

**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

**ORDER REGARDING ENFORCEMENT COUNSEL’S MOTIONS FOR  
SUMMARY DISPOSITION<sup>1</sup>**

**Nature of the Case**

On February 20, 2020, Wells Fargo Bank, N.A. (“WFB”) and Wells Fargo & Company (“WFC”) (collectively referred to hereinafter as “Wells Fargo” or “the Company”) admitted as

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<sup>1</sup> Although the parties have submitted documents that they aver should be maintained under seal and thus not available for public review, nothing in this Order constitutes non-public information or information that must remain under seal.

true a series of facts relating to its business practices as they existed between 2002 and September 2016.<sup>2</sup> The relevant period for purposes of this Order is January 1, 2010 through December 31, 2017.<sup>3</sup>

At all relevant times, WFC owned various subsidiaries through which it operated various lines of businesses, including the wholly owned subsidiary WFB.<sup>4</sup> WFB was a national bank and financial institution under 31 U.S.C. § 5312, and its customers' deposits were insured by the Federal Deposit Insurance Corporation.<sup>5</sup>

WFC provided retail, commercial, and corporate banking services through three operating segments for management reporting purposes: the Community Bank, Wholesale Banking, and Wealth and Investment Management.<sup>6</sup> WFC offered, through WFB and its other subsidiaries, a diverse array of financial services and products to both individuals and businesses.<sup>7</sup>

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.<sup>8</sup> The Community Bank was responsible for managing many of the everyday banking products targeted to individuals and small businesses, including checking and savings accounts, certificates of deposit, debit cards, bill pay, and global remittance products.<sup>9</sup> The Community

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<sup>2</sup> Enforcement Counsel's Motion for Summary Disposition (EC MSD) Ex. 1 (Deferred Prosecution Agreement) at Exhibit A (Statement of Facts),

<sup>3</sup> Approved Joint ESI Discovery Plan approved by the parties on March 12, 2020 and adopted by the Tribunal on March 15, 2020.

<sup>4</sup> EC MSD Ex. 1, Ex. A at ¶1.

<sup>5</sup> EC MSD Ex. 1, Ex. A at ¶2.

<sup>6</sup> EC MSD Ex. 1, Ex. A at ¶3.

<sup>7</sup> EC MSD Ex. 1, Ex. A at ¶3.

<sup>8</sup> EC MSD Ex. 1, Ex. A at ¶4.

<sup>9</sup> EC MSD Ex. 1, Ex. A at ¶4.

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.<sup>10</sup> All of the accounts, products, and services referred to in this paragraph are hereinafter referred to collectively as “accounts and financial products.”<sup>11</sup>

Product groups within the Community Bank designed and managed some of these accounts and financial products, and others were designed and managed by other parts of the Community Bank.<sup>12</sup> Accounts and financial products throughout Wells Fargo were offered to consumers within a large network of branches, referred to within Wells Fargo as “stores,” as well as other channels. Employees and officers of the Community Bank referred to accounts and financial products as “solutions” to be “sold” to customers.<sup>13</sup>

The Community Bank managed the U.S. branches. The branches employed various types of employees, including tellers, who processed basic transactions and made referrals to bankers for account openings or complex transactions, and bankers, who were generally responsible for offering accounts and financial products to customers.<sup>14</sup> Branch managers reported to other managers, and all ultimately reported up to senior regional executives, called Regional Bank Executives (“RBEs”).<sup>15</sup> The RBEs generally reported directly to the head of the Community Bank.<sup>16</sup>

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<sup>10</sup> EC MSD Ex. 1, Ex. A at ¶4.

<sup>11</sup> EC MSD Ex. 1, Ex. A at ¶4.

<sup>12</sup> EC MSD Ex. 1, Ex. A at ¶4.

<sup>13</sup> EC MSD Ex. 1, Ex. A at ¶5.

<sup>14</sup> EC MSD Ex. 1, Ex. A at ¶5.

<sup>15</sup> EC MSD Ex. 1, Ex. A at ¶5.

<sup>16</sup> EC MSD Ex. 1, Ex. A at ¶5.

## The Cross-Sell Model

Beginning in 1998, Wells Fargo increased its focus on sales volume and reliance on year-over-year sales growth. A core part of this sales model was the “cross-sell strategy.”<sup>17</sup> As described externally, the cross-sell strategy called for Wells Fargo to meet all of its customers’ financial needs by focusing on selling to its existing customers additional financial products that those customers wanted, needed, and would use.<sup>18</sup> Wells Fargo represented to investors that its ability to execute successfully on its cross-selling strategy provided the Company with competitive advantage, caused an increase in revenue, and allowed it to better serve its customers.<sup>19</sup>

Wells Fargo characterized its cross-selling strategy to investors as a key component of its financial success and routinely discussed its efforts to achieve cross-sell growth. Wells Fargo described cross-selling as its “primary strategy” to achieve its “vision . . . to increase the number of our products our customers utilize and to offer them all of the financial products that fulfill their needs.”<sup>20</sup> Wells Fargo stated that cross-selling was the “cornerstone of [its] business model and key to [its] ability to grow revenue and earnings.”<sup>21</sup> It was “the foundation of our business model.”<sup>22</sup>

Wells Fargo publicly stated on numerous occasions that its sales strategy was “needs-based.”<sup>23</sup> In other words, Wells Fargo claimed that its strategy was to sell customers the accounts

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<sup>17</sup> EC MSD Ex. 1, Ex. A at ¶7.

<sup>18</sup> EC MSD Ex. 1, Ex. A at ¶7.

<sup>19</sup> EC MSD Ex. 1, Ex. A at ¶7.

<sup>20</sup> EC MSD Ex. 1, Ex. A at ¶8

<sup>21</sup> EC MSD Ex. 1, Ex. A at ¶8

<sup>22</sup> EC MSD Ex. 1, Ex. A at ¶8

<sup>23</sup> EC MSD Ex. 1, Ex. A at ¶9.

that they needed.<sup>24</sup> In its 2012 Vision and Values statement Wells Fargo stated: “We do not view any product in isolation, but as part of a full and long-lasting relationship with a customer and with that customer’s total financial needs. We start with what the customer needs—not with what we want to sell them.”<sup>25</sup> Its subsequent Vision and Values statement, published in 2015, contained similar language. In its 2015 Annual Report, Wells Fargo stated that “[o]ur approach to cross-sell is needs-based as some customers will benefit from more products, and some may need fewer.”<sup>26</sup> The Company’s 2012 through 2016 Annual Reports explicitly referred to these Vision & Values statements.<sup>27</sup>

### **The Cross-Sell Metric**

From at least 2000 until the third quarter of 2016, Wells Fargo published a Community Bank “cross-sell metric” in its Annual Reports and SEC Forms 10-Q, 10-K, and 8-K that purported to be the ratio of the number of accounts and products per retail bank household.<sup>28</sup> During investor presentations and analyst conferences, Well Fargo referred to the Community Bank’s cross-sell metric, which continued to increase over time until it flattened in Q2 2014 and then decreased in Q3 2014, as proof of its success at executing on this core business strategy.<sup>29</sup> Wells Fargo touted to investors the consistent growth of the cross-sell metric over time as demonstrative of its success at executing on its cross-selling strategy.<sup>30</sup>

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<sup>24</sup> EC MSD Ex. 1, Ex. A at ¶9.

<sup>25</sup> EC MSD Ex. 1, Ex. A at ¶9.

<sup>26</sup> EC MSD Ex. 1, Ex. A at ¶9.

<sup>27</sup> EC MSD Ex. 1, Ex. A at ¶9.

<sup>28</sup> EC MSD Ex. 1, Ex. A at ¶11.

<sup>29</sup> EC MSD Ex. 1, Ex. A at ¶11.

<sup>30</sup> EC MSD Ex. 1, Ex. A at ¶12.

Because of the centrality of the cross-sell metric to Wells Fargo’s investor narrative, Company executives were focused on maintaining cross-sell growth from at least 2007 through 2016.<sup>31</sup> The compensation of certain Company executives was impacted by cross-sell growth.<sup>32</sup>

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<sup>31</sup> EC MSD Ex. 1, Ex. A at ¶12.

<sup>32</sup> EC MSD Ex. 1, Ex. A at ¶12.

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**Implementation of Cross-Sell at the Community Bank**

From at least as early as 2002 to approximately 2013, Community Bank leadership directly or indirectly encouraged, caused, and approved sales plans that called for aggressive annual growth in a number of basic banking products, such as checking and savings accounts, debit cards, credit cards, and bill pay accounts.<sup>33</sup>

By approximately 2010, in light of existing product penetration, shifting demand, macroeconomic conditions, and regulatory developments that made certain products—such as

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<sup>33</sup> EC MSD Ex. 1, Ex. A at ¶13.

checking accounts—less profitable, the sales plans were regarded in various parts of the Community Bank as far too high to be met by selling products that customers actually wanted, needed, or would use.<sup>34</sup> Nevertheless, the number of products sold continued to be a significant criterion by which the performance of employees, ranging from tellers and bankers to RBEs, was evaluated.<sup>35</sup>

Throughout the Community Bank, managers responded to the increasing difficulty of growing sales by exerting extreme pressure on subordinates to achieve sales goals, including explicitly directing and/or implicitly encouraging employees to engage in various forms of unlawful and unethical conduct to meet increasing sales goals.<sup>36</sup> Many employees believed that a failure to meet their sales goal would result in poor job evaluations, disciplinary action, or termination.<sup>37</sup> Though there had been evidence of employees struggling to ethically meet sales goals as early as 2002, the problem became significantly more acute beginning in 2010 as the sales plans diverged further from market opportunity and managers responded by increasing pressure on employees to sell products that customers did not want or need and would not use.<sup>38</sup>

### **Unlawful and Unethical Misconduct by the Community Bank to Generate Sales**

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

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<sup>34</sup> EC MSD Ex. 1, Ex. A at ¶14.

<sup>35</sup> EC MSD Ex. 1, Ex. A at ¶14.

<sup>36</sup> EC MSD Ex. 1, Ex. A at ¶14.

<sup>37</sup> EC MSD Ex. 1, Ex. A at ¶14.

<sup>38</sup> EC MSD Ex. 1, Ex. A at ¶14.

no or low value to the customer, while believing that the customer did not actually need the account and was not going to use the account.<sup>39</sup>

Collectively, many of these practices were referred to within Wells Fargo as “gaming.”<sup>40</sup> “Gaming” was a term generally known at the Company and referred to employees’ manipulation and/or misrepresentation of sales to meet sales goals, receive incentive compensation or avoid negative consequences, such as reprimands or termination.<sup>41</sup> Gaming strategies varied widely, and included using existing customers’ identities—without the customers’ consent—to open checking and savings, debit card, credit card, bill pay, and global remittance accounts.<sup>42</sup> Many widespread forms of gaming constituted violations of federal criminal law.<sup>43</sup> The following are examples of gaming practices engaged in by Wells Fargo employees during the period from 2002 to 2016:

a. Employees created false records and forged customers’ signatures on account opening documents to open accounts that were not authorized by customers.<sup>44</sup>

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.<sup>45</sup>

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<sup>39</sup> EC MSD Ex. 1, Ex. A at ¶15.

<sup>40</sup> EC MSD Ex. 1, Ex. A at ¶16.

<sup>41</sup> EC MSD Ex. 1, Ex. A at ¶16.

<sup>42</sup> EC MSD Ex. 1, Ex. A at ¶16.

<sup>43</sup> EC MSD Ex. 1, Ex. A at ¶16.

<sup>44</sup> EC MSD Ex. 1, Ex. A at ¶16.

<sup>45</sup> EC MSD Ex. 1, Ex. A at ¶16.

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.<sup>46</sup> To achieve this “simulated funding,” employees often moved funds from existing accounts of the customers without their consent.<sup>47</sup> 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.<sup>48</sup> 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.<sup>49</sup>

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.<sup>50</sup>

e. Employees opened bill pay products without customer authorization; employees also encouraged customers to make test or “token” payments from their billpay accounts to obtain employee sales credit (which was only awarded for bill pay accounts that had made a payment).<sup>51</sup>

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<sup>46</sup> EC MSD Ex. 1, Ex. A at ¶16.

<sup>47</sup> EC MSD Ex. 1, Ex. A at ¶16.

<sup>48</sup> EC MSD Ex. 1, Ex. A at ¶16.

<sup>49</sup> EC MSD Ex. 1, Ex. A at ¶16.

<sup>50</sup> EC MSD Ex. 1, Ex. A at ¶16.

<sup>51</sup> EC MSD Ex. 1, Ex. A at ¶16.

f. Employees at times altered the customer phone numbers, email addresses, or physical addresses on account opening documents.<sup>52</sup> In some instances, employees did so to prevent the customers from finding out about unauthorized accounts, including to prevent customers from being contacted by the Company in customer satisfaction surveys.<sup>53</sup> 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.<sup>54</sup>

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.<sup>55</sup> 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.<sup>56</sup> Millions of secondary accounts and products were opened from 2002 to 2016, and many of these were never used by customers.<sup>57</sup> 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.<sup>58</sup>

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

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<sup>52</sup> EC MSD Ex. 1, Ex. A at ¶16.

<sup>53</sup> EC MSD Ex. 1, Ex. A at ¶16.

<sup>54</sup> EC MSD Ex. 1, Ex. A at ¶16.

<sup>55</sup> EC MSD Ex. 1, Ex. A at ¶17.

<sup>56</sup> EC MSD Ex. 1, Ex. A at ¶17.

<sup>57</sup> EC MSD Ex. 1, Ex. A at ¶17.

<sup>58</sup> EC MSD Ex. 1, Ex. A at ¶18.

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 increasing over time, and that these practices were the result of onerous sales goals and management pressure to meet those sales goals.<sup>59</sup>

That information was reported to Community Bank senior leadership by multiple channels.<sup>60</sup> 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.<sup>61</sup>

For example, in 2005 a corporate investigations manager described the problem as "spiraling out of control."<sup>62</sup> This reporting continued through 2016, and generally emphasized increases in various forms of sales practices misconduct.<sup>63</sup> By 2012, certain of the RBEs and their direct reports, Regional Presidents, were regularly raising objections about the sales plans.<sup>64</sup> These objections included objections regarding the levels at which the plans were set, the types and categories of products for which they incited sales, the accompanying pressure, the resulting no- or low-value accounts, and unlawful and unethical sales practices at the Community Bank.<sup>65</sup> These complaints specifically articulated that the sales goals were too high and incited Community Bank employees to sell a significant number of low-quality or valueless duplicate

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<sup>59</sup> EC MSD Ex. 1, Ex. A at ¶19.

<sup>60</sup> EC MSD Ex. 1, Ex. A at ¶20.

<sup>61</sup> EC MSD Ex. 1, Ex. A at ¶20.

<sup>62</sup> EC MSD Ex. 1, Ex. A at ¶20.

<sup>63</sup> EC MSD Ex. 1, Ex. A at ¶20.

<sup>64</sup> EC MSD Ex. 1, Ex. A at ¶21.

<sup>65</sup> EC MSD Ex. 1, Ex. A at ¶21.

products, sometimes through misconduct.<sup>66</sup> Similar complaints continued to be made until 2016.<sup>67</sup>

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 . . . .”<sup>68</sup> 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.<sup>69</sup>

### **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.<sup>70</sup> Pressure to meet those ever-increasing plans also increased during this time period.<sup>71</sup> 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.<sup>72</sup> Despite knowledge of the widespread sales practices problems, including the pervasive illegal and unethical conduct tied to the sales goals, Community Bank

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<sup>66</sup> EC MSD Ex. 1, Ex. A at ¶21.

<sup>67</sup> EC MSD Ex. 1, Ex. A at ¶21.

<sup>68</sup> EC MSD Ex. 1, Ex. A at ¶22.

<sup>69</sup> EC MSD Ex. 1, Ex. A at ¶22.

<sup>70</sup> EC MSD Ex. 1, Ex. A at ¶24.

<sup>71</sup> EC MSD Ex. 1, Ex. A at ¶24.

<sup>72</sup> EC MSD Ex. 1, Ex. A at ¶24.



senior leadership failed to take sufficient action to prevent and reduce the incidence of unlawful and unethical sales practices.<sup>73</sup>

Certain Community Bank leaders also impeded scrutiny of sales practices by Wells Fargo's primary regulator, the Office of the Comptroller of Currency ("OCC").<sup>74</sup> 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.<sup>75</sup>

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.<sup>76</sup> 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.<sup>77</sup> They nonetheless failed to advise key gatekeepers of the significant risks that the nonneeds-based selling posed to the Company.<sup>78</sup>

### **Scope of the Unlawful and Unethical Misconduct**

Between 2011 and 2016, tens of thousands of employees were the subject of allegations of unethical sales practices.<sup>79</sup> During this period, the Company referred more than 23,000 employees for sales practices investigation and terminated over 5,300 employees for customer-

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<sup>73</sup> EC MSD Ex. 1, Ex. A at ¶25.

<sup>74</sup> EC MSD Ex. 1, Ex. A at ¶27.

<sup>75</sup> EC MSD Ex. 1, Ex. A at ¶27.

<sup>76</sup> EC MSD Ex. 1, Ex. A at ¶28.

<sup>77</sup> EC MSD Ex. 1, Ex. A at ¶28.

<sup>78</sup> EC MSD Ex. 1, Ex. A at ¶28.

<sup>79</sup> EC MSD Ex. 1, Ex. A at ¶30.

facing sales ethics violations, including, in many cases, for falsifying bank records.<sup>80</sup> 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.<sup>81</sup>

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.<sup>82</sup> From 2002 to 2016, Wells Fargo opened millions of accounts or financial products that were unauthorized or fraudulent.<sup>83</sup> 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.<sup>84</sup>

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).<sup>85</sup> 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.<sup>86</sup>

### **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

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<sup>80</sup> EC MSD Ex. 1, Ex. A at ¶30.

<sup>81</sup> EC MSD Ex. 1, Ex. A at ¶30.

<sup>82</sup> EC MSD Ex. 1, Ex. A at ¶31.

<sup>83</sup> EC MSD Ex. 1, Ex. A at ¶32.

<sup>84</sup> EC MSD Ex. 1, Ex. A at ¶32.

<sup>85</sup> EC MSD Ex. 1, Ex. A at ¶32.

<sup>86</sup> EC MSD Ex. 1, Ex. A at ¶32.

accounts were eventually closed for lack of use.<sup>87</sup> 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.<sup>88</sup> This had the effect of imposing additional pressure on employees to continue gaming practices.<sup>89</sup>

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.<sup>90</sup> 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.<sup>91</sup>

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.<sup>92</sup> 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.<sup>93</sup> At the end

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<sup>87</sup> EC MSD Ex. 1, Ex. A at ¶33.

<sup>88</sup> EC MSD Ex. 1, Ex. A at ¶33.

<sup>89</sup> EC MSD Ex. 1, Ex. A at ¶33.

<sup>90</sup> EC MSD Ex. 1, Ex. A at ¶34.

<sup>91</sup> EC MSD Ex. 1, Ex. A at ¶34.

<sup>92</sup> EC MSD Ex. 1, Ex. A at ¶35.

<sup>93</sup> EC MSD Ex. 1, Ex. A at ¶35.

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.<sup>94</sup> It did so by excluding inactive global remittance accounts, in a manner inconsistent with prior practice.<sup>95</sup> It was never disclosed to investors that the product was added to the metric.<sup>96</sup>

By the end of 2013, the cross-sell metric had grown by .11 since the prior year.<sup>97</sup> 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.<sup>98</sup> 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.<sup>99</sup>

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 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.<sup>100</sup>

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.<sup>101</sup> Several months after changing its disclosure that described how the cross-sell metric was calculated to characterize the metric as "products used," Community Bank

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<sup>94</sup> EC MSD Ex. 1, Ex. A at ¶36.

<sup>95</sup> EC MSD Ex. 1, Ex. A at ¶36.

<sup>96</sup> EC MSD Ex. 1, Ex. A at ¶36.

<sup>97</sup> EC MSD Ex. 1, Ex. A at ¶36.

<sup>98</sup> EC MSD Ex. 1, Ex. A at ¶36.

<sup>99</sup> EC MSD Ex. 1, Ex. A at ¶36.

<sup>100</sup> EC MSD Ex. 1, Ex. A at ¶37.

<sup>101</sup> EC MSD Ex. 1, Ex. A at ¶40.

senior leadership began to develop an alternative metric to capture products that had been used.<sup>102</sup>The Community Bank referred to this metric internally as “active cross-sell.”<sup>103</sup> 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.<sup>104</sup> 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.<sup>105</sup>

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.<sup>106</sup>

### **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.<sup>107</sup>

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<sup>102</sup> EC MSD Ex. 1, Ex. A at ¶41.

<sup>103</sup> EC MSD Ex. 1, Ex. A at ¶41.

<sup>104</sup> EC MSD Ex. 1, Ex. A at ¶41.

<sup>105</sup> EC MSD Ex. 1, Ex. A at ¶41.

<sup>106</sup> EC MSD Ex. 1, Ex. A at ¶42.

<sup>107</sup> 12 C.F.R. § 19.36.

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.<sup>108</sup> 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.<sup>109</sup> She drafts and reviews reports of examinations, Supervisory Letters, and Conclusion Memos and oversees the preparation of such documents by other team members.<sup>110</sup> She also drafts and reviews progress reports for Enforcement Actions and Matters Requiring Attention (MRAs).<sup>111</sup>

Her job involves assessing the adequacy of those Bank functions and establishing the OCC's supervision strategy for those areas.<sup>112</sup> 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 ("Board"), management committee structure, and policies and procedures.<sup>113</sup> 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.<sup>114</sup>

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.<sup>115</sup> Her responsibilities include evaluating the following areas of the Bank: enterprise risk

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<sup>108</sup> EC MSD Ex. 269 (Report of NBE Candy) at ¶10.

<sup>109</sup> EC MSD Ex. 269 (Report of NBE Candy) at ¶10.

<sup>110</sup> EC MSD Ex. 269 (Report of NBE Candy) at ¶11.

<sup>111</sup> EC MSD Ex. 269 (Report of NBE Candy) at ¶10.

<sup>112</sup> EC MSD Ex. 269 (Report of NBE Candy) at ¶10.

<sup>113</sup> EC MSD Ex. 269 (Report of NBE Candy) at ¶10.

<sup>114</sup> EC MSD Ex. 269 (Report of NBE Candy) at ¶10.

<sup>115</sup> EC MSD Ex. 269 (Report of NBE Candy) at ¶11.

management, audit, internal controls, incentive compensation, legal, and human resources.<sup>116</sup> 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.<sup>117</sup> 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.<sup>118</sup> 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.<sup>119</sup>

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.<sup>120</sup> 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 April 2014, before transferring to the OCC's Large Bank Supervision.<sup>121</sup> 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, she 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

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<sup>116</sup> EC MSD Ex. 269 (Report of NBE Candy) at ¶11.

<sup>117</sup> EC MSD Ex. 269 (Report of NBE Candy) at ¶11.

<sup>118</sup> EC MSD Ex. 269 (Report of NBE Candy) at ¶11.

<sup>119</sup> EC MSD Ex. 269 (Report of NBE Candy) at ¶11.

<sup>120</sup> EC MSD Ex. 269 (Report of NBE Candy) at ¶3.

<sup>121</sup> EC MSD Ex. 269 (Report of NBE Candy) at ¶3.

of “3” or worse under the Uniform Financial Institutions Rating System of the Federal Financial Institutions Examination Council.<sup>122</sup>

Examiner Candy reported that she holds the following opinions as a National Bank Examiner.<sup>123</sup>

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.<sup>124</sup> 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.<sup>125</sup> 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.<sup>126</sup> In addition, the Community Bank’s controls were severely deficient and intentionally so.<sup>127</sup> This business model was recklessly unsafe or unsound and resulted in a severe and systemic sales practices misconduct problem.<sup>128</sup> (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

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<sup>122</sup> EC MSD Ex. 269 (Report of NBE Candy) at ¶3.

<sup>123</sup> EC MSD Ex. 269 (Report of NBE Candy) at page 6.

<sup>124</sup> EC MSD Ex. 269 (Report of NBE Candy) at ¶16.

<sup>125</sup> EC MSD Ex. 269 (Report of NBE Candy) at ¶16.

<sup>126</sup> EC MSD Ex. 269 (Report of NBE Candy) at ¶16.

<sup>127</sup> EC MSD Ex. 269 (Report of NBE Candy) at ¶16.

<sup>128</sup> EC MSD Ex. 269 (Report of NBE Candy) at ¶16.



customer's consent, or obtaining a customer's consent by making false or misleading representations.)<sup>129</sup>

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: 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).<sup>130</sup>

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.<sup>131</sup>

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.<sup>132</sup>

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.<sup>133</sup>

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<sup>129</sup> EC MSD Ex. 269 (Report of NBE Candy) at ¶16(a).

<sup>130</sup> EC MSD Ex. 269 (Report of NBE Candy) at ¶17.

<sup>131</sup> EC MSD Ex. 269 (Report of NBE Candy) at ¶18.

<sup>132</sup> EC MSD Ex. 269 (Report of NBE Candy) at ¶19.

<sup>133</sup> EC MSD Ex. 269 (Report of NBE Candy) at ¶20.

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.<sup>134</sup> 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.<sup>135</sup>

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.<sup>136</sup> In February 2015, she and the Operations and Compliance Team Leads examined the Community Bank's governance processes with a focus on sales practices.<sup>137</sup> The result of the February 2015 examination was an April 2015 Supervisory Letter including an MRA on sales practices governance.<sup>138</sup>

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

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<sup>134</sup> EC MSD Ex. 269 (Report of NBE Candy) at ¶21.

<sup>135</sup> EC MSD Ex. 269 (Report of NBE Candy) at ¶21.

<sup>136</sup> 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 other OCC officials. She participated in the OCC's examinations and investigations of the Bank's sales practices. Id. at ¶2.

<sup>137</sup> EC MSD Ex. 268 (Report of NBE Crosthwaite) at ¶9.

<sup>138</sup> EC MSD Ex. 268 (Report of NBE Crosthwaite) at ¶9.

to Los Angeles/Orange County.<sup>139</sup> 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.<sup>140</sup>

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.<sup>141</sup> 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.<sup>142</sup> This 230 number was drastically higher than what the Bank had previously reported to the OCC during the February 2015 exam.<sup>143</sup> She then realized that the sales practices problem was more severe and pervasive than what management, including Respondents, had communicated to the OCC.<sup>144</sup> She learned that sales practices was much more than just simulated funding and phone number changes.<sup>145</sup>

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.<sup>146</sup> Community Bank Management also had a practice of pushing two checking and two savings accounts on customers (known as the "2 for

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<sup>139</sup> EC MSD Ex. 268 (Report of NBE Crosthwaite) at ¶10.

<sup>140</sup> EC MSD Ex. 268 (Report of NBE Crosthwaite) at ¶10.

<sup>141</sup> EC MSD Ex. 268 (Report of NBE Crosthwaite) at ¶10.

<sup>142</sup> EC MSD Ex. 268 (Report of NBE Crosthwaite) at ¶10.

<sup>143</sup> EC MSD Ex. 268 (Report of NBE Crosthwaite) at ¶10.

<sup>144</sup> EC MSD Ex. 268 (Report of NBE Crosthwaite) at ¶10.

<sup>145</sup> EC MSD Ex. 268 (Report of NBE Crosthwaite) at ¶10.

<sup>146</sup> EC MSD Ex. 268 (Report of NBE Crosthwaite) at ¶10.

2” campaign).<sup>147</sup> Examiners reviewed over 300 EthicsLine complaints and a sizeable number of customer complaints, which provided detailed accounts of pervasive unsafe or unsound and fraudulent sales practices misconduct.<sup>148</sup> 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.<sup>149</sup>

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.<sup>150</sup> The Supervisory Letter highlighted the aggressive sales culture and lack of effective Bank oversight, controls, and supervision.<sup>151</sup> It also highlighted that there was a lack of transparency in the front-line Community Bank leadership team.<sup>152</sup> 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.<sup>153</sup>

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.<sup>154</sup> The EIC and Examiner Crosthwaite requested that the independent Corporate Risk function of the Bank take the lead on

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<sup>147</sup> EC MSD Ex. 268 (Report of NBE Crosthwaite) at ¶10.

<sup>148</sup> EC MSD Ex. 268 (Report of NBE Crosthwaite) at ¶10.

<sup>149</sup> EC MSD Ex. 268 (Report of NBE Crosthwaite) at ¶10.

<sup>150</sup> EC MSD Ex. 268 (Report of NBE Crosthwaite) at ¶10.

<sup>151</sup> EC MSD Ex. 268 (Report of NBE Crosthwaite) at ¶10.

<sup>152</sup> EC MSD Ex. 268 (Report of NBE Crosthwaite) at ¶10.

<sup>153</sup> EC MSD Ex. 268 (Report of NBE Crosthwaite) at ¶10.

<sup>154</sup> EC MSD Ex. 268 (Report of NBE Crosthwaite) at ¶11.

coordinating responses to OCC information requests, on scheduling meetings, and on ensuring that the OCC received all such requested information.<sup>155</sup> 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.<sup>156</sup> 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.<sup>157</sup>

In July 2015, the OCC commented on sales practices in its annual Report of Examination (“ROE”) that “[t]he 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.”<sup>158</sup>

In February 2016, the OCC received the results of the PwC report which confirmed that sales practices misconduct was occurring on systemic scale and affected more than 1.5 million customer accounts.<sup>159</sup> The PwC report, combined with the Accenture findings, confirmed the systemic nature of sales practices misconduct.<sup>160</sup> The OCC issued a Supervisory Letter in July

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<sup>155</sup> EC MSD Ex. 268 (Report of NBE Crosthwaite) at ¶11.

<sup>156</sup> EC MSD Ex. 268 (Report of NBE Crosthwaite) at ¶11.

<sup>157</sup> EC MSD Ex. 268 (Report of NBE Crosthwaite) at ¶11.

<sup>158</sup> EC MSD Ex. 268 (Report of NBE Crosthwaite) at ¶12.

<sup>159</sup> EC MSD Ex. 268 (Report of NBE Crosthwaite) at ¶13.

<sup>160</sup> EC MSD Ex. 268 (Report of NBE Crosthwaite) at ¶13.

2016, finding that the sales practices misconduct problem at Wells Fargo was unsafe or unsound.<sup>161</sup> The July 2016 Supervisory Letter ultimately supported the Sales Practices Consent Order issued against the Bank in September 2016.<sup>162</sup> 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.<sup>163</sup>

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.<sup>164</sup> 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.<sup>165</sup> 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 identify and detail significant or systemic problems in audit reports.<sup>166</sup> None of the Respondents who held leadership roles in those departments adequately performed their responsibilities with respect to the sales practices misconduct problem.<sup>167</sup> Examiner Candy opined that all Respondents failed in their responsibilities.<sup>168</sup>

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<sup>161</sup> EC MSD Ex. 268 (Report of NBE Crosthwaite) at ¶13.

<sup>162</sup> EC MSD Ex. 268 (Report of NBE Crosthwaite) at ¶13.

<sup>163</sup> EC MSD Ex. 268 (Report of NBE Crosthwaite) at ¶¶13, 52.

<sup>164</sup> EC MSD Ex. 269 (Report of NBE Candy) at ¶22.

<sup>165</sup> EC MSD Ex. 269 (Report of NBE Candy) at ¶23.

<sup>166</sup> EC MSD Ex. 269 (Report of NBE Candy) at ¶23.

<sup>167</sup> EC MSD Ex. 269 (Report of NBE Candy) at ¶23.

<sup>168</sup> EC MSD Ex. 269 (Report of NBE Candy) at ¶23.

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;<sup>169</sup> 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.<sup>170</sup> Examiner Candy opined that Respondent Russ Anderson's conduct constituted a breach of her fiduciary duty.<sup>171</sup>

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,<sup>172</sup> 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.<sup>173</sup>

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).<sup>174</sup>

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<sup>169</sup> EC MSD Ex. 269 (Report of NBE Candy) at ¶24.

<sup>170</sup> EC MSD Ex. 269 (Report of NBE Candy) at ¶24.

<sup>171</sup> EC MSD Ex. 269 (Report of NBE Candy) at ¶24.

<sup>172</sup> EC MSD Ex. 269 (Report of NBE Candy) at ¶25.

<sup>173</sup> EC MSD Ex. 269 (Report of NBE Candy) at ¶26.

<sup>174</sup> EC MSD Ex. 269 (Report of NBE Candy) at ¶27.

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.<sup>175</sup>

### **Respondents Julian and McLinko**

Examiner Candy opined that Respondent Julian and Respondent McLinko each recklessly engaged in an unsafe or unsound practice by failing to plan and manage audit activity within the Community Bank that would detect and document the ongoing sales practices misconduct problem and identify corrective action to remediate and resolve it.<sup>176</sup> She noted that audits performed under their leadership gave “effective” ratings to areas touching on sales practices, failed to include appropriate scope or sufficient testing, and this continued to be the case until the elimination of sales goals in the Community Bank.<sup>177</sup> In Examiner Candy’s opinion, this conduct constituted breaches of their fiduciary duties.<sup>178</sup>

Examiner Candy opined that Respondent Julian recklessly engaged in an unsafe or unsound practice by failing to accurately assess and appropriately incorporate risk events in incentive compensation recommendations for material risk takers and executives at the Bank from 2014 through 2016.<sup>179</sup>

Examiner Candy opined that each of the Respondents’ unsafe or unsound practices were part of a pattern of misconduct, resulted in pecuniary gain or other benefit to each of the

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<sup>175</sup> EC MSD Ex. 269 (Report of NBE Candy) at ¶28.

<sup>176</sup> EC MSD Ex. 269 (Report of NBE Candy) at ¶32.

<sup>177</sup> EC MSD Ex. 269 (Report of NBE Candy) at ¶32.

<sup>178</sup> EC MSD Ex. 269 (Report of NBE Candy) at ¶32.

<sup>179</sup> EC MSD Ex. 269 (Report of NBE Candy) at ¶33.



Respondents, and caused significant loss to the Bank.<sup>180</sup> In her opinion, civil money penalties (“CMP”) in the amount assessed against each Respondent are appropriate. In her opinion, higher CMPs against each Respondent are consistent with and supported by the evidence.<sup>181</sup>

### **Incentive Compensation Program in the Community Bank Failed to Balance Risk and Reward**

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.<sup>182</sup> The review was prompted by the City of Los Angeles lawsuit filed against Wells Fargo on May 4, 2015. SL 2015-36 specifies that our 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.<sup>183</sup> The Operating Committee consisted of the Chief Executive Officer and his direct reports.<sup>184</sup> SL 2015-36 concluded that the Bank’s management and oversight of Enterprise Sales Practices risk was weak and needed to improve.<sup>185</sup>

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.]”<sup>186</sup> SL 2015-36 specifically noted that “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

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<sup>180</sup> EC MSD Ex. 269 (Report of NBE Candy) at ¶34.

<sup>181</sup> EC MSD Ex. 269 (Report of NBE Candy) at ¶35.

<sup>182</sup> EC MSD Ex. 269 (Report of NBE Candy) at ¶37.

<sup>183</sup> EC MSD Ex. 269 (Report of NBE Candy) at ¶37.

<sup>184</sup> EC MSD Ex. 269 (Report of NBE Candy) at ¶37.

<sup>185</sup> EC MSD Ex. 269 (Report of NBE Candy) at ¶37.

<sup>186</sup> EC MSD Ex. 269 (Report of NBE Candy) at ¶37.

be reevaluated across all sales activities enterprise- wide given these events.”<sup>187</sup> SL 2015-36 required the Bank to review compensation programs to protect against incenting inappropriate behavior.<sup>188</sup>

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.<sup>189</sup> An MRA is a significant supervisory action and must be taken seriously and addressed by bank management.<sup>190</sup>

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,<sup>191</sup> and amended on November 27, 2012.<sup>192</sup> The ICRM Policy is the primary policy that governs the Bank’s incentive compensation arrangements.<sup>193</sup>

The Bank’s ICRM Policy “applies to any Wells Fargo business that pays teams members under an incentive compensation arrangement. It covers both domestic and international team members in all jurisdictions where Wells Fargo does business.”<sup>194</sup> The ICRM Policy states:

“[t]he purpose of the Incentive Compensation Risk Management Policy is to help ensure that Wells Fargo’s incentive compensation arrangements are

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<sup>187</sup> EC MSD Ex. 269 (Report of NBE Candy) at ¶37.

<sup>188</sup> EC MSD Ex. 269 (Report of NBE Candy) at ¶37.

<sup>189</sup> EC MSD Ex. 269 (Report of NBE Candy) at ¶38.

<sup>190</sup> EC MSD Ex. 269 (Report of NBE Candy) at ¶41.

<sup>191</sup> 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).

<sup>192</sup> 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).

<sup>193</sup> EC MSD Ex. 269 (Report of NBE Candy) at ¶42.

<sup>194</sup> EC MSD Ex. 269 (Report of NBE Candy) at ¶43.

aligned with appropriate risk taking – which is to balance short-term performance goals with the long-term strength and stability of the company.”<sup>195</sup>

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.”<sup>196</sup>

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.<sup>197</sup>

The Wells Fargo Risk Management Framework also emphasizes the importance of a sound incentive compensation program.<sup>198</sup> It states:

“Wells Fargo’s incentive-based compensation practices balance risk and financial reward in a manner that incents 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

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<sup>195</sup> EC MSD Ex. 269 (Report of NBE Candy) at ¶43.

<sup>196</sup> EC MSD Ex. 269 (Report of NBE Candy) at ¶43.

<sup>197</sup> EC MSD Ex. 269 (Report of NBE Candy) at ¶44.

<sup>198</sup> EC MSD Ex. 269 (Report of NBE Candy) at ¶45.

both general and tailored compensation practices. The balance of risk and reward is, and always will be, a top priority.”<sup>199</sup>

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 be the single risk management program for all incentive compensation related matters across the enterprise.”<sup>200</sup>

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.<sup>201</sup> During this review, she discovered that from 2002 through 2016, the sales goals in the Community Bank were unreasonable.<sup>202</sup> 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.<sup>203</sup>

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.”<sup>204</sup> The current year’s sales plan served as the baseline for each successive year’s sales goals, and sales goals were increased each year.<sup>205</sup> So, for example: the Community Bank’s 2012 sales plan derived from the

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<sup>199</sup> 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).

<sup>200</sup> 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).

<sup>201</sup> EC MSD Ex. 269 (Report of NBE Candy) at ¶48.

<sup>202</sup> EC MSD Ex. 269 (Report of NBE Candy) at ¶48.

<sup>203</sup> EC MSD Ex. 269 (Report of NBE Candy) at ¶48.

<sup>204</sup> EC MSD Ex. 269 (Report of NBE Candy) at ¶48.

<sup>205</sup> EC MSD Ex. 269 (Report of NBE Candy) at ¶48.

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.<sup>206</sup> However, sales practices misconduct artificially inflated the run rate, making sales goals increasingly unattainable every year.<sup>207</sup> 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.<sup>208</sup>

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 the Community Bank (“Board Report”).<sup>209</sup> 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.”<sup>210</sup>

The Board Report found that the Community Bank’s sales goals were “untenable,” “unrealistic,” and “unattainable.”<sup>211</sup> The Board Report found that, even after the Community

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<sup>206</sup> EC MSD Ex. 269 (Report of NBE Candy) at ¶48.

<sup>207</sup> EC MSD Ex. 269 (Report of NBE Candy) at ¶48.

<sup>208</sup> EC MSD Ex. 269 (Report of NBE Candy) at ¶48.

<sup>209</sup> EC MSD Ex. 269 (Report of NBE Candy) at ¶48, 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].

<sup>210</sup> EC MSD Ex. 269 (Report of NBE Candy) at ¶48, citing *Board Report* at 41.

<sup>211</sup> EC MSD Ex. 269 (Report of NBE Candy) at ¶49, citing *Board Report* at 5, 19, 39.

Bank made mid-year downward adjustments to sales goals in 2013 and 2014, “they were still set at an unachievable level.”<sup>212</sup> These findings are consistent with Examiner Candy’s own conclusions based on her supervisory work and evidence she reviewed during the investigation and litigation.<sup>213</sup>

In October 2015, Accenture, a firm hired by the Bank in response to MRAs issued by the OCC in June 2015, issued a report.<sup>214</sup> The report explained that “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).”<sup>215</sup> 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 showcasing that they were unreasonable.<sup>216</sup>

### **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”).<sup>217</sup> Examiner Tanya Smith was the Bank’s Acting Examiner-in-Charge at the time.<sup>218</sup> The Board Report found that the “root cause of sales

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<sup>212</sup> EC MSD Ex. 269 (Report of NBE Candy) at ¶49, citing *Board Report* at 45.

<sup>213</sup> EC MSD Ex. 269 (Report of NBE Candy) at ¶49.

<sup>214</sup> EC MSD Ex. 269 (Report of NBE Candy) at ¶50.

<sup>215</sup> EC MSD Ex. 269 (Report of NBE Candy) at ¶50, citing Accenture, *Wells Fargo Sales Practices Assessment – Community Banking Sales Practices Report: Observations and Recommendations* (Oct. 2015) (OCC-SP1140359).

<sup>216</sup> EC MSD Ex. 269 (Report of NBE Candy) at ¶50.

<sup>217</sup> EC MSD Ex. 280 (Independent Directors of the Board of Wells Fargo & Company, Sales Practices Investigation Report, dated April 17, 2017).

<sup>218</sup> 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

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.”<sup>219</sup> 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.”<sup>220</sup>

The Board Report identified deficiencies in the Law Department, Audit, and Community Bank Risk. The Board Report found:

Respondent “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

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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.

<sup>219</sup> 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>.

<sup>220</sup> 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>.

practices that resulted in sales integrity violations. She also did not adequately address customer harm arising from improper sales practices.”<sup>221</sup>

“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 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.”<sup>222</sup>

“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.”<sup>223</sup>

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

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<sup>221</sup> 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.

<sup>222</sup> 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.

<sup>223</sup> 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.



prior to its issuance.<sup>224</sup> 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.<sup>225</sup>

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.<sup>226</sup> 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.<sup>227</sup>

In addition, in this instance the Board engaged outside counsel to independently look at the facts and circumstances which form the basis of the final report.<sup>228</sup> 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, and not exaggerated.<sup>229</sup> 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.<sup>230</sup>

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

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<sup>224</sup> EC MSD Ex. 267 (Report of NBE Smith) at ¶53.

<sup>225</sup> EC MSD Ex. 267 (Report of NBE Smith) at ¶53.

<sup>226</sup> EC MSD Ex. 267 (Report of NBE Smith) at ¶54.

<sup>227</sup> EC MSD Ex. 267 (Report of NBE Smith) at ¶54.

<sup>228</sup> EC MSD Ex. 267 (Report of NBE Smith) at ¶54.

<sup>229</sup> EC MSD Ex. 267 (Report of NBE Smith) at ¶54.

<sup>230</sup> EC MSD Ex. 267 (Report of NBE Smith) at ¶54.

sales practices “involving the opening of millions of accounts without customer authorization.”<sup>231</sup> 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.”<sup>232</sup>

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, Corporative and Risk Governance at 13 (July 2016).<sup>233</sup>

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

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<sup>231</sup> 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>.

<sup>232</sup> 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).

<sup>233</sup> EC MSD Ex. 269 (Report of NBE Candy) at ¶52.

culture existed in the Community Bank from 2002 through 2016.<sup>234</sup> 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, 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.<sup>235</sup> The incentive compensation arrangements in the Community Bank incentivized employees to engage in sales practices misconduct.<sup>236</sup> The incentive compensation arrangements also incentivized store or branch managers to encourage, or turn a blind eye to, sales practices misconduct.<sup>237</sup>

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.<sup>238</sup>

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.<sup>239</sup> As the Board Report concluded,

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<sup>234</sup> EC MSD Ex. 269 (Report of NBE Candy) at ¶53

<sup>235</sup> EC MSD Ex. 269 (Report of NBE Candy) at ¶54.

<sup>236</sup> EC MSD Ex. 269 (Report of NBE Candy) at ¶54.

<sup>237</sup> EC MSD Ex. 269 (Report of NBE Candy) at ¶54.

<sup>238</sup> EC MSD Ex. 269 (Report of NBE Candy) at ¶54.

<sup>239</sup> EC MSD Ex. 269 (Report of NBE Candy) at ¶55.

“performance management and incentive plans added significant additional risk to the sales model.”<sup>240</sup> Moreover, promotions and advancement within the Community Bank were based primarily on employees’ ability to generate sales and meet the unreasonable sales goals.<sup>241</sup> 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.<sup>242</sup>

The incentive compensation plans rewarded employees for sales of secondary products (e.g., a second checking or savings account or additional debit cards).<sup>243</sup> 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 to 2016, and many of these were never used by customers.”<sup>244</sup> 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.’”<sup>245</sup>

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<sup>240</sup> EC MSD Ex. 269 (Report of NBE Candy) at ¶54, citing Board Report at 27.

<sup>241</sup> EC MSD Ex. 269 (Report of NBE Candy) at ¶55.

<sup>242</sup> EC MSD Ex. 269 (Report of NBE Candy) at ¶55.

<sup>243</sup> EC MSD Ex. 269 (Report of NBE Candy) at ¶56.

<sup>244</sup> EC MSD Ex. 269 (Report of NBE Candy) at ¶56, 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).

<sup>245</sup> EC MSD Ex. 269 (Report of NBE Candy) at ¶57, citing *Board Report* at 41 n.17.

The Board Report found that incentive compensation “contributed to problematic behavior by over-weighting sales as against customer service or other factors.”<sup>246</sup> 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.”<sup>247</sup> 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.<sup>248</sup> Examiner Candy’s conclusions match those found in the Board Report.<sup>249</sup>

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.<sup>250</sup> This was recklessly unsafe or unsound and exposed the Bank to increased operational, compliance, regulatory, legal, reputational and financial risks.<sup>251</sup>

### **Respondents Russ Anderson and Julian failed to Perform their Responsibilities Under the ICRM**

The ICRM imposed responsibilities on various functions, including the Group Risk Officer and Audit.<sup>252</sup> Respondent Russ Anderson had responsibility under the Bank’s ICRM

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<sup>246</sup> EC MSD Ex. 269 (Report of NBE Candy) at ¶58, citing *Board Report* at 7

<sup>247</sup> EC MSD Ex. 269 (Report of NBE Candy) at ¶58, citing *Board Report* at 8.

<sup>248</sup> EC MSD Ex. 269 (Report of NBE Candy) at ¶58, citing *Board Report* at 8.

<sup>249</sup> EC MSD Ex. 269 (Report of NBE Candy) at ¶58.

<sup>250</sup> EC MSD Ex. 269 (Report of NBE Candy) at ¶59.

<sup>251</sup> EC MSD Ex. 269 (Report of NBE Candy) at ¶59.

<sup>252</sup> EC MSD Ex. 269 (Report of NBE Candy) at ¶60, citing Incentive Compensation Risk Management Policy (July 13, 2011) (OCC-WF-SP-05434513); Incentive Compensation Risk Management Policy (Nov. 27, 2012) (OCC-WF-SP-07258277).

Policy to provide “independent reviews of incentive compensation arrangements and balancing features used” to ensure that incentive compensation plans across the Community Bank achieved appropriate balance between risk and reward. Under the ICRM, Respondent Russ Anderson was “accountable to Wells Fargo’s Chief Risk Officer to ensure appropriate balance is achieved.”<sup>253</sup>

Respondent Russ Anderson did not provide the Chief Risk Officer, to whom she had a dotted-line reporting relationship, with an independent assessment of the Community Bank’s incentive compensation arrangements and did not advise whether they contained the requisite balancing features as required under the ICRM Policy.<sup>254</sup>

Respondent Russ Anderson participated in discussions regarding sales goals and incentive compensation plans with senior leaders in the Community Bank.<sup>255</sup> She knew that regional leaders often complained about the unreasonable sales goals, and that they advocated for changes to the incentive compensation plans. She also was privy to reporting about increasing levels of misconduct tied to sales goals.<sup>256</sup>

Respondent Russ Anderson reviewed and approved incentive compensation plans that consisted of unreasonable sales goals.<sup>257</sup> Based on the evidence she reviewed, Examiner Candy concluded that Respondent Russ Anderson knew that incentive compensation plans consisted of unreasonable and unattainable sales goals.<sup>258</sup> For example, in an October 2012 email exchange with Kenneth Zimmerman, the Community Bank’s Head of the Deposit Products Group—the

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<sup>253</sup> EC MSD Ex. 269 (Report of NBE Candy) at ¶61, citing Incentive Compensation Risk Management Policy (July 13, 2011) (OCC-WF-SP-05434513); Incentive Compensation Risk Management Policy (Nov. 27, 2012) (OCC-WF-SP-07258277).

<sup>254</sup> EC MSD Ex. 269 (Report of NBE Candy) at ¶61.

<sup>255</sup> EC MSD Ex. 269 (Report of NBE Candy) at ¶62.

<sup>256</sup> EC MSD Ex. 269 (Report of NBE Candy) at ¶62.

<sup>257</sup> EC MSD Ex. 269 (Report of NBE Candy) at ¶63.

<sup>258</sup> EC MSD Ex. 269 (Report of NBE Candy) at ¶63.

group responsible for the most significant products supervised by the Community Bank, including checking accounts, savings accounts, and debit cards—Respondent Russ Anderson asked why Carrie Tolstedt, the Head of the Community Bank, was “putting together a plan that we know isn’t attainable.”<sup>259</sup> Mr. Zimmerman responded that Ms. Tolstedt was “backed up against the wall due to the cross-sell metric.”<sup>260</sup> This unattainable sales plan was the one actually implemented in the Community Bank.<sup>261</sup>

It is Examiner Candy’s opinion as a National Bank Examiner that Respondent Russ Anderson failed to perform her job responsibilities under the ICRM Policy and that this conduct was recklessly unsafe or unsound and a breach of her fiduciary duty.<sup>262</sup> Bank executives are required to execute their responsibilities consistent with Bank policies.<sup>263</sup> Respondent Russ Anderson had ongoing review and approval responsibility for incentive compensation plans that consisted of unreasonable sales goals, and she failed to adequately oversee the implementation or outcomes of the incentive compensations plans.<sup>264</sup> She was on the ICRM Steering Committee.<sup>265</sup> Her actions were contrary to generally accepted standards of prudent operation for a Group Risk Officer, the possible consequences of which, if continued, would be abnormal risk or loss or damage to the Bank, its shareholders, or the Federal Deposit Insurance Corporation.<sup>266</sup>

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<sup>259</sup> EC MSD Ex. 269 (Report of NBE Candy) at ¶63.

<sup>260</sup> EC MSD Ex. 269 (Report of NBE Candy) at ¶63, citing Email from Ken Zimmerman to Claudia Russ Anderson (Oct. 25, 2012) (OCC-WF-SP-06178357).

<sup>261</sup> EC MSD Ex. 269 (Report of NBE Candy) at ¶63.

<sup>262</sup> EC MSD Ex. 269 (Report of NBE Candy) at ¶64.

<sup>263</sup> EC MSD Ex. 269 (Report of NBE Candy) at ¶64.

<sup>264</sup> EC MSD Ex. 269 (Report of NBE Candy) at ¶64.

<sup>265</sup> EC MSD Ex. 269 (Report of NBE Candy) at ¶64.

<sup>266</sup> EC MSD Ex. 269 (Report of NBE Candy) at ¶64.

The Incentive Compensation Steering Committee, later renamed the Incentive Compensation Committee (“ICC”), was responsible for overseeing the ICRM policy, processes, and outcomes and for reporting to the Human Resources Committee of the Board regarding ICRM practices and outcomes.<sup>267</sup> The ICC was responsible for providing “oversight around the design and outcomes of the Business Line incentive plans, and lead[ing] Wells Fargo’s enterprise efforts to enhance incentive compensation practices throughout the Company.”<sup>268</sup> Respondent Julian was a member of the ICC from 2012 through October 2016.<sup>269</sup>

Examiner Candy opined that Respondent Julian recklessly engaged in unsafe or unsound practices through his failings with respect to incentive compensation risk management, governance, and oversight as members of the ICC.<sup>270</sup> The ICRM Policy states that incentive-based compensation arrangements should “balance risk and financial rewards in a manner that does not provide team members with an incentive to take inappropriate risks that could lead to material financial, operational, or reputational risk for the company.”<sup>271</sup> The incentive compensation plans in the Community Bank encouraged employees to take inappropriate risks, risk that Respondent Julian and others were responsible for understanding, managing, overseeing, and escalating as members of the ICC.<sup>272</sup> Respondent Julian’s failures with respect to incentive compensation risk management exposed the Bank to abnormal risk of loss and resulted in actual loss.<sup>273</sup>

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<sup>267</sup> EC MSD Ex. 269 (Report of NBE Candy) at ¶65.

<sup>268</sup> EC MSD Ex. 269 (Report of NBE Candy) at ¶65.

<sup>269</sup> EC MSD Ex. 269 (Report of NBE Candy) at ¶65.

<sup>270</sup> EC MSD Ex. 269 (Report of NBE Candy) at ¶66.

<sup>271</sup> EC MSD Ex. 269 (Report of NBE Candy) at ¶66, citing Incentive Compensation Risk Management Policy (July 13, 2011) (OCC-WF-SP-05434513); Incentive Compensation Risk Management Policy (Nov. 27, 2012) (OCC-WF-SP-07258277).

<sup>272</sup> EC MSD Ex. 269 (Report of NBE Candy) at ¶66.

<sup>273</sup> EC MSD Ex. 269 (Report of NBE Candy) at ¶66.



## **The Community Bank's Controls were Inadequate**

Examiner Candy participated in the May 2015 ongoing supervisory activity that resulted in SL 2015-36.<sup>274</sup> During that review, she performed work to better understand the Bank's controls related to sales practices.<sup>275</sup> She reviewed customer and employee complaints and identified themes from those complaints.<sup>276</sup> 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.<sup>277</sup> 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.<sup>278</sup>

SL 2015-36 notes that “[o]f the 2,856 sales integrity cases [in 2014], 43% involved lack of customer consent for a product.”<sup>279</sup> 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.”<sup>280</sup> 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

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<sup>274</sup> EC MSD Ex. 269 (Report of NBE Candy) at ¶67.

<sup>275</sup> EC MSD Ex. 269 (Report of NBE Candy) at ¶67.

<sup>276</sup> EC MSD Ex. 269 (Report of NBE Candy) at ¶67.

<sup>277</sup> EC MSD Ex. 269 (Report of NBE Candy) at ¶67.

<sup>278</sup> EC MSD Ex. 269 (Report of NBE Candy) at ¶67.

<sup>279</sup> EC MSD Ex. 269 (Report of NBE Candy) at ¶67, citing OCC Supervisory Letter WFC 2015-36 (June 25, 2015) (OCC-WF-SP-07084578).

<sup>280</sup> 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.

products.<sup>281</sup> Review of customer complaints revealed similar themes.<sup>282</sup> 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.<sup>283</sup>

The May 2015 review resulted in the issuance of 5 MRAs.<sup>284</sup> One of the MRAs identified deficiencies in the Bank's controls over complaints.<sup>285</sup> The review determined that the Bank did not have an effective customer complaint process and required management to reassess the customer complaint process "since it is critical to promoting compliance with laws and regulations and reducing reputation risk."<sup>286</sup> 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."<sup>287</sup>

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.<sup>288</sup> Examiner Candy participated

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<sup>281</sup> 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.

<sup>282</sup> EC MSD Ex. 269 (Report of NBE Candy) at ¶68.

<sup>283</sup> EC MSD Ex. 269 (Report of NBE Candy) at ¶68.

<sup>284</sup> EC MSD Ex. 269 (Report of NBE Candy) at ¶69.

<sup>285</sup> EC MSD Ex. 269 (Report of NBE Candy) at ¶69.

<sup>286</sup> 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 4.

<sup>287</sup> 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.

<sup>288</sup> EC MSD Ex. 269 (Report of NBE Candy) at ¶70, citing OCC Supervisory Letter WFC 2016-36 (July 18, 2016) (OCC-WF-SP-07169362).

in the ongoing review that culminated in the issuance of SL 2016-36.<sup>289</sup> 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.”<sup>290</sup>

“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.”<sup>291</sup>

“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 . . . ”<sup>292</sup>

“In addition, the risks from these sales practices were not adequately managed.”<sup>293</sup>

“Our own review of incentive compensation programs and sales goals confirmed the aggressive sales pressure. For example, Gold, Silver, and

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<sup>289</sup> EC MSD Ex. 269 (Report of NBE Candy) at ¶70.

<sup>290</sup> EC MSD Ex. 269 (Report of NBE Candy) at ¶70.

<sup>291</sup> EC MSD Ex. 269 (Report of NBE Candy) at ¶70.

<sup>292</sup> EC MSD Ex. 269 (Report of NBE Candy) at ¶70.

<sup>293</sup> EC MSD Ex. 269 (Report of NBE Candy) at ¶70.

Bronze programs were in place to encourage employees to meet sales goals, with Gold requiring 13 daily ‘solutions’ or products sold per day.”<sup>294</sup>

Weaknesses in internal controls and management information systems including a lack of robust first, second and third lines of defense risk management programs.<sup>295</sup>

Set forth below is Examiner Candy’s further explanation of the Bank’s controls, how they evolved, and her opinions and assessments related to the controls for preventing and detecting sales practices misconduct.<sup>296</sup>

### **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.<sup>297</sup> The first two detection methods were reactive and relied on another employee or a customer becoming aware of improper activity and reporting it.<sup>298</sup> The third detection method was, in Examiner Candy’s opinion, inadequate as it only identified patterns of activity for certain types of misconduct.<sup>299</sup>

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<sup>294</sup> EC MSD Ex. 269 (Report of NBE Candy) at ¶70.

<sup>295</sup> EC MSD Ex. 269 (Report of NBE Candy) at ¶70.

<sup>296</sup> EC MSD Ex. 269 (Report of NBE Candy) at ¶71.

<sup>297</sup> EC MSD Ex. 269 (Report of NBE Candy) at ¶72.

<sup>298</sup> EC MSD Ex. 269 (Report of NBE Candy) at ¶72.

<sup>299</sup> EC MSD Ex. 269 (Report of NBE Candy) at ¶72.

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.”<sup>300</sup>

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.<sup>301</sup> 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 Bank’s system and a practice the Bank referred to as “simulated funding.”<sup>302</sup> 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.<sup>303</sup>

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”

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<sup>300</sup> EC MSD Ex. 269 (Report of NBE Candy) at ¶73, citing email from Marty Weber to Michael Bacon et. al. (Aug. 8, 2012) (OCC-WF-SP-06076695).

<sup>301</sup> EC MSD Ex. 269 (Report of NBE Candy) at ¶74.

<sup>302</sup> EC MSD Ex. 269 (Report of NBE Candy) at ¶75.

<sup>303</sup> EC MSD Ex. 269 (Report of NBE Candy) at ¶75.

activity.<sup>304</sup> Bank documents show that 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.<sup>305</sup> 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.<sup>306</sup>

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.<sup>307</sup> In October 2013, the Los Angeles Times reported that “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.”<sup>308</sup> 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

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<sup>304</sup> EC MSD Ex. 269 (Report of NBE Candy) at ¶76.

<sup>305</sup> EC MSD Ex. 269 (Report of NBE Candy) at ¶76.

<sup>306</sup> 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).

<sup>307</sup> EC MSD Ex. 269 (Report of NBE Candy) at ¶77.

<sup>308</sup> EC MSD Ex. 269 (Report of NBE Candy) at ¶77.

former and seven current Wells Fargo employees who worked at bank branches in nine states, including California.”<sup>309</sup>

### **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.<sup>310</sup> It was evident that the misconduct was widespread and continued monitoring could inundate the Community Bank with investigations and terminations.<sup>311</sup> However, by 2013 the root cause of sales practices misconduct was well known by the Community Bank, the Law Department, and Audit.<sup>312</sup>

The Community Bank paused proactive monitoring for approximately seven months, from December 2013 through July 2014.<sup>313</sup> 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.<sup>314</sup> 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.<sup>315</sup>

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<sup>309</sup> EC MSD Ex. 269 (Report of NBE Candy) at ¶77.

<sup>310</sup> EC MSD Ex. 269 (Report of NBE Candy) at ¶78.

<sup>311</sup> 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).

<sup>312</sup> EC MSD Ex. 269 (Report of NBE Candy) at ¶78.

<sup>313</sup> EC MSD Ex. 269 (Report of NBE Candy) at ¶80, citing Email from Paula Herzberg to Rebecca Rawson et. al. (Sept. 13, 2016) (OCC-WF-SP-07687489).

<sup>314</sup> EC MSD Ex. 269 (Report of NBE Candy) at ¶81.

<sup>315</sup> EC MSD Ex. 269 (Report of NBE Candy) at ¶81.

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.<sup>316</sup> In her opinion as a National Bank Examiner, this was not a prudent nor acceptable reason to pause proactive monitoring.<sup>317</sup>

### **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.<sup>318</sup> Based on Bank documents, approximately 30,000 employees exhibited characteristics of “red flag” activity for simulated funding in one month.<sup>319</sup> 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.<sup>320</sup> The Community Bank referred to these employees as “outliers.”<sup>321</sup> Examiner Candy opined that this simply was grossly insufficient – 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.<sup>322</sup>

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<sup>316</sup> EC MSD Ex. 269 (Report of NBE Candy) at ¶82.

<sup>317</sup> EC MSD Ex. 269 (Report of NBE Candy) at ¶82.

<sup>318</sup> EC MSD Ex. 269 (Report of NBE Candy) 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).

<sup>319</sup> EC MSD Ex. 269 (Report of NBE Candy) at ¶84.

<sup>320</sup> EC MSD Ex. 269 (Report of NBE Candy) at ¶84.

<sup>321</sup> EC MSD Ex. 269 (Report of NBE Candy) at ¶84.

<sup>322</sup> EC MSD Ex. 269 (Report of NBE Candy) at ¶84.



Beyond simulated funding, SSCOT used 99.99th percent as its threshold for proactive monitoring for the vast majority of sales activity monitored.<sup>323</sup> 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.<sup>324</sup> The 99.95th percent threshold involved an employee engaging in approximately 10.3 monthly occurrences of red flag activity for simulated funding.<sup>325</sup> 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.<sup>326</sup> 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.<sup>327</sup>

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.<sup>328</sup> Examiner Coleman

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<sup>323</sup> EC MSD Ex. 269 (Report of NBE Candy) at ¶85.

<sup>324</sup> 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); Email from Paula Herzberg to Rebecca Rawson et. al. (Sept. 13, 2016) (OCC-WF-SP-07687489).

<sup>325</sup> 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).

<sup>326</sup> 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).

<sup>327</sup> 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).

<sup>328</sup> 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 approximately

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.<sup>329</sup>

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.<sup>330</sup> 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.”<sup>331</sup>

Examiner Smith reported that she is aware of several meetings where Respondent Russ Anderson was not transparent with the OCC’s examination team.<sup>332</sup> 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 that “no one loses their job because they did not meet sales goals.”<sup>333</sup> And she told examiners during a May 14, 2015 meeting with the OCC that interviews with employees

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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.

<sup>329</sup> 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.

<sup>330</sup> EC MSD Ex. 267 (Report of NBE Smith) at ¶111.

<sup>331</sup> 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).

<sup>332</sup> EC MSD Ex. 267 (Report of NBE Smith) at ¶112.

<sup>333</sup> 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).

“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.”<sup>334</sup>

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.<sup>335</sup> Yet, according to Examiner Smith, the Community Bank continued to permit employees to issue products without a signature requirement.<sup>336</sup>

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.<sup>337</sup> 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.<sup>338</sup> 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.<sup>339</sup>

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<sup>334</sup> 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).

<sup>335</sup> 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).

<sup>336</sup> EC MSD Ex. 267 (Report of NBE Smith) at ¶114.

<sup>337</sup> EC MSD Ex. 267 (Report of NBE Smith) 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).

<sup>338</sup> 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).

<sup>339</sup> EC MSD Ex. 267 (Report of NBE Smith) at ¶115.

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."<sup>340</sup> 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.<sup>341</sup> The memorandum was also provided to the OCC.<sup>342</sup>

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.<sup>343</sup>

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 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

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<sup>340</sup> EC MSD Ex. 267 (Report of NBE Smith) 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).

<sup>341</sup> 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.

<sup>342</sup> EC MSD Ex. 267 (Report of NBE Smith) at ¶118.

<sup>343</sup> EC MSD Ex. 267 (Report of NBE Smith) at ¶118

constituted a pattern of misconduct, involved personal dishonesty, and demonstrated a willful and continuing disregard for the Bank’s safety and soundness.<sup>344</sup>

In late 2016, in response to an OCC MRA and the work of consultant PriceWaterhouse Coopers 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.<sup>345</sup> 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.”<sup>346</sup>

Examiner Candy reported that the Bank’s SSCOT continued to use the 99.95th percentile threshold until sales goals were eliminated in October 2016.<sup>347</sup> 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.<sup>348</sup>

### **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.<sup>349</sup> She added that senior management is supposed to oversee and provide

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<sup>344</sup> EC MSD Ex. 267 (Report of NBE Smith) at ¶¶119-20.

<sup>345</sup> EC MSD Ex. 257 (Report of NBE Coleman) at ¶66

<sup>346</sup> EC MSD Ex. 257 (Report of NBE Coleman) at ¶66, quoting FCRM Report at 1, OCC-WF-SP-08515940.

<sup>347</sup> EC MSD Ex. 269 (Report of NBE Candy) at ¶87.

<sup>348</sup> EC MSD Ex. 269 (Report of NBE Candy) at ¶87.

<sup>349</sup> EC MSD Ex. 269 (Report of NBE Candy) at ¶88, citing Office of the Comptroller of the Currency, Comptroller’s Handbook, Internal Control at 2 (Jan. 2001).

leadership and direction for the communication and monitoring of control policies, practices, and processes.<sup>350</sup>

It is Examiner Candy's opinion 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.<sup>351</sup> She reported that designing and implementing controls reasonably designed to prevent and detect misconduct or illegal activity is a critical part of effective risk management and internal controls,<sup>352</sup> 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.<sup>353</sup> 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.<sup>354</sup>

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.

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<sup>350</sup> EC MSD Ex. 269 (Report of NBE Candy) at ¶88, citing Office of the Comptroller of the Currency, Comptroller's Handbook, Internal Control at 2, 16 (Jan. 2001).

<sup>351</sup> EC MSD Ex. 269 (Report of NBE Candy) at ¶89.

<sup>352</sup> EC MSD Ex. 269 (Report of NBE Candy) at ¶89.

<sup>353</sup> EC MSD Ex. 269 (Report of NBE Candy) at ¶89.

<sup>354</sup> EC MSD Ex. 269 (Report of NBE Candy) at ¶89.

History shows that such departures can affect the entire financial services sector and the broader economy.<sup>355</sup>

It is Examiner Candy's conclusion that in addition to its inadequate detective controls, the Bank's controls to prevent sales practices misconduct were insufficient.<sup>356</sup> For example, the Bank did not require a customer signature—*i.e.*, evidence of customer consent—to open a debit card.<sup>357</sup> The Bank began requiring a customer signature to open a credit card only in 2015.<sup>358</sup> 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 services had one or the other, then most of our consent issues would become moot.<sup>359</sup>

The Head of SSCOT, who reported to Respondent Russ Anderson, testified that the Bank's systems enabled employees to engage in sales practices misconduct.<sup>360</sup> Rebecca Rawson

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<sup>355</sup> EC MSD Ex. 269 (Report of NBE Candy) at ¶88, quoting Office of the Comptroller of the Currency, Comptroller's Handbook, Safety and Soundness, Corporative and Risk Governance at 3 (July 2016).

<sup>356</sup> EC MSD Ex. 269 (Report of NBE Candy) at ¶90.

<sup>357</sup> EC MSD Ex. 269 (Report of NBE Candy) at ¶90.

<sup>358</sup> EC MSD Ex. 269 (Report of NBE Candy) at ¶90.

<sup>359</sup> 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).

<sup>360</sup> EC MSD Ex. 269 (Report of NBE Candy) at ¶90.

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.<sup>361</sup>

Based on the evidence that she reviewed, Examiner Candy concluded that the Bank's controls to detect sales practices misconduct were also insufficient.<sup>362</sup> She reported that a bank should investigate transactions that it considers a "red flag" for misconduct,<sup>363</sup> adding that is particularly true where, as here, the suspected misconduct constitutes illegal and even criminal activity.<sup>364</sup>

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

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<sup>361</sup> EC MSD Ex. 269 (Report of NBE Candy) at ¶91, quoting Rawson Tr. 50:11-19 (July 26, 2018).

<sup>362</sup> EC MSD Ex. 269 (Report of NBE Candy) at ¶92.

<sup>363</sup> EC MSD Ex. 269 (Report of NBE Candy) at ¶92.

<sup>364</sup> EC MSD Ex. 269 (Report of NBE Candy) at ¶92.



Acts and Practices or UDAP).<sup>365</sup> She reported that other types of sales practices misconduct similarly constitute illegal and criminal activity, for example opening a savings account without customer authorization involves falsifying bank records and UDAP.<sup>366</sup>

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.<sup>367</sup> Yet Examiner Candy reported 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.<sup>368</sup> Examiner Candy opined that this is far too few.<sup>369</sup>

Examiner Candy was the lead OCC examiner who reviewed the Bank’s earnings for three years and was responsible for understanding the drivers of enterprise and major business line income and expense streams.<sup>370</sup> She understood that at least one of the justifications for the chosen thresholds is that the Bank believed it lacked resources to investigate additional misconduct and expanding the thresholds would yield many false positives.<sup>371</sup> Examiner Candy opined that neither rationale is appropriate and both demonstrate that the Bank did not have adequate risk management over sales practices.<sup>372</sup>

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<sup>365</sup> EC MSD Ex. 269 (Report of NBE Candy) at ¶92.

<sup>366</sup> EC MSD Ex. 269 (Report of NBE Candy) at ¶92.

<sup>367</sup> EC MSD Ex. 269 (Report of NBE Candy) at ¶93.

<sup>368</sup> EC MSD Ex. 269 (Report of NBE Candy) at ¶93.

<sup>369</sup> EC MSD Ex. 269 (Report of NBE Candy) at ¶93.

<sup>370</sup> EC MSD Ex. 269 (Report of NBE Candy) at ¶94.

<sup>371</sup> EC MSD Ex. 269 (Report of NBE Candy) at ¶94.

<sup>372</sup> EC MSD Ex. 269 (Report of NBE Candy) at ¶94.

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.<sup>373</sup> She noted that Wells Fargo was posting record earnings quarter after quarter during that period.<sup>374</sup> 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.<sup>375</sup> She 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*.<sup>376</sup> She reported that the restrictive thresholds limited the number of investigations and terminations for sales practices misconduct, rather than managing the risk.<sup>377</sup> And she opined that that is not consistent with prudent and effective risk management.<sup>378</sup>

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.<sup>379</sup> 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).<sup>380</sup> Moreover, she opined that the evidence indicates that the Community Bank lacked the ability to identify the following types of sales

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<sup>373</sup> EC MSD Ex. 269 (Report of NBE Candy) at ¶94.

<sup>374</sup> EC MSD Ex. 269 (Report of NBE Candy) at ¶94.

<sup>375</sup> EC MSD Ex. 269 (Report of NBE Candy) at ¶94.

<sup>376</sup> EC MSD Ex. 269 (Report of NBE Candy) at ¶94.

<sup>377</sup> EC MSD Ex. 269 (Report of NBE Candy) at ¶94.

<sup>378</sup> EC MSD Ex. 269 (Report of NBE Candy) at ¶95.

<sup>379</sup> EC MSD Ex. 269 (Report of NBE Candy) at ¶95.

<sup>380</sup> EC MSD Ex. 269 (Report of NBE Candy) at ¶95.

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.<sup>381</sup>

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.<sup>382</sup> 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.<sup>383</sup> She 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.<sup>384</sup> 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.<sup>385</sup>

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.<sup>386</sup> 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?

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<sup>381</sup> EC MSD Ex. 269 (Report of NBE Candy) at ¶95.

<sup>382</sup> EC MSD Ex. 269 (Report of NBE Candy) at ¶95.

<sup>383</sup> EC MSD Ex. 269 (Report of NBE Candy) at ¶95.

<sup>384</sup> EC MSD Ex. 269 (Report of NBE Candy) at ¶95.

<sup>385</sup> EC MSD Ex. 269 (Report of NBE Candy) at ¶95.

<sup>386</sup> EC MSD Ex. 269 (Report of NBE Candy) at ¶96.

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.<sup>387</sup>

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.<sup>388</sup> 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.<sup>389</sup> 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.<sup>390</sup> 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.

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<sup>387</sup> EC MSD Ex. 269 (Report of NBE Candy) at ¶96, quoting Rawson Tr. 188:3-16 (July 26, 2018).

<sup>388</sup> EC MSD Ex. 269 (Report of NBE Candy) at ¶97.

<sup>389</sup> EC MSD Ex. 269 (Report of NBE Candy) at ¶97.

<sup>390</sup> EC MSD Ex. 269 (Report of NBE Candy) at ¶97.

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 they really would not be effective if people engaged in this misconduct who are in the 50th percentile or 60th percentile, correct?

A Correct.<sup>391</sup>

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.<sup>392</sup> 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.<sup>393</sup> 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.<sup>394</sup> She reported that this contrasted sharply with the insufficient and infrequent sales quality and proactive monitoring reporting.<sup>395</sup> She reported that the high pressure and aggressive sales goal business model contributed to an environment with high inherent risk for compliance.<sup>396</sup> And 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.<sup>397</sup>

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

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<sup>391</sup> EC MSD Ex. 269 (Report of NBE Candy) at ¶97, quoting Rawson Tr. 211:7-20 (July 26, 2018).

<sup>392</sup> EC MSD Ex. 269 (Report of NBE Candy) at ¶98.

<sup>393</sup> EC MSD Ex. 269 (Report of NBE Candy) at ¶98.

<sup>394</sup> EC MSD Ex. 269 (Report of NBE Candy) at ¶98.

<sup>395</sup> EC MSD Ex. 269 (Report of NBE Candy) at ¶98.

<sup>396</sup> EC MSD Ex. 269 (Report of NBE Candy) at ¶98.

<sup>397</sup> EC MSD Ex. 269 (Report of NBE Candy) at ¶98.

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.<sup>398</sup>

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.<sup>399</sup>

### **The Bank's Controls Were Intentionally Inadequate**

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.<sup>400</sup>

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.<sup>401</sup> She opined that Respondent Russ Anderson's failure to implement effective controls, and the failure to identify employees engaged in sales practice

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<sup>398</sup> EC MSD Ex. 269 (Report of NBE Candy) at ¶98.

<sup>399</sup> EC MSD Ex. 269 (Report of NBE Candy) at ¶98, quoting Loretta Kay Sperle Tr. 158:15-20 (February 13, 2018) (EC MSD Ex. 299).

<sup>400</sup> EC MSD Ex. 269 (Report of NBE Candy) at ¶99.

<sup>401</sup> EC MSD Ex. 269 (Report of NBE Candy) at ¶99.

misconduct to reduce terminations or to manage reputation risk, was unsafe or unsound and was inconsistent with the role of a Group Risk Officer.<sup>402</sup>

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.<sup>403</sup> She reported that in 2012 or 2013, he advocated for proactively monitoring other types of sales practices activities, such as: employees or customers with excessive accounts ("hundreds") registered to the same address; college credit cards issued to non-college students; and employees with inappropriate business accounts.<sup>404</sup> 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.<sup>405</sup> 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 "tip of the iceberg."<sup>406</sup> 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.<sup>407</sup>

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<sup>402</sup> EC MSD Ex. 269 (Report of NBE Candy) at ¶99.

<sup>403</sup> EC MSD Ex. 269 (Report of NBE Candy) at ¶100, citing Michael Bacon Tr. 120:7-127:19 (May 4, 2018) (EC MSD Ex. 295).

<sup>404</sup> EC MSD Ex. 269 (Report of NBE Candy) at ¶100.

<sup>405</sup> EC MSD Ex. 269 (Report of NBE Candy) at ¶100, citing Bacon Tr. 120:7-127:19 (May 4, 2018).

<sup>406</sup> EC MSD Ex. 269 (Report of NBE Candy) at ¶100 quoting Bacon Tr. 105:25-106:19; 121:23-122:15 (May 4, 2018).

<sup>407</sup> EC MSD Ex. 269 (Report of NBE Candy) at ¶100, citing Bacon Tr. 105:25-106:19; 121:23-122:15 (May 4, 2018).

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.<sup>408</sup>

James Richards, the Head of the Bank’s Financial Crimes Risk Management (“FCRM”) department, testified before the OCC that “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.”<sup>409</sup> 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.”<sup>410</sup>

### **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.<sup>411</sup> 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

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<sup>408</sup> EC MSD Ex. 269 (Report of NBE Candy) at ¶100, quoting Bacon Tr. 61:16-63:13 (May 4, 2018).

<sup>409</sup> 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).

<sup>410</sup> EC MSD Ex. 269 (Report of NBE Candy) at ¶100, quoting Richards Tr. 146:5-149:24 (May 1, 2018).

<sup>411</sup> EC MSD Ex. 269 (Report of NBE Candy) at ¶101.



number of Community Bank customer-interfacing employees engaged in sales practices misconduct.<sup>412</sup>

Examiner Candy reported that in August 2017, Bank consultant PricewaterhouseCoopers (“PwC”) determined that Bank employees opened approximately 3.5 million potentially unauthorized accounts between January 2009 and September 2016.<sup>413</sup> 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.<sup>414</sup> 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.<sup>415</sup> 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.”<sup>416</sup>

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

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<sup>412</sup> EC MSD Ex. 269 (Report of NBE Candy) at ¶101.

<sup>413</sup> EC MSD Ex. 269 (Report of NBE Candy) at ¶102.

<sup>414</sup> EC MSD Ex. 269 (Report of NBE Candy) at ¶107.

<sup>415</sup> EC MSD Ex. 269 (Report of NBE Candy) at ¶107.

<sup>416</sup> EC MSD Ex. 269 (Report of NBE Candy) at ¶107.

to the customer, while believing that the customer did not actually need the account and was not going to use the account.”<sup>417</sup>

“Millions of secondary accounts and products were opened from 2002 to 2016, and many of these were never used by customers.”<sup>418</sup>

“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.”<sup>419</sup>

“From 2002 to 2016, Wells Fargo opened millions of accounts or financial products that were unauthorized or fraudulent.”<sup>420</sup>

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<sup>417</sup> 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).

<sup>418</sup> 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.

<sup>419</sup> 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.

<sup>420</sup> 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

“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.”<sup>421</sup>

Examiner Candy reported that “millions” of non-Wells Fargo-employee customer account documents were not delivered to the customer but were sent to the employee or Bank premises indicates both the immense magnitude of the misconduct and the inadequate controls.<sup>422</sup> She reported that this demonstrates the systematic nature of the misconduct and the detrimental impact of the high sales goals and high-pressure business model.<sup>423</sup> 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.”<sup>424</sup>

Examiner Candy reported that anecdotal evidence also illustrates the pervasiveness of sales practices misconduct.<sup>425</sup> She found that every customer-interfacing employee had a powerful motive and opportunity to engage in sales practices misconduct.<sup>426</sup> She found the motive arose from fear of disciplinary action up to and including termination if they did not meet

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Practices (Feb. 21, 2020); Wells Fargo Deferred Prosecution Agreement and Exhibit A, Statement of Facts (Feb. 20, 2020) ¶ 32.

<sup>421</sup> 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.

<sup>422</sup> EC MSD Ex. 269 (Report of NBE Candy) at ¶111.

<sup>423</sup> EC MSD Ex. 269 (Report of NBE Candy) at ¶111.

<sup>424</sup> EC MSD Ex. 269 (Report of NBE Candy) at ¶112, quoting Email from Laura Schulte to Shelly Freeman (Oct. 18, 2013) (OCC-WF-SP-05365262).

<sup>425</sup> EC MSD Ex. 269 (Report of NBE Candy) at ¶113.

<sup>426</sup> EC MSD Ex. 269 (Report of NBE Candy) at ¶114.

the unreasonable sales goals, or the desire to earn incentive compensation.<sup>427</sup> She also found that the opportunity arose from the inadequate controls as detailed in this report.<sup>428</sup> 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.<sup>429</sup>

### **Respondent Russ Anderson Failed to Perform her Responsibilities as the Group Risk Officer**

#### **Background on Bank Supervision Generally**

Examiner Coleman reported that the OCC supervises the largest banks and thrifts subject to its supervision within the Large Bank Supervision division (“LBS”).<sup>430</sup> Within the OCC, an institution supervised by LBS is referred to as a “large bank.”<sup>431</sup> 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.<sup>432</sup>

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<sup>427</sup> EC MSD Ex. 269 (Report of NBE Candy) at ¶114.

<sup>428</sup> EC MSD Ex. 269 (Report of NBE Candy) at ¶114.

<sup>429</sup> EC MSD Ex. 269 (Report of NBE Candy) at ¶114.

<sup>430</sup> EC MSD Ex. 257 (Report of NBE Coleman) at ¶13.

<sup>431</sup> EC MSD Ex. 257 (Report of NBE Coleman) at ¶13.

<sup>432</sup> EC MSD Ex. 257 (Report of NBE Coleman) at ¶13.

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.<sup>433</sup> 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.<sup>434</sup> 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.<sup>435</sup>

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.<sup>436</sup> 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.<sup>437</sup> 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.<sup>438</sup>

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<sup>433</sup> EC MSD Ex. 257 (Report of NBE Coleman) at ¶14.

<sup>434</sup> EC MSD Ex. 257 (Report of NBE Coleman) at ¶15.

<sup>435</sup> EC MSD Ex. 257 (Report of NBE Coleman) at ¶15

<sup>436</sup> EC MSD Ex. 257 (Report of NBE Coleman) at ¶16.

<sup>437</sup> EC MSD Ex. 257 (Report of NBE Coleman) at ¶16.

<sup>438</sup> EC MSD Ex. 257 (Report of NBE Coleman) at ¶16.

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.<sup>439</sup> 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.<sup>440</sup>

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.<sup>441</sup>

### **Respondent Russ Anderson's Responsibilities as the Group Risk Officer**

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<sup>439</sup> EC MSD Ex. 257 (Report of NBE Coleman) at ¶17.

<sup>440</sup> EC MSD Ex. 257 (Report of NBE Coleman) at ¶17, quoting Comptroller's Handbook, Internal and External Audits at 2 (December 2016), OCC-SP1107962.

<sup>441</sup> EC MSD Ex. 257 (Report of NBE Coleman) at ¶17, citing Wells Fargo Risk Management Framework, Published July 2014, OCC-WF-SP-04791987.

Examiner Candy reported that Respondent Russ Anderson served as the Community Bank’s Compliance and Operational Risk Manager or Group Risk Officer from 2004 until August 2016.<sup>442</sup> She noted that as the Group Risk Officer, Respondent Russ Anderson led the first line of defense at the Bank, responsible for identifying, measuring, assessing, controlling, mitigating, monitoring, and reporting current and emerging risks associated with the Community Bank’s activities and operations.<sup>443</sup> Examiner Candy reported that Respondent Russ Anderson was accountable for ensuring that the Community Bank effectively managed risk and that the Community Bank conducted its operations consistent with applicable laws and regulations and safety and soundness principles.<sup>444</sup>

Examiner Candy reported that Respondent Russ Anderson also was responsible for providing credible challenge to Community Bank leaders, implementing proactive and sound risk management practices, reinforcing the risk culture throughout the Community Bank, and exhibiting transparency when interacting with Bank management, the Bank’s Enterprise Risk Management Committee (“ERMC”), the Bank’s Board, and the OCC.<sup>445</sup> She was responsible for understanding the risks associated with sales processes and incentive structures in the Community Bank, assessing whether such risks were adequately managed, credibly challenging Community Bank leadership, and escalating risks and significant trends to senior Bank management, the ERMC, and the Board.<sup>446</sup>

The Bank’s Fraud Risk Management Policy details the responsibilities of various functions. “The purpose of this policy is to promote accountability, measurability, partnership, and transparency of fraud risk management at Wells Fargo by setting the structure and

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<sup>442</sup> EC MSD Ex. 269 (Report of NBE Candy) at ¶115.

<sup>443</sup> EC MSD Ex. 269 (Report of NBE Candy) at ¶116.

<sup>444</sup> EC MSD Ex. 269 (Report of NBE Candy) at ¶117.

<sup>445</sup> EC MSD Ex. 269 (Report of NBE Candy) at ¶118.

<sup>446</sup> EC MSD Ex. 269 (Report of NBE Candy) at ¶119.

expectations for business fraud risk management programs.”<sup>447</sup> Under the Bank’s Fraud Risk Management Policy, Respondent Russ Anderson was accountable for managing internal fraud risk related specifically to business practices and processes and developing appropriate controls to help mitigate identified fraud risks.<sup>448</sup>

### **Respondent Russ Anderson’s Conduct with Respect to the Sales Practices Misconduct Problem**

“The hallmark of a positive control environment is a commitment by the board of directors and senior management to strong controls. A bank’s board of directors and management are responsible for establishing and maintaining effective internal control that meets the statutory and regulatory requirements and responds to changes in the bank’s environment and conditions. They must ensure that the system operates as intended and is modified appropriately when circumstances dictate.”<sup>449</sup>

It is Examiner Candy’s opinion 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.<sup>450</sup> It is also her opinion that this conduct was recklessly unsafe or unsound and exposed the Bank to a risk of substantial harm. Her conduct, in Examiner Candy’s opinion, constituted a breach of her fiduciary duty.<sup>451</sup>

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<sup>447</sup> EC MSD Ex. 269 (Report of NBE Candy) at ¶120, quoting Fraud Risk Management Policy (Aug. 1, 2013) (OCC-WF-SP-08175861).

<sup>448</sup> EC MSD Ex. 269 (Report of NBE Candy) at ¶120.

<sup>449</sup> EC MSD Ex. 269 (Report of NBE Candy) at ¶121, quoting Office of the Comptroller of the Currency, Comptroller’s Handbook, Internal Control at 15 (Jan. 2001).

<sup>450</sup> EC MSD Ex. 269 (Report of NBE Candy) at ¶122.

<sup>451</sup> EC MSD Ex. 269 (Report of NBE Candy) at ¶122.



Examiner Candy reported that generally accepted standards of prudent operation require banks to have controls reasonably designed to detect and prevent misconduct.<sup>452</sup> Any control needs to be designed so as to effectively manage risk.<sup>453</sup> The onus is on Bank management to understand activities conducted by lines of business and the risks generated by those activities.<sup>454</sup> The Community Bank was the largest line of business at Wells Fargo and selling additional products to existing customers (“cross-sell”) was a cornerstone of the business model.<sup>455</sup> According to OCC economist Mark Pocock,<sup>456</sup> the Bank’s business model was known as “cross-sell” and sought to maximize the number of Bank products sold to a household.<sup>457</sup> He reported that Bank senior management theorized that the more Bank products sold to a household, the less likely those customers were to exit their relationship with the Bank, and the deepening of the

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<sup>452</sup> EC MSD Ex. 269 (Report of NBE Candy) at ¶123.

<sup>453</sup> EC MSD Ex. 269 (Report of NBE Candy) at ¶123.

<sup>454</sup> EC MSD Ex. 269 (Report of NBE Candy) at ¶123.

<sup>455</sup> EC MSD Ex. 269 (Report of NBE Candy) at ¶123.

<sup>456</sup> Mark Pocock currently is employed as the Lead Expert for Capital Adequacy and Planning within the Office of the Comptroller of the Currency (“OCC”), a bureau of the United States Department of the Treasury. He has held this position since July 2019. He received a Bachelor’s Degree in Economics with university honors from Brigham Young University, Provo, Utah, in 2001, a Master of Arts in Economics from the University of Texas, Austin, Texas, in May 2003, and a Doctor of Philosophy (PhD) in Economics from the University of Texas, Austin, Texas, in 2006. From January 2012 through June 2017, he held several positions within Large Bank Supervision and the Economics Department at the OCC. In January 2012, he re-joined the OCC as a Senior Financial Economist. In this role he provided analysis and advice on stress testing and other enterprise risk related supervisory and regulatory issues to OCC policy makers and assisted examiners in conducting examinations of statistical models used for stress testing, allowance for loan and lease loss reserves, and operational risk measurement. In January 2015, he was promoted to the position of Dodd-Frank Act Stress Testing Program (“DFAST”) Manager for Large Bank Supervision where he was responsible for developing and executing the OCC’s DFAST Program. In February 2016, he was promoted to the position of Lead Expert for Capital Adequacy and Planning for Large Bank Supervision. In this position He served as the OCC’s subject matter expert on regulatory capital (Basel Accord), the DFAST Program, and related capital adequacy and planning supervisory initiatives. EC MSD Ex. 658 (Report of Mark Pocock, PhD) at ¶¶1-7.

<sup>457</sup> EC MSD Ex. 658 (Report of Mark Pocock, PhD) at ¶33.

customer relationship increases the potential revenue earned from the relationship.<sup>458</sup> The financial industry considered the Bank to be “the king of cross-sell.”<sup>459</sup>

Dr. Pocock reported that the Bank maintained and WFC publicly reported a metric known as the “cross-sell ratio.”<sup>460</sup> The cross-sell ratio is a measure of Bank products sold per household and was touted by the Bank and WFC as an indicator and driver of future revenue.<sup>461</sup> He reported that the Bank’s cross-sell business model had many financial benefits, some of which are obvious, but others are subtle.<sup>462</sup> The obvious benefit is that it allowed the Bank to acquire more customers and to sell more products and services to each customer.<sup>463</sup> Dr. Pocock reported that such sales would increase revenue and enhance WFC’s stock price.<sup>464</sup>

Dr. Pocock reported that a more subtle, but likely greater benefit of the cross-sell business model, is the prospect of future growth.<sup>465</sup> The Bank and WFC publicly highlighted the potential growth attributable to the cross-sell strategy.<sup>466</sup> While the current income from these products supported the stock price, the larger factor for the stock price is revenue and earnings growth due to additional products sold to households in the future.<sup>467</sup> In general, the likelihood of a customer acquiring his or her next financial product from the Bank increases as the number

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<sup>458</sup> EC MSD Ex. 658 (Report of Mark Pocock, PhD) at ¶33.

<sup>459</sup> EC MSD Ex. 658 (Report of Mark Pocock, PhD) at ¶33, quoting Wells Fargo & Co., 2010 Annual Report at 5 (2011), available at <https://qjubs3y9ggo1neukf3sc81r19vv-wpengine.netdna-ssl.com/assets/pdf/annual-reports/2010-annual-report.pdf>.

<sup>460</sup> EC MSD Ex. 658 (Report of Mark Pocock, PhD) at ¶34.

<sup>461</sup> EC MSD Ex. 658 (Report of Mark Pocock, PhD) at ¶34.

<sup>462</sup> EC MSD Ex. 658 (Report of Mark Pocock, PhD) at ¶35.

<sup>463</sup> EC MSD Ex. 658 (Report of Mark Pocock, PhD) at ¶35.

<sup>464</sup> EC MSD Ex. 658 (Report of Mark Pocock, PhD) at ¶35.

<sup>465</sup> EC MSD Ex. 658 (Report of Mark Pocock, PhD) at ¶36.

<sup>466</sup> EC MSD Ex. 658 (Report of Mark Pocock, PhD) at ¶36.

<sup>467</sup> EC MSD Ex. 658 (Report of Mark Pocock, PhD) at ¶36.

of products the customer has with the Bank increases.<sup>468</sup> For example, if a customer has his saving and checking accounts as well as his debit and credit cards with the Bank, he or she is more likely to look to the Bank for their next financial product, such as a mortgage or automobile loan.<sup>469</sup> Consequently, WFC not only reported the Bank's cross-sell ratio, but also boasted about the Bank's track record of consistent quarterly and annual cross-sell ratio growth.<sup>470</sup>

Dr. Pocock reported that preserving the Bank's cross-sell ratio growth was a primary focus of senior management.<sup>471</sup> He noted that in a May 24, 2012 e-mail, the Bank's Group Financial Officer explained that "[Respondent Tolstedt] had to be talked off the ledge" when informed of the possibility that the cross-sell ratio might drop by a mere .01%.<sup>472</sup> Dr. Pocock reported that the Community Bank's Group Financial Officer explained that "John [the CEO] told the world on Tuesday to expect cross-sell to grow '.15 to .30 a year' which translates 0.01 to .03 a month. So .01 is a significant and material increment when we look at months or quarters."<sup>473</sup>

Examiner Candy reported that Bank management needed to understand the risks generated by this activity and design and implement controls that effectively manage the risk.<sup>474</sup> As the Group Risk Officer, Respondent Russ Anderson's primary responsibility was to ensure that the Community Bank properly managed all risks inherent in its operations.<sup>475</sup> She was also

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<sup>468</sup> EC MSD Ex. 658 (Report of Mark Pocock, PhD) at ¶36.

<sup>469</sup> EC MSD Ex. 658 (Report of Mark Pocock, PhD) at ¶36.

<sup>470</sup> EC MSD Ex. 658 (Report of Mark Pocock, PhD) at ¶37.

<sup>471</sup> EC MSD Ex. 658 (Report of Mark Pocock, PhD) at ¶38.

<sup>472</sup> EC MSD Ex. 658 (Report of Mark Pocock, PhD) at ¶38.

<sup>473</sup> EC MSD Ex. 658 (Report of Mark Pocock, PhD) at ¶38, quoting E-mail from Bredensteiner to Raphaelson (May 25, 2012) (OCC-SP00001510).

<sup>474</sup> EC MSD Ex. 269 (Report of NBE Candy) at ¶123.

<sup>475</sup> EC MSD Ex. 269 (Report of NBE Candy) at ¶124.

responsible for ensuring that the Community Bank implemented adequate controls commensurate with the risk inherent in those operations.<sup>476</sup> Examiner Candy reported that Respondent 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.”<sup>477</sup> Examiner Candy reported that sales practices risk was not managed effectively. It is Examiner Candy’s opinion that Respondent 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.<sup>478</sup>

Examiner Candy reported that the Community Bank’s sales practices misconduct problem existed during the entire time that Respondent Russ Anderson served as the Group Risk Officer.<sup>479</sup> Examiner Candy 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 Board Report accurately concluded that: “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.”<sup>480</sup>

Examiner Candy opined that Respondent Russ Anderson also is responsible for significant deficiencies in the Bank’s risk management and controls, which enabled ongoing

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<sup>476</sup> EC MSD Ex. 269 (Report of NBE Candy) at ¶124.

<sup>477</sup> EC MSD Ex. 269 (Report of NBE Candy) at ¶124, quoting Charter: Community Banking Risk Management Committee (Jan. 2013) (OCC-WF-SP-06917996); Community Banking Risk Management Committee Charter (Mar. 24, 2015) (OCC-WF-SP-08656459).

<sup>478</sup> EC MSD Ex. 269 (Report of NBE Candy) at ¶124.

<sup>479</sup> EC MSD Ex. 269 (Report of NBE Candy) at ¶124

<sup>480</sup> EC MSD Ex. 269 (Report of NBE Candy) at ¶124, quoting Board Report at 49.

legal violations by Bank employees.<sup>481</sup> She reported that Respondent Russ Anderson did not ensure that incentive compensation plans adequately balanced risk and reward as required by the ICRM Policy.<sup>482</sup> The threat of employee termination and disciplinary action and actual terminations for failing to meet sales goals continued until October 2016.<sup>483</sup> Examiner Candy reported that it is her understanding that to this day, Respondent Russ Anderson maintains that employees were not terminated for failing to meet sales goals and that the controls were adequate.<sup>484</sup>

Examiner Candy opined that Respondent 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.<sup>485</sup> 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.<sup>486</sup> She opined that Respondent 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.<sup>487</sup> She reported that Respondent Russ Anderson never escalated and 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, and the OCC.<sup>488</sup> Examiner Candy reported that instead, Respondent Russ Anderson attempted to protect the Community

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<sup>481</sup> EC MSD Ex. 269 (Report of NBE Candy) at ¶124.

<sup>482</sup> EC MSD Ex. 269 (Report of NBE Candy) at ¶124.

<sup>483</sup> EC MSD Ex. 269 (Report of NBE Candy) at ¶124.

<sup>484</sup> EC MSD Ex. 269 (Report of NBE Candy) at ¶124.

<sup>485</sup> EC MSD Ex. 269 (Report of NBE Candy) at ¶125.

<sup>486</sup> EC MSD Ex. 269 (Report of NBE Candy) at ¶125.

<sup>487</sup> EC MSD Ex. 269 (Report of NBE Candy) at ¶125.

<sup>488</sup> EC MSD Ex. 269 (Report of NBE Candy) at ¶125.

Bank from external scrutiny, rather than properly identifying, controlling, reporting, and escalating risks.<sup>489</sup>

It is Examiner Candy's opinion that Respondent Russ Anderson's false, misleading, and incomplete reporting to the ERM, the Board, and the OCC was recklessly unsafe or unsound and constituted a breach of her fiduciary duty.<sup>490</sup> "Information 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."<sup>491</sup> Examiner Candy opined that Respondent Russ Anderson's reporting lacked this requisite transparency, candor, and completeness of information.<sup>492</sup>

Examiner Candy reported that despite having knowledge to the contrary, Respondent Russ Anderson in an April 2014 presentation to the Bank's ERM told the Committee that the Community Bank's business model did not incent inappropriate behavior.<sup>493</sup> Examiner Candy opined that this is a false statement and demonstrates Respondent Russ Anderson's personal dishonesty.<sup>494</sup> Examiner Candy reported that Respondent Russ Anderson reviewed and edited the May 19, 2015 Memo that Mr. Strother submitted to the Risk Committee of the Board and the

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<sup>489</sup> EC MSD Ex. 269 (Report of NBE Candy) at ¶125.

<sup>490</sup> EC MSD Ex. 269 (Report of NBE Candy) at ¶125.

<sup>491</sup> EC MSD Ex. 269 (Report of NBE Candy) at ¶126, quoting Office of the Comptroller of the Currency, Comptroller's Handbook, Safety and Soundness, Corporate and Risk Governance at 33 (July 2016).

<sup>492</sup> EC MSD Ex. 269 (Report of NBE Candy) at ¶126.

<sup>493</sup> EC MSD Ex. 269 (Report of NBE Candy) at ¶126, citing Minutes, Enterprise Risk Management Committee (April 9, 2014) (OCC-WF-SP-06400169).

<sup>494</sup> EC MSD Ex. 269 (Report of NBE Candy) at ¶126.

OCC.<sup>495</sup> Examiner Crosthwaite reported that as detailed below, the May 19, 2015 Memo was false, misleading, and incomplete.<sup>496</sup>

### **Respondent Russ Anderson Obstructed and Provided False Statements to OCC Examiners**

Based on her 24 years of experience as a national bank examiner, Examiner Crosthwaite opined that the Community Bank's Group Risk Officer, Respondent Russ Anderson, failed to fulfill her fiduciary duty and responsibilities as the first line of defense responsible for risk management and controls.<sup>497</sup> 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.<sup>498</sup> The Bank had various policies and procedures in place that touched on various aspects of sales practices misconduct.<sup>499</sup> Respondent Russ Anderson had responsibility for ensuring the adequacy and appropriateness of the Community Bank's risk management and controls.<sup>500</sup>

Under the Bank's Incentive Compensation Risk Management Policy, Respondent 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.<sup>501</sup>

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<sup>495</sup> EC MSD Ex. 269 (Report of NBE Candy) at ¶126.

<sup>496</sup> EC MSD Ex. 268 (Report of NBE Crosthwaite) at ¶108.

<sup>497</sup> EC MSD Ex. 268 (Report of NBE Crosthwaite) at ¶108.

<sup>498</sup> EC MSD Ex. 268 (Report of NBE Crosthwaite) at ¶108.

<sup>499</sup> EC MSD Ex. 268 (Report of NBE Crosthwaite) at ¶108.

<sup>500</sup> EC MSD Ex. 268 (Report of NBE Crosthwaite) at ¶109.

<sup>501</sup> EC MSD Ex. 268 (Report of NBE Crosthwaite) at ¶110.

Respondent Russ Anderson admits that “she had some, but not the sole, authority to address or investigate sales practices misconduct . . .”<sup>502</sup>

Notwithstanding that both the problem and its root cause were identified and well known by at least 2004, the Community Bank and Respondent Russ Anderson took no meaningful action.<sup>503</sup> The Board 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.”<sup>504</sup>

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.<sup>505</sup> 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 verbally and in writing.<sup>506</sup>

Management is required to be transparent and provide comprehensive and accurate information to senior management, the board, and the OCC. Transparency and truthful communication between the banker and regulator is of utmost importance for banks of all sizes.<sup>507</sup> 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.<sup>508</sup> The level of transparency by bank management with senior management, the

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<sup>502</sup> EC MSD Ex. 268 (Report of NBE Crosthwaite) at ¶110.

<sup>503</sup> EC MSD Ex. 268 (Report of NBE Crosthwaite) at ¶111.

<sup>504</sup> EC MSD Ex. 268 (Report of NBE Crosthwaite) at ¶111.

<sup>505</sup> EC MSD Ex. 268 (Report of NBE Crosthwaite) at ¶112.

<sup>506</sup> EC MSD Ex. 268 (Report of NBE Crosthwaite) at ¶112.

<sup>507</sup> EC MSD Ex. 268 (Report of NBE Crosthwaite) at ¶113.

<sup>508</sup> EC MSD Ex. 268 (Report of NBE Crosthwaite) at ¶114.



board, and the regulator influence and can hinder the bank's reputation with shareholders, regulators, customers, other stakeholders, and the community at large.<sup>509</sup>

Respondent 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.<sup>510</sup> She was responsible for ensuring that accurate, complete, and transparent information related to sales practices was being provided to the OCC.<sup>511</sup>

Examiner Crosthwaite opined, and stated the documents she reviewed reflect, 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,<sup>512</sup> asserting that she made several false and misleading statements during the February 2015 and May 2015 examinations and regularly sought to limit the extent of information the Bank provided to Examiner Crosthwaite and others at the OCC.<sup>513</sup> In support of these opinions, Examiner Crosthwaite noted the following:

- a. 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."

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<sup>509</sup> EC MSD Ex. 268 (Report of NBE Crosthwaite) at ¶114.

<sup>510</sup> EC MSD Ex. 268 (Report of NBE Crosthwaite) at ¶115.

<sup>511</sup> EC MSD Ex. 268 (Report of NBE Crosthwaite) at ¶116.

<sup>512</sup> EC MSD Ex. 268 (Report of NBE Crosthwaite) at ¶117.

<sup>513</sup> EC MSD Ex. 268 (Report of NBE Crosthwaite) at ¶117.

b. 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. In October and December 2013, the Los Angeles Times published two articles outlining the Bank's "pressure cooker" sales environment. 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. The OCC learned about the 230 team members from Legal in their response to the OCC's request letter for the May 2015 investigation. In February 2015, the OCC conducted a Community Bank examination with a focus on Sales Practices governance. OCC examiners conducted multiple interviews with Respondent Tolstedt, Respondent Russ Anderson, and a number of Tolstedt's direct reports. Respondent Russ Anderson did not mention the 2013 Los Angeles and Orange County investigation into simulated funding or the larger body of terminations.

c. Respondent Russ Anderson participated in a February 10, 2015 conference call with the OCC ("February 2015 OCC Call"). On the February 2015 OCC Call, an OCC examiner asked whether pressure to meet baseline sales goals was significant and contributed to employee turnover. Respondent Russ Anderson told the OCC that "no one loses their job because they did not meet sales goals." This was demonstrably false. 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 2011-2016 for not meeting sales goals.

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.” 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.<sup>514</sup>

Examiner Hudson participated in a February 10, 2015 teleconference between OCC examination staff and Respondent Russ Anderson.<sup>515</sup> Before the meeting, the OCC provided a list of topics and questions to be covered at the meeting, including:

- “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.”<sup>516</sup>

On the February 10, 2015 OCC Call, incentive compensation was discussed.<sup>517</sup> Examiner Hudson reported that Respondent Russ Anderson did not identify any concerns with incentive compensation at this meeting, risk created by the incentive compensation plans, or whether such risks were adequately managed.<sup>518</sup> Examiner Hudson reported that as a National Bank Examiner

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<sup>514</sup> EC MSD Ex. 268 (Report of NBE Crosthwaite) at ¶118.

<sup>515</sup> EC MSD Ex. 270 (Report of NBE Hudson) at ¶33.

<sup>516</sup> EC MSD Ex. 270 (Report of NBE Hudson) at ¶33, citing Email from Jill Charron to Kevin Swanson and attached notes (February 13, 2015) (OCC-SP0711664).

<sup>517</sup> EC MSD Ex. 270 (Report of NBE Hudson) at ¶33.

<sup>518</sup> EC MSD Ex. 270 (Report of NBE Hudson) at ¶34.

she expected that a senior Risk Officer 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.<sup>519</sup>

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 that "no one loses their job because they did not meet sales goals."<sup>520</sup> Examiner Hudson reported that she later learned this statement was demonstrably false.<sup>521</sup>

On the February 10, 2015 Call, OCC examiners asked how the Bank ensures that the customer understands what they purchased.<sup>522</sup> 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.<sup>523</sup> Examiners were told that Rebecca Rawson's team manages that process.<sup>524</sup>

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.<sup>525</sup> During the February 2015 Exam, the OCC asked how the Bank determines that customers only received products that they want.<sup>526</sup> Respondent Russ Anderson and her staff

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<sup>519</sup> EC MSD Ex. 270 (Report of NBE Hudson) at ¶34.

<sup>520</sup> Citing Conclusion Memorandum from Kevin Swanson to Karin Hudson (Feb. 19, 2015) (OCC-SP0125161).

<sup>521</sup> EC MSD Ex. 270 (Report of NBE Hudson) at ¶35.

<sup>522</sup> EC MSD Ex. 270 (Report of NBE Hudson) at ¶36

<sup>523</sup> EC MSD Ex. 270 (Report of NBE Hudson) at ¶36

<sup>524</sup> 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.*

<sup>525</sup> EC MSD Ex. 270 (Report of NBE Hudson) at ¶36

<sup>526</sup> EC MSD Ex. 270 (Report of NBE Hudson) at ¶36

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.<sup>527</sup>

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.<sup>528</sup> 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.<sup>529</sup>

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 overall sales quality and sales behavior.<sup>530</sup> Respondent Russ Anderson responded that there was no overall process.<sup>531</sup> 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.<sup>532</sup> This remark from Respondent Russ Anderson suggested that customers were only provided products that they needed and consented to.<sup>533</sup>

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<sup>527</sup> 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).

<sup>528</sup> EC MSD Ex. 270 (Report of NBE Hudson) at ¶37.

<sup>529</sup> EC MSD Ex. 270 (Report of NBE Hudson) at ¶37, citing Email from Jill Charron to Kevin Swanson and attached notes (February 13, 2015) (OCC-SP0711664).

<sup>530</sup> EC MSD Ex. 270 (Report of NBE Hudson) at ¶38.

<sup>531</sup> EC MSD Ex. 270 (Report of NBE Hudson) at ¶38, citing Email from Jill Charron to Kevin Swanson and attached notes (February 13, 2015) (OCC-SP0711664).

<sup>532</sup> EC MSD Ex. 270 (Report of NBE Hudson) at ¶38.

<sup>533</sup> EC MSD Ex. 270 (Report of NBE Hudson) at ¶38.

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.<sup>534</sup> 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.<sup>535</sup>

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 fulsomely.<sup>536</sup> 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.<sup>537</sup>

Respondent Russ Anderson never escalated the problem to the Board or the OCC.<sup>538</sup> When asked to present information on the scope and scale of sales practices misconduct to the

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<sup>534</sup> EC MSD Ex. 270 (Report of NBE Hudson) at ¶39.

<sup>535</sup> EC MSD Ex. 270 (Report of NBE Hudson) at ¶39.

<sup>536</sup> EC MSD Ex. 270 (Report of NBE Hudson) at ¶39.

<sup>537</sup> 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).

<sup>538</sup> EC MSD Ex. 268 (Report of NBE Crosthwaite) at ¶119.

Board, Respondent Russ Anderson provided high level and misleading reports that failed to address the size and scope of the problem.<sup>539</sup>

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.<sup>540</sup> 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.<sup>541</sup> 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.<sup>542</sup>

Examiner Candy interacted with Respondent Russ Anderson during the OCC's May 2015 review.<sup>543</sup> 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.<sup>544</sup> During conversations, she attempted to mislead examiners that the extent of the problem was primarily limited to the LA/OC market, and the bank had implemented sufficient controls.<sup>545</sup> Respondent Russ Anderson

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<sup>539</sup> EC MSD Ex. 268 (Report of NBE Crosthwaite) at ¶119.

<sup>540</sup> EC MSD Ex. 268 (Report of NBE Crosthwaite) at ¶120.

<sup>541</sup> EC MSD Ex. 268 (Report of NBE Crosthwaite) at ¶120.

<sup>542</sup> EC MSD Ex. 268 (Report of NBE Crosthwaite) at ¶121.

<sup>543</sup> EC MSD Ex. 269 (Report of NBE Candy) at ¶127.

<sup>544</sup> EC MSD Ex. 269 (Report of NBE Candy) at ¶127.

<sup>545</sup> EC MSD Ex. 269 (Report of NBE Candy) at ¶127.

also attempted to prevent her employees from giving Examiner Candy information she explicitly asked for regarding controls.<sup>546</sup>

In her opinion as a National Bank Examiner, Respondent Russ Anderson's failure to perform her responsibilities as the Group Risk Officer and false, misleading, and incomplete reporting on the sales practices misconduct problem was in disregard of, and evidenced a conscious indifference to, a known or obvious risk of substantial harm to the Bank.<sup>547</sup> 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.<sup>548</sup>

Indeed, 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.<sup>549</sup> This is significant – Respondent Russ Anderson clearly understood that having good sales production was synonymous with having bad sales quality.<sup>550</sup> She never reported this information to the Enterprise Risk Management Committee, the Board, or the OCC.<sup>551</sup>

The false, misleading, and incomplete reporting on the sales practices misconduct problem that Respondent Russ Anderson actively participated in hindered the Board's

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<sup>546</sup> EC MSD Ex. 269 (Report of NBE Candy) at ¶127.

<sup>547</sup> EC MSD Ex. 269 (Report of NBE Candy) at ¶128.

<sup>548</sup> EC MSD Ex. 269 (Report of NBE Candy) at ¶128.

<sup>549</sup> EC MSD Ex. 269 (Report of NBE Candy) at ¶128.

<sup>550</sup> EC MSD Ex. 269 (Report of NBE Candy) at ¶128.

<sup>551</sup> EC MSD Ex. 269 (Report of NBE Candy) at ¶128.



understanding of the root cause and scope of the problem and the adequacy of controls.<sup>552</sup> It also hindered the Bank’s ability to fundamentally address sales practices misconduct and remediate customers.<sup>553</sup>

### **Respondents Julian and McLinko Failed to Perform their Auditing Responsibilities with Respect to the Sales Practices Misconduct Problem**

According to the Office of the Comptroller of the Currency, Comptroller’s Handbook, Internal and External Audits, an internal audit function is responsible for auditing activities to determine the Bank’s compliance with laws, regulations, and established bank policies and procedures.<sup>554</sup> “Internal audit provides an objective, independent review of bank activities, internal controls, and management information systems to help the board and management monitor and evaluate internal control adequacy and effectiveness.”<sup>555</sup> “Effective internal and external audit programs are also a critical defense against fraud and provide vital information to the board of directors about the effectiveness of the internal control system.”<sup>556</sup> Effective audit programs should “[h]elp maintain or improve the effectiveness of bank risk management processes, controls, and corporate governance.”<sup>557</sup> “Internal audit programs are a bank’s primary mechanism for assessing controls and operations and performing whatever work is necessary to

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<sup>552</sup> EC MSD Ex. 269 (Report of NBE Candy) at ¶128.

<sup>553</sup> EC MSD Ex. 269 (Report of NBE Candy) at ¶128.

<sup>554</sup> EC MSD Ex. 269 (Report of NBE Candy) at ¶129, citing Office of the Comptroller of the Currency, Comptroller’s Handbook, Internal and External Audits, at 7 (Apr. 2003).

<sup>555</sup> EC MSD Ex. 269 (Report of NBE Candy) at ¶130, quoting Office of the Comptroller of the Currency, Comptroller’s Handbook, Internal Control at 1 (Jan. 2001).

<sup>556</sup> EC MSD Ex. 269 (Report of NBE Candy) at ¶130, quoting Comptroller’s Handbook, Internal and External Audits at 1 (Apr. 2003).

<sup>557</sup> EC MSD Ex. 269 (Report of NBE Candy) at ¶130.

allow the board and management to accurately attest to the adequacy of the bank’s internal control system.”<sup>558</sup>

Respondent Julian was the Chief Auditor.<sup>559</sup> The chief auditor is responsible for internal audit’s control risk assessments, audit plans, audit programs, and audit reports.<sup>560</sup>

Respondent McLinko was responsible for audits of the Community Bank. This included audits covering incentive compensation, risk management, and controls.<sup>561</sup>

Examiner Candy opined that Respondent Julian and Respondent McLinko each recklessly engaged in an unsafe or unsound practice by failing to plan and manage audit activity within the Community Bank that would detect and document the ongoing sales practices misconduct problem and identify corrective action to remediate and resolve it.<sup>562</sup> The same conduct constituted breaches of their fiduciary duties.<sup>563</sup>

Generally accepted standards of prudent operation require internal auditors to exhibit independence from the business line both in terms of operation and judgment<sup>564</sup> and “understand a bank’s strategic direction, objectives, products, services, and processes to conduct [its auditing] activities.”<sup>565</sup> Although Examiner Candy reported that she did not have anywhere near complete visibility into the sales practices misconduct issues in the Community Bank during the

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<sup>558</sup> EC MSD Ex. 269 (Report of NBE Candy) at ¶130, quoting Office of the Comptroller of the Currency, Comptroller’s Handbook, Internal and External Audits at 7-8 (April 2003)

<sup>559</sup> EC MSD Ex. 269 (Report of NBE Candy) at ¶131.

<sup>560</sup> EC MSD Ex. 269 (Report of NBE Candy) at ¶131.

<sup>561</sup> EC MSD Ex. 269 (Report of NBE Candy) at ¶132.

<sup>562</sup> EC MSD Ex. 269 (Report of NBE Candy) at ¶133.

<sup>563</sup> EC MSD Ex. 269 (Report of NBE Candy) at ¶133.

<sup>564</sup> EC MSD Ex. 268 (Report of NBE Crosthwaite) at ¶74.

<sup>565</sup> EC MSD Ex. 269 (Report of NBE Candy) at ¶134, quoting Office of the Comptroller of the Currency, Comptroller’s Handbook, Internal and External Audits, at 12 (Apr. 2003).

May 2015 examination, which was only a few weeks long, based on the information she reviewed she determined that there were weaknesses in risk management and controls.<sup>566</sup>

Respondents Julian and McLinko had unrestricted access to all functions, records, property, and personnel in the Bank, and WFAS's practice was to discuss problem areas and trends with Corporate Investigations, the unit that investigated sales integrity issues at the Bank.<sup>567</sup> Respondents Julian and McLinko also had considerably more information about the sales practices misconduct problem than OCC examiners, and had full authority to perform audits and issue corrective actions (known as issues and remediations for Wells Fargo Audit).<sup>568</sup> They also had significantly more personnel at their disposal, yet did not identify sales practices concerns in any meaningful way in any audit.<sup>569</sup> Instead, all of the audits touching on sales practices indicated that the processes and controls were effective.<sup>570</sup>

Respondent Julian and Respondent McLinko each were responsible for understanding the Community Bank's business model, the risks the model posed to the Bank, and the effectiveness of controls to detect and prevent the materialization of such risks.<sup>571</sup> As set forth above, the risk management framework at the Bank had significant deficiencies and the controls were inadequate to prevent and detect sales practices misconduct.<sup>572</sup>

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<sup>566</sup> EC MSD Ex. 269 (Report of NBE Candy) at ¶134.

<sup>567</sup> EC MSD Ex. 268 (Report of NBE Crosthwaite) at ¶75.

<sup>568</sup> EC MSD Ex. 269 (Report of NBE Candy) at ¶134.

<sup>569</sup> EC MSD Ex. 269 (Report of NBE Candy) at ¶134.

<sup>570</sup> EC MSD Ex. 269 (Report of NBE Candy) at ¶134.

<sup>571</sup> EC MSD Ex. 269 (Report of NBE Candy) at ¶134.

<sup>572</sup> EC MSD Ex. 269 (Report of NBE Candy) at ¶134.

Respondent Julian had a significant number of personnel at his disposal and the authority to examine any line of business at the Bank, including the Community Bank.<sup>573</sup> It is Examiner Crosthwaite's opinion that both Respondent Julian and Respondent McLinko should have employed his resources and authority to identify and escalate the sales practices misconduct problem much earlier in a manner that could have lessened the severity and duration of the sales practices problem.<sup>574</sup>

There was a significant control breakdown in the Community Bank, one that Respondent Julian previously acknowledged in his sworn statement.<sup>575</sup> None of the deficiencies were identified in any audit while the sales practices misconduct problem existed at the Bank from the beginning of each Respondent's respective tenures as Chief Auditor and Executive Audit Director, respectively.<sup>576</sup>

Examiner Crosthwaite expected Respondents Julian and McLinko to provide the OCC and herself clear and direct information about issues that present serious risks to the Bank.<sup>577</sup> Respondents Julian and McLinko never provided such information to the OCC related to the Bank's systemic sales practices misconduct problem.<sup>578</sup>

### **Respondents Julian and McLinko Were Aware of the Sales Practices Problem**

Respondents Julian and McLinko received regular reporting about the extent of the systemic problem from multiple informational channels, including the committees they were

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<sup>573</sup> EC MSD Ex. 268 (Report of NBE Crosthwaite) at ¶76

<sup>574</sup> EC MSD Ex. 268 (Report of NBE Crosthwaite) at ¶76.

<sup>575</sup> EC MSD Ex. 269 (Report of NBE Candy) at ¶134.

<sup>576</sup> EC MSD Ex. 269 (Report of NBE Candy) at ¶134.

<sup>577</sup> EC MSD Ex. 268 (Report of NBE Crosthwaite) at ¶79.

<sup>578</sup> EC MSD Ex. 268 (Report of NBE Crosthwaite) at ¶79.

members of.<sup>579</sup> Examiner Crosthwaite recalled the Chief Security Officer testifying that he was confident that all members of the TMMEC, including Respondents Julian and Strother, were fully aware of the seriousness, extent and root cause of the sales practices misconduct issue because he told them about all aspects of the problem in detail.<sup>580</sup> He testified as follows:

I am confident because we dedicated an hour and went through a very formal -- albeit an informal setting -- presentation and general discussion whereby all -- all participants acknowledged the existence of the -- of the pressure and the goals, and shared individual stories about such.<sup>581</sup>

The contemporaneous documents Examiner Crosthwaite reviewed during the February 2017 email review support the Chief Security Officer's testimony.<sup>582</sup> In August 2013, he provided information to the members of the TMMEC that sales integrity was the second largest investigation case type and that the number of investigations into sales integrity violations had increased from 2011 to 2012.<sup>583</sup> The Committee consisted "of senior executives who share responsibility for the appropriate management of team member misconduct and internal fraud matters" and "was formed to look at issues more broadly across the company rather than individual situations."<sup>584</sup> Its purpose was to "provide a forum for Wells Fargo executive management to provide leadership, oversight and direction related to team member misconduct and internal fraud risk management."<sup>585</sup>

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<sup>579</sup> EC MSD Ex. 268 (Report of NBE Crosthwaite) at ¶80.

<sup>580</sup> EC MSD Ex. 268 (Report of NBE Crosthwaite) at ¶80.

<sup>581</sup> EC MSD Ex. 268 (Report of NBE Crosthwaite) at ¶80.

<sup>582</sup> EC MSD Ex. 268 (Report of NBE Crosthwaite) at ¶81.

<sup>583</sup> EC MSD Ex. 268 (Report of NBE Crosthwaite) at ¶81.

<sup>584</sup> EC MSD Ex. 268 (Report of NBE Crosthwaite) at ¶81.

<sup>585</sup> Quoting Team Member Misconduct Executive Committee Charter, at 1 (May 2012) (OCC-WF-SP-07038231).

In March 2013, Respondent Julian wrote to Respondent McLinko that the Chief Security Officer and Head of Corporate Investigations “is presenting some data and Community Banking has a lot of issues [related to team member fraud] each year[.]”<sup>586</sup>

In August 2013, the Chief Security Officer again sent the members of the TMMEC information showing that, in 2012, about half of the 7,000+ EthicsLine complaints investigated by Corporate Investigations related to sales integrity violations and that the number of sales integrity cases had increased from 2012 to 2013.<sup>587</sup> The Chief Security Officer specifically highlighted the following misconduct considerations for the TMMEC, stating:

- Does practice or process create a need or an opportunity for misconduct?
- Are controls allowing too much opportunity?
- Is the LOB [Line of Business] creating an environment whereby the TM [Team Member] must commit misconduct?
- Too much opportunity or too much personal or business pressure can sway most anyone.<sup>588</sup>

Respondent Julian himself admitted in his sworn statement before the OCC that he was informed of the sales practices misconduct problem by various sources, including Corporate Investigations, the TMMEC, the Ethics Committee, and news articles, beginning in 2012.<sup>589</sup>

The Chief Security Officer and Head of Corporate Investigations reported to the Ethics Committee, including Respondent Julian, in August 2013 that “Sales Integrity issues are most prevalent – there needs to be continued focus in this area” and that most EthicsLine reports are

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<sup>586</sup> EC MSD Ex. 268 (Report of NBE Crosthwaite) at ¶82.

<sup>587</sup> EC MSD Ex. 268 (Report of NBE Crosthwaite) at ¶83.

<sup>588</sup> EC MSD Ex. 268 (Report of NBE Crosthwaite) at ¶83.

<sup>589</sup> EC MSD Ex. 268 (Report of NBE Crosthwaite) at ¶84.

“associated with Sales Integrity Issues.”<sup>590</sup> Respondents Julian and McLinko read the 2013 Los Angeles Times articles and were therefore aware that the allegations of sales practices misconduct were widespread across multiple states.<sup>591</sup>

In an April 9, 2014 Enterprise Risk Management Committee meeting, Community Bank leadership informed the committee, including Respondent Julian, that one to two percent of Community Bank employees (1,000 to 2,000) were terminated each year for sales practices-related wrongdoing.<sup>592</sup>

The Enterprise Risk Management Committee oversees the management of all types of risk across Wells Fargo.<sup>593</sup> Enterprise Risk Management Committee members, including Respondent Julian, were responsible for understanding and evaluating risk, addressing escalated issues, and providing active oversight of risk mitigation.<sup>594</sup> The Enterprise Risk Management Committee could escalate any issue to the Operating Committee or the CEO and reported quarterly to the Operating Committee and Risk Committee of the Board of Directors.<sup>595</sup>

The Enterprise Risk Management Committee identified for the Board sales practices as a significant enterprise risk beginning in January 2014, however the description of the risk was lacking in that it provided no information about the root cause, scope, or duration of the sales

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<sup>590</sup> EC MSD Ex. 268 (Report of NBE Crosthwaite) at ¶84.

<sup>591</sup> EC MSD Ex. 268 (Report of NBE Crosthwaite) at ¶84.

<sup>592</sup> EC MSD Ex. 268 (Report of NBE Crosthwaite) at ¶84.

<sup>593</sup> EC MSD Ex. 267 (Report of NBE Smith) at ¶94.

<sup>594</sup> EC MSD Ex. 267 (Report of NBE Smith) at ¶94.

<sup>595</sup> Citing Wells Fargo, Risk Management Framework, 2<sup>nd</sup> Edition (July 2014) (OCC-WF-SP-04791987).

practices misconduct problem.<sup>596</sup> It did not describe the problem as systemic.<sup>597</sup> It merely stated that management is discussing the risk and that addressing the risk is key.<sup>598</sup>

Examiner Smith reported that information provided to the Board should give directors a complete and accurate overview of the bank's condition, activities, and issues.<sup>599</sup> Management is responsible for being transparent and providing sufficient information to allow the directors to ask questions and challenge management.<sup>600</sup> Examiner Smith opined that the Enterprise Risk Management Committee's identification of sales practices as a significant risk in January 2014 did not constitute adequate escalation, was not sufficiently transparent, and Respondent Julian did not adequately address the risk of sales practices misconduct on the Bank.<sup>601</sup>

The Ethics Committee was responsible for the content of the Code of Ethics, which contained a section on sales incentive programs, and overseeing the policy and interpretation of the Code.<sup>602</sup> The Code stated: "Steering a customer to an inappropriate or unnecessary product to receive sales credit harms the customer; it is an unacceptable practice . . . Any form of 'gaming' to receive compensation, to meet sales goals, or for any other reason is in direct violation of company policy and this Code."<sup>603</sup>

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<sup>596</sup> EC MSD Ex. 267 (Report of NBE Smith) at ¶95.

<sup>597</sup> EC MSD Ex. 267 (Report of NBE Smith) at ¶95.

<sup>598</sup> EC MSD Ex. 267 (Report of NBE Smith) at ¶95, citing Memo from the Enterprise Risk Management Committee, Significant Enterprise Risks (Jan. 22, 2014) (OCC-WFSP-08672449).

<sup>599</sup> EC MSD Ex. 267 (Report of NBE Smith) at ¶95.

<sup>600</sup> EC MSD Ex. 267 (Report of NBE Smith) at ¶95, citing The Director's Book: Role of Directors for National Banks and Federal Savings Associations, at 40 (July 2016).

<sup>601</sup> EC MSD Ex. 267 (Report of NBE Smith) at ¶95.

<sup>602</sup> EC MSD Ex. 267 (Report of NBE Smith) at ¶100.

<sup>603</sup> EC MSD Ex. 267 (Report of NBE Smith) at ¶100, quoting Wells Fargo Team Member Code of Ethics and Business Conduct (OCC-WF-SP-04455174).



The members of the Ethics Committee, including Respondent Julian, regularly received information about the sales practices misconduct problem.<sup>604</sup> For example, the minutes of the August 22, 2013 meeting state the Community Bank has the most EthicsLine complaints at the Bank with “most associated with Sales Integrity Issues.” The minutes further state: “Sales Integrity issues are most prevalent – there needs to be continued focus in this area.”<sup>605</sup>

Examiner Smith opined that Respondent Julian took no meaningful actions in response to receiving information that thousands of employees each year submitted EthicsLine complaints (i.e. were blowing the whistle) about sales practices misconduct at the Bank, despite the facts that: (1) sales practices misconduct was a violation of the Code of Ethics and they were responsible for it; and (2) they were supposed to provide leadership, oversight, and direction related to sales practices misconduct as members of the Team Member Misconduct Executive Committee.<sup>606</sup>

Examiner Smith opined that Respondent Julian failed to fulfill his responsibilities as members of the Enterprise Risk Management Committee, Ethics Committee, and Team Member Misconduct Executive Committee.<sup>607</sup> It is her opinion that Respondent Julian’s failures perpetuated the existence of the Bank’s sales practices misconduct problem and constituted unsafe or unsound practices and breaches of their fiduciary duties,<sup>608</sup> and recklessly engaged in the aforementioned unsafe or unsound practices.<sup>609</sup>

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<sup>604</sup> EC MSD Ex. 267 (Report of NBE Smith) at ¶101.

<sup>605</sup> EC MSD Ex. 267 (Report of NBE Smith) at ¶101, quoting Ethics Committee Meeting Minutes (Aug. 22, 2013) (OCC-WF-SP-06727216).

<sup>606</sup> EC MSD Ex. 267 (Report of NBE Smith) at ¶102.

<sup>607</sup> EC MSD Ex. 267 (Report of NBE Smith) at ¶103.

<sup>608</sup> EC MSD Ex. 267 (Report of NBE Smith) at ¶103.

<sup>609</sup> EC MSD Ex. 267 (Report of NBE Smith) at ¶104.

Respondents Julian and McLinko also received information that the Community Bank and the Group Risk Officer were unable or unwilling to adequately address the sales practices issues.<sup>610</sup> In July 2012, the Chief Security Officer informed Respondents Julian and McLinko that the Community Bank’s data “continues to highlight a concerning trend in the area of sales integrity” and that Community Bank Group Risk Officer Claudia Russ Anderson was “minimizing the negative information being submitted to executive management.”<sup>611</sup> The Chief Security Officer detailed the concerning data “from the increase in EthicsLine reports, to the increase in executive complaint letters/OCC referrals, and increases in confirmed fraud, thus, we need to continue to escalate this issue with senior leadership.”<sup>612</sup> The Chief Security Officer emphasized that the “data continues to point to a very negative trend” and that Respondent Russ Anderson “often challenges the Audit and [Corporate Security] A&E reporting verbiage.”<sup>613</sup>

Respondent McLinko testified before the OCC that, based on all the information he reviewed, including the data, analysis, and modeling, it was evident that thousands of Bank employees issued millions of products and services without customer consent:

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: [Objection as to] Foundation.

THE WITNESS: Based upon the data that was produced, on the filing of the data analysis that’s done, and the modeling, yes.<sup>614</sup>

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<sup>610</sup> EC MSD Ex. 268 (Report of NBE Crosthwaite) at ¶87.

<sup>611</sup> EC MSD Ex. 268 (Report of NBE Crosthwaite) at ¶87.

<sup>612</sup> EC MSD Ex. 268 (Report of NBE Crosthwaite) at ¶87.

<sup>613</sup> EC MSD Ex. 268 (Report of NBE Crosthwaite) at ¶87.

<sup>614</sup> EC MSD Ex. 268 (Report of NBE Crosthwaite) at ¶88.

Respondent McLinko served on the Community Banking Risk Management Committee from at least 2014 until August 2016, which 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.”<sup>615</sup> Respondent McLinko explained in an email he drafted for Respondent Julian that “audit[‘s] 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.”<sup>616</sup>

In January 2011, the Chief Security Officer and Head of Corporate Investigations informed Respondent McLinko: “Community Bank sales integrity issue has resulted in two arrests.<sup>617</sup> This is highly unusual but reinforces the fact that this type of activity is unlawful and certainly poses a significant reputation risk to our company.”<sup>618</sup> In February 2011, Corporate Investigations met with Audit and informed auditors on case volumes and trends related to sales practices, including the number of terminations and cases and that “customer consent” was the number one issue.<sup>619</sup> Corporate Investigations also informed Audit that some of the Community Bank’s controls with respect to sales practices amounted to “the fox guarding the hen house.”<sup>620</sup>

In July 2011, the Chief Security Officer and Head of Corporate Investigations again informed Respondent McLinko that “[s]ales Integrity cases continue to surge.”<sup>621</sup> In July 2012, the Chief Security Officer and Head of Corporate Investigations again informed Respondent McLinko that the Bank’s data “continues to highlight a concerning trend in the area of [s]ales

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<sup>615</sup> EC MSD Ex. 268 (Report of NBE Crosthwaite) at ¶89.

<sup>616</sup> EC MSD Ex. 268 (Report of NBE Crosthwaite) at ¶90.

<sup>617</sup> EC MSD Ex. 268 (Report of NBE Crosthwaite) at ¶91.

<sup>618</sup> EC MSD Ex. 268 (Report of NBE Crosthwaite) at ¶91.

<sup>619</sup> EC MSD Ex. 268 (Report of NBE Crosthwaite) at ¶92.

<sup>620</sup> EC MSD Ex. 268 (Report of NBE Crosthwaite) at ¶92.

<sup>621</sup> EC MSD Ex. 268 (Report of NBE Crosthwaite) at ¶93.

[i]ntegrity – from the increase in EthicsLine reports, to the increase in executive complaint letters/OCC referrals, and increases in confirmed fraud” and that Respondent Russ Anderson “minimiz[ed] the negative information being submitted to executive management.”<sup>622</sup> The Chief Security Officer and Head of Corporate Investigations concluded: “we need to continue to escalate this issue with senior leadership” and stated the data “continues to point to a very negative trend.”<sup>623</sup>

In January 2013, an auditor who reported to Respondent McLinko told him that sales integrity “is still [the Chief Security Officer’s] #1 concern.”<sup>624</sup> In that same email, the auditor wrote: “I questioned [the Chief Security Officer] as to whether they had discussed root cause for some of the items listed above and was it related to sales pressure. He said he felt a lot of it was related to the sales goals and pressure. He feels there’s an issue that [Regional Bank] is trying to work through but not a lot of people want to address it with [Respondent Tolstedt].”<sup>625</sup>

Respondent McLinko also was aware of the Los Angeles Times articles at the end of 2013. The Chief Security Officer and Head of Corporate Investigations emailed him the first article and explained it was a “big deal[.]”<sup>626</sup>

Respondent Julian himself asked his staff in a September 2016 email about sales practices misconduct: “Where was audit while this activity was taking place? To be honest, I’m not sure how to answer this but am sure the A[udit and] E[xamination] Committee will and should be asking.”<sup>627</sup> Respondent Julian testified that he never received a “good answer about

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<sup>622</sup> EC MSD Ex. 268 (Report of NBE Crosthwaite) at ¶94.

<sup>623</sup> EC MSD Ex. 268 (Report of NBE Crosthwaite) at ¶94.

<sup>624</sup> EC MSD Ex. 268 (Report of NBE Crosthwaite) at ¶95.

<sup>625</sup> EC MSD Ex. 268 (Report of NBE Crosthwaite) at ¶95.

<sup>626</sup> EC MSD Ex. 268 (Report of NBE Crosthwaite) at ¶96.

<sup>627</sup> EC MSD Ex. 268 (Report of NBE Crosthwaite) at ¶97.

where was audit.”<sup>628</sup> Respondent Julian could offer no reasonable explanation for Audit’s failure to detect and escalate the sales practices misconduct problem.<sup>629</sup> This is consistent with Bank documents that show Respondent Julian did not receive an acceptable answer when he asked his staff, including Respondent McLinko, in September 2016: “where was audit while this activity was taking place?”<sup>630</sup> No one, including Respondent McLinko, responded with any of the arguments that Respondents Julian and McLinko now advance in the litigation.<sup>631</sup>

Examiner Candy opined that Respondent Julian’s and Respondent McLinko’s conduct subjected the Bank to abnormal risk or loss or damage to the Bank.<sup>632</sup> Their failures to detect sales practices issues in a timely and fulsome manner and review sales practices created undue legal, compliance, and reputational risks, and risk of customer and team member harm – the very risks that Audit was supposed to be auditing, and which materialized at the Bank.<sup>633</sup> The failure to identify the problem in any audit also perpetuated the problem and caused actual loss to the Bank.<sup>634</sup>

### **Respondent Julian’s and Respondent McLinko’s Failures to Fulfill Their Job Responsibilities are Recklessly Unsafe or Unsound**

The Bank has three lines of defense which are responsible for identifying, measuring, monitoring, and controlling risk. <sup>635</sup>The first line of defense is composed of the Bank’s risk-

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<sup>628</sup> EC MSD Ex. 268 (Report of NBE Crosthwaite) at ¶97.

<sup>629</sup> EC MSD Ex. 268 (Report of NBE Crosthwaite) at ¶97.

<sup>630</sup> EC MSD Ex. 268 (Report of NBE Crosthwaite) at ¶97.

<sup>631</sup> EC MSD Ex. 268 (Report of NBE Crosthwaite) at ¶97.

<sup>632</sup> EC MSD Ex. 269 (Report of NBE Candy) at ¶135.

<sup>633</sup> EC MSD Ex. 269 (Report of NBE Candy) at ¶135.

<sup>634</sup> EC MSD Ex. 269 (Report of NBE Candy) at ¶135.

<sup>635</sup> EC MSD Ex. 257 (Report of NBE Coleman) at ¶18.

generating business units like the Community Bank.<sup>636</sup> The second line of defense is composed of the Bank's independent risk management functions such as Corporate Risk.<sup>637</sup> Wells Fargo Audit Services ("WFAS" or "Audit") is the third line of defense.<sup>638</sup>

As the third line of defense, the internal audit function assesses the effectiveness of the policies, processes, personnel, and control systems created in the first and second lines of defense. [cite 2003 and 2016 Internal and External Audits Handbook] Evaluation of controls was within the purview of Audit's responsibilities:

"The effectiveness of internal controls is assessed through the bank's risk reviews (often second line of defense) and audit program (third line of defense) . . . Audit programs are the independent control function that verifies the effectiveness of the bank's risk management system. Unlike risk reviews, audit managers and the board should make decisions regarding the audit program to maintain appropriate independence."<sup>639</sup>

Beginning in March 2014 and through October 2016, Karin Hudson worked as a National Bank Examiner in Large Bank Supervision with the OCC's Wells Fargo examination team based in Charlotte, North Carolina.<sup>640</sup> During this period, she examined various areas in this complex institution, including retail credit and operational risk.<sup>641</sup> Examiner Hudson reported that she

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<sup>636</sup> EC MSD Ex. 257 (Report of NBE Coleman) at ¶18

<sup>637</sup> EC MSD Ex. 257 (Report of NBE Coleman) at ¶18

<sup>638</sup> EC MSD Ex. 257 (Report of NBE Coleman) at ¶18.

<sup>639</sup> EC MSD Ex. 268 (Report of NBE Crosthwaite) at ¶98.

<sup>640</sup> Examiner Hudson has twenty years of professional experience at the OCC, including extensive experience in the supervision of community, midsize, large, and problem banks. During her tenure, she has participated in at least 175 examinations. Her experience has included application of safety and soundness principles to bank operations, corporate governance, risk management, internal and external audit, and controls. She also review compliance with required laws, regulations, and OCC guidance. EC MSD Ex. 270 (Report of NBE Hudson) at ¶3.

<sup>641</sup> EC MSD Ex. 270 (Report of NBE Hudson) at ¶6.

performed ongoing supervisory activities and conducted examinations of Wells Fargo's Community Bank and Consumer Lending Group lines of business. She documented target review findings, including any applicable Matters Requiring Attention ("MRAs") in Conclusion Memos, Supervisory Letters, and other pertinent supervisory correspondence.<sup>642</sup> Additionally, she was responsible for presenting examination findings to Bank management and had frequent discussions with Wells Fargo management regarding Bank operations and was responsible for monitoring and updating relevant MRAs quarterly to gauge the Bank's progress towards effective completion within established timeframes.<sup>643</sup> She also completed quarterly Bank risk assessments covering areas such as governance, complaints, fraud, litigation, new products or services, and technology breaches causing impact to operational risk.<sup>644</sup>

The OCC commenced a target examination of operational risk management and cross-sell activities of Wells Fargo's Community Bank on approximately February 2, 2015 ("February 2015 Exam").<sup>645</sup> Target examinations may focus on one particular product (e.g., credit cards), function (e.g., audit), or risk (e.g., operational risk) or may cover specialty areas (e.g., municipal securities dealers).<sup>646</sup> Conclusions from target examinations are generally communicated to a bank in supervisory letters.<sup>647</sup>

Examiner Hudson led the February 2015 Exam, which was staffed by ten examiners (including Examiner Hudson) and lasted approximately three weeks: from February 2, 2015 until February 19, 2015.<sup>648</sup> The objective of the examination was to perform a broad assessment of

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<sup>642</sup> EC MSD Ex. 270 (Report of NBE Hudson) at ¶6.

<sup>643</sup> EC MSD Ex. 270 (Report of NBE Hudson) at ¶6.

<sup>644</sup> EC MSD Ex. 270 (Report of NBE Hudson) at ¶6.

<sup>645</sup> EC MSD Ex. 270 (Report of NBE Hudson) at ¶17.

<sup>646</sup> EC MSD Ex. 270 (Report of NBE Hudson) at ¶17.

<sup>647</sup> EC MSD Ex. 270 (Report of NBE Hudson) at ¶17.

<sup>648</sup> EC MSD Ex. 270 (Report of NBE Hudson) at ¶18.

Group Risk Officer Claudia Russ Anderson’s risk function (including the functions that reported to her), and to understand the cross-sell strategy, governance of complaints, and how complaints affect cross-sell activities, among other areas.<sup>649</sup>

Examiner Hudson’s interactions with Respondent Russ Anderson began in approximately June 2014 leading up to the February 2015 Exam.<sup>650</sup> Examiner Hudson reported that she wanted to understand the work performed by the risk organization overseen by Respondent Russ Anderson, the cross-sell ratio, and the strategy and risks around cross-sell where cross-sell is reported to be a metric the Bank used to measure the number of Bank products per household.<sup>651</sup>

The examination team held a kickoff meeting with Respondent Russ Anderson on or around February 2, 2015.<sup>652</sup> Around the time of this kickoff meeting, Respondent Russ Anderson indicated to Examiner Hudson that she loved being examined by the regulator and that although regulators review her department and areas under her responsibility, she welcomed the scrutiny and feedback to ensure that she was conducting operations appropriately.<sup>653</sup>

Approximately three days later, on or around February 5, 2015, Respondent Russ Anderson contacted Examiner Hudson’s primary supervisor, Christine Moses, and expressed concern about the documents Examiner Hudson’s team had requested as part of the February 2015 Exam. Examiner Hudson reports that Respondent Russ Anderson stated that the requests reflected “scope creep” and that the OCC was not sticking to the scope of the original request

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<sup>649</sup> EC MSD Ex. 270 (Report of NBE Hudson) at ¶18, citing Scope Memorandum from Karin Hudson (Jan. 8, 2015) (OCC-SP0087452).

<sup>650</sup> EC MSD Ex. 270 (Report of NBE Hudson) at ¶19.

<sup>651</sup> EC MSD Ex. 270 (Report of NBE Hudson) at ¶19.

<sup>652</sup> EC MSD Ex. 270 (Report of NBE Hudson) at ¶20, citing Request Letter from Christine Moses to Carrie Tolstedt (Jan. 7, 2015) (OCC-WF-SP-06521319).

<sup>653</sup> EC MSD Ex. 270 (Report of NBE Hudson) at ¶20.



letter.<sup>654</sup> Christine Moses then contacted Examiner Hudson via phone to relay Respondent Russ Anderson's concern.<sup>655</sup>

During the course of the February 2015 Exam, Examiner Hudson met with Respondent Russ Anderson numerous times.<sup>656</sup> During examinations, OCC staff regularly meet with bank personnel and management.<sup>657</sup> The purpose of such meetings is to obtain information relevant to the OCC's examination, to enable the OCC to make informed and accurate conclusions, and to better understand risks facing the bank and the bank's management from its businesses and operations.<sup>658</sup> The purpose of Examiner Hudson's meetings with Respondent Russ Anderson was to gain an understanding of cross-sell, operational risks in Community Bank oversight, and monitoring and controls over cross-sell and sales activities.<sup>659</sup>

### **February 9, 2015 Meeting with Respondents Russ Anderson and Audit and Audit's Lack of Independence**

On February 9, 2015, Examiner Hudson participated in a teleconference that was intended to be between OCC examination staff and Respondent Paul McLinko and his audit staff only ("February 9, 2015 Call").<sup>660</sup> At the time, Respondent McLinko was an Executive Audit Director responsible for auditing the Community Bank.<sup>661</sup> The purpose of the call was for the OCC to learn about Audit's coverage of Community Bank sales practices.<sup>662</sup>

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<sup>654</sup> EC MSD Ex. 270 (Report of NBE Hudson) at ¶20.

<sup>655</sup> EC MSD Ex. 270 (Report of NBE Hudson) at ¶20.

<sup>656</sup> EC MSD Ex. 270 (Report of NBE Hudson) at ¶21.

<sup>657</sup> EC MSD Ex. 270 (Report of NBE Hudson) at ¶22.

<sup>658</sup> EC MSD Ex. 270 (Report of NBE Hudson) at ¶22.

<sup>659</sup> EC MSD Ex. 270 (Report of NBE Hudson) at ¶22.

<sup>660</sup> EC MSD Ex. 270 (Report of NBE Hudson) at ¶23.

<sup>661</sup> EC MSD Ex. 270 (Report of NBE Hudson) at ¶23.

<sup>662</sup> EC MSD Ex. 270 (Report of NBE Hudson) at ¶23.

Examiner Hudson reported that she was surprised to hear that Respondent Russ Anderson (and three other members of Community Bank) announced themselves on the call.<sup>663</sup> Respondent Russ Anderson actively participated in the discussion that was intended to be between the OCC and Respondent McLinko and his Audit staff only.<sup>664</sup> Although Examiner Hudson did not send the meeting invitation to Respondent Russ Anderson (because the purpose of the discussion was to learn from Audit about their work and coverage of sales practices), Respondent Russ Anderson and her staff nonetheless participated in the meeting.<sup>665</sup>

Examiner Hudson reported she had concerns about Respondent Russ Anderson's and her staff's attendance on the February 9, 2015 Call as it could impede the independence of the audit function.<sup>666</sup> During an examination, it is important according to Examiner Hudson for OCC examiners to meet with the audit function separately to determine its review and assessment of various lines of business at the bank.<sup>667</sup> Examiner Hudson reported that such meetings provide a mechanism for audit to be candid and transparent with the OCC about risk areas at the bank and for examiners to have independent discussions with audit.<sup>668</sup> This type of discussion is not effective if the line of business subject to the audit is present, according to Examiner Hudson.<sup>669</sup> Examiner Hudson reported that in her experience, it is unusual for internal audit to include or allow the line of business that is the subject of the audit discussion to attend such a meeting.<sup>670</sup>

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<sup>663</sup> EC MSD Ex. 270 (Report of NBE Hudson) at ¶23.

<sup>664</sup> EC MSD Ex. 270 (Report of NBE Hudson) at ¶23.

<sup>665</sup> EC MSD Ex. 270 (Report of NBE Hudson) at ¶23, citing Meeting Notes from Kevin Swanson to Karin Hudson (Feb. 9, 2015) (OCC-SP0333218).

<sup>666</sup> EC MSD Ex. 270 (Report of NBE Hudson) at ¶24.

<sup>667</sup> EC MSD Ex. 270 (Report of NBE Hudson) at ¶24.

<sup>668</sup> EC MSD Ex. 270 (Report of NBE Hudson) at ¶24.

<sup>669</sup> EC MSD Ex. 270 (Report of NBE Hudson) at ¶24.

<sup>670</sup> EC MSD Ex. 270 (Report of NBE Hudson) at ¶24.

On the February 9, 2015 Call, Examiner Hudson and her staff asked about Audit's review of sales practices.<sup>671</sup> Respondent McLinko was unable to respond to many questions around sales practices.<sup>672</sup> After the February 9, 2015 Call, Examiner Hudson reported that her impression was that Audit had not done an end-to-end holistic review of sales practices in the Community Bank.<sup>673</sup> Examiner Hudson concluded that Audit reviewed certain areas touching on sales practices but did not review sales practices as a framework.<sup>674</sup> None of the audits touching on sales practices raised any significant issues in the audit reports.<sup>675</sup>

During the February 9, 2015 Call, Bart Deese, an auditor who reported to Respondent McLinko, stated that audits of the Bank's Wholesale Banking group and Wealth, Brokerage, and Retirement group focused on cross-sell as a separate activity, assessing governance, internal controls, oversight, and revenue derived from cross-sell.<sup>676</sup> Mr. Deese indicated that Audit had not conducted a similar review of the Community Bank.<sup>677</sup>

At this point, Respondent Russ Anderson (and another Community Bank employee) interjected and reiterated that in the Community Bank, cross-sell is not a separate activity that can be broken out and governed as a stand-alone activity.<sup>678</sup> Examiner Hudson reported that Respondent Russ Anderson consistently told the OCC's examiners during this examination that the Community Bank did not have a strategy around cross-sell, that it was just something the

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<sup>671</sup> EC MSD Ex. 270 (Report of NBE Hudson) at ¶25.

<sup>672</sup> EC MSD Ex. 270 (Report of NBE Hudson) at ¶25.

<sup>673</sup> EC MSD Ex. 270 (Report of NBE Hudson) at ¶25.

<sup>674</sup> EC MSD Ex. 270 (Report of NBE Hudson) at ¶25.

<sup>675</sup> EC MSD Ex. 270 (Report of NBE Hudson) at ¶25, citing Conclusion Memorandum from Kevin Swanson to Karin Hudson (Feb. 19, 2015) (OCC-SP0125161).

<sup>676</sup> EC MSD Ex. 270 (Report of NBE Hudson) at ¶26.

<sup>677</sup> EC MSD Ex. 270 (Report of NBE Hudson) at ¶26.

<sup>678</sup> EC MSD Ex. 270 (Report of NBE Hudson) at ¶26.

company did, and that the reason they wanted each customer to have eight products is because eight rhymed with great.<sup>679</sup> Respondent McLinko did not disagree with Respondent Russ Anderson or provide any additional information during the February 9, 2015 Call.<sup>680</sup>

Examiner Hudson reported that on the February 9, 2015 Call, she wanted to understand how sales goals impact incentive compensation and employee terminations.<sup>681</sup> During this call, Respondent Russ Anderson stated that “incentive compensation plans are capped to balance the incentives for sales vis-à-vis customer service.”<sup>682</sup> According to Examiner Hudson, Respondent Russ Anderson also added that “the impact of sales goals expectations on employee turnover is monitored through exit interviews and that it is not significant.”<sup>683</sup> On this call and in other meetings, Russ Anderson consistently stated to Examiner Hudson that sales goals do not drive employee compensation or employee terminations.<sup>684</sup>

Examiner Hudson reported that the primary responsibility of the internal audit function is to provide independent assurance and challenge.<sup>685</sup> As the third line of defense, the internal audit function assesses the effectiveness of the policies, processes, personnel, and control systems created in the first and second lines of defense.<sup>686</sup> Examiner Hudson reported that the fact that under Respondent McLinko’s leadership Audit had not conducted a comprehensive review of

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<sup>679</sup> EC MSD Ex. 270 (Report of NBE Hudson) at ¶26

<sup>680</sup> EC MSD Ex. 270 (Report of NBE Hudson) at ¶26.

<sup>681</sup> EC MSD Ex. 270 (Report of NBE Hudson) at ¶27.

<sup>682</sup> EC MSD Ex. 270 (Report of NBE Hudson) at ¶27, quoting Meeting Notes from Kevin Swanson to Karin Hudson (Feb. 9, 2015) (OCC-SP0333218).

<sup>683</sup> EC MSD Ex. 270 (Report of NBE Hudson) at ¶27, quoting Meeting Notes from Kevin Swanson to Karin Hudson (Feb. 9, 2015) (OCC-SP0333218).

<sup>684</sup> EC MSD Ex. 270 (Report of NBE Hudson) at ¶27.

<sup>685</sup> EC MSD Ex. 270 (Report of NBE Hudson) at ¶28,

<sup>686</sup> EC MSD Ex. 270 (Report of NBE Hudson) at ¶28, citing Comptroller’s Handbook, Internal and External Audits (Apr. 2003) (OCC-SP0103885).

sales practices and control systems concerned her because it raised questions about Audit's ability to detect risk, which is an important aspect of Audit's role.<sup>687</sup>

During the February 9, 2015 Call, Respondent Russ Anderson reported to the OCC that the Community Bank group risk function had a "good partnership with Audit."<sup>688</sup> This statement also raised concerns for Examiner Hudson regarding Respondent McLinko's independence in his role as the Executive Audit Director.<sup>689</sup> This statement and the prior interjection of Russ Anderson on the audit call raised concerns for Examiner Hudson regarding the independence of the Audit function generally.<sup>690</sup> Internal audit, according to Examiner Hudson, is required to maintain independence both in appearance and in fact and not be influenced by the lines of business that internal audit is supposed to be auditing.<sup>691</sup> A lack of independence by an audit function is concerning as it could result in strategic decisions that increase business line risks through ineffective policies, procedures, and controls contrary to the bank's risk appetite.<sup>692</sup>

Based on her experience, training, and commission as a National Bank Examiner, and her participation and interaction with Audit in the February 2015 Exam, Examiner Hudson concluded that Audit lacked independence.<sup>693</sup> Examiner Hudson opined that Audit's failure to be fully independent posed an elevated risk to the Bank because it affected Audit's ability to detect

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<sup>687</sup> EC MSD Ex. 270 (Report of NBE Hudson) at ¶29.

<sup>688</sup> EC MSD Ex. 270 (Report of NBE Hudson) at ¶30.

<sup>689</sup> EC MSD Ex. 270 (Report of NBE Hudson) at ¶30.

<sup>690</sup> EC MSD Ex. 270 (Report of NBE Hudson) at ¶30.

<sup>691</sup> EC MSD Ex. 270 (Report of NBE Hudson) at ¶30, citing Office of the Comptroller of the Currency, Comptroller's Handbook, Internal and External Audits, at 23 (April 2003).

<sup>692</sup> EC MSD Ex. 270 (Report of NBE Hudson) at ¶30.

<sup>693</sup> EC MSD Ex. 270 (Report of NBE Hudson) at ¶31.

and document risks and required corrective actions, and therefore hindered the Bank's ability to fully address risk.<sup>694</sup>

From her participation and interaction with Audit in the February 2015 Exam, Examiner Hudson opined that she did not believe that Audit, under Respondents McLinko's and Julian's leadership, acted with appropriate professional skepticism toward the Community Bank and its managers.<sup>695</sup>

### **Respondents Julian and McLinko Awarded the Community Bank the Highest Possible Audit Ratings**

Examiner Smith reported that well-planned, properly structured auditing programs are essential to effective risk management and internal control systems.<sup>696</sup> Effective internal and external audit programs are also a critical defense against fraud and provide vital information to the board of directors about the effectiveness of internal control systems.<sup>697</sup>

This is underscored by the fact that the head of Audit reports directly to the Board through the Audit & Examination Committee.<sup>698</sup> The scope of Audit's work "is to determine if the Company's risk management, systems of controls, and governance processes are adequate and functioning as intended."<sup>699</sup> Respondent Julian and his staff, including Respondent McLinko, were responsible for escalating significant weakness and deficiencies in internal controls, risk management, and governance to the Audit & Examination Committee of the Board of Directors weaknesses.<sup>700</sup> Audit's work is critical "to improve the effectiveness of [the Bank's]

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<sup>694</sup> EC MSD Ex. 270 (Report of NBE Hudson) at ¶31.

<sup>695</sup> EC MSD Ex. 270 (Report of NBE Hudson) at ¶32.

<sup>696</sup> EC MSD Ex. 267 (Report of NBE Smith) at ¶121.

<sup>697</sup> EC MSD Ex. 267 (Report of NBE Smith) at ¶121.

<sup>698</sup> EC MSD Ex. 267 (Report of NBE Smith) at ¶121.

<sup>699</sup> EC MSD Ex. 267 (Report of NBE Smith) at ¶122.

<sup>700</sup> EC MSD Ex. 267 (Report of NBE Smith) at ¶122.

risk management, control and governance processes, their adherence to relevant regulatory guidelines, and appropriateness for Wells Fargo’s size, business mix, and risk profile.”<sup>701</sup>

In July 2012, the Chief Security Officer and Head of Corporate Investigations informed Respondents Julian and McLinko: “[O]ur data continues to highlight a concerning trend in the area of Sales Integrity – from the increase in EthicsLine reports, to the increase in executive complaint letters / OCC referral, and increases in confirmed fraud, thus, we need to continue to escalate this issue with senior leadership. Our data continues to point to a very negative trend.”<sup>702</sup>

The Chief Security Officer and Head of Corporate Investigations also informed Respondent Julian in the email that Respondent Russ Anderson, the Community Bank’s Group Risk Officer, was “minimizing” the seriousness of the problem to executive management.<sup>703</sup> In January 2013, the Chief Security Officer and Head of Corporate Investigations informed Audit, including Respondent McLinko, that sales integrity was still his #1 concern.<sup>704</sup> During the February 9, 2015 Call, Audit told the OCC that “no significant coverage gaps were identified”

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<sup>701</sup> EC MSD Ex. 267 (Report of NBE Smith) at ¶122, quoting Wells Fargo, Risk Management Framework, 2nd Edition (July 2014) (OCC-WF-SP-04791987); Wells Fargo Audit Services, Second Quarter 2014 Summary, at 8 (Aug. 4, 2014) (OCC-SP0811518).

<sup>702</sup> EC MSD Ex. 267 (Report of NBE Smith) at ¶123, quoting E-mail from Bacon to McLinko, Julian et al., HIGHLY CONFIDENTIAL - review & discard - FW: Follow-up - Regional Banking Cash Negotiables Investigations Key Activity Report thru 2Q (OCC-WF-SP-06076643).

<sup>703</sup> EC MSD Ex. 267 (Report of NBE Smith) at ¶123, quoting E-mail from Bacon to McLinko, Julian et al., HIGHLY CONFIDENTIAL - review & discard - FW: Follow-up - Regional Banking Cash Negotiables Investigations Key Activity Report thru 2Q (OCC-WF-SP-06076643).

<sup>704</sup> EC MSD Ex. 267 (Report of NBE Smith) at ¶124, citing Email from Deese to McLinko, Recap of Meeting with Bacon (Jan. 3, 2013) (OCC-WF-SP-08880999).

concerning Audit's coverage of the Community Bank.<sup>705</sup> That was Audit's conclusion that was communicated to the OCC.<sup>706</sup>

Respondent Julian informed the OCC in May 2015, "Our 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."<sup>707</sup> Respondent Julian admitted in his sworn testimony that any competent auditor would have followed up on the information that he and his Audit group in fact received in real time.<sup>708</sup> Respondent Julian also admitted that if an auditor received such information and failed to investigate further, then such an auditor would not be doing his job.<sup>709</sup> Examiner Smith agreed with Respondent Julian's assessment on this point.

Examiner Smith reported that notwithstanding all the information Respondents Julian and McLinko received about sales practices misconduct in the Community Bank, Audit did not follow up on the information, and as a result, continued to award the Community Bank the highest possible ratings year after year.<sup>710</sup> Examiner Smith opined that Respondent Julian's and Respondent McLinko's failure to identify and escalate the systemic sales practices misconduct problem, including their failure to document the significant sales practices risk management and internal controls weaknesses in any audit report, perpetuated the existence of the Bank's sales

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<sup>705</sup> EC MSD Ex. 270 (Report of NBE Hudson) at ¶32, citing Meeting Notes from Kevin Swanson to Karin Hudson (Feb. 9, 2015) (OCC-SP0333218).

<sup>706</sup> EC MSD Ex. 270 (Report of NBE Hudson) at ¶32.

<sup>707</sup> EC MSD Ex. 267 (Report of NBE Smith) at ¶125, quoting E-mail from Julian to Grover et al., Audit Coverage of Sales Practices (OCC-WF-SP-06969110).

<sup>708</sup> EC MSD Ex. 267 (Report of NBE Smith) at ¶126, quoting Sworn Statement of Respondent Julian at 167:18-171:4; 263:6-22 (May 31, 2018) (OCC-SP00046063).

<sup>709</sup> EC MSD Ex. 267 (Report of NBE Smith) at ¶126, citing Sworn Statement of Respondent Julian at 167:18-171:4; 263:6-22 (May 31, 2018) (OCC-SP00046063).

<sup>710</sup> EC MSD Ex. 267 (Report of NBE Smith) at ¶127.



practices misconduct problem for many years and was an unsafe or unsound practice and breach of their fiduciary duty.<sup>711</sup>

She further opined that that Respondent Julian failed to adequately supervise the Audit Department and failed to escalate issues to his direct supervisor, the Chair of the Audit and Examination Committee, thereby ensuring that the Board was not made aware of the issues by the independent third line of defense.<sup>712</sup> Examiner Smith opined that these failures perpetuated the existence of the sales practices misconduct problem and constituted unsafe or unsound practices and breaches of his fiduciary duty.<sup>713</sup>

She further opined that Respondents Julian and McLinko recklessly engaged in the aforementioned unsafe or unsound practices.<sup>714</sup>

As part of scoping OCC examinations, examiners review previous audit reports.<sup>715</sup> As with other examinations, the OCC reviewed previous audit reports during the February 2015 Exam with respect to Audit's coverage of cross sell and sales practices in the Community Bank.<sup>716</sup> Based on Examiner Hudson's training and experience as a National Bank Examiner reviewing internal audit programs, audit should conduct a risk assessment and devise an audit scope and testing that would accurately identify and document risk in audit reports.<sup>717</sup> Audit testing should incorporate areas that pose risk to the bank and accurately and completely assess

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<sup>711</sup> EC MSD Ex. 267 (Report of NBE Smith) at ¶128.

<sup>712</sup> EC MSD Ex. 267 (Report of NBE Smith) at ¶129.

<sup>713</sup> EC MSD Ex. 267 (Report of NBE Smith) at ¶129.

<sup>714</sup> EC MSD Ex. 267 (Report of NBE Smith) at ¶130.

<sup>715</sup> EC MSD Ex. 270 (Report of NBE Hudson) at ¶32.

<sup>716</sup> EC MSD Ex. 270 (Report of NBE Hudson) at ¶32.

<sup>717</sup> EC MSD Ex. 270 (Report of NBE Hudson) at ¶32.

such risks and recommend corrective action.<sup>718</sup> From her participation in the February 2015 Exam and review of audit reports, Examiner Hudson concluded that none of Audit's reports covered sales practices in the manner one would have expected given the significant risks, nor did the reports identify any concerns with the sales model and its impact on employee misconduct and employee terminations.<sup>719</sup>

In July 2015, the OCC communicated to the Bank that it had failed to satisfy the safety and soundness standards contained in the OCC's Guidelines Establishing Heightened Standards for Certain Large Insured National Banks.<sup>720</sup> The OCC highlighted deficiencies with Audit and required Respondent Julian to, among other things, "develop audit programs that test the first line of defense compliance with high risk laws and regulations and report internal audit identified deficiencies to the Bank's Audit and Examination Committee along with the severity of the deficiency and the corrective actions."<sup>721</sup>

Examiner Crosthwaite opined that it was recklessly unsafe or unsound for the Respondents to continue awarding the Community Bank the highest possible rating, even after the sales practices misconduct problem was the subject of two Los Angeles Times articles in the Fall of 2013; after the City of Los Angeles filed a lawsuit against the Bank in May of 2015; and even after the OCC issued five Matters Requiring Attention with respect to sales practices on June 2015.<sup>722</sup> In support of this opinion, Examiner Crosthwaite specifically noted the following:

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<sup>718</sup> EC MSD Ex. 270 (Report of NBE Hudson) at ¶32.

<sup>719</sup> EC MSD Ex. 270 (Report of NBE Hudson) at ¶32.

<sup>720</sup> EC MSD Ex. 268 (Report of NBE Crosthwaite) at ¶99

<sup>721</sup> EC MSD Ex. 268 (Report of NBE Crosthwaite) at ¶99

<sup>722</sup> EC MSD Ex. 268 (Report of NBE Crosthwaite) at ¶100.

- a. During all the years that Respondents Julian and McLinko served in their respective positions, Audit consistently rated the Community Bank as effective—the highest possible grade.
- b. WFAS and Respondents Julian and McLinko issued these “effective” ratings even when they received information indicating that the sales practices problem had grown to an unmanageable level.
- c. WFAS rated the Regional Banking and Business Banking Compliance Program as “effective” in December 2013, when the Los Angeles Times published its second article on the Bank’s sales practices.
- d. In June 2015, the OCC issued five MRAs related to sales practices. One MRA required Audit to “reassess their coverage of sales practices and provide an enterprise view.” In response to the MRA, Audit indicated that it was committed to maintaining independence and developing a comprehensive audit approach with respect to sales practices. The response to the MRA designated Respondent McLinko as the “accountable executive.” The commitments for which Respondent McLinko was the “accountable executive” included being “engaged with the various LOBs (lines of business) as they develop and implement corrective actions to the Enterprise Sales Practices MRA’s. ... Issue monitoring and validation, reviewing governance processes and enhanced policy, monitoring of projects/initiatives to enhance Enterprise Sales Practices compliance, and obtaining an understanding of key activities and functions performed to ensure compliance with enterprise sales practices along with their sustainability.” Notwithstanding all of the commitments which Audit made, and for which Respondent McLinko was the “accountable executive,” the Community Bank audit team under Respondent McLinko’s leadership continued to award high ratings to the Community Bank.

e. WFAS Audit rated the Community Bank’s internal controls for customer account opening as “effective” as late as March 2016, after the Los Angeles City Attorney’s lawsuit and the OCC’s issuance of five MRAs from the OCC.” During my time as ERM Lead, WFAS never rated the Community Bank as anything less than “effective” until 2017, following public backlash over the Bank’s sales practices.<sup>723</sup>

Examiner Crosthwaite opined that the Chief Auditor should know whether Community Bank’s internal controls were adequate, whether any business operations in Community Bank were causing violations of laws, regulations, or Bank policies, and whether management was taking appropriate steps to address control deficiencies.<sup>724</sup> Although the extent of the sales practices misconduct problem, as is illustrated by PwC’s estimation of 3.5 million potentially unauthorized accounts, was alarming, it should not have been a surprise to senior executives such as Respondents Julian and McLinko who had regular and immediate access to sales integrity data.<sup>725</sup>

Respondent Julian was responsible for ensuring that WFAS performed its duties objectively and independent of the lines of business.<sup>726</sup> Respondent Julian failed to meet the expectations the OCC set and communicated for all internal auditors.<sup>727</sup> Despite knowledge about Respondent Russ Anderson’s lack of transparency and the Community Bank’s failure to address the sales practices problem, Respondents Julian and McLinko did not challenge the Community Bank in any capacity.<sup>728</sup>

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<sup>723</sup> EC MSD Ex. 268 (Report of NBE Crosthwaite) at ¶100.

<sup>724</sup> EC MSD Ex. 268 (Report of NBE Crosthwaite) at ¶101.

<sup>725</sup> EC MSD Ex. 268 (Report of NBE Crosthwaite) at ¶101.

<sup>726</sup> EC MSD Ex. 268 (Report of NBE Crosthwaite) at ¶102.

<sup>727</sup> EC MSD Ex. 268 (Report of NBE Crosthwaite) at ¶102.

<sup>728</sup> EC MSD Ex. 268 (Report of NBE Crosthwaite) at ¶102.

In his role as Chief Auditor, Respondent Julian was required to assess executive compensation and recommend reduction or negative impacts to compensation if there were deficiencies in risk management or other executive misconduct.<sup>729</sup> Respondent Julian admits that “Audit provided information in connection with annual incentive compensation risk memoranda and that memoranda were provided to the Human Resources Committee of the Board.”<sup>730</sup> Respondent Julian was asked to consult and determine whether there needed to be any impacts to executive compensation due to sales practices misconduct. Respondent Julian assessed a rating of “satisfactory” for sales practices in 2014, 2015, and 2016.<sup>731</sup>

“Satisfactory” was the highest possible assessment. Respondent Julian did not recommend any impacts to Respondent Tolstedt’s compensation due to sales practices contrary to real-time information he had received about the sales practices misconduct problem.<sup>732</sup> These ratings inaccurately signaled to the CEO and the Board that the Community Bank’s management over sales practices risk was appropriate and should have no negative impact on senior management’s incentive compensation.<sup>733</sup> Examiner Crosthwaite opined that it was recklessly unsafe or unsound for Respondent Julian to maintain the level of compensation for senior executives he knew or should have known contributed to the problem.<sup>734</sup>

Examiner Crosthwaite opined that Respondent Julian breached his fiduciary duty and engaged in an unsafe or unsound practice by failing to accurately assess and appropriately incorporate risk events in incentive compensation recommendations for material risk takers and

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<sup>729</sup> EC MSD Ex. 268 (Report of NBE Crosthwaite) at ¶103.

<sup>730</sup> EC MSD Ex. 268 (Report of NBE Crosthwaite) at ¶103.

<sup>731</sup> EC MSD Ex. 268 (Report of NBE Crosthwaite) at ¶104.

<sup>732</sup> EC MSD Ex. 268 (Report of NBE Crosthwaite) at ¶104.

<sup>733</sup> EC MSD Ex. 268 (Report of NBE Crosthwaite) at ¶104.

<sup>734</sup> EC MSD Ex. 268 (Report of NBE Crosthwaite) at ¶105.

executives at the Bank from 2014 through 2016.<sup>735</sup> Examiner Crosthwaite also expressed the concern that although the Community Bank’s problems have been common knowledge for many years, Respondents Julian and McLinko deny the existence of any serious or systemic problem with sales practices misconduct in the Community Bank even now.<sup>736</sup>

Examiner Candy concluded that Respondents Julian and McLinko disregarded known and obvious risk of substantial harm to the Bank caused by sales practices misconduct.<sup>737</sup> Each Respondent did not act appropriately to address or mitigate risk of substantial harm to the Bank, irrespective of the information and data supplied to them about the extent and root cause of the problem over the course of their tenures.<sup>738</sup>

It is Examiner Candy’s opinion as a National Bank Examiner that Respondent Julian recklessly engaged in an unsafe or unsound practice by failing to accurately assess and appropriately incorporate risk events in incentive compensation recommendations for material risk takers and executives at the Bank from 2014 through 2016.<sup>739</sup> Annual memoranda from 2014 through 2016 rates the Community Bank’s risk management in connection with sales practices as “satisfactory,” the highest possible assessment.<sup>740</sup> It also is her opinion that Respondent Julian’s and Respondent McLinko’s practices and breaches constituted a pattern of misconduct.<sup>741</sup>

### **Each Respondent Received Personal Gain or Other Benefit from Their Misconduct**

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<sup>735</sup> EC MSD Ex. 268 (Report of NBE Crosthwaite) at ¶106.

<sup>736</sup> EC MSD Ex. 268 (Report of NBE Crosthwaite) at ¶107.

<sup>737</sup> EC MSD Ex. 269 (Report of NBE Candy) at ¶136.

<sup>738</sup> EC MSD Ex. 269 (Report of NBE Candy) at ¶136.

<sup>739</sup> EC MSD Ex. 269 (Report of NBE Candy) at ¶137.

<sup>740</sup> EC MSD Ex. 269 (Report of NBE Candy) at ¶137.

<sup>741</sup> EC MSD Ex. 269 (Report of NBE Candy) at ¶138.

Examiner Candy opined that each Respondent's misconduct conferred personal gain or other benefit to them.<sup>742</sup> As explained above, the sales practices misconduct problem persisted because its root cause, the unreasonable goals and extreme pressure, were also the very basis for the financial success of the business model.<sup>743</sup> The Community Bank was the largest line of business at the Bank.<sup>744</sup> It was the driver of growth for the Bank and the key to its touted cross-sell success.<sup>745</sup>

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.<sup>746</sup> She reported that as WFC's share price increased during their tenures, so did their effective compensation.<sup>747</sup> 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.<sup>748</sup>

Examiner Smith reported that Respondents' improper actions and inactions allowed the Bank's impermissible, but profitable, sales model to continue for many years.<sup>749</sup> As senior executives of the company they benefitted financially from the unsafe and unsound business model that their misconduct preserved and perpetuated because their compensation was based in

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<sup>742</sup> EC MSD Ex. 269 (Report of NBE Candy) at ¶211.

<sup>743</sup> EC MSD Ex. 269 (Report of NBE Candy) at ¶212.

<sup>744</sup> EC MSD Ex. 269 (Report of NBE Candy) at ¶212.

<sup>745</sup> EC MSD Ex. 269 (Report of NBE Candy) at ¶212.

<sup>746</sup> EC MSD Ex. 269 (Report of NBE Candy) at ¶213.

<sup>747</sup> EC MSD Ex. 269 (Report of NBE Candy) at ¶213.

<sup>748</sup> EC MSD Ex. 269 (Report of NBE Candy) at ¶213.

<sup>749</sup> EC MSD Ex. 267 (Report of NBE Smith) at ¶146.

part on the Bank's financial performance.<sup>750</sup> Upon these findings, Examiner Smith opined that the Respondents received financial gain or other benefits by reason of their misconduct.<sup>751</sup>

### **Respondents' Misconduct Caused Enormous Financial Losses and Immense Reputational Damage to the Bank as Well as Significant Harm to its Customers and Employees**

Examiner Candy reported that when the sales practices scandal was publicized, the Bank suffered and continues to suffer massive financial loss and reputational damage.<sup>752</sup> Examiner Smith reported that the sales practices misconduct problem caused enormous and ongoing financial losses and other damage to Wells Fargo.<sup>753</sup> 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."<sup>754</sup>

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.<sup>755</sup> 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.<sup>756</sup>

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<sup>750</sup> EC MSD Ex. 267 (Report of NBE Smith) at ¶146.

<sup>751</sup> EC MSD Ex. 267 (Report of NBE Smith) at ¶147.

<sup>752</sup> EC MSD Ex. 269 (Report of NBE Candy) at ¶214.

<sup>753</sup> EC MSD Ex. 267 (Report of NBE Smith) at ¶148.

<sup>754</sup> EC MSD Ex. 267 (Report of NBE Smith) at ¶148, quoting Sworn Statement of Timothy Sloan at 260:8-261:3 (July 11, 2019) (OCC-SP00048394).

<sup>755</sup> 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>.

<sup>756</sup> 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>.



The Bank also incurred significant expenses to rehabilitate its image and rebuild trust with its customers.<sup>757</sup> In 2018, the Bank launched a marketing and outreach campaign, “Re-Established,” that cost the Bank hundreds of millions of dollars.<sup>758</sup> Further, the Board of Governors of the Federal Reserve imposed an “asset cap” on Wells Fargo, which has had a significant financial impact on the Bank by limiting the Bank’s ability to increase in asset size.<sup>759</sup>

On February 2, 2018, the Federal Reserve Board of Governors imposed an asset cap on WFC.<sup>760</sup> 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”<sup>761</sup> and that it would remain in effect until WFC sufficiently improves its governance and risk management.<sup>762</sup> As of the date of November 20, 2020, the asset cap remained in place.<sup>763</sup> The asset cap imposed on WFC is one of, if not the, costliest penalties ever.<sup>764</sup> The asset cap significantly affected WFC’s stock performance.<sup>765</sup>

From February 2, 2018 through December 31, 2019:

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[ilings/2020/second-quarter-10q.pdf](#); and Declaration of Scott W. Champion (Apr. 24, 2018) (OCC-WF-SP-06584570).

<sup>757</sup> EC MSD Ex. 267 (Report of NBE Smith) at ¶148.

<sup>758</sup> EC MSD Ex. 267 (Report of NBE Smith) at ¶148, citing Sworn Statement of Hope Hardison at 36:14-38:18 (Aug. 16, 2018).

<sup>759</sup> 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).

<sup>760</sup> EC MSD Ex. 658 (Report of Dr. Pocock) at ¶58.

<sup>761</sup> 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>.

<sup>762</sup> EC MSD Ex. 658 (Report of Dr. Pocock) at ¶58.

<sup>763</sup> EC MSD Ex. 658 (Report of Dr. Pocock) at ¶58.

<sup>764</sup> EC MSD Ex. 658 (Report of Dr. Pocock) at ¶58, 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>.

<sup>765</sup> EC MSD Ex. 258 (Report of Dr. Pocock) at ¶58.

- 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.<sup>766</sup>

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.<sup>767</sup> He opined that it would not be reasonable nor plausible to attribute this to a coincidence.<sup>768</sup>

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.<sup>769</sup> Examiner Smith opined that the Bank subsequently suffered immense reputational damage as a result of the sales practices misconduct problem.<sup>770</sup>

### **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.<sup>771</sup> WFC's principal business is to act as a holding company for its subsidiaries.<sup>772</sup> As of December 31, 2019, Wells Fargo Bank, N.A. was WFC's

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<sup>766</sup> EC MSD Ex. 267 (Report of NBE Smith) at ¶58.

<sup>767</sup> EC MSD Ex. 267 (Report of NBE Smith) at ¶65.

<sup>768</sup> EC MSD Ex. 267 (Report of NBE Smith) at ¶65.

<sup>769</sup> EC MSD Ex. 267 (Report of NBE Smith) at ¶148.

<sup>770</sup> EC MSD Ex. 267 (Report of NBE Smith) at ¶149.

<sup>771</sup> EC MSD Ex. 658 (Report of Dr. Pocock) at ¶44, citing Wells Fargo & Co., Annual Report (Form 10-K) at 1 (Feb. 27, 2020).

<sup>772</sup> EC MSD Ex. 658 (Report of Dr. Pocock) at ¶44, citing Wells Fargo & Co., Annual Report (Form 10-K) at 1 (Feb. 27, 2020).

principal subsidiary with assets of \$1.7 trillion, or 89 percent of WFC's assets.<sup>773</sup> 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."<sup>774</sup>

Not only did the Bank generate more than half of WFC's revenue, it also provided important synergies to all parts of the corporation.<sup>775</sup> "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."<sup>776</sup> 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.<sup>777</sup>

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.<sup>778</sup> 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.<sup>779</sup>

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:

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<sup>773</sup> EC MSD Ex. 658 (Report of Dr. Pocock) at ¶44, citing Wells Fargo & Co., Annual Report (Form 10-K) at 1 (Feb. 27, 2020).

<sup>774</sup> EC MSD Ex. 658 (Report of Dr. Pocock) at ¶45, citing Deferred Prosecution Agreement at A-1.

<sup>775</sup> EC MSD Ex. 658 (Report of Dr. Pocock) at ¶46.

<sup>776</sup> EC MSD Ex. 658 (Report of Dr. Pocock) at ¶46, citing Deferred Prosecution Agreement at A-2/

<sup>777</sup> EC MSD Ex. 658 (Report of Dr. Pocock) at ¶47.

<sup>778</sup> EC MSD Ex. 658 (Report of Dr. Pocock) at ¶48.

<sup>779</sup> EC MSD Ex. 658 (Report of Dr. Pocock) at ¶48.

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.<sup>780</sup>

The stock price analysis Dr. Pocock performed provides significant evidence that the Bank and OCC examiners are correct with respect to both propositions.<sup>781</sup> 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.<sup>782</sup> 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.<sup>783</sup>

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.<sup>784</sup>

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

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<sup>780</sup> EC MSD Ex. 658 (Report of Dr. Pocock) at ¶49, quoting Sworn Statement of Timothy Sloan at 260:8-16 (July 11, 2019) (OCC-SP00048394).

<sup>781</sup> EC MSD Ex. 658 (Report of Dr. Pocock) at ¶50.

<sup>782</sup> EC MSD Ex. 658 (Report of Dr. Pocock) at ¶50.

<sup>783</sup> EC MSD Ex. 658 (Report of Dr. Pocock) at ¶50.

<sup>784</sup> EC MSD Ex. 658 (Report of Dr. Pocock) at ¶66.

management positions.<sup>785</sup> In 2017, the Bank fell to last place in a bank reputation survey conducted by American Banker/Reputation Institute.<sup>786</sup> According to the American Banker, the Bank's reputation score "went into free fall . . . [and was] by far the lowest of any bank."<sup>787</sup> 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.<sup>788</sup>

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.<sup>789</sup>

Examiner Smith reported that the sale practices misconduct problem are ongoing<sup>790</sup> and have led to significant customer harm and breaches of customer trust.<sup>791</sup> In August 2017, Bank consultant PricewaterhouseCoopers ("PwC") determined that Bank employees opened approximately 3.5 million potentially unauthorized accounts between January 2009 and September 2016.<sup>792</sup> The Bank admitted that "[f]rom 2002 to 2016, Wells Fargo opened millions of accounts or financial products that were unauthorized or fraudulent" and that the Bank's "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

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<sup>785</sup> EC MSD Ex. 267 (Report of NBE Smith) at ¶150.

<sup>786</sup> EC MSD Ex. 267 (Report of NBE Smith) at ¶151.

<sup>787</sup> EC MSD Ex. 267 (Report of NBE Smith) at ¶151.

<sup>788</sup> EC MSD Ex. 267 (Report of NBE Smith) at ¶151, quoting 2017 reputation survey: Banks avoid the Wells Fargo drag, American Banker, Sean Sposito, (Jun. 27, 2017) available at <https://www.americanbanker.com/news/2017-bank-reputation-survey>.

<sup>789</sup> EC MSD Ex. 267 (Report of NBE Smith) at ¶152, quoting Mack Tr. at 241:16-242:1.

<sup>790</sup> EC MSD Ex. 267 (Report of NBE Smith) at ¶153.

<sup>791</sup> EC MSD Ex. 267 (Report of NBE Smith) at ¶154.

<sup>792</sup> EC MSD Ex. 267 (Report of NBE Smith) at ¶154, citing PwC, Wells Fargo Sales Practices Project, Analytical Results Update (Jan. 26, 2016) (OCC-WF-SP-08668768).

records.”<sup>793</sup> Examiner Smith reported that because the problem was systemic since no later than 2002, it is difficult to estimate just how many millions of customers were victimized by fraud, identity theft, and falsification of bank records.<sup>794</sup>

Examiner Smith also reported that the sales model also had a significant impact on Bank employees.<sup>795</sup> She reported 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.<sup>796</sup> During that same period, over 8,100 employees were terminated from not meeting sales goals.<sup>797</sup> 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.<sup>798</sup>

From these findings, Examiner Smith opined that Respondents’ misconduct caused the Bank to suffer material financial loss and reputational damage.<sup>799</sup> It is also her opinion that the Bank has yet to recover from the reputational damage caused by sales practices.<sup>800</sup> It is also her

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<sup>793</sup> EC MSD Ex. 267 (Report of NBE Smith) at ¶154, quoting Deferred Prosecution Agreement, Statement of Facts.

<sup>794</sup> EC MSD Ex. 267 (Report of NBE Smith) at ¶154.

<sup>795</sup> EC MSD Ex. 267 (Report of NBE Smith) at ¶155.

<sup>796</sup> EC MSD Ex. 267 (Report of NBE Smith) at ¶155, 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](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).

<sup>797</sup> 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).

<sup>798</sup> EC MSD Ex. 267 (Report of NBE Smith) at ¶155.

<sup>799</sup> EC MSD Ex. 267 (Report of NBE Smith) at ¶156.

<sup>800</sup> EC MSD Ex. 267 (Report of NBE Smith) at ¶156.

opinion that the reputational harm as well as the improper sales practices resulted in actual or prospective prejudice to the Bank's depositors.<sup>801</sup>

### **Assessment of Civil Money Penalties**

Respondents Russ Anderson, Julian, and McLinko were among the most senior officers of Wells Fargo, one of the largest financial institutions in the world.<sup>802</sup> Each Respondent had a unique and important responsibility with respect to the Bank's longstanding, widespread, and systemic sales practices misconduct problem.<sup>803</sup> Each Respondent knew about the problem and its root cause.<sup>804</sup> Examiner Smith opined that nonetheless each of the Respondents failed in their responsibilities:<sup>805</sup> they failed to identify, escalate, and address the sales practices misconduct problem continuously and repeatedly for years.<sup>806</sup> And Respondent Russ Anderson provided false and misleading information about the problem to the Board and the OCC.<sup>807</sup> In Examiner Smith's opinion, these failures resulted in millions of unauthorized accounts, and billions of dollars of financial losses and massive reputational damage to the Bank.<sup>808</sup> Additionally, each of the Respondent's received financial benefit as a result of the Bank's improper sales model.<sup>809</sup>

Examiner Candy opined that each Respondent had visibility into the sales practices misconduct problem, responsibilities that required them to take action to minimize and address

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<sup>801</sup> EC MSD Ex. 267 (Report of NBE Smith) at ¶157.

<sup>802</sup> EC MSD Ex. 267 (Report of NBE Smith) at ¶159.

<sup>803</sup> EC MSD Ex. 267 (Report of NBE Smith) at ¶159.

<sup>804</sup> EC MSD Ex. 267 (Report of NBE Smith) at ¶159.

<sup>805</sup> EC MSD Ex. 267 (Report of NBE Smith) at ¶159.

<sup>806</sup> EC MSD Ex. 267 (Report of NBE Smith) at ¶159.

<sup>807</sup> EC MSD Ex. 267 (Report of NBE Smith) at ¶159.

<sup>808</sup> EC MSD Ex. 267 (Report of NBE Smith) at ¶159.

<sup>809</sup> EC MSD Ex. 267 (Report of NBE Smith) at ¶159.

risk, and authority and stature to effectuate change.<sup>810</sup> She opined that none of the Respondents fulfilled their important responsibilities and their conduct and failures perpetuated the sales practices misconduct problem and enabled ongoing illegal activity at the Bank.<sup>811</sup>

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.<sup>812</sup> 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

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<sup>810</sup> EC MSD Ex. 269 (Report of NBE Candy) at ¶217

<sup>811</sup> EC MSD Ex. 269 (Report of NBE Candy) at ¶217.

<sup>812</sup> EC MSD Ex. 269 (Report of NBE Candy) 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).



breaches; and (17) the existence of agreements, commitments, orders or conditions imposed in writing intended to prevent violations.<sup>813</sup>

In his review of these factors, Examiner Coleman noted that Title 12 U.S.C 1818(i) permits the assessment of a CMP on a per-violation and per-day basis.<sup>814</sup> 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.”<sup>815</sup> 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.<sup>816</sup>

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.<sup>817</sup> One such factor is the Respondent’s ability to pay the CMP. There is no evidence that any of these Respondents lack the financial resources to pay the assessed CMP or a greater amount.<sup>818</sup> Each Respondent had ample opportunity to submit a personal financial statement or other evidence showing that their financial resources should mitigate the CMP but each chose not to.<sup>819</sup> Therefore, the OCC

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<sup>813</sup> 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).

<sup>814</sup> EC MSD Ex. 257 (Report of NBE Coleman) at ¶127.

<sup>815</sup> EC MSD Ex. 257 (Report of NBE Coleman) at ¶127, 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.*

<sup>816</sup> EC MSD Ex. 257 (Report of NBE Coleman) at ¶127.

<sup>817</sup> EC MSD Ex. 268 (Report of NBE Crosthwaite) at ¶131, citing 12 U.S.C. § 1818(i)(2)(G) and interagency policy.

<sup>818</sup> EC MSD Ex. 268 (Report of NBE Crosthwaite) at ¶131.

<sup>819</sup> EC MSD Ex. 268 (Report of NBE Crosthwaite) at ¶131.

assumes the Respondents have the ability to pay CMPs in the assessed amounts.<sup>820</sup> In any case, 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.<sup>821</sup>

Examiner Coleman noted the assessed CMPs or even higher CMPs are appropriate to serve the purpose of deterrence.<sup>822</sup> She reported that an important purpose of a CMP is to function as a deterrent.<sup>823</sup> Examiner Coleman reported that each Respondent was a senior executive within the Bank, accepted significant responsibility, and was well compensated.<sup>824</sup> 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.<sup>825</sup> Examiner Coleman asserted that if CMPs are insufficient, bank officers may reasonably conclude that ignoring the harm caused by a profitable business model is the prudent and profitable course of action.<sup>826</sup> 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.<sup>827</sup>

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<sup>820</sup> EC MSD Ex. 268 (Report of NBE Crosthwaite) at ¶131.

<sup>821</sup> EC MSD Ex. 268 (Report of NBE Crosthwaite) at ¶131.

<sup>822</sup> EC MSD Ex. 257 (Report of NBE Coleman) at ¶130.

<sup>823</sup> EC MSD Ex. 257 (Report of NBE Coleman) at ¶130, 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.”)

<sup>824</sup> EC MSD Ex. 257 (Report of NBE Coleman) at ¶130.

<sup>825</sup> EC MSD Ex. 257 (Report of NBE Coleman) at ¶130.

<sup>826</sup> EC MSD Ex. 257 (Report of NBE Coleman) at ¶130.

<sup>827</sup>

Upon consideration of all of the statutory and interagency factors, Examiner Candy opined that the CMPs in the assessed amounts are appropriate.<sup>828</sup> Specifically, a CMP of at least \$5,000,000 against Respondent Russ Anderson is warranted, a CMP of at least \$2,000,000 against Respondent Julian is warranted, and a CMP of at least \$500,000 against Respondent McLinko is warranted.<sup>829</sup> Further, she opined that *higher* CMPs against each Respondent are consistent with and supported by the evidence.<sup>830</sup>

### **Enforcement Counsel's Motions for Summary Disposition**

On March 26, 2021, Enforcement Counsel filed motions seeking summary disposition in their favor against Respondents Russ Anderson, Julian, and McLinko.<sup>831</sup> In their Motion regarding Respondent Russ Anderson, Enforcement Counsel aver there are no genuine issues of material fact to be determined regarding the charges alleged and relief sought against Respondent Russ Anderson, which are described in the Notice of Charges for Orders of Prohibition and Orders to Cease and Desist and Notice of Assessments of Civil Money Penalty filed on January 23, 2020.<sup>832</sup> Enforcement Counsel aver they are entitled to a decision as a matter of law, and request that this Tribunal issue an order granting the Motion along with a recommendation that the Comptroller issue an order of prohibition along with an order that Respondent Russ Anderson pay a civil money penalty in the amount of \$10,000,000.<sup>833</sup>

In their Motion regarding Respondents Julian and McLinko, Enforcement Counsel again aver here are no genuine issues of material fact to be determined regarding the charges alleged

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<sup>828</sup> EC MSD Ex. 269 (Report of NBE Candy) at ¶216.

<sup>829</sup> EC MSD Ex. 269 (Report of NBE Candy) at ¶216.

<sup>830</sup> EC MSD Ex. 269 (Report of NBE Candy) at ¶216.

<sup>831</sup> Enforcement Counsel's Motion for Summary Disposition against Respondent Claudia Russ Anderson, and Enforcement Counsel's Motion for Summary Disposition against Respondents David Julian and Paul McLinko, both dated March 26, 2021.

<sup>832</sup> Enforcement Counsel's Motion for Summary Disposition against Respondent Claudia Russ Anderson at 1.

<sup>833</sup> Enforcement Counsel's Motion for Summary Disposition against Respondent Claudia Russ Anderson at 1-2.

and relief sought against Respondents Julian and McLinko, which are described in the Notice of Charges for Orders of Prohibition and Orders to Cease and Desist and Notice of Assessments of Civil Money Penalty filed on January 23, 2020.<sup>834</sup> Enforcement Counsel aver they are entitled to a decision as a matter of law, and request that this Tribunal issue an order granting the Motion along with a recommendation that the Comptroller issue an order against Respondent Julian to cease and desist and be ordered to pay a civil money penalty in the amount of \$7,000,000; and an order against Respondent McLinko to cease and desist and be ordered to pay a civil money penalty in the amount of \$1,500,000.<sup>835</sup>

Enforcement Counsel have supported their motions with briefs in support, accompanied by statements of what Enforcement Counsel aver are material facts that are not disputed.<sup>836</sup>

With respect to Respondent Russ Anderson, Enforcement Counsel aver that she engaged in violations of law and regulation, unsafe or unsound practices, and breaches of her fiduciary duties by (a) failing to execute her risk management, control, escalation, and credible challenge responsibilities, (b) providing false, misleading, and incomplete information to senior management, the Enterprise Risk Management Committee, and the Board of Directors, and (c) obstructing the OCC's examinations.<sup>837</sup> They aver that by reason of her violations, practices, and breaches, the Bank suffered loss, the interests of the Bank's depositors were or could have been prejudiced, and Respondent Russ Anderson received financial and pecuniary gain and other

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<sup>834</sup> Enforcement Counsel's Motion for Summary Disposition against Respondents David Julian and Paul McLinko at 1.

<sup>835</sup> Enforcement Counsel's Motion for Summary Disposition against Respondents David Julian and Paul McLinko at 1-2.

<sup>836</sup> Brief in Support of Enforcement Counsel's Motion for Summary Disposition against Respondent Claudia Russ Anderson, Enforcement Counsel's Statement of Material Facts as to Respondent Claudia Russ Anderson, Brief in Support of Enforcement Counsel's Motion for Summary Disposition against Respondents David Julian and Paul McLinko, and Enforcement Counsel's Statement of Material Facts as to Respondents David Julian and Paul McLinko, all dated March 26, 2021.

<sup>837</sup> Brief in Support of Enforcement Counsel's Motion for Summary Disposition against Respondent Claudia Russ Anderson at 11.

benefit.<sup>838</sup> They aver that her actions demonstrated personal dishonesty and a willful or continuing disregard for the safety and soundness of the Bank. They aver her violations, practices, and breaches were part of a pattern of misconduct.<sup>839</sup> And they aver that there is no genuine dispute about the objective proof that establishes these facts, asserting that the record shows Respondent Russ Anderson's egregious misconduct more than justifies the prompt and summary imposition of a prohibition order and assessment of a CMP greater than the amount initially assessed in the Notice.<sup>840</sup>

With respect to Respondents Julian and McLinko, Enforcement Counsel aver that both Respondents recklessly engaged in unsafe or unsound practices and breached their fiduciary duties to the Bank.<sup>841</sup> They aver that both Respondents failed to do his job while the systemic sales practices misconduct problem persisted unabated.<sup>842</sup> They aver that each failed to identify and escalate the systemic sales practices misconduct problem, and failed to document the significant sales practices risk management and internal controls weaknesses in any audit report or Enterprise Risk Management Assessment.<sup>843</sup> They aver that Respondent Julian failed to adequately supervise Audit and failed to escalate the systemic problem, its root cause, and the

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<sup>838</sup> Brief in Support of Enforcement Counsel's Motion for Summary Disposition against Respondent Claudia Russ Anderson at 11.

<sup>839</sup> Brief in Support of Enforcement Counsel's Motion for Summary Disposition against Respondent Claudia Russ Anderson at 12.

<sup>840</sup> Brief in Support of Enforcement Counsel's Motion for Summary Disposition against Respondent Claudia Russ Anderson at 12.

<sup>841</sup> Brief in Support of Enforcement Counsel's Motion for Summary Disposition against Respondents Julian and McLinko at 21.

<sup>842</sup> Brief in Support of Enforcement Counsel's Motion for Summary Disposition against Respondents Julian and McLinko at Brief in Support of Enforcement Counsel's Motion for Summary Disposition against Respondents Julian and McLinko at 21. 21.

<sup>843</sup> Brief in Support of Enforcement Counsel's Motion for Summary Disposition against Respondents Julian and McLinko at 21.

control breakdowns to the Audit and Examination Committee.<sup>844</sup> They aver Respondent Julian's conduct ensured the Board remained uninformed of the systemic problem and its root cause and scope by the independent third line of defense.<sup>845</sup> They aver that Respondents Julian's and McLinko's unsafe or unsound practices and breaches of their fiduciary duties, which they aver lasted for years, were part of a pattern of misconduct, caused or were likely to cause more than a minimal loss to the Bank, and resulted in pecuniary gain or other benefit to each.<sup>846</sup> They aver that there is no genuine dispute about the objective proof that establishes these facts and no genuine issues of material fact that preclude summary disposition.<sup>847</sup> And they aver that the record showing Respondents Julian's and McLinko's actions—and each executive's repeated failure to act—more than justifies summary imposition of a personal cease and desist order and a civil money penalty greater than the amount initially assessed in the Notice.<sup>848</sup>

Each of the three Respondents have filed briefs in opposition, and each have filed responses to Enforcement Counsel's Statements of Material Facts.<sup>849</sup> To reduce duplication in

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<sup>844</sup> Brief in Support of Enforcement Counsel's Motion for Summary Disposition against Respondents Julian and McLinko at 21.

<sup>845</sup> Brief in Support of Enforcement Counsel's Motion for Summary Disposition against Respondents Julian and McLinko at 21.

<sup>846</sup> Brief in Support of Enforcement Counsel's Motion for Summary Disposition against Respondents Julian and McLinko at 22.

<sup>847</sup> Brief in Support of Enforcement Counsel's Motion for Summary Disposition against Respondents Julian and McLinko at 22.

<sup>848</sup> Brief in Support of Enforcement Counsel's Motion for Summary Disposition against Respondents Julian and McLinko at 22.

<sup>849</sup> Respondent Claudia Russ Anderson's Memorandum of Law in Opposition to Motion for Summary Disposition with Exhibits in support, Respondent Claudia Russ Anderson's Response to Enforcement Counsel's Statement of Material Facts as to Respondent Claudia Russ Anderson with Additional Material Facts, Respondent David Julian's Brief in Opposition to Motion for Summary Disposition with Exhibits in support, Response of Respondent David Julian to Enforcement Counsel's Statement of Material Facts as to Respondent David Julian with Additional Material Facts, Respondent Paul McLinko's Brief in Opposition to Enforcement Counsel's Motion for Summary Disposition against Respondents David Julian and Paul McLinko, Respondent Paul McLinko's Response to Enforcement Counsel's Statement of Material Facts as to Respondents David Julian and Paul McLinko with Additional Material Facts, all dated May 21, 2021, and Respondent Julian's Objections to Enforcement Counsel's

the presentation facts, law, and argument, Respondents Russ Anderson and Julian incorporated by reference certain portions of Respondent Julian’s responses to Enforcement Counsel’s Statement of Material Facts.

### **Respondent Russ Anderson’s Brief in Opposition**

In her opposition brief, Respondent Russ Anderson avers that there are material factual disputes that preclude summary disposition against her.<sup>850</sup> She averred that “[t]he world would not know about the so-called ‘fake account scandal’ at Wells Fargo but for the actions of Claudia Russ Anderson” after she inherited the Sales Quality Team in 2012.<sup>851</sup> She averred that she recognized the need for more to be done to detect sales quality issues, and “set out to transform the system.”<sup>852</sup> She described her efforts to develop procedures to terminate the employment of employees found to have engage in misconduct, “creating a proactive monitoring pilot program” designed to select areas of misconduct that could be measured statistically based on data in the Bank’s possession.<sup>853</sup> After the program found evidence of such misconduct, and after the termination of approximately 30 branch team members, Respondent Russ Anderson averred that the terminations “caused problems for upper management” such that her corporate superiors in

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Exhibits Submitted in Support of Motion for Summary Disposition and Declaration of Respondent David Julian, dated April 30, 2021.

<sup>850</sup> Respondent Claudia Russ Anderson’s Memorandum of Law in Opposition to Motion for Summary Disposition at 18.

<sup>851</sup> Respondent Claudia Russ Anderson’s Memorandum of Law in Opposition to Motion for Summary Disposition at 13.

<sup>852</sup> Respondent Claudia Russ Anderson’s Memorandum of Law in Opposition to Motion for Summary Disposition at 13.

<sup>853</sup> Respondent Claudia Russ Anderson’s Memorandum of Law in Opposition to Motion for Summary Disposition at 14.

December 2013 ordered a pause in the pilot program.<sup>854</sup> When she resumed the program (without asking for permission to do so), she expanded the program “to cover the Bank’s entire footprint,” resulting in an additional 230 employee terminations.<sup>855</sup> She averred that this expanded program led to “footprint-wide firings” of about 1,000 to 2,000 employees per year.<sup>856</sup>

According to Respondent Russ Anderson, the OCC’s investigation “was based on a foundation of three faulty premises.”<sup>857</sup> She averred that the first faulty premise is that “there were millions of fraudulent accounts,” noting that the claim was based on the Bank’s admission in its deferred prosecution agreement with the Department of Justice.<sup>858</sup> The faulty premise alleged by Respondent Russ Anderson was that “[i]f there were millions of fraudulent accounts, as many witnesses were asked to assume by Enforcement Counsel, then the only possible conclusion is that the controls, the oversight, and the people who conducted them were negligent or committing crimes.”<sup>859</sup>

The second faulty premise alleged by Respondent Russ Anderson was that as late as May 2015 the OCC’s supervisory team at Wells Fargo was aware of only 20 to 30 terminations in the LA/OC area – and that when the supervisory team learned in May 2015 that there had been 230

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<sup>854</sup> Respondent Claudia Russ Anderson’s Memorandum of Law in Opposition to Motion for Summary Disposition at 14.

<sup>855</sup> Respondent Claudia Russ Anderson’s Memorandum of Law in Opposition to Motion for Summary Disposition at 14.

<sup>856</sup> Respondent Claudia Russ Anderson’s Memorandum of Law in Opposition to Motion for Summary Disposition at 15.

<sup>857</sup> Respondent Claudia Russ Anderson’s Memorandum of Law in Opposition to Motion for Summary Disposition at 15.

<sup>858</sup> Respondent Claudia Russ Anderson’s Memorandum of Law in Opposition to Motion for Summary Disposition at 15.

<sup>859</sup> Respondent Claudia Russ Anderson’s Memorandum of Law in Opposition to Motion for Summary Disposition at 15-16.



terminations “footprint wide” the team reached the (faulty) conclusion that “Wells Fargo had engaged in a cover-up and lied to them time after time.”<sup>860</sup>

The third faulty premise alleged by Respondent Russ Anderson was that “since there were millions of fraudulent accounts, the problem had to be ‘systemic’” such that anyone who failed to inform the Bank’s regulators of the problem “was lying by omission and anyone who failed to escalate the issue had abrogated their fiduciary duties.”<sup>861</sup>

Respondent Russ Anderson averred these were faulty premises because “none of the three predicates has withstood the test of time.”<sup>862</sup> She averred the Bank’s motive in admitting to the creation of millions of fraudulent accounts was to “put its past actions behind it and avoid criminal prosecution.”<sup>863</sup> She averred that errors in the investigation by PricewaterhouseCoopers led to the analysis being “overly inclusive in identifying potential customers and accounts that could be entitled to remediation.”<sup>864</sup> She averred that after recognizing these errors in the investigation, the Bank determined the actual number was “perhaps less than 1% of PwC’s number,” and “it is clear it is far less than two million.”<sup>865</sup>

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<sup>860</sup> Respondent Claudia Russ Anderson’s Memorandum of Law in Opposition to Motion for Summary Disposition at 16.

<sup>861</sup> Respondent Claudia Russ Anderson’s Memorandum of Law in Opposition to Motion for Summary Disposition at 16.

<sup>862</sup> Respondent Claudia Russ Anderson’s Memorandum of Law in Opposition to Motion for Summary Disposition at 16.

<sup>863</sup> Respondent Claudia Russ Anderson’s Memorandum of Law in Opposition to Motion for Summary Disposition at 16.

<sup>864</sup> Respondent Claudia Russ Anderson’s Memorandum of Law in Opposition to Motion for Summary Disposition at 16.

<sup>865</sup> Respondent Claudia Russ Anderson’s Memorandum of Law in Opposition to Motion for Summary Disposition at 16.

Respondent Russ Anderson averred that the premise that the OCC was unaware of the magnitude of the sales practices misconduct is “unfounded.”<sup>866</sup> Noting in particular the reporting by OCC Examiner Crosthwaite, Respondent Russ Anderson averred that by April 2014 Examiner Crosthwaite was aware of the April 2014 Risk Committee report “that stated there were 1,000 to 2,000 terminations per year for sales practices misconduct.”<sup>867</sup> She averred the misconduct was not treated as “an emergency issue” until the City of Los Angeles filed its lawsuit against the Bank in 2015, and that “[t]o divert attention from its failure, [the OCC] looked for a scapegoat and settled on Ms. Russ Anderson,” even though the OCC had known about the terminations for years and even though they never asked Ms. Russ Anderson directly about the total number of terminations during the February 2015 examination.<sup>868</sup>

Respondent Russ Anderson avers that the third premise – that “Wells Fargo had a systemic sales practices misconduct problem and everyone knew it” does not “pass muster.”<sup>869</sup> Noting that during her own deposition she stated she did not believe there was a systemic problem, Respondent avers that her testimony then is borne out now, that the statistics now in evidence “prove her testimony to be true.”<sup>870</sup> She avers that the PwC study “shows that sales practices misconduct was not a systemic problem” by showing – with respect to the type of misconduct involving “simulated funding” – that “46% of the identified accounts were concentrated in California and 10% were from Arizona,” and that “almost half of the identified

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<sup>866</sup> Respondent Claudia Russ Anderson’s Memorandum of Law in Opposition to Motion for Summary Disposition at 17.

<sup>867</sup> Respondent Claudia Russ Anderson’s Memorandum of Law in Opposition to Motion for Summary Disposition at 17.

<sup>868</sup> Respondent Claudia Russ Anderson’s Memorandum of Law in Opposition to Motion for Summary Disposition at 17-18.

<sup>869</sup> Respondent Claudia Russ Anderson’s Memorandum of Law in Opposition to Motion for Summary Disposition at 18.

<sup>870</sup> Respondent Claudia Russ Anderson’s Memorandum of Law in Opposition to Motion for Summary Disposition at 18.

accounts were originated by 6.8% of bankers.”<sup>871</sup> Based on these findings, Respondent Russ Anderson avers that she “did not lie by omission by failing to tell the OCC Wells Fargo supervisory team that there was a systemic problem.”<sup>872</sup> Further, she averred that the PwC study found that the number of identified accounts dropped from 2.3% in 2013 to 0.7% by September 30, 2016, averring that this drop established that her “monitoring program was effective.”<sup>873</sup> Upon asserting that the question of whether sales practices misconduct was “systemic” is a disputed fact, Respondent Russ Anderson argues that she deserves an in-person hearing on the issue and that summary disposition against her is not available.<sup>874</sup>

Further, Respondent Russ Anderson argues against any modification of the civil money penalty being sought, averring the increase from \$5 million to \$10 million “presents a thinly disguised retribution against Ms. Russ Anderson for having the audacity to contest their charges and demand a hearing.”<sup>875</sup>

(Respondent Russ Anderson has also incorporated the analysis advanced by Respondent Julian at pages 9 through 11 in Respondent Julian’s Brief in Opposition.<sup>876</sup>)

### **Respondent Julian’s Brief in Opposition**

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<sup>871</sup> Respondent Claudia Russ Anderson’s Memorandum of Law in Opposition to Motion for Summary Disposition at 18.

<sup>872</sup> Respondent Claudia Russ Anderson’s Memorandum of Law in Opposition to Motion for Summary Disposition at 18.

<sup>873</sup> Respondent Claudia Russ Anderson’s Memorandum of Law in Opposition to Motion for Summary Disposition at 18.

<sup>874</sup> Respondent Claudia Russ Anderson’s Memorandum of Law in Opposition to Motion for Summary Disposition at 18.

<sup>875</sup> Respondent Claudia Russ Anderson’s Memorandum of Law in Opposition to Motion for Summary Disposition at 19.

<sup>876</sup> Respondent Claudia Russ Anderson’s Memorandum of Law in Opposition to Motion for Summary Disposition at 18-19.

Respondent Julian presented his opposition through a Brief with supporting Exhibits, a Response in Opposition to Enforcement Counsel’s Statement of Material Facts, a memorandum setting forth objections to exhibits being offered by Enforcement Counsel, and a Declaration by Mr. Julian.<sup>877</sup>

Respondent Julian avers that as the Bank’s Chief Auditor, he had “an exemplary professional record and a uniform history of comporting himself with the utmost integrity.”<sup>878</sup> He posits that no one “claims that Mr. Julian ever had anything other than the best interests of Wells Fargo at heart,” nor that he ever “intentionally did anything wrong, or even acted unprofessionally during a personal interaction with him.”<sup>879</sup> He avers he “built Wells Fargo Audit Services . . . from the modest, ‘check-the-box’ organization that he inherited into a large, robust and effective organization that received repeated acclaim from the OCC,” and that he “sought to address sales practices misconduct issues in real time as those issues and his knowledge of them evolved – repeatedly escalating concerns and providing credible challenge in accordance with professional standards.”<sup>880</sup>

Respondent Julian avers he is a “scapegoat” who was identified as such only after the OCC’s examination team came under “intense scrutiny” by the media, the Senate Banking Committee, and others.<sup>881</sup> He avers this administrative enforcement proceeding exists because “Mr. Julian, unlike others who caved to pressure and settled, refuses to roll over – he demands his on-the-record hearing and looks forward to clearing his good name while exposing

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<sup>877</sup> Respondent David Julian’s Brief in Opposition to Motion for Summary Disposition.

<sup>878</sup> Respondent David Julian’s Brief in Opposition to Motion for Summary Disposition at 1.

<sup>879</sup> Respondent David Julian’s Brief in Opposition to Motion for Summary Disposition at 1.

<sup>880</sup> Respondent David Julian’s Brief in Opposition to Motion for Summary Disposition at 1-2.

<sup>881</sup> Respondent David Julian’s Brief in Opposition to Motion for Summary Disposition at 2.

Enforcement Counsel’s case as nothing more than vague generalities, oversimplifications, distortions, and above all, governmental enforcement overreach.”<sup>882</sup>

Respondent Julian avers Enforcement Counsel has by their own brief recognized the existence of a fact issue that would preclude summary disposition, where in their Motion Enforcement Counsel assert the “mutually exclusive possibilities that Mr. Julian both ‘knew’ and ‘should have known’ about sales practices misconduct.”<sup>883</sup> He avers Enforcement Counsel have “cherry-picked” a subset of evidence that “they refer to as ‘objective’ (whatever that means), as viewed through their distorted lens” to support their case.<sup>884</sup> Respondent Julian asserts that through the summary disposition process established by the OCC, this Tribunal “does not weigh evidence, does not assess which witness to believe, does not discount or credit experts, and does not resolve any of the many genuine factual disputes that are presented.”<sup>885</sup>

Respondent Julian avers that the Administrative Procedure Act does not permit summary disposition “because the Act guarantees a respondent the right to a hearing on the record.”<sup>886</sup> He avers Enforcement Counsel’s Motion “improperly relies on declarations from witnesses who were not deposed and, in some instances, do not even appear on Enforcement Counsel’s witness list,” which Respondent Julian calls “the very definition of sandbagging.”<sup>887</sup> He avers the Motion

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<sup>882</sup> Respondent David Julian’s Brief in Opposition to Motion for Summary Disposition at 2.

<sup>883</sup> Respondent David Julian’s Brief in Opposition to Motion for Summary Disposition at 3, quoting Enforcement Counsel’s Brief in Support of Summary Disposition at 223-24.

<sup>884</sup> Respondent David Julian’s Brief in Opposition to Motion for Summary Disposition at 3.

<sup>885</sup> Respondent David Julian’s Brief in Opposition to Motion for Summary Disposition at 3.

<sup>886</sup> Respondent David Julian’s Brief in Opposition to Motion for Summary Disposition at 10, 211-14.

<sup>887</sup> Respondent David Julian’s Brief in Opposition to Motion for Summary Disposition at 10, 214-16.

is “based on inadmissible and unreliable evidence,” and identifies his objections in an appendix to his Response.<sup>888</sup>

He avers this Tribunal has issued rulings that violated his constitutional rights and that Enforcement Counsel have relied on opinions of ALJs and Comptrollers “even though the full body of OCC opinions is not published.”<sup>889</sup> He avers Enforcement Counsel’s submissions “fail to offer evidence to establish the standard of care applicable to a Chief Auditor” and that “[b]lack-letter law requires this because, otherwise, the Tribunal has no valid measuring stick to determine whether Mr. Julian met his professional obligations.”<sup>890</sup> He avers there are many disputed issues of fact concerning whether and when Respondent Julian served as the Bank’s Chief Auditor, as well as the “culpability element” and as such summary disposition is not available.<sup>891</sup>

He avers that there are disputed issues concerning what was “knowable” about the misconduct and what he knew “at particular points in time,” the scope of the sales practices misconduct, whether the misconduct was “systemic,” the root cause of the misconduct, timing and magnitude of such misconduct, his actions in escalating sales practices misconduct issues, and whether any failure to escalate can actually form the basis for liability under Section 1818.<sup>892</sup> He avers there are disputed facts material to whether his actions threatened the financial integrity

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<sup>888</sup> Respondent David Julian’s Brief in Opposition to Motion for Summary Disposition at 10, 216-37, 361-372, citing Appendix of Evidentiary Objections.

<sup>889</sup> Respondent David Julian’s Brief in Opposition to Motion for Summary Disposition at 10-11, 237-42.

<sup>890</sup> Respondent David Julian’s Brief in Opposition to Motion for Summary Disposition at 11, 242-52.

<sup>891</sup> Respondent David Julian’s Brief in Opposition to Motion for Summary Disposition at 252-54.

<sup>892</sup> Respondent David Julian’s Brief in Opposition to Motion for Summary Disposition at 254-358.

of the Bank.<sup>893</sup> He avers that the standard of deference to which examiner reports are due as proposed by Enforcement Counsel is “irrelevant at the summary disposition stage.”<sup>894</sup>

He avers there are disputed issues regarding the effects of violations, practices, or breaches attributable to Respondent Julian.<sup>895</sup> He avers there are genuine disputes of material fact concerning whether claims based on pre-2015 conduct are time barred.<sup>896</sup> And he avers that there are issues regarding whether any penalty is warranted, and avers that Enforcement Counsel has tried to “penalize Mr. Julian for asserting his right to a hearing,” citing the Motion’s position that the proper civil money penalty is \$7 million, in contrast with the \$2 million penalty proposed in the Notice of Charges.<sup>897</sup>

### **Respondent Paul McLinko’s Brief in Opposition**

To reduce duplication in the presentation of facts, law, and argument, Respondent McLinko incorporated by reference the entirety of Mr. Julian’s Brief in Opposition, as well as the documents filed by Mr. Julian, including Respondent Julian’s Response to Enforcement Counsel’s Statement of Material Facts as to Respondent David Julian, David Julian’s Statement of Additional Material Facts, and all accompanying exhibits.<sup>898</sup>

Respondent McLinko avers that the Administrative Procedure Act does not permit summary disposition and that he is “entitled to an on-the-record hearing pursuant to the

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<sup>893</sup> Respondent David Julian’s Brief in Opposition to Motion for Summary Disposition at 358-71.

<sup>894</sup> Respondent David Julian’s Brief in Opposition to Motion for Summary Disposition at 372-87.

<sup>895</sup> Respondent David Julian’s Brief in Opposition to Motion for Summary Disposition at 387-93.

<sup>896</sup> Respondent David Julian’s Brief in Opposition to Motion for Summary Disposition at 393-413.

<sup>897</sup> Respondent David Julian’s Brief in Opposition to Motion for Summary Disposition at 11.

<sup>898</sup> Respondent Paul McLinko’s Brief in Opposition to Enforcement Counsel’s Motion for Summary Disposition against Respondents David Julian and Paul McLinko, at 1.

procedures and protections set forth in APA §§ 554, 556 and 557.”<sup>899</sup> He avers he should have had the opportunity to depose declarants not identified on Enforcement Counsel’s witness list.<sup>900</sup> He avers the Motion is “based on inadmissible and unreliable evidence, avers that his Statement of Disputed Material Facts catalogs additional reasons why much of Enforcement Counsel’s evidence is not relevant, material, or reliable,” and adopts Respondent Julian’s objections as presented in the appendix to Respondent Julian’s Response.<sup>901</sup> He avers that evidence predating 2010 is inadmissible and avers “the unfairness in permitting the admissibility of pre-2010 evidence is compounded by the fact that Mr. McLinko was not Executive Audit Director in the pre-2010 period (indeed, he was not even an employee of the Bank for most of that time), and thus he lacks personal knowledge from which to develop a defense to the pre-2010 allegations.”<sup>902</sup>

He avers this Tribunal has issued rulings that violated his constitutional rights and that Enforcement Counsel have relied on opinions of ALJs and Comptrollers that are not equally available to Respondents.<sup>903</sup> He avers Enforcement Counsel’s Motion does not establish a standard of care applicable to internal auditors and “therefore cannot establish any violation.”<sup>904</sup>

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<sup>899</sup> Respondent Paul McLinko’s Brief in Opposition to Enforcement Counsel’s Motion for Summary Disposition against Respondents David Julian and Paul McLinko, at 149-50.

<sup>900</sup> Respondent Paul McLinko’s Brief in Opposition to Enforcement Counsel’s Motion for Summary Disposition against Respondents David Julian and Paul McLinko, at 150.

<sup>901</sup> Respondent Paul McLinko’s Brief in Opposition to Enforcement Counsel’s Motion for Summary Disposition against Respondents David Julian and Paul McLinko, at 10, 216-37, 361-372, citing Appendix of Evidentiary Objections.

<sup>902</sup> Respondent Paul McLinko’s Brief in Opposition to Enforcement Counsel’s Motion for Summary Disposition against Respondents David Julian and Paul McLinko at 151.

<sup>903</sup> Respondent Paul McLinko’s Brief in Opposition to Enforcement Counsel’s Motion for Summary Disposition against Respondents David Julian and Paul McLinko, at 154.

<sup>904</sup> Respondent Paul McLinko’s Brief in Opposition to Enforcement Counsel’s Motion for Summary Disposition against Respondents David Julian and Paul McLinko, at 155.



He avers there are many disputed issues of fact concerning the “culpability element” and as such summary disposition is not available.<sup>905</sup>

He avers that there are disputed issues concerning his roles and responsibilities at the Bank, what was knowable about the misconduct and what he knew at particular points in time, the scope of the sales practices misconduct, whether the misconduct was systemic, the root cause of the misconduct, the timing and magnitude of such misconduct, and his actions in escalating sales practices misconduct issues.<sup>906</sup> He avers there are disputed facts material to whether his actions threatened the financial integrity of the Bank.<sup>907</sup> He averred disputed issues exist regarding whether he – as an internal auditor – “directed the affairs of a Bank.”<sup>908</sup>

He avers there are disputed issues regarding the effects of violations, practices, or breaches attributable to him.<sup>909</sup> He avers there are genuine disputes of material fact concerning whether claims base on pre-2015 conduct are time barred.<sup>910</sup> And he avers that there are issues regarding whether any penalty is warranted, and avers that the increased penalty constitutes

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<sup>905</sup> Respondent Paul McLinko’s Brief in Opposition to Enforcement Counsel’s Motion for Summary Disposition against Respondents David Julian and Paul McLinko, at 157-237.

<sup>906</sup> Respondent Paul McLinko’s Brief in Opposition to Enforcement Counsel’s Motion for Summary Disposition against Respondents David Julian and Paul McLinko, at 226-230.

<sup>907</sup> Respondent Paul McLinko’s Brief in Opposition to Enforcement Counsel’s Motion for Summary Disposition against Respondents David Julian and Paul McLinko, at 235.

<sup>908</sup> Respondent Paul McLinko’s Brief in Opposition to Enforcement Counsel’s Motion for Summary Disposition against Respondents David Julian and Paul McLinko, at 234.

<sup>909</sup> Respondent Paul McLinko’s Brief in Opposition to Enforcement Counsel’s Motion for Summary Disposition against Respondents David Julian and Paul McLinko, at 237-43.

<sup>910</sup> Respondent Paul McLinko’s Brief in Opposition to Enforcement Counsel’s Motion for Summary Disposition against Respondents David Julian and Paul McLinko, at 243-45.

“improper retaliation,” averring that the \$500,000 CMP assessed against him in the OCC’s Notice of Charges “provides the *maximum* penalty that the OCC may impose.”<sup>911</sup>

## **Respondents’ Claims Regarding the OCC’s Jurisdiction**

### **Enforcement Counsel’s Statement of Material Fact No. 1 (Respondents Russ Anderson, Julian and McLinko):**

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. § 1813(q)(1)(A) and an “insured depository institution” as defined in 12 U.S.C. § 1813(c)(2).<sup>912</sup>

#### **Respondents’ Responses**

In each Response where more than one basis is presented disputing the claim presented in the Statement, each basis has been considered. Not all bases will be discussed in this Order, but only the most salient dispute(s) will be presented. This includes disputes that are based on the admissibility of evidence, such that if not specifically addressed in this Order the objection will have first been fully considered and then overruled unless the contrary is stated in the Order.

**Respondent Russ Anderson** did not dispute this jurisdictional fact.<sup>913</sup> Accordingly, the Recommended Decision will include a factual finding and legal conclusion that as to Respondent Russ Anderson that Wells Fargo Bank, N.A., Sioux Falls, South Dakota is a national banking association within the meaning of 12 U.S.C. § 1813(q)(1)(A) and an “insured depository institution” as defined in 12 U.S.C. § 1813(c)(2).

**Respondent McLinko** incorporated by reference “the entirety of Mr. Julian’s Response to the Statement of Facts.”<sup>914</sup> In the same submission, however, Respondent McLinko responded inconsistently with Respondent Julian’s responses to Enforcement Counsel’s Statements of Material Facts, in some instances contradicting Respondent Julian’s responses. For example, Respondent McLinko raised no objection to Enforcement Counsel’s Statement of Material Facts No. 1; and responded that the factual claims in that Statement were “undisputed.” As

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<sup>911</sup> Respondent Paul McLinko’s Brief in Opposition to Enforcement Counsel’s Motion for Summary Disposition against Respondents David Julian and Paul McLinko, at 249 [emphasis *sic*].

<sup>912</sup> 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”))

<sup>913</sup> Russ Anderson’s ECSFM at No. 1.

<sup>914</sup> McLinko’s ECSFM at 1.

noted immediately below, Respondent Julian disputed Enforcement Counsel’s claims that the Bank was a national banking association, and asserted Enforcement Counsel’s proffered evidence will not support a finding that Wells Fargo is subject to the OCC’s regulatory authority.<sup>915</sup>

A party cannot in one breath indicate no objection, while incorporating by reference the objection of another party. In such cases, I find Respondent McLinko’s more specific response – in this case his “no objection” and “undisputed” response to Material Fact No. 1 – prevails over the generally incorporated response that borrows from Respondent Julian.

Accordingly, the Recommended Decision will include a factual finding and legal conclusion that as to Respondent McLinko that Wells Fargo Bank, N.A., Sioux Falls, South Dakota is a national banking association within the meaning of 12 U.S.C. § 1813(q)(1)(A) and an “insured depository institution” as defined in 12 U.S.C. § 1813(c)(2).

**Respondent Julian** disputed the claims that the Bank was a national banking association or an insured depository institution as defined by the cited statutes.<sup>916</sup> He asserted that Enforcement Counsel’s cited evidence – the admissibility of which he challenges – does not support the factual propositions, noting that the evidence purports to be a press release of the United States Attorney’s Office.<sup>917</sup>

In Exhibit A accompanying the press release, the Bank admitted to the fact that it was a national bank and financial institution and that its customers’ deposits were insured by the FDIC.<sup>918</sup> Respondent Julian asserts that “the document does not mention 12 U.S.C. §§ 1813(q)(1)(A) or 3(c)(2) and therefore does not establish that the Bank was a ‘national banking association’ or an ‘insured depository institution’ within the meaning of those sections.”<sup>919</sup> He also asserts that the allegation “vaguely refers to ‘relevant times’ without defining that term.”<sup>920</sup> I find the objections unpersuasive and overrule them.

### **Respondent Julian’s Objection Based on Reliability**

Respondent Julian also objected to the use of the Department of Justice Deferred

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<sup>915</sup> Julian’s ECSFM at No. 1.

<sup>916</sup> Julian’s ECSFM at No. 1.

<sup>917</sup> Julian’s ECSFM at No. 1.

<sup>918</sup> Julian’s ECSFM at No. 1.

<sup>919</sup> Julian’s ECSFM at No. 1.

<sup>920</sup> Julian’s ECSFM at No. 1.

Prosecution Agreement and its Statement of Facts.<sup>921</sup> He asserted the Exhibit is unreliable and thus inadmissible under 12 C.F.R. § 19.36(a), which he asserts “includes concepts from the Federal Rules of Evidence that are designed to ensure reliability, including hearsay and authenticity rules, citing 12 C.F.R. § 19.36(a)(3) and the Federal Rules of Evidence exclude evidence to the extent such evidence would be irrelevant, immaterial, unreliable, repetitive.”<sup>922</sup>

I find the objections unpersuasive and overrule them. As the objections presented in Respondent Julian’s Objections to Enforcement Counsel’s Exhibits were presented at a time when Enforcement Counsel were precluded from responding (because the OCC’s Uniform Rules do not permit a party to reply to a response in opposition to a motion for summary disposition), the objections constitute preliminary questions about the admissibility of Enforcement Counsel’s proffered exhibits. This Tribunal must decide any preliminary question about whether a witness is qualified, a privilege exists, or evidence is admissible. In so deciding, this Tribunal is not bound by evidence rules, except those on privilege.<sup>923</sup>

The objection regarding the reliability of the contents of Attachment A to the DOJ press release is supported by no citation to authority other than the OCC’s Uniform Rule regarding the admissibility of evidence. That rule authorizes the exclusion of evidence if it is established to be unreliable. In this context, where expert testimony is presented describing the nature of the sources of the expert’s information, showing the expert’s training on which sources to use and how to use those sources, and showing that the sources she used are widely recognized as acceptable, there is a sufficient showing of reliability to answer preliminary questions about the admissibility of such evidence against a challenge as to the reliability of that evidence.<sup>924</sup> Upon review of the proffered evidence I overrule the objection, finding the proffered evidence to be sufficiently reliable to answer the preliminary question raised by the objection.

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<sup>921</sup> Respondent Julian’s Objections to Enforcement Counsel’s Exhibits Submitted in Support of Motion for Summary Disposition at Attachment A: Respondent Julian’s Objections to Enforcement Counsel’s Exhibits, citing MSD-001.

Submitted in Support of Summary Disposition.

<sup>922</sup> Respondent Julian’s Objections to Enforcement Counsel’s Exhibits Submitted in Support of Motion for Summary Disposition at Attachment A: Respondent Julian’s Objections to Enforcement Counsel’s Exhibits.

Submitted in Support of Summary Disposition.

<sup>923</sup> See Fed. R. Evid. 104: “(a) In General. The court must decide any preliminary question about whether a witness is qualified, a privilege exists, or evidence is admissible. In so deciding, the court is not bound by evidence rules, except those on privilege.” While the Federal Rules of Evidence are not binding on this Tribunal, they may assist the trier of fact in the course of making decisions regarding issues raised during the adjudicative process.

<sup>924</sup> See *Offield v. Colvin*, No. 14-1060-CV-W-REL-SSA, 2016 WL 223716, at \*14 (W.D. Mo. Jan. 19, 2016).

Respondent Russ Anderson incorporated Respondent Julian's Objections by reference in her Brief in Opposition.<sup>925</sup>

### **Respondent Julian's Objection Based on Material Relevance**

Respondent Julian asserts the DOJ press release is not materially relevant, rendering it inadmissible under 12 C.F.R. § 19.36(a).<sup>926</sup> (In his Objections to Enforcement Counsel's proffered exhibits, Respondent Julian has identified those Exhibits to which this objection is raised by using the abbreviation "I".)<sup>927</sup> Evidence is relevant if it has any tendency to make a fact more or less probable than it would be without the evidence; and the fact is of consequence in determining the action.<sup>928</sup> When the relevance of evidence depends on whether a fact exists, proof must be introduced sufficient to support a finding that the fact does exist.<sup>929</sup>

In proceedings such as these, the Administrative Procedure Act provides that the agency as a matter of policy shall provide for the exclusion of irrelevant, immaterial, or unduly repetitious evidence. The OCC does so in its Uniform Rules.<sup>930</sup> Proffered evidence may not be excluded "except on consideration of the whole record or those parts thereof cited by a party and supported by and in accordance with the reliable, probative, and substantial evidence."<sup>931</sup> Substantial evidence means "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion."<sup>932</sup> However, the substantial evidence standard presupposes a zone of choice within which the decision-maker can go either way, without

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<sup>925</sup> Respondent Claudia Russ Anderson's Memorandum of Law in Opposition to Motion for Summary Disposition at 35.

<sup>926</sup> Respondent Julian's Objections to Enforcement Counsel's Exhibits Submitted in Support of Motion for Summary Disposition at Attachment A: Respondent Julian's Objections to Enforcement Counsel's Exhibits. Submitted in Support of Summary Disposition.

<sup>927</sup> Respondent Julian's Objections to Enforcement Counsel's Exhibits Submitted in Support of Motion for Summary Disposition at Attachment A: Respondent Julian's Objections to Enforcement Counsel's Exhibits. Submitted in Support of Summary Disposition.

<sup>928</sup> Fed. R. Evid. 401.

<sup>929</sup> See Fed. R. Evid. 104(b).

<sup>930</sup> 12 C.F.R. § 19.36.

<sup>931</sup> 5 U.S.C. § 556(d).

<sup>932</sup> Richardson v. Perales, 402 U.S. at 401; Jernigan v. Sullivan, 948 F.2d 1070, 1073 n. 5 (8th Cir. 1991).

interference by the courts.<sup>933</sup>

Nothing in Respondent Julian's objection calls into question whether the facts presented in Attachment A are true. As jurisdictional predicates constitute material facts, there is no basis to exclude the proffered facts on relevance grounds, so Respondent Julian's objection is overruled.

### **Respondent Julian's Objections Based on the Application of *Daubert***

Further, Respondent Julian asserts the Exhibit contains improper opinion, meaning that the evidence: "(i) includes an opinion outside of what was disclosed in expert reports filed accordance with the scheduling order; and/or (ii) constitutes an expert opinion that is inadmissible under governing standards, including *Daubert* standards that ensure expert opinion reliability."<sup>934</sup> Respondent Julian has, however, offered no authority in support of the underlying legal premise supporting this averment – that *Daubert* standards apply in administrative proceedings conducted under the Administrative Procedure Act.<sup>935</sup> Given the absence of legal authority supporting this objection, I find no legal basis to make preliminary determinations regarding the admissibility of Enforcement Counsel's proffered exhibits based on the *Daubert* standards, and upon this finding overrule each of those objections (*i.e.*, all of those objections identified by "O" in Respondent Julian's Objections to Enforcement Counsel's Exhibits).

### **Respondent Julian's Objections Based on "Late" Exhibits**

Respondent Julian asserts the Exhibit is inadmissible because it was "late," averring that the Exhibit was not produced by Enforcement Counsel within the period for document discovery as specified in the scheduling order, averring that "[i]n the case of declarations, this includes instances where a witness was not deposed, or was not listed on Enforcement Counsel's witness list."<sup>936</sup> Respondent Julian offers, however, no authority that supports the

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<sup>933</sup> *Offield v. Colvin*, No. 14-1060-CV-W-REL-SSA, 2016 WL 223716, at \*1 (W.D. Mo. Jan. 19, 2016).

<sup>934</sup> Respondent Julian's Objections to Enforcement Counsel's Exhibits Submitted in Support of Motion for Summary Disposition at Attachment A: Respondent Julian's Objections to Enforcement Counsel's Exhibits. Submitted in Support of Summary Disposition.

<sup>935</sup> See, e.g., *Jordan v. Astrue*, 2009 WL 3380979 (D. Neb., October 21, 2009) (citing *Bayliss v. Barnhart*, 427 F.3d 1211 (9th Cir. 2005), and *Gangelhoff v. Apfel*, 2003 WL 22353047 (N. D. Iowa, July 13, 2003)), holding that the test for reliability as outlined in *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993),<sup>10</sup> and *Kumho Tire Co., Ltd. v. Carmichael*, 526 U.S. 137 (1999),<sup>11</sup> does not apply in Social Security administrative hearings.

<sup>936</sup> Respondent Julian's Objections to Enforcement Counsel's Exhibits Submitted in Support of Motion for Summary Disposition at Attachment A: Respondent Julian's Objections to Enforcement Counsel's Exhibits. Submitted in Support of Summary Disposition.

legal premise that motions for summary disposition under the OCC's Uniform Rules must be based only on evidence from witnesses listed by an opposing party. Accordingly, this objection will not constitute a basis for excluding evidence presented in Enforcement Counsel's Motion for Summary Disposition. Upon this finding I overrule each of those objections that are based on whether the exhibit was presented within the discovery period (i.e., those identified by "L" in Respondent Julian's Objections).

### **Respondent Julian's Objections Based on Exhibits that Pre-Date 2010**

Respondent Julian asserts that the Exhibit is inadmissible because it "predates 2010, which is objectionable because, as was averred in Respondent Julian's Opposition Brief, Enforcement Counsel refused to provide discovery concerning that time period."<sup>937</sup> In his Objection, Respondent Julian does not cite to any part of his Opposition Brief in support of the Objection, prompting a review of the entire Brief (which weighs in at 437 pages). Without claiming that this review was exhaustive, I found in that Brief no legal support for the proposition that the contents of exhibits presented by Enforcement Counsel are inadmissible based on the fact that the contents predate 2010. The preliminary admissibility review called for at this stage of the proceedings anticipates exclusion of evidence only if the proffered evidence is demonstrably irrelevant, immaterial, unreliable, or repetitive. Finding that the objection does not demonstrate a basis for exclusion at this stage, I overrule each of the objections that are based on whether the contents predate 2010 (i.e., those identified by "2010" in Respondent Julian's Objections).

With respect to Respondent Julian's objection that the allegation "vaguely refers to 'relevant times,'"<sup>938</sup> I overrule the objection as being insufficiently specific to permit a determination of whether the proffered Exhibit or its contents are irrelevant, immaterial, unreliable, or repetitive.

### **Each Respondents' Burden in Opposition**

The OCC's Uniform Rules provide Respondents with the means by which to respond to claims like those found in Enforcement Counsel's Statement of Material Facts. The specific Rule provides, in pertinent part:

Any party opposing a motion for summary disposition must file a statement setting forth those material facts as to which he or she contends a genuine

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<sup>937</sup> Respondent Julian's Objections to Enforcement Counsel's Exhibits Submitted in Support of Motion for Summary Disposition at Attachment A: Respondent Julian's Objections to Enforcement Counsel's Exhibits. Submitted in Support of Summary Disposition.

<sup>938</sup> Julian's ECSFM at No. 1.

dispute exists. Such opposition must be supported by evidence of the same type as that submitted with the motion for summary disposition[.]<sup>939</sup>

Evidence of the same type as that required for summary disposition motions is described as taking “the form of admissions in pleadings, stipulations, depositions, investigatory depositions, transcripts, affidavits and any other evidentiary materials that the moving party contends support his or her position.”<sup>940</sup>

Applying this Rule, the response presented by Respondent Julian to the factual claims presented in Enforcement Counsel’s Statement of Fact No. 1 does not provide a basis for rejecting Enforcement Counsel’s proffer of these facts, as the response is not supported by the same type of evidence that was submitted in support of Enforcement Counsel’s Motion. The press release issued by the United States Attorney’s Office constitutes “other evidentiary materials” that support Enforcement Counsel’s factual claims here. Respondent Julian’s response offers nothing that controverts the proffered evidence. Accordingly, as to Respondent Julian the Recommended Decision will include a factual finding and legal conclusion that Wells Fargo Bank, N.A., Sioux Falls, South Dakota is a “national banking association” within the meaning of 12 U.S.C. § 1813(q)(1)(A) and an “insured depository institution” as defined in 12 U.S.C. § 1813(c)(2).

**Respondent McLinko** presented no objection to the contents of Statement of Fact No. 1, and indicated the contents were undisputed. Accordingly, as to Respondent McLinko the Recommended Decision will include a factual finding and a legal conclusion that Wells Fargo Bank, N.A., Sioux Falls, South Dakota is a “national banking association” within the meaning of 12 U.S.C. § 1813(q)(1)(A) and an “insured depository institution” as defined in 12 U.S.C. § 1813(c)(2).

### **Implications of the Establishment of Uncontroverted Facts**

As noted above, I find uncontroverted Enforcement Counsel’s Statement of Material Fact No. 1 (regarding Respondents Russ Anderson, Julian, and McLinko). Pursuant to the OCC’s Uniform Rules of Practice and Procedure, if an Administrative Law Judge determines that a party is entitled to summary disposition as to certain claims only, the ALJ must “defer submitting a recommended decision as to those claims.”<sup>941</sup> As will be addressed below, some of the material factual claims presented by Enforcement Counsel in support of their summary disposition motion are controverted, precluding summary disposition on all of the claims. Under the OCC’s Rules, a hearing on the controverted claims must be ordered; such a hearing is scheduled to begin on September 13, 2021. Pursuant to the OCC’s Rules, those claims for which the ALJ has

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<sup>939</sup> 12 C.F.R. § 19.29(b)(2).

<sup>940</sup> *Id.*

<sup>941</sup> 12 C.F.R. § 19.30.



determined summary disposition is warranted will be identified in this Order and will appear again in the recommended decision filed at the conclusion of the hearing. No further evidence regarding those claims will be permitted during the hearing.

Enforcement Counsel is entitled to summary disposition in their favor regarding both the factual and legal claims presented in Statement No. 1 in both of their summary disposition motions. Accordingly, the factual and legal claims presented in Enforcement Counsel's Statement No. 1 will be included as final findings and conclusions in that recommended decision, and further evidence regarding the factual claims in Statement No. 1 will not be permitted during the hearing.

Note that the facts presented through the settlement with the Bank are not established as facts for the purposes of determining the merits of Enforcement Counsel's summary disposition motions. None of the Respondents participated in the settlement, and the facts set forth in the settlement are not binding on any Respondent. For the purposes of this Order, the only findings that are binding on Respondents are those that have taken into account first, what Enforcement Counsel aver are undisputed or uncontroverted material facts, and second, what each Respondent has supplied in response – and those responses are binding only on the Respondent who made the response.

**Enforcement Counsel's Statement of Material Fact (Russ Anderson) No. 2 and (Julian and McLinko) Nos. 2 and 4**

Respondent Russ Anderson was an "institution-affiliated party" of the Bank as that term is defined in 12 U.S.C. § 1813(u), having served in such capacity within six years from the date of the Notice (*see* 12 U.S.C. § 1813(i)(3)).<sup>942</sup>

Respondent Julian 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 Julian is an "institution-affiliated party" of the Bank.<sup>943</sup>

Respondent McLinko 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 McLinko is an "institution-affiliated party" of the Bank.<sup>944</sup>

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<sup>942</sup> Russ Anderson Amended Answer ¶ 245 and Response to ECSMF at No. 2.

<sup>943</sup> See 12 U.S.C. § 1813(i)(3); MSD-474 (Bank Board minutes from multiple years showing Respondent Julian's appointment as an officer of the Bank and its Chief Auditor, including in June 2014); MSD-279 (Julian Dep. Tr.) at 29:15- 32:1 (testifying that the Bank's Board minutes show he was an officer of the Bank and the Bank's Chief Auditor); (Julian Amended Answer ¶ 380 (admitting that Respondent Julian was Chief Auditor from around March 2012 to October 2018)).

<sup>944</sup> See 12 U.S.C. § 1813(i)(3); Respondent Paul McLinko's Amended Answer ("McLinko Amended Answer") ¶ 439, 442 ("Respondent Paul McLinko admits that he held the title of Executive Audit Director at the Bank from approximately late 2008 to at least 2018 and that, with the exception of an approximately six-month period during

## Responses:

**Russ Anderson** did not dispute this jurisdictional fact.<sup>945</sup> Accordingly, the Recommended Decision will include a factual finding and legal conclusion as to Respondent Russ Anderson that she 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 years from the date of the Notice (*see* 12 U.S.C. § 1813(i)(3)).

**Julian** disputed the claim, averring that he did not in his Amended Answer admit that he was Chief Auditor of the Bank from March 2012 to October 2018; rather Mr. Julian admitted that he was Chief Auditor of Wells Fargo & Company, the parent company of the Bank.<sup>946</sup>

It is a material fact in issue whether Respondent Julian, as alleged by Enforcement Counsel in this Statement, was employed by the Bank or its parent within six years of the filing of the Notice of Charges.

Because of the existence of this material controverted fact, summary disposition is not available with respect to Respondent Julian regarding this claim. Pursuant to the OCC’s Uniform Rules, the merits of the disputed claims raised in (Julian and McLinko) Statement No. 2 will be addressed during the hearing set to begin on September 13, 2021.

**McLinko** incorporated Respondent Julian’s Response,<sup>947</sup> but offered no evidence addressing his own status as an institution-affiliated party. While Respondent McLinko did not dispute his own status as an institution-affiliated party, he did dispute the merits of the claim raised by Respondent Julian in (Julian and McLinko) Statement No. 2 (regarding Mr. Julian’s status). That issue will be addressed during the hearing set to begin on September 13, 2021. Because he offered no evidence in his response to the claim in the Statement of Material Facts concerning his own status, the Recommended Decision will include a factual finding and legal conclusion that Respondent McLinko 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 McLinko therefore is an “institution-affiliated party” of the Bank.

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2012, he was an Executive Audit Director for the Community Bank from approximately 2011 to 2017.”); Julian and McLinko MSD- 474 (Bank Board minutes from multiple years showing Respondent McLinko’s appointment as a Bank officer, including in June 2014).

<sup>945</sup> Russ Anderson’s ECSFM at No. 2.

<sup>946</sup> Julian’s ECSFM at No. 2, citing Julian Amended Answer ¶ 386 (admitting that Mr. Julian was Chief Auditor of Wells Fargo & Company but denying that he was an institution-affiliated party of the Bank because he “lack[ed] sufficient knowledge or information to form a belief about the allegation”); MSD-279 at 22:22-23:12 (testifying that he became Chief Auditor of Wells Fargo & Company in or around March 2012 but the he did not know whether he was also Chief Auditor of Wells Fargo Bank, N.A.).

<sup>947</sup> Julian’s ECSFM at No. 418.

### **Enforcement Counsel’s Statement of Material Fact (Julian and McLinko) No. 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 initiate and maintain cease and desist and civil money penalty actions against Respondent Julian pursuant to 12 U.S.C. § 1818(b) and (i). (12 U.S.C. § 1813(q)).<sup>948</sup>

#### **Response:**

**Julian** disputed the claim, averring that he was not an officer of Wells Fargo Bank, N.A. during all of the relevant years, and that as such the OCC is not the appropriate federal banking agency with regard to allegations made during the time that Mr. Julian was not an officer of the Bank.<sup>949</sup> He further averred that although the Banks’ Board stipulated that “[t]he 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 this cease and desist action against the Bank pursuant to 12 U.S.C. § 1818(b),”<sup>950</sup> he avers that the Bank’s Board did not concede that the OCC was the appropriate Federal banking agency to maintain actions against individuals who were not officers at the Bank, adding that MSD-343 does not mention Mr. Julian’s name, civil money penalty actions, or § 1818(i).<sup>951</sup>

It is a material fact in issue whether the OCC is the ‘appropriate Federal banking agency’ as that term is defined in 12 U.S.C. § 1813(q). Because of the existence of this material controverted fact, summary disposition is not available with respect to Respondents Julian and McLinko concerning the claims raised in this Statement. Pursuant to the OCC’s Uniform Rules, the merits of the disputed claims raised in (Julian and McLinko) Statement No. 3 will be addressed during the hearing set to begin on September 13, 2021.

**McLinko** incorporated Respondent Julian’s Response.<sup>952</sup>

### **Enforcement Counsel’s Statement of Material Fact (Julian and McLinko) No. 4**

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<sup>948</sup>MSD-343 at 19 (the Bank’s Board stipulating the Bank is the “appropriate federal banking agency”).

<sup>949</sup> Julian’s ECSFM at No. 3.

<sup>950</sup> Julian’s ECSFM at No. 3, citing MSD-343 at 19.

<sup>951</sup> Julian’s ECSFM at No. 3.

<sup>952</sup> Julian’s ECSFM at No. 418.

Respondent McLinko 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 McLinko is an “institution-affiliated party” of the Bank (see 12 U.S.C. § 1813(i)(3)).<sup>953</sup>

**Responses:**

**Julian** incorporated Mr. McLinko’s response to this Statement.<sup>954</sup>

**McLinko** disputed the claim, averring that the cited evidence does not establish the alleged fact,<sup>955</sup> citing to evidence establishing that he was appointed an Executive Vice President of the Bank in 2009.<sup>956</sup> I find an insufficient factual basis has been presented to establish a dispute in this Response to create a controverted material fact. Accordingly, the Recommended Decision will include a factual finding as to Respondent McLinko that he was employed by the Bank within six years of the filing of the Notice of Charges, and the legal conclusion that pursuant to 12 U.S.C. § 1813(u), Respondent McLinko is an “institution-affiliated party” of the Bank (see 12 U.S.C. § 1813(i)(3)).

**Enforcement Counsel’s Statement of Material Fact (Russ Anderson) No. 3 and (Julian and McLinko) No. 5**

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 prohibition and civil money penalty actions against Respondent Russ Anderson pursuant to 12 U.S.C. § 1818(e) and (i)<sup>957</sup> and is

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<sup>953</sup> Respondent Paul McLinko’s Amended Answer (“McLinko Amended Answer”) ¶¶ 439, 442 (“Respondent Paul McLinko admits that he held the title of Executive Audit Director at the Bank from approximately late 2008 to at least 2018 and that, with the exception of an approximately six-month period during 2012, he was an Executive Audit Director for the Community Bank from approximately 2011 to 2017.”); MSD-474 (Bank Board minutes from multiple years showing Respondent McLinko’s appointment as a Bank officer, including in June 2014. See id. at 103-104, 111).

<sup>954</sup> Julian’s ECSFM at No. 4.

<sup>955</sup> McLinko’s ECSFM at No. 4.

<sup>956</sup> McLinko’s ECSFM at No. 4, citing MSD-474 (Regular Meeting of the Bank’s Board of Directors, Minutes of November 9, 2009). There is no basis shown for concealing from the public the reference being made to this document.

<sup>957</sup> 12 U.S.C. § 1813(q); Respondent Russ Anderson’s Response to ECSMF at No. 3 and MSD-343 at 19 (the Bank’s Board stipulating the Bank is the “appropriate federal banking agency”).

authorized to initiate and maintain cease and desist and civil money penalty actions against Respondents Julian and McLinko pursuant to 12 U.S.C. § 1818(b) and (i).<sup>958</sup>

### **Responses:**

**Russ Anderson** did not dispute this jurisdictional fact.<sup>959</sup> Accordingly, the Recommended Decision will include a factual finding and legal conclusion as to Respondent Russ Anderson that 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 prohibition and civil money penalty actions against Respondent Russ Anderson pursuant to 12 U.S.C. § 1818(e) and (i).

**Julian** disputed the claim, disputing that the OCC is the “appropriate Federal banking agency” as that term is defined in 12 U.S.C. § 1813(q), referring to his response to (Julian and McLinko) Statement No. 2 that he was not an officer of Wells Fargo Bank, N.A. during all of the relevant years, and averring that the Bank’s Board did not concede that the OCC was the appropriate Federal banking agency to maintain actions against individuals who were not officers at the Bank.<sup>960</sup>

It is a material fact in issue whether Respondent Julian, as alleged by Enforcement Counsel in this Statement, was employed by the Bank or its parent within six years of the filing of the Notice of Charges.

Because of the existence of this material controverted fact, summary disposition on this issue is not available with respect to Respondent Julian. Pursuant to the OCC’s Uniform Rules, the merits of the disputed claims raised in (Julian and McLinko) Statement No. 5 as pertains to Respondent Julian will be addressed during the hearing set to begin on September 13, 2021.

**McLinko** did not dispute this claim.<sup>961</sup> Accordingly, the Recommended Decision will include a factual finding as to Respondent McLinko that 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 cease and desist and civil money penalty actions against Respondents Julian and McLinko pursuant to 12 U.S.C. § 1818(b) and (i).

### **Terminology**

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<sup>958</sup> See 12 U.S.C. § 1813(q); see MSD-343 at 19 (the Bank’s Board stipulating the Bank is the “appropriate federal banking agency”).

<sup>959</sup> Russ Anderson’s ECSFM at No. 3.

<sup>960</sup> Julian’s ECSFM at No. 5.

<sup>961</sup> McLinko’s ECSFM at No. 5.

### **Enforcement Counsel’s Statement of Material Fact (Russ Anderson) No. 4 and (Julian and McLinko) No. 6**

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.<sup>962</sup>

#### **Responses:**

**Russ Anderson** incorporated Respondent Julian’s response.<sup>963</sup>

**Julian** did not dispute the term “sales practices misconduct” was used in the Notice of Charges to mean “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.”<sup>964</sup> He disputed the extent Paragraph 6 suggests the Bank ever used the term “sales practices misconduct”<sup>965</sup> and offered evidence that one Bank employee, Mr. Bacon, never used the term in any of his work.<sup>966</sup>

I find an insufficient factual basis has been presented to establish a dispute in this Response to create a controverted material fact. Accordingly, the Recommended Decision will include a factual finding as to Respondents Russ Anderson and Julian that 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

**McLinko** did not dispute this claim.<sup>967</sup> Accordingly, the Recommended Decision will include a factual finding as to Respondent McLinko that for the 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.

### **Enforcement Counsel’s Statement of Material Fact (Russ Anderson) No. 5 and (Julian**

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<sup>962</sup> Russ Anderson Amended Answer ¶ 4, Julian Amended Answer ¶ 4; McLinko Amended Answer ¶ 4.

<sup>963</sup> Russ Anderson’s ECSFM at No. 4.

<sup>964</sup> Julian’s ECSFM at No. 6.

<sup>965</sup> Julian’s ECSFM at No. 6.

<sup>966</sup> Julian’s ECSFM at No. 6.

<sup>967</sup> McLinko’s ECSFM at No. 6.

### **and McLinko) No. 7**

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.”

#### **Responses:**

**Russ Anderson** incorporated Respondent Julian’s response.<sup>968</sup>

**Julian** disputed that the term “sales practices misconduct” was historically used by the Bank, citing evidence that the term had not been “official defined by within the Bank until 2016.”<sup>969</sup>

I find an insufficient factual basis has been presented to establish a dispute in this Response to create a controverted material fact. Accordingly, the Recommended Decision will include a factual finding as to Respondents Russ Anderson and Julian that 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.”

**McLinko** disputed the claim because there is no evidence cited in support and because the stated terms are not synonymous with sales practices misconduct as Enforcement Counsel define it.<sup>970</sup>

I find an insufficient factual basis has been presented to establish a dispute in this Response to create a controverted material fact. Accordingly, the Recommended Decision will include a factual finding as to Respondent McLinko that 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.”

### **Enforcement Counsel’s Statement of Material Fact (Russ Anderson) No. 6 and (Julian and McLinko) No. 8**

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

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<sup>968</sup> Russ Anderson’s ECSFM at No. 5.

<sup>969</sup> Julian’s ECSFM at No. 6.

<sup>970</sup> McLinko’s ECSFM at No. 6, citing MMF ¶ 565 (sales integrity is not necessarily sales practices misconduct).

disclose fees while selling a solution<sup>971</sup> to the most serious ethical violations.”<sup>972</sup>

### **Responses:**

**Russ Anderson** incorporated Respondent Julian’s response.<sup>973</sup>

**Julian** did not dispute that the Bank’s Sales Quality Manual from August 2008 contains the quoted text, but did not “concede” the contents of the Manual are admissible.<sup>974</sup> Finding the Manual to be admissible in the face of such an unsupported challenge to its admissibility, the Recommended Decision will include a factual finding as to Respondents Russ Anderson and Julian that 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 solution, to the most serious ethical violations.

**McLinko** did not dispute the claim.<sup>975</sup> Accordingly, the Recommended Decision will include a factual finding as to Respondent McLinko that 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 solution<sup>976</sup> to the most serious ethical violations.”

### **Enforcement Counsel’s Statement of Material Fact (Russ Anderson) No. 7 and (Julian and McLinko) No. 9**

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

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<sup>971</sup> 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.

<sup>972</sup> MSD-10 at 5.

<sup>973</sup> Russ Anderson’s ECSFM at No. 6.

<sup>974</sup> Julian’s ECSFM at No. 8.

<sup>975</sup> McLinko’s ECSFM at No. 8.

<sup>976</sup> 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.



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 customer relationships, damages relationships between Team Members, and leads to loss of revenue and reputation for the company.”<sup>977</sup>

**Responses:**

**Russ Anderson** incorporated Respondent Julian’s response.<sup>978</sup>

**Julian** did not dispute that the cited Manual contains the quoted text.<sup>979</sup> **McLinko** did not dispute the claim.<sup>980</sup> Accordingly, the Recommended Decision will include a factual finding as to Respondents Russ Anderson, Julian, and McLinko that 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 customer relationships, damages relationships between Team Members, and leads to loss of revenue and reputation for the company.”

**Enforcement Counsel’s Statement of Material Fact (Russ Anderson) No. 8 and (Julian and McLinko) No. 10**

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 violations subtypes were listed as “656 - Defalcation/Embezzlement, and/or 18 USC 1001 & 1005, False entries/records, USA Patriot Act (CIP issues).”<sup>981</sup>

**Responses:**

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<sup>977</sup> MSD-10 at 5.

<sup>978</sup> Russ Anderson’s ECSFM at No. 7.

<sup>979</sup> Julian’s ECSFM at No. 9.

<sup>980</sup> McLinko’s ECSFM at No. 8.

<sup>981</sup> MSD-423 at 7-9.

**Russ Anderson** incorporated Respondent Julian’s response.<sup>982</sup>

**Julian** did not dispute that the June 2010 Corporate Security Policy Manual categorized its “sales integrity violations” case type into subtypes.<sup>983</sup> **McLinko** did not dispute the claim.<sup>984</sup> Accordingly, the Recommended Decision will include a factual finding as to Respondents Russ Anderson, Julian, and McLinko that 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 violations subtypes were listed as “656 - Defalcation/Embezzlement, and/or 18 USC 1001 & 1005, False entries/records, USA Patriot Act (CIP issues)”.

### **Enforcement Counsel’s Statement of Material Fact (Russ Anderson) No. 9 and (Julian and McLinko) No. 11**

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.”<sup>985</sup>

#### **Responses:**

**Russ Anderson** incorporated Respondent Julian’s response.<sup>986</sup>

**Julian** did not dispute that the July 2014 Sales Quality Manual contains the quoted text.<sup>987</sup> **McLinko** did not dispute the claim.<sup>988</sup> Accordingly, the Recommended Decision will include a factual finding as to Respondents Russ Anderson, Julian, and McLinko that 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.”

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<sup>982</sup> Russ Anderson’s ECSFM at No. 8.

<sup>983</sup> Julian’s ECSFM at No. 10.

<sup>984</sup> McLinko’s ECSFM at No. 10.

<sup>985</sup> Russ Anderson Amended Answer ¶ 33; McLinko Amended Answer ¶ 33; MSD-9 at 5.

<sup>986</sup> Russ Anderson’s ECSFM at No. 9.

<sup>987</sup> Julian’s ECSFM at No. 11.

<sup>988</sup> McLinko’s ECSFM at No. 11.

### **Enforcement Counsel’s Statement of Material Fact (Julian and McLinko) No. 12**

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.).”<sup>989</sup>

#### **Responses:**

**Julian** incorporated Respondent McLinko’s Response.<sup>990</sup>

**McLinko** incorporated Respondent Julian’s Response.<sup>991</sup>

As neither Respondent proffered evidence controverting the claims presented in the Statement, I find an insufficient factual basis has been presented to establish a dispute in this Response to create a controverted material fact. Accordingly, the Recommended Decision will include a factual finding as to Respondents Julian and McLinko that 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.).”

### **Enforcement Counsel’s Statement of Material Fact (Russ Anderson) No. 10 and (Julian and McLinko) No. 13**

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.”<sup>992</sup> 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

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<sup>989</sup> MSD-479.

<sup>990</sup> Julian’s ECSFM at No. 12.

<sup>991</sup> Julian’s ECSFM at No. 418.

<sup>992</sup> MSD-2 at 1, 3.

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 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).
- (g) Altering or falsifying documents translating to increased sales (i.e.; phony referrals).<sup>993</sup>

### **Responses:**

**Russ Anderson** incorporated Respondent Julian's response.<sup>994</sup>

**Julian** did not dispute that the "Incentive Based Gaming" Report contains the quoted text.<sup>995</sup> Accordingly, the Recommended Decision will include a factual finding as to Respondents Russ Anderson and Julian that 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." Specified types of gaming, included the types shown above.

**McLinko** disputed the claim, incorporating Julian's response and averring that Corporate Investigations created the reporting term "Sales Integrity" in 2010 at least in part because "gaming" did not adequately capture the conduct CIS was tracking.<sup>996</sup> I find an insufficient factual basis has been presented to establish a dispute in this Response to create a controverted material fact. Accordingly, the Recommended Decision will include a factual finding as to Respondent McLinko that the term "gaming" within the Bank mirrored the definition of sales integrity violations. "Sales gaming may be classified as the manipulation and/or

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<sup>993</sup> MSD-557.

<sup>994</sup> Russ Anderson's ECSFM at No. 10.

<sup>995</sup> Julian's ECSFM at No. 13.

<sup>996</sup> McLinko's ECSFM at No. 13, citing MMF ¶ 565 (sales integrity is not necessarily sales practices misconduct).

misrepresentation of sales or sales reporting to receive or attempt to receive compensation, or to meet or attempt to meet sales goals.” Specified types of gaming, included the types shown above.

#### **Enforcement Counsel’s Statement of Material Fact (Russ Anderson) No. 11 and (Julian and McLinko) No. 14**

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.”<sup>997</sup>

#### **Responses:**

**Russ Anderson** incorporated Respondent Julian’s response.<sup>998</sup>

**Julian** did not dispute that the Corporate Security EthicsLine Policy contains the quoted text.<sup>999</sup> Accordingly, the Recommended Decision will include a factual finding as to Respondents Russ Anderson, Julian, and McLinko that 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.”

**McLinko** incorporated Respondent Julian’s Response.<sup>1000</sup>

#### **Enforcement Counsel’s Statement of Material Fact (Russ Anderson) No. 12 and (Julian and McLinko) No. 15**

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.”<sup>1001</sup>

#### **Responses:**

**Russ Anderson** incorporated Respondent Julian’s response.<sup>1002</sup>

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<sup>997</sup> MSD-381 at 6.

<sup>998</sup> Russ Anderson’s ECSFM at No. 11.

<sup>999</sup> Julian’s ECSFM at No. 14

<sup>1000</sup> McLinko’s ECSFM at No. 14.

<sup>1001</sup> MSD-526 at 47; MSD-523 at 51.

<sup>1002</sup> Russ Anderson’s ECSFM at No. 12.

**Julian** did not dispute that the “WFAS A&E Committee Presentation: 4th Quarter 2012” and “WFAS A&E Committee Presentation: 4th Quarter 2012” contain the quoted text.<sup>1003</sup> **McLinko** did not dispute the claim.<sup>1004</sup> Accordingly, the Recommended Decision will include a factual finding as to Respondents Russ Anderson, Julian, and McLinko that 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.”

### **Enforcement Counsel’s Statement of Material Fact (Russ Anderson) No. 13 and (Julian and McLinko) No. 16**

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.

#### **Responses:**

**Russ Anderson** did not dispute this claim.<sup>1005</sup> **Julian** did not dispute the claim.<sup>1006</sup> Accordingly, the Recommended Decision will include a factual finding as to Respondents Russ Anderson and Julian that a “systemic” problem 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.

**McLinko** disputed the claim, offering no evidence but averring the word, “systemic” retains its ordinary, customary, or plain meaning.<sup>1007</sup> I find an insufficient factual basis has been presented to establish a dispute in this Response to create a controverted material fact. Accordingly, the Recommended Decision will include a factual finding as to Respondent McLinko that 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.

### **Enforcement Counsel’s Statement of Material Fact (Russ Anderson) No. 14 and (Julian**

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<sup>1003</sup> Julian’s ECSFM at No. 15.

<sup>1004</sup> McLinko’s ECSFM at No. 15.

<sup>1005</sup> Russ Anderson’s ECSFM at No. 13.

<sup>1006</sup> Julian’s ECSFM at No. 16.

<sup>1007</sup> McLinko’s ECSFM at No. 16.

### **and McLinko) No. 17**

The Community Bank was and is the Bank's largest line of business and houses the Bank's retail branch network.<sup>1008</sup>

#### **Responses:**

**Russ Anderson**, did not dispute this claim.<sup>1009</sup> **Julian** did not dispute this claim.<sup>1010</sup> **McLinko** did not dispute this claim.<sup>1011</sup> Accordingly, the Recommended Decision will include a factual finding as to Respondents Russ Anderson, Julian, and McLinko that the Community Bank was and is the Bank's largest line of business and houses the Bank's retail branch network.

### **Enforcement Counsel's Statement of Material Fact (Russ Anderson) No. 15 and (Julian and McLinko) No. 18**

The Community Bank referred to its products and services as "solutions."<sup>1012</sup>

#### **Responses:**

**Russ Anderson** incorporated Respondent Julian's response.<sup>1013</sup>

**Julian** disputed the claim, citing in support Wells Fargo Sales and Service Quality Manual,<sup>1014</sup> averring that the Manual at page 5 "referred to its services as separate and distinct from its "solutions."<sup>1015</sup> There is, however, no reference to services being separate and distinct from solutions on the page cited by Respondent Julian. Accordingly, the Recommended Decision will include a factual finding as to Respondents Russ Anderson, Julian, and McLinko that the Community Bank referred to its products and services as "solutions."

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<sup>1008</sup> Russ Anderson Amended Answer ¶ 2; MSD-1 at 20-21 ¶ 4; Julian Amended Answer ¶ 2; McLinko Amended Answer ¶ 2; MSD-1 at 20 ¶ 4.

<sup>1009</sup> Russ Anderson's ECSFM at No. 14.

<sup>1010</sup> Julian's ECSFM at No. 17.

<sup>1011</sup> McLinko's ECSFM at No. 17.

<sup>1012</sup> 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.

<sup>1013</sup> Russ Anderson's ECSFM at No. 15.

<sup>1014</sup> Julian's ECSFM at No. 18, citing MSD-009.

<sup>1015</sup> Julian's ECSFM at No. 18.

**McLinko** incorporated Respondent Julian’s Response.<sup>1016</sup>

**Enforcement Counsel’s Statement of Material Fact (Russ Anderson) No. 16 and (Julian and McLinko) No. 19**

The Community Bank referred to its employees as “team members.”<sup>1017</sup>

**Responses:**

**Russ Anderson** incorporated Respondent Julian’s response.<sup>1018</sup>

**Julian** did not dispute the claim.<sup>1019</sup> **McLinko** did not dispute this claim.<sup>1020</sup> Accordingly, the Recommended Decision will include a factual finding as to Respondents Russ Anderson, Julian, and McLinko that the Community Bank referred to its employees as “team members.”

**Enforcement Counsel’s Statement of Material Fact (Russ Anderson) No. 17 and (Julian and McLinko) No. 20**

The Community Bank referred to its branches as “stores.”<sup>1021</sup>

**Responses:**

**Russ Anderson** did not dispute this claim.<sup>1022</sup> **Julian** did not dispute this claim.<sup>1023</sup> **McLinko** did not dispute this claim.<sup>1024</sup> Accordingly, the Recommended Decision will include a factual finding as to Respondents Russ Anderson, Julian, and McLinko that the Community Bank referred to its branches as “stores.”

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<sup>1016</sup> McLinko’s ECSFM at No. 18.

<sup>1017</sup> MSD-266 (Russ Anderson Dep. Tr.) at 165:1-3.

<sup>1018</sup> Russ Anderson’s ECSFM at No. 16.

<sup>1019</sup> Julian’s ECSFM at No. 19.

<sup>1020</sup> McLinko’s ECSFM at No. 19.

<sup>1021</sup> MSD-1 at 21 ¶ 5.

<sup>1022</sup> Russ Anderson’s ECSFM at No. 14.

<sup>1023</sup> Julian’s ECSFM at No. 20.

<sup>1024</sup> McLinko’s ECSFM at No. 20.



## **Respondent Russ Anderson's Responsibilities as the Group Risk Officer**

### **Enforcement Counsel's Statement of Material Fact (Russ Anderson) No. 18**

Respondent Russ Anderson served as the Community Bank's Group Risk Officer from 2004 until August 2016.<sup>1025</sup>

#### **Responses:**

**Russ Anderson** did not dispute that she was Community Bank's Group Officer beginning in 2004, but disputed that she took a personal leave of absence beginning in September 2016.<sup>1026</sup>

I find an insufficient factual basis has been presented to establish a dispute in this Response to create a controverted material fact. Accordingly, the Recommended Decision will include a factual finding as to Respondent Russ Anderson that she served as the Community Bank's Group Risk Officer from 2004 until August 2016

### **Enforcement Counsel's Statement of Material Fact (Russ Anderson) No. 19**

Respondent Russ Anderson reported to Carrie Tolstedt, the Head of the Community Bank, from 2006 through 2016.<sup>1027</sup>

#### **Responses:**

**Russ Anderson** did not dispute this fact.<sup>1028</sup> Accordingly, the Recommended Decision will include a factual finding as to Respondent Russ Anderson that she reported to Carrie Tolstedt, the Head of the Community Bank, from 2006 through 2016.

### **Enforcement Counsel's Statement of Material Fact (Russ Anderson) No. 20**

Respondent Russ Anderson also had dotted-line reporting to the Bank's Chief Risk Officer Michael Loughlin.<sup>1029</sup>

#### **Responses:**

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<sup>1025</sup> Russ Anderson Amended Answer ¶ 242.

<sup>1026</sup> Russ Anderson's ECSFM at No. 18.

<sup>1027</sup> Russ Anderson Amended Answer ¶ 242.

<sup>1028</sup> Russ Anderson's ECSFM at No. 19.

<sup>1029</sup> MSD-266 (Russ Anderson Dep. Tr.) at 194:25-195:2; MSD- 264 (Farrell Expert Report) at 6; MSD-290A (Loughlin Tr.) at 26:18-27:10.

**Russ Anderson** disputed the claim “as to time referenced” in the Statement of Facts, noting that she began reporting on a dotted-line basis to Mr. Loughlin in the fall of 2013.<sup>1030</sup>

I find an insufficient factual basis has been presented to establish a dispute in this Response to create a controverted material fact. Accordingly, the Recommended Decision will include a factual finding as to Respondent Russ Anderson that she had dotted-line reporting to the Bank’s Chief Risk Officer Michael Loughlin.

### **Enforcement Counsel’s Statement of Material Fact (Russ Anderson) No. 21**

The Bank had three lines of defense tasked with controlling and managing risk. For the risks it generated, the Community Bank was the first line of defense. Corporate Risk was the second line of defense. Audit was the third line of defense.<sup>1031</sup>

#### **Responses:**

**Russ Anderson** disputed the Statement “to the extent that SOF 21 is a generalized statement as to the lines of defense.”<sup>1032</sup> She also disputed Enforcement Counsel’s “misrepresentation of MSD-224” – the WFC Corporate Risk Sales Practices Risk Governance Document, first on the basis of the Document’s admissibility and then regarding the Document’s use of “three lines of defense.”<sup>1033</sup>

I find an insufficient factual basis has been presented to establish a dispute in this Response to create a controverted material fact. Accordingly, the Recommended Decision will include a factual finding as to Respondent Russ Anderson that the Bank had three lines of defense tasked with controlling and managing risk. For the risks it generated, the Community Bank was the first line of defense. Corporate Risk was the second line of defense. Audit was the third line of defense.

### **Enforcement Counsel’s Statement of Material Fact (Russ Anderson) No. 22**

As the Community Bank’s Group Risk Officer from 2004 through 2016, Respondent Russ Anderson led the first line of defense in the Community Bank with responsibility for risk management and controls, including with respect to sales practices.<sup>1034</sup>

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<sup>1030</sup> Russ Anderson’s ECSFM at No. 20.

<sup>1031</sup> Russ Anderson Amended Answer ¶ 10; MSD-224 at 40; Julian Amended Answer ¶ 388; McLinko Amended Answer ¶ 388.

<sup>1032</sup> Russ Anderson’s ECSFM at No. 21.

<sup>1033</sup> Russ Anderson’s ECSFM at No. 21.

<sup>1034</sup> Russ Anderson Amended Answer ¶ 247; MSD-43 at 5; MSD-203; MSD-204; MSD-206; MSD-207; MSD-210; MSD-224 at 5, 9, 27; MSD-238.

### **Responses:**

**Russ Anderson** disputed the claim “to the extent Ms. Russ Anderson was the only person responsible for leading the first line of defense,” that her MBO’s included “any specific reference to responsibility” for sales practices, and for failing to note that she “transformed the Sales and Services Conduct Oversight Team” from reactive to proactive monitoring.<sup>1035</sup>

I find an insufficient factual basis has been presented to establish a dispute in this Response to create a controverted material fact. Accordingly, the Recommended Decision will include a factual finding as to Respondent Russ Anderson that as the Community Bank’s Group Risk Officer from 2004 through 2016, Respondent Russ Anderson led the first line of defense in the Community Bank with responsibility for risk management and controls, including with respect to sales practices.

### **Enforcement Counsel’s Statement of Material Fact (Russ Anderson) No. 23**

Respondent Russ Anderson “had the responsibility to appropriately assess and effectively manage the risks associated with the activities of the Community Bank. This responsibility included identifying, measuring, monitoring and controlling such risks.”<sup>1036</sup>

### **Responses:**

**Russ Anderson** disputed the claim that Paragraph 142 of the Notice of Charges and her amended answer thereto supported this Statement of Material Fact.<sup>1037</sup>

I find an insufficient factual basis has been presented to establish a dispute in this Response to create a controverted material fact. Accordingly, the Recommended Decision will include a factual finding as to Respondent Russ Anderson that Respondent Russ Anderson had the responsibility to appropriately assess and effectively manage the risks associated with the activities of the Community Bank. This responsibility included identifying, measuring, monitoring and controlling such risks.

### **Enforcement Counsel’s Statement of Material Fact (Russ Anderson) No. 24**

Respondent Russ Anderson provided sworn testimony to Enforcement Counsel in this

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<sup>1035</sup> Russ Anderson’s ECSFM at No. 22.

<sup>1036</sup> MSD- 264 (Farrell Expert Report) at 8; see also Respondent Russ Anderson Amended Answer ¶ 142 (admitting that she had authority to address or investigate sales practices misconduct).

<sup>1037</sup> Russ Anderson’s ECSFM at No. 23.

proceeding on January 13, 2021.<sup>1038</sup> Respondent Russ Anderson testified she had responsibility for the sales practices misconduct problem in the Community Bank.<sup>1039</sup>

**Responses:**

**Russ Anderson** did not dispute that she, among others at Wells Fargo, had responsibility for the sales practices misconduct problem in the Community Bank, but disputed to the extent Enforcement Counsel misrepresents the cited testimony.<sup>1040</sup>

I find an insufficient factual basis has been presented to establish a dispute in this Response to create a controverted material fact. Accordingly, the Recommended Decision will include a factual finding as to Respondent Russ Anderson that during sworn testimony given on January 13, 2021, Respondent acknowledged that she had responsibility for the sales practices misconduct problem in the Community Bank.

**Enforcement Counsel’s Statement of Material Fact (Russ Anderson) No. 25**

According to the Bank’s July 2005 Safety & Soundness Plan submitted to the OCC, Respondent Russ Anderson as the Group Risk Officer had “overall responsibility for identifying, assessing, monitoring, and managing credit, regulatory, legal, operational, and reputation risk for Community Banking’s lines of business.”<sup>1041</sup>

**Responses:**

**Russ Anderson** did not dispute this fact.<sup>1042</sup> Accordingly, the Recommended Decision will include a factual finding as to Respondent Russ Anderson, according to the Bank’s July 2005 Safety & Soundness Plan submitted to the OCC, Respondent Russ Anderson as the Group Risk Officer had “overall responsibility for identifying, assessing, monitoring, and managing credit, regulatory, legal, operational, and reputation risk for Community Banking’s lines of business.

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<sup>1038</sup> As Noted in the Notice, prior to the OCC filing the Notice, Ms. Russ Anderson refused to answer all substantive questions about sales practices misconduct when subpoenaed by the OCC and instead asserted her Fifth Amendment right against self-incrimination. See Russ Anderson Amended Answer ¶ 244.

<sup>1039</sup> MSD-266 (Russ Anderson Dep. Tr.) at 146:12-147:24; see also MSD-8C (Stumpf Tr.) at 551:12-25 (agreeing Respondent Russ Anderson bears significant responsibility for the existence and continuation of the systemic sales practices misconduct problem).

<sup>1040</sup> Russ Anderson’s ECSFM at No. 24.

<sup>1041</sup> MSD-205 at 44.

<sup>1042</sup> Russ Anderson’s ECSFM at No. 25.

## **Enforcement Counsel’s Statement of Material Fact (Russ Anderson) No. 26**

Respondent Russ Anderson’s specific responsibilities as the Community Bank’s Group Risk Officer, as set forth in her performance objectives, was to “ensure that an effective compliance and operational risk management program is functioning for Community Banking.”<sup>1043</sup> She had a role in working with the business management teams to: 1) “create effective control processes for compliance and operational risks”; and 2) “ensure that monitoring and testing programs effectively and timely detect potential operational risk and compliance issues and collaborating with management to ensure prompt corrective actions to address identified issues.”<sup>1044</sup> Respondent Russ Anderson was also supposed to “[a]ct as the ‘central repository’ for significant issues and risks” and “[d]iscern ‘best practices’ and help implement where prudent and warranted.” She was also supposed to meet with the OCC monthly to discuss all issues relating to Community Banking.<sup>1045</sup>

### **Responses:**

**Russ Anderson** disputed the claim to the extent SOF ¶ 26 indicates Ms. Russ Anderson was solely responsible for ensuring an effective compliance and operation risk management program.<sup>1046</sup>

I find an insufficient factual basis has been presented to establish a dispute in this Response to create a controverted material fact. Accordingly, the Recommended Decision will include a factual finding as to Respondent Russ Anderson that her specific responsibilities as the Community Bank’s Group Risk Officer, as set forth in her performance objectives, was to “ensure that an effective compliance and operational risk management program is functioning for Community Banking.”<sup>1047</sup> She had a role in working with the business management teams to: 1) “create effective control processes for compliance and operational risks”; and 2) “ensure that monitoring and testing programs effectively and timely detect potential operational risk and compliance issues and collaborating with management to ensure prompt corrective actions to address identified issues.”<sup>1048</sup> Respondent Russ Anderson was also supposed to “[a]ct as the ‘central repository’ for significant issues and risks” and “[d]iscern ‘best practices’ and help

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<sup>1043</sup> MSD-207 at 1.

<sup>1044</sup> MSD-207 at 1.

<sup>1045</sup> MSD-203 at 2; MSD-210 at 2; MSD-207 at 4; MSD- 206.

<sup>1046</sup> Russ Anderson’s ECSFM at No. 26.

<sup>1047</sup> MSD-207 at 1.

<sup>1048</sup> MSD-207 at 1.

implement where prudent and warranted.” She was also supposed to meet with the OCC monthly to discuss all issues relating to Community Banking.

### **Enforcement Counsel’s Statement of Material Fact (Russ Anderson) No. 27**

In her role, Respondent Russ Anderson was responsible for understanding the sales processes and incentive structures in the Community Bank and the risks they present.<sup>1049</sup>

#### **Responses:**

**Russ Anderson** did not dispute this fact.<sup>1050</sup> Accordingly, the Recommended Decision will include a factual finding as to Respondent Russ Anderson that she was responsible for understanding the sales processes and incentive structures in the Community Bank and the risks they present.

### **Enforcement Counsel’s Statement of Material Fact (Russ Anderson) No. 28**

Respondent Russ Anderson served on important management committees with responsibilities for identifying, managing, and escalating sales practices misconduct.<sup>1051</sup>

#### **Responses:**

**Russ Anderson** disputed this claim “to the extent SOF 28 suggests she was the sole person on those committees with the outlined responsibilities.”<sup>1052</sup>

I find an insufficient factual basis has been presented to establish a dispute in this Response to create a controverted material fact. Accordingly, the Recommended Decision will include a factual finding as to Respondent Russ Anderson that she served on important management committees with responsibilities for identifying, managing, and escalating sales practices misconduct.

### **Enforcement Counsel’s Statement of Material Fact (Russ Anderson) No. 29**

Beginning no later than 2004, Respondent Russ Anderson served as the Chair of the

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<sup>1049</sup> MSD-203 at 1-2; MSD-204; MSD-206; MSD-207; MSD-210; MSD-211; MSD-212.

<sup>1050</sup> Russ Anderson’s ECSFM at No. 27.

<sup>1051</sup> Russ Anderson Amended Answer ¶ 151.

<sup>1052</sup> Russ Anderson’s ECSFM at No. 28.

Community Banking Risk Management Committee.<sup>1053</sup>

- a. Ms. Tolstedt and other Community Bank leaders were members of the Community Banking Risk Management Committee.<sup>1054</sup>
- b. According to its charter, the purpose of the Community Banking Risk Management Committee 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.”<sup>1055</sup>

**Responses:**

**Russ Anderson** did not dispute this fact.<sup>1056</sup> Accordingly, the Recommended Decision will include a factual finding as to Respondent Russ Anderson that beginning no later than 2004, Respondent Russ Anderson served as the Chair of the Community Banking Risk Management Committee, that Ms. Tolstedt and other Community Bank leaders were members of the Community Banking Risk Management Committee, and that according to its charter, the purpose of the Community Banking Risk Management Committee 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.

**Enforcement Counsel’s Statement of Material Fact (Russ Anderson) No. 30**

The primary responsibility of the Community Banking Risk Management Committee was “to understand Community Banking’s operational risk profile and to work with management across Community Banking to ensure risks are managed effectively.”<sup>1057</sup>

**Responses:**

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<sup>1053</sup> OCC-WF-SP-00680477 (2004 MBOs); OCC-WF-SP-10796374 (2005 MBOs).

<sup>1054</sup> MSD-208.

<sup>1055</sup> MSD-208 at 1.

<sup>1056</sup> Russ Anderson’s ECSFM at No. 29.

<sup>1057</sup> Russ Anderson Amended Answer ¶ 255; MSD-208.

**Russ Anderson** disputed the claim “to the extent Enforcement Counsel mischaracterizes Ms. Russ Anderson’s Amended Answer.”<sup>1058</sup>

I find an insufficient factual basis has been presented to establish a dispute in this Response to create a controverted material fact. Accordingly, the Recommended Decision will include a factual finding as to Respondent Russ Anderson that the primary responsibility of the Community Banking Risk Management Committee was to understand Community Banking’s operational risk profile and to work with management across Community Banking to ensure risks are managed effectively.

#### **Enforcement Counsel’s Statement of Material Fact (Russ Anderson) No. 31**

Under the Bank’s Fraud Risk Management Policy, the Community Bank was “responsible for understanding its internal and external fraud risks and must maintain a fraud risk management program (‘fraud program’) to address these risks.” As the Community Bank’s Group Risk Officer, Respondent Russ Anderson was responsible for “opining on the adequacy of internal and external fraud risk management and providing credible challenge” to Community Bank business leaders.<sup>1059</sup>

#### **Responses:**

**Russ Anderson** disputed the claims “as to time.”<sup>1060</sup>

I find an insufficient factual basis has been presented to establish a dispute in this Response to create a controverted material fact. Accordingly, the Recommended Decision will include a factual finding as to Respondent Russ Anderson that under the Bank’s Fraud Risk Management Policy, the Community Bank was responsible for understanding its internal and external fraud risks and must maintain a fraud risk management program to address these risks, and that as the Community Bank’s Group Risk Officer, Respondent Russ Anderson was responsible for opining on the adequacy of internal and external fraud risk management and providing credible challenge to Community Bank business leaders.

#### **Enforcement Counsel’s Statement of Material Fact (Russ Anderson) No. 32**

The Bank’s Product and Service Risk Management Policy also conferred significant responsibilities on Respondent Russ Anderson. The Policy stated, in part: “Wells Fargo expects all its businesses that develop, sell, or service products to employ effective risk management.” Under the Policy, the Group Risk Officer “establishes the product risk management practices for the business group, in collaboration with the business group head, business managers, and other senior credit and market risk managers in the group.” The Group

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<sup>1058</sup> Russ Anderson’s ECSFM at No. 30.

<sup>1059</sup> MSD-209; MSD-238.

<sup>1060</sup> Russ Anderson’s ECSFM at No. 31.



Risk Officer’s responsibilities included: “Providing credible challenge and sufficient oversight to ensure the objectives of this policy and the business’s product risk management process are met” and “escalating matters requiring attention.” The policy authorized the Group Risk Officer to “at his or her sole discretion, require that a product’s development, modification, or sales of the product be suspended pending further review.”<sup>1061</sup>

**Responses:**

**Russ Anderson** disputed the claim “to the extent that Ms. Russ Anderson as Group Risk Officer could require the products at issue in this matter – Demand Deposit Accounts, credit cards, debit cards – to be suspended.”<sup>1062</sup> She averred the Statement cites “no documents that would indicate this policy would authorize the suspension of sales of these core products.” And she noted that Bank policy describes the roles and responsibilities of other individuals who may have a role in this regard.<sup>1063</sup>

I find an insufficient factual basis has been presented to establish a dispute in this Response to create a controverted material fact. Accordingly, the Recommended Decision will include a factual finding as to Respondent Russ Anderson that the Bank’s Product and Service Risk Management Policy conferred significant responsibilities on Respondent Russ Anderson. The Policy stated, in part: “Wells Fargo expects all its businesses that develop, sell, or service products to employ effective risk management.” Under the Policy, the Group Risk Officer “establishes the product risk management practices for the business group, in collaboration with the business group head, business managers, and other senior credit and market risk managers in the group.” The Group Risk Officer’s responsibilities included: “Providing credible challenge and sufficient oversight to ensure the objectives of this policy and the business’s product risk management process are met” and “escalating matters requiring attention.” The policy authorized the Group Risk Officer to “at his or her sole discretion, require that a product’s development, modification, or sales of the product be suspended pending further review.”

**Enforcement Counsel’s Statement of Material Fact (Russ Anderson) No. 33**

From 2004 until 2016, Respondent Russ Anderson was the Group Risk Officer in the Community Bank responsible for identifying, measuring, monitoring, and managing risks in the Community Bank, including sales practices risks. In January 2012, the Sales and Service Conduct Oversight Team (“SSCOT”) began reporting directly to Respondent Russ Anderson. SSCOT conducted proactive monitoring of sales practices misconduct. This group previously

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<sup>1061</sup> MSD-43.

<sup>1062</sup> Russ Anderson’s ECSFM at No. 32.

<sup>1063</sup> Russ Anderson’s ECSFM at No. 32.

was known as Sales Quality.<sup>1064</sup>

**Responses:**

**Russ Anderson** did not dispute the claim “to the extent Ms. Russ Anderson admitted to the second sentence of SOF ¶ 33 in her Amended Answer; but disputed “as to time frame referenced and the scope of” her duties.<sup>1065</sup> She further averred that under her leadership, SSCOT “began proactively monitoring for the first time in the history of the Bank in 2013”.<sup>1066</sup>

I find an insufficient factual basis has been presented to establish a dispute in this Response to create a controverted material fact. Accordingly, the Recommended Decision will include a factual finding as to Respondent Russ Anderson that from 2004 until 2016, she was the Group Risk Officer in the Community Bank responsible for identifying, measuring, monitoring, and managing risks in the Community Bank, including sales practices risks. In January 2012, the Sales and Service Conduct Oversight Team (“SSCOT”) began reporting directly to her. SSCOT conducted proactive monitoring of sales practices misconduct. This group previously was known as Sales Quality.

**Enforcement Counsel’s Statement of Material Fact (Russ Anderson) No. 34**

Respondent Russ Anderson served on the Bank’s Internal Fraud Committee beginning from January 2013 until 2016, responsible for ensuring “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.”<sup>1067</sup>

**Responses:**

**Russ Anderson** did not dispute that she served on the Bank’s Internal Fraud Committee, but disputed that the cited documents were admissible or that they establish a factual basis for the claims in this Statement.<sup>1068</sup>

I find an insufficient factual basis has been presented to establish a dispute in this Response to create a controverted material fact. Accordingly, the Recommended Decision will include a factual finding as to Respondent Russ Anderson that she served on the Bank’s Internal Fraud Committee beginning from January 2013 until 2016 and was responsible for ensuring that all

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<sup>1064</sup> Russ Anderson Amended Answer ¶ 260.

<sup>1065</sup> Russ Anderson’s ECSFM at No. 33.

<sup>1066</sup> Russ Anderson’s ECSFM at No. 33.

<sup>1067</sup> MSD-209 at 5; MSD-219.

<sup>1068</sup> Russ Anderson’s ECSFM at No. 34.

stakeholders who share responsibility for internal fraud risk management receive appropriate reporting and have a forum to address broad team member misconduct matters.

### **Enforcement Counsel’s Statement of Material Fact (Russ Anderson) No. 35**

In or around September 2016, Respondent Russ Anderson took a leave of absence from the Bank.<sup>1069</sup>

#### **Responses:**

**Russ Anderson** did not dispute this claim.<sup>1070</sup> Accordingly, the Recommended Decision will include a factual finding as to Respondent Russ Anderson that in or around September 2016, Respondent Russ Anderson took a leave of absence from the Bank.

### **Enforcement Counsel’s Statement of Material Fact (Russ Anderson) No. 36**

In or around February 2017, the Bank terminated Respondent Russ Anderson for cause in connection with her role in the sales practices misconduct problem in the Community Bank.<sup>1071</sup>

#### **Responses:**

**Russ Anderson** did not dispute that her employment at the Bank was terminated, but disputed that good cause existed for that termination.<sup>1072</sup>

I find an insufficient factual basis has been presented to establish a dispute in this Response to create a controverted material fact. Accordingly, the Recommended Decision will include a factual finding as to Respondent Russ Anderson that in or around February 2017, the Bank terminated Respondent Russ Anderson’s employment for cause in connection with her role in the sales practices misconduct problem in the Community Bank.

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<sup>1069</sup> MSD-266 (Russ Anderson Dep. Tr.) at 40:9-13.

<sup>1070</sup> Russ Anderson’s ECSFM at No. 35.

<sup>1071</sup> Russ Anderson Amended Answer ¶ 243; MSD-280 (Board Report) at 8; id. at 52 (“Russ Anderson minimized and obscured issues in reporting on the Community Bank, including sales practices.”); id. at 49 (“Russ Anderson’s performance fell far short of what was expected and required of the senior risk officer in the Community Bank.”); MSD-268 (NBE Crosthwaite Expert Report) at ¶ 120; MSD-586 (Hernandez Tr.) at 190:14-193:4.

<sup>1072</sup> Russ Anderson’s ECSFM at No. 36.

**The Community Bank had a systemic sales practices misconduct problem from at least 2002 until October 2016<sup>1073</sup>**

**Enforcement Counsel’s Statement of Material Fact (Russ Anderson) No. 37 and (Julian and McLinko) No. 21**

Beginning no later than 2002 until October 2016, the Community Bank had a systemic sales practices misconduct problem.<sup>1074</sup>

**Responses:**

**Russ Anderson** incorporated Respondent Julian’s response.<sup>1075</sup>

**Julian** disputed the claim averring “there is considerable evidence showing that sales practices misconduct issues did not occur on a large scale, varied in severity by time and geography, were not systemic or widespread, and were not caused by unreasonable sales goals or pressure.”<sup>1076</sup>

In support, he refers in part to a cover letter attached to a 2004 Gaming Memo states that “incentive based gaming is certainly not rampant [within] the company,” and notes that, at most, it is only “somewhat problematic.”<sup>1077</sup>

Having reviewed the proffered evidence, I find it insufficiently relates to the issues raised in the Notice of Charges, as it refers to conditions present in the Bank that are too remote in time to constitute evidence material to the issues presented in the Notice of Charges. Accordingly, the claims presented in (Russ Anderson) No. 37 and (Julian and McLinko) No. 21 will not support Enforcement Counsel’s Motion. The exclusion of the claims appearing in the Statement does not, however, create a factual basis that would prevent granting Enforcement Counsel’s Motion.

**McLinko** incorporated Respondent Julian’s Response.<sup>1078</sup>

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<sup>1073</sup> McLinko disputed the claim presented in this subheading. Subheadings do not contain Statements of Material Fact, and as such contain no disputable facts. To the extent any party submitted responses to claims presented through subheadings such as this, the submission will be maintained in the record as a proffer only.

<sup>1074</sup> See Russ Anderson SOF ¶¶48-86, 124-146; Julian and McLinko SOF ¶¶ 31-213.

<sup>1075</sup> Russ Anderson’s ECSFM at No. 37.

<sup>1076</sup> Julian’s ECSFM at No.21.

<sup>1077</sup> Julian’s ECSFM at No.21, quoting MSD-002 at 1.

<sup>1078</sup> McLinko’s ECSFM at No. 21.

### **Enforcement Counsel’s Statement of Material Fact (Russ Anderson) No. 38**

Respondent Russ Anderson testified that “there has been sales practice misconduct in the bank since I started in 1980, yes.”<sup>1079</sup>

#### **Responses:**

**Russ Anderson** did not dispute the accuracy of the testimony cited, but disputed “any suggestion” that she “admitted sales practices misconduct was systemic or widespread.”<sup>1080</sup>

I find an insufficient factual basis has been presented to establish a dispute in this Response to create a controverted material fact. Accordingly, the Recommended Decision will include a factual finding as to Respondent Russ Anderson that she testified that “there has been sales practice misconduct in the bank since I started in 1980, yes.”

### **Enforcement Counsel’s Statement of Material Fact (Russ Anderson) No. 39 and (Julian and McLinko) No. 22**

Sales practices misconduct violated laws and regulations and harmed the Bank’s customers.<sup>1081</sup>

#### **Responses:**

**Russ Anderson** incorporated Respondent Julian’s response.<sup>1082</sup>

**Julian** disputed the claim, not by establishing that the misconduct violated laws and regulations, but by averring Enforcement Counsel have not shown direct evidence of sales practices misconduct that violated laws and regulations.<sup>1083</sup> Averring that the claim relies in part on conclusions by the OCC examiners that sales practices misconduct violates multiple consumer and criminal laws, Respondent Julian does not offer countervailing evidence, but instead disputes the conclusions reached by the examiners.<sup>1084</sup>

I find an insufficient factual basis has been presented to establish a dispute in this Response to create a controverted material fact. Accordingly, the Recommended Decision will include a factual finding as to Respondents Russ Anderson, Julian, and McLinko that sales practices misconduct violated laws and regulations and harmed the Bank’s customers.

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<sup>1079</sup> MSD-266 (Russ Anderson Dep. Tr.) at 31:17-21; 208:12-18.

<sup>1080</sup> Russ Anderson’s ECSFM at No. 38.

<sup>1081</sup> See Russ Anderson SOF ¶¶ 257-275; 459-489; Julian and McLinko SOF ¶¶ 214-231.

<sup>1082</sup> Russ Anderson’s ECSFM at No. 39.

<sup>1083</sup> Julian’s ECSFM at No. 22.

<sup>1084</sup> Julian’s ECSFM at No. 22.

**McLinko** incorporated Respondent Julian’s Response.<sup>1085</sup>

**Enforcement Counsel’s Statement of Material Fact (Russ Anderson) No. 40 and (Julian and McLinko) No. 23**

Sales practices misconduct was pervasive and widespread within the Community Bank.<sup>1086</sup>

**Responses:**

**Russ Anderson** incorporated Respondent Julian’s response.<sup>1087</sup>

**Julian** disputed the claim, averring “the problem was not widespread or systemic” and that it was caused by “unsanctioned sales pressure imposed by rogue regional managers.”<sup>1088</sup> He cited in support evidence that “simulated funding” misconduct was deemed “more likely than not” to be the result of 5,604 team members, or only 2.5% of all active Bank team members at any one point in time.<sup>1089</sup> Evidence of such widespread misconduct does not support the factual claim Respondent Julian relies upon – it confirms that the cited misconduct was pervasive and widespread within the Community Bank.

I find an insufficient factual basis has been presented to establish a dispute in this Response to create a controverted material fact. Accordingly, the Recommended Decision will include a factual finding as to Respondents Russ Anderson, Julian, and McLinko that sales practices misconduct was pervasive and widespread within the Community Bank.

**McLinko** incorporated Respondent Julian’s Response.<sup>1090</sup>

**Enforcement Counsel’s Statement of Material Fact (Russ Anderson) No. 41 and (Julian and McLinko) No. 24**

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.<sup>1091</sup>

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<sup>1085</sup> McLinko’s ECSFM at No. 22.

<sup>1086</sup> See Russ Anderson SOF ¶¶ 214-256; Julian and McLinko SOF ¶¶ 169-213.

<sup>1087</sup> Russ Anderson’s ECSFM at No. 40.

<sup>1088</sup> Julian’s ECSFM at No. 23.

<sup>1089</sup> Julian’s ECSFM at No. 23, quoting (MSD-226 at 7, 481).

<sup>1090</sup> McLinko’s ECSFM at No. 23.

<sup>1091</sup> See Russ Anderson SOF ¶¶ 48-68, 124-146; Julian and McLinko SOF ¶¶ 31-116.

## Responses:

**Russ Anderson** incorporated Respondent Julian's response.<sup>1092</sup>

**Julian** disputed the claim, averring that evidence supports the view that sales practices misconduct was limited to a small group of team members.<sup>1093</sup> Included is evidence in the form of testimony from former Community Bank leader Tyson Pyles.<sup>1094</sup> Mr. Pyles was asked whether he believed during any time between 2003 and 2011 that the retail bank incentive compensation plan contributed directly or indirectly to sales practices misconduct. He answered "I don't believe it was the primary root cause. Might it have been an underlying root cause, I'm an open-minded person and would say that it could have been."<sup>1095</sup>

Having examined the evidence proffered in support of Respondent Julian's dispute, I find the evidence is insufficiently related to the issues raised in the Notice of Charges, as it presents conditions present in the Bank too remote in time to constitute evidence material to the issues presented in the Notice of Charges. Accordingly, the Recommended Decision will include a factual finding as to Respondents Russ Anderson, Julian, and McLinko that 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

**McLinko** incorporated Respondent Julian's Response.<sup>1096</sup>

## Enforcement Counsel's Statement of Material Fact (Russ Anderson) No. 42 and (Julian and McLinko) No. 25

The Bank's controls to both prevent and detect sales practices misconduct were inadequate.<sup>1097</sup>

## Responses:

**Russ Anderson** incorporated Respondent Julian's response.<sup>1098</sup>

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<sup>1092</sup> Russ Anderson's ECSFM at No. 41.

<sup>1093</sup> Julian's ECSFM at No. 24.

<sup>1094</sup> Julian's ECSFM at No. 24, citing MSD-653C (Tr. T. Pyles) at 648:25-651:16.

<sup>1095</sup> MSD-653C at 648-49.

<sup>1096</sup> McLinko's ECSFM at No. 24.

<sup>1097</sup> See Russ Anderson SOF ¶¶ 150-213; Julian and McLinko SOF ¶¶ 117-168.

<sup>1098</sup> Russ Anderson's ECSFM at No. 42.

**Julian** disputed the claim, averring that the Bank’s controls to both prevent and detect sales practices misconduct followed the three lines of defense model, and were constantly evolving to improve their capabilities.<sup>1099</sup> Having presented evidence of evolution, Respondent Julian has not presented evidence contradicting the claim that during the relevant period, existing controls were inadequate. In support of his averment, Respondent Julian asserts that “it is not WFAS’s role ‘to manage the company’s internal controls, rather internal audit is responsible for evaluating those controls designed and implemented by the first and second lines of defense.’”<sup>1100</sup> Such a proffer does not contradict the factual claim presented, but offers an opinion regarding what Respondent’s expert witness opined was the scope of the role of Wells Fargo Audit Services.

Having examined the evidence proffered in support of Respondent Julian’s dispute, I find the evidence is insufficiently related to the claims presented in this Statement, and I find an insufficient factual basis has been presented to establish a dispute in this Response to create a controverted material fact. Accordingly, the Recommended Decision will include a factual finding as to Respondents Russ Anderson, Julian, and McLinko that the Bank’s controls to both prevent and detect sales practices misconduct were inadequate.

**McLinko** incorporated Respondent Julian’s Response.<sup>1101</sup>

### **Enforcement Counsel’s Statement of Material Fact (Russ Anderson) No. 43 and (Julian and McLinko) No. 26**

None of Respondents’ expert witnesses concludes or opines 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.<sup>1102</sup>

#### **Responses:**

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<sup>1099</sup> Julian’s ECSFM at No. 25.

<sup>1100</sup> Julian’s ECSFM at No. 25, quoting MSD-271 (Respondent Julian’s Expert Report of Tali M. Ploetz) at 5.

<sup>1101</sup> McLinko’s ECSFM at No. 25.

<sup>1102</sup> 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.



**Russ Anderson** averred that “no expert in this case . . . has access to necessary data that would be necessary to conclude on such matters, evidence offered by Ms. Russ Anderson’s experts bears on the questions.”<sup>1103</sup>

I find an insufficient factual basis has been presented to establish a dispute in this Response to create a controverted material fact. Accordingly, the Recommended Decision will include a factual finding as to Respondent Russ Anderson, none of Respondents’ expert witnesses concludes or opines 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.

**Julian** disputed the claim, averring (along with Respondent Russ Anderson) that none of the experts had access to records that would be necessary to conclude on the claims raised here.<sup>1104</sup> Having examined the proffered evidence, I find an insufficient factual basis has been presented to establish a dispute in this Response to create a controverted material fact. Accordingly, the Recommended Decision will include a factual finding as to Respondent Julian, none of Respondents’ expert witnesses concludes that 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.

**McLinko** incorporated Respondent Julian’s Response and disputed that the cited exhibits supporting the Statement established the alleged fact that Community Bank had systemic sales practices misconduct from at least 2002 until October 2016, or that it established the root cause of the misconduct problem.<sup>1105</sup> I find an insufficient factual basis has been presented to establish a dispute in this Response to create a controverted material fact. Accordingly, the Recommended Decision will include a factual finding as to Respondent McLinko that none of Respondents’ expert witnesses concludes that 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.

#### **Enforcement Counsel’s Statement of Material Fact (Russ Anderson) No. 44**

None of Respondent Russ Anderson’s expert witnesses concludes or opines that the sales goals in the Community Bank were reasonable.<sup>1106</sup>

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<sup>1103</sup> Russ Anderson’s ECSFM at No. 43.

<sup>1104</sup> Julian’s ECSFM at No. 26.

<sup>1105</sup> McLinko’s ECSFM at No. 26.

<sup>1106</sup> MSD-265A (Farrell Dep. Tr.) at 53:9-12; MSD-263A (Abshier Dep. Tr.) at 40:23-41:1; MSD-282A (Wilcox Dep. Tr.) at 40:20-23.

### **Responses:**

Russ Anderson disputed the claim “to the extent that evaluation of ‘reasonableness’ can be subjective and subject to interpretation by parties based on the nature and extent of information that is made available to them.”<sup>1107</sup>

I find an insufficient factual basis has been presented to establish a dispute in this Response to create a controverted material fact. Accordingly, the Recommended Decision will include a factual finding as to Respondent Russ Anderson, that none of her expert witnesses concludes or opines that the sales goals in the Community Bank were reasonable.

### **Enforcement Counsel’s Statement of Material Fact (Julian and McLinko) No. 27**

None of Respondent Julian’s expert witnesses, and none of Respondent McLinko’s expert witnesses conclude or opine that the sales goals in the Community Bank were reasonable.<sup>1108</sup>

### **Responses:**

**Julian** did not dispute that no expert proffered by any party in this case has the expertise to conclude as to the reasonableness of sales goals.<sup>1109</sup> Accordingly, the Recommended Decision will include a factual finding as to Respondent Julian that none of his expert witnesses, and none of Respondent McLinko’s expert witnesses, conclude or opine that the sales goals in the Community Bank were reasonable.

**McLinko** incorporated Respondent Julian’s Response and disputed that the cited exhibits supporting the Statement established the alleged fact that Community Bank had systemic sales practices misconduct from at least 2002 until October 2016, or that it established the root cause of the misconduct problem.<sup>1110</sup> I find an insufficient factual basis has been presented to establish a dispute in this Response to create a controverted material fact. Accordingly, the Recommended Decision will include a factual finding as to Respondent McLinko that none of Respondent Julian’s expert witnesses, and none of Respondent McLinko’s expert witnesses conclude or opine that the sales goals in the Community Bank were reasonable.

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<sup>1107</sup> Russ Anderson’s ECSFM at No. 44.

<sup>1108</sup> 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 40:20-23; 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.

<sup>1109</sup> Julian’s ECSFM at No. 27.

<sup>1110</sup> McLinko’s ECSFM at No. 27.

### **Enforcement Counsel’s Statement of Material Fact (Russ Anderson) No. 45**

None of Respondents’ expert witnesses concludes or opines that the pressure was reasonable.<sup>1111</sup>

#### **Responses:**

**Russ Anderson** disputed the claim “insofar as ‘pressure’ is vague.”<sup>1112</sup>

I find an insufficient factual basis has been presented to establish a dispute in this Response to create a controverted material fact. Accordingly, the Recommended Decision will include a factual finding as to Respondent Russ Anderson that none of her expert witnesses concludes or opines that the pressure was reasonable.

### **Enforcement Counsel’s Statement of Material Fact (Julian and McLinko) No. 28**

None of Respondent Julian’s expert witnesses, and none of Respondent McLinko’s expert witnesses conclude or opine that the pressure was reasonable.<sup>1113</sup>

#### **Responses:**

**Julian** did not dispute that no expert proffered by any party in this case has the expertise to conclude as to whether the “pressure was reasonable.”<sup>1114</sup> Accordingly, the Recommended Decision will include a factual finding as to Respondent Julian that none of his expert witnesses, and none of Respondent McLinko’s expert witnesses, conclude or opine that the pressure was reasonable.

**McLinko** incorporated Respondent Julian’s Response and disputed that the cited exhibits supporting the Statement established the alleged fact that Community Bank had systemic sales practices misconduct from at least 2002 until October 2016, or that it established the root cause of the misconduct problem.<sup>1115</sup> I find an insufficient factual basis has been presented to establish

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<sup>1111</sup> MSD-265A (Farrell Dep. Tr.) at 53:13-17; MSD-263A (Abshier Dep. Tr.) at 43:5-10; MSD-282A (Wilcox Dep. Tr.) at 40:24-41:3); 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.

<sup>1112</sup> Russ Anderson’s ECSFM at No. 45.

<sup>1113</sup> 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.

<sup>1114</sup> Julian’s ECSFM at No. 28.

<sup>1115</sup> McLinko’s ECSFM at No. 28.

a dispute in this Response to create a controverted material fact. Accordingly, the Recommended Decision will include a factual finding as to Respondent McLinko that none of Respondent Julian's expert witnesses, and none of Respondent McLinko's expert witnesses conclude or opine that the pressure was reasonable.

#### **Enforcement Counsel's Statement of Material Fact (Russ Anderson) No. 46**

None of Respondents' expert witnesses conclude or opine that controls to prevent sales practices misconduct were adequate.<sup>1116</sup>

#### **Responses:**

**Russ Anderson** disputed the claim on the basis that "neither the OCC nor any of its experts have identified a single preventative control the Community Bank should have had in place which would have prevented the types of potential, illegal sales practice misconduct at issue in this case."<sup>1117</sup>

I find an insufficient factual basis has been presented to establish a dispute in this Response to create a controverted material fact. Accordingly, the Recommended Decision will include a factual finding as to Respondent Russ Anderson that none of Respondents' expert witnesses conclude or opine that controls to prevent sales practices misconduct were adequate.

#### **Enforcement Counsel's Statement of Material Fact (Julian and McLinko) No. 29**

None of Respondent Julian's expert witnesses, and none of Respondent McLinko's expert witnesses conclude or opine that controls to prevent sales practices misconduct were adequate.<sup>1118</sup>

#### **Responses:**

**Julian** did not dispute the claim that that no expert proffered by any party in this case has the expertise and concluded expressly that controls to prevent sales practices misconduct were

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<sup>1116</sup> MSD-265A (Farrell Dep. Tr.) at 56:2-6; MSD-263A (Abshier Dep. Tr.) at 53:13-54:9; MSD-282A (Wilcox Dep. Tr.) at 41:4-7). 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 583:15-584:6; MSD-284A (Deal Dep. Tr.) at 122:9-19; MSD-272A (Ploetz Dep. Tr.) at 21:22- 22:4.

<sup>1117</sup> Russ Anderson's ECSFM at No. 46.

<sup>1118</sup> 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 583:15-584:6; MSD-284A (Deal Dep. Tr.) at 122:9-19; MSD-272A (Ploetz Dep. Tr.) at 21:22-22:4

reasonable.<sup>1119</sup> Accordingly, the Recommended Decision will include a factual finding as to Respondent Julian that none of his expert witnesses, and none of Respondent McLinko's expert witnesses conclude or opine that controls to prevent sales practices misconduct were adequate.

**McLinko** incorporated Respondent Julian's Response and disputed that the cited exhibits supporting the Statement established the alleged fact that Community Bank had systemic sales practices misconduct from at least 2002 until October 2016, or that it established the root cause of the misconduct problem.<sup>1120</sup> I find an insufficient factual basis has been presented to establish a dispute in this Response to create a controverted material fact. Accordingly, the Recommended Decision will include a factual finding as to Respondent McLinko that none of Respondent McLinko's expert witnesses conclude or opine that controls to prevent sales practices misconduct were adequate.

#### **Enforcement Counsel's Statement of Material Fact (Russ Anderson) No. 47**

None of Respondent Russ Anderson's expert witnesses conclude or opine that controls to detect sales practices misconduct were adequate.<sup>1121</sup>

#### **Responses:**

**Russ Anderson** disputed the claim first based on issues she presented in her response to Statement No. 46, and second by incorporating Respondent Julian's response found in Julian and McLinko Statement No. 30.<sup>1122</sup>

**Julian's** response acknowledged that none of the Respondents' expert witnesses "has the expertise and concluded expressly that controls to detect sales practices misconduct were reasonable," but asserted the record elsewhere includes evidence that "certain controls relating to sales practices issues were appropriately conducted."<sup>1123</sup>

I find an insufficient factual basis has been presented to establish a dispute in this Response to create a controverted material fact. Accordingly, the Recommended Decision will include a

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<sup>1119</sup> Julian's ECSFM at No. 29.

<sup>1120</sup> McLinko's ECSFM at No. 29.

<sup>1121</sup> MSD-265A (Farrell Dep. Tr.) at 56:2-6; MSD-263A (Abshier Dep. Tr.) at 53:13-54:9; MSD-282A (Wilcox Dep. Tr.) at 41:4-7); 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.

<sup>1122</sup> Russ Anderson's ECSFM at No. 47.

<sup>1123</sup> Julian's ECSFM at No. 30.

factual finding as to Respondent Russ Anderson that none of Respondents' expert witnesses conclude or opine that controls to detect sales practices misconduct were adequate.

### **Enforcement Counsel's Statement of Material Fact (Julian and McLinko) No. 30**

None of Respondent Julian's expert witnesses, and none of Respondent McLinko's expert witnesses conclude or opine that controls to detect sales practices misconduct were adequate.<sup>1124</sup>

#### **Responses:**

**Julian** did not dispute the claim that no expert proffered by any party in this case has the expertise and concluded expressly that controls to detect sales practices misconduct were reasonable.<sup>1125</sup> Accordingly, the Recommended Decision will include a factual finding as to Respondent Julian that none of his expert witnesses, and none of Respondent McLinko's expert witnesses conclude or opine that controls to detect sales practices misconduct were adequate.

**McLinko** incorporated Respondent Julian's Response and disputed that the cited exhibits supporting the Statement established the alleged fact that Community Bank had systemic sales practices misconduct from at least 2002 until October 2016, or that it established the root cause of the misconduct problem.<sup>1126</sup> I find an insufficient factual basis has been presented to establish a dispute in this Response to create a controverted material fact. Accordingly, the Recommended Decision will include a factual finding as to Respondent McLinko that none of his expert witnesses, and none of Respondent McLinko's expert witnesses conclude or opine that controls to detect sales practices misconduct were adequate.

**Respondents Julian and McLinko have acknowledged that the Community Bank had a systemic sales practices misconduct problem and that its root cause was undue pressure to meet unreasonable sales goals**

### **Enforcement Counsel's Statement of Material Fact (Julian and McLinko) No. 31**

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<sup>1124</sup> 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.

<sup>1125</sup> Julian's ECSFM at No. 30.

<sup>1126</sup> McLinko's ECSFM at No. 30.

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.<sup>1127</sup>

**Responses:**

**Julian** did not dispute that he previously agreed in testimony that the Community Bank had a “systemic” problem, as that term was defined in testimony, with sales practices misconduct and a cause of the problem was, in OCC counsel’s words, “at least in large part—that the goals were unattainable or unreasonable, and the pressure to meet those unattainable goals was severe.”<sup>1128</sup>

Accordingly, the Recommended Decision will include a factual finding as to Respondents Julian and McLinko that 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.

**McLinko** incorporated Respondent Julian’s Response.<sup>1129</sup>

**Enforcement Counsel’s Statement of Material Fact (Julian and McLinko) No. 32**

Respondent Julian acknowledged in testimony before the OCC that systemic sales practices misconduct was the inevitable result of the Community Bank’s unreasonable sales goals and pressure to meet them.<sup>1130</sup>

**Responses:**

**Julian** agreed he testified that he “now [knew] that the bank gave its employees unreasonable sales goals.”<sup>1131</sup> He also agreed with the OCC’s assertion that, based on what was now know, it would be “obvious that there [would] be systemic sales practices misconduct.”<sup>1132</sup>

Accordingly, the Recommended Decision will include a factual finding as to Respondents Julian and McLinko that in sworn testimony before the OCC he testified that he “now [knew] that the bank gave its employees unreasonable sales goals.” (MSD-278 at 121:4-7). He also agreed with

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<sup>1127</sup> Julian Amended Answer ¶ 12; MSD-278 (Julian Tr.) at 25:1-27:3; 35:5-36:2, 40:23-41:9.

<sup>1128</sup> Julian’s ECSFM at No. 31, quoting MSD-278 at 25:1-27:3.

<sup>1129</sup> McLinko’s ECSFM at No. 31.

<sup>1130</sup> MSD-278 (Julian Tr.) at 121:4-7; 122:15-25.

<sup>1131</sup> MSD-278 at 121:4-7.

<sup>1132</sup> Julian’s ECSFM at No. 32, quoting MSD-278 at 121:20-122:5, 122:15-25.

the OCC's assertion that, based on what was now know, it would be "obvious that there [would] be systemic sales practices misconduct.

**McLinko** incorporated Respondent Julian's Response.<sup>1133</sup>

### **Enforcement Counsel's Statement of Material Fact (Julian and McLinko) No. 33**

Specifically, 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 --- 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.<sup>1134</sup>

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<sup>1133</sup> McLinko's ECSFM at No. 32.

<sup>1134</sup> Julian Amended ¶ 12, 18; MSD-278 (Julian Tr.) at 24:23-25:16; 35:5-36:2.



**Responses:**

**Julian** did not dispute that the testimony shown here was given.<sup>1135</sup> Accordingly, the Recommended Decision will include a factual finding as to Respondents Julian and McLinko that in sworn testimony before the OCC he testified as shown in the above Statement.

**McLinko** incorporated Respondent Julian's Response.<sup>1136</sup>

**Enforcement Counsel's Statement of Material Fact (Julian and McLinko) No. 34**

Enforcement Counsel's Statement of Material Fact (Julian and McLinko) No. 34 relies on exhibits presented to this Tribunal as being non-public. Pursuant to the OCC's Uniform Rules, while the proceedings in this administrative enforcement action are expressly required to be public, when presented with non-public documents the Administrative Law Judge is required to take all appropriate steps to preserve the confidentiality of such documents.<sup>1137</sup> Upon my review of the confidential documents supporting this Statement of Material Fact, and after weighing the expectation that all of the proceedings shall be public against the requirement that I protect against the disclosure of non-public information, I find the evidentiary value of these exhibits to be sufficiently marginal and duplicative as to warrant exclusion from this Order. Accordingly, this Order will not be based on any of the claims found in this Statement of Material Fact.

**Enforcement Counsel's Statement of Material Fact (Julian and McLinko) No. 35**

Respondent Julian agreed under oath that the Community Bank's sales practices problem was longstanding, existing from at least 2004 and throughout his tenure, until sales goals were eliminated in October 2016.<sup>1138</sup>

**Responses:**

Julian agreed that the paragraph Enforcement Counsel read described "the problem that existed in the Bank up until 2016 when the Bank eliminated the sales goals."<sup>1139</sup> Accordingly, the Recommended Decision will include a factual finding as to Respondents Julian and McLinko that he responded to Enforcement Counsel's question by testifying that "the problem that existed in the Bank up until 2016 when the Bank eliminated the sales goals."

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<sup>1135</sup> Julian's ECSFM at No. 33.

<sup>1136</sup> McLinko's ECSFM at No. 33.

<sup>1137</sup> See 12 C.F.R. § 19.33(b).

<sup>1138</sup> MSD-278 at 200:15-19 (May 31, 2018).

<sup>1139</sup> Julian's ECSFM at No. 35, citing MSD-278 at 198:2 - 200:19.

**McLinko** incorporated Respondent Julian's Response.<sup>1140</sup>

### **Enforcement Counsel's Statement of Material Fact (Julian and McLinko) No. 36**

Enforcement Counsel's Statement of Material Fact (Julian and McLinko) No. 36 relies on exhibits presented to this Tribunal as being non-public. Pursuant to the OCC's Uniform Rules, while the proceedings in this administrative enforcement action are expressly required to be public, when presented with non-public documents the Administrative Law Judge is required to take all appropriate steps to preserve the confidentiality of such documents.<sup>1141</sup> Upon my review of the confidential documents supporting this Statement of Material Fact, and after weighing the expectation that all of the proceedings shall be public against the requirement that I protect against the disclosure of non-public information, I find the evidentiary value of these exhibits to be sufficiently marginal and duplicative as to warrant exclusion from this Order. Accordingly, this Order will not be based on any of the claims found in this Statement of Material Fact.

### **Enforcement Counsel's Statement of Material Fact (Julian and McLinko) No. 37**

Enforcement Counsel's Statement of Material Fact (Julian and McLinko) No. 37 relies on exhibits presented to this Tribunal as being non-public. Pursuant to the OCC's Uniform Rules, while the proceedings in this administrative enforcement action are expressly required to be public, when presented with non-public documents the Administrative Law Judge is required to take all appropriate steps to preserve the confidentiality of such documents.<sup>1142</sup> Upon my review of the confidential documents supporting this Statement of Material Fact, and after weighing the expectation that all of the proceedings shall be public against the requirement that I protect against the disclosure of non-public information, I find the evidentiary value of these exhibits to be sufficiently marginal and duplicative as to warrant exclusion from this Order. Accordingly, this Order will not be based on any of the claims found in this Statement of Material Fact.

### **Enforcement Counsel's Statement of Material Fact (Julian and McLinko) No. 38**

Enforcement Counsel's Statement of Material Fact (Julian and McLinko) No. 38 relies on exhibits presented to this Tribunal as being non-public. Pursuant to the OCC's Uniform Rules, while the proceedings in this administrative enforcement action are expressly required to be public, when presented with non-public documents the Administrative Law Judge is required to

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<sup>1140</sup> McLinko's ECSFM at No. 35.

<sup>1141</sup> See 12 C.F.R. § 19.33(b).

<sup>1142</sup> See 12 C.F.R. § 19.33(b).

take all appropriate steps to preserve the confidentiality of such documents.<sup>1143</sup> Upon my review of the confidential documents supporting this Statement of Material Fact, and after weighing the expectation that all of the proceedings shall be public against the requirement that I protect against the disclosure of non-public information, I find the evidentiary value of these exhibits to be sufficiently marginal and duplicative as to warrant exclusion from this Order. Accordingly, this Order will not be based on any of the claims found in this Statement of Material Fact.

### **Enforcement Counsel’s Statement of Material Fact (Julian and McLinko) No. 39**

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.<sup>1144</sup>

#### **Responses:**

**Julian** incorporated Respondent McLinko’s Response.<sup>1145</sup>

**McLinko** disputed the claim, averring that the Statement misstates Mr. McLinko’s testimony in that he “explicitly stated that his responses to Enforcement Counsel’s questions were not based on his personal knowledge, but rather based on the conclusions that he read in reports written by others”.<sup>1146</sup> He presented the following excerpt from his testimony before the OCC:

I would say when I first believed it was when I read in the details that were provided in the independent board report, that—with that conclusions [*sic*] and what they had to say in there, that put a lot of new information for me that gave me additional insights...<sup>1147</sup>

Q: Okay. And from what we know now, the goals were unreasonable, and if you didn’t meet them, you were terminated. Is that fair to say?

Mr. Crudo: Foundation.

A. Based on examples I’ve seen, yes.<sup>1148</sup>

The Statement is supported by references first to Respondent McLinko’s Amended

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<sup>1143</sup> See 12 C.F.R. § 19.33(b).

<sup>1144</sup> McLinko Amended Answer ¶ 3; MSD-276 (McLinko Tr.) at 54:7-55:2, 95:19-24.

<sup>1145</sup> Julian’s ECSFM at No. 39.

<sup>1146</sup> McLinko’s ECSFM at No. 39.

<sup>1147</sup> McLinko’s ECSFM at No. 39, quoting MSD-276 (McLinko Sworn Stmt.) at 55:11-20;

<sup>1148</sup> McLinko’s ECSFM at No. 39, quoting MSD-276 (McLinko Sworn Stmt.) at 95:19-24

Answer, in which the OCC in Paragraph 3 of the Notice of Charges alleged “The Community Bank had a systemic and well-known problem with sales practices misconduct that persisted for at least 14 years, beginning no later than 2002.”<sup>1149</sup> McLinko’s Response to Paragraph 3 in the Notice of Charges included the following: Respondent Paul McLinko admits that the transcript of his testimony before the OCC states, in part:

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.<sup>1150</sup>

The Statement is further supported by Mr. McLinko’s testimony before the OCC, where he was asked: “Do you believe that the community bank had a systemic problem with sales practices misconduct?” and answered “From everything that I’ve read, in the regional bank part of the Community Bank, yes,” and then clarifying that by “regional bank” he meant all the branches in all the regions of the country.<sup>1151</sup>

From this proffer of evidence, I find an insufficient factual basis has been presented to establish a dispute in this Response to create a controverted material fact. Accordingly, the Recommended Decision will include a factual finding as to Respondents Julian and McLinko that 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.

#### **Enforcement Counsel’s Statement of Material Fact (Julian and McLinko) No. 40**

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.

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<sup>1149</sup> McLinko Amended Answer ¶ 3.

<sup>1150</sup> McLinko Amended Answer ¶ 3.

<sup>1151</sup> MSD-276 (McLinko Tr.) at 54.

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.<sup>1152</sup>

**Responses:**

**Julian** incorporated Respondent McLinko's Response.<sup>1153</sup>

**McLinko** did not dispute that Enforcement Counsel accurately quoted the cited section of Mr. McLinko's testimony, but objected to the use of his own testimony on the ground that it was "unreliable".<sup>1154</sup> I find an insufficient factual basis has been presented to establish a dispute in this Response to create a controverted material fact. Accordingly, the Recommended Decision will include a factual finding as to Respondents Julian and McLinko that Respondent McLinko gave the testimony shown in this Statement.

**Enforcement Counsel's Statement of Material Fact (Julian and McLinko) No. 41**

Respondent 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 ("Company") ("Board Report").<sup>1155</sup>

**Responses:**

**Julian** incorporated Respondent McLinko's Response.<sup>1156</sup>

**McLinko** disputed that he described the reports as being based on "voluminous data and

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<sup>1152</sup> MSD-276 (McLinko Tr.) at 54:7-55:2.

<sup>1153</sup> Julian's ECSFM at No. 40.

<sup>1154</sup> McLinko's ECSFM at No. 40.

<sup>1155</sup> MSD-276 (McLinko Tr.) at 56:8- 57:2; 57:16-21.

<sup>1156</sup> Julian's ECSFM at No. 41.

comprehensive analyses” but otherwise did not dispute the claims made in this Statement.<sup>1157</sup> I find an insufficient factual basis has been presented to establish a dispute in this Response to create a controverted material fact. Accordingly, the Recommended Decision will include a factual finding as to Respondents Julian and McLinko that Respondent McLinko testified that his conclusions about the systemic nature of the sales practice misconduct problem were based 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 (“Company”) (“Board Report”).

#### **Enforcement Counsel’s Statement of Material Fact (Julian and McLinko) No. 42**

Respondent McLinko testified before the OCC that sales goals and incentives contributed significantly to the Community Bank’s systemic problem with sales practices misconduct.<sup>1158</sup>

#### **Responses:**

**Julian** incorporated Respondent McLinko’s Response.<sup>1159</sup>

**McLinko** did not dispute that the testimony shown in the Statement accurately reflects testimony he gave.<sup>1160</sup> Accordingly, the Recommended Decision will include a factual finding as to Respondents Julian and McLinko that Respondent McLinko testified before the OCC that sales goals and incentives contributed significantly to the Community Bank’s systemic problem with sales practices misconduct.

#### **Enforcement Counsel’s Statement of Material Fact (Julian and McLinko) No. 43**

Further, Respondent McLinko agreed in sworn testimony that the Community Bank’s sales practices misconduct problem existed from at least 2004 until October 2016.<sup>1161</sup>

#### **Responses:**

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<sup>1157</sup> McLinko’s ECSFM at No. 41.

<sup>1158</sup> McLinko Amended Answer ¶ 19; 70; MSD-276 (McLinko Tr.) at 54:7-55:2.

<sup>1159</sup> Julian’s ECSFM at No. 42.

<sup>1160</sup> McLinko’s ECSFM at No. 42.

<sup>1161</sup> MSD- 276 at 58:24-59:7, 93:17-22 (Mar. 2, 2018).

**Julian** incorporated Respondent McLinko's Response.<sup>1162</sup>

**McLinko** did not dispute the claim regarding testimony he gave, objecting only to the use of the testimony as "unreliable".<sup>1163</sup> Overruling that objection, the Recommended Decision will include a factual finding as to Respondents Julian and McLinko that Respondent McLinko agreed in sworn testimony that the Community Bank's sales practices misconduct problem existed from at least 2004 until October 2016.

#### **Enforcement Counsel's Statement of Material Fact (Julian and McLinko) No. 44**

Enforcement Counsel's Statement of Material Fact (Julian and McLinko) No. 44 relies on exhibits presented to this Tribunal as being non-public. Pursuant to the OCC's Uniform Rules, while the proceedings in this administrative enforcement action are expressly required to be public, when presented with non-public documents the Administrative Law Judge is required to take all appropriate steps to preserve the confidentiality of such documents.<sup>1164</sup> Upon my review of the confidential documents supporting this Statement of Material Fact, and after weighing the expectation that all of the proceedings shall be public against the requirement that I protect against the disclosure of non-public information, I find the evidentiary value of these exhibits to be sufficiently marginal and duplicative as to warrant exclusion from this Order. Accordingly, this Order will not be based on any of the claims found in this Statement of Material Fact.

**Authoritative sources within the Bank testified that the Community Bank had a systemic sales practices misconduct problem rooted in its business model**<sup>1165</sup>

#### **Enforcement Counsel's Statement of Material Fact (Russ Anderson) No. 48 and (Julian and McLinko) No. 45**

Employees engaged in numerous types of sales practices misconduct, 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

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<sup>1162</sup> Julian's ECSFM at No. 43.

<sup>1163</sup> McLinko's ECSFM at No. 43.

<sup>1164</sup> See 12 C.F.R. § 19.33(b).

<sup>1165</sup> Respondent Russ Anderson included a claim of dispute regarding the subheading shown here. As there is no Statement of Material Fact expressed in the subheading, no response is warranted and no ruling is required.

- 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.<sup>1166</sup>

### Responses:

**Russ Anderson** responded by stating she did not understand the paragraph to contain any other assertion about the events; and by incorporating Respondent Julian’s response to Julian and McLinko Statement No. 45.<sup>1167</sup>

I find an insufficient factual basis has been presented to establish a dispute in this Response to create a controverted material fact. Accordingly, the Recommended Decision will include a factual finding as to Respondent Russ Anderson that Bank employees engaged in numerous types of sales practices misconduct, 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

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<sup>1166</sup> 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 (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.

<sup>1167</sup> Russ Anderson’s ECSFM at No. 48.



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.

**Julian** responding by stating it was “[u]ndisputed that at least one instance, without regard to timeframe, of each of the events described in (a)-(f) occurred.”<sup>1168</sup> He disputed the events were contemporaneously characterized as “sales practices misconduct” but were instead called “sales integrity violations”. Citing the PricewaterhouseCoopers analysis of simulated funding, he averred that “evidence shows that the underlying misconduct evolved and varied over time”.<sup>1169</sup>

I find an insufficient factual basis has been presented to establish a dispute in this Response to create a controverted material fact. Accordingly, the Recommended Decision will include a factual finding as to Respondents Julian and McLinko that Bank employees engaged in numerous types of sales practices misconduct, 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.

**McLinko** incorporated Respondent Julian’s Response.<sup>1170</sup>

#### **Enforcement Counsel’s Statement of Material Fact (Russ Anderson) No. 49 and (Julian and McLinko) No. 46**

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<sup>1168</sup> Julian’s ECSFM at No. 45.

<sup>1169</sup> Julian’s ECSFM at No. 45.

<sup>1170</sup> McLinko’s ECSFM at No. 45.

In sworn testimony before the OCC, the Bank's former CEO John Stumpf admitted, based on the information presented to him during his testimony, that the Community Bank had a systemic sales practices misconduct problem from the early 2000s until sales goals were eliminated in October 2016.<sup>1171</sup>

**Responses:**

**Russ Anderson** incorporated Respondent Julian's response.<sup>1172</sup>

**Julian** averred that in sworn testimony before the OCC, Mr. Stumpf testified that "learning the things I've learned here the last few days, I would agree, it was a systemic problem. . . ." <sup>1173</sup> Accordingly, the Recommended Decision will include a factual finding as to Respondents Russ Anderson, Julian, and McLinko that in sworn testimony before the OCC, Mr. Stumpf testified that "learning the things I've learned here the last few days, I would agree, it was a systemic problem. . . ."

To the extent the claim relates to Mr. McLinko's Amended Answer, Respondent Julian incorporated that portion of Mr. McLinko's Response.<sup>1174</sup>

**McLinko** incorporated Respondent Julian's Response.<sup>1175</sup>

**Enforcement Counsel's Statement of Material Fact (Russ Anderson) No. 50 and (Julian and McLinko) No. 47**

In sworn testimony before the OCC, the Bank's former Chief Risk Officer Michael Loughlin testified that the Community Bank had a systemic problem with sales practices misconduct.<sup>1176</sup>

**Responses:**

**Russ Anderson** incorporated Respondent Julian's response.<sup>1177</sup>

**Julian** responded that Mr. 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

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<sup>1171</sup> MSD-8C (Stumpf Tr.) at 550:5-551:25; McLinko Amended Answer ¶¶ 14-15.

<sup>1172</sup> Russ Anderson's ECSFM at No. 49.

<sup>1173</sup> Julian's ECSFM at No. 46, quoting MSD-008C at 550:551:25.

<sup>1174</sup> Julian's ECSFM at No. 46.

<sup>1175</sup> McLinko's ECSFM at No. 46.

<sup>1176</sup> MSD-290A (Loughlin Tr.) at 49:6-52:23; MSD-290B (Loughlin Tr.) at 317:3-9, 318:19-24.

<sup>1177</sup> Russ Anderson's ECSFM at No. 50.

bank had a widespread issue until at least 2015, after reviewing a report “generated by corporate investigations.”<sup>1178</sup>

Accordingly, the Recommended Decision will include a factual finding as to Respondents Russ Anderson, Julian, and McLinko that in sworn testimony before the OCC Mr. 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.”

**McLinko** incorporated Respondent Julian’s Response.<sup>1179</sup>

### **Enforcement Counsel’s Statement of Material Fact (Russ Anderson) No. 51 and (Julian and McLinko) No. 48**

In sworn testimony before the OCC, the Bank’s former Chief Administrative Officer and Director of Human Resources Hope Hardison admitted that the Community Bank had a systemic sales practices misconduct problem rooted in unreasonable sales goals, and that the Bank’s response “to this problem was slow and incremental, and ultimately not effective until 2016[.]”<sup>1180</sup>

#### **Responses:**

**Russ Anderson** incorporated Respondent Julian’s response.<sup>1181</sup>

**Julian** did not dispute that Ms. Hardison testified that the Bank’s response “to this problem was slow and incremental, and ultimately not effective until 2016[.]”<sup>1182</sup> He averred that Ms. 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.”<sup>1183</sup> Accordingly, the Recommended Decision will include a factual finding as to Respondents Russ Anderson, Julian, and McLinko that in sworn testimony before the OCC Ms. 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

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<sup>1178</sup> Julian’s ECSFM at No. 47, quoting MSD- 290A (Loughlin Inv. Tr.) at 49:6-52:23.

<sup>1179</sup> McLinko’s ECSFM at No. 47.

<sup>1180</sup> MSD-293A (Hardison Tr.) at 33:9-25, 48:1-51:11, 70:18-24; MSD-293B (Hardison Tr.) at 271:11-272:1, 319:2-8; McLinko Amended Answer ¶ 20.

<sup>1181</sup> Russ Anderson’s ECSFM at No. 51.

<sup>1182</sup> Julian’s ECSFM at No.48.

<sup>1183</sup> Julian’s ECSFM at No.48 quoting MSD-293A at 33:9-25, 48:1- 51:11 (Hardison Inv. Tr.).

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.”

**McLinko** incorporated Respondent Julian’s Response.<sup>1184</sup>

### **Enforcement Counsel’s Statement of Material Fact (Russ Anderson) No. 52 and (Julian and McLinko) No. 49**

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 Community Bank had a systemic problem with sales practices misconduct, and 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.”<sup>1185</sup>

#### **Responses:**

**Russ Anderson** incorporated Respondent Julian’s response.<sup>1186</sup>

**Julian** did not dispute that Ms. Callahan 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 LA Times articles came out” that she “thought that the root cause was probably a few different things.”<sup>1187</sup>

Accordingly, the Recommended Decision will include a factual finding as to Respondents Russ Anderson, Julian, and McLinko that in sworn testimony before the OCC Ms. Callahan 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 LA Times articles came out” that she “thought that the root cause was probably a few different things.”

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<sup>1184</sup> McLinko’s ECSFM at No. 48.

<sup>1185</sup> MSD-291 (Callahan Tr.) at 87:19-88:12, 110:2-111:13, 177:15-23, 190:5-19, 192:1-23). Ms. Callahan also testified that people were terminated for not meeting sales goals and that this was common knowledge within the Bank. (Id. at 24:4-25:9.

<sup>1186</sup> Russ Anderson’s ECSFM at No. 52.

<sup>1187</sup> Julian’s ECSFM at No. 49, quoting MSD-291 at 87:18-88:17 (Callahan Inv. Tr.).

**McLinko** incorporated Respondent Julian’s Response.<sup>1188</sup>

**Enforcement Counsel’s Statement of Material Fact (Russ Anderson) No. 53 and (Julian and McLinko) No. 50**

The Bank’s former Head of Corporate Enterprise Risk Karl (“Keb”) Byers testified before the OCC 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.”<sup>1189</sup> Mr. Byers also concluded that the Community Bank had a systemic problem with sales practices misconduct and at the time he gave his sworn statement he could not identify a single person who worked at the Bank who disagreed with that conclusion.<sup>1190</sup>

**Responses:**

**Russ Anderson** incorporated Respondent Julian’s response.<sup>1191</sup>

**Julian** did not dispute that Mr. Byers testified before the OCC 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.”<sup>1192</sup> He averred, however, that Mr. Byers testified, 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—“Sure” and “I think that sounds very reasonable.”<sup>1193</sup> 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 making improvement.”<sup>1194</sup>

Accordingly, the Recommended Decision will include a factual finding as to Respondents Russ Anderson, Julian, and McLinko that in sworn testimony before the OCC the Bank’s former Head of Corporate Enterprise Risk Karl Byers testified before the OCC 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

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<sup>1188</sup> McLinko’s ECSFM at No. 49.

<sup>1189</sup> MSD-382 (Byers Tr.) at 128:14-129:19.

<sup>1190</sup> MSD-382 (Byers Tr.) at 132:2-135:5, 231:20-232:6.

<sup>1191</sup> Russ Anderson’s ECSFM at No. 53.

<sup>1192</sup> Julian’s ECSFM at No. 50.

<sup>1193</sup> Julian’s ECSFM at No. 50, quoting MSD- 382 at 132:2-132:16.

<sup>1194</sup> Julian’s ECSFM at No. 50, quoting MSD-382 at 132:17- 133:4.

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.”<sup>1195</sup> 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 making improvement.”

**McLinko** incorporated Respondent Julian’s Response.<sup>1196</sup>

### **Enforcement Counsel’s Statement of Material Fact (Russ Anderson) No. 54 and (Julian and McLinko) No. 51**

The Bank’s former Chief Security Officer Bill Wipprecht, who was in charge of Corporate Investigations until 2009, testified before the OCC that at least as of 2002 he developed a view that the sales integrity issues within the Community Bank were systemic and that he continued to see an upward trend in sales integrity cases from 2004 to 2009.<sup>1197</sup> Mr. Wipprecht explained that “this was systemic I mean to the bank. It was caused by a policy that – that forced employees to do things against their own will. And to me, that’s systemic. And then not to change the policy, follow up, or to put the time and effort that it takes to do it at the highest level of management I thought was a major fault.”<sup>1198</sup> He explained that senior leaders in the Community Bank enforced the policy which was “[m]eet your quota or you’re – or be terminated.”<sup>1199</sup> . Mr. Wipprecht testified that the sales goals were unreasonable.<sup>1200</sup> He further explained that “we, meaning security management -- corporate security -- felt that the teller was being put in a non-compromised position where they -- where, if they couldn’t meet their sales goal, they were going to commit a gaming -- a gaming action or some type of activity to meet their sales goal because the pressure was so great.”<sup>1201</sup>

### **Responses:**

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<sup>1195</sup> Julian’s ECSFM at No. 50, quoting MSD- 382 at 132:2-132:16.

<sup>1196</sup> McLinko’s ECSFM at No. 50.

<sup>1197</sup> MSD-294 (Wipprecht Tr.) at 81:1-5, 127:11-128:24.

<sup>1198</sup> MSD-294 (Wipprecht Tr.) at 129:1-14.

<sup>1199</sup> MSD-294 (Wipprecht Tr.) at 130:5- 20.

<sup>1200</sup> MSD-294 (Wipprecht Tr.) at 53:1-54:5.

<sup>1201</sup> MSD-294 (Wipprecht Tr.) at 37:2-38:3, 94:1-21, 111:19- 112:19.

**Russ Anderson** incorporated Respondent Julian's response.<sup>1202</sup>

**Julian** objected to the use of the testimony of Mr. Wipprecht (Exhibit MSD-294) on the grounds that the testimony is irrelevant, immaterial, unreliable, or repetitive, noting that Mr. Wipprecht worked at the Bank from 2005 to 2009.<sup>1203</sup> The objection is sustained. Given the passage of time between the time of the witness's employment at the Bank and the filing of the Notice of Charges, given the remote and tangential relationship between the proffered evidence and the material claims presented in the Notice of Charges, given the potential for confusion that admitting the testimony presents, given the redundant nature of the material facts presented in the witness's testimony when compared with Exhibits that are more closely related in time, and given the marginal relevance of the testimony presented in the Statement, the Exhibit will not be admitted in support of Enforcement Counsel's Motion. Accordingly, the claims presented in (Russ Anderson) No. 54 and (Julian and McLinko) No. 51 will not support Enforcement Counsel's Motion as to Respondents Russ Anderson, Julian, or McLinko. The exclusion of Exhibit MSD-294 does not, however, create a factual basis that would prevent granting Enforcement Counsel's Motion.

**McLinko** incorporated Respondent Julian's Response.<sup>1204</sup>

### **Enforcement Counsel's Statement of Material Fact (Russ Anderson) No. 55 and (Julian and McLinko) No. 52**

Michael Bacon, Mr. Wipprecht's successor as the 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.<sup>1205</sup>

### **Responses:**

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<sup>1202</sup> Russ Anderson's ECSFM at No. 54.

<sup>1203</sup> Julian's ECSFM at No. 51; see Respondent Julian's Objections to Enforcement Counsel's Motion for Summary Disposition Exhibits.

<sup>1204</sup> McLinko's ECSFM at No. 51.

<sup>1205</sup> 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.

**Russ Anderson** incorporated Respondent Julian's response.<sup>1206</sup>

**Julian** did not dispute that Mr. Bacon testified as shown in the Statement, but objected to the testimony as "self-serving."<sup>1207</sup> I find an insufficient factual basis has been presented to establish a dispute in this Response to create a controverted material fact. Accordingly, the Recommended Decision will include a factual finding as to Respondents Russ Anderson, Julian, and McLinko that Michael Bacon, Mr. Wipprecht's successor as the 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.

**McLinko** incorporated Respondent Julian's Response.<sup>1208</sup>

### **Enforcement Counsel's Statement of Material Fact (Russ Anderson) No. 56 and (Julian and McLinko) No. 53**

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."<sup>1209</sup> 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.<sup>1210</sup>

### **Responses:**

**Russ Anderson** incorporated Respondent Julian's response.<sup>1211</sup>

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<sup>1206</sup> Russ Anderson's ECSFM at No. 55.

<sup>1207</sup> Julian's ECSFM at No. 52.

<sup>1208</sup> McLinko's ECSFM at No. 52.

<sup>1209</sup> MSD-297 (Richards Tr.) at 126:1-129:7, 193:9-13; MSD-298 (Richards Dep. Tr.) at 40:14-20.

<sup>1210</sup> (MSD-297 (Richards Tr.) at 234:5-19).

<sup>1211</sup> Russ Anderson's ECSFM at No. 56.



**Julian** did not dispute that Mr. Richards testified as shown in the Statement, but objected to the testimony as being taken “out of context.”<sup>1212</sup> I find an insufficient factual basis has been presented to establish a dispute in this Response to create a controverted material fact. Accordingly, the Recommended Decision will include a factual finding as to Respondents Russ Anderson, Julian, and McLinko that 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.

**McLinko** incorporated Respondent Julian’s Response.<sup>1213</sup>

#### **Enforcement Counsel’s Statement of Material Fact (Russ Anderson) No. 57 and (Julian and McLinko) No. 54**

The Bank’s former Deputy General Counsel Christine Meuers testified before the OCC that in the 2000s, she became concerned that the business model drove employees to issue products and services to customers without their consent.<sup>1214</sup>

#### **Responses:**

**Russ Anderson** incorporated Respondent Julian’s response.<sup>1215</sup>

**Julian** objected to the use of the witness’s testimony on the grounds that the evidence is irrelevant, immaterial, unreliable, or repetitive.<sup>1216</sup> The objection is sustained. Given the passage of time between the period testified to by the witness and the filing of the Notice of Charges, given the remote and tangential relationship between the testimony and the material claims presented in the Notice of Charges, given the potential for confusion that admitting the testimony

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<sup>1212</sup> Julian’s ECSFM at No. 53.

<sup>1213</sup> McLinko’s ECSFM at No. 53.

<sup>1214</sup> MSD-599 (Meuers Tr.) at 28:2-29:20, 34:21-37:14, 98:2-101:8 (testifying that “[c]learly there was something in the business model that was driving the behavior,” that the “facts were well known” to the people who had the power to change the sales model, including Respondent Russ Anderson).

<sup>1215</sup> Russ Anderson’s ECSFM at No. 57.

<sup>1216</sup> Julian’s ECSFM at No. 54; Respondent Julian’s Objections to Enforcement Counsel’s Motion for Summary Disposition Exhibits.

presents, given the redundant nature of the material facts presented in the testimony when compared with Exhibits that are more closely related in time, and given the marginal relevance of the claim presented in this Statement, the testimony will not be admitted in support of Enforcement Counsel's Motion as to Respondent Russ Anderson, Respondent Julian, or Respondent McLinko. Accordingly, the claims presented in (Russ Anderson) No. 57 and (Julian and McLinko) No. 54 will not support Enforcement Counsel's Motion. The exclusion of the testimony does not, however, create a factual basis that would prevent granting Enforcement Counsel's Motion.

**McLinko** incorporated Respondent Julian's Response.<sup>1217</sup>

### **Enforcement Counsel's Statement of Material Fact (Russ Anderson) No. 58 and (Julian and McLinko) No. 55**

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.<sup>1218</sup>

### **Responses:**

**Russ Anderson** incorporated Respondent Julian's response.<sup>1219</sup>

**Julian** did not dispute that General Counsel James Strother's investigatory testimony contains the quoted text.<sup>1220</sup> Accordingly, the Recommended Decision will include a factual finding as to Respondents Russ Anderson, Julian, and McLinko that Mr. Strother gave the testimony shown in the Statement.

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<sup>1217</sup> McLinko's ECSFM at No. 54.

<sup>1218</sup> MSD-288A (Strother Tr.) at 110:6-16.

<sup>1219</sup> Russ Anderson's ECSFM at No. 58.

<sup>1220</sup> Julian's ECSFM at No. 55.

**McLinko** incorporated Respondent Julian’s Response.<sup>1221</sup>

**Enforcement Counsel’s Statement of Material Fact (Russ Anderson) No. 59 and (Julian and McLinko) No. 56**

In her declaration, 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 country.”<sup>1222</sup>

**Responses:**

**Russ Anderson** incorporated Respondent Julian’s response.<sup>1223</sup>

**Julian** did not dispute that Ms. Freeman’s statement contains the quoted text.<sup>1224</sup> Accordingly, the Recommended Decision will include a factual finding as to Respondents Russ Anderson, Julian, and McLinko that 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 country.”

**McLinko** incorporated Respondent Julian’s Response.<sup>1225</sup>

**Enforcement Counsel’s Statement of Material Fact (Russ Anderson) No. 60 and (Julian and McLinko) No. 57**

Lisa Stevens and Laura Schulte, Regional Bank Executives reporting to Carrie Tolstedt, testified that the Community Bank had a systemic problem with sales practices misconduct.<sup>1226</sup>

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<sup>1221</sup> McLinko’s ECSFM at No. 55.

<sup>1222</sup> MSD- 199 (Freeman Decl.) at ¶¶ 6-7.

<sup>1223</sup> Russ Anderson’s ECSFM at No. 59.

<sup>1224</sup> Julian’s ECSFM at No. 56.

<sup>1225</sup> McLinko’s ECSFM at No. 56.

<sup>1226</sup> MSD-546 (Stevens Tr.) at 201:1-10; 207:5-17; MSD-579 (Schulte Tr.) at 95:3-14; 99:1-7.

## **Responses:**

**Russ Anderson** incorporated Respondent Julian's response.<sup>1227</sup>

**Julian** averred that Ms. Stevens and Ms. Schulte testified that they "held the belief" that the Community Bank had a "systemic" sales practices misconduct problem.<sup>1228</sup> Accordingly, the Recommended Decision will include a factual finding as to Respondents Russ Anderson, Julian, and McLinko that 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.

**McLinko** incorporated Respondent Julian's Response.<sup>1229</sup>

**All independent reviews and assessments of the Bank's sales practices misconduct problem and the Bank itself concluded that the problem was rooted in the Community Bank's strategy and culture**<sup>1230</sup>

## **Enforcement Counsel's Statement of Material Fact (Russ Anderson) No. 61 and (Julian and McLinko) No. 58**

Enforcement Counsel's Statement of Material Fact (Russ Anderson) No. 61 and (Julian and McLinko) No. 58 rely on exhibits presented to this Tribunal as being non-public. Pursuant to the OCC's Uniform Rules, while the proceedings in this administrative enforcement action are expressly required to be public, when presented with non-public documents the Administrative Law Judge is required to take all appropriate steps to preserve the confidentiality of such documents.<sup>1231</sup> Upon my review of the confidential documents supporting these Statements of Material Fact, and after weighing the expectation that all of the proceedings shall be public against the requirement that I protect against the disclosure of non-public information, I find the evidentiary value of these exhibits to be sufficiently marginal and duplicative as to warrant

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<sup>1227</sup> Russ Anderson's ECSFM at No. 60.

<sup>1228</sup> Russ Anderson's ECSFM at No. 57, quoting MSD-546 at 207:5-17; MSD-579 at 99:1-7.

<sup>1229</sup> McLinko's ECSFM at No. 57.

<sup>1230</sup> Respondent Russ Anderson included a claim of dispute regarding the subheading shown here. As there is no Statement of Material Fact expressed in this or any other subheading, no response is warranted and no ruling is required.

<sup>1231</sup> See 12 C.F.R. § 19.33(b).

exclusion from this Order. Accordingly, this Order will not be based on any of the claims found in these Statements of Material Fact.

**Enforcement Counsel’s Statement of Material Fact (Russ Anderson) No. 62 and (Julian and McLinko) No. 59**

**Responses:**

Enforcement Counsel’s Statement of Material Fact (Russ Anderson) No. 62 and (Julian and McLinko) No. 59 rely on exhibits presented to this Tribunal as being non-public. Pursuant to the OCC’s Uniform Rules, while the proceedings in this administrative enforcement action are expressly required to be public, when presented with non-public documents the Administrative Law Judge is required to take all appropriate steps to preserve the confidentiality of such documents.<sup>1232</sup> Upon my review of the confidential documents supporting these Statements of Material Fact, and after weighing the expectation that all of the proceedings shall be public against the requirement that I protect against the disclosure of non-public information, I find the evidentiary value of these exhibits to be sufficiently marginal and duplicative as to warrant exclusion from this Order. Accordingly, this Order will not be based on any of the claims found in these Statements of Material Fact.

**Enforcement Counsel’s Statement of Material Fact (Russ Anderson) No. 63 and (Julian and McLinko) No. 60**

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”).<sup>1233</sup> The Bank accepted the findings of the Board Report “as a critical part of [its] journey to rebuild trust.”<sup>1234</sup>

**Responses:**

**Russ Anderson** incorporated Respondent Julian’s response.<sup>1235</sup>

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<sup>1232</sup> See 12 C.F.R. § 19.33(b).

<sup>1233</sup> Russ Anderson Amended Answer ¶ 21; MSD-280). (Julian Amended Answer ¶ 21; McLinko Amended Answer ¶ 21; MSD-280.

<sup>1234</sup> MSD-326 at 5.

<sup>1235</sup> Russ Anderson’s ECSFM at No. 63.

**Julian** did not dispute that the cited Exhibits contain the quoted text.<sup>1236</sup> Accordingly, the Recommended Decision will include a factual finding as to Respondents Russ Anderson, Julian, and McLinko that 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”).<sup>1237</sup> The Bank accepted the findings of the Board Report “as a critical part of [its] journey to rebuild trust.”

**McLinko** incorporated Respondent Julian’s Response.<sup>1238</sup>

### **Enforcement Counsel’s Statement of Material Fact (Russ Anderson) No. 64 and (Julian and McLinko) No. 61**

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.”<sup>1239</sup>

#### **Responses:**

**Russ Anderson** incorporated Respondent Julian’s response.<sup>1240</sup>

**Julian** did not dispute that the cited Exhibit contains the quoted text.<sup>1241</sup> Accordingly, the Recommended Decision will include a factual finding as to Respondents Russ Anderson, Julian, and McLinko that 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.”

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<sup>1236</sup> Julian’s ECSFM at No. 60.

<sup>1237</sup> Russ Anderson Amended Answer ¶ 21; MSD-280). (Julian Amended Answer ¶ 21; McLinko Amended Answer ¶ 21; MSD-280.

<sup>1238</sup> McLinko’s ECSFM at No. 60.

<sup>1239</sup> MSD-280 at 2.

<sup>1240</sup> Russ Anderson’s ECSFM at No. 64.

<sup>1241</sup> Julian’s ECSFM at No. 61.

**McLinko** incorporated Respondent Julian's Response.<sup>1242</sup>

**Enforcement Counsel's Statement of Material Fact (Russ Anderson) No. 65 and (Julian and McLinko) No. 62**

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."<sup>1243</sup>

**Responses:**

**Russ Anderson** incorporated Respondent Julian's response.<sup>1244</sup>

**Julian** did not dispute that the cited Exhibit contains the quoted text.<sup>1245</sup> Accordingly, the Recommended Decision will include a factual finding as to Respondents Russ Anderson, Julian, and McLinko that 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."

**McLinko** incorporated Respondent Julian's Response.<sup>1246</sup>

**Enforcement Counsel's Statement of Material Fact (Russ Anderson) No. 66 and (Julian and McLinko) No. 63**

**Responses:**

Enforcement Counsel's Statement of Material Fact (Russ Anderson) No. 66 and (Julian and McLinko) No. 63 rely on exhibits presented to this Tribunal as being non-public. Pursuant to the OCC's Uniform Rules, while the proceedings in this administrative enforcement action are

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<sup>1242</sup> McLinko's ECSFM at No. 61.

<sup>1243</sup> MSD-280 at 5.

<sup>1244</sup> Russ Anderson's ECSFM at No. 65.

<sup>1245</sup> Julian's ECSFM at No. 62.

<sup>1246</sup> McLinko's ECSFM at No. 62.

expressly required to be public, when presented with non-public documents the Administrative Law Judge is required to take all appropriate steps to preserve the confidentiality of such documents.<sup>1247</sup> Upon my review of the confidential documents supporting these Statements of Material Fact, and after weighing the expectation that all of the proceedings shall be public against the requirement that I protect against the disclosure of non-public information, I find the evidentiary value of these exhibits to be sufficiently marginal and duplicative as to warrant exclusion from this Order. Accordingly, this Order will not be based on any of the claims found in these Statements of Material Fact.

**Enforcement Counsel’s Statement of Material Fact (Russ Anderson) No. 67 and (Julian and McLinko) No. 64**

**Responses:**

Enforcement Counsel’s Statement of Material Fact (Russ Anderson) No. 67 and (Julian and McLinko) No. 64 rely on exhibits presented to this Tribunal as being non-public. Pursuant to the OCC’s Uniform Rules, while the proceedings in this administrative enforcement action are expressly required to be public, when presented with non-public documents the Administrative Law Judge is required to take all appropriate steps to preserve the confidentiality of such documents.<sup>1248</sup> Upon my review of the confidential documents supporting these Statements of Material Fact, and after weighing the expectation that all of the proceedings shall be public against the requirement that I protect against the disclosure of non-public information, I find the evidentiary value of these exhibits to be sufficiently marginal and duplicative as to warrant exclusion from this Order. Accordingly, this Order will not be based on any of the claims found in these Statements of Material Fact.

**Enforcement Counsel’s Statement of Material Fact (Russ Anderson) No. 68 and (Julian and McLinko) No. 65**

Finally, 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 not actually need the account and was not going to

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<sup>1247</sup> See 12 C.F.R. § 19.33(b).

<sup>1248</sup> See 12 C.F.R. § 19.33(b).



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.<sup>1249</sup>

**Responses:**

**Russ Anderson** incorporated Respondent Julian’s response.<sup>1250</sup>

**Julian** did not dispute that the cited Exhibit contains the quoted text.<sup>1251</sup> Accordingly, the Recommended Decision will include a factual finding as to Respondents Russ Anderson, Julian, and McLinko that 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 facts set forth in the above Statement.

**McLinko** incorporated Respondent Julian’s Response.<sup>1252</sup>

**The Community Bank’s sales goals were unreasonable**

**Enforcement Counsel’s Statement of Material Fact (Julian and McLinko) No. 66**

The Community Bank imposed unreasonable sales goals on its employees until October 2016, including when Respondent Julian served as Chief Auditor of the Bank and Respondent

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<sup>1249</sup> MSD-1 at 25, 30, 31 ¶¶ 15, 25, 32.

<sup>1250</sup> Russ Anderson’s ECSFM at No. 68.

<sup>1251</sup> Julian’s ECSFM at No. 65.

<sup>1252</sup> McLinko’s ECSFM at No. 65.

McLinko served as Executive Audit Director of the Community Bank.<sup>1253</sup>

**Responses:**

**Julian** objected to the claim, asserting the proposition in the paragraph is “vague, confusing, and unsubstantiated.”<sup>1254</sup> Evidence presented in opposition, however, did not controvert the claim, but challenged the opinions expressed by the OCC’s Examiners<sup>1255</sup> and offered the argument that Paragraph 66 cites to two deposition transcripts of individuals not disclosed as OCC witnesses,<sup>1256</sup> arguing that “the veracity of his statements has not been tested in this litigation” seeking the conclusion that the testimony cannot “be relied on to establish that a fact is undisputed on summary disposition”, but citing no authority in support of this legal proposition.<sup>1257</sup>

I find an insufficient factual basis has been presented to establish a dispute in this Response to create a controverted material fact. Accordingly, the Recommended Decision will include a factual finding as to Respondents Julian and McLinko that the Community Bank imposed unreasonable sales goals on its employees until October 2016, including when Respondent Julian served as Chief Auditor of the Bank and Respondent McLinko served as Executive Audit Director of the Community Bank.

**McLinko** incorporated Respondent Julian’s Response.<sup>1258</sup>

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<sup>1253</sup> 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.

<sup>1254</sup> Julian’s ECSFM at No. 66.

<sup>1255</sup> Julian’s ECSFM at No. 66, citing the Reports of Examiners Crosthwaite, Coleman, and Smith.

<sup>1256</sup> Julian’s ECSFM at No. 66, citing MSD-349 (sworn statement of Jeffrey Schumacher); MSD-581 (sworn statement of George Clegg).

<sup>1257</sup> Julian’s ECSFM at No. 66.

<sup>1258</sup> McLinko’s ECSFM at No. 66.

## **The Community Bank’s sales goals remained unreasonable during Respondent Russ Anderson’s tenure as the Group Risk Officer<sup>1259</sup>**

### **Enforcement Counsel’s Statement of Material Fact (Russ Anderson) No. 69**

During Respondent Russ Anderson’s tenure as Group Risk Officer, the Community Bank imposed unreasonable sales goals on its employees. This persisted until October 2016.<sup>1260</sup> Similarly, the Community Bank imposed unreasonable sales goals on its employees until October 2016, including when Respondent Julian served as Chief Auditor of the Bank and Respondent McLinko served as Executive Audit Director of the Community Bank.<sup>1261</sup>

#### **Responses:**

**Russ Anderson** incorporated Respondent Julian’s response to (Julian and McLinko) No. 66.<sup>1262</sup>

In response to (Julian and McLinko) No. 66, Julian objected to the claim, asserting the proposition in the paragraph is “vague, confusing, and unsubstantiated.”<sup>1263</sup> Evidence presented in opposition, however, did not controvert the claim, but challenged the opinions expressed by the OCC’s Examiners<sup>1264</sup> and offered the argument that Paragraph 66 cites to two deposition

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<sup>1259</sup> Respondent Russ Anderson included a claim of dispute regarding the subheading shown here. As there is no Statement of Material Fact expressed in the subheading, no response is warranted and no ruling is required.

<sup>1260</sup> 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.

<sup>1261</sup> 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.

<sup>1262</sup> Russ Anderson’s ECSFM at No. 69.

<sup>1263</sup> Julian’s ECSFM at No. 66.

<sup>1264</sup> Julian’s ECSFM at No. 66, citing the Reports of Examiners Crosthwaite, Coleman, and Smith.

transcripts of individuals not disclosed as OCC witnesses,<sup>1265</sup> arguing that “the veracity of his statements has not been tested in this litigation” seeking the conclusion that the testimony cannot “be relied on to establish that a fact is undisputed on summary disposition”, but citing no authority in support of this legal proposition.<sup>1266</sup>

I find an insufficient factual basis has been presented to establish a dispute in this Response to create a controverted material fact. Accordingly, the Recommended Decision will include a factual finding as to Respondent Russ Anderson that the Community Bank imposed unreasonable sales goals on its employees until October 2016, including when Respondent Julian served as Chief Auditor of the Bank and Respondent McLinko served as Executive Audit Director of the Community Bank.

### **Enforcement Counsel’s Statement of Material Fact (Russ Anderson) No. 70 and (Julian and McLinko) No. 67**

#### **Responses:**

Enforcement Counsel’s Statement of Material Fact (Russ Anderson) No. 70 and (Julian and McLinko) No. 67 rely on exhibits presented to this Tribunal as being non-public. Pursuant to the OCC’s Uniform Rules, while the proceedings in this administrative enforcement action are expressly required to be public, when presented with non-public documents the Administrative Law Judge is required to take all appropriate steps to preserve the confidentiality of such documents.<sup>1267</sup> Upon my review of the confidential documents supporting these Statements of Material Fact, and after weighing the expectation that all of the proceedings shall be public against the requirement that I protect against the disclosure of non-public information, I find the evidentiary value of these exhibits to be sufficiently marginal and duplicative as to warrant exclusion from this Order. Accordingly, this Order will not be based on any of the claims found in these Statements of Material Fact.

### **Enforcement Counsel’s Statement of Material Fact (Russ Anderson) No. 71 and (Julian and McLinko) No. 68**

The Bank internally and publicly identified a metric known as “cross-sell” which related to

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<sup>1265</sup> Julian’s ECSFM at No. 66, citing MSD-349 (sworn statement of Jeffrey Schumacher); MSD-581 (sworn statement of George Clegg).

<sup>1266</sup> Julian’s ECSFM at No. 66.

<sup>1267</sup> See 12 C.F.R. § 19.33(b).

the number of products sold per household.<sup>1268</sup> 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 relationship and the less likely those customers would exit their relationship with the Bank.<sup>1269</sup>

### **Responses:**

**Russ Anderson** incorporated Respondent Julian's response.<sup>1270</sup>

**Julian** did not dispute that in his Amended Answer he admitted that the Bank publicly reported a metric known as the 'cross-sell ratio, but offered evidence that the claim in this Statement "confuses the cross-sell metric with sales practices. 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."<sup>1271</sup>

It may be a material fact in issue whether the cross-sell ratio was a measure of products sold per customer household, and whether the Statement confuses the cross-sell metric with sales practices.

I find that in his Response to (Julian and McLinko) Statement No. 68 (and by incorporation Russ Anderson No. 71) sufficiently demonstrated a factual controversy exists regarding whether the claim:

The Bank internally and publicly identified a metric known as "cross-sell" which related to the number of products sold per household.<sup>1272</sup> 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 relationship and the less likely those customers would exit their relationship with the Bank confuses the cross-sell metric with sales practices.

Because of the existence of these potentially material controverted facts, summary disposition is not available on this claim with respect to Respondents Russ Anderson, Julian or McLinko. Pursuant to the OCC's Uniform Rules, the merits of the disputed claims raised in (Julian and

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<sup>1268</sup> Russ Anderson Amended Answer ¶¶ 6, 59; Julian Amended Answer ¶ 6; McLinko Amended Answer ¶ 6.

<sup>1269</sup> MSD-411 (Raphaelson Decl.); MSD-547 (Bredensteiner Tr.) at 17:3-21:23, 23:12-23, 153:12-154:10; MSD-267 (Expert Report of Tanya K. Smith, NBE, CFA) at ¶¶ 71-72); MSD-692 at 100 ("'cross-selling' – is very important to our business model and key to our ability to grow revenue and earnings").

<sup>1270</sup> Russ Anderson's ECSFM at No. 71.

<sup>1271</sup> Julian's ECSFM at No. 68, citing DJ0576 at 1-2 OCC-SP0913943.

<sup>1272</sup> Russ Anderson Amended Answer ¶¶ 6, 59; Julian Amended Answer ¶ 6; McLinko Amended Answer ¶ 6.

McLinko) Statement No. 68 (Russ Anderson No. 71) will be addressed during the hearing set to begin on September 13, 2021.

**McLinko** incorporated Respondent Julian’s Response.<sup>1273</sup>

**Enforcement Counsel’s Statement of Material Fact (Russ Anderson) No. 72 and (Julian and McLinko) No. 69**

The Bank aimed to sell at least eight products to every household, and used slogans such as “Going for Gr-Eight.”<sup>1274</sup>

**Responses:**

**Russ Anderson** incorporated Respondent Julian’s response.<sup>1275</sup>

**Julian** objected to the Statement on the ground that the supporting exhibits were irrelevant, immaterial, unreliable, or repetitive.<sup>1276</sup> Finding an insufficient nexus between the averments presented in the Statement and the material facts in issue, the objection is sustained. Given the passage of time between the events reported in the supporting exhibits and the filing of the Notice of Charges, given the remote and tangential relationship with the material claims presented in the Notice of Charges, given the potential for confusion that admitting the evidence cited by Enforcement Counsel presents, given the redundant nature of the material facts presented in the Statement when compared with Exhibits that are more closely related in time, and given the marginal relevance of the claim presented in the Statement, the supporting exhibits will not be admitted in support of Enforcement Counsel’s Motion as to Respondents Russ

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<sup>1273</sup> McLinko’s ECSFM at No. 68.

<sup>1274</sup> MSD-411 (Raphaelson Decl.); MSD-692 at 8 (“Thirteen years ago, when I was head of Community Banking for Norwest Bank in Texas (before Norwest acquired Wells Fargo), our company set an ambitious goal to have our average banking household have eight products with us. Many analysts, focused only on the next quarter, yawned. That year, we averaged nearly four products per retail banking household. The next year, at the merger of Norwest and Wells Fargo, it was 3.2. 1999: 3.4. 2000: 3.7. 2001: 3.8. 2002: 4.2. 2003: 4.3. 2004: 4.6. 2005: 4.8. 2006: 5.2. 2007: 5.5. 2008: 5.7. 2009: our legacy Wells Fargo households, just under 6.0. This year, we crossed a major cross-sell threshold. Our banking households in the western U.S. now have an average of 6.14 products with us. Even when we get to eight, we’re only halfway home. The average banking household has about 16. I’m often asked why we set a cross-sell goal of eight. The answer is, it rhymed with ‘great.’ Perhaps our new cheer should be: ‘Let’s go again, for ten!’”); (Wells Fargo 2004 Annual Report, page 6, 18, at <https://www.wellsfargohistory.com/assets/pdf/annual-reports/2004-annual-report.pdf>; MSD-267 (NBE Smith Expert Report) at ¶ 74.

<sup>1275</sup> Russ Anderson’s ECSFM at No. 72.

<sup>1276</sup> See Respondent Julian at Respondent Julian’s Objections to Enforcement Counsel’s Motion for Summary Disposition Exhibits.

Anderson, Julian and McLinko. Accordingly, the claims presented in Statement of Material Fact (Russ Anderson) No. 72 and (Julian and McLinko) No. 69 will not support Enforcement Counsel's Motion. The exclusion of the evidence supporting these claims does not, however, create a factual basis that would prevent granting Enforcement Counsel's Motion.

**McLinko** incorporated Respondent Julian's Response.<sup>1277</sup>

**Enforcement Counsel's Statement of Material Fact (Russ Anderson) No. 73 and (Julian and McLinko) No. 70**

From the early 2000s, there was an expectation in the Community Bank that regions would achieve double-digit annual sales growth over the prior year's sales performance, or "run rate."<sup>1278</sup>

**Responses:**

**Russ Anderson** incorporated Respondent Julian's response.<sup>1279</sup>

**Julian** objected to the Statement on the ground that the supporting exhibits were irrelevant, immaterial, unreliable, or repetitive.<sup>1280</sup> Finding an insufficient nexus between the averments presented in the Statement and the material facts in issue, the objection is sustained. Given the passage of time between the events reported in the supporting exhibits and the filing of the Notice of Charges, given the remote and tangential relationship with the material claims

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<sup>1277</sup> McLinko's ECSFM at No. 69.

<sup>1278</sup> MSD-411 (Raphaelson Decl.); MSD-40 (Tolstedt commenting to her direct report in 2002 that "[y]our sales unit plan is at 4%" and instructing him to "change your sales plan to reflect a growth rate of between 10% and 15%."); MSD-551 (Bank data reflecting growth in each region's annual sales plans between 2005 and 2013); MSD-266 (Russ Anderson Dep. Tr.) 31:24-32:11 ("As I interpreted the question, you know, about the 10 percent growth, the C-suite always recognized that there was pressure in the sales plans. That -- that was part and parcel of how sales plans were put together. And as long as I can remember, 10 percent was the bogie."); MSD-31 ("As with last year, the regions have double-digit revenue growth plan and a 15% increase in sales goals."); see also MSD-1 at A-5-A-6 ¶¶ 13-14; MSD-35, MSD-40; MSD-49 (2008 presentation discussing that to reach the corporate goal of eight products per household, the Bank needed to increase its sales goals by double digits every year); MSD-546 (Stevens Tr.) at 20:15-21:12, 23:8-24:24; MSD-545 (Coyne Tr.) at 39:3-41:13, 49:15-52:6, 147:21-151:10; MSD-579 (Schulte Tr.) at 105:2-13 ("Carrie and Matthew have had historically wanted us to increase solutions by double digits."); MSD-280 (Board Report) at 44 ("The 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.").

<sup>1279</sup> Russ Anderson's ECSFM at No. 73.

<sup>1280</sup> See Respondent Julian at Respondent Julian's Objections to Enforcement Counsel's Motion for Summary Disposition Exhibits.

presented in the Notice of Charges, given the potential for confusion that admitting the evidence cited by Enforcement Counsel presents, given the redundant nature of the material facts presented in the Statement when compared with Exhibits that are more closely related in time, and given the marginal relevance of the claim presented in the Statement, the supporting exhibits will not be admitted in support of Enforcement Counsel's Motion as to Respondents Russ Anderson, Julian and McLinko. Accordingly, the claims presented in Statement of Material Fact (Russ Anderson) No. 73 and (Julian and McLinko) No. 70 will not support Enforcement Counsel's Motion. The exclusion of the evidence supporting these claims does not, however, create a factual basis that would prevent granting Enforcement Counsel's Motion.

**McLinko** incorporated Respondent Julian's Response.<sup>1281</sup>

**Enforcement Counsel's Statement of Material Fact (Russ Anderson) No. 74 and (Julian and McLinko) No. 71**

A senior leader in the human resources function in the Community Bank 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.<sup>1282</sup>

**Responses:**

**Russ Anderson** incorporated Respondent Julian's response.<sup>1283</sup>

**Julian** did not aver the quoted text does not appear in the cited exhibit, but avers the presentation "misconstrues Ms. Nelson's testimony" because later in her testimony she testified "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

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<sup>1281</sup> McLinko's ECSFM at No. 70.

<sup>1282</sup> MSD-548 (Nelson Tr.) at 116:15-20.

<sup>1283</sup> Russ Anderson's ECSFM at No. 74.



guess is. . . . I'm going to say possibly in late . . . 2008, 2009" the "double digit pace kicked down."<sup>1284</sup>

Accordingly, the Recommended Decision will include a factual finding as to Respondents Russ Anderson, Julian, and McLinko that a senior leader in the human resources function in the Community Bank 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.

And later testified:

"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."

**McLinko** incorporated Respondent Julian's Response.<sup>1285</sup>

### **Enforcement Counsel's Statement of Material Fact (Russ Anderson) No. 75**

While Respondent Russ Anderson was Group Risk Officer, the Community Bank increased sales goals every year from 2004 until 2013.<sup>1286</sup>

#### **Responses:**

**Russ Anderson** disputed that the evidence cited by Enforcement Counsel established that the Community Bank's sales goals remained unreasonable during Respondent Russ Anderson's tenure as the Group Risk Officer.<sup>1287</sup> She further averred the statement that "[w]hile Respondent Russ Anderson was Group Risk Officer, the Community Bank increased sales goals every year from 2004 until 2013[]", is misleading in that it improperly places responsibility for sales goals on Respondent Russ Anderson when she was not responsible for setting those goals.

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<sup>1284</sup> Julian's ECSFM at No. 71.

<sup>1285</sup> McLinko's ECSFM at No. 71.

<sup>1286</sup> MSD-49; see also MSD-280 (Board Report) at 50 ("Under her [Carrie Tolstedt's] direction, the Community Bank continued to increase its sales goals until 2013, and then lowered them only modestly"); MSD-84; MSD-131; MSD-199 (Freeman Decl.) at ¶¶ 4, 5; MSD-266 (Russ Anderson Dep. Tr.) 31:24-32:11.

<sup>1287</sup> Russ Anderson's ECSFM at No. 75.

This Statement of Material Fact is silent with respect to whether the sales goals remained unreasonable, and with respect to placing responsibility on Respondent Russ Anderson.

I find an insufficient factual basis has been presented to establish a dispute in this Response to create a controverted material fact. Accordingly, the Recommended Decision will include a factual finding as to Respondent Russ Anderson that while she was Group Risk Officer, the Community Bank increased sales goals every year from 2004 until 2013.

### **Enforcement Counsel’s Statement of Material Fact (Russ Anderson) No. 76 and (Julian and McLinko) No. 72**

By no later than 2004, Bank employees already considered the sales goals in the Community Bank to be “unattainable.”<sup>1288</sup>

#### **Responses:**

**Russ Anderson** incorporated Respondent Julian’s response.<sup>1289</sup>

**Julian** objected to the use of the exhibits supporting this Statement on the grounds that the evidence is irrelevant, immaterial, unreliable, or repetitive.<sup>1290</sup> The objection is sustained. Given the passage of time between the claimed facts and the filing of the Notice of Charges, given the remote and tangential relationship of the evidence presented in support of the Statement with the material claims presented in the Notice of Charges, given the potential for confusion that admitting the evidence presented here, given the redundant nature of the material facts presented in the Statement when compared with Exhibits that are more closely related in time, and given the marginal relevance of the claims in the Statement, the evidence supporting the Statement will not be admitted in support of Enforcement Counsel’s Motion as to Respondents Russ Anderson, Julian, and McLinko. Accordingly, the claims presented in (Russ Anderson) No. 76 and (Julian and McLinko) No. 72 will not support Enforcement Counsel’s Motion as to Respondents Russ Anderson, Julian, or McLinko. The exclusion of this evidence does not, however, create a factual basis that would prevent granting Enforcement Counsel’s Motion.

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<sup>1288</sup> MSD-527 at 14 (describing a “perception of ‘unattainable’ goals”); MSD-340 (“Every year before IC [incentive compensation] planning starts, extensive focus groups are conducted asking for feedback on the IC plans, and more and more often ‘sales goals are becoming unattainable’ is one of the criticisms.”); MSD-2 at 3; MSD-236 (describing “[r]elative inability of employees to meet sales goals in mature markets”).

<sup>1289</sup> Russ Anderson’s ECSFM at No. 76.

<sup>1290</sup> Julian’s ECSFM at No.72; Respondent Julian’s Objections to Enforcement Counsel’s Motion for Summary Disposition Exhibits.

**McLinko** incorporated Respondent Julian's Response.<sup>1291</sup>

### **Enforcement Counsel's Statement of Material Fact (Julian and McLinko) No. 73**

There was an expectation of cross-sell growth in every region of the retail branch network. For example, in 2012, the Head of the Community Bank Carrie Tolstedt wrote: "As set out in our vision and values, 'the core of our vision and our strategy is cross selling'. As such, as leaders, we need to ensure we know what our teams need to do specifically to deliver for each region to grow cross sell. Clearly, solutions growth is a driver as is our views on demonstrated performance on retention of certain products. Next year, cross sell will be a key focus and one that we will be monitoring processes in our monthly operating review ...". She elaborated: "In my mind, [e]very region must grow cross-sell – some faster than others. If you want me to be more specific by saying we need solutions growth of 6 to 8 percent, that is clear and I can do that."<sup>1292</sup>

#### **Responses:**

**Julian** objected to the use of the exhibits supporting this Statement on the grounds that the evidence is irrelevant, immaterial, unreliable, or repetitive.<sup>1293</sup> The objection is sustained. Given the passage of time between the claimed facts and the filing of the Notice of Charges, given the remote and tangential relationship of the evidence presented in support of the Statement with the material claims presented in the Notice of Charges, given the potential for confusion that admitting the evidence presented here, given the redundant nature of the material facts presented in the Statement when compared with Exhibits that are more closely related in time, and given the marginal relevance of the claims in the Statement, the evidence supporting the Statement will not be admitted in support of Enforcement Counsel's Motion as to Respondents Julian and McLinko. Accordingly, the claims presented in (Julian and McLinko) No. 73 will not support Enforcement Counsel's Motion as to Respondents Julian and McLinko. The exclusion of this evidence does not, however, create a factual basis that would prevent granting Enforcement Counsel's Motion.

**McLinko** incorporated Respondent Julian's Response.<sup>1294</sup>

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<sup>1291</sup> McLinko's ECSFM at No. 72.

<sup>1292</sup> MSD-32; see also MSD-33 ("Market and store level goals in recent years, in many cases, were too aggressive and disconnected from realities of existing resources and current productivity levels, and not properly focused on real potential and existing customer segment opportunities."); MSD-36; MSD-37 ("I am all about cross sell next year. We have to help people understand this is our core strategy and is up to everyone to deliver."); MSD-38; MSD-267 (NBE Smith Expert Report) at ¶¶ 75-83; MSD-131.

<sup>1293</sup> Respondent Julian's Objections to Enforcement Counsel's Motion for Summary Disposition Exhibits.

<sup>1294</sup> McLinko's ECSFM at No. 73.

**Enforcement Counsel’s Statement of Material Fact (Russ Anderson) No. 77 and (Julian and McLinko) No. 74**

During 2004, Mr. Stumpf and Ms. Tolstedt, with the assistance of the Community Bank’s Group Finance Officer, embarked on a plan to “push the envelope” to “grow sales 10- 15% each year for the next four years” and increase cross-sell growth.<sup>1295</sup>

**Responses:**

**Russ Anderson** incorporated Respondent Julian’s response.<sup>1296</sup>

**Julian** objected to the use of the evidence supporting this Statement on the grounds that the evidence is irrelevant, immaterial, unreliable, or repetitive.<sup>1297</sup> The objection is sustained. Given the passage of time between the acts averred in the Statement and the filing of the Notice of Charges, given the acts’ remote and tangential relationship with the material claims presented in the Notice of Charges, given the potential for confusion that admitting the acts presents, given the redundant nature of the material facts presented in the Statement when compared with Exhibits that are more closely related in time, and given the marginal relevance of the claim Statement, the evidence supporting the Statement will not be admitted in support of Enforcement Counsel’s Motion as to Respondents Russ Anderson, Julian, and McLinko. Accordingly, the claims presented in Statement of Material Fact (Russ Anderson) No. 77 and (Julian and McLinko) No. 74 will not support Enforcement Counsel’s Motion. The exclusion of this evidence does not, however, create a factual basis that would prevent granting Enforcement Counsel’s Motion.

**McLinko** incorporated Respondent Julian’s Response.<sup>1298</sup>

**Enforcement Counsel’s Statement of Material Fact (Russ Anderson) No. 78**

While Respondent Russ Anderson was Group Risk Officer, there was an expectation of

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<sup>1295</sup> MSD-552 at 46, 55. The Community Bank’s strategy for increasing sales and growing cross-sell focused on sales to existing customers and “pack sales” (i.e. sales of multiple products as a package) to new customers. (Id.; Raphaelson Declaration). The Group Finance Officer wrote in 2009 that the growth forecast for 2008 in the 2004 presentation had been “‘breaking the envelope,’ driven by what we considered wild, almost unimaginable, assumptions.” (MSD-49 (The Road to 8 Cross- Sell) at 2).

<sup>1296</sup> Russ Anderson’s ECSFM at No. 77.

<sup>1297</sup> Respondent Julian’s Objections to Enforcement Counsel’s Motion for Summary Disposition Exhibits.

<sup>1298</sup> McLinko’s ECSFM at No. 74.

cross-sell growth in every region of the retail branch network.<sup>1299</sup>

**Responses:**

**Russ Anderson** incorporated Respondent Julian's response to (Julian and McLinko) No. 73.<sup>1300</sup>

**Julian** objected to the use of the exhibits supporting this Statement on the grounds that the evidence is irrelevant, immaterial, unreliable, or repetitive.<sup>1301</sup> The objection is sustained. Given the passage of time between the claimed facts and the filing of the Notice of Charges, given the remote and tangential relationship of the evidence presented in support of the Statement with the material claims presented in the Notice of Charges, given the potential for confusion that admitting the evidence presented here, given the redundant nature of the material facts presented in the Statement when compared with Exhibits that are more closely related in time, and given the marginal relevance of the claims in the Statement, the evidence supporting the Statement will not be admitted in support of Enforcement Counsel's Motion as to Respondent Julian. Accordingly, the claims presented in (Russ Anderson) No. 78 will not support Enforcement Counsel's Motion as to Respondent Russ Anderson. The exclusion of this evidence does not, however, create a factual basis that would prevent granting Enforcement Counsel's Motion.

**Enforcement Counsel's Statement of Material Fact (Julian and McLinko) No. 75**

Sales plans in the Community Bank continued to call for double-digit sales growth through around 2013.<sup>1302</sup>

**Responses:**

**Julian** objected to the use of the exhibits supporting this Statement on the grounds that the evidence is irrelevant, immaterial, unreliable, or repetitive.<sup>1303</sup> The objection is sustained. Given the passage of time between the claimed facts and the filing of the Notice of Charges, given the remote and tangential relationship of the evidence presented in support of the Statement with the material claims presented in the Notice of Charges, given the potential for

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<sup>1299</sup> MSD-32; see also MSD-33 ("Market and store level goals in recent years, in many cases, were too aggressive and disconnected from realities of existing resources and current productivity levels, and not properly focused on real potential and existing customer segment opportunities."); MSD-36; MSD-37 ("I am all about cross sell next year. We have to help people understand this is our core strategy and is up to everyone to deliver."); MSD-38; MSD-267 (NBE Smith Expert Report) at ¶¶ 75-83; MSD-131.

<sup>1300</sup> Russ Anderson's ECSFM at No. 74.

<sup>1301</sup> Respondent Julian's Objections to Enforcement Counsel's Motion for Summary Disposition Exhibits.

<sup>1302</sup> MSD-411 (Raphaelson Decl.) at 2; MSD-199 (S. Freeman Decl.) at 2.

<sup>1303</sup> Respondent Julian's Objections to Enforcement Counsel's Motion for Summary Disposition Exhibits.

confusion that admitting the evidence presented here, given the redundant nature of the material facts presented in the Statement when compared with Exhibits that are more closely related in time, and given the marginal relevance of the claims in the Statement, the evidence supporting the Statement will not be admitted in support of Enforcement Counsel's Motion as to Respondent Julian. Accordingly, the claims presented in (Julian and McLinko) No. 75 will not support Enforcement Counsel's Motion as to Respondents Julian or McLinko. The exclusion of this evidence does not, however, create a factual basis that would prevent granting Enforcement Counsel's Motion.

**McLinko** incorporated Respondent Julian's Response.<sup>1304</sup>

**Enforcement Counsel's Statement of Material Fact (Russ Anderson) No. 79 and (Julian and McLinko) No. 76**

The Community Bank began lowering sales goals modestly in 2013.<sup>1305</sup> Accenture, an independent consultant hired by the Bank in 2015 to conduct an independent review of sales practices, issued a report in October 2015, noting that even after sales goals were lowered in 2013, they still had not been met in 2013 or thereafter.<sup>1306</sup>

**Responses:**

**Russ Anderson** incorporated Respondent Julian's response.<sup>1307</sup>

Julian objected to the use of the Accenture report on the grounds that the evidence is irrelevant, immaterial, unreliable, or repetitive.<sup>1308</sup> The objection is sustained as to the claims presented in this Statement, on finding the claims in this Statement are insufficiently material to warrant the admission of the supporting evidence. Accordingly, the claims presented in (Russ Anderson) No. 79 and (Julian and McLinko) No. 76 will not support Enforcement Counsel's Motion as to Respondents Russ Anderson, Julian, and McLinko. The exclusion of the claims in this Statement does not, however, create a factual basis that would prevent granting Enforcement Counsel's Motion.

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<sup>1304</sup> McLinko's ECSFM at No. 75.

<sup>1305</sup> MSD-280 (Board Report) at 44-45; MSD-199 (Freeman Decl.) at 5-6.

<sup>1306</sup> MSD-51 at 27 ("Based on the monthly motivator report, which tracks actual solutions sold against solution sales goals, solution sales goals have not been met since 2013 (even after accounting for adjustments made throughout the year to improve achievement rates).").

<sup>1307</sup> Russ Anderson's ECSFM at No. 79.

<sup>1308</sup> Respondent Julian's Objections to Enforcement Counsel's Motion for Summary Disposition Exhibits.

**McLinko** incorporated Respondent Julian's Response.<sup>1309</sup>

**Enforcement Counsel's Statement of Material Fact (Russ Anderson) No. 80 and (Julian and McLinko) No. 77**

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."<sup>1310</sup>

**Responses:**

**Russ Anderson** incorporated Respondent Julian's response.<sup>1311</sup>

**Julian** did not dispute that the cited report contains the quoted text shown in the Statement, and he offered no countervailing evidence, but disputed the reliability of the report on the ground that it was prepared by the same law firm that was representing the supposed "Independent Directors" in a shareholder action accusing those directors of the very misconduct about which the Board Report purports to address and was written in coordination with the OCC's investigation into the Bank.<sup>1312</sup>

I find an insufficient factual basis has been presented to establish a dispute in this Response to create a controverted material fact. Accordingly, the Recommended Decision will include a factual finding as to Respondents Russ Anderson, Julian, and McLinko that the cited 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."

**McLinko** incorporated Respondent Julian's Response.<sup>1313</sup>

**Enforcement Counsel's Statement of Material Fact (Russ Anderson) No. 81 and (Julian and McLinko) No. 78**

Enforcement Counsel's Statements of Material Fact (Russ Anderson) No. 81 and (Julian and McLinko) No. 78 rely on exhibits presented to this Tribunal as being non-public. Pursuant to the

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<sup>1309</sup> McLinko's ECSFM at No. 76.

<sup>1310</sup> 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 . . .").

<sup>1311</sup> Russ Anderson's ECSFM at No. 80.

<sup>1312</sup> Julian's ECSFM at No. 77.

<sup>1313</sup> McLinko's ECSFM at No. 77.

OCC's Uniform Rules, while the proceedings in this administrative enforcement action are expressly required to be public, when presented with non-public documents the Administrative Law Judge is required to take all appropriate steps to preserve the confidentiality of such documents.<sup>1314</sup> Upon my review of the confidential documents supporting these Statements of Material Fact, and after weighing the expectation that all of the proceedings shall be public against the requirement that I protect against the disclosure of non-public information, I find the evidentiary value of these exhibits to be sufficiently marginal and duplicative as to warrant exclusion from this Order. Accordingly, this Order will not be based on any of the claims found in these Statements of Material Fact.

### **Enforcement Counsel's Statement of Material Fact (Russ Anderson) No. 82 and (Julian and McLinko) No. 79**

Multiple senior regional leaders in the Community Bank testified that the Community Bank's sales goals were unreasonable.<sup>1315</sup>

#### **Responses:**

**Russ Anderson** incorporated Respondent Julian's response.<sup>1316</sup>

**Julian** offered no evidence in disputing the claim, but objects on the ground that the Statement cites to "inadmissible investigative testimony," but offered no authority for the proposition that such testimony cannot be presented in support of a motion seeking summary disposition.<sup>1317</sup> I find an insufficient factual basis has been presented to establish a dispute in this Response to create a controverted material fact. Accordingly, the Recommended Decision will include a factual finding as to Respondents Russ Anderson, Julian, and McLinko that multiple senior regional leaders in the Community Bank testified that the Community Bank's sales goals were unreasonable.

**McLinko** incorporated Respondent Julian's Response.<sup>1318</sup>

### **Enforcement Counsel's Statement of Material Fact (Russ Anderson) No. 83 and (Julian**

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<sup>1314</sup> See 12 C.F.R. § 19.33(b).

<sup>1315</sup> 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.

<sup>1316</sup> Russ Anderson's ECSFM at No. 82.

<sup>1317</sup> Julian's ECSFM at No. 79.

<sup>1318</sup> McLinko's ECSFM at No. 79.



**and McLinko) No. 80**

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 – 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.<sup>1319</sup>

**Responses:**

**Russ Anderson** incorporated Respondent Julian's response.<sup>1320</sup>

**Julian** did not dispute that the quoted phrase appears in the witness's testimony.<sup>1321</sup> Accordingly, the Recommended Decision will include a factual finding as to Respondents Russ Anderson, Julian, and McLinko that when the Bank's former Chief Risk Officer Michael Loughlin was asked "And did you at some point conclude that the goals in Community Bank – 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?" he responded "A: I don't have any doubt."

**McLinko** incorporated Respondent Julian's Response.<sup>1322</sup>

**Enforcement Counsel's Statement of Material Fact (Russ Anderson) No. 84 and (Julian and McLinko) No. 81**

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.

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<sup>1319</sup> MSD-290B (Loughlin Tr.) at 303:13-18.

<sup>1320</sup> Russ Anderson's ECSFM at No. 83.

<sup>1321</sup> Julian's ECSFM at No. 80

<sup>1322</sup> McLinko's ECSFM at No. 80.

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.*

1323  
...

#### Responses:

**Russ Anderson** incorporated Respondent Julian's response.<sup>1324</sup>

**Julian** did not dispute that the transcript contains the quoted testimony.<sup>1325</sup> Accordingly, the Recommended Decision will include a factual finding as to Respondents Russ Anderson, Julian, and McLinko that Mr. Schumacher testified as shown above.

**McLinko** incorporated Respondent Julian's Response.<sup>1326</sup>

#### Enforcement Counsel's Statement of Material Fact (Julian and McLinko) No. 82

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.

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<sup>1323</sup> MSD-349 (Schumacher Tr.) at 36:3-25 (emphasis added).

<sup>1324</sup> Russ Anderson's ECSFM at No. 84.

<sup>1325</sup> Julian's ECSFM at No. 81.

<sup>1326</sup> McLinko's ECSFM at No. 81.

A: Again, yes, based upon what I know now and reading this, they were certainly very difficult to attain.<sup>1327</sup>

**Responses:**

**Julian** incorporated the response by Respondent McLinko.<sup>1328</sup>

**McLinko** disputed giving the testimony presented in this Statement.<sup>1329</sup> Enforcement Counsel supported the Statement first by referencing Respondent McLinko's Amended Answer to Paragraph 5 of the Notice of Charges.<sup>1330</sup>

That Paragraph alleges as follows:

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

Respondent McLinko gave this response in his Amended Answer to Paragraph 5:

Respondent Paul McLinko admits that the transcript of his testimony before the OCC states, in part:

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.

THE WITNESS: Again, yes, based upon what I know now and reading this, they were certainly very difficult to attain.

BY MR. SAWI

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<sup>1327</sup> McLinko Amended Answer ¶ 5; MSD-276 (McLinko Tr.) at 74:9-17; see also *id.* at 95:19-24.

<sup>1328</sup> Julian's ECSFM at No. 82.

<sup>1329</sup> McLinko's ECSFM at No. 81.

<sup>1330</sup> McLinko Amended Answer ¶ 5.

Q: All right. And based on what you know now, these goals were monitored daily by management. Is that fair to say?

MR. CRUDO: Same objection.

THE WITNESS: I know they were monitored. I've heard examples of huddles and things like that, but I don't know in all the cases, but I know they were monitored a lot.

BY MR. SAWI:

Q: Fair enough. And you know now that there was significant and, in many times, severe pressure on employees to meet these sales goals?

A: I have --

MR. CRUDO: Same objection.

THE WITNESS: I've read about the significant pressure to meet goals. Yes.

Q: Okay. And from what we know now, the goals were unreasonable, and if you didn't meet them, you were terminated. Is that fair to say?

MR. CRUDO: Foundation.

THE WITNESS: Based on examples I've seen, yes.

Except as specifically admitted, Respondent lacks sufficient information to admit or deny the allegations in ¶ 5 and on that basis denies the allegations.

Enforcement Counsel relied upon Mr. McLinko's testimony as shown in the transcript, which is the same as what Respondent McLinko presented in his Amended Answer;<sup>1331</sup> and also supported this Statement by referring to the following excerpts of Mr. McLinko's testimony before the OCC:

Q: And from what we now know, the goals were unreasonable, and if you didn't meet them, you were terminated. Is that fair to say? [Objection by Mr. Crudo, "foundation"] A: Based on the examples I've seen, yes.<sup>1332</sup>

I find an insufficient factual basis has been presented to establish a dispute in this Response to create a controverted material fact. Accordingly, the Recommended Decision will include a factual finding as to Respondents Julian and McLinko that 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

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<sup>1331</sup> Cf MSD-276 (McLinko Tr.) at 74:9-17 with McLinko's Amended Answer at ¶5.

<sup>1332</sup> MSD-276 (McLinko Tr.) at 95:19-24.

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.

### **Enforcement Counsel’s Statement of Material Fact (Julian and McLinko) No. 83**

Respondent Julian testified that the Community Bank’s sales goals were unreasonable. Specifically, he testified:

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.<sup>1333</sup>

### **Responses:**

**Julian** did not dispute that the transcript contains the cited testimony.<sup>1334</sup> Accordingly, the Recommended Decision will include a factual finding as to Respondents Julian and McLinko that when he was asked whether it was “fair to say that you now know that the bank gave its employees unreasonable sales goals. Is that correct?” he answered “Yes.”

**McLinko** incorporated Respondent Julian’s Response.<sup>1335</sup>

### **Enforcement Counsel’s Statement of Material Fact (Russ Anderson) No. 85**

Respondent Russ Anderson participated in sales planning meetings, conferences, and individual meetings with regional leaders, including Carrie Tolstedt’s direct reports, where, among other things, the regional leaders expressed concerns about sales goals, and shared their concerns about sales quality, team member misconduct, and cross-sell reporting.<sup>1336</sup>

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<sup>1333</sup> MSD-278 (Julian Tr.) at 121:4-7.

<sup>1334</sup> Julian’s ECSFM at No. 83.

<sup>1335</sup> McLinko’s ECSFM at No. 83.

<sup>1336</sup> MSD-45; MSD-46; MSD-47; MSD-67 (Russ Anderson acknowledging in October 2013 that “folks are already really worried about goals.”); MSD-68 (regional banking leadership continuing to express concerns about sales goals in September 2015 to Respondent Russ Anderson and others); MSD-546 (Stevens Tr.) at 140:20 –142:8, 150:1-21, 158:8-17, 167:11-171:5, 187:6-189:13; MSD-582 (Sotoodeh Tr.) at 124:7-130:3, 193:10-194:25; Foley Tr. 90:14-95:24; Kvamme Tr. 125:17-128:8; J. Freeman Tr. 27:20-30:5, 76:17-78:20; MSD-199 (Freeman Decl.) at ¶¶ 14, 18; MSD-411 (Raphaelson Decl.) at ¶¶ 24, 29, 32.

## Responses:

**Russ Anderson** disputed that the evidence cited in this Statement establishes the Community Bank's sales goals remained unreasonable; and disputed the Statement "to the extent Enforcement Counsel attempts to suggest that [Respondent] had the ability to set sales goals based on this feedback."<sup>1337</sup>

I find an insufficient factual basis has been presented to establish a dispute in this Response to create a controverted material fact. Accordingly, the Recommended Decision will include a factual finding as to Respondent Russ Anderson that she participated in sales planning meetings, conferences, and individual meetings with regional leaders, including Carrie Tolstedt's direct reports, where, among other things, the regional leaders expressed concerns about sales goals, and shared their concerns about sales quality, team member misconduct, and cross-sell reporting.

## Enforcement Counsel's Statement of Material Fact (Russ Anderson) No. 86

Respondent Russ Anderson testified she believed the sales goals became unreasonable in the 2012 and 2013 timeframe, but did not share that information with the Chief Risk Officer Michael Loughlin (to whom she had dotted line reporting), the Enterprise Risk Management Committee, or the OCC:

Q: Okay. Just a couple more. Sitting here today, do you believe that the sales goals in the community bank were unreasonable? A: I believe that in the 2012 and 2013 time frame, I think that they had -- they weren't -- they were not -- they -- they had reached unreasonable, yes. Inadvertently [verbatim] -- or inadvertently, they had reached that point, yes.

Q: And did you ever tell Mr. Loughlin that in the 2012 to 2013 time frame the sales goals had reached the point of being unreasonable?

A: I do not recall that I did that, no.

...

Q: Understood. And I'm very familiar with the presentation you're referencing, but I just want to make sure I'm clear. Did you ever tell the enterprise risk management committee that you yourself concluded that in the 2012 to 2013 time frame the sales goals had reached a point of being unreasonable? Did you ever say those words to the enterprise risk management committee?

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<sup>1337</sup> Russ Anderson's ECSFM at No. 85.

A: I did not say those exact words . . .

. . .

Q: Did you ever tell the OCC that in the 2012 to 2013 time frame, you yourself concluded that the goals had reached the level of being unreasonable?

A: I did not. As the bank was making alterations to those sales goals and was backing off from them and making adjustments, I -- I did not. . . .<sup>1338</sup>

### **Responses:**

**Russ Anderson** did not dispute the accuracy of the transcript presented, but disputed, without citation to authority, the admissibility of the testimony, and averred the testimony “does not establish the alleged fact that the Community Bank’s sales goals remained unreasonable during Ms. Russ Anderson’s tenure” and disputed the Statement for the reasons set forth in Respondent Julian’s Statement No. 66.<sup>1339</sup> In that response, Respondent Julian disputed claims other than the above transcript testimony, made no claim that the transcript was inaccurate, but described the factual claims in (Julian and McLinko) No. 66 as vague, confusing, and unsubstantiated.

I find an insufficient factual basis has been presented to establish a dispute in this Response to create a controverted material fact. Accordingly, the Recommended Decision will include a factual finding as to Respondent Russ Anderson that testified as shown above, and that she believed the sales goals became unreasonable in the 2012 and 2013 timeframe but did not share that information with the Chief Risk Officer Michael Loughlin (to whom she had dotted line reporting), the Enterprise Risk Management Committee, or the OCC.

### **Respondent Russ Anderson approved incentive compensation plans based on unreasonable sales goals<sup>1340</sup>**

#### **Enforcement Counsel’s Statement of Material Fact (Russ Anderson) No. 87 and (Julian and McLinko) No. 84**

The Community Bank maintained “an incentive compensation system that was poorly

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<sup>1338</sup> MSD-266 (Russ Anderson Dep. Tr.) at 119:16-122:9; see also MSD-48 (October 25, 2012 email exchange where Respondent Russ Anderson acknowledges sales plan was knowingly not attainable).

<sup>1339</sup> Russ Anderson’s ECSFM at No. 86.

<sup>1340</sup> Respondent Russ Anderson included a claim of dispute regarding the subheading shown here. As there is no Statement of Material Fact expressed in the subheading, no response is warranted and no ruling is required.

designed, poorly monitored and managed and allowed to remain in place too long.”<sup>1341</sup>

**Responses:**

**Russ Anderson** incorporated Respondent Julian’s response.<sup>1342</sup>

**Julian** did not dispute that the Bank maintained “an incentive compensation system that was poorly designed, poorly monitored and managed and allowed to remain in place too long”, nor did he present controverting evidence, but instead averred the text does not indicate the time period in which the proposition it quotes was relevant, nor does it include the necessary context to understand the quotation.<sup>1343</sup>

I find an insufficient factual basis has been presented to establish a dispute in this Response to create a controverted material fact. Accordingly, the Recommended Decision will include a factual finding as to Respondents Russ Anderson, Julian, and McLinko that the Community Bank maintained “an incentive compensation system that was poorly designed, poorly monitored and managed and allowed to remain in place too long.”

**McLinko** incorporated Respondent Julian’s Response.<sup>1344</sup>

**Enforcement Counsel’s Statement of Material Fact (Russ Anderson) No. 88 and (Julian and McLinko) No. 85**

The incentive compensation plans in the Community Bank were based upon and consisted of unreasonable sales goals.<sup>1345</sup>

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<sup>1341</sup> MSD-6; see also MSD-5; MSD-289A (Sloan Tr.) at 79:3-80:25.

<sup>1342</sup> Russ Anderson’s ECSFM at No. 87.

<sup>1343</sup> Julian’s ECSFM at No. 84.

<sup>1344</sup> McLinko’s ECSFM at No. 84.

<sup>1345</sup> 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.



## Responses:

**Russ Anderson** incorporated Respondent Julian's response.<sup>1346</sup>

**Julian:** Without offering evidence in support, Respondent Julian controverted the Statement by questioning the reliability of the relied-upon Board Report because it was "prepared by the same law firm that was representing the supposed "Independent Directors" in a shareholder action accusing those directors of the very misconduct about which the Board Report purports to address and was written in coordination with the OCC's investigation into the Bank."<sup>1347</sup>

I find an insufficient factual basis has been presented to establish a dispute in this Response to create a controverted material fact. Accordingly, the Recommended Decision will include a factual finding as to Respondents Russ Anderson, Julian, and McLinko that incentive compensation plans in the Community Bank were based upon and consisted of unreasonable sales goals.

**McLinko** incorporated Respondent Julian's Response.<sup>1348</sup>

## **Enforcement Counsel's Statement of Material Fact (Russ Anderson) No. 89 and (Julian and McLinko) No. 86**

The Bank's Incentive Compensation Risk Management Policy, adopted in 2011 ("ICRM Policy") governed all incentive compensation plans, including those in the Community Bank.<sup>1349</sup>

## Responses:

**Russ Anderson** incorporated Respondent Julian's response.<sup>1350</sup>

**Julian** disputed Enforcement Counsel's articulation of Julian's Amended Answer, averring the Answer "admitted merely 'that a July 13, 2011 Incentive Compensation Risk Management Policy states that "[t]his policy applies to any Wells Fargo business that pays team members under an incentive compensation arrangement.'" (Julian Amended Answer ¶ 150). Moreover, Mr. Julian specifically denied that the ICRM Policy "imposed oversight responsibilities on the Head

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<sup>1346</sup> Russ Anderson's ECSFM at No. 88.

<sup>1347</sup> Julian's ECSFM at No. 85, citing MSD-280.

<sup>1348</sup> McLinko's ECSFM at No. 85.

<sup>1349</sup> 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.

<sup>1350</sup> Russ Anderson's ECSFM at No. 89.

of the Community Bank, the Community Bank Group Risk Officer, and the Law Department.”<sup>1351</sup>

I find an insufficient factual basis has been presented to establish a dispute in this Response to create a controverted material fact. Accordingly, the Recommended Decision will include a factual finding as to Respondents Russ Anderson, Julian, and McLinko that the Bank’s Incentive Compensation Risk Management Policy, adopted in 2011 (“ICRM Policy”) 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.”

**McLinko** incorporated Respondent Julian’s Response.<sup>1352</sup>

### **Enforcement Counsel’s Statement of Material Fact (Russ Anderson) No. 90**

The purpose of the ICRM Policy was “to align Wells Fargo’s incentive compensation arrangement with appropriate risk taking to ensure the strength and stability of the company.”<sup>1353</sup>

#### **Responses:**

**Russ Anderson** incorporated Respondent Julian’s response at (Julian and McLinko) No. 86.<sup>1354</sup> Respondent Julian’s response in No. 86 concerns Enforcement Counsel’s construction of a response given by Mr. Julian in his Amended Answer. The response by Mr. Julian is not responsive to the claim presented in (Russ Anderson) No. 90.

I find an insufficient factual basis has been presented to establish a dispute in this Response to create a controverted material fact. Accordingly, the Recommended Decision will include a factual finding as to Respondent Russ Anderson that the purpose of the Bank’s ICRM Policy was to align Wells Fargo’s incentive compensation arrangement with appropriate risk taking to ensure the strength and stability of the company.

### **Enforcement Counsel’s Statement of Material Fact (Russ Anderson) No. 91**

The ICRM Policy stated: “Incentive compensation arrangements should balance risk and rewards in a manner that does not encourage team members to expose Wells Fargo to

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<sup>1351</sup> Julian’s ECSFM at No. 86, quoting NOC ¶ 150; Julian Amended Answer ¶ 150.

<sup>1352</sup> McLinko’s ECSFM at No. 86.

<sup>1353</sup> MSD-211; MSD-212.

<sup>1354</sup> Russ Anderson’s ECSFM at No. 90.

imprudent risks.”<sup>1355</sup>

**Responses:**

**Russ Anderson** again incorporated Respondent Julian’s response at (Julian and McLinko) No. 86.<sup>1356</sup> Respondent Julian’s response in No. 86 concerns Enforcement Counsel’s construction of a response given by Mr. Julian in his Amended Answer. The response by Mr. Julian is not responsive to the claim presented in (Russ Anderson) No. 91.

I find an insufficient factual basis has been presented to establish a dispute in this Response to create a controverted material fact. Accordingly, the Recommended Decision will include a factual finding as to Respondent Russ Anderson that the Bank’s ICRM Policy stated: “Incentive compensation arrangements should balance risk and rewards in a manner that does not encourage team members to expose Wells Fargo to imprudent risks.”

**Enforcement Counsel’s Statement of Material Fact (Russ Anderson) No. 92**

The ICRM Policy stated: “Risk-management processes and internal controls reinforce and support the development and maintenance of balanced incentive compensation arrangements.”<sup>1357</sup>

**Responses:**

**Russ Anderson** again incorporated Respondent Julian’s response at (Julian and McLinko) No. 86.<sup>1358</sup> Respondent Julian’s response in No. 86 concerns Enforcement Counsel’s construction of a response given by Mr. Julian in his Amended Answer. The response by Mr. Julian is not responsive to the claim presented in (Russ Anderson) No. 92.

I find an insufficient factual basis has been presented to establish a dispute in this Response to create a controverted material fact. Accordingly, the Recommended Decision will include a factual finding as to Respondent Russ Anderson that the Bank’s ICRM Policy stated: “Risk-management processes and internal controls reinforce and support the development and maintenance of balanced incentive compensation arrangements.”

**Enforcement Counsel’s Statement of Material Fact (Russ Anderson) No. 93**

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<sup>1355</sup> MSD-211 at 1.

<sup>1356</sup> Russ Anderson’s ECSFM at No. 91.

<sup>1357</sup> MSD-211 at 2.

<sup>1358</sup> Russ Anderson’s ECSFM at No. 92.

The ICRM Policy imposed oversight responsibilities on Respondent Russ Anderson as the Community Bank Group Risk Officer.<sup>1359</sup>

**Responses:**

Russ Anderson responded that it was undisputed that she admitted in her Amended Answer the factual claims shown here. Accordingly, the Recommended Decision will include a factual finding as to Respondent Russ Anderson that the Bank's ICRM Policy imposed oversight responsibilities on Respondent Russ Anderson as the Community Bank Group Risk Officer.

**Enforcement Counsel's Statement of Material Fact (Russ Anderson) No. 94**

Under the ICRM Policy, Respondent Russ Anderson had "to provide independent reviews of incentive compensation arrangements and balancing features used" and was "accountable to Wells Fargo's Chief Risk Officer to ensure appropriate balance is achieved."<sup>1360</sup>

**Responses:**

**Russ Anderson** responded that it was undisputed that she admitted in her Amended Answer the factual claims shown here. Accordingly, the Recommended Decision will include a factual finding as to Respondent Russ Anderson that under the ICRM Policy, Respondent Russ Anderson had "to provide independent reviews of incentive compensation arrangements and balancing features used" and was "accountable to Wells Fargo's Chief Risk Officer to ensure appropriate balance is achieved."

**Enforcement Counsel's Statement of Material Fact (Russ Anderson) No. 95**

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.<sup>1361</sup>

**Responses:**

**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 disincent sales practices misconduct, citing her testimony, given on January 13, 2021, at 68:16-20.

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<sup>1359</sup> Russ Anderson Amended Answer ¶ 150; MSD-211; MSD-212.

<sup>1360</sup> Russ Anderson Amended Answer ¶ 253; MSD-211 at 3; MSD-212 at 3.

<sup>1361</sup> MSD-290B (Loughlin Tr.) at 478:7-11; MSD-269 (NBE Candy Expert Report) at ¶ 61; MSD- 266 (Russ Anderson Dep. Tr.) at 67:23-68:2.

That testimony is shown as follows:

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.<sup>1362</sup>

I find an insufficient factual basis has been presented to establish a dispute in this Response to create a controverted material fact. Accordingly, the Recommended Decision will include a factual finding as to Respondent Russ Anderson 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.

#### **Enforcement Counsel's Statement of Material Fact (Russ Anderson) No. 96**

Respondent Russ Anderson was a member of the Incentive Compensation Risk Management Steering Committee, which was responsible for reviewing and approving incentive compensation plans and ensuring their compliance with the ICRM Policy.<sup>1363</sup>

#### **Responses:**

**Russ Anderson** disputed that the Statement establishes the alleged fact that Community Bank had a systemic sales practice misconduct problem from at least 2002 until at least 2016, and that she approved incentive compensation plans based on unreasonable sales goals.<sup>1364</sup> These allegations, however, are not presented in Statement No. 96.

Respondent further incorporated Respondent Julian's response to (Julian and McLinko) No. 251.<sup>1365</sup> That paragraph, however, does not relate to the material facts alleged in (Russ Anderson) No. 96.

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<sup>1362</sup> MSD-266 at 68:16-20.

<sup>1363</sup> MSD-215 at 1-2.

<sup>1364</sup> Russ Anderson's ECSFM at No. 96.

<sup>1365</sup> Russ Anderson's ECSFM at No. 96.

I find an insufficient factual basis has been presented to establish a dispute in this Response to create a controverted material fact. Accordingly, the Recommended Decision will include a factual finding as to Respondent Russ Anderson that she was a member of the Incentive Compensation Risk Management Steering Committee, which was responsible for reviewing and approving incentive compensation plans and ensuring their compliance with the ICRM Policy.

### **Enforcement Counsel’s Statement of Material Fact (Russ Anderson) No. 97**

Respondent Russ Anderson reviewed and approved incentive compensation plans consisting of unreasonable sales goals.<sup>1366</sup>

#### **Responses:**

**Russ Anderson** disputed that the alleged facts established that Community Bank had a “systemic sales practices misconduct problem from at least 2002 until at least 2016” and that she had “approved incentive compensation plans based on unreasonable sales goals.”<sup>1367</sup> She offered in support references to MSD-214 (an email chain circa April 25, 2015 that included Respondent and other Bank employees regarding proposed “material changes” to the incentive plan), MSD-215 (an email chain circa Jun 1, 2015 that raised questions about the corporate policy applicable to Sales Practices), and MSD-216 (an email chain circa November 30, 2015 pertaining to the Wells Fargo Financial Consent Order). Respondent offered the documents in support of the proposition that “none of the documents cited contain any reference to an incentive compensation plan containing unreasonable sales goals.”<sup>1368</sup>

I find an insufficient factual basis has been presented to establish a dispute in this Response to create a controverted material fact. Accordingly, the Recommended Decision will include a factual finding as to Respondent Russ Anderson reviewed and approved incentive compensation plans consisting of unreasonable sales goals

### **Throughout Respondent Russ Anderson’s tenure as the Group Risk Officer, the Community Bank imposed significant pressure on its employees to meet its unreasonable goals**

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<sup>1366</sup> MSD-269 (NBE Candy Expert Report) at ¶ 63; MSD- 48; MSD-214 (“I agree and approve the Q2 Store plan changes also for RB [Regional Banking].”); MSD-215; MSD-216.

<sup>1367</sup> Russ Anderson’s ECSFM at No. 97.

<sup>1368</sup> Russ Anderson’s ECSFM at No. 97.

## **Enforcement Counsel’s Statement of Material Fact (Russ Anderson) No. 98 and (Julian and McLinko) No. 87**

From the early 2000s during 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.<sup>1369</sup>

### **Responses:**

**Russ Anderson** disputed that the documents cited by Enforcement Counsel establish the facts alleged; and aver that MSD-128 and MSD-129 “confirm that Ms. Russ Anderson was requesting more information about sales pressure to understand who was feeling it and why, and looking for ways to ensure that regional bank leaders did not exert pressure on team members.”<sup>1370</sup>

Having reviewed the exhibits cited by Respondent Russ Anderson, including the contents of MSD-128 (an email chain circa January 4, 2012 regarding sales goals) and MSD-129 (an email chain circa January 4, 2012 regarding “performance commitments”), I find nothing that controverts the factual claims in this Statement.

Accordingly, I find an insufficient factual basis has been presented to establish a dispute in this Response to create a controverted material fact. Thus, the Recommended Decision will include a factual finding as to Respondent Russ Anderson that from the early 2000s during Respondent Russ Anderson’s tenure as the Group Risk Officer and until sales goals were eliminated in the

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<sup>1369</sup> 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 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.

<sup>1370</sup> Russ Anderson’s ECSFM at No. 98.

Community Bank effective October 1, 2016, employees in the retail branch network of the Community Bank faced significant pressure to meet sales goals.

**Julian** disputed the claim, citing testimony by Respondent Russ Anderson, who testified in response to the question “Did there come a point in time when you, yourself determined that a significant number of EthicsLine complaints were indicating as a theme that employees were under significant pressure to meet unreasonable sales goals? A. I did not ever come to that conclusion, no.”<sup>1371</sup> Thus, the question presented in this excerpt addressed not whether employees in the retail branch network of the Community Bank faced significant pressure to meet sales goals, but whether Russ Anderson construed EthicsLine complaints as indicating “a theme” that employees were under pressure to meet unreasonable sales goals – a question more narrowly drawn than the one presented in the Statement.

Accordingly, I find an insufficient factual basis has been presented to establish a dispute in this Response to create a controverted material fact. Thus, the Recommended Decision will include a factual finding as to Respondents Julian and McLinko that from the early 2000s during 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.

**McLinko** incorporated Respondent Julian’s Response.<sup>1372</sup>

#### **Enforcement Counsel’s Statement of Material Fact (Russ Anderson) No. 99**

The significant pressure to meet sales goals existed at the Bank beginning no later than 2002. Respondent Russ Anderson testified that sales pressure existed for the entirety of her career at the Bank, dating back to 1980:

Q: Okay. And you respond, “Ms. Tolstedt was a ‘yes, I can do it’ person. There were only so many expenses she could cut, since she did not want to cut stores. Most of her expenses was people. Furthermore, you had to keep up with the industry by pumping money into the internet bank. Sooner or later the pot runs out and you recognize that you have all this pressure with the sales force.” And I take it, you believe that this was a truthful response to Grant Thornton when you responded to their question; is that fair to say?

A: I’d say that’s fair, yes.

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<sup>1371</sup> Julian’s ECSFM at No.87, quoting MSD-266 at 78:11-17.

<sup>1372</sup> McLinko’s ECSFM at No. 87.



Q: When did you first recognize that there was all this pressure within the sales force?

A: Ag -- again, there's been pressure on the sales force for the entirety of my career. That's part of being in a sales organization, there's pressure to reach certain levels of performance.<sup>1373</sup>

### **Responses:**

**Russ Anderson** did not dispute the accuracy of the transcription shown above, but disputed that the evidence cited by Enforcement Counsel establishes the alleged fact that Community Bank had a systemic sales practices misconduct problem from at least 2002 until at least 2016, and that throughout Ms. Russ Anderson's tenure as the Group Risk Officer, the Community Bank imposed significant pressure on its employees to meet its unreasonable goals.<sup>1374</sup> Further, she cited the Report of the Independent Directors of the Board of Wells Fargo & Company, Sales Practices Investigation Report, which included the finding that "[w]hile the level of input into each year's goals by regional banking leaders - those responsible for particular retail banking regions - rose and fell over time, sales goals were ultimately the responsibility of Community Bank leadership, in particular Carrie Tolsted and Matthew Raphaelson, the Community Bank's head of Strategic Planning and Finance."<sup>1375</sup>

Respondent Russ Anderson also cited the report of Ms. Farrell (MSD-264), in which the author averred "Ms. Russ Anderson had no input into the sales goals and no input into the incentive compensation for the Community Bank."<sup>1376</sup> There is, however, no substantial evidence supporting this factual claim, nor is there foundation establishing the time frame covered by this averment.

I find an insufficient factual basis has been presented to establish a dispute in this Response to create a controverted material fact. Accordingly, the Recommended Decision will include a factual finding as to Respondent Russ Anderson that she provided the sworn testimony shown above and that there was significant pressure to meet sales goals existed at the Bank beginning no later than 2002.

### **Enforcement Counsel's Statement of Material Fact (Russ Anderson) No. 100**

Respondent Russ Anderson testified that she suspected that pressure was an underlying issue

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<sup>1373</sup> MSD-266 (Russ Anderson Dep. Tr.) at 32:17-33:9, 63:16-23 (emphasis added).

<sup>1374</sup> Russ Anderson's ECSFM at No. 99.

<sup>1375</sup> Russ Anderson's ECSFM at No. 99, quoting from MSD-280 at 19.

<sup>1376</sup> Russ Anderson's ECSFM at No. 99, quoting from MSD-264 (Farrell Report).

behind employees engaging in sales practices misconduct:

Q: Okay. Did you also suspect that pressure was an underlying issue behind employees engaging in sales practices misconduct? A: Just generally speaking?

Q: Sure.

A: Generally speaking, I think that, yes. As I think I've testified before, pressure in various hotspots but, you know, not across the whole footprint, since I started in 1980, it – the pres -- predecessor to even Norwest.<sup>1377</sup>

### **Responses:**

**Russ Anderson** did not dispute the accuracy of the transcribed testimony, but disputed that the testimony presented in the Statement establishes the alleged fact that Community Bank had systemic sales practices.<sup>1378</sup>

I find an insufficient factual basis has been presented to establish a dispute in this Response to create a controverted material fact. Accordingly, the Recommended Decision will include a factual finding as to Respondent Russ Anderson that she provided the sworn testimony shown above.

### **Enforcement Counsel's Statement of Material Fact (Russ Anderson) No. 101**

Respondent Russ Anderson knew that the following areas were “hot spots” for sales practices misconduct: Los Angeles, Orange County, Arizona, New Jersey. She also knew employees were under significant pressure to meet unreasonable sales goals in the following locations: Los Angeles, Orange County, New Jersey, and Florida:

Q: When did you first realize that L.A./O.C., Arizona, and New Jersey were hot spots for sales practice misconduct?

A: Well, I think that was true even before I got the SSCOT team. But certainly once I got the SSCOT team in January of 2012 and working with my leadership in that organization and getting more direct data from them underscored it. But certainly there had been conversations with Ken Zimmerman, Debra Patterson, before then, even Carrie before then, that those were places of you needed to keep a watch on it.

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<sup>1377</sup> MSD-266 (Russ Anderson Dep. Tr.) at 187:8-17; MSD-142.

<sup>1378</sup> Russ Anderson's ECSFM at No. 100.

Q: So Ms. Tolstedt was aware well before 2012 that there were hot spots for sales practice misconduct; is that fair to say?

A: I would say that's fair, yes.

...

Q: Do you believe that to be true now, that employees were under significant pressure to meet unreasonable sales goals in the Community Bank?

A: I think there were pockets within regional banking where that is true, but I did not think it was footprint-wide, no.

Q: Okay. And the pockets where you believed it was true that employees were under significant pressure to meet unreasonable sales goals were L.A./O.C., Arizona, and New Jersey; is that fair to say?

A: Those would be the large areas, yes. There could have been little hotspots and, you know, other states just, you know, with little pockets here and there because there's 6,000 branches. But those were the places where -- you know with the data we would get from Ken – Ken Zimmerman and corporate investigations, it would lead you to those conclusions. Florida would pop up once in a while, particularly down in the Miami area. . . .<sup>1379</sup>

### **Responses:**

**Russ Anderson** did not dispute the accuracy of the transcribed testimony, but disputed that the testimony presented in the Statement establishes the alleged fact that Community Bank had systemic sales practices.<sup>1380</sup>

I find an insufficient factual basis has been presented to establish a dispute in this Response to create a controverted material fact. Accordingly, the Recommended Decision will include a factual finding as to Respondent Russ Anderson that she provided the sworn testimony shown above.

### **Enforcement Counsel's Statement of Material Fact (Russ Anderson) No. 102 and (Julian and McLinko) No. 88**

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<sup>1379</sup> (MSD-266 (Russ Anderson Dep. Tr.) at 77:14-79:17).

<sup>1380</sup> Russ Anderson's ECSFM at No. 101.

The Community Bank tracked employees' sales performance on a daily and at times hourly basis.<sup>1381</sup>

**Responses:**

**Russ Anderson** incorporated Respondent Julian's response.<sup>1382</sup>

Julian disputed the claim, averring that in the statement relied upon by Enforcement Counsel, Ms. Holliday testified that she did not "know if [sales goals] were monitored daily ... at a higher level" in the Community Bank.<sup>1383</sup>

I find an insufficient factual basis has been presented to establish a dispute in this Response to create a controverted material fact. Accordingly, the Recommended Decision will include a factual finding as to Respondents Russ Anderson, Julian, and McLinko that the Community Bank tracked employees' sales performance on a daily and at times hourly basis.

**McLinko** incorporated Respondent Julian's Response.<sup>1384</sup>

**Enforcement Counsel's Statement of Material Fact (Russ Anderson) No. 103 and (Julian and McLinko) No. 89**

The Community Bank employed stack rankings, which ordered sales performers from best to worst.<sup>1385</sup>

**Responses:**

**Russ Anderson** incorporated Respondent Julian's response.<sup>1386</sup>

**Julian** objected to the use of evidence in support of this claim on the grounds that the evidence is irrelevant, immaterial, unreliable, or repetitive.<sup>1387</sup> The objection is sustained. Finding an insufficient nexus between the averments presented in the Statement and the material facts in issue, the objection is sustained. Accordingly, the claims presented in (Russ Anderson) No. 103

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<sup>1381</sup> 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.

<sup>1382</sup> Russ Anderson's ECSFM at No. 102.

<sup>1383</sup> Julian's ECSFM at No. 88, quoting MSD-549 at 24:24-25:6.

<sup>1384</sup> McLinko's ECSFM at No. 88.

<sup>1385</sup> MSD-541 (J. Freeman Tr.) at 76:17-78:20, 92:11-93:12; MSD-300 (Rawson Tr.) at 24:2-27:1; MSD-349 (Schumacher Tr.) at 37:23-40:24; MSD-584 (Kaczor Tr.) at 33:7-15; MSD-199 (Freeman Decl.).

<sup>1386</sup> Russ Anderson's ECSFM at No. 103.

<sup>1387</sup> Respondent Julian's Objections to Enforcement Counsel's Motion for Summary Disposition Exhibits.

and (Julian and McLinko) No. 89 will not support Enforcement Counsel’s Motion. The exclusion of the claims appearing in the Statement does not, however, create a factual basis that would prevent granting Enforcement Counsel’s Motion.

**McLinko** incorporated Respondent Julian’s Response.<sup>1388</sup>

**Enforcement Counsel’s Statement of Material Fact (Russ Anderson) No. 104 and (Julian and McLinko) No. 90**

Incentive compensation and promotional opportunities in the Community Bank depended on an employee’s ability to meet sales goals.<sup>1389</sup>

**Responses:**

**Russ Anderson** incorporated Respondent Julian’s response.<sup>1390</sup>

**Julian** disputed the claim, averring it to be vague and lacking sufficient context to understand the incentive compensation and promotional opportunities in the Community Bank.<sup>1391</sup> Without controverting the material factual premises in the Statement, Julian proffered testimonial evidence to the effect that there were ways to be promoted other than through meeting sales goals – evidence that does not contradict the factual premise that incentive compensation and promotional opportunities depended on meeting sales goals. Julian presented testimony showing that the relevant factors varied depending on the level of the position and, for some positions, an employee’s ability to meet sales goals was, in fact, immaterial.<sup>1392</sup>

“Q. You also mentioned that people were promoted to management because of sales? A. In some cases, not in all cases. Q. Was it more typical at the lower levels of branch managers, district managers, that the primary reason for their promotion would be sales numbers? A. Yes. Q. Did promotions at higher levels, let’s say to lead regional president or regional president, was it less dependent on sales at that level? A. I would say, yes, it was. You know, you had to have other skills to

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<sup>1388</sup> McLinko’s ECSFM at No. 89.

<sup>1389</sup> 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).

<sup>1390</sup> Russ Anderson’s ECSFM at No. 104.

<sup>1391</sup> Julian’s ECSFM at No. 90.

<sup>1392</sup> Julian’s ECSFM at No. 90, quoting MSD-579 at 97:8-23.

command those positions. The higher up you got the less important it was that you had sales.”<sup>1393</sup>

This testimony does not controvert the material factual claim presented in the Statement. I find an insufficient factual basis has been presented to establish a dispute in this Response to create a controverted material fact. Accordingly, the Recommended Decision will include a factual finding as to Respondents Russ Anderson, Julian, and McLinko that incentive compensation and promotional opportunities in the Community Bank depended on an employee’s ability to meet sales goals.

**McLinko** incorporated Respondent Julian’s Response.<sup>1394</sup>

### **Enforcement Counsel’s Statement of Material Fact (Russ Anderson) No. 105 and (Julian and McLinko) No. 91**

From 2003 through 2013, the Community Bank promoted an annual sales campaign known as “Jump into January.” As part of this campaign, Community Bank imposed higher-than-normal sales goals in the month of January.<sup>1395</sup>

#### **Responses:**

**Russ Anderson** incorporated Respondent Julian’s response.<sup>1396</sup>

**Julian** objected to the use of exhibits supporting this Statement on the grounds that the evidence is irrelevant, immaterial, unreliable, or repetitive.<sup>1397</sup> The objection is sustained. Given the passage of time between the campaign cited and the filing of the Notice of Charges, given the campaign’s remote and tangential relationship with the material claims presented in the Notice of Charges, given the potential for confusion that admitting evidence of the campaign presents, given the redundant nature of the material facts presented regarding the campaign when compared with Exhibits that are more closely related in time, and given the marginal relevance of the campaign, evidence of the campaign will not be admitted in support of Enforcement

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<sup>1393</sup> Julian’s ECSFM at No. 90, quoting MSD-579 at 97:8-23.

<sup>1394</sup> McLinko’s ECSFM at No. 90.

<sup>1395</sup> MSD-280 (Board Report) at 21-22; MSD-141; MSD-582 (Sotoodeh Tr.) at 147:19-149:24; MSD-592 (Delay-Helser Tr.) at 22:13- 24:1; MSD-566; MSD-545 (Coyne Tr.) at 156:3-158:12; MSD-546 (Stevens Tr.) at 33:22-35:2 (“Jump into January . . . turned into a complete nightmare of team members feeling pressured.”); MSD-593 (Riley Tr.) at 167:5-20 (“So if you couldn’t get your January goal in line, your whole year was done. . . They put so much weight into that one month that there was so much pressure”); MSD-594 (Terrazas Tr.) at 174:22-175:1 (“every year for Jump into January, every year it was very stressful on our team members”); MSD-199 (Freeman Decl.) at ¶ 13.

<sup>1396</sup> Russ Anderson’s ECSFM at No. 105.

<sup>1397</sup> Respondent Julian’s Objections to Enforcement Counsel’s Motion for Summary Disposition Exhibits.

Counsel's Motion. Accordingly, the claims presented in (Russ Anderson) 105 and (Julian and McLinko) No. 91 will not support Enforcement Counsel's Motion. The exclusion of evidence of the campaign does not, however, create a factual basis that would prevent granting Enforcement Counsel's Motion.

**McLinko** incorporated Respondent Julian's Response.<sup>1398</sup>

**Enforcement Counsel's Statement of Material Fact (Russ Anderson) No. 106**

Jump into January was a "breeding ground for bad behavior."<sup>1399</sup> The pressure imposed on employees by Jump into January and the campaign's impact on increased sales practices misconduct and other gaming was widely known within the Community Bank.<sup>1400</sup>

**Responses:**

**Russ Anderson:** In Statement No. 105 Russ Anderson objected to the use of exhibits supporting this Statement on the grounds that the evidence is irrelevant, immaterial, unreliable, or repetitive.<sup>1401</sup> The objection applies here as well, and is sustained for the reasons given regarding (Russ Anderson) No. 105.

**Enforcement Counsel's Statement of Material Fact (Russ Anderson) No. 107**

"Jump into January" was especially associated with a practice known as "sandbagging," which involved bankers delaying the opening of requested accounts and other products to the next sales reporting period.<sup>1402</sup>

**Responses:**

**Russ Anderson:** In Statement No. 105 Russ Anderson objected to the use of exhibits supporting this Statement on the grounds that the evidence is irrelevant, immaterial, unreliable, or repetitive.<sup>1403</sup> The objection applies here as well, and is sustained for the reasons given regarding (Russ Anderson) No. 105.

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<sup>1398</sup> McLinko's ECSFM at No. 91.

<sup>1399</sup> MSD-280 (Board Report) at 21.

<sup>1400</sup> MSD-300 (Rawson Tr.) at 84:3-86:1; MSD-581 (Clegg Tr.) at 48:20-50:1.

<sup>1401</sup> Respondent Julian's Objections to Enforcement Counsel's Motion for Summary Disposition Exhibits.

<sup>1402</sup> MSD-101; MSD-546 (Stevens Tr.) at 34:13-35:25; 184:9-16; MSD-582 (Sotoodeh Tr.) at 148:20-149:16; DiCristofaro Tr. 53:22-60:14, 62:2-63:25; MSD-128; MSD-129.

<sup>1403</sup> Respondent Julian's Objections to Enforcement Counsel's Motion for Summary Disposition Exhibits.

### **Enforcement Counsel’s Statement of Material Fact (Russ Anderson) No. 108**

**Russ Anderson:** Respondent Russ Anderson was aware that sandbagging was a common practice associated with the Jump into January campaign.<sup>1404</sup>

#### **Responses:**

**Russ Anderson:** In Statement No. 105 Russ Anderson objected to the use of exhibits supporting this Statement on the grounds that the evidence is irrelevant, immaterial, unreliable, or repetitive.<sup>1405</sup> The objection applies here as well, and is sustained for the reasons given regarding (Russ Anderson) No. 105.

### **Enforcement Counsel’s Statement of Material Fact (Russ Anderson) No. 109**

The Bank had data capabilities to show a strong correlation between Jump into January and sales practices misconduct.<sup>1406</sup> Nonetheless, Respondent Russ Anderson never asked the Bank’s Financial Crimes Risk Management Team to run analytics and discern a relationship between Jump into January and sales practices misconduct.<sup>1407</sup>

#### **Responses:**

**Russ Anderson:** In Statement No. 105 Russ Anderson objected to the use of exhibits supporting this Statement on the grounds that the evidence is irrelevant, immaterial, unreliable, or repetitive.<sup>1408</sup> The objection applies here as well, and is sustained for the reasons given regarding (Russ Anderson) No. 105.

### **Enforcement Counsel’s Statement of Material Fact (Russ Anderson) No. 110 and (Julian and McLinko) No. 92**

Bank employees faced corrective actions for failing to meet their sales goals up to and including termination.<sup>1409</sup>

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<sup>1404</sup> MSD-225 at 1.

<sup>1405</sup> Respondent Julian’s Objections to Enforcement Counsel’s Motion for Summary Disposition Exhibits.

<sup>1406</sup> MSD-101; MSD-297 (Richards Tr.) at 217:3-222:21 (May 1, 2018).

<sup>1407</sup> MSD-297 (Richards Tr.) at 222:6-10.

<sup>1408</sup> Respondent Julian’s Objections to Enforcement Counsel’s Motion for Summary Disposition Exhibits.

<sup>1409</sup> MSD-78; MSD-549 (Holliday Tr.) at 25:7-27:25; MSD-300 (Rawson Tr.) at 27:2-29:20; MSD-142; MSD-578 (Hurley Tr.) at 34:15-35:14; MSD-580 (Henderson Tr.) at 133:5-10; MSD-291 (Callahan Tr.) at 23:13-24:13; MSD-579 (Schulte Tr.) at 97:11-99:7; MSD-78; MSD-79 (“We have been made aware that some team members have actually be[en] form[ally] counseled for making \$104% and 110% of their goals. In addition we discovered that one manager was getting ready to terminate a banker for being at [only] 105% [of his sales goals].”); MSD-142; MSD-



## **Responses:**

**Russ Anderson** responded by averring that the cited documentation does not establish that the Community Bank imposed significant pressure on its employees to meet its unreasonable sales goals throughout Ms. Russ Anderson's tenure as Group Risk Officer; and incorporated Respondent Julian's response.<sup>1410</sup>

**Julian** disputed the claim by asserting that there were other corrective actions that may be used, that the consequences of not meeting sales goals "varied a little bit by manager" and "corrective action" could include teaching or coaching the employee on how to meet the sales goals and did not necessarily involve adverse consequences for the employee.<sup>1411</sup>

I find an insufficient factual basis has been presented to establish a dispute in this Response to create a controverted material fact. Accordingly, the Recommended Decision will include a factual finding as to Respondents Julian and McLinko that Bank employees faced corrective actions for failing to meet their sales goals up to and including termination.

**McLinko** incorporated Respondent Julian's Response.<sup>1412</sup>

## **Enforcement Counsel's Statement of Material Fact (Russ Anderson) No. 111 and (Julian and McLinko) No. 94**

Standard language on Informal Warning corrective action documents stated, "If your sales performance does not improve to an acceptable level, further action up to and including termination of employment may result. If, at any time after this corrective action, you do not sustain your performance at an overall acceptable level, further action up to and including termination of employment may result."<sup>1413</sup>

## **Responses:**

**Russ Anderson** incorporated Respondent Julian's response.<sup>1414</sup>

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44; MSD-199 (Freeman Decl.) at 3 ("If employees consistently failed to meet sales goals, they could receive counseling and a low or non-satisfactory performance rating, which could eventually lead to termination.").

<sup>1410</sup> Russ Anderson's ECSFM at No. 110.

<sup>1411</sup> Julian's ECSFM at No. 92, quoting MSD-549 at 25:19-27:18); citing also MSD-300 at 28:22-29:23 (testifying that depending on the "boss that [she] was talking to" and the "approach" they had, reactions would differ when she failed to meet her sales goals).

<sup>1412</sup> McLinko's ECSFM at No. 92.

<sup>1413</sup> MSD-78 at 2 (emphasis added).

<sup>1414</sup> Russ Anderson's ECSFM at No. 111.

**Julian** objected to the use of the Informal Warning on the grounds that the evidence is irrelevant, immaterial, unreliable, or repetitive.<sup>1415</sup> The objection is sustained. Given the passage of time between the issuance of the Warning and the filing of the Notice of Charges, given the Warning's remote and tangential relationship with the material claims presented in the Notice of Charges, given the potential for confusion that admitting evidence of the Warning presents, given the redundant nature of the material facts presented in the Warning when compared with Exhibits that are more closely related in time, and given the marginal relevance of the claim, the Informal Warning will not be admitted in support of Enforcement Counsel's Motion. Accordingly, the claims presented in (Russ Anderson) No. 111 and (Julian and McLinko) No. 94 will not support Enforcement Counsel's Motion. The exclusion of the evidence does not, however, create a factual basis that would prevent granting Enforcement Counsel's Motion.

**McLinko** incorporated Respondent Julian's Response.<sup>1416</sup>

### **Enforcement Counsel's Statement of Material Fact (Russ Anderson) No. 112 and (Julian and McLinko) No. 93**

From 2011 through third quarter 2016, the Bank terminated approximately 8,520 employees for sales performance issues, including failure to meet sales goals.<sup>1417</sup>

#### **Responses:**

**Russ Anderson** responded by averring that the cited documentation does not establish that the Community Bank imposed significant pressure on its employees to meet its unreasonable sales goals throughout Ms. Russ Anderson's tenure as Group Risk Officer; and incorporated Respondent Julian's response.<sup>1418</sup>

I find an insufficient factual basis has been presented to establish a dispute in this Response to create a controverted material fact. Accordingly, the Recommended Decision will include a factual finding as to Respondent Russ Anderson that from 2011 through third quarter 2016, the Bank terminated approximately 8,520 employees for sales performance issues, including failure to meet sales goals.

**Julian** disputed the claim by asserting the email "appears to refer to employees "[t]erminated for sales performance issues," which included "failing to meet sales goals related to sales

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<sup>1415</sup> Respondent Julian's Objections to Enforcement Counsel's Motion for Summary Disposition Exhibits.

<sup>1416</sup> McLinko's ECSFM at No. 94.

<sup>1417</sup> MSD-44.

<sup>1418</sup> Russ Anderson's ECSFM at No. 112.

production, sales activities or appropriate sales behavior.”<sup>1419</sup> Therefore he avers the evidence shows that “[s]ales performance issues,” as Paragraph 93 describes, were not limited to “failure to meet sales goals.” The quoted language does not create a material controverted fact, as the quoted language states the terminations were for failure to reach sales goals – which is what the Statement avers.

I find an insufficient factual basis has been presented to establish a dispute in this Response to create a controverted material fact. Accordingly, the Recommended Decision will include a factual finding as to Respondents Julian and McLinko that from 2011 through third quarter 2016, the Bank terminated approximately 8,520 employees for sales performance issues, including failure to meet sales goals.

**McLinko** incorporated Respondent Julian’s Response.<sup>1420</sup>

### **Enforcement Counsel’s Statement of Material Fact (Russ Anderson) No. 113 and (Julian and McLinko) No. 95**

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. . . .”<sup>1421</sup>

#### **Responses:**

**Russ Anderson** responded by averring that the cited documentation does not establish that the Community Bank imposed significant pressure on its employees to meet its unreasonable sales goals throughout Ms. Russ Anderson’s tenure as Group Risk Officer; and incorporated Respondent Julian’s response.<sup>1422</sup>

I find an insufficient factual basis has been presented to establish a dispute in this Response to create a controverted material fact. Accordingly, the Recommended Decision will include a factual finding as to Respondent Russ Anderson that 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.

**Julian** did not present evidence controverting the claim, but instead averred the Board Report was unreliable because it had been prepared by the same firm that represented the

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<sup>1419</sup> Julian’s ECSFM at No.93, quoting MSD-044 at 2.

<sup>1420</sup> McLinko’s ECSFM at No. 93.

<sup>1421</sup> MSD-280 (Board Report) at 20.

<sup>1422</sup> Russ Anderson’s ECSFM at No. 113.

Independent Directors against a shareholder action.<sup>1423</sup>

I find an insufficient factual basis has been presented to establish a dispute in this Response to create a controverted material fact. Accordingly, the Recommended Decision will include a factual finding as to Respondents Julian and McLinko that 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.

**McLinko** incorporated Respondent Julian's Response.<sup>1424</sup>

### **Enforcement Counsel's Statement of Material Fact (Russ Anderson) No. 114 and (Julian and McLinko) No. 96**

The Board Report concluded that the Community Bank's performance management, including the pressure imposed on employees to meet sales goals, added significant additional risk to the Community Bank's sales model. Due to Community Bank leadership's view that the retail bank should be compared not to other banks but to non-bank retailers, there was a tolerance for high employee turnover. The Board Report found that "Community Bank- wide rolling 12-month average turnover reached at least 30% in every period from January 2011 to December 2015, and as high as 41% for the 12-month period ending in October 2012."<sup>1425</sup>

#### **Responses:**

**Russ Anderson** incorporated Respondent Julian's response.<sup>1426</sup>

**Julian** objected to the use of the findings pertaining to turnover between January 2011 and December 2015 on the grounds that the evidence is irrelevant, immaterial, unreliable, or repetitive.<sup>1427</sup> The objection is sustained. Given the passage of time between the turnover data and the filing of the Notice of Charges, given the data's remote and tangential relationship with the material claims presented in the Notice of Charges, given the potential for confusion that admitting the data presents, given the redundant nature of the material facts presented in the data when compared with Exhibits that are more closely related in time, and given the marginal relevance of the data, the data will not be admitted in support of Enforcement Counsel's Motion.

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<sup>1423</sup> Julian's ECSFM at No.95.

<sup>1424</sup> McLinko's ECSFM at No. 95.

<sup>1425</sup> MSD-280 at 27-28.

<sup>1426</sup> Russ Anderson's ECSFM at No. 114.

<sup>1427</sup> Respondent Julian's Objections to Enforcement Counsel's Motion for Summary Disposition Exhibits.

Accordingly, the claims presented in (Russ Anderson) No. 114 and (Julian and McLinko) No. 96 will not support Enforcement Counsel's Motion. The exclusion of the data does not, however, create a factual basis that would prevent granting Enforcement Counsel's Motion.

**McLinko** incorporated Respondent Julian's Response.<sup>1428</sup>

**Enforcement Counsel's Statement of Material Fact (Russ Anderson) No. 115 and (Julian and McLinko) No. 97**

**Responses:**

Enforcement Counsel's Statements of Material Fact (Russ Anderson) No. 115 and (Julian and McLinko) No. 97 rely on exhibits presented to this Tribunal as being non-public. Pursuant to the OCC's Uniform Rules, while the proceedings in this administrative enforcement action are expressly required to be public, when presented with non-public documents the Administrative Law Judge is required to take all appropriate steps to preserve the confidentiality of such documents.<sup>1429</sup> Upon my review of the confidential documents supporting these Statements of Material Fact, and after weighing the expectation that all of the proceedings shall be public against the requirement that I protect against the disclosure of non-public information, I find the evidentiary value of these exhibits to be sufficiently marginal and duplicative as to warrant exclusion from this Order. Accordingly, this Order will not be based on any of the claims found in these Statements of Material Fact.

**Enforcement Counsel's Statement of Material Fact (Russ Anderson) No. 116 and (Julian and McLinko) No. 98**

Enforcement Counsel's Statements of Material Fact (Russ Anderson) No. 116 and (Julian and McLinko) No. 98 rely on exhibits presented to this Tribunal as being non-public. Pursuant to the OCC's Uniform Rules, while the proceedings in this administrative enforcement action are expressly required to be public, when presented with non-public documents the Administrative Law Judge is required to take all appropriate steps to preserve the confidentiality of such documents.<sup>1430</sup> Upon my review of the confidential documents supporting these Statements of Material Fact, and after weighing the expectation that all of the proceedings shall be public against the requirement that I protect against the disclosure of non-public information, I find the evidentiary value of these exhibits to be sufficiently marginal and duplicative as to warrant

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<sup>1428</sup> McLinko's ECSFM at No. 6.

<sup>1429</sup> See 12 C.F.R. § 19.33(b).

<sup>1430</sup> See 12 C.F.R. § 19.33(b).

exclusion from this Order. Accordingly, this Order will not be based on any of the claims found in these Statements of Material Fact.

**Enforcement Counsel’s Statement of Material Fact (Russ Anderson) No. 117 and (Julian and McLinko) No. 100**

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.<sup>1431</sup>

**Responses:**

**Russ Anderson** responded by noting the emails used in support of the claims were sent after she began her leave of absence; and described Ms. Hardison’s testimony as “speculative.”<sup>1432</sup>

I find an insufficient factual basis has been presented to establish a dispute in this Response to create a controverted material fact. Accordingly, the Recommended Decision will include a factual finding as to Respondent Russ Anderson that 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.

**Julian** offered no evidence that controverted a material claim, but disputed the claim by asserting that “even if employees faced ‘significant pressure’ that does not mean that sales goals were necessarily unreasonable.”<sup>1433</sup>

I find an insufficient factual basis has been presented to establish a dispute in this Response to create a controverted material fact. Accordingly, the Recommended Decision will include a factual finding as to Respondents Julian and McLinko that 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.

**McLinko** incorporated Respondent Julian’s Response.<sup>1434</sup>

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<sup>1431</sup> 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.

<sup>1432</sup> Russ Anderson’s ECSFM at No. 117.

<sup>1433</sup> Julian’s ECSFM at No. 100.

<sup>1434</sup> McLinko’s ECSFM at No. 100.

### **Enforcement Counsel’s Statement of Material Fact (Russ Anderson) No. 118 and (Julian and McLinko) No. 99**

In an email dated October 5, 2016, 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.”<sup>1435</sup>

#### **Responses:**

**Russ Anderson** disputed the claim upon the basis that she had left the Bank by the time the statement was made, and on the basis that the statement lacks any date references.<sup>1436</sup>

I find an insufficient factual basis has been presented to establish a dispute in this Response to create a controverted material fact. Accordingly, the Recommended Decision will include a factual finding as to Respondent Russ Anderson that in an email dated October 5, 2016, 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.”

**Julian** did not dispute the quoted language appears in the cited exhibit.<sup>1437</sup> Accordingly, the Recommended Decision will include a factual finding as to Respondents Julian and McLinko that in an email dated October 5, 2016, 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.”

**McLinko** incorporated Respondent Julian’s Response.<sup>1438</sup>

### **Enforcement Counsel’s Statement of Material Fact (Russ Anderson) No. 119**

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<sup>1435</sup> MSD-77; MSD-293A (Hardison Tr.) at 134:4- 137:11; McLinko Amended Answer ¶ 134.

<sup>1436</sup> Russ Anderson’s ECSFM at No. 118.

<sup>1437</sup> Julian’s ECSFM at No. 99.

<sup>1438</sup> McLinko’s ECSFM at No. 99.

Respondent Russ Anderson knew that employees feared termination for not meeting sales goals and were actually terminated for not meeting sales goals.<sup>1439</sup>

**Responses:**

**Russ Anderson** disputed the factual claim by averring that that the first time she heard rumors about terminations for failure to meet sales goals was sometime around 2013, and that she took steps thereafter to address the issue.<sup>1440</sup>

I find an insufficient factual basis has been presented to establish a dispute in this Response to create a controverted material fact. Accordingly, the Recommended Decision will include a factual finding as to Respondent Russ Anderson that she knew that employees feared termination for not meeting sales goals and were actually terminated for not meeting sales goals.

**Enforcement Counsel’s Statement of Material Fact (Julian and McLinko) No. 101**

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 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.”<sup>1441</sup>

**Responses:**

**Julian** did not dispute that the Statement accurately quote’s Mr. Julian’s sworn statement.<sup>1442</sup> Accordingly, the Recommended Decision will include a factual finding as to Respondents Julian and McLinko that 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 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

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<sup>1439</sup> MSD-94 at 10; MSD-98; MSD-142; MSD-128; MSD-129 (Respondent Russ Anderson being informed in January 2012 that employees were being given performance commitment forms if they do not meet goals); MSD-127; MSD-295 (Bacon Tr.) at 51:9-52:20; MSD-580 (Henderson Tr.) at 133:5-134:16.

<sup>1440</sup> Russ Anderson’s ECSFM at No. 119.

<sup>1441</sup> MSD-278 (Julian Tr.) at 25:4-26:11.

<sup>1442</sup> Julian’s ECSFM at No. 101.



on the culture of not only setting goals that appeared to have been in a number of appearances unattainable.”

**McLinko** incorporated Respondent Julian’s Response.<sup>1443</sup>

### **Enforcement Counsel’s Statement of Material Fact (Julian and McLinko) No. 102**

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.”<sup>1444</sup>

#### **Responses:**

**Julian** incorporated Respondent McLinko’s Response.<sup>1445</sup>

**McLinko** did not dispute that he gave the testimony shown in this Statement.<sup>1446</sup> Accordingly, the Recommended Decision will include a factual finding as to Respondents Julian and McLinko that during his March 2018 sworn statement, Respondent McLinko testified: “There was certainly the pressure of the goals and that sort of stuff, sales goals.”

### **Enforcement Counsel’s Statement of Material Fact (Russ Anderson) No. 120**

Respondent Russ Anderson testified that she was never aware of any formal written policy at the Bank that said employees could not be fired for failing to meet sales goals:

Q: Are you aware of any formal written policy at the bank that said employees could not be fired for failing to meet sales goals?

A: Well, I’m not – I’m not – steeply knowledgeable of the HR policies around that, but I did not have a knowledge of a policy like that. Doesn’t mean it didn’t exist. I just – I can’t say that I had one many my possession.

Q: You’ve never seen one poli - -- a policy like that; is that fair to say?

A: That would be fair to say,

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<sup>1443</sup> McLinko’s ECSFM at No. 101.

<sup>1444</sup> MSD-276 (McLinko Tr.) at 125:11-13.

<sup>1445</sup> Julian’s ECSFM at No. 102.

<sup>1446</sup> McLinko’s ECSFM at No. 102.

yes.<sup>1447</sup>

**Responses:**

**Russ Anderson** did not dispute that the quoted text was accurate.<sup>1448</sup> Accordingly, the Recommended Decision will include a factual finding as to Respondent Russ Anderson that she gave testimony as shown above.

**Enforcement Counsel’s Statement of Material Fact (Russ Anderson) No. 121**

In an email dated October 5, 2016, 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’ [*sic*] will show.”<sup>1449</sup>

**Responses:**

**Russ Anderson** disputed the claim on the ground that the statement quoted was made after she left the company.<sup>1450</sup>

I find an insufficient factual basis has been presented to establish a dispute in this Response to create a controverted material fact. Accordingly, the Recommended Decision will include a factual finding as to Respondent Russ Anderson that in an email dated October 5, 2016, 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’ [*sic*] will show.”

**Enforcement Counsel’s Statement of Material Fact (Russ Anderson) No. 122**

Only after sales goals in the Community Bank were eliminated in October 2016 did the Bank issue internal guidance stating that terminations for failure to meet sales goals would not be

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<sup>1447</sup> MSD-266 (Russ Anderson Dep. Tr.) at 53:14-24.

<sup>1448</sup> Russ Anderson’s ECSFM at No. 120.

<sup>1449</sup> MSD-77; MSD-293A (Hardison Tr.) at 134:4- 137:11, McLinko Amended Answer ¶ 134.

<sup>1450</sup> Russ Anderson’s ECSFM at No. 121.

permitted.<sup>1451</sup>

**Responses:**

**Russ Anderson** disputed the claim, averring that she believed throughout her entire tenure that an employee could not be fired for failure to meet sales goal.<sup>1452</sup>

I find an insufficient factual basis has been presented to establish a dispute in this Response to create a controverted material fact. Accordingly, the Recommended Decision will include a factual finding as to Respondent Russ Anderson that only after sales goals in the Community Bank were eliminated in October 2016 did the Bank issue internal guidance stating that terminations for failure to meet sales goals would not be permitted.

**Enforcement Counsel’s Statement of Material Fact (Russ Anderson) No. 123**

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.<sup>1453</sup>

**Responses:**

**Russ Anderson** responded by averring that the cited documentation does not establish that the Community Bank imposed significant pressure on its employees to meet its unreasonable sales goals throughout Ms. Russ Anderson’s tenure as Group Risk Officer; and incorporated Respondent Julian’s response to (Julian and McLinko) No. 100.<sup>1454</sup>

**Julian** disputed claims in (Julian and McLinko) No. 100 – which averred that employees remained under significant pressure to meet unreasonable sales goals even in September 2016, a month before the Bank eliminated sales goals in the Community Bank. He asserted that “even if

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<sup>1451</sup> MSD-80.

<sup>1452</sup> Russ Anderson’s ECSFM at No. 122.

<sup>1453</sup> MSD-103 (“During one interview a team member was warned that if he did not achieve his sales goals that he would be transferred to a store where someone had been shot and killed. If team members did not hit their sales goal, they would acquire an additional call night on top of the already scheduled call night in the store. Lastly, separate team member indicated that if they did not make enough appointments they will be forced to walk out in the hot sun around the block.” 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)); MSD-148.

<sup>1454</sup> Russ Anderson’s ECSFM at No. 114.

employees faced ‘significant pressure,’ that does not mean that sales goals were necessarily unreasonable.<sup>1455</sup>

I find an insufficient factual basis has been presented to establish a dispute in this Response to create a controverted material fact. Accordingly, the Recommended Decision will include a factual finding as to Respondent Russ Anderson that 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.

### **The significant pressure to meet unreasonable sales goals led Bank employees to engage in sales practices misconduct**

#### **Enforcement Counsel’s Statement of Material Fact (Russ Anderson) No. 124 and (Julian and McLinko) No. 103**

By no later than 2002, pressure to meet the Community Bank’s unreasonable sales goals led employees to engage in sales practices misconduct.<sup>1456</sup>

#### **Responses:**

**Russ Anderson** incorporated Respondent Julian’s response.<sup>1457</sup>

**Julian** objected to the use of evidence supporting this Statement on the grounds that the evidence is irrelevant, immaterial, unreliable, or repetitive.<sup>1458</sup> The objection is sustained. Given the passage of time between the creation of the relied-upon documents and the filing of the Notice of Charges, given the documents’ remote and tangential relationship with the material claims presented in the Notice of Charges, given the potential for confusion that admitting the documents presents, and given the redundant nature of the material facts presented in the documents when compared with Exhibits that are more closely related in time, the relied-upon contents of the documents will not be admitted in support of Enforcement Counsel’s Motion. Accordingly, the claims presented in (Russ Anderson) No. 124 and (Julian and McLinko) No. 103 will not support Enforcement Counsel’s Motion. The exclusion of the relied-upon contents of the documents does not, however, create a factual basis that would prevent granting Enforcement Counsel’s Motion.

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<sup>1455</sup> Julian’s ECSFM at No. 100.

<sup>1456</sup> MSD-2; MSD-81; MSD- 236; MSD-556; MSD-559; MSD-613.

<sup>1457</sup> Russ Anderson’s ECSFM at No. 124.

<sup>1458</sup> Respondent Julian’s Objections to Enforcement Counsel’s Motion for Summary Disposition Exhibits.

**McLinko** incorporated Respondent Julian's Response.<sup>1459</sup>

**Enforcement Counsel's Statement of Material Fact (Russ Anderson) No. 125 and (Julian and McLinko) No. 104**

In 2002, nearly an entire branch of Bank employees in Fort Collins, Colorado had been involved in gaming, including submitting improper teller referrals and ordering debit cards for customers without consent. (MSD-559). During the investigation of the misconduct, the "consistent response from many of the tellers and the Teller Manager was that they did not do this for the sake of the bonuses but because the Branch Manager was putting the staff under severe pressure to increase sales and it was a way to get her off of their backs."<sup>1460</sup>

**Responses:**

**Russ Anderson** incorporated Respondent Julian's response.<sup>1461</sup>

**Julian** objected to the use of evidence supporting this Statement on the grounds that the evidence is irrelevant, immaterial, unreliable, or repetitive.<sup>1462</sup> The objection is sustained. Given the passage of time between the creation of the relied-upon documents and the filing of the Notice of Charges, given the documents' remote and tangential relationship with the material claims presented in the Notice of Charges, given the potential for confusion that admitting the documents presents, and given the redundant nature of the material facts presented in the documents when compared with Exhibits that are more closely related in time, the relied-upon contents of the documents will not be admitted in support of Enforcement Counsel's Motion. Accordingly, the claims presented in (Russ Anderson) No. 125 and (Julian and McLinko) No. 104 will not support Enforcement Counsel's Motion. The exclusion of the relied-upon contents of the documents does not, however, create a factual basis that would prevent granting Enforcement Counsel's Motion.

**McLinko** incorporated Respondent Julian's Response.<sup>1463</sup>

**Enforcement Counsel's Statement of Material Fact (Russ Anderson) No. 126 and**

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<sup>1459</sup> McLinko's ECSFM at No. 103.

<sup>1460</sup> MSD-613.

<sup>1461</sup> Russ Anderson's ECSFM at No. 125.

<sup>1462</sup> Respondent Julian's Objections to Enforcement Counsel's Motion for Summary Disposition Exhibits.

<sup>1463</sup> McLinko's ECSFM at No. 104.

### **(Julian and McLinko) No. 105**

In 2003, on a Community Bank leadership call, the Community Bank's former Group Finance Officer observed during a sales integrity update: "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."<sup>1464</sup>

#### **Responses:**

**Russ Anderson** incorporated Respondent Julian's response.<sup>1465</sup>

**Julian** objected to the use of evidence supporting this Statement on the grounds that the evidence is irrelevant, immaterial, unreliable, or repetitive.<sup>1466</sup> The objection is sustained. Given the passage of time between the creation of the relied-upon documents and the filing of the Notice of Charges, given the documents' remote and tangential relationship with the material claims presented in the Notice of Charges, given the potential for confusion that admitting the documents presents, and given the redundant nature of the material facts presented in the documents when compared with Exhibits that are more closely related in time, the relied-upon contents of the documents will not be admitted in support of Enforcement Counsel's Motion. Accordingly, the claims presented in (Russ Anderson) No. 126 and (Julian and McLinko) No. 105 will not support Enforcement Counsel's Motion. The exclusion of the relied-upon contents of the documents does not, however, create a factual basis that would prevent granting Enforcement Counsel's Motion.

**McLinko** incorporated Respondent Julian's Response.<sup>1467</sup>

### **Enforcement Counsel's Statement of Material Fact (Russ Anderson) No. 127 and (Julian and McLinko) No. 106**

Corporate Investigations was a department within the Bank responsible for investigating employee misconduct.<sup>1468</sup>

#### **Responses:**

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<sup>1464</sup> MSD-81.

<sup>1465</sup> Russ Anderson's ECSFM at No. 126.

<sup>1466</sup> Respondent Julian's Objections to Enforcement Counsel's Motion for Summary Disposition Exhibits.

<sup>1467</sup> McLinko's ECSFM at No. 105.

<sup>1468</sup> Russ Anderson Amended Answer, ¶ 50; Julian Amended Answer ¶ 50; McLinko Amended Answer ¶ 50.

**Russ Anderson** did not dispute this claim.<sup>1469</sup> **Julian** did not dispute this claim.<sup>1470</sup> **McLinko** did not dispute this claim.<sup>1471</sup> Accordingly, the Recommended Decision will include a factual finding as to Respondent Russ Anderson that Corporate Investigations was a department within the Bank responsible for investigating employee misconduct.

### **Enforcement Counsel’s Statement of Material Fact (Russ Anderson) No. 128 and (Julian and McLinko) No. 107**

In 2004, Corporate Investigations (over the years, this department also had other names, including “Corporate Security,” “Special Investigations,” and “Internal Investigations”) disseminated to senior Bank executives a report prepared by Marty Weber, Special Investigations Manager (“2004 Investigation Report”). The 2004 Investigation Report concluded, regarding the root cause of employee sales gaming, that “whether real or perceived, team members on the current Corporate Sales Incentive Plan feel they cannot make sales goals without gaming the system. The incentive to cheat is based on the fear of losing their jobs for not meeting performance expectations.”<sup>1472</sup> The report continued: “in approximately 90% of the cases where confessions are obtained, the confessed team member related they did not cheat the system for the purpose of monetary gain. In almost every case they related they ‘gamed’ the system in order to preserve their employment based on the fact that they are expected to meet certain goals or lose their job.”<sup>1473</sup>

#### **Responses:**

**Russ Anderson** incorporated Respondent Julian’s response.<sup>1474</sup>

**Julian** objected to the use of evidence supporting this Statement on the grounds that the evidence is irrelevant, immaterial, unreliable, or repetitive.<sup>1475</sup> The objection is sustained. Given the passage of time between the creation of the relied-upon documents and the filing of the Notice of Charges, given the documents’ remote and tangential relationship with the material claims presented in the Notice of Charges, given the potential for confusion that admitting the documents presents, and given the redundant nature of the material facts presented in the

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<sup>1469</sup> Russ Anderson’s ECSFM at No. 127.

<sup>1470</sup> Julian’s ECSFM at No. 106.

<sup>1471</sup> McLinko’s ECSFM at No. 106.

<sup>1472</sup> MSD-2 at 3.

<sup>1473</sup> MSD-2 at 5.

<sup>1474</sup> Russ Anderson’s ECSFM at No. 128.

<sup>1475</sup> Respondent Julian’s Objections to Enforcement Counsel’s Motion for Summary Disposition Exhibits.

documents when compared with Exhibits that are more closely related in time, the relied-upon contents of the documents will not be admitted in support of Enforcement Counsel's Motion. Accordingly, the claims presented in (Russ Anderson) No. 126 and (Julian and McLinko) No. 107 will not support Enforcement Counsel's Motion. The exclusion of the relied-upon contents of the documents does not, however, create a factual basis that would prevent granting Enforcement Counsel's Motion.

**McLinko** incorporated Respondent Julian's Response.<sup>1476</sup>

### **Enforcement Counsel's Statement of Material Fact (Russ Anderson) No. 129 and (Julian and McLinko) No. 108**

The 2004 Investigation Report warned about reputational risks to the Bank and noted that judges had "almost exclusively rule[d] in favor of the former team member" in unemployment insurance cases involving Bank employees terminated for sales integrity violations. The judges made "made disparaging comments" about the sales incentive plan.<sup>1477</sup>

#### **Responses:**

**Russ Anderson** incorporated Respondent Julian's response.<sup>1478</sup>

**Julian** objected to the use of evidence supporting this Statement on the grounds that the evidence is irrelevant, immaterial, unreliable, or repetitive.<sup>1479</sup> The objection is sustained. Given the passage of time between the creation of the relied-upon documents and the filing of the Notice of Charges, given the documents' remote and tangential relationship with the material claims presented in the Notice of Charges, given the potential for confusion that admitting the documents presents, and given the redundant nature of the material facts presented in the documents when compared with Exhibits that are more closely related in time, the relied-upon contents of the documents will not be admitted in support of Enforcement Counsel's Motion. Accordingly, the claims presented in (Russ Anderson) No. 126 and (Julian and McLinko) No. 108 will not support Enforcement Counsel's Motion. The exclusion of the relied-upon contents of the documents does not, however, create a factual basis that would prevent granting Enforcement Counsel's Motion.

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<sup>1476</sup> McLinko's ECSFM at No. 107.

<sup>1477</sup> MSD-2 at 5; MSD-544 (Weber Tr.) at 27:20-32:8.

<sup>1478</sup> Russ Anderson's ECSFM at No. 129.

<sup>1479</sup> Respondent Julian's Objections to Enforcement Counsel's Motion for Summary Disposition Exhibits.



**McLinko** incorporated Respondent Julian's Response.<sup>1480</sup>

**Enforcement Counsel's Statement of Material Fact (Russ Anderson) No. 130 and (Julian and McLinko) No. 109**

Special Investigations Manager Weber conveyed a similar message in other contemporaneous emails about gaming, explaining in one email that "we are hearing from almost all gaming suspects that they do so in order to preserve their jobs."<sup>1481</sup>

**Responses:**

**Russ Anderson** incorporated Respondent Julian's response.<sup>1482</sup>

**Julian** objected to the use of evidence supporting this Statement on the grounds that the evidence is irrelevant, immaterial, unreliable, or repetitive.<sup>1483</sup> The objection is sustained. Given the passage of time between the creation of the relied-upon documents and the filing of the Notice of Charges, given the documents' remote and tangential relationship with the material claims presented in the Notice of Charges, given the potential for confusion that admitting the documents presents, and given the redundant nature of the material facts presented in the documents when compared with Exhibits that are more closely related in time, the relied-upon contents of the documents will not be admitted in support of Enforcement Counsel's Motion. Accordingly, the claims presented in (Russ Anderson) No. 126 and (Julian and McLinko) No. 109 will not support Enforcement Counsel's Motion. The exclusion of the relied-upon contents of the documents does not, however, create a factual basis that would prevent granting Enforcement Counsel's Motion.

**McLinko** incorporated Respondent Julian's Response.<sup>1484</sup>

**Enforcement Counsel's Statement of Material Fact (Julian and McLinko) No. 110**

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<sup>1480</sup> McLinko's ECSFM at No. 108.

<sup>1481</sup> MSD-556 (in 2004). In another 2004 email about gaming, Mr. Weber explained: "The majority of terminated employees received no financial benefit but stated they 'knew it was wrong but could either follow the Code of Ethics and get fired for poor performance or cheat and hope not to get caught, thereby maintaining their jobs'. Each and everyone stated they were in a 'no win situation'." (MSD-236 (adding that the case and termination numbers "of course, are only the situations we know of. There is undoubtedly more occurring.")).

<sup>1482</sup> Russ Anderson's ECSFM at No. 130.

<sup>1483</sup> Respondent Julian's Objections to Enforcement Counsel's Motion for Summary Disposition Exhibits.

<sup>1484</sup> McLinko's ECSFM at No. 110.

Enforcement Counsel’s Statement of Material Fact (Julian and McLinko) No. 110 relies on exhibits presented to this Tribunal as being non-public. Pursuant to the OCC’s Uniform Rules, while the proceedings in this administrative enforcement action are expressly required to be public, when presented with non-public documents the Administrative Law Judge is required to take all appropriate steps to preserve the confidentiality of such documents.<sup>1485</sup> Upon my review of the confidential documents supporting this Statement of Material Fact, and after weighing the expectation that all of the proceedings shall be public against the requirement that I protect against the disclosure of non-public information, I find the evidentiary value of these exhibits to be sufficiently marginal and duplicative as to warrant exclusion from this Order. Accordingly, this Order will not be based on any of the claims found in this Statement of Material Fact.

### **Enforcement Counsel’s Statement of Material Fact (Russ Anderson) No. 131**

Enforcement Counsel’s Statement of Material Fact (Russ Anderson) No. 131 relies on exhibits presented to this Tribunal as being non-public. Pursuant to the OCC’s Uniform Rules, while the proceedings in this administrative enforcement action are expressly required to be public, when presented with non-public documents the Administrative Law Judge is required to take all appropriate steps to preserve the confidentiality of such documents.<sup>1486</sup> Upon my review of the confidential documents supporting this Statement of Material Fact, and after weighing the expectation that all of the proceedings shall be public against the requirement that I protect against the disclosure of non-public information, I find the evidentiary value of these exhibits to be sufficiently marginal and duplicative as to warrant exclusion from this Order. Accordingly, this Order will not be based on any of the claims found in this Statement of Material Fact.

### **Enforcement Counsel’s Statement of Material Fact (Russ Anderson) No. 132 and (Julian and McLinko) No. 111**

In 2009, the Head of Corporate Investigations wrote: “[W]e have heard for years that the sales pressure is the cause [of sales practices misconduct], and I for one do not doubt it for a minute. A standard line we hear is ‘I can play by the rules and get fired for not making unrealistic goals or I can cheat and hope I don’t get caught’.”<sup>1487</sup>

#### **Responses:**

**Russ Anderson** incorporated Respondent Julian’s response.<sup>1488</sup>

**Julian** disputed the claim, stating “Mr. Weber did not use the term “sales practices

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<sup>1485</sup> See 12 C.F.R. § 19.33(b).

<sup>1486</sup> See 12 C.F.R. § 19.33(b).

<sup>1487</sup> MSD-555.

<sup>1488</sup> Russ Anderson’s ECSFM at No. 131.

misconduct” nor, even if he had, would it possess the same definition that is currently used by Enforcement Counsel in this litigation.”

Enforcement Counsel cited MSD-555 in support of their Statement. That exhibit consists of an email dated April 14, 2009 from Michael Bacon to Marty Weber, an email dated April 14, 2009 from Marty Weber to Karen Emanuelson, an email dated April 14, 2009 from Karen Emanuelson to Marty Weber, and an email dated April 8, 2009 from Jonathan Evans to Marty Weber.<sup>1489</sup> Julian objected to the Statement on the ground that the supporting exhibit was irrelevant.<sup>1490</sup> Finding an insufficient nexus between the averments presented in the Statement and the material facts in issue, the objection is sustained. Accordingly, the claims presented in (Russ Anderson) No. 132 and (Julian and McLinko) No. 111 will not support Enforcement Counsel’s Motion. The exclusion of the claims appearing in the Statement does not, however, create a factual basis that would prevent granting Enforcement Counsel’s Motion.

**McLinko** incorporated Respondent Julian’s Response.<sup>1491</sup>

### **Enforcement Counsel’s Statement of Material Fact (Russ Anderson) No. 133 and (Julian and McLinko) No. 112**

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.<sup>1492</sup>

#### **Responses:**

**Russ Anderson** incorporated Respondent Julian’s response.<sup>1493</sup>

**Julian** did not offer evidence that contradicted the Statement’s claim, but he disputed the claim, averring that “from 2011 through 2015, only 2,112 employees engaged in likely simulated funding for purposes of “influenc[ing] compensation or career”—i.e., they

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<sup>1489</sup> Julian’s ECSFM at No. 111, citing MSD-555.

<sup>1490</sup> See Respondent Julian at Respondent Julian’s Objections to Enforcement Counsel’s Motion for Summary Disposition Exhibits.

<sup>1491</sup> McLinko’s ECSFM at No. 111.

<sup>1492</sup> 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.

<sup>1493</sup> Russ Anderson’s ECSFM at No. 133.

committed simulated funding out of fear of adverse consequences for missing sales goals.”<sup>1494</sup>

I find an insufficient factual basis has been presented to establish a dispute in this Response to create a controverted material fact. Accordingly, the Recommended Decision will include a factual finding as to Respondents Russ Anderson, Julian and McLinko that 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.

**McLinko** incorporated Respondent Julian’s Response.<sup>1495</sup>

### **Enforcement Counsel’s Statement of Material Fact (Russ Anderson) No. 134**

Respondent Russ Anderson was the Chair of the Community Banking Risk Management Committee.<sup>1496</sup>

#### **Responses:**

Russ Anderson did not dispute this claim. Accordingly, the Recommended Decision will include a factual finding as to Respondent Russ Anderson that she was the Chair of the Community Banking Risk Management Committee.

### **Enforcement Counsel’s Statement of Material Fact (Russ Anderson) No. 135 and (Julian and McLinko) No. 113**

In 2011, Respondent Russ Anderson identified sales practices misconduct as a “key scenario” for risk in two separate meeting packages for the Community Banking Risk Management Committee.<sup>1497</sup>

#### **Responses:**

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<sup>1494</sup> Julian’s ECSFM at No. 111, quoting MSD-226 at 7.

<sup>1495</sup> McLinko’s ECSFM at No. 112.

<sup>1496</sup> Russ Anderson Amended Answer ¶ 161; MSD-266 (Russ Anderson Dep. Tr.) at 172:6-8; MSD-208 (CBRMC 2013 charter).

<sup>1497</sup> Russ Anderson Amended Answer ¶ 164; MSD-94; MSD-255; MSD- 266 (Russ Anderson Dep. Tr.) at 149:9-23, 174:4-8. The presentation stated that “Team members manipulate or game product sales to increase compensation or sustain employment.” MSD-94 at 10 (emphasis added).

**Russ Anderson** incorporated Respondent Julian's response.<sup>1498</sup>

**Julian** objected to the use of the 2011 data on the grounds that the evidence is irrelevant, immaterial, unreliable, or repetitive.<sup>1499</sup> The objection is sustained. Given the passage of time between the events the data refers to and the filing of the Notice of Charges, given the data's remote and tangential relationship with the material claims presented in the Notice of Charges, given the potential for confusion that admitting the data presents, and given the redundant nature of the material facts presented in the data when compared with Exhibits that are more closely related in time, the data will not be admitted in support of Enforcement Counsel's Motion. Accordingly, the claims presented in (Russ Anderson) No. 135 and (Julian and McLinko) No. 113 will not support Enforcement Counsel's Motion. The exclusion of the data used in this Statement does not, however, create a factual basis that would prevent granting Enforcement Counsel's Motion.

**McLinko** incorporated Respondent Julian's Response.<sup>1500</sup>

### **Enforcement Counsel's Statement of Material Fact (Russ Anderson) No. 136**

Respondent Russ Anderson prepared the December 2011 presentation to the Community Banking Risk Management Committee.<sup>1501</sup> The presentation indicated that "[k]ey scenarios were identified based on estimated exposures and the ease of identifying and taking action to better mitigate the risk."<sup>1502</sup>

#### **Responses:**

Russ Anderson did not dispute that she prepared the December 2011 presentation to the Community Banking Risk Management Committee, nor did she dispute the presentation included what is shown above.<sup>1503</sup>

I find an insufficient factual basis has been presented to establish a dispute in this Response to create a controverted material fact. Accordingly, the Recommended Decision will include a factual finding as to Respondent Russ Anderson that she prepared the December 2011 presentation to the Community Banking Risk Management Committee, and that the presentation

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<sup>1498</sup> Russ Anderson's ECSFM at No. 135.

<sup>1499</sup> Respondent Julian's Objections to Enforcement Counsel's Motion for Summary Disposition Exhibits.

<sup>1500</sup> McLinko's ECSFM at No. 113.

<sup>1501</sup> MSD-266 (Russ Anderson Dep. Tr.) at 173:14-19.

<sup>1502</sup> MSD-94 at 5.

<sup>1503</sup> Russ Anderson's ECSFM at No. 136.

indicated that “[k]ey scenarios were identified based on estimated exposures and the ease of identifying and taking action to better mitigate the risk.”

### **Enforcement Counsel’s Statement of Material Fact (Russ Anderson) No. 137**

By 2011 at the latest, Respondent Russ Anderson understood that team members engaged in sales practices misconduct to increase compensation or to keep their jobs.<sup>1504</sup>

#### **Responses:**

**Russ Anderson** disputed that she knew by 2011 that sales pressure caused sales practices misconduct.<sup>1505</sup> She objected to the use of MSD-94 on the grounds of relevance, which exhibit includes an email from Ms. Russ Anderson and an attached Scenario Analysis regarding “risk drivers” presented in a 2011 Community Banking Executive Summary.<sup>1506</sup>

Enforcement Counsel supported this Statement by referring to MSD-94, which has been attributed to Respondent Russ Anderson and which appears to have been created in 2011. Given the passage of time between the creation of this Exhibit and the filing of the Notice of Charges, given the Exhibit’s remote and tangential relationship with the material claims presented in the Notice of Charges, given the potential for confusion that admitting the Exhibit presents, given the redundant nature of the material facts presented in the Exhibit when compared with Exhibits that are more closely related in time, and given the marginal relevance of the claim regarding what Respondent Russ Anderson did or did not know in 2011, the Exhibit will not be admitted in support of Enforcement Counsel’s Motion. Accordingly, the claims presented in (Russ Anderson) No. 137 will not support Enforcement Counsel’s Motion as to Respondent Russ Anderson. The exclusion of the Exhibit does not, however, create a factual basis that would prevent granting Enforcement Counsel’s Motion.

### **Enforcement Counsel’s Statement of Material Fact (Russ Anderson) No. 138**

By 2011 at the latest, Respondent Russ Anderson understood that the loss estimate for the bank associated with sales practices misconduct was \$187 million.<sup>1507</sup>

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<sup>1504</sup> MSD-266 (Russ Anderson Dep. Tr.) at 176:8-12; MSD-94 at 10 (“Team members manipulate or game product sales to increase compensation or sustain employment. This misconduct could also lead to allegations of abusive practices or disparate impact.”); MSD-142.

<sup>1505</sup> Russ Anderson’s ECSFM at No. 137

<sup>1506</sup> Respondent Claudia Russ Anderson’s Memorandum of Law in Opposition to Motion for Summary Disposition at 35.

<sup>1507</sup> MSD-266 (Russ Anderson Dep. Tr.) at 177:7-18; MSD-94 at 10.

## **Responses:**

**Russ Anderson** averred that the purported \$187 million loss estimate for the Bank associated with sales practices misconduct is misleading because it lacks the context in which the estimate was generated. She averred that the sales practices misconduct analysis in MSD-94 was a “black swan” hypothetical and the \$187 million loss estimate was generated by Mr. Raphaelson for inclusion in the hypothetical exercise. (MSD-266 (Russ Anderson Dep. Tr.) at 178:3-5).<sup>1508</sup> She objected to the use of MSD-94 on the grounds of relevance, which exhibit includes an email from Ms. Russ Anderson and an attached Scenario Analysis regarding “risk drivers” presented in a 2011 Community Banking Executive Summary.<sup>1509</sup>

Enforcement Counsel supported this Statement by referring to MSD-94, which has been attributed to Respondent Russ Anderson and which appears to have been created in 2011. Given the passage of time between the creation of this Exhibit and the filing of the Notice of Charges, given the Exhibit’s remote and tangential relationship with the material claims presented in the Notice of Charges, given the potential for confusion that admitting the Exhibit presents, given the redundant nature of the material facts presented in the Exhibit when compared with Exhibits that are more closely related in time, and given the marginal relevance of the claim regarding what Respondent Russ Anderson did or did not know in 2011, the Exhibit will not be admitted in support of Enforcement Counsel’s Motion as to Respondent Russ Anderson. Accordingly, the claims presented in (Russ Anderson) No. 138 will not support Enforcement Counsel’s Motion. The exclusion of the Exhibit does not, however, create a factual basis that would prevent granting Enforcement Counsel’s Motion.

## **Enforcement Counsel’s Statement of Material Fact (Russ Anderson) No. 139**

By 2011 at the latest, Respondent Russ Anderson understood that employees engaging in sales practices misconduct could cause customer harm.<sup>1510</sup>

## **Responses:**

**Russ Anderson** did not dispute that she understood throughout the entirety of her career that employees who engage in sales practices misconduct create the potential for customer harm. She disputed that she had any knowledge in 2011 or prior thereto of actual, ongoing sales

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<sup>1508</sup> Russ Anderson’s ECSFM at No. 138.

<sup>1509</sup> Respondent Claudia Russ Anderson’s Memorandum of Law in Opposition to Motion for Summary Disposition at 35.

<sup>1510</sup> MSD-266 (Russ Anderson Dep. Tr.) at 177:20-178:16; MSD-94 at 10.

practices misconduct within Community Bank.<sup>1511</sup>

Enforcement Counsel supported this Statement by referring to MSD-94, which has been attributed to Respondent Russ Anderson and which appears to have been created in 2011. Given the passage of time between the creation of this Exhibit and the filing of the Notice of Charges, given the Exhibit's remote and tangential relationship with the material claims presented in the Notice of Charges, given the potential for confusion that admitting the Exhibit presents, given the redundant nature of the material facts presented in the Exhibit when compared with Exhibits that are more closely related in time, and given the marginal relevance of the claim regarding what Respondent Russ Anderson did or did not know in 2011, the Exhibit will not be admitted in support of Enforcement Counsel's Motion as to Respondent Russ Anderson. Accordingly, the claims presented in (Russ Anderson) No. 139 will not support Enforcement Counsel's Motion. The exclusion of the Exhibit does not, however, create a factual basis that would prevent granting Enforcement Counsel's Motion.

#### **Enforcement Counsel's Statement of Material Fact (Russ Anderson) No. 140**

By 2011 at the latest, Respondent Russ Anderson anticipated litigation arising from employees engaging in sales practices misconduct.<sup>1512</sup>

#### **Responses:**

**Russ Anderson** did not dispute that that as early as 2011 she recognized that a "black swan" sales practices misconduct event could trigger litigation.<sup>1513</sup> She objected, however, to the use of MSD-94 on the grounds of relevance, which exhibit includes an email from Ms. Russ Anderson and an attached Scenario Analysis regarding "risk drivers" presented in a 2011 Community Banking Executive Summary.<sup>1514</sup>

Enforcement Counsel supported this Statement by referring to MSD-94, which has been attributed to Respondent Russ Anderson and which appears to have been created in 2011. Given the passage of time between the creation of this Exhibit and the filing of the Notice of Charges, given the Exhibit's remote and tangential relationship with the material claims presented in the Notice of Charges, given the potential for confusion that admitting the Exhibit presents, given the redundant nature of the material facts presented in the Exhibit when compared with Exhibits that are more closely related in time, and given the marginal relevance of the claim regarding

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<sup>1511</sup> Russ Anderson's ECSFM at No. 139.

<sup>1512</sup> MSD-266 (Russ Anderson Dep. Tr.) at 178:18-25; MSD-94 at 10.

<sup>1513</sup> Russ Anderson's ECSFM at No. 140.

<sup>1514</sup> Russ Anderson's ECSFM at No. 140.



what Respondent Russ Anderson did or did not know in 2011, the Exhibit will not be admitted in support of Enforcement Counsel’s Motion as to Respondent Russ Anderson. Accordingly, the claims presented in (Russ Anderson) No. 140 will not support Enforcement Counsel’s Motion. The exclusion of the Exhibit does not, however, create a factual basis that would prevent granting Enforcement Counsel’s Motion.

### **Enforcement Counsel’s Statement of Material Fact (Russ Anderson) No. 141**

In 2011, the Community Bank formed a “Sales Integrity Project Team” “to study and offer recommendations around the sales and sales integrity programs of the Community Bank.”<sup>1515</sup> Respondent Russ Anderson became the executive sponsor for the Sales Integrity Project Team.<sup>1516</sup> “Majority of the working team believe[d] that the sales culture, sales plan pressure, local performance expectations and messaging create fear among team member populations.”<sup>1517</sup>

#### **Responses:**

**Russ Anderson** disputed that the Exhibits cited in this Statement establish any knowledge on her part of the facts contained in the relied-upon Exhibits.<sup>1518</sup> Referring to MSD-95, she avers the exhibit is a copy of an email message from David Otsuka where he states that “Glen [] said that this project has been moved to Claudia Russ Anderson (presumably as Executive Sponsor) He said he’d connect back with me after his meeting with Claudia.” (MSD-95 at 1).<sup>1519</sup> She avers that she is not included in MSD-95 and there is no evidence that she took over this project.<sup>1520</sup>

Enforcement Counsel supported this Statement by referring to MSD-95, consisting of documents that have been attributed to an employee other than Respondent Russ Anderson and which appear to have been created in 2011 and 2012. Given the passage of time between the creation of the documents in this Exhibit and the filing of the Notice of Charges, given the Exhibit’s remote and tangential relationship with the material claims presented in the Notice of Charges, given the potential for confusion that admitting the Exhibit presents, given the redundant nature of the material facts presented in the Exhibit when compared with Exhibits that are more closely related

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<sup>1515</sup> MSD-95.

<sup>1516</sup> MSD-95.

<sup>1517</sup> MSD-96 at 11; *see also* MSD-232 (noting that “sales plan pressure and keeping your seat” and “managers telling [employees] they’ll be fired if they don’t hit the minimums causes sales integrity issues).

<sup>1518</sup> Russ Anderson’s ECSFM at No. 141.

<sup>1519</sup> Russ Anderson’s ECSFM at No. 141.

<sup>1520</sup> Russ Anderson’s ECSFM at No. 141.

in time, and given the marginal relevance of the claim regarding whether Respondent Russ Anderson was or was not the corporate sponsor for the Sales Integrity Project Team, the Exhibit will not be admitted in support of Enforcement Counsel's Motion as to Respondent Russ Anderson. Accordingly, the claims presented in (Russ Anderson) No. 140 will not support Enforcement Counsel's Motion. The exclusion of the Exhibit does not, however, create a controversy or factual basis that would prevent granting Enforcement Counsel's Motion for Summary Disposition.

#### **Enforcement Counsel's Statement of Material Fact (Julian and McLinko) No. 114**

In January 2013, Bart Deese, Respondent McLinko's direct report, informed him about a meeting with the Head of Corporate Investigations and stated, "Sales Integrity is still his #1 concern." Mr. Deese indicated he had "questioned [the Head of Corporate Investigations] as to whether they had discussed root cause for some of the items listed above and was it related to sales pressure. [The Head of Corporate Investigations] said he felt a lot of it was related to the sales goals and pressure..."<sup>1521</sup>

#### **Responses:**

Julian objected to the use of the 2013 data on the grounds that the evidence is irrelevant, immaterial, unreliable, or repetitive.<sup>1522</sup> The objection is sustained. Given the passage of time between the events the data refers to and the filing of the Notice of Charges, given the data's remote and tangential relationship with the material claims presented in the Notice of Charges, given the potential for confusion that admitting the data presents, and given the redundant nature of the material facts presented in the data when compared with Exhibits that are more closely related in time, the data will not be admitted in support of Enforcement Counsel's Motion. Accordingly, the claims presented in (Julian and McLinko) No. 114 will not support Enforcement Counsel's Motion. The exclusion of the data used in this Statement does not, however, create a factual basis that would prevent granting Enforcement Counsel's Motion.

**McLinko** incorporated Respondent Julian's Response.<sup>1523</sup>

#### **Enforcement Counsel's Statement of Material Fact (Russ Anderson) No. 142**

On or around November 18, 2013, three senior leaders in the human resources function informed Respondent Russ Anderson about pressure placed on team members, including "aggressive performance coaching/disciplinary action," that "we see this more often than

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<sup>1521</sup> McLinko Amended Answer ¶ 456; MSD-323.

<sup>1522</sup> Respondent Julian's Objections to Enforcement Counsel's Motion for Summary Disposition Exhibits.

<sup>1523</sup> McLinko's ECSFM at No. 114.

not; TM [team member] 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."<sup>1524</sup> The Head of Community Bank Human Resources Debra Paterson informed Respondent Russ Anderson about the continual feedback received from employees: "Also, just an FYI, the continual feedback we get is that ICP [incentive compensation plan] 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.'"<sup>1525</sup>

### **Responses:**

**Russ Anderson** did not dispute the contents of the email messages, but asserted that the discussion "is not about unreasonable sales goals" – that the discussion was instead about both sales and service goals.<sup>1526</sup> She also asserted that the selected quote was the "opinion of one person, Ms. Henderson, and the underlying basis for her opinion is unknown."<sup>1527</sup>

I find an insufficient factual basis has been presented to establish a dispute in this Response to create a controverted material fact. Accordingly, the Recommended Decision will include a factual finding as to Respondent Russ Anderson that on November 18, 2013, three senior leaders in the human resources function informed Respondent Russ Anderson about pressure placed on team members, including "aggressive performance coaching/disciplinary action," that "we see this more often than not; TM [team member] 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." The Head of Community Bank Human Resources Debra Paterson informed Respondent Russ Anderson about the continual feedback received from employees: "Also, just an FYI, the continual feedback we get is that ICP [incentive compensation plan] 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.'"

### **Enforcement Counsel's Statement of Material Fact (Russ Anderson) No. 143**

In December 2013, Respondent Russ Anderson discussed the creation of a "Sales Pressure Hotline" with Community Bank leaders.<sup>1528</sup>

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<sup>1524</sup> MSD-127 at 1-2; MSD-266 (Russ Anderson Dep. Tr.) at 184:15-185:6.

<sup>1525</sup> MSD-127 at 1); MSD-266 (Russ Anderson Dep. Tr.) at 188:18-192:6); MSD-149 ("the activity appears to serve no other purpose but to help them meet sales goals.")

<sup>1526</sup> Russ Anderson's ECSFM at No. 142.

<sup>1527</sup> Russ Anderson's ECSFM at No. 142.

<sup>1528</sup> MSD-88.

## Responses:

**Russ Anderson** did not dispute that the discussion that occurred on December 21, 2013 concerned “an idea about giving team members a dedicated phone number to call ‘if they felt pressure to make sales for the wrong reasons.’”<sup>1529</sup> She disputed that all of the individuals on the email thread were Community Bank Leaders, disputed that the evidence establishes the alleged fact that pressure led to misconduct, and averred the evidence establishes that in December 2013 Community Bank was attempting to determine whether sales goals were causing misconduct.<sup>1530</sup>

I find an insufficient factual basis has been presented to establish a dispute in this Response to create a controverted material fact. Accordingly, the Recommended Decision will include a factual finding as to Respondent Russ Anderson that in December 2013, she discussed the creation of a “Sales Pressure Hotline” with Community Bank leaders.

## Enforcement Counsel’s Statement of Material Fact (Russ Anderson) No. 144

In an email from September 2016, the Head of Conduct Risk Review in the Community Bank reported that his team became aware of the following activities occurring in the retail branch network:

a. “The District Manager (DM) has been supervising the store and overseeing sales activities since December 2015 . . . . Additionally, it was shared that there has been a great focus on sales and team members are pressured to perform with little coaching.”<sup>1531</sup>

b. “During interviews, team members expressed concern over the tactics used by management related to sales. During one interview a team member was warned that if he did not achieve his sales goals that he would be transferred to a store where someone had been shot and killed. If team members did not hit their sales goal, they would acquire an additional call night on top of the already scheduled call night in the store. Lastly, separate team member indicated that if they did not make enough appointments they will be forced to walk out in the hot sun around the block.”<sup>1532</sup>

## Responses:

**Russ Anderson** disputed the claim because “MSD-103 is an email dated September 23, 2016, after Ms. Russ Anderson took personal leave to take care of her ailing parents” and because it is “inaccurate” because it included references to testimony by Ms. Rawson, who was mistaken

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<sup>1529</sup> Russ Anderson’s ECSFM at No. 143.

<sup>1530</sup> Russ Anderson’s ECSFM at No. 143.

<sup>1531</sup> MSD-103 at 3.

<sup>1532</sup> MSD-103 at 3 (emphasis in original); MSD-300 (Rawson Tr.) at 61:18-66:8; MSD-104.

when she testified that Respondent Russ Anderson was still employed at the Bank at the time the email was issued.<sup>1533</sup>

I find an insufficient factual basis has been presented to establish a dispute in this Response to create a controverted material fact. Accordingly, the Recommended Decision will include a factual finding as to Respondent Russ Anderson that in an email from September 2016, the Head of Conduct Risk Review in the Community Bank reported that his team became aware of the following activities occurring in the retail branch network: (a) The District Manager has been supervising the store and overseeing sales activities since December 2015 . . . . Additionally, it was shared that there has been a great focus on sales and team members are pressured to perform with little coaching. (b) During interviews, team members expressed concern over the tactics used by management related to sales. During one interview a team member was warned that if he did not achieve his sales goals that he would be transferred to a store where someone had been shot and killed. If team members did not hit their sales goal, they would acquire an additional call night on top of the already scheduled call night in the store. Lastly, separate team member indicated that if they did not make enough appointments they will be forced to walk out in the hot sun around the block.

**Enforcement Counsel’s Statement of Material Fact (Russ Anderson) No. 145 and (Julian and McLinko) No. 115**

Enforcement Counsel’s Statements of Material Fact (Russ Anderson) No. 145 and (Julian and McLinko) No. 115 rely on exhibits presented to this Tribunal as being non-public. Pursuant to the OCC’s Uniform Rules, while the proceedings in this administrative enforcement action are expressly required to be public, when presented with non-public documents the Administrative Law Judge is required to take all appropriate steps to preserve the confidentiality of such documents.<sup>1534</sup> Upon my review of the confidential documents supporting these Statements of Material Fact, and after weighing the expectation that all of the proceedings shall be public against the requirement that I protect against the disclosure of non-public information, I find the evidentiary value of these exhibits to be sufficiently marginal and duplicative as to warrant exclusion from this Order. Accordingly, this Order will not be based on any of the claims found in these Statements of Material Fact.

**Enforcement Counsel’s Statement of Material Fact (Russ Anderson) No. 146**

The head of 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

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<sup>1533</sup> Russ Anderson’s ECSFM at No. 144.

<sup>1534</sup> See 12 C.F.R. § 19.33(b).

was supported by SSCOT's own data.<sup>1535</sup>

**Responses:**

**Russ Anderson** disputed that the establishes the alleged fact that Community Bank had a systemic sales practices misconduct problem from at least 2002 until at least 2016, but did not dispute the text of the quoted statement was accurately attributed to Ms. Rawson.<sup>1536</sup> I find an insufficient factual basis has been presented to establish a dispute in this Response to create a controverted material fact. Accordingly, the Recommended Decision will include a factual finding as to Respondent Russ Anderson that the head of 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.

**Respondent Russ Anderson was responsible for ensuring controls to prevent and detect sales practices misconduct were effective**

**Enforcement Counsel's Statement of Material Fact (Russ Anderson) No. 147**

Respondent Russ Anderson's position as Group Risk Officer of the Community Bank required her to understand and report on systemic risks in the Community Bank.<sup>1537</sup>

**Responses:**

**Russ Anderson** did not dispute that she was "required to understand and report on risks in the Community Bank, but disputed that the word "systemic" appears in the cited references, and averred that the Group Risk Officer is only "one of several individuals who would be responsible for identifying risk in the Community Bank, including executive management and the board of directors."<sup>1538</sup>

I find an insufficient factual basis has been presented to establish a dispute in this Response to create a controverted material fact. Accordingly, the Recommended Decision will include a factual finding as to Respondent Russ Anderson that her position as Group Risk Officer of the

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<sup>1535</sup> MSD-300 (Rawson Tr.) at 66:3-66:8.

<sup>1536</sup> Russ Anderson's ECSFM at No. 146.

<sup>1537</sup> MSD- 203; MSD-204; MSD-206; MSD-207; MSD-210; MSD-267 (NBE Smith Expert Report) at ¶¶ 23, 105-106, 117; MSD-269 (NBE Candy Expert Report) at ¶¶ 23, 64, 98, 116-124, 126; Abshier Dep. Tr. 60:19-61:8, 102:22-103:13.

<sup>1538</sup> Russ Anderson's ECSFM at No. 147.

Community Bank required her to understand and report on systemic risks in the Community Bank.

### **Enforcement Counsel's Statement of Material Fact (Russ Anderson) No. 148**

The Bank's former Chief Risk Officer Michael Loughlin, to whom Respondent Russ Anderson had dotted-line reporting, testified about her responsibility to understand the systemic nature of the sales practices misconduct problem:

Q: How about Ms. Russ Anderson, given her role within community bank, was she in a position to understand the systemic nature of sales practice misconduct problem?

A: Yes.

Q: Why do you say that?

A: She was the group risk officer for the community and had worked in the community bank for many years and could and should have known the nature of the problem.<sup>1539</sup>

### **Responses:**

**Russ Anderson** did not dispute the accuracy of the testimonial transcription, but averred the testimony does not refer to the time period being described and the Statement fails to reference any contemporaneous records indicating that Mr. Loughlin had determined that there was a systemic problem with sales practices misconduct.<sup>1540</sup>

I find an insufficient factual basis has been presented to establish a dispute in this Response to create a controverted material fact. Accordingly, the Recommended Decision will include a factual finding as to Respondent Russ Anderson that the Bank's former Chief Risk Officer Michael Loughlin, to whom Respondent Russ Anderson had dotted-line reporting, testified as shown above regarding Respondent Russ Anderson's responsibility to understand the systemic nature of the sales practices misconduct problem.

### **Enforcement Counsel's Statement of Material Fact (Russ Anderson) No. 149 and (Julian and McLinko) No. 117**

From no later than 2004 until 2016, the controls to prevent and detect sales practices

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<sup>1539</sup> MSD-290A (Loughlin Tr.) at 57:14-23; see also MSD-297 (Richards Tr.) at 209:16-210:3; MSD-545 (Coyne Tr.) at 84:8-85:1; MSD-382 (Byers Tr.) at 23:23-24:22.

<sup>1540</sup> Russ Anderson's ECSFM at No. 148.

misconduct were inadequate.<sup>1541</sup>

**Russ Anderson** incorporated Respondent Julian's response.<sup>1542</sup>

**Julian** disputed the claim, offering as evidence that "WFAS noted that "[f]ormal controls and oversight need to be enhanced in Community Banking and Wholesale Banking to ensure each team member receives a performance rating and underperforming team members receive coaching." (DJ0461 at 4 OCC-SP1264059). This shows WFAS directly engaging in audit work across the enterprise, in order to determine the weaknesses and allow for improvements within the Bank's controls."<sup>1543</sup>

Whether WFAS acted between 2013 and 2016 to work across the enterprise to determine the weaknesses alleged in this Statement is a material fact in issue.

I find that in his Response to (Russ Anderson) No. 149 and (Julian and McLinko) No. 117, Julian sufficiently demonstrated a factual controversy exists regarding how WFAS noted that "[f]ormal controls and oversight need to be enhanced in Community Banking and Wholesale Banking to ensure each team member receives a performance rating and underperforming team members receive coaching." and what WFAS – and Julian and McLinko – did with that knowledge between 2013 and 2016.

Because of the existence of these material controverted facts, summary disposition is not available with respect to Respondent Russ Anderson, Julian, or McLinko regarding this claim. Pursuant to the OCC's Uniform Rules, the merits of the disputed claims raised in (Russ Anderson) No. 149 and (Julian and McLinko) No. 117 will be addressed during the hearing set to begin on September 13, 2021.

**McLinko** incorporated Respondent Julian's Response.<sup>1544</sup>

## **Respondent Russ Anderson failed to institute adequate controls to prevent sales practices misconduct**

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<sup>1541</sup> 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.

<sup>1542</sup> Russ Anderson's ECSFM at No. 149.

<sup>1543</sup> Julian's ECSFM at No. 117.

<sup>1544</sup> McLinko's ECSFM at No. 117.



**Enforcement Counsel's Statement of Material Fact (Russ Anderson) No. 150 and (Julian and McLinko) No. 118**

The Bank's systems did not prevent employees from engaging in sales practices misconduct. The Bank's Head of SSCOT, Rebecca Rawson, who reported 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 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.<sup>1545</sup>

**Responses:**

**Russ Anderson** incorporated Respondent Julian's response.<sup>1546</sup> She also asserted that the controls she advocated for resulted in improved metrics, indicating an improvement in "the controls and the control environment."<sup>1547</sup>

I find an insufficient factual basis has been presented to establish a dispute in this Response to create a controverted material fact. Accordingly, the Recommended Decision will include a factual finding as to Respondent Russ Anderson that the testimony shown above was provided as shown and is properly attributed to the Bank's Head of SSCOT, Rebecca Rawson.

**Julian** did not dispute that Ms. Rawson gave the testimony shown above, but disputed that the testimony "supports any conclusions about controls."<sup>1548</sup> I find an insufficient factual basis has been presented to establish a dispute in this Response to create a controverted material fact. Accordingly, the Recommended Decision will include a factual finding as to Respondents Julian and McLinko that the testimony shown above was provided as shown and is properly attributed to the Bank's Head of SSCOT, Rebecca Rawson.

**McLinko** incorporated Respondent Julian's Response.<sup>1549</sup>

**Enforcement Counsel's Statement of Material Fact (Russ Anderson) No. 151 and (Julian and McLinko) No. 119**

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.<sup>1550</sup>

**Responses:**

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<sup>1545</sup> 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.").

<sup>1546</sup> Russ Anderson's ECSFM at No. 150.

<sup>1547</sup> Russ Anderson's ECSFM at No. 150.

<sup>1548</sup> Julian's ECSFM at No. 118.

<sup>1549</sup> McLinko's ECSFM at No. 118.

<sup>1550</sup> MSD-200 (Hughes Decl.) at 1; MSD-596 at 3.

**Russ Anderson** incorporated Respondent Julian’s response.<sup>1551</sup>

Julian did not dispute the claim.<sup>1552</sup> Accordingly, the Recommended Decision will include a factual finding as to Respondents Russ Anderson, Julian, and McLinko that 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.

**McLinko** incorporated Respondent Julian’s Response.<sup>1553</sup>

### **Enforcement Counsel’s Statement of Material Fact (Russ Anderson) No. 152 and (Julian and McLinko) No. 120**

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.<sup>1554</sup>

#### **Responses:**

**Russ Anderson** incorporated Respondent Julian’s response.<sup>1555</sup>

**Julian** did not dispute the claim as stated, but averred it was “missing context”.<sup>1556</sup> I find an insufficient factual basis has been presented to establish a dispute in this Response to create a controverted material fact. Accordingly, the Recommended Decision will include a factual finding as to Respondents Russ Anderson and Julian that 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.

**McLinko** incorporated Respondent Julian’s Response.<sup>1557</sup>

### **Enforcement Counsel’s Statement of Material Fact (Russ Anderson) No. 153 and (Julian and McLinko) No. 121**

Bank policies required Bank employees to obtain express consent from customers prior to

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<sup>1551</sup> Russ Anderson’s ECSFM at No. 151.

<sup>1552</sup> Julian’s ECSFM at No. 119.

<sup>1553</sup> McLinko’s ECSFM at No. 119.

<sup>1554</sup> MSD-200 (Hughes Decl.); MSD-596.

<sup>1555</sup> Russ Anderson’s ECSFM at No. 152.

<sup>1556</sup> Julian’s ECSFM at No. 120.

<sup>1557</sup> McLinko’s ECSFM at No. 120.

opening accounts or services.<sup>1558</sup>

**Responses:**

**Russ Anderson** incorporated Respondent Julian's response.<sup>1559</sup>

Without disputing that express consent was required, Julian disputed the claim by averring that Bank policies allowed employees to gain consent through a variety of means, including pins, signatures, and verbal consent.<sup>1560</sup>

I find an insufficient factual basis has been presented to establish a dispute in this Response to create a controverted material fact. Accordingly, the Recommended Decision will include a factual finding as to Respondents Russ Anderson, Julian, and McLinko that 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 means, including pins, signatures, and verbal consent.

**McLinko** incorporated Respondent Julian's Response.<sup>1561</sup>

**Enforcement Counsel's Statement of Material Fact (Russ Anderson) No. 154 and (Julian and McLinko) No. 122**

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.<sup>1562</sup>

**Responses:**

**Russ Anderson** incorporated Respondent Julian's response.<sup>1563</sup>

**Julian:** (see below for the claim presented in (Julian and McLinko) No. 122)

**McLinko** incorporated Respondent Julian's Response.<sup>1564</sup>

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<sup>1558</sup> MSD-10 (2008 Sales Quality Manual) at 5; MSD-9 (2014 Sales and Service Quality Manual) at 7.

<sup>1559</sup> Russ Anderson's ECSFM at No. 153.

<sup>1560</sup> Julian's ECSFM at No., citing MSD-010 at 5; MSD-009 at 7.

<sup>1561</sup> McLinko's ECSFM at No. 121.

<sup>1562</sup> MSD-150; MSD-229; MSD-356.

<sup>1563</sup> Russ Anderson's ECSFM at No. 154.

<sup>1564</sup> McLinko's ECSFM at No. 121.

### **Enforcement Counsel’s Statement of Material Fact (Julian and McLinko) No. 122**

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.” (MSD-66)

#### **Responses:**

**Julian** did not dispute the text attributed to Respondent Russ Anderson, but disputed the claim specifically, with respect to credit cards: “Paragraph 122 leaves out important details from Ms. Russ Anderson’s email cited by Enforcement Counsel. Ms. Russ Anderson noted in her June 2015 email that “the lack of a signature on an application did not necessarily indicate an issue regarding customer consent,” and that “signatures on credit card applications were not required until recently.”<sup>1565</sup>

I find an insufficient factual basis has been presented to establish a dispute in this Response to create a controverted material fact. Accordingly, the Recommended Decision will include a factual finding as to Respondents Russ Anderson, Julian and McLinko that 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.”

**McLinko** incorporated Respondent Julian’s Response.<sup>1566</sup>

### **Enforcement Counsel’s Statement of Material Fact (Russ Anderson) No. 155 and (Julian and McLinko) No. 123**

Until approximately 2014, it was an acceptable practice for Community Bank employees to open accounts over the phone and not obtain customer signature.<sup>1567</sup>

#### **Responses:**

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<sup>1565</sup> Julian’s ECSFM at No. 122, citing MSD-066 at 1.

<sup>1566</sup> McLinko’s ECSFM at No. 122.

<sup>1567</sup> MSD-65.

**Russ Anderson** incorporated Respondent Julian’s response.<sup>1568</sup>

**Julian** did not controvert that customer signatures were not obtained when Community Bank employees opened accounts over the phone.<sup>1569</sup>

I find an insufficient factual basis has been presented to establish a dispute in this Response to create a controverted material fact. Accordingly, the Recommended Decision will include a factual finding as to Respondents Russ Anderson, Julian and McLinko that until approximately 2014, it was an acceptable practice for Community Bank employees to open accounts over the phone and not obtain customer signature.

**McLinko** incorporated Respondent Julian’s Response.<sup>1570</sup>

### **Enforcement Counsel’s Statement of Material Fact (Russ Anderson) No. 156**

Respondent Russ Anderson knew that even in 2015, 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.”<sup>1571</sup>

#### **Responses:**

**Russ Anderson** disputed the claim, averring that MSD-66 itself (the admissibility of which is not conceded) contains ample evidence that to the extent a signature was not involved in a credit card sale, there were controls issued by SSCOT to detect misconduct involving customer consent.<sup>1572</sup> Referring to the email chain shown as MSD-66, Respondent Russ Anderson noted the language that “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”.<sup>1573</sup>

It is a material fact in issue whether Respondent Russ Anderson knew, as alleged by Enforcement Counsel in this Statement, that the Bank would – even in 2015 – process a credit card application without an applicant’s signature. In her Response to Statement No. 155, Russ Anderson sufficiently demonstrated a factual controversy exists regarding her knowledge in

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<sup>1568</sup> Russ Anderson’s ECSFM at No. 155.

<sup>1569</sup> Julian’s ECSFM at No. 123.

<sup>1570</sup> McLinko’s ECSFM at No. 123.

<sup>1571</sup> MSD-66 (emphasis added).

<sup>1572</sup> Russ Anderson’s ECSFM at No. 156.

<sup>1573</sup> Russ Anderson’s ECSFM at No. 156, quoting from MSD-66 at 1.

2015 of the Bank’s practice of processing credit card applications without an applicant’s signature; and whether she told Bank employees that if a customer complains about the issuance of a card that the customer did not authorize, there is nothing the Bank could or would do about it.

Because of the existence of a material controverted fact, summary disposition is not available with respect to Respondent Russ Anderson regarding this claim. Pursuant to the OCC’s Uniform Rules, the merits of the claims raised in (Russ Anderson) Statement No. 156 will be addressed during the hearing set to begin on September 13, 2021.

### **Enforcement Counsel’s Statement of Material Fact (Russ Anderson) No. 157 and (Julian and McLinko) No. 124**

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.<sup>1574</sup> Consent capture for non-credit card products had not yet been implemented as of May 2016.<sup>1575</sup> Up until March 2018, customer signatures still were not required to obtain a debit card.<sup>1576</sup>

#### **Responses:**

**Russ Anderson** incorporated Respondent Julian’s response.<sup>1577</sup> She also disputed the claim that only the Consumer Lending Group could issue credit cards, not Bank employees, but admitted that the decision to require signatures on debit cards was not implemented until March 2018.<sup>1578</sup>

I find an insufficient factual basis has been presented to establish a dispute in this Response to create a controverted material fact. Accordingly, the Recommended Decision will include a factual finding as to Respondent Russ Anderson that it was not until approximately 2016 that were Bank systems were modified to require evidence of customer consent before Community Bank employees could issue credit cards or transfer funds in customer accounts. Consent capture for non-credit card products had not yet been implemented as of May 2016. Up until March 2018, customer signatures still were not required to obtain a debit card.

**Julian** described “express consent” as being accomplished by “a variety of means, such as pins

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<sup>1574</sup> MSD-356.

<sup>1575</sup> MSD-356; MSD-598.

<sup>1576</sup> MSD-655 at 6-7 (“signatures are still not required to obtain a debit card.”).

<sup>1577</sup> Russ Anderson’s ECSFM at No. 157.

<sup>1578</sup> Russ Anderson’s ECSFM at No. 157.

and verbal consent.”<sup>1579</sup> He also cites to a letter dated March 23, 2018 addressed to Enforcement Counsel of the OCC; Julian avers the exhibit establishes that “the Bank began requiring signatures for all credit card applications beginning in May 2015.”<sup>1580</sup> That document averred that counsel for Mr. Julian “produced at WF-OCC2-000006061 to 6072 three documents demonstrating that signatures were required for all credit applications starting in May 2015.”<sup>1581</sup> If the referenced three documents supported Julian’s dispute, those documents should have been produced. They were not.

I find an insufficient factual basis has been presented to establish a dispute in this Response to create a controverted material fact. Accordingly, the Recommended Decision will include a factual finding as to Respondents Julian and McLinko that 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. Consent capture for non-credit card products had not yet been implemented as of May 2016. Up until March 2018, customer signatures still were not required to obtain a debit card.

**McLinko** incorporated Respondent Julian’s Response.<sup>1582</sup>

### **Enforcement Counsel’s Statement of Material Fact (Russ Anderson) No. 158 and (Julian and McLinko) No. 125**

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. In 2008, Respondent Russ Anderson was informed by Tyson Pyles, a senior leader in the Community Bank, that bankers were not required to obtain customer signatures in order to open a personal line of credit. In response, Respondent Russ Anderson asked: “Tyson – do we know why the product does not require a signature?” Mr. Pyles responded: “Well . . . 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 services had one or the other, then most of our consent issues

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<sup>1579</sup> Julian’s ECSFM at No. 124.

<sup>1580</sup> Julian’s ECSFM at No. 124, citing MSD-655 at 6.

<sup>1581</sup> Julian’s ECSFM at No. 124, citing MSD-655 at 6.

<sup>1582</sup> McLinko’s ECSFM at No. 124.



would become moot.”<sup>1583</sup>

### **Responses:**

**Russ Anderson** disputed the conclusion that she 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.<sup>1584</sup> In support, she referred to the limited nature of the exchange between herself and Ms. Rawson – which concerned a single customer complaint, not the “vast majority of sales integrity cases” alleged by Enforcement Counsel.

It is a material fact in issue whether Respondent Russ Anderson knew, as alleged by Enforcement Counsel in this Statement, that the “vast majority of customer consent sales integrity cases” were related to the Community Bank’s failure to capture evidence of customer consent. In her Response to Statement No. 158, Russ Anderson sufficiently demonstrated a factual controversy exists regarding her knowledge that the vast majority of customer consent sales integrity cases were related to the Community Bank’s failure to capture evidence of customer consent. Because of the existence of a material controverted fact, summary disposition is not available with respect to Respondent Russ Anderson regarding this claim. Pursuant to the OCC’s Uniform Rules, the merits of the claims raised in (Russ Anderson) Statement No. 158 will be addressed during the hearing set to begin on September 11, 2021

**Julian** averred that “[i]n order to identify potential sales integrity cases, the Bank looked at the rates of debit card activation as an indication of consent quality” but did not controvert the material claims in this Statement.<sup>1585</sup> I find an insufficient factual basis has been presented to establish a dispute in this Response to create a controverted material fact. Accordingly, the Recommended Decision will include a factual finding as to Respondents Julian and McLinko that 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. In 2008, Respondent Russ Anderson was informed by Tyson Pyles, a senior leader in the Community Bank, that bankers were not required to obtain customer signatures in order to open a personal line of credit. In response, Respondent Russ Anderson asked: “Tyson – do we know why the product does not require a signature?” Mr. Pyles responded: “Well . . . 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

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<sup>1583</sup> MSD-58 (emphasis added); MSD-59; MSD-60; MSD-150.

<sup>1584</sup> Russ Anderson’s ECSFM at No. 158.

<sup>1585</sup> Julian’s ECSFM at No. 125, citing MSD-300 at 82:20-83:10.

or services had one or the other, then most of our consent issues would become moot.”

**McLinko** incorporated Respondent Julian’s Response.<sup>1586</sup>

### **Enforcement Counsel’s Statement of Material Fact (Russ Anderson) No. 159 and (Julian and McLinko) No. 126**

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.<sup>1587</sup> 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).”<sup>1588</sup> She was also informed that “Debit card ‘lack of consent’ contributes more than fair share of enterprise quality issues and corrective actions.”<sup>1589</sup>

#### **Responses:**

**Russ Anderson** did not dispute that the above factual claim accurately reflects the contents of the document cited by Enforcement Counsel (MSD-90, an email chain circa October 17, 2012); nor did she dispute her receipt of the referenced PowerPoint presentation; nor that she was informed that lack of consent contributed to “more than fair share” of issues needing corrective actions.<sup>1590</sup> She averred, however, that “[t]hese facts establish that senior leadership responsible for rolling out the project determined that the project was not an effective solution to cure the problems.”<sup>1591</sup>

I find an insufficient factual basis has been presented to establish a dispute in this Response to create a controverted material fact. Accordingly, the Recommended Decision will include a factual finding as to Respondent Russ Anderson that in the spring and summer of 2012, the Community Bank piloted a program that would require explicit customer consent before allowing bankers to issue debit cards to customers. On June 28, 2012, Respondent Russ

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<sup>1586</sup> McLinko’s ECSFM at No. 125.

<sup>1587</sup> MSD-229.

<sup>1588</sup> MSD-229 at 3.

<sup>1589</sup> MSD-229 at 4; see also *id.* at 7 (noting that “Debit explicit consent has strong customer appeal.”).

<sup>1590</sup> Russ Anderson’s ECSFM at No. 159.

<sup>1591</sup> Russ Anderson’s ECSFM at No. 159.

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).” She was also informed that “Debit card ‘lack of consent’ contributes more than fair share of enterprise quality issues and corrective actions.”

**Julian** presented his response as “disputed,” but the substance of his response did not controvert the material allegations presented in this Statement.<sup>1592</sup> I find an insufficient factual basis has been presented to establish a dispute in this Response to create a controverted material fact. Accordingly, the Recommended Decision will include a factual finding as to Respondents Julian and McLinko that in the spring and summer of 2012, the Community Bank piloted a program that would require explicit customer consent before allowing bankers to issue debit cards to customers. 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).” She was also informed that “Debit card ‘lack of consent’ contributes more than fair share of enterprise quality issues and corrective actions.”

**McLinko** incorporated Respondent Julian’s Response.<sup>1593</sup>

### **Enforcement Counsel’s Statement of Material Fact (Russ Anderson) No. 160**

Nonetheless, in July 2012, Respondent Russ Anderson agreed to shut down the pilot that would require explicit customer consent before allowing bankers to issue a debit card.<sup>1594</sup>

#### **Responses:**

**Russ Anderson** disputed the claim that she agreed to shut down the pilot program, averring that the decision to shut it down was made by others, and it was made “based on the fact that the pilot was a failure.”<sup>1595</sup>

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<sup>1592</sup> Julian’s ECSFM at No. 126.

<sup>1593</sup> McLinko’s ECSFM at No. 126.

<sup>1594</sup> MSD-90 (“Claudia was on the call when the decision was made to pull the plug and was in agreement”).

<sup>1595</sup> Russ Anderson’s ECSFM at No. 160.

I find an insufficient factual basis has been presented to establish a dispute in this Response to create a controverted material fact. Accordingly, the Recommended Decision will include a factual finding as to Respondent Russ Anderson that in July 2012, Respondent Russ Anderson agreed to shut down the pilot that would require explicit customer consent before allowing bankers to issue a debit card.

#### **Enforcement Counsel’s Statement of Material Fact (Russ Anderson) No. 161**

In November 2013, Respondent Russ Anderson was again informed that the “customer is not required to sign for personal lines of credit.” In response, she acknowledged that not requiring customer signatures “[s]eems like a bad practice.”<sup>1596</sup>

#### **Responses:**

**Russ Anderson** did not dispute that she knew that customers were not required to sign for personal lines of credit, and otherwise did not dispute the quoted text shown above.<sup>1597</sup> She disputed, however, that the factual claims shown above established the alleged fact that Ms. Russ Anderson failed to institute adequate controls to prevent sales practices misconduct.<sup>1598</sup>

I find an insufficient factual basis has been presented to establish a dispute in this Response to create a controverted material fact. Accordingly, the Recommended Decision will include a factual finding as to Respondent Russ Anderson that in November 2013, Respondent Russ Anderson was again informed that the “customer is not required to sign for personal lines of credit.” In response, she acknowledged that *not* requiring customer signatures “[s]eems like a bad practice.”

#### **Enforcement Counsel’s Statement of Material Fact (Russ Anderson) No. 162 and (Julian and McLinko) No. 127**

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.”<sup>1599</sup>

#### **Responses:**

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<sup>1596</sup> MSD-59.

<sup>1597</sup> Russ Anderson’s ECSFM at No. 161.

<sup>1598</sup> Russ Anderson’s ECSFM at No. 161.

<sup>1599</sup> 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”).

**Russ Anderson** did not dispute that the Supervisory Letter cited in this Statement contained the above-cited observation and conclusion, but disputed that the facts alleged in the Supervisory Letter established that Ms. Russ Anderson failed to institute adequate controls to prevent sales practices misconduct, and disputed that the “root causes included excessive sales pressure and the absence of a control process that required documentation of explicit customer consent.”<sup>1600</sup> She also averred the OCC was aware of the absence of a control process in 2016 but that customer signatures still were not required until March 2018.<sup>1601</sup>

I find an insufficient factual basis has been presented to establish a dispute in this Response to create a controverted material fact. Accordingly, the Recommended Decision will include a factual finding as to Respondent Russ Anderson that 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.”

**Julian** did not dispute that the Supervisory Letter contains the quoted text.<sup>1602</sup> Accordingly, the Recommended Decision will include a factual finding as to Respondents Julian and McLinko that 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.”

**McLinko** incorporated Respondent Julian’s Response.<sup>1603</sup>

### **Enforcement Counsel’s Statement of Material Fact (Russ Anderson) No. 163 and (Julian and McLinko) No. 128**

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.<sup>1604</sup>

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<sup>1600</sup> Russ Anderson’s ECSFM at No. 162.

<sup>1601</sup> Russ Anderson’s ECSFM at No. 162.

<sup>1602</sup> Julian’s ECSFM at No. 127.

<sup>1603</sup> McLinko’s ECSFM at No. 127.

<sup>1604</sup> 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).

**Responses:**

**Russ Anderson** incorporated Respondent Julian’s response.<sup>1605</sup>

**Julian** presented his response as “disputed,” but the substance of his response did not controvert the material allegations presented in this Statement.<sup>1606</sup> Accordingly, the Recommended Decision will include a factual finding as to Respondents Russ Anderson, Julian and McLinko that 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.

**McLinko** incorporated Respondent Julian’s Response.<sup>1607</sup>

**The Bank’s Controls to detect sales practices misconduct were inadequate**

**Respondent Russ Anderson failed to institute adequate controls to detect sales practices misconduct**

**Enforcement Counsel’s Statement of Material Fact (Russ Anderson) No. 164 and (Julian and McLinko) No. 129**

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.<sup>1608</sup>

**Responses:**

**Russ Anderson** incorporated Respondent Julian’s response.<sup>1609</sup> She also averred that the description of the tools in place is neither quantitative nor qualitative analysis and provides

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<sup>1605</sup> Russ Anderson’s ECSFM at No. 163.

<sup>1606</sup> Julian’s ECSFM at No. 128.

<sup>1607</sup> McLinko’s ECSFM at No. 128.

<sup>1608</sup> 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.

<sup>1609</sup> Russ Anderson’s ECSFM at No. 164.

no support for the allegation that she failed to institute adequate controls to detect sales practices misconduct.<sup>1610</sup>

I find an insufficient factual basis has been presented to establish a dispute in this Response to create a controverted material fact. Accordingly, the Recommended Decision will include a factual finding as to Respondent Russ Anderson that 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.

**Julian** presented his response as “disputed,” but the substance of his response did not controvert the material allegations presented in this Statement.<sup>1611</sup> He averred the Bank” relied of a variety of tools to detect sales practices misconduct, including—but not limited to—EthicsLine reporting, employee complaints sent directly to management and others within the bank, customer complaints, and SSCOT proactive monitoring,” but offered no evidence controverting that the Bank used the four cited tools as primary, nor that the Bank did not employ proactive monitoring until around 2012.<sup>1612</sup>

Accordingly, the Recommended Decision will include a factual finding as to Respondents Julian and McLinko that 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.

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<sup>1610</sup> Russ Anderson’s ECSFM at No. 164.

<sup>1611</sup> Julian’s ECSFM at No. 128.

<sup>1612</sup> Julian’s ECSFM at No. 129 citing Julian Amended Answer ¶ 92; MSD-290A at 236:1-13.

**McLinko** incorporated Respondent Julian's Response.<sup>1613</sup>

**Enforcement Counsel's Statement of Material Fact (Russ Anderson) No. 165 and (Julian and McLinko) No. 130**

From 2004 to 2012, while Respondent Russ Anderson served as the Group Risk Officer, the Bank's controls to detect sales practices misconduct were "reactive by design." In other words, such controls relied on branch employees or customers identifying and reporting misconduct, as opposed to the Bank proactively detecting sales practices misconduct.<sup>1614</sup>

**Responses:**

**Russ Anderson** disputed that the controls identified in this Statement were the only controls available, noting controls within Retail Banking, controls within product lines, and controls within Human Resources.<sup>1615</sup>

Enforcement Counsel supported this Statement by referring to two email threads circa 2012 discussing reactive versus proactive monitoring measures. Given the passage of time between the creation of these Exhibits and the filing of the Notice of Charges, given the Exhibits' remote and tangential relationship with the material claims presented in the Notice of Charges, given the potential for confusion that admitting the Exhibits presents, given the redundant nature of the material facts presented in the Exhibits when compared with Exhibits that are more closely related in time, and given the marginal relevance of the claim regarding whether in 2012 the Bank's controls were reactive or proactive, the Exhibits will not be admitted in support of Enforcement Counsel's Motion as to Respondent Russ Anderson. Accordingly, the claims presented in (Russ Anderson) No. 165 will not support Enforcement Counsel's Motion. The exclusion of the Exhibits does not, however, create a factual basis that would prevent granting Enforcement Counsel's Motion.

**Julian** objected to the use of MSD-70 (Respondent Russ Anderson's June 2012) email on the grounds that the evidence is irrelevant, immaterial, unreliable, or repetitive.<sup>1616</sup> Finding an insufficient nexus between the averments presented in the Statement and the material facts in issue, the objection is sustained. Accordingly, the claims presented in (Julian and McLinko) No. 130 will not support Enforcement Counsel's Motion. The exclusion of the claims appearing in the Statement does not, however, create a factual basis that would prevent granting Enforcement

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<sup>1613</sup> McLinko's ECSFM at No. 129.

<sup>1614</sup> MSD-69; see also MSD-70 (Respondent Russ Anderson acknowledging in a June 2012 email that "[i]f I only depend on ethics line complaints we'll never catch up.").

<sup>1615</sup> Russ Anderson's ECSFM at No. 165.

<sup>1616</sup> Respondent Julian's Objections to Enforcement Counsel's Motion for Summary Disposition Exhibits.



Counsel's Motion.

**McLinko** incorporated Respondent Julian's Response.<sup>1617</sup>

### **Enforcement Counsel's Statement of Material Fact (Russ Anderson) No. 166**

The Community Bank's former Chief Compliance Officer told Respondent Russ Anderson that "the first line of defense lacked the appropriate tools to detect sales integrity violations."<sup>1618</sup>

#### **Responses:**

**Russ Anderson** averred the Declaration by Mr. Christoff lacked context and appears to relate to a specific "mystery shopping program" that he was advocating for in or around 2013.<sup>1619</sup> (MSD-56 (Christoff Decl.)<sup>1620</sup> at ¶¶ 11-15)

Enforcement Counsel supported this Statement by referring to a declaration by Jay Christoff, who served as Chief Compliance Officer of the Community Bank between May 2014 and October 2015. His declaration concerns his averment that from 2011 to 2015, he had "ongoing conversations" with Respondent Russ Anderson "regarding the inadequacy of the Community Bank's tracking of customer complaints."<sup>1621</sup>

Given the passage of time between the discussions related by Mr. Christoff in his Declaration and the filing of the Notice of Charges, given the Declaration's remote and tangential relationship with the material claims presented in the Notice of Charges, given the potential for confusion that admitting the Declaration presents, given the redundant nature of the material facts presented in the Declaration when compared with Exhibits that are more closely related in time, and given the marginal relevance of the claim regarding his discussions with Respondent Russ Anderson, the Declaration will not be admitted in support of Enforcement Counsel's Motion as to Respondent Russ Anderson. Accordingly, the claims presented in (Russ Anderson) No. 166 will not support Enforcement Counsel's Motion. The exclusion of the Declaration does not, however, create a factual basis that would prevent granting Enforcement Counsel's Motion.

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<sup>1617</sup> McLinko's ECSFM at No. 130.

<sup>1618</sup> MSD-56 (Christoff Decl.) at ¶ 11; see id. at ¶¶ 13-15 (explaining that Respondent Russ Anderson declined to follow suggestions about the Community Bank doing unannounced branch visits program).

<sup>1619</sup> Russ Anderson's ECSFM at No. 166.

<sup>1620</sup> MSD-56 (Christoff Decl.).

<sup>1621</sup> MSD-56 (Christoff Decl.) at ¶7.

## **Enforcement Counsel's Statement of Material Fact (Russ Anderson) No. 167 and (Julian and McLinko) No. 131**

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.<sup>1622</sup>

### **Responses:**

**Russ Anderson** did not dispute that the above accurately reflects Ms. Sperle's testimony, disputing only whether the testimony established Respondent Russ Anderson's failure to detect sales practices misconduct.<sup>1623</sup>

I find an insufficient factual basis has been presented to establish a dispute in this Response to create a controverted material fact. Accordingly, the Recommended Decision will include a factual finding as to Respondent Russ Anderson that 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, that by contrast, the chances were very small that an employee would be caught for issuing an unauthorized product or service, and that Ms. Sperle testified as shown above.

**Julian** did not dispute that the statement was given as shown.<sup>1624</sup> Accordingly, the Recommended Decision will include a factual finding as to Respondents Julian and McLinko that Ms. Sperle testified as shown above.

**McLinko** incorporated Respondent Julian's Response.<sup>1625</sup>

### **EthicsLine**

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<sup>1622</sup> MSD-299 (Sperle Tr.) at 157:1-160:1.

<sup>1623</sup> Russ Anderson's ECSFM at No. 167.

<sup>1624</sup> Julian's ECSFM at No. 131.

<sup>1625</sup> McLinko's ECSFM at No. 131.

## **Enforcement Counsel’s Statement of Material Fact (Russ Anderson) No. 168 and (Julian and McLinko) No. 132**

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.”<sup>1626</sup>

### **Responses:**

**Russ Anderson** incorporated Respondent Julian’s Response.<sup>1627</sup>

**Julian** presented his response as “disputed,” but the substance of his response did not controvert the material allegations presented in this Statement.<sup>1628</sup> He averred “[t]he Accenture report states, ‘Evidence from field interviews showed that team members seek to resolve potential ethical issues quickly by escalating to their immediate supervisor.’”<sup>1629</sup> Without offering supporting evidence, he averred “While these issues may not have been submitted directly to Ethics Line, the issues could nevertheless be investigated and dealt with directly by the manager.”<sup>1630</sup>

I find an insufficient factual basis has been presented to establish a dispute in this Response to create a controverted material fact. Accordingly, the Recommended Decision will include a factual finding as to Respondents Russ Anderson, Julian, and McLinko that 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.”

**McLinko** incorporated Respondent Julian’s Response.<sup>1631</sup>

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<sup>1626</sup> MSD-51 at 41; see also *id.* at 11.

<sup>1627</sup> Russ Anderson’s ECSFM at No. 168.

<sup>1628</sup> Julian’s ECSFM at No. 132.

<sup>1629</sup> Julian’s ECSFM at No. 132, citing MSD-051 at 11.

<sup>1630</sup> Julian’s ECSFM at No. 132.

<sup>1631</sup> McLinko’s ECSFM at No. 132.

**Enforcement Counsel’s Statement of Material Fact (Russ Anderson) No. 169 and (Julian and McLinko) No. 133**

Enforcement Counsel’s Statements of Material Fact (Russ Anderson) No. 169 and (Julian and McLinko) No. 133 rely on exhibits presented to this Tribunal as being non-public. Pursuant to the OCC’s Uniform Rules, while the proceedings in this administrative enforcement action are expressly required to be public, when presented with non-public documents the Administrative Law Judge is required to take all appropriate steps to preserve the confidentiality of such documents.<sup>1632</sup> Upon my review of the confidential documents supporting these Statements of Material Fact, and after weighing the expectation that all of the proceedings shall be public against the requirement that I protect against the disclosure of non-public information, I find the evidentiary value of these exhibits to be sufficiently marginal and duplicative as to warrant exclusion from this Order. Accordingly, this Order will not be based on any of the claims found in these Statements of Material Fact.

**Enforcement Counsel’s Statement of Material Fact (Russ Anderson) No. 170 and (Julian and McLinko) No. 134**

Sales integrity-related EthicsLine complaints were referred to Community Bank’s Sales Quality team, later known as SSCOT.<sup>1633</sup>

**Responses:**

**Russ Anderson** disputed that the allegation established any facts regarding her failure to institute adequate controls, and incorporated Respondent Julian’s response.<sup>1634</sup>

I find an insufficient factual basis has been presented to establish a dispute in this Response to create a controverted material fact. Accordingly, the Recommended Decision will include a factual finding as to Respondent Russ Anderson that sales integrity-related EthicsLine complaints were referred to Community Bank’s Sales Quality team, later known as SSCOT

**Julian** confirmed that SSCOT could refer violation reports back to Corporate Security for further investigation<sup>1635</sup> but disputed, without providing evidence in support, the remaining claims in the Statement.

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<sup>1632</sup> See 12 C.F.R. § 19.33(b).

<sup>1633</sup> MSD-381 at 15.

<sup>1634</sup> Russ Anderson’s ECSFM at No. 170.

<sup>1635</sup> Julian’s ECSFM at No.134, citing MSD-381 at 15.

I find an insufficient factual basis has been presented to establish a dispute in this Response to create a controverted material fact. Accordingly, the Recommended Decision will include a factual finding as to Respondents Julian and McLinko that Sales integrity-related EthicsLine complaints were referred to Community Bank’s Sales Quality team, later known as SSCOT.

**McLinko** incorporated Respondent Julian’s Response.<sup>1636</sup>

**Enforcement Counsel’s Statement of Material Fact (Russ Anderson) No. 171 and (Julian and McLinko) No. 135**

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.<sup>1637</sup>

**Responses:**

**Russ Anderson** disputed that the allegation established any facts regarding her failure to institute adequate controls, and incorporated Respondent Julian’s response.<sup>1638</sup>

**Julian** presented his response as “disputed,” but the substance of his response did not controvert the material allegations presented in this Statement.<sup>1639</sup> Confirming the material facts found in the Statement, Julian averred: “Polling was used to determine when an EthicsLine report was substantiated, and thus should be sent to Corporate Investigations. The number of individuals who needed to be polled varied by the type of misconduct and the seniority of the employee. If a certain number of individuals substantiated a claim, the case would be referred to Corporate.”

I find an insufficient factual basis has been presented to establish a dispute in this Response to

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<sup>1636</sup> McLinko’s ECSFM at No. 134.

<sup>1637</sup> 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.

<sup>1638</sup> Russ Anderson’s ECSFM at No. 171.

<sup>1639</sup> Julian’s ECSFM at No. 135.

create a controverted material fact. Accordingly, the Recommended Decision will include a factual finding as to Respondents Russ Anderson, Julian, and McLinko that 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.

**McLinko** incorporated Respondent Julian's Response.<sup>1640</sup>

### **Enforcement Counsel's Statement of Material Fact (Russ Anderson) No. 172 and (Julian and McLinko) No. 136**

The Bank's former CEO John Stumpf agreed in testimony before the OCC that employees did all they could to complain about the unreasonable sales goals to Bank senior leadership in numerous ways over many years, by calling the EthicsLine, sending emails, holding protests, and approaching newspapers. He further stated that the senior leadership team and not the employees, is to blame for the Bank not moving fast enough to address the sales practices misconduct problem.<sup>1641</sup>

#### **Responses:**

**Russ Anderson** disputed that the allegation established any facts regarding her failure to institute adequate controls, and incorporated Respondent Julian's response.<sup>1642</sup>

**Julian** averred that Mr. Stumpf did not respond in the affirmative "as Paragraph 136 suggests; instead, Mr. Stumpf testified, "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."<sup>1643</sup> Mr. Stumpf also took responsibility that he personally should have moved faster.<sup>1644</sup>

I find an insufficient factual basis has been presented to establish a dispute in this Response to create a controverted material fact. Accordingly, the Recommended Decision will include a

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<sup>1640</sup> McLinko's ECSFM at No. 135.

<sup>1641</sup> MSD-8B (Stumpf Tr.) at 401:9-402:6.

<sup>1642</sup> Russ Anderson's ECSFM at No. 172.

<sup>1643</sup> Julian's ECSFM at No. 136, quoting MSD-008B at 401:21-25.

<sup>1644</sup> Julian's ECSFM at No. 136, quoting MSD-008B at 402:1-6.

factual finding as to Respondents Russ Anderson, Julian, and McLinko that the Bank's former CEO John Stumpf testimony before the OCC that "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," 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.

**McLinko** incorporated Respondent Julian's Response.<sup>1645</sup>

### **Enforcement Counsel's Statement of Material Fact (Russ Anderson) No. 173**

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."<sup>1646</sup>

#### **Responses:**

**Russ Anderson** did not dispute that she testified as presented, but clarified that she would "read the ones that [her] SSCOT ~~am~~ 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."<sup>1647</sup>

I find an insufficient factual basis has been presented to establish a dispute in this Response to create a controverted material fact. Accordingly, 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."

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<sup>1645</sup> McLinko's ECSFM at No. 136.

<sup>1646</sup> MSD-266 (Russ Anderson Dep. Tr.) at 58:13-16.

<sup>1647</sup> Russ Anderson's ECSFM at No. 173, quoting from MSD-266 (Russ Anderson Dep. Tr.) at 58:5-59:8.

## Customer Complaints

### **Enforcement Counsel’s Statement of Material Fact (Russ Anderson) No. 174 and (Julian and McLinko) No. 137**

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 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.”<sup>1648</sup>

#### **Responses:**

**Russ Anderson** disputed any claim that the Statement portrays issues with the tracking of customer complaints as something that was exclusively under her control.<sup>1649</sup>

I find an insufficient factual basis has been presented to establish a dispute in this Response to create a controverted material fact. Accordingly, the Recommended Decision will include a factual finding as to Respondent Russ Anderson that, 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 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.”

**Julian** did not dispute the quoted text was reported to Respondent Russ Anderson.<sup>1650</sup> Accordingly, the Recommended Decision will include a factual finding as to Respondents Julian and McLinko that the Community Bank’s former Chief Compliance Officer (Mr. Christoff) reported to Respondent Russ Anderson, the “Community Bank did not have an adequate system 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.”

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<sup>1648</sup> MSD-56 (Christoff Decl.).

<sup>1649</sup> Russ Anderson’s ECSFM at No. 174.

<sup>1650</sup> Julian’s ECSFM at No. 137.



**McLinko** incorporated Respondent Julian’s Response.<sup>1651</sup>

**Enforcement Counsel’s Statement of Material Fact (Russ Anderson) No. 175**

From 2011 through 2015, the Chief Compliance Officer had ongoing conversations with Respondent Russ Anderson regarding the inadequacy of the Community Bank’s tracking of customer complaints.<sup>1652</sup>

**Responses:**

**Russ Anderson** disputed any claim that the Statement portrays issues with the tracking of customer complaints as something that was exclusively under her control.<sup>1653</sup>

I find an insufficient factual basis has been presented to establish a dispute in this Response to create a controverted material fact. Accordingly, the Recommended Decision will include a factual finding as to Respondent Russ Anderson that from 2011 through 2015, the Chief Compliance Officer had ongoing conversations with Respondent Russ Anderson regarding the inadequacy of the Community Bank’s tracking of customer complaints.

**Enforcement Counsel’s Statement of Material Fact (Russ Anderson) No. 176 and (Julian and McLinko) No. 138**

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.”<sup>1654</sup>

**Responses:**

**Russ Anderson** disputed that the allegation established any facts regarding her failure to

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<sup>1651</sup> McLinko’s ECSFM at No. 138.

<sup>1652</sup> MSD-56 (Christoff Decl.) at ¶ 7; see id. at ¶ 10 (“The customer complaints tracking system was deficient and continued to be deficient as of my departure from Wells Fargo in October 2015.”)

<sup>1653</sup> Russ Anderson’s ECSFM at No. 175.

<sup>1654</sup> MSD-51 at 10.

institute adequate controls, and incorporated Respondent Julian's response.<sup>1655</sup>

**Julian** presented his response as "disputed," but the substance of his response did not controvert the material allegations presented in this Statement.<sup>1656</sup> He averred that the Bank began work on the revised Enterprise Complaints Management Policy in 2013, scheduled to take full effect by the end of 2016;<sup>1657</sup> adding that in August 2015 the Bank agreed to accelerate the work to comply with MRAs issued by the OCC.<sup>1658</sup>

I find an insufficient factual basis has been presented to establish a dispute in this Response to create a controverted material fact. Accordingly, the Recommended Decision will include a factual finding as to Respondents Russ Anderson, Julian, and McLinko that 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."

**McLinko** incorporated Respondent Julian's Response.<sup>1659</sup>

### **Enforcement Counsel's Statement of Material Fact (Russ Anderson) No. 177 and (Julian and McLinko) No. 139**

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."<sup>1660</sup>

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<sup>1655</sup> Russ Anderson's ECSFM at No. 176.

<sup>1656</sup> Julian's ECSFM at No. 138.

<sup>1657</sup> MSD-213 at 7

<sup>1658</sup> Julian's ECSFM at No. 138.

<sup>1659</sup> McLinko's ECSFM at No. 138.

<sup>1660</sup> Julian's ECSFM at No. 138 citing MSD-51 at 43.

## **Responses:**

**Russ Anderson** disputed that the allegation established any facts regarding her failure to institute adequate controls, and incorporated Respondent Julian's response.<sup>1661</sup>

**Julian** presented his response as "disputed," but the substance of his response did not controvert the material allegations presented in this Statement.<sup>1662</sup> He averred the review "did not include any statistics on the percentage of complaints that were actually substantiated," but did not dispute the material claims in the statement.

I find an insufficient factual basis has been presented to establish a dispute in this Response to create a controverted material fact. Accordingly, the Recommended Decision will include a factual finding as to Respondents Russ Anderson, Julian, and McLinko that 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."

**McLinko** incorporated Respondent Julian's Response.<sup>1663</sup>

## **Enforcement Counsel's Statement of Material Fact (Russ Anderson) No. 178 and (Julian and McLinko) No. 140**

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.<sup>1664</sup> 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."<sup>1665</sup> The presentation depicted an iceberg, representing the Bank was only detecting the tip of the iceberg of sales practices misconduct.<sup>1666</sup>

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<sup>1661</sup> Russ Anderson's ECSFM at No. 177.

<sup>1662</sup> Julian's ECSFM at No. 139.

<sup>1663</sup> McLinko's ECSFM at No. 139.

<sup>1664</sup> MSD-51 at 7.

<sup>1665</sup> MSD-51 at 7.

<sup>1666</sup> MSD-51 at 7; MSD-539 (Dement Tr.) at 159:20-163:20.

## Responses:

**Russ Anderson** disputed that the allegation established any facts regarding her failure to institute adequate controls, and incorporated Respondent Julian's response.<sup>1667</sup>

**Julian** presented his response as "disputed," but the substance of his response did not controvert the material allegations presented in this Statement.<sup>1668</sup> He offered no controverting statistics but averred that Dwaine Dement, who created the slide deck, testified that this presentation was comprised of each group's "best guess" regarding lack of consent complaints and that these were not actual numbers,<sup>1669</sup> and that he saw allegations from the phone bank and realized there might be other channels where complaints were coming in aside from formal Ethicsline/HR allegations.<sup>1670</sup>

I find an insufficient factual basis has been presented to establish a dispute in this Response to create a controverted material fact. Accordingly, the Recommended Decision will include a factual finding as to Respondents Russ Anderson, Julian, and McLinko that 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.<sup>1671</sup> 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."<sup>1672</sup> The presentation depicted an iceberg, representing the Bank was only detecting the tip of the iceberg of sales practices misconduct.

**McLinko** incorporated Respondent Julian's Response.<sup>1673</sup>

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<sup>1667</sup> Russ Anderson's ECSFM at No. 178.

<sup>1668</sup> Julian's ECSFM at No. 140.

<sup>1669</sup> Julian's ECSFM at No. 140, quoting MSD-539 at 159:20-160:19.

<sup>1670</sup> Julian's ECSFM at No. 140 citing MSD-539 at 160:11- 161:5.

<sup>1671</sup> MSD-51 at 7.

<sup>1672</sup> MSD-51 at 7.

<sup>1673</sup> McLinko's ECSFM at No. 140.

## Watch List: Issues Reported Across Regional Banking



❖ **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  | 850  | Consent             |
| Personal Lines  | 500  | Consent             |
| Loan Documentation Issues   | 100  | Procedure           |
| Chking/Svngs. Debit. Online   | ???  |                     |
| Total Previously Undocumented   | 38,550 +   |                     |
| <small>*Range depends on whether you consider accts open +5 mths or +6 mths</small> |  |                     |
| 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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### Enforcement Counsel’s Statement of Material Fact (Russ Anderson) No. 179 and (Julian and McLinko) No. 141

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.<sup>1674</sup>

#### Responses:

**Russ Anderson** disputed that the allegation established any facts regarding her failure to institute adequate controls, and incorporated Respondent Julian’s response.<sup>1675</sup>

**Julian** presented his response as “disputed,” but the substance of his response did not controvert the material allegations presented in this Statement.<sup>1676</sup> He offered no evidence controverting the presentation, but averred that “[t]he presentation lists the regions making up the top quartile of

<sup>1674</sup> MSD- 72 at 3-4 (emphasis added).

<sup>1675</sup> Russ Anderson’s ECSFM at No. 179.

<sup>1676</sup> Julian’s ECSFM at No. 141.

regions by the percent of stores with allegations. It does not show allegations occurring across the Bank geography wide.”<sup>1677</sup>

I find an insufficient factual basis has been presented to establish a dispute in this Response to create a controverted material fact. Accordingly, the Recommended Decision will include a factual finding as to Respondents Russ Anderson, Julian, and McLinko that 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.

**McLinko** incorporated Respondent Julian’s Response.<sup>1678</sup>

### **Enforcement Counsel’s Statement of Material Fact (Russ Anderson) No. 180 and (Julian and McLinko) No. 142**

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.<sup>1679</sup>

#### **Responses:**

**Russ Anderson** disputed that the allegation established any facts regarding her failure to institute adequate controls, and incorporated Respondent Julian’s response.<sup>1680</sup>

**Julian** did not dispute the Letter contained the cited MRA.<sup>1681</sup> I find an insufficient factual basis has been presented to establish a dispute in this Response to create a controverted material fact. Accordingly, the Recommended Decision will include a factual finding as to Respondents Russ Anderson, Julian, and McLinko that 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.

**McLinko** incorporated Respondent Julian’s Response.<sup>1682</sup>

### **Proactive Monitoring**

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<sup>1677</sup> Julian’s ECSFM at No. 141, citing MSD-072 at 4.

<sup>1678</sup> McLinko’s ECSFM at No. 141.

<sup>1679</sup> MSD-213 at 4, 7-8.

<sup>1680</sup> Russ Anderson’s ECSFM at No. 180.

<sup>1681</sup> Julian’s ECSFM at No. 142.

<sup>1682</sup> McLinko’s ECSFM at No. 142.

## **Enforcement Counsel’s Statement of Material Fact (Russ Anderson) No. 181 and (Julian and McLinko) No. 143**

The group within the Community Bank that performed proactive monitoring was SSCOT, which reported to Respondent Russ Anderson beginning from 2012 through 2016.<sup>1683</sup>

### **Responses:**

**Russ Anderson** acknowledged SSCOT began performing proactive monitoring in 2013 and that the group reported directly to her from 2012 to 2016.<sup>1684</sup> She reported name changes for the group and disputed the Statement to the extent it establishes the alleged fact that she failed to institute adequate controls to prevent sales practices misconduct.<sup>1685</sup>

I find an insufficient factual basis has been presented to establish a dispute in this Response to create a controverted material fact. Accordingly, the Recommended Decision will include a factual finding as to Respondent Russ Anderson that the group within the Community Bank that performed proactive monitoring was Sales Quality/SSCOT, which reported to Respondent Russ Anderson beginning from 2012 through 2016

**Julian** responded that the claim was disputed, but did not dispute the claim and instead averred that SSCOT completed its first official proactive analysis into simulated funding across the Regional Bank in the summer 2013.<sup>1686</sup> Before 2013, SSCOT was primarily reactive rather than proactive.<sup>1687</sup> Rebecca Rawson instituted proactive monitoring in 2013 to help build out more proactive/detective controls.”<sup>1688</sup> I find an insufficient factual basis has been presented to establish a dispute in this Response to create a controverted material fact. Accordingly, the Recommended Decision will include a factual finding as to Respondent Julian that the group within the Community Bank that performed proactive monitoring was SSCOT, which reported to Respondent Russ Anderson beginning from 2012 through 2016.

**McLinko** responded that the claim was disputed, but did not dispute the claim and instead averred that it was likely that the Community Bank began proactive monitoring in 2012.<sup>1689</sup> I find an insufficient factual basis has been presented to establish a dispute in this Response to create a controverted material fact. Accordingly, the Recommended Decision will include a

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<sup>1683</sup> Russ Anderson Amended Answer ¶ 260; Julian Amended Answer ¶ 260; McLinko Amended Answer ¶ 260.

<sup>1684</sup> Russ Anderson’s ECSFM at No. 181.

<sup>1685</sup> Russ Anderson’s ECSFM at No. 181.

<sup>1686</sup> Julian’s ECSFM at No. 143, citing DJ0172 at 12 OCC-WF-SP-07666076.

<sup>1687</sup> Julian’s ECSFM at No. 143, citing MSD-300 at 21:2-8; MSD-629 at 41:17–42:5.

<sup>1688</sup> Julian’s ECSFM at No. 143, citing DJ0173 at 1 OCC-WF-SP-07667133.

<sup>1689</sup> McLinko’s ECSFM at No. 143.

factual finding as to Respondent McLinko that the group within the Community Bank that performed proactive monitoring was SSCOT, which reported to Respondent Russ Anderson beginning from 2012 through 2016.

**Enforcement Counsel’s Statement of Material Fact (Russ Anderson) No. 182 and (Julian and McLinko) No. 144**

SSCOT proactively monitored for simulated funding and phone number changes.<sup>1690</sup>

**Responses:**

**Russ Anderson** did not dispute that Sales Quality/SSCOT performed proactive monitoring for simulated funding and phone number changes.<sup>1691</sup> Accordingly, the Recommended Decision will include a factual finding as to Respondent Russ Anderson that Sales Quality/SSCOT proactively monitored for simulated funding and phone number changes.

**Julian** presented his response as “disputed,” but the substance of his response did not controvert the material allegations presented in this Statement, averring only that the Statement “is missing context.”<sup>1692</sup> I find an insufficient factual basis has been presented to establish a dispute in this Response to create a controverted material fact. Accordingly, the Recommended Decision will include a factual finding as to Respondents Julian and McLinko that SSCOT proactively monitored for simulated funding and phone number changes.

**McLinko** incorporated Respondent Julian’s Response.<sup>1693</sup>

**Enforcement Counsel’s Statement of Material Fact (Russ Anderson) No. 183 and (Julian and McLinko) No. 145**

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.<sup>1694</sup>

**Responses:**

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<sup>1690</sup> Russ Anderson Amended Answer ¶ 97; Julian Amended Answer ¶ 260; McLinko Amended Answer ¶ 260.

<sup>1691</sup> Russ Anderson’s ECSFM at No. 182.

<sup>1692</sup> Julian’s ECSFM at No. 144.

<sup>1693</sup> McLinko’s ECSFM at No. 144.

<sup>1694</sup> MSD-297 (Richards Tr.) at 82:4-84:4.



**Russ Anderson** did not dispute the claim that the Bank referred to the unauthorized transfer of customer funds between one customer account and another, unauthorized customer account as “simulated funding”.<sup>1695</sup>

I find an insufficient factual basis has been presented to establish a dispute in this Response to create a controverted material fact. Accordingly, the Recommended Decision will include a factual finding as to Respondent Russ Anderson that 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.

**Julian** presented his response as “disputed,” but the substance of his response did not controvert the material allegations presented in this Statement, averring only that in his Amended Answer he did not object to defining “simulated funding” to refer to “transferring customer funds from one account to another without customer consent.”<sup>1696</sup>

I find an insufficient factual basis has been presented to establish a dispute in this Response to create a controverted material fact. Accordingly, the Recommended Decision will include a factual finding as to Respondents Julian and McLinko that 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.

**McLinko** incorporated Respondent Julian’s Response.<sup>1697</sup>

### **Enforcement Counsel’s Statement of Material Fact (Russ Anderson) No. 184 and (Julian and McLinko) No. 146**

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.<sup>1698</sup>

#### **Responses:**

**Russ Anderson** incorporated Respondent Julian’s response.<sup>1699</sup>

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<sup>1695</sup> Russ Anderson’s ECSFM at No. 183.

<sup>1696</sup> Julian’s ECSFM at No. 145, quoting Julian Amended Answer ¶ 144.

<sup>1697</sup> McLinko’s ECSFM at No. 145.

<sup>1698</sup> 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.

<sup>1699</sup> Russ Anderson’s ECSFM at No. 184.

**Julian** presented his response as “disputed,” but the substance of his response did not controvert the material allegations presented in this Statement.<sup>1700</sup> For example, he averred the Statement “misrepresents the data collected,” and in support avers that with respect to pinning, Ms. Rawson said she had never heard their definition of pinning,<sup>1701</sup> “so, ‘allegedly enrolling the customer in online bill payments without the customer’s consent.’ I’ve never heard that definition of pinning.”<sup>1702</sup>

I find an insufficient factual basis has been presented to establish a dispute in this Response to create a controverted material fact. Accordingly, the Recommended Decision will include a factual finding as to Respondents Russ Anderson, Julian, and McLinko that 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.

**McLinko** incorporated Respondent Julian’s Response.<sup>1703</sup>

### **Enforcement Counsel’s Statement of Material Fact (Russ Anderson) No. 185 and (Julian and McLinko) No. 147**

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.<sup>1704</sup>

#### **Responses:**

**Russ Anderson** disputed that the allegation established any facts regarding her failure to institute adequate controls, and incorporated Respondent Julian’s response.<sup>1705</sup>

**Julian** presented his response as “disputed,” but the substance of his response did not controvert the material allegations presented in this Statement.<sup>1706</sup> He averred that SSCOT “looked more closely at team members within the outlying regions, looking specifically for instances where team members had made automatic transfers from one account to another and pulled back the

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<sup>1700</sup> Julian’s ECSFM at No. 146.

<sup>1701</sup> Julian’s ECSFM at No. 146, citing MSD-300 at 80:22-25.

<sup>1702</sup> Julian’s ECSFM at No. 146, citing MSD-300 at 80:22-25.

<sup>1703</sup> McLinko’s ECSFM at No. 146.

<sup>1704</sup> MSD-105; MSD-106; MSD-107; MSD-155 at 4.

<sup>1705</sup> Russ Anderson’s ECSFM at No. 185.

<sup>1706</sup> Julian’s ECSFM at No. 147.

money within the same day.”<sup>1707</sup>

I find an insufficient factual basis has been presented to establish a dispute in this Response to create a controverted material fact. Accordingly, the Recommended Decision will include a factual finding as to Respondents Russ Anderson, Julian, and McLinko that 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.

**McLinko** incorporated Respondent Julian’s Response.<sup>1708</sup>

### **Enforcement Counsel’s Statement of Material Fact (Russ Anderson) No. 186 and (Julian and McLinko) No. 148**

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].”<sup>1709</sup>

#### **Responses:**

**Russ Anderson** disputed the Statement as “incomplete.”<sup>1710</sup>

I find an insufficient factual basis has been presented to establish a dispute in this Response to create a controverted material fact. Accordingly, the Recommended Decision will include a factual finding as to Respondent Russ Anderson that for the Los Angeles/Orange County and then regional footprint analysis, she 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

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<sup>1707</sup> Julian’s ECSFM at No. 147, citing DJ0176 at 17 OCC-WF-SP- 07138420.

<sup>1708</sup> McLinko’s ECSFM at No. 147.

<sup>1709</sup> 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.

<sup>1710</sup> Russ Anderson’s ECSFM at No. 186.

leaving account X with a \$0 or possibly a negative balance,” and “account X had no further funding activity within [] 60 day[s].”

**Julian** averred that accounts flagged as potentially being an instance of simulated funding could have been legitimate, citing in support the report of his expert, Kathlyn Farrell, who stated that “an account that was opened accidentally, an account opened for one transaction (such as the sale of an asset) or an account where the customer changed his or her mind or expected money to come in that did not eventually come.”<sup>1711</sup> This speculative assessment does not, however, controvert the material facts presented in the Statement.

I find an insufficient factual basis has been presented to establish a dispute in this Response to create a controverted material fact. Accordingly, the Recommended Decision will include a factual finding as to Respondents Julian and McLinko that 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]

**McLinko** incorporated Respondent Julian’s Response.<sup>1712</sup>

#### **Enforcement Counsel’s Statement of Material Fact (Russ Anderson) No. 187 and (Julian and McLinko) No. 149**

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.”<sup>1713</sup>

#### **Responses:**

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<sup>1711</sup> Julian’s ECSFM at No. 148, quoting MSD-264 at 20.

<sup>1712</sup> McLinko’s ECSFM at No. 148.

<sup>1713</sup> MSD-105 (emphasis added); MSD-106; MSD-107.

**Russ Anderson** disputed the accuracy of the quote, stating that the text “50 or more instances of the above activity” should read “50 or more instances of this activity”; and did not dispute that the description of the methodology in the Statement is accurate.<sup>1714</sup>

I find an insufficient factual basis has been presented to establish a dispute in this Response to create a controverted material fact. Accordingly, the Recommended Decision will include a factual finding as to Respondent Russ Anderson that 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.”

**Julian** presented his response as “disputed,” but the substance of his response did not controvert the material allegations presented in this Statement.<sup>1715</sup> Referring to an October 9, 2013 Significant Investigation Notification that discussed evidence of possible significant funding, Julian averred this was evidence that the Bank “wanted to conduct interviews with the most egregious instances first.” Nothing in Julian’s Response controverted the material claims in this Statement.<sup>1716</sup>

I find an insufficient factual basis has been presented to establish a dispute in this Response to create a controverted material fact. Accordingly, the Recommended Decision will include a factual finding as to Respondents Julian and McLinko that 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.”

**McLinko** incorporated Respondent Julian’s Response.<sup>1717</sup>

### **Enforcement Counsel’s Statement of Material Fact (Russ Anderson) No. 188 and (Julian and McLinko) No. 150**

For the Los Angeles/Orange County and then regional footprint analysis, SSCOT identified employees who engaged in “potential falsification of customer phone numbers

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<sup>1714</sup> Russ Anderson’s ECSFM at No. 187.

<sup>1715</sup> Julian’s ECSFM at No. 149.

<sup>1716</sup> Julian’s ECSFM at No. 149, citing DJ0582 at 2 OCC-SP00046660.

<sup>1717</sup> McLinko’s ECSFM at No. 149.

(possibly to circumvent 11Ways to Wow Customer Surveys)” by identifying instances in which a “Customer’s existing phone number was changed by 1-3 digits.”<sup>1718</sup> 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.<sup>1719</sup>

### **Responses:**

**Russ Anderson** did not dispute that the quoted text is an accurate quote, nor did she dispute the extent the description of the methodology for investigations of phone number changes is accurate, and that the described methodology was employed.<sup>1720</sup> She averred the quote “lacks context” and that there were other forms of proactive monitoring in use.<sup>1721</sup>

I find an insufficient factual basis has been presented to establish a dispute in this Response to create a controverted material fact. Accordingly, the Recommended Decision will include a factual finding as to Respondent Russ Anderson that 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 11Ways to Wow Customer Surveys)” by identifying instances in which a “Customer’s existing phone number was changed by 1-3 digits.” 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.

**Julian** did not dispute that the quoted text is an accurate quote, nor did he dispute the extent the description of the methodology for investigations of phone number changes is accurate, and that the described methodology was employed.<sup>1722</sup> He averred only that “[t]his was considered to be the first slice of the data” and that SSCOT “was expected to run the report monthly”.<sup>1723</sup>

I find an insufficient factual basis has been presented to establish a dispute in this Response to create a controverted material fact. Accordingly, the Recommended Decision will include a factual finding as to Respondents Julian and McLinko that 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 11Ways to Wow Customer

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<sup>1718</sup> MSD-105; MSD-106; MSD-107.

<sup>1719</sup> MSD-105; MSD-106; MSD-107.

<sup>1720</sup> Russ Anderson’s ECSFM at No. 188.

<sup>1721</sup> Russ Anderson’s ECSFM at No. 188.

<sup>1722</sup> Julian’s ECSFM at No. 150.

<sup>1723</sup> Julian’s ECSFM at No. 150, citing MSD-107 at 1.

Surveys)” by identifying instances in which a “Customer’s existing phone number was changed by 1-3 digits.” 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.

**McLinko** incorporated Respondent Julian’s Response.<sup>1724</sup>

### **Enforcement Counsel’s Statement of Material Fact (Russ Anderson) No. 189 and (Julian and McLinko) No. 151**

On October 18, 2013, Corporate Investigations sent Respondent Russ Anderson a Significant Investigation Notification.<sup>1725</sup> Respondent McLinko’s direct report Bart Deese received the Significant Investigation Notification from Corporate Investigations.<sup>1726</sup> Mr. Deese provided Respondent McLinko with an updated Significant Investigation Notification on November 1, 2013.<sup>1727</sup> The Significant Incident Notification stated that “Corporate Investigations has deemed this case significant based on the number of team members impacted and the specific misconduct identified.”<sup>1728</sup> The Significant Investigation Notification noted that 177 bankers were identified for possible simulated funding.<sup>1729</sup> The allegation was that “Simulated funding falsified entries were made to meet individual and store sales goals.”<sup>1730</sup> Individuals with “the most egregious simulated funding numbers were to be interviewed first.”<sup>1731</sup> 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.”<sup>1732</sup> Those individuals with the most egregious phone number changes were also interviewed.<sup>1733</sup>

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<sup>1724</sup> McLinko’s ECSFM at No. 150.

<sup>1725</sup> MSD-108.

<sup>1726</sup> MSD-108.

<sup>1727</sup> MSD-333.

<sup>1728</sup> MSD-108 at 2.

<sup>1729</sup> MSD-108 at 2.

<sup>1730</sup> MSD-108 at 3 (emphasis added).

<sup>1731</sup> MSD-108 at 3.

<sup>1732</sup> MSD-108 at 3.

<sup>1733</sup> MSD-108 at 3.

## Responses:

**Russ Anderson** did not dispute that the quoted statements reflect what was said, but disputed this showed she failed to institute adequate controls to prevent sales practices misconduct.<sup>1734</sup>

I find an insufficient factual basis has been presented to establish a dispute in this Response to create a controverted material fact. Accordingly, the Recommended Decision will include a factual finding as to Respondent Russ Anderson that on October 18, 2013, Corporate Investigations sent Respondent Russ Anderson a Significant Investigation Notification. Respondent McLinko's direct report Bart Deese received the Significant Investigation Notification from Corporate Investigations. Mr. Deese provided Respondent McLinko with an updated Significant Investigation Notification on November 1, 2013. The Significant Incident Notification stated that "Corporate Investigations has deemed this case significant based on the number of team members impacted and the specific misconduct identified." The Significant Investigation Notification noted that 177 bankers were identified for possible simulated funding. The allegation was that "Simulated funding falsified entries were made *to meet individual and store sales goals.*" Individuals with "the most egregious simulated funding numbers were to be interviewed first." 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." Those individuals with the most egregious phone number changes were also interviewed.

**Julian** incorporated Respondent McLinko's Response.<sup>1735</sup>

**McLinko** did not dispute that he received the cited email and that it contained the quoted language, except that it did not contain any added emphasis<sup>1736</sup> I find an insufficient factual basis has been presented to establish a dispute in this Response to create a controverted material fact. Accordingly, the Recommended Decision will include a factual finding as to Respondents Julian and McLinko that on October 18, 2013, Corporate Investigations sent Respondent Russ Anderson a Significant Investigation Notification. Respondent McLinko's direct report Bart Deese received the Significant Investigation Notification from Corporate Investigations. Mr. Deese provided Respondent McLinko with an updated Significant Investigation Notification on November 1, 2013. The Significant Incident Notification stated that "Corporate Investigations has deemed this case significant based on the number of team members impacted and the specific misconduct identified." The Significant Investigation Notification noted that 177

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<sup>1734</sup> Russ Anderson's ECSFM at No. 189.

<sup>1735</sup> Julian's ECSFM at No. 151.

<sup>1736</sup> McLinko's ECSFM at No. 151



bankers were identified for possible simulated funding. The allegation was that “Simulated funding falsified entries were made to meet individual and store sales goals.” Individuals with “the most egregious simulated funding numbers were to be interviewed first.” 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.” Those individuals with the most egregious phone number changes were also interviewed.

### **Enforcement Counsel’s Statement of Material Fact (Russ Anderson) No. 190**

Respondent Russ Anderson testified that she did not disagree that the criteria detected the most egregious offenders.<sup>1737</sup>

#### **Responses:**

**Russ Anderson** disputed the Statement as referring to criteria that is vague and undefined; but did not dispute the testimony attributed to her.<sup>1738</sup>

I find an insufficient factual basis has been presented to establish a dispute in this Response to create a controverted material fact. Accordingly, the Recommended Decision will include a factual finding as to Respondent Russ Anderson that she testified that she did not disagree that the criteria detected the most egregious offenders.

### **Enforcement Counsel’s Statement of Material Fact (Russ Anderson) No. 191 and (Julian and McLinko) No. 152**

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[;] [I]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 with unfunded accounts but would resort to auto transfers w/o customer consent to meet goals timely[.]”<sup>1739</sup>

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<sup>1737</sup> MSD-266 (Russ Anderson Dep. Tr.) at 224:2-229:17; MSD-117 (email to Respondent Russ Anderson, “Second, we need to keep in mind that we’ve already terminated team members in LA/OC for this activity and those who were identified met the threshold of having 50 or more phone number changes of 1-3 digit in a 3 month period (which I think we would all acknowledge is just capturing the worst of the worst offenders)”.

<sup>1738</sup> Russ Anderson’s ECSFM at No. 190.

<sup>1739</sup> MSD-108 at 3.

## Responses:

**Russ Anderson** did not dispute that the exhibit relied upon by Enforcement Counsel contained the above-cited statements, but disputed the statements establish that she failed to institute adequate controls to detect sales practices misconduct.<sup>1740</sup>

I find an insufficient factual basis has been presented to establish a dispute in this Response to create a controverted material fact. Accordingly, the Recommended Decision will include a factual finding as to Respondent Russ Anderson that the Significant Investigation Notification that she 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 with unfunded accounts but would resort to auto transfers w/o customer consent to meet goals timely[.]”

**Julian** incorporated Respondent McLinko’s Response.<sup>1741</sup>

**McLinko** disputed the relied-upon exhibit is an accurate or complete recitation of the cited evidence, but presented no evidence establishing that the language presented was not found in the exhibit relied upon by Enforcement Counsel.<sup>1742</sup> I find an insufficient factual basis has been presented to establish a dispute in this Response to create a controverted material fact.

Accordingly, the Recommended Decision will include a factual finding as to Respondents Julian and McLinko that the Significant Investigation Notification that 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 with unfunded accounts but would resort to auto transfers w/o customer consent to meet goals timely[.]”

## Enforcement Counsel’s Statement of Material Fact (Russ Anderson) No. 192

Respondent Russ Anderson testified that she had no reason to doubt the findings in the

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<sup>1740</sup> Russ Anderson’s ECSFM at No. 191.

<sup>1741</sup> Julian’s ECSFM at No. 152.

<sup>1742</sup> McLinko’s ECSFM at No. 152.

Significant Investigation Notification.<sup>1743</sup>

**Responses:**

**Russ Anderson** did not dispute that the exhibit relied upon by Enforcement Counsel contained the above-cited statements, but disputed the statements establish that she failed to institute adequate controls to detect sales practices misconduct.<sup>1744</sup>

I find an insufficient factual basis has been presented to establish a dispute in this Response to create a controverted material fact. Accordingly, the Recommended Decision will include a factual finding as to Respondent Russ Anderson that she testified that she had no reason to doubt the findings in the Significant Investigation Notification.

**Enforcement Counsel’s Statement of Material Fact (Russ Anderson) No. 193 and (Julian and McLinko) No. 153**

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.”<sup>1745</sup>

**Responses:**

**Russ Anderson** did not dispute the text is accurately quoted but disputed the text shows she failed to institute adequate controls to prevent sales practices misconduct.<sup>1746</sup>

I find an insufficient factual basis has been presented to establish a dispute in this Response to create a controverted material fact. Accordingly, the Recommended Decision will include a factual finding as to Respondent Russ Anderson that 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

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<sup>1743</sup> MSD-266 (Russ Anderson Dep. Tr.) at 226:4- 227:10.

<sup>1744</sup> Russ Anderson’s ECSFM at No. 192.

<sup>1745</sup> MSD-221 at 2.

<sup>1746</sup> Russ Anderson’s ECSFM at No. 193.

[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.”

**Julian** incorporated Respondent McLinko’s Response.<sup>1747</sup>

**McLinko** disputed the relied-upon exhibit is an accurate or complete recitation of the cited evidence, but presented no evidence establishing that the language presented was not found in the exhibit relied upon by Enforcement Counsel.<sup>1748</sup> I find an insufficient factual basis has been presented to establish a dispute in this Response to create a controverted material fact. Accordingly, the Recommended Decision will include a factual finding as to Respondents Julian and McLinko that 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.”

**Enforcement Counsel’s Statement of Material Fact (Russ Anderson) No. 194 and (Julian and McLinko) No. 154**

Enforcement Counsel’s Statement of Material Fact (Russ Anderson) No. 194 and (Julian and McLinko) No. 154 rely on exhibits presented to this Tribunal as being non-public. Pursuant to the OCC’s Uniform Rules, while the proceedings in this administrative enforcement action are expressly required to be public, when presented with non-public documents the Administrative Law Judge is required to take all appropriate steps to preserve the confidentiality of such documents.<sup>1749</sup> Upon my review of the confidential documents supporting these Statements of Material Fact, and after weighing the expectation that all of the proceedings shall be public against the requirement that I protect against the disclosure of non-public information, I find the evidentiary value of these exhibits to be sufficiently marginal and duplicative as to warrant exclusion from this Order. Accordingly, this Order will not be based on any of the claims found in these Statements of Material Fact.

**Enforcement Counsel’s Statement of Material Fact (Russ Anderson) No. 195 and (Julian and McLinko) No. 155**

The analysis from SSCOT in the summer and fall of 2013 to identify employees engaged in

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<sup>1747</sup> Julian’s ECSFM at No. 153.

<sup>1748</sup> McLinko’s ECSFM at No. 153.

<sup>1749</sup> See 12 C.F.R. § 19.33(b).

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.<sup>1750</sup>

### **Responses:**

**Russ Anderson** does not dispute that the analysis reached the conclusions stated, but disputed its admissibility as it relies upon a legal opinion, lacks documentation, and Respondent was “not part of the exchange.”<sup>1751</sup>

I find an insufficient factual basis has been presented to establish a dispute in this Response to create a controverted material fact. Accordingly, the Recommended Decision will include a factual finding as to Respondent Russ Anderson that the referenced 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.

**Julian** presented his response as “disputed,” but the substance of his response did not controvert the material allegations presented in this Statement.<sup>1752</sup> He does not dispute that the analysis reached the conclusions shown in the Statement, but avers the Statement “mischaracterizes the SSCOT investigation, that “[t]o identify outlier behavior, SSCOT focused on individuals that had opened more than 50 accounts in one month or those where more than 10% of their total accounts opened in four months showed potential simulated funding activity.”<sup>1753</sup> Based on this analysis, SSCOT confirmed that higher than acceptable incidents of simulated funding appeared to be taking place and referred the matter to CIS.<sup>1754</sup> Corporate Investigations then decided to conduct an intensive investigation into simulated funding activity, starting with the Los Angeles and Orange County markets.”<sup>1755</sup>

I find an insufficient factual basis has been presented to establish a dispute in this Response to create a controverted material fact. Accordingly, the Recommended Decision will include a factual finding as to Respondents Julian and McLinko that the referenced 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

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<sup>1750</sup> Russ Anderson Amended Answer ¶ 99; MSD-114 at 2-3.

<sup>1751</sup> Russ Anderson’s ECSFM at No. 195.

<sup>1752</sup> Julian’s ECSFM at No. 155.

<sup>1753</sup> Julian’s ECSFM at No. 155, citing DJ0177 at 2 OCC-WF-SP- 07607271.

<sup>1754</sup> Julian’s ECSFM at No. 155, citing DJ0177 at 2 OCC-WF-SP-07607271.

<sup>1755</sup> Julian’s ECSFM at No. 155, citing DJ0177 at 1 OCC-WF-SP-07607271.

terminations of approximately 35 employees in the fall of 2013, followed by a footprint-wide investigation of similar conduct across the Regional Bank.

**McLinko** incorporated Respondent Julian’s Response.<sup>1756</sup>

### **Enforcement Counsel’s Statement of Material Fact (Russ Anderson) No. 196 and (Julian and McLinko) No. 156**

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.<sup>1757</sup>

#### **Responses:**

**Russ Anderson** did not dispute that the text was accurately quoted, but disputed the claim “for its mischaracterization of Ms. Russ Anderson’s knowledge of the simulated funding investigation.”<sup>1758</sup>

I find an insufficient factual basis has been presented to establish a dispute in this Response to create a controverted material fact. Accordingly, the Recommended Decision will include a factual finding as to Respondent Russ Anderson that 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.

**Julian** did not dispute that the text was accurately quoted, but disputed the Statement “lacks additional context.”<sup>1759</sup> I find an insufficient factual basis has been presented to establish a dispute in this Response to create a controverted material fact. Accordingly, the Recommended Decision will include a factual finding as to Respondents Julian and McLinko that on October 3,

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<sup>1756</sup> McLinko’s ECSFM at No. 155.

<sup>1757</sup> Russ Anderson Amended Answer ¶ 100; MSD-331 (email forwarding Oct. 2013 LA Times Article) (Russ Anderson asking Mr. Bacon for “some context” because she “wasn’t aware of this situation”); MSD-56 (Christoff Decl.) at ¶ 16.

<sup>1758</sup> Russ Anderson’s ECSFM at No. 196.

<sup>1759</sup> Julian’s ECSFM at No. 156.

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.

**McLinko** incorporated Respondent Julian’s Response.<sup>1760</sup>

### **Enforcement Counsel’s Statement of Material Fact (Russ Anderson) No. 197 and (Julian and McLinko) No. 157**

Enforcement Counsel’s Statement of Material Fact (Russ Anderson) No. 197 and (Julian and McLinko) No. 157 rely on exhibits presented to this Tribunal as being non-public. Pursuant to the OCC’s Uniform Rules, while the proceedings in this administrative enforcement action are expressly required to be public, when presented with non-public documents the Administrative Law Judge is required to take all appropriate steps to preserve the confidentiality of such documents.<sup>1761</sup> Upon my review of the confidential documents supporting these Statements of Material Fact, and after weighing the expectation that all of the proceedings shall be public against the requirement that I protect against the disclosure of non-public information, I find the evidentiary value of these exhibits to be sufficiently marginal and duplicative as to warrant exclusion from this Order. Accordingly, this Order will not be based on any of the claims found in these Statements of Material Fact.

### **Enforcement Counsel’s Statement of Material Fact (Russ Anderson) No. 198**

Only weeks after the October *Los Angeles Times* article, or around November 15, 2013, Respondent Russ Anderson provided feedback on a draft “Issue and Recommendation memo” from Audit (on which Respondent McLinko was copied).<sup>1762</sup> The original language of the “Issue and Recommendation memo” regarding Sales Quality / Sales Integrity stated: “Enhance the training notification process and increased visibility of repeat sales offenders.”<sup>1763</sup> The edits from Respondent Russ Anderson included, among other things, deleting the term “repeat sales

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<sup>1760</sup> McLinko’s ECSFM at No. 156.

<sup>1761</sup> See 12 C.F.R. § 19.33(b).

<sup>1762</sup> MSD-198 at 2.

<sup>1763</sup> MSD-198 at 4.

offenders” throughout the document.<sup>1764</sup>

**Responses:**

**Russ Anderson** did not dispute the claim that she made the edits described above, but disputed that making edits to a document is grounds for a conclusion that Ms. Russ Anderson failed to institute adequate controls to prevent sales practices misconduct.<sup>1765</sup>

I find an insufficient factual basis has been presented to establish a dispute in this Response to create a controverted material fact. Accordingly, the Recommended Decision will include a factual finding as to Respondent Russ Anderson that only weeks after the October *Los Angeles Times* article, or around November 15, 2013, Respondent Russ Anderson provided feedback on a draft “Issue and Recommendation memo” from Audit (on which Respondent McLinko was copied). The original language of the “Issue and Recommendation memo” regarding Sales Quality / Sales Integrity stated: “Enhance the training notification process and increased visibility of repeat sales offenders.” The edits from Respondent Russ Anderson included, among other things, deleting the term “repeat sales offenders” throughout the document.

**Enforcement Counsel’s Statement of Material Fact (Russ Anderson) No. 199 and (Julian and McLinko) No. 158**

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.<sup>1766</sup>

**Responses:**

**Russ Anderson** did not dispute that the article contains the quoted material, but averred the newspaper article is not evidence that employees were threatened with termination if they failed to meet sales goals, and that media outlets are known to generate articles and reports that are inaccurate.<sup>1767</sup>

I find an insufficient factual basis has been presented to establish a dispute in this Response to create a controverted material fact. Accordingly, the Recommended Decision will include a factual finding as to Respondent Russ Anderson that on December 21, 2013, the *Los Angeles*

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<sup>1764</sup> MSD-198 at 4, 6-8.

<sup>1765</sup> Russ Anderson’s ECSFM at No. 198.

<sup>1766</sup> Russ Anderson Amended Answer ¶ 101; MSD-111.

<sup>1767</sup> Russ Anderson’s ECSFM at No. 199.



*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.

**Julian** did not dispute that the article contains the quoted material, but averred the Statement “lacks additional context.”<sup>1768</sup>

I find an insufficient factual basis has been presented to establish a dispute in this Response to create a controverted material fact. Accordingly, the Recommended Decision will include a factual finding as to Respondents Julian and McLinko that 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.

**McLinko** incorporated Respondent Julian’s Response.<sup>1769</sup>

#### **Enforcement Counsel’s Statement of Material Fact (Russ Anderson) No. 200**

Respondent Russ Anderson read both the October 2013 and December 2013 *Los Angeles Times* articles.<sup>1770</sup>

#### **Responses:**

**Russ Anderson** did not dispute that the articles contained the quoted text or that she read both articles, but disputed the claims because references to her transcript “are incomplete as they do not include her subsequent response that that article was “not necessarily” credible and some accusations not accurate.”<sup>1771</sup>

I find an insufficient factual basis has been presented to establish a dispute in this Response to create a controverted material fact. Accordingly, the Recommended Decision will include a factual finding as to Respondent Russ Anderson that she read both the October 2013 and December 2013 *Los Angeles Times* articles.

#### **Enforcement Counsel’s Statement of Material Fact (Julian and McLinko) No. 159**

Respondents Julian and McLinko were both aware of the October 2013 and December 2013

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<sup>1768</sup> Julian’s ECSFM at No. 158.

<sup>1769</sup> McLinko’s ECSFM at No. 158.

<sup>1770</sup> MSD-266 (Russ Anderson Dep. Tr.) at 160:20-23; Russ Anderson Amended Answer ¶ 102.

<sup>1771</sup> Russ Anderson’s ECSFM at No. 200, citing MSD-266 at 160:24-162:12.

Los Angeles Times articles about the Community Bank's sales practices.<sup>1772</sup>

**Responses:**

**Julian** did not dispute the claim.<sup>1773</sup> **McLinko** did not dispute the claim. Accordingly, the Recommended Decision will include a factual finding as to Respondents Julian and McLinko that 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.<sup>1774</sup>

**Enforcement Counsel's Statement of Material Fact (Russ Anderson) No. 201 and (Julian and McLinko) No. 160**

Enforcement Counsel's Statement of Material Fact (Russ Anderson) No. 201 and (Julian and McLinko) No. 160 rely on exhibits presented to this Tribunal as being non-public. Pursuant to the OCC's Uniform Rules, while the proceedings in this administrative enforcement action are expressly required to be public, when presented with non-public documents the Administrative Law Judge is required to take all appropriate steps to preserve the confidentiality of such documents.<sup>1775</sup> Upon my review of the confidential documents supporting these Statements of Material Fact, and after weighing the expectation that all of the proceedings shall be public against the requirement that I protect against the disclosure of non-public information, I find the evidentiary value of these exhibits to be sufficiently marginal and duplicative as to warrant exclusion from this Order. Accordingly, this Order will not be based on any of the claims found in these Statements of Material Fact.

**Enforcement Counsel's Statement of Material Fact (Russ Anderson) No. 202 and (Julian and McLinko) No. 161**

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.<sup>1776</sup> There was no lookback conducted of potential simulated funding and phone number changes

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<sup>1772</sup> Julian Amended Answer ¶ 55, 102; McLinko Amended Answer ¶ 55, 102; MSD-531 (a colleague warning Respondent McLinko that "it poses reputation risk to the firm").

<sup>1773</sup> Julian's ECSFM at No. 159.

<sup>1774</sup> McLinko's ECSFM at No. 159.

<sup>1775</sup> See 12 C.F.R. § 19.33(b).

<sup>1776</sup> MSD-115 at 2, 3.

that occurred prior to April 2014.<sup>1777</sup>

**Responses:**

**Russ Anderson** incorporated Respondent Julian’s response.<sup>1778</sup>

**Julian** did not dispute the claim, but stated “it lacks necessary context,” referring to evidence showing that the Core Team agreed to pause in order to give them time to “understand and address the root causes of the issue and tak[e] appropriate action in response to our findings.”<sup>1779</sup>

I find an insufficient factual basis has been presented to establish a dispute in this Response to create a controverted material fact. Accordingly, the Recommended Decision will include a factual finding as to Respondent Julian that 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. There was no lookback conducted of potential simulated funding and phone number changes that occurred prior to April 2014.

**McLinko** incorporated Respondent Julian’s Response.<sup>1780</sup>

**Enforcement Counsel’s Statement of Material Fact (Russ Anderson) No. 203 and (Julian and McLinko) No. 162**

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.

**Responses:**

**Russ Anderson** did not dispute that in her Amended Answer she admitted to the threshold used as described above, but disputed how the threshold worked.<sup>1781</sup>

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<sup>1777</sup> MSD-115.

<sup>1778</sup> Russ Anderson’s ECSFM at No. 202.

<sup>1779</sup> Julian’s ECSFM at No. 161, quoting MSD-112 at 1.

<sup>1780</sup> McLinko’s ECSFM at No. 161.

<sup>1781</sup> Russ Anderson’s ECSFM at No. 203.

I find an insufficient factual basis has been presented to establish a dispute in this Response to create a controverted material fact. Accordingly, the Recommended Decision will include a factual finding as to Respondent Russ Anderson that 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.

**Julian** responded that the claim was disputed, but did not dispute the claim and instead averred Enforcement Counsel has misrepresented the data.<sup>1782</sup> I find an insufficient factual basis has been presented to establish a dispute in this Response to create a controverted material fact. Accordingly, the Recommended Decision will include a factual finding as to Respondents Julian and McLinko that 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.

**McLinko** incorporated Respondent Julian’s Response.<sup>1783</sup>

### **Enforcement Counsel’s Statement of Material Fact (Russ Anderson) No. 204 and (Julian and McLinko) No. 163**

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.<sup>1784</sup>

#### **Responses:**

**Russ Anderson** incorporated Respondent Julian’s response.<sup>1785</sup>

**Julian** disputed the claim, averring that 99.99% includes the bankers who did not have any instances of potential instances of simulated funding and is not limited to the bankers with “red flag” activity identified; thus, the bank was proactively monitoring the top 0.01% of all

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<sup>1782</sup> Julian’s ECSFM at No. 162.

<sup>1783</sup> McLinko’s ECSFM at No. 162.

<sup>1784</sup> MSD-116 at 3; see also MSD-300 (Rawson Tr.) at 176:17-179:11.

<sup>1785</sup> Russ Anderson’s ECSFM at No. 204.

employees.<sup>1786</sup>

I find an insufficient factual basis has been presented to establish a dispute in this Response to create a controverted material fact. Accordingly, the Recommended Decision will include a factual finding as to Respondents Russ Anderson, Julian, and McLinko that 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.

**McLinko** incorporated Respondent Julian's Response.<sup>1787</sup>

### **Enforcement Counsel's Statement of Material Fact (Julian and McLinko) No. 163**

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.<sup>1788</sup>

#### **Responses:**

**Julian** averred that Enforcement Counsel rely solely on their own calculation, which shows a "fundamental misunderstanding of how the threshold was calculated" and averred that the 99.99% "includes the bankers who did not have any instances of potential instances of simulated funding"<sup>1789</sup> [and i]t is not limited to the bankers with 'red flag' activity identified; thus, the bank was proactively monitoring the top 0.01% of all employees."<sup>1790</sup>

I find an insufficient factual basis has been presented to establish a dispute in this Response to create a controverted material fact. Accordingly, the Recommended Decision will include a factual finding as to Respondents Julian and McLinko that 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.

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<sup>1786</sup> Julian's ECSFM at No. 162, citing MSD- 119 at 2.

<sup>1787</sup> McLinko's ECSFM at No. 162.

<sup>1788</sup> MSD- 300 (Rawson Tr.) at 90:18-91:20.

<sup>1789</sup> Julian's ECSFM at No. 163, citing MSD- 119 at 2.

<sup>1790</sup> Julian's ECSFM at No. 163, citing MSD- 119 at 2.

**McLinko** incorporated Respondent Julian's Response.<sup>1791</sup>

### **Enforcement Counsel's Statement of Material Fact (Russ Anderson) No. 205**

From April 2015 through October 2016, SSCOT lowered the threshold slightly to refer for investigation those employees at or above the 99.95<sup>th</sup> percentile of activity that was a red flag for simulated funding.<sup>1792</sup>

#### **Responses:**

**Russ Anderson** incorporated Respondent Julian's response in (Julian and McLinko) No. 164.<sup>1793</sup> In that Response, Respondent Julian did not dispute that SSCOT lowered the threshold as stated, admitting that the Bank decided to lower the threshold in April 2015 because "simulated behavior decreased with only on average three team members identified per month" so "the SSCOT expanded the threshold for review by flagging all in-out transactions within one day, which could include cash deposits, and lowering the percentile to the top 99.95%."<sup>1794</sup>

I find an insufficient factual basis has been presented to establish a dispute in this Response to create a controverted material fact. Accordingly, the Recommended Decision will include a factual finding as to Respondent Julian that from April 2015 through October 2016, SSCOT lowered the threshold slightly to refer for investigation those employees at or above the 99.95<sup>th</sup> percentile of activity that was a red flag for simulated funding.

### **Enforcement Counsel's Statement of Material Facts (Julian and McLinko) No. 164**

From April 2015 through October 2016, SSCOT lowered the threshold slightly to refer for investigation those employees at or above the 99.95<sup>th</sup> 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.<sup>1795</sup>

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<sup>1791</sup> McLinko's ECSFM at No. 163.

<sup>1792</sup> Russ Anderson Amended Answer ¶ 106; MSD-116 at 3; MSD- 115 at 3 (describing the evolution of thresholds); MSD-300 (Rawson Tr.) at 225:11-22; 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.

<sup>1793</sup> Russ Anderson's ECSFM at No. 205.

<sup>1794</sup> Julian's ECSFM at No. 164, quoting MSD-116 at 1.

<sup>1795</sup> 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

## Responses:

**Julian** did not dispute that SSCOT lowered the threshold as stated, admitting that the Bank decided to lower the threshold in April 2015 because “simulated behavior decreased with only on average three team members identified per month” so “the SSCOT expanded the threshold for review by flagging all in-out transactions within one day, which could include cash deposits, and lowering the percentile to the top 99.95%.<sup>1796</sup>

I find an insufficient factual basis has been presented to establish a dispute in this Response to create a controverted material fact. Accordingly, the Recommended Decision will include a factual finding as to Respondents Julian and McLinko that 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.

**McLinko** incorporated Respondent Julian’s Response.<sup>1797</sup>

## **Enforcement Counsel’s Statement of Material Fact (Russ Anderson) No. 206 and (Julian and McLinko) No. 165**

Lowering the threshold to the 99.95<sup>th</sup> percentile resulted in the identification and referral of approximately 15 to 23 employees per month.<sup>1798</sup>

## Responses:

**Russ Anderson** incorporated Respondent Julian’s response.<sup>1799</sup>

**Julian** did not dispute the claim in the Statement, but averred that “lowering threshold from the 99.99<sup>th</sup> percentile to the 99.95th percentile was just one of the enhancements made in April of 2015.<sup>1800</sup>

I find an insufficient factual basis has been presented to establish a dispute in this Response to create a controverted material fact. Accordingly, the Recommended Decision will

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continued using the 99.95 threshold for identifying simulated funding, even in 2016); MSD-118; MSD-119; MSD-121.

<sup>1796</sup> Julian’s ECSFM at No. 164, quoting MSD-116 at 1.

<sup>1797</sup> McLinko’s ECSFM at No. 3.

<sup>1798</sup> 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.

<sup>1799</sup> Russ Anderson’s ECSFM at No. 206.

<sup>1800</sup> Julian’s ECSFM at No. 164, citing MSD-603 at 2-3.

include a factual finding as to Respondent Julian that lowering the threshold to the 99.95<sup>th</sup> percentile resulted in the identification and referral of approximately 15 to 23 employees per month.

**McLinko** incorporated Respondent Julian's Response.<sup>1801</sup>

**Enforcement Counsel's Statement of Material Fact (Russ Anderson) No. 207 and (Julian and McLinko) No. 166**

The 99.95% percent threshold captured employees who had on average 10.3 occurrences of red flag activity for simulated funding each month.<sup>1802</sup>

**Responses:**

**Russ Anderson** incorporated Respondent Julian's response.<sup>1803</sup>

**Julian** averred that SSCOT collected data over a period of time, and found that of the bankers that made up the top 0.05%, the average number of "red flag" activity for simulated funding overall was 10.3 occurrences per month,<sup>1804</sup> asserting that "[t]his does not mean that each employee individually had 10.3 occurrences per month, seeing as the employees with the most egregious behavior (e.g., opening 50 or more accounts in a month) would dramatically skew the average per employee."<sup>1805</sup>

I find an insufficient factual basis has been presented to establish a dispute in this Response to create a controverted material fact. Accordingly, the Recommended Decision will include a factual finding as to Respondents Russ Anderson and Julian that 99.95% percent threshold captured employees who had on average 10.3 occurrences of red flag activity for simulated funding each month.

**McLinko** incorporated Respondent Julian's Response.<sup>1806</sup>

**Enforcement Counsel's Statement of Material Fact (Russ Anderson) No. 208 and (Julian and McLinko) No. 167**

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<sup>1801</sup> McLinko's ECSFM at No. 4.

<sup>1802</sup> MSD-119; MSD-300 (Rawson Tr.) at 165:11-19.

<sup>1803</sup> Russ Anderson's ECSFM at No. 207.

<sup>1804</sup> Julian's ECSFM at No. 166, citing MSD-119 at 2.

<sup>1805</sup> Julian's ECSFM at No. 166, citing, e.g., (MSD-119 at 2) (DJ0177 at 2 OCC-WF- SP-07607271).

<sup>1806</sup> McLinko's ECSFM at No. 166.



Enforcement Counsel’s Statements of Material Fact (Russ Anderson) No. 208 and (Julian and McLinko) No. 167 rely on exhibits presented to this Tribunal as being non-public. Pursuant to the OCC’s Uniform Rules, while the proceedings in this administrative enforcement action are expressly required to be public, when presented with non-public documents the Administrative Law Judge is required to take all appropriate steps to preserve the confidentiality of such documents.<sup>1807</sup> Upon my review of the confidential documents supporting these Statements of Material Fact, and after weighing the expectation that all of the proceedings shall be public against the requirement that I protect against the disclosure of non-public information, I find the evidentiary value of these exhibits to be sufficiently marginal and duplicative as to warrant exclusion from this Order. Accordingly, this Order will not be based on any of the claims found in these Statements of Material Fact.

### **Enforcement Counsel’s Statement of Material Fact (Russ Anderson) No. 209**

Respondent Russ Anderson knew of and approved the use of the 99.99% and 99.95% thresholds.<sup>1808</sup>

#### **Responses:**

**Russ Anderson** did not dispute the testimony upon which this Statement is based, acknowledging that she testified that she knew of and approved the use of the 99.99% and 99.95% thresholds “[a]s part of the core committee, which was a recommendation that came through David Otsuka and the legal department”,<sup>1809</sup> but disputed the Statement as “incomplete.”<sup>1810</sup>

I find an insufficient factual basis has been presented to establish a dispute in this Response to create a controverted material fact. Accordingly, the Recommended Decision will include a factual finding as to Respondent Russ Anderson that she knew of and approved the use of the 99.99% and 99.95% thresholds.

### **Enforcement Counsel’s Statement of Material Fact (Russ Anderson) No. 210**

Respondent Russ Anderson testified she could not recall a point in time during her entire tenure as Group Risk Officer when SSCOT’s proactive monitoring referred for investigation

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<sup>1807</sup> See 12 C.F.R. § 19.33(b).

<sup>1808</sup> MSD-266 (Russ Anderson Dep. Tr.) at 101:9-102:12.

<sup>1809</sup> Russ Anderson’s ECSFM at No. 209, citing MSD-266 (Russ Anderson Dep. Tr.) at 101:9-102:12.

<sup>1810</sup> Russ Anderson’s ECSFM at No. 209.

anyone other than the most egregious offenders of sales practices misconduct.<sup>1811</sup>

**Responses:**

**Russ Anderson** did not dispute the testimony attributed to her but averred the Statement “mischaracterizes” the testimony.<sup>1812</sup>

I find an insufficient factual basis has been presented to establish a dispute in this Response to create a controverted material fact. Accordingly, the Recommended Decision will include a factual finding as to Respondent Russ Anderson that she testified she could not recall a point in time during her entire tenure as Group Risk Officer when SSCOT’s proactive monitoring referred for investigation anyone other than the most egregious offenders of sales practices misconduct.

**Enforcement Counsel’s Statement of Material Fact (Russ Anderson) No. 211**

Russ Anderson was aware of concerns regarding SSCOT’s methodology to detect sales practices misconduct, including from her own staff within SSCOT.<sup>1813</sup>

**Responses:**

**Russ Anderson** did not dispute that she was present at the meetings referred to by Ms. Rawson’s testimony, disputing only that Ms. Rawson’s testimony was vague when specifically asked whether Ms. Russ Anderson was present.<sup>1814</sup>

I find an insufficient factual basis has been presented to establish a dispute in this Response to create a controverted material fact. Accordingly, the Recommended Decision will include a factual finding as to Respondent Russ Anderson that she was aware of concerns regarding SSCOT’s methodology to detect sales practices misconduct, including from her own staff within SSCOT.

**Enforcement Counsel’s Statement of Material Fact (Russ Anderson) No. 212 and (Julian and McLinko) No. 168**

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<sup>1811</sup> MSD-266 (Russ Anderson Dep. Tr.) at 229:6-17; see also MSD-300 (Rawson Tr.) at 158:24- 163:3 (testifying that a plan to expand thresholds was not approved), 225:4-22; MSD-115 at 3 (describing those in the 99.99 percentile as “the worst of the worst”); MSD-118; MSD-119; MSD-121 (“However, where proactive monitoring identifies potential dishonest conduct involving a significant number of team members, we generally rely on established threshold to target more egregious conduct . . . [i]nappropriate conduct identified through proactive monitoring falling below an established threshold generally is . . . not reviewed for dishonesty, and in most of those situations, no other corrective action is taken.”).

<sup>1812</sup> Russ Anderson’s ECSFM at No. 210.

<sup>1813</sup> MSD-300 (Rawson Tr.) at 173:18-176:6, 187:3-190:15; MSD-546 (Stevens Tr.) at 215:4-18.

<sup>1814</sup> Russ Anderson’s ECSFM at No. 211.

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."<sup>1815</sup>

### **Responses:**

**Russ Anderson** did not dispute that Mr. Richards gave the above explanation to her, but averred that Mr. Richards' transcript is the only citation for this statement and is not proof of the statement."<sup>1816</sup>

I find an insufficient factual basis has been presented to establish a dispute in this Response to create a controverted material fact. Accordingly, the Recommended Decision will include a factual finding as to Respondent Russ Anderson that the Bank's former Head of Financial Crimes Risk Management James Richards explained to her 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."

**Julian** presented his response as "disputed," but he did not dispute that Mr. Richards gave the above explanation to Respondent Russ Anderson.<sup>1817</sup> I find an insufficient factual basis has been presented to establish a dispute in this Response to create a controverted material fact. Accordingly, the Recommended Decision will include a factual finding as to Respondents Julian and McLinko that 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."

**McLinko** incorporated Respondent Julian's Response.<sup>1818</sup>

### **Enforcement Counsel's Statement of Material Fact (Russ Anderson) No. 213**

In response, Respondent Russ Anderson suggested that "if they changed or dramatically changed their monitoring thresholds that they would have, and I can't recall her phrase, but

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<sup>1815</sup> MSD-297 (Richards Tr.) at 146:11-148:20.

<sup>1816</sup> Russ Anderson's ECSFM at No. 212

<sup>1817</sup> Julian's ECSFM at No. 168.

<sup>1818</sup> McLinko's ECSFM at No. 168.

many, many more identified team members than they could reasonably handle.”<sup>1819</sup> Mr. Richards offered his team to assist SSCOT with their modeling and monitoring, but Respondent Russ Anderson refused.<sup>1820</sup>

### **Responses:**

**Russ Anderson** did not dispute that Mr. Richards gave the above explanation to her, but averred that Mr. Richards’ transcript is the only citation for this statement and is not proof of the statement.”<sup>1821</sup>

I find an insufficient factual basis has been presented to establish a dispute in this Response to create a controverted material fact. Accordingly, the Recommended Decision will include a factual finding as to Respondent Russ Anderson that in response, she suggested that “if they 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.”<sup>1822</sup> Mr. Richards offered his team to assist SSCOT with their modeling and monitoring, but Respondent Russ Anderson refused.

## **The Community Bank’s sales practices misconduct problem was pervasive and widespread**

### **Enforcement Counsel’s Statement of Material Fact (Russ Anderson) No. 214 and (Julian and McLinko) No. 169**

The Bank had a systemic problem with sales practices misconduct from no later than 2002 until sales goals were eliminated in October 2016. Sales practices misconduct was widespread across the Community Bank and involved tens of thousands of employees issuing millions of products and services to customers without their consent.<sup>1823</sup>

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<sup>1819</sup> MSD-297 (Richards Tr.) at 149:11-150:19.

<sup>1820</sup> MSD-297 (Richards Tr.) at 138:17-151:16, 154:14-155:10.

<sup>1821</sup> Russ Anderson’s ECSFM at No. 213

<sup>1822</sup> MSD-297 (Richards Tr.) at 149:11-150:19.

<sup>1823</sup> MSD-1 (DOJ SOF) (containing the Bank’s admission that it “opened millions of accounts or financial products that were unauthorized or fraudulent.”); MSD-2 at 3-4 (stating gaming cases and associated terminations had both increased by over 950% between 2000 and 2004 and were “geographically consistent corporate-wide”); MSD-57 (showing 5,367 terminations for sales practices misconduct); MSD-72 (stating that the primary allegations are related to consent and are occurring across the Bank geography-wide and that the bank receives 25-48,000 customer calls each year from customers stating they did not request certain bank products); MSD-116; MSD- 268 (NBE Crosthwaite Expert Report) at ¶¶ 52; MSD-269 (NBE Candy Expert Report) at ¶¶ 101-114; MSD-53; MSD-161-168; (sales integrity case comprised approximately half of all EthicsLine complaints); MSD-604 (showing 12

Enforcement Counsel's Statements of Material Fact (Russ Anderson) No. 214 and (Julian and McLinko) No. 169 rely on exhibits presented to this Tribunal as being non-public. Pursuant to the OCC's Uniform Rules, while the proceedings in this administrative enforcement action are expressly required to be public, when presented with non-public documents the Administrative Law Judge is required to take all appropriate steps to preserve the confidentiality of such documents.<sup>1824</sup> Upon my review of the confidential documents supporting these Statements of Material Fact, and after weighing the expectation that all of the proceedings shall be public against the requirement that I protect against the disclosure of non-public information, I find the evidentiary value of these exhibits to be sufficiently marginal and duplicative as to warrant exclusion from this Order. Accordingly, this Order will not be based on any of the claims found in these Statements of Material Fact.

### **Enforcement Counsel's Statement of Material Fact (Russ Anderson) No. 215 and (Julian and McLinko) No. 170**

The 2004 Investigation Report reported that gaming cases were "geographically consistent corporate-wide."<sup>1825</sup>

#### **Responses:**

**Russ Anderson** incorporated Respondent Julian's response.<sup>1826</sup>

**Julian** did not dispute the Report includes the text presented in the Statement, but averred that the Statement "lacks important context," because the term "gaming" as used in the cited evidence "is broader than the term 'sales practices misconduct'"<sup>1827</sup>

I find an insufficient factual basis has been presented to establish a dispute in this Response to create a controverted material fact. Accordingly, the Recommended Decision will include a factual finding as to Respondents Russ Anderson, Julian and McLinko that the 2004 Investigation Report reported that gaming cases were "geographically consistent corporate-wide."

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million inactive accounts and 7 million inactive debit cards); (MSD-199 (Freeman Decl.) at 2- 3 ("[S]ales practices misconduct had occurred throughout the Bank's geographic footprint, with higher concentrations in certain parts of the country.")); MSD-558 ("When I assumed responsibility for investigations at the first of the year [2004] I was told that the biggest internal problem was gaming.").

<sup>1824</sup> See 12 C.F.R. § 19.33(b).

<sup>1825</sup> MSD-2; Russ Anderson Amended Answer ¶ 52.

<sup>1826</sup> Russ Anderson's ECSFM at No. 216.

<sup>1827</sup> Julian's ECSFM at No. 170.

**McLinko** incorporated Respondent Julian's Response.<sup>1828</sup>

**Enforcement Counsel's Statement of Material Fact (Russ Anderson) No. 216 and (Julian and McLinko) No. 171**

The 2004 Investigation Report reported that "[b]etween 2000 and 2004, gaming cases have increased 979% and associated terminations have increased 962%."<sup>1829</sup>

**Responses:**

**Russ Anderson** incorporated Respondent Julian's response.<sup>1830</sup>

**Julian**<sup>1831</sup> and **McLinko**<sup>1832</sup> objected to the use of the exhibit supporting this claim (MSD-2, an interoffice memo dated August 24, 2004) on the grounds that the evidence is irrelevant, immaterial, unreliable, or repetitive. The objection is sustained. Given the passage of time between the events reported in the exhibit and the filing of the Notice of Charges, given the remote and tangential relationship of those events with the material claims presented in the Notice of Charges, given the potential for confusion that admitting the email chain presents, given the redundant nature of the material facts presented in the exhibit when compared with Exhibits that are more closely related in time, the exhibit will not be admitted in support of Enforcement Counsel's Motion. Accordingly, the claims presented in (Russ Anderson) No. 216 and (Julian and McLinko) No. 171 will not support Enforcement Counsel's Motion. The exclusion of the exhibit does not, however, create a factual basis that would prevent granting Enforcement Counsel's Motion.

**Enforcement Counsel's Statement of Material Fact (Russ Anderson) No. 217 and (Julian and McLinko) No. 172**

Enforcement Counsel's Statement of Material Fact (Russ Anderson) No. 217 and (Julian and McLinko) No. 172 rely on exhibits presented to this Tribunal as being non-public. Pursuant to the OCC's Uniform Rules, while the proceedings in this administrative enforcement action are expressly required to be public, when presented with non-public documents the Administrative Law Judge is required to take all appropriate steps to preserve the confidentiality of such documents.<sup>1833</sup> Upon my review of the confidential documents supporting these Statements of

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<sup>1828</sup> McLinko's ECSFM at No. 170.

<sup>1829</sup> MSD-2 at 3-4.

<sup>1830</sup> Russ Anderson's ECSFM at No. 207.

<sup>1831</sup> Respondent Julian's Objections to Enforcement Counsel's Motion for Summary Disposition Exhibits.

<sup>1832</sup> McLinko's ECSFM at No. 171.

<sup>1833</sup> See 12 C.F.R. § 19.33(b).

Material Fact, and after weighing the expectation that all of the proceedings shall be public against the requirement that I protect against the disclosure of non-public information, I find the evidentiary value of these exhibits to be sufficiently marginal and duplicative as to warrant exclusion from this Order. Accordingly, this Order will not be based on any of the claims found in these Statements of Material Fact.

### **Enforcement Counsel's Statement of Material Fact (Russ Anderson) No. 218 and (Julian and McLinko) No. 173**

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.<sup>1834</sup>

### **Responses:**

**Russ Anderson** incorporated Respondent Julian's response.<sup>1835</sup>

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<sup>1834</sup> MSD-1 at 27, 31 ¶¶ 17-18, 32.

<sup>1835</sup> Russ Anderson's ECSFM at No. 218.

**Julian** presented his response as “disputed,” but the substance of his response did not controvert that the cited Agreement contained the text presented in the Statement.<sup>1836</sup> I find an insufficient factual basis has been presented to establish a dispute in this Response to create a controverted material fact. Accordingly, the Recommended Decision will include a factual finding as to Respondents Russ Anderson, Julian, and McLinko that the Deferred Prosecution Agreement contained the terms shown above.

**McLinko** incorporated Respondent Julian’s Response.<sup>1837</sup>

#### **Enforcement Counsel’s Statement of Material Facts (Julian and McLinko) No. 174**

Respondent McLinko testified in March 2018 that thousands of Wells Fargo employees issued millions of products and services without customers’ consent:

Q 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 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.<sup>1838</sup>

#### **Responses:**

**Julian** incorporated Respondent McLinko’s Response.<sup>1839</sup>

**McLinko** did not dispute that the Statement accurately quotes his testimony.<sup>1840</sup> Accordingly, the Recommended Decision will include a factual finding as to Respondents Julian and McLinko

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<sup>1836</sup> Julian’s ECSFM at No. 173.

<sup>1837</sup> McLinko’s ECSFM at No. 7.

<sup>1838</sup> McLinko Amended Answer ¶ 8; SS at 124:1-18.

<sup>1839</sup> Julian’s ECSFM at No. 174

<sup>1840</sup> McLinko’s ECSFM at No. 17.



that Respondent McLinko testified as shown in this Statement.

**Enforcement Counsel’s Statement of Material Fact (Russ Anderson) No. 219 and (Julian and McLinko) No. 175**

The Bank’s former Chief Risk Officer 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.”<sup>1841</sup>

**Responses:**

**Russ Anderson** incorporated Respondent Julian’s response.<sup>1842</sup>

**Julian** presented his response as “disputed,” but the substance of his response did not controvert the material allegations presented in this Statement, but instead averred the Statement omits important context.<sup>1843</sup> I find an insufficient factual basis has been presented to establish a dispute in this Response to create a controverted material fact. Accordingly, the Recommended Decision will include a factual finding as to Respondents Russ Anderson, Julian, and McLinko that the Bank’s former Chief Risk Officer 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.”

**McLinko** incorporated Respondent Julian’s Response.<sup>1844</sup>

**Enforcement Counsel’s Statement of Material Fact (Russ Anderson) No. 220 and (Julian and McLinko) No. 176**

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!”<sup>1845</sup>

**Responses:**

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<sup>1841</sup> MSD-290B (Loughlin Tr.) at 332:22-333:7.

<sup>1842</sup> Russ Anderson’s ECSFM at No. 219.

<sup>1843</sup> Julian’s ECSFM at No. 175.

<sup>1844</sup> McLinko’s ECSFM at No. 175.

<sup>1845</sup> MSD-550.

**Russ Anderson** incorporated Respondent Julian’s response.<sup>1846</sup>

**Julian** did not dispute the document contains the quoted language, but averred the information presented is immaterial.<sup>1847</sup> I find an insufficient factual basis has been presented to establish a dispute in this Response to create a controverted material fact. Accordingly, the Recommended Decision will include a factual finding as to Respondents Russ Anderson, Julian, and McLinko that 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!”

**McLinko** incorporated Respondent Julian’s Response.<sup>1848</sup>

### **Enforcement Counsel’s Statement of Material Fact (Russ Anderson) No. 221 and (Julian and McLinko) No. 177**

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.”<sup>1849</sup>

#### **Responses:**

**Russ Anderson** incorporated Respondent Julian’s response.<sup>1850</sup>

**Julian** did not dispute that the witness gave the testimony described above, but averred that it was inadmissible layperson opinion testimony containing the witness’s speculation about the root cause of misconduct.<sup>1851</sup> I find an insufficient factual basis has been presented to establish a dispute in this Response to create a controverted material fact. Accordingly, the Recommended Decision will include a factual finding as to Respondents Russ Anderson,

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<sup>1846</sup> Russ Anderson’s ECSFM at No. 220.

<sup>1847</sup> Julian’s ECSFM at No. 176.

<sup>1848</sup> McLinko’s ECSFM at No. 176.

<sup>1849</sup> 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)”).

<sup>1850</sup> Russ Anderson’s ECSFM at No. 221.

<sup>1851</sup> Julian’s ECSFM at No. 177.

Julian, and McLinko that 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.”

**McLinko** incorporated Respondent Julian’s Response.<sup>1852</sup>

### **Enforcement Counsel’s Statement of Material Fact (Russ Anderson) No. 222 and (Julian and McLinko) No. 178**

Bankers received sales credit for unfunded accounts.<sup>1853</sup>

#### **Responses:**

**Russ Anderson** incorporated Respondent Julian’s response and disputed that any policies in place before or after her tenure as GRO can properly be imputed to her.<sup>1854</sup>

**Julian** did not dispute the claim, but averred the Statement does not establish that Community Bank employees were incentivized to open unfunded accounts during Mr. Julian’s tenure as Chief Auditor.<sup>1855</sup> I find an insufficient factual basis has been presented to establish a dispute in this Response to create a controverted material fact. Accordingly, the Recommended Decision will include a factual finding as to Respondents Russ Anderson and Julian that Bankers received sales credit for unfunded accounts.

**McLinko** incorporated Respondent Julian’s Response.<sup>1856</sup>

### **Enforcement Counsel’s Statement of Material Fact (Russ Anderson) No. 223 and (Julian and McLinko) No. 179**

Enforcement Counsel’s Statement of Material Fact (Russ Anderson) No. 223 and (Julian and McLinko) No. 179 rely on exhibits presented to this Tribunal as being non-public. Pursuant to

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<sup>1852</sup> McLinko’s ECSFM at No. 177.

<sup>1853</sup> 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.”)

<sup>1854</sup> Russ Anderson’s ECSFM at No. 222.

<sup>1855</sup> Julian’s ECSFM at No. 178

<sup>1856</sup> McLinko’s ECSFM at No. 178.

the OCC's Uniform Rules, while the proceedings in this administrative enforcement action are expressly required to be public, when presented with non-public documents the Administrative Law Judge is required to take all appropriate steps to preserve the confidentiality of such documents.<sup>1857</sup> Upon my review of the confidential documents supporting these Statements of Material Fact, and after weighing the expectation that all of the proceedings shall be public against the requirement that I protect against the disclosure of non-public information, I find the evidentiary value of these exhibits to be sufficiently marginal and duplicative as to warrant exclusion from this Order. Accordingly, this Order will not be based on any of the claims found in these Statements of Material Fact.

**Enforcement Counsel's Statement of Material Fact (Russ Anderson) No. 224 and (Julian and McLinko) No. 180**

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).<sup>1858</sup>

**Responses:**

**Russ Anderson** incorporated Respondent Julian's response.<sup>1859</sup>

**Julian** presented his response as "disputed," but the substance of his response did not controvert the material allegations presented in this Statement, which he characterized as immaterial.<sup>1860</sup> I find an insufficient factual basis has been presented to establish a dispute in this Response to create a controverted material fact. Accordingly, the Recommended Decision will include a factual finding as to Respondents Russ Anderson, Julian, and McLinko that 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).

**McLinko** incorporated Respondent Julian's Response.<sup>1861</sup>

**Enforcement Counsel's Statement of Material Fact (Russ Anderson) No. 225 and (Julian and McLinko) No. 181**

Debit card accounts were a "major contributor" to customer consent cases and represented an

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<sup>1857</sup> See 12 C.F.R. § 19.33(b).

<sup>1858</sup> MSD-604.

<sup>1859</sup> Russ Anderson's ECSFM at No. 224.

<sup>1860</sup> Julian's ECSFM at No. 180.

<sup>1861</sup> McLinko's ECSFM at No. 180.

“outsize portion of conduct risk.”<sup>1862</sup>

**Responses:**

**Russ Anderson** incorporated Respondent Julian’s response and disputed that the Statement proves actual instances of sales practices misconduct during her tenure as GRO.<sup>1863</sup>

**Julian** disputed the claim, averring the Statement does not establish that unauthorized debit cards were a “major contributor” of actual instances of sales practices misconduct during Mr. Julian’s tenure as Chief Auditor.<sup>1864</sup>

I find an insufficient factual basis has been presented to establish a dispute in this Response to create a controverted material fact. Accordingly, the Recommended Decision will include a factual finding as to Respondents Russ Anderson, Julian, and McLinko that debit card accounts were a major contributor to customer consent cases and represented an outsize portion of conduct risk.

**McLinko** incorporated Respondent Julian’s Response.<sup>1865</sup>

**Enforcement Counsel’s Statement of Material Fact (Russ Anderson) No. 226 and (Julian and McLinko) No. 182**

Debit cards generally represented about 25% of all solutions sold by the Community Bank each year.<sup>1866</sup> 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.<sup>1867</sup>

**Responses:**

**Russ Anderson** incorporated Respondent Julian’s response and disputed that the Statement

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<sup>1862</sup> 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.

<sup>1863</sup> Russ Anderson’s ECSFM at No. 225.

<sup>1864</sup> Julian’s ECSFM at No. 181

<sup>1865</sup> McLinko’s ECSFM at No. 181.

<sup>1866</sup> MSD-605; MSD-606; MSD-607; MSD-608.

<sup>1867</sup> MSD-608.

proves actual instances of sales practices misconduct during her tenure as GRO.<sup>1868</sup>

**Julian** did not dispute the claim other than to aver that the Statement does not establish the volume or rate of unauthorized debit cards issued by Community Bank employees during Mr. Julian's tenure as Chief Auditor.<sup>1869</sup> I find an insufficient factual basis has been presented to establish a dispute in this Response to create a controverted material fact. Accordingly, the Recommended Decision will include a factual finding as to Respondents Russ Anderson, Julian, and McLinko that debit cards generally represented about 25% of all solutions sold by the Community Bank each year. 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.

**McLinko** incorporated Respondent Julian's Response.<sup>1870</sup>

### **Enforcement Counsel's Statement of Material Fact (Russ Anderson) No. 227 and (Julian and McLinko) No. 183**

Enforcement Counsel's Statement of Material Fact (Russ Anderson) No. 208 and (Julian and McLinko) No. 167 rely on exhibits presented to this Tribunal as being non-public. Pursuant to the OCC's Uniform Rules, while the proceedings in this administrative enforcement action are expressly required to be public, when presented with non-public documents the Administrative Law Judge is required to take all appropriate steps to preserve the confidentiality of such documents.<sup>1871</sup> Upon my review of the confidential documents supporting these Statements of Material Fact, and after weighing the expectation that all of the proceedings shall be public against the requirement that I protect against the disclosure of non-public information, I find the evidentiary value of these exhibits to be sufficiently marginal and duplicative as to warrant exclusion from this Order. Accordingly, this Order will not be based on any of the claims found in these Statements of Material Fact.

### **Enforcement Counsel's Statement of Material Fact (Russ Anderson) No. 228 and (Julian and McLinko) No. 184**

Enforcement Counsel's Statement of Material Fact (Russ Anderson) No. 228 and (Julian and McLinko) No. 184 rely on exhibits presented to this Tribunal as being non-public. Pursuant to the OCC's Uniform Rules, while the proceedings in this administrative enforcement action are

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<sup>1868</sup> Russ Anderson's ECSFM at No. 226.

<sup>1869</sup> Julian's ECSFM at No. 182.

<sup>1870</sup> McLinko's ECSFM at No. 182.

<sup>1871</sup> See 12 C.F.R. § 19.33(b).

expressly required to be public, when presented with non-public documents the Administrative Law Judge is required to take all appropriate steps to preserve the confidentiality of such documents.<sup>1872</sup> Upon my review of the confidential documents supporting these Statements of Material Fact, and after weighing the expectation that all of the proceedings shall be public against the requirement that I protect against the disclosure of non-public information, I find the evidentiary value of these exhibits to be sufficiently marginal and duplicative as to warrant exclusion from this Order. Accordingly, this Order will not be based on any of the claims found in these Statements of Material Fact.

**Enforcement Counsel’s Statement of Material Fact (Russ Anderson) No. 229 and (Julian and McLinko) No. 185**

Enforcement Counsel’s Statement of Material Fact (Russ Anderson) No. 229 and (Julian and McLinko) No. 185 rely on exhibits presented to this Tribunal as being non-public. Pursuant to the OCC’s Uniform Rules, while the proceedings in this administrative enforcement action are expressly required to be public, when presented with non-public documents the Administrative Law Judge is required to take all appropriate steps to preserve the confidentiality of such documents.<sup>1873</sup> Upon my review of the confidential documents supporting these Statements of Material Fact, and after weighing the expectation that all of the proceedings shall be public against the requirement that I protect against the disclosure of non-public information, I find the evidentiary value of these exhibits to be sufficiently marginal and duplicative as to warrant exclusion from this Order. Accordingly, this Order will not be based on any of the claims found in these Statements of Material Fact.

**Enforcement Counsel’s Statement of Material Fact (Russ Anderson) No. 230 and (Julian and McLinko) No. 186**

Enforcement Counsel’s Statement of Material Fact (Russ Anderson) No. 230 and (Julian and McLinko) No. 186 rely on exhibits presented to this Tribunal as being non-public. Pursuant to the OCC’s Uniform Rules, while the proceedings in this administrative enforcement action are expressly required to be public, when presented with non-public documents the Administrative Law Judge is required to take all appropriate steps to preserve the confidentiality of such documents.<sup>1874</sup> Upon my review of the confidential documents supporting these Statements of Material Fact, and after weighing the expectation that all of the proceedings shall be public against the requirement that I protect against the disclosure of non-public information, I find the

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<sup>1872</sup> See 12 C.F.R. § 19.33(b).

<sup>1873</sup> See 12 C.F.R. § 19.33(b).

<sup>1874</sup> See 12 C.F.R. § 19.33(b).

evidentiary value of these exhibits to be sufficiently marginal and duplicative as to warrant exclusion from this Order. Accordingly, this Order will not be based on any of the claims found in these Statements of Material Fact.

**Enforcement Counsel’s Statement of Material Fact (Russ Anderson) No. 231 and (Julian and McLinko) No. 187**

Enforcement Counsel’s Statement of Material Fact (Russ Anderson) No. 231 and (Julian and McLinko) No. 187 rely on exhibits presented to this Tribunal as being non-public. Pursuant to the OCC’s Uniform Rules, while the proceedings in this administrative enforcement action are expressly required to be public, when presented with non-public documents the Administrative Law Judge is required to take all appropriate steps to preserve the confidentiality of such documents.<sup>1875</sup> Upon my review of the confidential documents supporting these Statements of Material Fact, and after weighing the expectation that all of the proceedings shall be public against the requirement that I protect against the disclosure of non-public information, I find the evidentiary value of these exhibits to be sufficiently marginal and duplicative as to warrant exclusion from this Order. Accordingly, this Order will not be based on any of the claims found in these Statements of Material Fact.

**Enforcement Counsel’s Statement of Material Fact (Russ Anderson) No. 232 and (Julian and McLinko) No. 188**

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.”<sup>1876</sup>

**Responses:**

**Russ Anderson** incorporated Respondent Julian’s response.<sup>1877</sup>

**Julian** presented his response as “disputed,” but did not dispute that the witness opined as shown, and the substance of the rest of his response did not otherwise controvert the material allegations presented in this Statement.<sup>1878</sup> I find an insufficient factual basis has been presented

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<sup>1875</sup> See 12 C.F.R. § 19.33(b).

<sup>1876</sup> MSD-282A (Wilcox Dep. Tr.) at 125:12-126:10.

<sup>1877</sup> Russ Anderson’s ECSFM at No. 232.

<sup>1878</sup> Julian’s ECSFM at No. 188.



to establish a dispute in this Response to create a controverted material fact. Accordingly, the Recommended Decision will include a factual finding as to Respondents Russ Anderson, Julian, and McLinko that 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."

**McLinko** incorporated Respondent Julian's Response.<sup>1879</sup>

### **Enforcement Counsel's Statement of Material Fact (Russ Anderson) No. 233 and (Julian and McLinko) No. 189**

Enforcement Counsel's Statement of Material Fact (Russ Anderson) No. 233 and (Julian and McLinko) No. 189 rely on exhibits presented to this Tribunal as being non-public. Pursuant to the OCC's Uniform Rules, while the proceedings in this administrative enforcement action are expressly required to be public, when presented with non-public documents the Administrative Law Judge is required to take all appropriate steps to preserve the confidentiality of such documents.<sup>1880</sup> Upon my review of the confidential documents supporting these Statements of Material Fact, and after weighing the expectation that all of the proceedings shall be public against the requirement that I protect against the disclosure of non-public information, I find the evidentiary value of these exhibits to be sufficiently marginal and duplicative as to warrant exclusion from this Order. Accordingly, this Order will not be based on any of the claims found in these Statements of Material Fact.

### **Enforcement Counsel's Statement of Material Fact (Russ Anderson) No. 234 and (Julian and McLinko) No. 190**

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."<sup>1881</sup>

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<sup>1879</sup> McLinko's ECSFM at No. 188.

<sup>1880</sup> See 12 C.F.R. § 19.33(b).

<sup>1881</sup> MSD-347; MSD-413 at 14.

## **Responses:**

**Russ Anderson** incorporated Respondent Julian's response.<sup>1882</sup>

**Julian** disputed that the cited evidence shows that WFAS "relied" on PwC's sales practices work.<sup>1883</sup> He averred that WFAS believed that PricewaterhouseCoopers had "accurately" reimbursed the customers that PricewaterhouseCoopers had identified as potentially harmed, not that PricewaterhouseCoopers had accurately identified potentially unauthorized accounts.<sup>1884</sup>

I find an insufficient factual basis has been presented to establish a dispute in this Response to create a controverted material fact. Accordingly, the Recommended Decision will include a factual finding as to Respondents Russ Anderson, Julian, and McLinko that 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."

**McLinko** incorporated Respondent Julian's Response.<sup>1885</sup>

## **Enforcement Counsel's Statement of Material Fact (Russ Anderson) No. 235**

Respondent McLinko testified that the model used by PwC was "probably substantially correct."<sup>1886</sup>

## **Responses:**

**Russ Anderson** incorporated Respondent McLinko's response to (Julian and McLinko) No. 192.<sup>1887</sup> Respondent McLinko's Response to Statement No. 192 did not dispute that his

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<sup>1882</sup> Russ Anderson's ECSFM at No. 234.

<sup>1883</sup> Julian's ECSFM at No. 190.

<sup>1884</sup> Julian's ECSFM at No. 190.

<sup>1885</sup> McLinko's ECSFM at No. 190.

<sup>1886</sup> MSD-276 (McLinko Tr.) at 124:20-125:4.

<sup>1887</sup> Russ Anderson's ECSFM at No. 235.

testimony included the quoted language, but disputed it was accurate or complete, particularly as it relates to the time period from 4th Quarter 2010 through October 2016.<sup>1888</sup>

I find an insufficient factual basis has been presented to establish a dispute in this Response to create a controverted material fact. Accordingly, the Recommended Decision will include a factual finding as to Respondent Russ Anderson that Respondent McLinko testified that the model used by PwC was “probably substantially correct.”

### **Enforcement Counsel’s Statement of Material Fact (Julian and McLinko) No. 191**

Enforcement Counsel’s Statement of Material Fact (Julian and McLinko) No. 191 relies on exhibits presented to this Tribunal as being non-public. Pursuant to the OCC’s Uniform Rules, while the proceedings in this administrative enforcement action are expressly required to be public, when presented with non-public documents the Administrative Law Judge is required to take all appropriate steps to preserve the confidentiality of such documents.<sup>1889</sup> Upon my review of the confidential documents supporting this Statement of Material Fact, and after weighing the expectation that all of the proceedings shall be public against the requirement that I protect against the disclosure of non-public information, I find the evidentiary value of these exhibits to be sufficiently marginal and duplicative as to warrant exclusion from this Order. Accordingly, this Order will not be based on any of the claims found in this Statement of Material Fact.

### **Enforcement Counsel’s Statement of Material Fact (Julian and McLinko) No. 192**

Respondent McLinko testified that the model used by PwC was “probably substantially correct.”<sup>1890</sup>

#### **Responses:**

**Julian** incorporated Respondent McLinko’s Response.<sup>1891</sup>

**McLinko** did not dispute that his testimony included the quoted language.<sup>1892</sup> Accordingly, the Recommended Decision will include a factual finding as to Respondents Julian and McLinko

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<sup>1888</sup> McLinko’s ECSFM at No. 192.

<sup>1889</sup> See 12 C.F.R. § 19.33(b).

<sup>1890</sup> MSD-276 (McLinko Tr.) at 124:20-125:4.

<sup>1891</sup> Julian’s ECSFM at No. 192.

<sup>1892</sup> McLinko’s ECSFM at No. 192.

that Respondent McLinko testified as shown in this Statement.

**Enforcement Counsel’s Statement of Material Fact (Russ Anderson) No. 236 and (Julian and McLinko) No. 193**

Enforcement Counsel’s Statement of Material Fact (Russ Anderson) No. 236 and (Julian and McLinko) No. 193 rely on exhibits presented to this Tribunal as being non-public. Pursuant to the OCC’s Uniform Rules, while the proceedings in this administrative enforcement action are expressly required to be public, when presented with non-public documents the Administrative Law Judge is required to take all appropriate steps to preserve the confidentiality of such documents.<sup>1893</sup> Upon my review of the confidential documents supporting these Statements of Material Fact, and after weighing the expectation that all of the proceedings shall be public against the requirement that I protect against the disclosure of non-public information, I find the evidentiary value of these exhibits to be sufficiently marginal and duplicative as to warrant exclusion from this Order. Accordingly, this Order will not be based on any of the claims found in these Statements of Material Fact.

**Enforcement Counsel’s Statement of Material Fact (Russ Anderson) No. 237 and (Julian and McLinko) No. 194**

Enforcement Counsel’s Statement of Material Fact (Russ Anderson) No. 237 and (Julian and McLinko) No. 194 rely on exhibits presented to this Tribunal as being non-public. Pursuant to the OCC’s Uniform Rules, while the proceedings in this administrative enforcement action are expressly required to be public, when presented with non-public documents the Administrative Law Judge is required to take all appropriate steps to preserve the confidentiality of such documents.<sup>1894</sup> Upon my review of the confidential documents supporting these Statements of Material Fact, and after weighing the expectation that all of the proceedings shall be public against the requirement that I protect against the disclosure of non-public information, I find the evidentiary value of these exhibits to be sufficiently marginal and duplicative as to warrant exclusion from this Order. Accordingly, this Order will not be based on any of the claims found in these Statements of Material Fact.

**Enforcement Counsel’s Statement of Material Fact (Russ Anderson) No. 238 and (Julian and McLinko) No. 195**

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<sup>1893</sup> See 12 C.F.R. § 19.33(b).

<sup>1894</sup> See 12 C.F.R. § 19.33(b).

Enforcement Counsel's Statement of Material Fact (Russ Anderson) No. 238 and (Julian and McLinko) No. 195 rely on exhibits presented to this Tribunal as being non-public. Pursuant to the OCC's Uniform Rules, while the proceedings in this administrative enforcement action are expressly required to be public, when presented with non-public documents the Administrative Law Judge is required to take all appropriate steps to preserve the confidentiality of such documents.<sup>1895</sup> Upon my review of the confidential documents supporting these Statements of Material Fact, and after weighing the expectation that all of the proceedings shall be public against the requirement that I protect against the disclosure of non-public information, I find the evidentiary value of these exhibits to be sufficiently marginal and duplicative as to warrant exclusion from this Order. Accordingly, this Order will not be based on any of the claims found in these Statements of Material Fact.

**Enforcement Counsel's Statement of Material Fact (Russ Anderson) No. 239 and (Julian and McLinko) No. 196**

Enforcement Counsel's Statement of Material Fact (Russ Anderson) No. 239 and (Julian and McLinko) No. 196 rely on exhibits presented to this Tribunal as being non-public. Pursuant to the OCC's Uniform Rules, while the proceedings in this administrative enforcement action are expressly required to be public, when presented with non-public documents the Administrative Law Judge is required to take all appropriate steps to preserve the confidentiality of such documents.<sup>1896</sup> Upon my review of the confidential documents supporting these Statements of Material Fact, and after weighing the expectation that all of the proceedings shall be public against the requirement that I protect against the disclosure of non-public information, I find the evidentiary value of these exhibits to be sufficiently marginal and duplicative as to warrant exclusion from this Order. Accordingly, this Order will not be based on any of the claims found in these Statements of Material Fact.

**Enforcement Counsel's Statement of Material Fact (Russ Anderson) No. 240 and (Julian and McLinko) No. 197**

Enforcement Counsel's Statement of Material Fact (Russ Anderson) No. 240 and (Julian and McLinko) No. 197 rely on exhibits presented to this Tribunal as being non-public. Pursuant to the OCC's Uniform Rules, while the proceedings in this administrative enforcement action are expressly required to be public, when presented with non-public documents the Administrative Law Judge is required to take all appropriate steps to preserve the confidentiality of such

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<sup>1895</sup> See 12 C.F.R. § 19.33(b).

<sup>1896</sup> See 12 C.F.R. § 19.33(b).

documents.<sup>1897</sup> Upon my review of the confidential documents supporting these Statements of Material Fact, and after weighing the expectation that all of the proceedings shall be public against the requirement that I protect against the disclosure of non-public information, I find the evidentiary value of these exhibits to be sufficiently marginal and duplicative as to warrant exclusion from this Order. Accordingly, this Order will not be based on any of the claims found in these Statements of Material Fact.

#### **Enforcement Counsel’s Statement of Material Fact (Russ Anderson) No. 241 and (Julian and McLinko) No. 198**

Enforcement Counsel’s Statement of Material Fact (Russ Anderson) No. 241 and (Julian and McLinko) No. 198 rely on exhibits presented to this Tribunal as being non-public. Pursuant to the OCC’s Uniform Rules, while the proceedings in this administrative enforcement action are expressly required to be public, when presented with non-public documents the Administrative Law Judge is required to take all appropriate steps to preserve the confidentiality of such documents.<sup>1898</sup> Upon my review of the confidential documents supporting these Statements of Material Fact, and after weighing the expectation that all of the proceedings shall be public against the requirement that I protect against the disclosure of non-public information, I find the evidentiary value of these exhibits to be sufficiently marginal and duplicative as to warrant exclusion from this Order. Accordingly, this Order will not be based on any of the claims found in these Statements of Material Fact.

#### **Enforcement Counsel’s Statement of Material Fact (Russ Anderson) No. 242 and (Julian and McLinko) No. 199**

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.”<sup>1899</sup>

#### **Responses:**

**Russ Anderson** incorporated Respondent Julian’s response and avers there is no evidence that she received the cited report.<sup>1900</sup>

I find an insufficient factual basis has been presented to establish a dispute in this Response to

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<sup>1897</sup> See 12 C.F.R. § 19.33(b).

<sup>1898</sup> See 12 C.F.R. § 19.33(b).

<sup>1899</sup> MSD-227.

<sup>1900</sup> Russ Anderson’s ECSFM at No. 242.

create a controverted material fact. Accordingly, the Recommended Decision will include a factual finding as to Respondent Russ Anderson that 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.”

**Julian** did not dispute that the report cited contained the findings reported in the Statement, but averred the report only identified “potential simulated funding,” not instances of confirmed simulated funding.<sup>1901</sup> I find an insufficient factual basis has been presented to establish a dispute in this Response to create a controverted material fact. Accordingly, the Recommended Decision will include a factual finding as to Respondents Russ Anderson, Julian, and McLinko that 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.”

**McLinko** incorporated Respondent Julian’s Response.<sup>1902</sup>

#### **Enforcement Counsel’s Statement of Material Fact (Russ Anderson) No. 243 and (Julian and McLinko) No. 200**

Enforcement Counsel’s Statement of Material Fact (Russ Anderson) No. 243 and (Julian and McLinko) No. 200 rely on exhibits presented to this Tribunal as being non-public. Pursuant to the OCC’s Uniform Rules, while the proceedings in this administrative enforcement action are expressly required to be public, when presented with non-public documents the Administrative Law Judge is required to take all appropriate steps to preserve the confidentiality of such documents.<sup>1903</sup> Upon my review of the confidential documents supporting these Statements of Material Fact, and after weighing the expectation that all of the proceedings shall be public against the requirement that I protect against the disclosure of non-public information, I find the evidentiary value of these exhibits to be sufficiently marginal and duplicative as to warrant exclusion from this Order. Accordingly, this Order will not be based on any of the claims found in these Statements of Material Fact.

#### **Enforcement Counsel’s Statement of Material Fact (Russ Anderson) No. 244 and (Julian and McLinko) No. 201**

The former Head of Corporate Investigations Michael Bacon testified that the senior

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<sup>1901</sup> Julian’s ECSFM at No. 199.

<sup>1902</sup> McLinko’s ECSFM at No. 199.

<sup>1903</sup> See 12 C.F.R. § 19.33(b).

leadership in the Community Bank wanted to minimize terminations even with strong evidence that an employee engaged in sales integrity violations.<sup>1904</sup>

**Responses:**

Russ Anderson disputed the claim “because it fails to establish Community Bank leaders “wanted to minimize terminations” during Ms. Russ Anderson’s tenure as Group Risk Officer.”<sup>1905</sup>

I find an insufficient factual basis has been presented to establish a dispute in this Response to create a controverted material fact. Accordingly, the Recommended Decision will include a factual finding as to Respondent Russ Anderson that 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.

**Julian** disputed that the cited evidence established that Community Bank leaders “wanted to minimize termination – adding the clause “during Mr. Julian’s tenure”.<sup>1906</sup> The Statement did not aver this clause, and the testimony cited is as follows:

Q And is it fair to say that the senior leadership in Community Bank wanted to minimize terminations even if there is strong evidence that an employee engaged in sales integrity violations?

A Absolutely, yes.<sup>1907</sup>

I find an insufficient factual basis has been presented to establish a dispute in this Response to create a controverted material fact. Accordingly, the Recommended Decision will include a factual finding as to Respondents Julian and McLinko that 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.

**McLinko** incorporated Respondent Julian’s Response.<sup>1908</sup>

**Enforcement Counsel’s Statement of Material Fact (Russ Anderson) No. 245 and (Julian**

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<sup>1904</sup> MSD-295 (Bacon Tr.) at 62:8- 25.

<sup>1905</sup> Russ Anderson’s ECSFM at No. 242.

<sup>1906</sup> Julian’s ECSFM at No. 201.

<sup>1907</sup> MSD-295 (Bacon Tr.) at 62:8- 25.

<sup>1908</sup> McLinko’s ECSFM at No. 201.



## **and McLinko) No. 202**

From January 2011 through March 2016, the Bank terminated over 5,300 employees for engaging in improper sales practices. (MSD-52; MSD-661 at 96). 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.<sup>1909</sup>

### **Responses:**

**Russ Anderson** incorporated Respondent Julian's response.<sup>1910</sup>

**Julian** disputed that the cited evidence established that any of the 5,300 employees who were terminated actually engaged in improper sales practices, and cited MDS-661 at 100 in support.<sup>1911</sup> Having reviewed that page of the Congressional transcript of proceedings before the Committee on Banking, Housing, and Urban Affairs, I find no evidence controverting the claims presented in this Statement, and find the evidence cited in support of the Statement has been accurately presented here.

I find an insufficient factual basis has been presented to establish a dispute in this Response to create a controverted material fact. Accordingly, the Recommended Decision will include a factual finding as to Respondents Russ Anderson, Julian, and McLinko that from January 2011 through March 2016, the Bank terminated over 5,300 employees for engaging in improper sales practices.

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<sup>1909</sup> MSD-295 (Bacon Tr.) at 62:8- 25; see also MSD-44 (showing that the Bank terminated 8,713 employees for sales ethics, including creating false email account, assigning PINS without customer consent, unauthorized transactions, and unearned sales referral credit). The Bank terminated employees in the following states: Alabama, Alaska, Arizona, Arkansas, California, Colorado, Connecticut, Delaware, Florida, Georgia, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oregon, Pennsylvania, South Carolina, South Dakota, Tennessee, Texas, Utah, Virginia, Washington, Washington, DC, Wisconsin, and Wyoming. (MSD-661 at 99-100).

<sup>1910</sup> Russ Anderson's ECSFM at No. 245.

<sup>1911</sup> Julian's ECSFM at No. 202.

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.

**McLinko** incorporated Respondent Julian's Response.<sup>1912</sup>

### **Enforcement Counsel's Statement of Material Fact (Russ Anderson) No. 246**

Respondent Russ Anderson testified that she was not surprised 5,300 employees were terminated for sales practices misconduct from 2011-2016, because she knew in the 2012 and 2013 timeframe that the Community Bank terminated roughly 1,000 employees per year for sales practices misconduct, and what concerned her was how the number was being reported in the press:

Q: . . . Do you recall reporting in the fall of 2016 that Wells Fargo terminated 5,300 employees for sales practices misconduct from 2011 to 2016?

A: That I reported that?

Q: No. That Wells Fargo reported that 5,300 employees had been terminated for sales practice misconduct from 2011 to 2016. Do you recall that number?

A: I recall that number and that timeframe, yes.

Q: Understand. And were you surprised by that number?

A: No. Because we knew approximately 1,000 team members a year were being terminated. So over five years, that's 5300 team members and that's over 6,000 branches, so that's less than one team member per year, per branch.

Q: Okay. And in your view, is 5300 employees engaging in sales practice misconduct a significant number of employees

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<sup>1912</sup> McLinko's ECSFM at No. 202.

who engage in sales practice misconduct?

A: Again --

Q: I'm trying to understand whether you view the 5300 number as a significant number.

A: Okay. Let's break it down, again, though. 5300 over a five-year period of time. That's approximately 1,000 team members per year, over 6,000 branches, is a number we knew. It -- it no bothered me differently in 2016 than when I first knew about it in the 2013/2012 timeframe. No. I -- what bothered me was how it was represented in the press because it did not, in my mind, represent the true risk. It was a headliner.<sup>1913</sup>

**Responses:**

**Russ Anderson** did not dispute that the quoted material accurately reflects her testimony, and disputed the suggestion that she should have been surprised by the number reflected above.<sup>1914</sup>

I find an insufficient factual basis has been presented to establish a dispute in this Response to create a controverted material fact. Accordingly, the Recommended Decision will include a factual finding as to Respondent Russ Anderson that she testified as shown above.

**Enforcement Counsel's Statement of Material Fact (Russ Anderson) No. 247 and (Julian and McLinko) No. 203**

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.<sup>1915</sup>

**Responses:**

**Russ Anderson** incorporated Respondent Julian's response.<sup>1916</sup>

**Julian** disputed the claim, averring the Exhibit cited in support of the claim does not establish that the 99.99% SSCOT threshold identified approximately 30,000 employees per

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<sup>1913</sup> MSD-266 (Russ Anderson Dep. Tr.) at 179:22-181:4.

<sup>1914</sup> Russ Anderson's ECSFM at No. 246.

<sup>1915</sup> MSD-116 at 3.

<sup>1916</sup> Russ Anderson's ECSFM at No. 247.

month who exhibited activity that was a red flag for simulated funding. Rather, the 99.99% threshold identified between 3-6 team members per month,<sup>1917</sup> and that Enforcement Counsel “have cited no expert testimony establish that it is proper to divide 3 by 0.0001 to determine the total amount of employees exhibiting purported ‘red flag’ activity.”<sup>1918</sup>

The number of employees per month who exhibited activity that was a red flag for simulated funding and who subsequently were referred for further investigation is a material fact in issue.

I find that in his Response to (Julian and McLinko) Statement No. 203, Julian has sufficiently demonstrated a factual controversy exists regarding the number of employees per month who exhibited activity that was a red flag for simulated funding and who subsequently were referred for further investigation. Because of the existence of this material controverted fact, summary disposition is not available with respect to Respondent Julian (and through incorporation, Respondents Russ Anderson and McLinko) regarding this claim. Pursuant to the OCC’s Uniform Rules, the merits of the disputed claims raised in Statement of Material Fact (Russ Anderson) No. 247 and (Julian and McLinko) No. 203 will be addressed during the hearing set to begin on September 13, 2021.

**McLinko** incorporated Respondent Julian’s Response.<sup>1919</sup>

#### **Enforcement Counsel’s Statement of Material Fact (Russ Anderson) No. 248 and (Julian and McLinko) No. 204**

Enforcement Counsel’s Statement of Material Fact (Russ Anderson) No. 248 and (Julian and McLinko) No. 204 rely on exhibits presented to this Tribunal as being non-public. Pursuant to the OCC’s Uniform Rules, while the proceedings in this administrative enforcement action are expressly required to be public, when presented with non-public documents the Administrative Law Judge is required to take all appropriate steps to preserve the confidentiality of such documents.<sup>1920</sup> Upon my review of the confidential documents supporting these Statements of Material Fact, and after weighing the expectation that all of the proceedings shall be public against the requirement that I protect against the disclosure of non-public information, I find the evidentiary value of these exhibits to be sufficiently marginal and duplicative as to warrant exclusion from this Order. Accordingly, this Order will not be based on any of the claims found in these Statements of Material Fact.

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<sup>1917</sup> Julian’s ECSFM at No. 203, citing MSD-116 at 3.

<sup>1918</sup> Julian’s ECSFM at No. 203.

<sup>1919</sup> McLinko’s ECSFM at No. 205.

<sup>1920</sup> See 12 C.F.R. § 19.33(b).

### **Enforcement Counsel’s Statement of Material Fact (Russ Anderson) No. 249 and (Julian and McLinko) No. 205**

Of all the issues Bank employees could report to the EthicsLine (the whistleblower hotline), the most common issue was sales integrity, ultimately comprising more than half of all EthicsLine complaints.<sup>1921</sup>

#### **Responses:**

**Russ Anderson** incorporated Respondent Julian’s response.<sup>1922</sup>

**Julian** presented his response as “disputed,” but the substance of his response did not controvert the material allegations presented in this Statement.<sup>1923</sup> Rather than refer to what the most common issue that employees could report to the EthicsLine was, Julian averred that the EthicsLine complaints consisted of allegations of misconduct, not confirmed instances of misconduct.<sup>1924</sup>

I find an insufficient factual basis has been presented to establish a dispute in this Response to create a controverted material fact. Accordingly, the Recommended Decision will include a factual finding as to Respondents Russ Anderson, Julian, and McLinko that of all the issues Bank employees could report to the EthicsLine (the whistleblower hotline), the most common issue was sales integrity, ultimately comprising more than half of all EthicsLine complaints.

**McLinko** incorporated Respondent Julian’s Response.<sup>1925</sup>

### **Enforcement Counsel’s Statement of Material Fact (Russ Anderson) No. 250 and (Julian and McLinko) No. 206**

As of 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, the content of which was “very similar to content in [approximately] 50% of the formal Ethicsline/HR allegations that Sales Quality allegations currently processes.”<sup>1926</sup>

#### **Responses:**

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<sup>1921</sup> 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).

<sup>1922</sup> Russ Anderson’s ECSFM at No. 249.

<sup>1923</sup> Julian’s ECSFM at No. 205.

<sup>1924</sup> Julian’s ECSFM at No. 205.

<sup>1925</sup> McLinko’s ECSFM at No. 205.

<sup>1926</sup> MSD-72 at 7.

**Russ Anderson** incorporated Respondent Julian's response.<sup>1927</sup>

Julian objected to the Statement on the ground that the supporting exhibit was irrelevant.<sup>1928</sup> Finding an insufficient nexus between the averments presented in the Statement and the material facts in issue, the objection is sustained. Accordingly, the claims presented in (Russ Anderson) No. 250 and (Julian and McLinko) No. 206 will not support Enforcement Counsel's Motion. The exclusion of the claims appearing in the Statement does not, however, create a factual basis that would prevent granting Enforcement Counsel's Motion.

**McLinko** incorporated Respondent Julian's Response.<sup>1929</sup>

### **Enforcement Counsel's Statement of Material Fact (Russ Anderson) No. 251 and (Julian and McLinko) No. 207**

Enforcement Counsel's Statement of Material Fact (Russ Anderson) No. 251 and (Julian and McLinko) No. 207 rely on exhibits presented to this Tribunal as being non-public. Pursuant to the OCC's Uniform Rules, while the proceedings in this administrative enforcement action are expressly required to be public, when presented with non-public documents the Administrative Law Judge is required to take all appropriate steps to preserve the confidentiality of such documents.<sup>1930</sup> Upon my review of the confidential documents supporting these Statements of Material Fact, and after weighing the expectation that all of the proceedings shall be public against the requirement that I protect against the disclosure of non-public information, I find the evidentiary value of these exhibits to be sufficiently marginal and duplicative as to warrant exclusion from this Order. Accordingly, this Order will not be based on any of the claims found in these Statements of Material Fact.

### **Enforcement Counsel's Statement of Material Fact (Russ Anderson) No. 252 and (Julian and McLinko) No. 208**

Multiple senior leaders of the Bank, who were also Bank customers, were affected by sales practices misconduct. For example, in the first half of 2012, the former Chief Risk Officer's Michael Loughlin's wife received two debit cards in the mail she did not request.<sup>1931</sup>

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<sup>1927</sup> Russ Anderson's ECSFM at No. 250.

<sup>1928</sup> See Respondent Julian at Respondent Julian's Objections to Enforcement Counsel's Motion for Summary Disposition Exhibits.

<sup>1929</sup> McLinko's ECSFM at No. 206.

<sup>1930</sup> See 12 C.F.R. § 19.33(b).

<sup>1931</sup> MSD-611) (Loughlin Dep. Tr.) at 30:24-31:4; MSD-290A (Loughlin Tr.) at 36:23-37:19.

**Responses:**

**Russ Anderson** incorporated Respondent Julian's response.<sup>1932</sup>

**Julian** objected to the Statement on the ground that the supporting exhibit was irrelevant.<sup>1933</sup> Finding an insufficient nexus between the averments presented in the Statement and the material facts in issue, the objection is sustained. Accordingly, the claims presented in (Russ Anderson) No. 252 and (Julian and McLinko) No. 208 will not support Enforcement Counsel's Motion. The exclusion of the claims appearing in the Statement does not, however, create a factual basis that would prevent granting Enforcement Counsel's Motion.

**McLinko** incorporated Respondent Julian's Response.<sup>1934</sup>

**Enforcement Counsel's Statement of Material Fact (Russ Anderson) No. 253 and (Julian and McLinko) No. 209**

The Community Bank's Group Finance Officer and Head of Finance/Strategic Planning Matthew Raphaelson's wife also received a teen debit card that she did not order for one of their children.<sup>1935</sup>

**Responses:**

**Russ Anderson** incorporated Respondent Julian's response.<sup>1936</sup>

**Julian** objected to the Statement on the ground that the supporting exhibit was irrelevant.<sup>1937</sup> Finding an insufficient nexus between the averments presented in the Statement and the material facts in issue, the objection is sustained. Accordingly, the claims presented in (Russ Anderson) No. 253 and (Julian and McLinko) No. 209 will not support Enforcement Counsel's Motion. The exclusion of the claims appearing in the Statement does not, however, create a factual basis that would prevent granting Enforcement Counsel's Motion.

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<sup>1932</sup> Russ Anderson's ECSFM at No. 252.

<sup>1933</sup> See Respondent Julian at Respondent Julian's Objections to Enforcement Counsel's Motion for Summary Disposition Exhibits.

<sup>1934</sup> McLinko's ECSFM at No. 208.

<sup>1935</sup> MSD-411 (Raphaelson Decl.) at 7; MSD-572.

<sup>1936</sup> Russ Anderson's ECSFM at No. 253.

<sup>1937</sup> See Respondent Julian at Respondent Julian's Objections to Enforcement Counsel's Motion for Summary Disposition Exhibits.

**McLinko** incorporated Respondent Julian's Response.<sup>1938</sup>

**Enforcement Counsel's Statement of Material Fact (Russ Anderson) No. 254 and (Julian and McLinko) No. 210**

Respondent Russ Anderson knew that Rose Koning, a human resources manager at the Bank, was the subject of gaming having been sold a "travel account" by a teller even though the Bank did not offer travel accounts.<sup>1939</sup>

**Responses:**

Russ Anderson offered no evidence but averred the cited evidence does not support that Rose Koning was the subject of gaming as there was no investigation or final determination as to the propriety of the account sale.<sup>1940</sup>

I find an insufficient factual basis has been presented to establish a dispute in this Response to create a controverted material fact. Accordingly, the Recommended Decision will include a factual finding as to Respondent Russ Anderson that she knew that Rose Koning, a human resources manager at the Bank, was the subject of gaming having been sold a "travel account" by a teller even though the Bank did not offer travel accounts.

**Julian** objected to the Statement on the ground that the supporting exhibit was irrelevant.<sup>1941</sup> Finding an insufficient nexus between the averments presented in the Statement and the material facts in issue, the objection is sustained. Accordingly, the claims presented in (Julian and McLinko) No. 210 will not support Enforcement Counsel's Motion as to Respondent Julian. The exclusion of the claims appearing in the Statement does not, however, create a factual basis that would prevent granting Enforcement Counsel's Motion.

**McLinko** incorporated Respondent Julian's Response.<sup>1942</sup>

**Enforcement Counsel's Statement of Material Fact (Russ Anderson) No. 255 and (Julian and McLinko) No. 211**

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<sup>1938</sup> McLinko's ECSFM at No. 209.

<sup>1939</sup> MSD-71 ("Unfortunately we do not have a travel account. This sounds like gaming to me."); see also MSD-70 (referencing Rose Koning and a 'travel account.').

<sup>1940</sup> Russ Anderson's ECSFM at No. 254.

<sup>1941</sup> See Respondent Julian at Respondent Julian's Objections to Enforcement Counsel's Motion for Summary Disposition Exhibits.

<sup>1942</sup> McLinko's ECSFM at No. 210.



“‘[U]ndercover’ law enforcement accounts” were affected by sales practices misconduct. On one occasion Corporate Investigations opened three such accounts in California “and within 45 minutes two bankers . . . ordered debit cards for the without any customer consent or discussion.”<sup>1943</sup>

### **Responses:**

**Russ Anderson** incorporated Respondent Julian’s response.<sup>1944</sup>

**Julian** objected to the use of the exhibit supporting this claim (MSD-22) on the grounds that the evidence is irrelevant, immaterial, unreliable, or repetitive.<sup>1945</sup> The objection is sustained. Given the passage of time between the events reported in the email chain in MSD-22 and the filing of the Notice of Charges, given the remote and tangential relationship of those events with the material claims presented in the Notice of Charges, given the potential for confusion that admitting the email chain presents, given the redundant nature of the material facts presented in the exhibit when compared with Exhibits that are more closely related in time, the exhibit will not be admitted in support of Enforcement Counsel’s Motion. Accordingly, the claims presented in (Russ Anderson) No. 255 and (Julian and McLinko) No. 211 will not support Enforcement Counsel’s Motion. The exclusion of the exhibit does not, however, create a factual basis that would prevent granting Enforcement Counsel’s Motion.

**McLinko** incorporated Respondent Julian’s Response.<sup>1946</sup>

### **Enforcement Counsel’s Statement of Material Fact (Russ Anderson) No. 256 and (Julian and McLinko) No. 212**

Even animals were affected by sales practices misconduct. In 2009, Martin Weber, a Special Investigations Manager with Corporate Investigations and the author of the 2004 Investigation Report, sent the following in an email to his staff: “You just can’t make this stuff up. The district manager was completing polling regarding customer consent and contacted a customer who had 3 accounts each with a different joint account signer with an odd name. The customer stated that she had spoken to a banker and declined opening the account in question since the ‘odd’ named account signers were her dogs. The banker allegedly stated that she should have 3 different accounts for each dog’s expenses, the customer initially told the banker that she did not want the account in question since ‘her dogs do not write checks’.”<sup>1947</sup> The email

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<sup>1943</sup> MSD-22.

<sup>1944</sup> Russ Anderson’s ECSFM at No. 255.

<sup>1945</sup> Respondent Julian’s Objections to Enforcement Counsel’s Motion for Summary Disposition Exhibits.

<sup>1946</sup> McLinko’s ECSFM at No. 212.

<sup>1947</sup> MSD-26.

continued: “At least the customer profile appears to be complete. I reviewed one and the dog has a passport and a B of A [Bank of America] debit card as ID, the employer was listed as ‘Minor’ since the DOB [date of birth] indicates that the customer was born in 2005.”<sup>1948</sup>

### **Responses:**

**Russ Anderson** incorporated Respondent Julian’s response.<sup>1949</sup>

Julian objected to the Statement on the ground that the supporting exhibit was irrelevant.<sup>1950</sup> Finding an insufficient nexus between the averments presented in the Statement and the material facts in issue, the objection is sustained. Accordingly, the claims presented in Statement of Material Fact (Russ Anderson) No. 256 and (Julian and McLinko) No. 212 will not support Enforcement Counsel’s Motion. The exclusion of the claims appearing in the Statement does not, however, create a factual basis that would prevent granting Enforcement Counsel’s Motion.

**McLinko** incorporated Respondent Julian’s Response.<sup>1951</sup>

### **Enforcement Counsel’s Statement of Material Facts (Julian and McLinko) No. 213**

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.”<sup>1952</sup>

### **Responses:**

**Julian** did not dispute the cited Exhibit contains the text presented here.<sup>1953</sup> Accordingly, the Recommended Decision will include a factual finding as to Respondents Julian and McLinko that 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.”

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<sup>1948</sup> MSD-26.

<sup>1949</sup> Russ Anderson’s ECSFM at No. 256.

<sup>1950</sup> See Respondent Julian at Respondent Julian’s Objections to Enforcement Counsel’s Motion for Summary Disposition Exhibits.

<sup>1951</sup> McLinko’s ECSFM at No. 212.

<sup>1952</sup> MSD-581 (Clegg Tr.) at 47:9-48:1.

<sup>1953</sup> Julian’s ECSFM at No.231.

**McLinko** incorporated Respondent Julian's Response.<sup>1954</sup>

**Respondents Julian and McLinko had responsibilities to assess and assure the Bank had effective controls and risk management over sales practices while the systemic sales practices misconduct problem persisted within the Community Bank**

### **Responsibilities of the Audit Department and executives generally**

#### **Enforcement Counsel's Statement of Material Fact (Julian and McLinko) No. 232**

Audit, including Respondents Julian and McLinko, had certain oversight responsibilities with respect to incentive compensation, risk, compliance, and/or preparing audit reports.<sup>1955</sup>

#### **Responses:**

**Julian** did not dispute the claim.<sup>1956</sup> **McLinko** did not dispute the claim.<sup>1957</sup> Accordingly, the Recommended Decision will include a factual finding as to Respondents Julian and McLinko that Audit, including Respondents Julian and McLinko, had certain oversight responsibilities with respect to incentive compensation, risk, compliance, and/or preparing audit reports.

#### **Enforcement Counsel's Statement of Material Fact (Julian and McLinko) No. 233**

According to the *Comptrollers Handbook on Internal and External Audits*, "Well-planned, properly structured auditing programs are essential to effective risk management and adequate internal control systems. Effective internal and external audit programs are also a critical defense against fraud and provide vital information to the board of directors about the effectiveness of internal control systems."

#### **Responses:**

Julian did not dispute that the Handbook contained the quoted text.<sup>1958</sup> Accordingly, the Recommended Decision will include a factual finding as to Respondents Julian and McLinko

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<sup>1954</sup> McLinko's ECSFM at No. 213.

<sup>1955</sup> Julian Amended Answer ¶ 16.

<sup>1956</sup> Julian's ECSFM at No. 232.

<sup>1957</sup> McLinko's ECSFM at No. 232.

<sup>1958</sup> Julian's ECSFM at No. 233.

that according to the *Comptrollers Handbook on Internal and External Audits*, “Well-planned, properly structured auditing programs are essential to effective risk management and adequate internal control systems. Effective internal and external audit programs are also a critical defense against fraud and provide vital information to the board of directors about the effectiveness of internal control systems.”

**McLinko** disputed the claim in the statement on the ground there was no evidence cited in support, and incorporated Respondent Julian’s Response.<sup>1959</sup>

### **Enforcement Counsel’s Statement of Material Fact (Julian and McLinko) No. 234**

The *Comptrollers Handbook on Internal and External Audits* “Internal audit programs are a bank’s primary mechanism for assessing controls and operations and performing whatever work is necessary to allow the board and management to accurately attest to the adequacy of the bank’s internal control system.”<sup>1960</sup> The handbook continues: “Internal auditors must understand a bank’s strategic direction, objectives, products, services, and processes to conduct these activities. The auditors then communicate findings to the board of directors or its audit committee and senior management.”<sup>1961</sup>

#### **Responses:**

**Julian** did not dispute that the Handbook contains the quoted text.<sup>1962</sup> **McLinko** did not dispute the claim.<sup>1963</sup> Accordingly, the Recommended Decision will include a factual finding as to Respondents Julian and McLinko that the *Comptrollers Handbook on Internal and External Audits* “Internal audit programs are a bank’s primary mechanism for assessing controls and operations and performing whatever work is necessary to allow the board and management to accurately attest to the adequacy of the bank’s internal control system.”<sup>1964</sup> The handbook continues: “Internal auditors must understand a bank’s strategic direction, objectives, products, services, and processes to conduct these activities. The auditors then communicate findings to

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<sup>1959</sup> McLinko’s ECSFM at No. 233.

<sup>1960</sup> MSD-273 at 10; *see id.* at 12 (“The primary role of internal auditors is to independently and objectively review and evaluate bank activities to maintain or improve the efficiency and effectiveness of a bank’s risk management, internal controls, and corporate governance.”)

<sup>1961</sup> MSD-273 at 12.

<sup>1962</sup> Julian’s ECSFM at No. 234.

<sup>1963</sup> McLinko’s ECSFM at No. 234.

<sup>1964</sup> MSD-273 at 10; *see id.* at 12 (“The primary role of internal auditors is to independently and objectively review and evaluate bank activities to maintain or improve the efficiency and effectiveness of a bank’s risk management, internal controls, and corporate governance.”)

the board of directors or its audit committee and senior management.”

### **Enforcement Counsel’s Statement of Material Fact (Julian and McLinko) No. 235**

Wells Fargo Audit Services was the Bank’s third line of defense.<sup>1965</sup>

#### **Responses:**

**Julian** did not dispute the claim.<sup>1966</sup> **McLinko** did not dispute the claim.<sup>1967</sup> Accordingly, the Recommended Decision will include a factual finding as to Respondent Julian and McLinko that Wells Fargo Audit Services was the Bank’s third line of defense.

### **Enforcement Counsel’s Statement of Material Fact (Julian and McLinko) No. 236**

The responsibilities of WFAS were set forth in its charter. According to its charter, “The scope of internal audit work is to determine if the Company’s risk management, systems of control, and governance processes are adequate and functioning as intended.”<sup>1968</sup>

#### **Responses:**

**Julian** did not dispute this claim “to the extent that WFAS’s charter dated February 24, 2015 contains the quoted language.”<sup>1969</sup> Accordingly, the Recommended Decision will include a factual finding as to Respondent Julian that the responsibilities of WFAS were set forth in its charter. According to its charter, “The scope of internal audit work is to determine if the Company’s risk management, systems of control, and governance processes are adequate and functioning as intended.”

**McLinko** did not dispute that the WFAS charters included the quoted language.<sup>1970</sup> Accordingly, the Recommended Decision will include a factual finding as to Respondent McLinko that the responsibilities of WFAS were set forth in its charter. According to its charter, “The scope of internal audit work is to determine if the Company’s risk management, systems of control, and governance processes are adequate and functioning as intended.”

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<sup>1965</sup> Julian Amended Answer ¶ 388; McLinko Amended Answer ¶ 388.

<sup>1966</sup> Julian’s ECSFM at No. 235.

<sup>1967</sup> McLinko’s ECSFM at No. 235.

<sup>1968</sup> MSD-422B (2012) at 3; MSD-422C (2013) at 3; MSD-422D (2014) at 1; MSD-422E (2015) at 24; Julian Amended Answer ¶ 388; McLinko Amended Answer ¶ 388.

<sup>1969</sup> Julian’s ECSFM at No. 236.

<sup>1970</sup> McLinko’s ECSFM at No. 236.

### **Enforcement Counsel’s Statement of Material Fact (Julian and McLinko) No. 237**

WFAS’s charter further states that Audit “[c]onducts tests and provides conclusive reporting regarding the health of the [Bank’s] risk management and internal control structure” and “[f]unctions as a change agent to ensure risk issues are escalated and resolved.”<sup>1971</sup>

#### **Responses:**

**Julian** did not dispute this claim “to the extent that WFAS’s charter dated February 24, 2015 contains the quoted language.”<sup>1972</sup> Accordingly, the Recommended Decision will include a factual finding as to Respondent Julian that WFAS’s charter further states that Audit “[c]onducts tests and provides conclusive reporting regarding the health of the [Bank’s] risk management and internal control structure” and “[f]unctions as a change agent to ensure risk issues are escalated and resolved.”

**McLinko** did not dispute that the WFAS charters included the quoted language.<sup>1973</sup> Accordingly, the Recommended Decision will include a factual finding as to Respondent McLinko that WFAS’s charter further states that Audit “[c]onducts tests and provides conclusive reporting regarding the health of the [Bank’s] risk management and internal control structure” and “[f]unctions as a change agent to ensure risk issues are escalated and resolved.”

### **Enforcement Counsel’s Statement of Material Fact (Julian and McLinko) No. 238**

WFAS’s charter further states that Audit performs work to assure:

- (a) “Corporate Governance functions and processes provide adequate direction and oversight;”
- (b) “An appropriate culture has been established, understood, and consistently complied with across the organization;”
- (c) “The risk management system is adequately designed to ensure risks, including emerging risks, are appropriately identified and managed, and risk approvals, acceptances, and escalations are appropriately administered;”
- (d) “Operational risk is effective so that risk of loss resulting from inadequate or failed internal processes, people and systems or from

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<sup>1971</sup> MSD-422B (2012) at 3; MSD-422C (2013) at 3; MSD-422D (2014) at 1; MSD-422E (2015) at 24.

<sup>1972</sup> Julian’s ECSFM at No. 237.

<sup>1973</sup> McLinko’s ECSFM at No. 237.

- external events isadequately controlled;”
- (e) “Fraud risk management is effectively managed and the company’s customers and internal resources are protected;”
  - (f) “Reputation risk is effectively managed and the company’s brandprotected;”
  - (g) “Compensation programs incent appropriate and desired behavior;” and
  - (h) “Policies are sound/strong and employees’ actions are in compliance withthe policies, standards, procedures, and applicable laws and regulations.”<sup>1974</sup>

**Responses:**

**Julian** did not dispute this claim “to the extent that WFAS’s charter dated February 24, 2015 contains the quoted language.”<sup>1975</sup> Accordingly, the Recommended Decision will include a factual finding as to Respondent Julian that WFAS’s charter further states that Audit performs work to assure each of the above-listed areas.

**McLinko** did not dispute that the WFAS charters included the quoted language.<sup>1976</sup> Accordingly, the Recommended Decision will include a factual finding as to Respondent McLinko that WFAS’s charter further states that Audit performs work to assure each of the above-listed areas.

**Enforcement Counsel’s Statement of Material Fact (Julian and McLinko) No. 239**

Respondent Julian testified before the OCC: “Audit’s role is to come in and to assess the adequacy of those controls to ensure that . . . they’re working as appropriate. And if not, then to provide . . . comment, provide issues, raise concerns to management, raise concerns to the Board[.]”<sup>1977</sup>

**Responses:**

**Julian** did not dispute the transcript contains the quoted language.<sup>1978</sup> **McLinko** did not

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<sup>1974</sup> MSD-422C (2013) at 3; MSD-422D (2014) at 1; MSD-422E (2015) at 24; Julian Amended Answer ¶ 390; McLinko Amended Answer ¶ 390.

<sup>1975</sup> Julian’s ECSFM at No. 238.

<sup>1976</sup> McLinko’s ECSFM at No. 238.

<sup>1977</sup> MSD-278 (Julian Tr.) at 21:18-22:23; Julian Amended Answer ¶ 391; McLinko Amended Answer ¶ 391; see MSD-413 at 1.

<sup>1978</sup> Julian’s ECSFM at No. 239.

dispute the transcript contains the quoted language.<sup>1979</sup> Accordingly, the Recommended Decision will include a factual finding as to Respondents Julian and McLinko that Respondent Julian testified before the OCC: “Audit’s role is to come in and to assess the adequacy of those controls to ensure that . . . they’re working as appropriate. And if not, then to provide . . . comment, provide issues, raise concerns to management, raise concerns to the Board[.]”

#### **Enforcement Counsel’s Statement of Material Fact (Julian and McLinko) No. 240**

The Bank had a Fraud Risk Management Policy. With respect to WFAS’s fraud risk management responsibilities, the Bank’s Fraud Risk Management Policy states that WFAS “[p]rovides independent evaluation of the fraud controls that management has designed and implemented, including direct business controls” and “[p]erforms direct audits of business fraud programs and controls.”<sup>1980</sup>

Responses:

**Julian** did not dispute the Policy contains the quoted language.<sup>1981</sup> **McLinko** did not dispute the Policy contains the quoted language.<sup>1982</sup> Accordingly, the Recommended Decision will include a factual finding as to Respondents Julian and McLinko that the Bank had a Fraud Risk Management Policy. With respect to WFAS’s fraud risk management responsibilities, the Bank’s Fraud Risk Management Policy states that WFAS “[p]rovides independent evaluation of the fraud controls that management has designed and implemented, including direct business controls” and “[p]erforms direct audits of business fraud programs and controls.”

#### **Enforcement Counsel’s Statement of Material Fact (Julian and McLinko) No. 241**

The Bank also had a Responsible Business Policy. The policy stated that “WFAS carries out its responsibilities as risk management’s ‘third line of defense’ by auditing for UD(A)AP and “[r]eferring suspected violations of law or regulation to the Law Department and Business Compliance” and “Providing independent evaluations of [UD(A)AP] controls.”<sup>1983</sup>

Responses:

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<sup>1979</sup> McLinko’s ECSFM at No. 239.

<sup>1980</sup> MSD-238 at 7.

<sup>1981</sup> Julian’s ECSFM at No. 240.

<sup>1982</sup> McLinko’s ECSFM at No. 240.

<sup>1983</sup> MSD- 306 at 13.



**Julian** did not dispute that the Policy had the quoted language.<sup>1984</sup> **McLinko** did not dispute that the Policy had the quoted language.<sup>1985</sup> Accordingly, the Recommended Decision will include a factual finding as to Respondents Julian and McLinko that the Bank also had a Responsible Business Policy. The policy stated that “WFAS carries out its responsibilities as risk management’s ‘third line of defense’ by auditing for UD(A)AP and “[r]eferring suspected violations of law or regulation to the Law Department and Business Compliance” and “Providing independent evaluations of [UD(A)AP] controls.”

#### **Enforcement Counsel’s Statement of Material Fact (Julian and McLinko) No. 242**

WFAS had significant resources to satisfy its essential auditing responsibilities with respect to risk management and control. For example, in 2014, WFAS’s annual budget was around \$120 million, it had 941,000 planned audit hours, 753 approved FTEs, and 555 audit engagements.<sup>1986</sup>

#### **Responses:**

**Julian** did not dispute the claim to the extent that WFAS’s 2014 and 2015 Audit Plans are characterized. Accordingly, the Recommended Decision will include a factual finding as to Respondent Julian that WFAS had significant resources to satisfy its essential auditing responsibilities with respect to risk management and control. For example, in 2014, WFAS’s annual budget was around \$120 million, it had 941,000 planned audit hours, 753 approved FTEs, and 555 audit engagements.

**McLinko** did not dispute that the cited document included the annual budget.<sup>1987</sup> Accordingly, the Recommended Decision will include a factual finding as to Respondent McLinko that WFAS had significant resources to satisfy its essential auditing responsibilities with respect to risk management and control. For example, in 2014, WFAS’s annual budget was around \$120 million, it had 941,000 planned audit hours, 753 approved FTEs, and 555 audit engagements.

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<sup>1984</sup> Julian’s ECSFM at No. 241.

<sup>1985</sup> McLinko’s ECSFM at No. 241.

<sup>1986</sup> MSD-636 at 3, 20; MSD-637 at 18-19.

<sup>1987</sup> McLinko’s ECSFM at No. 242.

**Respondent Julian had responsibilities as the Chief Auditor for the Bank from 2012 to 2016, while the systemic sales practices misconduct problem persisted in the Community Bank**

**Enforcement Counsel’s Statement of Material Fact (Julian and McLinko) No. 243**

Respondent Julian was Chief Auditor from around March 2012 to October 2018.<sup>1988</sup>

**Responses:**

**Julian** disputed the claim, averring that it contains no evidence that he was appointed as an officer or the Chief Auditor of the Bank.<sup>1989</sup>

It is a material fact whether Respondent Julian is an institution-affiliated party. I find that in his Response to (Julian and McLinko) Statement No. 243 Respondent Julian sufficiently demonstrated a factual controversy exists regarding his appointment. Because of the existence of these material controverted facts, summary disposition is not available with respect to Respondents Julian and McLinko regarding this claim. Pursuant to the OCC’s Uniform Rules, the merits of the disputed claims raised in (Russ Anderson) Statement No. 305 will be addressed during the hearing set to begin on September 13, 2021.

**McLinko** incorporated Respondent Julian’s Response.<sup>1990</sup>

**Enforcement Counsel’s Statement of Material Fact (Julian and McLinko) No. 244**

In that role, Respondent Julian reported directly to the Audit and Examination Committee of the Board (“Audit and Examination Committee”) and administratively to the Chief Executive Officer (“CEO”) and oversaw the work of Audit.<sup>1991</sup> As Respondent Julian testified: “the reason I report to the -- to the chair of the Audit Committee is because I am assessing and providing criticism on the entire company. That includes the CEO. So I need or have the independence to be able – and the confidence to be able to criticize, if I had an occasion, the CEO knowing that he wouldn’t then turn around and fire me for it.”<sup>1992</sup>

**Responses:**

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<sup>1988</sup> Julian Amended Answer ¶ 380; MSD-477 at 7.

<sup>1989</sup> Julian’s ECSFM at No. 243.

<sup>1990</sup> McLinko’s ECSFM at No. 243.

<sup>1991</sup> Julian Amended Answer ¶¶ 9, 381, 382, 391, 392; MSD-278 (Julian Tr.) at 65:13-21.

<sup>1992</sup> MSD-278 (Julian Tr.) at 65:13-21.

**Julian** did not dispute that the testimony transcript contains the quoted text.<sup>1993</sup>

Accordingly, the Recommended Decision will include a factual finding as to Respondents Julian and McLinko that Respondent Julian testified: “the reason I report to the -- to the chair of the Audit Committee is because I am assessing and providing criticism on the entire company. That includes the CEO. So I need or have the independence to be able – and the confidence to be able to criticize, if I had an occasion, the CEO knowing that he wouldn’t then turn around and fire me for it.”

**McLinko** incorporated Respondent Julian’s Response.<sup>1994</sup>

### **Enforcement Counsel’s Statement of Material Fact (Julian and McLinko) No. 245**

The WFAS charter states that the “Chief Auditor, along with the staff of the internal audit department, has the responsibility to:

(a) Prepare and distribute to business unit management a written report at the conclusion of audit engagements that includes issues related to the business unit's control processes and management’s corrective actions.

(b) Issue periodic reports to the Audit & Examination committee and management summarizing results of audit activities.

(c) Report significant issues related to the processes for controlling the activities of the organization and its affiliates to the Audit & Examination committee.

(d) Provide a quarterly assessment on the adequacy and effectiveness of the organization’s processes for controlling its activities and managing its risks in the areas set forth under the mission and scope of work.”<sup>1995</sup>

### **Responses:**

**Julian** objected to the use of the supporting exhibits on the grounds that the evidence is irrelevant, immaterial, unreliable, or repetitive.<sup>1996</sup> The objection is sustained. Given the passage of time between the Charter’s creation and the filing of the Notice of Charges, given the redundant nature of the material facts presented in the Charter when compared with Exhibits that are more closely related in time, the Charter will not be admitted in support of Enforcement Counsel’s Motion. Accordingly, the claims presented in (Julian and McLinko) No. 245 will not support Enforcement Counsel’s Motion. The exclusion of the exhibit does not, however, create a factual basis that would prevent granting Enforcement Counsel’s Motion.

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<sup>1993</sup> Julian’s ECSFM at No. 244.

<sup>1994</sup> McLinko’s ECSFM at No. 244.

<sup>1995</sup> MSD- 422C (2013) at 6; MSD-422D (2014) at 3; MSD-422E (2015) at 26; MSD- 422B (2012) at 4.

<sup>1996</sup> Respondent Julian’s Objections to Enforcement Counsel’s Motion for Summary Disposition Exhibits.

**McLinko** incorporated Respondent Julian’s Response.<sup>1997</sup>

**Enforcement Counsel’s Statement of Material Fact (Julian and McLinko) No. 246**

The WFAS charter also provides that the “Chief Auditor and staff of the internal audit department are authorized to: Have unrestricted access to all functions, records, property, and personnel.”<sup>1998</sup>

**Responses:**

**Julian** objected to the use of the supporting exhibits on the grounds that the evidence is irrelevant, immaterial, unreliable, or repetitive.<sup>1999</sup> The objection is sustained. Given the passage of time between the Charter’s creation and the filing of the Notice of Charges, given the redundant nature of the material facts presented in the Charter when compared with Exhibits that are more closely related in time, the Charter will not be admitted in support of Enforcement Counsel’s Motion. Accordingly, the claims presented in (Julian and McLinko) No. 246 will not support Enforcement Counsel’s Motion. The exclusion of the exhibit does not, however, create a factual basis that would prevent granting Enforcement Counsel’s Motion.

**McLinko** incorporated Respondent Julian’s Response.<sup>2000</sup>

**Enforcement Counsel’s Statement of Material Fact (Julian and McLinko) No. 247**

Respondent Julian was a member of the Operating Committee, a group of the most senior executives of the Bank, including the CEO and Carrie Tolsted.<sup>2001</sup>

**Responses:**

**Julian** admitted that, at various times during his tenure as Chief Auditor, Respondent Julian was a non-voting, observing member of the Operating Committee.”<sup>2002</sup> I find an insufficient factual basis has been presented to establish a dispute in this Response to create a controverted material

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<sup>1997</sup> McLinko’s ECSFM at No. 245.

<sup>1998</sup> MSD-422B (2012) at 5; MSD-422C (2013) at 6; MSD-422D (2014) at 4; MSD- 422E (2015) at 27.

<sup>1999</sup> Respondent Julian’s Objections to Enforcement Counsel’s Motion for Summary Disposition Exhibits.

<sup>2000</sup> McLinko’s ECSFM at No. 246.

<sup>2001</sup> Julian Amended Answer ¶¶ 11, 383.

<sup>2002</sup> Julian’s ECSFM at No. 247, quoting Julian Amended Answer ¶ 383.

fact. Accordingly, the Recommended Decision will include a factual finding as to Respondent Julian that Respondent Julian was a non-voting, observing member of the Operating Committee, a group of the most senior executives of the Bank, including the CEO and Carrie Tolsted.

**McLinko** incorporated Respondent Julian's Response.<sup>2003</sup>

#### **Enforcement Counsel's Statement of Material Fact (Julian and McLinko) No. 248**

Respondent Julian was a member of the Bank's Enterprise Risk Management Committee. The committee's charter stated the committee was responsible for "understand[ing] and evaluat[ing] risk, address[ing] escalated issues, and provid[ing] active oversight of risk mitigation." The Enterprise Risk Management Committee could escalate any issue to the Operating Committee or the CEO, and reported quarterly to the Operating Committee and RiskCommittee of the Board.<sup>2004</sup>

#### **Responses:**

**Julian** disputed the claim but offered no evidence to controvert the claim, proffering only that his role on the Enterprise Risk Management Committee was limited in order to maintain the independence of Internal Audit.<sup>2005</sup> I find an insufficient factual basis has been presented to establish a dispute in this Response to create a controverted material fact. Accordingly, the Recommended Decision will include a factual finding as to Respondents Julian and McLinko that Respondent Julian was a member of the Bank's Enterprise Risk Management Committee. The committee's charter stated the committee was responsible for "understand[ing] and evaluat[ing] risk, address[ing] escalated issues, and provid[ing] active oversight of risk mitigation." The Enterprise Risk Management Committee could escalate any issue to the Operating Committee or the CEO, and reported quarterly to the Operating Committee and Risk Committee of the Board.

**McLinko** incorporated Respondent Julian's Response.<sup>2006</sup>

#### **Enforcement Counsel's Statement of Material Fact (Julian and McLinko) No. 249**

Respondent Julian was a member of the Bank's Team Member Misconduct Executive

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<sup>2003</sup> McLinko's ECSFM at No. 247.

<sup>2004</sup> Julian Amended Answer ¶ 155; MSD-435.

<sup>2005</sup> Julian's ECSFM at No. 248, quoting DJ0053 OCC-WF-SP-10771312); (DJ0071 OCC-WF-SP-03809376.

<sup>2006</sup> McLinko's ECSFM at No. 248.

Committee (“TMMEC”).<sup>2007</sup> The TMMEC charter stated that the “committee consists of senior executive who share responsibility for the appropriate management of team member misconduct and internal fraud matters” and the “purpose of the Team Member Misconduct Executive Committee is to provide a forum for Wells Fargo executive management to provide leadership, oversight and direction related to team member misconduct and internal fraud risk management.”<sup>2008</sup>

### **Responses:**

**Julian** disputed the claim but offered no evidence controverting the material claims in the Statement.<sup>2009</sup> I find an insufficient factual basis has been presented to establish a dispute in this Response to create a controverted material fact.

Accordingly, the Recommended Decision will include a factual finding as to Respondents Julian and McLinko that Respondent Julian was a member of the Bank’s Team Member Misconduct Executive Committee (“TMMEC”). The TMMEC charter stated that the “committee consists of senior executive who share responsibility for the appropriate management of team member misconduct and internal fraud matters” and the “purpose of the Team Member Misconduct Executive Committee is to provide a forum for Wells Fargo executive management to provide leadership, oversight and direction related to team member misconduct and internal fraud risk management.”

**McLinko** incorporated Respondent Julian’s Response.<sup>2010</sup>

### **Enforcement Counsel’s Statement of Material Fact (Julian and McLinko) No. 250**

Respondent Julian was a member of the Bank’s Ethics Committee. The 2013 “Wells Fargo’s Risk Management Framework” stated that “[t]he Ethics Committee is responsible for administering and interpreting the Wells Fargo Code of Ethics and Business Conduct, as well as approving its content.”<sup>2011</sup>

### **Responses:**

**Julian** disputed the claim but offered no evidence controverting the material claims in the Statement.<sup>2012</sup> I find an insufficient factual basis has been presented to establish a dispute in this

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<sup>2007</sup> Julian Amended Answer ¶¶ 157, 383.

<sup>2008</sup> Julian Amended Answer ¶ 157; MSD-417.

<sup>2009</sup> Julian’s ECSFM at No. 249.

<sup>2010</sup> McLinko’s ECSFM at No. 249.

<sup>2011</sup> Julian Amended Answer ¶ 159; 383; MSD-418 at 2.

<sup>2012</sup> Julian’s ECSFM at No. 250.

Response to create a controverted material fact.

Accordingly, the Recommended Decision will include a factual finding as to Respondents Julian and McLinko that Respondent Julian was a member of the Bank's Ethics Committee. The 2013 "Wells Fargo's Risk Management Framework" stated that "[t]he Ethics Committee is responsible for administering and interpreting the Wells Fargo Code of Ethics and Business Conduct, as well as approving its content."

**McLinko** incorporated Respondent Julian's Response.<sup>2013</sup>

### **Enforcement Counsel's Statement of Material Fact (Julian and McLinko) No. 251**

Respondent Julian was a member of the Bank's Incentive Compensation Steering Committee, later renamed the Incentive Compensation Committee.<sup>2014</sup> The Incentive Compensation Committee charter stated that the committee "is chartered to . . . provide oversight around the design and outcomes of the business line incentive plans, and lead Wells Fargo's enterprise efforts to enhance incentive compensation practices throughout the Company."<sup>2015</sup>

At his deposition in this proceeding, Respondent Julian could not remember attending any Incentive Compensation Committee meetings. He could not remember the committee issuing any policy statements or reviewing any compensation plans, and did not know whether the committee had criticized any individual incentive compensation plans.<sup>2016</sup>

Similarly, Ken Zimmerman, the Community Bank's representative on the Incentive Compensation Committee could not recall serving on the Incentive Compensation Committee, even though he believed he would have remembered it "[b]ecause it looks like it's kind of a big deal."<sup>2017</sup>

### **Responses:**

**Julian** disputed the claim but offered no evidence controverting the material claims in the Statement.<sup>2018</sup> I find an insufficient factual basis has been presented to establish a dispute in this Response to create a controverted material fact.

Accordingly, the Recommended Decision will include a factual finding as to Respondents

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<sup>2013</sup> McLinko's ECSFM at No. 250.

<sup>2014</sup> MSD-279 (Julian Dep. Tr.) at 36:18-23; MSD-421 at 27-28; MSD-687; MSD-712.

<sup>2015</sup> Julian Amended Answer ¶ 153; (MSD-421 at 24.

<sup>2016</sup> MSD-279 (Julian Dep. Tr.) at 37:11-41:15.

<sup>2017</sup> MSD-583B (Zimmerman Tr.) at 505:4-506:12.

<sup>2018</sup> Julian's ECSFM at No. 251.

Julian and McLinko that Respondent Julian was a member of the Bank’s Incentive Compensation Steering Committee, later renamed the Incentive Compensation Committee. The Incentive Compensation Committee charter stated that the committee “is chartered to . . . provide oversight around the design and outcomes of the business line incentive plans, and lead Wells Fargo’s enterprise efforts to enhance incentive compensation practices throughout the Company.”

At his deposition in this proceeding, Respondent Julian could not remember attending any Incentive Compensation Committee meetings. He could not remember the committee issuing any policy statements or reviewing any compensation plans, and did not know whether the committee had criticized any individual incentive compensation plans.

Similarly, Ken Zimmerman, the Community Bank’s representative on the Incentive Compensation Committee could not recall serving on the Incentive Compensation Committee, even though he believed he would have remembered it “[b]ecause it looks like it’s kind of a big deal.”

**McLinko** incorporated Respondent Julian’s Response.<sup>2019</sup>

#### **Enforcement Counsel’s Statement of Material Fact (Julian and McLinko) No. 252**

Respondent Julian was a member of the WFAS Audit Management Committee (“AMC”) which performed quarterly look backs and look forwards of WFAS’s audit coverage. The look back was to evaluate coverage, results, and impact and the look forward was to “evaluate risk profile changes, subsiding risks, and emerging risks.”<sup>2020</sup>

#### **Responses:**

Julian objected to the Statement on the ground that the supporting exhibit was irrelevant.<sup>2021</sup> Finding an insufficient nexus between the averments presented in the Statement and the material facts in issue, the objection is sustained. Accordingly, the claims presented in (Julian and McLinko) No. 502 will not support Enforcement Counsel’s Motion as to Respondent Julian. The exclusion of the claims appearing in the Statement does not, however, create a factual basis that would prevent granting Enforcement Counsel’s Motion.

**McLinko** incorporated Respondent Julian’s Response.<sup>2022</sup>

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<sup>2019</sup> McLinko’s ECSFM at No. 251.

<sup>2020</sup> MSD-502 at 13.

<sup>2021</sup> See Respondent Julian at Respondent Julian’s Objections to Enforcement Counsel’s Motion for Summary Disposition Exhibits.

<sup>2022</sup> McLinko’s ECSFM at No. 252.



### **Enforcement Counsel’s Statement of Material Fact (Julian and McLinko) No. 253**

In or around October 2018, the Bank placed Respondent Julian on administrative leave.<sup>2023</sup>

#### **Responses:**

**Julian** did not dispute the claim.<sup>2024</sup> **McLinko** did not dispute this claim.<sup>2025</sup> Accordingly, the Recommended Decision will include a factual finding as to Respondents Julian and McLinko that in or around October 2018, the Bank placed Respondent Julian on administrative leave.

### **Enforcement Counsel’s Statement of Material Fact (Julian and McLinko) No. 254**

Respondent Julian retired from the Bank in or around October 2019.<sup>2026</sup>

#### **Responses:**

**Julian** did not dispute the claim.<sup>2027</sup> **McLinko** did not dispute this claim.<sup>2028</sup> Accordingly, the Recommended Decision will include a factual finding as to Respondents Julian and McLinko that Respondent Julian retired from the Bank in or around October 2019.

### **Respondent McLinko had responsibilities as the Executive Audit Director for the Community Bank from 2011 to 2016, while the systemic sales practices misconduct problem persisted in the Community Bank**

### **Enforcement Counsel’s Statement of Material Fact (Julian and McLinko) No. 255**

Respondent McLinko held the title of Executive Audit Director at the Bank from approximately 2008 to at least 2018. With the exception of an approximately six-month period during 2012, he was an Executive Audit Director for the Community Bank from the fourth quarter of 2010

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<sup>2023</sup> Julian Amended Answer ¶ 384.

<sup>2024</sup> Julian’s ECSFM at No. 253.

<sup>2025</sup> McLinko’s ECSFM at No. 253.

<sup>2026</sup> Julian Amended Answer ¶ 385.

<sup>2027</sup> Julian’s ECSFM at No. 254.

<sup>2028</sup> McLinko’s ECSFM at No. 254.

to 2017.<sup>2029</sup> He had responsibilities for overseeing the auditing of the Community Bank.<sup>2030</sup>

**Responses:**

**Julian** incorporated Respondent McLinko’s Response.<sup>2031</sup>

**McLinko** disputed that he held the title shown in the claim, and disputed he had the responsibilities described in the claim.<sup>2032</sup>

Respondent McLinko’s duties may constitute material facts in issue whether he had the duties Enforcement Counsel attributed to him in this claim. Because of the existence of these material controverted facts, summary disposition is not available with respect to Respondents Julian and McLinko regarding this claim. Pursuant to the OCC’s Uniform Rules, the merits of the claims raised in (Julian and McLinko) No. 255 will be addressed during the hearing set to begin on September 13, 2021.

**Enforcement Counsel’s Statement of Material Fact (Julian and McLinko) No. 256**

From March 2012 to 2018, Respondent McLinko reported to Respondent Julian.<sup>2033</sup>

**Julian** incorporated Respondent McLinko’s Response.<sup>2034</sup>

McLinko did not dispute this claim.<sup>2035</sup> Accordingly, the Recommended Decision will include a factual finding as to Respondents Julian and McLinko that from March 2012 to 2018, Respondent McLinko reported to Respondent Julian.

**Enforcement Counsel’s Statement of Material Fact (Julian and McLinko) No. 257**

During his tenure as Executive Audit Director for the Community Bank between 2010 and 2017, Respondent McLinko had responsibilities concerning “oversight of the audits performed by WFAS’s Community Bank & Operations Group, which included setting the audit strategy, reviewing and approving draft audit reports, complying with Audit’s charter, and providing

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<sup>2029</sup> MSD-275 at 255.

<sup>2030</sup> McLinko Amended Answer ¶ 439.

<sup>2031</sup> Julian’s ECSFM at No. 255.

<sup>2032</sup> McLinko’s ECSFM at No. 254, citing MMF ¶¶ 592, 598, 658, 662, 848 (Mr. McLinko’s tenure).

<sup>2033</sup> Julian Amended Answer ¶ 440, McLinko Amended Answer ¶ 440.

<sup>2034</sup> Julian’s ECSFM at No. 256.

<sup>2035</sup> McLinko’s ECSFM at No. 256.

credible challenge to Community Bank management, as necessary.”<sup>2036</sup>

**Responses:**

**Julian** incorporated Respondent McLinko’s Response.<sup>2037</sup>

**McLinko** disputed the claim but presented no controverting evidence.<sup>2038</sup> I find an insufficient factual basis has been presented to establish a dispute in this Response to create a controverted material fact. Accordingly, the Recommended Decision will include a finding as to Respondents Julian and McLinko that during his tenure as Executive Audit Director for the Community Bank between 2010 and 2017, Respondent McLinko had responsibilities concerning “oversight of the audits performed by WFAS’s Community Bank & Operations Group, which included setting the audit strategy, reviewing and approving draft audit reports, complying with Audit’s charter, and providing credible challenge to Community Bank management, as necessary.”

**Enforcement Counsel’s Statement of Material Fact (Julian and McLinko) No. 258**

As EAD, Respondent McLinko had responsibilities concerning “oversight of the Community Bank’s audit team’s execution of their duties consistent with Audit’s responsibilities” and “the accuracy and completeness of the Community Bank’s audits.”<sup>2039</sup>

**Responses:**

**Julian** incorporated Respondent McLinko’s Response.<sup>2040</sup>

**McLinko** disputed the claim but presented no controverting evidence.<sup>2041</sup> I find an insufficient factual basis has been presented to establish a dispute in this Response to create a controverted material fact. Accordingly, the Recommended Decision will include a finding as to Respondents Julian and McLinko that as EAD, Respondent McLinko had responsibilities concerning “oversight of the Community Bank’s audit team’s execution of their duties consistent with Audit’s responsibilities” and “the accuracy and completeness of the Community Bank’s audits.”

**Enforcement Counsel’s Statement of Material Fact (Julian and McLinko) No. 259**

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<sup>2036</sup> McLinko Amended Answer ¶ 444.

<sup>2037</sup> Julian’s ECSFM at No. 257.

<sup>2038</sup> McLinko’s ECSFM at No. 257.

<sup>2039</sup> McLinko Amended Answer ¶¶ 445-46.

<sup>2040</sup> Julian’s ECSFM at No. 258.

<sup>2041</sup><sup>2041</sup> McLinko’s ECSFM at No. 257.

Respondent McLinko was a member of the Community Bank’s Internal Fraud Committee, which received reporting from Corporate Investigations regarding, in part, sales integrity cases and investigations related to lack of customer consent for products and services.<sup>2042</sup>

**Responses:**

**Julian** incorporated Respondent McLinko’s Response.<sup>2043</sup>

**McLinko** offered no evidence on the point but disputed the claim “to the extent the alleged fact it is meant to establish that Mr. McLinko was a member of the Internal Fraud Committee throughout his tenure as an Executive Audit Director of Community Bank, or that he always received reporting from CIS”.<sup>2044</sup> I find an insufficient factual basis has been presented to establish a dispute in this Response to create a controverted material fact. Accordingly, the Recommended Decision will include a finding as to Respondents Julian and McLinko that Respondent McLinko was a member of the Community Bank’s Internal Fraud Committee, which received reporting from Corporate Investigations regarding, in part, sales integrity cases and investigations related to lack of customer consent for products and services.

**Enforcement Counsel’s Statement of Material Fact (Julian and McLinko) No. 260**

By no later than February 2015, Respondent McLinko was a member of the Community Banking Risk Management Committee.<sup>2045</sup> The Committee was responsible for understanding the Community Bank’s risk profile and to ensure risks were managed effectively. Specifically, the committee identified and evaluated current and emerging material risks, determined whether appropriate balances exist between risk and reward, and identified exposures that may change the operational risk portfolio.<sup>2046</sup>

**Responses:**

**Julian** incorporated Respondent McLinko’s Response.<sup>2047</sup>

**McLinko** disputed the claim but presented no controverting evidence.<sup>2048</sup> I find an

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<sup>2042</sup> McLinko Amended Answer ¶ 449.

<sup>2043</sup> Julian’s ECSFM at No. 259.

<sup>2044</sup> McLinko’s ECSFM at No. 258

<sup>2045</sup> MSD-307 at 40 (showing Respondent McLinko as a member of the Community Bank Risk Management Committee)

<sup>2046</sup> MSD-307 at 36; McLinko Amended Answer ¶¶ 161, 255.

<sup>2047</sup> Julian’s ECSFM at No. 260.

<sup>2048</sup> McLinko’s ECSFM at No. 260.

insufficient factual basis has been presented to establish a dispute in this Response to create a controverted material fact. Accordingly, the Recommended Decision will include a finding as to Respondents Julian and McLinko that by no later than February 2015, Respondent McLinko was a member of the Community Banking Risk Management Committee. The Committee was responsible for understanding the Community Bank's risk profile and to ensure risks were managed effectively. Specifically, the committee identified and evaluated current and emerging material risks, determined whether appropriate balances exist between risk and reward, and identified exposures that may change the operational risk portfolio.

**Enforcement Counsel's Statement of Material Fact (Julian and McLinko) No. 261**

The Community Banking Risk Management Committee also was to ensure risk appetite was considered throughout the new product planning processes, strategic decision making, and business practices process by each appropriate line of business. The committee served "as the primary management-level forum for the consideration of the highest priority risk issues resident in Community Banking . . . and support and assist Wells Fargo's Enterprise Risk Management Committee (ERMC) in carrying out its risk oversight responsibilities."<sup>2049</sup>

**Responses:**

**Julian** incorporated Respondent McLinko's Response.<sup>2050</sup>

**McLinko** disputed the claim but presented no controverting evidence.<sup>2051</sup> I find an insufficient factual basis has been presented to establish a dispute in this Response to create a controverted material fact. Accordingly, the Recommended Decision will include a finding as to Respondents Julian and McLinko that the Community Banking Risk Management Committee also was to ensure risk appetite was considered throughout the new product planning processes, strategic decision making, and business practices process by each appropriate line of business. The committee served "as the primary management-level forum for the consideration of the highest priority risk issues resident in Community Banking . . . and support and assist Wells Fargo's Enterprise Risk Management Committee (ERMC) in carrying out its risk oversight responsibilities."

**Enforcement Counsel's Statement of Material Fact (Julian and McLinko) No. 262**

By at least October 2015, Respondent McLinko was a member of the Community Banking Conduct Risk Oversight Committee.<sup>2052</sup> The Committee was established to understand Community Bank's risk profile and work to provide visibility and transparency into business

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<sup>2049</sup> MSD-307 at 36.

<sup>2050</sup> Julian's ECSFM at No. 261.

<sup>2051</sup> McLinko's ECSFM at No. 261.

<sup>2052</sup> MSD-309 at 4; MSD-338 at 4.

line strategy, progress, risks, and future opportunities to ensure sales practices risk are managed effectively. The committee defined sales practices as: “risk of customer harm, reputational damage, financial loss, litigation, and regulator non-compliance associated with sales practices” within Community Bank.<sup>2053</sup>

**Responses:**

**Julian** incorporated Respondent McLinko’s Response.<sup>2054</sup>

**McLinko** did not dispute the claim.<sup>2055</sup> Accordingly, the Recommended Decision will include a finding as to Respondents Julian and McLinko that by at least October 2015, Respondent McLinko was a member of the Community Banking Conduct Risk Oversight Committee. The Committee was established to understand Community Bank’s risk profile and work to provide visibility and transparency into business line strategy, progress, risks, and future opportunities to ensure sales practices risk are managed effectively. The committee defined sales practices as: “risk of customer harm, reputational damage, financial loss, litigation, and regulator non-compliance associated with sales practices” within Community Bank.

**Enforcement Counsel’s Statement of Material Fact (Julian and McLinko) No. 263**

The Community Banking Conduct Risk Oversight Committee was accountable for: “1. Identify[ing] and evaluat[ing] current and emerging material risks and examine trends appropriate for conduct risk oversight. Assess[ing] strategic implications for business objectives and sales practices risk management. 2. Review[ing] conduct risk activities, including: cross- selling, the drive to meet financial targets (including, potentially, sales goals) and key behavioral motivators (including incentive compensation arrangements and team member recognition and rewards practices) as well as important HR processes (including recruitment and training and performance management) for, in particular, customer-facing team members.”<sup>2056</sup>

**Responses:**

**Julian** incorporated Respondent McLinko’s Response.<sup>2057</sup>

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<sup>2053</sup> MSD-309 at 1; MSD-338 at 1.

<sup>2054</sup> Julian’s ECSFM at No. 262.

<sup>2055</sup> McLinko’s ECSFM at No. 262.

<sup>2056</sup> MSD-309 at 1; MSD-338 at 1.

<sup>2057</sup> Julian’s ECSFM at No. 263.

**McLinko** did not dispute the claim.<sup>2058</sup> Accordingly, the Recommended Decision will include a finding as to Respondents Julian and McLinko that the Community Banking Conduct Risk Oversight Committee was accountable for: “1. Identify[ing] and evaluat[ing] current and emerging material risks and examine trends appropriate for conduct risk oversight. Assess[ing] strategic implications for business objectives and sales practices risk management. 2. Review[ing] conduct risk activities, including: cross- selling, the drive to meet financial targets (including, potentially, sales goals) and key behavioral motivators (including incentive compensation arrangements and team member recognition and rewards practices) as well as important HR processes (including recruitment and training and performance management) for, in particular, customer-facing team members.”

### **Enforcement Counsel’s Statement of Material Fact (Julian and McLinko) No. 264**

Respondent McLinko retired from the Bank on or around April 2019.<sup>2059</sup>

#### **Responses:**

**Julian** incorporated Respondent McLinko’s Response.<sup>2060</sup>

**McLinko** did not dispute the claim.<sup>2061</sup> Accordingly, the Recommended Decision will include a finding as to Respondents Julian and McLinko that Respondent McLinko retired from the Bank on or around April 2019.

### **Respondents Julian and McLinko received extensive information regarding sales practices misconduct at the Community Bank**

#### **Respondent Julian Received extensive information from Corporate Investigations and others regarding sales practices misconduct at the Community Bank**

### **Enforcement Counsel’s Statement of Material Fact (Julian and McLinko) No. 265**

Respondent Julian testified that, from time to time, he received information related to

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<sup>2058</sup> McLinko’s ECSFM at No. 263.

<sup>2059</sup> McLinko Amended Answer ¶ 441.

<sup>2060</sup> Julian’s ECSFM at No. 264.

<sup>2061</sup> McLinko’s ECSFM at No. 264.

sales integrity from different sources.<sup>2062</sup>

**Responses:**

**Julian** disputed the claim but presented no controverting evidence.<sup>2063</sup> I find an insufficient factual basis has been presented to establish a dispute in this Response to create a controverted material fact. Accordingly, the Recommended Decision will include a factual finding as to Respondents Julian and McLinko that Respondent Julian testified that, from time to time, he received information related to sales integrity from different sources.

**McLinko** incorporated Respondent Julian's Response.<sup>2064</sup>

**Enforcement Counsel's Statement of Material Fact (Julian and McLinko) No. 266**

Respondent Julian received a steady stream of information from a variety of sources about sales integrity and sales practices misconduct in the Community Bank that indicated its widespread and systemic nature.<sup>2065</sup>

**Responses:**

Julian disputed the claim but presented no controverting evidence.<sup>2066</sup> I find an insufficient factual basis has been presented to establish a dispute in this Response to create a controverted material fact. Accordingly, the Recommended Decision will include a factual finding as to Respondents Julian and McLinko that Respondent Julian received a steady stream of information from a variety of sources about sales integrity and sales practices misconduct in the Community Bank that indicated its widespread and systemic nature.

**McLinko** incorporated Respondent Julian's Response.<sup>2067</sup>

**Enforcement Counsel's Statement of Material Fact (Julian and McLinko) No. 267**

Under the Bank's EthicsLine Policy, Corporate Investigations sent certain types of EthicsLine complaints (i.e. whistleblower complaints) to Respondent Julian as the Bank's Chief

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<sup>2062</sup> Julian Amended Answer ¶ 396.

<sup>2063</sup> Julian's ECSFM at No. 265.

<sup>2064</sup> McLinko's ECSFM at No. 265.

<sup>2065</sup> See, e.g., MSD-324 at 5; MSD-420 at 9; MSD- 430 at 15; MSD-484-487; MSD-442-446; MSD-524 at 49.

<sup>2066</sup> Julian's ECSFM at No. 266.

<sup>2067</sup> McLinko's ECSFM at No. 266.



Auditor.<sup>2068</sup> Respondent Julian directly received dozens of EthicsLine whistleblower complaints from Bank employees around the country detailing undue sales pressure, unreasonable sales goals, and sales practices misconduct in the Community Bank.<sup>2069</sup> He received information showing that Bank employees submitted thousands of similar complaints each year, and that such complaints comprised roughly 50% of all EthicsLine complaints received annually.<sup>2070</sup>

**Responses:**

**Julian** objected to the Statement on the ground that the supporting exhibits were irrelevant, noting the time they were last updated.<sup>2071</sup> Finding an insufficient nexus between the averments presented in the Statement and the material facts in issue, the objection is sustained. Accordingly, the claims presented in (Julian and McLinko) No. 267 will not support Enforcement Counsel’s Motion. The exclusion of the claims appearing in the Statement does not, however, create a factual basis that would prevent granting Enforcement Counsel’s Motion.

**McLinko** incorporated Respondent Julian’s Response.<sup>2072</sup>

**Enforcement Counsel’s Statement of Material Fact (Julian and McLinko) No. 268**

Shearman & Sterling LLP interviewed David Julian on behalf of the Oversight Committee of the Board of Directors in 2016 in connection with the Board Report. According to the interview notes, Respondent Julian said “he receives notice of certain EthicsLine complaints, and that, given the content of some examples he had seen over time, he found it difficult to believe that Ms. Tolstedt had been unaware of team-member reactions to the high-pressure sales environment in CB.”<sup>2073</sup>

**Responses:**

**Julian** did not dispute that the notes from the interview contained the phrase “Mr. Julian further stated that he receives notice of certain EthicsLine complaints, and that, given the content of some examples he had seen over time, he found it difficult to believe that Ms. Tolstedt had been unaware of team-member reactions to the high-pressure sales

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<sup>2068</sup> MSD-240 at 11; MSD-381 at 11.

<sup>2069</sup> See, e.g., MSD-442-446; MSD-484-487.

<sup>2070</sup> See, e.g., MSD-324 at 5; MSD-430; MSD-524 at 49.

<sup>2071</sup> See Respondent Julian at Respondent Julian’s Objections to Enforcement Counsel’s Motion for Summary Disposition Exhibits.

<sup>2072</sup> McLinko’s ECSFM at No. 267.

<sup>2073</sup> MSD-501 at 6.

environment in CB.”<sup>2074</sup>

Accordingly, the Recommended Decision will include a factual finding as to Respondents Julian and McLinko that after Shearman & Sterling LLP interviewed David Julian on behalf of the Oversight Committee of the Board of Directors in 2016 in connection with the Board Report, notes from the interview contained the phrase “Mr. Julian further stated that he receives notice of certain EthicsLine complaints, and that, given the content of some examples he had seen over time, he found it difficult to believe that Ms. Tolstedt had been unaware of team-member reactions to the high-pressure sales environment in CB.”

**McLinko** incorporated Respondent Julian’s Response.<sup>2075</sup>

### **Enforcement Counsel’s Statement of Material Fact (Julian and McLinko) No. 269**

Enforcement Counsel’s Statement of Material Fact (Julian and McLinko) No. 269 relies on exhibits presented to this Tribunal as being non-public. Pursuant to the OCC’s Uniform Rules, while the proceedings in this administrative enforcement action are expressly required to be public, when presented with non-public documents the Administrative Law Judge is required to take all appropriate steps to preserve the confidentiality of such documents.<sup>2076</sup> Upon my review of the confidential documents supporting this Statement of Material Fact, and after weighing the expectation that all of the proceedings shall be public against the requirement that I protect against the disclosure of non-public information, I find the evidentiary value of these exhibits to be sufficiently marginal and duplicative as to warrant exclusion from this Order. Accordingly, this Order will not be based on any of the claims found in this Statement of Material Fact.

### **Enforcement Counsel’s Statement of Material Fact (Julian and McLinko) No. 270**

Respondent Julian also received information showing that there were sales integrity cases in every region in the Community Bank and that customer consent cases were the most common sales integrity case type.<sup>2077</sup>

#### **Responses:**

**Julian** disputed the claim, asserting that while the cited chart does show the number of confirmed fraud cases for Corporate Investigation Sales Integrity cases overall, it does not detail

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<sup>2074</sup> Julian’s ECSFM at No. 268, citing MSD-501 at 6.

<sup>2075</sup> McLinko’s ECSFM at No. 268.

<sup>2076</sup> See 12 C.F.R. § 19.33(b).

<sup>2077</sup> See, e.g., MSD-420 at 9.

how many of those cases are specific to customer consent.<sup>2078</sup> I find an insufficient factual basis has been presented to establish a dispute in this Response to create a controverted material fact. Accordingly, the Recommended Decision will include a factual finding as to Respondents Julian and McLinko that he received information showing that there were sales integrity cases in every region in the Community Bank and that customer consent cases were the most common sales integrity case type.

**McLinko** incorporated Respondent Julian's Response.<sup>2079</sup>

### **Enforcement Counsel's Statement of Material Fact (Julian and McLinko) No. 271**

Respondent Julian was reminded about internal audit's critical role with respect to team member misconduct and internal fraud and repeatedly asked to consider whether the controls were allowing too much opportunity and whether the line of business was "creating an environment whereby the employee must commit misconduct."<sup>2080</sup>

#### **Responses:**

**Julian** disputed the claim, averring it does not provide sufficient context regarding whether Mr. Julian reviewed the cited presentations.<sup>2081</sup> I find an insufficient factual basis has been presented to establish a dispute in this Response to create a controverted material fact. Accordingly, the Recommended Decision will include a factual finding as to Respondents Julian and McLinko that he was reminded about internal audit's critical role with respect to team member misconduct and internal fraud and repeatedly asked to consider whether the controls were allowing too much opportunity and whether the line of business was "creating an environment whereby the employee must commit misconduct."

**McLinko** incorporated Respondent Julian's Response.<sup>2082</sup>

### **Enforcement Counsel's Statement of Material Fact (Julian and McLinko) No. 272**

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

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<sup>2078</sup> Julian's ECSFM at No. 270.

<sup>2079</sup> McLinko's ECSFM at No. 271.

<sup>2080</sup> See, e.g., MSD-420, MSD-311.

<sup>2081</sup> Julian's ECSFM at No. 271.

<sup>2082</sup> McLinko's ECSFM at No. 271.

Board.<sup>2083</sup> 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).<sup>2084</sup>

### **Responses:**

Julian disputed the claim, averring it does not provide sufficient context regarding whether Mr. Julian reviewed the cited presentations.<sup>2085</sup> I find an insufficient factual basis has been presented to establish a dispute in this Response to create a controverted material fact. Accordingly, the Recommended Decision will include a factual finding as to Respondents Julian and McLinko that 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.<sup>2086</sup> 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).

**McLinko** incorporated Respondent Julian's Response.<sup>2087</sup>

### **Enforcement Counsel's Statement of Material Fact (Julian and McLinko) No. 273**

Enforcement Counsel's Statement of Material Fact (Julian and McLinko) No. 273 relies on exhibits presented to this Tribunal as being non-public. Pursuant to the OCC's Uniform Rules, while the proceedings in this administrative enforcement action are expressly required to be public, when presented with non-public documents the Administrative Law Judge is required to take all appropriate steps to preserve the confidentiality of such documents.<sup>2088</sup> Upon my review of the confidential documents supporting this Statement of Material Fact, and after weighing the

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<sup>2083</sup> MSD-279 (Julian Dep. Tr.) at 204:15-207:1.

<sup>2084</sup> MSD-425 at 3-4.

<sup>2085</sup> Julian's ECSFM at No. 272.

<sup>2086</sup> MSD-279 (Julian Dep. Tr.) at 204:15-207:1.

<sup>2087</sup> McLinko's ECSFM at No. 273.

<sup>2088</sup> See 12 C.F.R. § 19.33(b).

expectation that all of the proceedings shall be public against the requirement that I protect against the disclosure of non-public information, I find the evidentiary value of these exhibits to be sufficiently marginal and duplicative as to warrant exclusion from this Order. Accordingly, this Order will not be based on any of the claims found in this Statement of Material Fact.

#### **Enforcement Counsel's Statement of Material Fact (Julian and McLinko) No. 274**

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 vastmajority 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 violationscases from EthicsLine complaints in 2011.<sup>2089</sup>

#### **Responses:**

**Julian** disputed the claim, averring it does not provide sufficient context regarding whether Mr. Julian reviewed the cited presentations.<sup>2090</sup> I find an insufficient factual basis has been presented to establish a dispute in this Response to create a controverted material fact. Accordingly, the Recommended Decision will include a factual finding as to Respondents Julian and McLinko that 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 vastmajority 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 violationscases from EthicsLine complaints in 2011.

**McLinko** incorporated Respondent Julian's Response.<sup>2091</sup>

#### **Enforcement Counsel's Statement of Material Fact (Julian and McLinko) No. 275**

Enforcement Counsel's Statement of Material Fact (Julian and McLinko) No. 275 relies on exhibits presented to this Tribunal as being non-public. Pursuant to the OCC's Uniform Rules, while the proceedings in this administrative enforcement action are expressly required to be public, when presented with non-public documents the Administrative Law Judge is required to

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<sup>2089</sup> MSD-506 at 8, 10.

<sup>2090</sup> Julian's ECSFM at No. 274.

<sup>2091</sup> McLinko's ECSFM at No. 274.

take all appropriate steps to preserve the confidentiality of such documents.<sup>2092</sup> Upon my review of the confidential documents supporting this Statement of Material Fact, and after weighing the expectation that all of the proceedings shall be public against the requirement that I protect against the disclosure of non-public information, I find the evidentiary value of these exhibits to be sufficiently marginal and duplicative as to warrant exclusion from this Order. Accordingly, this Order will not be based on any of the claims found in this Statement of Material Fact.

#### **Enforcement Counsel’s Statement of Material Fact (Julian and McLinko) No. 276**

On May 16, 2012, Respondent Julian received an EthicsLine complaint about a team member in Alaska “open[ing] two savings accounts for a customer without his consent.” The investigator also noted that she located an April 2012 complaint from a different employee where four accounts were opened without a customer’s consent.<sup>2093</sup>

#### **Responses:**

**Julian** objected to the Statement on the ground that the supporting exhibit was irrelevant.<sup>2094</sup> Finding an insufficient nexus between the averments presented in the Statement and the material facts in issue, the objection is sustained. Accordingly, the claims presented in (Julian and McLinko) No. 276 will not support Enforcement Counsel’s Motion. The exclusion of the claims appearing in the Statement does not, however, create a factual basis that would prevent granting Enforcement Counsel’s Motion.

**McLinko** incorporated Respondent Julian’s Response.<sup>2095</sup>

#### **Enforcement Counsel’s Statement of Material Fact (Julian and McLinko) No. 277**

Enforcement Counsel’s Statement of Material Fact (Julian and McLinko) No. 277 relies on exhibits presented to this Tribunal as being non-public. Pursuant to the OCC’s Uniform Rules, while the proceedings in this administrative enforcement action are expressly required to be public, when presented with non-public documents the Administrative Law Judge is required to take all appropriate steps to preserve the confidentiality of such documents.<sup>2096</sup> Upon my review of the confidential documents supporting this Statement of Material Fact, and after weighing the expectation that all of the proceedings shall be public against the requirement that I protect against the disclosure of non-public information, I find the evidentiary value of these exhibits to

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<sup>2092</sup> See 12 C.F.R. § 19.33(b).

<sup>2093</sup> MSD-426.

<sup>2094</sup> Respondent Julian’s Objections to Enforcement Counsel’s Motion for Summary Disposition Exhibits.

<sup>2095</sup> McLinko’s ECSFM at No. 276.

<sup>2096</sup> See 12 C.F.R. § 19.33(b).

be sufficiently marginal and duplicative as to warrant exclusion from this Order. Accordingly, this Order will not be based on any of the claims found in this Statement of Material Fact.

### **Enforcement Counsel’s Statement of Material Fact (Julian and McLinko) No. 278**

On May 18, 2012, Respondent Julian received an EthicsLine report from NewMexico that “tellers, lead tellers, bankers, and managers” were opening savings accounts for customers without funding the accounts, which caused overdraft fees. The investigator noted that the case was referred to the Sales Quality group. This report was generated as an update from the original March 5, 2012 complaint.<sup>2097</sup>

#### **Responses:**

**Julian** objected to the Statement on the ground that the supporting exhibit was irrelevant.<sup>2098</sup> Finding an insufficient nexus between the averments presented in the Statement and the material facts in issue, the objection is sustained. Accordingly, the claims presented in (Julian and McLinko) No. 278 will not support Enforcement Counsel’s Motion. The exclusion of the claims appearing in the Statement does not, however, create a factual basis that would prevent granting Enforcement Counsel’s Motion.

**McLinko** incorporated Respondent Julian’s Response.<sup>2099</sup>

### **Enforcement Counsel’s Statement of Material Fact (Julian and McLinko) No. 279**

Enforcement Counsel’s Statement of Material Fact (Julian and McLinko) No. 279 relies on exhibits presented to this Tribunal as being non-public. Pursuant to the OCC’s Uniform Rules, while the proceedings in this administrative enforcement action are expressly required to be public, when presented with non-public documents the Administrative Law Judge is required to take all appropriate steps to preserve the confidentiality of such documents.<sup>2100</sup> Upon my review of the confidential documents supporting this Statement of Material Fact, and after weighing the expectation that all of the proceedings shall be public against the requirement that I protect against the disclosure of non-public information, I find the evidentiary value of these exhibits to be sufficiently marginal and duplicative as to warrant exclusion from this Order. Accordingly, this Order will not be based on any of the claims found in this Statement of Material Fact.

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<sup>2097</sup> MSD-482.

<sup>2098</sup> Respondent Julian’s Objections to Enforcement Counsel’s Motion for Summary Disposition Exhibits.

<sup>2099</sup> McLinko’s ECSFM at No. 278.

<sup>2100</sup> See 12 C.F.R. § 19.33(b).

### **Enforcement Counsel’s Statement of Material Fact (Julian and McLinko) No. 280**

On May 31, 2012 Respondent Julian received an EthicsLine complaint about teammates in Florida who “opened accounts without the consent of the customers.”<sup>2101</sup>

#### **Responses:**

Julian objected to the Statement on the ground that the supporting exhibit was irrelevant.<sup>2102</sup> Finding an insufficient nexus between the averments presented in the Statement and the material facts in issue, the objection is sustained. Accordingly, the claims presented in (Julian and McLinko) No. 280 will not support Enforcement Counsel’s Motion. The exclusion of the claims appearing in the Statement does not, however, create a factual basis that would prevent granting Enforcement Counsel’s Motion.

**McLinko** incorporated Respondent Julian’s Response.<sup>2103</sup>

### **Enforcement Counsel’s Statement of Material Fact (Julian and McLinko) No. 281**

On July 20, 2012, Head of Corporate Investigations Michael Bacon forwarded an email chain to Respondent Julian informing him that the attached email chain was a “classic case” of Respondent Russ Anderson “minimizing the negative information being submitted to executive management.” Mr. Bacon stated that Respondent Russ Anderson “often challenges the Audit and [Corporate Security] [Audit and Examination Committee of the Board] reporting verbiage.”<sup>2104</sup>

#### **Responses:**

Julian objected to the Statement on the ground that the supporting exhibit was irrelevant.<sup>2105</sup> Finding an insufficient nexus between the averments presented in the Statement and the material facts in issue, the objection is sustained. Accordingly, the claims presented in (Julian and McLinko) No. 281 will not support Enforcement Counsel’s Motion. The exclusion of the claims appearing in the Statement does not, however, create a factual basis that would prevent granting Enforcement Counsel’s Motion.

**McLinko** did not dispute the email chain contained the language presented, but disputed that the

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<sup>2101</sup> MSD-429.

<sup>2102</sup> Respondent Julian’s Objections to Enforcement Counsel’s Motion for Summary Disposition Exhibits.

<sup>2103</sup> McLinko’s ECSFM at No. 280.

<sup>2104</sup> Julian Amended Answer ¶¶ 402, 455; McLinko Amended Answer ¶¶ 402, 455; MSD-25.

<sup>2105</sup> Respondent Julian’s Objections to Enforcement Counsel’s Motion for Summary Disposition Exhibits.



Statement is an accurate or complete statement of the cited email.<sup>2106</sup> He averred MSD- 25 does not state that the email chain he forwarded was a “‘classic case’ of Ms. Russ Anderson ‘minimizing the negative information being submitted to executive management’” but instead states: “Claudia is a fantastic business partner and I enjoy a great relationship with her, but she often challenges the Audit and CS A&E reporting verbiage. It is often a classic case of minimizing the negative information being submitted to executive management.” For the reasons advanced by Respondent Julian, the claims presented in (Julian and McLinko) No. 281 will not support Enforcement Counsel’s Motion.

### **Enforcement Counsel’s Statement of Material Fact (Julian and McLinko) No. 282**

Head of Corporate Investigations Michael Bacon also reported in the email that his “data continues to highlight a concerning trend in the area of Sales Integrity – from the increase in EthicsLine reports, to the increase in executive complaint letters/OCC referrals, and increases in confirmed fraud, thus, we need to escalate this issue with senior leadership . . . our data continues to point to a very negative trend.” The email chain itself began with Mr. Bacon providing Respondent Russ Anderson with a summary report of SAR filing trends that stated: “Although internal cases involving sales integrity matters decreased . . . related SAR filings increased. Specifically, SAR filings involving fictitious sales referrals increased 49%, customer consent concerns increased 29%, and false entry of customer identification information increased 24%.” Respondent Russ Anderson replied that the context needed rethinking as “it sounds much worse than it really is...” Mr. Bacon replied to Respondent Russ Anderson, reminding her that “we have had a spike in egregious Sales Integrity matters, which added to the upward trend.”<sup>2107</sup>

### **Responses:**

**Julian** objected to the Statement on the ground that the supporting exhibit was irrelevant.<sup>2108</sup> Finding an insufficient nexus between the averments presented in the Statement and the material facts in issue, the objection is sustained. Accordingly, the claims presented in (Julian and McLinko) No. 282 will not support Enforcement Counsel’s Motion. The exclusion of the claims appearing in the Statement does not, however, create a factual basis that would prevent granting Enforcement Counsel’s Motion.

**McLinko** objected to the Statement on the ground that it omitted words without identifying them.<sup>2109</sup> For the reasons advanced by Respondent Julian, the claims presented in (Julian

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<sup>2106</sup> McLinko’s ECSFM at No. 281.

<sup>2107</sup> Julian Amended Answer ¶ 402; MSD-25 (emphasis added).

<sup>2108</sup> See Respondent Julian at Respondent Julian’s Objections to Enforcement Counsel’s Motion for Summary Disposition Exhibits.

<sup>2109</sup> McLinko’s ECSFM at No. 282.

and McLinko) No. 282 will not support Enforcement Counsel's Motion.

### **Enforcement Counsel's Statement of Material Fact (Julian and McLinko) No. 283**

Respondent Julian testified to the OCC during its investigation:

Q. Once Mr. McLinko and yourself got this email is there any excuse for audit not to investigate further to see whether what Mr. Bacon is pointing to is a serious issue or not?

A. Yes. Again, I am not sure what Paul would have or did do in this. I can't say that he didn't. We get, not an excuse, we cover a broad range.

This was one example where it appears Michael is raising a concern that ultimately turned out to be a valid concern. Whether it was looked into by Paul or not at that time I am not sure, but –

Q. Okay. I'm sorry.

A. So you used the word "excuse," I'm not sure I am in the excuse making. I mean it's clear we didn't do enough based on what I know now to investigate.

Q. No, I understand that historically you don't know what, if anything, Mr. McLinko did in response to getting to this email, is that correct?

A. I don't recall, yes, what he would have did or didn't do.

Q. Okay, all right. My question is not like a historical question on what Mr. McLinko or anybody in audit did or didn't do, my question is more about what you would expect a competent audit department or competent auditor to do. I a competent auditor gets an email like this from corporate investigation what should they do?

A. Again, depending on the overall context, but they should look further into to see if the concerns raised by, in this case, Michael Bacon were valid and relevant or not relevant valid concerns.<sup>2110</sup>

### **Responses:**

Julian did not dispute the transcript includes the quoted material.<sup>2111</sup> Accordingly, the Recommended Decision will include a factual finding as to Respondents Julian and McLinko that he gave the testimony presented above.

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<sup>2110</sup> Julian Amended Answer ¶ 402; MSD-278 (Julian Tr.) at 166:19-168:5; 168:6-170:19).

<sup>2111</sup> Julian's ECSFM at No. 283.

**McLinko** incorporated Respondent Julian's Response.<sup>2112</sup>

**Enforcement Counsel's Statement of Material Fact (Julian and McLinko) No. 284**

On July 30, 2012, Respondent Julian received a PowerPoint presentation from Head of Corporate Investigations Michael Bacon for an Audit Management Committee meeting. The presentation deck listed general trends, including:

(a) "Pressure on company to save [money] and to perform is at all time high - this can easily lead to [team member] misconduct (pressure combined with less controls);"

(b) "Audits involving a [team member] related process (TM loans, accts, HR items, etc.) - if business process could identify [team member] conduct, then detection efforts should be coordinated with Corporate Investigations/ Business process should not just be 'call EthicsLine';"

(c) "WFF Consent Order Update - New Team Member Misconduct Executive Committee, Implementation of formal [line of business] Internal Fraud Committees (IFC) - Internal TM Misconduct & Fraud is a Team Sport -

Audit has a primary seat at the prevention table" (emphasis in original). (MSD-311 at 4).

(a) The Audit Management Committee presentation also included the "Academic Fraud Triangle" which shows that three elements must be present for fraud to occur: Opportunity (an associated bullet asks whether the line of business's controls are allowing too much opportunity), Pressure (the associated bullet asks whether the line business is creating an environment whereby the [employee] must commit fraud), and Rationalization (the associated bullet states that "[t]oo much opportunity or too much pressure can sway most anyone.")<sup>2113</sup>

**Responses:**

**Julian** objected to the Statement on the ground that the supporting exhibit was irrelevant.<sup>2114</sup> Finding an insufficient nexus between the averments presented in the Statement and the material facts in issue, the objection is sustained. Accordingly, the claims presented in (Julian and

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<sup>2112</sup> McLinko's ECSFM at No. 283.

<sup>2113</sup> MSD-311 at 5.

<sup>2114</sup> See Respondent Julian at Respondent Julian's Objections to Enforcement Counsel's Motion for Summary Disposition Exhibits.

McLinko) No. 284 will not support Enforcement Counsel's Motion. The exclusion of the claims appearing in the Statement does not, however, create a factual basis that would prevent granting Enforcement Counsel's Motion.

**McLinko** incorporated Respondent Julian's Response.<sup>2115</sup>

### **Enforcement Counsel's Statement of Material Fact (Julian and McLinko) No. 285**

In the August 2012 WFAS Second Quarter 2012 Summary to the Audit and Examination Committee, Corporate Investigations provided a mid-year summary, which reflected that sales integrity violations were one of the top five case types and although there was a decrease in violations, it only reflected the gross number of cases opened because there was an increase in related terminations (up 7%) and an increase in required Suspicious Activity Report filing (up 27%).<sup>2116</sup>

#### **Responses:**

Julian objected to the Statement on the ground that the supporting exhibit was irrelevant.<sup>2117</sup> Finding an insufficient nexus between the averments presented in the Statement and the material facts in issue, the objection is sustained. Accordingly, the claims presented in (Julian and McLinko) No. 285 will not support Enforcement Counsel's Motion. The exclusion of the claims appearing in the Statement does not, however, create a factual basis that would prevent granting Enforcement Counsel's Motion.

**McLinko** incorporated Respondent Julian's Response.<sup>2118</sup>

### **Enforcement Counsel's Statement of Material Fact (Julian and McLinko) No. 286**

Enforcement Counsel's Statement of Material Fact (Julian and McLinko) No. 286 relies on exhibits presented to this Tribunal as being non-public. Pursuant to the OCC's Uniform Rules, while the proceedings in this administrative enforcement action are expressly required to be public, when presented with non-public documents the Administrative Law Judge is required to take all appropriate steps to preserve the confidentiality of such documents.<sup>2119</sup> Upon my review

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<sup>2115</sup> McLinko's ECSFM at No. 284.

<sup>2116</sup> MSD-521 at 43, 46.

<sup>2117</sup> See Respondent Julian at Respondent Julian's Objections to Enforcement Counsel's Motion for Summary Disposition Exhibits.

<sup>2118</sup> McLinko's ECSFM at No. 285.

<sup>2119</sup> See 12 C.F.R. § 19.33(b).

of the confidential documents supporting this Statement of Material Fact, and after weighing the expectation that all of the proceedings shall be public against the requirement that I protect against the disclosure of non-public information, I find the evidentiary value of these exhibits to be sufficiently marginal and duplicative as to warrant exclusion from this Order. Accordingly, this Order will not be based on any of the claims found in this Statement of Material Fact.

### **Enforcement Counsel's Statement of Material Fact (Julian and McLinko) No. 287**

Although Respondent Julian was not in attendance of the October 2012 Ethics Committee meeting, he attended the next meeting in January 2013, where the October 2012 minutes were approved.<sup>2120</sup> Respondent Julian received a copy of the minutes from the October 2012 Ethics Committee meeting.<sup>2121</sup>

#### **Responses:**

**Julian** objected to the Statement on the ground that the supporting exhibit was irrelevant.<sup>2122</sup> Finding an insufficient nexus between the averments presented in the Statement and the material facts in issue, the objection is sustained. Accordingly, the claims presented in (Julian and McLinko) No. 287 will not support Enforcement Counsel's Motion. The exclusion of the claims appearing in the Statement does not, however, create a factual basis that would prevent granting Enforcement Counsel's Motion.

**McLinko** incorporated Respondent Julian's Response.<sup>2123</sup>

### **Enforcement Counsel's Statement of Material Fact (Julian and McLinko) No. 288**

On October 24, 2012, Respondent Julian received an EthicsLine report of an employee claiming he was terminated for gaming in retaliation for reporting sales integrity violations. He reported that at least three other employees at the California branch were gaming.<sup>2124</sup>

#### **Responses:**

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<sup>2120</sup> MSD-432.

<sup>2121</sup> MSD-504.

<sup>2122</sup> See Respondent Julian at Respondent Julian's Objections to Enforcement Counsel's Motion for Summary Disposition Exhibits.

<sup>2123</sup> McLinko's ECSFM at No. 287.

<sup>2124</sup> MSD-483.

Julian objected to the Statement on the ground that the supporting exhibit was irrelevant.<sup>2125</sup> Finding an insufficient nexus between the averments presented in the Statement and the material facts in issue, the objection is sustained. Accordingly, the claims presented in (Julian and McLinko) No. 288 will not support Enforcement Counsel's Motion. The exclusion of the claims appearing in the Statement does not, however, create a factual basis that would prevent granting Enforcement Counsel's Motion.

**McLinko** incorporated Respondent Julian's Response.<sup>2126</sup>

### **Enforcement Counsel's Statement of Material Fact (Julian and McLinko) No. 289**

On November 5, 2012, Respondent Julian received an invite to the quarterly Code of Ethics Administrators meeting. The attached presentation included an update from Michael Bacon, which observed an increase in allegations involving team member misconduct and an increase in EthicsLine reports. One of the top four categories of EthicsLine reports was Sales Integrity.<sup>2127</sup>

#### **Responses:**

**Julian** objected to the Statement on the ground that the supporting exhibit was irrelevant.<sup>2128</sup> Finding an insufficient nexus between the averments presented in the Statement and the material facts in issue, the objection is sustained. Accordingly, the claims presented in (Julian and McLinko) No. 289 will not support Enforcement Counsel's Motion. The exclusion of the claims appearing in the Statement does not, however, create a factual basis that would prevent granting Enforcement Counsel's Motion.

**McLinko** incorporated Respondent Julian's Response.<sup>2129</sup>

### **Enforcement Counsel's Statement of Material Fact (Julian and McLinko) No. 290**

In the November 27, 2012 WFAS Third Quarter 2012 Summary to the Audit and Examination

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<sup>2125</sup> See Respondent Julian at Respondent Julian's Objections to Enforcement Counsel's Motion for Summary Disposition Exhibits.

<sup>2126</sup> McLinko's ECSFM at No. 288.

<sup>2127</sup> MSD-431.

<sup>2128</sup> See Respondent Julian at Respondent Julian's Objections to Enforcement Counsel's Motion for Summary Disposition Exhibits.

<sup>2129</sup> McLinko's ECSFM at No. 289.

Committee, Corporate Investigations reported that “internal cases involving sales integrity matters increased overall by 1% compared to the same time period in 2011; however, related SAR filings increased 30%. This is a result of higher quality referrals and an increase in reportable misconduct. Specifically, SAR filings involving fictitious sales referrals increased 40%, customer consent concerns increased 36%, and false entry of customer identification information increased 24%. Corporate Security Investigations continues to work on several Community Bank project teams to analyze root causes and implement additional controls that are focused on minimizing future occurrences and mitigating the risks associated with these issues.”<sup>2130</sup>

**Responses:**

**Julian** objected to the Statement on the ground that the supporting exhibit was irrelevant.<sup>2131</sup> Finding an insufficient nexus between the averments presented in the Statement and the material facts in issue, the objection is sustained. Accordingly, the claims presented in (Julian and McLinko) No. 290 will not support Enforcement Counsel’s Motion. The exclusion of the claims appearing in the Statement does not, however, create a factual basis that would prevent granting Enforcement Counsel’s Motion.

**McLinko** incorporated Respondent Julian’s Response.<sup>2132</sup>

**Enforcement Counsel’s Statement of Material Fact (Julian and McLinko) No. 291**

On November 30, 2012, Respondent Julian received an EthicsLine complaint that a Pennsylvania store manager opened a checking account that a customer did not want.<sup>2133</sup>

**Responses:**

**Julian** objected to the Statement on the ground that the supporting exhibit was irrelevant.<sup>2134</sup> Finding an insufficient nexus between the averments presented in the Statement and the material facts in issue, the objection is sustained. Accordingly, the claims presented in (Julian and McLinko) No. 291 will not support Enforcement Counsel’s Motion. The exclusion of the claims

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<sup>2130</sup> MSD-522 at 51.

<sup>2131</sup> See Respondent Julian at Respondent Julian’s Objections to Enforcement Counsel’s Motion for Summary Disposition Exhibits.

<sup>2132</sup> McLinko’s ECSFM at No. 290.

<sup>2133</sup> MSD- 484.

<sup>2134</sup> See Respondent Julian at Respondent Julian’s Objections to Enforcement Counsel’s Motion for Summary Disposition Exhibits.

appearing in the Statement does not, however, create a factual basis that would prevent granting Enforcement Counsel's Motion.

**McLinko** incorporated Respondent Julian's Response.<sup>2135</sup>

### **Enforcement Counsel's Statement of Material Fact (Julian and McLinko) No. 292**

On December 10, 2012, Respondent Julian received an EthicsLine report that a team member felt he/she was being retaliated against because he/she reported a California manager took a teller's personal information and opened an account and debit card without that teller's permission.<sup>2136</sup>

#### **Responses:**

**Julian** objected to the Statement on the ground that the supporting exhibit was irrelevant.<sup>2137</sup> Finding an insufficient nexus between the averments presented in the Statement and the material facts in issue, the objection is sustained. Accordingly, the claims presented in (Julian and McLinko) No. 292 will not support Enforcement Counsel's Motion. The exclusion of the claims appearing in the Statement does not, however, create a factual basis that would prevent granting Enforcement Counsel's Motion.

**McLinko** incorporated Respondent Julian's Response.<sup>2138</sup>

### **Enforcement Counsel's Statement of Material Fact (Julian and McLinko) No. 293**

On December 12, 2012, Respondent Julian received an EthicsLine report that a customer in South Carolina reported she had inquired about opening an account at a branch and later received information that an account had been opened. The customer reported that the account was opened without her permission.<sup>2139</sup>

#### **Responses:**

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<sup>2135</sup> McLinko's ECSFM at No. 291.

<sup>2136</sup> MSD-485.

<sup>2137</sup> See Respondent Julian at Respondent Julian's Objections to Enforcement Counsel's Motion for Summary Disposition Exhibits.

<sup>2138</sup> McLinko's ECSFM at No. 292.

<sup>2139</sup> MSD-486.



**Julian** objected to the Statement on the ground that the supporting exhibit was irrelevant.<sup>2140</sup> Finding an insufficient nexus between the averments presented in the Statement and the material facts in issue, the objection is sustained. Accordingly, the claims presented in (Julian and McLinko) No. 293 will not support Enforcement Counsel’s Motion. The exclusion of the claims appearing in the Statement does not, however, create a factual basis that would prevent granting Enforcement Counsel’s Motion.

**McLinko** incorporated Respondent Julian’s Response.<sup>2141</sup>

#### **Enforcement Counsel’s Statement of Material Fact (Julian and McLinko) No. 294**

Enforcement Counsel’s Statement of Material Fact (Julian and McLinko) No. 294 relies on exhibits presented to this Tribunal as being non-public. Pursuant to the OCC’s Uniform Rules, while the proceedings in this administrative enforcement action are expressly required to be public, when presented with non-public documents the Administrative Law Judge is required to take all appropriate steps to preserve the confidentiality of such documents.<sup>2142</sup> Upon my review of the confidential documents supporting this Statement of Material Fact, and after weighing the expectation that all of the proceedings shall be public against the requirement that I protect against the disclosure of non-public information, I find the evidentiary value of these exhibits to be sufficiently marginal and duplicative as to warrant exclusion from this Order. Accordingly, this Order will not be based on any of the claims found in this Statement of Material Fact.

#### **Enforcement Counsel’s Statement of Material Fact (Julian and McLinko) No. 295**

Also on January 28, 2013, Respondent Julian received an EthicsLine report that two California employees were “pinning, enrolling, and activating online banking on behalf of customers, who are not present, in order to get sales credit.”<sup>2143</sup>

#### **Responses:**

**Julian** objected to the Statement on the ground that the supporting exhibit was irrelevant.<sup>2144</sup> Finding an insufficient nexus between the averments presented in the Statement and the material

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<sup>2140</sup> See Respondent Julian at Respondent Julian’s Objections to Enforcement Counsel’s Motion for Summary Disposition Exhibits.

<sup>2141</sup> McLinko’s ECSFM at No. 293.

<sup>2142</sup> See 12 C.F.R. § 19.33(b).

<sup>2143</sup> MSD-488.

<sup>2144</sup> See Respondent Julian at Respondent Julian’s Objections to Enforcement Counsel’s Motion for Summary Disposition Exhibits.

facts in issue, the objection is sustained. Accordingly, the claims presented in (Julian and McLinko) No. 295 will not support Enforcement Counsel's Motion. The exclusion of the claims appearing in the Statement does not, however, create a factual basis that would prevent granting Enforcement Counsel's Motion.

**McLinko** incorporated Respondent Julian's Response.<sup>2145</sup>

### **Enforcement Counsel's Statement of Material Fact (Julian and McLinko) No. 296**

On February 1, 2013, Respondent Julian received an EthicsLine complaint about an employee in Texas resigning from the Bank because the store manager allowed and encouraged gaming and other unethical practices. The manager told the employee to "straighten the screws in your head" after he failed to get his sales for the day. The summary described further research into the complaint, which showed other allegations of gaming at the same branch, which had resulted in three terminations to date because the investigation was ongoing.<sup>2146</sup>

#### **Responses:**

**Julian** objected to the Statement on the ground that the supporting exhibit was irrelevant.<sup>2147</sup> Finding an insufficient nexus between the averments presented in the Statement and the material facts in issue, the objection is sustained. Accordingly, the claims presented in (Julian and McLinko) No. 296 will not support Enforcement Counsel's Motion. The exclusion of the claims appearing in the Statement does not, however, create a factual basis that would prevent granting Enforcement Counsel's Motion.

**McLinko** incorporated Respondent Julian's Response.<sup>2148</sup>

### **Enforcement Counsel's Statement of Material Fact (Julian and McLinko) No. 297**

On February 6, 2013 Respondent Julian received an EthicsLine complaint that an employee felt he was terminated because he reported sales integrity issues and fake accounts to the EthicsLine.<sup>2149</sup>

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<sup>2145</sup> McLinko's ECSFM at No. 295.

<sup>2146</sup> MSD-434.

<sup>2147</sup> See Respondent Julian at Respondent Julian's Objections to Enforcement Counsel's Motion for Summary Disposition Exhibits.

<sup>2148</sup> McLinko's ECSFM at No. 296.

<sup>2149</sup> MSD-489.

**Responses:**

**Julian** objected to the Statement on the ground that the supporting exhibit was irrelevant.<sup>2150</sup> Finding an insufficient nexus between the averments presented in the Statement and the material facts in issue, the objection is sustained. Accordingly, the claims presented in (Julian and McLinko) No. 297 will not support Enforcement Counsel's Motion. The exclusion of the claims appearing in the Statement does not, however, create a factual basis that would prevent granting Enforcement Counsel's Motion.

**McLinko** incorporated Respondent Julian's Response.<sup>2151</sup>

**Enforcement Counsel's Statement of Material Fact (Julian and McLinko) No. 298**

On February 23, 2013, Respondent Julian received an EthicsLine complaint that a manager in Florida was retaliating against an employee for reporting sales integrity concerns. The investigator observed that there were four other complaints against the manager for sales integrity concerns.<sup>2152</sup>

**Responses:**

Julian objected to the Statement on the ground that the supporting exhibit was irrelevant.<sup>2153</sup> Finding an insufficient nexus between the averments presented in the Statement and the material facts in issue, the objection is sustained. Accordingly, the claims presented in (Julian and McLinko) No. 298 will not support Enforcement Counsel's Motion. The exclusion of the claims appearing in the Statement does not, however, create a factual basis that would prevent granting Enforcement Counsel's Motion.

**McLinko** incorporated Respondent Julian's Response.<sup>2154</sup>

**Enforcement Counsel's Statement of Material Fact (Julian and McLinko) No. 299**

On February 24, 2013, Head of Corporate Investigations Michael Bacon provided a presentation to the members of the TMMEC, including Respondent Julian. The presentation

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<sup>2150</sup> See Respondent Julian at Respondent Julian's Objections to Enforcement Counsel's Motion for Summary Disposition Exhibits.

<sup>2151</sup> McLinko's ECSFM at No. 297.

<sup>2152</sup> MSD-490.

<sup>2153</sup> See Respondent Julian at Respondent Julian's Objections to Enforcement Counsel's Motion for Summary Disposition Exhibits.

<sup>2154</sup> McLinko's ECSFM at No. 298.

stated that the TMMEC was created in response to the WFF Consent Order, which required the Bank “demonstrate effective oversight through policies and procedures designed to ensure adequate fraud investigation and response to the results of such investigations, including escalation protocols for reporting to appropriate senior management and the board of directors.”<sup>2155</sup>

**Responses:**

**Julian** objected to the Statement on the ground that the supporting exhibit was irrelevant.<sup>2156</sup> Finding an insufficient nexus between the averments presented in the Statement and the material facts in issue, the objection is sustained. Accordingly, the claims presented in (Julian and McLinko) No. 299 will not support Enforcement Counsel’s Motion. The exclusion of the claims appearing in the Statement does not, however, create a factual basis that would prevent granting Enforcement Counsel’s Motion.

**McLinko** incorporated Respondent Julian’s Response.<sup>2157</sup>

**Enforcement Counsel’s Statement of Material Fact (Julian and McLinko) No. 300**

The TMMEC 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.”<sup>2158</sup>

**Responses:**

**Julian** did not dispute that the TMMEC presentation contains the quoted text.<sup>2159</sup> **McLinko**

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<sup>2155</sup> MSD-436 at 6; Julian Amended Answer ¶ 164, 398; McLinko Amended Answer ¶ 164, 398.

<sup>2156</sup> See Respondent Julian at Respondent Julian’s Objections to Enforcement Counsel’s Motion for Summary Disposition Exhibits.

<sup>2157</sup> McLinko’s ECSFM at No. 299.

<sup>2158</sup> MSD-436 at 7.

<sup>2159</sup> Julian’s ECSFM at No. 300.

did not dispute the claim.<sup>2160</sup> Accordingly, the Recommended Decision will include a factual finding as to Respondents Julian and McLinko that the TMMEC 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 “Investigative Key Activity reporting to all key stakeholders, LOB Internal Fraud Committees, GEVPS, and Audit & Examination Committee.
- (c) “Investigative Key Activity reporting to all key stakeholders, LOB Internal Fraud Committees, GEVPS, and Audit & Examination Committee.

### **Enforcement Counsel’s Statement of Material Fact (Julian and McLinko) No. 301**

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*.”<sup>2161</sup>

**Julian** did not dispute that the TMMEC presentation contains the quoted text.<sup>2162</sup> Accordingly, the Recommended Decision will include a factual finding as to Respondents Julian and McLinko that 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*.”

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<sup>2160</sup> McLinko’s ECSFM at No. 300.

<sup>2161</sup> MSD-436 at 10.

<sup>2162</sup> Julian’s ECSFM at No. 301.

**McLinko** incorporated Respondent Julian's Response.<sup>2163</sup>

### **Enforcement Counsel's Statement of Material Fact (Julian and McLinko) No. 302**

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.<sup>2164</sup>

#### **Responses:**

**Julian** disputed the claim on the basis that the report did not report on confirmed violations.<sup>2165</sup> I find an insufficient factual basis has been presented to establish a dispute in this Response to create a controverted material fact. Accordingly, the Recommended Decision will include a factual finding as to Respondent Julian that 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.

**McLinko** did not dispute that the cited exhibit identifies the total number of sales integrity violations investigation cases but disputed that this establishes he or Mr. Julian received extensive information regarding sales practices misconduct (a claim that does not appear in this Statement).<sup>2166</sup> I find an insufficient factual basis has been presented to establish a dispute in this Response to create a controverted material fact. Accordingly, the Recommended Decision will include a factual finding as to Respondent McLinko that 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.

### **Enforcement Counsel's Statement of Material Fact (Julian and McLinko) No. 303**

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

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<sup>2163</sup> McLinko's ECSFM at No. 301.

<sup>2164</sup> MSD-436 at 11.

<sup>2165</sup> Julian's ECSFM at No. 302.

<sup>2166</sup> McLinko's ECSFM at No. 302.

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.<sup>2167</sup>

**Responses:**

**Julian** disputed the claim on the basis that it lacked necessary context.<sup>2168</sup> I find an insufficient factual basis has been presented to establish a dispute in this Response to create a controverted material fact. Accordingly, the Recommended Decision will include a factual finding as to Respondents Julian and McLinko that 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.

**McLinko** incorporated Respondent Julian's Response.<sup>2169</sup>

**Enforcement Counsel's Statement of Material Fact (Julian and McLinko) No. 304**

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 violate sales incentive policies." Specifically, the employee said the manager "instructed team members to open accounts despite the customers' need for the products."<sup>2170</sup>

**Responses:**

**Julian** disputed the claim on the basis that it lacked necessary context.<sup>2171</sup> I find an insufficient factual basis has been presented to establish a dispute in this Response to create a controverted material fact. Accordingly, the Recommended Decision will include a factual finding as to Respondents Julian and McLinko that 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 violate sales incentive policies." Specifically, the employee said the manager

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<sup>2167</sup> MSD-523 at 51.

<sup>2168</sup> Julian's ECSFM at No. 303.

<sup>2169</sup> McLinko's ECSFM at No. 303.

<sup>2170</sup> MSD-491.

<sup>2171</sup> Julian's ECSFM at No. 304.

“instructed team members to open accounts despite the customers’ need for the products.”

**McLinko** incorporated Respondent Julian’s Response.<sup>2172</sup>

### **Enforcement Counsel’s Statement of Material Fact (Julian and McLinko) No. 305**

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.”<sup>2173</sup>

#### **Responses:**

**Julian** disputed the claim on the basis that it lacked necessary context.<sup>2174</sup> I find an insufficient factual basis has been presented to establish a dispute in this Response to create a controverted material fact. Accordingly, the Recommended Decision will include a factual finding as to Respondents Julian and McLinko that on March 4, 2013, 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.”

**McLinko** incorporated Respondent Julian’s Response.<sup>2175</sup>

### **Enforcement Counsel’s Statement of Material Fact (Julian and McLinko) No. 306**

Enforcement Counsel’s Statement of Material Fact (Julian and McLinko) No. 306 relies on exhibits presented to this Tribunal as being non-public. Pursuant to the OCC’s Uniform Rules, while the proceedings in this administrative enforcement action are expressly required to be public, when presented with non-public documents the Administrative Law Judge is required to take all appropriate steps to preserve the confidentiality of such documents.<sup>2176</sup> Upon my review of the confidential documents supporting this Statement of Material Fact, and after weighing the expectation that all of the proceedings shall be public against the requirement that I protect against the disclosure of non-public information, I find the evidentiary value of these exhibits to

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<sup>2172</sup> McLinko’s ECSFM at No. 304.

<sup>2173</sup> MSD-492.

<sup>2174</sup> Julian’s ECSFM at No. 305.

<sup>2175</sup> McLinko’s ECSFM at No. 305.

<sup>2176</sup> See 12 C.F.R. § 19.33(b).



be sufficiently marginal and duplicative as to warrant exclusion from this Order. Accordingly, this Order will not be based on any of the claims found in this Statement of Material Fact.

### **Enforcement Counsel’s Statement of Material Fact (Julian and McLinko) No. 307**

On March 4, 2013, Respondent Julian attended a TMMEC meeting at which Head of Corporate Investigations Michael Bacon reported in YTD 2012, 3,108 corporate investigations cases related to sales integrity violations 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.<sup>2177</sup>

#### **Responses:**

**Julian** objected to the Statement on the ground that the supporting exhibit was irrelevant.<sup>2178</sup> Finding an insufficient nexus between the averments presented in the Statement and the material facts in issue, the objection is sustained. Accordingly, the claims presented in (Julian and McLinko) No. 307 will not support Enforcement Counsel’s Motion. The exclusion of the claims appearing in the Statement does not, however, create a factual basis that would prevent granting Enforcement Counsel’s Motion.

**McLinko** incorporated Respondent Julian’s Response.<sup>2179</sup>

### **Enforcement Counsel’s Statement of Material Fact (Julian and McLinko) No. 308**

The same day as the TMMEC meeting (March 4, 2013), Respondent Julian emailed Respondent McLinko stating that Mr. Bacon “is presenting some data and Community Banking has a lot of issues [related to team member fraud] each year.”<sup>2180</sup>

#### **Responses:**

**Julian** objected to the Statement on the ground that the supporting exhibit was irrelevant.<sup>2181</sup> Finding an insufficient nexus between the averments presented in the Statement and the material facts in issue, the objection is sustained. Accordingly, the claims presented in (Julian and McLinko) No. 307 will not support Enforcement Counsel’s Motion. The exclusion of the claims

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<sup>2177</sup> MSD-419.

<sup>2178</sup> See Respondent Julian at Respondent Julian’s Objections to Enforcement Counsel’s Motion for Summary Disposition Exhibits.

<sup>2179</sup> McLinko’s ECSFM at No. 307.

<sup>2180</sup> Julian Amended Answer ¶ 397; McLinko Amended Answer ¶ 397; MSD-312.

<sup>2181</sup> See Respondent Julian at Respondent Julian’s Objections to Enforcement Counsel’s Motion for Summary Disposition Exhibits.

appearing in the Statement does not, however, create a factual basis that would prevent granting Enforcement Counsel's Motion.

**McLinko** incorporated Respondent Julian's Response.<sup>2182</sup>

### **Enforcement Counsel's Statement of Material Fact (Julian and McLinko) No. 309**

Respondent Julian then asked Respondent McLinko what work WFAS performed related to team member fraud. Respondent McLinko replied with a description of the audit process for Community Bank team member fraud: audit performed a control testing audit of Store Operations Control Review (SOCR), audit performed a control testing of sales quality/sales integrity, and other potential indirect reviews such as customer complaints or incentive compensation. Respondent McLinko further replied, "Interesting that you asked this. Over the last month I had my managers put together a picture (1 pager) of a Sales Quality Overview, which includes coverage of Fraud" and stated he would set up a meeting to review the diagram. Respondent Julian replied, "Good. Thanks".<sup>2183</sup>

#### **Responses:**

**Julian** objected to the Statement on the ground that the supporting exhibit was irrelevant.<sup>2184</sup> Finding an insufficient nexus between the averments presented in the Statement and the material facts in issue, the objection is sustained. Accordingly, the claims presented in (Julian and McLinko) No. 309 will not support Enforcement Counsel's Motion. The exclusion of the claims appearing in the Statement does not, however, create a factual basis that would prevent granting Enforcement Counsel's Motion.

**McLinko** incorporated Respondent Julian's Response.<sup>2185</sup>

### **Enforcement Counsel's Statement of Material Fact (Julian and McLinko) No. 310**

On March 11, 2013, Respondent Julian received a "Corporate Investigations 2012 Year End Key Activity Overview/ General Update" presentation for the Head of Corporate Investigations' presentation to the Audit Management Committee. The presentation showed sales integrity violations as the number two case type for both 2011 and 2012, with 2,992 and

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<sup>2182</sup> McLinko's ECSFM at No. 308.

<sup>2183</sup> McLinko Amended Answer ¶ 397; MSD- 312; MSD-437.

<sup>2184</sup> See Respondent Julian at Respondent Julian's Objections to Enforcement Counsel's Motion for Summary Disposition Exhibits.

<sup>2185</sup> McLinko's ECSFM at No. 309.

3,108 respectively. The Community Bank comprised the vast majority of cases: 10,616 cases in Community Bank versus 1,267 in the other lines of business in 2011 and 11,597 cases in Community Bank versus 1,586 in the other lines of business in 2012. The presentation also reported the number of EthicsLine reports referred to Regional Banking Sales Quality (i.e. EthicsLine complaints related to sales practices) as 3,068 in 2011 and 3,899 in 2012, up 27% and comprising 48% of the 8,354 EthicsLine complaints in 2012.<sup>2186</sup>

**Responses:**

**Julian** objected to the Statement on the ground that the supporting exhibit was irrelevant.<sup>2187</sup> Finding an insufficient nexus between the averments presented in the Statement and the material facts in issue, the objection is sustained. Accordingly, the claims presented in (Julian and McLinko) No. 310 will not support Enforcement Counsel’s Motion. The exclusion of the claims appearing in the Statement does not, however, create a factual basis that would prevent granting Enforcement Counsel’s Motion.

**McLinko** incorporated Respondent Julian’s Response.<sup>2188</sup>

**Enforcement Counsel’s Statement of Material Fact (Julian and McLinko) No. 311**

On March 12, 2013, Respondent Julian attended the International Institute of Auditors Mid-Atlantic District Conference (“IIA Conference”) and gave a presentation on “Leading Internal Audit at Financial Institutions: Chief Audit Executive View.”<sup>2189</sup> Immediately following Respondent Julian’s presentation, Respondent McLinko introduced Head of Corporate Investigations Michael Bacon to give a presentation on “The Complexities of Internal Fraud.”<sup>2190</sup>

**Responses:**

**Julian** objected to the Statement on the ground that the supporting exhibit was irrelevant.<sup>2191</sup> Finding an insufficient nexus between the averments presented in the Statement and the material facts in issue, the objection is sustained. Accordingly, the claims presented in (Julian and

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<sup>2186</sup> MSD-324 at 5.

<sup>2187</sup> See Respondent Julian at Respondent Julian’s Objections to Enforcement Counsel’s Motion for Summary Disposition Exhibits.

<sup>2188</sup> McLinko’s ECSFM at No. 310.

<sup>2189</sup> MSD-528 at 3.

<sup>2190</sup> MSD-325; MSD-327.

<sup>2191</sup> See Respondent Julian at Respondent Julian’s Objections to Enforcement Counsel’s Motion for Summary Disposition Exhibits.

McLinko) No. 311 will not support Enforcement Counsel’s Motion. The exclusion of the claims appearing in the Statement does not, however, create a factual basis that would prevent granting Enforcement Counsel’s Motion.

**McLinko** incorporated Respondent Julian’s Response.<sup>2192</sup>

### **Enforcement Counsel’s Statement of Material Fact (Julian and McLinko) Nos. 312 and 382**

Mr. Bacon’s presentation began with a slide of the former CEO of the Bank on the cover of a January 2012 issue of Forbes magazine with the headline, “the bank that works.” The next slide showed an image of Respondent Julian superimposed over the former CEO’s image with a different headline, “the bank that fails: where were the auditors?” and a nearby bubble stating: “IIA bans David Julian.”<sup>2193</sup>



### **Responses:**

**Julian** objected to the Statement on the ground that the supporting exhibit was irrelevant.<sup>2194</sup> Finding an insufficient nexus between the averments presented in the Statement and the material facts in issue, the objection is sustained. Accordingly, the claims presented in (Julian and McLinko) Nos. 312 and 382 will not support Enforcement Counsel’s Motion. The exclusion of the claims appearing in the Statement does not, however, create a factual basis that would prevent granting Enforcement Counsel’s Motion.

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<sup>2192</sup> McLinko’s ECSFM at No. 311.

<sup>2193</sup> MSD-325 at 3-4.

<sup>2194</sup> See Respondent Julian at Respondent Julian’s Objections to Enforcement Counsel’s Motion for Summary Disposition Exhibits.

**McLinko** incorporated Respondent Julian's Response.<sup>2195</sup>

**Enforcement Counsel's Statement of Material Fact (Julian and McLinko) Nos. 313 and 383**

Head of Corporate Investigations Bacon testified that he used this slide to "draw attention to the criticality of the [audit] business."<sup>2196</sup>

**Responses:**

**Julian** objected to the Statement on the ground that the supporting exhibit was irrelevant.<sup>2197</sup> Finding an insufficient nexus between the averments presented in the Statement and the material facts in issue, the objection is sustained. Accordingly, the claims presented in (Julian and McLinko) Nos. 313 and 383 will not support Enforcement Counsel's Motion. The exclusion of the claims appearing in the Statement does not, however, create a factual basis that would prevent granting Enforcement Counsel's Motion.

**McLinko** incorporated Respondent Julian's Response.<sup>2198</sup>

**Enforcement Counsel's Statement of Material Fact (Julian and McLinko) Nos. 314 and 384**

Mr. Bacon's presentation next described internal auditing as "all about detecting or preventing Employee Misconduct or Internal Fraud."<sup>2199</sup> It explained that internal audit's "fraud role" was to "support management with evaluation of internal controls used to detect or mitigate fraud" and "evaluate the organization's assessment of fraud risk."<sup>2200</sup>

**Responses:**

**Julian** objected to the Statement on the ground that the supporting exhibit was

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<sup>2195</sup> McLinko's ECSFM at Nos. 312 and 382.

<sup>2196</sup> MSD-296B (Bacon Depo. Tr.) at 421:8-10.

<sup>2197</sup> See Respondent Julian at Respondent Julian's Objections to Enforcement Counsel's Motion for Summary Disposition Exhibits.

<sup>2198</sup> McLinko's ECSFM at Nos. 313 and 383.

<sup>2199</sup> MSD-325 at 5.

<sup>2200</sup> MSD-325 at 18.

irrelevant.<sup>2201</sup> Finding an insufficient nexus between the averments presented in the Statement and the material facts in issue, the objection is sustained. Accordingly, the claims presented in (Julian and McLinko) Nos. 314 and 384 will not support Enforcement Counsel’s Motion. The exclusion of the claims appearing in the Statement does not, however, create a factual basis that would prevent granting Enforcement Counsel’s Motion.

**McLinko** incorporated Respondent Julian’s Response.<sup>2202</sup>

### **Enforcement Counsel’s Statement of Material Fact (Julian and McLinko) Nos. 315 and 385**

Mr. Bacon’s presentation also explained that fraud “risks are very specific to the organization and every organization is unique” and “For most organizations internal fraud is no longer about losses or the traditional definition of occupational fraud – it is now all about reputation and brand protection.”<sup>2203</sup> It further explained that the “complexities of internal misconduct and fraud is as complex as the organization’s business practices and business processes” and asked whether a “practice or process create[s] a need or an opportunity for fraud?”<sup>2204</sup>

#### **Responses:**

**Julian** objected to the Statement on the ground that the supporting exhibit was irrelevant.<sup>2205</sup> Finding an insufficient nexus between the averments presented in the Statement and the material facts in issue, the objection is sustained. Accordingly, the claims presented in (Julian and McLinko) Nos. 315 and 385 will not support Enforcement Counsel’s Motion. The exclusion of the claims appearing in the Statement does not, however, create a factual basis that would prevent granting Enforcement Counsel’s Motion.

**McLinko** incorporated Respondent Julian’s Response.<sup>2206</sup>

### **Enforcement Counsel’s Statement of Material Fact (Julian and McLinko) Nos. 316 and**

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<sup>2201</sup> See Respondent Julian at Respondent Julian’s Objections to Enforcement Counsel’s Motion for Summary Disposition Exhibits.

<sup>2202</sup> McLinko’s ECSFM at Nos. 314 and 384.

<sup>2203</sup> MSD-325 at 8, 14.

<sup>2204</sup> MSD-325 at 23.

<sup>2205</sup> See Respondent Julian at Respondent Julian’s Objections to Enforcement Counsel’s Motion for Summary Disposition Exhibits.

<sup>2206</sup> McLinko’s ECSFM at Nos. 315 and 385.

**386**

The presentation illustrated the “Academic Fraud Triangle” which showed that three elements must be present for fraud to occur: Opportunity (an associated bullet asks whether the business controls are allowing too much opportunity), Pressure (the associated bullet asks whether the business is creating an environment whereby the employee must commit fraud), and Rationalization (the associated bullet states that too much opportunity or too much pressure can sway most anyone.).<sup>2207</sup>

**Responses:**

**Julian** objected to the Statement on the ground that the supporting exhibit was irrelevant.<sup>2208</sup> Finding an insufficient nexus between the averments presented in the Statement and the material facts in issue, the objection is sustained. Accordingly, the claims presented in (Julian and McLinko) Nos. 316 and 386 will not support Enforcement Counsel’s Motion. The exclusion of the claims appearing in the Statement does not, however, create a factual basis that would prevent granting Enforcement Counsel’s Motion.

**McLinko** incorporated Respondent Julian’s Response.<sup>2209</sup>

**Enforcement Counsel’s Statement of Material Fact (Julian and McLinko) Nos. 317 and 387**

One of the final slides of Head of Corporate Investigations Michael Bacon’s presentation on “The Complexities of Internal Fraud” at the IIA Conference provided “Keys to Success” and recommended the audience “question rainbows and butterflies / absence of issues is a red flag.”<sup>2210</sup>

**Responses:**

**Julian** objected to the Statement on the ground that the supporting exhibit was irrelevant.<sup>2211</sup> Finding an insufficient nexus between the averments presented in the Statement and the material facts in issue, the objection is sustained. Accordingly, the claims presented in (Julian and McLinko) Nos. 317 and 387 will not support Enforcement

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<sup>2207</sup> MSD-325 at 24.

<sup>2208</sup> See Respondent Julian at Respondent Julian’s Objections to Enforcement Counsel’s Motion for Summary Disposition Exhibits.

<sup>2209</sup> McLinko’s ECSFM at Nos. 316, 386.

<sup>2210</sup> MSD-325 at 30.

<sup>2211</sup> See Respondent Julian at Respondent Julian’s Objections to Enforcement Counsel’s Motion for Summary Disposition Exhibits.

Counsel's Motion. The exclusion of the claims appearing in the Statement does not, however, create a factual basis that would prevent granting Enforcement Counsel's Motion.

**McLinko** incorporated Respondent Julian's Response.<sup>2212</sup>

### **Enforcement Counsel's Statement of Material Fact (Julian and McLinko) No. 318 and 388**

Mr. Bacon explained in testimony that what he meant by "question rainbows and butterflies / absence of issues is a red flag" is that "when an executive's not open or welcome tonegative news, negative discussions, that it all has to be rosy, [it] is certainly a concern."<sup>2213</sup>

#### **Responses:**

**Julian** objected to the Statement on the ground that the supporting exhibit was irrelevant.<sup>2214</sup> Finding an insufficient nexus between the averments presented in the Statement and the material facts in issue, the objection is sustained. Accordingly, the claims presented in (Julian and McLinko) Nos. 318 and 388 will not support Enforcement Counsel's Motion. The exclusion of the claims appearing in the Statement does not, however, create a factual basis that would prevent granting Enforcement Counsel's Motion.

**McLinko** incorporated Respondent Julian's Response.<sup>2215</sup>

### **Enforcement Counsel's Statement of Material Fact (Julian and McLinko) No. 319**

On March 14, 2013, Respondent Julian received an EthicsLine complaint that a store manager in Florida was instructing employees "to open accounts without customers' signatures and without funding... the team member feels they are being asked to make bad sales."<sup>2216</sup>

#### **Responses:**

**Julian** objected to the Statement on the ground that the supporting exhibit was

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<sup>2212</sup> McLinko's ECSFM at Nos. 317, 387.

<sup>2213</sup> MSD- 296B (Bacon Depo. Tr.) at 439:3-13.

<sup>2214</sup> See Respondent Julian at Respondent Julian's Objections to Enforcement Counsel's Motion for Summary Disposition Exhibits.

<sup>2215</sup> McLinko's ECSFM at Nos. 318, 388.

<sup>2216</sup> MSD-494.



irrelevant.<sup>2217</sup> Finding an insufficient nexus between the averments presented in the Statement and the material facts in issue, the objection is sustained. Accordingly, the claims presented in (Julian and McLinko) No. 319 will not support Enforcement Counsel's Motion. The exclusion of the claims appearing in the Statement does not, however, create a factual basis that would prevent granting Enforcement Counsel's Motion.

**McLinko** incorporated Respondent Julian's Response.<sup>2218</sup>

### **Enforcement Counsel's Statement of Material Fact (Julian and McLinko) No. 320**

Enforcement Counsel's Statement of Material Fact (Julian and McLinko) No. 320 relies on exhibits presented to this Tribunal as being non-public. Pursuant to the OCC's Uniform Rules, while the proceedings in this administrative enforcement action are expressly required to be public, when presented with non-public documents the Administrative Law Judge is required to take all appropriate steps to preserve the confidentiality of such documents.<sup>2219</sup> Upon my review of the confidential documents supporting this Statement of Material Fact, and after weighing the expectation that all of the proceedings shall be public against the requirement that I protect against the disclosure of non-public information, I find the evidentiary value of these exhibits to be sufficiently marginal and duplicative as to warrant exclusion from this Order. Accordingly, this Order will not be based on any of the claims found in this Statement of Material Fact.

### **Enforcement Counsel's Statement of Material Fact (Julian and McLinko) No. 321**

Corporate Security's update in WFAS's May 6, 2013 First Quarter 2013 Summary to the Audit and Examination Committee listed "sales integrity misconduct" as a major case type.<sup>2220</sup> Additionally, the report noted that 51% of EthicsLine reports were referred to Community Bank Sales Quality (i.e. they were related to sales practices).<sup>2221</sup>

### **Responses:**

**Julian** objected to the Statement on the ground that the supporting exhibit was

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<sup>2217</sup> See Respondent Julian at Respondent Julian's Objections to Enforcement Counsel's Motion for Summary Disposition Exhibits.

<sup>2218</sup> McLinko's ECSFM at No. 319.

<sup>2219</sup> See 12 C.F.R. § 19.33(b).

<sup>2220</sup> MSD-524 at 48.

<sup>2221</sup> MSD-524 at 49.

irrelevant.<sup>2222</sup> Finding an insufficient nexus between the averments presented in the Statement and the material facts in issue, the objection is sustained. Accordingly, the claims presented in (Julian and McLinko) No. 321 will not support Enforcement Counsel's Motion. The exclusion of the claims appearing in the Statement does not, however, create a factual basis that would prevent granting Enforcement Counsel's Motion.

**McLinko** incorporated Respondent Julian's Response.<sup>2223</sup>

### **Enforcement Counsel's Statement of Material Fact (Julian and McLinko) No. 322**

Corporate Security's update in WFAS's August 5, 2013 Second Quarter 2013 Summary to the Audit and Examination Committee noted that sales integrity violations allegations had increased.<sup>2224</sup> Community Bank had experienced a 5% increase in cases primarily due to allegations involving possible sales integrity misconduct and falsification of records.<sup>2225</sup> The report further noted an increase in SAR filings related to "the falsification of bank records related to sales integrity misconduct of 19%." Lastly the report noted that 46% of EthicsLine report were referred to Community Bank Sales Quality (i.e. they were related to sales practices).<sup>2226</sup>

#### **Responses:**

**Julian** objected to the Statement on the ground that the supporting exhibit was irrelevant.<sup>2227</sup> Finding an insufficient nexus between the averments presented in the Statement and the material facts in issue, the objection is sustained. Accordingly, the claims presented in (Julian and McLinko) No. 322 will not support Enforcement Counsel's Motion. The exclusion of the claims appearing in the Statement does not, however, create a factual basis that would prevent granting Enforcement Counsel's Motion.

**McLinko** incorporated Respondent Julian's Response.<sup>2228</sup>

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<sup>2222</sup> See Respondent Julian at Respondent Julian's Objections to Enforcement Counsel's Motion for Summary Disposition Exhibits.

<sup>2223</sup> McLinko's ECSFM at No. 321.

<sup>2224</sup> MSD-525 at 44.

<sup>2225</sup> MSD-525 at 44-45.

<sup>2226</sup> MSD-525 at 47.

<sup>2227</sup> See Respondent Julian at Respondent Julian's Objections to Enforcement Counsel's Motion for Summary Disposition Exhibits.

<sup>2228</sup> McLinko's ECSFM at No. 322.

### **Enforcement Counsel’s Statement of Material Fact (Julian and McLinko) No. 323**

During an August 22, 2013 Ethics Committee meeting, the Head of Corporate Investigations reported that “misconduct and ethics violations were up,” that the Community Bank had the “highest number of [EthicsLine] reports per 1000 team members and most associated with Sales Integrity issues,” that “March tends to be the highest month for reports –associated with campaign results activity” (i.e. Jump into January), and that “Sales Integrity issues are most prevalent – there needs to be continued focus in this area.”<sup>2229</sup>

#### **Responses:**

**Julian** objected to the Statement on the ground that the supporting exhibit was irrelevant.<sup>2230</sup> Finding an insufficient nexus between the averments presented in the Statement and the material facts in issue, the objection is sustained. Accordingly, the claims presented in (Julian and McLinko) No. 323 will not support Enforcement Counsel’s Motion. The exclusion of the claims appearing in the Statement does not, however, create a factual basis that would prevent granting Enforcement Counsel’s Motion.

**McLinko** incorporated Respondent Julian’s Response.<sup>2231</sup>

### **Enforcement Counsel’s Statement of Material Fact (Julian and McLinko) No. 324**

According to the data presented by Head of Corporate Investigations Michael Bacon at the Ethics Committee meeting: there were 1,655 sales integrity violations cases YTD in 2013 compared with 1,532 YTD in 2012; Community Banking made up over 88% of EthicsLine complaints in 2012 and over 83% of EthicsLine complaints in 2013; and Corporate Investigations opened 1,339 sales integrity violations cases from EthicsLine complaints in 2010, 1,236 in 2011, 1,091 in 2012, and 576 through mid-year 2013.<sup>2232</sup>

#### **Responses:**

**Julian** objected to the Statement on the ground that the supporting exhibit was irrelevant.<sup>2233</sup> Finding an insufficient nexus between the averments presented in the

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<sup>2229</sup> MSD-133; MSD- 519; Julian Amended Answer ¶ 164; McLinko Amended Answer ¶ 164.

<sup>2230</sup> See Respondent Julian at Respondent Julian’s Objections to Enforcement Counsel’s Motion for Summary Disposition Exhibits.

<sup>2231</sup> McLinko’s ECSFM at No. 323.

<sup>2232</sup> MSD-519 at 5, 9, 13.

<sup>2233</sup> See Respondent Julian at Respondent Julian’s Objections to Enforcement Counsel’s Motion for Summary Disposition Exhibits.

Statement and the material facts in issue, the objection is sustained. Accordingly, the claims presented in (Julian and McLinko) No. 324 will not support Enforcement Counsel's Motion. The exclusion of the claims appearing in the Statement does not, however, create a factual basis that would prevent granting Enforcement Counsel's Motion.

**McLinko** incorporated Respondent Julian's Response.<sup>2234</sup>

### **Enforcement Counsel's Statement of Material Fact (Julian and McLinko) No. 325**

At an August 26, 2013 TMMEC General Semi-Annual Meeting, Head of Corporate Investigations Michael Bacon provided corporate investigations updates. Mr. Bacon's presentation for the meeting showed that sales integrity violations were the second highest case type in both 2012 and to-date in 2013, with 1,655 sales integrity violations cases YTD in 2013 compared with 1,532 YTD in 2012. Mr. Bacon's presentation also contained the following misconduct considerations: "Does practice or process create a need or opportunity for misconduct? Are controls allowing too much opportunity? Is the LOB creating an environment whereby the TM must commit misconduct? Too much opportunity or too much personal or business pressure can sway most anyone."<sup>2235</sup>

#### **Responses:**

**Julian** objected to the Statement on the ground that the supporting exhibit was irrelevant.<sup>2236</sup> Finding an insufficient nexus between the averments presented in the Statement and the material facts in issue, the objection is sustained. Accordingly, the claims presented in (Julian and McLinko) No. 325 will not support Enforcement Counsel's Motion. The exclusion of the claims appearing in the Statement does not, however, create a factual basis that would prevent granting Enforcement Counsel's Motion.

**McLinko** incorporated Respondent Julian's Response.<sup>2237</sup>

### **Enforcement Counsel's Statement of Material Fact (Julian and McLinko) No. 326**

Attached to Mr. Bacon's presentation was a "2013 Mid-year – Regional Banking Sales Integrity Case & EthicsLine Update" prepared by Special Investigations Manager Marty Weber (the author of the 2004 Investigation Report). Mr. Weber's presentation showed that

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<sup>2234</sup> McLinko's ECSFM at No. 324.

<sup>2235</sup> MSD-420 at 7.

<sup>2236</sup> See Respondent Julian at Respondent Julian's Objections to Enforcement Counsel's Motion for Summary Disposition Exhibits.

<sup>2237</sup> McLinko's ECSFM at No. 325.

there were sales integrity cases in every region in the Community Bank and that customer consent cases were the most common sales integrity case type. Mr. Weber's presentation also showed that Community Banking made up over 88% of EthicsLine complaints in 2012 and over 83% of EthicsLine complaints in 2013 and that sales integrity was the most common Corporate Investigations case type stemming from EthicsLine complaints, with 1,339 cases in 2010, 1,236 in 2011, 1,091 in 2012, and 576 through mid-year 2013.<sup>2238</sup>

**Responses:**

**Julian** objected to the Statement on the ground that the supporting exhibit was irrelevant.<sup>2239</sup> Finding an insufficient nexus between the averments presented in the Statement and the material facts in issue, the objection is sustained. Accordingly, the claims presented in (Julian and McLinko) No. 326 will not support Enforcement Counsel's Motion. The exclusion of the claims appearing in the Statement does not, however, create a factual basis that would prevent granting Enforcement Counsel's Motion.

**McLinko** incorporated Respondent Julian's Response.<sup>2240</sup>

**Enforcement Counsel's Statement of Material Fact (Julian and McLinko) No. 327**

In September 2013, Respondent Julian received an EthicsLine complaint about a team member in North Carolina "may have opened an account for a customer (no name provided) without the customer's consent." The complaint noted that there were two prior EthicsLine reports that the same team member opened accounts for customers that "they did not want or need."<sup>2241</sup>

**Responses:**

**Julian** objected to the Statement on the ground that the supporting exhibit was irrelevant.<sup>2242</sup> Finding an insufficient nexus between the averments presented in the Statement and the material facts in issue, the objection is sustained. Accordingly, the claims presented in (Julian and McLinko) No. 327 will not support Enforcement Counsel's Motion. The exclusion of the claims appearing in the Statement does not, however, create a

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<sup>2238</sup> MSD-420 at 9, 10, 14.

<sup>2239</sup> See Respondent Julian at Respondent Julian's Objections to Enforcement Counsel's Motion for Summary Disposition Exhibits.

<sup>2240</sup> McLinko's ECSFM at No. 326.

<sup>2241</sup> MSD-439.

<sup>2242</sup> See Respondent Julian at Respondent Julian's Objections to Enforcement Counsel's Motion for Summary Disposition Exhibits.

factual basis that would prevent granting Enforcement Counsel’s Motion.

**McLinko** incorporated Respondent Julian’s Response.<sup>2243</sup>

### **Enforcement Counsel’s Statement of Material Fact (Julian and McLinko) No. 328**

In October 2013, Respondent Julian received an EthicsLine complaint about a team member in Pennsylvania who felt he was terminated for “raising ethical issues and sales integrity concerns” to his district manager. The team member stated that he was “instructed to add online banking and debit card accounts for customers that did not request them.”<sup>2244</sup>

#### **Responses:**

**Julian** objected to the Statement on the ground that the supporting exhibit was irrelevant.<sup>2245</sup> Finding an insufficient nexus between the averments presented in the Statement and the material facts in issue, the objection is sustained. Accordingly, the claims presented in (Julian and McLinko) No. 328 will not support Enforcement Counsel’s Motion. The exclusion of the claims appearing in the Statement does not, however, create a factual basis that would prevent granting Enforcement Counsel’s Motion.

**McLinko** incorporated Respondent Julian’s Response.<sup>2246</sup>

### **Enforcement Counsel’s Statement of Material Fact (Julian and McLinko) No. 329**

On October 4, 2013, Respondent Julian received the October 3, 2013 *Los Angeles Times* Article, “Wells Fargo Fires Workers Accused of Cheating on Sales Goals,” from Head of Corporate Investigations Michael Bacon. Mr. Bacon wrote that the article was a “big deal and very interesting.”<sup>2247</sup>

#### **Responses:**

**Julian** objected to the Statement on the ground that the supporting exhibit was

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<sup>2243</sup> McLinko’s ECSFM at No. 327.

<sup>2244</sup> MSD- 440.

<sup>2245</sup> See Respondent Julian at Respondent Julian’s Objections to Enforcement Counsel’s Motion for Summary Disposition Exhibits.

<sup>2246</sup> McLinko’s ECSFM at No. 328.

<sup>2247</sup> MSD-331; Julian Amended Answer ¶ 404; McLinko Amended Answer ¶ 457.

irrelevant.<sup>2248</sup> Finding an insufficient nexus between the averments presented in the Statement and the material facts in issue, the objection is sustained. Accordingly, the claims presented in (Julian and McLinko) No. 329 will not support Enforcement Counsel’s Motion. The exclusion of the claims appearing in the Statement does not, however, create a factual basis that would prevent granting Enforcement Counsel’s Motion.

**McLinko** incorporated Respondent Julian’s Response.<sup>2249</sup>

### **Enforcement Counsel’s Statement of Material Fact (Julian and McLinko) No. 330**

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.”<sup>2250</sup>

#### **Responses:**

**Julian** did not dispute the cited article contains the quoted language.<sup>2251</sup> Accordingly, the Recommended Decision will include a factual finding as to Respondents Julian and McLinko that 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.”

**McLinko** incorporated Respondent Julian’s Response.<sup>2252</sup>

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<sup>2248</sup> See Respondent Julian at Respondent Julian’s Objections to Enforcement Counsel’s Motion for Summary Disposition Exhibits.

<sup>2249</sup> McLinko’s ECSFM at No. 329.

<sup>2250</sup> MSD-331.

<sup>2251</sup> Julian’s ECSFM at No. 330.

<sup>2252</sup> McLinko’s ECSFM at No. 330.

### **Enforcement Counsel’s Statement of Material Fact (Julian and McLinko) No. 331**

On October 14, 2013, Respondent Julian received a link to an online petition to Wells Fargo to “End the Obsession with Sales Goals” from a WFAS colleague.<sup>2253</sup> Comments left by current and former employees on the online petition detailed undue pressure to meet unreasonable sales goals, and unethical sales practices, including sales practices misconduct.<sup>2254</sup>

#### **Responses:**

**Julian** objected to the Statement on the ground that the supporting exhibit was irrelevant.<sup>2255</sup> Finding an insufficient nexus between the averments presented in the Statement and the material facts in issue, the objection is sustained. Accordingly, the claims presented in (Julian and McLinko) No. 331 will not support Enforcement Counsel’s Motion. The exclusion of the claims appearing in the Statement does not, however, create a factual basis that would prevent granting Enforcement Counsel’s Motion.

**McLinko** incorporated Respondent Julian’s Response.<sup>2256</sup>

### **Enforcement Counsel’s Statement of Material Fact (Julian and McLinko) No. 332**

On October 28, 2013, Respondent Julian received an EthicsLine complaint that a district manager in Florida “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 sales matrices. The team member stated that [the manager] 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, [the manager] 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 [the manager's] goals is creating an

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<sup>2253</sup> MSD-332.

<sup>2254</sup> MSD-140.

<sup>2255</sup> See Respondent Julian at Respondent Julian’s Objections to Enforcement Counsel’s Motion for Summary Disposition Exhibits.

<sup>2256</sup> McLinko’s ECSFM at No. 331.



unhealthy work environment and could lead to unethical practices by team members in fear of losing their jobs.”<sup>2257</sup>

**Responses:**

**Julian** objected to the Statement on the ground that the supporting exhibit was irrelevant.<sup>2258</sup> Finding an insufficient nexus between the averments presented in the Statement and the material facts in issue, the objection is sustained. Accordingly, the claims presented in (Julian and McLinko) No. 332 will not support Enforcement Counsel’s Motion. The exclusion of the claims appearing in the Statement does not, however, create a factual basis that would prevent granting Enforcement Counsel’s Motion.

**McLinko** incorporated Respondent Julian’s Response.<sup>2259</sup>

**Enforcement Counsel’s Statement of Material Fact (Julian and McLinko) No. 333**

On October 29, 2013, Respondent Julian received an EthicsLine complaint about two customers in Texas who “received credit cards that they did not request.”<sup>2260</sup> On November 12, 2013, Respondent Julian received an EthicsLine complaint about a customer in Utah who “received a debit card for a new account that she did not open.”<sup>2261</sup>

**Responses:**

**Julian** objected to the Statement on the ground that the supporting exhibit was irrelevant.<sup>2262</sup> Finding an insufficient nexus between the averments presented in the Statement and the material facts in issue, the objection is sustained. Accordingly, the claims presented in (Julian and McLinko) No. 333 will not support Enforcement Counsel’s Motion. The exclusion of the claims appearing in the Statement does not, however, create a factual basis that would prevent granting Enforcement Counsel’s Motion.

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<sup>2257</sup> MSD-442.

<sup>2258</sup> See Respondent Julian at Respondent Julian’s Objections to Enforcement Counsel’s Motion for Summary Disposition Exhibits.

<sup>2259</sup> McLinko’s ECSFM at No. 332.

<sup>2260</sup> MSD-443.

<sup>2261</sup> MSD-444.

<sup>2262</sup> See Respondent Julian at Respondent Julian’s Objections to Enforcement Counsel’s Motion for Summary Disposition Exhibits.

**McLinko** incorporated Respondent Julian's Response.<sup>2263</sup>

### **Enforcement Counsel's Statement of Material Fact (Julian and McLinko) No. 334**

On November 12, 2013, Respondent Julian received an EthicsLine complaint about a customer in Utah who "received a debit card for a new account that she did not open."<sup>2264</sup>

#### **Responses:**

**Julian** objected to the Statement on the ground that the supporting exhibit was irrelevant.<sup>2265</sup> Finding an insufficient nexus between the averments presented in the Statement and the material facts in issue, the objection is sustained. Accordingly, the claims presented in (Julian and McLinko) No. 334 will not support Enforcement Counsel's Motion. The exclusion of the claims appearing in the Statement does not, however, create a factual basis that would prevent granting Enforcement Counsel's Motion.

**McLinko** incorporated Respondent Julian's Response.<sup>2266</sup>

### **Enforcement Counsel's Statement of Material Fact (Julian and McLinko) No. 335**

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.<sup>2267</sup>

#### **Responses:**

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<sup>2263</sup> McLinko's ECSFM at No. 333.

<sup>2264</sup> MSD-444.

<sup>2265</sup> See Respondent Julian at Respondent Julian's Objections to Enforcement Counsel's Motion for Summary Disposition Exhibits.

<sup>2266</sup> McLinko's ECSFM at No. 334.

<sup>2267</sup> Julian Amended Answer ¶ 101; MSD-111 at 1-2). Respondent Julian was aware of the article. (Julian Amended Answer ¶ 55, 102; 404.

**Julian** did not dispute that the cited article contained the quoted language.<sup>2268</sup> Accordingly, the Recommended Decision will include a factual finding as to Respondents Julian and McLinko that 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.

**McLinko** incorporated Respondent Julian’s Response.<sup>2269</sup>

### **Enforcement Counsel’s Statement of Material Fact (Julian and McLinko) No. 336**

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.<sup>2270</sup>

#### **Responses:**

**Julian** did not dispute that he previously testified as reflected in the Statement.<sup>2271</sup> Accordingly, the Recommended Decision will include a factual finding as to Respondents Julian and McLinko that 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.

**McLinko** incorporated Respondent Julian’s Response.<sup>2272</sup>

### **Enforcement Counsel’s Statement of Material Fact (Julian and McLinko) No. 337**

In January 2014, Respondent Julian received an EthicsLine complaint about a team member in Delaware who “opened accounts for a customer ... that the customer said he did not authorize or want.”<sup>2273</sup>

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<sup>2268</sup> Julian’s ECSFM at No. 335.

<sup>2269</sup> McLinko’s ECSFM at No. 335.

<sup>2270</sup> Julian Amended Answer ¶ 405.

<sup>2271</sup> Julian’s ECSFM at No. 336.

<sup>2272</sup> McLinko’s ECSFM at No. 336.

<sup>2273</sup> MSD-445.

**Responses:**

**Julian** did not dispute that he received the cited complaint, but averred there is no evidence that he opened or reviewed the email and attachment, and that he received information indicating that the majority of EthicsLine complaints were not substantiated.<sup>2274</sup>

Whether Respondent Julian received and reviewed this specific complaint is not a material fact, such that disputing the same will not create a controverted material fact that would prevent granting Enforcement Counsel's summary disposition motion. The Recommended Decision will not, however, include the claim presented in (Julian and McLinko) No. 337 as to Respondents Julian and McLinko, in the absence of evidence warranting such inclusion as may be presented during the hearing.

**McLinko** incorporated Respondent Julian's Response.<sup>2275</sup>

**Enforcement Counsel's Statement of Material Fact (Julian and McLinko) No. 338**

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 Community Bank Sales Quality" (i.e. related to sales practices).<sup>2276</sup>

**Responses:**

**Julian** disputed the claim, averring that the definition quoted in the Statement is not limited to sales practices misconduct or issues related to customer consent.<sup>2277</sup> I find an insufficient factual basis has been presented to establish a dispute in this Response to create a controverted material fact. Accordingly, the Recommended Decision will include a factual finding as to Respondents Julian and McLinko that 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

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<sup>2274</sup> Julian's ECSFM at No. 337.

<sup>2275</sup> McLinko's ECSFM at No. 337.

<sup>2276</sup> MSD-526 at 47-48, 51.

<sup>2277</sup> Julian's ECSFM at No. 338.

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 Community Bank Sales Quality” (i.e. related to sales practices).

**McLinko** incorporated Respondent Julian’s Response.<sup>2278</sup>

### **Enforcement Counsel’s Statement of Material Fact (Julian and McLinko) No. 339**

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.<sup>2279</sup>

#### **Responses:**

**Julian** did not dispute that he received the Update identified in the Statement, but averred the cited evidence does not contain the appropriate context.<sup>2280</sup> I find an insufficient factual basis has been presented to establish a dispute in this Response to create a controverted material fact. Accordingly, the Recommended Decision will include a factual finding as to Respondents Julian and McLinko that 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.

**McLinko** incorporated Respondent Julian’s Response.<sup>2281</sup>

### **Enforcement Counsel’s Statement of Material Fact (Julian and McLinko) No. 340**

On March 3, 2014, Respondent Julian received an EthicsLine complaint about a team member in New Jersey whose district manager “threatens’ the team and tells them they must hit 200% of their sales goal at any cost on a daily basis, . . . that bankers and tellers are required to stay late to make sales calls if they have not met their goal for the day , [and] that they are

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<sup>2278</sup> McLinko’s ECSFM at No. 338.

<sup>2279</sup> MSD-335 at 4.

<sup>2280</sup> Julian’s ECSFM at No. 339.

<sup>2281</sup> McLinko’s ECSFM at No. 339.

treated like ‘garbage’ and the situation makes him/her want to leave the company.”<sup>2282</sup>

**Responses:**

**Julian** did not dispute that he received the cited complaint, but averred there is no evidence that he opened or reviewed the email and attachment.<sup>2283</sup>

Whether Respondent Julian received and reviewed this specific complaint is not a material fact, such that disputing the same will not create a controverted material fact that would prevent granting Enforcement Counsel’s summary disposition motion. The Recommended Decision will not, however, include the claim presented in (Julian and McLinko) No. 340 as to Respondents Julian or McLinko, in the absence of evidence warranting such inclusion as may be presented during the hearing.

**McLinko** incorporated Respondent Julian’s Response.<sup>2284</sup>

**Enforcement Counsel’s Statement of Material Fact (Julian and McLinko) No. 341**

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.<sup>2285</sup> The report also reflected that the vast majority of EthicsLine complaints related to the Community Bank<sup>2286</sup> 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.<sup>2287</sup>

**Responses:**

**Julian** did not dispute that he received the year-end update identified in the Statement, nor did he dispute the contents included the language shown above, but averred the evidence does not contain the appropriate context.<sup>2288</sup> I find an insufficient factual basis has been presented to establish a dispute in this Response to create a controverted material fact. Accordingly, the

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<sup>2282</sup> MSD-446.

<sup>2283</sup> Julian’s ECSFM at No. 340.

<sup>2284</sup> McLinko’s ECSFM at No. 340.

<sup>2285</sup> MSD-447 at 4.

<sup>2286</sup> MSD-447 at 4.

<sup>2287</sup> MSD-447 at 7.

<sup>2288</sup> Julian’s ECSFM at No. 341.

Recommended Decision will include a factual finding as to Respondents Julian and McLinko that 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.<sup>2289</sup> The report also reflected that the vast majority of EthicsLine complaints related to the Community Bank<sup>2290</sup> 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.

**McLinko** incorporated Respondent Julian's Response.<sup>2291</sup>

### **Enforcement Counsel's Statement of Material Fact (Julian and McLinko) No. 342**

On March 5, 2014, Respondent Julian received an EthicsLine report summary in which a Store Manager in Ardmore, Pennsylvania reported that his District Manager directed employees to tell customers to activate billpay while in the branch, open multiple savings accounts for customers intending to open one account, and improve the Quality Sales Report Card ratings by selling credit cards rather than deposit accounts, because credit card applications do not require signatures.<sup>2292</sup>

#### **Responses:**

**Julian** did not dispute that he received the cited report, but averred there is no evidence that he opened or reviewed the email and attachment.<sup>2293</sup>

Whether Respondent Julian received and reviewed this specific report is not a material fact, such that disputing the same will not create a controverted material fact that would prevent granting Enforcement Counsel's summary disposition motion. The Recommended Decision will not, however, include the claim presented in (Julian and McLinko) No. 342 as to Respondents Julian or McLinko, in the absence of evidence warranting such inclusion as may be presented during the hearing.

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<sup>2289</sup> MSD-447 at 4.

<sup>2290</sup> MSD-447 at 4.

<sup>2291</sup> McLinko's ECSFM at No. 341.

<sup>2292</sup> MSD-448.

<sup>2293</sup> Julian's ECSFM at No. 342.

**McLinko** incorporated Respondent Julian's Response.<sup>2294</sup>

### **Enforcement Counsel's Statement of Material Fact (Julian and McLinko) No. 343**

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.<sup>2295</sup>

#### **Responses:**

**Julian** disputed the claim, averring the statistic referred to termination for wrongdoing by "[a]nyone acting outside of policy" or "[a]nyone who was terminated for ... any reason for not behaving as they should have been behaving."<sup>2296</sup>

I find an insufficient factual basis has been presented to establish a dispute in this Response to create a controverted material fact. Accordingly, the Recommended Decision will include a factual finding as to Respondents Julian and McLinko that 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 "not behaving as they should have been behaving."

**McLinko** incorporated Respondent Julian's Response.<sup>2297</sup>

### **Enforcement Counsel's Statement of Material Fact (Julian and McLinko) No. 344**

On April 25, 2014, Respondent Julian received an EthicsLine complaint about a district manager in Georgia that "set unreasonable performance expectations and expects them to harass customers about products and services they do not want. He/She said [the manager] berates people when they are unable to meet sales goals and has forced them to stay several hours late on a regular basis."<sup>2298</sup>

#### **Responses:**

**Julian** did not dispute that he received the cited complaint, but averred there is no evidence

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<sup>2294</sup> McLinko's ECSFM at No. 342.

<sup>2295</sup> MSD-28 at 1; Julian Amended Answer ¶¶ 164, 271, 398; McLinko Amended Answer ¶ 164, 271, 398.

<sup>2296</sup> Julian's ECSFM at No.342, citing MSD-611 at 121:05-13; 122:08-17.

<sup>2297</sup> McLinko's ECSFM at No. 343.

<sup>2298</sup> MSD-451.



that he opened or reviewed the email and attachment.<sup>2299</sup>

Whether Respondent Julian reviewed this specific complaint is not a material fact, such that disputing the same will not create a controverted material fact that would prevent granting Enforcement Counsel's summary disposition motion. The Recommended Decision will not, however, include the claim presented in (Julian and McLinko) No. 344 as to Respondents Julian or McLinko, in the absence of evidence warranting such inclusion as may be presented during the hearing.

**McLinko** incorporated Respondent Julian's Response.<sup>2300</sup>

### **Enforcement Counsel's Statement of Material Fact (Julian and McLinko) No. 345**

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).<sup>2301</sup>

#### **Responses:**

**Julian** did not dispute the cited Security update contained the data presented in this Statement.<sup>2302</sup> Accordingly, the Recommended Decision will include a factual finding as to Respondents Julian and McLinko that 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).

**McLinko** incorporated Respondent Julian's Response.<sup>2303</sup>

### **Enforcement Counsel's Statement of Material Fact (Julian and McLinko) No. 346**

On May 9, 2014, Respondent Julian received an EthicsLine report which stated a Lead Regional President was the "core of all wrongdoing in LA/OC," which included issues in

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<sup>2299</sup> Julian's ECSFM at No. 344.

<sup>2300</sup> McLinko's ECSFM at No. 344.

<sup>2301</sup> MSD-451 at 52.

<sup>2302</sup> Julian's ECSFM at No. 345.

<sup>2303</sup> McLinko's ECSFM at No. 345.

hiring, sales quality, and overall ethics.<sup>2304</sup>

**Responses:**

**Julian** did not dispute that he received the cited complaint, but averred there is no evidence that he opened or reviewed the email and attachment.<sup>2305</sup>

Whether Respondent Julian reviewed this specific complaint is not a material fact, such that disputing the same will not create a controverted material fact that would prevent granting Enforcement Counsel's summary disposition motion. The Recommended Decision will not, however, include the claim presented in (Julian and McLinko) No. 346 as to Respondents Julian or McLinko, in the absence of evidence warranting such inclusion as may be presented during the hearing.

**McLinko** incorporated Respondent Julian's Response.<sup>2306</sup>

**Enforcement Counsel's Statement of Material Fact (Julian and McLinko) No. 347**

On June 5, 2014, Respondent Julian received an EthicsLine complaint alleging unethical sales practices at a branch in South Dakota. The investigator noted there were three other EthicsLine reports containing allegations of the managing gaming at the branch.<sup>2307</sup>

**Responses:**

**Julian** did not dispute that he received the cited complaint, but averred there is no evidence that he opened or reviewed the email and attachment.<sup>2308</sup>

Whether Respondent Julian reviewed this specific complaint is not a material fact, such that disputing the same will not create a controverted material fact that would prevent granting Enforcement Counsel's summary disposition motion. The Recommended Decision will not, however, include the claim presented in (Julian and McLinko) No. 347 as to Respondents Julian or McLinko, in the absence of evidence warranting such inclusion as may be presented during the hearing.

**McLinko** incorporated Respondent Julian's Response.<sup>2309</sup>

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<sup>2304</sup> MSD-452.

<sup>2305</sup> Julian's ECSFM at No. 346.

<sup>2306</sup> McLinko's ECSFM at No. 346.

<sup>2307</sup> MSD-495.

<sup>2308</sup> Julian's ECSFM at No. 347.

<sup>2309</sup> McLinko's ECSFM at No. 347.

### **Enforcement Counsel’s Statement of Material Fact (Julian and McLinko) No. 348**

On June 17, 2014, Respondent Julian received an EthicsLine complaint about a store manager in Virginia “instruct[ing] his staff to ‘double pack’ customers and communicate to customers that they need to open two checking accounts and two savings accounts” (i.e. bundling).<sup>2310</sup>

#### **Responses:**

**Julian** did not dispute that he received the cited complaint, but averred there is no evidence that he opened or reviewed the email and attachment.<sup>2311</sup>

Whether Respondent Julian reviewed this specific complaint is not a material fact, such that disputing the same will not create a controverted material fact that would prevent granting Enforcement Counsel’s summary disposition motion. The Recommended Decision will not, however, include the claim presented in (Julian and McLinko) No. 348 as to Respondents Julian or McLinko, in the absence of evidence warranting such inclusion as may be presented during the hearing.

**McLinko** incorporated Respondent Julian’s Response.<sup>2312</sup>

### **Enforcement Counsel’s Statement of Material Fact (Julian and McLinko) No. 349**

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 types<sup>2313</sup> 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).<sup>2314</sup>

#### **Responses:**

**Julian** did not dispute that the update identified in the Statement contains the information presented above, but averred that not all Community Bank Sales Quality referrals deal with

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<sup>2310</sup> MSD-453.

<sup>2311</sup> Julian’s ECSFM at No. 348.

<sup>2312</sup> McLinko’s ECSFM at No. 348.

<sup>2313</sup> MSD-397 at 64.

<sup>2314</sup> MSD-397 at 68.

sales practices issues.<sup>2315</sup>

I find an insufficient factual basis has been presented to establish a dispute in this Response to create a controverted material fact. Accordingly, the Recommended Decision will include a factual finding as to Respondents Julian and McLinko that 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 types 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).

**McLinko** incorporated Respondent Julian's Response.<sup>2316</sup>

### **Enforcement Counsel's Statement of Material Fact (Julian and McLinko) No. 350**

On August 12, 2014, Respondent Julian received an EthicsLine complaint from a Georgia District Manager that a store manager had transferred funds from a customer's checking account to the customer's savings account without the customer's permission. The customer questioned the transfer because he did not authorize it.<sup>2317</sup>

#### **Responses:**

**Julian** did not dispute that he received the cited complaint, but averred there is no evidence that he opened or reviewed the email and attachment.<sup>2318</sup>

Whether Respondent Julian reviewed this specific complaint is not a material fact, such that disputing the same will not create a controverted material fact that would prevent granting Enforcement Counsel's summary disposition motion. The Recommended Decision will not, however, include the claim presented in (Julian and McLinko) No. 350 as to Respondents Julian or McLinko, in the absence of evidence warranting such inclusion as may be presented during the hearing.

**McLinko** incorporated Respondent Julian's Response.<sup>2319</sup>

### **Enforcement Counsel's Statement of Material Fact (Julian and McLinko) No. 351**

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<sup>2315</sup> Julian's ECSFM at No. 349.

<sup>2316</sup> McLinko's ECSFM at No. 349.

<sup>2317</sup> MSD-454.

<sup>2318</sup> Julian's ECSFM at No. 350.

<sup>2319</sup> McLinko's ECSFM at No. 350.

On August 25, 2014, Respondent Julian received an EthicsLine complaint about team members in North Carolina being trained to “enroll[] customers in checking accounts on dates later than requested and also to open more than one account for customers when they only requested one account. [T]he purpose of these actions were to help them meet their ‘quotas.’”<sup>2320</sup>

**Responses:**

**Julian** did not dispute that he received the cited complaint, but averred there is no evidence that he opened or reviewed the email and attachment.<sup>2321</sup>

Whether Respondent Julian reviewed this specific complaint is not a material fact, such that disputing the same will not create a controverted material fact that would prevent granting Enforcement Counsel’s summary disposition motion. The Recommended Decision will not, however, include the claim presented in (Julian and McLinko) No. 351 as to Respondents Julian or McLinko, in the absence of evidence warranting such inclusion as may be presented during the hearing.

**McLinko** incorporated Respondent Julian’s Response.<sup>2322</sup>

**Enforcement Counsel’s Statement of Material Fact (Julian and McLinko) No. 352**

On September 7, 2014, Respondent Julian received an EthicsLine complaint referencing 19 EthicsLine reports made about a single store manager in California that included concerns related to sales integrity and retaliation.<sup>2323</sup>

**Responses:**

**Julian** did not dispute that he received the cited complaint, but averred there is no evidence that he opened or reviewed the email and attachment.<sup>2324</sup>

Whether Respondent Julian reviewed this specific complaint is not a material fact, such that disputing the same will not create a controverted material fact that would prevent granting Enforcement Counsel’s summary disposition motion. The Recommended Decision will not, however, include the claim presented in (Julian and McLinko) No. 352 as to Respondents Julian or McLinko, in the absence of evidence warranting such inclusion as may be presented during the hearing.

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<sup>2320</sup> MSD-455.

<sup>2321</sup> Julian’s ECSFM at No. 351.

<sup>2322</sup> McLinko’s ECSFM at No. 351.

<sup>2323</sup> MSD-457.

<sup>2324</sup> Julian’s ECSFM at No. 352.

**McLinko** incorporated Respondent Julian's Response.<sup>2325</sup>

### **Enforcement Counsel's Statement of Material Fact (Julian and McLinko) No. 353**

On October 21, 2014, Respondent Julian received an EthicsLine complaint from Utah, where additional accounts were opened for customers and accounts were being opened for minors without a family member or guardian. The complaint specified a particular branch manager but observed there had been other sales quality cases under a particular District Manager.<sup>2326</sup>

#### **Responses:**

**Julian** did not dispute that he received the cited complaint, but averred there is no evidence that he opened or reviewed the email and attachment.<sup>2327</sup>

Whether Respondent Julian reviewed this specific complaint is not a material fact, such that disputing the same will not create a controverted material fact that would prevent granting Enforcement Counsel's summary disposition motion. The Recommended Decision will not, however, include the claim presented in (Julian and McLinko) No. 353 as to Respondents Julian or McLinko, in the absence of evidence warranting such inclusion as may be presented during the hearing.

**McLinko** incorporated Respondent Julian's Response.<sup>2328</sup>

### **Enforcement Counsel's Statement of Material Fact (Julian and McLinko) No. 354**

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).<sup>2329</sup>

#### **Responses:**

**Julian** did not dispute that the cited Security update contained the language presented in the Statement.<sup>2330</sup> Accordingly, the Recommended Decision will include a factual finding as to

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<sup>2325</sup> McLinko's ECSFM at No. 352.

<sup>2326</sup> MSD-497.

<sup>2327</sup> Julian's ECSFM at No. 353.

<sup>2328</sup> McLinko's ECSFM at No. 353.

<sup>2329</sup> MSD-398 at 69.

<sup>2330</sup> Julian's ECSFM at No. 354.

Respondent Julian that 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)

**McLinko** incorporated Respondent Julian's Response.<sup>2331</sup>

### **Enforcement Counsel's Statement of Material Fact (Julian and McLinko) No. 355**

On December 8, 2014, Respondent Julian received an EthicsLine complaint that a banker had opened an account for a customer and his/her nephew without proper consent in New York.<sup>2332</sup>

#### **Responses:**

**Julian** did not dispute that he received the cited complaint, but averred there is no evidence that he opened or reviewed the email and attachment.<sup>2333</sup>

Whether Respondent Julian reviewed this specific complaint is not a material fact, such that disputing the same will not create a controverted material fact that would prevent granting Enforcement Counsel's summary disposition motion. The Recommended Decision will not, however, include the claim presented in (Julian and McLinko) No. 355 as to Respondents Julian or McLinko, in the absence of evidence warranting such inclusion as may be presented during the hearing.

**McLinko** incorporated Respondent Julian's Response.<sup>2334</sup>

### **Enforcement Counsel's Statement of Material Fact (Julian and McLinko) No. 356**

On December 31, 2014, Respondent Julian received an EthicsLine complaint about a team member in Arizona that "transferred \$25 between a customer's checking and savings accounts without the customer's authorization" (i.e. simulated funding).<sup>2335</sup>

#### **Responses:**

**Julian** did not dispute that he received the cited complaint, but averred there is no evidence

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<sup>2331</sup> McLinko's ECSFM at No. 354.

<sup>2332</sup> MSD-498.

<sup>2333</sup> Julian's ECSFM at No. 355.

<sup>2334</sup> McLinko's ECSFM at No. 355.

<sup>2335</sup> MSD-458.

that he opened or reviewed the email and attachment.<sup>2336</sup>

Whether Respondent Julian reviewed this specific complaint is not a material fact, such that disputing the same will not create a controverted material fact that would prevent granting Enforcement Counsel's summary disposition motion. The Recommended Decision will not, however, include the claim presented in (Julian and McLinko) No. 356 as to Respondents Julian or McLinko, in the absence of evidence warranting such inclusion as may be presented during the hearing.

**McLinko** incorporated Respondent Julian's Response.<sup>2337</sup>

### **Enforcement Counsel's Statement of Material Fact (Julian and McLinko) No. 357**

On February 4, 2015, Respondent Julian received an EthicsLine complaint about a team member in New Jersey whose district manager threatened to "terminate him if he did not report to [another branch] and continue to meet his sales goals. [H]e feels he is being set up for failure because the production rates at the [branch] are low, and it will be hard for him to meet his sales goals." The complaint also described a previous report from the same team member that his store manager had opened accounts "under various team members' names in order for those team members to receive sales credit."<sup>2338</sup>

#### **Responses:**

**Julian** did not dispute that he received the cited complaint, but averred there is no evidence that he opened or reviewed the email and attachment.<sup>2339</sup>

Whether Respondent Julian reviewed this specific complaint is not a material fact, such that disputing the same will not create a controverted material fact that would prevent granting Enforcement Counsel's summary disposition motion. The Recommended Decision will not, however, include the claim presented in (Julian and McLinko) No. 357 as to Respondents Julian or McLinko, in the absence of evidence warranting such inclusion as may be presented during the hearing.

**McLinko** incorporated Respondent Julian's Response.<sup>2340</sup>

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<sup>2336</sup> Julian's ECSFM at No. 356.

<sup>2337</sup> McLinko's ECSFM at No. 356.

<sup>2338</sup> MSD-459.

<sup>2339</sup> Julian's ECSFM at No. 357.

<sup>2340</sup> McLinko's ECSFM at No. 357.



### **Enforcement Counsel’s Statement of Material Fact (Julian and McLinko) No. 358**

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).<sup>2341</sup>

#### **Responses:**

**Julian** did not dispute that the cited Security update contained the information presented in the Statement.<sup>2342</sup> Accordingly, the Recommended Decision will include a factual finding as to Respondents Julian and McLinko that 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).

**McLinko** incorporated Respondent Julian’s Response.<sup>2343</sup>

### **Enforcement Counsel’s Statement of Material Fact (Julian and McLinko) No. 359**

On March 27, 2015, Respondent Julian received an EthicsLine complaint that a team member in Texas felt she was being retaliated against after she reported her store manager and other employees for gaming and harassment.<sup>2344</sup>

#### **Responses:**

**Julian** did not dispute that he received the cited complaint, but averred there is no evidence that he opened or reviewed the email and attachment.<sup>2345</sup>

Whether Respondent Julian reviewed this specific complaint is not a material fact, such that disputing the same will not create a controverted material fact that would prevent granting Enforcement Counsel’s summary disposition motion. The Recommended Decision will not, however, include the claim presented in (Julian and McLinko) No. 359 as to Respondents Julian or McLinko, in the absence of evidence warranting such inclusion as may be presented during the hearing.

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<sup>2341</sup> MSD-400 at 79.

<sup>2342</sup> Julian’s ECSFM at No. 358.

<sup>2343</sup> McLinko’s ECSFM at No. 358.

<sup>2344</sup> MSD-460.

<sup>2345</sup> Julian’s ECSFM at No. 359.

**McLinko** incorporated Respondent Julian's Response.<sup>2346</sup>

### **Enforcement Counsel's Statement of Material Fact (Julian and McLinko) No. 360**

On April 30, 2015, Respondent Julian received an EthicsLine complaint that a team member was being retaliated against in Alaska for reporting dishonest sales activity.<sup>2347</sup>

#### **Responses:**

**Julian** did not dispute that he received the cited complaint, but averred there is no evidence that he opened or reviewed the email and attachment.<sup>2348</sup>

Whether Respondent Julian reviewed this specific complaint is not a material fact, such that disputing the same will not create a controverted material fact that would prevent granting Enforcement Counsel's summary disposition motion. The Recommended Decision will not, however, include the claim presented in (Julian and McLinko) No. 360 as to Respondents Julian or McLinko, in the absence of evidence warranting such inclusion as may be presented during the hearing.

**McLinko** incorporated Respondent Julian's Response.<sup>2349</sup>

### **Enforcement Counsel's Statement of Material Fact (Julian and McLinko) No. 361**

On May 4, 2015, Respondent Julian received an EthicsLine complaint that a customer in Connecticut complained that he did not authorize a banker to open accounts.<sup>2350</sup>

#### **Responses:**

**Julian** did not dispute that he received the cited complaint, but averred there is no evidence that he opened or reviewed the email and attachment.<sup>2351</sup>

Whether Respondent Julian reviewed this specific complaint is not a material fact, such that disputing the same will not create a controverted material fact that would prevent granting Enforcement Counsel's summary disposition motion. The Recommended Decision will not, however, include the claim presented in (Julian and McLinko) No. 361 as to Respondents

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<sup>2346</sup> McLinko's ECSFM at No. 359.

<sup>2347</sup> MSD-461.

<sup>2348</sup> Julian's ECSFM at No. 360.

<sup>2349</sup> McLinko's ECSFM at No. 360.

<sup>2350</sup> MSD- 462.

<sup>2351</sup> Julian's ECSFM at No. 361.

Julian or McLinko, in the absence of evidence warranting such inclusion as may be presented during the hearing.

**McLinko** incorporated Respondent Julian's Response.<sup>2352</sup>

### **Enforcement Counsel's Statement of Material Fact (Julian and McLinko) No. 362**

Also 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 employees take the blame, and Wells Fargo reaps the profits.<sup>2353</sup>

### **Responses:**

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<sup>2352</sup> McLinko's ECSFM at No. 361.

<sup>2353</sup> MSD-169 at 3.

**Julian** did not dispute the cited Complaint contains the language quoted in the Statement.<sup>2354</sup> Accordingly, the Recommended Decision will include a factual finding as to Respondents Julian and McLinko that 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 sale practices, alleged the facts shown above.

**McLinko** incorporated Respondent Julian’s Response.<sup>2355</sup>

### **Enforcement Counsel’s Statement of Material Fact (Julian and McLinko) No. 363**

On May 4, 2015, Respondent Julian received a *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.<sup>2356</sup>

#### **Responses:**

**Julian** did not dispute that he received a copy of the Times as reported in the Statement.<sup>2357</sup> Accordingly, the Recommended Decision will include a factual finding as to Respondent Julian that on May 4, 2015, he received a *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.

**McLinko** incorporated Respondent Julian’s Response.<sup>2358</sup>

### **Enforcement Counsel’s Statement of Material Fact (Julian and McLinko) No. 364**

On June 3, 2015, Respondent Julian received an EthicsLine complaint in which a team member reported that they witnessed a California Branch Manager take a customer to another team member “and pushed the customer to open teen checking accounts for his/her children when the children were not present to sign anything. The team member said the accounts were opened anyway.”<sup>2359</sup>

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<sup>2354</sup> Julian’s ECSFM at No. 362.

<sup>2355</sup> McLinko’s ECSFM at No. 362.

<sup>2356</sup> MSD-463.

<sup>2357</sup> Julian’s ECSFM at No. 363.

<sup>2358</sup> McLinko’s ECSFM at No. 363.

<sup>2359</sup> MSD-464.

## **Responses:**

**Julian** did not dispute that he received the cited complaint, but averred there is no evidence that he opened or reviewed the email and attachment.<sup>2360</sup>

Whether Respondent Julian reviewed this specific complaint is not a material fact, such that disputing the same will not create a controverted material fact that would prevent granting Enforcement Counsel's summary disposition motion. The Recommended Decision will not, however, include the claim presented in (Julian and McLinko) No. 364 as to Respondents Julian or McLinko, in the absence of evidence warranting such inclusion as may be presented during the hearing.

**McLinko** incorporated Respondent Julian's Response.<sup>2361</sup>

## **Respondent McLinko received extensive information regarding sales practices misconduct at the Bank**

### **Enforcement Counsel's Statement of Material Fact (Julian and McLinko) No. 365**

On July 6, 2010, Respondent McLinko received notification from the Head of Corporate Investigations regarding an investigation of Bank employees in Michigan that was expected to result in at least 17 terminations. The Significant Investigation Notification ("SIN") described allegations including ordering debit cards without customer consent, closing and opening accounts on the same day with same ownership and account type, opening multiple "pack" accounts for the same customer. The SIN stated that the substantiated allegations occurred at 11 branch locations.<sup>2362</sup>

## **Responses:**

**Julian** incorporated Respondent McLinko's Response.<sup>2363</sup>

**McLinko** objected to the Statement on the ground that the supporting exhibit was irrelevant.<sup>2364</sup> Finding an insufficient nexus between the averments presented in the Statement and the material facts in issue, the objection is sustained. Accordingly, the claims presented in (Julian and

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<sup>2360</sup> Julian's ECSFM at No. 364.

<sup>2361</sup> McLinko's ECSFM at No. 364.

<sup>2362</sup> MSD-314.

<sup>2363</sup> Julian's ECSFM at No. 365.

<sup>2364</sup> See Respondent Paul McLinko's Brief in Opposition to Enforcement Counsel's Motion for Summary Disposition Against Respondents David Julian and Paul McLinko at 1, incorporating the objections by Respondent Julian in Respondent Julian's Objections to Enforcement Counsel's Motion for Summary Disposition Exhibits.

McLinko) No. 365 will not support Enforcement Counsel's Motion. The exclusion of the claims appearing in the Statement does not, however, create a factual basis that would prevent granting Enforcement Counsel's Motion.

### **Enforcement Counsel's Statement of Material Fact (Julian and McLinko) No. 366**

During an October 6, 2010 meeting, Respondent McLinko was informed that there was a rise in East Coast sales quality cases.<sup>2365</sup>

#### **Responses:**

**Julian** incorporated Respondent McLinko's Response.<sup>2366</sup>

**McLinko** objected to the Statement on the ground that the supporting exhibit was irrelevant.<sup>2367</sup> Finding an insufficient nexus between the averments presented in the Statement and the material facts in issue, the objection is sustained. Accordingly, the claims presented in (Julian and McLinko) No. 366 will not support Enforcement Counsel's Motion. The exclusion of the claims appearing in the Statement does not, however, create a factual basis that would prevent granting Enforcement Counsel's Motion.

### **Enforcement Counsel's Statement of Material Fact (Julian and McLinko) No. 367**

On January 14, 2011, Head of Corporate Investigations Michael Bacon informed Respondent McLinko that two Community Bank employees had been arrested for identity theft. He wrote, "Community Bank sales integrity issue has resulted in two arrests. This is highly unusual, but reinforces the fact that this type of activity is unlawful and certainly poses a significant reputation risk to our company. [Respondent McLinko], you and I can discuss in more detail, but wanted everyone to have a heads up on this."<sup>2368</sup>

#### **Responses:**

**Julian** incorporated Respondent McLinko's Response.<sup>2369</sup>

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<sup>2365</sup> MSD-315.

<sup>2366</sup> Julian's ECSFM at No. 366.

<sup>2367</sup> See Respondent Paul McLinko's Brief in Opposition to Enforcement Counsel's Motion for Summary Disposition Against Respondents David Julian and Paul McLinko at 1, incorporating the objections by Respondent Julian in Respondent Julian's Objections to Enforcement Counsel's Motion for Summary Disposition Exhibits.

<sup>2368</sup> MSD-316; McLinko Amended Answer ¶ 452.

<sup>2369</sup> Julian's ECSFM at No. 367.

**McLinko** objected to the Statement on the ground that the supporting exhibit was irrelevant.<sup>2370</sup> Finding an insufficient nexus between the averments presented in the Statement and the material facts in issue, the objection is sustained. Accordingly, the claims presented in (Julian and McLinko) No. 367 will not support Enforcement Counsel’s Motion. The exclusion of the claims appearing in the Statement does not, however, create a factual basis that would prevent granting Enforcement Counsel’s Motion.

### **Enforcement Counsel’s Statement of Material Fact (Julian and McLinko) No. 368**

On March 4, 2011, the Head of Corporate Investigations notified Respondent McLinko of a “significant sales integrity case” in which team members located in legacy Wells Fargo branches issued debit cards to legacy Wachovia customers in other states without their knowledge or consent.<sup>2371</sup> The email to Respondent McLinko added that it was a “very disappointing situation that reflects very poorly on Wells Fargo” and highlighted that between January and February 2011, 6,450 cards were opened by Bank employees located in other states than the customers. The highest concentration of this activity occurred in the Los Angeles area, where 2,574 cards were opened for customers located in Alabama, Delaware, Georgia, Mississippi, New Jersey, and Tennessee. The out of state sales in the Los Angeles area comprised 18.91% of total sales in the Los Angeles market. 37 employees had opened 20 or more out of state cards and 18 bankers had opened over 70 cards. Respondent McLinko forwarded the email to his direct reports, writing “FYI.”<sup>2372</sup>

### **Responses:**

**Julian** incorporated Respondent McLinko’s Response.<sup>2373</sup>

**McLinko** objected to the Statement on the ground that the supporting exhibit was irrelevant.<sup>2374</sup> Finding an insufficient nexus between the averments presented in the Statement and the material facts in issue, the objection is sustained. Accordingly, the claims presented in (Julian and McLinko) No. 368 will not support Enforcement Counsel’s Motion. The exclusion of the claims appearing in the Statement does not, however, create a factual basis that would prevent granting

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<sup>2370</sup> See Respondent Paul McLinko’s Brief in Opposition to Enforcement Counsel’s Motion for Summary Disposition Against Respondents David Julian and Paul McLinko at 1, incorporating the objections by Respondent Julian in Respondent Julian’s Objections to Enforcement Counsel’s Motion for Summary Disposition Exhibits.

<sup>2371</sup> MSD-317.

<sup>2372</sup> MSD-317.

<sup>2373</sup> Julian’s ECSFM at No. 368.

<sup>2374</sup> See Respondent Paul McLinko’s Brief in Opposition to Enforcement Counsel’s Motion for Summary Disposition Against Respondents David Julian and Paul McLinko at 1, incorporating the objections by Respondent Julian in Respondent Julian’s Objections to Enforcement Counsel’s Motion for Summary Disposition Exhibits.

Enforcement Counsel's Motion.

**Enforcement Counsel's Statement of Material Fact (Julian and McLinko) No. 369**

On March 15, 2011, the Head of Corporate Investigations notified Respondent McLinko that a significant sales integrity case in Northern California had resulted in 12 terminations.<sup>2375</sup>

**Responses:**

**Julian** incorporated Respondent McLinko's Response.<sup>2376</sup>

**McLinko** objected to the Statement on the ground that the supporting exhibit was irrelevant.<sup>2377</sup> Finding an insufficient nexus between the averments presented in the Statement and the material facts in issue, the objection is sustained. Accordingly, the claims presented in (Julian and McLinko) No. 369 will not support Enforcement Counsel's Motion. The exclusion of the claims appearing in the Statement does not, however, create a factual basis that would prevent granting Enforcement Counsel's Motion.

**Enforcement Counsel's Statement of Material Fact (Julian and McLinko) No. 370**

On March 23, 2011, the Head of Corporate Investigations informed Respondent McLinko that "13 Community Bank team members were terminated yesterday as a result of our investigation into team members ordering unsolicited debit cards to out of state customers, primarily Alabama." He further stated: This case also has resulted in enhanced monitoring by Sales Quality, since in retrospect this item should have been detected prior to the customer complaints."<sup>2378</sup>

**Responses:**

**Julian** incorporated Respondent McLinko's Response.<sup>2379</sup>

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<sup>2375</sup> MSD-318.

<sup>2376</sup> Julian's ECSFM at No. 369.

<sup>2377</sup> See Respondent Paul McLinko's Brief in Opposition to Enforcement Counsel's Motion for Summary Disposition Against Respondents David Julian and Paul McLinko at 1, incorporating the objections by Respondent Julian in Respondent Julian's Objections to Enforcement Counsel's Motion for Summary Disposition Exhibits.

<sup>2378</sup> MSD-424.

<sup>2379</sup> Julian's ECSFM at No. 370.



**McLinko** objected to the Statement on the ground that the supporting exhibit was irrelevant.<sup>2380</sup> Finding an insufficient nexus between the averments presented in the Statement and the material facts in issue, the objection is sustained. Accordingly, the claims presented in (Julian and McLinko) No. 370 will not support Enforcement Counsel’s Motion. The exclusion of the claims appearing in the Statement does not, however, create a factual basis that would prevent granting Enforcement Counsel’s Motion.

### **Enforcement Counsel’s Statement of Material Fact (Julian and McLinko) No. 371**

On March 31, 2011, the Head of Corporate Investigations updated Respondent McLinko on the investigation related to out-of-state debit cards, informing him that 26 employees had been terminated, with eight more pending termination.<sup>2381</sup>

#### **Responses:**

**Julian** incorporated Respondent McLinko’s Response.<sup>2382</sup>

**McLinko** objected to the Statement on the ground that the supporting exhibit was irrelevant.<sup>2383</sup> Finding an insufficient nexus between the averments presented in the Statement and the material facts in issue, the objection is sustained. Accordingly, the claims presented in (Julian and McLinko) No. 371 will not support Enforcement Counsel’s Motion. The exclusion of the claims appearing in the Statement does not, however, create a factual basis that would prevent granting Enforcement Counsel’s Motion.

### **Enforcement Counsel’s Statement of Material Fact (Julian and McLinko) No. 372**

On July 15, 2011, Head of Corporate Investigations Michael Bacon informed Respondent McLinko that “sales integrity cases continue to surge.”<sup>2384</sup>

#### **Responses:**

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<sup>2380</sup> See Respondent Paul McLinko’s Brief in Opposition to Enforcement Counsel’s Motion for Summary Disposition Against Respondents David Julian and Paul McLinko at 1, incorporating the objections by Respondent Julian in Respondent Julian’s Objections to Enforcement Counsel’s Motion for Summary Disposition Exhibits.

<sup>2381</sup> MSD-319.

<sup>2382</sup> Julian’s ECSFM at No. 371.

<sup>2383</sup> See Respondent Paul McLinko’s Brief in Opposition to Enforcement Counsel’s Motion for Summary Disposition Against Respondents David Julian and Paul McLinko at 1, incorporating the objections by Respondent Julian in Respondent Julian’s Objections to Enforcement Counsel’s Motion for Summary Disposition Exhibits.

<sup>2384</sup> McLinko Amended Answer ¶ 454; MSD-320.

**Julian** incorporated Respondent McLinko's Response.<sup>2385</sup>

**McLinko** objected to the Statement on the ground that the supporting exhibit was irrelevant.<sup>2386</sup> Finding an insufficient nexus between the averments presented in the Statement and the material facts in issue, the objection is sustained. Accordingly, the claims presented in (Julian and McLinko) No. 372 will not support Enforcement Counsel's Motion. The exclusion of the claims appearing in the Statement does not, however, create a factual basis that would prevent granting Enforcement Counsel's Motion.

### **Enforcement Counsel's Statement of Material Fact (Julian and McLinko) No. 373**

On November 29, 2011, Head of Corporate Investigations Michael Bacon forwarded an email he had sent to Respondent Russ Anderson, with a comment to Respondent McLinko noting that "everyone continues to avoid any negativity - no matter the topic. I just wanted to go on record - again." The portion of Mr. Bacon's email to Respondent Russ Anderson stated, "my only concern within Community Bank continues to be with Sales Integrity cases and their continued increase."<sup>2387</sup>

#### **Responses:**

**Julian** incorporated Respondent McLinko's Response.<sup>2388</sup>

**McLinko** objected to the Statement on the ground that the supporting exhibit was irrelevant.<sup>2389</sup> Finding an insufficient nexus between the averments presented in the Statement and the material facts in issue, the objection is sustained. Accordingly, the claims presented in (Julian and McLinko) No. 373 will not support Enforcement Counsel's Motion. The exclusion of the claims appearing in the Statement does not, however, create a factual basis that would prevent granting Enforcement Counsel's Motion.

### **Enforcement Counsel's Statement of Material Fact (Julian and McLinko) No. 374**

On July 20, 2012, Head of Corporate Investigations Michael Bacon forwarded an email chain

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<sup>2385</sup> Julian's ECSFM at No. 372.

<sup>2386</sup> See Respondent Paul McLinko's Brief in Opposition to Enforcement Counsel's Motion for Summary Disposition Against Respondents David Julian and Paul McLinko at 1, incorporating the objections by Respondent Julian in Respondent Julian's Objections to Enforcement Counsel's Motion for Summary Disposition Exhibits.

<sup>2387</sup> MSD-322.

<sup>2388</sup> Julian's ECSFM at No. 373.

<sup>2389</sup> See Respondent Paul McLinko's Brief in Opposition to Enforcement Counsel's Motion for Summary Disposition Against Respondents David Julian and Paul McLinko at 1, incorporating the objections by Respondent Julian in Respondent Julian's Objections to Enforcement Counsel's Motion for Summary Disposition Exhibits.

to Respondent McLinko informing him that the attached email chain was a “classic case” of Respondent Russ Anderson “minimizing the negative information being submitted to executive management.” Mr. Bacon stated that Respondent Russ Anderson “often challenges the Audit and [Corporate Security] [Audit and Examination Committee of the Board] reporting verbiage.”<sup>2390</sup>

**Responses:**

**Julian** incorporated Respondent McLinko’s Response.<sup>2391</sup>

**McLinko** objected to the Statement on the ground that the supporting exhibit was irrelevant.<sup>2392</sup> Finding an insufficient nexus between the averments presented in the Statement and the material facts in issue, the objection is sustained. Accordingly, the claims presented in (Julian and McLinko) No. 374 will not support Enforcement Counsel’s Motion. The exclusion of the claims appearing in the Statement does not, however, create a factual basis that would prevent granting Enforcement Counsel’s Motion.

**Enforcement Counsel’s Statement of Material Fact (Julian and McLinko) No. 375**

Head of Corporate Investigations Michael Bacon also reported in the email that his “data continues to highlight a concerning trend in the area of Sales Integrity – from the increase in EthicsLine reports, to the increase in executive complaint letters/OCC referrals, and increases in confirmed fraud, thus, we need to escalate this issue with senior leadership . . . our data continues to point to a very negative trend.” The email chain itself began with Mr. Bacon providing Respondent Russ Anderson with a summary report of SAR filing trends that stated: “Although internal cases involving sales integrity matters decreased . . . related SAR filings increased. Specifically, SAR filings involving fictitious sales referrals increased 49%, customer consent concerns increased 29%, and false entry of customer identification information increased 24%.” Respondent Russ Anderson replied that the context needed rethinking as “it sounds much worse than it really is...” Mr. Bacon replied to Respondent Russ Anderson, reminding her that “we have had a spike in egregious Sales Integrity matters, which added to the upward trend.”<sup>2393</sup>

**Responses:**

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<sup>2390</sup> Julian Amended Answer ¶¶ 402, 455; McLinko Amended Answer ¶¶ 402, 455; MSD-25.

<sup>2391</sup> Julian’s ECSFM at No. 374.

<sup>2392</sup> See Respondent Paul McLinko’s Brief in Opposition to Enforcement Counsel’s Motion for Summary Disposition Against Respondents David Julian and Paul McLinko at 1, incorporating the objections by Respondent Julian in Respondent Julian’s Objections to Enforcement Counsel’s Motion for Summary Disposition Exhibits.

<sup>2393</sup> Julian Amended Answer ¶ 402; MSD-25.

**Julian** incorporated Respondent McLinko's Response.<sup>2394</sup>

**McLinko** objected to the Statement on the ground that the supporting exhibit was irrelevant.<sup>2395</sup> Finding an insufficient nexus between the averments presented in the Statement and the material facts in issue, the objection is sustained. Accordingly, the claims presented in (Julian and McLinko) No. 375 will not support Enforcement Counsel's Motion. The exclusion of the claims appearing in the Statement does not, however, create a factual basis that would prevent granting Enforcement Counsel's Motion.

### **Enforcement Counsel's Statement of Material Fact (Julian and McLinko) No. 376**

On July 30, 2012, Respondent McLinko received a PowerPoint presentation from Head of Corporate Investigations Michael Bacon for an Audit Management Committee meeting. The presentation deck listed general trends, including:

- (a) "Pressure on company to save [money] and to perform is at all time high - this can easily lead to [team member] misconduct (pressure combined with less controls);"
- (b) "Audits involving a [team member] related process (TM loans, accts, HR items, etc.) - if business process could identify [team member] conduct, then detection efforts should be coordinated with Corporate Investigations/ Business process should not just be 'call EthicsLine';"
- (c) "WFF Consent Order Update - New Team Member Misconduct Executive Committee, Implementation of formal [line of business] Internal Fraud Committees (IFC) - Internal TM Misconduct & Fraud is a Team Sport - Audit has a primary seat at the prevention table" (emphasis in original). (MSD-311 at 4).
- (d) The Audit Management Committee presentation also included the "Academic Fraud Triangle" which shows that three elements must be present for fraud to occur: Opportunity (an associated bullet asks whether the line of business's controls are allowing too much opportunity), Pressure (the associated bullet asks whether the line business is creating an environment whereby the employee must commit fraud), and Rationalization (the associated bullet states that too much opportunity or too much pressure can sway most anyone.)<sup>2396</sup>

### **Responses:**

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<sup>2394</sup> Julian's ECSFM at No. 375.

<sup>2395</sup> See Respondent Paul McLinko's Brief in Opposition to Enforcement Counsel's Motion for Summary Disposition Against Respondents David Julian and Paul McLinko at 1, incorporating the objections by Respondent Julian in Respondent Julian's Objections to Enforcement Counsel's Motion for Summary Disposition Exhibits.

<sup>2396</sup> MSD- 311 at 5.

**Julian** incorporated Respondent McLinko's Response.<sup>2397</sup>

**McLinko** objected to the Statement on the ground that the supporting exhibit was irrelevant.<sup>2398</sup> Finding an insufficient nexus between the averments presented in the Statement and the material facts in issue, the objection is sustained. Accordingly, the claims presented in (Julian and McLinko) No. 376 will not support Enforcement Counsel's Motion. The exclusion of the claims appearing in the Statement does not, however, create a factual basis that would prevent granting Enforcement Counsel's Motion.

### **Enforcement Counsel's Statement of Material Fact (Julian and McLinko) No. 377**

On November 26, 2012, Respondent McLinko asked his direct report Bart Deese to "provide your definitional distinction between Sales Quality, Sales Integrity and Product Suitability?" Mr. Deese responded on November 27, 2012, explaining that he had heard sales quality and sales integrity used interchangeably across the Community Bank and he thought of them together. For example, when a banker records "inappropriate sales (e.g. adding debit cards to customers without consent, creating bogus accounts, etc.)" and the team under Respondent Russ Anderson that monitors this inappropriate behavior is the "Sales Quality" team. When they provide updates, they're called "sales quality" updates. Mr. Deese further explained that he believed suitability was whether the banker sold "the customer the best product given their account relationships, specific situation, etc.? Did they try to push the customer in one direction when the customer really wanted something else? ... [sales quality] and Suitability to me are tied at the hip in many cases because bankers can be tempted to provide unsuitable or inappropriate products to a customer to gain more incentive. Not to belabor the point but using debit cards as an example. A customer has 2 checking accounts, the [banker] signs them up for a debit card. It's usually a product associated with checking accounts so it would probably pass most suitability tests; however, if the customer didn't ask for it and complained, it would be a sales quality issue."<sup>2399</sup>

### **Responses:**

**Julian** incorporated Respondent McLinko's Response.<sup>2400</sup>

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<sup>2397</sup> Julian's ECSFM at No. 376.

<sup>2398</sup> See Respondent Paul McLinko's Brief in Opposition to Enforcement Counsel's Motion for Summary Disposition Against Respondents David Julian and Paul McLinko at 1, incorporating the objections by Respondent Julian in Respondent Julian's Objections to Enforcement Counsel's Motion for Summary Disposition Exhibits.

<sup>2399</sup> MSD-479.

<sup>2400</sup> Julian's ECSFM at No. 377.

**McLinko** objected to the Statement on the ground that the supporting exhibit was irrelevant.<sup>2401</sup> Finding an insufficient nexus between the averments presented in the Statement and the material facts in issue, the objection is sustained. Accordingly, the claims presented in (Julian and McLinko) No. 377 will not support Enforcement Counsel’s Motion. The exclusion of the claims appearing in the Statement does not, however, create a factual basis that would prevent granting Enforcement Counsel’s Motion.

### **Enforcement Counsel’s Statement of Material Fact (Julian and McLinko) No. 378**

In an email to Respondent McLinko on January 3, 2013, Respondent McLinko's direct report Bart Deese summarized a January 2013 meeting with the Head of Corporate Investigations and stated “Sales Integrity is still his #1 concern. During mid-year 2012 the case numbers leveled out, but they saw an uptick in the last half of 2012.” Respondent McLinko's direct report further reported that he “questioned [the Head of Corporate Investigations] as to whether they had discussed root cause for some of the items listed above and was it related to sales pressure. He said he felt a lot of it was related to the sales goals and pressure. He feels there’s an issue that RB is trying to work through, but not a lot of people want to address it with Carrie.”<sup>2402</sup>

#### **Responses:**

**Julian** incorporated Respondent McLinko’s Response.<sup>2403</sup>

**McLinko** objected to the Statement on the ground that the supporting exhibit was irrelevant.<sup>2404</sup> Finding an insufficient nexus between the averments presented in the Statement and the material facts in issue, the objection is sustained. Accordingly, the claims presented in (Julian and McLinko) No. 378 will not support Enforcement Counsel’s Motion. The exclusion of the claims appearing in the Statement does not, however, create a factual basis that would prevent granting Enforcement Counsel’s Motion.

### **Enforcement Counsel’s Statement of Material Fact (Julian and McLinko) No. 379**

As a member of the Bank’s Internal Fraud Risk Management Committee, Respondent

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<sup>2401</sup> See Respondent Paul McLinko’s Brief in Opposition to Enforcement Counsel’s Motion for Summary Disposition Against Respondents David Julian and Paul McLinko at 1, incorporating the objections by Respondent Julian in Respondent Julian’s Objections to Enforcement Counsel’s Motion for Summary Disposition Exhibits.

<sup>2402</sup> McLinko Amended Answer ¶ 456; MSD-323.

<sup>2403</sup> Julian’s ECSFM at No. 378.

<sup>2404</sup> See Respondent Paul McLinko’s Brief in Opposition to Enforcement Counsel’s Motion for Summary Disposition Against Respondents David Julian and Paul McLinko at 1, incorporating the objections by Respondent Julian in Respondent Julian’s Objections to Enforcement Counsel’s Motion for Summary Disposition Exhibits.

McLinko received reporting on sales integrity violations, including trends.<sup>2405</sup> For example, a report provided to Respondent McLinko on February 20, 2013 showed that customer consent was the largest category of Sales Integrity Violations cases, and the total number of Sales Integrity Violations cases increased from 2,609 in 2011 to 2,699 in 2012.<sup>2406</sup> The report also informed her that the number of terminations and resignations association with Sales Integrity Violations increased from 935 in 2011 to 1,152 in 2012, with customer consent being the largest category associated with such terminations and resignations. The report also showed 86 resignations for sales integrity violations in 2011 and 100 in 2012 (i.e. 1,252 total terminations and resignations for sales integrity violations in 2012).<sup>2407</sup>

### **Responses:**

**Julian** incorporated Respondent McLinko's Response.<sup>2408</sup>

**McLinko** objected to the Statement on the ground that the supporting exhibit was irrelevant.<sup>2409</sup> Finding an insufficient nexus between the averments presented in the Statement and the material facts in issue, the objection is sustained. Accordingly, the claims presented in (Julian and McLinko) No. 379 will not support Enforcement Counsel's Motion. The exclusion of the claims appearing in the Statement does not, however, create a factual basis that would prevent granting Enforcement Counsel's Motion.

### **Enforcement Counsel's Statement of Material Fact (Julian and McLinko) No. 380**

On March 11, 2013, Respondent McLinko received a "Corporate Investigations 2012 Year End Key Activity Overview/ General Update" presentation for the Head of Corporate Investigations' presentation to the Audit Management Committee. The presentation showed sales integrity violations as the number two case type for both 2011 and 2012, with 2,992 and 3,108 respectively. The Community Bank comprised of the vast majority of cases: 10,616 cases in Community Bank versus 1,267 in the other lines of business in 2011 and 11,597 cases in Community Bank versus 1,586 in the other lines of business in 2012. The presentation also reported the number of EthicsLine reports referred to Regional Banking Sales Quality (i.e. EthicsLine complaints related to sales practices) as 3,068 in 2011 and 3,899 in 2012, up 27%

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<sup>2405</sup> MSD- 218.

<sup>2406</sup> MSD- 218 at 7.

<sup>2407</sup> MSD- 218 at 11.

<sup>2408</sup> Julian's ECSFM at No. 379.

<sup>2409</sup> See Respondent Paul McLinko's Brief in Opposition to Enforcement Counsel's Motion for Summary Disposition Against Respondents David Julian and Paul McLinko at 1, incorporating the objections by Respondent Julian in Respondent Julian's Objections to Enforcement Counsel's Motion for Summary Disposition Exhibits.

and comprising 48% of the 8,354 EthicsLine complaints in 2012.<sup>2410</sup>

**Responses:**

**Julian** incorporated Respondent McLinko's Response.<sup>2411</sup>

**McLinko** objected to the Statement on the ground that the supporting exhibit was irrelevant.<sup>2412</sup> Finding an insufficient nexus between the averments presented in the Statement and the material facts in issue, the objection is sustained. Accordingly, the claims presented in (Julian and McLinko) No. 380 will not support Enforcement Counsel's Motion. The exclusion of the claims appearing in the Statement does not, however, create a factual basis that would prevent granting Enforcement Counsel's Motion.

**Enforcement Counsel's Statement of Material Fact (Julian and McLinko) No. 381**

On March 12, 2013, Respondent McLinko attended the International Institute of Auditors Mid-Atlantic District Conference. Respondent McLinko introduced Head of Corporate Investigations Michael Bacon to give a presentation at the IIA Conference on "The Complexities of Internal Fraud."<sup>2413</sup>

**Responses:**

**Julian** incorporated Respondent McLinko's Response.<sup>2414</sup>

**McLinko** objected to the Statement on the ground that the supporting exhibit was irrelevant.<sup>2415</sup> Finding an insufficient nexus between the averments presented in the Statement and the material facts in issue, the objection is sustained. Accordingly, the claims presented in (Julian and McLinko) No. 381 will not support Enforcement Counsel's Motion. The exclusion of the claims appearing in the Statement does not, however, create a factual basis that would prevent granting Enforcement Counsel's Motion.

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<sup>2410</sup> MSD-324 at 5.

<sup>2411</sup> Julian's ECSFM at No. 380.

<sup>2412</sup> See Respondent Paul McLinko's Brief in Opposition to Enforcement Counsel's Motion for Summary Disposition Against Respondents David Julian and Paul McLinko at 1, incorporating the objections by Respondent Julian in Respondent Julian's Objections to Enforcement Counsel's Motion for Summary Disposition Exhibits.

<sup>2413</sup> MSD-325; MSD-327.

<sup>2414</sup> Julian's ECSFM at No. 381.

<sup>2415</sup> See Respondent Paul McLinko's Brief in Opposition to Enforcement Counsel's Motion for Summary Disposition Against Respondents David Julian and Paul McLinko at 1, incorporating the objections by Respondent Julian in Respondent Julian's Objections to Enforcement Counsel's Motion for Summary Disposition Exhibits.



**Enforcement Counsel’s Statement of Material Fact (Julian and McLinko) No. 382 – see (Julian and McLinko No. 312)**

**Enforcement Counsel’s Statement of Material Fact (Julian and McLinko) No. 383 – see (Julian and McLinko No. 313)**

**Enforcement Counsel’s Statement of Material Fact (Julian and McLinko) No. 384 – see (Julian and McLinko No. 314)**

**Enforcement Counsel’s Statement of Material Fact (Julian and McLinko) No. 385 – see (Julian and McLinko No. 315)**

**Enforcement Counsel’s Statement of Material Fact (Julian and McLinko) No. 386 – see (Julian and McLinko No. 316)**

**Enforcement Counsel’s Statement of Material Fact (Julian and McLinko) No. 387 – see (Julian and McLinko No. 317)**

**Enforcement Counsel’s Statement of Material Fact (Julian and McLinko) No. 388 – see (Julian and McLinko No. 318)**

**Enforcement Counsel’s Statement of Material Fact (Julian and McLinko) No. 389**

On May 9, 2013, Head of Corporate Investigations Michael Bacon forwarded Respondent McLinko a whistleblower complaint that had been sent to former CEO Stumpf, Carrie Tolstedt and Respondent Russ Anderson, complaining about the “huge amount of unethical practices” and “threats of being placed on corrective action.” The complaint described opening accounts without customers being present and falsifying customer information to open accounts. Mr. Bacon wrote to Respondent McLinko: “classic given our discussion.”<sup>2416</sup>

**Responses:**

**Julian** incorporated Respondent McLinko’s Response.<sup>2417</sup>

**McLinko** objected to the Statement on the ground that the supporting exhibit was irrelevant.<sup>2418</sup> Finding an insufficient nexus between the averments presented in the Statement and the material facts in issue, the objection is sustained. Accordingly, the claims presented in (Julian and McLinko) No. 389 will not support Enforcement Counsel’s Motion. The exclusion of the claims appearing in the Statement does not, however, create a factual basis that would prevent granting Enforcement Counsel’s Motion.

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<sup>2416</sup> MSD-41.

<sup>2417</sup> Julian’s ECSFM at No. 389.

<sup>2418</sup> See Respondent Paul McLinko’s Brief in Opposition to Enforcement Counsel’s Motion for Summary Disposition Against Respondents David Julian and Paul McLinko at 1, incorporating the objections by Respondent Julian in Respondent Julian’s Objections to Enforcement Counsel’s Motion for Summary Disposition Exhibits.

### **Enforcement Counsel’s Statement of Material Fact (Julian and McLinko) No. 390**

On July 23, 2013, Respondent McLinko received an invitation for an August 13, 2013 Community Banking Internal Fraud Committee Mid-year Meeting from the Head of Corporate Investigations.<sup>2419</sup> The presentation material showed there to be 774 sales integrity violations cases in 2Q12, 848 in 3Q12, 740 in 4Q12, 798 in 1Q13, and 822 in 2Q13 and 376 terminations/resignations for sales integrity violations in 2Q12, 371 in 3Q12, 360 in 4Q12, 326 in 1Q13, and 371 in 2Q13.<sup>2420</sup>

#### **Responses:**

**Julian** incorporated Respondent McLinko’s Response.<sup>2421</sup>

**McLinko** objected to the Statement on the ground that the supporting exhibit was irrelevant.<sup>2422</sup> Finding an insufficient nexus between the averments presented in the Statement and the material facts in issue, the objection is sustained. Accordingly, the claims presented in (Julian and McLinko) No. 390 will not support Enforcement Counsel’s Motion. The exclusion of the claims appearing in the Statement does not, however, create a factual basis that would prevent granting Enforcement Counsel’s Motion.

### **Enforcement Counsel’s Statement of Material Fact (Julian and McLinko) No. 391**

On August 20, 2013, a Senior Investigations Manager Marty Weber provided Respondent McLinko and others with a sales integrity and EthicsLine update, stating: “I assume you will take appropriate action as you deem necessary.”<sup>2423</sup> The attached materials showed there to be 1,885 sales integrity violations YTD in 2013 and 1,712 YTD in 2012, that customer consent was the biggest sales integrity violations sub-type, and that there were sales integrity violations cases in every region.<sup>2424</sup> The reporting further showed that Corporate Investigations opened 1,339 sales integrity violations cases from EthicsLine complaints in

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<sup>2419</sup> MSD-328 at 1.

<sup>2420</sup> MSD-328 at 11, 20.

<sup>2421</sup> Julian’s ECSFM at No. 390.

<sup>2422</sup> See Respondent Paul McLinko’s Brief in Opposition to Enforcement Counsel’s Motion for Summary Disposition Against Respondents David Julian and Paul McLinko at 1, incorporating the objections by Respondent Julian in Respondent Julian’s Objections to Enforcement Counsel’s Motion for Summary Disposition Exhibits.

<sup>2423</sup> MSD-250 at 1.

<sup>2424</sup> MSD-250 at 2-50.

2010, 1,236 in 2011, 1,091 in 2012, and 576 through mid-year 2013.<sup>2425</sup>

**Responses:**

**Julian** incorporated Respondent McLinko's Response.<sup>2426</sup>

**McLinko** objected to the Statement on the ground that the supporting exhibit was irrelevant.<sup>2427</sup> Finding an insufficient nexus between the averments presented in the Statement and the material facts in issue, the objection is sustained. Accordingly, the claims presented in (Julian and McLinko) No. 391 will not support Enforcement Counsel's Motion. The exclusion of the claims appearing in the Statement does not, however, create a factual basis that would prevent granting Enforcement Counsel's Motion.

**Enforcement Counsel's Statement of Material Fact (Julian and McLinko) No. 392**

On September 12, 2013, Respondent McLinko received an invitation to attend a "West Coast – Semi Annual Audit/Security/Sales Quality Update," along with the meeting attachments.<sup>2428</sup> The attached Sales Quality Regional Update reflected 4,087 salesquality allegations in 42.31% of stores across the Regional Bank in 2012. For January – June 2013, the Regional Bank reflected 3,739 sales quality allegations in 40.66% of stores.<sup>2429</sup> The attached Corporate Security Update also reflected 412 sales integrity violations in 2012 and 436 sales integrity violations through 2Q 2013 in the West Coast region. The largest category of sales integrity violations for both years were customer consent.<sup>2430</sup>

**Responses:**

**Julian** incorporated Respondent McLinko's Response.<sup>2431</sup>

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<sup>2425</sup> MSD-250 at 58.

<sup>2426</sup> Julian's ECSFM at No. 391.

<sup>2427</sup> See Respondent Paul McLinko's Brief in Opposition to Enforcement Counsel's Motion for Summary Disposition Against Respondents David Julian and Paul McLinko at 1, incorporating the objections by Respondent Julian in Respondent Julian's Objections to Enforcement Counsel's Motion for Summary Disposition Exhibits.

<sup>2428</sup> MSD-330 at 1.

<sup>2429</sup> MSD-330 at 19.

<sup>2430</sup> MSD-330 at 3.

<sup>2431</sup> Julian's ECSFM at No. 392.

**McLinko** objected to the Statement on the ground that the supporting exhibit was irrelevant.<sup>2432</sup> Finding an insufficient nexus between the averments presented in the Statement and the material facts in issue, the objection is sustained. Accordingly, the claims presented in (Julian and McLinko) No. 392 will not support Enforcement Counsel’s Motion. The exclusion of the claims appearing in the Statement does not, however, create a factual basis that would prevent granting Enforcement Counsel’s Motion.

### **Enforcement Counsel’s Statement of Material Fact (Julian and McLinko) No. 393**

On October 4, 2013, Respondent McLinko was forwarded the October 3, 2013 *Los Angeles Times* Article, “Wells Fargo Fires Workers Accused of Cheating on Sales Goals,” from the Head of Corporate Investigations. The Head of Corporate Investigations wrote that the article was a "big deal and very interesting."<sup>2433</sup>

#### **Responses:**

**Julian** incorporated Respondent McLinko’s Response.<sup>2434</sup>

**McLinko** did not dispute receiving the cited email but disputes the cited text is an accurate or complete statement of the article.<sup>2435</sup> I find an insufficient factual basis has been presented to establish a dispute in this Response to create a controverted material fact. Accordingly, the Recommended Decision will include a factual finding as to Respondents Julian and McLinko that on October 4, 2013, Respondent McLinko was forwarded the October 3, 2013 *Los Angeles Times* Article, “Wells Fargo Fires Workers Accused of Cheating on Sales Goals,” from the Head of Corporate Investigations. The Head of Corporate Investigations wrote that the article was a "big deal and very interesting."

### **Enforcement Counsel’s Statement of Material Fact (Julian and McLinko) No. 394**

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 salesgoals.” The article also stated that one of the fired employees said “in some cases

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<sup>2432</sup> See Respondent Paul McLinko’s Brief in Opposition to Enforcement Counsel’s Motion for Summary Disposition Against Respondents David Julian and Paul McLinko at 1, incorporating the objections by Respondent Julian in Respondent Julian’s Objections to Enforcement Counsel’s Motion for Summary Disposition Exhibits.

<sup>2433</sup> McLinko Amended Answer ¶¶ 55, 102, 404, 457; MSD-331.

<sup>2434</sup> Julian’s ECSFM at No. 393.

<sup>2435</sup> McLinko’s ECSFM at No. 393.

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.”<sup>2436</sup>

**Responses:**

**Julian** incorporated Respondent McLinko’s Response.<sup>2437</sup>

**McLinko** did not dispute the claims in this Statement.<sup>2438</sup> Accordingly, the Recommended Decision will include a factual finding as to Respondents Julian and McLinko that 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.”

**Enforcement Counsel’s Statement of Material Fact (Julian and McLinko) No. 395**

On October 14, 2013, Respondent McLinko received a link to an online petition to Wells Fargo to “End the Obsession with Sales Goals” from a WFAS colleague.<sup>2439</sup> Comments left by current and former employees on the online petition detailed undue pressure to meet unreasonable sales goals, and unethical sales practices, including sales practices misconduct.<sup>2440</sup>

**Responses:**

**Julian** incorporated Respondent McLinko’s Response.<sup>2441</sup>

**McLinko** disputed the claim but presented no controverting evidence, other than to assert there is no evidence he ever saw the cited contents.<sup>2442</sup> Whether Respondent McLinko received and reviewed the cited contents is not a material fact, such that disputing the same will not create a controverted material fact that would prevent granting Enforcement

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<sup>2436</sup> MSD-331.

<sup>2437</sup> Julian’s ECSFM at No. 394.

<sup>2438</sup> McLinko’s ECSFM at No. 394.

<sup>2439</sup> MSD-332.

<sup>2440</sup> MSD-140.

<sup>2441</sup> Julian’s ECSFM at No. 395.

<sup>2442</sup> McLinko’s ECSFM at No. 395.

Counsel's summary disposition motion. The Recommended Decision will not, however, include the claim presented in (Julian and McLinko) No. 395 as to Respondents Julian or McLinko, in the absence of evidence warranting such inclusion as may be presented during the hearing.

### **Enforcement Counsel's Statement of Material Fact (Julian and McLinko) No. 396**

On November 1, 2013, Bart Deese (a direct report of Respondent McLinko) forwarded Respondent McLinko a Significant Investigation Notification he received from Corporate Investigations about the investigation that gave rise to the October 2013 *Los Angeles Times* article. The notification stated that: 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."<sup>2443</sup>

#### **Responses:**

**Julian** incorporated Respondent McLinko's Response.<sup>2444</sup>

**McLinko** did not dispute the claim.<sup>2445</sup> Accordingly, the Recommended Decision will include a factual finding as to Respondents Julian and McLinko that on November 1, 2013, Bart Deese (a direct report of Respondent McLinko) forwarded Respondent McLinko a Significant Investigation Notification he received from Corporate Investigations about the investigation that gave rise to the October 2013 *Los Angeles Times* article. The notification stated that: 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."

### **Enforcement Counsel's Statement of Material Fact (Julian and McLinko) No. 397**

After the *Los Angeles Times* published its second article about the Bank's sales practices,

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<sup>2443</sup> MSD-333 at 3.

<sup>2444</sup> Julian's ECSFM at No. 396.

<sup>2445</sup> McLinko's ECSFM at No. 396.

*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 (LA Times), but it poses reputation risk to the firm."<sup>2446</sup>

**Responses:**

**Julian** incorporated Respondent McLinko's Response.<sup>2447</sup>

**McLinko** did not dispute that the article contained the quoted language.<sup>2448</sup> Accordingly, the Recommended Decision will include a factual finding as to Respondents Julian and McLinko that 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 (LA Times), but it poses reputation risk to the firm."

**Enforcement Counsel's Statement of Material Fact (Julian and McLinko) No. 398**

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.<sup>2449</sup>

**Responses:**

**Julian** incorporated Respondent McLinko's Response.<sup>2450</sup>

**McLinko** did not dispute that the article contained the quoted language.<sup>2451</sup> Accordingly, the Recommended Decision will include a factual finding as to Respondents Julian and McLinko that 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

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<sup>2446</sup> MSD-531.

<sup>2447</sup> Julian's ECSFM at No. 397.

<sup>2448</sup> McLinko's ECSFM at No. 397.

<sup>2449</sup> McLinko Amended Answer ¶ 101; MSD-111 at 1-2. Respondent McLinko was aware of the article; McLinko Amended Answer ¶ 55, 102.

<sup>2450</sup> Julian's ECSFM at No. 398.

<sup>2451</sup> McLinko's ECSFM at No. 398.

meet their sales goals.

### **Enforcement Counsel’s Statement of Material Fact (Julian and McLinko) No. 399**

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.<sup>2452</sup>

### **Responses:**

**Julian** incorporated Respondent McLinko’s Response.<sup>2453</sup>

**McLinko** did not dispute that the article contained the quoted language.<sup>2454</sup> Accordingly, the Recommended Decision will include a factual finding as to Respondents Julian and McLinko that 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.

### **Enforcement Counsel’s Statement of Material Fact (Julian and McLinko) No. 400**

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).<sup>2455</sup>

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<sup>2452</sup> MSD-335 at 4.

<sup>2453</sup> Julian’s ECSFM at No. 399.

<sup>2454</sup> McLinko’s ECSFM at No. 399.

<sup>2455</sup> MSD-336 at 7, 28.



**Responses:**

**Julian** incorporated Respondent McLinko's Response.<sup>2456</sup>

**McLinko** responded that the claim was disputed, but did not dispute the claim and instead disputed that the cited language is "an accurate and complete statement of the cited document".<sup>2457</sup> I find an insufficient factual basis has been presented to establish a dispute in this Response to create a controverted material fact. Accordingly, the Recommended Decision will include a factual finding as to Respondents Julian and McLinko that 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).

**Enforcement Counsel's Statement of Material Fact (Julian and McLinko) No. 401**

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.<sup>2458</sup>

**Responses:**

**Julian** incorporated Respondent McLinko's Response.<sup>2459</sup>

**McLinko** did not dispute that the Statement contains a presentation deck that included the stated information.<sup>2460</sup> Accordingly, the Recommended Decision will include a factual finding as to Respondents Julian and McLinko that 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

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<sup>2456</sup> Julian's ECSFM at No. 400.

<sup>2457</sup> McLinko's ECSFM at No. 400.

<sup>2458</sup> MSD-614 at 6, 30.

<sup>2459</sup> Julian's ECSFM at No. 401.

<sup>2460</sup> McLinko's ECSFM at No. 401.

4Q13, 381 in 1Q14, and 393 in 2Q14.

### **Enforcement Counsel’s Statement of Material Fact (Julian and McLinko) No. 402**

Enforcement Counsel’s Statement of Material Fact (Julian and McLinko) No. 402 relies on exhibits presented to this Tribunal as being non-public. Pursuant to the OCC’s Uniform Rules, while the proceedings in this administrative enforcement action are expressly required to be public, when presented with non-public documents the Administrative Law Judge is required to take all appropriate steps to preserve the confidentiality of such documents.<sup>2461</sup> Upon my review of the confidential documents supporting this Statement of Material Fact, and after weighing the expectation that all of the proceedings shall be public against the requirement that I protect against the disclosure of non-public information, I find the evidentiary value of these exhibits to be sufficiently marginal and duplicative as to warrant exclusion from this Order. Accordingly, this Order will not be based on any of the claims found in this Statement of Material Fact.

### **Enforcement Counsel’s Statement of Material Fact (Julian and McLinko) No. 403**

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.<sup>2462</sup> For example, 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.”<sup>2463</sup> The presentation also noted that WFAS attended “Semi-annual Regional President meetings,” in which “RB – Sales Quality and Corporate Investigations attend and share information.”<sup>2464</sup>

### **Responses:**

**Julian** incorporated Respondent McLinko’s Response.<sup>2465</sup>

**McLinko** did not dispute that the Statement contains the quoted language.<sup>2466</sup> Accordingly,

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<sup>2461</sup> See 12 C.F.R. § 19.33(b).

<sup>2462</sup> MSD-476 at 6.

<sup>2463</sup> MSD-476 at 6.

<sup>2464</sup> MSD-476 at 6.

<sup>2465</sup> Julian’s ECSFM at No. 403.

<sup>2466</sup> McLinko’s ECSFM at No. 403.

the Recommended Decision will include a factual finding as to Respondents Julian and McLinko that 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.<sup>2467</sup> For example, 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.”<sup>2468</sup> The presentation also noted that WFAS attended “Semi-annual Regional President meetings,” in which “RB – Sales Quality and Corporate Investigations attend and share information.”

#### **Enforcement Counsel’s Statement of Material Fact (Julian and McLinko) No. 404**

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.”<sup>2469</sup>

#### **Responses:**

**Julian** did not dispute the email contained the language presented in the Statement.<sup>2470</sup>

**McLinko** did not dispute that the document cited in the Statement contains the quoted language.<sup>2471</sup> Accordingly, the Recommended Decision will include a factual finding as to Respondents Julian and McLinko that 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.”

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<sup>2467</sup> MSD-476 at 6.

<sup>2468</sup> MSD-476 at 6.

<sup>2469</sup> 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).

<sup>2470</sup> Julian’s ECSFM at No. 404.

<sup>2471</sup> McLinko’s ECSFM at No. 404.

### **Enforcement Counsel’s Statement of Material Fact (Julian and McLinko) No. 405**

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.<sup>2472</sup>

#### **Responses:**

**Julian** incorporated Respondent McLinko’s Response.<sup>2473</sup>

**McLinko** incorporated by reference his responses to Statement of Facts Nos. 265-418, and avers the claim contains data that is difficult to understand.<sup>2474</sup> I find an insufficient factual basis has been presented to establish a dispute in this Response to create a controverted material fact. Accordingly, the Recommended Decision will include a factual finding as to Respondents Julian and McLinko that 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.

### **Enforcement Counsel’s Statement of Material Fact (Julian and McLinko) No. 406**

The below paragraphs list some of the information Respondent McLinko’s direct reports received.

#### **Responses:**

**Julian** incorporated Respondent McLinko’s Response.<sup>2475</sup> **McLinko** disputed the claim because there is no evidence cited as support.<sup>2476</sup> Inasmuch as the Statement contains no claim other than to refer to the subsequent paragraphs, I find an insufficient factual basis has been presented to establish a dispute in this Response to create a controverted material fact.

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<sup>2472</sup> SOF ¶¶ 265-418.

<sup>2473</sup> Julian’s ECSFM at No. 405.

<sup>2474</sup> McLinko’s ECSFM at No. 405.

<sup>2475</sup> Julian’s ECSFM at No. 406.

<sup>2476</sup> McLinko’s ECSFM at No. 406.

### **Enforcement Counsel’s Statement of Material Fact (Julian and McLinko) No. 407**

At a July 6, 2010 Regional President meeting (Southwest region) attended by Bart Deese, Corporate Investigations reported that “sales integrity cases continue to increase.”<sup>2477</sup>

#### **Responses:**

**Julian** incorporated Respondent McLinko’s Response.<sup>2478</sup>

**McLinko** did not dispute that the document cited in the Statement contains the quoted language.<sup>2479</sup> Accordingly, the Recommended Decision will include a factual finding as to Respondents Julian and McLinko that at a July 6, 2010 Regional President meeting (Southwest region) attended by Bart Deese, Corporate Investigations reported that “sales integrity cases continue to increase.”

### **Enforcement Counsel’s Statement of Material Fact (Julian and McLinko) No. 408**

At a July 7, 2010 Regional President meeting (Carolinas region) attended by Bart Deese, Corporate Investigations reported that “due to a more aggressive sales culture, sales integrity is going to be a challenge.”<sup>2480</sup>

#### **Responses:**

**Julian** incorporated Respondent McLinko’s Response.<sup>2481</sup>

**McLinko** did not dispute that the document cited in the Statement contains the quoted language.<sup>2482</sup> Accordingly, the Recommended Decision will include a factual finding as to Respondents Julian and McLinko that at a July 7, 2010 Regional President meeting (Carolinas region) attended by Bart Deese, Corporate Investigations reported that “due to a more aggressive sales culture, sales integrity is going to be a challenge.”

### **Enforcement Counsel’s Statement of Material Fact (Julian and McLinko) No. 409**

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<sup>2477</sup> MSD- 615.

<sup>2478</sup> Julian’s ECSFM at No. 407.

<sup>2479</sup> McLinko’s ECSFM at No. 407.

<sup>2480</sup> MSD-616.

<sup>2481</sup> Julian’s ECSFM at No. 408.

<sup>2482</sup> McLinko’s ECSFM at No. 408.

At a July 8, 2010 Regional President meeting (Great Lakes region) attended by Bart Deese, Corporate Investigations reported that “[s]ales integrity cases continue to be a challenge.”<sup>2483</sup>

**Responses:**

**Julian** incorporated Respondent McLinko’s Response.<sup>2484</sup>

**McLinko** objected to the Statement on the ground that the supporting exhibit was irrelevant.<sup>2485</sup> Finding an insufficient nexus between the averments presented in the Statement and the material facts in issue, the objection is sustained. Accordingly, the claims presented in (Julian and McLinko) No. 409 will not support Enforcement Counsel’s Motion. The exclusion of the claims appearing in the Statement does not, however, create a factual basis that would prevent granting Enforcement Counsel’s Motion.

**Enforcement Counsel’s Statement of Material Fact (Julian and McLinko) No. 410**

At a December 10, 2010 Regional President meeting (Mid-Atlantic region) attended by Bart Deese, Corporate Investigations reported that “[s]ales integrity cases are up 280%.”<sup>2486</sup>

**Responses:**

**Julian** incorporated Respondent McLinko’s Response.<sup>2487</sup>

**McLinko** objected to the Statement on the ground that the supporting exhibit was irrelevant.<sup>2488</sup> Finding an insufficient nexus between the averments presented in the Statement and the material facts in issue, the objection is sustained. Accordingly, the claims presented in (Julian and McLinko) No. 410 will not support Enforcement Counsel’s Motion. The exclusion of the claims appearing in the Statement does not, however, create a factual basis that would prevent granting Enforcement Counsel’s Motion.

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<sup>2483</sup> MSD-627.

<sup>2484</sup> Julian’s ECSFM at No. 409.

<sup>2485</sup> See Respondent Paul McLinko’s Brief in Opposition to Enforcement Counsel’s Motion for Summary Disposition Against Respondents David Julian and Paul McLinko at 1, incorporating the objections by Respondent Julian in Respondent Julian’s Objections to Enforcement Counsel’s Motion for Summary Disposition Exhibits.

<sup>2486</sup> MSD-624.

<sup>2487</sup> Julian’s ECSFM at No. 410.

<sup>2488</sup> See Respondent Paul McLinko’s Brief in Opposition to Enforcement Counsel’s Motion for Summary Disposition Against Respondents David Julian and Paul McLinko at 1, incorporating the objections by Respondent Julian in Respondent Julian’s Objections to Enforcement Counsel’s Motion for Summary Disposition Exhibits.

### **Enforcement Counsel’s Statement of Material Fact (Julian and McLinko) No. 411**

At a December 13, 2010 Regional President meeting (Mountain West region) attended by Bart Deese, Corporate Investigations reported that “[s]ales integrity cases in Denver are up 51%” and the Regional President stated he was “concerned with the number of unauthorized debit cards and the result number of team member terminations.”<sup>2489</sup>

#### **Responses:**

**Julian** incorporated Respondent McLinko’s Response.<sup>2490</sup>

**McLinko** objected to the Statement on the ground that the supporting exhibit was irrelevant.<sup>2491</sup> Finding an insufficient nexus between the averments presented in the Statement and the material facts in issue, the objection is sustained. Accordingly, the claims presented in (Julian and McLinko) No. 411 will not support Enforcement Counsel’s Motion. The exclusion of the claims appearing in the Statement does not, however, create a factual basis that would prevent granting Enforcement Counsel’s Motion.

### **Enforcement Counsel’s Statement of Material Fact (Julian and McLinko) No. 412**

At a December 16, 2010 Regional President meeting (Southeast region) attended by Bart Deese, Corporate Investigations reported on “the increase in . . . sales integrity cases primarily due to . . . selling of unwanted debit cards and opening of unnecessary accounts.”<sup>2492</sup>

#### **Responses:**

**Julian** incorporated Respondent McLinko’s Response.<sup>2493</sup>

**McLinko** objected to the Statement on the ground that the supporting exhibit was irrelevant.<sup>2494</sup> Finding an insufficient nexus between the averments presented in the Statement and the material facts in issue, the objection is sustained. Accordingly, the claims presented in (Julian and McLinko) No. 412 will not support Enforcement Counsel’s Motion. The exclusion of the claims

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<sup>2489</sup> MSD-625.

<sup>2490</sup> Julian’s ECSFM at No. 411.

<sup>2491</sup> See Respondent Paul McLinko’s Brief in Opposition to Enforcement Counsel’s Motion for Summary Disposition Against Respondents David Julian and Paul McLinko at 1, incorporating the objections by Respondent Julian in Respondent Julian’s Objections to Enforcement Counsel’s Motion for Summary Disposition Exhibits.

<sup>2492</sup> MSD-626.

<sup>2493</sup> Julian’s ECSFM at No. 412.

<sup>2494</sup> See Respondent Paul McLinko’s Brief in Opposition to Enforcement Counsel’s Motion for Summary Disposition Against Respondents David Julian and Paul McLinko at 1, incorporating the objections by Respondent Julian in Respondent Julian’s Objections to Enforcement Counsel’s Motion for Summary Disposition Exhibits.

appearing in the Statement does not, however, create a factual basis that would prevent granting Enforcement Counsel's Motion.

### **Enforcement Counsel's Statement of Material Fact (Julian and McLinko) No. 413**

At February 8 and 9, 2011 meetings with Corporate Investigations prior to a Community Bank audit attended by Bart Deese, Corporate Investigations reported:

- (a) "2,607 sales integrity cases for 2010," of which "Customer Consent" was the number one issue with "1000+ cases."
- (b) For Customer Consent cases, there are "No geographical 'hot spots.'"
- (c) "Many employees say it's undue pressure vs. monetary gain."
- (d) "70% of cases" come from "Ethics Line Calls" (i.e. the detective controls are reactive in nature).<sup>2495</sup>

### **Responses:**

**Julian** incorporated Respondent McLinko's Response.<sup>2496</sup>

**McLinko** objected to the Statement on the ground that the supporting exhibit was irrelevant.<sup>2497</sup> Finding an insufficient nexus between the averments presented in the Statement and the material facts in issue, the objection is sustained. Accordingly, the claims presented in (Julian and McLinko) No. 413 will not support Enforcement Counsel's Motion. The exclusion of the claims appearing in the Statement does not, however, create a factual basis that would prevent granting Enforcement Counsel's Motion.

### **Enforcement Counsel's Statement of Material Fact (Julian and McLinko) No. 414**

In a July 15, 2011 email from Head of Corporate Investigations Michael Bacon, Mr. Bacon informed Bart Deese and others that the OCC "noted the trend in the increase of related complaints over the last several months received by the OCC and our overall increases in Sales

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<sup>2495</sup> MSD-627; MSD-628; MSD-638 (Deese Dep. Tr.) at 243:2-16 (testifying that Corporate Investigations told him that the reason employees opened accounts without consent was "due to pressure versus actually due to incentive [compensation] gain.").

<sup>2496</sup> Julian's ECSFM at No. 413.

<sup>2497</sup> See Respondent Paul McLinko's Brief in Opposition to Enforcement Counsel's Motion for Summary Disposition Against Respondents David Julian and Paul McLinko at 1, incorporating the objections by Respondent Julian in Respondent Julian's Objections to Enforcement Counsel's Motion for Summary Disposition Exhibits.



Integrity cases and related EthicsLine reports.”<sup>2498</sup>

**Responses:**

**Julian** incorporated Respondent McLinko’s Response.<sup>2499</sup>

**McLinko** objected to the Statement on the ground that the supporting exhibit was irrelevant.<sup>2500</sup> Finding an insufficient nexus between the averments presented in the Statement and the material facts in issue, the objection is sustained. Accordingly, the claims presented in (Julian and McLinko) No. 414 will not support Enforcement Counsel’s Motion. The exclusion of the claims appearing in the Statement does not, however, create a factual basis that would prevent granting Enforcement Counsel’s Motion.

**Enforcement Counsel’s Statement of Material Fact (Julian and McLinko) No. 415**

In a November 29, 2011 email from Head of Corporate Investigations Michael Bacon, Mr. Bacon forwarded to the former Chief Auditor and Erica Ocana (a direct report of Respondent McLinko) an email to Respondent Russ Anderson, which stated:

My only concern within Community Bank continues to be with Sales Integrity cases and their continued increase. As previously noted, everyone expected a slight increase in cases once SQ began doing customer polling, but I can only speak for my team, we did not expect the increase we have been experiencing. This is especially true of the west and specifically in some mature markets within CA. . . . During the call, Carrie was fairly adamant about being cautious in regards to our language, but I don’t feel comfortable not pointing out to you, that we have either in fact ‘detected’ more misconduct that wasn’t previously detected or managed appropriately or we simply have an increase.

The Head of Corporate Investigations noted in his email to WFAS that “everyone [in Community Bank] continues to avoid any negativity – no matter the topic. I just wanted to go on record – again.”<sup>2501</sup>

This email followed a November 14, 2011 email from Mr. Bacon to Ms. Ocana, in which he expressed that Respondent Russ Anderson’s edits to Corporate Security’s update to the Audit and Examination Committee, which included changing “misconduct” to “behaviors,” were

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<sup>2498</sup> MSD-320.

<sup>2499</sup> Julian’s ECSFM at No. 414.

<sup>2500</sup> See Respondent Paul McLinko’s Brief in Opposition to Enforcement Counsel’s Motion for Summary Disposition Against Respondents David Julian and Paul McLinko at 1, incorporating the objections by Respondent Julian in Respondent Julian’s Objections to Enforcement Counsel’s Motion for Summary Disposition Exhibits.

<sup>2501</sup> MSD-322.

“very frustrating”.<sup>2502</sup>

**Responses:**

**Julian** incorporated Respondent McLinko’s Response.<sup>2503</sup>

**McLinko** objected to the Statement on the ground that the supporting exhibit was irrelevant.<sup>2504</sup> Finding an insufficient nexus between the averments presented in the Statement and the material facts in issue, the objection is sustained. Accordingly, the claims presented in (Julian and McLinko) No. 415 will not support Enforcement Counsel’s Motion. The exclusion of the claims appearing in the Statement does not, however, create a factual basis that would prevent granting Enforcement Counsel’s Motion.

**Enforcement Counsel’s Statement of Material Fact (Julian and McLinko) No. 416**

In connection with a December 12, 2011 Regional President meeting (Southwest region) attended by Bart Deese and Erica Ocana with Corporate Investigations and Sales Quality, WFAS received a Sales Quality presentation for the Southwest showing:

- (a) “Overall 23% increase in ‘total allegations’ YTD 2011. (662 in 2011 vs. 537 in 2010)”;
- (b) 56% percent of stores had sales integrity allegations;
- (c) 51% of sales integrity allegations related to Consent;
- (d) 61% of sales integrity allegations related to Checking/Savings accounts;

and

- (e) “The most common drivers of allegations are issues related to customer consent & account opening procedural issues (ex: closing existing to open new account).”<sup>2505</sup>

**Responses:**

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<sup>2502</sup> MSD-12A; see also MSD-12 (explaining to Respondent Russ Anderson that “sales integrity matters are not necessarily [Wachovia] integration related. We are up in the West as well. [A]lthough our cases related to the [EthicsLine] are down those sent to Sales Quality are up – but we made no mention of this. We simply provide the percentage up.”)

<sup>2503</sup> Julian’s ECSFM at No. 415.

<sup>2504</sup> See Respondent Paul McLinko’s Brief in Opposition to Enforcement Counsel’s Motion for Summary Disposition Against Respondents David Julian and Paul McLinko at 1, incorporating the objections by Respondent Julian in Respondent Julian’s Objections to Enforcement Counsel’s Motion for Summary Disposition Exhibits.

<sup>2505</sup> MSD-621 at 10, 11.

**Julian** incorporated Respondent McLinko's Response.<sup>2506</sup>

**McLinko** objected to the Statement on the ground that the supporting exhibit was irrelevant.<sup>2507</sup> Finding an insufficient nexus between the averments presented in the Statement and the material facts in issue, the objection is sustained. Accordingly, the claims presented in (Julian and McLinko) No. 416 will not support Enforcement Counsel's Motion. The exclusion of the claims appearing in the Statement does not, however, create a factual basis that would prevent granting Enforcement Counsel's Motion.

#### **Enforcement Counsel's Statement of Material Fact (Julian and McLinko) No. 417**

In connection with a January 12, 2012 Regional President meeting (West Coast region) attended by Bart Deese and Erica Ocana with Corporate Investigations and Sales Quality, WFAS received a Sales Quality presentation for the West Coast showing:

- (a) "Overall increase in 'total allegations' YTD 2011 as follows: 1,693 in 2011 vs. 1,563 in 2010";
- (b) 70% percent of stores had sales integrity allegations;
- (c) 55% of sales integrity allegations related to Consent;
- (d) 65% of sales integrity allegations related to Checking/Savings accounts, 21% related to Debit Cards/ExpressSend (remittance product); and
- (e) "The most common drivers of allegations are issues related to customer consent & account opening procedural issues (ex: closing existing to open new account)."<sup>2508</sup>

#### **Responses:**

**Julian** incorporated Respondent McLinko's Response.<sup>2509</sup>

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<sup>2506</sup> Julian's ECSFM at No. 416.

<sup>2507</sup> See Respondent Paul McLinko's Brief in Opposition to Enforcement Counsel's Motion for Summary Disposition Against Respondents David Julian and Paul McLinko at 1, incorporating the objections by Respondent Julian in Respondent Julian's Objections to Enforcement Counsel's Motion for Summary Disposition Exhibits.

<sup>2508</sup> MSD-617 at 2, 3.

<sup>2509</sup> Julian's ECSFM at No. 417.

**McLinko** objected to the Statement on the ground that the supporting exhibit was irrelevant.<sup>2510</sup> Finding an insufficient nexus between the averments presented in the Statement and the material facts in issue, the objection is sustained. Accordingly, the claims presented in (Julian and McLinko) No. 417 will not support Enforcement Counsel’s Motion. The exclusion of the claims appearing in the Statement does not, however, create a factual basis that would prevent granting Enforcement Counsel’s Motion.

### **Enforcement Counsel’s Statement of Material Fact (Julian and McLinko) No. 418**

At an August 21, 2013 Kick-Off Meeting for WFAS’s audit of Sales Quality / Integrity in the Community Bank, Bart Deese received a presentation that:

- (a) Defines Sales Integrity as a “Subset of sales quality issues which typically involve the manipulation and/or misrepresentation of sales or referrals in order to receive compensation or to meet sales goals; including potential unethical and/or illegal behavior.”<sup>2511</sup>
- (b) Shows that sales integrity allegations rose from 177 in 2003 to 7,543 in 2012.<sup>2512</sup>

### **Responses:**

**Julian** incorporated Respondent McLinko’s Response.<sup>2513</sup>

**McLinko** objected to the Statement on the ground that the supporting exhibit was irrelevant.<sup>2514</sup> Finding an insufficient nexus between the averments presented in the Statement and the material facts in issue, the objection is sustained. Accordingly, the claims presented in (Julian and McLinko) No. 418 will not support Enforcement Counsel’s Motion. The exclusion of the claims appearing in the Statement does not, however, create a factual basis that would prevent granting Enforcement Counsel’s Motion.

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<sup>2510</sup> See Respondent Paul McLinko’s Brief in Opposition to Enforcement Counsel’s Motion for Summary Disposition Against Respondents David Julian and Paul McLinko at 1, incorporating the objections by Respondent Julian in Respondent Julian’s Objections to Enforcement Counsel’s Motion for Summary Disposition Exhibits.

<sup>2511</sup> MSD-622 at 4.

<sup>2512</sup> MSD-622 at 5.

<sup>2513</sup> Julian’s ECSFM at No. 418.

<sup>2514</sup> See Respondent Paul McLinko’s Brief in Opposition to Enforcement Counsel’s Motion for Summary Disposition Against Respondents David Julian and Paul McLinko at 1, incorporating the objections by Respondent Julian in Respondent Julian’s Objections to Enforcement Counsel’s Motion for Summary Disposition Exhibits.

**Respondent Julian and Respondent McLinko failed to identify and escalate the systemic sales practices misconduct problem and the significant sales practices risk management and internal controls weaknesses; and Respondent Julian’s and Audit’s reporting to the Board on sales practices was misleading**

**Enforcement Counsel’s Statement of Material Fact (Julian and McLinko) No. 419**

Respondents Julian and McLinko failed to identify the systemic sales practices misconduct problem and the significant sales practices risk management and internal controls weaknesses in any audit report or Enterprise Risk Management Assessment.<sup>2515</sup>

**Responses:**

**Julian** disputed the Statement, averring the meaning of the term “audit report” and “Enterprise Risk Management Assessment is disputed, and identified what he asserted were numerous occasions through which WFAS raised issues around controls related to sales practices.<sup>2516</sup>

It is a material fact in issue whether Respondents Julian and McLinko failed to identify the systemic sales practices misconduct problem and the significant sales practices risk management and internal controls weaknesses in any audit report or Enterprise Risk Management Assessment. I find that in his response to (Julian and McLinko) No. 419, Julian has sufficiently demonstrated that a factual controversy exists regarding whether Julian or McLinko (or both) ailed to identify the systemic sales practices misconduct problem and the significant sales practices risk management and internal controls weaknesses in any audit report or Enterprise Risk Management Assessment. Pursuant to the OCC’s Uniform Rules, the merits of the claims raised in (Julian and McLinko) No. 419, will be addressed during the hearing set to begin on September 13, 2021.

**McLinko** incorporated Respondent Julian’s Response.<sup>2517</sup>

**Enforcement Counsel’s Statement of Material Fact (Julian and McLinko) No. 420**

Respondent Julian admitted in his Amended Answer that, “As to the allegation in the first sentence that ‘[u]nder Respondent Julian’s leadership, Audit never . . . identified [the sales practices misconduct problem’s] root cause in any audit report,’ admitted that Audit did not discuss the root cause of sales practices misconduct in audit reports, which reports were

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<sup>2515</sup> See SOF ¶¶ 419- 522; MSD-638 (Deese Dep. Tr.) 245:22-251:17.

<sup>2516</sup> Julian’s ECSFM at No. 419.

<sup>2517</sup> McLinko’s ECSFM at No. 419.

focused on the testing and assessment of specific controls.”<sup>2518</sup>

**Responses:**

**Julian** did not dispute that his Amended Answer contains the quoted language.<sup>2519</sup> Accordingly, the Recommended Decision will include a factual finding as to Respondent Julian that he stated in his Amended Answer: “As to the allegation in the first sentence that ‘[u]nder Respondent Julian’s leadership, Audit never . . . identified [the sales practices misconduct problem’s] root cause in any audit report,’ admitted that Audit did not discuss the root cause of sales practices misconduct in audit reports, which reports were focused on the testing and assessment of specific controls.”

**McLinko** incorporated Respondent Julian’s Response.<sup>2520</sup>

**Enforcement Counsel’s Statement of Material Fact (Julian and McLinko) No. 421**

Respondent Paul McLinko admitted in his Amended Answer that “his 15-Day Letter response states, in part, that: ‘Mr. McLinko did not identify the depth and breadth of the systemic sales practices misconduct that ultimately were revealed in the Board Report.’ Respondent further admits that the Community Bank audit team did not identify in any audit reports what the Notice of Charges alleges is the root cause of the alleged systemic sales practices misconduct problem.”<sup>2521</sup>

**Responses:**

**Julian** incorporated Respondent McLinko’s Response.<sup>2522</sup>

**McLinko** did not dispute that Enforcement Counsel accurately quoted the cited section of his Amended Answer.<sup>2523</sup> Accordingly, the Recommended Decision will include a factual finding as to Respondents Julian and McLinko that Respondent Paul McLinko admitted in his Amended Answer that “his 15-Day Letter response states, in part, that: ‘Mr. McLinko did not identify the depth and breadth of the systemic sales practices misconduct that ultimately were revealed in the Board Report.’ Respondent further admits that the Community Bank audit team did not identify in any audit reports what the Notice of Charges alleges is the root cause of the alleged systemic

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<sup>2518</sup> Julian Amended Answer ¶ 411.

<sup>2519</sup> Julian’s ECSFM at No. 420.

<sup>2520</sup> McLinko’s ECSFM at No. 420...

<sup>2521</sup> McLinko Amended Answer ¶ 411.

<sup>2522</sup> Julian’s ECSFM at No. 421.

<sup>2523</sup> McLinko’s ECSFM at No. 421.

sales practices misconduct problem.”

#### **Enforcement Counsel’s Statement of Material Fact (Julian and McLinko) No. 422**

On February 5, 2015, the Bank provided OCC examiners with a presentation prepared by Respondent McLinko and his direct report Bart Deese on “WFAS Community Sales Coverage.” The presentation identified audits that had been completed since 2013 or were expected to be completed in 2015.<sup>2524</sup>

#### **Responses:**

**Julian** incorporated Respondent McLinko’s Response.<sup>2525</sup>

**McLinko** did not dispute the claim.<sup>2526</sup> Accordingly, the Recommended Decision will include a factual finding as to Respondents Julian and McLinko that on February 5, 2015, the Bank provided OCC examiners with a presentation prepared by Respondent McLinko and his direct report Bart Deese on “WFAS Community Sales Coverage.” The presentation identified audits that had been completed since 2013 or were expected to be completed in 2015.

#### **Enforcement Counsel’s Statement of Material Fact (Julian and McLinko) No. 423**

On May 27, 2015, Respondents Julian provided OCC examiners with a list detailing WFAS Community Bank Sales Coverage, which identified audits that had been completed since 2013 or were expected to be completed in 2015.<sup>2527</sup>

#### **Responses:**

**Julian** did not dispute that he provided the OCC examiners with the list described in the Statement, but averred the cited evidence “details only part of WFAS’s coverage of sales practices in the Community Bank from 2013 through 2015.”<sup>2528</sup> I find an insufficient factual basis has been presented to establish a dispute in this Response to create a controverted material fact. Accordingly, the Recommended Decision will include a factual finding as to Respondents Julian and McLinko that on May 27, 2015, he provided OCC examiners with a list detailing

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<sup>2524</sup> MSD-630.

<sup>2525</sup> Julian’s ECSFM at No. 422.

<sup>2526</sup> McLinko’s ECSFM at No. 422.

<sup>2527</sup> MSD-416.

<sup>2528</sup> Julian’s ECSFM at No. 423.

WFAS Community Bank Sales Coverage, which identified audits that had been completed since 2013 or were expected to be completed in 2015.

**McLinko** incorporated Respondent Julian's Response.<sup>2529</sup>

#### **Enforcement Counsel's Statement of Material Fact (Julian and McLinko) No. 424**

Respondent McLinko identified the following audit as covering sales practices in 2012: RB [Regional Bank] – Human Resources.<sup>2530</sup>

#### **Responses:**

**Julian** incorporated Respondent McLinko's Response.<sup>2531</sup>

**McLinko** objected to the Statement on the ground that the supporting exhibit was irrelevant.<sup>2532</sup> Finding an insufficient nexus between the averments presented in the Statement and the material facts in issue, the objection is sustained. Accordingly, the claims presented in (Julian and McLinko) No. 424 will not support Enforcement Counsel's Motion. The exclusion of the claims appearing in the Statement does not, however, create a factual basis that would prevent granting Enforcement Counsel's Motion.

#### **Enforcement Counsel's Statement of Material Fact (Julian and McLinko) No. 425**

Respondents Julian and McLinko identified the following audits as covering sales practices in 2013: RB Sales Quality,<sup>2533</sup> Wells Fargo Customer Connection Incentive Compensation,<sup>2534</sup> Business Banking Group Sales, Service, Product Suitability & Marketing,<sup>2535</sup> and, Community Bank Household Metrics Reporting.<sup>2536</sup>

#### **Responses:**

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<sup>2529</sup> McLinko's ECSFM at No. 423.

<sup>2530</sup> MSD-631.

<sup>2531</sup> Julian's ECSFM at No. 424.

<sup>2532</sup> See Respondent Paul McLinko's Brief in Opposition to Enforcement Counsel's Motion for Summary Disposition Against Respondents David Julian and Paul McLinko at 1, incorporating the objections by Respondent Julian in Respondent Julian's Objections to Enforcement Counsel's Motion for Summary Disposition Exhibits.

<sup>2533</sup> MSD-376.

<sup>2534</sup> MSD-512.

<sup>2535</sup> MSD-518.

<sup>2536</sup> MSD-375.



**Julian**<sup>2537</sup> and **McLinko**<sup>2538</sup> objected to the Statement on the ground that the supporting exhibit was irrelevant. Finding an insufficient nexus between the averments presented in the Statement and the material facts in issue, the objection is sustained. Accordingly, the claims presented in (Julian and McLinko) No. 425 will not support Enforcement Counsel’s Motion. The exclusion of the claims appearing in the Statement does not, however, create a factual basis that would prevent granting Enforcement Counsel’s Motion.

### **Enforcement Counsel’s Statement of Material Fact (Julian and McLinko) No. 426**

Respondents Julian and McLinko identified the following audits as covering sales practices in 2014: Wells Fargo Customer Connection Account Opening & Fulfillment;<sup>2539</sup> Digital Channels Group Online Sales & Marketing;<sup>2540</sup> Regional Bank SOCR;<sup>2541</sup> Enterprise Incentive Compensation;<sup>2542</sup> and Business Banking Group Accounting & Finance.<sup>2543</sup>

#### **Responses:**

**Julian** did not dispute that he and Respondent McLinko identified the referenced audits, but averred those audits “did not represent the totality” of WFAS’s coverage of sales practices in 2014.<sup>2544</sup> I find an insufficient factual basis has been presented to establish a dispute in this Response to create a controverted material fact. Accordingly, the Recommended Decision will include a factual finding as to Respondent Julian that he and Respondent McLinko identified the following audits as covering sales practices in 2014: Wells Fargo Customer Connection Account Opening & Fulfillment; Digital Channels Group Online Sales & Marketing; Regional Bank SOCR; Enterprise Incentive Compensation; and Business Banking Group Accounting & Finance.

**McLinko** did not dispute that he and Respondent Julian identified the referenced audits,

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<sup>2537</sup> See Respondent Julian at Respondent Julian’s Objections to Enforcement Counsel’s Motion for Summary Disposition Exhibits.

<sup>2538</sup> See Respondent Paul McLinko’s Brief in Opposition to Enforcement Counsel’s Motion for Summary Disposition Against Respondents David Julian and Paul McLinko at 1, incorporating the objections by Respondent Julian in Respondent Julian’s Objections to Enforcement Counsel’s Motion for Summary Disposition Exhibits.

<sup>2539</sup> MSD- 513.

<sup>2540</sup> MSD-514.

<sup>2541</sup> MSD-520.

<sup>2542</sup> MSD-515.

<sup>2543</sup> MSD-516.

<sup>2544</sup> Julian’s ECSFM at No. 426.

but incorporated Respondent Julian’s response and disputed the claim because none of the cited documents “identifies Mr. Julian or Mr. McLinko as having performed the audits” referred to in the Statement.<sup>2545</sup>

#### **Enforcement Counsel’s Statement of Material Fact (Julian and McLinko) No. 427**

Respondents Julian and McLinko identified the following audit as covering sales practices in 2015: RB Account Opening & Closing.<sup>2546</sup>

**Julian** did not dispute that he and Respondent McLinko identified the referenced audit, but averred the audit did not “represent the totality” of WFAS’s coverage of sales practices in 2014.<sup>2547</sup> I find an insufficient factual basis has been presented to establish a dispute in this Response to create a controverted material fact. Accordingly, the Recommended Decision will include a factual finding as to Respondent Julian that he and Respondent McLinko identified the following audits as covering sales practices in 2015: RB Account Opening & Closing.

**McLinko** did not dispute that he and Respondent Julian identified the referenced audit, but incorporated Mr. Julian’s response and disputed the claim because it did not identify him “as an author, or auditor who performed the work described.”<sup>2548</sup> I find an insufficient factual basis has been presented to establish a dispute in this Response to create a controverted material fact. Accordingly, the Recommended Decision will include a factual finding as to Respondent McLinko that Respondents Julian and McLinko identified the following audit as covering sales practices in 2015: RB Account Opening & Closing.

#### **Enforcement Counsel’s Statement of Material Fact (Julian and McLinko) No. 428**

WFAS rated all but one of the audits Respondents Julian and McLinko identified as relating to sales practices issues in the Community Bank as “Effective” or “Satisfactory.”<sup>2549</sup>

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<sup>2545</sup> McLinko’s ECSFM at No. 426

<sup>2546</sup> MSD-385.

<sup>2547</sup> Julian’s ECSFM at No. 427.

<sup>2548</sup> McLinko’s ECSFM at No. 427.

<sup>2549</sup> Julian Amended Answer ¶ 413 (“Admitted that, between 2012 and 2016, some controls related to sales practices were audited and received ratings of ‘effective’ between 2012 and 2016.”); McLinko Amended Answer ¶ 463 (“Respondent Paul McLinko admits that Audit periodically issued audit reports pertinent to aspects of sales practices misconduct at the Community Bank, certain of which reports provided overall ‘effective’ ratings”); see SOF ¶¶ 439-41, 443, 452-53, 456, 465, 467, 487.

## **Responses:**

**Julian** did not dispute the claim, but averred it “lacked context”.<sup>2550</sup> I find an insufficient factual basis has been presented to establish a dispute in this Response to create a controverted material fact. Accordingly, the Recommended Decision will include a factual finding as to Respondent Julian that WFAS rated all but one of the audits Respondents Julian and McLinko identified as relating to sales practices issues in the Community Bank as “Effective” or “Satisfactory.”

**McLinko** did not dispute the “Effective” or “Satisfactory” ratings were given, but incorporated Mr. Julian’s response and disputed the claim on the ground that the cited exhibits “do not establish the facts alleged.”<sup>2551</sup> I find an insufficient factual basis has been presented to establish a dispute in this Response to create a controverted material fact. Accordingly, the Recommended Decision will include a factual finding as to Respondent McLinko that WFAS rated all but one of the audits Respondents Julian and McLinko identified as relating to sales practices issues in the Community Bank as “Effective” or “Satisfactory.”

## **Enforcement Counsel’s Statement of Material Fact (Julian and McLinko) No. 429**

In addition to audit activities that were scoped to assess a particular area of operations within the Community Bank, the WFAS Community Bank audit team also completed annual Enterprise Risk Management (“ERM”) Assessments of the overall risk management within the Community Bank. Like the audit activities completed during Respondents Julian and McLinko’s tenures, the annual ERM Assessments (or “ERMAs”) reported each year from 2012 to 2016 that the Community Bank had Satisfactory risk management, including management of sales practices risk, and reported Strong or Satisfactory ratings of the Community Bank’s “Governance” and “Culture.”

## **Responses:**

**Julian** did not dispute the claims, but averred the Statement “lacked context”.<sup>2552</sup> I find an insufficient factual basis has been presented to establish a dispute in this Response to create a controverted material fact. Accordingly, the Recommended Decision will include a factual finding as to Respondent Julian that in addition to audit activities that were scoped to assess a particular area of operations within the Community Bank, the WFAS Community Bank audit team also completed annual Enterprise Risk Management (“ERM”) Assessments of the overall risk management within the Community Bank. Like the audit activities completed during Respondents Julian and McLinko’s tenures, the annual ERM Assessments (or “ERMAs”) reported each year from 2012 to 2016 that the Community Bank had Satisfactory risk management, including management of sales practices risk, and reported Strong or Satisfactory

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<sup>2550</sup> Julian’s ECSFM at No. 428.

<sup>2551</sup> McLinko’s ECSFM at No. 428.

<sup>2552</sup> Julian’s ECSFM at No. 429.

ratings of the Community Bank’s “Governance” and “Culture.”

**McLinko** did not dispute the cited ratings were given, but incorporated Mr. Julian’s response and disputed the claim on the ground that the claim “mischaracterizes ERMs performed at the Community Bank.”<sup>2553</sup> I find an insufficient factual basis has been presented to establish a dispute in this Response to create a controverted material fact. Accordingly, the Recommended Decision will include a factual finding as to Respondent Julian that in addition to audit activities that were scoped to assess a particular area of operations within the Community Bank, the WFAS Community Bank audit team also completed annual Enterprise Risk Management (“ERM”) Assessments of the overall risk management within the Community Bank. Like the audit activities completed during Respondents Julian and McLinko’s tenures, the annual ERM Assessments (or “ERMAs”) reported each year from 2012 to 2016 that the Community Bank had Satisfactory risk management, including management of sales practices risk, and reported Strong or Satisfactory ratings of the Community Bank’s “Governance” and “Culture.”

#### **Enforcement Counsel’s Statement of Material Fact (Julian and McLinko) No. 430**

WFAS awarded the Community Bank Effective ratings in other audits that touched on sales practices that were not included on the lists of sales practices-related audits Respondents Julian and McLinko provided to the OCC.<sup>2554</sup>

#### **Responses:**

**Julian** did not dispute the claims, but averred the Statement “lacked context”.<sup>2555</sup> I find an insufficient factual basis has been presented to establish a dispute in this Response to create a controverted material fact. Accordingly, the Recommended Decision will include a factual finding as to Respondents Julian and McLinko that WFAS awarded the Community Bank Effective ratings in other audits that touched on sales practices that were not included on the lists of sales practices-related audits Respondents Julian and McLinko provided to the OCC.

**McLinko** incorporated Respondent Julian’s Response.<sup>2556</sup>

#### **Enforcement Counsel’s Statement of Material Fact (Julian and McLinko) No. 431**

On April 11, 2011, WFAS issued its audit report on *Regional Bank - Sales, Service &*

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<sup>2553</sup> McLinko’s ECSFM at No. 429.

<sup>2554</sup> MSD-371; MSD-348; MSD-379.

<sup>2555</sup> Julian’s ECSFM at No. 430.

<sup>2556</sup> McLinko’s ECSFM at No. 430.

*Development*, rating internal controls Effective. The audit assessed controls related to sales quality, incentive compensation plan administration, incentive compensation plan design, approval, implementation, and governance, and the control environment quality of risk management.<sup>2557</sup>

**Responses:**

**Julian** did not dispute the claims, but averred the Statement “lacked context”.<sup>2558</sup> I find an insufficient factual basis has been presented to establish a dispute in this Response to create a controverted material fact. Accordingly, the Recommended Decision will include a factual finding as to Respondent Julian that an April 11, 2011, WFAS issued its audit report on *Regional Bank - Sales, Service & Development*, rating internal controls Effective. The audit assessed controls related to sales quality, incentive compensation plan administration, incentive compensation plan design, approval, implementation, and governance, and the control environment quality of risk management.

**McLinko** did not dispute the claims, but disputed that the Statement establishes the alleged fact that Respondents Julian and McLinko failed to identify and escalate the systemic sales practices misconduct problem and the significant sales practices risk management and internal controls weaknesses, or that Respondent Julian’s and Audit’s reporting to the Board on sales practices was misleading (allegations that do not appear in this Statement).<sup>2559</sup> I find an insufficient factual basis has been presented to establish a dispute in this Response to create a controverted material fact. Accordingly, the Recommended Decision will include a factual finding as to Respondent McLinko that an April 11, 2011, WFAS issued its audit report on *Regional Bank - Sales, Service & Development*, rating internal controls Effective. The audit assessed controls related to sales quality, incentive compensation plan administration, incentive compensation plan design, approval, implementation, and governance, and the control environment quality of risk management.

**Enforcement Counsel’s Statement of Material Fact (Julian and McLinko) No. 432**

On March 22, 2012, WFAS issued its audit report on *Regional Banking – Human Resources*, rating internal controls as **Effective**.<sup>2560</sup>

**Responses:**

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<sup>2557</sup> MSD-371.

<sup>2558</sup> Julian’s ECSFM at No. 431.

<sup>2559</sup> McLinko’s ECSFM at No. 431.

<sup>2560</sup> MSD-631.

**Julian** did not dispute the claim, but averred the Statement “was misleading”.<sup>2561</sup> I find an insufficient factual basis has been presented to establish a dispute in this Response to create a controverted material fact. Accordingly, the Recommended Decision will include a factual finding as to Respondent Julian that on March 22, 2012, WFAS issued its audit report on *Regional Banking – HumanResources*, rating internal controls as **Effective**.

**McLinko** did not dispute that WFAS issued the referenced audit report on March 22, 2012.<sup>2562</sup> Accordingly, the Recommended Decision will include a factual finding as to Respondent McLinko that on March 22, 2012, WFAS issued its audit report on *Regional Banking – Human Resources*, rating internal controls as **Effective**.

### **Enforcement Counsel’s Statement of Material Fact (Julian and McLinko) No. 433**

On October 26, 2012 WFAS issued its audit report on *Regional Banking Compensation*, rating internal controls as **Effective**. Although the report identified Incentive Compensation Risk Management - Incentive Compensation as a risk, because “[i]nadequate review and execution of [incentive] plan balancing activities could negatively impact Wells Fargo’s safety and soundness, resulting in adverse impact on Wells Fargo’s reputation, regulatory scrutiny, negative market opinion, an increase in cost of capital, and a decrease in share price,” the report concluded that compensation processes were “very robust within both administrative and control functions” and “management has historically focused on and continues to be attentive to the inherent risks associated with incentive compensation.”<sup>2563</sup>

#### **Responses:**

**Julian** did not dispute the claim, but averred the Statement “was misleading”.<sup>2564</sup> I find an insufficient factual basis has been presented to establish a dispute in this Response to create a controverted material fact. Accordingly, the Recommended Decision will include a factual finding as to Respondent Julian that on October 26, 2012 WFAS issued its audit report on *Regional Banking Compensation*, rating internal controls as **Effective**. Although the report identified Incentive Compensation Risk Management - Incentive Compensation as a risk, because “[i]nadequate review and execution of [incentive] plan balancing activities could negatively impact Wells Fargo’s safety and soundness, resulting in adverse impact on Wells Fargo’s reputation, regulatory scrutiny, negative market opinion, an

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<sup>2561</sup> Julian’s ECSFM at No. 432.

<sup>2562</sup> McLinko’s ECSFM at No. 432.

<sup>2563</sup> Julian Amended Answer ¶¶ 415, 464; McLinko Amended Answer ¶¶ 415, 464; MSD-348.

<sup>2564</sup> Julian’s ECSFM at No. 433.

increase in cost of capital, and a decrease in share price," the report concluded that compensation processes were "very robust within both administrative and control functions" and "management has historically focused on and continues to be attentive to the inherent risks associated with incentive compensation."

**McLinko** incorporated Respondent Julian's response and did not dispute that on October 26, 2012 WFAS issued its audit report on *Regional Banking Compensation*, rating internal controls as Effective, and that it included the quoted statements.<sup>2565</sup> Accordingly, the Recommended Decision will include a factual finding as to Respondent McLinko that on October 26, 2012 WFAS issued its audit report on *Regional Banking Compensation*, rating internal controls as **Effective**. Although the report identified Incentive Compensation Risk Management - Incentive Compensation as a risk, because "[i]nadequate review and execution of [incentive] plan balancing activities could negatively impact Wells Fargo's safety and soundness, resulting in adverse impact on Wells Fargo's reputation, regulatory scrutiny, negative market opinion, an increase in cost of capital, and a decrease in share price," the report concluded that compensation processes were "very robust within both administrative and control functions" and "management has historically focused on and continues to be attentive to the inherent risks associated with incentive compensation."

#### **Enforcement Counsel's Statement of Material Fact (Julian and McLinko) No. 434**

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 [sic] attention without you are [sic] your team being aware. No surprises as we agreed."<sup>2566</sup>

#### **Responses:**

**Julian** incorporated Respondent McLinko's Response.<sup>2567</sup>

**McLinko** disputed that the Statement is an accurate or complete statement of the cited email, averring that the Statement omitted a parenthetical that explains the purpose of Mr. McLinko's statement: "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."<sup>2568</sup> I find an insufficient factual basis has been presented to establish a

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<sup>2565</sup> McLinko's ECSFM at No. 433.

<sup>2566</sup> MSD-388 (emphasis added).

<sup>2567</sup> Julian's ECSFM at No. 434.

<sup>2568</sup> McLinko's ECSFM at No. 433.

dispute in this Response to create a controverted material fact. Accordingly, the Recommended Decision will include a factual finding as to Respondents Julian and McLinko that 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.”

### **Enforcement Counsel’s Statement of Material Fact (Julian and McLinko) No. 435**

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]”.<sup>2569</sup>

### **Responses:**

**Julian** incorporated Respondent McLinko’s Response.<sup>2570</sup>

**McLinko** did not dispute Enforcement Counsel accurately quoted the cited excerpt from the Exhibit.<sup>2571</sup> Accordingly, the Recommended Decision will include a factual finding as to Respondents Julian and McLinko that 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

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<sup>2569</sup> MSD-389.

<sup>2570</sup> Julian’s ECSFM at No. 435.

<sup>2571</sup> McLinko’s ECSFM at No. 435.



Integrity as those issues are referred to [the Head of Corporate Investigations]”.

#### **Enforcement Counsel’s Statement of Material Fact (Julian and McLinko) No. 436**

On March 4, 2013 Respondent McLinko asked his audit team to put together 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 verses an auditor.”<sup>2572</sup> 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.”<sup>2573</sup>

#### **Responses:**

**Julian** incorporated Respondent McLinko’s Response.<sup>2574</sup>

**McLinko** did not dispute Enforcement Counsel accurately quoted the cited excerpt from the Exhibit.<sup>2575</sup> Accordingly, the Recommended Decision will include a factual finding as to Respondents Julian and McLinko that on March 4, 2013 Respondent McLinko asked his audit team to put together 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 verses an auditor.”<sup>2576</sup> 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.”

#### **Enforcement Counsel’s Statement of Material Fact (Julian and McLinko) No. 437**

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,

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<sup>2572</sup> MSD-390.

<sup>2573</sup> MSD-390.

<sup>2574</sup> Julian’s ECSFM at No. 436.

<sup>2575</sup> McLinko’s ECSFM at No. 436.

<sup>2576</sup> MSD-390.

Assessment and Analysis were rated Satisfactory.<sup>2577</sup> At the time, ERMA ratings were Strong, Satisfactory, or Weak.<sup>2578</sup>

**Responses:**

**Julian** disputed the claim without disputing the Assessment contained the information as shown here, but averring it “lacked context”.<sup>2579</sup> I find an insufficient factual basis has been presented to establish a dispute in this Response to create a controverted material fact. Accordingly, the Recommended Decision will include a factual finding as to Respondents Julian and McLinko that 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.<sup>2580</sup> At the time, ERMA ratings were Strong, Satisfactory, or Weak.

**McLinko** did not dispute the cited evidence includes the quoted language and incorporated Respondent Julian’s response.<sup>2581</sup>

**Enforcement Counsel’s Statement of Material Fact (Julian and McLinko) No. 438**

Regarding Culture, the 2012 CB ERMA noted: “The vision and values of Wells Fargo is evident in the Community Banking culture and their key initiatives continue to focus on the customer.” Regarding Risk Response and Control, the ERMA noted: “Community Banking risk management, system of controls, and governance processes are adequate and functioning as intended. Controls across Community Banking are well designed to proactively mitigate risk exposures. This includes use of automated controls and robust policies and procedures to governday-to-day activities within the business segments.”<sup>2582</sup>

**Responses:**

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<sup>2577</sup> MSD-373.

<sup>2578</sup> MSD-373 at 1.

<sup>2579</sup> Julian’s ECSFM at No. 437.

<sup>2580</sup> MSD-373.

<sup>2581</sup> McLinko’s ECSFM at No. 437.

<sup>2582</sup> MSD-373.

**Julian** did not dispute the claim, but averred the Statement “lacks necessary context”.<sup>2583</sup> I find an insufficient factual basis has been presented to establish a dispute in this Response to create a controverted material fact. Accordingly, the Recommended Decision will include a factual finding as to Respondents Julian and McLinko regarding Culture, the 2012 CB ERMA noted: “The vision and values of Wells Fargo is evident in the Community Banking culture and their key initiatives continue to focus on the customer.” Regarding Risk Response and Control, the ERMA noted: “Community Banking risk management, system of controls, and governance processes are adequate and functioning as intended. Controls across Community Banking are well designed to proactively mitigate risk exposures. This includes use of automated controls and robust policies and procedures to govern day-to-day activities within the business segments.”

**McLinko** did not dispute the cited evidence includes the quoted language and incorporated Respondent Julian’s response.<sup>2584</sup>

### **Enforcement Counsel’s Statement of Material Fact (Julian and McLinko) No. 439**

On September 30, 2013, WFAS issued its audit report on *Community Bank - Household Metrics Reporting*, concluding that “[t]he systemic of internal controls for [Community Bank] – Household Metrics Reporting is **Effective**, with no reportable issues. The scope of this audit included re-performance of key metrics (including cross sell). . . .”<sup>2585</sup>

#### **Responses:**

Julian did not dispute the claim but averred “the cited evidence does not contain any references to Mr. Julian.”<sup>2586</sup> I find an insufficient factual basis has been presented to establish a dispute in this Response to create a controverted material fact. Accordingly, the Recommended Decision will include a factual finding as to Respondents Julian and McLinko that on September 30, 2013, WFAS issued its audit report on *Community Bank - Household Metrics Reporting*, concluding that “[t]he systemic of internal controls for [Community Bank] – Household Metrics Reporting is **Effective**, with no reportable issues. The scope of this audit included re-performance of key metrics (including cross sell). . . .”

**McLinko** did not dispute the cited evidence includes the quoted language and incorporated

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<sup>2583</sup> Julian’s ECSFM at No. 438.

<sup>2584</sup> McLinko’s ECSFM at No. 438.

<sup>2585</sup> MSD-375.

<sup>2586</sup> Julian’s ECSFM at No. 439.

Respondent Julian's response.<sup>2587</sup>

#### **Enforcement Counsel's Statement of Material Fact (Julian and McLinko) No. 440**

On December 2, 2013, WFAS issued its audit report on Community Banking WFCC (Wells Fargo Customer Connection) – Incentive Compensation/Sales Integrity. The report found that “the system of internal controls within WFCC Incentive Compensation and Sales Integrity is Effective, noting no reportable issues.”<sup>2588</sup>

#### **Responses:**

**Julian** responded that the claim was disputed, but did not dispute the claim and instead averred the claim “did not list Mr. Julian” as part of the team that conducted the audit.<sup>2589</sup> I find an insufficient factual basis has been presented to establish a dispute in this Response to create a controverted material fact. Accordingly, the Recommended Decision will include a factual finding as to Respondents Julian and McLinko that on September 30, 2013, WFAS issued its audit report on Community Bank - Household Metrics Reporting, concluding that “[t]he systemic of internal controls for [Community Bank] – Household Metrics Reporting is Effective, with no reportable issues. The scope of this audit included re-performance of key metrics (including cross sell)”.

**McLinko** did not dispute the cited evidence includes the quoted language and incorporated Respondent Julian's response.<sup>2590</sup>

#### **Enforcement Counsel's Statement of Material Fact (Julian and McLinko) No. 441**

On December 13, 2013, WFAS issued its audit report on *Regional Banking - Sales Quality/ Sales Integrity*. In its report, WFAS concluded that “the system of internal controls with Regional Banking Sales Quality / Sales Integrity is **Effective**. This rating reflects our opinion that controls in place adequately mitigate the risks associated with sales quality allegation, case management, service management and reporting processes. WFAS did identify a moderate rated issue regarding the need to enhance the training notification process; however, this is not a significant control weakness. The scope of our audit also included a design review of the enhanced proactive monitoring and behavioral trend reporting processes. The overall design is

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<sup>2587</sup> McLinko's ECSFM at No. 439.

<sup>2588</sup> MSD-512.

<sup>2589</sup> Julian's ECSFM at No. 440.

<sup>2590</sup> McLinko's ECSFM at No. 440.

deemed adequate . . . .”<sup>2591</sup>

- (a) 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 RB – 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.”<sup>2592</sup> 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.<sup>2593</sup>
- (b) On November 15, 2013, the Community Bank provided line edits to the 2013 Draft I&R, including edits from Respondent Russ Anderson. (MSD-198). 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.”<sup>2594</sup>
- (c) 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 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.”<sup>2595</sup>
- (d) 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

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<sup>2591</sup> MSD-376; Julian Amended Answer ¶¶ 416, 465 McLinko Amended Answer ¶¶ 416, 465.

<sup>2592</sup> MSD-503 at 1, 2.

<sup>2593</sup> MSD-503 at 1, 2.

<sup>2594</sup> MSD-198.

<sup>2595</sup> MSD-198.

and increased numbers of additional allegations.”<sup>2596</sup>

- (e) 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.<sup>2597</sup>

**Responses:**

**Julian** responded that the claim was disputed, but he did not dispute that the language presented appears in the cited documents; but avers that such evidence includes an audit engagement report that does not list Mr. Julian as part of the WFAS Audit Team that conducted the audit engagement.<sup>2598</sup>

I find an insufficient factual basis has been presented to establish a dispute in this Response to create a controverted material fact. Accordingly, the Recommended Decision will include a factual finding as to Respondents Julian and McLinko that on December 13, 2013, WFAS issued its audit report on *Regional Banking - Sales Quality/ Sales Integrity*. In its report, WFAS concluded as is shown above.

**McLinko** did not dispute the cited evidence includes the quoted language and incorporated Respondent Julian’s response.<sup>2599</sup>

**Enforcement Counsel’s Statement of Material Fact (Julian and McLinko) No. 442**

On December 16, 2013, Bart Deese, Respondent McLinko’s direct report sent the OCC a presentation summarizing audits WFAS completed in 2013. The presentation was titled “Community Bank and TOG Operations and Team Update.” Respondent McLinko was copied on this email and was listed as one of the presenters. Under “2013 Plan Highlights,” the comments for the RB - Sales Quality/ Sales Integrity reads: “Report issued on December 16. Rating was Effective. Review included processes related to monitoring and reporting of questionable sales activity. One moderate issue identified related to the need to enhance the training notification process.” (MSD-366 at 10). Under “2014 Plan Highlights,” the deck lists “CMBK - Cross Sell” as a planned area of audit coverage for 2014.<sup>2600</sup>

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<sup>2596</sup> MSD-198.

<sup>2597</sup> MSD-376 (not using the term “repeat offenders” or “inappropriate sales practices”); MSD-601.

<sup>2598</sup> Julian’s ECSFM at No. 441.

<sup>2599</sup> McLinko’s ECSFM at No. 441.

<sup>2600</sup> MSD-366 at 14.

## Responses:

**Julian** incorporated Respondent McLinko's Response.<sup>2601</sup>

**McLinko** did not dispute the cited evidence includes the quoted language.<sup>2602</sup> Accordingly, the Recommended Decision will include a factual finding as to Respondents Julian and McLinko that on December 16, 2013, Bart Deese, Respondent McLinko's direct report sent the OCC a presentation summarizing audits WFAS completed in 2013. The presentation was titled "Community Bank and TOG Operations and Team Update." Respondent McLinko was copied on this email and was listed as one of the presenters. Under "2013 Plan Highlights," the comments for the RB - Sales Quality/ Sales Integrity reads: "Report issued on December 16. Rating was Effective. Review included processes related to monitoring and reporting of questionable sales activity. One moderate issue identified related to the need to enhance the training notification process." (MSD-366 at 10). Under "2014 Plan Highlights," the deck lists "CMBK - Cross Sell" as a planned area of audit coverage for 2014.

## Enforcement Counsel's Statement of Material Fact (Julian and McLinko) No. 443

On December 20, 2013, WFAS issued its audit report on *Business Banking Sales, Service, Product Suitability, and Marketing*, which assessed the marketing and product evaluation processes that are managed within [Business Banking] for use by all business bankers within Business Banking and Regional Banking." WFAS concluded that "[t]he system of internal control of this engagement scope is **Effective**. This rating reflects our opinion that the product evaluation, marketing, sales customer set up, customer servicing and user access processes and controls are working effectively to manage risk."<sup>2603</sup>

## Responses:

**Julian** responded that the claim was disputed, but did not dispute the claim and instead averred the claim "did not list Mr. Julian" as part of the team that conducted the audit.<sup>2604</sup> I find an insufficient factual basis has been presented to establish a dispute in this Response to create a controverted material fact. Accordingly, the Recommended Decision will include a factual finding as to Respondents Julian and McLinko that on December 20, 2013, WFAS issued its audit report on *Business Banking Sales, Service, Product Suitability, and Marketing*, which assessed the marketing and product evaluation processes that are managed within [Business Banking] for use by all business bankers within Business

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<sup>2601</sup> Julian's ECSFM at No. 442.

<sup>2602</sup> McLinko's ECSFM at No. 442.

<sup>2603</sup> MSD-518.

<sup>2604</sup> Julian's ECSFM at No. 443.

Banking and Regional Banking.” WFAS concluded that “[t]he system of internal control of this engagement scope is **Effective**. This rating reflects our opinion that the product evaluation, marketing, sales customer set up, customer servicing and user access processes and controls are working effectively to manage risk.”

**McLinko** did not dispute the cited evidence includes the quoted language and incorporated Respondent Julian’s response.<sup>2605</sup>

#### **Enforcement Counsel’s Statement of Material Fact (Julian and McLinko) No. 444**

Enforcement Counsel’s Statement of Material Fact (Julian and McLinko) No. 444 relies on exhibits presented to this Tribunal as being non-public. Pursuant to the OCC’s Uniform Rules, while the proceedings in this administrative enforcement action are expressly required to be public, when presented with non-public documents the Administrative Law Judge is required to take all appropriate steps to preserve the confidentiality of such documents.<sup>2606</sup> Upon my review of the confidential documents supporting this Statement of Material Fact, and after weighing the expectation that all of the proceedings shall be public against the requirement that I protect against the disclosure of non-public information, I find the evidentiary value of these exhibits to be sufficiently marginal and duplicative as to warrant exclusion from this Order. Accordingly, this Order will not be based on any of the claims found in this Statement of Material Fact.

#### **Enforcement Counsel’s Statement of Material Fact (Julian and McLinko) No. 445**

Thereafter the Enterprise Risk Management Committee identified “Sales Conduct, Practices and the Consumer Business Model” for the Board as a “Noteworthy Risk” at least seven times in 2014 and 2015.<sup>2607</sup> Audit updated the Audit and Examination Committee on its activities related to the “Sales Conduct, Practices and the Consumer Business Model” “Noteworthy Risk.”<sup>2608</sup> It provided similar reporting to the Operating Committee and the Enterprise Risk Management Committee.<sup>2609</sup>

#### **Responses:**

**Julian** responded that the claim was disputed, but did not dispute the claim and instead

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<sup>2605</sup> McLinko’s ECSFM at No. 443.

<sup>2606</sup> See 12 C.F.R. § 19.33(b).

<sup>2607</sup> See MSD-395; MSD-396; MSD-532; MSD-533; MSD-534; MSD-535; MSD-536.

<sup>2608</sup> SOF ¶¶ 451, 454, 457-58, 460, 470, 477, 484.

<sup>2609</sup> See, e.g., MSD-536, MSD-719.



averred the claim “lacks context”.<sup>2610</sup> I find an insufficient factual basis has been presented to establish a dispute in this Response to create a controverted material fact. Accordingly, the Recommended Decision will include a factual finding as to Respondents Julian and McLinko that the Enterprise Risk Management Committee identified “Sales Conduct, Practices and the Consumer Business Model” for the Board as a “Noteworthy Risk” at least seven times in 2014 and 2015. Audit updated the Audit and Examination Committee on its activities related to the “Sales Conduct, Practices and the Consumer Business Model” “Noteworthy Risk.” It provided similar reporting to the Operating Committee and the Enterprise Risk Management Committee.

**McLinko** did not dispute the cited evidence includes the quoted language and incorporated Respondent Julian’s response.<sup>2611</sup>

#### **Enforcement Counsel’s Statement of Material Fact (Julian and McLinko) No. 446**

Each year, the Bank’s Chief Risk Officer and its Director of Human Resources submitted to the Human Resources Committee of the Board a memorandum summarizing the risk assessment processes and risk outcome evaluations that informed their annual incentive compensation recommendations for senior Bank executives, including Head of the Community Bank Carrie Tolstedt. These memoranda were submitted to the CEO and the Human Resources Committee of the Board, and later provided to the OCC. Corporate Human Resources and Corporate Risk explicitly relied on WFAS’s work and findings in preparing annual incentive compensation risk memoranda.<sup>2612</sup> Respondent Julian attended meetings regarding the executive compensation year-end risk review.<sup>2613</sup>

#### **Responses:**

**Julian** responded that the claim was disputed, but did not dispute the claim and instead averred the claim “lacks context”.<sup>2614</sup> I find an insufficient factual basis has been presented to establish a dispute in this Response to create a controverted material fact. Accordingly, the Recommended Decision will include a factual finding as to Respondent Julian that each year, the Bank’s Chief Risk Officer and its Director of Human Resources submitted to the

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<sup>2610</sup> Julian’s ECSFM at No. 445.

<sup>2611</sup> McLinko’s ECSFM at No. 443.

<sup>2612</sup> MSD-412; MSD-433; MSD-456); Julian Amended Answer ¶ 425 (admitting that “Audit provided information in connection with annual incentive compensation risk memoranda and that memoranda were provided to the Human Resources Committee of the Board.”); MSD-290B (Loughlin Tr.) at 452:16-23.

<sup>2613</sup> MSD-507 at 2, 4.

<sup>2614</sup> Julian’s ECSFM at No. 446.

Human Resources Committee of the Board a memorandum summarizing the risk assessment processes and risk outcome evaluations that informed their annual incentive compensation recommendations for senior Bank executives, including Head of the Community Bank Carrie Tolstedt. These memoranda were submitted to the CEO and the Human Resources Committee of the Board, and later provided to the OCC. Corporate Human Resources and Corporate Risk explicitly relied on WFAS's work and findings in preparing annual incentive compensation risk memoranda.<sup>2615</sup> Respondent Julian attended meetings regarding the executive compensation year-end risk review.

**McLinko** incorporated Respondent Julian's response.<sup>2616</sup>

#### **Enforcement Counsel's Statement of Material Fact (Julian and McLinko) No. 447**

In a February 18, 2014 annual incentive compensation risk memorandum from the Bank's Chief Risk Officer and its Director of Human Resources to the CEO and the Human Resources Committee of the Board, Carrie Tolstedt received a "Satisfactory" assessment related to Sales Quality Monitoring and there was no adjustment to her compensation. A "Satisfactory" assessment indicated: "No adverse impact from management of risk. The individual has taken steps expected to prevent and manage the risk issues."<sup>2617</sup> The memorandum noted that the Chief Risk Officer's and Director of Human Resources' evaluation of risk outcomes was based, in part, on a "holistic review of audit findings related to the business . . . with a focus on the Unsatisfactory and high-risk Needs Improvement audit issues."<sup>2618</sup>

#### **Responses:**

**Julian** responded that the claim was disputed, but did not dispute the claim and instead averred the claim lacked evidence that Mr. Julian played any role in the cited assessment.<sup>2619</sup> I find an insufficient factual basis has been presented to establish a dispute in this Response to create a controverted material fact. Accordingly, the Recommended Decision will include a factual finding as to Respondents Julian and McLinko that in a February 18, 2014 annual incentive compensation risk memorandum from the Bank's Chief

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<sup>2615</sup> MSD-412; MSD-433; MSD-456); Julian Amended Answer ¶ 425 (admitting that "Audit provided information in connection with annual incentive compensation risk memoranda and that memoranda were provided to the Human Resources Committee of the Board."); MSD-290B (Loughlin Tr.) at 452:16-23.

<sup>2616</sup> McLinko's ECSFM at No. 446.

<sup>2617</sup> MSD-412 at 7.

<sup>2618</sup> MSD-412 at 3.

<sup>2619</sup> Julian's ECSFM at No. 447.

Risk Officer and its Director of Human Resources to the CEO and the Human Resources Committee of the Board, Carrie Tolstedt received a “Satisfactory” assessment related to Sales Quality Monitoring and there was no adjustment to her compensation. A “Satisfactory” assessment indicated: “No adverse impact from management of risk. The individual has taken steps expected to prevent and manage the risk issues.”<sup>2620</sup> The memorandum noted that the Chief Risk Officer’s and Director of Human Resources’ evaluation of risk outcomes was based, in part, on a “holistic review of audit findings related to the business . . . with a focus on the Unsatisfactory and high-risk Needs Improvement audit issues.”

**McLinko** did not dispute the cited evidence includes the quoted language and incorporated Respondent Julian’s response.<sup>2621</sup>

#### **Enforcement Counsel’s Statement of Material Fact (Julian and McLinko) No. 448**

On March 31, 2014, WFAS issued a Community Banking Enterprise Risk Management Assessment for 2013 (“2013 CB ERMA”), concluding that “risk management within Community Banking (CB) is **Satisfactory**.” Governance and Culture and Strategy and Objective Setting were rated Strong. Risk Identification, Assessment and Analysis and Risk Response and Control were rated Satisfactory.<sup>2622</sup> At the time, ERMA ratings were Strong, Satisfactory, Needs Improvement, or Weak.<sup>2623</sup>

#### **Responses:**

**Julian** responded that the claim was disputed, but did not dispute the claim and instead averred the claim lacked “necessary context”.<sup>2624</sup> I find an insufficient factual basis has been presented to establish a dispute in this Response to create a controverted material fact. Accordingly, the Recommended Decision will include a factual finding as to Respondents Julian and McLinko that on March 31, 2014, WFAS issued a Community Banking Enterprise Risk Management Assessment for 2013 (“2013 CB ERMA”), concluding that “risk management within Community Banking (CB) is **Satisfactory**.” Governance and Culture and Strategy and Objective Setting were rated Strong. Risk Identification, Assessment and Analysis and Risk Response and Control were rated Satisfactory.<sup>2625</sup> At

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<sup>2620</sup> MSD-412 at 7.

<sup>2621</sup> McLinko’s ECSFM at No. 447.

<sup>2622</sup> MSD-378.

<sup>2623</sup> MSD-378 at 3.

<sup>2624</sup> Julian’s ECSFM at No. 448.

<sup>2625</sup> MSD-378.

the time, ERMA ratings were Strong, Satisfactory, Needs Improvement, or Weak.

**McLinko** did not dispute the cited evidence includes the quoted language and incorporated Respondent Julian's response.<sup>2626</sup>

#### **Enforcement Counsel's Statement of Material Fact (Julian and McLinko) No. 449**

Regarding culture, the 2013 CB ERMA concluded: "The vision and values of Wells Fargo is also evident in the CB culture. Key initiatives continue to focus on the customer. Expectations regarding the company's ethical culture are frequently communicated and tangibly demonstrated throughout the Community Bank." Regarding performance management (in Risk Response and Control), the ERMA stated: "Community Banking performance measures are appropriately tied to compensations, incentive, and risk. They are aligned with shareholder interests and the long-term profitability of the company."<sup>2627</sup>

#### **Responses:**

**Julian** responded that the claim was disputed, but did not dispute the claim and instead averred the claim lacked "context".<sup>2628</sup> I find an insufficient factual basis has been presented to establish a dispute in this Response to create a controverted material fact. Accordingly, the Recommended Decision will include a factual finding as to Respondents Julian and McLinko that regarding culture, the 2013 CB ERMA concluded: "The vision and values of Wells Fargo is also evident in the CB culture. Key initiatives continue to focus on the customer. Expectations regarding the company's ethical culture are frequently communicated and tangibly demonstrated throughout the Community Bank." Regarding performance management (in Risk Response and Control), the ERMA stated: "Community Banking performance measures are appropriately tied to compensations, incentive, and risk. They are aligned with shareholder interests and the long-term profitability of the company."

**McLinko** incorporated Respondent Julian's response.<sup>2629</sup>

#### **Enforcement Counsel's Statement of Material Fact (Julian and McLinko) No. 450**

At an April 29, 2014 meeting, Respondent Julian informed the Board of Directors that there were

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<sup>2626</sup> McLinko's ECSFM at No. 448.

<sup>2627</sup> MSD-378.

<sup>2628</sup> Julian's ECSFM at No. 449.

<sup>2629</sup> McLinko's ECSFM at No. 449.

“no alarming trends or significant issues to discuss with the Board.”<sup>2630</sup>

**Responses:**

**Julian** responded that the claim was disputed, but did not dispute the claim and instead averred the claim lacked “context”.<sup>2631</sup> I find an insufficient factual basis has been presented to establish a dispute in this Response to create a controverted material fact. Accordingly, the Recommended Decision will include a factual finding as to Respondents Julian and McLinko that at an April 29, 2014 meeting, Respondent Julian informed the Board of Directors that there were “no alarming trends or significant issues to discuss with the Board.”

**McLinko** incorporated Respondent Julian’s response.<sup>2632</sup>

**Enforcement Counsel’s Statement of Material Fact (Julian and McLinko) No. 451**

On May 5, 2014, WFAS presented its First Quarter 2014 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 being performed in Wells Fargo Customer Connection and Digital Channels Group in 2014. In addition, an assessment of cross sell audit coverage is included in the Community Banking Audit Plan. Focus of these reviews is on the sales practices and conduct to ensure customers are sold products meeting their financial needs.”<sup>2633</sup>

Respondent McLinko and his team reviewed and advised on the language WFAS included in its quarterly reports to the Audit and Examination Committee, including regarding the “Sales Conduct, Practices and the Consumer Business Model” “Noteworthy Risk,” and even provided draft language to Respondent Russ Anderson for her review and comment.<sup>2634</sup>

**Responses:**

**Julian** did not dispute that the First Quarter 2014 Summary contains the language shown above.<sup>2635</sup> Accordingly, the Recommended Decision will include a factual finding as to Respondents Julian and McLinko that on May 5, 2014, WFAS presented its First Quarter

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<sup>2630</sup> MSD-481 at 6.

<sup>2631</sup> Julian’s ECSFM at No. 450.

<sup>2632</sup> McLinko’s ECSFM at No. 450.

<sup>2633</sup> MSD-402 at 31.

<sup>2634</sup> See, e.g., MSD-536, MSD-719.

<sup>2635</sup> Julian’s ECSFM at No. 451.

2014 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 being performed in Wells Fargo Customer Connection and Digital Channels Group in 2014. In addition, an assessment of cross sell audit coverage is included in the Community Banking Audit Plan. Focus of these reviews is on the sales practices and conduct to ensure customers are sold products meeting their financial needs.” Respondent McLinko and his team reviewed and advised on the language WFAS included in its quarterly reports to the Audit and Examination Committee, including regarding the “Sales Conduct, Practices and the Consumer Business Model” “Noteworthy Risk,” and even provided draft language to Respondent Russ Anderson for her review and comment.

**McLinko** did not dispute the cited evidence includes the quoted language and incorporated Respondent Julian’s response.<sup>2636</sup>

#### **Enforcement Counsel’s Statement of Material Fact (Julian and McLinko) No. 452**

On May 9, 2014, WFAS issued an audit report on *Community Banking WFCC (Wells Fargo Customer Connection) – Account Opening/Fulfillment*. The audit rated “the system of internal controls within WFCC Account Opening/Fulfillment is **Effective**. Testing . . . noted no significant concerns or reportable issues.”<sup>2637</sup>

#### **Responses:**

**Julian** responded that the claim was disputed, but did not dispute the claim and instead averred the claim was misleading because it “does not set forth the scope of the cited audit engagement”.<sup>2638</sup> I find an insufficient factual basis has been presented to establish a dispute in this Response to create a controverted material fact. Accordingly, the Recommended Decision will include a factual finding as to Respondents Julian and McLinko that on May 9, 2014, WFAS issued an audit report on *Community Banking WFCC (Wells Fargo Customer Connection) – Account Opening/Fulfillment*. The audit rated “the system of internal controls within WFCC Account Opening/Fulfillment is **Effective**. Testing . . . noted no significant concerns or reportable issues.”

**McLinko** did not dispute the cited evidence includes the quoted language and incorporated Respondent Julian’s response.<sup>2639</sup>

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<sup>2636</sup> McLinko’s ECSFM at No. 451.

<sup>2637</sup> MSD-513.

<sup>2638</sup> Julian’s ECSFM at No. 452.

<sup>2639</sup> McLinko’s ECSFM at No. 452.

### **Enforcement Counsel’s Statement of Material Fact (Julian and McLinko) No. 453**

On June 27, 2014, WFAS issued an audit report on Community Banking – Digital Channels Group (DCG) – Online Sales & Marketing. The audit concluded that “The system of internal controls within DCG Online Sales and Marketing is Effective. Testing . . . noted no significant concerns or reportable issues.”<sup>2640</sup>

#### **Responses:**

**Julian** responded that the claim was disputed, but did not dispute the claim and instead averred the claim was misleading because it “does not set forth the scope of the cited audit engagement”.<sup>2641</sup> I find an insufficient factual basis has been presented to establish a dispute in this Response to create a controverted material fact. Accordingly, the Recommended Decision will include a factual finding as to Respondents Julian and McLinko that on June 27, 2014, WFAS issued an audit report on Community Banking – Digital Channels Group (DCG) – Online Sales & Marketing. The audit concluded that “The system of internal controls within DCG Online Sales and Marketing is Effective. Testing . . . noted no significant concerns or reportable issues.”

**McLinko** did not dispute the cited evidence includes the quoted language and incorporated Respondent Julian’s response.<sup>2642</sup>

### **Enforcement Counsel’s Statement of Material Fact (Julian and McLinko) No. 454**

Although Respondents Julian and McLinko and WFAS implied to the OCC and the Board that its audits of Wells Fargo Customer Connection (call center) and digital channels (online) were related to its Community Bank sales practices coverage and the “Sales Conduct, Practices and the Consumer Business Model” Noteworthy Risk, these audits were scoped to review Community Bank activities in call centers and online channels, and did not look at salespractices in the Regional Banking branches/stores. In any case, WFAS’s audits of these areas were rated **Effective**.<sup>2643</sup>

#### **Responses:**

**Julian** responded that the claim was disputed, but did not dispute the claim and instead averred the claim was misleading because Enforcement Counsel have presented no

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<sup>2640</sup> MSD-514.

<sup>2641</sup> Julian’s ECSFM at No. 453.

<sup>2642</sup> McLinko’s ECSFM at No. 453.

<sup>2643</sup> See MSD-512; MSD-513; and MSD-514.

evidence that audits of Community Bank WFCC (Wells Fargo Customer Connection) – Account Opening/Fulfillment and Community Bank – Digital Channels Group (DCG) – Online Sales & Marketing were related to WFAS’s Community Bank sales practices coverage.<sup>2644</sup> I find an insufficient factual basis has been presented to establish a dispute in this Response to create a controverted material fact. Accordingly, the Recommended Decision will include a factual finding as to Respondent Julian that although Respondents Julian and McLinko and WFAS implied to the OCC and the Board that its audits of Wells Fargo Customer Connection (call center) and digital channels(online) were related to its Community Bank sales practices coverage and the “Sales Conduct, Practices and the Consumer Business Model” Noteworthy Risk, these audits were scoped to review Community Bank activities in call centers and online channels, and did not look at sales practices in the Regional Banking branches/stores. In any case, WFAS’s audits of these areas were rated **Effective**.

**McLinko** disputed that disputed that the documents cited in the Statement in any way indicates that he “implied to the OCC and the Board” that the audits were related to sales practices other than those sales practices specifically identified in the audit reports.<sup>2645</sup> I find an insufficient factual basis has been presented to establish a dispute in this Response to create a controverted material fact. Accordingly, the Recommended Decision will include a factual finding as to Respondent McLinko that although he and Respondent Julian and WFAS implied to the OCC and the Board that its audits of Wells Fargo Customer Connection (call center) and digital channels (online) were related to its Community Bank sales practices coverage and the “Sales Conduct, Practices and the Consumer Business Model” Noteworthy Risk, these audits were scoped to review Community Bank activities in call centers and online channels, and did not look at sales practices in the Regional Banking branches/stores. In any case, WFAS’s audits of these areas were rated **Effective**.

#### **Enforcement Counsel’s Statement of Material Fact (Julian and McLinko) No. 455**

On June 30, 2014, WFAS issued an audit report on *Enterprise Code of Ethics*, the scope of which include the Bank’s “tracking and reporting of complaints and violations.” The audit was rated **Effective**.<sup>2646</sup>

#### **Responses:**

**Julian** responded that the claim was disputed, but did not dispute the claim and instead averred the claim was misleading because it does not list Mr. Julian as part of the “WFAS

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<sup>2644</sup> Julian’s ECSFM at No. 454.

<sup>2645</sup> McLinko’s ECSFM at No. 454.

<sup>2646</sup> MSD-529 at 2.



Audit Team” that conducted the audit engagement.<sup>2647</sup> I find an insufficient factual basis has been presented to establish a dispute in this Response to create a controverted material fact. Accordingly, the Recommended Decision will include a factual finding as to Respondents Julian and McLinko that on June 30, 2014, WFAS issued an audit report on *Enterprise Code of Ethics*, the scope of which include the Bank’s “tracking and reporting of complaints and violations.” The audit was rated **Effective**.

**McLinko** did not dispute the cited evidence includes the quoted language and incorporated Respondent Julian’s response.<sup>2648</sup>

#### **Enforcement Counsel’s Statement of Material Fact (Julian and McLinko) No. 456**

On August 1, 2014, WFAS issued its audit report on *Community Banking Business Banking Group – Accounting and Finance* audit rated management of compensation processes and controls as **Effective**.<sup>2649</sup>

#### **Responses:**

**Julian** responded that the claim was disputed, but did not dispute the claim and instead averred the claim was misleading because it does not list Mr. Julian as part of the “WFAS Audit Team” that conducted the audit engagement.<sup>2650</sup> I find an insufficient factual basis has been presented to establish a dispute in this Response to create a controverted material fact. Accordingly, the Recommended Decision will include a factual finding as to Respondents Julian and McLinko that on August 1, 2014, WFAS issued its audit report on *Community Banking Business Banking Group – Accounting and Finance* audit rated management of compensation processes and controls as **Effective**.

**McLinko** did not dispute the cited evidence includes the quoted language and incorporated Respondent Julian’s response.<sup>2651</sup>

#### **Enforcement Counsel’s Statement of Material Fact (Julian and McLinko) No. 457**

On August 4, 2014, WFAS presented its Second Quarter 2014 Summary to the Audit and Examination Committee of the Board. Audit’s quarterly report to the Board contained the

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<sup>2647</sup> Julian’s ECSFM at No. 455.

<sup>2648</sup> McLinko’s ECSFM at No. 455.

<sup>2649</sup> MSD-516 at 2.

<sup>2650</sup> Julian’s ECSFM at No. 456.

<sup>2651</sup> McLinko’s ECSFM at No. 456.

following update on the “Sales Conduct, Practices and the Consumer Business Model” Noteworthy Risk: “Sales audits were completed within Community Banking in Wells Fargo Customer Connection and the Digital Channels Group. The focus of these reviews was on the sales practices and conduct to ensure customers are sold products meeting their financial needs. Both audits were rated Effective with no reportable issues.”<sup>2652</sup>

**Responses:**

**Julian** did not dispute that the report contained the language shown in the Statement.<sup>2653</sup> Accordingly, the Recommended Decision will include a factual finding as to Respondents Julian and McLinko that on August 4, 2014, WFAS presented its Second Quarter 2014 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 were completed within Community Banking in Wells Fargo Customer Connection and the Digital Channels Group. The focus of these reviews was on the sales practices and conduct to ensure customers are sold products meeting their financial needs. Both audits were rated Effective with no reportable issues.”

**McLinko** did not dispute the cited evidence includes the quoted language and incorporated Respondent Julian’s response.<sup>2654</sup>

**Enforcement Counsel’s Statement of Material Fact (Julian and McLinko) No. 458**

On November 18, 2014, WFAS presented its Third Quarter 2014 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 were completed within Community Banking in Wells Fargo Customer Connection and the Digital Channels Group. The focus of these reviews was on the sales practices and conduct to ensure customers are sold products meeting their financial needs. Both audits were rated Effective with no reportable issues.”<sup>2655</sup>

**Responses:**

**Julian** did not dispute that the report contained the language shown in the Statement.<sup>2656</sup>

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<sup>2652</sup> MSD-397 at 52.

<sup>2653</sup> Julian’s ECSFM at No. 457.

<sup>2654</sup> McLinko’s ECSFM at No. 457.

<sup>2655</sup> MSD-398 at 56.

<sup>2656</sup> Julian’s ECSFM at No. 458.

Accordingly, the Recommended Decision will include a factual finding as to Respondents Julian and McLinko that on November 18, 2014, WFAS presented its Third Quarter 2014 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 were completed within Community Banking in Wells Fargo Customer Connection and the Digital Channels Group. The focus of these reviews was on the sales practices and conduct to ensure customers are sold products meeting their financial needs. Both audits were rated Effective with no reportable issues."

**McLinko** did not dispute the cited evidence includes the quoted language and incorporated Respondent Julian's response.<sup>2657</sup>

### **Enforcement Counsel's Statement of Material Fact (Julian and McLinko) No. 459**

On December 16, 2014, WFAS issued its audit report on *Regional Bank - Risk Council*. As explained in the audit report, the "Risk Council is a forum of RB Senior Management that meets on a quarterly basis to discuss operational risk topics and breaches for established Enterprise Key Indicators (EKIs). Root cause and corrective action plans for any EKI breaches are researched and monitored by the Risk Council on a quarterly basis to ensure store banker performance meets established standards." WFAS concluded in its report that "the system of internal controls related to Risk Council organizational structure and EKI monitoring is **Effective**." The report also rated "Originate and Setup Accounts – EKI Monitoring," and rated that process Effective as well.<sup>2658</sup>

#### **Responses:**

**Julian** responded that the claim was disputed, but did not dispute the claim and instead averred the claim was misleading because it does not list Mr. Julian as part of the "WFAS Audit Team" that conducted the audit engagement.<sup>2659</sup> I find an insufficient factual basis has been presented to establish a dispute in this Response to create a controverted material fact. Accordingly, the Recommended Decision will include a factual finding as to Respondents Julian and McLinko that on December 16, 2014, WFAS issued its audit report on *Regional Bank - Risk Council*. As explained in the audit report, the "Risk Council is a forum of RB Senior Management that meets on a quarterly basis to discuss operational risk topics and breaches for established Enterprise Key Indicators (EKIs). Root cause and corrective action plans for any EKI breaches are researched and monitored by the Risk

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<sup>2657</sup> McLinko's ECSFM at No. 458.

<sup>2658</sup> MSD-379.

<sup>2659</sup> Julian's ECSFM at No. 459.

Council on a quarterly basis to ensure store banker performance meets established standards.” WFAS concluded in its report that “the system of internal controls related to Risk Council organizational structure and EKI monitoring is **Effective**.” The report also rated “Originate and Setup Accounts – EKI Monitoring,” and rated that process Effective as well.

**McLinko** did not dispute the cited evidence includes the quoted language and incorporated Respondent Julian’s response.<sup>2660</sup>

#### **Enforcement Counsel’s Statement of Material Fact (Julian and McLinko) No. 460**

On February 4, 2015, WFAS presented its Fourth Quarter 2014 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 were completed within Community Banking in Wells Fargo Customer Connection and the Digital Channels Group as part of the 2014 Community Banking plan. The focus of these reviews was on the sales practices and conduct to ensure customers are sold products meeting their financial needs. Both audits were rated Effective with no reportable issues. In addition, an assessment of cross-sell audit coverage was also completed as part of the plan with no significant additional coverage warranted. A continued focus on sales practices and conduct will continue in 2015 with account opening audits in both Regional Banking and Business Banking.”<sup>2661</sup>

#### **Responses:**

**Julian** did not dispute that the cited Report contains the language presented above.<sup>2662</sup> Accordingly, the Recommended Decision will include a factual finding as to Respondents Julian and McLinko that on February 4, 2015, WFAS presented its Fourth Quarter 2014 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 were completed within Community Banking in Wells Fargo Customer Connection and the Digital Channels Group as part of the 2014 Community Banking plan. The focus of these reviews was on the sales practices and conduct to ensure customers are sold products meeting their financial needs. Both audits were rated Effective with no reportable issues. In addition, an assessment of cross-sell audit coverage was also completed as part of the plan with no significant additional coverage warranted. A continued focus on sales practices and conduct will continue in 2015 with account opening audits in both Regional

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<sup>2660</sup> McLinko’s ECSFM at No. 459.

<sup>2661</sup> MSD-400 at 63.

<sup>2662</sup> Julian’s ECSFM at No. 460.

Banking and Business Banking.”

**McLinko** did not dispute the cited evidence includes the quoted language and incorporated Respondent Julian’s response.<sup>2663</sup>

#### **Enforcement Counsel’s Statement of Material Fact (Julian and McLinko) No. 461**

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.<sup>2664</sup> 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.’”<sup>2665</sup>

#### **Responses:**

**Julian** incorporated Respondent McLinko’s Response.<sup>2666</sup>

**McLinko** did not dispute the cited evidence includes the quoted language.<sup>2667</sup> Accordingly, the Recommended Decision will include a factual finding as to Respondents Julian and McLinko that 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.<sup>2668</sup> 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.’”

#### **Enforcement Counsel’s Statement of Material Fact (Julian and McLinko) No. 462**

The February 16, 2015 annual incentive compensation risk memorandum from the Bank’s Chief Risk Officer and its Director of Human Resources to the CEO and the Human

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<sup>2663</sup> McLinko’s ECSFM at No. 460.

<sup>2664</sup> MSD-185.

<sup>2665</sup> MSD-270 (NBE Hudson Expert Report) at ¶ 25, 30.

<sup>2666</sup> Julian’s ECSFM at No. 461.

<sup>2667</sup> McLinko’s ECSFM at No. 461.

<sup>2668</sup> MSD-185.

Resources Committee of the Board stated: “As a follow up to issues identified as part of 2013 compensation process for monitoring in 2014, we reviewed the progress against Sales Integrity issue in Community Banking, specifically store level quality processes. We believe appropriate actions were taken to address the issues during the performance year and no compensation adjustment is required for the 2014 cycle.”<sup>2669</sup> The memorandum noted that the Chief Risk Officer’s and Director of Human Resources’ evaluation of risk outcomes was based, in part, on a “holistic review of audit findings related to the business, with a focus on the Unsatisfactory and high-risk Needs Improvement audit issues.”<sup>2670</sup>

### **Responses:**

**Julian** responded that the claim was disputed, but did not dispute the claim and instead averred Enforcement Counsel have presented no evidence that Mr. Julian participated in drafting annual incentive compensation risk memoranda.<sup>2671</sup> I find an insufficient factual basis has been presented to establish a dispute in this Response to create a controverted material fact. Accordingly, the Recommended Decision will include a factual finding as to Respondents Julian and McLinko that on February 16, 2015 annual incentive compensation risk memorandum from the Bank’s Chief Risk Officer and its Director of Human Resources to the CEO and the Human Resources Committee of the Board stated: “As a follow up to issues identified as part of 2013 compensation process for monitoring in 2014, we reviewed the progress against Sales Integrity issue in Community Banking, specifically store level quality processes. We believe appropriate actions were taken to address the issues during the performance year and no compensation adjustment is required for the 2014 cycle.”<sup>2672</sup> The memorandum noted that the Chief Risk Officer’s and Director of Human Resources’ evaluation of risk outcomes was based, in part, on a “holistic review of audit findings related to the business, with a focus on the Unsatisfactory and high-risk Needs Improvement audit issues.”

**McLinko** did not dispute the cited evidence includes the quoted language and incorporated Respondent Julian’s response.<sup>2673</sup>

### **Enforcement Counsel’s Statement of Material Fact (Julian and McLinko) No. 463**

On February 19, 2015, Respondent McLinko updated Respondent Russ Anderson on another

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<sup>2669</sup> MSD-433 at 4.

<sup>2670</sup> MSD-433 at 3.

<sup>2671</sup> Julian’s ECSFM at No. 462.

<sup>2672</sup> MSD-433 at 4.

<sup>2673</sup> McLinko’s ECSFM at No. 460.

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: “It 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.”<sup>2674</sup>

**Responses:**

**Julian** incorporated Respondent McLinko’s Response.<sup>2675</sup>

**McLinko** did not dispute the cited evidence includes the quoted language.<sup>2676</sup> Accordingly, the Recommended Decision will include a factual finding as to Respondents Julian and McLinko that 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: “It 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.”

**Enforcement Counsel’s Statement of Material Fact (Julian and McLinko) No. 464**

On March 12, 2015, WFAS issued its 2014 Community Banking Enterprise Risk Management Assessment (“2014 CB ERMA”), concluding again that “[r]isk management for Community Banking (CB) is **Satisfactory**. Community Banking risk management processes and controls are designed to identify, manage, monitor, and report on credit, operational, and compliance risk.” Culture and Strategy & Objective Setting were rated Strong. Governance, Risk Response and Control, and Risk Identification, Assessment and Analysis were rated Satisfactory.<sup>2677</sup> At the time, ERMA ratings were Strong, Satisfactory, Needs Improvement, or Weak.<sup>2678</sup>

**Responses:**

**Julian** responded that the claim was disputed, but did not dispute the claim and instead averred the claim lacked “context”.<sup>2679</sup> I find an insufficient factual basis has been presented to establish a dispute in this Response to create a controverted material fact.

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<sup>2674</sup> MSD-399.

<sup>2675</sup> Julian’s ECSFM at No. 463.

<sup>2676</sup> McLinko’s ECSFM at No. 463.

<sup>2677</sup> MSD-380 at 3.

<sup>2678</sup> MSD-380 at 3.

<sup>2679</sup> Julian’s ECSFM at No. 464.

Accordingly, the Recommended Decision will include a factual finding as to Respondents Julian and McLinko that on March 12, 2015, WFAS issued its 2014 Community Banking Enterprise Risk Management Assessment (“2014 CB ERMA”), concluding again that “[r]isk management for Community Banking (CB) is **Satisfactory**. Community Banking risk management processes and controls are designed to identify, manage, monitor, and report on credit, operational, and compliance risk.” Culture and Strategy & Objective Setting were rated Strong. Governance, Risk Response and Control, and Risk Identification, Assessment and Analysis were rated Satisfactory.<sup>2680</sup> At the time, ERMA ratings were Strong, Satisfactory, Needs Improvement, or Weak.

**McLinko** did not dispute the cited evidence includes the quoted language and incorporated Respondent Julian’s response.<sup>2681</sup>

### **Enforcement Counsel’s Statement of Material Fact (Julian and McLinko) No. 465**

On March 13, 2015, WFAS issued its audit report on *Enterprise Incentive Compensation*, which concluded compensation processes and the overall system of internal control was **Effective**. In the audit, WFAS had “evaluated the end-to-end processes Wells Fargouses to manage incentive compensation risk. Our scope focused on the ICRM program, key regulatory requirements related to incentive compensation, and [certain] processes put in place.”<sup>2682</sup> The audit report also specified that the Community Bank’s processes and risks related to managing incentive compensation were effective as well.<sup>2683</sup>

#### **Responses:**

**Julian** responded that the claim was disputed, but he did not dispute that the language presented appears in the cited documents; but avers that such evidence includes an audit engagement report that does not list Mr. Julian as part of the WFAS Audit Team that conducted the audit engagement.<sup>2684</sup>

I find an insufficient factual basis has been presented to establish a dispute in this Response to create a controverted material fact. Accordingly, the Recommended Decision will include a factual finding as to Respondents Julian and McLinko that on March 13, 2015, WFAS issued its audit report on *Enterprise Incentive Compensation*, which concluded compensation processes and the overall system of internal control was **Effective**. In the

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<sup>2680</sup> MSD-380 at 3.

<sup>2681</sup> McLinko’s ECSFM at No. 464.

<sup>2682</sup> MSD-515 at 3.

<sup>2683</sup> MSD-515 at 14.

<sup>2684</sup> Julian’s ECSFM at No. 465.



audit, WFAS had “evaluated the end-to-end processes Wells Fargouses to manage incentive compensation risk. Our scope focused on the ICRM program, key regulatory requirements related to incentive compensation, and [certain] processes put in place.”<sup>2685</sup> The audit report also specified that the Community Bank’s processes and risks related to managing incentive compensation were effective as well.

**McLinko** did not dispute the cited evidence includes the quoted language and incorporated Respondent Julian’s response.<sup>2686</sup>

### **Enforcement Counsel’s Statement of Material Fact (Julian and McLinko) No. 466**

On March 24, 2015 Respondent McLinko emailed his notes from the Community Bank’s March Risk Management Committee Meeting to his audit team. One discussion topic was the OCC’s examination of the Community Bank’s operational risk and cross sell/ sales practices and the Respondent Russ Anderson’s expectation to receive a couple MRAs from the OCC. Respondent McLinko also noted, “again, [Carrie Tolstedt] and the management team, was very involved in the meeting as noted above. [Carrie Tolstedt] and team set the tone at the top and their understanding of risk. It also is a clear indication of the risk culture that [Carrie Tolstedt] instill[s] in the [Community Bank].”<sup>2687</sup>

#### **Responses:**

**Julian** incorporated Respondent McLinko’s Response.<sup>2688</sup>

**McLinko** disputed the Statement is an accurate or complete statement of the cited evidence, averring that “Ms. Tolstedt actively participated in the discussions and emphasized appropriate risk management”.<sup>2689</sup> I find an insufficient factual basis has been presented to establish a dispute in this Response to create a controverted material fact. Accordingly, the Recommended Decision will include a factual finding as to Respondents McLinko and Julian that on March 24, 2015 Respondent McLinko emailed his notes from the Community Bank’s March Risk Management Committee Meeting to his audit team. One discussion topic was the OCC’s examination of the Community Bank’s operational risk and cross sell/ sales practices and the Respondent Russ Anderson’s expectation to receive a couple MRAs from the OCC. Respondent McLinko also noted, “again, [Carrie Tolstedt] and the management team, was very involved in the meeting as noted above. [Carrie Tolstedt] and team set the tone at the top and their

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<sup>2685</sup> MSD-515 at 3.

<sup>2686</sup> McLinko’s ECSFM at No. 465.

<sup>2687</sup> MSD-401.

<sup>2688</sup> Julian’s ECSFM at No. 466.

<sup>2689</sup> McLinko’s ECSFM at No. 466.

understanding of risk. It also is a clear indication of the risk culture that [Carrie Tolstedt] instill[s] in the [Community Bank].”

#### **Enforcement Counsel’s Statement of Material Fact (Julian and McLinko) No. 467**

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.<sup>2690</sup> On February 10, 2015, Respondent McLinko had assured Carrie Tolstedt that the SOCR audit would not be reported to the Board.<sup>2691</sup>

#### **Responses:**

**Julian** responded that the claim was disputed, but did not dispute the claim and instead averred the claim lacked “context”.<sup>2692</sup> I find an insufficient factual basis has been presented to establish a dispute in this Response to create a controverted material fact. Accordingly, the Recommended Decision will include a factual finding as to Respondents Julian and McLinko that 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.<sup>2693</sup> On February 10, 2015, Respondent McLinko had assured Carrie Tolstedt that the SOCR audit would not be reported to the Board.

**McLinko** did not dispute the cited evidence includes the quoted language and incorporated Respondent Julian’s response.<sup>2694</sup>

#### **Enforcement Counsel’s Statement of Material Fact (Julian and McLinko) No. 468**

Neither the March 30, 2015 RB SOCR audit report nor any other audit report issued during Respondent Julian’s and McLinko’s tenures before October 2016 identified that: the Bank was opening up large numbers of accounts or services without customer consent; the Bank had a

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<sup>2690</sup> MSD-520.

<sup>2691</sup> MSD-368.

<sup>2692</sup> Julian’s ECSFM at No. 467.

<sup>2693</sup> MSD-520.

<sup>2694</sup> McLinko’s ECSFM at No. 467.

systemic problem with sales practices misconduct; the Community Bank's sales goals were unreasonable; there was undue sales pressure in the Community Bank; or the Bank's preventative or detective controls regarding sales practices were unsatisfactory or inadequate.<sup>2695</sup>

**Responses:**

**Julian** responded that the claim was disputed, but did not dispute the claim and instead averred the claim lacked "context".<sup>2696</sup> I find an insufficient factual basis has been presented to establish a dispute in this Response to create a controverted material fact. Accordingly, the Recommended Decision will include a factual finding as to Respondent Julian that neither the March 30, 2015 RB SOCR audit report nor any other audit report issued during Respondent Julian's and McLinko's tenures before October 2016 identified that: the Bank was opening up large numbers of accounts or services without customer consent; the Bank had a systemic problem with sales practices misconduct; the Community Bank's sales goals were unreasonable; there was undue sales pressure in the Community Bank; or the Bank's preventative or detective controls regarding sales practices were unsatisfactory or inadequate

**McLinko** did not dispute that Mr. Deese gave the testimony cited in the Statement, but averred Mr. Deese "lacked personal knowledge of the subject matter"; and incorporated Respondent Julian's response.<sup>2697</sup> I find an insufficient factual basis has been presented to establish a dispute in this Response to create a controverted material fact. Accordingly, the Recommended Decision will include a factual finding as to Respondent McLinko that neither the March 30, 2015 RB SOCR audit report nor any other audit report issued during Respondent Julian's and McLinko's tenures before October 2016 identified that: the Bank was opening up large numbers of accounts or services without customer consent; the Bank had a systemic problem with sales practices misconduct; the Community Bank's sales goals were unreasonable; there was undue sales pressure in the Community Bank; or the Bank's preventative or detective controls regarding sales practices were unsatisfactory or inadequate.

**Enforcement Counsel's Statement of Material Fact (Julian and McLinko) No. 469**

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

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<sup>2695</sup> MSD-638 (Deese Dep. Tr.) 245:22-251:17.

<sup>2696</sup> Julian's ECSFM at No. 468.

<sup>2697</sup> McLinko's ECSFM at No. 468.

et seq. by engaging in unlawful sales practices.<sup>2698</sup>

**Responses:**

**Julian** did not dispute the claim.<sup>2699</sup> **McLinko** did not dispute the claim.<sup>2700</sup> Accordingly, the Recommended Decision will include a factual finding as to Respondent Julian that 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.

**Enforcement Counsel’s Statement of Material Fact (Julian and McLinko) No. 470**

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.”<sup>2701</sup>

**Responses:**

**Julian** did not dispute that the referenced report contained the language shown above.<sup>2702</sup> Accordingly, the Recommended Decision will include a factual finding as to Respondents Julian and McLinko that 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.”

**McLinko** did not dispute the cited evidence includes the quoted language and incorporated Respondent Julian’s response.<sup>2703</sup>

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<sup>2698</sup> Julian Amended Answer ¶¶ 123, 223; McLinko Amended Answer ¶¶ 123, 223.

<sup>2699</sup> Julian’s ECSFM at No. 469.

<sup>2700</sup> McLinko’s ECSFM at No. 469.

<sup>2701</sup> MSD-634 at 59-60.

<sup>2702</sup> Julian’s ECSFM at No. 470.

<sup>2703</sup> McLinko’s ECSFM at No. 470.

### **Enforcement Counsel’s Statement of Material Fact (Julian and McLinko) No. 471**

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.” (MSD-213). 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.<sup>2704</sup>

#### **Responses:**

**Julian** responded that the claim was disputed, but did not dispute the claim and instead averred the claim lacked “context”.<sup>2705</sup> I find an insufficient factual basis has been presented to establish a dispute in this Response to create a controverted material fact. Accordingly, the Recommended Decision will include a factual finding as to Respondents Julian and McLinko that 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.” (MSD-213). 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.

**McLinko** incorporated Respondent Julian’s response.<sup>2706</sup>

### **Enforcement Counsel’s Statement of Material Fact (Julian and McLinko) No. 472**

Enforcement Counsel’s Statement of Material Fact (Julian and McLinko) No. 472 relies on exhibits presented to this Tribunal as being non-public. Pursuant to the OCC’s Uniform Rules, while the proceedings in this administrative enforcement action are expressly required to be public, when presented with non-public documents the Administrative Law Judge is required to take all appropriate steps to preserve the confidentiality of such documents.<sup>2707</sup> Upon my review

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<sup>2704</sup> MSD-302 (Linskens Dep. Tr.) at 147:12-16.

<sup>2705</sup> Julian’s ECSFM at No. 471.

<sup>2706</sup> McLinko’s ECSFM at No. 471.

<sup>2707</sup> See 12 C.F.R. § 19.33(b).

of the confidential documents supporting this Statement of Material Fact, and after weighing the expectation that all of the proceedings shall be public against the requirement that I protect against the disclosure of non-public information, I find the evidentiary value of these exhibits to be sufficiently marginal and duplicative as to warrant exclusion from this Order. Accordingly, this Order will not be based on any of the claims found in this Statement of Material Fact.

### **Enforcement Counsel’s Statement of Material Fact (Julian and McLinko) No. 473**

According to the Bank’s former Examiner-in-Charge Bradley Linskens, Respondent Julian delivered a similar message to the OCC around that time. Mr. Linskens testified that: “I do remember a number of meetings that I had with David, and the message that we received from him during that period was consistent with the other executives, that it was, you know, rogue employees and -- and that, you know, the bank was working to address it – or had worked to address it. And at that period of time, there was not one executive who was volunteering that it was more significant than a few rogue employees.”<sup>2708</sup>

#### **Responses:**

**Julian** did not dispute that the witness provided testimony as shown above.<sup>2709</sup> Accordingly, the Recommended Decision will include a factual finding as to Respondents Julian and McLinko that according to the Bank’s former Examiner-in-Charge Bradley Linskens, Respondent Julian delivered a similar message to the OCC around that time. Mr. Linskens testified that: “I do remember a number of meetings that I had with David, and the message that we received from him during that period was consistent with the other executives, that it was, you know, rogue employees and -- and that, you know, the bank was working to address it – or had worked to address it. And at that period of time, there was not one executive who was volunteering that it was more significant than a few rogue employees.”

**McLinko** incorporated Respondent Julian’s response.<sup>2710</sup>

### **Enforcement Counsel’s Statement of Material Fact (Julian and McLinko) No. 474**

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 that “Wells Fargo’s management and oversight of Enterprise Sales Practices risk is

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<sup>2708</sup> MSD-302 (Linskens Dep. Tr.) at 119:3-17.

<sup>2709</sup> Julian’s ECSFM at No. 473.

<sup>2710</sup> McLinko’s ECSFM at No. 473.

weak and needs to improve.”<sup>2711</sup>

**Responses:**

**Julian** responded that the claim was disputed, but did not dispute the claim other than to aver the Letter did not use the term “sales practices misconduct.”<sup>2712</sup> I find an insufficient factual basis has been presented to establish a dispute in this Response to create a controverted material fact. Accordingly, the Recommended Decision will include a factual finding as to Respondents Julian and McLinko that 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 that “Wells Fargo’s management and oversight of Enterprise Sales Practices risk is weak and needs to improve.”

**McLinko** incorporated Respondent Julian’s response.<sup>2713</sup>

**Enforcement Counsel’s Statement of Material Fact (Julian and McLinko) No. 475**

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.”<sup>2714</sup>

**Responses:**

**Julian** did not dispute this claim.<sup>2715</sup> **McLinko** did not dispute this claim.<sup>2716</sup> Accordingly, the Recommended Decision will include a factual finding as to Respondents Julian and McLinko that 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

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<sup>2711</sup> MSD-213 at 2.

<sup>2712</sup> Julian’s ECSFM at No. 474.

<sup>2713</sup> McLinko’s ECSFM at No. 474.

<sup>2714</sup> MSD-213 at 3-4, 6-9.

<sup>2715</sup> Julian’s ECSFM at No. 475.

<sup>2716</sup> McLinko’s ECSFM at No. 475.

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.”

#### **Enforcement Counsel’s Statement of Material Fact (Julian and McLinko) No. 476**

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.”<sup>2717</sup> 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.”<sup>2718</sup>

#### **Responses:**

**Julian** did not dispute that the document cited contained the language shown here.<sup>2719</sup> Accordingly, the Recommended Decision will include a factual finding as to Respondents Julian and McLinko that 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.”<sup>2720</sup> 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.”

**McLinko** incorporated Respondent Julian’s response.<sup>2721</sup>

#### **Enforcement Counsel’s Statement of Material Fact (Julian and McLinko) No. 477**

On July 28, 2015, WFAS presented its Second Quarter 2015 Summary to the Audit and Examination Committee of the Board. Audit’s quarterly report to the Board contained the

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<sup>2717</sup> MSD-213 at 8.

<sup>2718</sup> MSD-213 at 8-9.

<sup>2719</sup> Julian’s ECSFM at No. 476.

<sup>2720</sup> MSD-213 at 8.

<sup>2721</sup> McLinko’s ECSFM at No. 476.



following update on the “Sales Conduct, Practices and the Consumer Business Model” Noteworthy Risk: “Account Opening and Closing audit, which will be prepared in conjunction with Wells Fargo’s counsel, is currently in planning. A Business Banking sales audit is planned for later in 2015. The focus of these reviews will be account opening and sales practices. WFAS received one new MRA this quarter related to sales practices. The OCC issued a Supervisory Letter on June 26, 2015, which noted that WFC needs to strengthen the management and oversight of Enterprise Sales Practices (Section 3.9.1). The Supervisory Letter included five MRAs covering all lines of defense, with one MRA directed to WFAS regarding audit coverage of sales practices. The OCC communicated that WFAS needs to reassess its coverage of sales practices at an enterprise level and develop an Enterprise Risk Management Assessment (ERMA) process for sales practices. WFAS is currently reviewing the MRAs to determine how WFAS will respond and how to work with the lines of business in tracking/validating their agreed actions, when defined.” “The Regional Banking – Account Opening and Closing audit, which will be prepared in conjunction with Wells Fargo’s counsel, is currently in planning. A Business Banking sales audit is planned for later in 2015. The focus of these reviews will be account opening and sales practices.<sup>2722</sup>

#### **Responses:**

**Julian** disputed that the Statement accurately quoted the referenced report.<sup>2723</sup> Whether the cited language is the same in both the Statement and the supporting document is not a material fact, such that disputing the same will not create a controverted material fact that would prevent granting Enforcement Counsel’s summary disposition motion. The Recommended Decision will not, however, include the claim presented in (Julian and McLinko) No. 447 as to Respondents Julian or McLinko, in the absence of evidence warranting such inclusion as may be presented during the hearing.

**McLinko** incorporated Respondent Julian’s response.<sup>2724</sup>

#### **Enforcement Counsel’s Statement of Material Fact (Julian and McLinko) No. 478**

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

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<sup>2722</sup> MSD-404 at 61.

<sup>2723</sup> Julian’s ECSFM at No. 477.

<sup>2724</sup> McLinko’s ECSFM at No. 477.

received.<sup>2725</sup> 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.”<sup>2726</sup>

### **Responses:**

**Julian** did not dispute that the Notice of Deficiency contains the quoted language.<sup>2727</sup> Accordingly, the Recommended Decision will include a factual finding as to Respondents Julian and McLinko that 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.<sup>2728</sup> 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.”

**McLinko** incorporated Respondent Julian’s response.<sup>2729</sup>

### **Enforcement Counsel’s Statement of Material Fact (Julian and McLinko) No. 479**

On August 10, 2015, the Bank provided a response to SL 2015-36, which stated that the Bank “recognize[s] the importance of the concerns discussed in the Supervisory Letter to Wells Fargo and its customers.”<sup>2730</sup> 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

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<sup>2725</sup> MSD-414 at 1-2.

<sup>2726</sup> MSD-414 at 2-3.

<sup>2727</sup> Julian’s ECSFM at No. 478.

<sup>2728</sup> MSD-414 at 1-2.

<sup>2729</sup> McLinko’s ECSFM at No. 478.

<sup>2730</sup> MSD-313 at 1.

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 information is available.”<sup>2731</sup>

### **Responses:**

**Julian** did not dispute that the Bank’s response contains the quoted language.<sup>2732</sup>

**McLinko** did not dispute that the Bank’s response contains the quoted language.<sup>2733</sup>

Accordingly, the Recommended Decision will include a factual finding as to Respondents Julian and McLinko that on August 10, 2015, the Bank provided a response to SL 2015-36, which stated that the Bank “recognize[s] the importance of the concerns discussed in the Supervisory Letter to Wells Fargo and its customers.”<sup>2734</sup> 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 information is available.”

### **Enforcement Counsel’s Statement of Material Fact (Julian and McLinko) No. 480**

The Bank’s August 10, 2015 response further stated that “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

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<sup>2731</sup> MSD-313 at 11; Julian Amended Answer ¶¶ 418, 467; McLinko Amended Answer ¶¶ 418, 467.

<sup>2732</sup> Julian’s ECSFM at No. 479.

<sup>2733</sup> Julian’s ECSFM at No. 479.

<sup>2734</sup> MSD-313 at 1.

with their sustainability.”<sup>2735</sup>

**Responses:**

**Julian** did not dispute that the Bank’s response contains the quoted language.<sup>2736</sup>

**McLinko** did not dispute that the Bank’s response contains the quoted language.<sup>2737</sup>

Accordingly, the Recommended Decision will include a factual finding as to Respondents Julian and McLinko that the Bank’s August 10, 2015 response further stated that “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.”

**Enforcement Counsel’s Statement of Material Fact (Julian and McLinko) No. 481**

On October 21, 2015, Respondents Julian and McLinko received Accenture’s Community Banking Sales Practices Report: Observations and Recommendations (“Accenture Report”).<sup>2738</sup> Accenture’s review was primarily comprised of interviews with Bank employees and sales data. Accenture was clear that its review did **not** include “deep testing of control effectiveness or exhaustive review of tools and systems; or a large-scale survey distributed to employees.”<sup>2739</sup> Even so, the Accenture Report noted “[a]lthough there are multiple programs in flight to strengthen controls within the [first line of defense], the [first line of defense] does not have a uniform way of evidencing sufficient control over sales practices issues.”<sup>2740</sup>

**Responses:**

**Julian** did not dispute that the cited document contains the quoted language but averred the cited evidence does not establish that Mr. Julian received the Accenture Report.<sup>2741</sup>

Whether Respondent Julian received and reviewed this report is not a material fact, such that disputing the same will not create a controverted material fact that would prevent

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<sup>2735</sup> MSD-313 at 11; Julian Amended Answer ¶¶ 419, 468; McLinko Amended Answer ¶¶ 419, 468.

<sup>2736</sup> Julian’s ECSFM at No. 480.

<sup>2737</sup> Julian’s ECSFM at No. 480.

<sup>2738</sup> MSD-51.

<sup>2739</sup> MSD-51 at 2.

<sup>2740</sup> MSD-51 at 42.

<sup>2741</sup> Julian’s ECSFM at No. 481.

granting Enforcement Counsel’s summary disposition motion. The Recommended Decision will not, however, include the claim presented in (Julian and McLinko) No. 481 as to Respondent Julian, in the absence of evidence warranting such inclusion as may be presented during the hearing.

**McLinko** did not dispute that the cited document contains the quoted language but disputed as to when he received the Accenture report and disputed that the Statement is an accurate or complete statement of the cited evidence.<sup>2742</sup> When Respondent McLinko received and reviewed this report is not a material fact, such that disputing the same will not create a controverted material fact that would prevent granting Enforcement Counsel’s summary disposition motion. The Recommended Decision will not, however, include the claim presented in (Julian and McLinko) No. 481 as to Respondents McLinko, in the absence of evidence warranting such inclusion as may be presented during the hearing.

### **Enforcement Counsel’s Statement of Material Fact (Julian and McLinko) No. 482**

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.”<sup>2743</sup> The report noted that “solution sales goals have not been met since 2013 (even after accounting for adjustments made throughout the year to improve achievement rates).”<sup>2744</sup> 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.”<sup>2745</sup>

#### **Responses:**

**Julian** did not dispute that the Report contains the quoted text.<sup>2746</sup> Accordingly, the Recommended Decision will include a factual finding as to Respondents Julian and McLinko that 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.” The report noted that “solution sales goals have not been met since 2013 (even after accounting for adjustments made throughout the year to improve achievement rates).” 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

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<sup>2742</sup> McLinko’s ECSFM at No. 481.

<sup>2743</sup> MSD-51 at 4.

<sup>2744</sup> MSD-51 at 27.

<sup>2745</sup> MSD-51 at 27.

<sup>2746</sup> Julian’s ECSFM at No. 482.

management, which could lead to adverse customer impact.”

**McLinko** disputed that the Statement is an accurate or complete statement of the cited evidence and incorporated Respondent Julian’s response.<sup>2747</sup>

### **Enforcement Counsel’s Statement of Material Fact (Julian and McLinko) No. 483**

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.”<sup>2748</sup>

#### **Responses:**

**Julian** incorporated Respondent McLinko’s Response.<sup>2749</sup>

**McLinko** did not dispute that the Statement accurately quoted his testimony, but disputed that he now agrees that the Community Bank had a systemic sales practices misconduct problem.<sup>2750</sup> I find an insufficient factual basis has been presented to establish a dispute in this Response to create a controverted material fact. Accordingly, the Recommended Decision will include a factual finding as to Respondents Julian and McLinko that 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.”

### **Enforcement Counsel’s Statement of Material Fact (Julian and McLinko) No. 484**

On November 17, 2015, WFAS presented its Third 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: “As reported last quarter, the OCC issued a supervisory letter on June 26, 2015, that included five MRAs covering all lines of defense. In 3Q15, Wells Fargo management formally responded to the OCC with actions plans for the five issues which the OCC formally accepted on September 9, 2015. A group within WFAS has been formed to assess and monitor management’s remediation efforts across the enterprise. The WFAS

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<sup>2747</sup> McLinko’s ECSFM at No. 482.

<sup>2748</sup> MSD-276 (McLinko Tr.) at 56:8- 19.

<sup>2749</sup> Julian’s ECSFM at No. 483.

<sup>2750</sup> McLinko’s ECSFM at No. 483.

working group, which encompasses all lines of defense audit teams, as well as Risk Management audit teams, has been formed to enhance future audit coverage of Sales Practices, but also of the associated Incentive Compensation, Human Resource, Ethics Line, Complaint Management, and Corporate Investigation functions. A Sales Practices Standard Audit Program is also being created to ensure consistency in audit coverage. In 2017, WFAS will issue the ERMA opinion for Sales Practices for 2016.”<sup>2751</sup>

### **Responses:**

**Julian** did not dispute that the Summary contains the quoted text.<sup>2752</sup> **McLinko** did not dispute that the Summary contains the quoted text.<sup>2753</sup> Accordingly, the Recommended Decision will include a factual finding as to Respondents Julian and McLinko that on November 17, 2015, WFAS presented its Third 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: “As reported last quarter, the OCC issued a supervisory letter on June 26, 2015, that included five MRAs covering all lines of defense. In 3Q15, Wells Fargo management formally responded to the OCC with actions plans for the five issues which the OCC formally accepted on September 9, 2015. A group within WFAS has been formed to assess and monitor management’s remediation efforts across the enterprise. The WFAS working group, which encompasses all lines of defense audit teams, as well as Risk Management audit teams, has been formed to enhance future audit coverage of Sales Practices, but also of the associated Incentive Compensation, Human Resource, Ethics Line, Complaint Management, and Corporate Investigation functions. A Sales Practices Standard Audit Program is also being created to ensure consistency in audit coverage. In 2017, WFAS will issue the ERMA opinion for Sales Practices for 2016.”

### **Enforcement Counsel’s Statement of Material Fact (Julian and McLinko) No. 485**

Enforcement Counsel’s Statement of Material Fact (Julian and McLinko) No. 485 relies on exhibits presented to this Tribunal as being non-public. Pursuant to the OCC’s Uniform Rules, while the proceedings in this administrative enforcement action are expressly required to be public, when presented with non-public documents the Administrative Law Judge is required to take all appropriate steps to preserve the confidentiality of such documents.<sup>2754</sup> Upon my review of the confidential documents supporting this Statement of Material Fact, and after weighing the expectation that all of the proceedings shall be public against the requirement that I protect

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<sup>2751</sup> MSD-405 at 63.

<sup>2752</sup> Julian’s ECSFM at No. 484.

<sup>2753</sup> McLinko’s ECSFM at No. 484.

<sup>2754</sup> See 12 C.F.R. § 19.33(b).

against the disclosure of non-public information, I find the evidentiary value of these exhibits to be sufficiently marginal and duplicative as to warrant exclusion from this Order. Accordingly, this Order will not be based on any of the claims found in this Statement of Material Fact.

### **Enforcement Counsel's Statement of Material Fact (Julian and McLinko) No. 486**

In the February 12, 2016, annual incentive compensation risk memorandum from the Bank's Chief Risk Officer and its Director of Human Resources to the CEO and the Human Resources Committee of the Board, sales practices received an Issue Rating of "Improvement Needed" but an "Overall Risk Performance" assessment of "Satisfactory," the highest rating.<sup>2755</sup> The memorandum did not recommend any incentive compensation adjustments for Head of the Community Bank Carrie Tolstedt. The memorandum noted that the Chief Risk Officer's and Director of Human Resources' evaluation of risk outcomes was based, in part, on a "holistic review of audit findings related to the business, with a focus on the Unsatisfactory and high-risk Needs Improvement audit issues."<sup>2756</sup>

#### **Responses:**

**Julian** did not dispute that the Summary contains the quoted text.<sup>2757</sup> Accordingly, the Recommended Decision will include a factual finding as to Respondents Julian and McLinko that in the February 12, 2016, annual incentive compensation risk memorandum from the Bank's Chief Risk Officer and its Director of Human Resources to the CEO and the Human Resources Committee of the Board, sales practices received an Issue Rating of "Improvement Needed" but an "Overall Risk Performance" assessment of "Satisfactory," the highest rating.<sup>2758</sup> The memorandum did not recommend any incentive compensation adjustments for Head of the Community Bank Carrie Tolstedt. The memorandum noted that the Chief Risk Officer's and Director of Human Resources' evaluation of risk outcomes was based, in part, on a "holistic review of audit findings related to the business, with a focus on the Unsatisfactory and high-risk Needs Improvement audit issues."

**McLinko** did not dispute that the Summary contains the quoted text and incorporated Respondent Julian's Response.<sup>2759</sup>

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<sup>2755</sup> MSD-456 at 8, 13.

<sup>2756</sup> MSD-456 at 2.

<sup>2757</sup> Julian's ECSFM at No. 486.

<sup>2758</sup> MSD-456 at 8, 13.

<sup>2759</sup> McLinko's ECSFM at No. 486.



### **Enforcement Counsel’s Statement of Material Fact (Julian and McLinko) No. 487**

Enforcement Counsel’s Statement of Material Fact (Julian and McLinko) No. 487 relies on exhibits presented to this Tribunal as being non-public. Pursuant to the OCC’s Uniform Rules, while the proceedings in this administrative enforcement action are expressly required to be public, when presented with non-public documents the Administrative Law Judge is required to take all appropriate steps to preserve the confidentiality of such documents.<sup>2760</sup> Upon my review of the confidential documents supporting this Statement of Material Fact, and after weighing the expectation that all of the proceedings shall be public against the requirement that I protect against the disclosure of non-public information, I find the evidentiary value of these exhibits to be sufficiently marginal and duplicative as to warrant exclusion from this Order. Accordingly, this Order will not be based on any of the claims found in this Statement of Material Fact.

### **Enforcement Counsel’s Statement of Material Fact (Julian and McLinko) No. 488**

Also on March 18, 2016, WFAS issued its Community Banking Enterprise Risk Management Assessment for 2015 (“2015 CB ERMA”), concluding yet again that “Enterprise Risk Management [] for Community Banking [] is Satisfactory.” Strategy and Objective Setting, Governance, Culture, Risk Identification, Assessment, and Analysis, and Risk Control and Response were all rated Satisfactory. At the time, ERMA ratings were Satisfactory, Needs Improvement, or Weak, i.e. Satisfactory was the highest possible rating at the time.<sup>2761</sup>

### **Responses:**

**Julian** did not dispute that the quoted language appears in the cited Assessment.<sup>2762</sup> Accordingly, the Recommended Decision will include a factual finding as to Respondents Julian and McLinko that on March 18, 2016, WFAS issued its Community Banking Enterprise Risk Management Assessment for 2015 (“2015 CB ERMA”), concluding yet again that “Enterprise Risk Management [] for Community Banking [] is Satisfactory.” Strategy and Objective Setting, Governance, Culture, Risk Identification, Assessment, and Analysis, and Risk Control and Response were all rated Satisfactory. At the time, ERMA ratings were Satisfactory, Needs Improvement, or Weak, i.e. Satisfactory was the highest possible rating at the time.

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<sup>2760</sup> See 12 C.F.R. § 19.33(b).

<sup>2761</sup> MSD-384 at 1.

<sup>2762</sup> Julian’s ECSFM at No. 488.

**McLinko** incorporated Respondent Julian's Response.<sup>2763</sup>

### **Enforcement Counsel's Statement of Material Fact (Julian and McLinko) No. 489**

With respect to Culture, the 2015 CB ERMA noted that "actions are underway to strengthen sales practices across all channels by fostering a culture that only needs-based and value-add product and service solutions are delivered to customers. Efforts include assessing solutions goals and customer outcomes, enhanced vision and values assessments/reinforcement, additional training, enhanced Ethics Line procedures and cultural benchmark/monitoring." The 2015 CB ERMA also noted that "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 Oversight teams, Conduct Risk Committee, etc.)."<sup>2764</sup>

On March 9, 2016, Respondent McLinko had provided Carrie Tolstedt with a copy of the final draft 2015 CB ERMA. He told her: "While many groups talk about risk management, you and your team live it, which is demonstrated in the many ways that are highlighted in the assessment."<sup>2765</sup>

### **Responses:**

**Julian** did not dispute that the quoted text appears in the cited report.<sup>2766</sup> Accordingly, the Recommended Decision will include a factual finding as to Respondent Julian that With respect to Culture, the 2015 CB ERMA noted that "actions are underway to strengthen sales practices across all channels by fostering a culture that only needs-based and value-add product and service solutions are delivered to customers. Efforts include assessing solutions goals and customer outcomes, enhanced vision and values assessments/reinforcement, additional training, enhanced Ethics Line procedures and cultural benchmark/monitoring." The 2015 CB ERMA also noted that "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 Oversight teams, Conduct Risk Committee, etc.)."<sup>2767</sup>

To the extent this paragraph relates to Mr. McLinko's Amended Answer, Julian incorporated

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<sup>2763</sup> McLinko's ECSFM at No. 488.

<sup>2764</sup> MSD-384.

<sup>2765</sup> McLinko Amended Answer ¶ 470; MSD-387.

<sup>2766</sup> Julian's ECSFM at No. 489.

<sup>2767</sup> MSD-384.

Respondent McLinko's Response.<sup>2768</sup>

**McLinko** did not dispute that the cited documents contain the quoted language.<sup>2769</sup>

Accordingly, the Recommended Decision will include a factual finding as to Respondent McLinko that with respect to Culture, the 2015 CB ERMA noted that "actions are underway to strengthen sales practices across all channels by fostering a culture that only needs-based and value-add product and service solutions are delivered to customers. Efforts include assessing solutions goals and customer outcomes, enhanced vision and values assessments/reinforcement, additional training, enhanced Ethics Line procedures and cultural benchmark/monitoring." The 2015 CB ERMA also noted that "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 Oversight teams, Conduct Risk Committee, etc.)."

#### **Enforcement Counsel's Statement of Material Fact (Julian and McLinko) No. 490**

On April 21, 2016, Respondent McLinko informed Respondent Russ Anderson that his "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). [An OCC examiner] asked the most questions, but nothing on the culture front. 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."<sup>2770</sup>

#### **Responses:**

**Julian** incorporated Respondent McLinko's Response.<sup>2771</sup>

**McLinko** disputed that the Statement was an accurate or complete statement of the cited evidence, averring the full statement is as follows:

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

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<sup>2768</sup> Julian's ECSFM at No. 489.

<sup>2769</sup> McLinko's ECSFM at No. 489.

<sup>2770</sup> McLinko Amended Answer ¶ 471; MSD-407.

<sup>2771</sup> Julian's ECSFM at No. 490.

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 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.<sup>2772</sup>

I find an insufficient factual basis has been presented to establish a dispute in this Response to create a controverted material fact. Accordingly, the Recommended Decision will include a factual finding as to Respondents Julian and McLinko that 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 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.

### **Enforcement Counsel's Statement of Material Fact (Julian and McLinko) No. 491**

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<sup>2772</sup> McLinko's ECSFM at No. 490, quoting MSD-407.

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.<sup>2773</sup> 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.”<sup>2774</sup>

**Responses:**

**Julian** did not dispute that the Letter contains the quoted language.<sup>2775</sup> Accordingly, the Recommended Decision will include a factual finding as to Respondents Julian and McLinko that 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.<sup>2776</sup> 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.”

**McLinko** incorporated Respondent Julian’s Response.<sup>2777</sup>

**Enforcement Counsel’s Statement of Material Fact (Julian and McLinko) No. 492 (see Russ Anderson No. 447)**

**Enforcement Counsel’s Statement of Material Fact (Julian and McLinko) No. 493**

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

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<sup>2773</sup> MSD-342 at 1.

<sup>2774</sup> MSD-342 at 2.

<sup>2775</sup> Julian’s ECSFM at No. 491.

<sup>2776</sup> MSD-342 at 1.

<sup>2777</sup> McLinko’s ECSFM at No. 491.

enforcement action against the Bank.”<sup>2778</sup>

**Responses:**

**Julian** did not dispute that the Letter contains the quoted text.<sup>2779</sup> **McLinko** did not dispute that the Letter contains the quoted text.<sup>2780</sup> Accordingly, the Recommended Decision will include a factual finding as to Respondents Julian and McLinko that 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.”

**Enforcement Counsel’s Statement of Material Fact (Julian and McLinko) No. 494**

On July 18, 2016, the same day as the OCC issued SL 2016-36 communicating to the Bank that its sales practices and sales practices risk management were unsafe or unsound, Respondent McLinko wrote to Carrie Tolstedt, “congratulations on your retirement. You have been a wonderful partner with WFAS. It’s rare to find a business leader who takes risk management as seriously as you do. I’ve been lucky to work with one of the best; that being you. I, and Wells Fargo, will miss all that you bring on a day to day basis; but also know that I am very happy for you. Keep wearing the Wells Fargo Stagecoach pin.”<sup>2781</sup>

**Responses:**

**Julian** did not dispute that the email contains the quoted text.<sup>2782</sup> **McLinko** did not dispute that the email contains the quoted text.<sup>2783</sup> Accordingly, the Recommended Decision will include a factual finding as to Respondents Julian and McLinko that on July 18, 2016, the same day as the OCC issued SL 2016-36 communicating to the Bank that its sales practices and sales practices risk management were unsafe or unsound, Respondent McLinko wrote to Carrie Tolstedt, “congratulations on your retirement. You have been a wonderful partner with WFAS. It’s rare to find a business leader who takes risk management as seriously as you do. I’ve been lucky to work with one of the best; that being you. I, and Wells Fargo, will miss all that you bring on a day to day basis; but also know that I am very happy for you. Keep wearing the Wells Fargo Stagecoach pin.”

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<sup>2778</sup> MSD-342 at 7; Julian Amended Answer ¶ 131; McLinko Amended Answer ¶ 131.

<sup>2779</sup> Julian’s ECSFM at No. 493.

<sup>2780</sup> McLinko’s ECSFM at No. 493.

<sup>2781</sup> McLinko Amended Answer ¶ 470; MSD-409.

<sup>2782</sup> Julian’s ECSFM at No. 494.

<sup>2783</sup> McLinko’s ECSFM at No. 494.

To the extent the Statement relates to Mr. McLinko's Amended Answer, Julian incorporated Respondent McLinko's Response.<sup>2784</sup>

#### **Enforcement Counsel's Statement of Material Fact (Julian and McLinko) No. 495**

On September 7, 2016, Respondent McLinko's direct report asked him whether sales practices was classified as a high risk area. Respondent McLinko replied, "Nope, not even sure who makes that classification." After discussion about whether sales practices would be considered a high risk area, Respondent McLinko stated: "the short answer is I don't see how it can't have a high risk classification, given the impact on the company and the regulatory interest."<sup>2785</sup>

#### **Responses:**

**Julian** incorporated Respondent McLinko's Response.<sup>2786</sup>

**McLinko** did not dispute the cited documents contained the language quoted in the Statement.<sup>2787</sup> Accordingly, the Recommended Decision will include a factual finding as to Respondents Julian and McLinko that on September 7, 2016, Respondent McLinko's direct report asked him whether sales practices was classified as a high risk area. Respondent McLinko replied, "Nope, not even sure who makes that classification." After discussion about whether sales practices would be considered a high risk area, Respondent McLinko stated: "the short answer is I don't see how it can't have a high risk classification, given the impact on the company and the regulatory interest."

#### **Enforcement Counsel's Statement of Material Fact (Julian and McLinko) No. 496**

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.<sup>2788</sup>

#### **Responses:**

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<sup>2784</sup> Julian's ECSFM at No. 494.

<sup>2785</sup> MSD-362.

<sup>2786</sup> Julian's ECSFM at No. 495.

<sup>2787</sup> McLinko's ECSFM at No. 495.

<sup>2788</sup> MSD-343.

**Julian** did not dispute the factual claim in this Statement.<sup>2789</sup> Accordingly, the Recommended Decision will include a factual finding as to Respondents Julian and McLinko that 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.

**McLinko** incorporated Respondent Julian’s Response.<sup>2790</sup>

**Enforcement Counsel’s Statement of Material Fact (Julian and McLinko) No. 497 (see Julian and McLinko No. 496)**

**Enforcement Counsel’s Statement of Material Fact (Julian and McLinko) No. 498 (see Russ Anderson No. 450)**

**Enforcement Counsel’s Statement of Material Fact (Julian and McLinko) No. 499 (see Russ Anderson No. 451)**

**Enforcement Counsel’s Statement of Material Fact (Julian and McLinko) No. 500**

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.”<sup>2791</sup>

**Responses:**

**Julian** did not dispute the factual claim in this Statement.<sup>2792</sup> Accordingly, the Recommended Decision will include a factual finding as to Respondents Julian and McLinko that 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.”

**McLinko** incorporated Respondent Julian’s Response.<sup>2793</sup>

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<sup>2789</sup> Julian’s ECSFM at No. 496.

<sup>2790</sup> McLinko’s ECSFM at No. 496.

<sup>2791</sup> MSD-343 at 3.

<sup>2792</sup> Julian’s ECSFM at No. 500.

<sup>2793</sup> McLinko’s ECSFM at No. 500.



### **Enforcement Counsel’s Statement of Material Fact (Julian and McLinko) No. 501**

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.<sup>2794</sup>

#### **Responses:**

**Julian** did not dispute the factual claim in this Statement.<sup>2795</sup> Accordingly, the Recommended Decision will include a factual finding as to Respondents Julian and McLinko that 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.

**McLinko** incorporated Respondent Julian’s Response.<sup>2796</sup>

### **Enforcement Counsel’s Statement of Material Fact (Julian and McLinko) No. 502**

On September 11, 2016, Respondent Julian emailed WFAS’s Executive Audit Directors, including Respondent McLinko, asking, “How would we answer the question[:] What has WFAS done to determine if we have sales practices issue in the other businesses?” Several of the Executive Audit Directors responded, including Respondent McLinko, who described, not WFAS activities completed before 2016, but the development of the 2016 sales practices coverage strategy.<sup>2797</sup>

#### **Responses:**

**Julian** did not dispute the factual claim in this Statement.<sup>2798</sup> Accordingly, the Recommended Decision will include a factual finding as to Respondent Julian that on September 11, 2016, Respondent Julian emailed WFAS’s Executive Audit Directors, including Respondent McLinko, asking, “How would we answer the question[:] What has WFAS done to determine if we have sales practices issue in the other businesses?” Several of the Executive Audit Directors responded, including Respondent McLinko, who described, not WFAS activities completed before 2016, but the development of the 2016

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<sup>2794</sup> MSMSD-469.D-343.

<sup>2795</sup> Julian’s ECSFM at No. 501.

<sup>2796</sup> McLinko’s ECSFM at No. 501.

<sup>2797</sup> MSD-469.

<sup>2798</sup> Julian’s ECSFM at No. 502.

sales practices coverage strategy

**McLinko** disputed that the Statement was accurate or complete, averring that “[f]ollowing up on another auditor’s response, Mr. McLinko states:

David,

Mark provided a well-rounded response to your questions. We have a centralized working group that is coordinating our coverage of Sales Practices. Kathy Sheng is leading that group and it included representatives from all LOB audit teams, as well as teams that cover Internal Investigations, Ethics Line and Compensation. We’ve developed sales practices coverage strategy for 2016 (which will be updated in response to the CO) as well as a Sales Practices Standard Audit Program which all teams all [sic] using to test sales practices. In addition, and like Mark indicated, all teams are in the initial stages of using the complaints data (is a large complaints initiative at the top of the house) to target testing.

In my absence, Kathy Sheng for the overall sales practices project, and Bart Deese for Community Banking are the key contacts.

Let me know if you have other questions.<sup>2799</sup>

I find an insufficient factual basis has been presented to establish a dispute in this Response to create a controverted material fact. Accordingly, the Recommended Decision will include a factual finding as to Respondent McLinko that on September 11, 2016, Respondent Julian emailed WFAS’s Executive Audit Directors, including Respondent McLinko, asking, “How would we answer the question[:] What has WFAS done to determine if we have sales practices issue in the other businesses?” Several of the Executive Audit Directors responded, including Respondent McLinko, who described, not WFAS activities completed before 2016, but the development of the 2016 sales practices coverage strategy. In response to another auditor’s inquiry, Mr. McLinko stated:

David,

Mark provided a well-rounded response to your questions. We have a centralized working group that is coordinating our coverage of Sales Practices. Kathy Sheng is leading that group and it included representatives from all LOB audit teams, as well as teams that cover Internal Investigations, Ethics Line and Compensation. We’ve developed sales practices coverage strategy for 2016 (which will be updated in response to the CO) as well as a Sales Practices Standard Audit Program which all teams all [sic] using to test sales practices. In addition, and like Mark indicated, all teams are in the initial stages of using the complaints data (is a large complaints initiative at the top of the house) to target testing.

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<sup>2799</sup> McLinko’s ECSFM at No. 502, quoting MSD-469 at -624.

In my absence, Kathy Sheng for the overall sales practices project, and Bart Deese for Community Banking are the key contacts.

Let me know if you have other questions.

### **Enforcement Counsel’s Statement of Material Fact (Julian and McLinko) No. 503**

On September 12, 2016, Respondent Julian asked in the same email chain, “I could use some help with this question: Where was audit while this [sales practices] activity was taking place? To be honest, I’m not sure how to answer this but am sure the AE Committee will and should be asking. Any thoughts would be welcomed.”<sup>2800</sup>

#### **Responses:**

**Julian** did not dispute the factual claim in this Statement.<sup>2801</sup> Accordingly, the Recommended Decision will include a factual finding as to Respondents Julian and McLinko that on September 12, 2016, Respondent Julian asked in the same email chain, “I could use some help with this question: Where was audit while this [sales practices] activity was taking place? To be honest, I’m not sure how to answer this but am sure the AE Committee will and should be asking. Any thoughts would be welcomed.”

**McLinko** incorporated Respondent Julian’s Response.<sup>2802</sup>

### **Enforcement Counsel’s Statement of Material Fact (Julian and McLinko) No. 504**

On September 12, 2016, Respondent McLinko responded, describing WFAS’s reliance on the Community Bank’s SOCR program; and, after WFAS failed SOCR’s review documentation, the addition of an account opening audit in the 2015 audit plan.<sup>2803</sup>

#### **Responses:**

**Julian** did not dispute that Respondent McLinko responded as shown, other than to aver this “does not provide the full context” of the response.<sup>2804</sup> I find an insufficient factual basis has been presented to establish a dispute in this Response to create a controverted material fact. Accordingly, the Recommended Decision will include a factual finding as to Respondent Julian

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<sup>2800</sup> MSD-469; Julian Amended Answer ¶ 435, 472; McLinko Amended Answer ¶ 435, 472.

<sup>2801</sup> Julian’s ECSFM at No. 503.

<sup>2802</sup> McLinko’s ECSFM at No. 503.

<sup>2803</sup> MSD-469; MSD-364.

<sup>2804</sup> Julian’s ECSFM at No. 504.

that on September 12, 2016, Respondent McLinko responded, describing WFAS's reliance on the Community Bank's SOCR program; and, after WFAS failed SOCR's review documentation, the addition of an account opening audit in the 2015 audit plan.

**McLinko** incorporated Respondent Julian's Response<sup>2805</sup> and disputed that the quoted text is an accurate or complete statement of the cited evidence, averring the following is the complete statement of the cited evidence:

My response is related to the Stores as in the Call Centers, all Sales are recorded, which gives us the ability to select samples of sales from the recordings and test for consent, etc.

Regarding the Stores:

- In many ways, we have leveraged the Store Operations Control Review (SOCR) which is part of the ILOD. SOCR goes into every store every year and performs a variety of functions, one being a review of account opening documentation and signatures. Every two years we test the program by going into a sample of stores and re-performing the work the SOCR team does. Several years back we raised a moderate rated issue as it relates to the documentation supporting the process (not that they weren't performing the work). Audit validation of the corrective actions failed the issue and at that time we raised it to a high rated issue.
- Because of that fail, we added an account opening audit to our plan in 2015. We announced the audit and then the LA lawsuit happened. As a result, the scope of the audit was changed and put under ACP.
- We have also tested for new account documentation in an audit called Deposit Products Support Services. This audit would review for account documentation and customer signature.
- We have also tested the Sales and Services Conduct Oversight Team, which is the group that was part of researching the sales practices issues back in 2013. That led to the investigation and subsequent TM firings; that led to the LA lawsuit.
- In 2014, we tested incentive plans in coordination with Andrew's team. During that audit we tested: Customer Connection (WFCC), Personal Banker 1/Assistant Store Mgr. (Regional Banking), and RBPB/Private Banker (Regional Banking) incentive plans.

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<sup>2805</sup> McLinko's ECSFM at No. 504.

In short, over the years, we have relied on the SOCR program. Once we failed the SOCR issue validation, during annual audit planning in 2014, we added a Regional Banking account opening audit to the 2015 audit plan which is mentioned above.

In addition:

- As you're aware, complaints has been an issue at the top of the house with continued rollout of the program, thus we're beginning to be able to utilize that: information (which was also part of our response to the MRA).
- The new technology that captures customer consent for deposits, credit: cards and unsecured lines of credit just: went live recently which we are testing as part of the IVRA validation.
- A retrospective review for this topic was performed in response to the OCC MRA's. In a nutshell this covers what we've done.<sup>2806</sup>

I find an insufficient factual basis has been presented to establish a dispute in this Response to create a controverted material fact. Accordingly, the Recommended Decision will include a factual finding as to Respondent McLinko that on September 12, 2016, Respondent McLinko responded as shown above, describing WFAS's reliance on the Community Bank's SOCR program; and, after WFAS failed SOCR's review documentation, the addition of an account opening audit in the 2015 audit plan.

### **Enforcement Counsel's Statement of Material Fact (Julian and McLinko) No. 505**

Another Executive Audit Director responded with some suggestions for moving forward and Respondent Julian replied, "I will really need to respond to 'where was Audit' and while I'd like to be able to say we tested for activity like this, specifically in the Community Bank, I don't think we did."<sup>2807</sup>

#### **Responses:**

**Julian** did not dispute the email had the quoted text.<sup>2808</sup> Accordingly, the Recommended Decision will include a factual finding as to Respondents Julian and McLinko that another Executive Audit Director responded with some suggestions for moving forward and Respondent

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<sup>2806</sup> McLinko's ECSFM at No. 504, quoting MSD-364 at -513-514.

<sup>2807</sup> MSD-469.

<sup>2808</sup> Julian's ECSFM at No. 505.

Julian replied, “I will really need to respond to ‘where was Audit’ and while I’d like to be able to say we tested for activity like this, specifically in the Community Bank, I don’t think we did.”

**McLinko** incorporated Respondent Julian’s Response.<sup>2809</sup>

### **Enforcement Counsel’s Statement of Material Fact (Julian and McLinko) No. 506**

On September 12, 2016, after receiving Respondent Julian’s question, “Where was audit while this [sales practices] activity was taking place?,” Respondent McLinko sent an instant message to two of his direct reports asking, “have we audited new account opening in the past as to customer consent?” His direct reports responded that the first account opening audit in branches occurred in 2016. Respondent McLinko stated: “something doesn’t add up. [W]e added the account opening audit to the plan in 2015. [I] would have thought we knew earlier.”<sup>2810</sup>

### **Responses:**

**Julian** incorporated Respondent McLinko’s Response.<sup>2811</sup>

**McLinko** disputed the Statement provided an accurate or complete statement of the cited evidence.<sup>2812</sup> He described the “relevant exchange” as shown here:

McLinko, Paul M [10:50 AM]:

when did we fail the SOCR validation and move it to a high  
if you can’t tell, David is being asked where was audit during this time.

McCadney, Regina D. [10:50 AM]:

I figured that would come up ...

let me check the date ... it was the last audit

The March 30, 2015 audit was closed with a NI rating and High issue.

Mclinko, Paul M [10:53 AM]:

something doesn’t add up. we added the account opening audit to the plan in  
2015. i would have thought we knew earlier.

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<sup>2809</sup> McLinko’s ECSFM at No. 505.

<sup>2810</sup> MSD-345.

<sup>2811</sup> Julian’s ECSFM at No. 506.

<sup>2812</sup> McLinko’s ECSFM at No. 506.

McCadney, Regina D. [10:54 AM]:

We knew there were issues with SOCR from the first two times they had to make changes to the corrective action ... so when I became a SAM we started looking at the coverage and looked for ways to add coverage outside of SOCR ... that is where the RB Account Opening and Wire CCA came from. . .<sup>2813</sup>

I find an insufficient factual basis has been presented to establish a dispute in this Response to create a controverted material fact. Accordingly, the Recommended Decision will include a factual finding as to Respondents Julian and McLinko that on September 12, 2016, after receiving Respondent Julian's question, "Where was audit while this [sales practices] activity was taking place?," Respondent McLinko sent an instant message to two of his direct reports as shown above, asking, "have we audited new account opening in the past as to customer consent?" His direct reports responded that the first account opening audit in branches occurred in 2016. Respondent McLinko stated: "something doesn't add up. [W]e added the account opening audit to the plan in 2015. [I] would have thought we knew earlier."

#### **Enforcement Counsel's Statement of Material Fact (Julian and McLinko) No. 507**

Enforcement Counsel's Statement of Material Fact (Julian and McLinko) No. 507 relies on exhibits presented to this Tribunal as being non-public. Pursuant to the OCC's Uniform Rules, while the proceedings in this administrative enforcement action are expressly required to be public, when presented with non-public documents the Administrative Law Judge is required to take all appropriate steps to preserve the confidentiality of such documents.<sup>2814</sup> Upon my review of the confidential documents supporting this Statement of Material Fact, and after weighing the expectation that all of the proceedings shall be public against the requirement that I protect against the disclosure of non-public information, I find the evidentiary value of these exhibits to be sufficiently marginal and duplicative as to warrant exclusion from this Order. Accordingly, this Order will not be based on any of the claims found in this Statement of Material Fact.

#### **Enforcement Counsel's Statement of Material Fact (Julian and McLinko) No. 508**

On November 8, 2016, Respondent Julian was interviewed by Shearman & Sterling LLP on behalf of the Oversight Committee of the Board of Directors.<sup>2815</sup> According to the notes from

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<sup>2813</sup> McLinko's ECSFM at No. 506, quoting MSD-345 at -311-312.

<sup>2814</sup> See 12 C.F.R. § 19.33(b).

<sup>2815</sup> MSD-501.

the November 8, 2016 interview, Respondent Julian “stated that Audit first became aware of the need to plan additional audits around [Community Bank’s] sales practice controls in [Community Bank] in late 2013, shortly before the L.A. Times article was published. Audit’s awareness arose in part from data showing an increasing number of sales practice-related issues.”<sup>2816</sup> “He was, however, unaware of SAR and EthicsLine metrics related to sales practices having resulted in a change to any particular audit’s scope.”<sup>2817</sup> “He also stated that he was unaware of Audit having conducted any audit into the ways incentivecompensation policies had motivated lower level team members.”<sup>2818</sup> According to the interview notes, Respondent Julian stated that “To the extent Audit had failed to review issues orfunctions that it should have, he said, this was Audit’s responsibility.”<sup>2819</sup>

### **Responses:**

**Julian** did not dispute that the referenced notes include the quoted text.<sup>2820</sup> Accordingly, the Recommended Decision will include a factual finding as to Respondents Julian and McLinko that on November 8, 2016, Respondent Julian was interviewed by Shearman & Sterling LLP on behalf of the Oversight Committee of the Board of Directors. According to the notes from the November 8, 2016 interview, Respondent Julian “stated that Audit first became aware of the need to plan additional audits around [Community Bank’s] sales practice controls in [Community Bank] in late 2013, shortly before the L.A. Times article was published. Audit’s awareness arose in part from data showing an increasing number of sales practice-related issues.” “He was, however, unaware of SAR and EthicsLine metrics related to sales practices having resulted in a change to any particular audit’s scope.” “He also stated that he was unaware of Audit having conducted any audit into the ways incentivecompensation policies had motivated lower level team members.” According to the interview notes, Respondent Julian stated that “To the extent Audit had failed to review issues orfunctions that it should have, he said, this was Audit’s responsibility.”

**McLinko** incorporated Respondent Julian’s Response.<sup>2821</sup>

### **Enforcement Counsel’s Statement of Material Fact (Julian and McLinko) No. 509**

On April 27, 2017, WFAS issued its 2016 Sales Practices Enterprise Risk Management

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<sup>2816</sup> MSD-501 at 5.

<sup>2817</sup> MSD-501 at 5.

<sup>2818</sup> MSD-501 at 7.

<sup>2819</sup> MSD-501 at 5.

<sup>2820</sup> Julian’s ECSFM at No. 508.

<sup>2821</sup> McLinko’s ECSFM at No. 508.



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.<sup>2822</sup>

**Responses:**

**Julian** did not dispute that the 2016 Sales Practices Enterprise Risk Management Assessment (“2016 SP ERMA”) was issued on April 27, 2017 and concluded that the risk management for sales practices was weak across the enterprise; and that sales practices risk is defined as “sales practices, complaints, team member allegations including EthicsLine, and Internal Investigations”; but disputed to the extent that Paragraph 509 fails to list all three predominant factors for the weak rating.<sup>2823</sup> I find an insufficient factual basis has been presented to establish a dispute in this Response to create a controverted material fact. Accordingly, the Recommended Decision will include a factual finding as to Respondents Julian and McLinko that 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.

**McLinko** incorporated Respondent Julian’s Response.<sup>2824</sup>

**Enforcement Counsel’s Statement of Material Fact (Julian and McLinko) No. 510**

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.<sup>2825</sup> 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

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<sup>2822</sup> MSD- 386 at 1.

<sup>2823</sup> Julian’s ECSFM at No. 509.

<sup>2824</sup> McLinko’s ECSFM at No. 508.

<sup>2825</sup> MSD- 386 at 3.

effective sales practices risk management program.<sup>2826</sup> Finally, the 2016 SP ERMA rated Team Member Allegations processes as Weak and Complaints and Internal Investigations processes as Needs Improvement.<sup>2827</sup>

### **Responses:**

**Julian** did not dispute that the 2016 SP ERMA rated the first line of defense, second line of defense, and team member allegations process “weak,” and the complaints process and Internal Investigations process as “needs improvement”; but disputed to the extent that Paragraph 510 does not provide the necessary context for the ratings.<sup>2828</sup> I find an insufficient factual basis has been presented to establish a dispute in this Response to create a controverted material fact. Accordingly, the Recommended Decision will include a factual finding as to Respondents Julian and McLinko that 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. 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. Finally, the 2016 SP ERMA rated Team Member Allegations processes as Weak and Complaints and Internal Investigations processes as Needs Improvement.

McLinko did not dispute that 2016 SP ERMA provided the stated ratings, and incorporated Respondent Julian’s Response.<sup>2829</sup>

### **Enforcement Counsel’s Statement of Material Fact (Julian and McLinko) No. 511**

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?

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<sup>2826</sup> MSD- 386 at 2.

<sup>2827</sup> MSD- 386 at 4.

<sup>2828</sup> Julian’s ECSFM at No. 510.

<sup>2829</sup> McLinko’s ECSFM at No. 510.

A: We -- we concluded the overall sales practices risk is weak, as of December 31, 2016.<sup>2830</sup>

**Responses:**

**Julian** responded that the claim was disputed, but did not dispute the claim and instead averred the claim lacked “context”.<sup>2831</sup> I find an insufficient factual basis has been presented to establish a dispute in this Response to create a controverted material fact. Accordingly, the Recommended Decision will include a factual finding as to Respondent Julian that 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.

**McLinko** disputed the claim by averring the Statement “misstates Ms. Sheng’s testimony.”<sup>2832</sup>

The Statement’s citation is to the following testimony:

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. (by Ms. Sheng) We -- we concluded the overall sales practice risk is weak, as of December 31, 2016.<sup>2833</sup>

I find an insufficient factual basis has been presented to establish a dispute in this Response to create a controverted material fact. Accordingly, the Recommended Decision will include a factual finding as to Respondent McLinko that 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

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<sup>2830</sup> MSD-505 (Sheng Dep. Tr.) at 220:23-221:3.

<sup>2831</sup> Julian’s ECSFM at No. 511.

<sup>2832</sup> McLinko’s ECSFM at No. 511.

<sup>2833</sup> MSD-505 (Sheng Dep. Tr.) at 220:23-221:3.

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.

### **Enforcement Counsel's Statement of Material Fact (Julian and McLinko) No. 512**

#### **Responses:**

Enforcement Counsel's Statement of Material Fact (Julian and McLinko) No. 512 relies on exhibits presented to this Tribunal as being non-public. Pursuant to the OCC's Uniform Rules, while the proceedings in this administrative enforcement action are expressly required to be public, when presented with non-public documents the Administrative Law Judge is required to take all appropriate steps to preserve the confidentiality of such documents.<sup>2834</sup> Upon my review of the confidential documents supporting this Statement of Material Fact, and after weighing the expectation that all of the proceedings shall be public against the requirement that I protect against the disclosure of non-public information, I find the evidentiary value of these exhibits to be sufficiently marginal and duplicative as to warrant exclusion from this Order. Accordingly, this Order will not be based on any of the claims found in this Statement of Material Fact.

### **Enforcement Counsel's Statement of Material Fact (Julian and McLinko) No. 513**

Enforcement Counsel's Statement of Material Fact (Julian and McLinko) No. 513 relies on exhibits presented to this Tribunal as being non-public. Pursuant to the OCC's Uniform Rules, while the proceedings in this administrative enforcement action are expressly required to be public, when presented with non-public documents the Administrative Law Judge is required to take all appropriate steps to preserve the confidentiality of such documents.<sup>2835</sup> Upon my review of the confidential documents supporting this Statement of Material Fact, and after weighing the expectation that all of the proceedings shall be public against the requirement that I protect against the disclosure of non-public information, I find the evidentiary value of these exhibits to be sufficiently marginal and duplicative as to warrant exclusion from this Order. Accordingly, this Order will not be based on any of the claims found in this Statement of Material Fact.

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<sup>2834</sup> See 12 C.F.R. § 19.33(b).

<sup>2835</sup> See 12 C.F.R. § 19.33(b).

### **Enforcement Counsel’s Statement of Material Fact (Julian and McLinko) No. 514**

Enforcement Counsel’s Statement of Material Fact (Julian and McLinko) No. 514 relies on exhibits presented to this Tribunal as being non-public. Pursuant to the OCC’s Uniform Rules, while the proceedings in this administrative enforcement action are expressly required to be public, when presented with non-public documents the Administrative Law Judge is required to take all appropriate steps to preserve the confidentiality of such documents.<sup>2836</sup> Upon my review of the confidential documents supporting this Statement of Material Fact, and after weighing the expectation that all of the proceedings shall be public against the requirement that I protect against the disclosure of non-public information, I find the evidentiary value of these exhibits to be sufficiently marginal and duplicative as to warrant exclusion from this Order. Accordingly, this Order will not be based on any of the claims found in this Statement of Material Fact.

### **Enforcement Counsel’s Statement of Material Fact (Julian and McLinko) No. 515**

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.

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<sup>2836</sup> See 12 C.F.R. § 19.33(b).

Q. Thank you. And unsatisfactory is the lowest grade you can get?

A. Yes, sir.<sup>2837</sup>

**Responses:**

**Julian** did not dispute giving the testimony as shown in this Statement.<sup>2838</sup> Accordingly, the Recommended Decision will include a factual finding as to Respondents Julian and McLinko that Mr. Julian testified as shown in this Statement.

**McLinko** incorporated Respondent Julian's Response.<sup>2839</sup>

**Enforcement Counsel's Statement of Material Fact (Julian and McLinko) No. 516**

Regarding the email he sent to his team asking "Where was audit?" Respondent Julian testified before the OCC during his 2018 sworn statement as follows:

A I think I concluded that audit didn't do -- certainly in retrospect -- didn't do the level of work I wish we had done around these issues throughout the process. So I didn't get an answer where was audit. What I discovered is what we did and, in cases, what we didn't do and formed the opinion I discussed earlier that I think we could have done, should have done more, should have done more sooner.

Q Did anybody in your team give you any explanation for why audit did not do what, in fact, it should have done?

A No one gave me an explanation why something wasn't done, but they talked to me about what was done and recognized that other things could have, should have been done, especially, you know, in retrospect, based on seeing information that was available, certain flags such as Michael Bacon's, and things like that. So they didn't give me an answer why they didn't do anything as much as what they did and recognized there's more that could have been done

Q But what you are absolutely sure of now is that audit, in fact, did not do what it should have done with respect to sales practices at the bank; is that fair to say?

A It's fair to say we could have done more, we should have done more.

...

Q Okay. Well, no, I appreciate your efforts, but could have done more could always be the case. You could do a great job and you could have done an even better one.

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<sup>2837</sup> Julian Amended Answer ¶ 414; MSD-278 (Julian Tr.) at 37:2-14, 155:22-156:5.

<sup>2838</sup> Julian's ECSFM at No. 515.

<sup>2839</sup> McLinko's ECSFM at No. 515.

You could do a fabulous job, but, as long as it wasn't perfect, there's room for improvement. Is that what you're telling me?

A No, I don't think I -- Q Okay.

A -- whatsoever.

Q Fine. So I don't want your answer to be misinterpreted as that. So you can always do more, but my question is it fair to say that, without a doubt, audit should have done much more than it did with respect to the sales practice misconduct issue at the bank?

A In retrospect, yes, we should have done more specific to sales practices in relation to that.

Q And the reason you are saying that they should have done more is because they, in fact, did receive red flags and information that should have caused any competent auditor to do more; is that fair to say?

A In retrospect. Again, you know, taking it all in what we know now, seeing four emails or emails over a long period of time, taking that all into context, certainly, again, I'm going to go back to wish we would have. I'm not saying that audit did enough. I'm not making the excuse that, at the time, we did what was appropriate because we wouldn't be here, we being the company, potentially if we had done more.<sup>2840</sup>

#### **Responses:**

**Julian** did not dispute giving the testimony as shown in this Statement.<sup>2841</sup> Accordingly, the Recommended Decision will include a factual finding as to Respondents Julian and McLinko that Mr. Julian testified as shown in this Statement.

**McLinko** incorporated Respondent Julian's Response.<sup>2842</sup>

#### **Enforcement Counsel's Statement of Material Fact (Julian and McLinko) No. 517**

Respondent Julian admitted that WFAS under his leadership never identified in any audit report the sales practices misconduct problem's root cause and did not discuss in audit reports the root cause of sales practices misconduct.<sup>2843</sup> Similarly, Respondent Paul McLinko

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<sup>2840</sup> MSD-278 (Julian Tr.) at 261:6-263:22.

<sup>2841</sup> Julian's ECSFM at No. 516.

<sup>2842</sup> McLinko's ECSFM at No. 516.

<sup>2843</sup> Julian Amended Answer ¶ 411.

admitted that he and his team did not identify in any audit reports the root cause of the systemic sales practices misconduct problem.<sup>2844</sup>

**Responses:**

**Julian** responded that the claim was disputed, but did not dispute the claim and instead averred the testimony was given prior to discovery, without opportunity for refreshment of Mr. Julian's memory, and without cross examination <sup>2845</sup> I find an insufficient factual basis has been presented to establish a dispute in this Response to create a controverted material fact. Accordingly, the Recommended Decision will include a factual finding as to Respondents Julian and McLinko that Mr. Julian admitted that WFAS under his leadership never identified in any audit report the sales practices misconduct problem's root cause and did not discuss in audit reports the root cause of sales practices misconduct. Similarly, Respondent Paul McLinko admitted that he and his team did not identify in any audit reports the root cause of the systemic sales practices misconduct problem.

Julian also incorporated Mr. McLinko's response, to the extent this paragraph relates to Mr. McLinko's Amended Answer.<sup>2846</sup>

**McLinko** incorporated Respondent Julian's Response.<sup>2847</sup>

**Enforcement Counsel's Statement of Material Fact (Julian and McLinko) No. 518**

Enforcement Counsel's Statement of Material Fact (Julian and McLinko) No. 518 relies on exhibits presented to this Tribunal as being non-public. Pursuant to the OCC's Uniform Rules, while the proceedings in this administrative enforcement action are expressly required to be public, when presented with non-public documents the Administrative Law Judge is required to take all appropriate steps to preserve the confidentiality of such documents.<sup>2848</sup> Upon my review of the confidential documents supporting this Statement of Material Fact, and after weighing the expectation that all of the proceedings shall be public against the requirement that I protect against the disclosure of non-public information, I find the evidentiary value of these exhibits to be sufficiently marginal and duplicative as to warrant exclusion from this Order. Accordingly, this Order will not be based on any of the claims found in this Statement of Material Fact.

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<sup>2844</sup> McLinko Amended Answer ¶ 411.

<sup>2845</sup> Julian's ECSFM at No. 517.

<sup>2846</sup> Julian's ECSFM at No. 517.

<sup>2847</sup> McLinko's ECSFM at No. 517.

<sup>2848</sup> See 12 C.F.R. § 19.33(b).



### **Enforcement Counsel’s Statement of Material Fact (Julian and McLinko) No. 519**

Respondent McLinko testified before the OCC on March 2, 2018 as follows regarding the satisfactory ratings for culture Audit award the Community Bank:

Q Okay. Based on what you know now, how would you rate the bank’s culture in 2015 and 2014?

A Community bank. I’m not talking about -- Q Community bank, yes.

A -- the bank as a whole, just to be clear.

Q Yes, yes. The community bank, absolutely. Community bank.

A Yes, well, based upon what I know now and what was the information that I've learned, it certainly would not be -- have received what we would qualify as an effective rating or satisfactory rating, whatever the terms are that we had.

Q It would be unsatisfactory. Right?

A I -- it certainly would lead – could lead that way. Yes.<sup>2849</sup>

### **Responses:**

**Julian** incorporated Respondent McLinko’s Response.<sup>2850</sup>

**McLinko** did not dispute that the Statement accurately quotes the cited testimony.<sup>2851</sup> Accordingly, the Recommended Decision will include a factual finding as to Respondents Julian and McLinko that Mr. McLinko gave the testimony shown above.

### **Enforcement Counsel’s Statement of Material Fact (Julian and McLinko) No. 520**

Respondent McLinko further testified:

Q: Okay. Is it fair to say, though that audit, over the years totally missed the problem in the community bank, the systemic problem with sales practice misconduct?

A: I think that, based on the approach from internal audit, the process, risk, and control that we discussed—in our approach to looking at that—to looking at the leveraging, the SOCR program that we did, and our transactional approach that we took—okay—coming up with those effective ratings in that approach, we did not

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<sup>2849</sup> MSD-276 (McLinko Tr.) at 125:15-126:8.

<sup>2850</sup> Julian’s ECSFM at No. 519.

<sup>2851</sup> McLinko’s ECSFM at No. 519.

identify the sales practices issues that we've all come to see.<sup>2852</sup>

**Responses:**

**Julian** incorporated Respondent McLinko's Response.<sup>2853</sup>

**McLinko** did not dispute that the Statement accurately quotes the cited testimony.<sup>2854</sup> Accordingly, the Recommended Decision will include a factual finding as to Respondents Julian and McLinko that Mr. McLinko gave the testimony shown above.

**Enforcement Counsel's Statement of Material Fact (Julian and McLinko) No. 521**

Enforcement Counsel's Statement of Material Fact (Julian and McLinko) No. 521 relies on exhibits presented to this Tribunal as being non-public. Pursuant to the OCC's Uniform Rules, while the proceedings in this administrative enforcement action are expressly required to be public, when presented with non-public documents the Administrative Law Judge is required to take all appropriate steps to preserve the confidentiality of such documents.<sup>2855</sup> Upon my review of the confidential documents supporting this Statement of Material Fact, and after weighing the expectation that all of the proceedings shall be public against the requirement that I protect against the disclosure of non-public information, I find the evidentiary value of these exhibits to be sufficiently marginal and duplicative as to warrant exclusion from this Order. Accordingly, this Order will not be based on any of the claims found in this Statement of Material Fact.

**Enforcement Counsel's Statement of Material Fact (Julian and McLinko) No. 522 (see (Russ Anderson) No. 453)**

**Respondents Julian and McLinko received financial gain or other benefit from their misconduct**

**Enforcement Counsel's Statement of Material Fact (Julian and McLinko) No. 523**

The Community Bank was "Wells Fargo's largest operating segment in terms of revenue,"

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<sup>2852</sup> MSD-276 (McLinko Tr.) at 64:14- 65:1; McLinko Amended Answer ¶ 461.

<sup>2853</sup> Julian's ECSFM at No. 520

<sup>2854</sup> McLinko's ECSFM at No. 520.

<sup>2855</sup> See 12 C.F.R. § 19.33(b).

contributing roughly half of the Company's average annual revenue and profits each year.<sup>2856</sup>

**Responses:**

**Julian** disputed the claim on the ground that it relates to the financial performance of Wells Fargo & Co., not Wells Fargo Bank, N.A., the relevant entity in this litigation.<sup>2857</sup> I find an insufficient factual basis has been presented to establish a dispute in this Response to create a controverted material fact. Accordingly, the Recommended Decision will include a factual finding as to Respondents Julian and McLinko that 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.

**McLinko** incorporated Respondent Julian's Response.<sup>2858</sup>

**Enforcement Counsel's Statement of Material Fact (Julian and McLinko) No. 524**

The Community Bank's business model was financially profitable for Wells Fargo and was key to its growth and cross-sell success.<sup>2859</sup>

**Responses:**

**Julian** responded that the claim was disputed, but did not dispute the claim and instead averred the claim does not establish that the cross-sell metric materially affected the CommunityBank's financial performance during Mr. Julian's tenure,<sup>2860</sup> I find an insufficient factual basis has been presented to establish a dispute in this Response to create a controverted material fact. Accordingly, the Recommended Decision will include a factual finding as to Respondents Julian and McLinko that the Community Bank's business model was financially profitable for Wells Fargo and was key to its growth and cross-sell

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<sup>2856</sup> 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).

<sup>2857</sup> Julian's ECSFM at No. 523.

<sup>2858</sup> McLinko's ECSFM at No. 523.

<sup>2859</sup> 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.").

<sup>2860</sup> Julian's ECSFM at No. 524.

success.

**McLinko** incorporated Respondent Julian’s Response.<sup>2861</sup>

### **Enforcement Counsel’s Statement of Material Fact (Julian and McLinko) No. 525**

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.”<sup>2862</sup>

#### **Responses:**

**Julian** disputed the claim on the basis that the cited evidence and its conclusions are inadmissible expert testimony based on flawed underlying reasoning and analysis that render it unreliable.<sup>2863</sup> I find an insufficient factual basis has been presented to establish a dispute in this Response to create a controverted material fact. Accordingly, the Recommended Decision will include a factual finding as to Respondents Julian and McLinko that 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.”

**McLinko** incorporated Respondent Julian’s Response.<sup>2864</sup>

### **Enforcement Counsel’s Statement of Material Fact (Julian and McLinko) No. 526**

Respondent Julian and Respondent McLinko received equity incentive compensation from Wells Fargo that was dependent on or tied to Wells Fargo’s financial performance.<sup>2865</sup>

#### **Responses:**

**Julian** disputed the claim on the basis that Enforcement Counsel has cited no evidence showing that Mr. Julian received additional equity compensation as a result of sales practices misconduct at the Community Bank; and averring that the expert report of Bruce Deal extensively analyzes Mr. Julian’s compensation and opines that there is no basis to

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<sup>2861</sup> McLinko’s ECSFM at No. 524.

<sup>2862</sup> MSD-658 (Pocock Expert Report) at 5, 11-14.

<sup>2863</sup> Julian’s ECSFM at No. 525.

<sup>2864</sup> McLinko’s ECSFM at No. 525.

<sup>2865</sup> MSD-283A (Julian Expert Report of Bruce Deal) at 12, 20-21; MSD-283B (McLinko Expert Report of Bruce Deal) at 15, 19.

conclude that he received pecuniary gain due to sales practices misconduct.<sup>2866</sup>

Whether Respondents received equity incentive compensation from Wells Fargo that was dependent on or tied to Wells Fargo's financial performance may be a material fact. I find that in his Response to Statement No. 526, Respondents Julian and (by incorporation) Respondent McLinko have sufficiently demonstrated a factual controversy exists regarding a material issue in question. Pursuant to the OCC's Uniform Rules, the merits of the claims raised in (Julian and McLinko) Statement No. 526 will be addressed during the hearing set to begin on September 13, 2021.

**McLinko** incorporated Respondent Julian's Response.<sup>2867</sup>

### **Enforcement Counsel's Statement of Material Fact (Julian and McLinko) No. 527**

Between 2012 and 2016, Respondent Julian earned over \$11.1 million in equity compensation in addition to \$5,175,000 in cash compensation (salary and bonus).<sup>2868</sup>

#### **Responses:**

**Julian** disputed the claim averring that the cited evidence shows that Mr. Julian actually suffered pecuniary loss as a result of sales practices misconduct in the form of withheld and cancelled compensation.<sup>2869</sup>

Whether Respondent received equity incentive compensation from Wells Fargo that was dependent on or tied to Wells Fargo's financial performance may be a material fact. I find that in his Response to Statement No. 527, Respondents Julian and (by incorporation) Respondent McLinko have sufficiently demonstrated a factual controversy exists regarding a material issue in question. Pursuant to the OCC's Uniform Rules, the merits of the claims raised in (Julian and McLinko) Statement No. 527 will be addressed during the hearing set to begin on September 13, 2021.

**McLinko** incorporated Respondent Julian's Response.<sup>2870</sup>

### **Enforcement Counsel's Statement of Material Fact (Julian and McLinko) No. 528**

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<sup>2866</sup> Julian's ECSFM at No. 526.

<sup>2867</sup> McLinko's ECSFM at No. 526.

<sup>2868</sup> MSD-283A (Julian Expert Report of Bruce Deal) at 16-18.

<sup>2869</sup> Julian's ECSFM at No. 527.

<sup>2870</sup> McLinko's ECSFM at No. 527.

Between 2012 and 2016, Respondent McLinko earned approximately \$880,000 in equity compensation in addition to \$2,073,000 in cash compensation (salary and bonus).<sup>2871</sup>

**Responses:**

**Julian** incorporated Respondent McLinko's Response.<sup>2872</sup>

**McLinko** offered no evidence in support, but disputed that the Expert Report established the alleged fact that Mr. McLinko received financial gain or other benefit from his alleged misconduct.<sup>2873</sup> I find an insufficient factual basis has been presented to establish a dispute in this Response to create a controverted material fact. Accordingly, the Recommended Decision will include a factual finding as to Respondents Julian and McLinko that between 2012 and 2016, Respondent McLinko earned approximately \$880,000 in equity compensation in addition to \$2,073,000 in cash compensation (salary and bonus).

**Respondent Julian's and Respondent McLinko's conduct with respect to sales practices misconduct resulted in loss to the Bank**

**Enforcement Counsel's Statement of Material Fact (Julian and McLinko) No. 529**

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.<sup>2874</sup>

**Responses:**

**Julian** did not dispute the claim.<sup>2875</sup> Accordingly, the Recommended Decision will include a factual finding as to Respondents Julian and McLinko that 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.

**McLinko** incorporated Respondent Julian's Response.<sup>2876</sup>

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<sup>2871</sup> MSD- 283B (McLinko Expert Report of Bruce Deal) at 17-18.

<sup>2872</sup> Julian's ECSFM at No. 528.

<sup>2873</sup> McLinko's ECSFM at No. 528.

<sup>2874</sup> Julian Amended Answer ¶ 132; McLinko Amended Answer ¶ 132; MSD-562.

<sup>2875</sup> Julian's ECSFM at No. 529.

<sup>2876</sup> McLinko's ECSFM at No. 529.

### **Enforcement Counsel's Statement of Material Fact (Julian and McLinko) No. 530**

The September 2016 announcement of the settlement and subsequent publicawareness of the sales practices misconduct problem, which resulted from Respondents' 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.<sup>2877</sup>

#### **Responses:**

**Julian** did not dispute the claim.<sup>2878</sup> Accordingly, the Recommended Decision will include a factual finding as to Respondent Julian that September 2016 announcement of the settlement and subsequent publicawareness of the sales practices misconduct problem, which resulted from Respondents' 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.

**McLinko** incorporated Respondent Julian's Response.<sup>2879</sup>

### **Enforcement Counsel's Statement of Material Fact (Julian and McLinko) No. 531**

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.<sup>2880</sup>

#### **Responses:**

**Julian** did not dispute the claim.<sup>2881</sup> Accordingly, the Recommended Decision will include a factual finding as to Respondents Julian and McLinko that 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,

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<sup>2877</sup> MSD-565 at 9.

<sup>2878</sup> Julian's ECSFM at No. 529.

<sup>2879</sup> McLinko's ECSFM at No. 530.

<sup>2880</sup> 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.

<sup>2881</sup> Julian's ECSFM at No. 531.

2016.

**McLinko** incorporated Respondent Julian's Response.<sup>2882</sup>

### **Enforcement Counsel's Statement of Material Fact (Julian and McLinko) No. 532**

Enforcement Counsel's Statement of Material Fact (Julian and McLinko) No. 532 relies on exhibits presented to this Tribunal as being non-public. Pursuant to the OCC's Uniform Rules, while the proceedings in this administrative enforcement action are expressly required to be public, when presented with non-public documents the Administrative Law Judge is required to take all appropriate steps to preserve the confidentiality of such documents.<sup>2883</sup> Upon my review of the confidential documents supporting this Statement of Material Fact, and after weighing the expectation that all of the proceedings shall be public against the requirement that I protect against the disclosure of non-public information, I find the evidentiary value of these exhibits to be sufficiently marginal and duplicative as to warrant exclusion from this Order. Accordingly, this Order will not be based on any of the claims found in this Statement of Material Fact.

### **Enforcement Counsel's Statement of Material Fact (Julian and McLinko) No. 533**

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.<sup>2884</sup>

#### **Responses:**

**Julian** responded that the claim was disputed, but offered no evidence to dispute the claim.<sup>2885</sup> I find an insufficient factual basis has been presented to establish a dispute in this Response to create a controverted material fact. Accordingly, the Recommended Decision will include a factual finding as to Respondents Julian and McLinko that 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

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<sup>2882</sup> McLinko's ECSFM at No. 531.

<sup>2883</sup> See 12 C.F.R. § 19.33(b).

<sup>2884</sup> MSD- 293A (Hardison Tr.) at 34:4-36:18; MSD-289A (Sloan Tr.) at 251:2-253:6; MSD-564; MSD-1.

<sup>2885</sup> Julian's ECSFM at No. 533.



in February 2020, a \$3 billion settlement with the DOJ and the SEC

**McLinko** incorporated Respondent Julian's Response.<sup>2886</sup>

#### **Enforcement Counsel's Statement of Material Fact (Julian and McLinko) No. 534**

Respondent Julian testified before the OCC in May 2018 as follows: "I'm not saying that audit did enough. I'm not making the excuse that, at the time, we did what was appropriate because we wouldn't be here, we being the company, potentially if we had done more."<sup>2887</sup>

#### **Responses:**

**Julian** responded that the claim was disputed, but he did not dispute he testified as shown, but averred that it was a potentiality that had "the company" acted differently, the company would have been in a different position in May 2018.<sup>2888</sup> I find an insufficient factual basis has been presented to establish a dispute in this Response to create a controverted material fact. Accordingly, the Recommended Decision will include a factual finding as to Respondents Julian and McLinko that he testified before the OCC in May 2018 as follows: "I'm not saying that audit did enough. I'm not making the excuse that, at the time, we did what was appropriate because we wouldn't be here, we being the company, potentially if we had done more."

**McLinko** incorporated Respondent Julian's Response.<sup>2889</sup>

#### **Sales practices misconduct constituted unethical and illegal activity that violated Bank policy**

#### **Enforcement Counsel's Statement of Material Fact (Russ Anderson) No. 257 and (Julian and McLinko) No. 219**

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

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<sup>2886</sup> McLinko's ECSFM at No. 33.

<sup>2887</sup> MSD-278 (Julian Tr.) at 263:18-22; see also id. at 269:12-270:1 ("Certainly I think management would admit that we were too slow to act.")

<sup>2888</sup> Julian's ECSFM at No. 534, citing MSD-278 at 263:18-263:22.

<sup>2889</sup> McLinko's ECSFM at No. 534.

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.<sup>2890</sup>

### **Responses:**

**Russ Anderson** did not dispute the transcript of her testimony included the above statements; but averred that the quote "lacks context" and that "[s]weeping statements by witnesses do not alter such legal analysis."<sup>2891</sup>

I find an insufficient factual basis has been presented to establish a dispute in this Response to create a controverted material fact. Accordingly, the Recommended Decision will include a factual finding as to Respondent Russ Anderson that she testified as shown above.

**Julian** did not dispute that Respondent Russ Anderson testified as shown.<sup>2892</sup> Accordingly, the Recommended Decision will include a factual finding as to Respondents Julian and McLinko that Respondent Russ Anderson testified as shown above.

**McLinko** incorporated Respondent Julian's Response.<sup>2893</sup>

### **Enforcement Counsel's Statement of Material Fact (Russ Anderson) No. 258 and (Julian and McLinko) No. 223**

Respondent Russ Anderson's expert witness, Kathlyn Farrell, testified that sales practices misconduct violated UDAP, Regulation Z, Regulation DD, and Truth in Savings Act.<sup>2894</sup>

### **Responses:**

Russ Anderson: Disputed the claim because "Ms. Farrell did not unequivocally testify that

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<sup>2890</sup> MSD-266 (Russ Anderson Dep. Tr.) at 122:22-124:19.

<sup>2891</sup> Russ Anderson's ECSFM at No. 257.

<sup>2892</sup> Julian's ECSFM at No. 219.

<sup>2893</sup> McLinko's ECSFM at No. 219.

<sup>2894</sup> MSD-265 (Farrell Dep. Tr.) at 63:5-66:1.

sales practices misconduct violated the referenced laws and regulations.<sup>2895</sup> Ms. Farrell testified that she “would have to look” at whether opening an unauthorized deposition account violated the Truth in Saving Act, and that she “would have to look” at those “disclosure laws that are hard to remember” to opine whether opening an unauthorized deposition account violated Regulation.”

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 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 As [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

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<sup>2895</sup> Russ Anderson's ECSFM at No. 258.

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.<sup>2896</sup>

I find an insufficient factual basis has been presented to establish a dispute in this Response to create a controverted material fact. Accordingly, the Recommended Decision will include a factual finding as to Respondent Russ Anderson that her expert witness, Kathlyn Farrell, testified that sales practices misconduct violated UDAP, Regulation Z, Regulation DD, and Truth in Savings Act.

**Julian** disputed the claim, averring that Ms. Farrell testified that she “would have to look” at whether opening an unauthorized deposition account violated the Truth in Saving Act, and that she “would have to look” at those “disclosure laws that are hard to remember” to opine whether

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<sup>2896</sup> MSD-265 (Farrell Dep. Tr.) at 63:5-66:1.

opening an unauthorized deposition account violated Regulation DD.<sup>2897</sup> I find an insufficient factual basis has been presented to establish a dispute in this Response to create a controverted material fact. Accordingly, the Recommended Decision will include a factual finding as to Respondents Julian and McLinko that Ms. Farrell testified that sales practices misconduct violated UDAP, Regulation Z, Regulation DD, and Truth in Savings Act.

**McLinko** incorporated Respondent Julian's Response.<sup>2898</sup>

### **Enforcement Counsel's Statement of Material Fact (Russ Anderson) No. 259 and (Julian and McLinko) No. 214**

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 that "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."<sup>2899</sup>

#### **Responses:**

**Russ Anderson** did not dispute that the Deferred Prosecution Agreement contains the quoted language, but avers that Wells Fargo's statements in the Agreement are not admissible for the truth of the matter asserted in the current proceeding against the Respondent and are not binding on Respondent Russ Anderson.<sup>2900</sup>

I find an insufficient factual basis has been presented to establish a dispute in this Response to create a controverted material fact. Accordingly, the Recommended Decision will include a factual finding as to Respondent Russ Anderson that 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)

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<sup>2897</sup> Julian's ECSFM at No. 223, quoting MSD-265A at 65:11-18.

<sup>2898</sup> McLinko's ECSFM at No. 223.

<sup>2899</sup> MSD-1 (DOJ SOF) at 7, 10, 25.

<sup>2900</sup> Russ Anderson's ECSFM at No. 259.

unlawful conduct to attain sales through fraud, identity theft, and the falsification of bank records.” Wells Fargo agreed that “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.”

**Julian** did not dispute that the Deferred Prosecution Agreement contains the quoted language, but avers that Wells Fargo’s statements in the Agreement are not admissible because the Agreement is not binding on him.<sup>2901</sup>

I find an insufficient factual basis has been presented to establish a dispute in this Response to create a controverted material fact. Accordingly, the Recommended Decision will include a factual finding as to Respondents Julian and McLinko that 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 that “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.”

**McLinko** incorporated Respondent Julian’s Response.<sup>2902</sup>

### **Enforcement Counsel’s Statement of Material Fact (Russ Anderson) No. 260 and (Julian and McLinko) No. 215**

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).<sup>2903</sup>

#### **Responses:**

**Russ Anderson** incorporated Respondent Julian’s response.<sup>2904</sup>

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<sup>2901</sup> Julian’s ECSFM at No. 214.

<sup>2902</sup> McLinko’s ECSFM at No. 214.

<sup>2903</sup> MSD-423 at 7-9.

<sup>2904</sup> Russ Anderson’s ECSFM at No. 260.

**Julian** did not dispute that the Manual includes the language shown here.<sup>2905</sup> Accordingly, the Recommended Decision will include a factual finding as to Respondents Russ Anderson, Julian, and McLinko that 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).

**McLinko** incorporated Respondent Julian’s Response.<sup>2906</sup>

### **Enforcement Counsel’s Statement of Material Fact (Russ Anderson) No. 261 and (Julian and McLinko) No. 216**

Authoritative sources within the Bank testified about the illegal nature of sales practices misconduct.<sup>2907</sup> 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.<sup>2908</sup>

#### **Responses:**

**Russ Anderson** incorporated Respondent Julian’s response.<sup>2909</sup>

**Julian** did not dispute that Mr. Strother’s transcript contains the quoted text.<sup>2910</sup> Accordingly, the Recommended Decision will include a factual finding as to Respondents Russ Anderson, Julian, and McLinko that 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

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<sup>2905</sup> Julian’s ECSFM at No. 215.

<sup>2906</sup> McLinko’s ECSFM at No. 215.

<sup>2907</sup> MSD-544 (Weber Tr.) at 82:13-22, 91:22-93:21; MSD-297 (Richards Tr.) at 84:5-11.

<sup>2908</sup> 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.

<sup>2909</sup> Russ Anderson’s ECSFM at No. 261.

<sup>2910</sup> Julian’s ECSFM at No. 216.

bank records” and might constitute identity theft in some states.

**McLinko** incorporated Respondent Julian’s Response.<sup>2911</sup>

### **Enforcement Counsel’s Statement of Material Fact (Russ Anderson) No. 262 and (Julian and McLinko) No. 217**

Enforcement Counsel’s Statement of Material Fact (Russ Anderson) No. 262 and (Julian and McLinko) No. 217 rely on exhibits presented to this Tribunal as being non-public. Pursuant to the OCC’s Uniform Rules, while the proceedings in this administrative enforcement action are expressly required to be public, when presented with non-public documents the Administrative Law Judge is required to take all appropriate steps to preserve the confidentiality of such documents.<sup>2912</sup> Upon my review of the confidential documents supporting these Statements of Material Fact, and after weighing the expectation that all of the proceedings shall be public against the requirement that I protect against the disclosure of non-public information, I find the evidentiary value of these exhibits to be sufficiently marginal and duplicative as to warrant exclusion from this Order. Accordingly, this Order will not be based on any of the claims found in these Statements of Material Fact.

### **Enforcement Counsel’s Statement of Material Fact (Russ Anderson) No. 263**

Paula Herzberg, who worked as Head of Compliance and Operational Risk within the Community Bank reporting to Respondent Russ Anderson, testified before the OCC that in many cases Bank customers did not receive electronic disclosures because Community Bank employees were sending the disclosures to their own email addresses or entering a fake email address for the customer. She testified that the entry of fake email addresses constitutes falsification of bank records and violates Regulation DD.<sup>2913</sup>

#### **Responses:**

**Russ Anderson** offered no evidence to dispute the claims but averred the claims were vague as to timeframe and vague and ambiguous as to how many Bank customers Ms. Herzberg is referring to and what constitutes “many”.<sup>2914</sup>

I find an insufficient factual basis has been presented to establish a dispute in this Response to create a controverted material fact. Accordingly, the Recommended Decision will include a

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<sup>2911</sup> McLinko’s ECSFM at No. 216.

<sup>2912</sup> See 12 C.F.R. § 19.33(b).

<sup>2913</sup> MSD-585 (Herzberg Tr.) at 21:24- 22:22, 164:4-167:4.

<sup>2914</sup> Russ Anderson’s ECSFM at No. 263.



factual finding as to Respondent Russ Anderson that Paula Herzberg, who worked as Head of Compliance and Operational Risk within the Community Bank reporting to Respondent Russ Anderson, testified before the OCC that in many cases Bank customers did not receive electronic disclosures because Community Bank employees were sending the disclosures to their own email addresses or entering a fake email address for the customer. She testified that the entry of fake email addresses constitutes falsification of bank records and violates Regulation DD.

**Enforcement Counsel’s Statement of Material Fact (Russ Anderson) No. 264 and (Julian and McLinko) No. 218**

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 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.<sup>2915</sup>

**Responses:**

**Russ Anderson** did not dispute that the quoted text is an accurate depiction of a portion of Ms. Herzberg’s testimony, but disputed that the testimony “proves systemic sales pressure

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<sup>2915</sup> MSD-585 (Herzberg Tr.) at 17:18-19:5, 220:21-222:4, 26:9-27:20, 30:15-32:8.

existed.”<sup>2916</sup>

I find an insufficient factual basis has been presented to establish a dispute in this Response to create a controverted material fact. Accordingly, the Recommended Decision will include a factual finding as to Respondent Russ Anderson that Ms. Herzberg gave the testimony shown above.

**Julian** did not dispute that the cited transcript contains the quoted text.<sup>2917</sup> Accordingly, the Recommended Decision will include a factual finding as to Respondents Julian and McLinko that Ms. Herzberg testified as shown in this Statement.

**McLinko** incorporated Respondent Julian’s Response.<sup>2918</sup>

### **Enforcement Counsel’s Statement of Material Fact (Julian and McLinko) No. 218**

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.<sup>2919</sup>

### **Responses:**

**Julian** did not dispute that the cited transcript contains the quoted text.<sup>2920</sup> Accordingly, the Recommended Decision will include a factual finding as to Respondents Julian and McLinko that Ms. Herzberg testified as shown in this Statement.

**McLinko** incorporated Respondent Julian’s Response.<sup>2921</sup>

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<sup>2916</sup> Russ Anderson’s ECSFM at No. 264.

<sup>2917</sup> Julian’s ECSFM at No. 217.

<sup>2918</sup> McLinko’s ECSFM at No. 217.

<sup>2919</sup> MSD-257 (Herzberg Tr.) at 166:18-167:4; 221:14-23.

<sup>2920</sup> Julian’s ECSFM at No. 218.

<sup>2921</sup> McLinko’s ECSFM at No. 218.

**Enforcement Counsel’s Statement of Material Fact (Russ Anderson) No. 265 and (Julian and McLinko) No. 220**

Enforcement Counsel’s Statement of Material Fact (Russ Anderson) No. 265 and (Julian and McLinko) No. 220 rely on exhibits presented to this Tribunal as being non-public. Pursuant to the OCC’s Uniform Rules, while the proceedings in this administrative enforcement action are expressly required to be public, when presented with non-public documents the Administrative Law Judge is required to take all appropriate steps to preserve the confidentiality of such documents. Upon my review of the confidential documents supporting these Statements of Material Fact, and after weighing the expectation that all of the proceedings shall be public against the requirement that I protect against the disclosure of non-public information, I find the evidentiary value of these exhibits to be sufficiently marginal and duplicative as to warrant exclusion from this Order. Accordingly, this Order will not be based on any of the claims found in these Statements of Material Fact.

**Enforcement Counsel’s Statement of Material Fact (Russ Anderson) No. 266 and (Julian and McLinko) No. 221**

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).<sup>2922</sup>

**Responses:**

**Russ Anderson** did not dispute the characterization of the CFPB Practices Consent Order, but disputed that the CFPB “contained no findings as to Ms. Russ Anderson specifically.”<sup>2923</sup>

I find an insufficient factual basis has been presented to establish a dispute in this Response to create a controverted material fact. Accordingly, the Recommended Decision will include a factual finding as to Respondent Russ Anderson that 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).

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<sup>2922</sup> MSD-52 (CFPB Consent Order) (citing violations of UDAAP against the Bank for sales practices misconduct).

<sup>2923</sup> Russ Anderson’s ECSFM at No. 266.

**Julian** did not dispute that the cited Order contains the quoted text.<sup>2924</sup> Accordingly, the Recommended Decision will include a factual finding as to Respondents Julian and McLinko that 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).

**McLinko** incorporated Respondent Julian’s Response.<sup>2925</sup>

### **Enforcement Counsel’s Statement of Material Fact (Russ Anderson) No. 267 and (Julian and McLinko) No. 222**

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 Savings); and 12 C.F.R. § 1026.12(a) (Regulation Z/Truth in Lending).<sup>2926</sup>

#### **Responses:**

**Russ Anderson** incorporated Respondent Julian’s response.<sup>2927</sup>

**Julian** responded that the claim was disputed, but did not dispute the claim and instead averred the Examiners’ conclusions were “not reliable.”<sup>2928</sup> I find an insufficient factual basis has been presented to establish a dispute in this Response to create a controverted material fact. Accordingly, the Recommended Decision will include a factual finding as to Respondents Russ Anderson, Julian, and McLinko that 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 Savings); and 12 C.F.R. § 1026.12(a) (Regulation Z/Truth in Lending).

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<sup>2924</sup> Julian’s ECSFM at No. 221.

<sup>2925</sup> McLinko’s ECSFM at No. 221.

<sup>2926</sup> 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.

<sup>2927</sup> Russ Anderson’s ECSFM at No. 267.

<sup>2928</sup> Julian’s ECSFM at No. 222.

**McLinko** incorporated Respondent Julian’s Response.<sup>2929</sup>

**Enforcement Counsel’s Statement of Material Fact (Russ Anderson) No. 268 and (Julian and McLinko) No. 224**

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.”<sup>2930</sup>
- (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.”<sup>2931</sup>
- (c) “employees created false records by opening unauthorized checking and savings accounts to hit sales goals.”<sup>2932</sup>
- (d) “unlawfully misused customers’ sensitive personal information (including customers’ means of identification).”<sup>2933</sup>

**Responses:**

**Russ Anderson** incorporated Respondent Julian’s response.<sup>2934</sup>

**Julian** did not dispute that the Agreement contains the quoted language.<sup>2935</sup> Accordingly, the Recommended Decision will include a factual finding as to Respondents Russ Anderson, Julian, and McLinko that the Agreement contains the terms quoted above.

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<sup>2929</sup> McLinko’s ECSFM at No. 222.

<sup>2930</sup> MSD-1 at 25.

<sup>2931</sup> MSD-1 at 25.

<sup>2932</sup> MSD-1 at 26.

<sup>2933</sup> MSD-1 at 31.

<sup>2934</sup> Russ Anderson’s ECSFM at No. 268.

<sup>2935</sup> Julian’s ECSFM at No. 224.

**McLinko** incorporated Respondent Julian's Response.<sup>2936</sup>

**Enforcement Counsel's Statement of Material Fact (Russ Anderson) No. 269 and (Julian and McLinko) No. 225**

Bank policies did not permit employees to open accounts or issue products not authorized by a customer or to engage in simulated funding.<sup>2937</sup> Bank employees who confessed to opening unauthorized accounts or engaging in simulated funding admitted they knew it was against Bank policy and ethics guidelines.<sup>2938</sup>

**Responses:**

**Russ Anderson** incorporated Respondent Julian's response.<sup>2939</sup>

**Julian** responded that the claim was disputed, but did not dispute the claim and instead averred the claim lacked "necessary context".<sup>2940</sup> I find an insufficient factual basis has been presented to establish a dispute in this Response to create a controverted material fact. Accordingly, the Recommended Decision will include a factual finding as to Respondents Russ Anderson, Julian, and McLinko that Bank policies did not permit employees to open accounts or issue products not authorized by a customer or to engage in simulated funding.<sup>2941</sup> Bank employees who confessed to opening unauthorized accounts or engaging in simulated funding admitted they knew it was against Bank policy and ethics guidelines.

**McLinko** incorporated Respondent Julian's Response.<sup>2942</sup>

**Enforcement Counsel's Statement of Material Fact (Russ Anderson) No. 270 and (Julian and McLinko) No. 226**

To open or issue an unauthorized account, product, or service for a customer, Bank employees

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<sup>2936</sup> McLinko's ECSFM at No. 224.

<sup>2937</sup> MSD-9 at 7; MSD-10.

<sup>2938</sup> See, e.g., MSD-108 (concluding that employees engaged in simulated funding to meet sales goals despite knowing it was against Bank policy).

<sup>2939</sup> Russ Anderson's ECSFM at No. 269.

<sup>2940</sup> Julian's ECSFM at No. 225.

<sup>2941</sup> MSD-9 at 7; MSD-10.

<sup>2942</sup> McLinko's ECSFM at No. 225.

generally would have had to enter false information into the Bank’s systems.<sup>2943</sup> 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’).”<sup>2944</sup>

**Responses:**

**Russ Anderson** incorporated Respondent Julian’s response.<sup>2945</sup>

**Julian** responded that the claim was disputed, but did not dispute the claim presented and instead averred the claim lacked “necessary context”.<sup>2946</sup> I find an insufficient factual basis has been presented to establish a dispute in this Response to create a controverted material fact. Accordingly, the Recommended Decision will include a factual finding as to Respondents Russ Anderson, Julian, and McLinko that 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. 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’).

**McLinko** incorporated Respondent Julian’s Response.<sup>2947</sup>

**Enforcement Counsel’s Statement of Material Fact (Russ Anderson) No. 271 and (Julian and McLinko) No. 227**

“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.”<sup>2948</sup>

**Responses:**

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<sup>2943</sup> See MSD-200 (Hughes Decl.).

<sup>2944</sup> See MSD-200 (Hughes Decl.) at 1.

<sup>2945</sup> Russ Anderson’s ECSFM at No. 270.

<sup>2946</sup> Julian’s ECSFM at No. 226.

<sup>2947</sup> McLinko’s ECSFM at No. 226.

<sup>2948</sup> See MSD-200 (Hughes Decl.) at 1-2.

**Russ Anderson** incorporated Respondent Julian's response.<sup>2949</sup>

**Julian** responded that the claim was disputed, but did not dispute the claim presented and instead averred the claim lacked "necessary context".<sup>2950</sup> I find an insufficient factual basis has been presented to establish a dispute in this Response to create a controverted material fact. Accordingly, the Recommended Decision will include a factual finding as to Respondents Russ Anderson, Julian, and McLinko that "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."

**McLinko** incorporated Respondent Julian's Response.<sup>2951</sup>

### **Enforcement Counsel's Statement of Material Fact (Russ Anderson) No. 272 and (Julian and McLinko) No. 228**

"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."<sup>2952</sup>

#### **Responses:**

**Russ Anderson** incorporated Respondent Julian's response.<sup>2953</sup>

**Julian** responded that the claim was disputed, but did not dispute the claim presented and

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<sup>2949</sup> Russ Anderson's ECSFM at No. 271.

<sup>2950</sup> Julian's ECSFM at No. 227.

<sup>2951</sup> McLinko's ECSFM at No. 227.

<sup>2952</sup> See MSD-200 (Hughes Decl.) at 2.

<sup>2953</sup> Russ Anderson's ECSFM at No. 272.



instead averred the claim lacked “necessary context”.<sup>2954</sup> I find an insufficient factual basis has been presented to establish a dispute in this Response to create a controverted material fact. Accordingly, the Recommended Decision will include a factual finding as to Respondents Russ Anderson, Julian, and McLinko that “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.”

**McLinko** incorporated Respondent Julian’s Response.<sup>2955</sup>

### **Enforcement Counsel’s Statement of Material Fact (Russ Anderson) No. 273 and (Julian and McLinko) No. 229**

“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.”<sup>2956</sup>

#### **Responses:**

**Russ Anderson** incorporated Respondent Julian’s response.<sup>2957</sup>

**Julian** responded that the claim was disputed, but did not dispute the claim presented and instead averred the claim lacked “necessary context”.<sup>2958</sup> I find an insufficient factual basis has been presented to establish a dispute in this Response to create a controverted material fact. Accordingly, the Recommended Decision will include a factual finding as to

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<sup>2954</sup> Julian’s ECSFM at No. 228.

<sup>2955</sup> McLinko’s ECSFM at No. 228.

<sup>2956</sup> See MSD-200 (Hughes Decl.) at 4.

<sup>2957</sup> Russ Anderson’s ECSFM at No. 273.

<sup>2958</sup> Julian’s ECSFM at No. 229.

Respondents Russ Anderson, Julian, and McLinko that “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.”

**McLinko** incorporated Respondent Julian’s Response.<sup>2959</sup>

### **Enforcement Counsel’s Statement of Material Fact (Russ Anderson) No. 274 and (Julian and McLinko) No. 230**

“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.”<sup>2960</sup>

#### **Responses:**

**Russ Anderson** incorporated Respondent Julian’s response.<sup>2961</sup>

**Julian** responded that the claim was disputed, but did not dispute the claim presented and instead averred the claim lacked “necessary context”.<sup>2962</sup> I find an insufficient factual basis has been presented to establish a dispute in this Response to create a controverted material fact. Accordingly, the Recommended Decision will include a factual finding as to Respondents Russ Anderson, Julian, and McLinko that “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.”

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<sup>2959</sup> McLinko’s ECSFM at No. 229.

<sup>2960</sup> See MSD-200 (Hughes Decl.) at 5.

<sup>2961</sup> Russ Anderson’s ECSFM at No. 274.

<sup>2962</sup> Julian’s ECSFM at No. 230.

**McLinko** incorporated Respondent Julian's Response.<sup>2963</sup>

**Enforcement Counsel's Statement of Material Fact (Russ Anderson) No. 275 and (Julian and McLinko) No. 231**

“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 information previously supplied by the customer.”<sup>2964</sup>

**Responses:**

**Russ Anderson** incorporated Respondent Julian's response.<sup>2965</sup>

**Julian** responded that the claim was disputed, but did not dispute the claim presented and instead averred the claim lacked “necessary context”.<sup>2966</sup> I find an insufficient factual basis has been presented to establish a dispute in this Response to create a controverted material fact. Accordingly, the Recommended Decision will include a factual finding as to Respondents Russ Anderson, Julian, and McLinko that “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 information previously supplied by the customer.”

**McLinko** incorporated Respondent Julian's Response.<sup>2967</sup>

**Throughout her Group Risk Officer tenure, Respondent Russ Anderson received extensive information about ongoing sales practices misconduct in the Community Bank**

**Enforcement Counsel's Statement of Material Fact (Russ Anderson) No. 276**

On April 26, 2005, the then-Chief Auditor Kevin McCabe sent to Respondent Russ Anderson

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<sup>2963</sup> McLinko's ECSFM at No. 230.

<sup>2964</sup> See MSD-200 (Hughes Decl.) at 6.

<sup>2965</sup> Russ Anderson's ECSFM at No. 275.

<sup>2966</sup> Julian's ECSFM at No. 231.

<sup>2967</sup> McLinko's ECSFM at No. 231.

the final draft of a report that would be submitted to the Audit & Examination Committee of the Board. The report included Corporate Security Activities, including “Special Investigation Fraud Type.” One of the “Special Investigation Fraud Type[s]” was Code of Ethics violations. The report showed an increase in the number of cases opened involving Code of Ethics violations, from 360 cases in first quarter 2004 to 467 cases opened in first quarter 2005. The comments stated: “Gaming of sales incentive cases continues to account for 50% of such cases. 48 cases involving the improper release/access of customer information were investigated in 1Q2005, an increasing trend. One case with \$192,000 loss involved a team member assisting with false ATM claims.”<sup>2968</sup>

### **Responses:**

**Russ Anderson**, citing lack of relevance, objected to Enforcement Counsel’s reliance on the reports presented as MSD-15 (a Bank audit report circa 2005) and MSD-249 (a Bank audit update report circa 2005).<sup>2969</sup>

Given the passage of time between the creation of the two reports and the filing of the Notice of Charges, given the reports’ remote and tangential relationship with the material claims presented in the Notice of Charges, given the potential for confusion that admitting the reports presents, given the redundant nature of the material facts presented in the reports when compared with Exhibits that are more closely related in time, and given the marginal relevance of the claim regarding 2005 audit findings, the reports will not be admitted in support of Enforcement Counsel’s Motion as to Respondent Russ Anderson. Accordingly, the claims presented in (Russ Anderson) No. 276 will not support Enforcement Counsel’s Motion. The exclusion of the 276 does not, however, create a factual basis that would prevent granting Enforcement Counsel’s Motion.

### **Enforcement Counsel’s Statement of Material Fact (Russ Anderson) No. 277**

On July 19, 2005, the-then Chief Auditor Kevin McCabe sent to Respondent Russ Anderson a draft report that would be submitted to the Audit & Examination Committee of the Board. The report stated: “The EthicsLine is the 24/7 hotline which allows team members to anonymously report possible ethics violations. All fraud-related calls are referred to Special Investigations for review and investigation. Refer to Appendix 6 for additional information regarding case types

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<sup>2968</sup> MSD-15 at 26; see also MSD-249 at 16 (“The number of EthicsLine calls that resulted in cases in 2004 is 428 compared to 225 in 2003, an increase of 90%. This increase is primarily due to an increase in EthicsLine calls relating to sales incentive gaming activity.”).

<sup>2969</sup> See Respondent Claudia Russ Anderson’s Memorandum of Law in Opposition to Motion for Summary Disposition at 35, incorporating the objections by Respondent Julian at Respondent Julian’s Objections to Enforcement Counsel’s Motion for Summary Disposition Exhibits.

and confirmed fraud relating to EthicsLine calls. Special EthicsLine data is located in the matrix on the following page.”<sup>2970</sup> The matrix showed a 53% increase in “Internal Cases Resulting from EthicsLine Calls” from 2004 to 2005. The comments indicated that the volume was “[d]ue to increase in volume of calls, specifically sales incentive gaming calls.”<sup>2971</sup>

**Responses:**

**Russ Anderson**, citing lack of relevance, objected to Enforcement Counsel’s reliance on the reports presented as MSD-16 (a Bank audit report circa 2005).<sup>2972</sup>

Given the passage of time between the creation of the cited report and the filing of the Notice of Charges, given the report’s remote and tangential relationship with the material claims presented in the Notice of Charges, given the potential for confusion that admitting the report presents, given the redundant nature of the material facts presented in the report when compared with Exhibits that are more closely related in time, and given the marginal relevance of the claim regarding 2005 audit findings, the reports will not be admitted in support of Enforcement Counsel’s Motion as to Respondent Russ Anderson. Accordingly, the claims presented in (Russ Anderson) No. 277 will not support Enforcement Counsel’s Motion. The exclusion of the 277 does not, however, create a factual basis that would prevent granting Enforcement Counsel’s Motion.

**Enforcement Counsel’s Statement of Material Fact (Russ Anderson) No. 278**

Appendix 6 of the document that Respondent Russ Anderson received showed that the number of EthicsLine reports related to “Gaming of Sales Incentive Programs” by far exceeded any other category of Code of Ethics Violations. (MSD-16 at 51).

**Responses:**

**Russ Anderson**, citing lack of relevance, objected to Enforcement Counsel’s reliance on the reports presented as Appendix 6 in MSD-16 (a Bank audit report circa 2005).<sup>2973</sup>

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<sup>2970</sup> MSD-16 at 25-26.

<sup>2971</sup> MSD-16 at 26.

<sup>2972</sup> See Respondent Claudia Russ Anderson’s Memorandum of Law in Opposition to Motion for Summary Disposition at 35, incorporating the objections by Respondent Julian at Respondent Julian’s Objections to Enforcement Counsel’s Motion for Summary Disposition Exhibits.

<sup>2973</sup> See Respondent Claudia Russ Anderson’s Memorandum of Law in Opposition to Motion for Summary Disposition at 35, incorporating the objections by Respondent Julian at Respondent Julian’s Objections to Enforcement Counsel’s Motion for Summary Disposition Exhibits.

Given the passage of time between the creation of the cited report and the filing of the Notice of Charges, given the report's remote and tangential relationship with the material claims presented in the Notice of Charges, given the potential for confusion that admitting the report presents, given the redundant nature of the material facts presented in the report when compared with Exhibits that are more closely related in time, and given the marginal relevance of the claim regarding 2005 audit findings, the reports will not be admitted in support of Enforcement Counsel's Motion as to Respondent Russ Anderson. Accordingly, the claims presented in (Russ Anderson) No. 278 will not support Enforcement Counsel's Motion. The exclusion of the 278 does not, however, create a factual basis that would prevent granting Enforcement Counsel's Motion.

### **Enforcement Counsel's Statement of Material Fact (Russ Anderson) No. 279**

Michael Bacon was the Head of Corporate Investigations from approximately 2007 until September 2014.<sup>2974</sup>

#### **Responses:**

**Russ Anderson** offered no evidence to controvert the claim made in this Statement, disputing the claim based on the averment that the exhibit presented in support "does not provide an end date" for Mr. Bacon's service.<sup>2975</sup>

I find an insufficient factual basis has been presented to establish a dispute in this Response to create a controverted material fact. Accordingly, the Recommended Decision will include a factual finding as to Respondent Russ Anderson that Michael Bacon was the Head of Corporate Investigations from approximately 2007 until September 2014.

### **Enforcement Counsel's Statement of Material Fact (Russ Anderson) No. 280**

During Respondent Russ Anderson's tenure as Group Risk Officer of the Community Bank, Mr. Bacon and Corporate Investigations regularly informed Respondent Russ Anderson about continuing sales practices misconduct.<sup>2976</sup> Mr. Bacon and his team also informed her that employees engaged in sales practices misconduct because they feared losing their jobs if they do not meet sales goals.<sup>2977</sup>

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<sup>2974</sup> MSD-295 (Bacon Tr.) at 15:1-7.

<sup>2975</sup> Russ Anderson's ECSFM at No. 279.

<sup>2976</sup> MSD-11; MSD-14; MSD-18; MSD-21; MSD-24; MSD-25; MSD-42; MSD-149; MSD-242; MSD-244; MSD-322.

<sup>2977</sup> MSD-295 (Bacon Tr.) at 44:5-15; 51:3- 52:20.

## Responses:

**Russ Anderson** did not dispute that Mr. Bacon informed her as reported in this Statement, but instead asserts the documents cited by Enforcement Counsel provide examples of Ms. Russ Anderson being aware of sales integrity and sales practice misconduct and addressing the issues.<sup>2978</sup>

I find an insufficient factual basis has been presented to establish a dispute in this Response to create a controverted material fact. Accordingly, the Recommended Decision will include a factual finding as to Respondent Russ Anderson that during her tenure as Group Risk Officer of the Community Bank, Mr. Bacon and Corporate Investigations regularly informed Respondent Russ Anderson about continuing sales practices misconduct. Mr. Bacon and his team also informed her that employees engaged in sales practices misconduct because they feared losing their jobs if they do not meet sales goals.

### Enforcement Counsel's Statement of Material Fact (Russ Anderson) No. 281

On August 20, 2007, Mr. Bacon sent a presentation to Respondent Russ Anderson regarding sales integrity violations. The subject of the email stated: "For our meeting today – YTD [Year-to-Date] Sales Integrity Overview Meeting presentation items[.]" The presentation to Respondent Russ Anderson showed a 196% increase from YTD 2006 to YTD 2007 in the number of EthicsLine reports specific to sales integrity. (MSD-18 at 4). The presentation further showed that Sales Incentive Program Violations was the largest case sub-type within Code of Ethics Case, and that the number of cases related to Sales Incentive Program Violations increased by 65% from YTD 2006 to YTD 2007.<sup>2979</sup> The presentation provided to Respondent Russ Anderson also informed her that:

- "Customer Consent & Account Procedural Issues Primary Drivers of Allegations," that "[f]ailure to capture customer consent enables unethical behaviors" (MSD-18 at 7, 11);
- "43% of allegations originated from customer consent issues" (MSD-18 at 7);
- Sales integrity violations posed regulatory compliance risks (MSD-18 at 9);
- "Majority of Sales Integrity Allegations stem from Ethics Line reports (MSD-18 at 9);
- "SOX [Sarbanes Oxley] guidance regarding company-level control considerations include:
  - Pressure to meet unrealistic or short term performance targets
  - Extent to which management monitors whether internal control systems

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<sup>2978</sup> Russ Anderson's ECSFM at No. 280.

<sup>2979</sup> MSD-18 at 5.

are working”<sup>2980</sup>

- Majority of sales integrity allegations related to lack of customer consent involved checking/saving funding and procedural issues and debit cards.<sup>2981</sup>

### **Responses:**

**Russ Anderson** objected to the use of MSD-18 (a report on corporate security statistics and sales integrity circa 2007) on the grounds of relevance.<sup>2982</sup>

Given the passage of time between the issuance of the relied-upon Exhibit and the filing of the Notice of Charges, given the Exhibit’s remote and tangential relationship with the material claims presented in the Notice of Charges, given the potential for confusion that admitting the Exhibit presents, and given the redundant nature of the material facts presented in the Exhibit when compared with Exhibits that are more closely related in time, the Exhibit will not be admitted in support of Enforcement Counsel’s Motion as to Respondent Russ Anderson. Accordingly, the claims presented in (Russ Anderson) No. 281 will not support Enforcement Counsel’s Motion. The exclusion of the 281 does not, however, create a factual basis that would prevent granting Enforcement Counsel’s Motion.

### **Enforcement Counsel’s Statement of Material Fact (Russ Anderson) No. 282**

On May 22, 2008, Tyson Pyles, who managed the Sales Quality Team within the Community Bank at the time provided the following information to Respondent Russ Anderson<sup>2983</sup>:

- “Allegations sent to SQ [Sales Quality Team] are up YOY [Year-Over-Year]”,<sup>2984</sup>
- “Consent issues & reclassifying existing business are still the two primary issues.”<sup>2985</sup>

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<sup>2980</sup> MSD-18 at 9.

<sup>2981</sup> MSD-18 at 14, 22.

<sup>2982</sup> See Respondent Claudia Russ Anderson’s Memorandum of Law in Opposition to Motion for Summary Disposition at 35, incorporating the objections by Respondent Julian at Respondent Julian’s Objections to Enforcement Counsel’s Motion for Summary Disposition Exhibits.

<sup>2983</sup> MSD-19.

<sup>2984</sup> MSD-19 at 8.

<sup>2985</sup> MSD-19 at 8.



- “Lack of documentation = Increased Opportunity for Consent Issues.”<sup>2986</sup>
- “Many products require no documented customer consent.”<sup>2987</sup>
- “Current systems do not support consent capture or investigation of issues after the account is opened.”<sup>2988</sup>
- “Phone Bank approached Sales Quality in Q1 2008 concerning customer calls related to lack of consent for products.”<sup>2989</sup>
- “Primary activity driving allegation volumes is lack of customer consent for solutions (red bars) although account opening procedural issues also contribute a significant volume (green bars).”<sup>2990</sup>

**Responses:**

**Russ Anderson** objected to the use of the cited evidence on the grounds of relevance.<sup>2991</sup>

Given the passage of time between the issuance of the relied-upon Exhibit and the filing of the Notice of Charges, given the Exhibit’s remote and tangential relationship with the material claims presented in the Notice of Charges, given the potential for confusion that admitting the Exhibit presents, and given the redundant nature of the material facts presented in the Exhibit when compared with Exhibits that are more closely related in time, the Exhibit will not be admitted in support of Enforcement Counsel’s Motion as to Respondent Russ Anderson. Accordingly, the claims presented in (Russ Anderson) No. 282 will not support Enforcement Counsel’s Motion. The exclusion of the 282 does not, however, create a factual basis that would prevent granting Enforcement Counsel’s Motion.

**Enforcement Counsel’s Statement of Material Fact (Russ Anderson) No. 283**

In or around 2011 or 2012, Respondent Russ Anderson received a “Case Escalation Memorandum” from Corporate Investigations. This memorandum informed her, among other things, that customers were enrolled in on-line banking without their knowledge or consent. She

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<sup>2986</sup> MSD-19 at 9

<sup>2987</sup> MSD-19 at 9.

<sup>2988</sup> MSD-19 at 9.

<sup>2989</sup> MSD-19 at 11.

<sup>2990</sup> MSD-19 at 12, 16.

<sup>2991</sup> See Respondent Claudia Russ Anderson’s Memorandum of Law in Opposition to Motion for Summary Disposition at 35, incorporating the objections by Respondent Julian at Respondent Julian’s Objections to Enforcement Counsel’s Motion for Summary Disposition Exhibits.

was also informed that employees who commit various forms of sales practices misconduct violate 18 U.S.C. §§ 1005 and 1006.<sup>2992</sup>

**Responses:**

**Russ Anderson** objected to the use of the cited evidence on the grounds of relevance.<sup>2993</sup>

Given the passage of time between the issuance of the relied-upon Exhibit and the filing of the Notice of Charges, given the Exhibit's remote and tangential relationship with the material claims presented in the Notice of Charges, given the potential for confusion that admitting the Exhibit presents, and given the redundant nature of the material facts presented in the Exhibit when compared with Exhibits that are more closely related in time, the Exhibit will not be admitted in support of Enforcement Counsel's Motion as to Respondent Russ Anderson. Accordingly, the claims presented in (Russ Anderson) No. 283 will not support Enforcement Counsel's Motion. The exclusion of the 283 does not, however, create a factual basis that would prevent granting Enforcement Counsel's Motion.

**Enforcement Counsel's Statement of Material Fact (Russ Anderson) No. 284**

On September 10, 2011, the Head of Corporate Investigation Michael Bacon informed Respondent Russ Anderson about key activity in the Community Bank. He stated: "As you may recall we broke out Sales Integrity from the Code of Ethics Case Type in an effort to improve reporting and provide more insight as to the specific trends. You will see that Sales has several subtypes as to the specific activity."<sup>2994</sup> Respondent Russ Anderson received information about the types of Sales Integrity Violations, their associated volumes, and their disposition.<sup>2995</sup> The document provided to Respondent Russ Anderson reflected that in 2010 and 2011, most employee terminations and resignations for Sales Integrity Violations related to lack of customer consent, and that such terminations increased by 54% from 2010 to 2011.<sup>2996</sup> The reporting also showed that cases involving Sales Integrity Violations that resulted in confirmed fraud increased by 19% from 2010 to 2011.<sup>2997</sup>

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<sup>2992</sup> MSD-711 at 2, 3, 6.

<sup>2993</sup> See Respondent Claudia Russ Anderson's Memorandum of Law in Opposition to Motion for Summary Disposition at 35, incorporating the objections by Respondent Julian at Respondent Julian's Objections to Enforcement Counsel's Motion for Summary Disposition Exhibits.

<sup>2994</sup> MSD-21.

<sup>2995</sup> MSD-21.

<sup>2996</sup> MSD-21 at 9.

<sup>2997</sup> MSD-21 at 12.

**Responses:**

**Russ Anderson** objected to the use of the cited evidence on the grounds of relevance.<sup>2998</sup>

Given the passage of time between the issuance of the relied-upon Exhibit and the filing of the Notice of Charges, given the Exhibit's remote and tangential relationship with the material claims presented in the Notice of Charges, given the potential for confusion that admitting the Exhibit presents, and given the redundant nature of the material facts presented in the Exhibit when compared with Exhibits that are more closely related in time, the Exhibit will not be admitted in support of Enforcement Counsel's Motion as to Respondent Russ Anderson. Accordingly, the claims presented in (Russ Anderson) No. 284 will not support Enforcement Counsel's Motion. The exclusion of the 284 does not, however, create a factual basis that would prevent granting Enforcement Counsel's Motion.

**Enforcement Counsel's Statement of Material Fact (Russ Anderson) No. 285**

On or about November 10, 2011, Mr. Bacon sent Respondent Russ Anderson another report, which informed her of a "significant increase in misconduct specific to falsification of bank records related to sales."<sup>2999</sup> Respondent Russ Anderson replied, "Obviously this is a very concerning report . . ."<sup>3000</sup> Mr. Bacon responded that this concerning report "is nearly identical to previous quarters, the trend just keep[s] increasing."<sup>3001</sup>

**Responses:**

**Russ Anderson** objected to the use of the cited evidence on the grounds of relevance.<sup>3002</sup>

Given the passage of time between the issuance of the relied-upon Exhibit and the filing of the Notice of Charges, given the Exhibit's remote and tangential relationship with the material claims presented in the Notice of Charges, given the potential for confusion that admitting the Exhibit presents, and given the redundant nature of the material facts presented in the Exhibit

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<sup>2998</sup> See Respondent Claudia Russ Anderson's Memorandum of Law in Opposition to Motion for Summary Disposition at 35, incorporating the objections by Respondent Julian at Respondent Julian's Objections to Enforcement Counsel's Motion for Summary Disposition Exhibits.

<sup>2999</sup> MSD-231 at 3.

<sup>3000</sup> MSD-231 at 3.

<sup>3001</sup> MSD-231 at 2; MSD-267 (NBE Smith Expert Report) at ¶ 107.

<sup>3002</sup> See Respondent Claudia Russ Anderson's Memorandum of Law in Opposition to Motion for Summary Disposition at 35, incorporating the objections by Respondent Julian at Respondent Julian's Objections to Enforcement Counsel's Motion for Summary Disposition Exhibits.

when compared with Exhibits that are more closely related in time, the Exhibit will not be admitted in support of Enforcement Counsel's Motion as to Respondent Russ Anderson. Accordingly, the claims presented in (Russ Anderson) No. 285 will not support Enforcement Counsel's Motion. The exclusion of the 285 does not, however, create a factual basis that would prevent granting Enforcement Counsel's Motion.

### **Enforcement Counsel's Statement of Material Fact (Russ Anderson) No. 286**

On November 14, 2011, Mr. Bacon informed Respondent Russ Anderson about his proposed submission to the Audit and Examination Committee of the Board. He wrote: "... Eastern Community Bank volume has seen a *significant increase* in misconduct specific to the falsification of bank records related to sales . . ." In response, Respondent Russ Anderson stated that Mr. Bacon's reporting "is not a well-balanced report." She further commented: "I just think there is so much more to this story than what is shown here. Have we done any research to figure this out? Also, is the relative number important given the size of the company?" Mr. Bacon explained to Respondent Russ Anderson: "Claudia, these items must be commented on and I believe our comments are very accurate. None of these issues should be new. The trends have consistently been heading up quarter over quarter, year after year."<sup>3003</sup>

### **Responses:**

**Russ Anderson** objected to the use of the cited evidence on the grounds of relevance.<sup>3004</sup>

Given the passage of time between the issuance of the relied-upon Exhibit and the filing of the Notice of Charges, given the Exhibit's remote and tangential relationship with the material claims presented in the Notice of Charges, given the potential for confusion that admitting the Exhibit presents, and given the redundant nature of the material facts presented in the Exhibit when compared with Exhibits that are more closely related in time, the Exhibit will not be admitted in support of Enforcement Counsel's Motion as to Respondent Russ Anderson. Accordingly, the claims presented in (Russ Anderson) No. 286 will not support Enforcement Counsel's Motion. The exclusion of the 286 does not, however, create a factual basis that would prevent granting Enforcement Counsel's Motion.

### **Enforcement Counsel's Statement of Material Fact (Russ Anderson) No. 287**

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<sup>3003</sup> MSD-12; see also MSD-42 (Mr. Bacon informing Respondent Russ Anderson of increasing trend in misconduct cases and providing data in support).

<sup>3004</sup> See Respondent Claudia Russ Anderson's Memorandum of Law in Opposition to Motion for Summary Disposition at 35, incorporating the objections by Respondent Julian at Respondent Julian's Objections to Enforcement Counsel's Motion for Summary Disposition Exhibits.

On November 27, 2011, Respondent Russ Anderson emailed Mr. Bacon and others stating that “[t]he number of Sales Integrity SAR [Suspicious Activity Reports] are up 190 year over year (33.75%) . . . The 2011 losses ytd 9/30 were \$1,083,000 vs. \$160,000 in 2010. While on the face of it this is a significant % increase the dollars relative to the size of Regional Banking are not significant.” In response, Mr. Bacon informed Respondent Russ Anderson: “The Sales Integrity loss data is not millions- it is only – 1,083 versus 160. These types of cases don’t usually have a hard dollar loss – in these instances a debit card was ordered without consent and was fraudulently used.” Respondent Russ Anderson responded: “Oh – my bad I just assumed it was millions so it is even more insignificant.”<sup>3005</sup>

**Responses:**

**Russ Anderson** objected to the Statement on the ground that the supporting exhibit was irrelevant.<sup>3006</sup> Finding an insufficient nexus between the averments presented in the Statement and the material facts in issue, the objection is sustained. Accordingly, the claims presented in (Russ Anderson) No. 287 will not support Enforcement Counsel’s Motion. The exclusion of the claims appearing in the Statement does not, however, create a factual basis that would prevent granting Enforcement Counsel’s Motion.

**Enforcement Counsel’s Statement of Material Fact (Russ Anderson) No. 288**

On November 29, 2011, Mr. Bacon emailed Respondent Russ Anderson highlighting his continued concern with sales integrity cases and their continued increase: “My only concern within Community Bank continues to be with Sales Integrity cases and their continued increase. As previously noted, everyone expected a slight increase in cases once SQ [Sales Quality Team] began doing the customer polling, but I can only speak for my team, we did not expect the increase we have been experiencing. . . . During the call, Carrie [Tolstedt] was fairly adamant about being cautious in regards to our language, but I don’t feel comfortable not pointing out to you, that we have either in fact ‘detected’ more misconduct that wasn’t previously detected or managed appropriately or we simply have an increase.”<sup>3007</sup>

**Responses:**

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<sup>3005</sup> MSD-23.

<sup>3006</sup> See Respondent Claudia Russ Anderson’s Memorandum of Law in Opposition to Motion for Summary Disposition at 35, incorporating the objections by Respondent Julian at Respondent Julian’s Objections to Enforcement Counsel’s Motion for Summary Disposition Exhibits.

<sup>3007</sup> MSD-11.

**Russ Anderson** objected to the use of the cited evidence on the grounds of relevance.<sup>3008</sup>

Given the passage of time between the issuance of the relied-upon Exhibit and the filing of the Notice of Charges, given the Exhibit's remote and tangential relationship with the material claims presented in the Notice of Charges, given the potential for confusion that admitting the Exhibit presents, and given the redundant nature of the material facts presented in the Exhibit when compared with Exhibits that are more closely related in time, the Exhibit will not be admitted in support of Enforcement Counsel's Motion as to Respondent Russ Anderson. Accordingly, the claims presented in (Russ Anderson) No. 288 will not support Enforcement Counsel's Motion. The exclusion of the 288 does not, however, create a factual basis that would prevent granting Enforcement Counsel's Motion.

### **Enforcement Counsel's Statement of Material Fact (Russ Anderson) No. 289**

On or around March 28, 2012, a Regional Investigations Manager provided an update to Respondent Russ Anderson regarding 11 terminations in a branch due to sales integrity violations.<sup>3009</sup> The email to Respondent Russ Anderson informed her that:

- “Bankers admitted to forging customer account applications, pinning debit cards, signing customer’s [sic] up for on line banking and forging withdrawal slips”;
- “Research also indicated that On Line Banking is being set up for these customers at the time the accounts are being opened and the customers are not present”;
- “Several complaints received alleging that the Napa store is opening multiple accounts for customers using team member’s home addresses, phone numbers, and common email addresses”;
- (4) “Interviews were conducted and 11 team members were terminated, including the store manager resigned prior to termination and will be coded as in-eligible for re-hire).”<sup>3010</sup>

Mr. Bacon forwarded this email to the Director of Corporate Human Resources, stating that “Cases involving Sales Integrity continue to increase across the enterprise.” He also commented that “Sales Integrity cases are plentiful – we ended the year with almost 3K and

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<sup>3008</sup> See Respondent Claudia Russ Anderson’s Memorandum of Law in Opposition to Motion for Summary Disposition at 35, incorporating the objections by Respondent Julian at Respondent Julian’s Objections to Enforcement Counsel’s Motion for Summary Disposition Exhibits.

<sup>3009</sup> MSD-242 at 2.

<sup>3010</sup> MSD-242 at 2.

allegations dominate the EthicsLine, . . . Our focus and one we are sharing with Claudia is we need to focus on Manager accountability – many of the Sales Integrity items can already been [sic] seen in the management reports and in Claudia’s Sales Quality data – we terminate way too many good TMs [team members] for activity either directly caused by management sales pressure or bad behaviors not detected soon enough by management.”<sup>3011</sup>

**Responses:**

**Russ Anderson** objected to the use of the cited evidence on the grounds of relevance.<sup>3012</sup>

Given the passage of time between the issuance of the relied-upon Exhibit and the filing of the Notice of Charges, given the Exhibit’s remote and tangential relationship with the material claims presented in the Notice of Charges, given the potential for confusion that admitting the Exhibit presents, and given the redundant nature of the material facts presented in the Exhibit when compared with Exhibits that are more closely related in time, the Exhibit will not be admitted in support of Enforcement Counsel’s Motion as to Respondent Russ Anderson. Accordingly, the claims presented in (Russ Anderson) No. 289 will not support Enforcement Counsel’s Motion. The exclusion of the 289 does not, however, create a factual basis that would prevent granting Enforcement Counsel’s Motion.

**Enforcement Counsel’s Statement of Material Fact (Russ Anderson) No. 290**

Enforcement Counsel’s Statement of Material Fact (Russ Anderson) No. 290 relies on exhibits presented to this Tribunal as being non-public. Pursuant to the OCC’s Uniform Rules, while the proceedings in this administrative enforcement action are expressly required to be public, when presented with non-public documents the Administrative Law Judge is required to take all appropriate steps to preserve the confidentiality of such documents.<sup>3013</sup> Upon my review of the confidential documents supporting this Statement of Material Fact, and after weighing the expectation that all of the proceedings shall be public against the requirement that I protect against the disclosure of non-public information, I find the evidentiary value of these exhibits to be sufficiently marginal and duplicative as to warrant exclusion from this Order. Accordingly, this Order will not be based on any of the claims found in this Statement of Material Fact.

**Enforcement Counsel’s Statement of Material Fact (Russ Anderson) No. 291**

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<sup>3011</sup> MSD-242 at 1.

<sup>3012</sup> See Respondent Claudia Russ Anderson’s Memorandum of Law in Opposition to Motion for Summary Disposition at 35, incorporating the objections by Respondent Julian at Respondent Julian’s Objections to Enforcement Counsel’s Motion for Summary Disposition Exhibits.

<sup>3013</sup> See 12 C.F.R. § 19.33(b).

On July 20, 2012, the Head of Corporate Investigations Michael Bacon emailed Respondent Russ Anderson informing her of his proposed submission to the Audit and Examination Committee of the Board. In the email, Mr. Bacon noted, among other things, that “customer consent concerns increased 29% and false entry of customer identification information increased 24%.” In response, Respondent Russ Anderson told Mr. Bacon that “it is the context that I think needs rethinking. As we discussed last year this sounds so much worse than it really is . . .” Mr. Bacon responded to Russ Anderson: “Claudia, I am not sure the data supports this conclusion. The content of our submittal is very accurate and I actually think there are items of concern in the data. Also of note, as you know, we have had a spike in egregious Sales Integrity matters, which added to the upward trend. As previously discussed, we are preparing a deep dive report for each region highlighting the Sales Integrity cases and related key activity.”<sup>3014</sup>

**Responses:**

**Russ Anderson** did not dispute receipt of the email cited in the Statement, but disputed its relevance, averring the quoted language referred to Suspicious Activity Reports and not sales practices misconduct.<sup>3015</sup> Finding an insufficient nexus between the averments presented in the Statement and the material facts in issue, the objection is sustained. Accordingly, the claims presented in (Russ Anderson) No. 291 will not support Enforcement Counsel’s Motion. The exclusion of the claims appearing in the Statement does not, however, create a factual basis that would prevent granting Enforcement Counsel’s Motion.

**Enforcement Counsel’s Statement of Material Fact (Russ Anderson) No. 292**

During her tenure as Group Risk Officer, Respondent Russ Anderson also received employee complaints regarding unethical sales practices. For example, on May 9, 2013, an employee forwarded her an email that stated, in part: “I have some serious concerns about the leadership in our market. There is a huge amount of unethical sales 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. 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.”<sup>3016</sup>

**Responses:**

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<sup>3014</sup> MSD-25.

<sup>3015</sup> See Russ Anderson’s ECSFM at No. 291 and Respondent Claudia Russ Anderson’s Memorandum of Law in Opposition to Motion for Summary Disposition at 35, incorporating the objections by Respondent Julian at Respondent Julian’s Objections to Enforcement Counsel’s Motion for Summary Disposition Exhibits.

<sup>3016</sup> MSD-41.



**Russ Anderson** did not dispute her receipt of the email cited in the Statement, but averred it was “actually an email that was sent to Mr. Stumpf and copied to Ms. Tolstedt, who forwarded it to Ms. Russ Anderson”; and averred the email “demonstrates that numerous individuals within the organization, including the CEO of Wells Fargo, received the same information.”<sup>3017</sup>

I find an insufficient factual basis has been presented to establish a dispute in this Response to create a controverted material fact. Accordingly, the Recommended Decision will include a factual finding as to Respondent Russ Anderson that during her tenure as Group Risk Officer, Respondent Russ Anderson also received employee complaints regarding unethical sales practices. For example, on May 9, 2013, an employee forwarded her an email that stated, in part: “I have some serious concerns about the leadership in our market. There is a huge amount of unethical sales 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. 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.”

#### **Enforcement Counsel’s Statement of Material Fact (Russ Anderson) No. 293**

On November 1, 2013, Respondent Russ Anderson received an anonymous email from “You LA/OC Region Team Members.”<sup>3018</sup> The email stated, among other things: “The breakdown of our internal controls has been detrimental to our team members, who are being treated as seasonal workers every quarter. Pay attention to fluctuation reports. More duplicate premier checking and fake business accounts are demanded to be opened just so they can clinch a higher tier in their bonus payouts. Sure enough, months later, the bankers would get fired and we bring along a fresher batch of hopeful bankers. The proof is in the pudding.”<sup>3019</sup>

#### **Responses:**

**Russ Anderson** did not dispute her receipt of the email cited in the Statement.<sup>3020</sup> Accordingly, the Recommended Decision will include a factual finding as to Respondent Russ Anderson that on November 1, 2013, she received an anonymous email from “You LA/OC

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<sup>3017</sup> Russ Anderson’s ECSFM at No. 292.

<sup>3018</sup> MSD-248.

<sup>3019</sup> MSD-248 at 3.

<sup>3020</sup> Russ Anderson’s ECSFM at No. 293.

Region Team Members.”<sup>3021</sup> The email stated, among other things: “The breakdown of our internal controls has been detrimental to our team members, who are being treated as seasonal workers every quarter. Pay attention to fluctuation reports. More duplicate premier checking and fake business accounts are demanded to be opened just so they can clinch a higher tier in their bonus payouts. Sure enough, months later, the bankers would get fired and we bring along a fresher batch of hopeful bankers. The proof is in the pudding.”

#### **Enforcement Counsel’s Statement of Material Fact (Russ Anderson) No. 294**

Respondent Russ Anderson read both *Los Angeles Times* articles.<sup>3022</sup>

#### **Responses:**

**Russ Anderson** did not dispute that she had read both articles.<sup>3023</sup> Accordingly, the Recommended Decision will include a factual finding as to Respondent Russ Anderson that she read both of the cited *Los Angeles Times* articles.

#### **Enforcement Counsel’s Statement of Material Fact (Russ Anderson) No. 295**

On November 15, 2013, after the first *Los Angeles Times* article, Mickey Delay- Helser, a Community Bank leader, emailed Respondent Russ Anderson the subject line of which read “This is worrying me.”<sup>3024</sup> Ms. Delay-Helser wrote: “As I think I’ve shared with you, in a 10-day period I had four complaints raised [to me] by friends about family about issues in 4 different stores. Three of them were Sales Integrity issues. None of these people complained internally and so if they had not complained to me, we would never have heard about these complaints. . . .So I worry that we look at the Ethics line reporting only.”<sup>3025</sup>

#### **Responses:**

Russ Anderson did not dispute her receipt of the cited email.<sup>3026</sup> Accordingly, the Recommended Decision will include a factual finding as to Respondent Russ Anderson that on November 15, 2013, after the first *Los Angeles Times* article, Mickey Delay- Helser, a Community Bank leader, emailed Respondent Russ Anderson the subject line of which read

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<sup>3021</sup> MSD-248.

<sup>3022</sup> MSD-266 (Russ Anderson Dep. Tr.) at 160:20-23.

<sup>3023</sup> Russ Anderson’s ECSFM at No. 294.

<sup>3024</sup> MSD-237.

<sup>3025</sup> MSD-237.

<sup>3026</sup> Russ Anderson’s ECSFM at No. 295.

“This is worrying me.”<sup>3027</sup> Ms. Delay-Helser wrote: “As I think I’ve shared with you, in a 10-day period I had four complaints raised [to me] by friends about family about issues in 4 different stores. Three of them were Sales Integrity issues. None of these people complained internally and so if they had not complained to me, we would never have heard about these complaints. . . .So I worry that we look at the Ethics line reporting only.”

### **Enforcement Counsel’s Statement of Material Fact (Russ Anderson) No. 296**

Respondent Russ Anderson, however, “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.”<sup>3028</sup>

#### **Responses:**

**Russ Anderson** did not dispute that she testified as shown in the Statement.<sup>3029</sup> Accordingly, the Recommended Decision will include a factual finding as to Respondent Russ Anderson that she testified that she “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.”

### **Enforcement Counsel’s Statement of Material Fact (Russ Anderson) No. 297**

Enforcement Counsel’s Statement of Material Fact (Russ Anderson) No. 297 relies on exhibits presented to this Tribunal as being non-public. Pursuant to the OCC’s Uniform Rules, while the proceedings in this administrative enforcement action are expressly required to be public, when presented with non-public documents the Administrative Law Judge is required to take all appropriate steps to preserve the confidentiality of such documents.<sup>3030</sup> Upon my review of the confidential documents supporting this Statement of Material Fact, and after weighing the expectation that all of the proceedings shall be public against the requirement that I protect against the disclosure of non-public information, I find the evidentiary value of these exhibits to be sufficiently marginal and duplicative as to warrant exclusion from this Order. Accordingly, this Order will not be based on any of the claims found in this Statement of Material Fact.

### **Enforcement Counsel’s Statement of Material Fact (Russ Anderson) No. 298**

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<sup>3027</sup> MSD-237.

<sup>3028</sup> MSD-266 (Russ Anderson Dep. Tr.) at 58:13-16.

<sup>3029</sup> Russ Anderson’s ECSFM at No. 296.

<sup>3030</sup> See 12 C.F.R. § 19.33(b).

On July 31, 2013, the Head of Corporate Investigations Michael Bacon informed Respondent Russ Anderson: “Three ‘undercover’ law enforcement accounts were opened up in CA [California] and within 45 minutes two bankers at SF main ordered debit cards for them without any customer consent or discussion. Clearly the bankers were monitoring the system.”<sup>3031</sup>

**Responses:**

**Russ Anderson** did not dispute being informed as shown in this Statement. Accordingly, the Recommended Decision will include a factual finding as to Respondent Russ Anderson that on July 31, 2013, the Head of Corporate Investigations Michael Bacon informed Respondent Russ Anderson: “Three ‘undercover’ law enforcement accounts were opened up in CA [California] and within 45 minutes two bankers at SF main ordered debit cards for them without any customer consent or discussion. Clearly the bankers were monitoring the system.”

**Enforcement Counsel’s Statement of Material Fact (Russ Anderson) No. 299**

On August 20, 2013, Respondent Russ Anderson received reporting on sales integrity violations broken out by region.<sup>3032</sup> The data showed: (1) an increase in Sales Integrity Violations cases from year to date 2012 through 2013; (2) that customer consent constituted the largest sub-type of Sales Integrity Violations; (3) every region had Sales Integrity Violations.<sup>3033</sup> The email stated: “I assume you will take additional appropriate action as you deem necessary.”<sup>3034</sup>

**Responses:**

**Russ Anderson** did not dispute receipt of the cited email message, but asserted it was “unclear to whom the ‘you’ in “I assume you will take additional appropriate action as you deem necessary” was referencing.”<sup>3035</sup>

I find an insufficient factual basis has been presented to establish a dispute in this Response to create a controverted material fact. Accordingly, the Recommended Decision will include a factual finding as to Respondent Russ Anderson that on August 20, 2013, Respondent Russ Anderson received reporting on sales integrity violations broken out by region. The data showed: (1) an increase in Sales Integrity Violations cases from year to date 2012 through 2013;

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<sup>3031</sup> MSD-22; see also MSD-55.

<sup>3032</sup> MSD-250.

<sup>3033</sup> MSD-250.

<sup>3034</sup> MSD-250.

<sup>3035</sup> Russ Anderson’s ECSFM at No. 299.

(2) that customer consent constituted the largest sub-type of Sales Integrity Violations; (3) every region had Sales Integrity Violations. The email stated: “I assume you will take additional appropriate action as you deem necessary.”

### **Enforcement Counsel’s Statement of Material Fact (Russ Anderson) No. 300**

After the *Los Angeles Times* articles were published in October and December 2013, the Bank formed a “Core Team.”<sup>3036</sup> The Core Team was a cross-functional group created to ensure consistency in employee termination decisions in the wake of the *Los Angeles Times* articles.<sup>3037</sup>

#### **Responses:**

**Russ Anderson** did not dispute that the Bank formed a “Core Team” after the publication of the two news articles, nor that it was a cross functional group created to ensure consistency in employee terminations in the wake of the articles.<sup>3038</sup> She disputed the Statement as to context and “mischaracterization of the facts related to the Core Team.”<sup>3039</sup>

### **Enforcement Counsel’s Statement of Material Fact (Russ Anderson) No. 301**

Respondent Russ Anderson was a member of the Core Team.<sup>3040</sup>

#### **Responses:**

**Russ Anderson** did not dispute that she was a member of the Core Team. Accordingly, the Recommended Decision will include a factual finding as to Respondent Russ Anderson that she was a member of the Core Team.

### **Enforcement Counsel’s Statement of Material Fact (Russ Anderson) No. 302**

As a member of the Core Team from 2013 through 2016, Respondent Russ Anderson was aware of continuing sales practices misconduct in the Community Bank and that employees’

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<sup>3036</sup> MSD-124 (describing criteria for escalation to Core Team); MSD-280 (Board Report) at 80; MSD-580 (Henderson Tr.) at 45:14-47:17.

<sup>3037</sup> MSD-580 (Henderson Tr.) at 45:14- 47:17, 50:2-51:13.

<sup>3038</sup> Russ Anderson’s ECSFM at No. 300.

<sup>3039</sup> Russ Anderson’s ECSFM at No. 300.

<sup>3040</sup> MSD-287A (Otsuka Tr.) at 38:15-40:16; MSD-548 (Nelson Tr.) at 46:1-47:22.

fear of losing their jobs if they do not meet sales goals incentivized them to engage in sales practices misconduct.<sup>3041</sup>

**Responses:**

**Russ Anderson** disputed the claim regarding her awareness of both the continuing sales practices misconduct in the Community Bank during the period from 2013 to 2016, and the employees' fear of losing their jobs if they did not meet sales goals that incentivized sales practices misconduct. She noted the cited evidence does not include testimony on the relevant points, and asserted the testimony presented was unreliable as based on hearsay and rumor.<sup>3042</sup>

It is a material fact in issue whether Respondent Russ Anderson, as alleged by Enforcement Counsel in this Statement, was aware of the continuing sales practices misconduct in the Community Bank during the period from 2013 to 2016, and was aware of Bank employees' fear of losing their jobs if they do not meet sales goals incentivized them to engage in sales practices misconduct.

While I find uncontroverted (1) that sales practices misconduct continued in the Community Bank from 2013 through 2016, and (2) that Community Bank employees feared they would lose their jobs if they did not meet sales practices goals between 2013 and 2016, and (3) that such fear incentivized sales practices misconduct by Community Bank employees between 2013 and 2016, I find that in her Response to Statement No. 302, Russ Anderson sufficiently demonstrated a factual controversy exists regarding her knowledge of these conditions between 2013 and 2016. Because of the existence of these material controverted facts, summary disposition is not available with respect to Respondent Russ Anderson regarding this claim. Pursuant to the OCC's Uniform Rules, the merits of the claims raised in (Russ Anderson) Statement No. 302 will be addressed during the hearing set to begin on September 13, 2021.

**Enforcement Counsel's Statement of Material Fact (Russ Anderson) No. 303**

Enforcement Counsel's Statement of Material Fact (Russ Anderson) No. 303 relies on exhibits presented to this Tribunal as being non-public. Pursuant to the OCC's Uniform Rules, while the proceedings in this administrative enforcement action are expressly required to be public, when presented with non-public documents the Administrative Law Judge is required to take all appropriate steps to preserve the confidentiality of such documents.<sup>3043</sup> Upon my review of the confidential documents supporting this Statement of Material Fact, and after weighing the expectation that all of the proceedings shall be public against the requirement that I protect against the disclosure of non-public information, I find the evidentiary value of these exhibits to

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<sup>3041</sup> MSD-580 (Henderson Tr.) at 21:16-22:16, 25:20-26:16, 118:22- 119:2, 133:11-134:16.

<sup>3042</sup> Russ Anderson's ECSFM at No. 302.

<sup>3043</sup> See 12 C.F.R. § 19.33(b).

be sufficiently marginal and duplicative as to warrant exclusion from this Order. Accordingly, this Order will not be based on any of the claims found in this Statements of Material Fact.

### **Enforcement Counsel’s Statement of Material Fact (Russ Anderson) No. 304**

On December 19, 2013, Susan Nelson, a senior leader in the Human Resources function, again emailed Respondent Russ Anderson expressing concerns about large number of terminations for sales integrity violations:

“Corporate Investigations’ hiatus on running sales integrity reporting will end at the end of this month. At that point, they will start to run reports going back to beginning of November. I’m hugely concerned that that is going to re-open the floodgates on large number of involuntary terminations. This 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. So at least wanted to move the dialogue forward a little. I’m not sure how many more hours we can all continue to invest in Core Group meetings to hammer through same issues – different names again and again.”<sup>3044</sup>

### **Responses:**

**Russ Anderson** did not dispute that the above text is an accurate depiction of contents of an email sent by Ms. Nelson to a group that included Respondent Russ Anderson.<sup>3045</sup> She disputed whether the exhibit supporting the Statement establishes a timeframe for the events described in the text.

I find an insufficient factual basis has been presented to establish a dispute in this Response to create a controverted material fact. Accordingly, the Recommended Decision will include a factual finding as to Respondent Russ Anderson that on December 19, 2013, Susan Nelson, a senior leader in the Human Resources function, emailed Respondent Russ Anderson expressing concerns, through the text shown above, about large number of terminations for sales integrity violations.

### **Enforcement Counsel’s Statement of Material Fact (Russ Anderson) No. 305**

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<sup>3044</sup> MSD-123.

<sup>3045</sup> Russ Anderson’s ECSFM at No.304

As a member of the Bank's Internal Fraud Committee, Respondent Russ Anderson received reporting on sales integrity violations, including trends.<sup>3046</sup> For example, a report Respondent Russ Anderson received on February 20, 2013 showed that customer consent was the largest category of Sales Integrity Violations cases, and the total number of Sales Integrity Violations cases increased from 2,609 in 2011 to 2,699 in 2012.<sup>3047</sup> The report also informed Respondent Russ Anderson that the number of terminations and resignations associated with Sales Integrity Violations increased from 935 in 2011 to 1,152 in 2012, with customer consent being the largest category associated with such terminations and resignations.<sup>3048</sup> Confirmed fraud associated with Sales Integrity Violations cases also increased from 2011 to 2012.<sup>3049</sup>

### **Responses:**

**Russ Anderson** did not dispute that she received regular reports on multiple topics including sales integrity violations and termination/resignation statistics, and that the referenced reports contain the referenced statistics. She disputed that she received MSD-244 or had knowledge of the information contained in MSD-244, and disputed that she received MSD-223 or had knowledge of the information contained in MSD-223.

It is a material fact in issue whether Respondent Russ Anderson, as alleged by Enforcement Counsel in this Statement, was aware of the trends described in this Statement, as reflected in the cited Reports (MSD-223 and MSD-244).

While I find uncontroverted that (1) a report sent to Respondent Russ Anderson dated February 20, 2013 showed that customer consent was the largest category of Sales Integrity Violations cases, and the total number of Sales Integrity Violations cases increased from 2,609 in 2011 to 2,699 in 2012;<sup>3050</sup> (2) the report also stated that the number of terminations and resignations associated with Sales Integrity Violations increased from 935 in 2011 to 1,152 in 2012, with customer consent being the largest category associated with such terminations and resignations;<sup>3051</sup> and (3) confirmed fraud associated with Sales Integrity Violations cases also increased from 2011 to 2012; I find that in her Response to Statement No. 305, Russ Anderson sufficiently demonstrated a factual controversy exists regarding her knowledge of the contents of these reports circa 2013. Because of the existence of these material controverted facts, summary disposition is not available with respect to Respondent Russ Anderson regarding this claim.

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<sup>3046</sup> MSD-218; MSD- 219; MSD-222 at 9-14; MSD-223.

<sup>3047</sup> MSD-218 at 7.

<sup>3048</sup> MSD-218 at 11.

<sup>3049</sup> MSD-218 at 12, 13); MSD- 244.

<sup>3050</sup> MSD-218 at 7.

<sup>3051</sup> MSD-218 at 11.



Pursuant to the OCC's Uniform Rules, the merits of the disputed claims raised in (Russ Anderson) Statement No. 305 will be addressed during the hearing set to begin on September 13, 2021.

### **Enforcement Counsel's Statement of Material Fact (Russ Anderson) No. 306**

In or around September 2015, Respondent Russ Anderson received information that employee survey results revealed continued sales pressure: "Sales pressure makes people make unethical decisions and damage customer loyalty to the bank and sometimes cause harm to their credit. I see so many bankers selling or lying to customer about our fees on some [of] our products just to meet their solutions at the end of the day to keep their jobs."<sup>3052</sup> Respondent Russ Anderson wanted to shut down the survey. She replied by email dated September 11, 2015: "What I think we need to consider is do we want to allow these kind of 'surveys' to occur any longer. It is a new world."<sup>3053</sup>

#### **Responses:**

**Russ Anderson** did not dispute that the quoted text is an accurate depiction of what it purports to be, but disputed the characterization that she wanted to shut down the survey, and averred that she "is entitled to seek and rely upon the advice of legal counsel."<sup>3054</sup>

I find an insufficient factual basis has been presented to establish a dispute in this Response to create a controverted material fact. Accordingly, the Recommended Decision will include a factual finding as to Respondent Russ Anderson that in or around September 2015, she received information that employee survey results revealed continued sales pressure: "Sales pressure makes people make unethical decisions and damage customer loyalty to the bank and sometimes cause harm to their credit. I see so many bankers selling or lying to customer about our fees on some [of] our products just to meet their solutions at the end of the day to keep their jobs." She replied by email dated September 11, 2015: "What I think we need to consider is do we want to allow these kind of 'surveys' to occur any longer. It is a new world."

### **Enforcement Counsel's Statement of Material Fact (Russ Anderson) No. 307**

The Community Bank's former Chief Compliance Officer, who reported to Respondent Russ Anderson from 2011 through 2015, determined:

It is my opinion that as the Community Bank's Group Risk Officer, Claudia Russ Anderson was in a position to understand the full scope and systemic nature of sales integrity violations

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<sup>3052</sup> MSD-217 at 6.

<sup>3053</sup> MSD-217 at 1.

<sup>3054</sup> Russ Anderson's ECSFM at No. 306.

within the Community Bank. She had access to important data points such as customer complaints and the employee EthicsLine. She also had responsibility for the Sales [and] Service Conduct Oversight Team (SSCOT), including its proactive monitoring work. She also had the authority to ask for whatever additional information she needed to execute her risk management and control responsibilities.<sup>3055</sup>

**Responses:**

**Russ Anderson** did not dispute that the quoted text is an accurate depiction of a portion of what it purports to be, but disputed that the Statement proves the allegations it contains.<sup>3056</sup>

I find an insufficient factual basis has been presented to establish a dispute in this Response to create a controverted material fact. Accordingly, the Recommended Decision will include a factual finding as to Respondent Russ Anderson that the Community Bank's former Chief Compliance Officer, who reported to Respondent Russ Anderson from 2011 through 2015, opined that as the Community Bank's Group Risk Officer, Claudia Russ Anderson was in a position to understand the full scope and systemic nature of sales integrity violations within the Community Bank. She had access to important data points such as customer complaints and the employee EthicsLine. She also had responsibility for the Sales and Service Conduct Oversight Team (SSCOT), including its proactive monitoring work. She also had the authority to ask for whatever additional information she needed to execute her risk management and control responsibilities.

**For years, customers complained about being victimized from sales practices misconduct**

**Enforcement Counsel's Statement of Material Fact (Russ Anderson) No. 308 and (Julian and McLinko) No. 137**

Customers contacted the Bank alleging lack of consent for Bank products and services.<sup>3057</sup>

**Responses:**

Enforcement Counsel's Statement of Material Fact (Russ Anderson) No. 308 and (Julian and McLinko) No. 137 rely on exhibits presented to this Tribunal as being non-public. Pursuant to

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<sup>3055</sup> MSD-56 (Christoff Decl.) at ¶ 19.

<sup>3056</sup> Russ Anderson's ECSFM at No. 307.

<sup>3057</sup> (MSD-72 at 7; MSD-151; MSD-247.

the OCC's Uniform Rules, while the proceedings in this administrative enforcement action are expressly required to be public, when presented with non-public documents the Administrative Law Judge is required to take all appropriate steps to preserve the confidentiality of such documents.<sup>3058</sup> Upon my review of the confidential documents supporting these Statements of Material Fact, and after weighing the expectation that all of the proceedings shall be public against the requirement that I protect against the disclosure of non-public information, I find the evidentiary value of these exhibits to be sufficiently marginal and duplicative as to warrant exclusion from this Order. Accordingly, this Order will not be based on any of the claims found in these Statements of Material Fact.

### **Enforcement Counsel's Statement of Material Fact (Russ Anderson) No. 309**

On or around November 2011, Respondent Russ Anderson was informed that a customer received two debit cards in the mail that he never ordered. "On the day he was writing this letter to Carrie Tolstedt and the RP [Regional President] . . . he received another debit card in the mail. . . ."<sup>3059</sup>

#### **Responses:**

**Russ Anderson** did not dispute that the cited evidence references a 2011 incident where a single customer purportedly received two debit cards he did not order, but disputed that there is sufficient information to determine whether the single incident referenced from 2011, (MSD-700), involved a confirmed violation of law or Bank policy at the time.<sup>3060</sup>

I find an insufficient factual basis has been presented to establish a dispute in this Response to create a controverted material fact. Accordingly, the Recommended Decision will include a factual finding as to Respondent Russ Anderson that on or around November 2011, she was informed that a customer received two debit cards in the mail that he never ordered. "On the day he was writing this letter to Carrie Tolstedt and the RP [Regional President] . . . he received another debit card in the mail. . . ."

### **Enforcement Counsel's Statement of Material Fact (Russ Anderson) No. 310**

On February 27, 2013, Respondent Russ Anderson wrote in an email that "this week has been busy with unauthorized account opening complaints."<sup>3061</sup>

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<sup>3058</sup> See 12 C.F.R. § 19.33(b).

<sup>3059</sup> MSD-700.

<sup>3060</sup> Russ Anderson's ECSFM at No. 309.

<sup>3061</sup> MSD-102.

**Responses:**

**Russ Anderson** did not dispute that the evidence cited contains the quoted language, but disputed the Statement because the relied-upon exhibit provides no information on whether this single complaint was confirmed as factually true or a violation of law or Bank policy<sup>3062</sup>

I find an insufficient factual basis has been presented to establish a dispute in this Response to create a controverted material fact. Accordingly, the Recommended Decision will include a factual finding as to Respondent Russ Anderson that on February 27, 2013, she wrote in an email that “this week has been busy with unauthorized account opening complaints.”

**Enforcement Counsel’s Statement of Material Fact (Russ Anderson) No. 311**

On or around December 19, 2013, Respondent Russ Anderson was informed about concerns from a customer “that an additional checking account was opened and funded with \$50.00 without her knowledge or consent.”<sup>3063</sup>

**Responses:**

**Russ Anderson** objected to the Statement on the ground that the supporting exhibit was irrelevant.<sup>3064</sup> Finding an insufficient nexus between the averments presented in the Statement and the material facts in issue, the objection is sustained. Accordingly, the claims presented in (Russ Anderson) No. 311 will not support Enforcement Counsel’s Motion. The exclusion of the claims appearing in the Statement does not, however, create a factual basis that would prevent granting Enforcement Counsel’s Motion.

**Enforcement Counsel’s Statement of Material Fact (Russ Anderson) No. 312**

In a 2014 complaint forwarded to Respondent Russ Anderson, a customer pointed out: “If I were to take a [stranger’s] information and apply for credit cards with it, I would go to jail. It is morally and legally criminal. In a world where a credit score controls many important aspects of your life, it is truly scary that an employee of a financial institution can manipulate my information and assert himself into my personal and financial life.”<sup>3065</sup>

**Responses:**

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<sup>3062</sup> Russ Anderson’s ECSFM at No. 310.

<sup>3063</sup> MSD-700.

<sup>3064</sup> See Respondent Claudia Russ Anderson’s Memorandum of Law in Opposition to Motion for Summary Disposition at 35, incorporating the objections by Respondent Julian at Respondent Julian’s Objections to Enforcement Counsel’s Motion for Summary Disposition Exhibits.

<sup>3065</sup> Russ Anderson Amended Answer ¶ 46; MSD-110.

**Russ Anderson** did not dispute that the cited exhibit contains the quoted language, but disputed the claim because the evidence cited does not demonstrate whether the customer’s complaint quoted in the Statement was validated, or whether the allegations against the Bank employee were confirmed as a violation of law or Bank policy.

I find an insufficient factual basis has been presented to establish a dispute in this Response to create a controverted material fact. Accordingly, the Recommended Decision will include a factual finding as to Respondent Russ Anderson that in a 2014 complaint forwarded to her, a customer pointed out: “If I were to take a [stranger’s] information and apply for credit cards with it, I would go to jail. It is morally and legally criminal. In a world where a credit score controls many important aspects of your life, it is truly scary that an employee of a financial institution can manipulate my information and assert himself into my personal and financial life.”

### **Employees repeatedly informed senior leadership about significant pressure to meet unreasonable sales goals and its impact on gaming and sales practices misconduct**

#### **Enforcement Counsel’s Statement of Material Fact (Russ Anderson) No. 313**

During her tenure as Group Risk Officer, Respondent Russ Anderson received employee complaints and petitions related to sales goals, sales pressure, gaming, sales integrity violations, and various forms of sales practices misconduct.<sup>3066</sup>

#### **Responses:**

**Russ Anderson:** The Statement is “[u]ndisputed to the extent Ms. Russ Anderson admitted ‘there were some complaints about sales goals’ during her tenure as Group Risk Officer,” but disputed as the dates cited in the supporting exhibits “do not span [her] tenure as Group Risk Officer,” and refer to anonymous complaints posted to an online petition by unidentified people and people claiming to be current and former Bank employees.

I find an insufficient factual basis has been presented to establish a dispute in this Response to create a controverted material fact. Accordingly, the Recommended Decision will include a factual finding as to Respondent Russ Anderson that during her tenure as Group Risk Officer, she received employee complaints and petitions related to sales goals, sales pressure, gaming, sales integrity violations, and various forms of sales practices misconduct.

#### **Enforcement Counsel’s Statement of Material Fact (Russ Anderson) No. 314**

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<sup>3066</sup> Russ Anderson Amended Answer ¶ 30; MSD-138; MSD-139; MSD-140.

Each year, nearly half of all EthicsLine cases related to employee sales integrity violations.<sup>3067</sup>

**Responses:**

**Russ Anderson** disputed the factual premises presented in this Statement. She asserted that when asked if “sales incentive program violations constituted a significant portion of the EthicsLine submissions[,]” Ms. Russ Anderson responded, “I don’t know that I – that that was a conscious thought, no.” (Id. at 59:24-60:6). She asserted that while she testified that she recalled receiving EthicsLine reports by category, (Id. at 59:17-23, 60:7-9), she disagreed that “sales incentive program violations constituted a significant portion of the EthicsLine submissions” as SOF ¶ 314 alleges. (Id. at 59:17-60:9).

While the metric of “nearly half” is not material in itself, the number and proportion of EthicsLine cases that related to employee sales integrity violations is material to the issues raised in the Notice of Charges, at least during the years 2013 through 2016.

I find that in her Response to Statement No. 314, Russ Anderson sufficiently demonstrated a factual controversy exists regarding (1) the number of EthicsLine cases that related to employee sales integrity violations when compared with other issues between 2013 and 2016; and (2) her knowledge of the correct metric during that period. Pursuant to the OCC’s Uniform Rules, the merits of the disputed claims raised in (Russ Anderson) Statement No. 314 will be addressed during the hearing set to begin on September 13, 2021.

**Enforcement Counsel’s Statement of Material Fact (Russ Anderson) No. 315**

By 2010, there was “a significant increase in EthicsLine reports within the Eastern Community Bank, up approximately 200%, primarily related to Sales Integrity matters.”<sup>3068</sup>

**Responses:**

**Russ Anderson** did not dispute that the exhibit cited contains the quoted language, but disputed the relevance and materiality of the claim on the basis that “Sales integrity violations” include potential types of misconduct that are immaterial to “sales practices

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<sup>3067</sup> Russ Anderson Amended Answer ¶ 35; MSD-132; MSD-133 (“CFPB and Sales Integrity issues are most prevalent – there needs to be continued focus in this area.”); MSD-134 (“As of June 30, 2015, Ethics Line reports aggregated 4,344, the majority (57%) of which pertained to allegations of sales incentive program violations, followed by policy issues and fraud.”); MSD-135; MSD-136; MSD-266 (Russ Anderson Dep. Tr.) at 59:17-60:9 (testifying that she received EthicsLine reporting by categories and that EthicsLine complaints related to sales integrity violations or sales incentive program violations constituted a significant portion of the EthicsLine submissions); (MSD-161 at 4, 7); MSD-162 at 3,4; MSD-163; MSD-164; MSD- 165; MSD-166; MSD-167; MSD-168.

<sup>3068</sup> MSD-230.

misconduct.”<sup>3069</sup>

I find an insufficient factual basis has been presented to establish a dispute in this Response to create a controverted material fact. Accordingly, the Recommended Decision will include a factual finding as to Respondent Russ Anderson that by 2010, there was “a significant increase in EthicsLine reports within the Eastern Community Bank, up approximately 200%, primarily related to Sales Integrity matters.”

### **Enforcement Counsel’s Statement of Material Fact (Russ Anderson) No. 316**

Employees also sent letters and emails to senior leadership, and in some cases Respondent Russ Anderson directly, regarding sales pressure to meet sales goals and gaming within the regional branch network.<sup>3070</sup>

- a. On or around July 5, 2012, Respondent Russ Anderson became aware of an employee complaint, which stated the reality in the branches was the continual opening of fake accounts: “As I mentioned above, I have undergone company training, based on the ethics and values of Wells Fargo, which I really appreciate on a personal level, I have found many inconsistencies from my training to the reality in the branch. . . . The reason for the call [to the EthicsLine] was watching them continually open fake accounts. In the branch they call them travel accounts (an extra account for customers who often already maintain multiple checking and savings). More than simply opening the accounts, they were using fear tactics, creating a need when there was none – creating theoretical scenarios where a customer money is in danger, all in the name of making the store’s goals . . .”<sup>3071</sup>

### **Responses:**

**Russ Anderson** objected to the Statement on the ground that the supporting exhibits (MSD-158, MSD-159, MSD-160, MSD-248, and MSD-699) were inadmissible on the grounds that their contents were irrelevant, immaterial, unreliable, or repetitive.<sup>3072</sup> Finding that given the passage of time an insufficient nexus has been shown between the averments presented in the Statement

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<sup>3069</sup> Russ Anderson’s ECSFM at No. 315.

<sup>3070</sup> MSD-158; MSD-159 (“This is not a call for a major investigation to root out the cheaters. This is a call to change the sales goals. Markets and solution goals need to [be] re-evaluated and changed to allow honesty and integrity in dealing with the customers”); MSD-160; MSD-248.

<sup>3071</sup> MSD-699.

<sup>3072</sup> See Respondent Claudia Russ Anderson’s Memorandum of Law in Opposition to Motion for Summary Disposition at 35, incorporating the objections by Respondent Julian at Respondent Julian’s Objections to Enforcement Counsel’s Motion for Summary Disposition Exhibits.

through these specific exhibits and the material facts in issue, the objection is sustained on the ground that the contents are not material to the charges presented against Respondent Russ Anderson. Accordingly, the claims presented in (Russ Anderson) No. 316 will not support Enforcement Counsel's Motion. The exclusion of the claims appearing in this Statement does not, however, create a factual basis that would prevent granting Enforcement Counsel's Motion.

### **Enforcement Counsel's Statement of Material Fact (Russ Anderson) No. 317**

On or around October 18, 2013, after the first *Los Angeles Times* article, Respondent Russ Anderson received a petition from employees.<sup>3073</sup> A word cloud of the comments from the petition included the following repeated themes: pressure; unethical; sales; harassed; unrealistic; sell.<sup>3074</sup> The petition contained testimonials from current and former employees and customers.<sup>3075</sup> The testimonials included complaints about pressure to meet excessive and unrealistic sales goals creating an environment for unethical behaviors.<sup>3076</sup>

#### **Responses:**

**Russ Anderson** did not dispute her receipt of the cited petition, but disputed its reliability.<sup>3077</sup>

I find an insufficient factual basis has been presented to establish a dispute in this Response to create a controverted material fact. Accordingly, the Recommended Decision will include a factual finding as to Respondent Russ Anderson that on or around October 18, 2013, after the first *Los Angeles Times* article, Respondent Russ Anderson received a petition from employees. A word cloud of the comments from the petition included the following repeated themes: pressure; unethical; sales; harassed; unrealistic; sell. The petition contained testimonials from current and former employees and customers. The testimonials included complaints about pressure to meet excessive and unrealistic sales goals creating an environment for unethical behaviors.

### **Enforcement Counsel's Statement of Material Fact (Russ Anderson) No. 318**

On April 28, 2016, the Head of the Ethics Office informed Respondent Russ Anderson that in the first quarter of 2016, "Sales Incentive Program Violations" remained the largest

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<sup>3073</sup> MSD-140.

<sup>3074</sup> MSD-140 at 2.

<sup>3075</sup> MSD-140 at 4-15.

<sup>3076</sup> MSD-140 at 4-15/

<sup>3077</sup> Russ Anderson's ECSFM at No. 317.



EthicsLine case type, constituting 47% of EthicsLine cases.<sup>3078</sup>

**Responses:**

**Russ Anderson** did not dispute being informed as presented in the Statement, but disputed its import on the ground that the Statement does not state that any of the EthicsLine complaints referenced were confirmed as actual sales incentive program violations or sales practices misconduct.<sup>3079</sup>

I find an insufficient factual basis has been presented to establish a dispute in this Response to create a controverted material fact. Accordingly, the Recommended Decision will include a factual finding as to Respondent Russ Anderson that on April 28, 2016, the Head of the Ethics Office informed her that in the first quarter of 2016, “Sales Incentive Program Violations” remained the largest EthicsLine case type, constituting 47% of EthicsLine cases.

**Respondent Russ Anderson downplayed the sales practices misconduct problem and failed to escalate and accurately report the root cause, scope, and duration of the problem to senior management and the Enterprise Risk Management Committee**

**Enforcement Counsel’s Statement of Material Fact (Russ Anderson) No. 319**

Respondent Russ Anderson continually downplayed negative information about what was actually happening in the Community Bank with respect to sales integrity violations.<sup>3080</sup>

**Responses:**

**Russ Anderson** disputed the claim on the ground that it was vague as to time and does not specify the kind of misconduct being discussed; on the ground that the expert report of David Abshier documented that the OCC had been aware of sales integrity violations going back to at least 2010; and on the ground that there is evidence that she “contributed to the development of improved systems and processes in the Community Bank’s SSCOT unit to detect sales misconduct, and, particularly after the Los Angeles Times articles, participated in efforts by the Community Bank to communicate to managers that undue sales pressure and

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<sup>3078</sup> MSD-135.

<sup>3079</sup> Russ Anderson’s ECSFM at No. 318.

<sup>3080</sup> MSD-280 (Board Report) at 52, 53 (“Russ Anderson minimized and obscured issues in reporting on the Community Bank, including sales practices.”); MSD-13; MSD-14; MSD-295 (Bacon Tr.) 41:13-42:1; 44:5-45:18; see also 296A (Bacon Dep. Tr.) at 62:8-16; 107:10-108:1; MSD-297 (Richards Tr.) at 230:3-8; MSD-93; MSD-293A (Hardison Tr.) at 49:16-51:11; MSD- 642 (Hardison Dep. Tr.) at 86:22-87:25, 88:1-18; MSD-297 (Richards Tr.) at 44:5-46:22.

sales misconduct were not acceptable.”<sup>3081</sup>

Whether (and the extent to which) Respondent Russ Anderson downplayed negative information about what was actually happening in the Community Bank between 2013 and 2016 with respect to sales integrity violations is a material fact in issue. I find that in her Response to Statement No. 319, Russ Anderson sufficiently demonstrated a factual controversy exists regarding her response to the sales integrity violations occurring between 2013 and 2016. Because of the existence of these material controverted facts, summary disposition is not available with respect to Respondent Russ Anderson regarding this claim. Pursuant to the OCC’s Uniform Rules, the merits of the disputed claims raised in (Russ Anderson) Statement No. 319 will be addressed during the hearing set to begin on September 13, 2021.

### **Enforcement Counsel’s Statement of Material Fact (Russ Anderson) No. 320**

After she received the first *Los Angeles Times* article, in November 2013, Respondent Russ Anderson received detailed reporting showing the number of employees terminated for sales integrity violations and the number of employees who resigned related to sales integrity violations for the years 2012 and 2013.<sup>3082</sup> The reporting broke out the number of cases Corporate Investigations investigated by case type, including sales integrity violations and the sub-types of cases that comprised sales integrity violations, including “customer consent,” “funding manipulation,” and “fictitious customer.” The reporting also identified the number of cases investigated by region. Respondent Russ Anderson was explicitly informed: “Look at customer consent, #1 issue.” Instead of expressing concern about this, Respondent Russ Anderson stated in an email: “I also don’t know how they classify cases so take this with somewhat of a grain of salt.”<sup>3083</sup>

#### **Responses:**

**Russ Anderson** did not dispute her receipt of the reports presented in the Statement or the responses attributed to her in the Statement, but disputed how the term “sales integrity violations” was used, such that it would encompass practices that are not material to the issues raised in the Notice of Charges.<sup>3084</sup>

I find an insufficient factual basis has been presented to establish a dispute in this Response to create a controverted material fact. Accordingly, the Recommended Decision will include a factual finding as to Respondent Russ Anderson that after she received the first *Los Angeles*

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<sup>3081</sup> Russ Anderson’s ECSFM at No.319, quoting MSD-280 at 52.

<sup>3082</sup> MSD-13.

<sup>3083</sup> MSD-14.

<sup>3084</sup> Russ Anderson’s ECSFM at No. 320.

*Times* article, in November 2013, Respondent Russ Anderson received detailed reporting showing the number of employees terminated for sales integrity violations and the number of employees who resigned related to sales integrity violations for the years 2012 and 2013. The reporting broke out the number of cases Corporate Investigations investigated by case type, including sales integrity violations and the sub-types of cases that comprised sales integrity violations, including “customer consent,” “funding manipulation,” and “fictitious customer.” The reporting also identified the number of cases investigated by region. Respondent Russ Anderson was explicitly informed: “Look at customer consent, #1 issue.” Instead of expressing concern about this, Respondent Russ Anderson stated in an email: “I also don’t know how they classify cases so take this with somewhat of a grain of salt.”

### **Enforcement Counsel’s Statement of Material Fact (Russ Anderson) No. 321**

The former Head of Corporate Investigations Michael Bacon testified that he “had continuing, ongoing conversations with [Respondent Russ Anderson] from day 1 until I left.”<sup>3085</sup> Mr. Bacon testified that Respondent Russ Anderson was “very aware that [sales integrity] was a problem.” He based his testimony on “six to eight years of conversations with her, verbally, face to face, telephonically, emails, *and it was a continuous conversation.*”<sup>3086</sup> He explained that she often downplayed the information he provided to her related to sales integrity violations:

A: You know Claudia often pushed back on certain numbers, certain verbiage that were in our reports. And so we would have either an email exchange or, probably more frequently, a verbal discussion around it. And she did follow the Carrie Tolstedt approach of trying to minimize it, and so there was a lot of, you know, detailed discussions in support of why I was reporting what I reported. There is no question she acknowledged it, but she certainly leaned towards downplaying it, if you will, or trying to find another metric to soften the obvious – what I would call an obvious number or concern. And again, that was just frequent discussions.<sup>3087</sup>

### **Responses:**

**Russ Anderson** did not dispute the text as presented is an accurate quote from the sources

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<sup>3085</sup> MSD-295 (Bacon Tr.) at 39:6-19.

<sup>3086</sup> MSD-295 (Bacon Tr.) at 40:12-41:11.

<sup>3087</sup> MSD-295 (Bacon Tr.) 41:13-42:1; 44:5-45:18; see also 296A (Bacon Dep. Tr.) at 62:8-16; 107:10-108:1).

cited, but disputed the materiality of the citations.<sup>3088</sup> She also offered the following additional testimony from Mr. Bacon:

Q. Okay. And I think you testified when you gave your sworn statement to the OCC, that you had issues with Claudia minimizing the details and data around the issue of sales practices misconduct that we're talking about; is that correct?

A. Yes, sir.

Q. Okay. And can you tell us, what were the -- what were the nature of your -- your disagreements with Ms. Russ Anderson.

A. Sure. First, I had the utmost respect for Claudia Russ, and I -- I think we had a - a great relationship and a -- a great technically business partnership. But Claudia was known to challenge just numbers, trends, stats, definitions. That was just her - her style and her role. So, you know, minimizing was certainly part of it. She also certainly wanted to understand it, which I applauded, but -- but, yes, there was a trend of -- of challenge and -- and an issue of trying to minimize some of the negative that -- that was in -- in our trends or in our data.<sup>3089</sup>

I find an insufficient factual basis has been presented to establish a dispute in this Response to create a controverted material fact. Accordingly, the Recommended Decision will include a factual finding as to Respondent Russ Anderson that the former Head of Corporate Investigations Michael Bacon testified that he “had continuing, ongoing conversations with [Respondent Russ Anderson] from day 1 until I left.” Mr. Bacon testified that Respondent Russ Anderson was “very aware that [sales integrity] was a problem.” He based his testimony on “six to eight years of conversations with her, verbally, face to face, telephonically, emails, and it was a continuous conversation.” He explained that she often downplayed the information he provided to her related to sales integrity violations:

You know Claudia often pushed back on certain numbers, certain verbiage that were in our reports. And so we would have either an email exchange or, probably more frequently, a verbal discussion around it. And she did follow the Carrie Tolstedt approach of trying to minimize it, and so there was a lot of, you know, detailed discussions in support of why I was reporting what I reported. There is no question she acknowledged it, but she certainly leaned towards downplaying it, if you will, or trying to find another metric to soften the obvious – what I would call an obvious number or concern. And again, that was just frequent discussions.

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<sup>3088</sup> Russ Anderson’s ECSFM at No. 321.

<sup>3089</sup> Russ Anderson’s ECSFM at No. 321, quoting MSD-296A (Bacon Tr.) at 61:19-62:16.

### **Enforcement Counsel's Statement of Material Fact (Russ Anderson) No. 322**

James Richards, Mr. Bacon's successor as the Head of Corporate Investigations and the Director of the Bank's Financial Crimes Risk Management Group, testified that Respondent Russ Anderson continued to challenge the characterization of sales integrity violations:

Q: . . . And then the last point, note that Community Banking often challenges our characterization of sales integrity. Is there anyone specifically from Community Banking that you're referring to here?

A: Claudia Russ Anderson.<sup>3090</sup>

### **Responses:**

**Russ Anderson** did not dispute that the quoted language accurately reflects the witness's testimony, but disputed the Statement because it fails to take into consideration Mr. Richards' testimony as to why he felt Ms. Russ Anderson challenged the characterization of sales integrity violations.<sup>3091</sup>

I find an insufficient factual basis has been presented to establish a dispute in this Response to create a controverted material fact. Accordingly, the Recommended Decision will include a factual finding as to Respondent Russ Anderson that James Richards, Mr. Bacon's successor as the Head of Corporate Investigations and the Director of the Bank's Financial Crimes Risk Management Group, testified as is shown above.

### **Enforcement Counsel's Statement of Material Fact (Russ Anderson) No. 323**

In September 2012, the Bank's Chief Risk Officer Michael Loughlin asked the Community Bank to present to the Enterprise Risk Management Committee to address his concerns with turnover and sales goals.<sup>3092</sup> He provided seven specific questions for the Community Bank to answer. Respondent Russ Anderson knew the questions that the Chief Risk Officer requested be answered.<sup>3093</sup> Mr. Loughlin asked the following questions: (1) does our emphasis on cross sell increase turnover; (2) how do we, or the managers on the front line, know that our cross sells (solutions) are high quality and in the customer's benefit?; (3) Does emphasizing the number of solutions mean we run the risk of flogging product and potentially irritating the

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<sup>3090</sup> MSD-297 (Richards Tr.) at 230:3-8; MSD-93.

<sup>3091</sup> Russ Anderson's ECSFM at No. 322.

<sup>3092</sup> MSD-233; MSD-290A (Loughlin Tr.) at 113:17-115:1; Loughlin Dep. Tr. 30:17-33:1.

<sup>3093</sup> MSD-233; MSD-290A (Loughlin Tr.) at 113:17-115:1; Loughlin Dep. Tr. 30:17-33:1.

customer?; (4) Are we selling too many products?; (5) How do we pay our people for cross sell?; (6) How does the competition cross sell and pay their people?; and (7) How does 11 ways to wow fit in to the cross sell strategy?<sup>3094</sup>

**Responses:**

**Russ Anderson** objected to the Statement on the ground that the supporting exhibit was irrelevant, immaterial, unreliable, or repetitive.<sup>3095</sup> Finding an insufficient nexus between the averments presented in the Statement concerning Mr. Loughlin's 2012 questions he presented to Respondent Russ Anderson and the material facts in issue, the objection is sustained. Accordingly, the claims presented in (Russ Anderson) No. 323 will not support Enforcement Counsel's Motion. The exclusion of the claims appearing in the Statement does not, however, create a factual basis that would prevent granting Enforcement Counsel's Motion.

**Enforcement Counsel's Statement of Material Fact (Russ Anderson) No. 324**

Respondent Russ Anderson reviewed and provided feedback on the written materials Community Bank senior leadership planned to present at the Enterprise Risk Management Committee meeting in September 2012.<sup>3096</sup>

**Responses:**

**Russ Anderson** objected to the Statement on the ground that the supporting exhibits were irrelevant, immaterial, unreliable, or repetitive.<sup>3097</sup> Finding an insufficient nexus between the averments presented in the Statement concerning the feedback she gave to materials to be presented to the Enterprise Risk Management Committee meeting in September 2012 and the material facts in issue, the objection is sustained. Accordingly, the claims presented in (Russ Anderson) No. 324 will not support Enforcement Counsel's Motion. The exclusion of the claims appearing in the Statement does not, however, create a factual basis that would prevent granting Enforcement Counsel's Motion.

**Enforcement Counsel's Statement of Material Fact (Russ Anderson) No. 325**

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<sup>3094</sup> MSD-233.

<sup>3095</sup> See Respondent Claudia Russ Anderson's Memorandum of Law in Opposition to Motion for Summary Disposition at 35, incorporating the objections by Respondent Julian at Respondent Julian's Objections to Enforcement Counsel's Motion for Summary Disposition Exhibits.

<sup>3096</sup> MSD-234; MSD-235.

<sup>3097</sup> See Respondent Claudia Russ Anderson's Memorandum of Law in Opposition to Motion for Summary Disposition at 35, incorporating the objections by Respondent Julian at Respondent Julian's Objections to Enforcement Counsel's Motion for Summary Disposition Exhibits.

The presentation made no mention of: (1) undue pressure to meet unreasonable sales goals; (2) that employees engaged in sales practices misconduct in order to sustain employment or gain incentive compensation; and (3) that the Bank did not have sufficient preventative or detective controls.<sup>3098</sup> Respondent Russ Anderson did not suggest that any of the above points be added.<sup>3099</sup>

**Responses:**

**Russ Anderson** objected to the Statement on the ground that the supporting exhibits were irrelevant, immaterial, unreliable, or repetitive.<sup>3100</sup> Finding an insufficient nexus between the averments presented in the Statement concerning the referenced presentation and the material facts in issue, the objection is sustained. Accordingly, the claims presented in (Russ Anderson) No. 325 will not support Enforcement Counsel’s Motion. The exclusion of the claims appearing in the Statement does not, however, create a factual basis that would prevent granting Enforcement Counsel’s Motion.

**Enforcement Counsel’s Statement of Material Fact (Russ Anderson) No. 326**

The Chief Risk Officer Michael Loughlin testified that he was dissatisfied with the Community Bank’s presentation to the Enterprise Risk Management Committee in September 2012 because “[i]t was high level, jargon filled, and he [Matthew Raphaelson] did not answer the questions that I had sent him before the meeting.”<sup>3101</sup>

**Responses:**

**Russ Anderson** objected to the Statement on the ground that the supporting exhibits were irrelevant, immaterial, unreliable, or repetitive.<sup>3102</sup> Finding an insufficient nexus between the averments presented in the Statement concerning the Mr. Loughlin’s testimony and the material facts in issue, the objection is sustained. Accordingly, the claims presented in (Russ Anderson) No. 326 will not support Enforcement Counsel’s Motion. The exclusion of the claims appearing in the Statement does not, however, create a factual basis that would prevent granting

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<sup>3098</sup> See MSD-235 at 10-37.

<sup>3099</sup> MSD-234.

<sup>3100</sup> See Respondent Claudia Russ Anderson’s Memorandum of Law in Opposition to Motion for Summary Disposition at 35, incorporating the objections by Respondent Julian at Respondent Julian’s Objections to Enforcement Counsel’s Motion for Summary Disposition Exhibits.

<sup>3101</sup> MSD-611 (Loughlin Dep. Tr.) at 32:4-14.

<sup>3102</sup> See Respondent Claudia Russ Anderson’s Memorandum of Law in Opposition to Motion for Summary Disposition at 35, incorporating the objections by Respondent Julian at Respondent Julian’s Objections to Enforcement Counsel’s Motion for Summary Disposition Exhibits.

Enforcement Counsel's Motion.

**Enforcement Counsel's Statement of Material Fact (Russ Anderson) No. 327**

In March 2014, in preparation for an Internal Fraud Committee meeting, a committee on which Respondent Russ Anderson was a member, a compliance consultant in the Community Bank asked: "Does it make sense to provide an update as it relates to the Corrective Action Task Force that was formed to address the LA Times Issues?"<sup>3103</sup> Respondent Russ Anderson replied: "No need to mention anything on the LA Times article."<sup>3104</sup>

**Responses:**

**Russ Anderson** did not dispute the language attributed to the compliance consultant and her response thereto, but averred that Enforcement Counsel "avoids providing any context for the discussion between Ms. Russ Anderson and Justin Richards, CAMS Compliance Consultant."<sup>3105</sup>

I find an insufficient factual basis has been presented to establish a dispute in this Response to create a controverted material fact. Accordingly, the Recommended Decision will include a factual finding as to Respondent Russ Anderson that on March 2014, in preparation for an Internal Fraud Committee meeting, a committee on which Respondent Russ Anderson was a member, a compliance consultant in the Community Bank asked: "Does it make sense to provide an update as it relates to the Corrective Action Task Force that was formed to address the LA Times Issues?" Respondent Russ Anderson replied: "No need to mention anything on the LA Times article."

**Enforcement Counsel's Statement of Material Fact (Russ Anderson) No. 328**

Respondent Russ Anderson presented to the Enterprise Risk Management Committee on April 9, 2014.<sup>3106</sup>

**Responses:**

**Russ Anderson** disputed that she made a presentation, averring that she was at an airport at the time of the meeting, that she was "an ERM Guest during the April 9, 2014 meeting," and that although the minutes of the meeting state she "presented" at the meeting she spoke "very

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<sup>3103</sup> MSD-220 at 3.

<sup>3104</sup> MSD-220 at 1.

<sup>3105</sup> Russ Anderson's ECSFM at No. 327.

<sup>3106</sup> Russ Anderson Amended Answer ¶ 270; MSD-28.



little” and the presentation itself was made by Jason MacDuff.<sup>3107</sup>

I find an insufficient factual basis has been presented to establish a dispute in this Response to create a controverted material fact. Accordingly, the Recommended Decision will include a factual finding as to Respondent Russ Anderson that Respondent Russ Anderson presented to the Enterprise Risk Management Committee on April 9, 2014.

### **Enforcement Counsel’s Statement of Material Fact (Russ Anderson) No. 329**

The Bank’s Chief Risk Officer Michael Loughlin asked Respondent Russ Anderson and another member of the Community Bank leadership team (Jason MacDuff) to present at the April 9, 2014 Enterprise Risk Management Committee meeting.<sup>3108</sup>

#### **Responses:**

**Russ Anderson** did not dispute that Mr. Loughlin testified as cited in the Statement, and disputed that she downplayed the sales practices misconduct.<sup>3109</sup>

I find an insufficient factual basis has been presented to establish a dispute in this Response to create a controverted material fact. Accordingly, the Recommended Decision will include a factual finding as to Respondent Russ Anderson that the Bank’s Chief Risk Officer Michael Loughlin asked Respondent Russ Anderson and another member of the Community Bank leadership team (Jason MacDuff) to present at the April 9, 2014 Enterprise Risk Management Committee meeting.

### **Enforcement Counsel’s Statement of Material Fact (Russ Anderson) No. 330**

Mr. Loughlin testified that he asked Respondent Russ Anderson and another member of the Community Bank to present at the April 9, 2014 Enterprise Risk Management Committee meeting because between the *Los Angeles Times* articles “and April of 2014 was a good time to bring the community bank in front of the ERM [Enterprise Risk Management Committee], as they would have had approximately six months to analyze the issue and come up with some solutions.”<sup>3110</sup>

#### **Responses:**

**Russ Anderson** did not dispute that Mr. Loughlin testified as cited in the Statement, and

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<sup>3107</sup> Russ Anderson’s ECSFM at No. 328.

<sup>3108</sup> MSD-290A (Loughlin Tr.) at 154:15-155:24.

<sup>3109</sup> Russ Anderson’s ECSFM at No. 329.

<sup>3110</sup> MSD-611 (Loughlin Dep. Tr.) at 121:23-122:6.

disputed that she downplayed the sales practices misconduct.<sup>3111</sup>

I find an insufficient factual basis has been presented to establish a dispute in this Response to create a controverted material fact. Accordingly, the Recommended Decision will include a factual finding as to Respondent Russ Anderson that Mr. Loughlin asked Respondent Russ Anderson and another member of the Community Bank to present at the April 9, 2014 Enterprise Risk Management Committee meeting because between the *Los Angeles Times* articles “and April of 2014 was a good time to bring the community bank in front of the ERM [Enterprise Risk Management Committee], as they would have had approximately six months to analyze the issue and come up with some solutions.”

### **Enforcement Counsel’s Statement of Material Fact (Russ Anderson) No. 331**

Approximately two and a half months earlier, on or around January 23, 2014, a member of SSCOT, which reported to Respondent Russ Anderson, informed her that SSCOT had seen a “33% Year over Year” increase in sales quality allegations from fourth quarter 2013 versus fourth quarter 2012 and that “allegations as a whole are up; not just concentrated in LA- OC [Los Angeles - Orange County].” The SSCOT member also provided data showing allegations by product (e.g., credit card, line of credit, online/bill pay, etc.). Respondent Russ Anderson asked: “Of the products listed were the allegations re: consent?” In response, the SSCOT team member told Respondent Russ Anderson, “[f]or the most part yes.”<sup>3112</sup>

### **Responses:**

**Russ Anderson** did not dispute that she had been informed as reported in the Statement, but averred the data referenced as the basis for increase cited by Enforcement Counsel was preliminary, raising questions as to its ultimate accuracy.<sup>3113</sup>

I find an insufficient factual basis has been presented to establish a dispute in this Response to create a controverted material fact. Accordingly, the Recommended Decision will include a factual finding as to Respondent Russ Anderson that approximately two and a half months earlier, on or around January 23, 2014, a member of SSCOT, which reported to Respondent Russ Anderson, informed her that SSCOT had seen a “33% Year over Year” increase in sales quality allegations from fourth quarter 2013 versus fourth quarter 2012 and that “allegations as a whole are up; not just concentrated in LA- OC [Los Angeles - Orange County].” The SSCOT member also provided data showing allegations by product (e.g., credit card, line of credit, online/bill pay, etc.). Respondent Russ Anderson asked: “Of the products listed were the allegations re: consent?” In response, the SSCOT team member told Respondent Russ Anderson, “[f]or the most part yes.”

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<sup>3111</sup> Russ Anderson’s ECSFM at No. 330.

<sup>3112</sup> MSD-27.

<sup>3113</sup> Russ Anderson’s ECSFM at No. 331.

### **Enforcement Counsel’s Statement of Material Fact (Russ Anderson) No. 332**

Prior to the April 9, 2014 Enterprise Risk Management Committee meeting, Respondent Russ Anderson was informed that Corporate Risk wanted more information in the written deck from her to the Committee. Specifically, Respondent Russ Anderson received an email on April 4, 2014, telling her: “Specifically, Keb [Byers] is looking what doesn’t work well today in our existing sales practices, referencing a discussion with Mike [Loughlin] and the ‘team member misconduct committee?’ They are looking for the committee to have insight into understanding of the current state vs. future state. The deck is heavy on what is being done to bring us to a future state.”<sup>3114</sup> Respondent Russ Anderson replied: “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 regulators review.”<sup>3115</sup>

#### **Responses:**

**Russ Anderson** did not dispute that the quoted material accurately reflects what was said, but disputed by referring to Ms. Farrell’s deposition testimony to the effect that it is “not only an acceptable practice to not include negative information in presentations, but it is done in every single bank.”<sup>3116</sup>

I find an insufficient factual basis has been presented to establish a dispute in this Response to create a controverted material fact. Accordingly, the Recommended Decision will include a factual finding as to Respondent Russ Anderson that prior to the April 9, 2014 Enterprise Risk Management Committee meeting, Respondent Russ Anderson was informed that Corporate Risk wanted more information in the written deck from her to the Committee. Specifically, Respondent Russ Anderson received an email on April 4, 2014, telling her: “Specifically, Keb [Byers] is looking what doesn’t work well today in our existing sales practices, referencing a discussion with Mike [Loughlin] and the ‘team member misconduct committee?’ They are looking for the committee to have insight into understanding of the current state vs. future state. The deck is heavy on what is being done to bring us to a future state.” Respondent Russ Anderson replied: “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 regulators review.”

### **Enforcement Counsel’s Statement of Material Fact (Russ Anderson) No. 333**

Despite her knowledge, Respondent Russ Anderson failed to inform the Enterprise Risk Management Committee that sales quality allegations were up year over year from 2012 to 2013, that for the most part the allegations related to lack of customer consent for Bank

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<sup>3114</sup> MSD-126 at 2.

<sup>3115</sup> MSD-126 at 1.

<sup>3116</sup> Russ Anderson’s ECSFM at No. 332, quoting MSD-265B (Farrell Dep. Tr.) at 288:8-290:1.

products, or that the allegations were not limited to Los Angeles and Orange County.<sup>3117</sup> She also failed to tell them that customer consent remained the #1 issue.<sup>3118</sup>

### **Responses:**

**Russ Anderson** disputed the Statement's claims regarding her failure to inform the ERMC as stated above.<sup>3119</sup> She averred the meeting minutes indicate that the ERMC did receive information relating to sales quality issues, including monitoring of inappropriate activity, EthicsLine referrals, drivers of inappropriate behavior, and termination rates for wrongdoing:

Ms. Russ Anderson and Mr. MacDuff presented an update on Community Banking's Retail Bank Model and the substantial changes to improve capabilities to manage and monitor performance quality while growing the businesses.... Ms. Russ Anderson noted there is a Sales Quality team that reviews ethic line referrals and outliers in performance metrics. There are teams within the Deposit Products Group and Corporate Security that also monitor for inappropriate activity. The committee discussed whether the current model incents inappropriate behavior, which the Community Banking team doesn't believe is the case. Ms. Russ Anderson and Mr. MacDuff indicated management tries to stress a balanced message of sales, service and quality. The 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. Ms. Russ Anderson also noted that the Sales Quality team looks at a manager's track record prior to an individual being promoted. Mr. Loughlin inquired how many team members are terminated for wrongdoing in the Community Bank, and it was noted that this averages 1-2% of the population (approximately 1,000-2,000 per year).<sup>3120</sup>

Whether Respondent Russ Anderson failed to fully inform the ERMC regarding sales quality allegations during the meeting cited in the Statement is a material fact in issue. I find that in her Response to Statement No. 333, Russ Anderson sufficiently demonstrated that a factual controversy exists regarding whether she failed to fully inform the ERMC regarding sales quality allegations. Because of the existence of these material controverted facts, summary disposition is not available with respect to Respondent Russ Anderson regarding this claim. Pursuant to the

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<sup>3117</sup> MSD-28.

<sup>3118</sup> MSD-14.

<sup>3119</sup> Russ Anderson's ECSFM at No. 333

<sup>3120</sup> Russ Anderson's ECSFM at No. 333, quoting MSD-28 at 1.

OCC’s Uniform Rules, the merits of the disputed claims raised in (Russ Anderson) Statement No. 333 will be addressed during the hearing set to begin on September 13, 2021.

**Enforcement Counsel’s Statement of Material Fact (Russ Anderson) No. 334**

Instead, 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.”<sup>3121</sup>

**Responses:**

**Russ Anderson** did not dispute that the quoted statements reflect what she told the Committee, but averred the Statement did not include everything that was discussed at the meeting.

I find an insufficient factual basis has been presented to establish a dispute in this Response to create a controverted material fact. Accordingly, the Recommended Decision will include a factual finding as to Respondent Russ Anderson that at the April 9, 2014 Enterprise Risk Management Committee meeting, she 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.”

**Enforcement Counsel’s Statement of Material Fact (Russ Anderson) No. 335**

At the April 9, 2014 Enterprise Risk Management Committee meeting, in response to a question, Community Bank leadership informed the committee that one to two percent of Community Bank employees (i.e., 1,000-2,000) were terminated each year for sales practices-related wrongdoing.<sup>3122</sup>

**Responses:**

**Russ Anderson** disputed that the terminations of 1,000-2,000 cited above were solely for “sales practices-related wrongdoing,” citing in support testimony from Mr. Loughlin, the

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<sup>3121</sup> Russ Anderson Amended Answer ¶ 271; MSD-28; MSD-290A (Loughlin Tr.) at 156:23- 157:10.

<sup>3122</sup> Russ Anderson Amended Answer ¶ 164 (admitting part (e) of Notice paragraph (164)).

Chief Risk Officer, who said he understood that “wrongdoing” as referred to the 1,000-2,000 terminations meant “anyone acting outside of policy” and terminated “for any reason for not behaving as they should have been behaving.”<sup>3123</sup>

I find an insufficient factual basis has been presented to establish a dispute in this Response to create a controverted material fact. Accordingly, the Recommended Decision will include a factual finding as to Respondent Russ Anderson that at the April 9, 2014 Enterprise Risk Management Committee meeting, in response to a question, Community Bank leadership informed the committee that one to two percent of Community Bank employees (i.e., 1,000-2,000) were terminated each year for sales practices-related wrongdoing.

### **Enforcement Counsel’s Statement of Material Fact (Russ Anderson) No. 336**

The Bank’s former Chief Administrative Officer and Director of Corporate Human Resources Hope Hardison testified before the OCC that at the April 9, 2014 Enterprise Risk Management Committee meeting, the Committee “very specifically asked the question what is the root cause of this, and they [referring to the presenters] were like we’re not -- there is it’s not a root cause issue, right? They still, even at that time, didn’t believe there was a root cause issue to be solved.”<sup>3124</sup>

### **Responses:**

**Russ Anderson** disputed the claim presented by Ms. Hardison, but did not dispute that the statement accurately reflects her testimony;<sup>3125</sup> disputed the Statement because it did not disclose Ms. Hardison’s testimony in which she stated was “not an expert in sales practices misconduct” and because the data the Community Bank received was “very confusing” it was hard to tell if the cause was “idiosyncratic bad behavior” or if there was something that the company was doing to “incent the bad behavior.”<sup>3126</sup>

I find an insufficient factual basis has been presented to establish a dispute in this Response to create a controverted material fact. Accordingly, the Recommended Decision will include a factual finding as to Respondent Russ Anderson that the Bank’s former Chief Administrative Officer and Director of Corporate Human Resources Hope Hardison testified before the OCC that at the April 9, 2014 Enterprise Risk Management Committee meeting, the Committee “very specifically asked the question what is the root cause of this, and they [referring to the presenters] were like we’re not -- there is it’s not a root cause issue, right? They still, even at

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<sup>3123</sup> Russ Anderson’s ECSFM at No.335, quoting MSD-611 (Loughlin Dep. Tr.) at 122:8-17.

<sup>3124</sup> MSD-293A (Hardison Tr.) at 49:16-51:11; MSD-280 (Board Report) at 52 (“Russ Anderson exhibited a lack of transparency and failed to escalate sales integrity issues . . . to Wells Fargo’s Board of Directors and the ERM.”).

<sup>3125</sup> Russ Anderson’s ECSFM at No. 336.

<sup>3126</sup> Russ Anderson’s ECSFM at No. 336 quoting MSD-293A (Hardison Tr. at 53: 21-5; 54:16-23.

that time, didn't believe there was a root cause issue to be solved.”

#### **Enforcement Counsel's Statement of Material Fact (Russ Anderson) No. 337**

In her deposition, Ms. Hardison again testified that she was “frustrated by [the April 9, 2014] presentation . . . I – I didn't think that it provided enough substance around getting to this issue of root cause as I recall.”<sup>3127</sup> She also stated that “the prevailing view from the business in that [April 9, 2014] meeting was that there wasn't anything in the operating model, per se, that was incenting this behavior.”<sup>3128</sup>

#### **Responses:**

**Russ Anderson** did not dispute that Ms. Hardison testified as quoted above, but averred that “other ERM Board members felt differently” and complimented the presenters.<sup>3129</sup>

I find an insufficient factual basis has been presented to establish a dispute in this Response to create a controverted material fact. Accordingly, the Recommended Decision will include a factual finding as to Respondent Russ Anderson that Ms. Hardison testified that she was “frustrated by [the April 9, 2014] presentation . . . I – I didn't think that it provided enough substance around getting to this issue of root cause as I recall.”<sup>3130</sup> She also stated that “the prevailing view from the business in that [April 9, 2014] meeting was that there wasn't anything in the operating model, per se, that was incenting this behavior.”

#### **Enforcement Counsel's Statement of Material Fact (Russ Anderson) No. 338**

Respondent Russ Anderson failed to disclose the unreasonable or unattainable sales goals at the April 9, 2014 Enterprise Risk Management Committee meeting.<sup>3131</sup>

#### **Responses:**

**Russ Anderson** disputed the claim, averring that that sales goals were in fact being addressed and moderated beginning in 2013 - months prior to the April 2014 ERM meeting. She gave as an example the Board Report that noted that sales goals moderated starting in 2013,<sup>3132</sup> and averred that she had discussed sales goals, the reasonableness of sales goals, and the

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<sup>3127</sup> MSD-642 (Hardison Dep. Tr.) at 86:22-87:25.

<sup>3128</sup> MSD-642 (Hardison Dep. Tr.) at 88:1- 18.

<sup>3129</sup> Russ Anderson's ECSFM at No. 337.

<sup>3130</sup> MSD-642 (Hardison Dep. Tr.) at 86:22-87:25.

<sup>3131</sup> MSD-28.

<sup>3132</sup> Russ Anderson's ECSFM at No. 338, citing MSD-280 at 9.

adjustments being made to sales goals to the ERMC in a previous meeting.<sup>3133</sup>

Whether Respondent Russ Anderson failed to disclose the unreasonable or unattainable sales goals at the April 9, 2014 ERMC meeting is a material fact in issue.

I find that in her Response to Statement No. 338, Russ Anderson sufficiently demonstrated a factual controversy exists regarding the extent to which she disclosed the unreasonable or unattainable sales goals at the April 9, 2014 Enterprise Risk Management Committee meeting. Because of the existence of these material controverted facts, summary disposition is not available with respect to Respondent Russ Anderson regarding this claim. Pursuant to the OCC's Uniform Rules, the merits of the disputed claims raised in (Russ Anderson) Statement No. 338 will be addressed during the hearing set to begin on September 13, 2021.

### **Enforcement Counsel's Statement of Material Fact (Russ Anderson) No. 339**

Respondent Russ Anderson failed to inform the Committee about pressure placed on employees to meet sales goals at the April 9, 2014 Enterprise Risk Management Committee meeting.<sup>3134</sup>

#### **Responses:**

**Russ Anderson** disputed the Statement on the basis that the cited exhibits do not provide direct or indirect evidence that she failed to inform the Committee about pressure placed on employees to meet sales goals.<sup>3135</sup>

Inasmuch as the claims presented in (Russ Anderson) No. 338 are to be included in the evidentiary hearing, and inasmuch as the claims raised in (Russ Anderson) No. 339 are closely related to the claims raised in No. 338, the merits of the disputed claims raised in (Russ Anderson) Statement No. 339 will be addressed during the hearing set to begin on September 13, 2021.

### **Enforcement Counsel's Statement of Material Fact (Russ Anderson) No. 340**

Respondent Russ Anderson failed to inform the Committee of the pause on proactive monitoring at the April 9, 2014 Enterprise Risk Management Committee meeting.<sup>3136</sup>

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<sup>3133</sup> Russ Anderson's ECSFM at No. 338, citing MSD-266 (Russ Anderson Dep. Tr.) at 120:7-121:1.

<sup>3134</sup> MSD-28.

<sup>3135</sup> Russ Anderson's ECSFM at No. 339.

<sup>3136</sup> MSD-28.



Inasmuch as the claims presented in (Russ Anderson) No. 338 are to be included in the evidentiary hearing, and inasmuch as the claims raised in (Russ Anderson) No. 339 are closely related to the claims raised in No. 340, the merits of the disputed claims raised in (Russ Anderson) Statement No. 340 will be addressed during the hearing set to begin on September 13, 2021.

#### **Enforcement Counsel's Statement of Material Fact (Russ Anderson) No. 341**

Respondent Russ Anderson failed to inform the Enterprise Risk Management Committee that she was uncomfortable with the pause on proactive monitoring or that it hindered SSCOT's ability to detect additional sales practices misconduct.<sup>3137</sup>

#### **Responses:**

Inasmuch as the claims presented in (Russ Anderson) No. 338 are to be included in the evidentiary hearing, and inasmuch as the claims raised in (Russ Anderson) No. 341 are closely related to the claims raised in No. 338, the merits of the disputed claims raised in (Russ Anderson) Statement No. 341 will be addressed during the hearing set to begin on September 13, 2021.

#### **Enforcement Counsel's Statement of Material Fact (Russ Anderson) No. 342**

Respondent Russ Anderson testified that she has no regrets about what she communicated to the Enterprise Risk Management Committee on April 9, 2014:

Q: Okay. Do you have any regrets about what you communicated to the enterprise risk management committee at this meeting on April 9, 2014?

A: I have no regrets.<sup>3138</sup>

#### **Responses:**

**Russ Anderson** did not dispute that she provided the testimony shown above, and averred there was no reason for her to have any regrets.<sup>3139</sup> Accordingly, the Recommended Decision will include a factual finding as to Respondent Russ Anderson that she provided the testimony shown above.

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<sup>3137</sup> MSD-266 (Russ Anderson Dep. Tr.) at 136:9-25.

<sup>3138</sup> MSD-266 (Russ Anderson Dep. Tr.) at 202:19-22.

<sup>3139</sup> Russ Anderson's ECSFM at No. 342.

### **Enforcement Counsel's Statement of Material Fact (Russ Anderson) No. 343**

In April 2015, Mr. Richards reported to the Audit & Examination Committee of the Board that the Community Bank terminated 14 team members per business day.<sup>3140</sup> He testified that Respondent Russ Anderson was frustrated by his reporting of this statistic to the Board:

Q: . . . How were you able to get the 14 team members terminated statistic? Was this something that you were able to get once you reviewed Corporate Investigations database?

A: That's correct.

Q: And, as far as you knew, by this point, the Board has never seen that statistic, that 14 team members are terminated per day within Community Bank, correct?

A: Per business day, yes, that was my belief, yes.

Q: And, take a look at the second page again. I take it Ms. Claudia Russ-Anderson responded to your email on April 25<sup>th</sup>, 2015. And, Ms. Tolstedt and Mr. Neitz are also copied on the email that she's sending you. And, she writes, Jim, do we know what makes up that statistic in terms of reason for termination? Did you have any conversations with Ms. Claudia Russ-Anderson related to you reporting this statistic to the A&E Committee?

A: Yes.

Q: Can you tell me about those conversations, please?

A: She called me at home, I'm sorry, she called my cell phone, I was at home, it was the weekend. And, to talk about it and ask me questions about it.

Q: What is it that she asked you about it?

A: She asked me why I did it. She asked me why I expressed it as 14 a day. And, I believe I fairly characterized the conversation as being – as she was extremely irritated and disappointed in me, both professionally and personally.

Q: Did you develop an understanding as to the source of her disappointment throughout the conversation with her?

A: A source, I can't say it was the source, but a source. That she

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<sup>3140</sup> MSD-144 at 6; MSD-145; MSD-146, MSD-147 at 1.

expressed to me that Carrie was very irritated and was assembling the team to try to refute what I had written.

Q: And, what you had written is information that you got from Corporate Investigations database, correct?

A: That's correct.

Q: From your understanding, I'm just trying to understand, what is it that would be irritating about reporting a statistic to the A&E Committee about the number of terminations within Community Bank per working day?

A: She expressed to me that it lacked context.

Q: What context did it lack according to Ms. Claudia Russ- Anderson?

A: It was a tiny percentage of the total number of tellers and bankers they had. It -- there was no breakdown on the reasons for the termination or the nature of the case, whether it was defalcation, embezzlement, forced balancing, you know, sort of the theft and type nefarious aspects of or reasons for termination or resignation. And, that it was, frankly, not my business really to be weighing in on community banking's business.<sup>3141</sup>

### **Responses:**

**Russ Anderson** did not dispute the quoted text is an accurate depiction of Mr. Richards' testimony and that he reported the termination of fourteen team members per business day.<sup>3142</sup> She disputed that the quoted language was an accurate depiction of any conversation they had, but offered no evidence to support this claim.<sup>3143</sup>

I find an insufficient factual basis has been presented to establish a dispute in this Response to create a controverted material fact. Accordingly, the Recommended Decision will include a factual finding as to Respondent Russ Anderson that Mr. Richards provided the testimony shown above.

### **Respondent Russ Anderson provided false, misleading, and incomplete reporting on sales**

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<sup>3141</sup> MSD-297 (Richards Tr.) at 44:5-46:22 (emphases added); see also MSD-145.

<sup>3142</sup> Russ Anderson's ECSFM at No. 343.

<sup>3143</sup> Russ Anderson's ECSFM at No. 343.

## **practices misconduct to the Risk Committee of the Board and the OCC**

### **Enforcement Counsel's Statement of Material Fact (Russ Anderson) No. 344**

The Risk Committee of the Board requested a briefing from Community Bank senior leadership on sales practices at a meeting to be held in April 2014.<sup>3144</sup> After reading the draft materials, the Bank's then-Chief Risk Officer Michael Loughlin wrote in an email, on which Respondent Russ Anderson was copied: "The risk committee will want to hear from Carrie her view on: does the pressure of cross sell goals cause bad behaviour [sic]? That is what Rick asked."<sup>3145</sup> Carrie Tolstedt was called to jury duty and the presentation to the Risk Committee of the Board did not happen in 2014.<sup>3146</sup>

#### **Responses:**

**Russ Anderson** did not dispute that the cited Exhibit contains the above-quoted text and contains a reference to a request for a presentation to the Risk Committee of the Board on sales practices; but disputed that her knowledge of the Risk Committee's specific request for Carrie Tolstedt's opinion on the impact of cross-sell sales goals on employee behavior supports Enforcement Counsel's allegation that Ms. Russ Anderson provided false, misleading, or incomplete information.<sup>3147</sup>

I find an insufficient factual basis has been presented to establish a dispute in this Response to create a controverted material fact. Accordingly, the Recommended Decision will include a factual finding as to Respondent Russ Anderson that the Risk Committee of the Board requested a briefing from Community Bank senior leadership on sales practices at a meeting to be held in April 2014, and that after reading the draft materials, the Bank's then-Chief Risk Officer Michael Loughlin wrote in an email, on which Respondent Russ Anderson was copied: "The risk committee will want to hear from Carrie her view on: does the pressure of cross sell goals cause bad behaviour [sic]? That is what Rick asked."<sup>3148</sup> Carrie Tolstedt was called to jury duty and the presentation to the Risk Committee of the Board did not happen in 2014.

### **Enforcement Counsel's Statement of Material Fact (Russ Anderson) No. 345**

In February 2015, the OCC commenced an examination of operational risk and cross-sell

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<sup>3144</sup> MSD-152 at 2.

<sup>3145</sup> MSD-152 at 1.

<sup>3146</sup> MSD-266 (Russ Anderson Dep. Tr.) at 204:12-16.

<sup>3147</sup> Russ Anderson's ECSFM at No. 344.

<sup>3148</sup> MSD-152 at 1.

oversight within the Community Bank.<sup>3149</sup>

- a. As a result of the February 2015 OCC examination, the OCC issued a Matter Requiring Attention (“MRA”) related to sales practices to the Community Bank on April 3, 2015.<sup>3150</sup>
- b. The OCC uses Matters Requiring Attention to communicate concern about a bank’s deficient practices to a bank’s board of directors and management.<sup>3151</sup>
- c. The sales practices Matter Requiring Attention found that the Community Bank “lack[ed] a formalized governance framework to oversee sales practices” and warned that the consequences of inaction included “heightened reputation risk and possible negative publicity.”<sup>3152</sup>

### **Responses:**

**Russ Anderson** did not dispute that the OCC investigated operational risk and cross-sell oversight in February 2015, the results of which formed the basis for the April 2015 MRA, but disputed that the Statement supports the OCC’s allegations that she provided false, misleading, or incomplete information.<sup>3153</sup>

I find an insufficient factual basis has been presented to establish a dispute in this Response to create a controverted material fact. Accordingly, the Recommended Decision will include a factual finding as to Respondent Russ Anderson that in February 2015, the OCC commenced an examination of operational risk and cross-sell oversight within the Community Bank; that as a result of the February 2015 OCC examination, the OCC issued a Matter Requiring Attention (“MRA”) related to sales practices to the Community Bank on April 3, 2015; that the OCC uses Matters Requiring Attention to communicate concern about a bank’s deficient practices to a bank’s board of directors and management; and that the sales practices Matter Requiring Attention found that the Community Bank “lack[ed] a formalized governance framework to oversee sales practices” and warned that the consequences of inaction included “heightened reputation risk and possible negative publicity.”

### **Enforcement Counsel’s Statement of Material Fact (Russ Anderson) No. 346**

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<sup>3149</sup> Russ Anderson Amended Answer ¶ 125; MSD-270 (NBE Hudson Expert Report – Revised) at ¶ 17.

<sup>3150</sup> Russ Anderson Amended Answer ¶ 125; MSD-270 (NBE Hudson Expert Report – Revised) at ¶¶ 44; MSD-688). Respondent Russ Anderson received the Supervisory Letter. (MSD-688).

<sup>3151</sup> MSD- 270 (NBE Hudson Expert Report – Revised) at ¶ 41.

<sup>3152</sup> MSD-688 at 3.

<sup>3153</sup> Russ Anderson’s ECSFM at No. 345.

As the Group Risk Officer, Respondent Russ Anderson committed to fully address the corrective actions required by the OCC.<sup>3154</sup>

**Responses:**

**Russ Anderson** did not dispute the claim.<sup>3155</sup> Accordingly, the Recommended Decision will include a factual finding as to Respondent Russ Anderson that as the Group Risk Officer, she committed to fully address the corrective actions required by the OCC.

**Enforcement Counsel’s Statement of Material Fact (Russ Anderson) No. 347**

On or around March 30, 2015, prior to the issuance of the final Supervisory Letter arising from the February 2015 examination, OCC examiner Karin Hudson shared a draft of the sales practices MRA with Respondent Russ Anderson.<sup>3156</sup>

**Responses:**

**Russ Anderson** did not dispute this claim.<sup>3157</sup> Accordingly, the Recommended Decision will include a factual finding as to Respondent Russ Anderson that on or around March 30, 2015, prior to the issuance of the final Supervisory Letter arising from the February 2015 examination, OCC examiner Karin Hudson shared a draft of the sales practices MRA with Respondent Russ Anderson.

**Enforcement Counsel’s Statement of Material Fact (Russ Anderson) No. 348**

Respondent Russ Anderson attempted to edit the substantive requirements of the MRA.<sup>3158</sup>

**Responses:**

**Russ Anderson** admitted she “suggested changes to the MRA,” but disputed that her suggested changes to the MRA were intended to change the substantive requirements. She noted at the time that she was confused by the nature of Ms. Hudson’s inquiry because it changed in scope several times and was not in line with previous investigations Ms. Russ

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<sup>3154</sup> MSD-266 (Russ Anderson Dep. Tr.) at 237:17-21.

<sup>3155</sup> Russ Anderson’s ECSFM at No. 346.

<sup>3156</sup> MSD-153.

<sup>3157</sup> Russ Anderson’s ECSFM at No. 347.

<sup>3158</sup> MSD-153; MSD-270 (NBE Hudson Expert Report – Revised) at ¶ 42; MSD-266 (Russ Anderson Dep. Tr.) at 237:12-16.

Anderson had been involved with.<sup>3159</sup>

Whether Russ Anderson attempted to edit the substantive requirements of the MRA is a material fact in issue. While I find uncontroverted that she did attempt to make changes to the MRA, I find that in her Response to Statement No. 348, Russ Anderson sufficiently demonstrated a factual controversy exists regarding whether she attempted to edit the substantive requirements of the MRA. Because of the existence of these material controverted facts, summary disposition is not available with respect to Respondent Russ Anderson regarding this claim. Pursuant to the OCC's Uniform Rules, the merits of the disputed claims raised in (Russ Anderson) Statement No. 348 will be addressed during the hearing set to begin on September 13, 2021

### **Enforcement Counsel's Statement of Material Fact (Russ Anderson) No. 349**

In an email dated March 31, 2015, examiner Karin Hudson explicitly informed Respondent Russ Anderson of the OCC's expectations following the February 2015 Exam:

“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 [sic] 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 incentives for improper behavior and turnover? We think this is the same question asked by the committee. We would expect analysis, something more 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.”<sup>3160</sup>

### **Responses:**

**Russ Anderson** did not dispute that the cited text is an accurate depiction of a portion of a March 31, 2015 email from Karin Hudson to Russ Anderson, but disputed that the Statement proves Ms. Russ Anderson provided false, misleading, or incomplete information to the OCC.<sup>3161</sup>

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<sup>3159</sup> Russ Anderson's ECSFM at No. 347, citing MSD-266 (Russ Anderson Tr.) at 234:22-236:18).

<sup>3160</sup> MSD-153 at 2); see also MSD-270 (NBE Hudson Expert Report – Revised) at ¶¶ 42-43.

<sup>3161</sup> Russ Anderson's ECSFM at No. 349.

I find an insufficient factual basis has been presented to establish a dispute in this Response to create a controverted material fact. Accordingly, the Recommended Decision will include a factual finding as to Respondent Russ Anderson that in an email dated March 31, 2015, examiner Karin Hudson explicitly informed Respondent Russ Anderson of the OCC's expectations following the February 2015 Exam, as shown above.

### **Enforcement Counsel's Statement of Material Fact (Russ Anderson) No. 350**

Respondent Russ Anderson testified that she understood the OCC's instruction to her to evaluate the sales goals and the pressure that existed in the Community Bank:

Q: Okay. And I take it, you understood that the OCC was instructing you, as the group risk officer, to evaluate the sales goals and the pressure that existed in the community bank; correct?

A: So to be clear, I took it to mean that I and my partners within community bank. I could not do this alone. I would need to have my HR partners and -- and the folks in finance with me. But I was the one - I was the point person for making it happen, yes.<sup>3162</sup>

### **Responses:**

**Russ Anderson** did not dispute that this is an accurate representation of her testimony, but disputed that the Statement proves Ms. Russ Anderson provided false, misleading, or incomplete information to the OCC.<sup>3163</sup>

I find an insufficient factual basis has been presented to establish a dispute in this Response to create a controverted material fact. Accordingly, the Recommended Decision will include a factual finding as to Respondent Russ Anderson that she testified as shown above.

### **Enforcement Counsel's Statement of Material Fact (Russ Anderson) No. 351**

Carrie Tolstedt presented on sales practices to the Risk Committee of the Board on April 28, 2015.<sup>3164</sup>

### **Responses:**

**Russ Anderson** did not dispute that Ms. Tolstedt made a presentation to the Risk Committee

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<sup>3162</sup> MSD-266 (Russ Anderson Dep. Tr.) at 239:3-13.

<sup>3163</sup> Russ Anderson's ECSFM at No. 350.

<sup>3164</sup> MSD-154; MSD-586 (Hernandez Tr.) at 84:8-85:15; MSD-290B (Loughlin Tr.) at 311:15-25.



of the Board on April 28, 2015, but disputed that she has any personal knowledge of whether Ms. Tolstedt presented or what the contents of any such presentation may have been because was not present at the April 28, 2015 Risk Committee of the Board.<sup>3165</sup>

I find an insufficient factual basis has been presented to establish a dispute in this Response to create a controverted material fact. Accordingly, the Recommended Decision will include a factual finding as to Respondent Russ Anderson that Carrie Tolstedt presented on sales practices to the Risk Committee of the Board on April 28, 2015.

#### **Enforcement Counsel's Statement of Material Fact (Russ Anderson) No. 352**

Respondent Russ Anderson provided feedback on Ms. Tolstedt's written memorandum to the Risk Committee of the Board for the April 28, 2015 meeting and helped prepare her for the April 28, 2015 Risk Committee meeting. On April 9, 2015, Respondent Russ Anderson provided edits and comments to the written memorandum.<sup>3166</sup>

#### **Responses:**

**Russ Anderson** did not dispute that she participated in the preparation of Ms. Tolstedt's April 28, 2015 comments before the Risk Committee, but disputed that she had any authority whatsoever on the final contents of Ms. Tolstedt's April 28, 2015 comments to the Risk Committee; disputed that Ms. Tolstedt's April 28, 2015 comments to the Risk Committee represented Russ Anderson's views at that time; and disputed that her actions related to Ms. Tolstedt's presentation were false, misleading, or incomplete information provided to the Board.<sup>3167</sup>

I find an insufficient factual basis has been presented to establish a dispute in this Response to create a controverted material fact. Accordingly, the Recommended Decision will include a factual finding as to Respondent Russ Anderson that she provided feedback on Ms. Tolstedt's written memorandum to the Risk Committee of the Board for the April 28, 2015 meeting and helped prepare her for the April 28, 2015 Risk Committee meeting. On April 9, 2015, Respondent Russ Anderson provided edits and comments to the written memorandum.

#### **Enforcement Counsel's Statement of Material Fact (Russ Anderson) No. 353**

In an email dated April 8, 2015, Jason MacDuff, a senior leader in the Community Bank, asked the following question regarding a draft of the written memorandum to be submitted to the Risk Committee of the Board for the April 28, 2015 meeting: "After reading the Supervisory Letter

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<sup>3165</sup> Russ Anderson's ECSFM at No. 351.

<sup>3166</sup> MSD-170, MSD-172, MSD-173, MSD-174, MSD-175 (stating that Respondent Russ Anderson read the draft memorandum "like 15 times now"); MSD-176; MSD-177.

<sup>3167</sup> Russ Anderson's ECSFM at No. 352.

from the OCC, I made some updates to the last page covering the MRA but elected not to add the detailed context 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." Respondent Russ Anderson replied: "Specific to the questions you've outlined below (1) 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[.]"<sup>3168</sup>

#### **Responses:**

**Russ Anderson** did not dispute that the quoted exchange is an accurate representation of an email exchange between Mr. MacDuff and Ms. Russ Anderson, but averred that "any advice Ms. Russ Anderson provided on the contents of Mr. MacDuff's memo was just that, advice, and had no controlling effect on the final contents of Mr. MacDuff's memo."<sup>3169</sup>

I find an insufficient factual basis has been presented to establish a dispute in this Response to create a controverted material fact. Accordingly, the Recommended Decision will include a factual finding as to Respondent Russ Anderson that in an email dated April 8, 2015, Jason MacDuff, a senior leader in the Community Bank, asked the following question regarding a draft of the written memorandum to be submitted to the Risk Committee of the Board for the April 28, 2015 meeting: "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 context 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." Respondent Russ Anderson replied: "Specific to the questions you've outlined below (1) 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[.]"

#### **Enforcement Counsel's Statement of Material Fact (Russ Anderson) No. 354**

The Bank provided to the OCC the memorandum submitted to the Risk Committee of the Board for the April 28, 2015 meeting.<sup>3170</sup>

#### **Responses:**

**Russ Anderson** did not dispute that the OCC obtained a copy of the memorandum submitted to the Risk Committee of the Board for the April 28, 2015 meeting, but disputed that the Statement proves Ms. Russ Anderson provided false, misleading, or incomplete information to

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<sup>3168</sup> MSD-171 at 2.

<sup>3169</sup> Russ Anderson's ECSFM at No. 353.

<sup>3170</sup> MSD-182; MSD-573.

the Board; and averred she has no personal knowledge of the source of the OCC's receipt of the memorandum.<sup>3171</sup>

I find an insufficient factual basis has been presented to establish a dispute in this Response to create a controverted material fact. Accordingly, the Recommended Decision will include a factual finding as to Respondent Russ Anderson that the Bank provided to the OCC the memorandum submitted to the Risk Committee of the Board for the April 28, 2015 meeting.

### **Enforcement Counsel's Statement of Material Fact (Russ Anderson) No. 355**

The memorandum provided to the Board for the April 28, 2015 Risk Committee meeting and also shared with the OCC 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;
- 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;
- the criteria used in the Los Angeles/Orange County investigation to detect those engaged in simulated funding and phone number changes and the criteria used in the footprint-wide analysis; or
- the proactive monitoring methodology and the 99.99 threshold.<sup>3172</sup>

### **Responses:**

**Russ Anderson** did not dispute the contents of the April 28, 2015 memorandum provided as part of Ms. Tolsted's presentation to the Risk Committee, but disputed that Ms. Russ Anderson had authority over the contents of the April 28, 2015 memorandum, or the presentation to the Risk Committee.<sup>3173</sup>

I find an insufficient factual basis has been presented to establish a dispute in this Response to create a controverted material fact. Accordingly, the Recommended Decision will include a

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<sup>3171</sup> Russ Anderson's ECSFM at No. 354.

<sup>3172</sup> MSD-181.

<sup>3173</sup> Russ Anderson's ECSFM at No. 355.

factual finding as to Respondent Russ Anderson that the memorandum provided to the Board for the April 28, 2015 Risk Committee meeting and also shared with the OCC 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;
- 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;
- the criteria used in the Los Angeles/Orange County investigation to detect those engaged in simulated funding and phone number changes and the criteria used in the footprint-wide analysis; or
- the proactive monitoring methodology and the 99.99 threshold.

#### **Enforcement Counsel's Statement of Material Fact (Russ Anderson) No. 356**

The Chair of the Risk Committee of the Board testified that Ms. Tolstedt's presentation before the Committee "went very poorly. It did not address what I had asked to be addressed, which was still from the prior year even. What is the scope and substance of the sales practice issue? And in this meeting, Tolstedt presented all these belts and suspenders and efforts to ensure that misdeeds would not occur. And that wasn't the question. But again, we walked away from there no better informed than when we walked in about the scope and substance . . . ." <sup>3174</sup>

#### **Responses:**

**Russ Anderson** did not dispute that the quoted statement is an accurate transcript of Mr. Hernandez's testimony, but disputed that she was present for Ms. Tolstedt's April 28, 2015 presentation.

I find an insufficient factual basis has been presented to establish a dispute in this Response to create a controverted material fact. Accordingly, the Recommended Decision will include a factual finding as to Respondent Russ Anderson that the Chair of the Risk Committee of the Board testified that Ms. Tolstedt's presentation before the Committee "went very poorly. It did not address what I had asked to be addressed, which was still from the prior year even. What is the scope and substance of the sales practice issue? And in this meeting, Tolstedt presented all these belts and suspenders and efforts to ensure that misdeeds would not occur. And that wasn't the question. But again, we walked away

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<sup>3174</sup> MSD-586 (Hernandez Tr.) at 84:8-85:10.

from there no better informed than when we walked in about the scope and substance . . .  
»<sup>3175</sup>

### **Enforcement Counsel’s Statement of Material Fact (Russ Anderson) No. 357**

After the April 28, 2015 Risk Committee meeting, the Community Bank was instructed to appear before the Risk Committee of the Board again.<sup>3176</sup>

#### **Responses:**

**Russ Anderson** did not dispute that at least one further appearance before the Risk Committee was requested of Community Bank, but disputed that the alleged negative reception by the Risk Committee of Ms. Tolstedt’s April 28, 2015 presentation was the impetus for further meetings, averring that Mr. Hernandez testified that the decision to recall Community Bank before the Risk Committee was in part a reaction to the lawsuit described in SOF ¶ 358.<sup>3177</sup>

I find an insufficient factual basis has been presented to establish a dispute in this Response to create a controverted material fact. Accordingly, the Recommended Decision will include a factual finding as to Respondent Russ Anderson that after the April 28, 2015 Risk Committee meeting, the Community Bank was instructed to appear before the Risk Committee of the Board again.

### **Enforcement Counsel’s Statement of Material Fact (Russ Anderson) No. 358**

On May 4, 2015, the Los Angeles City Attorney sued the Bank. The lawsuit alleged that the Community Bank engaged in unlawful sales practices, including opening unauthorized accounts for customers, pinning, bundling, and sandbagging, to meet unrealistic sales goals, resulting in customer harm and violations of state consumer protection laws.<sup>3178</sup>

#### **Responses:**

**Russ Anderson** did not dispute the claims in the Statement as to the date, suing party, and allegations of the May 4, 2015 lawsuit, but disputed that the allegations of the May 4, 2015 lawsuit were accurate.<sup>3179</sup>

I find an insufficient factual basis has been presented to establish a dispute in this Response to

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<sup>3175</sup> MSD-586 (Hernandez Tr.) at 84:8-85:10.

<sup>3176</sup> MSD-586 (Hernandez Tr.) at 86:16-20.

<sup>3177</sup> Russ Anderson’s ECSFM at No. 357 citing MSD-586; Hernandez Tr. at 86:16- 25.

<sup>3178</sup> Russ Anderson Amended Answer ¶ 123; MSD-169.

<sup>3179</sup> Russ Anderson’s ECSFM at No. 358.

create a controverted material fact. Accordingly, the Recommended Decision will include a factual finding as to Respondent Russ Anderson that on May 4, 2015, the Los Angeles City Attorney sued the Bank. The lawsuit alleged that the Community Bank engaged in unlawful sales practices, including opening unauthorized accounts for customers, pinning, bundling, and sandbagging, to meet unrealistic sales goals, resulting in customer harm and violations of state consumer protection laws.

#### **Enforcement Counsel’s Statement of Material Fact (Russ Anderson) No. 359**

Respondent Russ Anderson, with assistance from the Law Department, prepared written materials for a meeting of the Risk Committee of the Board covering sales practices on May 19, 2015 (“May 19, 2015 Memo”).<sup>3180</sup>

#### **Responses:**

**Russ Anderson** disputed that she prepared written materials for the Risk Committee as alleged in the Statement, averring only that, relying on advice of counsel, she participated in edits and comments in the preparation of the written materials for this meeting.<sup>3181</sup>

I find an insufficient factual basis has been presented to establish a dispute in this Response to create a controverted material fact. Accordingly, the Recommended Decision will include a factual finding as to Respondent Russ Anderson that she participated in edits and comments in the preparation of the written materials for the Risk Committee of the Board covering sales practices on May 19, 2015.

#### **Enforcement Counsel’s Statement of Material Fact (Russ Anderson) No. 360**

Respondent Russ Anderson provided comments and edits to the May 19, 2015 Memo.<sup>3182</sup>

#### **Responses:**

**Russ Anderson** did not dispute the Statement as accurate representation of Ms. Russ Anderson’s limited input to the May 19, 2015 Memo. Accordingly, the Recommended Decision will include a factual finding as to Respondent Russ Anderson that she provided comments and edits to the May 19, 2015 Memo.

#### **Enforcement Counsel’s Statement of Material Fact (Russ Anderson) No. 361**

Respondent Russ Anderson also participated on a call discussing the May 2015 submission

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<sup>3180</sup> Russ Anderson Amended Answer ¶¶ 126, 275; Strother Amended Answer ¶ 126); (MSD-157).

<sup>3181</sup> Russ Anderson’s ECSFM at No. 359.

<sup>3182</sup> MSD-266 (Russ Anderson Dep. Tr.) at 219:4-8; MSD-706; MSD-707; MSD-708; MSD-709.

to the OCC.<sup>3183</sup>

**Responses:**

**Russ Anderson** did not dispute the claim. Accordingly, the Recommended Decision will include a factual finding as to Respondent Russ Anderson that she participated on a call discussing the May 2015 submission to the OCC.

**Enforcement Counsel’s Statement of Material Fact (Russ Anderson) No. 362**

Respondent Russ Anderson received a draft of the May 19, 2015 Memo stating that a trend for “Sales Integrity Violations Team Terminations/Resignations” was approximately “1 percent of total Retail Banking workforce; 2014 lower than 2013.”<sup>3184</sup> It also stated that the goal for Sales Integrity Violations Team Terminations/Resignations was “1 to 2 percent of total workforce in any given year.”<sup>3185</sup>

**Responses:**

**Russ Anderson** did not dispute that the evidence cited is accurately quoted. Accordingly, the Recommended Decision will include a factual finding as to Respondent Russ Anderson that she received a draft of the May 19, 2015 Memo stating that a trend for “Sales Integrity Violations Team Terminations/Resignations” was approximately “1 percent of total Retail Banking workforce; 2014 lower than 2013.”<sup>3186</sup> It also stated that the goal for Sales Integrity Violations Team Terminations/Resignations was “1 to 2 percent of total workforce in any given year.”

**Enforcement Counsel’s Statement of Material Fact (Russ Anderson) No. 363**

On May 16, 2015, a lawyer in the Law Department sent an email to Respondent Russ Anderson and others, inquiring about the statistic and stated: “Wondering what the backup is/looks like if we get asked.”<sup>3187</sup> In response to the email, Jason MacDuff, a senior leader in the Community Bank, explained that in 2014, there were 1,293 terminations for sales integrity violations and 1,229 terminations for sales integrity violations in 2013.<sup>3188</sup> He stated that there

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<sup>3183</sup> MSD-710.

<sup>3184</sup> MSD-710 at 45.

<sup>3185</sup> MSD-710 at 45.

<sup>3186</sup> MSD-710 at 45.

<sup>3187</sup> MSD-179 at 2.

<sup>3188</sup> MSD-179 at 1-2

was “a data validation process last week.”<sup>3189</sup> Respondent Russ Anderson was copied on this email. The Head of Corporate Investigations Loretta Sperle also affirmed the data in a May 16, 2015 email on which Respondent Russ Anderson was copied: “The metrics represents all allegations of sales integrity violations investigated by Corporate Investigations in those time periods, and the terms/resignations either due to confirmed fraud or a confirmed policy violation.”<sup>3190</sup>

### **Responses:**

**Russ Anderson** did not dispute that the quotes are accurate depictions of some of the contents of some emails about the number of terminations for sales integrity violations, but averred that the definition of “sales integrity violation” for purposes of the Bank’s internal record-keeping and tracking is different and more broad than the OCC’s definition of “sales integrity violation” for the present matter.

I find an insufficient factual basis has been presented to establish a dispute in this Response to create a controverted material fact. Accordingly, the Recommended Decision will include a factual finding as to Respondent Russ Anderson that on May 16, 2015, a lawyer in the Law Department sent an email to Respondent Russ Anderson and others, inquiring about the statistic and stated: “Wondering what the backup is/looks like if we get asked.” In response to the email, Jason MacDuff, a senior leader in the Community Bank, explained that in 2014, there were 1,293 terminations for sales integrity violations and 1,229 terminations for sales integrity violations in 2013. He stated that there was “a data validation process last week.” Respondent Russ Anderson was copied on this email. The Head of Corporate Investigations Loretta Sperle also affirmed the data in a May 16, 2015 email on which Respondent Russ Anderson was copied: “The metrics represents all allegations of sales integrity violations investigated by Corporate Investigations in those time periods, and the terms/resignations either due to confirmed fraud or a confirmed policy violation.”

### **Enforcement Counsel’s Statement of Material Fact (Russ Anderson) No. 364**

Respondent Russ Anderson replied to the May 16, 2015 email stating: “I think we need to really look at the areas that are deemed ‘sales integrity’ violations. I looked at the excel file and would not think all of those categories would really be ‘sales integrity’.”<sup>3191</sup>

### **Responses:**

**Russ Anderson** did not dispute that the quoted text is an accurate depiction of some of the

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<sup>3189</sup> MSD-179 at 2.

<sup>3190</sup> MSD-179 at 1; MSD-280 (Board Report) at 107-108.

<sup>3191</sup> MSD-179.



content of a May 16, 2015 email, but disputed that MSD-364 proves that she provided false, misleading, or incomplete information to the Board or OCC, and averred the evidence lacks the context of a follow up email chain.<sup>3192</sup>

I find an insufficient factual basis has been presented to establish a dispute in this Response to create a controverted material fact. Accordingly, the Recommended Decision will include a factual finding as to Respondent Russ Anderson that she replied to the May 16, 2015 email by stating: “I think we need to really look at the areas that are deemed ‘sales integrity’ violations. I looked at the excel file and would not think all of those categories would really be ‘sales integrity’.”

#### **Enforcement Counsel’s Statement of Material Fact (Russ Anderson) No. 365**

On May 16, 2015, Respondent Russ Anderson received a spreadsheet “of the Regional Banking Sales Integrity cases worked by Corporate Investigations in 2013-1Q 2015, broken down by subtype and by region. The second pivot includes all of the terminations for the same time period – by subtype, by region, by position.”<sup>3193</sup>

#### **Responses:**

**Russ Anderson** did not dispute her receipt of the spreadsheet or the accuracy of the quoted material.<sup>3194</sup> Accordingly, the Recommended Decision will include a factual finding as to Respondent Russ Anderson that on May 16, 2015, she received a spreadsheet “of the Regional Banking Sales Integrity cases worked by Corporate Investigations in 2013-1Q 2015, broken down by subtype and by region. The second pivot includes all of the terminations for the same time period – by subtype, by region, by position.”

#### **Enforcement Counsel’s Statement of Material Fact (Russ Anderson) No. 366**

The data provided to Respondent Russ Anderson showed that “customer consent” was the largest sub-category of cases involving Sales Integrity Violations and was associated with the greatest number of terminations.<sup>3195</sup>

#### **Responses:**

**Russ Anderson** did not dispute the claim.<sup>3196</sup> Accordingly, the Recommended Decision will

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<sup>3192</sup> Russ Anderson’s ECSFM at No. 364.

<sup>3193</sup> MSD-183.

<sup>3194</sup> Russ Anderson’s ECSFM at No. 365.

<sup>3195</sup> MSD-183 at 3, 6.

<sup>3196</sup> Russ Anderson’s ECSFM at No. 366.

include a factual finding as to Respondent Russ Anderson that the data provided to her showed that “customer consent” was the largest sub-category of cases involving Sales Integrity Violations and was associated with the greatest number of terminations

### **Enforcement Counsel’s Statement of Material Fact (Russ Anderson) No. 367**

Respondent Russ Anderson again expressed concern about whether certain conduct should be classified as a sales integrity violation.<sup>3197</sup>

#### **Responses:**

**Russ Anderson** did not dispute the claim.<sup>3198</sup> Accordingly, the Recommended Decision will include a factual finding as to Respondent Russ Anderson that she expressed concern about whether certain conduct should be classified as a sales integrity violation.

### **Enforcement Counsel’s Statement of Material Fact (Russ Anderson) No. 368**

Approximately one month earlier, on April 25, 2015, Carrie Tolstedt sent an email to Respondent Russ Anderson stating that the number of terminations and resignations for “sales” was “around 1,000 to 1200 in 2013[.]”<sup>3199</sup> Respondent Russ Anderson did not question the accuracy of this statistic; instead, she agreed with Ms. Tolstedt’s estimate and stated: “. . . Nothing in the stats has changed much.”<sup>3200</sup>

#### **Responses:**

**Russ Anderson** did not dispute that the quoted text is an accurate depiction of an email from Ms. Tolstedt to Ms. Russ Anderson or that the quoted response text accurately depicts her response to Ms. Tolstedt’s email, but disputed that Ms. Russ Anderson’s agreement with Ms. Tolstedt’s statements prove that Ms. Russ Anderson provided false, misleading, or incomplete information to the Board or the OCC.<sup>3201</sup>

I find an insufficient factual basis has been presented to establish a dispute in this Response to create a controverted material fact. Accordingly, the Recommended Decision will include a factual finding as to Respondent Russ Anderson that approximately one month earlier, on April 25, 2015, Carrie Tolstedt sent an email to Respondent Russ Anderson stating that the number of

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<sup>3197</sup> MSD-180.

<sup>3198</sup> Russ Anderson’s ECSFM at No. 367.

<sup>3199</sup> MSD-145 at 2.

<sup>3200</sup> MSD-145.

<sup>3201</sup> Russ Anderson’s ECSFM at No. 368.

terminations and resignations for “sales” was “around 1,000 to 1200 in 2013[.]” Respondent Russ Anderson did not question the accuracy of this statistic; instead, she agreed with Ms. Tolstedt’s estimate and stated: “. . . Nothing in the stats has changed much.”

### **Enforcement Counsel’s Statement of Material Fact (Russ Anderson) No. 369**

The final May 19, 2015 Memo provided to the Risk Committee of the Board and the OCC did not include that the trend for “Sales Integrity Violations Team Terminations/Resignations” was approximately “1 percent of total Retail Banking workforce; 2014 lower than 2013” and that the goal for such resignations and terminations was 1 to 2 percent of the total workforce in any given year.<sup>3202</sup>

#### **Responses:**

**Russ Anderson** did not dispute the text accurately reflects the contents of the cited Memo, but disputed that any exclusion(s) from the May 19, 2015 Memo proves she provided false, misleading, or incomplete information to the Board or the OCC.<sup>3203</sup>

I find an insufficient factual basis has been presented to establish a dispute in this Response to create a controverted material fact. Accordingly, the Recommended Decision will include a factual finding as to Respondent Russ Anderson that the final May 19, 2015 Memo provided to the Risk Committee of the Board and the OCC did not include that the trend for “Sales Integrity Violations Team Terminations/Resignations” was approximately “1 percent of total Retail Banking workforce; 2014 lower than 2013” and that the goal for such resignations and terminations was 1 to 2 percent of the total workforce in any given year.

### **Enforcement Counsel’s Statement of Material Fact (Russ Anderson) No. 370**

The May 19, 2015 Memo was also provided to the OCC during its review of sales practices at the Bank.<sup>3204</sup>

#### **Responses:**

**Russ Anderson** did not dispute the claim. Accordingly, the Recommended Decision will include a factual finding as to Respondent Russ Anderson that the May 19, 2015 Memo was also provided to the OCC during its review of sales practices at the Bank.

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<sup>3202</sup> MSD-155.

<sup>3203</sup> Russ Anderson’s ECSFM at No. 369.

<sup>3204</sup> (Russ Anderson Amended Answer ¶¶ 127, 275; Strother Amended Answer ¶ 127.

### **Enforcement Counsel’s Statement of Material Fact (Russ Anderson) No. 371**

The May 19, 2015 Memo ascribed the root cause to “intentional team member misconduct based on the fact that only a small percentage of Retail Banking team members engaged in the outlier behavior issue in the investigation, and when interviewed, many of them acknowledged that they received proper training and understood the conduct violated bank policies.”<sup>3205</sup>

#### **Responses:**

**Russ Anderson** did not dispute that the quote is an accurate excerpt from the May 19, 2015 Memo. Accordingly, the Recommended Decision will include a factual finding as to Respondent Russ Anderson that the May 19, 2015 Memo ascribed the root cause to “intentional team member misconduct based on the fact that only a small percentage of Retail Banking team members engaged in the outlier behavior issue in the investigation, and when interviewed, many of them acknowledged that they received proper training and understood the conduct violated bank policies.”

### **Enforcement Counsel’s Statement of Material Fact (Russ Anderson) No. 372**

The May 19, 2015 Memo did not disclose what was meant by “outlier behavior.”<sup>3206</sup>

#### **Responses:**

**Russ Anderson** did not dispute the claim, but disputed that “outlier behavior” requires a specific definition.<sup>3207</sup>

I find an insufficient factual basis has been presented to establish a dispute in this Response to create a controverted material fact. Accordingly, the Recommended Decision will include a factual finding as to Respondent Russ Anderson that May 19, 2015 Memo did not disclose what was meant by “outlier behavior.”

### **Enforcement Counsel’s Statement of Material Fact (Russ Anderson) No. 373**

The May 19, 2015 Memo stated that “[w]e also determined that our controls were effective in detecting this behavior.”<sup>3208</sup>

#### **Responses:**

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<sup>3205</sup> MSD-155 at 5; Strother Amended Answer ¶ 126; see MSD-8C (Stumpf Tr.) at 586:16-588:15).

<sup>3206</sup> MSD-155 at 5.

<sup>3207</sup> Russ Anderson’s ECSFM at No. 372.

<sup>3208</sup> MSD-155 at 5.

**Russ Anderson** did not dispute the claim.<sup>3209</sup> Accordingly, the Recommended Decision will include a factual finding as to Respondent Russ Anderson that the May 19, 2015 Memo stated that “[w]e also determined that our controls were effective in detecting this behavior.”

### **Enforcement Counsel’s Statement of Material Fact (Russ Anderson) No. 374**

The May 19, 2015 Memo 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.<sup>3210</sup>

### **Responses:**

**Russ Anderson** did not dispute that the Memo 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. 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;<sup>3211</sup> averring that references adjustments to goals in connection with an initiative relating to incentive compensation plans;<sup>3212</sup> and disputed the claim that alleged

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<sup>3209</sup> Russ Anderson’s ECSFM at No. 373.

<sup>3210</sup> MSD-155.

<sup>3211</sup> Russ Anderson’s ECSFM at No. 375 citing MSD-155 at 12.

<sup>3212</sup> Russ Anderson’s ECSFM at No. 375 citing MSD-155 at 13.

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.<sup>3213</sup>

Whether the May 19, 2015 Memo made no mention of information material to Respondent Russ Anderson's fiduciary duties owed to the Bank is a material fact in issue.

While I find 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, I find that in her Response to Statement No. 374, 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. Pursuant to the OCC's Uniform Rules, the merits of the disputed claims raised in (Russ Anderson) Statement No. 374 will be addressed during the hearing set to begin on September 13, 2021.

#### **Enforcement Counsel's Statement of Material Fact (Russ Anderson) No. 375**

The May 19, 2015 Memo stated: "In the summer of 2013, to monitor compliance with the requirement that deposit accounts are funded by the client, 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."<sup>3214</sup>

#### **Responses:**

**Russ Anderson** did not dispute the quoted text as an accurate description of the 2013-2014 Investigation's findings, namely, that simulated funding accounted for approximately 69 of the 230 total footprint-wide terminations or resignations which resulted from the 2013-2014 investigation.<sup>3215</sup>

Accordingly, the Recommended Decision will include a factual finding as to Respondent Russ Anderson that the May 19, 2015 Memo stated: "In the summer of 2013, to monitor compliance with the requirement that deposit accounts are funded by the client, 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

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<sup>3213</sup> Russ Anderson's ECSFM at No. 375 citing MSD-155 at 19-23.

<sup>3214</sup> MSD-155 at 4.

<sup>3215</sup> Russ Anderson's ECSFM at No. 376.

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.”

#### **Enforcement Counsel's Statement of Material Fact (Russ Anderson) No. 376**

The May 19, 2015 Memo stated that “230 team members were terminated or chose to resign.”<sup>3216</sup>

#### **Responses:**

**Russ Anderson** did not dispute the claim.<sup>3217</sup> Accordingly, the Recommended Decision will include a factual finding as to Respondent Russ Anderson that the May 19, 2015 Memo stated that “230 team members were terminated or chose to resign.”

#### **Enforcement Counsel's Statement of Material Fact (Russ Anderson) No. 377**

The May 19, 2015 Memo stated that of the 230 team member separations across the Retail Banking footprint, “the majority of the separations (approximately 70%) related to customer phone number changes.”<sup>3218</sup>

#### **Responses:**

**Russ Anderson** did not dispute the claim.<sup>3219</sup> Accordingly, the Recommended Decision will include a factual finding as to Respondent Russ Anderson that the May 19, 2015 Memo stated that of the 230 team member separations across the Retail Banking footprint, “the majority of the separations (approximately 70%) related to customer phone number changes.”

#### **Enforcement Counsel's Statement of Material Fact (Russ Anderson) No. 378**

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.<sup>3220</sup>

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<sup>3216</sup> MSD-155 at 5.

<sup>3217</sup> Russ Anderson's ECSFM at No. 376.

<sup>3218</sup> MSD-155 at 5.

<sup>3219</sup> Russ Anderson's ECSFM at No. 377.

<sup>3220</sup> MSD-155.

## **Responses:**

**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, and citing in support MSD-155 (materials for the Risk Committee meeting to be held on May 19, 2015) at 19.

Whether the May 19, 2015 Memo discussed the referenced subjects is a material fact in issue.

I find that in her Response to Statement No. 378, Russ Anderson sufficiently demonstrated a factual controversy exists regarding the contents of the Memo. Because of the existence of material controverted facts, summary disposition is not available with respect to Respondent Russ Anderson regarding this claim. Pursuant to the OCC's Uniform Rules, the merits of the disputed claims raised in (Russ Anderson) Statement No. 378 will be addressed during the hearing set to begin on September 13, 2021.

## **Enforcement Counsel's Statement of Material Fact (Russ Anderson) No. 379**

The May 19, 2015 Memo does not mention how many products were opened that were done without the knowledge of the customers.<sup>3221</sup>

## **Responses:**

**Russ Anderson** did not dispute the claim.<sup>3222</sup> Accordingly, the Recommended Decision will include a factual finding as to Respondent Russ Anderson that the May 19, 2015 Memo does not mention how many products were opened that were done without the knowledge of the customers.

## **Enforcement Counsel's Statement of Material Fact (Russ Anderson) No. 380**

The May 19, 2015 Memo stated: "Beginning in May, 2014, the SSCOT performed a footprint-wide Behavioral Trends Analysis to evaluate the effectiveness of measures taken to address the conduct at issue. The analysis demonstrated a dramatic reduction in inappropriate practices in the past year, as only four team members were identified as outliers for phone number changes, and only three team members were identified as outliers for simulated funding. We believe the efforts described herein contributed significantly to this result."<sup>3223</sup>

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<sup>3221</sup> MSD-155; MSD-156.

<sup>3222</sup> Russ Anderson's ECSFM at No. 379.

<sup>3223</sup> MSD-155 at 7-8.



**Responses:**

**Russ Anderson** did not dispute the claim as to what the Memo stated.<sup>3224</sup> Accordingly, the Recommended Decision will include a factual finding as to Respondent Russ Anderson that the May 19, 2015 Memo stated: “Beginning in May, 2014, the SSCOT performed a footprint-wide Behavioral Trends Analysis to evaluate the effectiveness of measures taken to address the conduct at issue. The analysis demonstrated a dramatic reduction in inappropriate practices in the past year, as only four team members were identified as outliers for phone number changes, and only three team members were identified as outliers for simulated funding. We believe the efforts described herein contributed significantly to this result.”

**Enforcement Counsel’s Statement of Material Fact (Russ Anderson) No. 381**

The May 19, 2015 Memo did not explain what constituted an “outlier” (e.g., the 99.99% threshold).<sup>3225</sup>

**Responses:**

**Russ Anderson** objected to the Statement as duplicative of Statement of Material Fact (Russ Anderson) No. 372. The objection is sustained. Accordingly, the claim presented in (Russ Anderson) No. 381 will not support Enforcement Counsel’s Motion. The exclusion of the claim appearing in the Statement does not, however, create a factual basis that would prevent granting Enforcement Counsel’s Motion.

**Enforcement Counsel’s Statement of Material Fact (Russ Anderson) No. 382**

The May 19, 2015 Memo stated that “SSCOT also conducts robust Proactive Monitoring to reduce inappropriate sales behaviors through early detection.”<sup>3226</sup>

**Responses:**

**Russ Anderson** did not dispute that the quoted text is an accurate depiction of a portion of the May 19, 2015 Memo.<sup>3227</sup> Accordingly, the Recommended Decision will include a factual finding as to Respondent Russ Anderson that the May 19, 2015 Memo stated that “SSCOT also conducts robust Proactive Monitoring to reduce inappropriate sales behaviors through early detection.”

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<sup>3224</sup> Russ Anderson’s ECSFM at No. 380.

<sup>3225</sup> MSD-155.

<sup>3226</sup> MSD-155 at 8; see also MSD-8C (Stumpf Tr.) at 590:2-22.

<sup>3227</sup> Russ Anderson’s ECSFM at No. 382.

### **Enforcement Counsel’s Statement of Material Fact (Russ Anderson) No. 383**

The Bank’s former Chief Risk Officer Michael Loughlin testified that the controls that existed at the Bank to identify people engaged in sales practices misconduct were not robust and representing the controls as such “certainly doesn’t portray an accurate picture of the state of their controls.”<sup>3228</sup>

#### **Responses:**

**Russ Anderson** did not dispute that the quoted text is an accurate depiction of Mr. Loughlin’s testimony, but averred that the quoted testimony does not indicate any time frame for which Mr. Loughlin’s opinions about the quality of the controls the Bank employed to identify sales practices misconduct apply.<sup>3229</sup>

I find an insufficient factual basis has been presented to establish a dispute in this Response to create a controverted material fact. Accordingly, the Recommended Decision will include a factual finding as to Respondent Russ Anderson that the Bank’s former Chief Risk Officer Michael Loughlin testified that the controls that existed at the Bank to identify people engaged in sales practices misconduct were not robust and representing the controls as such “certainly doesn’t portray an accurate picture of the state of their controls.”

### **Enforcement Counsel’s Statement of Material Fact (Russ Anderson) No. 384**

The Bank’s former Head of SSCOT Rebecca Rawson gave the following testimony:

Q: Okay. Right. And even after the investigation, even the things that would trigger an investigation, well, the three things that would trigger the investigation are, EthicsLine of complaints, customer complaints or SSCOT proactive monitoring, correct?

A: Yes.

Q: Okay. All right. We know that the EthicsLine complaint and the customer complaint were not effective because your analysis showed that they didn’t even catch people who were engaged in this misconduct in the top 99.99 percentile?

A: Correct.

Q: All right. And the SSCOT control, given the nature of what they were doing, didn’t even try to catch all misconduct

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<sup>3228</sup> MSD-290A (Loughlin Tr.) at 236:1-238:3.

<sup>3229</sup> Russ Anderson’s ECSFM at No. 383.

it only looked at three people a month and later 18 people a month.

A: The outlying activity, correct.

Q: Okay. Which turned out to be three some months and up to 18? A: Correct.

Q: Okay. So the Bank really did not have any adequate controls, and that statement that it did is misleading?

A: Yes, I could see how that would be misleading.

Q: Okay. And actually, anyone who understands how the controls worked and what SSCOT's analysis was, would know, just like you said, that the controls were not effective.

A: Yes. The only thing in the report, is because the sentence proceeding does mention engaged in the outlier behavior. Then it says, we also determined that our controls were effective in detecting the behavior. The controls were effective in detecting the outlying behavior.

Q: Okay.

A: I still think it could be misleading because the reader does not have the full context to maybe catch on to the outlying behavior sentence.

Q: Right. Okay. So, even if you can interpret the statement to be technically true, it is still misleading?

A: It could still be misleading, yes.

Q: Right. And anyone who understands what outlying behavior was would know that the statement is misleading?

A: I think they should.

Q: All right. And Ms. Claudia Russ Anderson understood what the outlying behavior that SSCOT was managing, monitoring was?

A: I believe she did.

Q: Okay, thanks. And you based that belief on the fact that you told her both verbally and in email?

A: Correct.<sup>3230</sup>

**Responses:**

**Russ Anderson** did not dispute that the excerpt is an accurate depiction of a portion of Ms. Rawson's testimony.<sup>3231</sup> Accordingly, the Recommended Decision will include a factual finding as to Respondent Russ Anderson that Ms. Rawson testified as shown above.

**Enforcement Counsel's Statement of Material Fact (Russ Anderson) No. 385**

The Bank's former CEO John Stumpf agreed in testimony that the May 19, 2015 Memo was misleads the Board and the OCC about the root cause of sales practices misconduct and the adequacy of controls:

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

A: I would agree with that.

...

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

A: I would agree with that.<sup>3232</sup>

**Responses:**

**Russ Anderson** did not dispute that the excerpt is an accurate depiction of a portion of Mr. Stumpf's testimony.<sup>3233</sup> Accordingly, the Recommended Decision will include a factual finding as to Respondent Russ Anderson that Mr. Stumpf testified as shown above.

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<sup>3230</sup> MSD-300 (Rawson Tr.) at 213:2-215:10.

<sup>3231</sup> Russ Anderson's ECSFM at No. 384.

<sup>3232</sup> MSD-8C (Stumpf Tr.) at 593:24-595:17.

<sup>3233</sup> Russ Anderson's ECSFM at No. 385.

### **Enforcement Counsel's Statement of Material Fact (Russ Anderson) No. 386**

Respondent Russ Anderson presented to the Risk Committee of the Board at the May 19, 2015 meeting, along with Carrie Tolstedt.<sup>3234</sup>

#### **Responses:**

**Russ Anderson** did not dispute the claim.<sup>3235</sup> Accordingly, the Recommended Decision will include a factual finding as to Respondent Russ Anderson that Respondent Russ Anderson presented to the Risk Committee of the Board at the May 19, 2015 meeting, along with Carrie Tolstedt

### **Enforcement Counsel's Statement of Material Fact (Russ Anderson) No. 387**

Respondent Russ Anderson never communicated to the Board that the Community Bank's business model needed a wholesale change.<sup>3236</sup>

#### **Responses:**

**Russ Anderson** did not dispute the claim.<sup>3237</sup> Accordingly, the Recommended Decision will include a factual finding as to Respondent Russ Anderson that she never communicated to the Board that the Community Bank's business model needed a wholesale change.

### **Enforcement Counsel's Statement of Material Fact (Russ Anderson) No. 388**

Respondent Russ Anderson never communicated to the Board that there was systemic sales pressure in the Community Bank.<sup>3238</sup>

#### **Responses:**

**Russ Anderson** did not dispute the claim.<sup>3239</sup> Accordingly, the Recommended Decision will include a factual finding as to Respondent Russ Anderson that she never communicated to the Board that there was systemic sales pressure in the Community Bank.

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<sup>3234</sup> MSD-157; MSD-266 (Russ Anderson Dep. Tr.) at 137:10-13; MSD-468; MSD-191.

<sup>3235</sup> Russ Anderson's ECSFM at No. 386.

<sup>3236</sup> MSD-266 (Russ Anderson Dep. Tr.) at 90:7-11.

<sup>3237</sup> Russ Anderson's ECSFM at No. 387.

<sup>3238</sup> MSD-266 (Russ Anderson Dep. Tr.) at 118:9- 119.

<sup>3239</sup> Russ Anderson's ECSFM at No. 388.

### **Enforcement Counsel's Statement of Material Fact (Russ Anderson) No. 389**

Respondent Russ Anderson never communicated to the Board that she was uncomfortable with the instruction to pause proactive monitoring and that it hindered SSCOT's ability to detect additional sales practices misconduct.<sup>3240</sup>

#### **Responses:**

**Russ Anderson** did not dispute the claim that she never directly contacted the Board about her discomfort with the pause to proactive monitoring.<sup>3241</sup> Accordingly, the Recommended Decision will include a factual finding as to Respondent Russ Anderson that she never communicated to the Board that she was uncomfortable with the instruction to pause proactive monitoring.

### **Enforcement Counsel's Statement of Material Fact (Russ Anderson) No. 390**

Respondent Russ Anderson never communicated to the OCC that there was systemic sales pressure in the Community Bank.<sup>3242</sup>

#### **Responses:**

**Russ Anderson** did not dispute the claim.<sup>3243</sup> Accordingly, the Recommended Decision will include a factual finding as to Respondent Russ Anderson that she never communicated to the OCC that there was systemic sales pressure in the Community Bank.

### **Enforcement Counsel's Statement of Material Fact (Russ Anderson) No. 391**

Respondent Russ Anderson never communicated to the OCC that in the 2012 to 2013 time frame, she concluded that the goals had reached the level of being unreasonable.<sup>3244</sup>

#### **Responses:**

**Russ Anderson** did not dispute the claim.<sup>3245</sup> Accordingly, the Recommended Decision will

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<sup>3240</sup> MSD-266 (Russ Anderson Dep. Tr.) at 137:2-13.

<sup>3241</sup> Russ Anderson's ECSFM at No. 389.

<sup>3242</sup> MSD-266 (Russ Anderson Dep. Tr.) at 118:9- 119:5.

<sup>3243</sup> Russ Anderson's ECSFM at No. 390.

<sup>3244</sup> MSD-266 (Russ Anderson Dep. Tr.) at 121:13-18.

<sup>3245</sup> Russ Anderson's ECSFM at No. 391.

include a factual finding as to Respondent Russ Anderson that she never communicated to the OCC that in the 2012 to 2013 time frame, she concluded that the goals had reached the level of being unreasonable.

#### **Enforcement Counsel's Statement of Material Fact (Russ Anderson) No. 392**

Respondent Russ Anderson never communicated to the OCC that the Community Bank's business model needed a wholesale change.<sup>3246</sup>

#### **Responses:**

**Russ Anderson** did not dispute the claim.<sup>3247</sup> Accordingly, the Recommended Decision will include a factual finding as to Respondent Russ Anderson that she never communicated to the OCC that the Community Bank's business model needed a wholesale change

#### **Enforcement Counsel's Statement of Material Fact (Russ Anderson) No. 393**

Respondent Russ Anderson testified that she does not regret anything that was submitted in the May 19, 2015 Memo to the Board and the OCC.<sup>3248</sup>

#### **Responses:**

**Russ Anderson** did not dispute the claim.<sup>3249</sup> Accordingly, the Recommended Decision will include a factual finding as to Respondent Russ Anderson that she testified that she does not regret anything that was submitted in the May 19, 2015 Memo to the Board and the OCC.

**Respondent Russ Anderson lied repeatedly to OCC Examiners, provided false, misleading, and incomplete information during OCC examinations, failed to supply information to the OCC known to her, and obstructed OCC Examinations**

#### **Enforcement Counsel's Statement of Material Fact (Russ Anderson) No. 394**

Respondent Russ Anderson testified that she was obligated to be fully transparent, forthcoming, and candid in every interaction that she had with the OCC, and provide complete information to

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<sup>3246</sup> MSD-266 (Russ Anderson Dep. Tr.) at 90:12-15.

<sup>3247</sup> Russ Anderson's ECSFM at No. 392.

<sup>3248</sup> MSD-266 (Russ Anderson Dep. Tr.) at 219:4-223:15.

<sup>3249</sup> Russ Anderson's ECSFM at No. 393.

examiners:

Q: Notwithstanding whatever you believed the OCC had access to, I take it, you always recognized that you were obligated to be fully transparent and forthcoming when communicating with OCC examiners; is that fair to say?

A: I think that's very fair to say.

Q: And notwithstanding whatever you believed the OCC had access to, I take it, you always recognized that you had an obligation to be fully candid with OCC examiners in every interaction that you had with the OCC; is that fair to say?

A: That is very fair to say, yes.

Q: Okay. And I take it, you also always recognized that you had an obligation to provide complete information to the OCC throughout your tenure as the group risk officer; is that fair to say? A: I would say, it's fair to say that I was responsible for providing the OCC with complete and accurate information for which they asked for, yes.<sup>3250</sup>

### Responses:

**Russ Anderson** did not dispute that the testimony above is accurately reported.<sup>3251</sup> Accordingly, the Recommended Decision will include a factual finding as to Respondent Russ Anderson that she testified as shown above.

### Enforcement Counsel's Statement of Material Fact (Russ Anderson) No. 395

The OCC commenced a target examination of operational risk management and cross sell activities of Wells Fargo's Community Bank on approximately February 2, 2015 ("February 2015 Exam").<sup>3252</sup> During the course of the February 2015 Exam, Respondent Russ Anderson interacted regularly with OCC examiner staff, including but not limited to Karin Hudson, a National Bank Examiner who served as Examiner-in-Charge for the Exam, and Jennifer

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<sup>3250</sup> MSD-266 (Russ Anderson Dep. Tr.) at 92:24-93:18; MSD-270 (NBE Hudson Expert Report – Revised) at ¶¶ 57, 60; MSD-268 (NBE Crosthwaite Expert Report) at ¶¶ 11, 112-114.

<sup>3251</sup> Russ Anderson's ECSFM at No. 394.

<sup>3252</sup> MSD-270 (NBE Hudson Expert Report – Revised) at ¶ 17; OCC- 184.



Crosthwaite.<sup>3253</sup>

**Responses:**

**Russ Anderson** did not dispute that she interacted regularly with Karin Hudson. Disputed that she interacted regularly with other OCC examiner staff, with the exception of Christine Moses.<sup>3254</sup> Accordingly, the Recommended Decision will include a factual finding as to Respondent Russ Anderson that she interacted regularly with Karin Hudson. Disputed that she interacted regularly with other OCC examiner staff, with the exception of Christine Moses.

**Enforcement Counsel’s Statement of Material Fact (Russ Anderson) No. 396**

Respondent Russ Anderson testified that she was concerned with the scope of the February 2015 Exam.<sup>3255</sup>

**Responses:**

**Russ Anderson** disputed the claim without presenting evidence that contradicted the limited nature of the claim (which concerned testimony by Russ Anderson); but instead raised collateral claims – including the claim that OCC Examiner Hudson was also concerned about the scope of the Exam.<sup>3256</sup>

I find an insufficient factual basis has been presented to establish a dispute in this Response to create a controverted material fact. Accordingly, the Recommended Decision will include a factual finding as to Respondent Russ Anderson that she testified that she was concerned with the scope of the February 2015 Exam.

**Enforcement Counsel’s Statement of Material Fact (Russ Anderson) No. 397**

At an initial cross sell meeting held on February 4, 2015, Respondent Russ Anderson stated “that team members do have referral and sales goals but meeting these is only part of the review and evaluation process. Referral fees paid to team members are capped to keep the incentive to sell products in check and keep the focus on customer service.”<sup>3257</sup>

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<sup>3253</sup> MSD- 266 (Russ Anderson Dep. Tr.) at 234:22-235:5; 238:5-12; MSD-270 (NBE Hudson Expert Report – Revised) at ¶ 59; MSD-268 (NBE Crosthwaite Expert Report) at ¶ 115.

<sup>3254</sup> Russ Anderson’s ECSFM at No. 395.

<sup>3255</sup> MSD-266 (Russ Anderson Dep. Tr.) at 235:20-236:10; see also MSD- 270 (NBE Hudson Expert Report – Revised) at ¶ 20.

<sup>3256</sup> Russ Anderson’s ECSFM at No. 396.

<sup>3257</sup> MSD-187 at 2; MSD-646A (Hudson Dep. Tr.) at 106:7-17.

## Responses:

**Russ Anderson** averred the quoted material is taken from the OCC's notes of a meeting, where the statement is not presented as a quote; and asserts that as such, to evidence that Ms. Russ Anderson actually stated these words at the meeting and to present it as a quote is false and misleading.<sup>3258</sup> She does not, however, dispute saying the quoted words.<sup>3259</sup>

I find an insufficient factual basis has been presented to establish a dispute in this Response to create a controverted material fact. Accordingly, the Recommended Decision will include a factual finding as to Respondent Russ Anderson that during an initial cross sell meeting with the OCC's Examiners held on February 4, 2015, Respondent Russ Anderson stated words to the effect that that team members do have referral and sales goals but meeting these is only part of the review and evaluation process, and that referral fees paid to team members are capped to keep the incentive to sell products in check and keep the focus on customer service.

## Enforcement Counsel's Statement of Material Fact (Russ Anderson) No. 398

Respondent Russ Anderson participated in a teleconference between OCC examiners and Audit staff on February 9, 2015 ("February 9, 2015 Call").<sup>3260</sup> Respondent McLinko was among the audit staff who attended the meeting.<sup>3261</sup> During the February 9, 2015 Call, Respondent Russ Anderson stated that "incentive compensation plans are capped to balance the incentive for sales vis-à-vis customer service."<sup>3262</sup>

## Responses:

**Russ Anderson** averred the quoted material is taken from the OCC's notes of a meeting, where the statement is not presented as a quote; and asserts that as such, to evidence that Ms. Russ Anderson actually stated these words at the meeting and to present it as a quote is false and misleading.<sup>3263</sup> She does not, however, dispute saying the quoted words.<sup>3264</sup>

I find an insufficient factual basis has been presented to establish a dispute in this Response to create a controverted material fact. Accordingly, the Recommended Decision will include a

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<sup>3258</sup> Russ Anderson's ECSFM at No. 397.

<sup>3259</sup> Russ Anderson's ECSFM at No. 397.

<sup>3260</sup> MSD-185.

<sup>3261</sup> MSD-270 (NBE Hudson Expert Report – Revised) at ¶¶ 23-32; MSD-185.

<sup>3262</sup> MSD-185 at 2; MSD-270 (NBE Hudson Expert Report – Revised) at ¶ 27.

<sup>3263</sup> Russ Anderson's ECSFM at No. 398.

<sup>3264</sup> Russ Anderson's ECSFM at No. 398.

factual finding as to Respondent Russ Anderson that she participated in a teleconference between OCC examiners and Audit staff on February 9, 2015; that Respondent McLinko was among the audit staff who attended the meeting; and that during the February 9, 2015 Call, Respondent Russ Anderson stated words to the effect that incentive compensation plans are capped to balance the incentive for sales vis-à-vis customer service.

### **Enforcement Counsel’s Statement of Material Fact (Russ Anderson) No. 399**

Respondent Russ Anderson also stated on the February 9, 2015 Call that “the impact of sales goals expectations on employee turnover is monitored through exit interviews and that it is not significant.”<sup>3265</sup>

#### **Responses:**

**Russ Anderson** averred the quoted material is taken from the OCC’s notes of a meeting, where the statement is not presented as a quote; and asserts that as such, to evidence that Ms. Russ Anderson actually stated these words at the meeting and to present it as a quote is false and misleading.<sup>3266</sup> She does not, however, dispute saying the quoted words.<sup>3267</sup>

I find an insufficient factual basis has been presented to establish a dispute in this Response to create a controverted material fact. Accordingly, the Recommended Decision will include a factual finding as to Respondent Russ Anderson that on the February 9, 2015 Call she stated words to the effect that the impact of sales goals expectations on employee turnover is monitored through exit interviews and that it is not significant.

### **Enforcement Counsel’s Statement of Material Fact (Russ Anderson) No. 400**

An OCC examiner who participated on the February 9, 2015 Call, Michael DeClue, gave the following deposition testimony regarding his concerns with Respondent Russ Anderson:

Q: Did Ms. Russ Anderson’s attendance at this meeting cause you any concerns?

A: Yes, sir.

Q: What were those concerns? A: Independence.

Q: Can you explain what you mean by “independence”?

A: During this meeting, Ms. Anderson dominated the

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<sup>3265</sup> MSD-185 at 2; MSD-270 (NBE Hudson Expert Report – Revised) at ¶ 27.

<sup>3266</sup> Russ Anderson’s ECSFM at No. 399.

<sup>3267</sup> Russ Anderson’s ECSFM at No. 399.

conversation on the Wells Fargo side and was essentially, an advocate versus she provided -- really, served in an advocate -- advocate role versus a challenge role -- role. And to the point where she would interrupt and speak for Mr. McLinko and Mr. Deese, et cetera. And what was noticeable is that neither Mr. Deese or Mr. McLinko seemed to object.<sup>3268</sup>

**Responses:**

**Russ Anderson** did not dispute that the testimony shown is accurate, but instead averred that no one from the OCC ever expressed any concern or disagreement in advance of the meeting, or at the meeting for that matter, that Ms. Russ Anderson was invited and attended.<sup>3269</sup>

I find an insufficient factual basis has been presented to establish a dispute in this response to create a controverted material fact. Accordingly, the Recommended Decision will include a factual finding as to Respondent Russ Anderson that Examiner DeClue testified as shown above.

**Enforcement Counsel's Statement of Material Fact (Russ Anderson) No. 401**

During the February 2015 examination, Respondent Russ Anderson stated that sales goals do not drive employee compensation or employee terminations.<sup>3270</sup>

**Responses:**

**Russ Anderson** did not dispute the testimony attributed to her, but instead added that it was her belief that employees could not be fired for failing to meet sales goals, which she averred was confirmed by the senior leader of the Community Bank's HR group.<sup>3271</sup>

I find an insufficient factual basis has been presented to establish a dispute in this response to create a controverted material fact. Accordingly, the Recommended Decision will include a factual finding as to Respondent Russ Anderson that during the February 2015 examination, she stated that sales goals do not drive employee compensation or employee terminations.

**Enforcement Counsel's Statement of Material Fact (Russ Anderson) No. 402**

Respondent Russ Anderson participated in a February 10, 2015 teleconference with the OCC

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<sup>3268</sup> MSD-645 (DeClue Dep. Tr.) at 231:23-232:13; see also MSD-644 (Moses Dep. Tr.) at 265:24- 266:12.

<sup>3269</sup> Russ Anderson's ECSFM at No. 400.

<sup>3270</sup> MSD-270 (NBE Hudson Expert Report – Revised) at ¶ 27; MSD-646A (Hudson Dep. Tr.) at 61:17-62:1.

<sup>3271</sup> Russ Anderson's ECSFM at No. 401.

examination staff (“February 10, 2015 Call”).<sup>3272</sup>

**Responses:**

**Russ Anderson** did not dispute the claim.<sup>3273</sup> Accordingly, the Recommended Decision will include a factual finding as to Respondent Russ Anderson that she was in attendance at the meeting cited above.

**Enforcement Counsel’s Statement of Material Fact (Russ Anderson) No. 403**

Prior to the February 10, 2015 Call, the OCC provided a list of topics and questions to be covered at the meeting, which Respondent Russ Anderson attended.<sup>3274</sup> The topics included:

- “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”;
- “Testing to ensure that the incentive program encourages appropriate behavior”;
- “Roles of the various monitoring groups (SSCOT, Deposit Products, Corporate Investigations, etc.).”<sup>3275</sup>

**Responses:**

**Russ Anderson** did not dispute the claim.<sup>3276</sup> Accordingly, the Recommended Decision will include a factual finding as to Respondent Russ Anderson that that the OCC provided a list of topics, as cited above.

**Enforcement Counsel’s Statement of Material Fact (Russ Anderson) No. 404**

On the February 10, 2015 Call, an OCC examiner asked whether pressure to meet baselines sales goals was significant and contributed to employee turnover. Respondent Russ Anderson

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<sup>3272</sup> Russ Anderson Amended Answer ¶ 58; MSD-270 (NBE Hudson Expert Report – Revised) at ¶¶ 33-39.

<sup>3273</sup> Russ Anderson’s ECSFM at No. 402.

<sup>3274</sup> MSD-186.

<sup>3275</sup> MSD-186 at 1; MSD-270 (NBE Hudson Expert Report – Revised) at ¶¶ 33-34.

<sup>3276</sup> Russ Anderson’s ECSFM at No. 403.

answered that “no one loses their job because they did not meet sales goals.”<sup>3277</sup>

**Responses:**

**Russ Anderson** did not dispute answering as shown above, but averred only that the meeting notes do not indicate such a statement was made.<sup>3278</sup> Accordingly, the Recommended Decision will include a factual finding as to Respondent Russ Anderson that on the February 10, 2015 call, an OCC examiner asked whether pressure to meet baselines sales goals was significant and contributed to employee turnover, and she answered that “no one loses their job because they did not meet sales goals.”

**Enforcement Counsel’s Statement of Material Fact (Russ Anderson) No. 405**

During her deposition testimony, Respondent Russ Anderson admitted that she told OCC examiners that employees could not be terminated for failing to meet sales goals.<sup>3279</sup>

**Responses:**

**Russ Anderson** did not dispute testifying as shown above.<sup>3280</sup> Accordingly, the Recommended Decision will include a factual finding as to Respondent Russ Anderson that during her deposition testimony, Respondent Russ Anderson admitted that she told OCC examiners that employees could not be terminated for failing to meet sales goals.

**Enforcement Counsel’s Statement of Material Fact (Russ Anderson) No. 406**

On the February 10, 2015 Call, the SSCOT program was discussed.<sup>3281</sup> Nonetheless, Respondent Russ Anderson did not inform the OCC about the subsequent application of the 99.99 threshold used by SSCOT.<sup>3282</sup>

**Responses:**

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<sup>3277</sup> MSD- 270 (NBE Hudson Expert Report – Revised) at ¶ 35; MSD-646A (Hudson Dep. Tr.) at 61:17- 62:1, 126:8-127:9; MSD-644 (Moses Dep. Tr.) at 144:11-145:12; MSD-187 at 3; MSD-188 at 2; MSD-268 (NBE Crosthwaite Expert Report) at ¶ 118(c).

<sup>3278</sup> Russ Anderson’s ECSFM at No. 404.

<sup>3279</sup> MSD-266 (Russ Anderson Dep. Tr.) at 52:14-53:5.

<sup>3280</sup> Russ Anderson’s ECSFM at No. 405.

<sup>3281</sup> MSD-187 at 3; MSD-188.

<sup>3282</sup> MSD-187 at 3; MSD-188; MSD-270 (NBE Hudson Expert Report – Revised) at ¶ 39; MSD-268 (NBE Crosthwaite Expert Report) at ¶ 118(b).

**Russ Anderson** did not dispute the above claim, but only disputed “to the extent Enforcement Counsel suggested the OCC requested information that Ms. Russ Anderson refused to provide.”<sup>3283</sup> Accordingly, since no such suggestion appears in the claim, the Recommended Decision will include a factual finding as to Respondent Russ Anderson that on the February 10, 2015 Call, the SSCOT program was discussed but she did not inform the OCC about the subsequent application of the 99.99 threshold used by SSCOT.

#### **Enforcement Counsel’s Statement of Material Fact (Russ Anderson) No. 407**

On the February 10, 2015 Call, OCC examiners were told “[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.”<sup>3284</sup>

#### **Responses:**

**Russ Anderson** did not deny making the quoted statement, but averred there is no indication in the OCC February 10, 2015 meeting notes that the statement at issue was made by Respondent RussAnderson.<sup>3285</sup>

I find an insufficient factual basis has been presented to establish a dispute in this Response to create a controverted material fact. Accordingly, the Recommended Decision will include a factual finding as to Respondent Russ Anderson that on the February 10, 2015 Call, OCC examiners were told words to the effect 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.

#### **Enforcement Counsel’s Statement of Material Fact (Russ Anderson) No. 408**

On the February 10, 2015 Call, Respondent Russ Anderson stated 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.”<sup>3286</sup>

#### **Responses:**

**Russ Anderson** did not dispute making the statements attributed to her, but objected to Enforcement Counsel putting material in quotes when there is no information in the

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<sup>3283</sup> Russ Anderson’s ECSFM at No. 406.

<sup>3284</sup> MSD-188 at 2; MSD-270 (NBE Hudson Expert Report – Revised) at ¶ 37.

<sup>3285</sup> Russ Anderson’s ECSFM at No. 407.

<sup>3286</sup> MSD-187 at 3; MSD-270 (NBE Hudson Expert Report – Revised) at ¶ 38; MSD-266 (Russ Anderson Dep. Tr.) at 107:14-111:19.

underlying document that attributes the material as a verbatim statement spoken by Ms. Russ Anderson.<sup>3287</sup>

I find an insufficient factual basis has been presented to establish a dispute in this Response to create a controverted material fact. Accordingly, the Recommended Decision will include a factual finding as to Respondent Russ Anderson that on the February 10, 2015 Call, Respondent Russ Anderson stated words to the effect 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.

#### **Enforcement Counsel’s Statement of Material Fact (Russ Anderson) No. 409**

The Community Bank’s Chief Compliance Officer “witnessed Ms. Russ Anderson editing responses to OCC questions during the OCC’s February 2015 Operational Risk Exam. . . .”<sup>3288</sup>

#### **Responses:**

**Russ Anderson** did not dispute making the claimed statement, but averred that Mr. Christoff had no basis for claiming that she was attempting to edit responses “with an eye towards putting the Bank in the best possible light” because he cannot attest to what she was thinking when she made the edits.<sup>3289</sup>

I find an insufficient factual basis has been presented to establish a dispute in this Response to create a controverted material fact. Accordingly, the Recommended Decision will include a factual finding as to Respondent Russ Anderson that the Community Bank’s Chief Compliance Officer witnessed Ms. Russ Anderson editing responses to OCC questions during the OCC’s February 2015 Operational Risk Exam.

#### **Enforcement Counsel’s Statement of Material Fact (Russ Anderson) No. 410**

On or around April 20, 2015, an SSCOT manager who reported to Respondent Russ Anderson, Rebecca Rawson, shared with her posts from a former branch manager. The posts stated: “[Wells Fargo management] have created a toxic atmosphere of sales goals that forces employees to sell products [customers] don’t want. They literally say ‘every customer needs a credit card.’ . . . If there is ever a company as disgusting and unethical as this one, I dare you to

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<sup>3287</sup> Russ Anderson’s ECSFM at No. 408.

<sup>3288</sup> MSD-56 (Christoff Decl.) at ¶ 17; see id. at ¶ 18 (“I observed that Ms. Russ Anderson edited the Community Bank’s responses to questions posed by the OCC, with an eye towards putting the Bank in the best possible light.”).

<sup>3289</sup> Russ Anderson’s ECSFM at No. 409.



find it.”<sup>3290</sup>

**Responses:**

**Russ Anderson** did not dispute that Rebecca Rawson shared information with Respondent Russ Anderson on April 20, 2015 regarding certain Facebook posts made by a former Wells Fargo employee, but challenged the statement as inadmissible hearsay.<sup>3291</sup>

I find an insufficient factual basis has been presented to establish a dispute in this Response to create a controverted material fact. Accordingly, the Recommended Decision will include a factual finding as to Respondent Russ Anderson that on or around April 20, 2015, an SSCOT manager who reported to Respondent Russ Anderson, Rebecca Rawson, shared with her posts from a former branch manager. The posts stated: “[Wells Fargo management] have created a toxic atmosphere of sales goals that forces employees to sell products [customers] don’t want. They literally say ‘every customer needs a credit card.’ . . . If there is ever a company as disgusting and unethical as this one, I dare you to find it.”

**Enforcement Counsel’s Statement of Material Fact (Russ Anderson) No. 411**

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 (“May 2015 Exam”).<sup>3292</sup>

**Responses:**

**Russ Anderson** incorporated the response by Respondent Julian to (Julian and McLinko) No. 471, which responded to claims that the OCC commenced a May 2015 examination of Enterprise Sales Practices at the Bank was prompted by the City of Attorney of Los Angeles lawsuit against the Bank relating to its sales practices. Julian’s response was that the claim “lacks context” because the complaint “does not refer to WFAS,” and the OCC’s decision to blame WFAS, “in part, for the sales practices issues alleged in the LA City Attorney’s Complaint was not supported by the OCC examiners focused on WFAS.”<sup>3293</sup> She also disputed the claim because the LA City Attorney’s Complaint does not refer to Ms. Russ Anderson or her role as Group Risk Officer of Community Bank.<sup>3294</sup>

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<sup>3290</sup> MSD-190 at 3-5.

<sup>3291</sup> Russ Anderson’s ECSFM at No. 410.

<sup>3292</sup> MSD-270 (NBE Hudson Expert Report – Revised) at ¶ 4.

<sup>3293</sup> Julian’s ECSFM at No. 471.

<sup>3294</sup> Russ Anderson’s ECSFM at No. 411.

I find an insufficient factual basis has been presented to establish a dispute in this Response to create a controverted material fact. Accordingly, the Recommended Decision will include a factual finding as to Respondent Russ Anderson that 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.

#### **Enforcement Counsel’s Statement of Material Fact (Russ Anderson) No. 412**

The May 2015 Exam “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.”<sup>3295</sup>

#### **Responses:**

**Russ Anderson** did not dispute the claim.<sup>3296</sup> Accordingly, the Recommended Decision will include a factual finding as to Respondent Russ Anderson that the May 2015 Exam 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.

#### **Enforcement Counsel’s Statement of Material Fact (Russ Anderson) No. 413**

National Bank Examiners Karin Hudson, Jennifer Crosthwaite, and others again met with Respondent Russ Anderson during the May 2015 Exam.<sup>3297</sup>

#### **Responses:**

**Russ Anderson** did not dispute the claim.<sup>3298</sup> Accordingly, the Recommended Decision will include a factual finding as to Respondent Russ Anderson that National Bank Examiners Karin Hudson, Jennifer Crosthwaite, and others again met with Respondent Russ Anderson during the May 2015 Exam.

#### **Enforcement Counsel’s Statement of Material Fact (Russ Anderson) No. 414**

#### **Responses:**

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<sup>3295</sup> MSD-213 at 1.

<sup>3296</sup> Russ Anderson’s ECSFM at No. 412.

<sup>3297</sup> MSD-266 (Russ Anderson Dep. Tr.) at 238:10-12; MSD-270 (NBE Hudson Expert Report – Revised) at ¶ 46; MSD-268 (NBE Crosthwaite Expert Report) at ¶ 118.

<sup>3298</sup> Russ Anderson’s ECSFM at No. 413.

Enforcement Counsel’s Statement of Material Fact (Russ Anderson) No. 414 relies on exhibits presented to this Tribunal as being non-public. Pursuant to the OCC’s Uniform Rules, while the proceedings in this administrative enforcement action are expressly required to be public, when presented with non-public documents the Administrative Law Judge is required to take all appropriate steps to preserve the confidentiality of such documents.<sup>3299</sup> Upon my review of the confidential documents supporting this Statement of Material Fact, and after weighing the expectation that all of the proceedings shall be public against the requirement that I protect against the disclosure of non-public information, I find the evidentiary value of these exhibits to be sufficiently marginal and duplicative as to warrant exclusion from this Order. Accordingly, this Order will not be based on any of the claims found in this Statement of Material Fact.

### **Enforcement Counsel’s Statement of Material Fact (Russ Anderson) No. 415**

Respondent Russ Anderson participated in a May 14, 2015 meeting with the OCC (“May 14, 2015 Meeting”).<sup>3300</sup>

#### **Responses:**

**Russ Anderson** did not dispute the claim.<sup>3301</sup> Accordingly, the Recommended Decision will include a factual finding as to Respondent Russ Anderson that she participated in a May 14, 2015 meeting with the OCC.

### **Enforcement Counsel’s Statement of Material Fact (Russ Anderson) No. 416**

Respondent Russ Anderson told examiners during the May 14, 2015 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.”<sup>3302</sup>

#### **Responses:**

**Russ Anderson** did not dispute that she told the examiners what is shown above, but that the quoted material “is not a quote” but was drawn from the underlying document of meeting

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<sup>3299</sup> See 12 C.F.R. § 19.33(b).

<sup>3300</sup> Russ Anderson Amended Answer ¶ 286; MSD-189.

<sup>3301</sup> Russ Anderson’s ECSFM at No. 414.

<sup>3302</sup> MSD-266 (Russ Anderson Dep. Tr.) at 158:10-159:20; MSD-189 at 3 (“Interviews did not lead to a conclusion about sales pressure. This was not an underlying issue . . . The number of allegations in Ethics declined and no preponderance of issues discovered in interviews.”); MSD-270 (NBE Hudson Expert Report – Revised) at ¶¶ 49, 52, 54; MSD-646A (Hudson Dep. Tr.) at 126:8-127:9, 146:20-147:9, 155:20-157:1; MSD-268 (NBE Crosthwaite Expert Report) at ¶118(d); MSD-644 (Moses Dep. Tr.) at 275:23-276:23.

notes.<sup>3303</sup> She added that she testified as follows:

A. So specifically in May of 2015 when the OCC asked me that question and I responded that I was not hearing of pressure, that is a true statement. And that is exactly what I said, because that is exactly what I had heard from my visits out into the regions, that the pressure was materially different and -- and much less, and that everybody was very pleased with the changes that had been happening.<sup>3304</sup>

I find an insufficient factual basis has been presented to establish a dispute in this Response to create a controverted material fact. Accordingly, the Recommended Decision will include a factual finding as to Respondent Russ Anderson that told examiners during the May 14, 2015 Meeting words to the effect 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.

#### **Enforcement Counsel's Statement of Material Fact (Russ Anderson) No. 417**

During the May 14, 2015 Meeting, Respondent Russ Anderson discussed activity that the Bank refers to as simulated funding and described it as follows: "Simulated funding can occur 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. Another example is a customer wants an account with funds coming from one account to another but the funds are expected to be put back in the original account after a certain period. The account appears funded for active use but the account is not used. Process could be signaled by money in and out in a quick basis."<sup>3305</sup>

#### **Responses:**

**Russ Anderson** did not dispute making the statements presented, but averred Enforcement Counsel misrepresents the nature of the quoted material by putting it in quotes when the quoted material is not in a quote in the underlying document of meeting notes.<sup>3306</sup>

I find an insufficient factual basis has been presented to establish a dispute in this Response to create a controverted material fact. Accordingly, the Recommended Decision will include a factual finding as to Respondent Russ Anderson that during the May 14, 2015 Meeting, Respondent Russ Anderson discussed activity that the Bank refers to as simulated funding and described it with words to the effect that "Simulated funding" can occur when a banker opens an

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<sup>3303</sup> Russ Anderson's ECSFM at No. 416.

<sup>3304</sup> Russ Anderson's ECSFM at No. 416, quoting MSD-266 (Russ Anderson Dep. Tr.) at 158:21-159:4.

<sup>3305</sup> MSD- 189 at 1-2; MSD-270 (NBE Hudson Expert Report – Revised) at ¶ 46.

<sup>3306</sup> Russ Anderson's ECSFM at No. 417.

account a customer did not ask for and uses his/her own funds by putting, in example, \$25 in an account. Another example is a customer wants an account with funds coming from one account to another but the funds are expected to be put back in the original account after a certain period. The account appears funded for active use but the account is not used. Process could be signaled by money in and out in a quick basis.

### **Enforcement Counsel’s Statement of Material Fact (Russ Anderson) No. 418**

Respondent Russ Anderson did not disclose at the May 14, 2015 meeting that simulated funding entailed the creation of accounts and movement of customer funds without customer consent.<sup>3307</sup>

#### **Responses:**

**Russ Anderson** disputed the claim that she did not disclose at the May 14, 2015 meeting that simulated funding entailed the creation of accounts and movement of customer funds without customer consent.<sup>3308</sup> In support, she cited her Declaration at ¶30 (which avers “examples of simulated funding were provided during the course of a conversation”) and her response to (Russ Anderson) No. 103, which incorporated Respondent Julian’s response to (Julian and McLinko) No. 89, which averred that the Statement “does not set forth the relevant information to ascertain who in the Community Bank allegedly employed stack rankings nor what those alleged rankings indicated nor when those alleged rankings were used.”<sup>3309</sup> She did not, however, present evidence showing the disclosure referred to in the Statement.

I find an insufficient factual basis has been presented to establish a dispute in this Response to create a controverted material fact. Accordingly, the Recommended Decision will include a factual finding as to Respondent Russ Anderson that she did not disclose at the May 14, 2015 meeting that simulated funding entailed the creation of accounts and movement of customer funds without customer consent.

### **Enforcement Counsel’s Statement of Material Fact (Russ Anderson) No. 419**

At the May 14, 2015 Meeting, the OCC asked Respondent Russ Anderson how simulated funding was detected. In response, she stated: “They work with the Deposit Products Group (DPG) who uses analytics with exact filters. DPG looks at the activity and Quality Sales Report Card metric. They can see increases or decreases in that type of simulated funding. Scans occur

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<sup>3307</sup> MSD-270 (NBE Hudson Expert Report – Revised) at ¶ 46.

<sup>3308</sup> Russ Anderson’s ECSFM at No. 418.

<sup>3309</sup> Russ Anderson’s ECSFM at No. 419.

regularly.”<sup>3310</sup>

**Responses:**

**Russ Anderson** did not dispute that she made the statements attributed to her, but averred the quoted material is actually not a quote but is based on Exam staff notes.<sup>3311</sup>

I find an insufficient factual basis has been presented to establish a dispute in this Response to create a controverted material fact. Accordingly, the Recommended Decision will include a factual finding as to Respondent Russ Anderson that at the May 14, 2015 Meeting, the OCC asked Respondent Russ Anderson how simulated funding was detected. In response, she responded to the effect that they work with the Deposit Products Group (DPG) who uses analytics with exact filters. DPG looks at the activity and Quality Sales Report Card metric. They can see increases or decreases in that type of simulated funding. Scans occur regularly.

**Enforcement Counsel’s Statement of Material Fact (Russ Anderson) No. 420**

At the May 14, 2015 Meeting, Respondent Russ Anderson did not disclose the 99.99% and 99.95% thresholds used by SSCOT to detect simulated funding.<sup>3312</sup>

**Responses:**

**Russ Anderson** did not dispute that she did not disclose the cited thresholds, but avers Exam staff did not ask questions about thresholds.<sup>3313</sup>

I find an insufficient factual basis has been presented to establish a dispute in this Response to create a controverted material fact. Accordingly, the Recommended Decision will include a factual finding as to Respondent Russ Anderson that at the May 14, 2015 Meeting, although she was not asked about thresholds, Respondent did not disclose the 99.99% and 99.95% thresholds used by SSCOT to detect simulated funding.

**Enforcement Counsel’s Statement of Material Fact (Russ Anderson) No. 421**

At the May 14, 2015 Meeting, Respondent Russ Anderson discussed 190 employee

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<sup>3310</sup> MSD-270 (NBE Hudson Expert Report – Revised) at ¶ 47.

<sup>3311</sup> Russ Anderson’s ECSFM at No. 419.

<sup>3312</sup> MSD-270 (NBE Hudson Expert Report – Revised) at ¶ 47; MSD-266 (Russ Anderson Dep. Tr.) at 94:5-97:9; MSD-115 at 3 (“I don’t believe the OCC/CFPB are aware of the details around thresholds or outliers. We didn’t get into that detail in our original OCC submission.”); MSD-646A (Hudson Dep. Tr.) at 111:20-112:13, 115:16-117:6; MSD-304B (Candy Dep. Tr.) at 323:14-324:17.

<sup>3313</sup> Russ Anderson’s ECSFM at No. 420.

terminations and stated that the terminations largely related to employees changing customers' phone numbers and receiving sales credit for sales that another teller made.<sup>3314</sup>

**Responses:**

**Russ Anderson** did not dispute that she testified that “at the end of the day, that was the preponderance of the terminations in LA/OC. Some 70% were for phone numbers changes versus simulated funding.”<sup>3315</sup>

Accordingly, the Recommended Decision will include a factual finding as to Respondent Russ Anderson that she testified that “at the end of the day, that was the preponderance of the terminations in LA/OC. Some 70% were for phone numbers changes versus simulated funding.”

**Enforcement Counsel’s Statement of Material Fact (Russ Anderson) No. 422**

At the May 14, 2015 Meeting, the OCC asked Respondent Russ Anderson about the root cause of employee terminations for sales practices.<sup>3316</sup> Respondent Russ Anderson did not disclose any connection between pressure to meet unreasonable sales goals causing employees to issue products for customers that they did not need, want, or consent to. Instead, she discussed Gallup surveys and stated that they had not done a formal root cause analysis.<sup>3317</sup>

**Responses:**

**Russ Anderson** did not dispute the above claims.<sup>3318</sup> Accordingly, the Recommended Decision will include a factual finding as to Respondent Russ Anderson that at the May 14, 2015 Meeting, the OCC asked Respondent Russ Anderson about the root cause of employee terminations for sales practices, and she did not disclose any connection between pressure to meet unreasonable sales goals causing employees to issue products for customers that they did not need, want, or consent to. Instead, she discussed Gallup surveys and stated that they had not done a formal root cause analysis.

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<sup>3314</sup> MSD- 189; MSD-270 (NBE Hudson Expert Report – Revised) at ¶ 50; MSD-646A (Hudson Dep. Tr.) at 90:23-92:8, 184:21-185:18; MSD-266 (Russ Anderson Dep. Tr.) at 98:4-13.

<sup>3315</sup> Russ Anderson’s ECSFM at No. 421, quoting MSD-266 (Russ Anderson Dep. Tr.) at 98:4-13.

<sup>3316</sup> MSD-189 at 2-3; MSD-270 (NBE Hudson Expert Report – Revised) at ¶ 51.

<sup>3317</sup> MSD-189 at 2; MSD- 270 (NBE Hudson Expert Report – Revised) at ¶ 51; MSD-646A (Hudson Dep. Tr.) at 110:2- 111:7.

<sup>3318</sup> Russ Anderson’s ECSFM at No. 422.

### **Enforcement Counsel’s Statement of Material Fact (Russ Anderson) No. 423**

At the May 14, 2015 Meeting, OCC examiners asked whether there was anything pertinent that should be shared with them during their review of sales practices.<sup>3319</sup> Respondent Russ Anderson stated that the “[m]ost important thing is we found something, we were proactive, we did something, and the preponderance were non-customer impact.”<sup>3320</sup>

#### **Responses:**

**Russ Anderson** did not dispute the question that was presented to her and the answer she gave, as reported above.<sup>3321</sup> Accordingly, the Recommended Decision will include a factual finding as to Respondent Russ Anderson that at the May 14, 2015 Meeting, OCC examiners asked her whether there was anything pertinent that should be shared with them during their review of sales practices, and she responding by stating that the “[m]ost important thing is we found something, we were proactive, we did something, and the preponderance were non-customer impact.”

### **Enforcement Counsel’s Statement of Material Fact (Russ Anderson) No. 424**

Enforcement Counsel’s Statement of Material Fact (Russ Anderson) No. 424 relies on exhibits presented to this Tribunal as being non-public. Pursuant to the OCC’s Uniform Rules, while the proceedings in this administrative enforcement action are expressly required to be public, when presented with non-public documents the Administrative Law Judge is required to take all appropriate steps to preserve the confidentiality of such documents.<sup>3322</sup> Upon my review of the confidential documents supporting this Statement of Material Fact, and after weighing the expectation that all of the proceedings shall be public against the requirement that I protect against the disclosure of non-public information, I find the evidentiary value of these exhibits to be sufficiently marginal and duplicative as to warrant exclusion from this Order. Accordingly, this Order will not be based on any of the claims found in this Statement of Material Fact.

### **Enforcement Counsel’s Statement of Material Fact (Russ Anderson) No. 425**

Respondent Russ Anderson continually expressed concerns regarding what information

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<sup>3319</sup> MSD-189 at 4.

<sup>3320</sup> MSD-189 at 4; MSD-270 (NBE Hudson Expert Report – Revised) at ¶¶ 53, 54; MSD-304B (Candy Dep. Tr.) at 323:14-324:17.

<sup>3321</sup> Russ Anderson’s ECSFM at No. 423.

<sup>3322</sup> See 12 C.F.R. § 19.33(b).



would be shared with the OCC.<sup>3323</sup>

**Responses:**

**Russ Anderson** offered no evidence to dispute the claim, averring only that the Statement mischaracterizes how Ms. Russ Anderson and her colleagues worked through determining what the OCC Exam staff requested and evaluating whether certain information was responsive to an OCC Exam request.<sup>3324</sup> Accordingly, the Recommended Decision will include a factual finding as to Respondent Russ Anderson that Russ Anderson continually expressed concerns regarding what information would be shared with the OCC.

**Enforcement Counsel’s Statement of Material Fact (Russ Anderson) No. 426**

On May 19, 2015, OCC examiner Jennifer Crosthwaite requested information from the Bank, including “[d]etails on terminations due to inappropriate sales practices since May 2013 this should include the 190 discussed in the lawsuit and any since that time.”<sup>3325</sup>

**Responses:**

**Russ Anderson** did not dispute the claim, other than to aver the term “inappropriate sales practices” is vague.<sup>3326</sup> Accordingly, the Recommended Decision will include a factual finding as to Respondent Russ Anderson that on May 19, 2015, OCC examiner Jennifer Crosthwaite requested information from the Bank, including “[d]etails on terminations due to inappropriate sales practices since May 2013 this should include the 190 discussed in the lawsuit and any since that time.”

**Enforcement Counsel’s Statement of Material Fact (Russ Anderson) No. 427**

Three days earlier, on May 16, 2015, Respondent Russ Anderson was informed that the number of terminations/resignations for sales integrity was 1,293 in 2014 and 1,229 in 2013.<sup>3327</sup>

**Responses:**

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<sup>3323</sup> MSD-126; MSD-171; MSD-192 (“If we don’t think it advances the ‘tone at the top’ agenda should we provide?” MSD-195.

<sup>3324</sup> Russ Anderson’s ECSFM at No. 425.

<sup>3325</sup> MSD- 192 at 3.

<sup>3326</sup> Russ Anderson’s ECSFM at No. 426.

<sup>3327</sup> MSD-179; MSD-280 (Board Report) at 108; see also MSD-145 (taking no issue with Ms. Tolstedt 1,000-1,200 termination estimate for sales in 2013.

**Russ Anderson** did not dispute the claim but averred the Statement fails to consider that the termination figures being reported in the various documents cited by the OCC, report different data with different criteria being applied.<sup>3328</sup> Accordingly, the Recommended Decision will include a factual finding as to Respondent Russ Anderson that three days earlier, on May 16, 2015, Respondent Russ Anderson was informed that the number of terminations/resignations for sales integrity was 1,293 in 2014 and 1,229 in 2013.

#### **Enforcement Counsel’s Statement of Material Fact (Russ Anderson) No. 428**

Enforcement Counsel’s Statement of Material Fact (Russ Anderson) No. 428 relies on exhibits presented to this Tribunal as being non-public. Pursuant to the OCC’s Uniform Rules, while the proceedings in this administrative enforcement action are expressly required to be public, when presented with non-public documents the Administrative Law Judge is required to take all appropriate steps to preserve the confidentiality of such documents.<sup>3329</sup> Upon my review of the confidential documents supporting this Statement of Material Fact, and after weighing the expectation that all of the proceedings shall be public against the requirement that I protect against the disclosure of non-public information, I find the evidentiary value of these exhibits to be sufficiently marginal and duplicative as to warrant exclusion from this Order. Accordingly, this Order will not be based on any of the claims found in this Statement of Material Fact.

#### **Enforcement Counsel’s Statement of Material Fact (Russ Anderson) No. 429**

On June 19, 2015, in a meeting between OCC examiners Jennifer Crosthwaite, Elizabeth Candy, Chris Moses, Karin Hudson and Respondent Russ Anderson and other Bank personnel, OCC examiners requested information about the Bank’s signature requirements for deposit products: “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.”<sup>3330</sup> The request encapsulated information about signature requirements for deposit products.<sup>3331</sup>

#### **Responses:**

**Russ Anderson** did not dispute the factual claims regarding what transpired during the meeting on June 19, 2015, other than to aver that the actual request makes no reference to deposit products and raise the claim that the purported expert report of Ms. Candy makes sweeping conclusory statements about Ms. Russ Anderson’s candor to OCC exam staff, but

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<sup>3328</sup> Russ Anderson’s ECSFM at No. 427.

<sup>3329</sup> See 12 C.F.R. § 19.33(b).

<sup>3330</sup> MSD-194; MSD-269 (NBE Candy Expert Report) at ¶ 127.

<sup>3331</sup> MSD-194.

makes no mention of the specific facts alleged in the Statement.<sup>3332</sup>

I find an insufficient factual basis has been presented to establish a dispute in this Response to create a controverted material fact. Accordingly, the Recommended Decision will include a factual finding as to Respondent Russ Anderson that on June 19, 2015, in a meeting between OCC examiners Jennifer Crosthwaite, Elizabeth Candy, Chris Moses, Karin Hudson and Respondent Russ Anderson and other Bank personnel, OCC examiners requested information about the Bank's signature requirements for deposit products: "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." The request encapsulated information about signature requirements for deposit products.

### **Enforcement Counsel's Statement of Material Fact (Russ Anderson) No. 430**

On June 23, 2015, employees within the Community Bank specifically stated that the scope of the OCC's questions "are related to both deposit and credit products as well as the back-end processes to review exceptions."<sup>3333</sup> Nonetheless, Respondent Russ Anderson decided to remove information related to deposit products from the materials submitted to the OCC: "They did not ask about deposits and we shouldn't add it. I'll edit it out when they send it."<sup>3334</sup>

#### **Responses:**

**Russ Anderson** did not dispute the statement attributed to employees within the Community Bank, but averred she decided to remove information related to deposit products submitted to the OCC because she understood that the OCC exam staff did not ask for deposit products, and another team member agreed.<sup>3335</sup>

I find an insufficient factual basis has been presented to establish a dispute in this Response to create a controverted material fact. Accordingly, the Recommended Decision will include a factual finding as to Respondent Russ Anderson that on June 23, 2015, employees within the Community Bank specifically stated that the scope of the OCC's questions "are related to both deposit and credit products as well as the back-end processes to review exceptions." Nonetheless, Respondent Russ Anderson decided to remove information related to deposit products from the materials submitted to the OCC: "They did not ask about deposits and we shouldn't add it. I'll edit it out when they send it."

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<sup>3332</sup> Russ Anderson's ECSFM at No. 429.

<sup>3333</sup> MSD-195 at 3.

<sup>3334</sup> MSD-195 at 2.

<sup>3335</sup> Russ Anderson's ECSFM at No. 430, quoting MSD-195 at 2 (Paula Herzberg stating, "ok-agreed." She states further there are "lots of emails and things are getting confused I'm afraid.").

### **Enforcement Counsel’s Statement of Material Fact (Russ Anderson) No. 431**

In March 2016, Respondent Russ Anderson expressed concerns about sales practices complaints analysis being shared with the OCC.<sup>3336</sup>

#### **Responses:**

**Russ Anderson** did not dispute that she expressed the concerns stated in the Statement, but averred that Enforcement Counsel left out the testimony of Paula Herzberg in which Ms. Herzberg testified that the concerns around the information going to the OCC exam team were that the information was 1) not complete and was still being updated; 2) was outdated; 3) there would not be the right person available to explain the information or answer questions.<sup>3337</sup>

I find an insufficient factual basis has been presented to establish a dispute in this Response to create a controverted material fact. Accordingly, the Recommended Decision will include a factual finding as to Respondent Russ Anderson that in March 2016, Respondent Russ Anderson expressed concerns about sales practices complaints analysis being shared with the OCC.

### **Enforcement Counsel’s Statement of Material Fact (Russ Anderson) No. 432**

The Bank admitted that “[c]ertain Community Bank leaders also impeded scrutiny of sales practices by Wells Fargo’s primary regulator, the Office of the Comptroller of the Currency (“OCC”). 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 problems.”<sup>3338</sup>

#### **Responses:**

**Russ Anderson** did not dispute the Bank’s admissions as presented above.<sup>3339</sup> Accordingly, the Recommended Decision will include a factual finding as to Respondent Russ Anderson that the Bank admitted that “[c]ertain Community Bank leaders also impeded scrutiny of sales practices by Wells Fargo’s primary regulator, the Office of the Comptroller of the Currency

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<sup>3336</sup> MSD-196; MSD-197 (“I have to be honest that had we known this was going to OCC without my and Carrie’s final approval we would not have agreed to some of the content.”)

<sup>3337</sup> Russ Anderson’s ECSFM at No. 431, citing MSD-196 and MSD-197; MSD-585 (Paul Herzberg Tr.) at 235:12-236:17; 239:6-240:5.

<sup>3338</sup> MSD-1 at 30 ¶ 27; MSD-270 (NBE Hudson Expert Report – Revised) at ¶ 73.

<sup>3339</sup> Russ Anderson’s ECSFM at No. 432.

(“OCC”). 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 problems.”

**Respondent Russ Anderson continued to obscure the sales practices misconduct problem following supervisory criticism**

**Enforcement Counsel’s Statement of Material Fact (Russ Anderson) No. 433**

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”).<sup>3340</sup>

**Responses:**

**Russ Anderson** did not dispute the stated communication, but incorporated by reference Respondent Julian’s response to (Julian and McLinko) Statement 474. That Response averred the OCC’s June 26, 2015 Supervisory Letter regarding Enterprise Sales Practices did not use the term “sales practices misconduct.”<sup>3341</sup>

I find an insufficient factual basis has been presented to establish a dispute in this Response to create a controverted material fact. Accordingly, the Recommended Decision will include a factual finding as to Respondent Russ Anderson that on June 26, 2015, the OCC communicated the results of its May 2015 examination of Enterprise Sales Practices in Supervisory Letter WFC 2015-36.

**Enforcement Counsel’s Statement of Material Fact (Russ Anderson) No. 434**

SL 2015-36 concluded that “Wells Fargo's management and oversight of Enterprise Sales Practices risk is weak and needs to improve.”<sup>3342</sup>

**Responses:**

**Russ Anderson** did not dispute SL 2015-36 reached the stated conclusion, but averred the June 26, 2015 Supervisory Letter regarding Enterprise Sales Practices (“SL 2015-36”) (the admissibility of which is not conceded) did not use the term “sales practices misconduct.”<sup>3343</sup>

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<sup>3340</sup> MSD-213.

<sup>3341</sup> Julian’s ECSFM at No. 474.

<sup>3342</sup> MSD-213 at 2.

<sup>3343</sup> Russ Anderson’s ECSFM at No. 434.

I find an insufficient factual basis has been presented to establish a dispute in this Response to create a controverted material fact. Accordingly, the Recommended Decision will include a factual finding as to Respondent Russ Anderson that SL 2015-36 concluded that “Wells Fargo's management and oversight of Enterprise Sales Practices risk is weak and needs to improve.”

#### **Enforcement Counsel’s Statement of Material Fact (Russ Anderson) No. 435**

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.<sup>3344</sup>

#### **Responses:**

**Russ Anderson** did not dispute the stated claims but incorporated Respondent Julian’s response to (Julian and McLinko) No. 475.<sup>3345</sup> Respondent Julian did not dispute that 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.”<sup>3346</sup>

Accordingly, the Recommended Decision will include a factual finding as to Respondent Russ Anderson that 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.

#### **Enforcement Counsel’s Statement of Material Fact (Russ Anderson) No. 436**

The concern identified in the Community Bank Group - Sales Practices MRA, which replaced the CB FLOD Risk Management – Sales Practices MRA issued in SL 2015-07, 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

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<sup>3344</sup> MSD-213.

<sup>3345</sup> Russ Anderson’s ECSFM at No. 435.

<sup>3346</sup> Julian’s ECSFM at No. 475.

harm.”<sup>3347</sup>

**Responses:**

**Russ Anderson** did not dispute that the concern identified 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,<sup>3348</sup> but averred that by this time, “numerous steps had been taken that were resulting in improvements around sales practice misconduct.”<sup>3349</sup>

I find an insufficient factual basis has been presented to establish a dispute in this Response to create a controverted material fact. Accordingly, the Recommended Decision will include a factual finding as to Respondent Russ Anderson that the concern identified in the Community Bank Group - Sales Practices MRA, which replaced the CB FLOD Risk Management – Sales Practices MRA issued in SL 2015-07, 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.”

**Enforcement Counsel’s Statement of Material Fact (Russ Anderson) No. 437**

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.”<sup>3350</sup>

**Responses:**

**Russ Anderson** did not dispute that the MRA was properly quoted.<sup>3351</sup> Accordingly, the Recommended Decision will include a factual finding as to Respondent Russ Anderson that 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.”

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<sup>3347</sup> MSD- 213 at 8.

<sup>3348</sup> Russ Anderson’s ECSFM at No. 436.

<sup>3349</sup> Russ Anderson’s ECSFM at No. 436, citing MSD-8C (Stumpf Tr.) at 587:2-8.

<sup>3350</sup> MSD-213 at 6.

<sup>3351</sup> Russ Anderson’s ECSFM at No. 437.

### **Enforcement Counsel’s Statement of Material Fact (Russ Anderson) No. 438**

The Bank retained Accenture, a consultant, to conduct a review of sales practices.<sup>3352</sup>

#### **Responses:**

**Russ Anderson** did not dispute the claim, but averred the Bank retained Accenture in mid-2015 to “to examine the sales -- the community bank in terms of sales practices and asked them to -- to determine once and for all did we have a problem and how would we continue to solve the problem.”<sup>3353</sup>

I find an insufficient factual basis has been presented to establish a dispute in this Response to create a controverted material fact. Accordingly, the Recommended Decision will include a factual finding as to Respondent Russ Anderson that the Bank retained Accenture, a consultant, to conduct a review of sales practices.

### **Enforcement Counsel’s Statement of Material Fact (Russ Anderson) No. 439**

In August 2015, Respondent Russ Anderson agreed not to provide to Accenture exit survey verbatim comments from employees.<sup>3354</sup> The verbatim comments that Respondent Russ Anderson agreed not to provide to Accenture discussed pressure placed on employees to meet unreasonable sales goals and sales practices misconduct.<sup>3355</sup>

#### **Responses:**

**Russ Anderson** did not dispute the claim, but averred that she had reviewed what was sent to her and replied to Ms. Kidd that it seemed like a complete answer.<sup>3356</sup> Accordingly, the Recommended Decision will include a factual finding as to Respondent Russ Anderson that in August 2015, Respondent Russ Anderson agreed not to provide to Accenture exit survey verbatim comments from employees. The verbatim comments that Respondent Russ Anderson agreed not to provide to Accenture discussed pressure placed on employees to meet unreasonable sales goals and sales practices misconduct.

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<sup>3352</sup> Loughlin Dep. Tr. 162:10-165:19; MSD-199 at 3-4.

<sup>3353</sup> Russ Anderson’s ECSFM at No. 438.

<sup>3354</sup> MSD-202.

<sup>3355</sup> MSD-704; MSD- 705.

<sup>3356</sup> Russ Anderson’s ECSFM at No. 439.



### **Enforcement Counsel’s Statement of Material Fact (Russ Anderson) No. 440**

Prior to the issuance of the final report from Accenture on Community Bank sales practices, Respondent Russ Anderson reviewed the report and provided her feedback.<sup>3357</sup> Respondent Russ Anderson’s “‘big worry’ was 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’.”<sup>3358</sup>

Respondent Russ Anderson’s “‘first specific comment was about the FLOD [first line of defense] needing to cooperate with SLOD [second line of defense]. She didn’t see that as the case and thought this would get John Stumpf would grab SLOD by the neck if true. After that, she talked about the same themes Jason and Matthew raised about banker views being taken as ‘facts’ and misinterpretation/misalignment of actual facts . . .”<sup>3359</sup>

#### **Responses:**

**Russ Anderson** did not dispute the responses reported in this Statement, but averred the Statement is misleading and lacks context, asserting that MSD-201 (an email chain circa 2015 regarding the Accenture report) does not contain any direct statements from Ms. Russ Anderson and “is a second-hand account of a discussion with her, which could have been taken out of context or misinterpreted.”<sup>3360</sup>

I find an insufficient factual basis has been presented to establish a dispute in this Response to create a controverted material fact. Accordingly, the Recommended Decision will include a factual finding as to Respondent Russ Anderson that prior to the issuance of the final report from Accenture on Community Bank sales practices, Respondent Russ Anderson reviewed the report and provided her feedback; that her ‘big worry’ was 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’; that her “‘first specific comment was about the FLOD [first line of defense] needing to cooperate with SLOD [second line of defense]. She didn’t see that as the case and thought this would get John Stumpf would grab SLOD by the neck if true. After that, she talked about the same themes Jason and Matthew raised about banker views being taken as ‘facts’ and misinterpretation/misalignment of actual facts. . . .”

### **Enforcement Counsel’s Statement of Material Fact (Russ Anderson) No. 441**

Accenture issued a report in October 2015 regarding sales practices in the Community

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<sup>3357</sup> MSD- 201 at 3-5.

<sup>3358</sup> MSD- 201 at 3.

<sup>3359</sup> MSD- 201 at 3.

<sup>3360</sup> Russ Anderson’s ECSFM at No. 440.

Bank.<sup>3361</sup>

**Responses:**

**Russ Anderson** did not dispute the claim.<sup>3362</sup> Accordingly, the Recommended Decision will include a factual finding as to Respondent Russ Anderson that Accenture issued a report in October 2015 regarding sales practices in the Community Bank.

**Enforcement Counsel’s Statement of Material Fact (Russ Anderson) No. 442**

Accenture observed that “[a]lthough there are multiple programs in flight to strengthen controls within the 1LOD [first line of defense], the 1LOD does not have a uniform way of evidencing sufficient control over sales practices issues.”<sup>3363</sup>

**Responses:**

**Russ Anderson** did not dispute the claim.<sup>3364</sup> Accordingly, the Recommended Decision will include a factual finding as to Respondent Russ Anderson that Accenture observed that “[a]lthough there are multiple programs in flight to strengthen controls within the 1LOD [first line of defense], the 1LOD does not have a uniform way of evidencing sufficient control over sales practices issues.”

**Enforcement Counsel’s Statement of Material Fact (Russ Anderson) No. 443**

Accenture observed that “[t]eam members believe that executive messaging related to customer relationships is misaligned with solution sales goals, the performance management evaluation process, day-to-day performance expectations, and incentive compensation structure.”<sup>3365</sup>

**Responses:**

**Russ Anderson** did not dispute the claim.<sup>3366</sup> Accordingly, the Recommended Decision will include a factual finding as to Respondent Russ Anderson that Accenture observed that “[t]eam members believe that executive messaging related to customer relationships

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<sup>3361</sup> MSD-51.

<sup>3362</sup> Russ Anderson’s ECSFM at No. 441.

<sup>3363</sup> MSD-51 at 42.

<sup>3364</sup> Russ Anderson’s ECSFM at No. 442.

<sup>3365</sup> MSD-51 at 4.

<sup>3366</sup> Russ Anderson’s ECSFM at No. 443.

is misaligned with solution sales goals, the performance management evaluation process, day-to-day performance expectations, and incentive compensation structure.”

#### **Enforcement Counsel’s Statement of Material Fact (Russ Anderson) No. 444**

Accenture explained that “[m]any [b]ankers stated that despite recent reductions in store sales goals, they 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.”<sup>3367</sup>

#### **Responses:**

**Russ Anderson** did not dispute the claim.<sup>3368</sup> Accordingly, the Recommended Decision will include a factual finding as to Respondent Russ Anderson that Accenture explained that “[m]any [b]ankers stated that despite recent reductions in store sales goals, they 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.”

#### **The sales practices misconduct problem was resolved only after intense Congressional and public scrutiny**

#### **Enforcement Counsel’s Statement of Material Fact (Russ Anderson) No. 445**

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”).<sup>3369</sup>

#### **Responses:**

**Russ Anderson** did not dispute the claim.<sup>3370</sup> Accordingly, the Recommended Decision will include a factual finding as to Respondent Russ Anderson that 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.

#### **Enforcement Counsel’s Statement of Material Fact (Russ Anderson) No. 446**

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

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<sup>3367</sup> MSD-51 at 28, 27, 37.

<sup>3368</sup> Russ Anderson’s ECSFM at No. 444.

<sup>3369</sup> MSD-570.

<sup>3370</sup> Russ Anderson’s ECSFM at No. 445.

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.”<sup>3371</sup>

**Responses:**

**Russ Anderson** did not dispute the claim.<sup>3372</sup> Accordingly, the Recommended Decision will include a factual finding as to Respondent Russ Anderson that 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.”

**Enforcement Counsel’s Statement of Material Fact (Russ Anderson) No. 447 and (Julian and McLinko) No. 492**

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.”<sup>3373</sup>
- b. “The widespread and unauthorized opening of credit card accounts without consent . . . is considered an unsafe or unsound banking practice.”<sup>3374</sup>
- 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.”<sup>3375</sup>
- d. “[T]he Bank engaged in the unsafe or unsound practices of operating

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<sup>3371</sup> MSD-570 at 3.

<sup>3372</sup> Russ Anderson’s ECSFM at No. 446.

<sup>3373</sup> MSD-570 at 5.

<sup>3374</sup> MSD-570 at 6.

<sup>3375</sup> MSD-570 at 6.

without adequate controls and monitoring over its sales practices.”<sup>3376</sup>

**Responses:**

**Russ Anderson** did not dispute the claim.<sup>3377</sup> Accordingly, the Recommended Decision will include a factual finding as to Respondent Russ Anderson that SL 216-36 elaborated regarding the unsafe or unsound practices:

- 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.”
- b. “The widespread and unauthorized opening of credit card accounts without consent . . . is considered an unsafe or unsound banking practice.”
- 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.”

“[T]he Bank engaged in the unsafe or unsound practices of operating without adequate controls and monitoring over its sales practices.”

**Julian** did not dispute the claim.<sup>3378</sup> Accordingly, the Recommended Decision will include a factual finding as to Respondents Julian and McLinko that SL 216-36 elaborated regarding the unsafe or unsound practices as shown above.

**McLinko** incorporated Respondent Julian’s Response.<sup>3379</sup>

**Enforcement Counsel’s Statement of Material Fact (Russ Anderson) No. 448**

On September 8, 2016, the OCC, the Consumer Financial Protection Bureau, and the Los Angeles City Attorney issued fines and penalties against the Bank related to sales practices misconduct, totaling \$185 million.<sup>3380</sup>

**Responses:**

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<sup>3376</sup> MSD-570 at 6; Julian Amended Answer ¶ 131; McLinko Amended Answer ¶ 131.

<sup>3377</sup> Russ Anderson’s ECSFM at No. 447.

<sup>3378</sup> Julian’s ECSFM at No. 492.

<sup>3379</sup> McLinko’s ECSFM at No. 447.

<sup>3380</sup> Russ Anderson Amended Answer ¶ 132; Julian Amended Answer ¶ 132; MSD-343; MSD-344.

**Russ Anderson** did not dispute the claim.<sup>3381</sup> Accordingly, the Recommended Decision will include a factual finding as to Respondent Russ Anderson that on September 8, 2016, the OCC, the Consumer Financial Protection Bureau, and the Los Angeles City Attorney issued fines and penalties against the Bank related to sales practices misconduct, totaling \$185 million.

#### **Enforcement Counsel’s Statement of Material Fact (Russ Anderson) No. 449**

The OCC also issued a Consent Order (“Sales Practices Consent Order”) requiring corrective action and ordered the Bank to remediate customers who were harmed by the Bank’s unsafe or unsound sales practices and to establish an enterprise-wide sales practices risk management and oversight program to prevent and detect unsafe or unsound sales practices.<sup>3382</sup>

#### **Responses:**

**Russ Anderson** did not dispute the claim.<sup>3383</sup> Accordingly, the Recommended Decision will include a factual finding as to Respondent Russ Anderson that the OCC issued a Consent Order requiring corrective action and ordered the Bank to remediate customers who were harmed by the Bank’s unsafe or unsound sales practices and to establish an enterprise-wide sales practices risk management and oversight program to prevent and detect unsafe or unsound sales practices.

#### **Enforcement Counsel’s Statement of Material Fact (Russ Anderson) No. 450 and (Julian and McLinko) No. 498**

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

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<sup>3381</sup> Russ Anderson’s ECSFM at No. 448.

<sup>3382</sup> MSD-343.

<sup>3383</sup> Russ Anderson’s ECSFM at No. 449.

inquiries”.<sup>3384</sup>

Responses:

**Russ Anderson** did not dispute the claim.<sup>3385</sup> Accordingly, the Recommended Decision will include a factual finding as to Respondent Russ Anderson that 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”.

**Julian** did not dispute the claim.<sup>3386</sup> Accordingly, the Recommended Decision will include a factual finding as to Respondents Julian and McLinko that 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” are as shown above.

**McLinko** incorporated Respondent Julian’s Response.<sup>3387</sup>

#### **Enforcement Counsel’s Statement of Material Fact (Russ Anderson) No. 451 and (Julian and McLinko) No. 499**

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

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<sup>3384</sup> MSD-343.

<sup>3385</sup> Russ Anderson’s ECSFM at No. 450

<sup>3386</sup> Julian’s ECSFM at No. 498.

<sup>3387</sup> McLinko’s ECSFM at No. 498.

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 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.”<sup>3388</sup>

**Responses:**

**Russ Anderson** did not dispute the claim.<sup>3389</sup> Accordingly, the Recommended Decision will include a factual finding as to Respondent Russ Anderson that 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

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<sup>3388</sup> MSD-343.

<sup>3389</sup> Russ Anderson’s ECSFM at No. 451.



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 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.”

**Julian** did not dispute the claim.<sup>3390</sup> Accordingly, the Recommended Decision will include a factual finding as to Respondents Julian and McLinko that 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 shown above.

**McLinko** incorporated Respondent Julian’s Response.<sup>3391</sup>

### **Enforcement Counsel’s Statement of Material Fact (Russ Anderson) No. 452 and (Julian and McLinko) No. 116**

In October 2016, the Bank finally eliminated sales goals for Community Bank employees.<sup>3392</sup>

#### **Responses:**

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<sup>3390</sup> Julian’s ECSFM at No. 499.

<sup>3391</sup> McLinko’s ECSFM at No. 499.

<sup>3392</sup> 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).

**Russ Anderson** did not dispute the claim.<sup>3393</sup> Accordingly, the Recommended Decision will include a factual finding as to Respondent Russ Anderson that in October 2016, the Bank finally eliminated sales goals for Community Bank employees.

**Julian** disputed the claim, averring the Statement “mischaracterizes” his Amended Answer.<sup>3394</sup> That Answer stated, in full: “Admitted that Wells Fargo eliminated product sales goals in the Community Bank effective October 1, 2016. Otherwise, the allegation is denied.”<sup>3395</sup> I find an insufficient factual basis has been presented to establish a dispute in this Response to create a controverted material fact. Accordingly, the Recommended Decision will include a factual finding as to Respondents Julian and McLinko that in October 2016, the Bank finally eliminated sales goals for Community Bank employees.

**McLinko** incorporated Respondent Julian’s Response, but did not dispute that in October 2016 the Bank eliminated sales goals for the Community Bank, and did not dispute that the Statement accurately cites to Ms. Rawson’s testimony.<sup>3396</sup>

### **Enforcement Counsel’s Statement of Material Fact (Russ Anderson) No. 453 and (Julian and McLinko) No. 522**

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.”<sup>3397</sup>

#### **Responses:**

**Russ Anderson** did not dispute the claim.<sup>3398</sup> Accordingly, the Recommended Decision will include a factual finding as to Respondent Russ Anderson that in a January 23, 2020 Wells Fargo press release about the OCC’s Notice of Charges, the Bank’s current CEO stated: “The

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<sup>3393</sup> Russ Anderson’s ECSFM at No. 452.

<sup>3394</sup> Julian’s ECSFM at No. 116, citing Julian’s Amended Answer ¶ 135.

<sup>3395</sup> Julian’s Amended Answer ¶ 135.

<sup>3396</sup> McLinko’s ECSFM at No. 116.

<sup>3397</sup> MSD-662.

<sup>3398</sup> Russ Anderson’s ECSFM at No. 453.

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.”

**Julian** did not dispute the claim.<sup>3399</sup> Accordingly, the Recommended Decision will include a factual finding as to Respondents Julian and McLinko that 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.”

**McLinko** incorporated Respondent Julian's Response.<sup>3400</sup>

### **Respondent Russ Anderson's conduct with respect to systemic sales practices misconduct resulted in loss to the Bank**

#### **Enforcement Counsel's Statement of Material Fact (Russ Anderson) No. 454**

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.<sup>3401</sup>

#### **Responses:**

**Russ Anderson** incorporated Respondent Julian's response to Statement (Julian and McLinko) No. 529.<sup>3402</sup> In that Response, Respondent Julian did not dispute the claims presented in (Julian and McLinko) No. 529.<sup>3403</sup>

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<sup>3399</sup> Julian's ECSFM at No. 522.

<sup>3400</sup> McLinko's ECSFM at No. 522.

<sup>3401</sup> Russ Anderson Amended Answer ¶ 132; MSD-562.

<sup>3402</sup> Russ Anderson's ECSFM at No. 454.

<sup>3403</sup> Julian's ECSFM at No. 529.

I find an insufficient factual basis has been presented to establish a dispute in this Response to create a controverted material fact. Accordingly, the Recommended Decision will include a factual finding as to Respondent Russ Anderson that 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.

#### **Enforcement Counsel's Statement of Material Fact (Russ Anderson) No. 455**

The September 2016 announcement of the settlement and subsequent public awareness of the sales practices misconduct problem, which resulted from Respondent 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.<sup>3404</sup>

#### **Responses:**

**Russ Anderson** incorporated Respondent Julian's response to Statement (Julian and McLinko) No. 530.<sup>3405</sup> In that Response, Respondent Julian did not dispute the claims presented in (Julian and McLinko) No. 530.<sup>3406</sup>

I find an insufficient factual basis has been presented to establish a dispute in this Response to create a controverted material fact. Accordingly, the Recommended Decision will include a factual finding as to Respondent Russ Anderson that the September 2016 announcement of the settlement and subsequent public awareness of the sales practices misconduct problem, which resulted from Respondent 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.

#### **Enforcement Counsel's Statement of Material Fact (Russ Anderson) No. 456**

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

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<sup>3404</sup> MSD-565 at 9.

<sup>3405</sup> Russ Anderson's ECSFM at No. 455.

<sup>3406</sup> Julian's ECSFM at No. 530.

goals, effective October 1, 2016.<sup>3407</sup>

**Responses:**

**Russ Anderson** incorporated Respondent Julian’s response to Statement (Julian and McLinko) No. 531.<sup>3408</sup> In that Response, Respondent Julian did not dispute the claims presented in (Julian and McLinko) No. 531.<sup>3409</sup>

I find an insufficient factual basis has been presented to establish a dispute in this Response to create a controverted material fact. Accordingly, the Recommended Decision will include a factual finding as to Respondent Russ Anderson that 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.

**Enforcement Counsel’s Statement of Material Fact (Russ Anderson) No. 457**

During its investigation, the OCC requested information from the Bank, including “documentation sufficient to demonstrate any loss to the bank resulting from improper and unethical sales practices, including sales practices-related fines or money penalties, customer remediation, shareholder and class action litigation, and internal investigations.”<sup>3410</sup> In response, the Bank provided the Declaration of W. Scott Champion, which itemized losses to the Bank dating fourth quarter 2016 and thereafter.<sup>3411</sup>

**Responses:**

**Russ Anderson** incorporated Respondent Julian’s response to Statement (Julian and McLinko) No. 532.<sup>3412</sup> In that Response, Respondent Julian did not dispute the claims presented in (Julian and McLinko) No. 532.<sup>3413</sup>

I find an insufficient factual basis has been presented to establish a dispute in this Response to create a controverted material fact. Accordingly, the Recommended Decision will include a factual finding as to Respondent Russ Anderson that during its investigation, the OCC

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<sup>3407</sup> 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.

<sup>3408</sup> Russ Anderson’s ECSFM at No. 456.

<sup>3409</sup> Julian’s ECSFM at No. 531.

<sup>3410</sup> MSD-641 at 7¶ 43.

<sup>3411</sup> MSD-564 (Champion Decl.).

<sup>3412</sup> Russ Anderson’s ECSFM at No. 457.

<sup>3413</sup> Julian’s ECSFM at No. 532.

requested information from the Bank, including “documentation sufficient to demonstrate any loss to the bank resulting from improper and unethical sales practices, including sales practices-related fines or money penalties, customer remediation, shareholder and class action litigation, and internal investigations.”<sup>3414</sup> In response, the Bank provided the Declaration of W. Scott Champion, which itemized losses to the Bank dating fourth quarter 2016 and thereafter.

### **Enforcement Counsel’s Statement of Material Fact (Russ Anderson) No. 458**

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.<sup>3415</sup>

#### **Responses:**

**Russ Anderson** incorporated Respondent Julian’s response to Statement (Julian and McLinko) No. 533.<sup>3416</sup> In that Response, Respondent Julian did not dispute the claims presented in (Julian and McLinko) No. 533.<sup>3417</sup>

I find an insufficient factual basis has been presented to establish a dispute in this Response to create a controverted material fact. Accordingly, the Recommended Decision will include a factual finding as to Respondent Russ Anderson that 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.

### **Sales practices misconduct, which persisted at the Bank due to Respondent Russ Anderson’s misconduct, harmed customers and breached their trust**

### **Enforcement Counsel’s Statement of Material Fact (Russ Anderson) No. 459**

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<sup>3414</sup> MSD-641 at 7¶ 43.

<sup>3415</sup> MSD- 293A (Hardison Tr.) at 34:4-36:18; MSD-289A (Sloan Tr.) at 251:2-253:6; MSD-564; MSD-1.

<sup>3416</sup> Russ Anderson’s ECSFM at No. 458.

<sup>3417</sup> Julian’s ECSFM at No. 533.

Respondent Russ Anderson admits that the business of banking is built on customer trust.<sup>3418</sup>

**Responses:**

**Russ Anderson** did not dispute the claim.<sup>3419</sup> Accordingly, the Recommended Decision will include a factual finding as to Respondent Russ Anderson that the business of banking is built on customer trust.

**Enforcement Counsel’s Statement of Material Fact (Russ Anderson) No. 460**

Respondent Russ Anderson admits that she recognized that when employees engaged in sales practices misconduct, that erodes customer trust and confidence in the Bank, and that she believed that in all 36 years of her career.<sup>3420</sup>

**Responses:**

**Russ Anderson** did not materially dispute the claim.<sup>3421</sup> Accordingly, the Recommended Decision will include a factual finding as to Respondent Russ Anderson that when employees engaged in sales practices misconduct, such conduct can erode customer trust and confidence in the Bank.

**Enforcement Counsel’s Statement of Material Fact (Russ Anderson) No. 461 and (Julian and McLinko) No. 535**

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.<sup>3422</sup>

**Responses:**

**Russ Anderson** incorporated Respondent Julian’s response.<sup>3423</sup>

Julian disputed the claim, averring that Mr. Stumpf testified—based on an objectionable

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<sup>3418</sup> MSD-266 (Russ Anderson Dep. Tr.) at 179:7-9.

<sup>3419</sup> Russ Anderson’s ECSFM at No. 459.

<sup>3420</sup> MSD-266 (Russ Anderson Dep. Tr.) at 179:10-19.

<sup>3421</sup> Russ Anderson’s ECSFM at No. 459.

<sup>3422</sup> MSD-8A (Stumpf Tr.) at 127:9-14; MSD-567; MSD-568; MSD-569.

<sup>3423</sup> Russ Anderson’s ECSFM at No. 461.

hypothetical question posed at the time, without his memory being refreshed, and without access to the evidence—“Yes”<sup>3424</sup> and averred that Mr. Stumpf did not testify that the Bank breached its customers’ trust.<sup>3425</sup> I find an insufficient factual basis has been presented to establish a dispute in this Response to create a controverted material fact. Accordingly, the Recommended Decision will include a factual finding as to Respondents Russ Anderson, Julian, and McLinko that 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.

**McLinko** incorporated Respondent Julian’s Response.<sup>3426</sup>

### **Enforcement Counsel’s Statement of Material Fact (Russ Anderson) No. 462 and (Julian and McLinko) No. 536**

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.<sup>3427</sup>

#### **Responses:**

**Russ Anderson** incorporated Respondent Julian’s response.<sup>3428</sup>

**Julian** responded that the claim was disputed, but did not dispute the claim presented and instead averred the claim lacked “necessary context”.<sup>3429</sup> I find an insufficient factual basis has been presented to establish a dispute in this Response to create a controverted material fact. Accordingly, the Recommended Decision will include a factual finding as to Respondents Russ Anderson, Julian, and McLinko that 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.

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<sup>3424</sup> Julian’s ECSFM at No. 535, quoting MSD-8A at 127:9-14.

<sup>3425</sup> Julian’s ECSFM at No. 535, quoting MSD-8A at 127:9-14.

<sup>3426</sup> McLinko’s ECSFM at No. 535.

<sup>3427</sup> MSD-543; MSD-663.

<sup>3428</sup> Russ Anderson’s ECSFM at No. 462.

<sup>3429</sup> Julian’s ECSFM at No. 536.



**McLinko** incorporated Respondent Julian's Response.<sup>3430</sup>

**Enforcement Counsel's Statement of Material Fact (Russ Anderson) No. 463 and (Julian and McLinko No. 537**

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."<sup>3431</sup>

**Responses:**

**Russ Anderson** incorporated Respondent Julian's response.<sup>3432</sup>

**Julian** responded that the claim was disputed, but did not dispute the claim presented and instead averred the claim lacked "necessary context".<sup>3433</sup> I find an insufficient factual basis has been presented to establish a dispute in this Response to create a controverted material fact. Accordingly, the Recommended Decision will include a factual finding as to Respondents Russ Anderson, Julian, and McLinko that 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

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<sup>3430</sup> McLinko's ECSFM at No. 536.

<sup>3431</sup> MSD- 664.

<sup>3432</sup> Russ Anderson's ECSFM at No. 463.

<sup>3433</sup> Julian's ECSFM at No. 537.

customers, team members, shareholders and communities.”

**McLinko** incorporated Respondent Julian’s Response.<sup>3434</sup>

### **Enforcement Counsel’s Statement of Material Fact (Russ Anderson) No. 464 and (Julian and McLinko) No. 538**

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 was not entitled, harmed the credit ratings of certain customers, and unlawfully misused customers’ sensitive personal information (including customers’ means of identification).”<sup>3435</sup>

#### **Responses:**

**Russ Anderson** incorporated Respondent Julian’s response.<sup>3436</sup>

**Julian** responded that the claim was disputed, but did not dispute the claim presented and instead averred the claim lacked “necessary context”.<sup>3437</sup> I find an insufficient factual basis has been presented to establish a dispute in this Response to create a controverted material fact. Accordingly, the Recommended Decision will include a factual finding as to Respondents Russ Anderson, Julian, and McLinko that 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 was not entitled, harmed the credit ratings of certain customers, and unlawfully misused customers’ sensitive personal information (including customers’ means of identification).”

**McLinko** incorporated Respondent Julian’s Response.<sup>3438</sup>

### **Enforcement Counsel’s Statement of Material Fact (Russ Anderson) No. 465 and (Julian and McLinko) No. 539**

The Bank has paid millions of dollars of remediation to its customers to compensate

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<sup>3434</sup> McLinko’s ECSFM at No. 537.

<sup>3435</sup> MSD-1 at 31 ¶ 32.

<sup>3436</sup> Russ Anderson’s ECSFM at No. 464.

<sup>3437</sup> Julian’s ECSFM at No. 538.

<sup>3438</sup> McLinko’s ECSFM at No. 538.

them for harm resulting from its sales practices.<sup>3439</sup>

**Responses:**

**Russ Anderson** incorporated Respondent Julian’s response.<sup>3440</sup>

**Julian** responded that the claim was disputed, but did not dispute the claim presented and instead averred the claim “mischaracterized” his Amended Answer.<sup>3441</sup> At Paragraph 26 of the Notice of Charges, the OCC avers as follows:

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

In his Amended Answer to Paragraph 26, Respondent Julian stated:

As to the first sentence, admitted that sales practices issues arose within the Community Bank. Insofar as the allegation in this sentence relates to time periods before Respondent Julian worked for the Bank and/or before he became Chief Auditor, Respondent Julian lacks sufficient knowledge or information to form a belief about the allegation, so it is denied to that extent. Denied that sales practices misconduct was “systemic,” and Respondent Julian incorporates by reference his responses to paragraph 3. Any remaining allegations in this sentence are denied. As to the second sentence, admitted that the Bank has refunded money to customers in connection with its review of sales practices. Otherwise, the allegation in the second sentence is denied, as Respondent Julian lacks sufficient knowledge or information to form a belief about the amount of money the Bank has refunded.

I find an insufficient factual basis has been presented to establish a dispute in this Response to create a controverted material fact. Accordingly, the Recommended Decision will include a factual finding as to Respondents Russ Anderson, Julian, and McLinko that the Bank has paid millions of dollars of remediation to its customers to compensate them for harm resulting from its sales practices.

**McLinko** incorporated Respondent Julian’s Response.<sup>3442</sup>

**Enforcement Counsel’s Statement of Material Fact (Russ Anderson) No. 466 and (Julian**

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<sup>3439</sup> MSD-542; Julian Amended Answer ¶ 26; MSD-665.

<sup>3440</sup> Russ Anderson’s ECSFM at No. 465.

<sup>3441</sup> Julian’s ECSFM at No. 539, citing Julian Amended Answer ¶ 26.

<sup>3442</sup> McLinko’s ECSFM at No. 539.

### **and McLinko) No. 540**

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.<sup>3443</sup>

#### **Responses:**

**Russ Anderson** incorporated Respondent Julian’s response.<sup>3444</sup>

Julian did not dispute the claim.<sup>3445</sup> Accordingly, the Recommended Decision will include a factual finding as to Respondents Russ Anderson, Julian, and McLinko that 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.

**McLinko** incorporated Respondent Julian’s Response.<sup>3446</sup>

### **Enforcement Counsel’s Statement of Material Fact (Russ Anderson) No. 467 and (Julian and McLinko) No. 541**

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.”<sup>3447</sup>

#### **Responses:**

**Russ Anderson** incorporated Respondent Julian’s response.<sup>3448</sup>

**Julian** did not dispute the Settlement included the relief quoted here.<sup>3449</sup> Accordingly, the Recommended Decision will include a factual finding as to Respondents Russ Anderson, Julian, and McLinko that the *Jabbari* settlement class included “All Persons for whom Wells Fargo or Wells Fargo’s current or former subsidiaries, affiliates, principals, officers, directors,

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<sup>3443</sup> MSD-665; see also Julian Amended Answer ¶ 173.

<sup>3444</sup> Russ Anderson’s ECSFM at No. 466.

<sup>3445</sup> Julian’s ECSFM at No. 540.

<sup>3446</sup> McLinko’s ECSFM at No. 540.

<sup>3447</sup> MSD-665.

<sup>3448</sup> Russ Anderson’s ECSFM at No. 467.

<sup>3449</sup> Julian’s ECSFM at No. 541.

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.”

**McLinko** incorporated Respondent Julian’s Response.<sup>3450</sup>

### **Enforcement Counsel’s Statement of Material Fact (Russ Anderson) No. 468 and (Julian and McLinko) No. 542**

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.”<sup>3451</sup>

#### **Responses:**

**Russ Anderson** incorporated Respondent Julian’s response.<sup>3452</sup>

**Julian** did not dispute the press release included what was quoted here.<sup>3453</sup> Accordingly, the Recommended Decision will include a factual finding as to Respondents Russ Anderson, Julian, and McLinko that 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.”

**McLinko** incorporated Respondent Julian’s Response.<sup>3454</sup>

### **Enforcement Counsel’s Statement of Material Fact (Russ Anderson) No. 469 and (Julian and McLinko) No. 543**

Under the *Jabbari* settlement, “Claimants will be reimbursed from the Net Settlement

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<sup>3450</sup> McLinko’s ECSFM at No. 541.

<sup>3451</sup> MSD-666.

<sup>3452</sup> Russ Anderson’s ECSFM at No. 468.

<sup>3453</sup> Julian’s ECSFM at No. 542.

<sup>3454</sup> McLinko’s ECSFM at No. 542.

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.”<sup>3455</sup>

**Responses:**

**Russ Anderson** incorporated Respondent Julian’s response.<sup>3456</sup>

**Julian** did not dispute the cited Order included what was quoted here.<sup>3457</sup> Accordingly, the Recommended Decision will include a factual finding as to Respondents Russ Anderson, Julian, and McLinko that 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.”

**McLinko** incorporated Respondent Julian’s Response.<sup>3458</sup>

**Enforcement Counsel’s Statement of Material Fact (Russ Anderson) No. 470 and (Julian and McLinko) No. 544**

Enforcement Counsel’s Statement of Material Fact (Russ Anderson) No. 470 and (Julian and McLinko) No. 544 rely on exhibits presented to this Tribunal as being non-public. Pursuant to the OCC’s Uniform Rules, while the proceedings in this administrative enforcement action are expressly required to be public, when presented with non-public documents the Administrative Law Judge is required to take all appropriate steps to preserve the confidentiality of such documents.<sup>3459</sup> Upon my review of the confidential documents supporting these Statements of Material Fact, and after weighing the expectation that all of the proceedings shall be public against the requirement that I protect against the disclosure of non-public information, I find the evidentiary value of these exhibits to be sufficiently marginal and duplicative as to warrant

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<sup>3455</sup> MSD-664.

<sup>3456</sup> Russ Anderson’s ECSFM at No. 469.

<sup>3457</sup> Julian’s ECSFM at No. 543.

<sup>3458</sup> McLinko’s ECSFM at No. 543.

<sup>3459</sup> See 12 C.F.R. § 19.33(b).

exclusion from this Order. Accordingly, this Order will not be based on any of the claims found in these Statements of Material Fact.

**Enforcement Counsel’s Statement of Material Fact (Russ Anderson) No. 471 and (Julian and McLinko) No. 545**

Enforcement Counsel’s Statement of Material Fact (Russ Anderson) No. 471 and (Julian and McLinko) No. 545 rely on exhibits presented to this Tribunal as being non-public. Pursuant to the OCC’s Uniform Rules, while the proceedings in this administrative enforcement action are expressly required to be public, when presented with non-public documents the Administrative Law Judge is required to take all appropriate steps to preserve the confidentiality of such documents.<sup>3460</sup> Upon my review of the confidential documents supporting these Statements of Material Fact, and after weighing the expectation that all of the proceedings shall be public against the requirement that I protect against the disclosure of non-public information, I find the evidentiary value of these exhibits to be sufficiently marginal and duplicative as to warrant exclusion from this Order. Accordingly, this Order will not be based on any of the claims found in these Statements of Material Fact.

**The Bank has paid billions of dollars in civil and criminal fines and incurred significant other losses as a result of the sales practices misconduct problem**

**Enforcement Counsel’s Statement of Material Fact (Russ Anderson) No. 472 and (Julian and McLinko) No. 546**

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.<sup>3461</sup>

**Responses:**

**Russ Anderson** incorporated Respondent Julian’s response.<sup>3462</sup>

Julian did not dispute the claim.<sup>3463</sup> Accordingly, the Recommended Decision will include a factual finding as to Respondent Julian and McLinko that on September 8, 2016, the Bank was

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<sup>3460</sup> See 12 C.F.R. § 19.33(b).

<sup>3461</sup> MSD-667; MSD-52; MSD-343; MSD-344.

<sup>3462</sup> Russ Anderson’s ECSFM at No. 472.

<sup>3463</sup> Julian’s ECSFM at No. 546.

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.

**McLinko** incorporated Respondent Julian’s Response.<sup>3464</sup>

**Enforcement Counsel’s Statement of Material Fact (Russ Anderson) No. 473 and (Julian and McLinko) No. 547**

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 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.”<sup>3465</sup>

**Responses:**

**Russ Anderson** incorporated Respondent Julian’s response.<sup>3466</sup>

**Julian** responded that the claim was disputed, but did not dispute the claim presented and instead averred the claim lacked “context”.<sup>3467</sup> I find an insufficient factual basis has been presented to establish a dispute in this Response to create a controverted material fact. Accordingly, the Recommended Decision will include a factual finding as to Respondents Russ Anderson, Julian, and McLinko that 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 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.”

**McLinko** incorporated Respondent Julian’s Response.<sup>3468</sup>

**Enforcement Counsel’s Statement of Material Fact (Russ Anderson) No. 474 and (Julian and McLinko) No. 548**

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<sup>3464</sup> McLinko’s ECSFM at No. 546.

<sup>3465</sup> MSD-668; MSD-679.

<sup>3466</sup> Russ Anderson’s ECSFM at No. 473.

<sup>3467</sup> Julian’s ECSFM at No. 547.

<sup>3468</sup> McLinko’s ECSFM at No. 547.



The “asset cap” has had a significant financial impact on the Bank.<sup>3469</sup>

**Responses:**

**Russ Anderson** incorporated Respondent Julian’s response.<sup>3470</sup>

**Julian** responded that the claim was disputed, but did not dispute the claim presented and instead averred the claim lacked “context”.<sup>3471</sup> I find an insufficient factual basis has been presented to establish a dispute in this Response to create a controverted material fact. Accordingly, the Recommended Decision will include a factual finding as to Respondents Russ Anderson, Julian, and McLinko that the “asset cap” has had a significant financial impact on the Bank.

**McLinko** incorporated Respondent Julian’s Response.<sup>3472</sup>

**Enforcement Counsel’s Statement of Material Fact (Russ Anderson) No. 475 and (Julian and McLinko) No. 549**

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.<sup>3473</sup>

**Responses:**

**Russ Anderson** incorporated Respondent Julian’s response.<sup>3474</sup>

**Julian** responded that the claim was disputed, but did not dispute the claim presented and instead averred the claim “misrepresents” the nature of the Wells Fargo Settlement.<sup>3475</sup> I find an insufficient factual basis has been presented to establish a dispute in this Response to create a controverted material fact. Accordingly, the Recommended Decision will include a factual finding as to Respondents Russ Anderson, Julian, and McLinko that 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.

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<sup>3469</sup> 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”).

<sup>3470</sup> Russ Anderson’s ECSFM at No. 474.

<sup>3471</sup> Julian’s ECSFM at No. 548.

<sup>3472</sup> McLinko’s ECSFM at No. 548.

<sup>3473</sup> MSD-670; MSD-673; MSD-678.

<sup>3474</sup> Russ Anderson’s ECSFM at No. 475.

<sup>3475</sup> Julian’s ECSFM at No. 549.

**McLinko** incorporated Respondent Julian's Response.<sup>3476</sup>

**Enforcement Counsel's Statement of Material Fact (Russ Anderson) No. 476 and (Julian and McLinko) No. 550**

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.<sup>3477</sup>

**Responses:**

**Russ Anderson** incorporated Respondent Julian's response.<sup>3478</sup>

**Julian** responded that the claim was disputed, but did not dispute the claim presented and instead averred the claim "misrepresents" the nature of the Wells Fargo Settlement.<sup>3479</sup> I find an insufficient factual basis has been presented to establish a dispute in this Response to create a controverted material fact. Accordingly, the Recommended Decision will include a factual finding as to Respondents Russ Anderson, Julian, and McLinko that 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.

**McLinko** incorporated Respondent Julian's Response.<sup>3480</sup>

**Enforcement Counsel's Statement of Material Fact (Russ Anderson) No. 477 and (Julian and McLinko) No. 551**

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."<sup>3481</sup>

**Responses:**

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<sup>3476</sup> McLinko's ECSFM at No. 549.

<sup>3477</sup> MSD-671; MSD-672.

<sup>3478</sup> Russ Anderson's ECSFM at No. 476.

<sup>3479</sup> Julian's ECSFM at No. 550.

<sup>3480</sup> McLinko's ECSFM at No. 550.

<sup>3481</sup> MSD-289A (Sloan Tr.) at 260:8-16.

**Russ Anderson** incorporated Respondent Julian’s response.<sup>3482</sup>

**Julian** responded that the claim was disputed, but did not dispute the testimony was as is quoted here, but avers the witness “hyperbolized” during that testimony.<sup>3483</sup> I find an insufficient factual basis has been presented to establish a dispute in this Response to create a controverted material fact. Accordingly, the Recommended Decision will include a factual finding as to Respondents Russ Anderson, Julian, and McLinko that 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.”

**McLinko** incorporated Respondent Julian’s Response.<sup>3484</sup>

### **Enforcement Counsel’s Statement of Material Fact (Russ Anderson) No. 478 and (Julian and McLinko) No. 552**

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.<sup>3485</sup>

#### **Responses:**

**Russ Anderson** incorporated Respondent Julian’s response.<sup>3486</sup>

**Julian** responded that the claim was disputed, but did not dispute the claim but avers the Statement relies on expert opinions for which the author is unqualified.<sup>3487</sup> I find an insufficient factual basis has been presented to establish a dispute in this Response to create a controverted material fact. Accordingly, the Recommended Decision will include a factual finding as to Respondents Russ Anderson, Julian, and McLinko 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.

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<sup>3482</sup> Russ Anderson’s ECSFM at No. 477.

<sup>3483</sup> Julian’s ECSFM at No. 551.

<sup>3484</sup> McLinko’s ECSFM at No. 551.

<sup>3485</sup> 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.

<sup>3486</sup> Russ Anderson’s ECSFM at No. 478.

<sup>3487</sup> Julian’s ECSFM at No. 552.

**McLinko** incorporated Respondent Julian’s Response.<sup>3488</sup>

**Enforcement Counsel’s Statement of Material Fact (Russ Anderson) No. 479 and (Julian and McLinko No. 553**

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.<sup>3489</sup>

**Responses:**

**Russ Anderson** incorporated Respondent Julian’s response.<sup>3490</sup>

**Julian** responded that the claim was disputed, but did not dispute the claim but avers the Statement “mischaracterizes” the Declaration of W. Scott Champion.<sup>3491</sup> I find an insufficient factual basis has been presented to establish a dispute in this Response to create a controverted material fact. Accordingly, the Recommended Decision will include a factual finding as to Respondents Russ Anderson, Julian, and McLinko that 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.

**McLinko** incorporated Respondent Julian’s Response.<sup>3492</sup>

**Enforcement Counsel’s Statement of Material Fact (Russ Anderson) No. 480 and (Julian and McLinko) No. 554**

The Bank’s 10-Q 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

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<sup>3488</sup> McLinko’s ECSFM at No. 552.

<sup>3489</sup> MSD-564 (Champion Decl.); MSD-267 (NBE Smith Expert Report) at ¶ 148; MSD-289A (Sloan Tr.) at 255:10-18.

<sup>3490</sup> Russ Anderson’s ECSFM at No. 479.

<sup>3491</sup> Julian’s ECSFM at No. 553.

<sup>3492</sup> McLinko’s ECSFM at No. 553.

was approximately \$3.9 billion as of June 30, 2019.”<sup>3493</sup>

**Responses:**

**Russ Anderson** incorporated Respondent Julian’s response, adding the averment that she has no authority over settlement decisions or that any losses resulting from settlement can be attributed to her.<sup>3494</sup>

Julian did not dispute the claim.<sup>3495</sup> Accordingly, the Recommended Decision will include a factual finding as to Respondents Russ Anderson, Julian, and McLinko that the Bank’s 10-Q 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.”

**McLinko** incorporated Respondent Julian’s Response.<sup>3496</sup>

**Enforcement Counsel’s Statement of Material Fact (Russ Anderson) No. 481 and Julian and McLinko No. 555**

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.<sup>3497</sup>

**Responses:**

**Russ Anderson** incorporated Respondent Julian’s response, adding the averment that she has no authority over settlement decisions or that any losses resulting from settlement can be attributed to her.<sup>3498</sup>

**Julian** responded that the claim was disputed, but did not dispute the claim presented and instead averred the claim lacked “context”.<sup>3499</sup> I find an insufficient factual basis has been presented to establish a dispute in this Response to create a controverted material fact.

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<sup>3493</sup> Julian Amended Answer ¶ 184; McLinko Amended Answer ¶ 184.

<sup>3494</sup> Russ Anderson’s ECSFM at No. 480.

<sup>3495</sup> Julian’s ECSFM at No. 554.

<sup>3496</sup> McLinko’s ECSFM at No. 554.

<sup>3497</sup> MSD-1 at 1-4; MSD-674.

<sup>3498</sup> Russ Anderson’s ECSFM at No. 481.

<sup>3499</sup> Julian’s ECSFM at No. 555.

Accordingly, the Recommended Decision will include a factual finding as to Respondents Russ Anderson, Julian, and McLinko 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.

**McLinko** incorporated Respondent Julian’s Response.<sup>3500</sup>

### **Enforcement Counsel’s Statement of Material Fact (Russ Anderson) No. 482 and (Julian and McLinko) No. 556**

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.”<sup>3501</sup>

#### **Responses:**

**Russ Anderson** incorporated Respondent Julian’s response, adding the averment that she has no authority over settlement decisions or that any losses resulting from settlement can be attributed to her.<sup>3502</sup>

**Julian** responded that the claim was disputed, but did not dispute the claim but avers the Statement “mischaracterizes” the press release issued by the Department of Justice.<sup>3503</sup> I find an insufficient factual basis has been presented to establish a dispute in this Response to create a controverted material fact. Accordingly, the Recommended Decision will include a factual finding as to Respondents Russ Anderson, Julian, and McLinko that 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.”

**McLinko** incorporated Respondent Julian’s Response.<sup>3504</sup>

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<sup>3500</sup> McLinko’s ECSFM at No. 555.

<sup>3501</sup> MSD-674.

<sup>3502</sup> Russ Anderson’s ECSFM at No. 482.

<sup>3503</sup> Julian’s ECSFM at No. 556.

<sup>3504</sup> McLinko’s ECSFM at No. 556.

**The Bank’s reputation has suffered immense damage as a result of the sales practices misconduct problem and Respondent Russ Anderson’s conduct and the Bank has spent hundreds of millions of dollars trying to repair it**

**Enforcement Counsel’s Statement of Material Fact (Russ Anderson) No. 483 and (Julian and McLinko) No. 557**

Wells Fargo’s reputation was significantly impacted as a result of the sales practices misconduct problem.<sup>3505</sup>

**Responses:**

**Russ Anderson** incorporated Respondent Julian’s response.<sup>3506</sup>

**Julian** responded that the claim was disputed, but did not dispute the claim presented and instead averred the claim lacked “context”.<sup>3507</sup> I find an insufficient factual basis has been presented to establish a dispute in this Response to create a controverted material fact. Accordingly, the Recommended Decision will include a factual finding as to Respondents Russ Anderson, Julian, and McLinko that Wells Fargo’s reputation was significantly impacted as a result of the sales practices misconduct problem.

**McLinko** incorporated Respondent Julian’s Response.<sup>3508</sup>

**Enforcement Counsel’s Statement of Material Fact (Russ Anderson) No. 484 and (Julian and McLinko) No. 558**

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.”<sup>3509</sup>

**Responses:**

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<sup>3505</sup> 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.

<sup>3506</sup> Russ Anderson’s ECSFM at No. 483.

<sup>3507</sup> Julian’s ECSFM at No. 557.

<sup>3508</sup> McLinko’s ECSFM at No. 557.

<sup>3509</sup> MSD- 565.

**Russ Anderson** incorporated Respondent Julian’s response.<sup>3510</sup>

**Julian** responded that the claim was disputed, but did not dispute the claim presented and instead averred the quoted language was taken “out of context”.<sup>3511</sup> I find an insufficient factual basis has been presented to establish a dispute in this Response to create a controverted material fact. Accordingly, the Recommended Decision will include a factual finding as to Respondents Russ Anderson, Julian, and McLinko that 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.”

**McLinko** incorporated Respondent Julian’s Response.<sup>3512</sup>

### **Enforcement Counsel’s Statement of Material Fact (Russ Anderson) No. 485 and (Julian and McLinko) No. 559**

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.<sup>3513</sup>

#### **Responses:**

**Russ Anderson** incorporated Respondent Julian’s response.<sup>3514</sup>

**Julian** responded that the claim was disputed, but did not dispute the claim presented and instead averred the *American Banker* article contains no factual basis for its assertions.<sup>3515</sup> I find an insufficient factual basis has been presented to establish a dispute in this Response to create a controverted material fact. Accordingly, the Recommended Decision will include a factual finding as to Respondents Russ Anderson, Julian, and McLinko that 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 .

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<sup>3510</sup> Russ Anderson’s ECSFM at No. 484.

<sup>3511</sup> Julian’s ECSFM at No. 558.

<sup>3512</sup> McLinko’s ECSFM at No. 558.

<sup>3513</sup> MSD-675; Julian Amended Answer ¶ 175.

<sup>3514</sup> Russ Anderson’s ECSFM at No. 485.

<sup>3515</sup> Julian’s ECSFM at No. 559.



. . [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.

**McLinko** incorporated Respondent Julian’s Response.<sup>3516</sup>

### **Enforcement Counsel’s Statement of Material Fact (Russ Anderson) No. 486 and (Julian and McLinko) No. 560**

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.”<sup>3517</sup>

#### **Responses:**

**Russ Anderson** incorporated Respondent Julian’s response.<sup>3518</sup>

**Julian** responded that the claim was disputed, but did not dispute the claim presented and instead averred the news release “omits the necessary context.”<sup>3519</sup> I find an insufficient factual basis has been presented to establish a dispute in this Response to create a controverted material fact. Accordingly, the Recommended Decision will include a factual finding as to Respondents Russ Anderson, Julian, and McLinko that 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.”

**McLinko** incorporated Respondent Julian’s Response.<sup>3520</sup>

### **Enforcement Counsel’s Statement of Material Fact (Russ Anderson) No. 487 and (Julian and McLinko) No. 561**

In explaining how the Bank’s sales practices misconduct problem “so clearly harmed [the

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<sup>3516</sup> McLinko’s ECSFM at No. 559.

<sup>3517</sup> MSD-676.

<sup>3518</sup> Russ Anderson’s ECSFM at No. 486.

<sup>3519</sup> Julian’s ECSFM at No. 560.

<sup>3520</sup> McLinko’s ECSFM at No. 560.

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.”<sup>3521</sup>

**Responses:**

**Russ Anderson** incorporated Respondent Julian’s response.<sup>3522</sup>

**Julian** responded that the claim was disputed, but did not dispute the claim presented and instead averred the quoted testimony was taken “out of context”.<sup>3523</sup> I find an insufficient factual basis has been presented to establish a dispute in this Response to create a controverted material fact. Accordingly, the Recommended Decision will include a factual finding as to Respondents Russ Anderson, Julian, and McLinko that 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.”

**McLinko** incorporated Respondent Julian’s Response.<sup>3524</sup>

**Enforcement Counsel’s Statement of Material Fact (Russ Anderson) No. 488 and (Julian and McLinko) No. 562**

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.”<sup>3525</sup>

**Responses:**

**Russ Anderson** incorporated Respondent Julian’s response.<sup>3526</sup>

**Julian** responded that the claim was disputed, but did not dispute the claim presented and

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<sup>3521</sup> MSD-289A (Sloan Tr.) at 43:15-23.

<sup>3522</sup> Russ Anderson’s ECSFM at No. 487.

<sup>3523</sup> Julian’s ECSFM at No. 561.

<sup>3524</sup> McLinko’s ECSFM at No. 561.

<sup>3525</sup> MSD- 677; Julian Amended Answer ¶ 178; McLinko Amended Answer ¶ 178.

<sup>3526</sup> Russ Anderson’s ECSFM at No. 488.

instead averred the release “does not include the necessary context.”<sup>3527</sup> I find an insufficient factual basis has been presented to establish a dispute in this Response to create a controverted material fact. Accordingly, the Recommended Decision will include a factual finding as to Respondents Russ Anderson, Julian, and McLinko that 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.”

**McLinko** incorporated Respondent Julian’s Response.<sup>3528</sup>

### **Enforcement Counsel’s Statement of Material Fact (Russ Anderson) No. 489 and (Julian and McLinko) No. 563**

The “Re-Established” marketing campaign cost the Bank hundreds of millions of dollars.<sup>3529</sup>

#### **Responses:**

**Russ Anderson** incorporated Respondent Julian’s response.<sup>3530</sup>

**Julian** responded that the claim was disputed, but did not dispute the testimony was as is quoted here, but avers Mr. Sloan “hyperbolized” about the cost of the campaign.<sup>3531</sup> I find an insufficient factual basis has been presented to establish a dispute in this Response to create a controverted material fact. Accordingly, the Recommended Decision will include a factual finding as to Respondents Russ Anderson, Julian, and McLinko that the “Re-Established” marketing campaign cost the Bank hundreds of millions of dollars.

**McLinko** incorporated Respondent Julian’s Response.<sup>3532</sup>

### **Enforcement Counsel’s Statement of Material Fact (Russ Anderson) No. 490 and (Julian and McLinko) No. 564**

The sales practices misconduct problem also negatively impacted the Bank’s ability to attract new customers. The current Head of the Community Bank Mary Mack testified on October 26,

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<sup>3527</sup> Julian’s ECSFM at No. 562.

<sup>3528</sup> McLinko’s ECSFM at No. 562.

<sup>3529</sup> MSD-293A (Hardison Tr.) at 36:14-38:18; MSD-289A (Sloan Tr.) at 254:3-15.

<sup>3530</sup> Russ Anderson’s ECSFM at No. 489.

<sup>3531</sup> Julian’s ECSFM at No. 563.

<sup>3532</sup> McLinko’s ECSFM at No. 563.

2018 that the scandal hampered the ability of the Community Bank to attract customers.<sup>3533</sup> 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.”<sup>3534</sup>

**Responses:**

**Russ Anderson** incorporated Respondent Julian’s response.<sup>3535</sup>

**Julian** responded that the claim was disputed, but did not dispute the claim presented and instead averred the quoted testimony was taken “out of context”.<sup>3536</sup> I find an insufficient factual basis has been presented to establish a dispute in this Response to create a controverted material fact. Accordingly, the Recommended Decision will include a factual finding as to Respondents Russ Anderson, Julian, and McLinko that the sales practices misconduct problem also negatively impacted 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.<sup>3537</sup> 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.”

**McLinko** incorporated Respondent Julian’s Response.<sup>3538</sup>

**Sales Practices Misconduct, which persisted at the Bank due To respondent Julian’s and Respondent McLinko’s conduct, harmed its customers and breached their trust**

**Enforcement Counsel’s Statement of Material Fact (Julian and McLinko) No. 535 (see Russ Anderson No. 461)**

**Enforcement Counsel’s Statement of Material Fact (Julian and McLinko) No. 536 (see Russ Anderson No. 462)**

**Enforcement Counsel’s Statement of Material Fact (Julian and McLinko) No. 537 (see**

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<sup>3533</sup> MSD-472 (Mack Tr.) at 241:16-242:1.

<sup>3534</sup> MSD-289A (Sloan Tr.) at 257:18-23.

<sup>3535</sup> Russ Anderson’s ECSFM at No. 490.

<sup>3536</sup> Julian’s ECSFM at No. 564.

<sup>3537</sup> MSD-472 (Mack Tr.) at 241:16-242:1.

<sup>3538</sup> McLinko’s ECSFM at No. 564.

**Russ Anderson No. 463)**

**Enforcement Counsel's Statement of Material Fact (Julian and McLinko) No. 538 (see Russ Anderson No. 464)**

**Enforcement Counsel's Statement of Material Fact (Julian and McLinko) No. 539 (see Russ Anderson No. 465)**

**Enforcement Counsel's Statement of Material Fact (Julian and McLinko) No. 540 (see Russ Anderson No. 466)**

**Enforcement Counsel's Statement of Material Fact (Julian and McLinko) No. 541 (see Russ Anderson No. 467)**

**Enforcement Counsel's Statement of Material Fact (Julian and McLinko) No. 542 (see Russ Anderson No. 468)**

**Enforcement Counsel's Statement of Material Fact (Julian and McLinko) No. 543 (see Russ Anderson No. 469)**

**Enforcement Counsel's Statement of Material Fact (Julian and McLinko) No. 544 (see Russ Anderson No. 470)**

**Enforcement Counsel's Statement of Material Fact (Julian and McLinko) No. 545 (see Russ Anderson No. 471)**

**Enforcement Counsel's Statement of Material Fact (Julian and McLinko) No. 546 (see Russ Anderson No. 472)**

**Enforcement Counsel's Statement of Material Fact (Julian and McLinko) No. 547 (see Russ Anderson No. 473)**

**Enforcement Counsel's Statement of Material Fact (Julian and McLinko) No. 548 (see Russ Anderson No. 474)**

**Enforcement Counsel's Statement of Material Fact (Julian and McLinko) No. 549 (see Russ Anderson No. 475)**

**Enforcement Counsel's Statement of Material Fact (Julian and McLinko) No. 550 (see Russ Anderson No. 476)**

**Enforcement Counsel's Statement of Material Fact (Julian and McLinko) No. 551 (see Russ Anderson No. 477)**

**Enforcement Counsel's Statement of Material Fact (Julian and McLinko) No. 552 (see Russ Anderson No. 478)**

**Enforcement Counsel's Statement of Material Fact (Julian and McLinko) No. 553 (see Russ Anderson No. 479)**

**Enforcement Counsel's Statement of Material Fact (Julian and McLinko) No. 554 (see**

**Russ Anderson No. 480)**

**Enforcement Counsel's Statement of Material Fact (Julian and McLinko) No. 555 (see Russ Anderson No. 481)**

**Enforcement Counsel's Statement of Material Fact (Julian and McLinko) No. 556 (see Russ Anderson No. 482)**

**Enforcement Counsel's Statement of Material Fact (Julian and McLinko) No. 557 (see Russ Anderson No. 483)**

**Enforcement Counsel's Statement of Material Fact (Julian and McLinko) No. 558 (see Russ Anderson No. 484)**

**Enforcement Counsel's Statement of Material Fact (Julian and McLinko) No. 559 (see Russ Anderson No. 485)**

**Enforcement Counsel's Statement of Material Fact (Julian and McLinko) No. 560 (see Russ Anderson No. 486)**

**Enforcement Counsel's Statement of Material Fact (Julian and McLinko) No. 561 (see Russ Anderson No. 487)**

**Enforcement Counsel's Statement of Material Fact (Julian and McLinko) No. 562 (see Russ Anderson No. 488)**

**Enforcement Counsel's Statement of Material Fact (Julian and McLinko) No. 563 (see Russ Anderson No. 489)**

**Enforcement Counsel's Statement of Material Fact (Julian and McLinko) No. 564 (see Russ Anderson No. 490)**

**Respondent Russ Anderson received financial gain or other benefit from her misconduct**

**Enforcement Counsel's Statement of Material Fact (Russ Anderson) No. 491**

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.<sup>3539</sup>

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<sup>3539</sup> Russ Anderson 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.

## Responses:

**Russ Anderson** incorporated Respondent Julian’s response to (Julian and McLinko) No. 523.<sup>3540</sup> That Statement averred that 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. Respondent Julian’s Response was to dispute the claim on the basis that the cited evidence “relates to the financial performance of Wells Fargo & Co., not Wells Fargo Bank, N.A., the relevant entity in this litigation”; and on the disputed ground that “any material portion of the Community Bank’s revenue and profits were attributable to sales practices misconduct.”<sup>3541</sup>

I find an insufficient factual basis has been presented to establish a dispute in this Response to create a controverted material fact. Accordingly, the Recommended Decision will include a factual finding as to Respondent Russ Anderson that 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.

## Enforcement Counsel’s Statement of Material Fact (Russ Anderson) No. 492

The Community Bank’s business model was financially profitable for Wells Fargo and was key to its growth and cross-sell success.<sup>3542</sup>

## Responses:

**Russ Anderson** did not dispute the claim, other than to aver the cited evidence does not establish that the cross-sell metric materially affected the Community Bank’s performance during her tenure.<sup>3543</sup> She also incorporated Respondent Julian’s response to (Julian and McLinko) No. 524. In that response, Respondent Julian disputed the claim that the Community Bank’s business model was financially profitable for Wells Fargo and was key to its growth and cross-sell success by citing to the report of FTI Consulting, which determined that the maximum impact on the cross-sell metric from potential sales practices misconduct

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<sup>3540</sup> Russ Anderson’s ECSFM at No. 491.

<sup>3541</sup> Julian’s ECSFM at No. 523.

<sup>3542</sup> Russ Anderson Amended Answer ¶ 6; 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.”).

<sup>3543</sup> Russ Anderson’s ECSFM at No. 492.

was 0.04, which would have been immaterial to Wells Fargo's stock price<sup>3544</sup>.

It is not clear that a factual finding that the Community Bank's business model was financially profitable for Wells Fargo and was key to its growth and cross-sell success is a material fact, given the issues presented by the Notice of Charges. In her Amended Answer, Respondent Russ Anderson admitted that the Community Bank's business model was highly profitable because it resulted in a greater number of legitimate sales than would have been possible without the unreasonable sales goals and sales pressure; and admitted that the Bank touted a metric known as "cross-sell," or the "cross-sell ratio," that measured the number of products sold per household.<sup>3545</sup> Given this Answer, I find the disputed claims presented by Respondent Russ Anderson are not material to the issues presented in the Notice of Charges. Accordingly, I find an insufficient factual basis has been presented to establish a dispute in this Response to create a controverted material fact. Accordingly, the Recommended Decision will include a factual finding as to Respondent Russ Anderson that the Community Bank's business model was financially profitable for Wells Fargo and was key to its growth and cross-sell success

#### **Enforcement Counsel's Statement of Material Fact (Russ Anderson) No. 493**

Respondent Russ Anderson admits the Community Bank's business model was financially profitable for the Bank.<sup>3546</sup>

#### **Responses:**

**Russ Anderson** did not dispute this claim.<sup>3547</sup> Accordingly, the Recommended Decision will include a factual finding as to Respondent Russ Anderson that the Community Bank's business model was financially profitable for the Bank.

#### **Enforcement Counsel's Statement of Material Fact (Russ Anderson) No. 494**

None of Respondent Russ Anderson's expert witnesses deny that the business model was financially profitable for the Bank.<sup>3548</sup>

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<sup>3544</sup> Julian's ECSFM at No. 524, citing MSD-280 at 46; MSD-283A.

<sup>3545</sup> Russ Anderson Amended Answer ¶ 6.

<sup>3546</sup> MSD-266 (Russ Anderson Dep. Tr.) at 35:15-36:10; 87:16- 88:24; see also MSD-294 (Wipprecht Tr.) at 133:4-11.

<sup>3547</sup> Russ Anderson's ECSFM at No. 493.

<sup>3548</sup> See MSD-281 (Expert Report of James Wilcox) at 13; MSD-264 (Expert Report of Kathlyn Farrell) at 5; MSD-262 (Expert Report of David Abshier) at 5.



**Responses:**

**Russ Anderson** response does not address findings presented by her expert witnesses, and as such does not controvert the claim.<sup>3549</sup> Accordingly, the Recommended Decision will include a factual finding as to Respondent Russ Anderson that none of her expert witnesses deny that the business model was financially profitable for the Bank.

**Enforcement Counsel’s Statement of Material Fact (Russ Anderson) No. 495**

Respondent Russ Anderson’s compensation “was based partly on the overall performance of Wells Fargo.”<sup>3550</sup>

**Responses:**

**Russ Anderson** did not dispute that her Amended Answer contains the quoted text.<sup>3551</sup> Accordingly, the Recommended Decision will include a factual finding as to Respondent Russ Anderson that none of her expert witnesses deny that the business model was financially profitable for the Bank.

**Enforcement Counsel’s Statement of Material Fact (Russ Anderson) No. 496**

From 2004 through 2015, Respondent Russ Anderson received annual cash bonus payments that totaled more \$2.732 million.<sup>3552</sup>

**Responses:**

**Russ Anderson** does not dispute the claim, but avers the supporting evidence cited by Enforcement Counsel is inadmissible.<sup>3553</sup> Finding an insufficient basis for exclusion, the stated objections are overruled. Accordingly, the Recommended Decision will include a factual finding as to Respondent Russ Anderson that from 2004 through 2015, Respondent Russ Anderson received annual cash bonus payments that totaled more \$2.732 million.

**Enforcement Counsel’s Statement of Material Fact (Russ Anderson) No. 497**

Respondent Russ Anderson received equity compensation under the Company’s Long-Term

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<sup>3549</sup> Russ Anderson’s ECSFM at No. 494.

<sup>3550</sup> Russ Anderson Amended Answer ¶ 58.

<sup>3551</sup> Russ Anderson’s ECSFM at No. 495.

<sup>3552</sup> MSD-659.

<sup>3553</sup> Russ Anderson’s ECSFM at No. 496.

Incentive Compensation Plan (“LTICP”) in the form of stock options and Restricted Share Rights (“RSR”) awards.<sup>3554</sup>

**Responses:**

**Russ Anderson** disputed the claim, offering no supporting evidence but asserting that the claim relies on exhibits which she avers are unreliable hearsay and which do not establish an applicable timeframe.<sup>3555</sup>

I find an insufficient factual basis has been presented to establish a dispute in this Response to create a controverted material fact. Accordingly, the Recommended Decision will include a factual finding as to Respondent Russ Anderson that she received equity compensation under the Company’s Long-Term Incentive Compensation Plan in the form of stock options and Restricted Share Rights awards.

**Enforcement Counsel’s Statement of Material Fact (Russ Anderson) No. 498**

From 2004 through 2009, Respondent Russ Anderson received annual awards of stock options.<sup>3556</sup>

**Responses:**

**Russ Anderson** disputed the claim, offering no supporting evidence but asserting that the claim relies on exhibits which she avers are unreliable hearsay.<sup>3557</sup>

I find an insufficient factual basis has been presented to establish a dispute in this Response to create a controverted material fact. Accordingly, the Recommended Decision will include a factual finding as to Respondent Russ Anderson that 2004 through 2009 she received annual awards of stock options.

**Enforcement Counsel’s Statement of Material Fact (Russ Anderson) No. 499**

Between 2012 and 2017, Respondent Russ Anderson’s exercise of those options yielded a total taxable gain of over \$5.037 million.<sup>3558</sup>

**Responses:**

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<sup>3554</sup> MSD-659; MSD-686 at 1308-10.

<sup>3555</sup> Russ Anderson’s ECSFM at No. 497.

<sup>3556</sup> MSD-659.

<sup>3557</sup> Russ Anderson’s ECSFM at No. 498.

<sup>3558</sup> MSD-659.

**Russ Anderson** disputed the claim, offering no supporting evidence but asserting that the claim relies on exhibits which she avers are unreliable hearsay.<sup>3559</sup>

I find an insufficient factual basis has been presented to establish a dispute in this Response to create a controverted material fact. Accordingly, the Recommended Decision will include a factual finding as to Respondent Russ Anderson that between 2012 and 2017 her exercise of those options yielded a total taxable gain of over \$5.037 million.

#### **Enforcement Counsel’s Statement of Material Fact (Russ Anderson) No. 500**

From 2010 through 2016, Respondent Russ Anderson received annual equity awards in the form of RSR Awards that resulted in a realized taxable gain of over \$2.441 million.<sup>3560</sup>

#### **Responses:**

**Russ Anderson** disputed the claim, offering no supporting evidence but asserting that the claim relies on exhibits which she avers are unreliable hearsay.<sup>3561</sup>

I find an insufficient factual basis has been presented to establish a dispute in this Response to create a controverted material fact. Accordingly, the Recommended Decision will include a factual finding as to Respondent Russ Anderson that from 2010 through 2016 she received annual equity awards in the form of RSR Awards that resulted in a realized taxable gain of over \$2.441 million.

#### **Statements Offering Additional Material Facts**

Respondent Julian included in his Statement “additional material fact” statements.<sup>3562</sup>

The process of considering a party’s motion seeking summary disposition is controlled by the OCC’s Uniform Rules.<sup>3563</sup> A party who believes there is “no genuine issue of material fact” is authorized to seek to have a determination that the party is entitled to a decision “as a matter of law.”<sup>3564</sup> The motion seeking such a determination “must be accompanied by a statement of material facts as to which the moving party contends there is no genuine

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<sup>3559</sup> Russ Anderson’s ECSFM at No. 499.

<sup>3560</sup> MSD-659.

<sup>3561</sup> Russ Anderson’s ECSFM at No. 500.

<sup>3562</sup> See David Julian’s Statement of Additional Material Facts, Nos. 565 through 1129, which follow Julian’s Responses to Enforcement Counsel’s Statement of Material Facts Nos. 1 through 564.

<sup>3563</sup> 12 C.F.R. § 19.29.

<sup>3564</sup> 12 C.F.R. § 19.29(a).

issue.”<sup>3565</sup> Enforcement Counsel is the movant for this Motion, and submitted their statements of material fact – one for their Motion seeking summary disposition against Respondent Russ Anderson, and another one for their Motion seeking summary disposition against Respondents Julian and McLinko.

The OCC’s Uniform Rules also permit the party opposing summary disposition to file “a statement setting forth those material facts as to which he or she contends a genuine dispute exists.”<sup>3566</sup> The Rules also permit the opposing party to submit a brief “containing the points and authorities in support of the contention that summary disposition is inappropriate.”<sup>3567</sup>

Respondent Julian is in this instance responding to Enforcement Counsel’s summary disposition motion – allowing him to file “a statement setting forth those material facts as to which he or she contends a genuine dispute exists.”<sup>3568</sup> His submissions under Numbers 565 through 1129 do not respond to any claim raised by Enforcement Counsel – they are free-standing claims, taking the form of an affirmative claim not responsive to any claim raised by Enforcement Counsel.<sup>3569</sup>

The same is true with Respondent McLinko, who submitted Statements of Material Fact Nos. 565 to 852.<sup>3570</sup>

Unlike the claims submitted by Enforcement Counsel, which the Uniform Rules permit Respondents Julian and McLinko to respond to, there is no opportunity under the OCC’s Rules that would permit Enforcement Counsel to respond to Respondent Julian’s submissions Nos. 565 to 1129 or Respondent McLinko’s submissions Nos. 565 to 852.<sup>3571</sup>

Nothing in the OCC’s Uniform Rules permit a responding party to advance affirmative statements like those in Respondent Julian’s submissions Nos. 565 to 1129 or Respondent McLinko’s submissions Nos. 565 to 852; and neither Respondent has presented authority that would allow these submissions. Given that under those same rules Enforcement Counsel would not permitted to file responses challenging affirmative statements like

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<sup>3565</sup> 12 C.F.R. § 19.29(b)(2).

<sup>3566</sup> 12 C.F.R. § 19.29(b)(2).

<sup>3567</sup> 12 C.F.R. § 19.29(b)(2).

<sup>3568</sup> 12 C.F.R. § 19.29(b)(2).

<sup>3569</sup> Response of Respondent David Julian to Enforcement Counsel’s Statement of Material Facts as to Respondent David Julian, filed May 21, 2021.

<sup>3570</sup> Respondent Paul McLinko’s Response to Enforcement Counsel’s Statement of Material Facts as to Respondents David Julian and Paul McLinko, filed May 21, 2021.

<sup>3571</sup> 12 C.F.R. § 19.29.

those submitted by Respondents Julian and McLinko, I find no legal basis exists for Respondents Julian's or McLinko's submissions to be considered in the summary disposition process. Inasmuch as Respondents Julian or McLinko have not sought leave, or been granted leave, to present affirmative statements not tied to the Statements of Material Fact presented by Enforcement Counsel, I order stricken Respondent Julian's submissions Nos. 565 to 1129 and Respondent McLinko's submissions Nos. 565 to 852. The statements will remain in the record as proffers, but the substance of those submissions will not be taken into account in determining the merits of Enforcement Counsel's summary disposition motion regarding Respondents Julian or McLinko.

### **Order on Enforcement Counsel's Motions**

Pursuant to 12 C.F.R. § 19.30, upon determining that Enforcement Counsel is entitled to summary disposition as to certain of the claims presented in their two motions seeking summary disposition, this Order denies Enforcement Counsel's Motions for Summary Disposition, enters the above determinations, and sets for hearing all of those claims not determined through these Motions.

### **Supplemental Pre-Hearing Order**

Given the substantial determinations reflected above, the parties are directed to submit supplemental prehearing statements that take into account the matters that have now been determined, as further evidence will not be taken with respect to claims that have been determined through this Order. Supplemental prehearing statements will be timely if filed by August 6, 2021. The deadline for final prehearing motions, including motions in limine based on the determinations reflected above, is amended from July 30, 2021 to August 23, 2021, with responses due not later than August 30, 2021.

It is so ordered.

Date: July 20, 2021

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