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Secretary of the United States Department of Labor

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

EDL

THOMAS E. PEREZ, Secretary of the United States Department of Labor, Plaintiff, v. CALIFORNIA PACIFIC BANK, RICHARD CHI, AKILA CHEN, KENT CHEN, WILLIAM MO, and THE CALIFORNIA PACIFIC BANK EMPLOYEE STOCK OWNERSHIP PLAN, Defendants.	**Cv 13 3792** Civil Action No. _____ **COMPLAINT FOR ERISA VIOLATIONS**

Thomas E. Perez, Secretary of the United States Department of Labor (the "Secretary"), alleges:

1. The Secretary is charged with enforcing the provisions of Title I of the Employee Retirement Income Security Act of 1974 ("ERISA"), as amended, 29 U.S.C. § 1001, et seq. One

of ERISA's goals is to ensure "the soundness and stability of plans with respect to adequate funds to pay promised benefits." ERISA § 2(a), 29 U.S.C. § 1001(a). To protect plan assets, ERISA requires that those who manage the assets act solely, exclusively, and prudently in the interests of plan participants. ERISA § 404(a)(1), 29 U.S.C. § 1104(a)(1).

2. ERISA §§ 404(a)(1)(A), (B) and (D), 29 U.S.C. §§ 1104(a)(1)(A), (B) and (D), impose broad obligations on fiduciaries for the protection of participants and beneficiaries. These fiduciary obligations, known as the "duty of loyalty," the "duty of prudence," Reich v. Compton, 57 F.3d 270, 281 n. 16 (3d Cir., 1995), and the "duty to act in accordance with plan document[s]," Collins v. Pension and Ins. Comm. of S. Cal. Rock Prod. and Ready Mixed, 144 F.3d 1279, 1282 (9th Cir. 1998), are among "the highest known to law." Howard v. Shay, 100 F.3d 1484, 1488 (9th Cir. 1996) (quoting Donovan v. Bierwirth, 680 F.2d 263, 272 n.8 (2d Cir. 1982)).

3. When ERISA's strict fiduciary standards are not met, the Secretary has the authority to seek relief under ERISA §§ 409 and 502(a)(2) & (5), 29 U.S.C. §§ 1109 and 1132(a)(2) & (5), to rescind improper transactions, restore plan losses, recover unjust profits, and obtain other remedial and equitable relief as the court may deem appropriate.

BACKGROUND

4. This action is filed against the five fiduciaries of the California Pacific Bank Employee Stock Ownership Plan for violations of Title I of ERISA, as well as the Plan itself pursuant to Rule 19(a) of the Federal Rules of Civil Procedure.

5. Defendant California Pacific Bank (the "Bank") established the California Pacific Bank Employee Stock Ownership Plan (the "Plan") effective December 31, 1996. Fiduciaries of the Plan included the Bank, along with four individual fiduciaries: Defendants Richard Chi, Akila Chen, Kent Chen, and William Mo. These individual fiduciaries were Trustees of the Plan, as well as members of the Board of Directors of the Bank.

6. Contrary to their fiduciary duties of loyalty, prudence, and compliance with Plan Documents, these Plan fiduciaries mismanaged Plan assets on multiple occasions, causing the Plan to suffer over $1,392,088 in harm. First, after deciding to terminate the Plan in 2010, the

fiduciaries failed to liquidate and distribute Plan shares as cash in accordance with the Plan Document and with the statutory and regulatory provisions governing the Plan. Because the Plan Sponsor is not a publicly traded company, participants were thus left with shares they could not easily liquidate for cash value, if at all.

7. Second, upon receiving payment on a $132,506 account receivable owned by the Plan in 2011, the fiduciaries diverted a significant portion of that payment to the Bank, which had no claim to this Plan asset.

8. Third, in 2012, the fiduciaries transferred approximately $69,746 worth of Plan assets from the Plan to the Bank again despite the fact that the Bank had no claim to such assets.

9. Finally, over the course of four years from 2007 to 2011, the fiduciaries held Plan assets (cash) in various noninterest bearing accounts owned by the Bank, thereby providing use of those assets to the Bank without charge, and causing the Plan to lose the interest on those assets that the Plan should have otherwise earned.

10. None of these decisions by the fiduciaries was in keeping with their statutory and fiduciary duties to act solely, exclusively, and prudently in the interests of the Plan and its participants. Instead, the fiduciaries chose to manage these Plan assets in the interest of the Bank, i.e., the Plan Sponsor, to the detriment of the Plan and its participants.

JURISDICTION AND VENUE

11. This action arises under ERISA and is brought by the Secretary to obtain relief under ERISA §§ 409 and 502(a)(2) & (5), 29 U.S.C. §§ 1109 and 1132(a)(2) & (5), to redress violations and enforce the provisions of Title I of ERISA. This Court has subject matter jurisdiction over this action pursuant to ERISA § 502(e)(1), 29 U.S.C. § 1132(e)(1).

12. Venue is appropriate in the Northern District of California pursuant to ERISA § 502(e)(2), 29 U.S.C. § 1132(e)(2).

INTRADISTRICT ASSIGNMENT

13. Assignment to the San Francisco Division of the Northern District of California is appropriate pursuant to Civil L.R. 3-2(c). The Bank is headquartered in San Francisco County, and a substantial portion of the events and omissions which give rise to the claims described

below, including the fiduciaries' failure to liquidate and distribute Plan shares as cash upon termination, improper diversion of a $132,506 account receivable, transfer of Plan assets from the Plan to the Bank, and holding of Plan assets in noninterest bearing accounts at the Bank, occurred in San Francisco County.

PARTIES

14. Plaintiff, the Secretary, is vested with the authority to enforce the provisions of Title I of ERISA by, among other means, the filing and prosecution of claims against fiduciaries and other parties who violate ERISA. ERISA §§ 502(a)(2) and (5), 29 U.S.C. §§ 1132(a)(2) and (5).

15. Defendant California Pacific Bank Employee Stock Ownership Plan (the "Plan"), an employee benefit plan pursuant to ERISA § 3(3), 29 U.S.C. § 1002(3), is named as a defendant herein pursuant to Rule 19(a) of the Federal Rules of Civil Procedure solely to assure that complete relief can be granted.

16. Defendant California Pacific Bank (the "Bank"), was, at all times relevant herein, a California State Chartered Bank engaged in commercial banking and headquartered in San Francisco, California, within the Northern District of California. The Bank established the California Pacific Bank Employee Stock Ownership Plan (the "Plan") effective December 31, 1996. The Bank is the Plan Sponsor of the Plan pursuant to ERISA § 3(16)(B), 29 U.S.C. § 1002(16)(B). The Bank was identified as a named fiduciary in the Plan Document, exercised discretionary authority or discretionary control respecting management of the Plan, exercised authority or control respecting management or disposition of the Plan's assets, and had discretionary authority or discretionary responsibility in the administration of the Plan and, as such, was a fiduciary of the Plan pursuant to ERISA § 3(21)(A), 29 U.S.C. § 1002(21)(A). As a fiduciary, the Bank is a party in interest to the Plan pursuant to ERISA § 3(14)(A), 29 U.S.C. § 1002(14)(A). As the employer whose employees are covered by the Plan, the Bank is also a party in interest pursuant to ERISA § 3(14)(C), 29 U.S.C. § 1002(14)(C).

17. Defendant Richard Chi, at all times relevant herein, was the CEO of the Bank, was a member of its Board of Directors, served as the Plan Administrator (since the Plan's inception on December 31, 1996), served as a Plan Trustee (effective January 1, 2006), exercised

discretionary authority or discretionary control respecting management of the Plan, exercised authority or control respecting management or disposition of the Plan's assets, and had discretionary authority or discretionary responsibility in the administration of the Plan and, as such, was a fiduciary of the Plan within the meaning of ERISA § 3(21)(A). As of December 2010, Richard Chi owned approximately 22% of the Bank. As a fiduciary, Richard Chi is a party in interest pursuant to ERISA § 3(14)(A). As an employee, officer, and director of the Bank, Richard Chi is also a party in interest pursuant to ERISA § 3(14)(H), 29 U.S.C. § 1002(14)(H).

18. Defendant Akila Chen, at all times relevant herein, was a member of the Board of Directors of the Bank, served as a Trustee of the Plan (effective January 1, 2006), exercised discretionary authority or discretionary control respecting management of the Plan, exercised authority or control respecting management or disposition of the Plan's assets, and had discretionary authority or discretionary responsibility in the administration of the Plan and, as such, was a fiduciary of the Plan within the meaning of ERISA § 3(21)(A). As a fiduciary, Akila Chen is a party in interest pursuant to ERISA § 3(14)(A). As a director of the Bank, Akila Chen is also a party in interest pursuant to ERISA § 3(14)(H).

19. Defendant Kent Chen, at all times relevant herein, was a member of the Board of Directors of the Bank, served as a Trustee of the Plan (since at least January 1, 2005), exercised discretionary authority or discretionary control respecting management of the Plan, exercised authority or control respecting management or disposition of the Plan's assets, and had discretionary authority or discretionary responsibility in the administration of the Plan and, as such, was a fiduciary of the Plan within the meaning of ERISA § 3(21)(A). As a fiduciary, Kent Chen is a party in interest pursuant to ERISA § 3(14)(A). As a director of the Bank, Kent Chen is also a party in interest pursuant to ERISA § 3(14)(H).

20. Defendant William Mo, at all times relevant herein, was a member of the Board of Directors of the Bank, served as a Trustee of the Plan (since at least January 1, 2005), exercised discretionary authority or discretionary control respecting management of the Plan, exercised authority or control respecting management or disposition of the Plan's assets, and had discretionary authority or discretionary responsibility in the administration of the Plan and, as

such, was a fiduciary of the Plan within the meaning of ERISA § 3(21)(A). As a fiduciary, William Mo is a party in interest pursuant to ERISA § 3(14)(A). As a director of the Bank, William Mo is also a party in interest pursuant to ERISA § 3(14)(H).

21. Defendants California Pacific Bank, Richard Chi, Akila Chen, Kent Chen, and William Mo are referred to at times within this Complaint as the "Fiduciary Defendants."

ALLEGATIONS

a. Failure to Liquidate and Distribute Shares as Cash upon Termination:

22. Section 10.4 of the Plan Document provides:

> Upon termination or partial termination of the Plan and Trust by formal action of the Employer or for any other reason, or the Bank Contributions to the Plan and Trust are permanently discontinued for any reason, each effected [sic] Participant shall be 100% vested in his Accounts, and payment to such Participant shall be made in cash as soon as practicable after liquidation of the assets of the Trust but no later than one year following the date of termination.
>
> (Emphasis added.)

23. United States Department of Labor regulations also required that the participants' Bank shares be subject to a put option, which "must permit a participant to put the security to the employer," because they were not publicly traded when distributed. 29 C.F.R. § 2550.408b-3(j). In addition, Section 409(h)(1)(B) of the Internal Revenue Code provides that plan participants, entitled to a distribution from a plan of employer securities not readily tradable on an established market, have a right to require that the employer repurchase employer securities under a fair valuation formula.[1] Thus, the Trustees' December 28, 2010 resolution, the Plan Document, United States Department of Labor regulations, and the Internal Revenue Code all required the

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[1] In certain cases, Section 409(h)(3) of the Internal Revenue Code would prevent a plan sponsor that is a bank from buying back its own shares as the Bank here should have done, but no such restriction applies here. I.R.C. § 409(h)(3). In this case, the Plan Sponsor (the Bank) is not a "bank . . . prohibited by law from redeeming or purchasing its own securities." Id. The Bank has purchased its own securities multiple times in the past, with specific approval from the Federal Deposit Insurance Corporation and the State of California's Department of Financial Institutions.

Fiduciary Defendants to liquidate the Plan's assets by putting them to the Bank and then distributing the assets to participants as cash.

24. Accordingly, in a December 28, 2010 "Resolution to Terminate the California Bank Employee Stock Ownership Program by the Plan's Trustees," Defendants Akila Chen, Kent Chen, and William Mo directed the Plan Administrator, Defendant Richard Chi, "to take all necessary steps to liqu[id]ate the assets of the Plan and distribute the Plan assets as required by law." (Emphasis added.) On June 24, 2011, however, the Plan distributed 97,237 Bank shares to participant IRA accounts held at the Bank, contrary to Section 10.4 of the Plan Document, the Trustees' December 28, 2010 resolution, and the statutory and regulatory provisions applicable to the Plan.

25. Had the 97,237 shares distributed on June 24, 2011, been liquidated and distributed as cash using the Avery Company, LLC's December 31, 2009 appraisal value of $12.75 per share, Plan participants would have received a total of $1,239,771.75 in cash distributions.

b. Improper Diversion of $132,506 Account Receivable:

26. The Plan acquired a 13.3261% ownership interest in Seclusion Alcade LLC ("SA LLC") as a dividend on Bank stock held by the Plan in 2000. SA LLC's sole asset was the right to receive the proceeds from the eventual sale, after development, of 26 acres of undeveloped land in Lafayette, California.

27. On January 1, 2005, the Plan sold its ownership interest in SA LLC to Seclusion Alcade Management LLC ("SAM LLC") for a $132,506 account receivable and an option to repurchase the interest in SA LLC on or before the closing of the future sale(s) of the properties which comprised SA LLC.

28. Defendant Richard Chi served as the Manager of SAM LLC and had a 50% profit, loss, and capital interest in SAM LLC at the time, as well as a 26.3% profit, loss, and capital interest in SA LLC. As the CEO and a 16.3% owner of the Bank, he also had a significant interest in the Bank. In addition, the relevant capital accounts of both the Plan and SAM LLC were held by the Bank.

29. Defendants Akila Chen, Kent Chen, and William Mo, acting as Plan Trustees, commissioned C. Darrell Sooy of Tobin & Tobin to provide an opinion on the potential conflicts of interest in the January 1, 2005 transaction. Sooy's opinion, dated December 31, 2004, concluded: ". . . we are of the opinion that the Agreement is fair to both parties and you should be able to defend any accusations that you acted to benefit one party at the expense of the other."

30. The January 1, 2005 transaction appears to have been concealed from Plan participants. Form 5500s, Summary Annual Reports, Bank Board of Director Meeting minutes and participants' statements, among other Plan Documents, all fail to disclose or reference the January 1, 2005 transaction or the participants' right to any benefits associated with the $132,506 account receivable. During an inquiry by the Secretary in December 2010, Brian Nash, Audit Director of the Bank's external auditor, Richardson & Company, stated that he was "unaware" of the Plan's interests in SA LLC and SAM LLC.

31. Upon termination of the Plan in December 2010, Defendants Akila Chen, Kent Chen, and William Mo, acting as Plan Trustees, opted to demand payment of the account receivable rather than continue to wait to exercise the repurchase option when the SA LLC properties were eventually sold.

32. Letters were issued to participants in 2011 alerting them to the omission of their share of the account receivable and updating their termination distribution to include that benefit.

33. The full cash amount of the $132,506 account receivable was only partially distributed, as follows: On June 24, 2011, the Plan received $35,060.85 in the form of cashier's checks distributed to individual participants. On July 22, 2011, the Bank received $81,407.18. The remaining $16,037.97 was retained by SAM LLC as a final payment on a Plan loan owed to SAM LLC.

34. Even though the entire $132,506 payment was an asset of the Plan, only $35,060.85 of the payment was actually allocated to Plan participants, and $16,037.97 was expended by the Plan in order to repay a Plan loan. The remaining amount, $81,407.18 in Plan assets, was diverted to the benefit of the Bank (and therefore also to the benefit of Defendant Richard Chi,

who owned approximately 22% of the Bank at the time), but never allocated to participant accounts.

c. Transfer of Plan Assets from Plan to Bank:

35. On September 10, 2012, $69,745.93 in Plan assets were inappropriately transferred out of a Plan account to the Bank.

d. Plan Assets Held in Noninterest Bearing Accounts at the Bank:

36. The Plan earned three dividends of 10 cents per share ($11,846.40 each) in August 2007, August 2008, and November 2009, for a total of $35,539.20.[2] Once paid, these Plan dividend assets (cash) were held in eleven separate noninterest bearing accounts (DDAs) at the Bank (a separate account was held for each of the Plan's share certificates). The assets were therefore available for use by the Bank without charge.

37. Ten of these accounts held Plan assets beginning in August 2007, when the first dividend was paid. An eleventh account (the "2007 Year Richardson's Audit For ESOP Dividend," which was created to hold the dividends on the 19,237 shares reallocated to the Plan from the Bank in 2007 as the result of an IRS examination), held Plan assets starting in June 2008.

38. One distribution of $4,057.08 took place on December 27, 2010, to five participants who elected to leave the Plan and receive full distributions at that time. The rest of the Plan dividend assets remained in these accounts until June 24, 2011, when they were distributed as cash dividends to participants pursuant to the Plan's termination. Total assets in each account at the time of distribution in June 2011 were as follows:

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[2] At the time of the August 2007 dividend, the Plan only had 99,227 shares, and thus was initially paid a total of $9,922.70 for that dividend. Later that same year, the Plan share allocations were revised during an IRS examination to allocate 19,237 shares of suspended stock to participants' accounts as of January 1, 2006. As a result, a retroactive dividend payment of $1,924 was transferred to the Plan on June 26, 2008. Because these shares should have been Plan shares in August 2007 when the dividend was issued, the total interest that would have accrued on the Plan dividend assets – had they not been held in noninterest bearing accounts – is calculated as if the dividend had in fact been paid in August 2007.

Account Title	Balance
ESOP 1997	$3,000.00
ESOP 1998	$3,000.00
ESOP 1999	$3,000.00
ESOP 2000	$4500.00
ESOP 2001	$2,703.60
ESOP 2002	$780.00
ESOP 2003	$3,000.00
ESOP 2004	$1,800.00
ESOP 2005	$3,000.00
ESOP 2006 & 2007	$2,851.12
2007 Year Richardson's Audit For Esop Dividend	$3,847.40
Total:	$31,482.12

39. Interest lost by the Plan prior to distribution in June 2011 because its assets were held in these 11 noninterest bearing accounts totals approximately $4,507.64.

e. Failure to Monitor Fellow Fiduciaries

40. All four Trustees of the Plan are also members of the Bank's Board of Directors. Defendants Akila Chen, Richard Chi, and William Mo have been Directors since 1998. Defendant Kent Chen has been a Director since at least April 29, 2006.

41. Sections 8.1(a)(2) and (3) of the Plan Document provides that the Bank's Board of Directors shall appoint the Plan's Trustee, and that they shall "[p]eriodically review the performance of the Trustee." Section 8.1(c)(1) of the Plan Document provides that one of the duties of the Trustee shall be "[p]eriodically reviewing the investment of the Plan assets and the performance of the Trustee . . . " The Plan Document thus created a duty for all four individual fiduciaries (i.e., Defendants Richard Chi, Akila Chen, Kent Chen, and William Mo), each of whom is both a Director and a Trustee, to monitor the Plan Trustees they appointed and their decisions regarding the investment of Plan assets.

42. United States Department of Labor regulations also require fiduciaries who appoint trustees or other fiduciaries to review the performance of those they appoint. 29 C.F.R. § 2509.75-8 (FR-17) ("[T]rustees and other fiduciaries should be reviewed by the appointing fiduciary in such manner as may be reasonably expected to ensure that their performance has been in compliance with the terms of the plan and statutory standards...."). See also DeFazio v. Hollister, Inc., 854 F. Supp. 2d 770, 801-802 (E.D. Cal. 2012) (citing 29 C.F.R. § 2509.75-8 (FR-17); In re Calpine Corp., No. 03–1685, 2005 WL 1431506, at *3 (N.D. Cal. 2005)).

43. The Secretary uncovered no evidence that these fiduciaries periodically monitored, reviewed, or corrected the performance of their fellow fiduciaries; instead they participated in the various breaches detailed above.

ERISA VIOLATIONS

44. ERISA imposes broad obligations on fiduciaries for the protection of participants and beneficiaries, including the duties to act with prudence and undivided loyalty, solely and exclusively in the interests of plan participants. ERISA §§ 404(a)(1)(A) and (B), 29 U.S.C. §§ 1104(a)(1)(A) and (B).

45. ERISA § 404(a)(1)(D) requires fiduciaries to act "in accordance with the documents and instruments governing the plan," insofar as those documents are consistent with ERISA. 29 U.S.C. § 1104(a)(1) (D).

46. ERISA § 406(a)(1)(D) prohibits a fiduciary from causing a plan to engage in a transaction if the fiduciary knows that such transaction constitutes the transfer of plan assets to a party in interest. 29 U.S.C. § 1106(a)(1)(D).

47. ERISA § 406(b)(1) prohibits plan fiduciaries from dealing with the assets of a plan in their own interest, i.e., self-dealing. 29 U.S.C. § 1106(b)(1).

48. ERISA § 406(b)(2) prohibits plan fiduciaries from acting in a transaction involving a plan on behalf of a party whose interests are adverse to the interests of the plan or its participants or beneficiaries. 29 U.S.C. § 1106(b)(2).

49. ERISA § 408 provides exemptions for prohibited transactions that meet strict requirements designed to protect participants and beneficiaries from the conflicts of interest

inherent in all transactions prohibited by ERISA § 406. 29 U.S.C. § 1108. None of the prohibited transactions alleged herein met the terms of any prohibited transaction exemption.

50. ERISA § 403(c)(1) provides that plan assets shall never inure to the benefit of the employer, and shall be held for the exclusive purposes of providing benefits to plan participants and their beneficiaries, and defraying reasonable expenses of administering the plan. 29 U.S.C. § 1103(c)(1).

51. ERISA § 405(a) provides that fiduciaries may be held liable for harm caused by their co-fiduciaries' misconduct if (1) the fiduciaries knowingly participated in their co-fiduciaries' misconduct, (2) by the fiduciaries' failure to comply with their own fiduciary duties (such as here, by the Board of Director fiduciaries' failure to monitor the activities of the co-fiduciaries they appointed) they enabled their co-fiduciaries to commit a breach, or (3) if they had knowledge of a breach by their co-fiduciaries and they failed to make reasonable efforts under the circumstances to remedy the breach. 29 U.S.C. § 1105(a).

COUNT ONE

FAILING TO LIQUIDATE AND DISTRIBUTE SHARES AS CASH UPON TERMINATION

Violations of Duties of Loyalty, Prudence, and Compliance with Plan Documents, ERISA §§ 404(a)(1)(A), (B) and (D)

52. Paragraphs 1 through 51 are incorporated herein by this reference.

53. As set forth more fully above, Defendants Richard Chi and the Bank breached both their duty of loyalty and their duty of prudence when they chose to distribute 97,237 Bank shares to participant IRA accounts instead of liquidating the Plan's assets and distributing them as cash, in violation of Section 10.4 of the Plan Document, the December 28, 2010 Resolution to Terminate the California Bank Employee Stock Ownership Program by the Plan's Trustees, Section 409(h)(1)(B) of the Internal Revenue Code, and the regulatory requirements of 29 C.F.R. § 2550.408b-3(j).

54. In making this decision fiduciaries Richard Chi and the Bank acted in the interests of the Plan Sponsor rather than the participants and beneficiaries in violation of their duties of loyalty and prudence under ERISA §§ 404(a)(1)(A) and (B).

55. This failure to follow the Plan Document also violated ERISA § 404(a)(1)(D)'s requirement that the Plan's fiduciaries comply with terms of the Plan Documents (which also required the Bank to purchase the shares).

56. As a result of the foregoing imprudent and disloyal acts, Defendants Richard Chi and the Bank caused losses to the Plan, of which they were fiduciaries, for which they are liable pursuant to ERISA § 409(a), 29 U.S.C. § 1109(a).

57. Each of the Fiduciary Defendants is jointly and severally liable for the breaches of their co-fiduciaries alleged herein pursuant to ERISA § 405(a), 29 U.S.C. § 1105(a), because (1) the Fiduciary Defendants knowingly participated in their co-fiduciaries' misconduct, (2) as a result of the Fiduciary Defendants' failures to comply with their own fiduciary duties (including the Board of Director fiduciaries' failure to monitor the activities of the co-fiduciaries they appointed) they enabled their co-fiduciaries to commit the breaches alleged herein, and (3) the Fiduciary Defendants had knowledge of the breaches by their co-fiduciaries alleged herein and failed to make reasonable efforts under the circumstances to remedy the breaches.

COUNT TWO

IMPROPERLY DIVERTING $132,506 ACCOUNT RECEIVABLE

Violations of Duties of Loyalty and Prudence, ERISA §§ 404(a)(1)(A) and (B); Transfer of Plan Assets to a Party in Interest, ERISA § 406(a)(1)(D); Self-Dealing, ERISA § 406(b)(1); Transaction Involving a Conflict of Interest, ERISA § 406(b)(2); Causing Plan Assets to Inure to Benefit of the Employer, ERISA § 403(c)(1)

58. Paragraphs 1 through 57 are incorporated herein by this reference.

59. The Fiduciary Defendants diverted to the Bank a significant portion ($81,407.18) of the $132,506 account receivable that the Plan received as payment for the sale of its 13.3261% ownership interest in SA LLC. The Bank had no legal claim to the account receivable, and the

Fiduciary Defendants violated their duties of loyalty and prudence under ERISA §§ 404(a)(1)(A) and (B) by diverting a significant portion of this Plan asset to the Bank.

60. When the Fiduciary Defendants chose to transfer to the Bank, a party in interest, a significant portion ($81,407.18) of this Plan asset, they violated ERISA's § 406(a)(1)(D) prohibition against transferring Plan assets to a party in interest.

61. By diverting a significant portion ($81,407.18) of this Plan asset to the Bank, Defendants Richard Chi (the owner of approximately 22% of the Bank) and the Bank dealt with this Plan asset in their own interest. Defendants Richard Chi and the Bank therefore violated ERISA § 406(b)(1).

62. By diverting a significant portion ($81,407.18) of this Plan asset to the Bank, the Fiduciary Defendants acted in a transaction involving the Plan on behalf of a party (the Bank, i.e., the Plan Sponsor) whose interests are adverse to the interests of the Plan and its participants and beneficiaries. The Fiduciary Defendants therefore violated ERISA § 406(b)(2).

63. The Bank is the Plan Sponsor and the employer of participants in the Plan. When the Fiduciary Defendants allowed a large portion ($81,407.18) of the Plan's $132,506 account receivable to be diverted to the Bank, they caused those assets to inure to the benefit of the employer, not to the participants or their beneficiaries. This act therefore violated the anti-inurement provisions of ERISA § 403(c)(1).

64. As a result of the foregoing imprudent, disloyal, improper acts and prohibited transactions, the Fiduciary Defendants caused losses to the Plan, of which they were fiduciaries, for which they are liable pursuant to ERISA § 409(a), 29 U.S.C. § 1109(a).

65. Each of the Fiduciary Defendants is jointly and severally liable for the breaches of their co-fiduciaries alleged herein pursuant to ERISA § 405(a), 29 U.S.C. § 1105(a), because (1) the Fiduciary Defendants knowingly participated in their co-fiduciaries' misconduct, (2) as a result of the Fiduciary Defendants' failures to comply with their own fiduciary duties (including the Board of Director fiduciaries' failure to monitor the activities of the co-fiduciaries they appointed) they enabled their co-fiduciaries to commit the breaches alleged herein, and (3) the

Fiduciary Defendants had knowledge of the breaches by their co-fiduciaries alleged herein and failed to make reasonable efforts under the circumstances to remedy the breaches.

COUNT THREE

TRANSFERRING PLAN ASSETS FROM THE PLAN TO THE PLAN SPONSOR

Violations of Duties of Loyalty and Prudence, ERISA §§ 404(a)(1)(A) and (B); Transfer of Plan Assets to a Party in Interest, ERISA § 406(a)(1)(D); Self-Dealing, ERISA § 406(b)(1); Transaction Involving a Conflict of Interest, ERISA § 406(b)(2); Causing Plan Assets to Inure to Benefit of the Employer, ERISA § 403(c)(1)

66. Paragraphs 1 through 65 are incorporated herein by this reference.

67. The Fiduciary Defendants further violated their duties of loyalty and prudence by transferring $69,745.93 in Plan assets out of a Plan account and into a general account of the Bank on September 10, 2012. This transfer of Plan assets from the Plan to the Plan Sponsor was in the interest of the Plan Sponsor rather than the Plan, and was therefore a violation of the Fiduciary Defendants' duties of loyalty and prudence under ERISA §§ 404(a)(1)(A) and (B).

68. When the Fiduciary Defendants chose to transfer $69,745.93 in Plan assets from a Plan Account to a general account of the Bank, a party in interest, they violated ERISA's § 406(a)(1)(D) prohibition against transferring Plan assets to a party in interest.

69. By transferring $69,745.93 in Plan assets from a Plan account to the Bank, Defendants Richard Chi, an approximate 22% owner of the Bank at the time, and the Bank both dealt with these Plan assets in their own interest. Defendants Richard Chi and the Bank therefore violated ERISA § 406(b)(1) by causing the Plan to engage in this prohibited transaction.

70. When the Fiduciary Defendants transferred $69,745.93 in Plan assets from a Plan account to the Bank, they acted in a transaction involving the Plan on behalf of a party (the Bank, i.e., the Plan Sponsor) whose interests are adverse to the Plan, its participants, and its beneficiaries. The Fiduciary Defendants therefore violated ERISA § 406(b)(2) by making this transfer.

71. The Bank is the Plan Sponsor and the employer of participants in the Plan. When the Fiduciary Defendants transferred $69,745.93 in Plan assets from a Plan account to the Bank,

they caused those assets to inure to the benefit of the employer, not to the participants or their beneficiaries. This act therefore violated ERISA § 403(c)(1).

72. As a result of the foregoing imprudent, disloyal, improper acts and prohibited transactions, the Fiduciary Defendants caused losses to the Plan, of which they were fiduciaries, for which they are liable pursuant to ERISA § 409(a), 29 U.S.C. § 1109(a).

73. Each of the Fiduciary Defendants is jointly and severally liable for the breaches of their co-fiduciaries alleged herein pursuant to ERISA § 405(a), 29 U.S.C. § 1105(a), because (1) the Fiduciary Defendants knowingly participated in their co-fiduciaries' misconduct, (2) as a result of the Fiduciary Defendants' failures to comply with their own fiduciary duties (including the Board of Director fiduciaries' failure to monitor the activities of the co-fiduciaries they appointed) they enabled their co-fiduciaries to commit the breaches alleged herein, and (3) the Fiduciary Defendants had knowledge of the breaches by their co-fiduciaries alleged herein and failed to make reasonable efforts under the circumstances to remedy the breaches.

COUNT FOUR

HOLDING PLAN ASSETS IN NONINTEREST BEARING ACCOUNTS AT THE BANK

Violations of Duties of Loyalty and Prudence, ERISA §§ 404(a)(1)(A) and (B); Self-Dealing, ERISA § 406(b)(1); Transactions Involving a Conflict of Interest, ERISA § 406(b)(2); Causing Plan Assets to Inure to Benefit of the Employer, ERISA § 403(c)(1)

74. Paragraphs 1 through 73 are incorporated herein by this reference.

75. When the Fiduciary Defendants chose to hold Plan cash assets in eleven separate noninterest bearing accounts at the Bank, thereby making the cash available for use by the Bank without charge, they again violated their fiduciary duties of loyalty and prudence under ERISA §§ 404(a)(1)(A) and (B).

76. When Defendants Richard Chi, who owned approximately 22% of the Bank at the time, and the Bank chose to hold Plan cash assets in eleven separate noninterest bearing accounts at the Bank, thereby making the cash available for use by the Bank without charge, they dealt with these Plan cash assets in their own interest. Defendants Richard Chi and the Bank therefore violated ERISA § 406(b)(1)'s prohibition against self-dealing.

77. By choosing to hold Plan cash assets in eleven separate noninterest bearing accounts at the Bank, thereby making the cash available for use by the Bank without charge, the Fiduciary Defendants were acting in a transaction involving the Plan on behalf of a party (the Bank, i.e., the Plan Sponsor) whose interests are adverse to the Plan, its participants and its beneficiaries. The Fiduciary Defendants therefore violated ERISA § 406(b)(2).

78. The Bank is the Plan Sponsor and the employer of participants in the Plan. When the Fiduciary Defendants chose to hold Plan cash assets in eleven separate noninterest bearing accounts at the Bank, thereby making the cash available for use by the Bank without charge, they caused those assets to inure to the benefit of the employer, not to the participants or their beneficiaries. This act was thus a violation of ERISA § 403(c)(1).

79. As a result of the foregoing imprudent, disloyal, improper acts and prohibited transactions, the Fiduciary Defendants caused losses to the Plan, of which they were fiduciaries, for which they are liable pursuant to ERISA § 409(a), 29 U.S.C. § 1109(a).

80. Each of the Fiduciary Defendants is jointly and severally liable for the breaches of their co-fiduciaries alleged herein pursuant to ERISA § 405(a), 29 U.S.C. § 1105(a), because (1) the Fiduciary Defendants knowingly participated in their co-fiduciaries' misconduct, (2) as a result of the Fiduciary Defendants' failures to comply with their own fiduciary duties (including the Board of Director fiduciaries' failure to monitor the activities of the co-fiduciaries they appointed) they enabled their co-fiduciaries to commit the breaches alleged herein, and (3) the Fiduciary Defendants had knowledge of the breaches by their co-fiduciaries alleged herein and failed to make reasonable efforts under the circumstances to remedy the breaches.

PRAYER FOR RELIEF

WHEREFORE, the Secretary asks that this Court enter an Order:

1. Permanently removing the Fiduciary Defendants California Pacific Bank, Richard Chi, Akila Chen, Kent Chen, and William Mo as fiduciaries of the Plan;
2. Appointing an independent fiduciary, appropriately bonded pursuant to ERISA § 412, 29 U.S.C. § 1112, with control over the Plan and its assets to administer the liquidation and termination of the Plan including, but not limited to, collecting any

funds or other property recovered pursuant to this action and distributing those funds or other property to affected participants and beneficiaries;

3. Requiring the Fiduciary Defendants California Pacific Bank, Richard Chi, Akila Chen, Kent Chen, and William Mo, jointly and severally, to restore to the Plan all of the costs of the independent fiduciary to the Plan;
4. Requiring the Fiduciary Defendants California Pacific Bank, Richard Chi, Akila Chen, Kent Chen, and William Mo, jointly and severally, to restore to the Plan all losses to the Plan;
5. Requiring the Fiduciary Defendants California Pacific Bank, Richard Chi, Akila Chen, Kent Chen, and William Mo to disgorge to the Plan any financial benefit they realized as a result of the violations and any profits which they made through their use of assets of the Plan;
6. Permanently enjoining the Fiduciary Defendants California Pacific Bank, Richard Chi, Akila Chen, Kent Chen, and William Mo from ever serving, directly or indirectly, for compensation or otherwise, as a fiduciary or service provider with respect to any employee benefit plan subject to ERISA; and
7. Granting such other relief as may be equitable, just, and proper.

Dated: August 15, 2013

For the Secretary:

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