Russ Anderson never escalated the sales practices misconduct problem to the Board or the OCC.²³⁷⁶ When asked to present information on the scope and scale of sales

²³⁶⁸ EC MSD Ex. 270 (Report of NBE Hudson) at ¶38.

²³⁶⁹ *Id.*, citing Email from Jill Charron to Kevin Swanson and attached notes (February 13, 2015) (OCC-SP0711664).

²³⁷⁰ EC MSD Ex. 270 (Report of NBE Hudson) at ¶38.

²³⁷¹ *Id.*

²³⁷² *Id.* at ¶39.

²³⁷³ *Id.*

²³⁷⁴ *Id.*

²³⁷⁵ EC MSD Ex. 270 (Report of NBE Hudson) at ¶39, citing Email from Jill Charron to Kevin Swanson and attached notes (February 13, 2015) (OCC-SP0711664).

²³⁷⁶ EC MSD Ex. 268 (Report of NBE Crosthwaite) at ¶119.

practices misconduct to the Board, Respondent Russ Anderson provided high level and misleading reports that failed to address the size and scope of the problem.²³⁷⁷

On February 21, 2017, while the examiners' review was underway, Respondent Russ Anderson was terminated for cause based on findings from the Board's independent investigation.²³⁷⁸ Contributing factors included: (i) failure to manage risk, failure to escalate, behavior in opposition to culture; (ii) failure to take action to remediate customer harm from sales practices issues; (iii) failure to adequately change business practices once becoming aware of aggressive sales pressure; (iv) failure to take appropriate action to ensure complaints were handled in an appropriate manner; (v) obstructing the examination process; and (vi) continued failure to perform duties appropriate for a Senior Risk Officer of the company.²³⁷⁹ Examiner Crosthwaite opined that Respondent Russ Anderson's false statements to examiners and other acts of obstruction of our examination, constituted a recklessly unsafe or unsound practice and a breach of her fiduciary duty.²³⁸⁰

Examiner Candy interacted with Respondent Russ Anderson during the OCC's May 2015 review.²³⁸¹ It is her opinion that Respondent Russ Anderson intentionally and consistently misled the OCC and the Board on the scope, duration, and root cause of the sales practices misconduct, and the adequacy of controls to prevent and detect such misconduct.²³⁸² During conversations, she attempted to mislead examiners that the extent of the problem was primarily limited to the Los Angeles and Orange County, California markets, and the Bank had implemented sufficient controls.²³⁸³ Respondent Russ Anderson also attempted to prevent her employees from giving Examiner Candy information she explicitly asked for regarding controls.²³⁸⁴

Examiner Candy reported that in her role as the Group Risk Officer, Respondent Russ Anderson received extensive information about all aspects of the sales practices misconduct problem: the sales goals, the pressure, and the controls.²³⁸⁵ Examiner Candy opined that Respondent Russ Anderson's failure to perform her responsibilities as the Group Risk Officer and her false, misleading, and incomplete reporting on the sales practices misconduct problem

²³⁷⁷ EC MSD Ex. 268 (Report of NBE Crosthwaite) at ¶119.

²³⁷⁸ *Id.* at ¶120.

²³⁷⁹ *Id.*

²³⁸⁰ *Id.* at ¶121.

²³⁸¹ EC MSD Ex. 269 (Report of NBE Candy) at ¶127.

²³⁸² *Id.*

²³⁸³ *Id.*

²³⁸⁴ *Id.*

²³⁸⁵ *Id.* at ¶128.

was in disregard of, and evidenced a conscious indifference to, a known or obvious risk of substantial harm to the Bank.²³⁸⁶

Examiner Candy reported that in a February 2013 email, months before the Los Angeles Times articles, Respondent Russ Anderson acknowledged that she could not identify any mid-level to senior leader in the Community Bank who had both “good sales production” and either good or significantly improved sales quality.²³⁸⁷ Examiner Candy opined that under these conditions, Respondent Russ Anderson clearly understood that having good sales production was synonymous with having bad sales quality,²³⁸⁸ but that Respondent Russ Anderson never reported this information to the Enterprise Risk Management Committee, the Bank’s Board of Directors, or the OCC.²³⁸⁹

Examiner Candy reported that the false, misleading, and incomplete reporting on the sales practices misconduct problem that Respondent Russ Anderson actively participated in hindered the Bank Board’s understanding of the root cause and scope of the problem and the adequacy of controls,²³⁹⁰ and hindered the Bank’s ability to fundamentally address sales practices misconduct and remediate customers.²³⁹¹

Respondent Russ Anderson averred that “[n]one of the Interagency Policy factors . . . support such a drastic civil penalty.²³⁹² She averred that she was “motivated by a desire to be clear and concise in her communications with her superiors and the OCC”²³⁹³ an averment not supported in the record. She also asserted that “there is no evidence in the record that the OCC admonished Ms. Russ Anderson personally” and that “the OCC reviewed her positively as late as 2015.”²³⁹⁴ Given the substantial evidence establishing the steps Respondent Russ Anderson took to conceal the scope and effect of the sales practices misconduct and her failure to address that misconduct, no weight is given to this averment.

Respondent Russ Anderson asserted that the penalty assessment is “disproportionately greater than the penalties it has imposed in other cases involving similar alleged misconduct.”²³⁹⁵

²³⁸⁶ *Id.*

²³⁸⁷ *Id.*

²³⁸⁸ *Id.*

²³⁸⁹ *Id.*

²³⁹⁰ *Id.*

²³⁹¹ *Id.*

²³⁹² Respondent Claudia Russ Anderson’s Memorandum of Law in Opposition to Motion for Summary Disposition at 144.

²³⁹³ *Id.*

²³⁹⁴ *Id.*

²³⁹⁵ *Id.*, citing *In re Akahoshi*, #N18-002, OCC AA-EC-2018-20 (April 16, 2018) (charging \$50,000 penalty against chief compliance officer who falsely informed the OCC in multiple instances that a written report finding her bank to not be in compliance with BSA/AML requirements did not exist, in furtherance of a scheme in which the

Although indicating there were other cases where other penalties, presumably more modest assessments, were levied, she identified no other cases relating to the Bank, thus making comparisons unavailable.²³⁹⁶ She argued, unpersuasively, that “[t]hese other cases directly relate to and demonstrate that the massive civil penalty the OCC seeks is arbitrary, capricious, and abusive.”²³⁹⁷

Respondent’s Argument that the \$10 million assessment violates the Due Process and Excessive Fines Clauses

Quoting *TXO Productions Corp.*, Ms. Russ Anderson asserted that the “Due Process Clause of the Fourteenth Amendment imposes substantive limits ‘beyond which penalties may not go,’”²³⁹⁸ and “[a] civil penalty violates substantive due process when it is grossly excessive.”²³⁹⁹ *Id.* at .

In *TXO*, the Court considered a common-law action for slander of title, where respondents obtained a judgment against petitioner for \$19,000 in actual damages and \$10 million in punitive damages.²⁴⁰⁰ The question before the Court was whether that punitive damages award violated the Due Process Clause of the Fourteenth Amendment, either because its amount is excessive or because it is the product of an unfair procedure.²⁴⁰¹

In affirming the award, the Court provided this guidance:

bank laundered over \$368 Million in illegal drug- sale proceeds); *In re Ellsworth and Stevenson*, NR 2012-19, OCC-EC-11-41 & 42 at 2-7 (February 6, 2012) (ordering \$100,00 penalty against bank officers for misappropriation of bank funds and false statements to the OCC regarding the misappropriation); *In re Matthew Moore*, #2011-027, AA-EC-10-73 at 2-4 (ordering \$20,000 civil penalty where branch manager falsified loan applications and made false statements to the OCC about his activities); *In re Craig Bjorklund*, #2016-096, AA-EC-2016-56 at 2-5 (October 3, 2016) (imposing \$45,000 civil penalty where director made false statements to the OCC regarding the use of bank funds to pay director debts).

²³⁹⁶ Respondent Claudia Russ Anderson’s Memorandum of Law in Opposition to Motion for Summary Disposition at 144. The citation to the URL bears no date indicating when the resource was accessed. Access attempted on August 3 and 6, 2021 resulted in the following message: “We can’t find the page you’re looking for.”

²³⁹⁷ Respondent Claudia Russ Anderson’s Memorandum of Law in Opposition to Motion for Summary Disposition at 144. As previously noted, citations to authority using as precedent orders and recommended decisions from OFIA should be limited to those in which the agency has considered and approved the ALJ’s order or recommended decision. Respondent Russ Anderson has made no showing that any agency has approved the cited Orders, and provided no copies of the cited Orders. Accordingly, no weight is given to the legal and factual premise supported by the unidentified Orders.

²³⁹⁸ Respondent Claudia Russ Anderson’s Memorandum of Law in Opposition to Motion for Summary Disposition at 145, quoting *TXO Productions Corp. v. Alliance Resources Corp.*, 509 U.S. 443, 453-54 (1993).

²³⁹⁹ Respondent Claudia Russ Anderson’s Memorandum of Law in Opposition to Motion for Summary Disposition at 145, citing *TXO Productions Corp. v. Alliance Resources Corp.*, 509 U.S. 443, 458.

²⁴⁰⁰ *TXO Prod. Corp. v. All. Res. Corp.*, 509 U.S. 443 (1993).

²⁴⁰¹ *Id.* at 446.

[I]n determining whether a particular award is so “grossly excessive” as to violate the Due Process Clause of the Fourteenth Amendment, *Waters–Pierce Oil Co.*, 212 U.S., at 111, 29 S.Ct., at 227, we return to what we said two Terms ago in *Haslip*: “We need not, and indeed we cannot, draw a mathematical bright line between the constitutionally acceptable and the constitutionally unacceptable that would fit every case. We can say, however, that [a] general concern of reasonableness ... properly enter[s] into the constitutional calculus.” 499 U.S., at 18, 111 S.Ct., at 1043. And, to echo *Haslip* once again, it is with this concern for reasonableness in mind that we turn to petitioner's argument that the punitive award in this case was so “grossly excessive” as to violate the substantive component of the Due Process Clause.²⁴⁰²

Haslip provides further guidance:

We conclude that the punitive damages assessed by the jury against Pacific Mutual were not violative of the Due Process Clause of the Fourteenth Amendment. It is true, of course, that under Alabama law, as under the law of most States, punitive damages are imposed for purposes of retribution and deterrence. *Aetna Life Ins. Co. v. Lavoie*, 470 So.2d 1060, 1076 (Ala.1984). They have been described as quasi-criminal. See *Smith v. Wade*, 461 U.S. 30, 59, 103 S.Ct. 1625, 1641, 75 L.Ed.2d 632 (1983) (REHNQUIST, J., dissenting). But this in itself does not provide the answer. We move, then, to the points of specific attack.

We have carefully reviewed the instructions to the jury. By these instructions, see n. 1, *supra*, the trial court expressly described for the jury the purpose of punitive damages, namely, “not to compensate the plaintiff for any injury” but “to punish the defendant” and “for the added purpose of protecting the public by [deterring] the defendant and others from doing such wrong in the future.” App. 105–106. Any evidence of Pacific Mutual's wealth was excluded from the trial in accord with Alabama law. See *Southern Life & Health Ins. Co. v. Whitman*, 358 So.2d 1025, 1026–1027 (Ala.1978).

To be sure, the instructions gave the jury significant discretion in its determination of punitive damages. But that discretion was not unlimited. It was confined to deterrence and retribution, the state policy concerns sought to be advanced. And if punitive damages were to be awarded, the jury “must take into consideration the character and the degree of the wrong as shown by the evidence and necessity of preventing similar wrong.” App. 106. The instructions thus enlightened the jury as to the punitive damages' nature and

²⁴⁰² TXO Prod. Corp. v. All. Res. Corp., 509 U.S. 443, 458 (1993).

purpose, identified the damages as punishment for civil wrongdoing of the kind involved, and explained that their imposition was not compulsory.²⁴⁰³

The jurisprudential point addressed by the Court in both *Haslip* and *TXO* is not a neat fit with the issue presented by Ms. Russ Anderson's claim, because the Court in both cases was applying a Due Process analysis to a jury's application of common law principles in assessing punitive damages. In the present administrative enforcement action, the OCC's examiners were not applying common law principles, but instead were following a statutorily-prescribed protocol that included a matrix of very specifically parsed factors.²⁴⁰⁴

The cases relied upon by Ms. Russ Anderson nevertheless may provide guidance in supplying a lens through which an assessment intended to deter her and others from engaging in similar unsafe or unsound banking practices. As was true in *Haslip*, the purpose of the OCC's assessment is not to compensate a plaintiff for any injury, but to punish Ms. Russ Anderson "for the added purpose of protecting the public by [detering] the defendant and others from doing such wrong in the future."²⁴⁰⁵ The Court in *TXO* affirmed a jury's award of \$19,000 in actual damages and \$10 million in punitive damages; and in *Haslip* affirmed a jury's punitive damages award that was more than four times the amount of compensatory damages *Haslip* claimed.²⁴⁰⁶ There is no basis to conclude from *TXO* or *Haslip* that the \$10 million assessment against Ms. Russ Anderson violates the Fourteenth Amendment or the Due Process Clause.

Invoking the excessive penalty clause of the Eighth Amendment, Ms. Russ Anderson asserted the \$10 million penalty is "grossly excessive and grossly disproportionate when considered in light of the alleged misconduct, the relatively minimal and unspecified amount of customer financial harm, the amount of alleged ill-gotten gain, and Ms. Russ Anderson's limited financial resources."²⁴⁰⁷ In support, she cited *U.S. v. Bajakajian*, 524 U.S. 321 (1998).²⁴⁰⁸

In *Bajakajian*, customs inspectors found respondent and his family preparing to board an international flight carrying \$357,144. *Bajakajian* was charged with attempting to leave the United States without reporting, as required by 31 U.S.C. § 5316(a)(1)(A), because he was

²⁴⁰³ Pac. Mut. Life Ins. Co. v. Haslip, 499 U.S. 1, 19 (1991)

²⁴⁰⁴ MSD-231 (Decl. of Examiner Smith) at ¶¶5 and 6, indicating that when making an assessment of a civil money penalty the OCC must take into account the statutory mitigating factors set forth in 12 U.S.C. § 1818(i)(2)(G) and the thirteen factors set forth in the Federal Financial Institutions Examination Council's Interagency Policy Regarding the Assessment of Civil Money Penalties by the Federal Financial Institutions Regulatory Agencies, 63 Fed. Reg. 30,226, 30,227 (June 3, 1998) ("Interagency CMP Policy"); and the guidance contained in the Interagency CMP Policy and in the OCC's Policies and Procedures Manual on Civil Money Penalties, PPM 5000-7 (Nov. 13, 2018).

²⁴⁰⁵ Pac. Mut. Life Ins. Co. v. Haslip, 499 U.S. at 19.

²⁴⁰⁶ Pac. Mut. Life Ins. Co. v. Haslip, 499 U.S. 1 (1991).

²⁴⁰⁷ Respondent Claudia Russ Anderson's Memorandum of Law in Opposition to Motion for Summary Disposition at 145.

²⁴⁰⁸ *Id.* at 14.

transporting more than \$10,000 in currency.²⁴⁰⁹ The Government also sought forfeiture of the \$357,144 under 18 U.S.C. § 982(a)(1), which provides that a person convicted of willfully violating § 5316 shall forfeit “any property ... involved in such an offense.” Respondent pleaded guilty to the failure to report and elected to have a bench trial on the forfeiture.

The District Court found, among other things, that the entire \$357,144 was subject to forfeiture because it was “involved in” the offense, that the funds were not connected to any other crime, and that respondent was transporting the money to repay a lawful debt. Concluding that full forfeiture would be grossly disproportional to the offense in question and would therefore violate the Excessive Fines Clause of the Eighth Amendment, the court ordered forfeiture of \$15,000, in addition to three years' probation and the maximum fine of \$5,000 under the Sentencing Guidelines. The Ninth Circuit affirmed, holding that a forfeiture must fulfill two conditions to satisfy the Clause: The property forfeited must be an “instrumentality” of the crime committed, and the property's value must be proportional to its owner's culpability. The United States appealed, and the Supreme Court affirmed the decision of the Court of Appeals.

The Court noted its prior determination that the Excessive Fines Clause “limits the government's power to extract payments, whether in cash or in kind, ‘as punishment for some offense.’”²⁴¹⁰ The forfeiture in this case “serves no remedial purpose, is designed to punish the offender, and cannot be imposed upon innocent owners.”²⁴¹¹

The Court held:

The touchstone of the constitutional inquiry under the Excessive Fines Clause is the principle of proportionality: The amount of the forfeiture must bear some relationship to the gravity of the offense that it is designed to punish. See *Austin v. United States*, 509 U.S., at 622–623, 113 S.Ct., at 2812 (noting Court of Appeals' statement that “ ‘the government is exacting too high a penalty in relation to the offense committed’ ”); *Alexander v. United States*, 509 U.S. 544, 559, 113 S.Ct. 2766, 2776, 125 L.Ed.2d 441 (1993) (“It is in the light of the extensive criminal activities which petitioner apparently conducted ... that the question whether the forfeiture was ‘excessive’ must be considered”). Until today, however, we have not articulated a standard for determining whether a punitive forfeiture is constitutionally excessive. We now hold that a punitive forfeiture violates the Excessive Fines Clause if it is grossly disproportional to the gravity of a defendant's offense.²⁴¹²

Applying this test, I find Ms. Russ Anderson has presented no basis that would demonstrate the \$10 million penalty is grossly disproportional to the gravity of her offenses. I

²⁴⁰⁹ *United States v. Bajakajian*, 524 U.S. 321 (1998).

²⁴¹⁰ *Id.* at 328 (1998), quoting *Austin v. United States*, 509 U.S. 602, 609–610 (1993).

²⁴¹¹ *Bajakajian*, 524 U.S. at 332.

²⁴¹² *Id.* at 334.

reject as not supported in the record Ms. Russ Anderson’s averment that the misconduct that can properly be attributed to Respondent resulted in “relatively minimal” harm – whether that harm was sustained by the Bank’s customers or the Bank itself.

I find nothing in the Court’s holding in *Bajakajian* that would indicate an Eighth Amendment analysis should take into account “the amount of alleged ill-gotten gain” – rather, the analysis requires a determination only of the “gravity of a defendant’s offense” in relation to the amount of the penalty. Further, even if these factors were properly included in the proportionality analysis required under *Bajakajian*, the record does not support the factual averments that Respondent has been “singled out,” that she serves as a “scapegoat,” that she was “relatively low in the corporate structure,” or that she was “powerless to change the policies in issue.”²⁴¹³ She offers no support for the factual claim that the \$10 million penalty “goes far beyond what is needed to deter other bank officers from committing unsafe, unsound or unlawful acts.”²⁴¹⁴

In sum, I find the \$10 million penalty is proportionate, given the gravity of Respondent Russ Anderson’s pattern of unsafe and unsound practices, her repeated and continual breach of fiduciary duties she owed the Bank, and her repeated violation of banking laws.

Respondent’s Claim that the Civil Penalty Enforcement Counsel Seeks Is Intended to Punish Respondent for Asserting Her Due Process Hearing Rights

Respondent made the factual claim that “the massive civil penalty sought is intended to punish Ms. Russ Anderson for asserting her right to a hearing”, and that the penalty thus “violates due process.”²⁴¹⁵ She presented no authority for the proposition.

Nothing in the record supports this factual averment. To the contrary, there is within the record substantial evidence establishing the basis for the \$10 million assessment, and substantial evidence that in determining the assessment the OCC’s Examiners fully considered the relevant statutory and regulatory factors. And while Respondent avers that “Enforcement Counsel does not articulate any reason for doubling the civil penalty in the Notice of Charges other than the fact that Ms. Russ Anderson is going through the administrative hearing process,”²⁴¹⁶ the record reflects that the OCC’s examiners *have* articulated reasons for establishing the \$10 million assessment following the introduction of Respondent’s Amended Answer and the testimony she and other witnesses gave in the prehearing process.

Respondent Russ Anderson made the factual claim that “one of Enforcement Counsel’s experts admitted in her declaration that Enforcement Counsel is seeking to punish Ms. Russ

²⁴¹³ Respondent Claudia Russ Anderson’s Memorandum of Law in Opposition to Motion for Summary Disposition at 145.

²⁴¹⁴ *Id.*

²⁴¹⁵ *Id.* at 146.

²⁴¹⁶ *Id.*

Anderson for contesting Enforcement Counsel’s allegations.²⁴¹⁷ In support of the factual claim that one of Enforcement Counsel’s experts “admitted in her Declaration that Enforcement Counsel is seeking to punish Ms. Russ Anderson for contesting Enforcement Counsel’s allegations,” Respondent Russ Anderson proffered the following excerpt from Examiner Tanya Smith’s Declaration.²⁴¹⁸

Under the Interagency CMP Policy, the OCC is not precluded “from considering any other matter relevant to the civil money penalty assessment.” Interagency CMP Policy. Because the purpose of a CMP is to “serve as a deterrent to future violations, unsafe or unsound practices, and breaches of fiduciary duty, by the IAP or institution against which the CMP is assessed and by other IAPs and institutions,” PPM 5000-7 (emphasis added); see Interagency CMP Policy, I also considered the extent of the Respondents’ wealth in addition to evidence of “financial gain or other benefit.”

After considering all the factors listed above and the evidence I have reviewed, including the Respondents’ Amended Answer and deposition testimony and other information that has come to light after the Notice was filed in January 2020, I believe that the evidence, including evidence previously unavailable to the OCC, supports higher CMPs than was initially assessed against each Respondent. I believe that CMPs of \$10 million for Respondent Russ Anderson, \$7 million for Respondent Julian, and \$1.5 million for Respondent McLinko are supported by the evidence and are appropriate.

The starting point for my analysis of appropriate amounts for CMPs against the Respondents for their roles in the Bank’s longstanding and systemic sales practices misconduct problem is the maximum amounts permitted to be assessed by statute. Because I intended to conservatively calculate the statutory CMP amounts, I chose to use the per diem amounts for Tier 2 CMPs. I did this even though, based on my review of the evidence, Respondents’ misconduct was knowing and caused substantial loss to the Bank and substantial pecuniary gain to each Respondent, and could support Tier 3 CMPs of over \$1 million per day.

Twelve C.F.R. § 19.240 provided that a Tier 2 CMP based on conduct occurring from November 10, 2008 until November 1, 2015, shall not exceed \$37,500 per violation, practice, or breach per day for each day that the misconduct continues. See Rules of Practice and Procedure; Civil Money Penalty Inflation Adjustments, 73 Fed. Reg. 66,493-501, 2008 WL 4829809 (Nov. 10, 2008). The maximum authorized CMP that could be assessed by the OCC in 2020 for conduct occurring on or after November 2, 2015, until September 30, 2016 (when the Bank

²⁴¹⁷ Respondent Claudia Russ Anderson’s Memorandum of Law in Opposition to Motion for Summary Disposition at 146, citing *Dazzio*, 970 F.2d at 79 (reversing civil penalty against bank officer where regulator increased the civil penalty with no change in the record supporting the penalty or articulation of the reason). “This looks to us uncomfortably like judicial vindictiveness, or ‘charging for the use of the courthouse.’” *Id.* (citing *North Carolina v. Pearce*, 395 U.S. 711, 712 (1969)). See also *Oberstar v. F.D.I.C.*, 987 F.2d 494, 503-04 (8th Cir. 1993) (FDIC abused discretion by imposing civil penalty where the inference was that it was in retaliation for respondent seeking judicial review of a prohibition order, which the court found “deeply disturbing”).

²⁴¹⁸ Respondent Claudia Russ Anderson’s Memorandum of Law in Opposition to Motion for Summary Disposition at 146, citing Tanya Smith Decl, 8-10.

eliminated the Community Bank's unreasonable sales goals) is \$51,222 per day that the misconduct continues. See OCC Adjusts Civil Money Penalties for Inflation, 84 Fed. Reg. 71,735, 2019 WL 8270932 (Dec. 30, 2019).²⁴¹⁹

Having considered the text of this part of Examiner Smith's Declaration, I find no basis that would support Respondent's factual claim that Examiner Smith "admitted" to the factual claim that "Enforcement Counsel is seeking to punish Ms. Russ Anderson". Nothing in this excerpt suggests Enforcement Counsel had any role in directing Examiner Smith's efforts to articulate a basis for the increased assessment.

In her Declaration, Examiner Smith laid out in plain language the factors she considered when arriving at the assessments presented through Enforcement Counsel's Motions for Summary Disposition. She noted in Paragraphs 5 and 6 that she must take into account the statutory mitigating factors set forth in 12 U.S.C. § 1818(i)(2)(G) and the thirteen factors set forth in the Federal Financial Institutions Examination Council's Interagency Policy Regarding the Assessment of Civil Money Penalties by the Federal Financial Institutions Regulatory Agencies, 63 Fed. Reg. 30,226, 30,227 (June 3, 1998) ("Interagency CMP Policy"); and the guidance contained in the Interagency CMP Policy and in the OCC's Policies and Procedures Manual on Civil Money Penalties, PPM 5000-7 (Nov. 13, 2018).

In Paragraph 7 of her Declaration she spelled out the thirteen factors that she included in determining a civil money penalty. In Paragraph 8 she quoted language in the Policy that permitted the OCC to consider "any other matter relevant to the civil money penalty assessment." She identified one such relevant matter: that one of the established purposes of the imposition of civil money penalties is to deter "future violations, unsafe or unsound practices, and breaches of fiduciary duty". She also expressly noted that in determining the appropriate assessment she considered the extent of Respondents' wealth in addition to evidence of financial gain or other benefit.

After identifying these factors, Examiner Smith in Paragraph 9 reflected on evidence she reviewed after the Notice of Charges was issued. These included the Respondents' Amended Answers, deposition testimony obtained after the filing of the Notice, and "other information that has come to light" during the course of this administrative enforcement action.

I find Examiner Smith's reliance on evidence she reviewed after the Notice of Charges supports her assessment with respect to Respondent Russ Anderson. I further find Ms. Russ

²⁴¹⁹ Note that on page 146 of her Memorandum of Law in Opposition, Respondent Russ Anderson supported her factual claim with the following citation: "Tanya Smith Decl, 8-10." Applying standard legal citation protocol, the citation refers the reader to pages 8 through 10 of Examiner Smith's Declaration. I read the text in those pages and found no support for the factual claim - the pages consist of part of Paragraph 17, and all of Paragraphs 18 through 23. Examiner Smith's Declaration in these paragraphs had nothing to do with the assessment factors she considered when evaluating a potential civil money penalty regarding Ms. Russ Anderson. The text quoted above appears in Paragraphs 8, 9, and 10 of Examiner Smith's Declaration, and are complete, verbatim presentations of those paragraphs.

Anderson’s deposition testimony (taken on January 13, 2021)²⁴²⁰ and her Amended Answer (dated August 7, 2020) contain relevant and material information relating to the factors bearing on the appropriateness of the civil money penalty, where such information was not available to Examiner Smith or to the OCC at the time the Notice of Charges was issued.

More to the point, I find the factual claim proffered by Respondent Russ Anderson that Examiner Smith “admitted in her declaration that Enforcement Counsel is seeking to punish Ms. Russ Anderson for contesting Enforcement Counsel’s allegations” – is patently false. Nothing in Paragraphs 8, 9, or 10 support this factual claim.

If one were to rely on the factual averment presented on behalf of Ms. Russ Anderson, one would conclude that there is a factual basis to conclude Examiner Smith had determined that Enforcement Counsel “is seeking to punish” Respondent Russ Anderson “for contesting Enforcement Counsel’s allegations.” This would be a gross and obvious mischaracterization of Examiner Smith’s Declaration, one that threatens the integrity of Respondent Russ Anderson’s Memorandum in Opposition. For the same reason, the presentation of this claim calls into question both the diligence and the integrity of the attorney whose signature supported the claim.

In similar fashion, Respondent Russ Anderson through counsel made the factual claim that “[t]he evidence in the record that Enforcement Counsel is reacting to congressional criticism for its failure to appreciate the nature and scope of the sales practices misconduct issue bolsters this conclusion.”²⁴²¹ This averment is presented, however, without any citation to the record, and again appears to be a patently false statement. There is no evidence that the \$10 million assessment was in response to any criticism from any quarter.

Ms. Russ Anderson argues that the OCC’s statutory authority to modify the civil penalty – changing what had been presented in the Notice of Charges to what is now before me through Enforcement Counsel’s summary disposition motion – is limited such that a penalty can only be modified to a lower assessment.²⁴²² I find no legal basis for such a conclusion. As Ms. Russ Anderson noted, the OCC is authorized to “compromise, modify, or remit” any penalty which the agency has already assessed.²⁴²³ In this context, and as Ms. Russ Anderson has herself acknowledged, the authority to “modify” a penalty already assessed includes the authority to change the amount by increasing or by decreasing the assessment.²⁴²⁴

²⁴²⁰ MSD-266 (Deposition of Russ Anderson).

²⁴²¹ Respondent Claudia Russ Anderson’s Memorandum of Law in Opposition to Motion for Summary Disposition at 147.

²⁴²² *Id.*

²⁴²³ *Id.*, quoting 12 U.S.C. § 1818(i)(2)(F).

²⁴²⁴ Respondent Claudia Russ Anderson’s Memorandum of Law in Opposition to Motion for Summary Disposition at 147, quoting the Random House Thesaurus (1984), which sets forth the following synonyms for the term “modify:” “alter,” “vary,” “change,” “reduce,” “moderate,” and “temper.”

Ms. Russ Anderson asserted the authority to modify an assessment limited the OCC’s authority – that the term “modify” “must be interpreted in light of the terms surrounding it in the statute, which clearly don’t allow for an increase, much less a doubling.”²⁴²⁵

In support of this legal premise, Respondent relies on *Yates v. United States*, 574 U.S. 528, 543 (2015). My reading of *Yates* does not compel the conclusion urged by Ms. Russ Anderson that the authority to modify an assessment “only allows for a reduction of the initially-noticed penalty.”²⁴²⁶ In *Yates*, the Court construed language in the Sarbanes-Oxley Act (which had been prompted by exposure of Enron’s massive accounting fraud and the systematic destruction of potentially incriminating documents) – where the Court rejected the government’s claim that a “tangible object” within the Act’s compass is “simply something other than a document or record.”²⁴²⁷

In rejecting this construction, the Court provided guidance for construing the meaning of words within context. As the Court observed in *Atlantic Cleaners & Dyers*, 286 U.S., at 433, 52 S.Ct. 607:

Most words have different shades of meaning and consequently may be variously construed. . . . Where the subject matter to which the words refer is not the same in the several places where [the words] are used, or the conditions are different, or the scope of the legislative power exercised in one case is broader than that exercised in another, the meaning well may vary to meet the purposes of the law, to be arrived at by a consideration of the language in which those purposes are expressed, and of the circumstances under which the language was employed [footnote omitted].

In short, although dictionary definitions of the words “tangible” and “object” bear consideration, they are not dispositive of the meaning of “tangible object” in § 1519.²⁴²⁸

Applying *Yates*, I find Ms. Russ Anderson has not made a sufficient showing that the language that authorizes the OCC to modify an assessment precludes the modification to a greater amount. Nothing in the other cases cited by Ms. Russ Anderson (*Abercrombie*²⁴²⁹ and

²⁴²⁵ Respondent Claudia Russ Anderson’s Memorandum of Law in Opposition to Motion for Summary Disposition at 147.

²⁴²⁶ *Id.* at 147-48.

²⁴²⁷ *Yates v. United States*, 574 U.S. 528, 534 (2015).

²⁴²⁸ Respondent Claudia Russ Anderson’s Memorandum of Law in Opposition to Motion for Summary Disposition at 148, quoting *Yates*, 574 U.S. at 538.

²⁴²⁹ Respondent Claudia Russ Anderson’s Memorandum of Law in Opposition to Motion for Summary Disposition at 148, citing *Abercrombie v. Off. Of Comptroller of Currency*, 641 F. Supp. 598, 602 (S.D. Ind. 1986), *aff’d*, 833 F.2d 672 (7th Cir. 1987) (offered for the proposition that the OCC has the statutory authority to reduce the initially-noticed civil penalty).

*Clifton Power*²⁴³⁰) compels a different outcome, as neither construe the language under review in the present enforcement action as limiting the agency’s authority.

Ms. Russ Anderson argues, “[a]llowing Enforcement Counsel to double the civil penalty at the 11th hour of a proceeding without formal notice would also violate Ms. Russ Anderson’s procedural due process rights.” In support, she relied upon the Court’s holding in *Edward J. DeBartolo Corp. v. Fla. Gulf Coast Building and Constr. Trades Council*²⁴³¹ for the proposition that “[t]he statute should not be construed in a way that it would violate the Constitution.”²⁴³²

As a parenthetical point, it would be difficult for the record to be construed in a way that holds the modification of Ms. Russ Anderson’s assessment as arriving at “the 11th hour.”²⁴³³ The \$10 million assessment came not long after Ms. Russ Anderson filed her Amended Answer. Through her Amended Answer which she filed on August 7, 2020 Respondent for the first time acknowledged having knowledge and information sufficient to answer a significant number of the material factual claims presented in the Notice of Charges – six months after initially claiming through her original Answer that she lacked information sufficient to admit or deny the claim.²⁴³⁴

Enforcement Counsel provided Examiner Smith’s Declaration, and all of the other documents supporting the \$10 million assessment, on March 26, 2021. At this point, the enforcement action had been pending since January 23, 2020 (with the issuance of the Notice of Charges), and the matter was scheduled for hearing to begin on September 13, 2021. This timeline does not suggest an 11th hour effort on Enforcement Counsel’s part, particularly not given Russ Anderson’s unwarranted six month delay in providing forthright and complete answers to the Notice of Charges.

The record also does not support Ms. Russ Anderson’s assertion that she has not been given “formal notice” of the \$10 million assessment.²⁴³⁵ That notice was included in Enforcement Counsel’s March 26, 2021 submission.

²⁴³⁰ Respondent Claudia Russ Anderson’s Memorandum of Law in Opposition to Motion for Summary Disposition at 148, citing *Clinton Power Corp. v. F.E.R.C.*, 88 F.3d 1258, 1266 (D.C. Cir. 1996) (offered for the proposition that the penalty in notice of charges sets the maximum).

²⁴³¹ *Edward J. DeBartolo Corp. v. Fla. Gulf Coast Building and Constr. Trades Council* 485 U.S. 568, 569 (1988).

²⁴³² Respondent Claudia Russ Anderson’s Memorandum of Law in Opposition to Motion for Summary Disposition at 148.

²⁴³³ *Id.*.

²⁴³⁴ Compare Answer of Respondent Russ Anderson, filed February 11, 2020, with Amended Answer of Respondent Russ Anderson, filed August 7, 2020, at, e.g., ¶¶3, 6, 8, 14, 15, 16, 17, 18, and 19.

²⁴³⁵ Respondent Claudia Russ Anderson’s Memorandum of Law in Opposition to Motion for Summary Disposition at 148.

Enforcement Counsel proffered the Declaration of Examiner Smith, which is dated March 23, 2021, and which identified the information made available to the OCC only after the filing of the Notice of Charges – including Respondent’s Amended Answer.²⁴³⁶

Respondent’s reliance on the Court’s holding in *Edward J. DeBartolo Corp.* is misplaced. In that case, the Supreme Court applied a long-standing rule of statutory construction, the general thrust of which is fairly straightforward.

The Court held:

Where an otherwise acceptable construction of a statute would raise serious constitutional problems, the Court will construe the statute to avoid such problems unless such construction is plainly contrary to the intent of Congress. *Catholic Bishop, supra*, 440 U.S., at 499–501, 504, 99 S.Ct., at 1318–1319, 1320–1321. This cardinal principle has its roots in Chief Justice Marshall’s opinion for the Court in *Murray v. The Charming Betsy*, 2 Cranch 64, 118, 2 L.Ed. 208 (1804), and has for so long been applied by this Court that it is beyond debate. *E.g.*, *Catholic Bishop, supra*, 440 U.S., at 500–501, 99 S.Ct., at 1318–1319; *Machinists v. Street*, 367 U.S. 740, 749–750, 81 S.Ct. 1784, 1790, 6 L.Ed.2d 1141 (1961); *Crowell v. Benson*, 285 U.S. 22, 62, 52 S.Ct. 285, 296–297, 76 L.Ed. 598 (1932); *Lucas v. Alexander*, 279 U.S. 573, 577, 49 S.Ct. 426, 428, 73 L.Ed. 851 (1929); *Panama R. Co. v. Johnson*, 264 U.S. 375, 390, 44 S.Ct. 391, 395, 68 L.Ed. 748 (1924); *United States ex rel. Attorney General v. Delaware & Hudson Co.*, 213 U.S. 366, 407–408, 29 S.Ct. 527, 535–536, 53 L.Ed. 836 (1909); *Parsons v. Bedford*, 3 Pet. 433, 448–449, 7 L.Ed. 732 (1830) (Story, J.). As was stated in *Hooper v. California*, 155 U.S. 648, 657, 15 S.Ct. 207, 211, 39 L.Ed. 297 (1895), “[t]he elementary rule is that every reasonable construction must be resorted to, in order to save a statute from unconstitutionality.” This approach not only reflects the prudential concern that constitutional issues not be needlessly confronted, but also recognizes that Congress, like this Court, is bound by and swears an oath to uphold the Constitution. The courts will therefore not lightly assume that Congress intended to infringe constitutionally protected liberties or usurp power constitutionally forbidden it. See *Grenada County Supervisors v. Brogden*, 112 U.S. 261, 269, 5 S.Ct. 125, 129, 28 L.Ed. 704 (1884).²⁴³⁷

Respondent Russ Anderson advanced no statutory construction that operated contrary to the Court’s holding in *DeBartolo*. As noted above, the OCC is authorized to “compromise,

²⁴³⁶ MSD-231 (Decl. of Examiner Smith) at ¶9.

²⁴³⁷ *Edward J. DeBartolo Corp. v. Fla. Gulf Coast Bldg. & Const. Trades Council*, 485 U.S. 568, 575 (1988).

modify, or remit” any penalty which the agency has already assessed.²⁴³⁸ Applied in this context, there has been no showing that an upward modification of a penalty assessed by the OCC contravenes any provision of the statute that authorized modifications of assessed penalties.

Respondent’s Claim that the Tanya Smith Declaration is an Untimely, Inadmissible Expert²⁴³⁹

Respondent Russ Anderson avers that in increasing the OCC’s assessment against her, Enforcement Counsel relies on the declaration of Tanya Smith.²⁴⁴⁰ She avers that Examiner Smith’s declaration “does not rely on any new facts not previously available to Enforcement Counsel.”²⁴⁴¹ As noted above, this factual premise is not supported by the record. Examiner Smith identified information that had not been available to the OCC at the time the Notice of Charges was filed – including significant factual admissions that were introduced to the record only in August 2020 with the filing of a more forthcoming set of answers to the Notice. The Declaration contained sufficient indicia of reliance on newly available information to warrant its introduction in this enforcement action.

Whether or not Examiner Smith waited to advocate for a \$10 million civil penalty until after the close of discovery,²⁴⁴² nothing in the OCC’s Uniform Rules or orders of this tribunal barred the use of newly discovered admissions or testimony in the development of Examiner Smith’s Declaration. Ms. Russ Anderson had at her disposal the ability to introduce contradictory evidence through her response to Enforcement Counsel’s summary disposition motion and their Statement of Material Facts. Having fully exercised the right to offer such contradictory evidence, there is no legal basis to conclude she has been deprived of “the opportunity to effectively defend herself in this case by deposing Ms. Smith regarding her dramatically different expert conclusion.”²⁴⁴³

Findings of Fact

1. At all relevant times Wells Fargo Bank, N.A., Sioux Falls, South Dakota (“Bank”) is a national banking association within the meaning of 12 U.S.C. §

²⁴³⁸ Respondent Claudia Russ Anderson’s Memorandum of Law in Opposition to Motion for Summary Disposition at 147, quoting 12 U.S.C. § 1818(i)(2)(F).

²⁴³⁹ Respondent Claudia Russ Anderson’s Memorandum of Law in Opposition to Motion for Summary Disposition at 148.

²⁴⁴⁰ *Id.*

²⁴⁴¹ *Id.*

²⁴⁴² *Id.* at 148-49.

²⁴⁴³ *Id.* at 149.

- 1813(q)(1)(A) and an “insured depository institution” as defined in 12 U.S.C. § 1813(c)(2).²⁴⁴⁴
2. Respondent Claudia Russ Anderson was employed by the Bank within six years of the filing of the Notice of Charges. Pursuant to 12 U.S.C. § 1813(u), Respondent Russ Anderson is an “institution-affiliated party” of the Bank.
 3. The OCC is the “appropriate Federal banking agency” as that term is defined in 12 U.S.C. § 1813(q) and is authorized to issue a prohibition order and initiate and maintain a civil money penalty action against Respondent Russ Anderson pursuant to 12 U.S.C. § 1818(e) and (i).²⁴⁴⁵
 4. For purposes of the Notice of Charges, the term “sales practices misconduct” was defined as 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.²⁴⁴⁶
 5. The Bank utilized different terminology over the years to describe employee misconduct that encompassed sales practices misconduct and other ethical violations, such as “sales integrity violations,” “sales incentive program violations,” and “gaming.”
 6. The Bank’s Sales Quality Manual from August 2008 defined “Sales Quality” as follows: “‘Sales Quality’ is a broader term that captures all sales and referral related issues that impact customer satisfaction as well as profitability of the sale/referral for Wells Fargo. Examples could range from general product design considerations and trends to Bankers failing to disclose fees while selling a solution²⁴⁴⁷ to the most serious ethical violations.”²⁴⁴⁸
 7. The Bank’s Sales Quality Manual from August 2008 defined “Sales Integrity” as follows: “‘Sales Integrity’ is a narrower term used to specifically describe the subset of Sales Quality concerns that are related to unethical and/or illegal behavior on the part of individuals while selling to our customers. Sales integrity issues involve the manipulation and/or misrepresentation of sales or referrals and reporting of sales and referrals in an attempt to receive compensation or to meet sales goals. Unethical sales behavior has far-reaching impacts. It impacts

²⁴⁴⁴ Respondent Claudia Russ Anderson’s Amended Answer (“Russ Anderson Amended Answer”) at ¶ 1) and Response to Enforcement Counsel’s Statement of Material Facts (ECSMF) at No. 1; (MSD-1 and MSD-343 at 19 (the Bank’s Board stipulating the Bank is a “national banking association” and an “insured depository institution”))

²⁴⁴⁵MSD-343 at 19 (the Bank’s Board stipulating the Bank is the “appropriate federal banking agency”).

²⁴⁴⁶ Russ Anderson Amended Answer ¶ 4.

²⁴⁴⁷ Within the Community Bank, the term “solution” referred to Bank products and services that could be opened, issued, or provided by Bank employees, including, but not limited to deposit accounts, debit and credit cards, online bill pay and other Bank services.

²⁴⁴⁸ MSD-10 at 5.

customer relationships, damages relationships between Team Members, and leads to loss of revenue and reputation for the company.”²⁴⁴⁹

8. The June 2010 Corporate Security Policy Manual categorized its “sales integrity violations” case type into the following subtypes: Customer Consent, False Entries/CIP Violations, Fictitious Customer, Online Banking, Product Manipulation, Funding Manipulation, Reassignment of Sales Credit, Referrals, and Other. All sales integrity violation subtypes were listed as “656 - Defalcation/Embezzlement, and/or 18 USC 1001 & 1005, False entries/records, USA Patriot Act (CIP issues).”²⁴⁵⁰
9. The Bank’s Sales Quality Manual from July 2014 defined sales integrity violations as “manipulations and/or misrepresentations of sales, service or referrals and reporting of sales, service or referrals in an attempt to receive compensation or to meet sales and service goals.”²⁴⁵¹
10. In a November 2012 email, Bart Deese explained the distinction between sales quality and sales integrity to Respondent McLinko as follows: “I have heard Sales Quality and Sales Integrity used interchangeably across [Community Bank]. When I think SQ/SI, I think of them together in regards to a banker trying to manipulate incentive compensation plans by recording inappropriate sales (e.g. adding debit cards to customers without consent, creating bogus accounts, etc.).”²⁴⁵²
11. The term “gaming” within the Bank mirrored the definition of sales integrity violations. “Sales gaming may be classified as the manipulation and/or misrepresentation of sales or sales reporting to receive or attempt to receive compensation, or to meet or attempt to meet sales goals.”²⁴⁵³ Specified types of gaming, included the following:
 - (a) “Selling products to existing customers without their knowledge (i.e. debit cards) or booking more expensive DDA products above what an actual customer requested and without their knowledge.
 - (b) Listing bogus sales referrals by use of current customer SSN’s when they were never present.
 - (c) Misrepresenting products by not disclosing additional fee income items like overdraft protection.
 - (d) Signing customers up for on-line banking and bill pay without

²⁴⁴⁹ MSD-10 at 5.

²⁴⁵⁰ MSD-423 at 7-9.

²⁴⁵¹ Russ Anderson Amended Answer ¶ 33; McLinko Amended Answer ¶ 33; MSD-9 at 5.

²⁴⁵² MSD-479.

²⁴⁵³ MSD-2 at 1, 3.

- their knowledge.
- (e) Management supplying tellers and bankers with SSN's from the Hogan system to be used as bogus referrals.
 - (f) Opening unfunded DDA's without customer knowledge and waiving fees (zero balance account auto-closes within 90 days but the sales goal is registered).
12. Altering or falsifying documents translating to increased sales (i.e.; phony referrals).²⁴⁵⁴
 13. A "sales incentive program violation" is defined as the "manipulation and/or misrepresentation of sales or sales reporting in an attempt to receive compensation or meet sales goals. Includes inappropriate sales."²⁴⁵⁵
 14. A "case" or an "investigation" as used by the Bank's Corporate Investigations group "is defined as an allegation of team member misconduct involving a possible violation of law or a code of ethics policy violation or information security policy violation, which has resulted in a financial loss and/or exposure or represents a significant compliance or reputational risk."²⁴⁵⁶
 15. A "systemic" problem, as used herein, refers to a problem that is inherent in the business model, operations, or culture of a bank as opposed to a problem that can be solved by terminating employees engaged in wrongdoing.
 16. The Community Bank was and is the Bank's largest line of business and houses the Bank's retail branch network.²⁴⁵⁷
 17. The Community Bank referred to its products and services as "solutions."²⁴⁵⁸
 18. The Community Bank referred to its employees as "team members."²⁴⁵⁹
 19. The Community Bank referred to its branches as "stores."²⁴⁶⁰
 20. Sales practices misconduct violated laws and regulations and harmed the Bank's

²⁴⁵⁴ MSD-557.

²⁴⁵⁵ MSD-381 at 6.

²⁴⁵⁶ MSD-526 at 47; MSD-523 at 51.

²⁴⁵⁷ Russ Anderson Amended Answer ¶ 2; MSD-1 at 20-21 ¶ 4; Julian Amended Answer ¶ 2; McLinko Amended Answer ¶ 2; MSD-1 at 20 ¶ 4.

²⁴⁵⁸ MSD- 653 (Pyles Tr.) at 96:5-96:9; MSD-350 (Ramage Tr.) at 37:24-38:2; MSD-579 (Schulte Tr.) at 71:14-72:13.

²⁴⁵⁹ MSD-266 (Russ Anderson Dep. Tr.) at 165:1-3.

²⁴⁶⁰ MSD-1 at 21 ¶ 5.

customers.²⁴⁶¹

21. Sales practices misconduct was pervasive and widespread within the Community Bank.²⁴⁶²
22. During the time period relevant to the issues presented in the Notice of Charges the root cause of sales practices misconduct was the Community Bank's business model, which imposed undue pressure on employees to meet unreasonable sales goals.²⁴⁶³
23. The Bank's controls to both prevent and detect sales practices misconduct were inadequate throughout the relevant period.²⁴⁶⁴
24. None of Respondents' expert witnesses concluded or opined on whether the Community Bank had a systemic sales practices misconduct problem, the root cause thereof, how long that lasted, the magnitude of the problem, or how widespread it was.²⁴⁶⁵
25. None of Respondents' expert witnesses concluded or opined that the sales goals in the Community Bank were reasonable.²⁴⁶⁶
26. None of Respondents' expert witnesses concluded or opined that the pressure was reasonable.²⁴⁶⁷
27. None of Respondents' expert witnesses concluded or opined that controls to prevent sales practices misconduct were adequate.²⁴⁶⁸

²⁴⁶¹ See Russ Anderson SOF ¶¶ 257-275; 459-489; Julian and McLinko SOF ¶¶ 214-231.

²⁴⁶² See Russ Anderson SOF ¶¶ 214-256; Julian and McLinko SOF ¶¶ 169-213.

²⁴⁶³ See Russ Anderson SOF ¶¶ 48-68, 124-146; Julian and McLinko SOF ¶¶ 31-116.

²⁴⁶⁴ See Russ Anderson SOF ¶¶ 150-213; Julian and McLinko SOF ¶¶ 117-168.

²⁴⁶⁵ See MSD-264 (Farrell Expert Report) at 5; MSD-262 (Abshier Expert Report) at 5; MSD-281 (Wilcox Expert Report) at 11; MSD-265A (Farrell Dep. Tr.) at 52:18-22; MSD-263A (Abshier Dep. Tr.) at 44:18-25, 50:15-51:12; MSD-282A (Wilcox Dep. Tr.) at 40:11-41:11; MSD-271 (Ploetz Expert Report) at 4; MSD-283A (Julian Deal Expert Report) at 8; MSD-283B (McLinko Deal Expert Report) at 8; MSD-285 (Jarrett Expert Report) at 6; see also MSD-282A (Wilcox Dep. Tr.) at 40:11-41:16; MSD-272A (Ploetz Dep. Tr.) at 16:16-22:4; MSD-286B (Jarrett Dep. Tr.) at 580:3-584:3; MSD-284A (Deal Dep. Tr.) at 116:3-119:9.

²⁴⁶⁶ See MSD-271 (Ploetz Expert Report) at 4; MSD-283A (Julian Deal Expert Report) at 8; MSD-285 (Jarrett Expert Report) at 6; see also MSD-282A (Wilcox Dep. Tr.) at 40:20-23; MSD-286B (Jarrett Dep. Tr.) at 581:10-25; MSD-284A (Deal Dep. Tr.) at 118:10-17; MSD-272A (Ploetz Dep. Tr.) at 19:13-10.

²⁴⁶⁷ See MSD-271 (Ploetz Expert Report) at 4; MSD-283A (Julian Deal Expert Report) at 8; MSD-283B (McLinko Deal Expert Report) at 8; MSD-285 (Jarrett Expert Report) at 6; see also MSD-282A (Wilcox Dep. Tr.) at 40:24-41:3; MSD-286B (Jarrett Dep. Tr.) at 582:3-18; MSD-284A (Deal Dep. Tr.) at 118:18-119:9; MSD-272A (Ploetz Dep. Tr.) at 21:9-21.

²⁴⁶⁸ See MSD-271 (Ploetz Expert Report) at 4; MSD-283A (Julian Deal Expert Report) at 8; MSD-283B (McLinko Deal Expert Report) at 8; MSD-285 (Jarrett Expert Report) at 6; see also MSD-282A (Wilcox Dep. Tr.) at

28. None of Respondents' expert witnesses concluded or opined that controls to detect sales practices misconduct were adequate.²⁴⁶⁹
29. In sworn testimony before the OCC during its investigation, Respondent Julian agreed there was a systemic problem with sales practices misconduct at the Bank, and the root cause of the problem was unattainable sales goals and severe pressure on employees to meet them.²⁴⁷⁰
30. Respondent Julian testified as follows:

Q: And as you know and as I've said earlier, our investigation is focused on the sales practice issues. And so, let me ask you: Hindsight is 20/20. Let me ask you based on what you know now today. Here we are on May 31st, 2018. Do you now believe that there was a systemic problem with sales practice misconduct at Wells Fargo? And let me define what I mean by 'systemic.' By 'systemic' I mean a problem that is inherent in the system, the business model, the culture of the bank as opposed to a problem that could be solved by terminating some individuals who are doing things they shouldn't do. With that definition, do you now believe that there was a significant systemic problem at Wells Fargo with sales practice misconduct?

A: I do.

...

Q. Is it fair to say that sitting here today based on the work that Wells Fargo's Audit Group has done, you can confidently say that Wells Fargo had systemic problem with sales practice misconduct that existed at least since 2011 where the data from Pricewaterhouse was looked at?

A. Yes. I'm just trying to differentiate the question between that – the – just the prior one. So the answer I think would be very –

Q. Yes.

A. – the same as – expanding on the same as I just said.

Q: Okay. And based on the work that Wells Fargo Audit Group did, the root cause of the sales practice misconduct was -- at least in large part

41:4-7; MSD-286B (Jarrett Dep. Tr.) at 583:15-584:6; MSD-284A (Deal Dep. Tr.) at 122:9-19; MSD-272A (Ploetz Dep. Tr.) at 21:22-22:4

²⁴⁶⁹ See MSD-271 (Ploetz Expert Report) at 4; MSD-283A (Julian Deal Expert Report) at 8; MSD-283B (McLinko Deal Expert Report) at 8; MSD-285 (Jarrett Expert Report) at 6; see also MSD-282A (Wilcox Dep. Tr.) at 41:4-7; MSD-286B (Jarrett Dep. Tr.) at 582:20-583:13; MSD-284A (Deal Dep. Tr.) at 122:9-19; MSD-272A (Ploetz Dep. Tr.) at 21:22-22:4.

²⁴⁷⁰ Julian Amended Answer ¶ 12; MSD-278 (Julian Tr.) at 25:1-27:3; 35:5-36:2, 40:23-41:9.

--- that the goals were unattainable or unreasonable, and the pressure to meet those unattainable goals was severe. Is that fair to say?

A: Yes, I -- I -- I think that's how I would characterize it.²⁴⁷¹

31. Respondent Julian agreed under oath that the Community Bank's sales practices problem was longstanding, and the problem that existed in the Bank up until 2016 when the Bank eliminated the sales goals.²⁴⁷²

32. In sworn testimony before the OCC during its investigation, Respondent McLinko testified the Community Bank had a systemic problem with sales practices misconduct, the root cause of which was pressure on employees to meet unreasonable sales goals.²⁴⁷³

33. In sworn testimony before the OCC during its investigation, Respondent McLinko testified as follows:

Q Let's leave it within the community bank. Do you believe that the community bank had a systemic problem with sales practice misconduct?

A From everything that I've read, in the regional bank part of the community bank, yes.

Q All right. And when you say the regional bank, what does that include?

A That's the branch environment.

Q All right. So it's all the branches in all the regions of the country?

A That's right. Yes, correct.

Q Okay. And do you have a belief on what is the cause of this problem at the bank?

MR. CRUDO: Foundation.

THE WITNESS: Based upon everything that I've read, as of now, the different reports that were issued, I would say that the sales goals and incentive processes were certainly two areas that contributed significantly to the issue, the pressure for the sales goals.²⁴⁷⁴

34. In sworn testimony before the OCC during its investigation, Respondent

²⁴⁷¹ Julian Amended ¶ 12, 18; MSD-278 (Julian Tr.) at 24:23-25:16; 35:5-36:2.

²⁴⁷² MSD-278 at 200:15-19 (May 31, 2018).

²⁴⁷³ McLinko Amended Answer ¶ 3; MSD-276 (McLinko Tr.) at 54:7-55:2, 95:19-24.

²⁴⁷⁴ MSD-276 (McLinko Tr.) at 54:7-55:2.

McLinko testified that his conclusions about the systemic nature of the sales practice misconduct problem were based on the voluminous data and comprehensive analyses reflected in the reports of the Bank's third party consultants engaged to review the sales practices problem, as well as information detailed in the April 2017 Sales Practices Investigation Report published by the Independent Directors of the Board of Wells Fargo & Company, the Bank's holding company.²⁴⁷⁵

35. In sworn testimony before the OCC during its investigation, Respondent McLinko testified before the OCC that sales goals and incentives contributed significantly to the Community Bank's systemic problem with sales practices misconduct.²⁴⁷⁶
36. In sworn testimony before the OCC during its investigation, Respondent McLinko agreed in sworn testimony that the Community Bank's sales practices misconduct problem existed from at least 2004 until October 2016.²⁴⁷⁷
37. Community Bank team members engaged in numerous types of sales practices misconduct throughout the relevant period, including:
 - (a) opening and issuing unauthorized checking and savings accounts, debit cards, and credit cards;
 - (b) transferring customer funds between accounts without customer consent, a practice the Bank refers to as "simulated funding";
 - (c) misrepresenting to customers that certain products were available only in packages with other products, known as "bundling";
 - (d) enrolling customers in online banking and online bill-pay without consent, known as "pinning";
 - (e) delaying the opening of requested accounts and other products to the next sales reporting period, known as "sandbagging"; and
 - (f) accessing and falsifying personal customer account information without authorization such as customer phone numbers, home addresses, and email addresses.²⁴⁷⁸

²⁴⁷⁵ MSD-276 (McLinko Tr.) at 56:8- 57:2; 57:16-21.

²⁴⁷⁶ McLinko Amended Answer ¶ 19; 70; MSD-276 (McLinko Tr.) at 54:7-55:2.

²⁴⁷⁷ MSD- 276 at 58:24-59:7, 93:17-22 (Mar. 2, 2018).

²⁴⁷⁸ McLinko Amended Answer ¶ 8; Russ Anderson Amended Answer ¶ 8; MSD-22; MSD-23; MSD-108; MSD-225; MSD-1; MSD-2; MSD-297 (Richards Tr.) at 87:7-90:3; MSD-295 (Bacon Tr.) at 188:19-189:10; MSD-544 (Weber Tr.) at 82:24-84:12; MSD-585 (Herzberg Tr.) at 119:13-15) (McLinko Amended Answer ¶ 8; see also Russ Anderson Amended Answer ¶ 8; MSD-22; MSD-23; MSD-108; MSD-225; MSD-1; MSD-2; MSD-297

38. In sworn testimony before the OCC, the Bank's former CEO John Stumpf testified, "learning the things I've learned here the last few days, I would agree, it was a systemic problem. . . ."
39. In sworn testimony before the OCC, the Bank's former Chief Risk Officer Michael Loughlin testified that he was "trying to translate [Enforcement Counsel's definition of systemic] into a simple phrase like widespread" and did not believe the bank had a widespread issue until at least 2015, after reviewing a report "generated by corporate investigations."²⁴⁷⁹
40. In sworn testimony before the OCC, the Bank's former Chief Administrative Officer, Hope Hardison testified that "sometime in 2013" she became "worried that there was a root cause that . . . they weren't acknowledging," and that as late as 2014, the Enterprise Risk Management Committee "didn't believe there was a root cause issue to be solved" and that the Bank's response "to this problem was slow and incremental, and ultimately not effective until 2016."²⁴⁸⁰
41. In sworn testimony before the OCC, Patricia Callahan, the Bank's former Chief Administrative Officer in charge of the Corporate Human Resources function, testified that the incentive plans were "too aggressive," "basic performance plans were also probably too aggressive in terms of how many of whatever people needed to click off to get satisfactory performance and keep their jobs" and "there was a perception that there was just too much pressure in the branches", but averred that at the time "when the L.A. Times articles came out" that she "thought that the root cause was probably a few different things."²⁴⁸¹
42. In sworn testimony before the OCC, the Bank's former Head of Corporate Enterprise Risk Karl ("Keb") Byers testified that sales goals in the Community Bank "were too high and there was pressure in the system. And there was an overemphasis on solutions versus quality of sale" and, when asked whether he believed the Community Bank had a systemic problem with "sales practices misconduct," without his memory being refreshed, and without access to the evidence, he responded "Sure" and "I think that sounds very reasonable."²⁴⁸² Mr. Byers also testified that, by the time he appreciated the scope of sales practices misconduct, "it was pretty late. . . to be perfectly honest it just wasn't prior to the September 8th, 2016 [Consent Order] announcement" and that both he and "the second line" thought "the first line [] was making progress and

(Richards Tr.) at 87:7-90:3; MSD-295 (Bacon Tr.) at 188:19-189:10; MSD-544 (Weber Tr.) at 82:24-84:12); MSD-585 (Herzberg Tr.) at 119:13-15.

²⁴⁷⁹ Julian's ECSFM at No. 47, quoting MSD- 290A (Loughlin Inv. Tr.) at 49:6-52:23.

²⁴⁸⁰ Julian's ECSFM at No.48.

²⁴⁸¹ *Id.* at No. 49, quoting MSD-291 at 87:18-88:17 (Callahan Inv. Tr.).

²⁴⁸² Julian's ECSFM at No. 50, quoting MSD- 382 at 132:2-132:16.

making improvement.”²⁴⁸³

43. Michael Bacon, Chief Security Officer and Head of Corporate Investigations until September 2014 testified before the OCC that he realized in 2004 that the Bank had a systemic problem with sales practices misconduct, and the problem persisted until he left the Bank in 2014. He testified that “it was my view and continues to be my view that senior leaders in the roles that should have addressed it simply didn’t do their job[,]” including Respondent Russ Anderson.²⁴⁸⁴
44. The Bank’s former Head of Financial Crimes Risk Management James Richards, who succeeded Mr. Bacon in taking over the Corporate Investigations function, testified before the OCC that the Community Bank had a systemic problem with sales practices misconduct and what he “observed was that there were team members that felt pressure from senior management, sales goals related pressure and that those team members committed sales practices related misconduct as a result.” Mr. Richards further testified that the Community Bank tracked whether employees were meeting sales goals on a daily basis and if employees failed to meet sales goals they would suffer adverse employment consequences up to and including termination.²⁴⁸⁵
45. In sworn testimony before the OCC during its investigation, former General Counsel James Strother testified the Community Bank’s sales goals were a major contributing factor to the Bank’s sales practices misconduct problem:

[I]n hindsight knowing what I know today, it’s clear that those goals were either the major contributing factor to the problems that we had, and certainly a major contributing factor to it, and that the bank, as a whole, and the Community Bank, in particular, should have recognized earlier that the amount of bad behavior that was resulting, either because of, or partly because of those goals, or mainly because of those goals, was unacceptable and it should have been changed.²⁴⁸⁶
46. In her declaration, the Bank’s former Regional President for Los Angeles and Lead Regional President for Florida, Shelley Freeman, stated, “sales practices misconduct was a systemic problem in that it resulted from the Community Bank’s incentive plans and high sales goals, coupled with a lack of oversight and controls. [S]ales practices misconduct had occurred throughout the Bank’s geographic footprint, with higher concentrations in certain parts of the

²⁴⁸³ Julian’s ECSFM at No. 50, quoting MSD-382 at 132:17- 133:4.

²⁴⁸⁴ MSD-295 (Bacon Tr.) at 25:12-26:23; see also *id.* at 17:21-20:19; MSD-296A (Bacon Dep. Tr.) at 222:6-24; 224:2-225:9; 226:1-15; MSD-296B (Bacon Dep. Tr.) at 433:13-434:14.

²⁴⁸⁵ (MSD-297 (Richards Tr.) at 234:5-19).

²⁴⁸⁶ MSD-288A (Strother Tr.) at 110:6-16.

country.”²⁴⁸⁷

47. Lisa Stevens and Laura Schulte, Regional Bank Executives reporting to Carrie Tolstedt, held the belief that the Community Bank had a “systemic” sales practices misconduct problem.²⁴⁸⁸
48. In April 2017, the Independent Directors of the Board of Wells Fargo & Company, the Bank’s holding company (“Company”), issued a Sales Practices Investigation Report (“Board Report”).²⁴⁸⁹ The Bank accepted the findings of the Board Report “as a critical part of [its] journey to rebuild trust.”²⁴⁹⁰
49. Based on 100 interviews of Bank employees and review across 35 million documents, the Board Report concluded that “[t]he root cause of sales practice failures was the distortion of the Community Bank’s sales culture and performance management system, which, when combined with aggressive sales management, created pressure on employees to sell unwanted or unneeded products to customers and, in some cases, to open unauthorized accounts.”²⁴⁹¹
50. Further, the Board Report pointed out Community Bank senior management’s failure to recognize the sales model as the root of the problem: “[t]hey ... failed to adequately consider that low quality accounts could be indicative of unauthorized accounts. It was convenient instead to blame the problem of low quality and unauthorized accounts and other employee misconduct on individual wrongdoers and poor management in the field rather than on the Community Bank’s sales model.”²⁴⁹²
51. As part of a Deferred Prosecution Agreement the Bank entered into after the Department of Justice concluded its investigation regarding the Bank’s sales practices, the Bank admitted, accepted, and acknowledged as true the following facts:
 - (a) The Community Bank’s onerous sales goals and accompanying management pressure 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 the customer, while believing that the customer did

²⁴⁸⁷ MSD- 199 (Freeman Decl.) at ¶¶ 6-7.

²⁴⁸⁸ MSD-546 (Stevens Tr.) at 201:1-10; 207:5-17; MSD-579 (Schulte Tr.) at 95:3-14; 99:1-7.

²⁴⁸⁹ Russ Anderson Amended Answer ¶ 21; MSD-280). (Julian Amended Answer ¶ 21; McLinko Amended Answer ¶ 21; MSD-280.

²⁴⁹⁰ MSD-326 at 5.

²⁴⁹¹ MSD-280 at 2.

²⁴⁹² *Id.* at 5.

not actually need the account and was not going to use the account;

- (b) Despite knowledge of the widespread sales practices problems, including the pervasive illegal and unethical conduct tied to the sales goals, Community Bank senior leadership failed to take sufficient action to prevent and reduce the incidence of unlawful and unethical sales practices; and
- (c) From 2002 to 2016, Wells Fargo opened millions of accounts or financial products that were unauthorized or fraudulent. During that same time period, Wells Fargo employees also opened significant numbers of additional unneeded, unwanted, or otherwise low value products that were not consistent with Wells Fargo's purported needs-based selling model. Wells Fargo collected millions of dollars in fees and interest to which the Company was not entitled, harmed the credit ratings of certain customers, and unlawfully misused customers' sensitive personal information (including customers' means of identification). In general, the unauthorized, fraudulent, unneeded, and unwanted accounts were created as a result of the Community Bank's systemic sales pressure and excessive sales goals.²⁴⁹³

52. The Community Bank imposed unreasonable sales goals on its employees until October 2016, including when Respondent Russ Anderson served as the Group Risk Officer of the Community Bank.²⁴⁹⁴

53. Among the claims unresolved prior to the start of the evidentiary hearing was Enforcement Counsel's claim stating the following:

The Bank internally and publicly identified a metric known as "cross-sell" which related to the number of products sold per household.²⁴⁹⁵ The cross-sell ratio was a measure of products sold per customer household, as a perceived driver of future revenue. The more products sold to existing households, the more money the Bank expected to earn from each

²⁴⁹³ MSD-1 at 25, 30, 31 ¶¶ 15, 25, 32.

²⁴⁹⁴ MSD-50 ("In retrospect, we missed some clear indications that our goals were unrealistic, making the problem worse than it should've been."); MSD-131; MSD-269 (NBE Candy Expert Report) at ¶¶ 48-51; MSD-268 (NBE Crosthwaite Expert Report) at ¶¶ 43a-g; MSD-257 (NBE Coleman Expert Report) at ¶¶ 56, 69, 106; MSD-267 (NBE Smith Expert Report) at ¶¶ 67-85; MSD-349 (Schumacher Tr.) at 30:12-33:3, 35:4-20, MSD-82; MSD-581 (Clegg Tr.) at 44:1-46:6, 84:8-11; MSD-300 (Rawson Tr.) at 237:2-7; MSD-582 (Sotoodeh Tr.) at 61:20-62:7, 73:21-74:12; MSD-577 (Foley Tr.) at 134:19-135:9, 163:17-19; MSD-546 (Stevens Tr.) at 72:23-73:5; MSD-579 (Schulte Tr.) at 50:12-16; MSD-290B (Loughlin Tr.) at 304:3-14; MSD-297 (Richards Tr.) at 191:5-20; MSD-289A (Sloan Tr.) at 79:3-80:25.

²⁴⁹⁵ Russ Anderson Amended Answer ¶¶ 6, 59; Julian Amended Answer ¶ 6; McLinko Amended Answer ¶ 6.

relationship and the less likely those customers would exit their relationship with the Bank confuses the cross-sell metric with sales practices.²⁴⁹⁶

54. During the hearing, any ambiguity regarding (1) whether the Bank publicly identified the cross-sell metric as a perceived driver of future income; (2) whether the metric related to the number of products sold per household; and (3) whether the metric related to sales practices and thus to sales practices misconduct was resolved through preponderant evidence establishing as true each of these three factual premises.
55. The first claim – that the Bank internally and publicly identified a metric known as “cross-sell” which related to the number of products sold per household – was not disputed, as each Respondent confirmed the claim in their amended answers.²⁴⁹⁷
56. The next claim was that the cross-sell ratio was a measure of products sold per customer household, as a perceived driver of future revenue. Mr. Julian asserted that the factual premise as stated by Enforcement Counsel confused the cross-sell metric with sale practices.²⁴⁹⁸ He asserted the cross-sell metric “was a key metric tracking the number of products per household and was reviewed by the Retail Bank Cross-Sell Steering Committee for data integrity.”²⁴⁹⁹
57. Testimony during the hearing resolved any confusion or ambiguity: As Deputy Comptroller Coleman explained, the cornerstone of the Community Bank’s business strategy was “selling more bank products to customers”.²⁵⁰⁰ The Community Bank developed their own “cross-sell metric so they could track the number of products that they sold.”²⁵⁰¹ Through this testimony, Deputy Comptroller Gregory established the relationship between the Bank’s business model and the metric used to determine the success of that model.
58. Susan Nelson, a Human Resources manager and later one of its Business Partner Leaders in the Community Bank, testified in a pre-hearing

²⁴⁹⁶ Enforcement Counsel’s MSD at Enforcement Counsel’s Statement of Material Fact (Russ Anderson) No. 71 and (Julian and McLinko) No. 68.

²⁴⁹⁷ Russ Anderson Amended Answer ¶¶ 6, 59; Julian Amended Answer ¶ 6; McLinko Amended Answer ¶ 6.

²⁴⁹⁸ Julian’s ECSFM at ¶68, citing DJ0576 at 1-2 OCC-SP0913943. See also Russ Anderson’s ECSFM at ¶ 71 and McLinko ECSFM at ¶68, incorporating Mr. Julian’s response.

²⁴⁹⁹ MSD-548 (Nelson Tr., Jan. 31, 2018) at 116.

²⁵⁰⁰ Tr. (Coleman) at 246.

²⁵⁰¹ *Id.*

deposition.²⁵⁰² Responding to questioning by Mr. McLinko’s attorney, she agreed that she understood that when discussing either sales practice misconduct or sales integrity, that would, using the description provided to her by the attorney, be referring to the practice of an employee providing a service or product to a customer without the customer’s consent or knowledge, or transferring funds from one account to another without the customer’s consent.²⁵⁰³

59. Ms. Nelson testified that it was “the Wells Fargo way” to increase sales goals every year:

A: . . . I can confirm that goals did go up every year.

Q: Okay. Okay. And how are you able to confirm that goals went up every year?

A: It was the Wells Fargo way. (Laughter.) Double digit, year over year, increasing goals.

* * *

I would say in more recent years, it wasn’t double digits. Listening to my businesses talk, I think it was less than ten percent, probably anywhere from one to nine percent, depending on the business, my guess is. . . . I’m going to say possibly in late . . . 2008, 2009” the “double digit pace kicked down.”²⁵⁰⁴

60. The Board Report found that, even after the Community Bank lowered sales goals mid-year in 2013 and 2014, “they were still set at an unachievable level,” and described the Community Bank’s sales goals as “untenable,” “unrealistic,” and “unattainable.”²⁵⁰⁵
61. Multiple senior regional leaders in the Community Bank testified that the Community Bank’s sales goals were unreasonable.²⁵⁰⁶
62. The Bank’s former Chief Risk Officer Michael Loughlin testified that he had no doubt that the sales goals in the Community Bank were unreasonable:

Q: And did you at some point conclude that the goals in Community Bank

²⁵⁰² MSD-548 (Nelson Tr. January 31, 2018).

²⁵⁰³ *Id.* at 9.

²⁵⁰⁴ Julian’s ECSFM at No. 71.

²⁵⁰⁵ MSD-280 at 5, 19, 44-45; see also MSD-199 (Freeman Decl.) at 2 (“I believed the sales goals were too high . . . despite the fact that the Community Bank at that time had been retroactively reducing sales goals . . .”).

²⁵⁰⁶ See, e.g., MSD-546 (Stevens Tr.) at 72:23- 73:5; MSD-579 (Schulte Tr.) at 50:12-51:9; MSD-349 (Schumacher Tr.) at 36:3-25; MSD-575 (Lee Tr.) at 87:13-16; MSD-576 (Perry Tr.) at 35:2-9; MSD-577 (Foley) Tr. 62:23-63:5; see also MSD-199 (Freeman Decl.) at 2, 5-6.

– well, let me put it this way; sitting here today, do you have any doubt in your mind that Community Bank’s sales goals were unreasonable?

A: I don’t have any doubt.²⁵⁰⁷

A former regional leader Jeffrey Schumacher provided the following sworn testimony to the OCC about the impact of the sales goals:

Q: Okay. You also eluded [sic] to some emails that you sent, and some statements you made to others that high goals, that the goals were so unreasonable or aggressive that they are likely to cause that behavior. At least that’s what I understood you to say. Is that what happened?

A: Yes.

Q: Okay. And why did you think that these unreasonable goals that you were assigned would lead to bad behavior?

A: Well, because people need jobs. I mean, they have families to feed, they have people that depend on them. And you know, the goals were part, the sales goals were part of their incentive plan which was how much extra money they made. And it was part of their performance review, which was obviously could determine whether they stay with the company. And so for a long period of time, sales were a pretty big part of what Wells Fargo did. And I actually, the common term was solutions are king. And I think senior management projected that. And so when sales goals are aggressive, I think that creates a lot of pressure on someone that’s trying to keep their job and keep their family and it’s a lot of pressure to make those goals. . . .²⁵⁰⁸

63. Respondent McLinko testified that sales goals within the Community Bank were unreasonable. Specifically, he testified:

Q: All right. From reading this and from what you now know from everything, do you have a belief as to whether these sales goals that Wells Fargo set for members of the community bank were unreasonable?

MR. CRUDO: Foundation.

A: Again, yes, based upon what I know now and reading this, they were certainly very difficult to attain.²⁵⁰⁹

64. Respondent Julian testified that the Community Bank’s sales goals were unreasonable. Specifically, he testified:

²⁵⁰⁷ MSD-290B (Loughlin Tr.) at 303:13-18.

²⁵⁰⁸ MSD-349 (Schumacher Tr.) at 36:3-25 (emphasis added).

²⁵⁰⁹ McLinko Amended Answer ¶ 5.

Q: Okay. So, it's fair to say that you now know that the bank gave its employees unreasonable sales goals. Is that correct?

A: Yes.²⁵¹⁰

65. The Community Bank maintained “an incentive compensation system that was poorly designed, poorly monitored and managed and allowed to remain in place too long.”²⁵¹¹
66. The incentive compensation plans in the Community Bank were based upon and consisted of unreasonable sales goals.²⁵¹²
67. The Bank’s Incentive Compensation Risk Management Policy, adopted in 2011, governed all incentive compensation plans, including those in the Community Bank, but did not impose oversight responsibilities on the Head of the Community Bank, the Community Bank Group Risk Officer, and the Law Department.²⁵¹³
68. From the early 2000s and throughout Respondent Russ Anderson’s tenure as the Group Risk Officer and until sales goals were eliminated in the Community Bank effective October 1, 2016, employees in the retail branch network of the Community Bank faced significant pressure to meet sales goals.²⁵¹⁴

²⁵¹⁰ MSD-278 (Julian Tr.) at 121:4-7.

²⁵¹¹ MSD-6; see also MSD-5; MSD-289A (Sloan Tr.) at 79:3-80:25.

²⁵¹² MSD-5; MSD-6; MSD-213 (SL 2015-36) at 2 (“Cross-selling, if not properly governed, can lead to excessive sales pressure on employees to meet sales goals and achieve financial incentives. Incentive compensation is a key factor in motivating employee behavior and should be reevaluated across all sales activities enterprise-wide given these events.”); MSD-280 (Board Report) at 23, 29, 31-33, 57, 78, 84 (“The Community Bank did not drop teller referral goals, and, while it lowered overall sales goals slightly for 2013, it did not revise the sales goals embedded in the eligibility thresholds for incentive compensation until 2014 (and then only slightly).”); MSD-570 (SL 2016-36); MSD-600 (SL-2016-49) at 1, 3, 7 (“the CB management team implemented aggressive sales goals and a poorly designed incentive compensation program which resulted in the widespread unethical activity, significant customer harm and reputational damage to the bank.”); MSD-651 (SL 2016-35); MSD-343 (Sales Practices Consent Order); MSD-269 (NBE Candy Expert Report) at ¶¶ 37-59; MSD-382 (Byers Tr.) at 231:20-232:6; MSD-199 (Freeman Decl.) at ¶ 8, 17; MSD-411 (Raphaelson Decl.) at ¶¶ 5, 14, 15, 16, 19, 20, 23.

²⁵¹³ Russ Anderson Amended Answer ¶ 150; MSD-211; MSD-212; MSD-224 at 10, 24; McLinko Amended Answer ¶ 150; Julian Amended Answer ¶ 150; MSD-211; MSD-212; MSD-224 at 10, 24.

²⁵¹⁴ MSD-266 (Russ Anderson Dep. Tr.) at 32:17-33:9, 61:16-63:23, 78:18-79:17; MSD-268 (NBE Crosthwaite Expert Report) at ¶¶ 44, 46; MSD-580 (Henderson Tr.) at 131:18- 132:19 (describing call nights whereby employees who did not meet sales goals had to stay overtime to make calls in order to get sales); MSD-382 (Byers Tr.) at 231:20-232:6; MSD-128; MSD-129; MSD-81 (“We have a lot of markets and regions that are significantly below minimum standards, and you have to believe there is unbearable pressure. In light of that, you have to predict there will be more gaming.”); MSD-141; MSD-142; MSD-158 at 4 (“Make your goals at any cost to the team member or customer – this is our environment.”); MSD-159; MSD- 160; MSD-296A (Bacon Dep. Tr.) at 222:1-24, 225:20-226:3, MSD-296B (Bacon Dep. Tr.) at 180:17-181:9, 190:12-192:15, 200:4-202:24); MSD-544 (Weber Tr.) at 20:16-23:10, 27:20-32:8, 50:18-52:7, 146:23-148:4, 151:1-152:3 (Dec. 21, 2017); MSD-294 (Wipprecht Tr.) 35:1-38:3, 79:7-14, 94:1-21, 112:6-19; MSD-549 (Holliday Tr.) at 51:19-52:9, 69:14-71:22); MSD-73; MSD-74; MSD-75 (“...I do know gaming has everyone’s attention at the moment. We’ve been preaching it for

69. The Community Bank tracked employees' sales performance on a daily and at times hourly basis.²⁵¹⁵
70. Incentive compensation and promotional opportunities in the Community Bank depended on an employee's ability to meet sales goals.²⁵¹⁶
71. From 2011 through third quarter 2016, the Bank terminated approximately 8,520 employees for sales performance issues, including failure to meet sales goals.²⁵¹⁷
72. The Board Report found that Community Bank's sales-performance stack rankings and its determination of employees' incentive compensation and promotional opportunities relative to sales goals, created an "intense pressure to perform. . . ."²⁵¹⁸
73. Employees remained under significant pressure to meet unreasonable sales goals even in September 2016, a month before the sales goals in the Community Bank were officially eliminated.²⁵¹⁹
74. In an email dated October 5, 2016, Hope Hardison, the former Chief Administrative Officer and Head of Corporate Human Resources wrote the following: "Don't say there was nothing wrong with our culture. At least in the case of parts of the Community Bank, to suggest so just ignores a reality that everyone knows there was insane pressure on people to produce 'widgets' new account sales. That is a reality people know, and we will hear more about in the media as former team member exposes' will show."²⁵²⁰
75. During his May 2018 sworn statement, Respondent Julian testified that, "having seen the information, read the various reports, read the – what's out there in the

ten years largely ignored . . ."); MSD-76 (October 21, 2005 email from an Investigations Manager stating: "We have seen a recent surge in complaints regarding on-line banking enrolling, bill-pay enrollment and ordering debit cards without customer consent or knowledge. I don't know what's going on but I think we need to address the issue, as it is spiraling out of control."); MSD-581 (Clegg Tr.) at 50:3-12; 51:14-21, 81:4-82:7; MSD-287B (Otsuka Tr.) at 9:15-19; MSD-546 (Stevens Tr.) at 88:2-9, 111:5-18; MSD-582(Sotoodeh Tr.) at 81:16-82:2, 106:14-24, 107:3-10; MSD-579 (Schulte Tr.) at 71:9-11, 93:21-94:1.

²⁵¹⁵ MSD-549 (Holliday Tr.) at 25:7-27:25, 59:11-18; MSD-541 (J. Freeman Tr.) 76:20-77:12; MSD-350 (Ramage Tr.) at 33:13-36:18; MSD-199 (Freeman Decl.) at ¶ 10; MSD- 411 (Raphaelson Decl.) at ¶ 21.

²⁵¹⁶ MSD-266 (Russ Anderson Dep. Tr.) at 22:13-23:3; MSD-349 (Schumacher Tr.) at 40:25-44:11; MSD-549 (Holliday Tr.) at 28:3-23; MSD-579 (Schulte Tr.) at 97:8-15; MSD-591 (Najvar Tr.) at 305:1– 308:2; MSD-350 (Ramage Tr.) at 112:1-113:4; MSD-595 (Vasquez Tr.) at 37:5-10, 98:12-18; MSD-508).

²⁵¹⁷ MSD-44.

²⁵¹⁸ MSD-280 (Board Report) at 20.

²⁵¹⁹ MSD-103; MSD-83 ("For the day, volume was up 177% over YTD daily volume and Sales Practice allegations almost doubled. I just read the 19 sales practice allegations and at least 50% are exactly 'pressure and gaming' related. It made my hair curl"); MSD-293A (Hardison Tr.) at 148:7-160:18 (testifying that employees were complaining about pressure and gaming for many years and reflected what was actually going on in the Community Bank for many years)); CRA-148; MSD-472 (Mack Tr.) at 179:19-181:9.

²⁵²⁰ MSD-77; MSD-293A (Hardison Tr.) at 134:4- 137:11; McLinko Amended Answer ¶ 134.

public, read team members' allegations, read customer complaints, it – it's clear to me that we had a culture within the general bank, within the retail bank at Wells Fargo that was putting goal-oriented, undue -- my words -- undue pressure on team members to reach goals that either were unattainable or were very challenging to be able to reach, and it put pressure on the culture of not only setting goals that appeared to have been in a number of appearances unattainable."²⁵²¹

76. Similarly, during his March 2018 sworn statement, Respondent McLinko testified: "There was certainly the pressure of the goals and that sort of stuff, sales goals."²⁵²²
77. Corporate Investigations was a department within the Bank responsible for investigating employee misconduct.²⁵²³
78. Employees investigated for engaging in sales practices misconduct expressed to investigators in Corporate Investigations that they committed the misconduct because of sales pressure and fear that they could and would be fired for failing to meet sales goals. Multiple senior leaders in Corporate Investigations testified before the OCC that employees who engaged in sales practices misconduct did so because of significant pressure to meet unreasonable sales goals.²⁵²⁴
79. Through the summary disposition process, the parties identified a factual dispute regarding whether controls to prevent and detect sales practices misconduct were inadequate. Testimony taken during the evidentiary hearing constituted preponderant evidence establishing that controls from both the first and third lines of defense were inadequate and neither prevented nor detected sales practices misconduct.
80. With respect to the first line of defense, as GRO Ms. Russ Anderson was responsible for implementing proactive and sound risk-management practices and reinforcing the risk culture throughout the Community Bank.²⁵²⁵ As Chair of the Community Bank's Risk Management Committee and pursuant to the Bank's Risk Management Framework, Ms. Russ Anderson was responsible for understanding the Community Bank's risk profile and working with management across the Community Bank to ensure risks were effectively managed.²⁵²⁶
81. As a member of the Community Bank's Internal Fraud Committee, Ms. Russ Anderson

²⁵²¹ MSD-278 (Julian Tr.) at 25:4-26:11.

²⁵²² MSD-276 (McLinko Tr.) at 125:11-13.

²⁵²³ Russ Anderson Amended Answer, ¶ 50; Julian Amended Answer ¶ 50; McLinko Amended Answer ¶

50.

²⁵²⁴ MSD-544 (Weber Tr.) 21:24-23:20; MSD-299 (Sperle Tr.) at 67:4-25, 139:10-140:1, 146:1-13, 162:8-25; MSD-294 (Wipprecht Tr.) 38:23-39:25; MSD-297 (Richards Tr.) at 79:11-80:22; MSD-581 (Clegg Tr.) at 44:1-46:6. OCC Exh. 2340 at ¶ 118; OCC Exh. 2335 at ¶ 109; OCC Exh. 0102 at 0025; OCC Exh. 2407 at ¶ 106.

²⁵²⁵ OCC Exh. 2340 at ¶ 118; OCC Exh. 2335 at ¶ 109; OCC Exh. 0102 at 0025; OCC Exh. 2407 at ¶ 106.

²⁵²⁶ OCC Exh. 0660 at 0001; R Exh. 11556 at 0001; Tr. at 9769-9770 (CRA).

was responsible for managing internal fraud risks related to business practices and processes, and for developing appropriate controls to mitigate such risks.²⁵²⁷ Taking these responsibilities into account, NBE Candy identified the inadequacies of these controls and Ms. Russ Anderson's role:

Q (by Enforcement Counsel): What, if any, conclusions did you reach about the adequacy of the Bank's controls to prevent sales practices misconduct from 2013 to 2016?

A (by NBE Candy): From reviewing documents and testimony, I have concluded that from 2013 to 2016, this relevant time period, that the controls to prevent sales practices misconduct were inadequate.

Q: Why?

A: There's a number of reasons for that. The most basic way to explain it is if a customer -- I mean, if an employee wanted to open up an unauthorized account, he or she could. If they wanted to open up an unauthorized credit card, he or she could. If he wanted to open up an unauthorized checking account, move money in and out of that account to make it appear funded and then take the money out, he could or she could. During this entire time, the preventative controls were not effective to prevent these, this sort of misconduct to happen, and we know that, both from confirmed cases of sales practice misconduct and fraud, as well as from other analyses that show the, the potential magnitude of the problem at the Community Bank.

* * *

Q: How, if at all, is Ms. Russ Anderson responsible for the inadequate controls to prevent sales practices misconduct as the Group Risk Officer?

A: As the group risk officer for the Community Bank during this period, it was absolutely her responsibility to implement adequate preventative controls. [T]he bank was pursuing a risky business model, as well as the fact that there's just risk inherent in, in offering products and services to customers. As the Group Risk Officer charged with ensuring that risk management was effective, which includes preventative controls, it was her responsibility to implement adequate preventative controls.

Q: What controls to prevent sales practices misconduct should Ms. Russ Anderson have instituted during her tenure as the Group Risk Officer?

A: There's a number of things. I can't give an exhaustive list, but probably the most important thing that she could have done to prevent sales practice misconduct was to advocate for fundamental changes to the business model.

²⁵²⁷ OCC Exh. 2340 at ¶ 120; OCC Exh. 1272 at 0003, 0005; R Exh. 06313 at 0003, 0005; Tr. at 9548 (CRA).

Wells Fargo's Community Bank chose to have unreasonable sales goals and unbearable pressure to meet those sales goals.

Changing that model was by far, advocating and incredibly challenging that model, was one of the most effective things she could have done to prevent sales practice misconduct from occurring. Also, she could have advocated for a formal policy that team members could not be terminated for failing to meet sales goals. The fact that people could risk termination if they did not meet the unreasonable goals did drive some of the misconduct. So that would have been another effective thing to do.

And in terms of her responsibilities with incentive compensation risk management, there's also a number of things she could do. She could have advocated for not giving credit for unfunded accounts or not giving credit for duplicate accounts. You know, I've seen people who have had 50-plus checking accounts unnecessarily. She could have advocated for not giving credit to accounts that appeared to be simulated funding. Or she could have advocated for just taking the sales goals out of the incentive compensation plan.

But other than those three, there's a number of things she could have done for preventing the misconduct from ever happening, including things such as requiring signatures prior to opening up accounts, including things such as having text message or e-mail confirmations, you know, when you're opening an account that you are authorizing it. Again, this is not exhaustive, but there's, there's a number of things that she should have implemented as Group Risk Officer to prevent sales practice misconduct.²⁵²⁸

82. From no later than 2004 until 2016, the controls to prevent and detect sales practices misconduct were inadequate.²⁵²⁹

83. The Bank's systems did not prevent employees from engaging in sales practices misconduct. The Bank's Head of SSCOT (Sales and Service Conduct Oversight Team), Rebecca Rawson, who reported directly to Respondent Russ Anderson, provided the following sworn testimony about the deficiencies in controls to prevent sales practices misconduct:

A: . . . And also looking at controls within our operations, so the systems that

²⁵²⁸ Tr. (Candy) at 1065-69.

²⁵²⁹ MSD-269 (Expert Report of NBE Elizabeth Candy); MSD-267 (Expert Report of Tanya K. Smith, NBE, CFA); MSD-92; MSD-297 (Richards Tr.) at 175:21-178:13; MSD-300 (Rawson Tr.) at 49:5-50:22; 211:21-212:2; MSD-92 ("With the recent sales practices matter, we have recognized the consumer and customer impact, reputational impact, legal and regulatory impact of conduct risk. Fragmented, complex controls spread across the company have not proven to be effective."); MSD-643A (DiCristofaro Tr.) at 109:18-21; MSD-472 (Mack Tr.) at 111:3-112:8; MSD-59.

are used by the bankers, so store vision platform. And if we say a signature is required, or whatever by policy, why does the system not prevent the banker from going against policy? So in other words, making it harder for someone to get something -- for a banker to get it wrong.

Because I think in that point in time, we have policies and procedures that stated X, but the system really could just allow you to proceed.

Q: Okay.

A: So I think that is what I think about with the root cause a little bit.

Q: I see. Again, I will tell you what I got from your testimony, and please correct me if I misunderstood you.

A: Okay.

Q: At the Community Bank, I take it there was a significant problem with controls that are supposed to detect and prevent sales practice misconduct? Is that fair to say?

A: I do not know if it would be -- it depends in how you define the system.

Q: Okay.

A: If the system is a control. I think we should have -- this is my opinion. We should have built into our systems places where it stops the team member from advancing if they are not acting in accordance with policy. Q: Okay. So I take it the bank had a policy that you should not issue credit cards or debit cards without the customer's consent?

A: Correct.

Q: All right. But the system allowed team members to actually issue credit cards and debit cards without the customer's consent or the customer's signature?

A: I think that is right.

Q: Okay. And you view that as a failure in controls? A: I think that is fair.²⁵³⁰

84. Community Bank employees across its nationwide branch network used a Bank system known as the Store Vision Platform ("SVP") to open and issue products and services for bank customers.²⁵³¹
85. SVP required bank employees to enter or confirm customers' personal data and select options within the platform to open or issue any product or service.²⁵³²
86. Bank policies required Bank employees to obtain express consent from customers prior to opening accounts or services, where such consent could be through a variety of

²⁵³⁰ MSD-300 (Rawson Tr.) at 49:5-50:22; 211:21-212:2; see also MSD-150 ("Lines of Credit, Cards, and ancillary services such as online, bill pay, rewards, etc. do not require signatures and thus are hard to track internally.").

²⁵³¹ MSD-200 (Hughes Decl.) at 1; MSD-596 at 3.

²⁵³² MSD-200 (Hughes Decl.); MSD-596.

means, including pins, signatures, and verbal consent.²⁵³³

87. SVP did not require Community Bank employees to obtain evidence of customer consent, such as a customer signature, before they could open or issue credit cards, debit cards, lines of credit, or certain other products and services, or transfer customer funds; and Respondent Russ Anderson explained in 2015 that the Bank “will process [a credit card] application without a signature (since it is not required by law) unless the applicant is under the age of 21 So, if the customer complains [that a card was unauthorized] and there is not a signature there isn’t anything we ‘do’ about it.”²⁵³⁴
88. Until approximately 2014, it was an acceptable practice for Community Bank employees to open accounts over the phone and not obtain customer signature.²⁵³⁵
89. Not until approximately 2016 were Bank systems modified to require evidence of customer consent before Community Bank employees could issue credit cards or transfer funds in customer accounts.²⁵³⁶ Consent capture for non-credit card products had not yet been implemented as of May 2016.²⁵³⁷ Up until March 2018, customer signatures still were not required to obtain a debit card.²⁵³⁸
90. Community Bank leaders, including Respondent Russ Anderson, knew that the vast majority of customer-consent sales integrity cases were related to the Community Bank’s failure to capture evidence of customer consent.²⁵³⁹
91. In spring and summer 2012, the Community Bank piloted a program that would require explicit customer consent before allowing bankers to issue debit cards to customers.²⁵⁴⁰ On June 28, 2012, Respondent Russ Anderson received a PowerPoint presentation explaining the “[p]ositive impacts of store pilot for consumer and business debit cards” included: “Strong customer preference per market research”; (2) “Banker feedback that debit consent screen flow and process easy to adopt, and represents a sales quality improvement”; and (3) “Lifts in debit card fraud activation and POS [point of sale] activation – especially where customer provides consent electronically (on the signature pad).”²⁵⁴¹ She was also informed, “Debit card ‘lack of consent’ contributes

²⁵³³ Julian’s ECSFM at No., citing MSD-010 at 5; MSD-009 at 7.

²⁵³⁴ MSD-66; MSD-150; MSD-229; MSD-356.

²⁵³⁵ MSD-65.

²⁵³⁶ MSD-356.

²⁵³⁷ *Id.*; MSD-598.

²⁵³⁸ MSD-655 at 6-7 (“signatures are still not required to obtain a debit card.”).

²⁵³⁹ MSD-58); MSD-59; MSD-60; MSD-150.

²⁵⁴⁰ MSD-229.

²⁵⁴¹ *Id.* at 3.

more than fair share of enterprise quality issues and corrective actions.”²⁵⁴²

92. In a Supervisory Letter issued on June 26, 2015 to the Bank, the OCC stated: “[o]ur sampling of customer complaints noted in many cases there was no method to prove customer consent in the form of a signature for either the deposit or credit card product.”²⁵⁴³
93. Another preventative control that the Community Bank failed to institute was awarding sales credit to employees only for accounts that customers use. This was Accenture’s first recommendation to the Community Bank in October 2015.²⁵⁴⁴
94. There were four primary mechanisms the Bank employed to detect sales practices misconduct. Three were reactive tools that relied on employees or customers to surface problems: 1) a whistleblower hotline known as the EthicsLine established for employees to raise concerns about behavior that may violate the Bank’s Code of Ethics, or any laws, rules or regulations, 2) employee complaints sent directly to senior management or others within the Bank, and 3) customer complaints. The fourth tool involved using data analytics to detect activity indicative of certain sales practices misconduct, referred to as “proactive monitoring.” The Bank did not begin employing proactive monitoring until around 2012; before then, the primary way the Bank detected sales practices misconduct was if a customer or a Bank employee reported it.²⁵⁴⁵
95. The Bank’s former Head of Corporate Investigations Loretta Sperle testified before the OCC that there was nearly a 100% chance an employee’s boss would know if she failed to meet her sales goals. By contrast, the chances were very small that an employee would be caught for issuing an unauthorized product or service. Ms. Sperle testified:

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

A: Yes. I would agree.

²⁵⁴² MSD-229 at 4; see also *id.* at 7 (noting that “Debit explicit consent has strong customer appeal.”).

²⁵⁴³ MSD- 213 (SL 2015-36) at 3; see also MSD-570 (SL 2016-36) at 4 (“The root causes include excessive sales pressure and the absence of a control process that required documentation of explicit customer consent”).

²⁵⁴⁴ MSD-51 at 12 (“Reward team members based more on positive customer outcomes (e.g., account utilization) with less emphasis on solutions sold.”). “As of January 2016, the Community Bank allowed employees to have approximately 30 percent of the new accounts they opened to remain unfunded; they would still be eligible to receive sales credit for the unfunded accounts.” (MSD-269 (NBE Candy Expert Report) at ¶ 107c; MSD-647); see also MSD-295 (Bacon Tr.) at 121:15-125:1 (suggestions of preventative controls).

²⁵⁴⁵ Russ Anderson Amended Answer ¶ 92; MSD-290A (Loughlin Tr.) 236:1-13; MSD- 300 (Rawson Tr.) at 86:2-88:15, 213:2-8; MSD-299 (Sperle Tr.) at 41:6-42:2, 53:13-19.

96. Although the EthicsLine was one of the Community Bank’s mechanisms for detecting sales practices misconduct, Community Bank employees did not consistently use the EthicsLine to report issues. In its 2015 independent review of sales practices, Accenture reported, based on its interviews of over 300 Community Bank employees, that “[m]any bankers stated that ethics issues are usually escalated through management and rarely escalated through the Ethics Line,” and “some Service Managers and Bankers stated that they do not utilize the Ethics Line as they fear retribution or that it may not be anonymous.”²⁵⁴⁶ Sales integrity-related EthicsLine complaints were referred to Community Bank’s Sales Quality team, later known as SSCOT.²⁵⁴⁷
97. Sales Quality/SSCOT referred only a small percentage of the EthicsLine complaints to the Bank’s Corporate Investigations group for investigation. Sales Quality imposed various preliminary thresholds including, among other things, polling of other customers of the accused employee, to determine which allegations to send to Corporate Investigations for investigation. An employee accused of sales practices misconduct might only be referred to Corporate Investigations if telephone “polling” of other customers of the same employee revealed other incidents, or “substantiations,” of similar misconduct.²⁵⁴⁸
98. The Bank’s former CEO John Stumpf testified before the OCC, “As I sit here today looking back, there were a number of outreaches by team members that were informing the company and senior leadership about these issues. And I wish we would have moved faster on those”. He took responsibility that he personally should have moved faster, and testified that employees did all they could to complain about the unreasonable sales goals to Bank senior leadership in numerous ways over many years, by calling the EthicsLine, sending emails, holding protests, and approaching newspapers. He further stated that the senior leadership team and not the employees, is to blame for the Bank not moving fast enough to address the sales practices misconduct problem.²⁵⁴⁹
99. According to the Community Bank’s former Chief Compliance Officer, who reported to Respondent Russ Anderson, the “Community Bank did not have an adequate system

²⁵⁴⁶ MSD-51 at 41; see also *id.* at 11.

²⁵⁴⁷ MSD-381 at 15.

²⁵⁴⁸ MSD-245 at 9; MSD-381; MSD-122 (“Generally speaking, if there are fewer than 3 polling substantiations, there’s no referral to Investigations.”); MSD-93 (“No single LOB [Line of Business] or Second Line of Defense ‘owns’ EthicsLine/Sales Integrity/Sales Practices, and Corporate Investigations only sees a sliver of these.”) (emphasis added); MSD-297 (Richards Tr.) at 226:18-229:20; MSD-591 (Najvar Tr.) at 142:24-144:25; MSD-75; MSD-150; MSD-151 at 1 (“There are lots of situations where we do polling. Generally speaking, if the team member denied the conduct and there was just one polling confirmation, we’re not likely to terminate (and it might not even get sent to Investigations.”); MSD-245.

²⁵⁴⁹ MSD-8B (Stumpf Tr.) at 401:9-402:6.

to track customer complaints from 2011 until [his] departure in 2015. Specifically:

- a. Retail branches lacked the technology to track customer complaints in a consistent manner;
- b. Complaints that were tracked were captured via disparate systems and inputted into various spreadsheets; and
- c. The Community Bank did not have a centralized repository for customer complaints.”²⁵⁵⁰

100. The Community Bank did not consistently capture customer complaints from customers affected by sales practices misconduct. When Accenture conducted its 2015 independent review of sales practices within the Community Bank, it found in its interviews of over 300 Community Bank employees that “team members . . . do not have a clear understanding of what constitutes a customer complaint and frequently do not capture or document complaints for further analysis.” Accenture’s review “did not identify a clear and consistent process or governance model to ensure all customer complaints are captured, monitored, addressed, and reported across all stores within the Community Bank.”²⁵⁵¹

101. Of the customer complaints Community Bank Sales Quality/SSCOT captured, lack of consent was the most common customer complaint type. Accenture “review[ed] all SSCOT cases with ‘an element of a customer complaint’ provided by SSCOT.” Its review “revealed that ‘Consent’ is the greatest case type (68%). The remaining case types are related to ‘Account Openings’ (14%) and case types that are a combination of the consent and account opening case types.”²⁵⁵²

102. Lack of consent had been the greatest customer complaint type since long before Accenture conducted its review in 2015. A September 5, 2007 presentation by the Sales Quality Team, the predecessor to SSCOT, showed that by 2007, the Bank as a whole was receiving 25,000-48,000 “Customer Calls Annually Stating ‘Did Not Request’” (i.e. lack of consent) for certain Bank products.²⁵⁵³ The presentation explained: “The content of these calls is very similar to content in [approximately] 50% of the formal EthicsLine/HR allegations that Sales Quality allegations currently processes.”²⁵⁵⁴ The presentation depicted an iceberg, representing the Bank was only detecting the

²⁵⁵⁰ MSD-56 (Christoff Decl.).

²⁵⁵¹ MSD-51 at 10.

²⁵⁵² Julian’s ECSFM at No. 138 citing MSD-51 at 43.

²⁵⁵³ MSD-51 at 7.

²⁵⁵⁴ *Id.*

tip of the iceberg of sales practices misconduct.²⁵⁵⁵

Watch List: Issues Reported Across Regional Banking

WELLS FARGO

❖ **Potential scope of Sales Quality issues companywide is larger than SQ Team allegation volumes**

- Product groups approached Sales Quality regarding direct customer calls alleging lack of consent
- SQ asked each group to size, and given information on volumes, implemented alternative processes
- With data accumulated, surfacing issue now with intent to educate, further the case for signatures, and manage potential risks
- Comparing calls and cases is not a 1 to 1 comparison, as some portion of calls would relate to same bankers or same stores



Product	# of Customer Calls Annually Stating "Did Not Request"	Type of Issue
Credit Card & Combo Rewards	25,000-48,000*	Consent
Credit Cards	8,700	Consent
Overdraft Protection	3,800	Consent
Debit Card Rewards	650	Consent
Personal Lines	500	Consent
Loan Documentation Issues	100	Procedure
Chngng/Svngs. Debit, Online	???	
Total Previously Undocumented	38,650 +	
*Range depends on whether you consider accts open ± 6 mths or ± 8 mths		
Total Annual SQ Cases	~1,800	Consent & Procedure

❖ The content of these calls is very similar to content in ~50% of the formal Ethicsline/HR allegations that Sales Quality allegations currently processes.

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103. The presentation separately stated that the primary allegations handled by the Sales Quality Team “continue to be customer consent issues and account opening procedural issues” and that sales quality allegations were occurring across the Bank geography wide.²⁵⁵⁶

104. In a Supervisory Letter issued on June 26, 2015 to the Bank, the OCC cited a Matter Requiring Attention (“MRA”) related to the Bank’s complaint management systems.²⁵⁵⁷

105. The group within the Community Bank that performed proactive monitoring was SSCOT, which reported to Respondent Russ Anderson beginning from 2012 through 2016.²⁵⁵⁸

106. SSCOT proactively monitored for simulated funding and phone number

²⁵⁵⁵ MSD-51 at 7; MSD-539 (Dement Tr.) at 159:20-163:20.

²⁵⁵⁶ MSD- 72 at 3-4 (emphasis added).

²⁵⁵⁷ MSD-213 at 4, 7-8.

²⁵⁵⁸ Russ Anderson Amended Answer ¶ 260; Julian Amended Answer ¶ 260; McLinko Amended Answer ¶

changes.²⁵⁵⁹

107. The practice that the Bank referred to as simulated funding involved the unauthorized transfer of customer funds between one customer account and another, unauthorized customer account.²⁵⁶⁰
108. The Community Bank did not proactively monitor other types of sales practices misconduct, including pinning, bundling, sandbagging, and the issuance of unauthorized debit and credit cards.²⁵⁶¹
109. In the summer and fall of 2013, SSCOT conducted an analysis to detect instances of simulated funding and of employees changing customer phone numbers without customer authorization in Los Angeles/Orange County, and then across the regional footprint.²⁵⁶²
110. For the Los Angeles/Orange County and then regional footprint analysis, Respondent Russ Anderson approved SSCOT applying the following methodology to identify employees who, based on data analytics, exhibited activity that was a red flag for simulated funding: “account X was opened, account X was funded by virtue of an auto transfer from account Y, within one day funds were auto transferred from Account X back to account Y leaving account X with a \$0 or possibly a negative balance,” and “account X had no further funding activity within [] 60 day[s].”²⁵⁶³
111. After applying this methodology for identifying red flag simulated funding activity, SSCOT then referred for investigation only those employees who were “extreme outliers” for simulated funding (e.g., those who met the following restrictive criteria): “50 or more instances of the above activity occurring over the five month period review OR Four of the five months reflected 10+ accounts involved in this activity and 10% or more of checking/savings sales was involved in this activity.”²⁵⁶⁴
112. For the Los Angeles/Orange County and then regional footprint analysis, SSCOT identified employees who engaged in “potential falsification of customer phone numbers (possibly to circumvent 11 Ways to Wow Customer Surveys)” by identifying instances in which a “Customer’s existing phone

²⁵⁵⁹ Russ Anderson Amended Answer ¶ 97; Julian Amended Answer ¶ 260; McLinko Amended Answer ¶ 260.

²⁵⁶⁰ MSD-297 (Richards Tr.) at 82:4-84:4.

²⁵⁶¹ MSD-300 (Rawson Tr.) at 79:16-83:17; MSD-297 (Richards Tr.) at 96:6- 97:19; MSD-299 (Sperle Tr.) at 56:10-62:3.

²⁵⁶² MSD-105; MSD-106; MSD-107; MSD-155 at 4.

²⁵⁶³ MSD-105 (emphasis in original); MSD-106; MSD-107; (“...the fact that the accounts only had one deposit and one withdrawal with no additional transactions ultimately resulting in a zero balance seems unusual”); MSD-265 (Farrell Dep. Tr.) at 369:16-370:24.

²⁵⁶⁴ MSD-105 (emphasis added); MSD-106; MSD-107.

number was changed by 1-3 digits.”²⁵⁶⁵ After applying this methodology, SSCOT then referred for investigation only those employees “having greater than 50 examples of unique phone number changes” in a three-month period.²⁵⁶⁶

113. On October 18, 2013, Corporate Investigations sent Respondent Russ Anderson a Significant Investigation Notification.²⁵⁶⁷ Respondent McLinko’s direct report Bart Deese received the Significant Investigation Notification from Corporate Investigations.²⁵⁶⁸ Mr. Deese provided Respondent McLinko with an updated Significant Investigation Notification on November 1, 2013.²⁵⁶⁹ The Significant Incident Notification stated, “Corporate Investigations has deemed this case significant based on the number of team members impacted and the specific misconduct identified.”²⁵⁷⁰
114. The Significant Investigation Notification noted that 177 bankers were identified for possible simulated funding.²⁵⁷¹ The allegation was that “Simulated funding falsified entries were made to meet individual and store sales goals.”²⁵⁷² Individuals with “the most egregious simulated funding numbers were to be interviewed first.”²⁵⁷³ The criteria for identifying employees with the most egregious simulated funding numbers was the criteria of “50 or more accounts opened in 1 month or 10% of total accounts opened in a 4 month period.”²⁵⁷⁴ Those individuals with the most egregious phone number changes were also interviewed.²⁵⁷⁵
115. The Significant Investigation Notification Respondent Russ Anderson received contained the following key findings based on the investigation of employees with the most egregious simulated funding numbers: “[k]nowing their actions were against wfb [Wells Fargo Bank] policy[;] [t]o meet quarterly sales goals; following manager and/or prior manager’s guidance[;] [l]earned from observing/talking to other team members[;] [h]ad customer’s [sic] fund accounts with a \$50 deposit and then withdraw from atm[;] [a]ttempt to contact customer

²⁵⁶⁵ MSD-105; MSD-106; MSD-107.

²⁵⁶⁶ MSD-105; MSD-106; MSD-107.

²⁵⁶⁷ MSD-108.

²⁵⁶⁸ *Id.*

²⁵⁶⁹ MSD-333.

²⁵⁷⁰ MSD-108 at 2.

²⁵⁷¹ *Id.*

²⁵⁷² *Id.* at 3 (emphasis added).

²⁵⁷³ *Id.*

²⁵⁷⁴ *Id.*

²⁵⁷⁵ *Id.*

- with unfunded accounts but would resort to auto transfers w/o customer consent to meet goals timely[.]”²⁵⁷⁶
116. As Corporate Investigations explained, “The SIN and IDEA notifications are designed to ensure that the investigative findings are appropriately shared with all appropriate key stakeholders. The goal of the SIN and IDEA is to ensure all key stakeholders are aware of the issue and that they review for possible follow-up specific to their role and responsibility within the organization. A primary role for each LOB [line of business] Group Risk Officer is to mitigate risks and acts of TM [team member] misconduct and fraud are a key part of these risks.”²⁵⁷⁷
117. The analysis from SSCOT in the summer and fall of 2013 to identify employees engaged in egregious patterns of simulated funding and phone number changes led to an initial round of investigations that resulted in terminations of approximately 35 employees in the fall of 2013, followed by a footprint-wide investigation of similar conduct across the Regional Bank.²⁵⁷⁸
118. On October 3, 2013, the *Los Angeles Times* published an article under the headline, “Wells Fargo Fires Workers Accused of Cheating on Sales Goals.” The article reported that the Bank had fired 30 employees in the Los Angeles region for “open[ing] accounts that were never used and attempt[ing] to manipulate customer-satisfaction surveys.” The article further reported “the pressure to meet sales goals was intense” and that there were cases of forged customer signatures and accounts opened without customer knowledge.²⁵⁷⁹
119. On December 21, 2013, the *Los Angeles Times* published a second article, with the headline: “Wells Fargo’s Pressure-Cooker Sales Culture Comes at a Cost.” The article stated it was based on interviews with 28 former and seven current employees across nine states. This article reported that employees were threatened with termination if they failed to meet their sales goals.²⁵⁸⁰
120. Respondents Julian and McLinko were both aware of the October 2013 and December 2013 Los Angeles Times articles about the Community Bank’s sales practices.²⁵⁸¹
121. The pause on the Community Bank’s proactive monitoring of simulated funding and phone number changes did not end until July 2014, in that SSCOT did not begin to refer cases generated from the proactive monitoring reports to

²⁵⁷⁶ MSD-108 at 3.

²⁵⁷⁷ MSD-221 at 2.

²⁵⁷⁸ Russ Anderson Amended Answer ¶ 99; MSD-114 at 2-3.

²⁵⁷⁹ Russ Anderson Amended Answer ¶ 100; MSD-331 (email forwarding Oct. 2013 L.A. Times Article) (Russ Anderson asking Mr. Bacon for “some context” because she “wasn’t aware of this situation”); MSD-56 (Christoff Decl.) at ¶ 16.

²⁵⁸⁰ Russ Anderson Amended Answer ¶ 101; MSD-111.

²⁵⁸¹ Julian Amended Answer ¶ 55, 102; McLinko Amended Answer ¶ 55, 102; MSD-531 (a colleague warning Respondent McLinko, “it poses reputation risk to the firm”).

Corporate Investigations until then.²⁵⁸² There was no lookback conducted of potential simulated funding and phone number changes that occurred prior to April 2014.²⁵⁸³

122. When SSCOT resumed proactive monitoring of simulated funding in July 2014, the Community Bank used a threshold that identified for further investigation only the top 0.01% of employees who engaged in “red flag” simulated funding activity. The other 99.99% of employees engaging in “red flag” activity were not referred for investigation as a result of the proactive monitoring.²⁵⁸⁴
123. SSCOT’s application of the 99.99% threshold beginning in July 2014 identified approximately 30,000 employees per month who exhibited activity that was a red flag for simulated funding. SSCOT referred for investigation only the top 0.01% of those employees who had the most activity indicative of simulated funding, or 3 employees per month. In other words, SSCOT referring for investigation only 1 out of every 10,000 employees who exhibited red flag activity for simulated funding.²⁵⁸⁵
124. The “extreme outlier” employees identified for further investigation through SSCOT’s proactive monitoring of simulated funding had not been previously identified and terminated through the Bank’s other reactive detective means, such as the EthicsLine or customer complaints.²⁵⁸⁶
125. From April 2015 through October 2016, SSCOT lowered the threshold slightly to refer for investigation those employees at or above the 99.95th percentile of activity that was a red flag for simulated funding. SSCOT’s proactive monitoring of simulated funding never looked beyond the most egregious offenders.²⁵⁸⁷
126. Lowering the threshold to the 99.95th percentile resulted in the identification and referral of approximately 15 to 23 employees per

²⁵⁸² MSD-115 at 2, 3.

²⁵⁸³ MSD-115.

²⁵⁸⁴ Russ Anderson Amended Answer ¶ 104; MSD-116 at 3; MSD-300 (Rawson Tr.) at 91:21-94:22, 177:2-22; MSD-602 (Bernardo Tr.) at 109:12-112:25, 115:3-116:2.

²⁵⁸⁵ MSD-116 at 3; see also MSD-300 (Rawson Tr.) at 176:17-179:11.

²⁵⁸⁶ MSD- 300 (Rawson Tr.) at 90:18-91:20.

²⁵⁸⁷ Russ Anderson Amended Answer ¶ 106; MSD- 116 at 3; MSD-115 at 3 (describing the evolution of thresholds); MSD-300 (Rawson Tr.) at 158:24-163:3 225:11-22 (testifying that plan to expand thresholds was not approved); Russ Anderson Dep. Tr. 229:6-17, 225:4-22; MSD-299 (Sperle Tr.) at 110:20-111:1 (testifying that SSCOT continued using the 99.95 threshold for identifying simulated funding, even in 2016); MSD-118; MSD-119; MSD-121.

month.²⁵⁸⁸

127. The 99.95% percent threshold captured employees who had on average 10.3 occurrences of red flag activity for simulated funding each month.²⁵⁸⁹

128. The Bank's former Head of Financial Crimes Risk Management James Richards explained to Respondent Russ Anderson that "applying percentage based, purely percentage based thresholds allows you to manage to the output from those thresholds rather than to manage to the underlying risk or underlying activity that you're monitoring. It allows you to manage the output."²⁵⁹⁰

129. As part of the Bank's February 2020 Deferred Prosecution Agreement with the U.S. Department of Justice related to its sales practices, the Bank admitted, accepted, and acknowledged as true the following:

- Gaming conduct and the practice of pushing unnecessary accounts on customers began in at least 2002 and became widespread over time, lasting through 2016, when the community Bank eliminated product sales goals for its employees.
- From 2002 to 2016, Wells Fargo opened millions of accounts or financial products that were unauthorized or fraudulent. During that same time period, Wells Fargo employees also opened significant numbers of additional unneeded, unwanted, or otherwise low-value products that were not consistent with Wells Fargo's purported needs-based selling model. Wells Fargo collected millions of dollars in fees and interest to which the Company was not entitled, harmed the credit ratings of certain customers, and unlawfully misused customers' sensitive personal information (including customers' means of identification).
- Millions of non-Wells Fargo-employee customer accounts reflected a Wells Fargo email address as the customer's email address, contained a generic and incorrect customer phone number, or were linked to a Wells Fargo branch or Wells Fargo employee's home address.
- Millions of secondary accounts and products were opened from 2002 to 2016, and many of these were never used by customers.²⁵⁹¹

130. Respondent McLinko testified in March 2018 that thousands of Wells

²⁵⁸⁸ MSD-603; MSD-116 at 3; MSD-119 at 1-2 (noting that application of the 99.95% captures the "more egregious behavior"); MSD- 122; MSD-300 (Rawson Tr.) at 169:7-172:10, 213:16-23; MSD-299 (Sperle Tr.) at 170:9- 171:13.

²⁵⁸⁹ MSD-119; MSD-300 (Rawson Tr.) at 165:11-19.

²⁵⁹⁰ MSD-297 (Richards Tr.) at 146:11-148:20.

²⁵⁹¹ MSD-1 at 27, 31 ¶¶ 17-18, 32.

Fargo employees issued millions of products and services without customers' consent:

Q [by Enforcement Counsel] All right. You -- I think that based on everything you've read, that central report, the PricewaterhouseCooper report, and your audit work, do you believe now that, over the years, let's say from 2009 to 2016, thousands of Wells Fargo employees issued products and services to customers without the customers' consent?

A [by Mr. McLinko]: Based upon everything that I've read, that's correct.

Q: Okay. And based on what you have seen and all the information you gathered, those thousands of Wells Fargo employees have issued millions of products and services without customers' consent?

MR. CRUDO: Foundation.

THE WITNESS: Based upon the data that was produced, on the filing of the data analysis that's done, and the modeling, yes.²⁵⁹²

131. The Bank's former Chief Risk Officer, Mr. Loughlin, testified that "the sales practice problem as described in this 2004 [Investigation Report] is essentially the same problem that existed at the bank up until the elimination of sales goals in the fall of 2016."²⁵⁹³

132. After publication of the 2016 Consent Orders with the OCC and CFPB and settlement with the City of LA, a regional leader in California forwarded negative media coverage of the Bank's sales practices "crisis", commenting that the "[o]nly thing this article is missing is that [the sales practices crisis] wasn't created over the span of 5 years – this was created since 2002!"²⁵⁹⁴

133. The Bank's former Head of Corporate Investigations, Loretta Sperle, agreed in sworn testimony that given the Community Bank's business model and the controls that existed at the Bank, every customer-facing employee had a daily temptation and opportunity to cheat. She testified before the OCC that given the amount of pressure that existed at the Bank, it would not be surprising "that there is going to be a high percentage of people that will cheat."²⁵⁹⁵

²⁵⁹² McLinko Amended Answer ¶ 8; SS at 124:1-18.

²⁵⁹³ MSD-290B (Loughlin Tr.) at 332:22-333:7.

²⁵⁹⁴ MSD-550.

²⁵⁹⁵ MSD- 299 (Sperle Tr.) at 160:16-163:4; see also MSD-269 (NBE Candy Expert Report) at ¶ 108, 114; MSD-581 (Clegg Tr.) at 46:11-48:13; MSD-223 at OCC-WF-SP-06963006 ("Focus on 'business practices & business processes' (are they creating need or opportunity)").

134. Bankers received sales credit for unfunded accounts.²⁵⁹⁶
135. As of December 2015, the Bank had approximately 12.4 million accounts that had been inactive for the last 12 months, including nearly 7 million debit cards (approximately 18% of all debit cards accounts had been inactive for the last 12 months).²⁵⁹⁷
136. Debit card accounts were a “major contributor” to customer consent cases and represented an “outsize portion of conduct risk.”²⁵⁹⁸
137. Debit cards generally represented about 25% of all solutions sold by the Community Bank each year.²⁵⁹⁹ For example, in 2013, approximately 10.3 million consumer and business debits cards were sold, which comprised about 24.1% of total solutions sold that year.²⁶⁰⁰
138. Respondents’ only expert to opine on the PwC work admitted he has done no analysis to confirm or quantify false negatives related to the PwC data (i.e. unauthorized accounts in fact affected by simulated funding that were excluded from PwC’s estimate of potentially unauthorized accounts), though he testified “it seems very likely that there would be, you know, false – some false negatives.”²⁶⁰¹
139. Audit relied on PwC’s sales practices work and did not conduct its own analysis of the scope of the sales practices. Audit noted that its work on the identification of customers and associated financial harm for the customer account analysis and the historical complaints analysis was complete: “For the customer account analysis, based on our assessment of the implementation of the analytical approach by PwC to identify potentially impacted customers, and the identification of the associated reimbursement amounts, we are reasonably confident that the work is accurate and complete.”²⁶⁰²
140. Respondent McLinko testified that the model used by PwC was “probably

²⁵⁹⁶ MSD-243; MSD-269 (NBE Candy Expert Report) at ¶ 107(c) (“the Community Bank allowed employees to have approximately 30 percent of the new accounts they opened to remain unfunded; they would still be eligible to receive sales credit for the unfunded accounts.”)

²⁵⁹⁷ MSD-604.

²⁵⁹⁸ MSD-239; MSD-60 (“This furthers my view that debit cards should be one of our primary areas of focus . . . It’s a major contributor in cases involving both Tellers and PBs [Personal Bankers], and it’s the primary factor in customer consent allegations. Also, as we noted in previous conversations, the debit card can be a ‘doorway’ to additional unethical sales (online, billpay, rewards.)”); see also MSD-18; MSD-23; MSD-46; MSD-61; MSD-62; MSD-63 (discussing that “an outsize portion of conduct risk is related to” issuance of secondary checking and secondary debit cards); MSD-64; MSD-150.

²⁵⁹⁹ MSD-605; MSD-606; MSD-607; MSD-608.

²⁶⁰⁰ MSD-608.

²⁶⁰¹ MSD-282A (Wilcox Dep. Tr.) at 125:12-126:10.

²⁶⁰² MSD-347; MSD-413 at 14.

substantially correct.”²⁶⁰³

141. A report distributed to regional leaders on July 2, 2013 showed that “11.26% of accounts that are funded in West Coast are done so using simulated funding (vs 6.82% for regional banking [nationwide]) and approx[imately] 60% of those accounts are closed within 90 days.”²⁶⁰⁴

142. The former Head of Corporate Investigations, Michael Bacon, testified that the senior leadership in the Community Bank wanted to minimize terminations even with strong evidence that an employee engaged in sales integrity violations.²⁶⁰⁵

143. From January 2011 through March 2016, the Bank terminated over 5,300 employees for engaging in improper sales practices.²⁶⁰⁶ Improper sales practices included:

- (a) Opening any account without the consumer’s consent;
- (b) Transferring funds between a consumer’s accounts without the consumer’s consent;
- (c) Applying for any credit card without the consumer’s consent;
- (d) Issuing any debit card without the consumer’s consent;
- (e) Enrolling any consumer in online-banking services without the consumer’s consent.

144. SSCOT outlined the criteria for simulated funding monitoring under Ms. Russ Anderson’s direction. In a May 11, 2015 analysis, Paula Bernardo presented a chart showing the Simulated Funding outlier criteria as it existed in 2014.²⁶⁰⁷ From the Sales Quality Proactive Monitoring Plan report, Ms. Russ Anderson’s subordinate reported that Sales Quality was continuing previously established monitoring that defined outliers as the top “99.99 percentile of team members participating in each activity except Low Debit Card Activations” – and specifically included identified those activities as including instances of “missing signatures” and low debit card activations.²⁶⁰⁸

145. According to Kathlyn Farrell, Ms. Russ Anderson’s expert witness, use of the 99.99 (and later 99.95) percentile for this monitoring model only caught the worst offenders of simulated funding, so only a small percentage of

²⁶⁰³ MSD-276 (McLinko Tr.) at 124:20-125:4.

²⁶⁰⁴ MSD-227.

²⁶⁰⁵ MSD-295 (Bacon Tr.) at 62:8- 25.

²⁶⁰⁶ MSD-52; MSD-661 at 96.

²⁶⁰⁷ MSD-116 at 3.

²⁶⁰⁸ R. Ex. 17391 at 1.

employees, *i.e.*, only the top .01 percent of employees with potential simulated funding activity would be identified for investigation.²⁶⁰⁹

146. According to Examiner Candy, these two thresholds were not disclosed to the OCC during the May 2015 examination.²⁶¹⁰ Through her subsequent investigation, after familiarizing herself with how the thresholds had been used, NBE Candy concluded that the reports provided by Ms. Russ Anderson's subordinate supported the conclusion that using the 99.99 percent threshold, "over 30,000 team members per month engaged in at least one instance of activity that was indicative of simulated funding."²⁶¹¹ She found that only three to six team members were actually referred to Corporate Investigations for simulated funding.²⁶¹²

147. When asked how she knew that approximately 30,000 employees exhibited red flag activity for simulated funding per month, NBE Candy responded:

A few different ways. One is understanding what the threshold means. So when they used a 99.99 percent threshold, that means they're not going to look at 99.99 percent; they are looking at, or Ms. Russ Anderson's group was looking at the .01 percent of that, of team members that engaged in that behavior. So one, it is simple math.

When you take to six number of people that they were referring to corporate investigations and apply the facts that they're looking at, that .01, that will get you between 30,000 and 60,000 team members per month that engaged in activity indicative of simulated funding. And it's not a surprise that that number varies because this is measured on a monthly basis, so it's not going to be the same month to month.

But also I have reviewed documentation from the bank that has confirmed that during this time period about 45 percent of Community Bank employees had, were engaging in the red flag activity for simulated funding. At this time there was roughly 70,000 customer-facing people in the Community Bank, which also translates to that 30,000 figure.

Lastly, in Ms. Rebecca [Rawson's] testimony, who was the head of SSCOT during this period, she testified to, you know, knowledge of that 45 percent of team members were engaging in activity that was a red flag for simulated funding, and she confirmed the methodology that I have

²⁶⁰⁹ Tr. (Farrell) at 10515-16.

²⁶¹⁰ Tr. (Candy) at 1079.

²⁶¹¹ *Id.* at 1080.

²⁶¹² *Id.* at 1080; (Report of NBE Candy) at 9, 84, 93, and 95(a).

described today.²⁶¹³

148. Preponderant evidence established that SSCOT's application the 99.99% threshold beginning in July 2014 identified approximately 30,000 employees per month who exhibited activity that was a red flag for simulated funding. Only 1 out of every 10,000 employees were referred for further investigation.²⁶¹⁴
149. Of all the issues Bank employees could report to the EthicsLine (the whistleblower hotline), the most common issue during the relevant period was sales integrity, ultimately comprising more than half of all EthicsLine complaints.²⁶¹⁵
150. An investigator testified that there were a "multitude of ways" employees engaged in sales practices misconduct: "Oh, simulated funding, opening accounts for nonexistent people, opening accounts for deceased people, opening multiple checking accounts where a person should only have one, if that. It would depend on the emphasis during that time period."²⁶¹⁶
151. Corporate Investigations (also called Corporate Security) prepared quarterly updates that were included in WFAS's quarterly reports to the Audit and Examination Committee of the Board.²⁶¹⁷ In Audit's February 2012 report to the Audit and Examination Committee, Corporate Security noted a 44% increase in Suspicious Activity Report ("SAR") filings in 2011 related to team member misconduct and attributed the increases in part to "sales integrity issues involving a possible violation of law." Corporate Investigation's report also noted 42% of all EthicsLine reports were referred to the Community Bank's Sales Quality Team (i.e. they were related to possible sales integrity violations).²⁶¹⁸
152. During the April 2012 Ethics Committee meeting, Head of Corporate Investigations, Michael Bacon, provided a written presentation to the Ethics Committee that showed that over 90% of EthicsLine reports in 2011 related to Community Banking and the vast majority of EthicsLine cases referred to Corporate Investigations related to sales integrity violations. Specifically, it showed that Corporate Investigations opened 1,339 sales integrity violations cases from EthicsLine complaints in 2010 and opened 1,220 sales integrity

²⁶¹³ Tr. (Candy) at 1081-82.

²⁶¹⁴ MSD-116 at 3.

²⁶¹⁵ MSD-3 at 52; MSD-161-168; MSD-430 at 15 ("Over 50% of [EthicsLine] calls were related to sales integrity."); MSD-324 at 5 (showing that sales integrity cases made up 48% of EthicsLine cases).

²⁶¹⁶ MSD-581 (Clegg Tr.) at 47:9-48:1.

²⁶¹⁷ MSD-279 (Julian Dep. Tr.) at 204:15-207:1.

²⁶¹⁸ MSD-425 at 3-4.

- violations cases from EthicsLine complaints in 2011.²⁶¹⁹
153. The TMMEC (Team Member Misconduct Executive Committee) presentation listed misconduct-governance supporting policies and processes, including:
- (a) “Comprehensive Team Member Misconduct/Fraud Investigations Program (includes routine reporting of results, escalation or risks/control breakdowns/systemic issues, partnering with audit, and components specific to strategic internal fraud testing and ongoing internal fraud assessments);”
 - (b) Senior Leader / Operating Committee / A&E / GRO & Audit escalation processes;” and
 - (c) “Investigative Key Activity reporting to all key stakeholders, LOB Internal Fraud Committees, GEVPS, and Audit & Examination Committee.”²⁶²⁰
154. The TMMEC presentation provided an update on the establishment of Internal Fraud Committees within each line of business, including the Community Bank. The update provided: “[a]s stated within the Corporate Fraud Policy, the primary responsibility for adequate response to investigation results lies with LOB senior leaders, GROs, and LOB specific internal fraud committee members” and “LOB [Internal Fraud Committee] membership includes, but [is] not limited to . . . *Audit.*”²⁶²¹
155. The presentation further showed the TMMEC that sales integrity violations was the second-most common Corporate Investigations case type and that sales integrity violations were at 3,108 for 2012, up from 2,992 in 2011. It also showed that the vast majority of Corporate Investigation cases in both 2011 and 2012 originated in the Community Bank.²⁶²²
156. In the February 26, 2013 WFAS Fourth Quarter 2012 Summary to the Audit and Examination Committee, Corporate Security reported that sales integrity violations and related falsifications were one of the top four case types and had increased 4% over the prior year’s volume. The report explained that the increase could be partly attributed to enhanced monitoring and detection, and a slight increase in misconduct in some regions.²⁶²³
157. On March 3, 2013, Respondent Julian received an EthicsLine complaint that an employee was being retaliated against by a Florida manager after the manager learned someone had reported him for “influencing team members to

²⁶¹⁹ MSD-506 at 8, 10.

²⁶²⁰ MSD-436 at 7.

²⁶²¹ *Id.* at 10.

²⁶²² *Id.* at 11.

²⁶²³ MSD-523 at 51.

violate sales incentive policies.” Specifically, the employee said the manager “instructed team members to open accounts despite the customers’ need for the products.”²⁶²⁴

158. On March 4, 2013, Respondent Julian received an EthicsLine report that a banker had opened a business credit card for a customer without his consent and he had called the National Business Banking Center “because he was upset about fees charged to a business credit card that he did not authorize.”²⁶²⁵

159. The October 4, 2013 *Los Angeles Times* article stated that the Bank “fired about 30 branch employees in the Los Angeles region who the bank said had opened accounts that were never used and attempted to manipulate customer-satisfaction surveys.” According to the article, a Bank spokesperson explained that “[t]he employees were trying to take shortcuts to meet sales goals.” The article also stated that one of the fired employees said, “in some cases signatures were forged and customers had accounts opened in their names without their knowledge” and “the pressure to meet sales goals was intense at Wells Fargo.”²⁶²⁶

160. On December 21, 2013, the *Los Angeles Times* published an article titled “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 and reported that “To meet quotas, employees have opened unneeded accounts for customers, ordered credit cards without customers’ permission and forged client signatures on paperwork” and employees were threatened with termination if they failed to meet their sales goals.²⁶²⁷

161. Respondent Julian testified to the OCC during its investigation that after he read the 2013 *Los Angeles Times* articles, he started “thinking that, gosh, is there a problem” with Community Bank sales practices misconduct.²⁶²⁸

162. Corporate Security’s update in the February 25, 2014 WFAS Fourth Quarter 2013 Summary to the Audit and Examination Committee explained that a “case is defined as an allegation of team member misconduct involving a possible violation of law or a code of ethics policy violation or information security policy violation, which has resulted in a financial loss and/or exposure or represents a significant compliance or reputational risk.” It further stated that “The major case types that increased year-over-year include Sales Integrity up 5%” and that “43% [of EthicsLine complaints] were referred to

²⁶²⁴ MSD-491.

²⁶²⁵ MSD-492.

²⁶²⁶ MSD-331.

²⁶²⁷ Julian Amended Answer ¶ 101; MSD-111 at 1-2). Respondent Julian was aware of the article. (Julian Amended Answer ¶ 55, 102; 404.

²⁶²⁸ Julian Amended Answer ¶ 405.

- Community Bank Sales Quality” (*i.e.* related to sales practices).²⁶²⁹
163. On February 28, 2014, Respondent Julian received a “Corporate Investigations 2013 Year End Update/2014 Priorities” slide deck for the Head of Corporate Investigations’ presentation to the Audit Management Committee on March 3, 2014. The presentation showed sales integrity violations as the number two case type for both 2012 and 2013, with 3,167 and 3,330 respectively.²⁶³⁰
164. On March 4, 2014, Respondent Julian received a 2013 year-end update from Head of Corporate Investigations Michael Bacon as part of his TMMEC membership. The report showed that sales integrity violations were the second highest case type at the Bank in 2012 and 2013, with 3,330 sales integrity violations cases YTD in 2013 compared with 3,167 sales integrity violations cases YTD in 2012.²⁶³¹ The report also reflected that the vast majority of EthicsLine complaints related to the Community Bank²⁶³² and that 3,653 of 8,535 (42.8%) EthicsLine reports in 2013 were referred to Sales Quality (*i.e.* related to sales practices) compared with 3,739 of 8,354 (44.7%) in 2012.²⁶³³
165. At the April 9, 2014 Enterprise Risk Management Committee meeting, Community Bank leadership, including Respondent Russ Anderson, informed the committee that one to two percent of the Community Bank employees (1,000-2,000) were terminated each year for sales practices-related wrongdoing.²⁶³⁴
166. The Corporate Security update in WFAS’s May 5, 2014 First Quarter 2014 Summary to the Audit and Examination Committee stated that, of the 2,168 total EthicsLine complaints received in YTD 1Q14, 46% were referred to Community Bank Sales Quality (*i.e.* were related to sales practices).²⁶³⁵
167. Corporate Security’s update in WFAS’s August 4, 2014 Second Quarter 2014 Summary to the Audit and Examination Committee stated that sales integrity was one of Corporate Investigations’ major case types²⁶³⁶ and 42% of the 4,536 total EthicsLine received YTD in 2Q14 “were referred to Community Bank Sales Quality” (*i.e.* were related to sales practices).²⁶³⁷

²⁶²⁹ MSD-526 at 47-48, 51.

²⁶³⁰ MSD-335 at 4.

²⁶³¹ MSD-447 at 4.

²⁶³² *Id.*

²⁶³³ *Id.* at 7.

²⁶³⁴ MSD-28 at 1; Julian Amended Answer ¶¶ 164, 271, 398; McLinko Amended Answer ¶ 164, 271, 398.

²⁶³⁵ MSD-451 at 52.

²⁶³⁶ MSD-397 at 64.

²⁶³⁷ *Id.* at 68.

168. The Corporate Security update in WFAS's November 18, 2014 Third Quarter 2014 Summary to the Audit and Examination Committee stated that 40% of the 6,700 EthicsLine complaints received 3Q14 YTD were "referred to Community Bank Sales Quality" (i.e. were related to sales practices).²⁶³⁸
169. The Corporate Security update in WFAS's February 24, 2015 WFAS Fourth Quarter 2014 Summary to the Audit and Examination Committee stated that 39% of the 8,707 EthicsLine complaints received 4Q14 YTD were referred to Community Bank Sales Quality (i.e. were related to sales practices).²⁶³⁹
170. On May 4, 2015, the City Attorney of Los Angeles sued the Bank in connection with the Community Bank's sales practices. The Complaint, which was consistent with the information Respondents Julian had received over the years related to the Bank's sales practices, alleged the following:

For years, Wells Fargo & Company and Wells Fargo Bank, National Association (collectively "Wells Fargo") have victimized their customers by using pernicious and often illegal sales tactics to maintain high levels of sales of their banking and financial products. The banking business model employed by Wells Fargo is based on selling customers multiple banking products, which Wells Fargo calls "solutions." In order to achieve its goal of selling a high number of "solutions" to each customer, Wells Fargo imposes unrealistic sales quotas on its employees, and has adopted policies that have, predictably and naturally, driven its bankers to engage in fraudulent behavior to meet those unreachable goals.

As a result, Wells Fargo's employees have engaged in unfair, unlawful, and fraudulent conduct, including opening customer accounts, and issuing credit cards, without authorization. Wells Fargo has known about and encouraged these practices for years. It has done little, if anything, to discourage its employees' behavior and protect its customers.

Worse, 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 have caused.

The result is that Wells Fargo has engineered a virtual fee-generating machine, through which its customers are harmed, its

²⁶³⁸ MSD-398 at 69.

²⁶³⁹ MSD-400 at 79.

employees take the blame, and Wells Fargo reaps the profits.²⁶⁴⁰

171. On May 4, 2015, Respondent Julian received the *Los Angeles Times* article titled, “L.A. Sues Wells Fargo, alleging ‘unlawful and fraudulent conduct,’” which described the allegations in the City Attorney of Los Angeles lawsuit.²⁶⁴¹
172. On October 4, 2013, the Head of Corporate Investigations forwarded to Respondent McLinko the October 3, 2013 *Los Angeles Times* Article, “Wells Fargo Fires Workers Accused of Cheating on Sales Goals”. The Head of Corporate Investigations wrote that the article was a “big deal and very interesting.”²⁶⁴²
173. The October 3, 2013 *Los Angeles Times* article stated that the Bank “fired about 30 branch employees in the Los Angeles region who the bank said had opened accounts that were never used and attempted to manipulate customer-satisfaction surveys.” According to the article, a Bank spokesperson explained that “[t]he employees were trying to take shortcuts to meet salesgoals.” The article also stated that one of the fired employees said, “in some cases signatures were forged and customers had accounts opened in their names without their knowledge” and “the pressure to meet sales goals was intense at Wells Fargo.”²⁶⁴³
174. On November 1, 2013, Bart Deese (a direct report of Respondent McLinko) forwarded to Respondent McLinko a Significant Investigation Notification (SIN) that he received from Corporate Investigations about the investigation that gave rise to the October 2013 *Los Angeles Times* article. The notification stated the allegation was that “[s]imulated funding falsified entries were made to meet individual and store sales goals;” twenty employees “with the most egregious simulated funding numbers were to be interviewed first” and that the “Criteria for egregious [was] 50 or more accounts opened in 1 month or 10% of total accounts opened in a 4 month period” that met the simulated funding criteria; and the investigation found that employees engaged in simulated funding “[t]o meet quarterly sales goals” despite “[k]nowing their actions were against [Bank] policy.”²⁶⁴⁴
175. After the *Los Angeles Times* published its second article about the Bank’s sales practices, *Wells Fargo’s Pressure-Cooker Sales Culture Comes at a Cost*, a fellow WFAS corporate risk auditor sent a link to article to Respondent McLinko the and wrote: “I am not sure how much merit there is to this story (L.A. Times), but it poses reputation risk to the firm.”²⁶⁴⁵

²⁶⁴⁰ MSD-169 at 3.

²⁶⁴¹ MSD-463.

²⁶⁴² McLinko Amended Answer ¶¶ 55, 102, 404, 457; MSD-331.

²⁶⁴³ MSD-331.

²⁶⁴⁴ MSD-333 at 3.

²⁶⁴⁵ MSD-531.

176. The article stated it was based on interviews with 28 former and seven current employees across nine states and reported that “To meet quotas, employees have opened unneeded accounts for customers, ordered credit cards without customers’ permission and forged client signatures on paperwork” and employees were threatened with termination if they failed to meet their sales goals.²⁶⁴⁶
177. On February 28, 2014, Respondent McLinko received a “Corporate Investigations 2013 Year End Update/2014 Priorities” slide deck for the Head of Corporate Investigations’ presentation to the Audit Management Committee on March 3, 2014. The presentation showed sales integrity violations as the number two case type for both 2012 and 2013, with 3,167 and 3,330 respectively. Although sales-integrity violation cases are not specifically tied to the Community Bank, the Community Bank comprises of the vast majority of cases: 11,591 cases in Community Bank versus 1,583 in the other lines of business in 2012 and 11,915 cases in Community Bank versus 1,821 in the other lines of business in 2013.²⁶⁴⁷
178. Respondent McLinko received a presentation and agenda for an Internal Fraud Committee meeting. The agenda stated: “Sales Integrity key activity is mixed, but expected to increase due to proactive initiatives” (*i.e.* the Community Bank will identify more sales integrity violations when it increases proactive monitoring). The presentation showed: 740 sales integrity violations cases in 4Q12, 798 in 1Q13, 823 in 2Q13, 822 in 3Q13, and 824 in 4Q13 (*i.e.* 3,267 total sales integrity cases in 2013); and 361 terminations/resignations for sales integrity violations in 4Q12, 335 in 1Q13, 383 in 2Q13, 389 in 3Q13, and 348 in 4Q13 (*i.e.* 1,455 terminations/resignations for sales integrity violations in 2013).²⁶⁴⁸
179. On August 18, 2014, Respondent McLinko received a presentation for an October 2, 2014 Internal Fraud Committee meeting showing: 824 sales integrity violations cases in 2Q13, 822 in 3Q13, 822 in 4Q13, 746 in 1Q14, and 744 in 2Q14; and 386 terminations/resignations for sales integrity violations in 2Q13, 389 in 3Q13, 368 in 4Q13, 381 in 1Q14, and 393 in 2Q14.²⁶⁴⁹
180. According to a February 2015 presentation made to the OCC by Respondent McLinko (and his direct report Bart Deese) on WFAS Community Bank Sales Coverage, WFAS had a “[p]artnership with Corporate Investigations” and interacted with Corporate Investigations in several ways.²⁶⁵⁰ For example,

²⁶⁴⁶ McLinko Amended Answer ¶ 101; MSD-111 at 1-2. Respondent McLinko was aware of the article; McLinko Amended Answer ¶ 55, 102.

²⁶⁴⁷ MSD-335 at 4.

²⁶⁴⁸ MSD-336 at 7, 28.

²⁶⁴⁹ MSD-614 at 6, 30.

²⁶⁵⁰ MSD-476 at 6.

WFAS was “[c]opied on all significant cases above established dollar thresholds for review and assessment,” it had “[o]ngoing dialogue throughout the year on open cases (where needed),” and it “[p]articipat[ed] in semi-annual CMBK Internal Fraud Committee Meeting.”²⁶⁵¹ The presentation also noted that WFAS attended “Semi-annual Regional President meetings,” in which “RB – Sales Quality and Corporate Investigations attend and share information.”²⁶⁵²

181. Similarly, in a May 27, 2015 email to the OCC, Respondent Julian wrote that WFAS’s “audit methodology includes contacting Corporate Investigations at the beginning of each audit to determine if there are any cases/trends related to the area under review. In addition, the Community Banking (CB) audit team interact with Corporate Investigations in a number of ways throughout the year (e.g., Semi-annual Regional President meetings, Semi-annual CMBK Internal Fraud Committee, Copied on SINs and IDEAs, Ad hoc discussions) to understand cases/trends, etc.”²⁶⁵³
182. Like Respondent Julian, Respondent McLinko’s direct reports also received extensive information from both Corporate Investigations and the Community Bank’s Sales Quality team indicating that sales practices misconduct existed throughout the Community Bank, that consent was the number one sales integrity issue, and that the root cause of the misconduct was pressure to meet sales goals.²⁶⁵⁴
183. At a July 6, 2010 Regional President meeting (Southwest region) attended by Bart Deese, Corporate Investigations reported, “sales integrity cases continue to increase.”²⁶⁵⁵
184. At a July 7, 2010 Regional President meeting (Carolinas region) attended by Bart Deese, Corporate Investigations reported, “due to a more aggressive sales culture, sales integrity is going to be a challenge.”²⁶⁵⁶
185. Preponderant evidence established that Ms. Russ Anderson failed to identify incentive compensation practices as relating to sales practices and sales practices misconduct throughout the relevant period.
186. When asked what she found during the 2016 risk management examination, NBE Candy responded that adverse risk events were not adequately incorporated into incentive decisions during the relevant period:

²⁶⁵¹ MSD-476 at 6.

²⁶⁵² *Id.*

²⁶⁵³ MSD-416; Julian Amended Answer ¶¶ 400, 451; McLinko Amended Answer ¶¶ 400, 451; MSD-369 (providing Respondent Julian with a draft email to send to the OCC).

²⁶⁵⁴ SOF ¶¶ 265-418.

²⁶⁵⁵ MSD- 615.

²⁶⁵⁶ MSD-616.

A [Ms. Candy]: You know, for this exam, we were doing it in 2016, and we were basing it off of 2015 compensation decisions. So when we look specifically to sales practices, at this point, you know, it's after the L.A. Times article. It's also after the OCC issued the five letter -- I mean the five MRAs to the bank from the sales practices exam in June of 2015.

There was a lot of knowledge within the bank about the deficiencies in risk management that led to sales practice misconduct occurring. Despite this, there was not adequate incorporation of that as a huge adverse risk event in compensation decisions.

When you specifically looked at people that were identified as accountable for sales, you know, the sales practices issue, they, the lowest they received compensation was 98 percent of their target bonus, up until 120 percent of their target bonus. So they even got above target bonus payments despite this event.

When people are not held accountable, especially through compensation for adverse risk events, it does not; it's not consistent with incentive compensation risk management practices to deter that behavior. You know, furthermore, when we were looking at compensation plans in the Community Bank, we also identified that there was not an adequate process at an individual level and especially manager level to incorporate sales practice misconduct and conduct risk into their compensation as well.

* * *

Q: Okay. To your knowledge, were the deficiencies with the incentive compensation plans that you identified in this supervisory letter in November 2016 previously identified by any of the respondents in this case?

A: They were not. And frankly that's a problem.

Q Why? A So as we've talked about the last few days about heightened standards and risk governance framework and the purpose of the three lines of defense, as the first line of defense they are responsible for managing and identifying the risks.

So in this case, you know, risks got posed by the incentive compensation plan. The second line of defense should be credibly challenging that and overseeing it. And then the third line of defense is also critical, because they're the last, you know, the last stop within the bank and should be adequately providing oversight and testing to ensure compliance.

So when the OCC has to go in and identify an issue, that really demonstrates failures in all three lines of defense.

* * *

Q: Ms. Candy, respondents may argue that the incentive compensation plans in the Community Bank were being modified beginning in 2013. What, if anything, did you conclude about any modifications to incentive compensation plans in the Community Bank from 2013 to 2016?

A: I concluded that any modifications made were not sufficient. When we reviewed the 2015 plans, you know, when we reviewed it in 2016 during this exam, we found them still to be unreasonable and driving inappropriate behavior, so it shows any subsequent, you know, tweaks to the plans were not adequate to manage the risk and sales practices misconduct.²⁶⁵⁷

187. On November 26, 2012, after Respondent Russ Anderson learned that WFAS had contacted the OCC regarding an upcoming examination, Respondent Russ Anderson wrote: “[n]ot sure why audit would make this type of inquiry and not cc me as GRO. Help!” Respondent McLinko replied: “You have my assurance that we would never bring anything to the regulators attention without you are [sic] your team being aware (thus preventing a disconnect). No surprises as we agreed.”²⁶⁵⁸
188. On December 18, 2012, Respondent McLinko described a meeting with Respondent Russ Anderson to his direct reports, where he wrote “It’s either my charming personality (not or mimosa’s [sic] in the morning (not on my part) or something else, but had a very good meeting with [Respondent Russ Anderson]... regarding [Respondent Russ Anderson’s] expectations for me at her offsite the first week of January. As the audit lead, she’s looking to partner, for me to get to know her folks better (and vice versa), and hear what the senior risk leaders ... have to say. She also expects me to stay for heavy appetizers and beverages (she needs to twist my arm for that :)).” [also – I specifically brought up audits of Sales Quality, Suitability and a slip on my part Integrity. Her only comment was they don’t use Integrity as those issues are referred to [the Head of Corporate Investigations]”.²⁶⁵⁹
189. On March 4, 2013, Respondent McLinko asked his audit team to put together

²⁶⁵⁷ Tr. (Candy) at 1123-28. See also OCC Ex. 2407 (Report of NBE Candy) at ¶128 (regarding Respondents Julian and McLinko), ¶115-16 (regarding Respondent Russ Anderson); OCC Ex. 2335 (Report of NBE Crosthwaite) at ¶31 (regarding Respondents Julian and McLinko), and ¶110-11 (regarding Respondent Russ Anderson).

²⁶⁵⁸ MSD-388 (emphasis added).

²⁶⁵⁹ MSD-389.

a presentation in advance of a March 19, 2013 meeting with Carrie Tolstedt and Respondent Russ Anderson. Respondent McLinko directed his team prepare a slide that suggests the Community Bank should consider WFAS as “more of a partner versus an auditor.”²⁶⁶⁰ The draft PowerPoint presentation that Respondent McLinko’s team prepared contained a slide titled “Working Together.” The slide stated: “Consider us more a partner than an auditor.”

190. On March 7, 2013, WFAS issued its Community Banking Enterprise Risk Management Assessment (“ERMA”) for 2012 (“2012 CB ERMA”), concluding that “risk management within Community Banking is Satisfactory trending toward Strong. . .WFAS’s evaluation of risk related to Community Banking focused on Operational Risk with an emphasis on . . . sales quality, regulatory compliance, and reputation impacts.” Governance, Culture, and Risk Response and Control were rated Strong. Strategy/Objective Setting and Risk Identification, Assessment and Analysis were rated Satisfactory.²⁶⁶¹ At the time, ERMA ratings were Strong, Satisfactory, or Weak.²⁶⁶²
191. On October 29, 2013, WFAS had provided members of the Community Bank with a draft Issue and Recommendation Memo (“Draft I&R”) in connection with its Regional Banking – Sales Quality / Sales Integrity audit. The Draft I&R and cover email described an issue identified during audit regarding enhancing training notifications and “escalation and increased visibility of repeat sales offenders.”²⁶⁶³ WFAS requested a written response from Community Bank about the audit issue, setting corrective actions and reasonable target dates to complete them, and designating responsible individuals. Neither the Draft I&R nor cover email requested line edits to the Draft I&R itself.²⁶⁶⁴
192. On November 15, 2013, the Community Bank provided line edits to the 2013 Draft I&R, including edits from Respondent Russ Anderson.²⁶⁶⁵ The Draft I&R included language such as “Enhance the training notification process and increased visibility of repeat sales offenders,” which was changed to “Enhance the training notification process and increased visibility of second time training notifications.”²⁶⁶⁶
193. Respondent Russ Anderson changed “The monthly regional sales reports including metrics on cases resulting in training e-mail does not differentiate between first time and repeat offenders” in the original Draft I&R to “The

²⁶⁶⁰ MSD-390.

²⁶⁶¹ MSD-373.

²⁶⁶² MSD-373 at 1.

²⁶⁶³ MSD-503 at 1, 2.

²⁶⁶⁴ MSD-503 at 1, 2.

²⁶⁶⁵ MSD-198.

²⁶⁶⁶ *Id.*

monthly regional sales reports including metrics on cases resulting in training e-mail notifications does not differentiate between first time and second time training notifications.”²⁶⁶⁷

194. The Risk section of the Draft I&R originally read “Failure to properly monitor training e-mail notifications and escalate/report repeat allegations could lead to inappropriate training practices and increased numbers of repeat offenders of inappropriate sales practices,” but Respondent Russ Anderson changed it to “Failure to properly monitor training e-mail notifications and differentiate between first and second time training notifications could lead to inappropriate training practices and increased numbers of additional allegations.”²⁶⁶⁸
195. WFAS incorporated Respondent Russ Anderson’s edits on the Draft I&R into its final audit engagement report on RB – Sales Quality/Sales Integrity issued on December 16, 2013 and its final Issue and Recommendation Memo.²⁶⁶⁹
196. On February 9, 2015, Respondent McLinko and his reports met with OCC examiners of WFAS’s Community Bank Sales Coverage. Respondent Russ Anderson attended the meeting as well.²⁶⁷⁰ According to OCC examiner Karin Hudson, “Respondent McLinko was unable to respond to many questions around sales practices” at the February 9, 2015 meeting. Additionally, Respondent Russ Anderson interjected during the meeting and stated at the meeting “that the Community Bank group risk function had a ‘good partnership with Audit.’”²⁶⁷¹
197. On February 19, 2015, Respondent McLinko updated Respondent Russ Anderson on another WFAS meeting with the OCC regarding sales and cross-sell, to provide her with additional perspective. In the update, Respondent McLinko described part of the conversation: “I took that opportunity to tell them (after we had emailed them asking them to go to you) to make all such inquiries specifically relating to Community Bank process with you and your team.”²⁶⁷²
198. On March 30, 2015, WFAS issued its audit report on RB – SOCR (Regional Banking Store Operations Control Review (“SOCR”). In determining annual audit coverage, WFAS leveraged the results of SOCR on-site reviews. WFAS rated the SOCR program **Needs Improvement** because of the accuracy and completeness of program execution and supervisory review.²⁶⁷³ On February 10, 2015, Respondent McLinko had assured Carrie Tolstedt that the SOCR audit

²⁶⁶⁷ MSD-198.

²⁶⁶⁸ *Id.*

²⁶⁶⁹ MSD-376 (not using the term “repeat offenders” or “inappropriate sales practices”); MSD-601.

²⁶⁷⁰ MSD-185.

²⁶⁷¹ MSD-270 (NBE Hudson Expert Report) at ¶ 25, 30.

²⁶⁷² MSD-399.

²⁶⁷³ MSD-520.

- would not be reported to the Board.²⁶⁷⁴
199. On May 4, 2015, the Los Angeles City Attorney filed a complaint against the Bank alleging it violated the California Unfair Competition Law, Business and Professional Code § 17200 et seq. by engaging in unlawful sales practices.²⁶⁷⁵
200. On May 4, 2015, WFAS presented its First Quarter 2015 Summary to the Audit and Examination Committee of the Board. Audit’s quarterly report to the Board contained the following update on the “Sales Conduct, Practices and the Consumer Business Model” Noteworthy Risk: “Sales audits are planned for Regional Banking and Business Banking in 2015. The focus of these reviews is on the sales practices and conduct to ensure customers are sold products meeting their financial needs.”²⁶⁷⁶
201. In May 2015, the OCC commenced an examination of Enterprise Sales Practices at the Bank, which was prompted by the City of Attorney of Los Angeles lawsuit against the Bank relating to its sales practices. The review “focused on the events in 2013 that led to the initial employee termination, the investigation of employee misconduct that followed, and overall changes in governance intended to improve the bank’s practices.”²⁶⁷⁷ The former Examiner-in-Charge of the Bank explained that the purpose of the May 2015 examination was “to find the truth. We were told being one thing by the bank and management, and we were seeing something else” in the City Attorney of Los Angeles lawsuit.²⁶⁷⁸
202. On June 26, 2015, the OCC communicated the results of its May 2015 examination of Enterprise Sales Practices in Supervisory Letter WFC 2015-36 (“SL 2015-36”). SL 2015-36 concluded, “Wells Fargo’s management and oversight of Enterprise Sales Practices risk is weak and needs to improve.”²⁶⁷⁹
203. SL 2015-36 contained five MRAs, covering all three lines of defense: Enterprise Sales Practices - Corporate; Enterprise Sales Practices - Second Line of Defense; Complaints; Community Bank Group - Sales Practices; and Audit Coverage. The Enterprise Sales Practices - Corporate MRA required the Bank to hire an independent third party consultants “to conduct a thorough review of Wells Fargo’s approach to Enterprise Sales Practices” and “to ensure all allegations of inappropriate behavior (e.g., gaming, pinning, bundling, etc.) are evaluated and properly remediated.”²⁶⁸⁰

²⁶⁷⁴ MSD-368.

²⁶⁷⁵ Julian Amended Answer ¶¶ 123, 223; McLinko Amended Answer ¶¶ 123, 223.

²⁶⁷⁶ MSD-634 at 59-60.

²⁶⁷⁷ MSD-213.

²⁶⁷⁸ MSD-302 (Linskens Dep. Tr.) at 147:12-16.

²⁶⁷⁹ MSD-213 at 2.

²⁶⁸⁰ *Id.* at 3-4, 6-9.

204. The concern identified by the OCC in the Community Bank Group - Sales Practices MRA, was that the Community Bank “lacks a formalized governance framework to oversee sales practices and does not have effective oversight and testing of branch (store) sales practices.” The MRA explained that inaction “could impact reputation risk and cause customer harm.”²⁶⁸¹ The concern identified by the OCC in the Audit Coverage MRA was that “Wells Fargo Audit Services (WFAS) did not identify the issues noted in this Supervisory Letter and past coverage did not provide an enterprise view of sales practices.” The MRA explained that inaction “increases compliance, legal, and reputation risks.”²⁶⁸²
205. On July 28, 2015, the OCC issued a Notice of Deficiency under 12 C.F.R. Part 30 to the Bank because based on deficiencies and weaknesses in all three lines of defense related to the Bank’s compliance risk management program, which Respondents Julian and McLinko received.²⁶⁸³ The Part 30 Notice of Deficiency required the Bank to submit a Safety and Soundness Plan to “adequately address all of the deficiencies and weaknesses noted in compliance-related supervisory letters” and must specifically include “[d]evelop[ing] audit programs that test the first lines of defense compliance with high-risk laws and regulations” and “[r]eport[ing] Internal Audit identified deficiencies to the Bank’s Audit and Examination Committee, along with the severity of the deficiencies and the corrective actions.”²⁶⁸⁴
206. On August 10, 2015, the Bank provided a response to SL 2015-36, stating that the Bank “recognize[s] the importance of the concerns discussed in the Supervisory Letter to Wells Fargo and its customers.”²⁶⁸⁵ The response named Respondent McLinko as an accountable executive for the Audit Coverage MRA and stated that WFAS was “committed to maintaining independence and implementing the changes needed to address the concerns noted in the MRA” and “evalu[ating] the current sales practices audit coverage and commit to develop a comprehensive audit approach.” WFAS also committed to “engag[ing] with Accenture and PwC to understand the scope of their coverage as it relates to Wells Fargo's approach to Enterprise Sales Practices and assessing potential customer harm for allegations of inappropriate behavior, respectively. Their review and evaluation will be compared to our current sales practices audit coverage, and enhance coverage where appropriate. WFAS anticipate incorporating the preliminary findings from PwC and Accenture as part of our 2016 audit plan process and will enhance our coverage when additional

²⁶⁸¹ MSD-213 at 8.

²⁶⁸² *Id.* at 8-9.

²⁶⁸³ MSD-414 at 1-2.

²⁶⁸⁴ *Id.* at 2-3.

²⁶⁸⁵ MSD-313 at 1.

information is available.”

207. The Bank’s August 10, 2015 response further stated, “WFAS will be engaged with the various LOBs as they develop and implement corrective actions to the Enterprise Sales Practices MRAs. The scope of WFAS’s work will include: issue monitoring and validation, reviewing governance processes and enhanced policy, monitoring of projects/initiatives to enhance Enterprise Sales Practices compliance, and obtaining an understanding of key activities and functions performed to ensure compliance with enterprise sales practices along with their sustainability.”²⁶⁸⁶
208. Accenture’s top recommendation was to “Review the solution sales goals setting at district/store level, and reward team members based more on positive customer outcomes (e.g., account utilization) with less emphasis on solutions sold.”²⁶⁸⁷ The report noted, “solution sales goals have not been met since 2013 (even after accounting for adjustments made throughout the year to improve achievement rates).”²⁶⁸⁸ The Accenture Report warned of the risk that “[n]egative sales practices may occur due to pressure to meet unreasonable sales targets set by senior management, which could lead to adverse customer impact.”²⁶⁸⁹
209. Respondent McLinko testified “in the Accenture report, the volume of interviews that were done, the data that they had gathered on a very large sample of the community bank, they had a very strong basis to come up with their conclusions. So that led me, at least initially to like, there’s a systemic issue here, from that perspective.”²⁶⁹⁰
210. On April 21, 2016, Respondent McLinko sent the following email message to Respondent Russ Anderson:

Hi Claudia,

Not sure if you traveled home yet or not, but if you did, hope it was a good flight. If not, safe travels.

My regulator meeting to discuss the 2016 audit plan was a non-event. We discussed my sales practices audit validation coverage in some detail, along with ERMA (the area where the topic of Risk Culture has been raised). Chris Mosses asked the most questions, but nothing on the culture front. They continue to be very interested in complaints and ethics line, the rollout, the data, and what is done with that data. Chris

²⁶⁸⁶ MSD-313 at 11; Julian Amended Answer ¶¶ 419, 468; McLinko Amended Answer ¶¶ 419, 468.

²⁶⁸⁷ MSD-51 at 4.

²⁶⁸⁸ *Id.* at 27.

²⁶⁸⁹ *Id.*

²⁶⁹⁰ MSD-276 (McLinko Tr.) at 56:8- 19.

indicated that she thought she was meeting with you next week. If so, I'm sure the topics will come up. Jenny asked a few questions, but more on my FTE count and some specifics on my plan.

It just hit me that you and Carrie meet with regulators monthly and culture doesn't come up and I meet with them bimonthly and sometimes in between and the topic is not specifically raised with me (I hear it from my peers). Wonder what that is about?

That's the low lights. I'd appreciate it if you don't mention audit and the risk culture topic together when and if you approach the subject with the regulators.²⁶⁹¹

211. On July 18, 2016, the OCC communicated the findings from its ongoing review of sales practices at the Bank in Supervisory Letter WFC 2016-36 ("SL 2016-36"), which Respondents Julian and McLinko received.²⁶⁹² SL 2016-36 noted that since the issuance of SL 2015-36, the OCC "reviewed additional reports and material prepared by the Bank and third-party consultants as part of our ongoing supervision. . . . One of our objectives in reviewing these materials was to determine whether the findings identified instances of unsafe or unsound banking practices. Based on our ongoing review, we have concluded that the Bank's risk management of its sales practices and its sales practices themselves are unsafe or unsound."²⁶⁹³

212. Regarding the unsafe or unsound practices, SL 2016-36 elaborated:

a. "The practice of opening deposit accounts without authorization, the practice of moving funds without customer consent (simulated funding) and the failure to timely refund or remediate fees charged are considered unsafe or unsound banking practices."²⁶⁹⁴

b. "The widespread and unauthorized opening of credit card accounts without consent . . . is considered an unsafe or unsound banking practice."²⁶⁹⁵

c. "[T]he Bank engaged in the unsafe or unsound practice of failing to adequately monitor and control sales practices to prevent such inappropriate employee behavior."²⁶⁹⁶

d. "[T]he Bank engaged in the unsafe or unsound practices of operating

²⁶⁹¹ McLinko's ECSFM at No. 490, quoting MSD-407.

²⁶⁹² MSD-342 at 1.

²⁶⁹³ *Id.* at 2.

²⁶⁹⁴ MSD-570 at 5.

²⁶⁹⁵ *Id.* at 6.

²⁶⁹⁶ *Id.*

without adequate controls and monitoring over its sales practices.”²⁶⁹⁷

213. The OCC informed the Bank in SL 2016-36 that the “inappropriate sales practices and the lack of adequate risk management over the sales practices referenced in this letter are considered unsafe or unsound banking practices, and the OCC is considering formal enforcement action against the Bank.”²⁶⁹⁸

214. On September 8, 2016, the OCC issued a consent order and assessed a \$35,000,000 civil money penalty to the Bank for deficiencies and unsafe or unsound practices in the Bank’s risk management and oversight of the Bank’s sales practices, and unsafe or unsound sales practices by the Bank.²⁶⁹⁹

215. In the Sales Practices Consent Order, the Comptroller found “that the OCC has identified the following unsafe or unsound sales practices in the Bank’s Community Bank Group,” which the Sales Practices Consent Order referred to as the “unsafe or unsound sales practices”:

- a. “The selling of unwanted deposit or credit card accounts”;
- b. “The unauthorized opening of deposit or credit card accounts”;
- c. “The transfer of funds from authorized, existing accounts to unauthorized accounts (‘simulated funding’)”; and
- d. “Unauthorized credit inquiries”.²⁷⁰⁰

216. In the Sales Practices Consent Order, the Comptroller also found “that the OCC has identified the following deficiencies and unsafe or unsound practices in the Bank’s risk management and oversight of the Bank’s sales practices:”

- a. “The incentive compensation program and plans within the Community Bank Group were not aligned properly with local branch traffic, staff turnover, or customer demand, and they fostered the unsafe or unsound sales practices”;
- b. “The Bank lacked an Enterprise-Wide Sales Practices Oversight Program and thus failed to provide sufficient oversight to prevent and detect the unsafe or unsound sales practices”;
- c. “The Bank lacked a comprehensive customer complaint monitoring process that impeded the Bank’s ability to: (1) assess customer complaint activity across the Bank; (2) adequately monitor, manage, and report on customer complaints; and (3) analyze and understand the

²⁶⁹⁷ MSD-570 at 6; Julian Amended Answer ¶ 131; McLinko Amended Answer ¶ 131.

²⁶⁹⁸ MSD-342 at 7; Julian Amended Answer ¶ 131; McLinko Amended Answer ¶ 131.

²⁶⁹⁹ MSD-343.

²⁷⁰⁰ *Id.*

potential sales practices risk”;

- d. “The Bank’s Community Bank Group failed to adequately oversee sales practices and failed to adequately test and monitor branch employee sales practices”; and
- e. “The Bank’s audit coverage was inadequate because it failed to include in its scope an enterprise-wide view of the Bank’s sales practices.”²⁷⁰¹

217. In the Sales Practices Consent Order, the Comptroller further found that by reason of the unsafe or unsound sales practices and unsafe or unsound practices in the Bank’s risk management and oversight of the Bank’s sales practices, “the Bank engaged in reckless unsafe or unsound banking practices that were part of a pattern of misconduct.”²⁷⁰²

218. The Sales Practices Consent Order contained actionable articles covering an Enterprise-Wide Risk Review of Sales Practices Risk, an Enterprise-Wide Sales Practices Risk Management and Oversight Program, an Enterprise Complaints Management Policy, Internal Audit, and Customer Reimbursement.²⁷⁰³

219. On April 27, 2017, WFAS issued its 2016 Sales Practices Enterprise Risk Management Assessment for 2016 (“2016 SP ERMA”). The 2016 SP ERMA concluded that Enterprise Risk Management for sales practices risk was Weak, the lowest WFAS audit rating. WFAS defined sales practices risk as sales practices, complaints, team member allegations including EthicsLine, and Internal Investigations. The weak rating was driven by several factors, including the lack of an overall view of sales practices risk across the Bank and the effectiveness and sustainability of the recently implemented enhancements needed to be demonstrated.²⁷⁰⁴

220. The 2016 SP ERMA issued on April 27, 2017 rated the First Line of Defense (i.e., the Community Bank) as Weak due to the need to better understand where sales practices risk reside, the need to implement the Sales Practices Risk Governance Document, and additional time to demonstrate the recently implemented enhancements to demonstrate effectiveness and sustainability.²⁷⁰⁵ The 2016 SP ERMA rated the Second Line of Defense Weak due to the magnitude and complexity of the corrective actions that remained to build and sustain an effective sales practices risk management program.²⁷⁰⁶ Finally, the

²⁷⁰¹ MSD-343.

²⁷⁰² *Id.* at 3.

²⁷⁰³ MSMSD-469.D-343.

²⁷⁰⁴ MSD- 386 at 1.

²⁷⁰⁵ *Id.* at 3.

²⁷⁰⁶ *Id.* at 2.

2016 SP ERMA rated Team Member Allegations processes as Weak and Complaints and Internal Investigations processes as Needs Improvement.²⁷⁰⁷

221. One of the auditors responsible for the 2016 SP ERMA testified that despite the improvements made by the Bank in 2015 and 2016 in response to OCC Matters Requiring Attention, controls and risk management related to sales practices was still weak.

Q: So notwithstanding the risk management and control improvements to address the MRAs from 2015 through 2016, audit still gave sales practices risk a weak rating overall; is that correct?

A: We - - we concluded the overall sales practices risk is weak, as of December 31, 2016.²⁷⁰⁸

222. Respondent Julian testified before the OCC during his May 31, 2018 sworn statement that he would now consider the Community Bank's controls over sales practices misconduct from 2012 to 2016 to be "unsatisfactory," the lowest possible rating that Audit could issue at that time:

Q. Okay. But how about if we limit it to not just work that Audit – and the Audit Group did by itself, but work that the Audit Group did by itself, but work that the Audit Group did in conjunction with other parts of the bank or other consultants? Would you then conclude, based on that – the work that the Audit Group did by itself and in conjunction with other groups – that the controls for sales practice misconduct were unsatisfactory?

A. That the controls – I'm sorry.

Q. Yes, the controls to manage the risk of sales practice misconduct were unsatisfactory.

A. Based on what I know now, yes.

...

Q. Okay. And if the systems did not prevent employees from issuing credit cards and debit cards without customer signatures, how would you rate the controls?

A. Based on the impact and what we know the controls were unsatisfactory in that way.

Q. Thank you. And unsatisfactory is the lowest grade you can get?

A. Yes, sir.²⁷⁰⁹

²⁷⁰⁷ MSD-386 at 4.

²⁷⁰⁸ MSD-505 (Sheng Dep. Tr.) at 220:23-221:3.

²⁷⁰⁹ Julian Amended Answer ¶ 414; MSD-278 (Julian Tr.) at 37:2-14, 155:22-156:5.

223. In a January 23, 2020 Wells Fargo press release about the OCC's Notice of Charges, the Bank's current CEO stated, "The OCC's actions are consistent with my belief that we should hold ourselves and individuals accountable. They also are consistent with our belief that significant parts of the operating model of our Community Bank were flawed. At the time of the sales practices issues, the Company did not have in place the appropriate people, structure, processes, controls, or culture to prevent the inappropriate conduct. This was inexcusable. Our customers and you all deserved more from the leadership of this Company."²⁷¹⁰

224. The Community Bank was "Wells Fargo's largest operating segment in terms of revenue," contributing roughly half of the Company's average annual revenue and profits each year.²⁷¹¹

225. NBE Crosthwaite opined:

The Community Bank model with the unreasonable goals and the extreme pressure was also a wildly profitable model for the company. So with all that pressure, team members were putting on lots of real accounts and real customers, which ultimately drove up revenue, net income, and quarter after quarter, the bank's performance was going up, and their stock was going up.²⁷¹²

226. The Community Bank's business model was financially profitable for Wells Fargo and was key to its growth and cross-sell success.²⁷¹³

227. From January 1, 2002 through September 8, 2016 (the date of the Sales Practices Consent Order), Wells Fargo's stock price performed "significantly better than the stock price of its peers and the financial services sector."²⁷¹⁴

228. There is no requirement that a banker receive additional equity compensation beyond that which he was entitled under the bank's existing compensation

²⁷¹⁰ MSD-662.

²⁷¹¹ Julian Amended Answer ¶ 2; MSD-1 at 20 ¶ 4 ("Wells Fargo's largest business unit was the Community Bank, which contributed more than half (and in some years more than two-thirds) of the Company's revenue from 2007 through 2016."); MSD-692 at 50; MSD-693 at 42; MSD-694 at 46; MSD-695 at 44; MSD-696 at 46; MSD-697 at 45; MSD-698 at 53; MSD-658 (Pocock Expert Report) at 9-10 ¶ 44-45).

²⁷¹² Tr. at 2420 (Crosthwaite); OCC Exh. 2335 at ¶¶ 63-64; OCC Exh. 2407 at 28; OCC Exh. 2330 at ¶¶ 105-107.

²⁷¹³ MSD-266 (Russ Anderson Dep. Tr.) at 87:16-88:24; see also MSD-294 (Wipprecht Tr.) at 133:4-11; See MSD-658 (Pocock Expert Report) at ¶ 13, 18, 19; MSD-267 (Expert Report of Tanya Smith) at ¶ 72 ("The Bank described the 'cross-sell' as 'its primary strategy' and 'the foundation of our business model.'"); MSD-304A (Candy Dep. Tr.) at 234:4-13; MSD-649 ("The Community Bank is 'Rome' in our company—all roads lead to and from it."); MSD-692 at 100 ("cross-selling" – is very important to our business model and key to our ability to grow revenue and earnings.").

²⁷¹⁴ MSD-658 (Pocock Expert Report) at 5, 11-14.

program. Retaining employment is, in and of itself, a benefit sufficient to meet the benefit element, where such retention was occasioned by the failure of the head of the bank's third line of defense to effectively challenge inadequate controls put in place by the first line of defense.

229. Preponderant evidence established that Ms. Russ Anderson benefitted by her failure to credibly challenge the risk management practices relating to controls that should have detected and prevented sales practices misconduct at the Community Bank.

230. Next, there is merit in Enforcement Counsel's proposition that the increase in the proposed civil money penalty does not constitute retaliation for Respondents' exercising their right to a hearing.²⁷¹⁵ The increase in the proposed penalty can be wholly attributed to the Respondents "plac[ing] themselves in their self-contradictory position after this litigation began."²⁷¹⁶

231. Next, only through the process leading up to the filing of Enforcement Counsel's summary disposition motions was it possible to take the full measure of Respondents' good faith – one of the factors that must be considered when recommending a civil penalty. The record reflects, as described above, substantial evidence of sustained gross neglect by each Respondent, coupled with evidence that each Respondent was motivated by greed and a desire to keep their jobs, which required them to withhold from the Bank's Board of Directors and its regulators the true scope and nature of the Bank's highly profitable and seriously unsafe compensation practices.

232. Last, the hearing produced the remarkable and indefensible position by Ms. Russ Anderson asserting that having witnessed the testimony presented, she could not articulate whether incentive compensation through sales goals was the root cause of Community Bank team member sales practices misconduct. This position utterly beggars belief, given the abundance of uncontroverted evidence establishing the relationship between the sales goals and the misconduct.

233. On or about September 8, 2016, the Bank paid a total of \$185 million as part of a stipulated judgment to settle the Los Angeles City Attorney lawsuit, and to pay civil money penalties assessed by the CFPB and OCC related to the Bank's systemic sales practices misconduct.²⁷¹⁷

234. The September 2016 announcement of the settlement and subsequent public awareness of the sales practices misconduct problem, which resulted in part from Ms. Russ Anderson's misconduct, significantly damaged the Bank's reputation. The May 2017 results of a corporate reputation tracking study indicated the Bank's favorability rating plummeted 50% between September and October 2016, and by May 2017 had recovered only to 65% of its previous level.

²⁷¹⁵ See, Enforcement Counsel's Post-Hearing Reply Brief as to Paul McLinko at 88.

²⁷¹⁶ *Id.*

²⁷¹⁷ Julian Amended Answer ¶ 132; McLinko Amended Answer ¶ 132; MSD-562.

235. The announcement of the September 2016 settlement and subsequent public backlash caused the Bank to change the Community Bank's business model and eliminate product sales goals, effective October 1, 2016.²⁷¹⁸
236. After the September 8, 2016 settlement announcement, and continuing over the next several years, the Bank suffered a series of other losses related to sales practices misconduct, including civil judgments to settle class action lawsuits, investigations commissioned to root out malfeasance, the costs of advertising campaigns aimed at rehabilitating its reputation, and in February 2020, a \$3 billion settlement with the DOJ and the SEC.²⁷¹⁹
237. Respondent Russ Anderson testified, based on her experience as a senior risk professional with years of experience in the risk business, that when employees engage in various types of sales practices misconduct, they are violating applicable laws and regulations:

Q: Understand. So just so we're clear, you agree that when employees issue a product or service to a customer without the customer's consent, they're violating applicable laws and regulations; correct?

A: I would agree, yes.

Q: Okay. And you also agree that when employees transfer customer funds without customer consent, they're violating applicable laws and regulations; correct?

A: I would agree, yes.²⁷²⁰

238. Respondent Russ Anderson's expert witness, Kathlyn Farrell, testified that sales practices misconduct violated UDAP, Regulation Z, Regulation DD, and Truth in Savings Act.²⁷²¹ The testimony by Ms. Farrell that was relied upon by Enforcement Counsel is as follows:

Q. Okay. I'm going to read part of this e-mail to you. In -- in the body of the e-mail starting with the third sentence, Ms. Bresee wrote: "To be honest, if the allegations are proven to be correct, they violate a series of laws which are in the talking points we drafted. So, to the extent a team member gives a customer a credit card they didn't want/didn't consent to, it likely violates: UDAAP (OCC), UDAAP," with two As, "(CFPB), TILA, Reg Z, and the Fair" -- "and FCRA. On the deposit

²⁷¹⁸ MSD-289A (Sloan Tr.) at 251:2-253:6; MSD- 288-B (Strother Tr.) at 49:22-50:10; MSD-8B (Stumpf Tr.) at 228:11-229:16; MSD-563.

²⁷¹⁹ MSD- 293A (Hardison Tr.) at 34:4-36:18; MSD-289A (Sloan Tr.) at 251:2-253:6; MSD-564; MSD-1.

²⁷²⁰ MSD-266 (Russ Anderson Dep. Tr.) at 122:22-124:19.

²⁷²¹ MSD-265 (Farrell Dep. Tr.) at 63:5-66:1.

side, providing a savings/checking account that a customer didn't want/didn't consent to likely violates: UDAP, UDAAP" with two As, "the Truth in Savings Act, and Reg DD. (As well as similar state laws.)"

Do you see that?

A. I do.

Q. Okay. You mentioned previously that whether there were any violations of law as a result of the sales practices misconduct issues crossed your mind; is that right?

A. Yes.

Q. Okay. Does sales practice misconduct, as we defined it earlier, violate UDAP with one A [verbatim]?

A. I think so.

Q. Does sales practice misconduct, as we described it before, violate UDAAP with two As?

A. I think it probably does.

Q. Okay. Does opening an unauthorized account violate TILA?

A. Probably. I'm saying that without looking it up, but I suspect that it does.

Q. Why?

A. Because I don't think you're supposed -- well, now that I think about it, I don't think you're supposed to issue any activated credit card to anybody without their consent. So, yes, if the card was activated before -- you used to could send them out unactivated, but I -- I don't -- so if these were activated, then, yes, it's clearly a violation of Truth in Lending.

Q. Does opening an unauthorized credit card account also violate Reg Z?

A. Yes. It would be the same.

Q. Does opening an unauthorized credit card account violate FCRA?

A. That completely would depend upon whether it is reported to the credit bureaus. I have no idea if they did in this case.

Q. Okay. And if they were reported to the credit card bureaus, would there be a violation of the FCRA if there was an unauthorized credit card account opened?

A. I think so.

Q. Does opening an unauthorized deposit account violate the Truth in Savings Act?

A. I would have to look at it.

Q. Does opening an unauthorized deposit account violate Reg DD?

A. Again, I would have to -- to look at that for sure. Those are disclosure laws that are hard to remember. I'm sorry.

Q. Okay. It's all right. If -- if an unauthorized deposit account was opened and the required disclosures weren't made, would that violate Reg DD?

A. Yes, it would.

Q. Would that also violate the Truth in Savings Act?

A. Yes, it would.²⁷²²

239. As part of its Deferred Prosecution Agreement with the U.S. Department of Justice “to resolve the federal criminal investigation of violations of, among other statutes, Title 18, United States Code, Sections 1005 and 1028A, arising out of Wells Fargo’s improper sales practices,” the Bank admitted, accepted, and acknowledged as true that the “Community Bank’s onerous sales goals and accompanying management pressure led thousands of its employees to engage in: (1) unlawful conduct to attain sales through fraud, identity theft, and the falsification of bank records.” Wells Fargo agreed, “the acts and omissions described in the Statement of Facts” attached to the Deferred Prosecution Agreement “are sufficient to establish violations by Wells Fargo of Title 18, United States Code, Sections 1005 and 1028A.”²⁷²³

240. Under the Bank’s June 2010 Corporate Security Policy Manual, sales integrity violations, including but not limited to customer consent and funding manipulation cases, were considered to result in violations of 18 U.S.C. §§ 656 (misapplication), 1001 (false statements), and 1005 (false bank entries).²⁷²⁴

241. Authoritative sources within the Bank testified about the illegal nature of sales practices misconduct.²⁷²⁵ For example, James Strother, the Bank’s former General Counsel, testified before the OCC that sales practices misconduct violated applicable laws and regulations and that “for sure it is [an] unfair and deceptive practice. There are laws in every state that prohibit that” in addition to federal laws. He agreed under oath that such practices constitute “fraud” and “falsification of bank records” and might constitute identity theft in some states.²⁷²⁶

242. Ms. Herzberg, who formerly worked as an examiner for the Office of Thrift Supervision (“OTS”) and was a “safety and soundness regulator” and did work

²⁷²² MSD-265 (Farrell Dep. Tr.) at 63:5-66:1.

²⁷²³ MSD-1 (DOJ SOF) at 7, 10, 25.

²⁷²⁴ MSD-423 at 7-9.

²⁷²⁵ MSD-544 (Weber Tr.) at 82:13-22, 91:22-93:21; MSD-297 (Richards Tr.) at 84:5-11.

²⁷²⁶ MSD-288A (Strother Tr.) at 26:19-28:13, 142:25-143:10, 192:23-193:24 (testifying that issuing products and services to customers without their consent “is serious and violates law.”); James Strother Amended Answer ¶¶ 141 (“Admitted that sales practices misconduct involved serious misconduct that likely included violations of criminal laws”); MSD-382 (Byers Tr.) at 135:6- 136:5; MSD-297 (Richards Tr.) at 82:4-84:11, 105:4-9 (explaining why simulated funding is improper and that it is a form of fraud), 200:4-201:2, 251:8-15; MSD-599 (Meuers Tr.) at 11:3- 11; MSD-549 (Holliday Tr.) at 69:14-70:9; MSD-149.

in compliance before working at the Bank, gave the following testimony under oath before the OCC:

Q: ...As I understand your testimony, now you believe that sales practice misconduct at the bank was systemic. Is that correct?

A: Yes. Now I believe that.

Q: All right. And you believe the sales practice misconduct at the bank that was systemic also constituted unsafe and unsound banking practices. Is that --

A: Yes.

Q: Okay. And you also believe that the sales practices misconduct at the bank that was systemic also constituted violations of applicable laws and regulations.

A: That's right.

Q: All right. And that includes violations of -- and that includes unsafe and unsound practices, as well as unfair and deceptive practices.

A: Yes.²⁷²⁷

Ms. Herzberg also testified as follows:

Q. Regardless of the motivation, the behavior of inputting fake email addresses essentially constitutes falsification of bank records.

A. Yes. Regardless of why they did it. Yes.

Q. Are you familiar with Reg DD?

A. Yes.

Q. Would the behavior also violate Reg DD?

A. Yes. They didn't receive their deposit account disclosures. Yes.²⁷²⁸

243. In the Bank's September 2016, CFPB Sales Practices Consent Order, the CFPB concluded that the Bank, by engaging in sales practices misconduct, "engaged in 'unfair' and 'abusive' acts or practices that violate §§ 1031(c)(1), (d)(1), (d)(2)(B), and 1036(a)(1)(B) of the [Consumer Financial Protection Act]. 12 U.S.C. §§ 5531(c)(1), (d)(1), (d)(2)(B), 5536(a)(1)(B)" (UDAAP).²⁷²⁹

244. OCC examiners have concluded that sales practices misconduct violates multiple consumer and criminal laws and regulations, including: 18 U.S.C. §§ 656 (theft/misapplication by bank employee), 1005 (false entries), 1028(a)(7) (identity theft), and 1344(2) (bank fraud); 15 U.S.C. § 45(a) (unfair or deceptive acts and practices); 12 C.F.R. § 1030.4(a) (Regulation DD/Truth in

²⁷²⁷ MSD-585 (Herzberg Tr.) at 17:18-19:5, 220:21-222:4, 26:9-27:20, 30:15-32:8.

²⁷²⁸ MSD-257 (Herzberg Tr.) at 166:18-167:4; 221:14-23.

²⁷²⁹ MSD-52 (CFPB Consent Order) (citing violations of UDAAP against the Bank for sales practices misconduct).

Savings); and 12 C.F.R. § 1026.12(a) (Regulation Z/Truth in Lending).²⁷³⁰
245. In its Deferred Prosecution Agreement with the U.S. Department of Justice, the Bank further admitted, accepted, and acknowledged as true the following:

- (a) “Employees created false records and forged customers’ signatures on account opening documents to open accounts that were not authorized by customers.”²⁷³¹
- (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.”²⁷³²
- (c) “Employees created false records by opening unauthorized checking and savings accounts to hit sales goals.”²⁷³³
- (d) “Unlawfully misused customers’ sensitive personal information (including customers’ means of identification).”²⁷³⁴

246. Bank policies did not permit employees to open accounts or issue products not authorized by a customer or to engage in simulated funding.²⁷³⁵ Bank employees who confessed to opening unauthorized accounts or engaging in simulated funding admitted they knew it was against Bank policy and ethics guidelines.²⁷³⁶

247. To open or issue an unauthorized account, product, or service for a customer, Bank employees generally would have had to enter false information into the Bank’s systems.²⁷³⁷ Bank employees used the Bank’s Store Vision Platform (“SVP”) “to open accounts for new and existing Bank customers, and the provision to customers of new accounts kits, including electronic new account kits (‘eNAK’).”²⁷³⁸

²⁷³⁰ MSD-257 (NBE Coleman Expert Report) at 6; MSD-267 (NBE Smith Expert Report) at 7; MSD-268 (NBE Crosthwaite Expert Report) at 7; MSD-269 (NBE Candy Expert Report) at 8.

²⁷³¹ MSD-1 at 25.

²⁷³² *Id.*

²⁷³³ *Id.* at 26.

²⁷³⁴ *Id.* at 31.

²⁷³⁵ MSD-9 at 7; MSD-10.

²⁷³⁶ See, e.g., MSD-108 (concluding that employees engaged in simulated funding to meet sales goals despite knowing it was against Bank policy).

²⁷³⁷ See MSD-200 (Hughes Decl.).

²⁷³⁸ *Id.* at 1.

248. “When opening or issuing an account, product or service for a customer, SVP required Bank employees to indicate in the system whether the customer was present in the branch. If an employee issued a product or service to a customer without customer consent, the employee would have had to indicate that the customer was present when in fact the customer was not present to avoid” appearing on a “report reflecting products and services issued to a customer when the customer was not present.”²⁷³⁹
249. “When opening a savings or checking account or issuing a debit card to a customer, SVP required Bank employees to enter into the system, as applicable, information related to the nature of the Bank employee’s interaction with the customer, the customer request method, the source of funds for the opening deposit, the purpose of the account, the estimated monthly account activity, and whether the customer was present. In situations where employees opened a checking or savings account or issued a debit card for a customer without customer consent, Bank employees would have had to fabricate (or use without consent) some or all of this information in order to open the account or issue the card.”²⁷⁴⁰
250. “When opening a savings, checking, or credit card account for a customer, the Bank requires its employees to provide the customer with certain account opening disclosures, either in paper form or electronically via eNAK. SVP required Bank employees to indicate in the system that the required disclosures were provided to the customer; otherwise, SVP would not allow the employee to continue with the account opening process. In situations where Bank employees opened a savings, checking, or credit card account for a customer without customer consent, Bank employees would have had to indicate in SVP that the required disclosures were provided to the customer when, in fact, they were not.”²⁷⁴¹
251. “When opening a credit card account for a customer, SVP required Bank employees to enter into the system the customer’s current income information. In situations where employees opened a credit card account for a customer without customer consent, Bank employees would have had to fabricate (or use without consent) this information.”²⁷⁴²
252. “When opening or issuing an account, product or service for a customer, SVP required Bank employees to enter into the system the customer’s identification information, such as a driver’s license number. In situations where employees issued a product or service to an existing customer without customer consent, Bank employees could have populated customer identification information with

²⁷³⁹ *Id.* at 1-2.

²⁷⁴⁰ *Id.* at 2.

²⁷⁴¹ *Id.* at 4.

²⁷⁴² *Id.* at 5.

information previously supplied by the customer.”²⁷⁴³

253. In October 2016, the Bank finally eliminated sales goals for Community Bank employees.²⁷⁴⁴

254. Sales practices misconduct at the Bank breached its customers’ trust, including but not limited to by opening accounts for customers without customer consent, transferring customer funds without customer consent, and misusing its customers’ personal information to do so.²⁷⁴⁵

255. Sales practices misconduct at the Bank resulted in financial harm to the Bank’s customers, including but not limited to account fees paid by the customer and increased borrowing costs borne by the customer due to a credit score impact.²⁷⁴⁶

256. The Bank has acknowledged that its sales practices misconduct problem resulted in a breach of its customers’ trust and financially harmed its customers. In an August 31, 2017 Wells Fargo press release related to the remediation process, former Bank CEO Tim Sloan said:

We apologize to everyone who was harmed by unacceptable sales practices that occurred in our retail bank. To rebuild trust and to build a better Wells Fargo, our first priority is to make things right for our customers, and the completion of this expanded third-party analysis is an important milestone. Through this expanded review, as well as the class action settlement, free mediation services, and ongoing outreach and complaint resolution, we’ve cast a wide net to reach customers and address their remaining concerns. Our commitment has never been stronger to build a better bank for our customers, team members, shareholders and communities.²⁷⁴⁷

257. As part of its February 20, 2020 Deferred Prosecution Agreement with the DOJ, the Bank also admitted as true that, as a result of its sales practices misconduct problem from 2002 through 2016, the Bank “collected millions of dollars in fees and interest to which the Company

²⁷⁴³ *Id.* at 6.

²⁷⁴⁴ Russ Anderson Amended Answer ¶ 135; MSD-295 (Bacon Tr.) at 194:10-197:8 (testifying that “it took an act of Congress for the company to change.”; MSD-289A (Sloan Tr.) at 251:2-253:6; MSD-288-B (Strother Tr.) at 49:22-50:10; MSD-8B (Stumpf Tr.) at 228:11- 229:16; MSD-563; (Julian Amended Answer ¶ 135; McLinko Amended Answer ¶ 135. The Head of the Community Bank’s Sales and Service Conduct Oversight Team (“SSCOT”) testified that the Bank’s “elimination of sales goals [in early October 2016] help[ed] dramatically reduce the sales practices problem,” a conclusion she testified was supported by SSCOT’s own data. (MSD-300 (Rawson Tr.) at 66:3- 66:8).

²⁷⁴⁵ MSD-8A (Stumpf Tr.) at 127:9-14; MSD-567; MSD-568; MSD-569.

²⁷⁴⁶ MSD-543; MSD-663.

²⁷⁴⁷ MSD-664.

was not entitled, harmed the credit ratings of certain customers, and unlawfully misused customers' sensitive personal information (including customers' means of identification)."²⁷⁴⁸

258. The Bank has paid millions of dollars of remediation to its customers to compensate them for harm resulting from its sales practices.²⁷⁴⁹
259. On June 14, 2018, the U.S. District Court for the Northern District of California approved a \$142 million class action settlement in *Jabbari v. Wells Fargo & Co*, No. 15-cv- 02159-VC.²⁷⁵⁰
260. The *Jabbari* settlement class included "All Persons for whom Wells Fargo or Wells Fargo's current or former subsidiaries, affiliates, principals, officers, directors, or employees opened an Unauthorized Account or submitted an Unauthorized Application, or who obtained Identity Theft Protection Services from Wells Fargo during the period from May 1, 2002 to April 20, 2017."²⁷⁵¹
261. In a June 15, 2018 Wells Fargo press release about the *Jabbari* settlement, former Bank CEO Tim Sloan stated: "The court's approval of the broad and far-reaching \$142 million settlement agreement is a significant step forward in making things right for our customers and further restoring trust with all of Wells Fargo's stakeholders. . . . We are pleased with this decision as it supports our efforts to help customers impacted by improper retail sales practices and ensures they have every opportunity for remediation."²⁷⁵²
262. Under the *Jabbari* settlement, "Claimants will be reimbursed from the Net Settlement Amount for out-of-pocket losses stemming from Unauthorized Accounts and Unauthorized Applications. Such out-of-pocket losses shall consist of two components: (1) increased borrowing cost due to credit score impact as a result of a Credit Analysis Account ('Credit Impact Damages'); and (2) fees assessed by Wells Fargo in connection with certain Unauthorized Accounts."²⁷⁵³
263. On September 8, 2016, the Bank was fined \$185 million by the OCC, the Consumer Financial Protection Bureau, and the Office of the Los Angeles City Attorney in connection with its sales practices.²⁷⁵⁴
264. On February 2, 2018, the Board of Governors of the Federal Reserve imposed on Wells Fargo an "asset cap" limiting the Bank's ability to increase in asset size

²⁷⁴⁸ MSD-1 at 31 ¶ 32.

²⁷⁴⁹ MSD-542; Julian Amended Answer ¶ 26; MSD-665.

²⁷⁵⁰ MSD-665; see also Julian Amended Answer ¶ 173.

²⁷⁵¹ MSD-665.

²⁷⁵² MSD-666.

²⁷⁵³ MSD-664.

²⁷⁵⁴ MSD-667; MSD-52; MSD-343; MSD-344.

because it “pursued a business strategy that emphasized sales and growth without ensuring that senior management had established and maintained an adequate risk management framework commensurate with the size and complexity of the Firm, which resulted in weak compliance practices.”²⁷⁵⁵

265. The “asset cap” has had a significant adverse financial impact on the Bank.²⁷⁵⁶

266. On October 22, 2018, Wells Fargo was fined \$65 million by the Office of the Attorney General of the State of New York in connection with its sales practices.²⁷⁵⁷

267. On December 28, 2018, the Bank was fined \$575 million by all 50 state Attorneys General and the District of Columbia in connection with its sales practices and related matters.²⁷⁵⁸

268. By July 11, 2019, when former Bank CEO Tim Sloan testified before the OCC, he estimated the total financial impact of the sales practices scandal on the Bank to be already “in the tens of billions of dollars, when you add -- the most significant impact was one that we were referring to earlier, and that was the impact of the stock price. We really missed out on recovery.”²⁷⁵⁹

269. The Company’s stock price has significantly lagged its peers since September 8, 2016, the date of the sales practices settlements with the OCC, CFPB, and City Attorney of Los Angeles.²⁷⁶⁰

270. The Bank has also expended significant sums of money on lawyers and consultants in connection with its sales practices. From the fourth quarter of 2016 through the first quarter of 2018, the Bank paid legal fees and consulting costs of at least \$169 million related to its sales practices.²⁷⁶¹

271. The Bank’s 10-Q SEC filing dated August 2, 2019 includes the following statement: “[T]he Company establishes accruals for legal actions when potential losses associated with the actions become probable and the costs can be reasonably estimated. The high end of the range of reasonably possible potential losses in excess of the Company’s accrual for probable and estimable losses was approximately \$3.9 billion as of June 30, 2019.”²⁷⁶²

²⁷⁵⁵ MSD-668; MSD-679.

²⁷⁵⁶ MSD-267 (NBE Smith Expert Report) at ¶ 148(e); MSD-669 (noting the Bank “has missed out on roughly \$4 billion in profits -- and counting -- since the cap was imposed”).

²⁷⁵⁷ MSD-670; MSD-673; MSD-678.

²⁷⁵⁸ MSD-671; MSD-672.

²⁷⁵⁹ MSD-289A (Sloan Tr.) at 260:8-16.

²⁷⁶⁰ MSD-658 (Pocock Expert Report) at 5, 13-14; MSD-267 (NBE Smith Expert Report) at 148(f); MSD-289A (Sloan Tr.) at 256:25-257:8; see also MSD-257 (NBE Coleman Expert Report) at ¶ 115.

²⁷⁶¹ MSD-564 (Champion Decl.); MSD-267 (NBE Smith Expert Report) at ¶ 148; MSD-289A (Sloan Tr.) at 255:10-18.

²⁷⁶² Julian Amended Answer ¶ 184; McLinko Amended Answer ¶ 184.

272. On February 20, 2020, the Bank was fined \$3 billion by the U.S. Department of Justice and U.S. Securities and Exchange Commission in connection with its sales practices.²⁷⁶³
273. In a February 21, 2020 Wells Fargo press release related to their \$3 billion Deferred Prosecution Agreement with the DOJ and SEC, the Bank's CEO said: "The conduct at the core of today's settlements — and the past culture that gave rise to it — are reprehensible and wholly inconsistent with the values on which Wells Fargo was built. Our customers, shareholders and employees deserved more from the leadership of this Company."²⁷⁶⁴
274. Wells Fargo's reputation was significantly impacted as a result of the sales practices misconduct problem.²⁷⁶⁵
275. According to the Bank's own research, the Bank's favorability and trustworthiness scores declined significantly between September and October 2016. As of May 2017, Wells Fargo's favorability and trustworthiness scores remained "near the bottom."²⁷⁶⁶
276. In 2017, the Bank fell to last place in a bank reputation survey conducted by the *American Banker*/Reputation Institute. According to the *American Banker*, the Bank's reputation score "went into free fall . . . [and was] by far the lowest of any bank." It added, "Wells Fargo's image is in tatters — and will likely remain so for some time." Wells Fargo's declining reputation score was attributed to the sales practices scandal.²⁷⁶⁷
277. In an August 4, 2017 news release, former Wells Fargo CEO Tim Sloan acknowledged the reputational damage resulting from the Bank's sales practices: "Rebuilding trust became our top priority when I became CEO last October. That's when we began our recovery from the reputation damage we sustained from unacceptable retail sales practices in the Community Bank."²⁷⁶⁸
278. In explaining how the Bank's sales practices misconduct problem "so clearly harmed [the Bank's] reputation," former Wells Fargo CEO Tim Sloan testified before the OCC: "Well, prior to [the sales practices scandal], Wells Fargo had a very stellar reputation in terms of serving our customers, serving all of our stakeholders. And because of the mistakes that we made related to sales practices, we saw significant criticism on the part of a number of those stakeholders."²⁷⁶⁹

²⁷⁶³ MSD-1 at 1-4; MSD-674.

²⁷⁶⁴ MSD-674.

²⁷⁶⁵ MSD-267 (NBE Smith Expert Report) at ¶ 149; MSD-257 (NBE Coleman Expert Report) at ¶¶ 114, 117; MSD-289A (Sloan Tr.) at 43:15-23; MSD-565; MSD-675.

²⁷⁶⁶ MSD- 565.

²⁷⁶⁷ MSD-675; Julian Amended Answer ¶ 175.

²⁷⁶⁸ MSD-676.

²⁷⁶⁹ MSD-289A (Sloan Tr.) at 43:15-23.

279. On May 7, 2018, the Bank launched its “Re-Established” marketing campaign “to emphasize the company’s commitment to re-establish trust with stakeholders and to demonstrate how Wells Fargo is transforming as it emerges from a challenging period in its history.”²⁷⁷⁰
280. The “Re-Established” marketing campaign cost the Bank hundreds of millions of dollars.²⁷⁷¹
281. The sales practices misconduct problem also negatively affected the Bank’s ability to attract new customers. The current Head of the Community Bank Mary Mack testified on October 26, 2018 that the scandal hampered the ability of the Community Bank to attract customers.²⁷⁷² Similarly, former Wells Fargo CEO Tim Sloan testified before the OCC on July 11, 2019 that, as a result of the sales practices scandal, “on the retail side of the bank we clearly haven’t grown as many new customers.”²⁷⁷³

3. Conclusions of Law

Requirements to Support a Section 8(e) Prohibition Order

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

To issue a prohibition order pursuant to section 1818(e)(1), the Comptroller must make each of the following three findings: “(1) There must be a specified type of misconduct—violation of law, unsafe or unsound practice, or breach of fiduciary duty; (2) The misconduct must have a prescribed effect—financial gain to the respondent or financial harm or other damage to the institution; and (3) The misconduct must involve culpability of a certain degree—personal dishonesty or willful or continuing disregard for the safety or soundness of the institution.”²⁷⁷⁴ “Stated more succinctly, the Board must prove (1) an improper act, (2) that had an impermissible effect, and (3) was accompanied by a culpable state of mind.”²⁷⁷⁵

The “misconduct” prong may be satisfied by a finding of violation of law or regulation, unsafe or unsound practices, or breach of fiduciary duty.

An *unsafe or unsound practice* is “one that is contrary to generally accepted standards of prudent operations, the possible consequence of which, if continued, would be abnormal risk or

²⁷⁷⁰ MSD- 677; Julian Amended Answer ¶ 178; McLinko Amended Answer ¶ 178.

²⁷⁷¹ MSD-293A (Hardison Tr.) at 36:14-38:18; MSD-289A (Sloan Tr.) at 254:3-15.

²⁷⁷² MSD-472 (Mack Tr.) at 241:16-242:1.

²⁷⁷³ MSD-289A (Sloan Tr.) at 257:18-23.

²⁷⁷⁴ *In re Vasa*, 81 Fed. Res. Bull. 1171, 1995 WL 736814, at *1-2 (Dec. 1995).

²⁷⁷⁵ *Michael v. FDIC*, 687 F.3d 337, 349 (7th Cir. 2012).

loss or damage to the institution its shareholders, or the insurance fund.”²⁷⁷⁶

There are two overarching *fiduciary duties* applicable in this context: the duty of care and the duty of loyalty.²⁷⁷⁷ The duty of loyalty requires fiduciaries to “put the interests of the bank before their own, and not use their positions at the bank for their own personal gain.”²⁷⁷⁸ “Self-dealing, conflicts of interest, or even divided loyalties are inconsistent with fiduciary responsibilities.”²⁷⁷⁹ “A crucial component of the duty of loyalty is the duty of candor, which requires that corporate fiduciaries disclose all material information relevant to corporate decisions from which they may derive a personal benefit.”²⁷⁸⁰ Omissions are sufficient to trigger a violation of this duty.²⁷⁸¹

A breach of the fiduciary duty of care is shown when a banker fails to act in good faith and in a manner reasonably believed to be in the bank’s best interest.²⁷⁸² It includes the obligation to act diligently, prudently, honestly and carefully in carrying out their responsibilities. It also requires the proper supervision of subordinates, a knowledge of state and federal banking laws, and the constant concern for the safety and soundness of the bank.²⁷⁸³

The record reflects Ms. Russ Anderson engaged in unsafe or unsound practices and breached fiduciary duties she owed to the Bank.

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.

The record reflects the Bank has suffered and will probably continue to suffer financial

²⁷⁷⁶ See, e.g., *In re Fletcher*, FRB Nos. 17-007-E-I, 17-007-CMP-I, 2018 WL 395574, at *5 (Jan. 4, 2018) (quoting *In re Salmon*, 84 Fed. Res. Bull. 807, 1998 WL 609758, at *3 n.3 (Sept. 1998)) (emphasis in original); see also *In re ****, FRB No. AA-EC-87-88, 1988 WL 427510, at *8 (Jan. 1, 1988) (same).

²⁷⁷⁷ *In re Ellsworth*, OCC Nos. AA-EC-11-41 and AA-EC-11-42, 2013 WL 3963708, at *34 (June 25, 2013).

²⁷⁷⁸ *In re Ellsworth*, at *35 (citing *Seidman v. OTS*, 37 F.3d 911, 933-34 (3d Cir. 1994)).

²⁷⁷⁹ *Michael v. FDIC*, 687 F.3d 337, 351 (7th Cir. 2012) (quotation omitted) (upholding prohibition order assessment of civil monetary penalties under 12 U.S.C. § 1818).

²⁷⁸⁰ *In re Ellsworth*, 2013 WL 3963708, at *35 (citations omitted).

²⁷⁸¹ *De La Fuente II v. FDIC*, 332 F.3d 1208, 1222 (9th Cir. 2003) (“It is well established that a person can breach a fiduciary duty by failing to disclose material information, even if not asked”)

²⁷⁸² *In re Ellsworth*, 2016 WL 11597958, at *15 (citing *Michael v. FDIC*, 687 F.3d 337, 350-51 (7th Cir. 2012)); *In re Bush*, No. OTS AP 91-16, 1991 WL 540753, at *4 n.3 (Apr. 18, 1991) (citing cases) (final order) (“[O]fficers and directors of depository institutions are held to a strict fiduciary duty to act in the best interests of the institution, its shareholders and its depositors.”)

²⁷⁸³ *In re Grubb*, Nos. FDIC-88-282K, FDIC-89-111e, 1992 WL 813163, at *28 (Aug. 25, 1992) (final decision) *aff’d sub nom. Grubb v. FDIC*, 34 F.3d 956 (10th Cir. 1994).

loss and reputational damage; that the interests of its depositors have been prejudiced; and that by her breaches of fiduciary duties Ms. Russ Anderson received financial gain in the form of compensation paid while she was breaching those duties.

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.

The record reflects Ms. Russ Anderson deliberately withheld from the Bank’s Board and OCC examiners material information that would have identified the root cause of sales practices misconduct by the Community Bank’s team members. Preponderant evidence demonstrated that between 2013 and 2016 while serving as the Community Bank’s Group Risk Officer and holding multiple committee positions that required the disclosure of information known to her indicating inadequate controls over risks associated with such misconduct, Ms. Russ Anderson withheld that information and failed to take steps that would have identified the root cause of such misconduct and mitigated the adverse effects of that misconduct.

Upon a sufficient showing that Ms. Russ Anderson engaged in unsafe or unsound practices and breached fiduciary duties she owed to the Bank, the “misconduct” prong has been met.

Preponderant credible evidence established that Ms. Russ Anderson’s 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, and prejudiced depositors’ interests, and gave financial gain and other benefits to Ms. Russ Anderson, meeting the “effects” prong.

Preponderant credible evidence established that the unsafe or unsound practices and breaches of fiduciary duties 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 shown in Enforcement Counsel’s Proposed Prohibition Order that accompanied their Post-Hearing Brief and Proposed Findings of Fact and Conclusions of Law at Appendix A.

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.

6. Assessment of Civil Money Penalties

Examiner Smith reported that Respondents Russ Anderson, Julian, and McLinko were among the most senior officers of Wells Fargo, one of the largest financial institutions in the world.²⁷⁸⁴ She opined that Ms. Russ Anderson had a unique and important responsibility with respect to the Bank's longstanding, widespread, and systemic sales practices misconduct problem.²⁷⁸⁵ She reported that Ms. Russ Anderson knew about the problem and its root cause.²⁷⁸⁶ She opined that notwithstanding this knowledge, Ms. Russ Anderson failed her respective responsibilities.²⁷⁸⁷

Examiner Smith opined that each Respondent individually failed to identify, escalate, and address the sales practices misconduct problem continuously and repeatedly for years.²⁷⁸⁸ In Examiner Smith's opinion, these failures resulted in the opening of millions of unauthorized accounts, and billions of dollars of financial losses and massive reputational damage to the Bank.²⁷⁸⁹ She opined that Ms. Russ Anderson received financial benefit as a result of the Bank's improper sales model.²⁷⁹⁰

Examiner Candy opined that Ms. Russ Anderson had insight into the sales practices misconduct problem, giving rise to responsibilities that required her to take action to minimize and address the associated risks, and required that she use her authority and stature as GRO and committee member to effectuate change.²⁷⁹¹ She opined that Ms. Russ Anderson failed to fulfill

²⁷⁸⁴ EC MSD Ex. 267 (Report of NBE Smith) at ¶159.

²⁷⁸⁵ *Id.*

²⁷⁸⁶ *Id.*

²⁷⁸⁷ *Id.*

²⁷⁸⁸ *Id.*

²⁷⁸⁹ *Id.*

²⁷⁹⁰ *Id.*

²⁷⁹¹ EC MSD Ex. 269 (Report of NBE Candy) at ¶217

her important responsibilities and that her conduct and failures perpetuated the sales practices misconduct problem and enabled ongoing illegal activity at the Bank.²⁷⁹²

Examiner Candy reported that the OCC considers a number of statutory and interagency factors in determining the amount of a civil money penalty (“CMP”) to assess to an individual.²⁷⁹³ These include: (1) the size of the financial resources and good faith of the person; (2) the gravity of the violation; (3) the history of previous violations; (4) such other matters as justice may require; (5) evidence that the violations were intentional or committed with disregard of the law or consequences to the institution; (6) the duration and frequency of the misconduct; (7) the continuation of the misconduct after the respondent was notified or, alternatively, its immediate cessation and correction; (8) the failure to cooperate with the agency in effecting early resolution of the problem; (9) concealment of the misconduct; (10) 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; (11) the respondent’s financial gain or other benefit from the misconduct; (12) any restitution paid by the respondent for the losses; (13) any history of previous misconduct, particularly where similar to the actions under consideration; (14) previous criticism of the institution or individual for similar actions; (15) presence or absence of a compliance program and its effectiveness; (16) tendency to engage in violations of law, unsafe or unsound practices or breaches; and (17) the existence of agreements, commitments, orders or conditions imposed in writing intended to prevent violations.²⁷⁹⁴

In his review of these factors, Deputy Comptroller Coleman noted that Title 12 U.S.C 1818(i) permits the assessment of a CMP on a per-violation and per-day basis.²⁷⁹⁵ Title 12 U.S.C. 1818(i)(2)(B) authorizes the OCC to assess a CMP of “of not more than \$25,000 for each day during which such violation, practice, or breach continues.”²⁷⁹⁶ Examiner Coleman opined that each Respondent engaged in a repeated pattern of reckless unsafe and unsound practices and breaches of their fiduciary duties over a period of many years, and calculated that even if the OCC were to assess Respondents based on a single violation over a single year, the maximum CMP would exceed \$18 million.²⁷⁹⁷

²⁷⁹² *Id.* at ¶217.

²⁷⁹³ *Id.* at ¶215, citing 1818(i)(2)(G); and Federal Financial Institutions Examination Council’s (FFIEC) “Interagency Policy Regarding the Assessment of Civil Money Penalties by the Federal Financial Institutions Regulatory Agencies” transmitted in OCC Bulletin 1998-32, “Civil Money Penalties: Interagency Statement” (July 24, 1998).

²⁷⁹⁴ EC MSD Ex. 257 (Report of NBE Coleman) at ¶119, citing 12 U.S.C. § 1818(i)(2)(G) and Interagency Policy Regarding the Assessment of Civil Money Penalties by the Federal Financial Institutions Regulatory Agencies, 63 Fed. Reg. 30227, (June 3, 1998).

²⁷⁹⁵ EC MSD Ex. 257 (Report of NBE Coleman) at ¶127.

²⁷⁹⁶ *Id.*, noting that 12 C.F.R. § 19.240 provides for annual adjustments to this amount for inflation. “The current Tier 2 CMP maximum is \$51,222 per violation per day. The per-day maximum for violations that occurred between December 6, 2012 and November 2, 2015 is \$37,500.” *Id.*

²⁷⁹⁷ EC MSD Ex. 257 (Report of NBE Coleman) at ¶127.

Examiner Crosthwaite reported that the OCC considers a number of statutory and interagency factors in determining the amount of a civil money penalty (“CMP”) to assess to an individual.²⁷⁹⁸ She reported that one such factor is the Respondent’s ability to pay the CMP. She reported that there is no evidence that any of these Respondents lack the financial resources to pay the assessed CMP or a greater amount.²⁷⁹⁹

Examiner Crosthwaite reported that each Respondent had many opportunities to submit a personal financial statement or other evidence showing that their financial resources should mitigate the CMP but each chose not to.²⁸⁰⁰ She reported that as a result, the OCC assumes the Respondents have the ability to pay CMPs in the assessed amounts.²⁸⁰¹ Even without relying on that assumption, from her review of the Respondents’ compensation information received from the Bank, Examiner Crosthwaite opined that each of the Respondents has the ability to pay the CMPs in the assessed amounts.²⁸⁰²

Examiner Coleman noted the assessed CMPs or even higher CMPs are appropriate to serve the purpose of deterrence.²⁸⁰³ He reported that an important purpose of a CMP is to function as a deterrent.²⁸⁰⁴ Examiner Coleman reported that each Respondent was a senior executive within the Bank, accepted significant responsibility, and was well compensated.²⁸⁰⁵ Given the duration and scope of sales practices misconduct problem, Examiner Coleman opined that significant penalties are necessary to deter these Respondents or others in the industry from similar misconduct.²⁸⁰⁶ Examiner Coleman asserted that if CMPs are insufficient, bank officers might reasonably conclude that ignoring the harm caused by a profitable business model is the prudent and profitable course of action.²⁸⁰⁷ He asserted that CMPs must be high enough to change that calculation; to encourage other bank executives to identify significant problems and escalate and address them, even if doing so may be unwelcome to their colleagues or senior management.²⁸⁰⁸

²⁷⁹⁸ EC MSD Ex. 268 (Report of NBE Crosthwaite) at ¶131, citing 12 U.S.C. § 1818(i)(2)(G) and interagency policy.

²⁷⁹⁹ EC MSD Ex. 268 (Report of NBE Crosthwaite) at ¶131.

²⁸⁰⁰ *Id.*

²⁸⁰¹ *Id.*

²⁸⁰² *Id.*

²⁸⁰³ EC MSD Ex. 257 (Report of NBE Coleman) at ¶130.

²⁸⁰⁴ *Id.*, citing OCC PPM 5000-7, Civil Money Penalties (November 13, 2018) at 3 (“A CMP may serve as a deterrent to future violations, unsafe or unsound practices, and breaches of fiduciary duty, by the IAP or institution against which the CMP is assessed and by other IAPs and institutions.”)

²⁸⁰⁵ EC MSD Ex. 257 (Report of NBE Coleman) at ¶130.

²⁸⁰⁶ *Id.*

²⁸⁰⁷ *Id.*

²⁸⁰⁸ *Id.*

Upon consideration of all of the statutory and interagency factors, Examiner Candy opined that the CMPs in the assessed amounts are appropriate.²⁸⁰⁹ Specifically, Examiner Candy opined that a CMP of at least \$5,000,000 against Respondent Russ Anderson is warranted. Further, she opined that *higher* CMPs against Ms. Russ Anderson would be consistent with and supported by the evidence.²⁸¹⁰

Evidence adduced during the hearing established the following:

(1) *the size of the financial resources and good faith of the person*: The record reflects the absence of good faith on Ms. Russ Anderson's part, where in her conduct prior to the issuance of the Notice of Charges she persistently failed to provide timely material information to the Bank's Chief Risk Officer, its Board of Directors, and the OCC examiners, factors warranting a high penalty. Further, by presenting false and unreliable testimony throughout the proceeding, Ms. Russ Anderson provided evidence of a lack of good faith that was not available at the time the Notice of Charges was issued. Further, by offering uncorroborated and incomplete information regarding her financial resources, Ms. Russ Anderson has deprived the Tribunal and the Comptroller of material information regarding her financial resources.

(2) *the gravity of the violation*: the record reflects the risks of financial loss and harm to the Bank's reputation were aggravating conditions warranting a high penalty – and that those conditions worsened following the issuance of the Notice of Charges.

(3) *the history of previous violations*: there is nothing in the record establishing a history of violations by Ms. Russ Anderson preceding the misconduct alleged in the Notice of Charges.

(4) *such other matters as justice may require*: The record reflects that through her testimony during the hearing, Ms. Russ Anderson repeatedly sought to evade answering questions presented during cross-examination and provided answers that directly contradicted her prior written statements, including averments she included in the responses she provided to the 15-day letter. Through her testimony during the hearing, Ms. Russ Anderson sought to deflect responsibility for her failure to provide credible challenge. This evidence was not available at the time the Notice of Charges was issued. Having been present and attentive to Ms. Russ Anderson's testimony, I find ample cause has been shown for the \$10 million penalty sought by Enforcement Counsel.

(5) *evidence that the violations were intentional or committed with disregard of the law or consequences to the institution*: The record establishes Ms. Russ Anderson's refusal to act in the Bank's interest and her failure to escalate known issues regarding the ineffective risk management controls that were in place in the Community Bank were intentional acts taken in utter disregard to the myriad adverse consequences to the Bank.

(6) *the duration and frequency of the misconduct*: The record establishes a chronic lack of effective risk-management services and credible challenge by Ms. Russ Anderson throughout a

²⁸⁰⁹ EC MSD Ex. 269 (Report of NBE Candy) at ¶216.

²⁸¹⁰ *Id.*

period that began no later than January 2013 and ended only during late 2016.

(7) *the continuation of the misconduct after the respondent was notified or, alternatively, its immediate cessation and correction*: The record reflects Ms. Russ Anderson's failure to provide effective services as the Community Bank's Group Risk Officer and member of risk-management committees persisted after she received repeated notifications of risk-management control failures and elected to take no action to mitigate those control failures.

(8) *the failure to cooperate with the agency in effecting early resolution of the problem*: The record reflects that Ms. Russ Anderson's interactions with the OCC examiners exacerbated the adverse implications of the Community Bank's risk management control failure, through her failure to exercise credible challenge to the Community Bank's first line of defense and failure to properly supervise the teams in the first line of defense responsible for identifying such failure.

(9) *concealment of the misconduct*: The record reflects Ms. Russ Anderson persistently provided to the Board and to the OCC little or no notice of the ineffectiveness of Community Bank's risk management controls, notwithstanding her position as the Community Bank's GRO and her placement on risk-management committees where the mission of those committees mandated disclosure and not concealment of known issues.

(10) *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*: The record reflects significant material losses sustained by the Bank related to team member sales practices misconduct, both financial and reputational losses, that threatened public confidence in the Bank to a significant degree, losses that were mitigated only when external auditors were employed to quantify the true scope of that harm.

(11) *the respondent's financial gain or other benefit from the misconduct*: The record reflects that Ms. Russ Anderson was able to profit from the Bank's increased income and value, where that value was increased only due to the pervasive sales practices culture that exposed the Bank to financial loss in the long run. Until those risks were exposed, Ms. Russ Anderson was highly compensated as the Community Bank's GRO, allowing her to benefit from her misconduct.

(12) *any restitution paid by the respondent for the losses*. Nothing in the record suggests Ms. Russ Anderson or anyone else has paid restitution for the Bank's losses.

(13) *any history of previous misconduct, particularly where similar to the actions under consideration*: Apart from the significant course of time over which ineffective risk management controls permitted pervasive sales practices misconduct by team members in the Community Bank, the record is silent regarding similar misconduct by Ms. Russ Anderson in her previous postings.

(14) *previous criticism of the institution or individual for similar actions*: There is no record of previous criticism of either the Bank or Ms. Russ Anderson apart from the misconduct alleged in the Notice of Charges.

(15) *presence or absence of a compliance program and its effectiveness*: Although there

is evidence in the record of the Bank's development of compliance programs after the issuance of five MRAs, two of which directly addressed the Community Bank's first line of defense, the record does not establish effective compliance programs regarding risk management control failures at the Community Bank during the relevant period, until sales goals were eliminated in 2016.

(16) *tendency to engage in violations of law, unsafe or unsound practices or breaches*: The record reflects Ms. Russ Anderson had a tendency to deny responsibility for risk-management control functions that were clearly hers to fulfill, including responsibilities arising out of her membership on critical risk-management committees.

(17) *the existence of agreements, commitments, orders or conditions imposed in writing intended to prevent violations*: The record includes written directives issued by the OCC that were intended to prevent violations, where responses from Ms. Russ Anderson and the risk-management committees on which she served could have but did not effectively address those matters requiring attention.

Upon a sufficient showing that each of these factors were considered by the OCC when arriving at such assessments,²⁸¹¹ and upon my separate review of the evidence presented during the hearing relating to each of these factors, sufficient cause has been shown to recommend the issuance of an order assessing a \$10 million civil money penalty against Ms. Russ Anderson.

7. Key Factual Findings

1. Beginning in not later than January 2013, Ms. Russ Anderson 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 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 describes 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 and goals for achieving customer satisfaction and strategic and financial objectives.

²⁸¹¹ See OCC Ex. 2377 (Declaration of OCC Acting Examiner-in-Charge Tanya K. Smith, March 23, 2021).

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, Ms. Russ Anderson 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, Ms. Russ Anderson failed to provide credible challenge to the Community Bank's leadership (including Carrie Tolstedt) regarding the Community Bank's risk culture. Between January 2013 and mid-2016, Ms. Russ Anderson failed to take effective measures to determine the root cause of sales practices misconduct by Community Bank's team members.
7. Between January 2013 and mid-2016, Ms. Russ Anderson failed to effectively escalate risk issues related to sales practices misconduct by Community Bank team members and controls over such misconduct.
8. Between late 2013 (with the publication of two L.A. Times articles regarding sales practices pressure and related misconduct by team members of the Community Bank) and mid-2016, Ms. Russ Anderson failed to take meaningful action to escalate known issues regarding controls over sales risk management and sales risk culture in the Community Bank.
9. 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, Ms. Russ Anderson 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.
10. 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.
11. 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.
12. 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.
13. Throughout 2014 to 2016, Ms. Russ Anderson was 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.

14. Throughout 2013 to mid-2016, Ms. Russ Anderson 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.
15. Between late 2013 and 2016, Ms. Russ Anderson concealed from members of the Bank's Audit & Examination Committee, its Enterprise Risk Management Committee, its Board of Directors, and the OCC examiners the extent of sales practices misconduct being committed by Community Bank team members and the inadequacy of controls related to such misconduct.
16. Throughout 2013 to 2016, Ms. Russ Anderson failed to take effective measures to identify the root cause of the risks associated with sales practices misconduct by Community Bank's team members.
17. Throughout 2013 to 2016, Ms. Russ Anderson 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.
18. Throughout 2013 to 2016, Ms. Russ Anderson 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 fiduciary duties Ms. Russ Anderson owed to the Bank.**
19. Whether or not a customer realized a financial harm, at a minimum the Bank suffered a reputational injury when a customer learns that an account had been opened that the customer did not want or request.
20. Although she was aware of reports of sales practices misconduct from across the bank branch system, Ms. Russ Anderson took no steps in early 2013 to determine the true scope and reach of such misconduct, nor did she 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 she 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 Ms. Russ Anderson owed to the Bank.**
21. October 3, 2013, the L.A. 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.
22. On December 21, 2013, the L.A. 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.

23. 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 the 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 its bankers to engage in fraudulent behavior to meet those unreachable goals.
24. 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 have 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.
25. An independent sales practices assessment commissioned by the Board in mid-2015 and shared with Ms. Russ Anderson 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 perceive 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.
26. 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, 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 from which the simulated funding occurred, or due to the Bank's set-off process.

27. 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, 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. It found that these weaknesses exposed the Bank to increased operational, compliance, regulatory, and reputational risks, and were considered unsafe or unsound banking practices.
28. Ms. Russ Anderson's fiduciary duties arose not only because of her position as the Group Risk Officer for the Community Bank, but also through the mandates of the committees on which she served. As a member of these committees, Ms. Russ Anderson had fiduciary responsibilities based on the mission of each committee. Her presence on these committees gave her the opportunity and the duty to gather information concerning risk activities. With that information, she had the duty to engage in credible challenge related to those activities. **The failure to gather such information and engage in credible challenge related to those activities constituted unsafe or unsound banking practices and constituted a breach of the fiduciary duties Ms. Russ Anderson owed to the Bank.**
29. As a member of these committees, Ms. Russ Anderson 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 her membership in these committees, throughout 2013 to 2016 Ms. Russ Anderson 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 the fiduciary duties Ms. Russ Anderson owed to the Bank.**
30. **Ms. Russ Anderson's failure to take effective steps to identify and address sales practices misconduct in the Community Bank persisted over at least four years, and expressed itself as a pattern of misconduct, one that included willful neglect of the duty to familiarize herself 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 provide credible challenge to assure team member compliance with regulatory and professional audit standards.

31. Ms. Russ Anderson'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.
32. Through her 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, Ms. Russ Anderson was able to retain her employment and receive the benefits of being a highly regarded and compensated member of the Bank's senior officer staff.
33. Although the Community Bank's business model incited misconduct, it was profitable throughout the relevant period, which benefited Ms. Russ Anderson during that same period. In addition to being able to retain his position as the Group Risk Officer for the Community Bank, by allowing the misconduct to proliferate Ms. Russ Anderson 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), Ms. Russ Anderson, month by month from 2013 through 2016, received the material financial and other benefits that came from such non-disclosure.

Conclusions of Law

1. 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 cease and desist orders under the FDI Act.
2. Preponderant evidence presented during the hearing established that Ms. Russ Anderson has engaged in unsafe and unsound practices in conducting the business of the Bank, sufficient to warrant the issuance of a prohibition order as proposed by Enforcement Counsel in their post-hearing brief.
3. Preponderant evidence presented during the hearing established that Ms. Russ Anderson engaged in misconduct by engaging in unsafe or unsound practice, breached fiduciary duties she owed to the Bank; (2) 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 (3) her misconduct involved both her personal dishonesty and her willful or continuing disregard for the safety or soundness of the Bank.

4. 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.

5. Statute of Limitations²⁸¹²

The parties assert the five-year statute of limitations in 28 U.S.C. § 2462 applies to the civil money penalty action and the cease and desist order.²⁸¹³

Enforcement Counsel have persuasively established that the cited statute does not apply to enforcement actions seeking cease and desist orders.²⁸¹⁴ As such and for the reasons cited in Enforcement Counsel's Post-Hearing Reply Brief as to Paul McLinko, the assertion is found to be without merit and the affirmative defense is denied as to limitations applicable to cease and desist actions under the Federal Deposit Insurance Act.

There is no dispute among the parties that because prohibition orders are punitive in nature the five-year limitation in 28 U.S.C. § 2462 is applicable.

Respondents argue the limitations period under Section 2462 is triggered once the elements of a claim are present.²⁸¹⁵ Enforcement Counsel respond that even if cease and desist actions are properly subject to the five-year limitation the

²⁸¹² Respondent Claudia Russ Anderson's Proposed Findings of Fact and Conclusions of Law at 149; Respondent Claudia Russ Anderson's Post-Hearing Reply Brief at 87; Respondent David Julian's Proposed Findings of Fact and Conclusions of Law at 107; Respondent David Julian's Post-Hearing Reply Brief at 92; Respondent Paul McLinko's Proposed Findings of Fact and Conclusions of Law at 119; Respondent Paul McLinko's Post-Hearing Reply Brief at 92.

²⁸¹³ Respondent David Julian's Proposed Findings of Fact and Conclusions of Law at 107.

²⁸¹⁴ See Enforcement Counsel's Post-Hearing Reply Brief as to Paul McLinko at 92-93, citing SEC v. Graham, 823 F.3d 1357, 1362 (11th Cir. 2016) ("Because injunctions are equitable, forward-looking remedies and not penalties within the meaning of § 2462, we conclude that the five-year statute of limitations is inapplicable to injunctions such as the one the SEC sought in this case."); See First Nat'l Bank of Bellaire, 697 F.2d 674 at 680-81 (5th Cir. 1983) ("Congress designed the Cease and Desist power to give the Comptroller 'a statutory means of moving quickly and effectively to require adherence to the law and cessation and correction of unsafe or improper practices.' ... In other words, the Cease & Desist power was envisioned as a means of correcting improprieties and not as a form of punitive relief."); In re ***, Nos. FDIC-83-252b&c, FDIC-84-49b, -50e, 1985 WL 303871, at *104 (Aug. 19, 1985) (final decision); In re The Stephens Security Bank, 1991 WL 789326, at *4 (FDIC Aug. 9, 1991).

²⁸¹⁵ Respondent David Julian's Proposed Findings of Fact and Conclusions of Law at 108.

continuing nature of Respondents' action permits this enforcement action, as the misconduct attributed to each Respondent continued from before the five-year period well into the five-year period.

In support of their argument, Respondents cite to *Blanton v. OCC*.²⁸¹⁶ In *Blanton*, the Court of Appeals held:

A claim generally accrues “when the factual and legal prerequisites for filing suit are in place.” *Proffitt v. Fed. Deposit Ins. Corp.*, 200 F.3d 855, 862 (D.C. Cir. 2000) (quoting *3M Co. (Minnesota Min. & Mfg.) v. Browner*, 17 F.3d 1453, 1460 (D.C. Cir. 1994)). Here, an actionable infraction consists of two elements: first, the bank official must “recklessly engage[] in an unsafe or unsound [banking] practice”; and second, the reckless practice must be “part of a pattern of misconduct.” 12 U.S.C. § 1818(i)(2)(B)(i)(II), (ii)(I). *For our purposes, then, a claim accrues each time a bank official recklessly engages in an unsafe or unsound banking practice as part of a pattern of misconduct.*

Blanton contends that the OCC's overdraft claim accrued long before June 30, 2010, because the Bank's practice of honoring Campos's overdrafts began before Blanton assumed the CEO role. But the initial onset of the Bank's ongoing (and preexisting) pattern of honoring the overdrafts did not alone trigger the limitations clock. *Rather, each instance of an unsafe or unsound practice triggers a new claim if part of a pattern of misconduct.* See *Proffitt*, 200 F.3d at 863-64.

As a result, each time the Bank, under Blanton's direction, honored a Campos overdraft without having imposed adequate risk controls, an unsafe or unsound banking practice occurred, continuing the pattern of misconduct and causing a new claim to accrue. It follows that each honored overdraft after June 30, 2010 (there were at least ten) constituted an actionable banking practice as part of a pattern of misconduct. And even though the OCC “might well have brought an action earlier,” its “failure to do so” does not make the claims it elected to bring “untimely.” *Id.* at 864.

Respondents' conduct as reported above constituted a continuous pattern of inactions, affirmative misconduct, and false and misleading reporting that was inconsistent with their respective risk management and control function responsibilities. Under the continuing violations doctrine, where one of the cognizable effects of Respondents' respective misconduct has occurred within the

²⁸¹⁶ Respondent David Julian's Proposed Findings of Fact and Conclusions of Law at 108, citing *Blanton v. OCC*, 909 F.3d 1162, 1171 (D.C. Cir 2018).

limitations period, an action to enforce Section 1818 is timely.²⁸¹⁷

Under this doctrine, a continuing violation occurs when a defendant creates a situation from which new claims continue to arise, notwithstanding that some of the defendants' specific acts fell outside the limitations period.²⁸¹⁸ Under the continuing violations doctrine, the statute of limitations under 28 U.S.C. § 2462 is tolled for a claim that otherwise would be time-barred where the violation giving rise to the claim continues to occur within the limitations period.²⁸¹⁹ I find that from the record now assembled, this is the case for all claims presented against Mr. Julian and Mr. McLinko. As such, given the facts reported above, the limitations of actions defense raised by Mr. Julian and Mr. McLinko is without merit and is denied.

Where conduct was not shown to be continuing, and where such conduct predated January 23, 2015 (the limitations period based on the January 23, 2020 filing of the Notice of Charges), 28 U.S.C. § 2462 bars enforcement action where the action seeks a prohibition order. Thus, to the extent claims based on Ms. Russ Anderson's violation of federal laws that were committed prior to January 23, 2015, those claims are barred. The record reflects, however, that allegations that supported the claims of federal law violations by Ms. Russ Anderson were based on her conduct during the February 2015 OCC examination and were not based on conduct predating January 23, 2015.

Finding insufficient factual and legal bases to support the affirmative defense based on 28 U.S.C. § 2462, the defense is without merit and is denied.

Respondents' Affirmative Defenses

Estoppel

The parties assert the Tribunal erred in striking Mr. Julian's affirmative defenses, including the defense of estoppel.²⁸²⁰ For the reasons articulated in the Tribunal's April 1, 2020 Order Regarding Enforcement Counsel's Motion to Strike Respondents' Affirmative Defenses, the assertion is found to be without merit and

²⁸¹⁷ *Proffitt v. Fed. Deposit Ins. Corp.*, 200 F.3d 855, 861 (D.C. Cir. 2000).

²⁸¹⁸ *In re Conover*, Nos. FDIC-13-214e, FDIC-13-217k, 2016 WL 10822038, at * 21 (Nov. 29, 2016) (final decision) (citing *In re Leuthe*, Nos. FDIC-95-15e, FDIC-95-16k, 1998 WL 438323, at *5 (June 26, 1998) (final decision)); *Courtney v. La Salle Univ.*, 124 F.3d 499, 505 (3d Cir. 1997) (“[I]n the case of a continuing unlawful practice, every day that the practice continues is a fresh wrong for purposes of the statute of limitations.”).

²⁸¹⁹ *Nat'l Park & Conversation Ass'n, Inc. v. Tenn Valley Auth.*, 502 F.3d 1316, 1322 (11th Cir. 2007).

²⁸²⁰ Respondent David Julian's Proposed Findings of Fact and Conclusions of Law at 109; Respondent Paul McLinko's Proposed Findings of Fact and Conclusions of Law at 143; Respondent Claudia Russ Anderson's Proposed Findings of Fact and Conclusions of Law at 150.

the contents of that Order are incorporated by this reference. The parties argue further that, with respect to the evidence presented during the hearing, the OCC provided positive assessments and feedback; that they relied upon that feedback; that the reliance was detrimental; that that the OCC now seeks to deflect blame from the OCC to the Respondents.²⁸²¹

While Respondents are not precluded from the affirmative defense of equitable estoppel, they bear an increased burden in order to prevail on their estoppel claim. “To succeed on a claim of equitable estoppel against the government, a plaintiff must not only prove all the elements of equitable estoppel, but also that the government committed affirmative misconduct.” *Charleston Hous. Auth. v. U.S. Dep’t of Agric.*, 419 F.3d 729, 739 (8th Cir.2005). Through this affirmative misconduct requirement, “[t]he Supreme Court has imposed a more stringent standard for estopping the government because there is a strong public interest in upholding the rule of law, even where hardship may result to individuals in particular cases.” *Wang*, 823 F.2d at 1276. The claimant bears the “heavy burden” of establishing that the government engaged in affirmative misconduct. *Morgan v. Comm’r*, 345 F.3d 563, 566 (8th Cir.2003).

If a claimant satisfies the affirmative misconduct requirement, he then must prove the four traditional elements of estoppel: (1) a “false representation by the government;” (2) government intent to induce the claimant to act on the misrepresentation; (3) a lack of knowledge or inability to obtain true facts on the part of the claimant; and (4) the claimant’s “reliance on the misrepresentation to his detriment.”²⁸²²

Respondents assert the government engaged in affirmative misconduct by providing “positive assessments and feedback concerning Mr. Julian and WFAS.”²⁸²³ This assertion will not support the affirmative defense relied upon by Respondents.²⁸²⁴ While the record reflects positive feedback had been provided by the OCC’s examiners, the record also reflects that the basis for that feedback was reporting by Respondents that falsely assured the OCC, the Bank’s A&E committee, and its Board of Directors that Community Bank’s risk management controls over sales practices misconduct was proactive and effective. No reliance on this body of misinformation (supplied by Mr. Julian, Ms. Russ Anderson, and Mr. McLinko directly and through their roles as members of risk management committees) can support an estoppel claim.

²⁸²¹ Respondent David Julian’s Proposed Findings of Fact and Conclusions of Law at 109.

²⁸²² *Rutten v. United States*, 299 F.3d 993, 995 (8th Cir.2002).

²⁸²³ Respondent David Julian’s Proposed Findings of Fact and Conclusions of Law at 109.

²⁸²⁴ See, *Bartlett v. U.S. Dep’t of Agric.*, 716 F.3d 464, 475–76 (8th Cir. 2013),

Upon these findings, the affirmative defense of estoppel as pleaded and as presented through the evidence adduced during the hearing is without merit and is denied.

Constitutional Violations

a. Article II²⁸²⁵

The Respondents asserted deference given to examiners under *Sunshine*²⁸²⁶ violated the Appointments Clause,²⁸²⁷ and that the presiding ALJ was not validly appointed by the appropriate head of a department and that any subsequent ratification of such appointment does not cure the deficiency. Finding an insufficient factual and legal basis has been advanced in support of this claim, I find the claims raised by Respondents to be without merit and are denied.

b. Article III²⁸²⁸

The Respondents assert this administrative enforcement action is unconstitutional. In support, they cited Respondents' Joint Motion for Summary Disposition on the Basis of Their Appointments, Removal, and Improper Signatory Defenses (May 12, 2020); Respondents' Joint Motion for Summary Disposition on the Basis of Their Article III, Seventh Amendment, and Due Process Defenses (May 12, 2020). The merits of these claims have been addressed by subsequent orders of this Tribunal, the contents of which are incorporated by reference. Upon this record, the claims raised by Respondents in these motions are denied for the reasons appearing in the record.

c. Discovery

The Respondents asserted the Tribunal erred by striking their discovery requests seeking information covered by *Brady v. Maryland*.²⁸²⁹ The merits of these claims were addressed in the Order Regarding

²⁸²⁵ Respondent David Julian's Post-Hearing Reply Brief at 93-94; Respondent Claudia Russ Anderson's Proposed Findings of Fact and Conclusions of Law at 150; Respondent Claudia Russ Anderson's Post-Hearing Reply Brief at 87; Respondent David Julian's Proposed Findings of Fact and Conclusions of Law at 123-31; Respondent David Julian's Post-Hearing Reply Brief at 98-99; Respondent Paul McLinko's Proposed Findings of Fact and Conclusions of Law at 144-47; Respondent Claudia Russ Anderson's Proposed Findings of Fact and Conclusions of Law at 150; Respondent Claudia Russ Anderson's Post-Hearing Reply Brief at 87.

²⁸²⁶ *Sunshine State Bank v. FDIC*, 783 F.2d 1580 (11th Cir. 1986).

²⁸²⁷ Julian COL ¶¶425-60.

²⁸²⁸ Respondent David Julian's Proposed Findings of Fact and Conclusions of Law at ¶¶461-66.

²⁸²⁹ Julian COL at ¶ 467.

Enforcement Counsel's Motion to Strike Portions of Respondent Julian's et al. Fourth Request for Production of OCC Documents (Oct. 28, 2020). Upon this record, the claims raised by Respondents in these motions are denied for the reasons appearing in the record.

d. Summary Disposition

The Respondents asserted the Tribunal erred in entertaining summary disposition and in ruling that Enforcement Counsel had established 356 statements of material fact concerning Mr. Julian and that only twelve of the asserted statements were controverted.²⁸³⁰ The record includes the analysis of claims presented by the parties, which analysis is incorporated by reference.²⁸³¹ Upon this record, the claims raised by Respondents in these motions are denied for the reasons appearing in the record.

e. Pretrial

The Respondents asserted the Tribunal erred in striking certain witnesses and quashing certain subpoenas addressed to those witnesses.²⁸³² The record includes an analysis of the claims presented by the parties, which analysis is incorporated by reference.²⁸³³ Upon this record, the claims raised by Respondents in these motions are denied for the reasons appearing in the record.

f. The Hearing

The Respondents asserted the Tribunal erred by making an opening statement at the start of the evidentiary hearing, on the ground that the statement constituted evidence of prejudgment.²⁸³⁴ Upon review of the record and finding the statement consisted of findings already entered into the record through the summary disposition process, I find the claim is without merit and is denied.

The Respondents asserted error in the order of hearing, including orders regarding when witnesses would be permitted to testify, the import of answers provided, whether the questions sought information beyond the scope of direct examination, examiner competence and credibility, limits on the scope of testimony permitted, the provisional admission of documentary evidence, the

²⁸³⁰ Julian COL at ¶¶ 467-74; Respondent David Julian's Post-Hearing Reply Brief at 94-98 Respondent Claudia Russ Anderson's Proposed Findings of Fact and Conclusions of Law at 150 (Due Process Clause, consultation with counsel, Summary Disposition); Respondent Claudia Russ Anderson's Post-Hearing Reply Brief at 87.

²⁸³¹ See Order Regarding Enforcement Counsel's Motions for Summary Disposition, issued July 20, 2021.

²⁸³² Julian COL at ¶¶ 475-76.

²⁸³³ Order Regarding EC's Motions to Quash Hearing Subpoenas Directed to Certain OCC Personnel and Strike Them from Respondents' Witness Lists and for Order to Show Cause, issued Aug. 18, 2021.

²⁸³⁴ Julian COL at ¶ 478.

admission of evidence for the truth of the matter asserted, the admission of evidence asserted to be not relevant, the admission of expert witness opinions, the admission of summary exhibits, the admission of prior statements, the admission of documents provided by the Bank, the admission of agreements between the Bank and other parties, the admission of certain spreadsheets, the admission of testimony regarding certain audits, the admission of or the exclusion of peer bank reports.²⁸³⁵ Upon review of the premises and finding an insufficient factual and legal basis has been presented, I find the claims are without merit and are denied.

g. ALJ Recusal

The Respondents asserted the ALJ's conduct warranted recusal.²⁸³⁶ The record includes an analysis of the claims presented by the parties, which analysis is incorporated by reference.²⁸³⁷ Upon this record, the claims raised by Respondents in these motions are denied for the reasons appearing in the record.

h. Seventh Amendment²⁸³⁸

The Respondents asserted the administrative enforcement action violated his Seventh Amendment right to a jury trial, citing in support *Tull v. United States*, 481 U.S. 412, 417, 421-422, 425 (1987); *SEC v. Lipson*, 278 F.3d 656, 662 (7th Cir. 2002); and *Jarkesy v. SEC*, 2022 WL 1563613, at *4-5 (5th Cir. May 18, 2022).

Finding an insufficient factual and legal basis has been advanced to explain and support these claims, I find the claims raised by Respondents to be without merit and are denied.

i. Proposed Recommendation for a New Hearing

The Respondents²⁸³⁹ proposed that if the Tribunal does not recommend the dismissal of the case against them, the Tribunal should recommend that the Comptroller grant a new hearing.²⁸⁴⁰ In support, they incorporated by reference Respondents' Motion for Disqualification Based on Personal

²⁸³⁵ Julian COL at ¶ 479-504; Respondent David Julian's Proposed Findings of Fact and Conclusions of Law at 123-31; Respondent David Julian's Post-Hearing Reply Brief at 98-99; Respondent Paul McLinko's Proposed Findings of Fact and Conclusions of Law at 144-47; Respondent Claudia Russ Anderson's Proposed Findings of Fact and Conclusions of Law at 150; Respondent Claudia Russ Anderson's Post-Hearing Reply Brief at 87.

²⁸³⁶ Julian COL at ¶¶ 505-08.

²⁸³⁷ See, Order Regarding Respondents' Motion for Disqualification Based on Personal Bias and Other Disqualification under 5 U.S.C. § 556(b), issued November 3, 2021, and Order Regarding Respondents' Motion for Disqualification Based on Personal Bias and Other Disqualification, issued Nov. 5, 2021.

²⁸³⁸ Respondent David Julian's Proposed Findings of Fact and Conclusions of Law at 131.

²⁸³⁹ Ms. Russ Anderson incorporated this claim by reference, see Respondent Russ Anderson's Post-Hearing Reply Brief at 87; as did Mr. McLinko, see Respondent McLinko's Post-Hearing Reply Brief at 1.

²⁸⁴⁰ Respondent Julian's Post-Hearing Reply Brief at 100.

Bias and Other Disqualification Under 5 U.S.C. § 556(b) (Oct. 15, 2021) and Respondents' Motion for Reconsideration (May 27, 2022).

I find the premises supporting this assertion to be without merit, for the reasons set forth in the Order Regarding Respondents' Objection Pursuant to 12 U.S.C. 1818(h)(1) and Motion for Reconsideration, issued on September 6, 2021, the Order Regarding Respondents' Motion for Disqualification Based on Personal Bias and Other Disqualifications under 5 U.S.C. § 556(b), issued on November 3, 2021 and the Order Regarding Respondents' Motion for Reconsideration and for Leave to File, issued on July 5, 2022. Incorporating by reference the determinations issued through these orders and finding Respondents have presented an insufficient factual and legal basis in support of the request for a new hearing, the request is denied.

6. Proposed Orders

A proposed Prohibition Order is attached, accompanied by a proposed Civil Money Penalty assessment against Ms. Russ Anderson.

Date: December 5, 2022



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

CERTIFICATE OF SERVICE

On October 20, 2022 and December 5, 2022, the Office of Financial Institution Adjudication provided hard drives containing the hearing exhibits and the certified record upon the Hearing Clerk, Office of the Comptroller of the Currency by encrypted hard drive, along with a copy of the index of the certified record, a copy of the index of exhibits, the Executive Summary, and Recommended Decision in OCC AA-EC-2019-81 regarding Respondent Claudia Russ Anderson.

Also on December 5, 2022, I served upon the parties by email transmission a copy of the index of the certified record, a copy of the index of exhibits, along with copies of the Executive Summary and Recommended Decision in OCC AA-EC-2019-81, Respondent Claudia Russ Anderson, upon:

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

In the Matter of
Claudia Russ Anderson
Former Community Bank Group Risk
Officer

OCC AA-EC-2019-81

Wells Fargo Bank, N.A.
Sioux Falls, South Dakota

**PROPOSED ORDER OF PROHIBITION AND
ORDER FOR THE ASSESSMENT OF A CIVIL MONEY PENALTY**

WHEREAS, the Office of the Comptroller of the Currency (“OCC”) initiated prohibition and civil money penalty proceedings against Claudia Russ Anderson (“Respondent”), the former Community Bank Group Risk Officer of Wells Fargo Bank, N.A. (“Bank”), pursuant to 12 U.S.C. § 1818(e) and (i), through the issuance of a Notice of Charges for Orders of Prohibition and Orders to Cease and Desist and Notice of Assessments of a Civil Money Penalty dated January 23, 2020 in *In the Matter of Carrie Tolstedt, et al.* (“Notice”) based on Respondent’s conduct related to the Bank’s sales practices misconduct problem;

WHEREAS, Respondent timely filed an Answer to the Notice and requested a hearing on February 11, 2020. Respondent filed an Amended Answer on August 7, 2020;

WHEREAS, pursuant to 12 U.S.C. §§ 1818(e) and (i) and 12 C.F.R. Part 19, a hearing was conducted before an Administrative Law Judge in Sioux Falls, South Dakota and remotely via videoconference between September 13, 2021 and January 6, 2022. Respondent was given a full opportunity to appear, present evidence, examine and cross-examine witnesses, file proposed findings of fact and conclusions of law, and file post-hearing and reply briefs;

NOW, THEREFORE, having considered the evidence presented at said hearing and the record as a whole, the arguments of both parties, and the Recommended Decision issued by the presiding Administrative Law Judge, and pursuant to the authority vested in him by the Federal Deposit Insurance Act, as amended, 12 U.S.C. § 1818, the Comptroller of the Currency (“Comptroller”) hereby issues the following prohibition and civil money penalty orders (“Order”):

ARTICLE I
JURISDICTION

(1) The Bank is an “insured depository institution” as that term is defined in 12 U.S.C. § 1813(c)(2).

(2) Respondent was an officer and employee of the Bank and was an “institution-affiliated party” of the Bank as that term is defined in 12 U.S.C. § 1813(u), having served in such capacity within six (6) years from the date of the Notice. *See* 12 U.S.C. § 1818(i)(3).

(3) The Bank is a national banking association within the meaning of 12 U.S.C. § 1813(q)(1)(A), and is chartered and examined by the OCC. *See* 12 U.S.C. § 1 *et seq.*

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

ARTICLE II
ORDER OF PROHIBITION

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

(1) With respect to the institutions and agencies set forth in paragraph (2) of this Article, Respondent hereby shall not:

- (a) participate in any manner in the conduct of their affairs;
- (b) solicit, procure, transfer, attempt to transfer, vote, or attempt to vote any proxy, consent, or authorization with respect to any voting rights;
- (c) violate any voting agreement previously approved by the “appropriate Federal banking agency,” as defined in 12 U.S.C. § 1813(q); or
- (d) vote for a director, or serve or act as an “institution-affiliated party,” as defined in 12 U.S.C. § 1813(u).

(2) The prohibitions in paragraph (1) of this Article apply to the following institutions and agencies:

- (a) any insured depository institution, as defined in 12 U.S.C. § 1813(c);
- (b) any institution treated as an insured bank under 12 U.S.C. § 1818(b)(3), (b)(4) or (b)(5);
- (c) any insured credit union under the Federal Credit Union Act;
- (d) any institution chartered under the Farm Credit Act of 1971;
- (e) any appropriate Federal depository institution regulatory agency; and
- (f) the Federal Housing Finance Agency and any Federal Home Loan Bank.

(3) The prohibitions of paragraphs (1) and (2) of this Article shall cease to apply with respect to a particular institution if Respondent obtains the prior written consent of both the OCC and the institution’s “appropriate Federal financial institutions regulatory agency,” as defined in 12 U.S.C. § 1818(e)(7)(D).

ARTICLE III

ORDER FOR CIVIL MONEY PENALTY

(1) Respondent shall pay a civil money penalty in the amount of Ten Million Dollars (\$10,000,000.00), which shall be paid in full upon the effective date of this Order.

(2) Respondent shall make payment in full via wire transfer, in accordance with instructions provided by the OCC. The docket number of this case (AA-EC- 2019-81) shall be referenced in connection with the submitted payment.

(3)

ARTICE IV

CLOSING

(1) Respondent is prohibited from seeking or accepting indemnification from any insured depository institution for the civil money penalty assessed and paid in this matter.

(2) If, at any time, the Comptroller deems it appropriate in fulfilling the responsibilities placed upon him by the several laws of the United States of America to undertake any action affecting the Respondent, nothing in this Order shall in any way inhibit, estop, bar or otherwise prevent the Comptroller from so doing.

(3) The provisions of this Order are effective at the expiration of thirty (30) days after the service of this Order by the Comptroller, through his authorized representative whose hand appears below, and shall remain effective and enforceable, except to the extent that, and until such time as, any provisions of this Order shall have been amended, suspended, waived, or terminated in writing by the Comptroller.

IT IS SO ORDERED, this ____ day of _____, 202_

Comptroller of the Currency
Office of the Comptroller of the Currency