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19 **IN THE UNITED STATES DISTRICT COURT**  
20 **FOR THE SOUTHERN DISTRICT OF CALIFORNIA**

21 FEDERAL DEPOSIT INSURANCE  
22 CORPORATION as Receiver for  
23 LA JOLLA BANK, FSB,

24 Plaintiff,

25 v.

26 RICHARD K. COLBOURNE, RICK F.  
27 HALL, and MARTIN RODRIGUEZ,

28 Defendants.

**CASE NO. : '13CV0351 GPC WMC**

**COMPLAINT**

[PLAINTIFF DEMANDS JURY TRIAL PURSUANT TO FEDERAL RULE OF CIVIL PROCEDURE 38 and CivLR 38.1]

Plaintiff, the Federal Deposit Insurance Corporation as Receiver for La Jolla Bank, FSB (“FDIC-R”), complains and alleges as follows:

**I. INTRODUCTION**

1. The FDIC-R seeks to recover damages in excess of \$57 million

1 resulting from the negligence, gross negligence, and breaches of fiduciary duty by  
2 former La Jolla Bank, FSB (“LJB” or “Bank”) officers Rick F. Hall (“Hall”)<sup>1</sup> and  
3 Martin Rodriguez (“Rodriguez”) and former LJB director Richard K. Colbourne  
4 (“Colbourne”) (collectively, “Defendants”).

5       2. Defendants’ acts and omissions violated LJB’s loan policy (the “Loan  
6 Policy”) and prudent, safe, and sound lending practices, and included, among other  
7 things, recommending or approving speculative commercial real estate loans  
8 despite known adverse economic conditions in the local real estate market;  
9 recommending or approving credit to borrowers who were not creditworthy or were  
10 known to be in financial difficulty; recommending or approving loans without  
11 conducting or insisting upon sufficient underwriting; recommending or approving  
12 credit based on inadequate information about the financial condition of prospective  
13 borrowers and guarantors and without adequately analyzing cash flow and other  
14 critical financial information; recommending or approving loans without adequate  
15 appraisals; recommending or approving loans that violated the Bank’s limit on  
16 loans-to-any-one-borrower (“LTAOB”); and recommending or approving loans  
17 with excessive loan-to-value (“LTV”) ratios.

18       3. As an LJB officer, Hall breached his fiduciary duties and was  
19 negligent and grossly negligent by, among other things, approving at least seven  
20 loans between March 2007 and March 2009 (the “Loans”) in violation of LJB’s  
21 Loan Policy and prudent, safe, and sound lending practices.

22       4. As an LJB officer, Rodriguez breached his fiduciary duties and was  
23 negligent and grossly negligent by, among other things, recommending at least six  
24 of the Loans in violation of LJB’s Loan Policy and prudent, safe, and sound lending  
25 practices.

26       5. As an LJB director, Colbourne breached his fiduciary duties and was  
27 grossly negligent by, among other things, approving at least five of the Loans in

28 \_\_\_\_\_  
<sup>1</sup> Hall was also a director of the Bank, but the FDIC-R is suing him in his capacity  
as a former officer of LJB.

1 violation of LJB's Loan Policy and prudent, safe, and sound lending practices.

2 6. Hall and Rodriguez are liable for the damages they caused the Bank as  
3 a result of their negligence, gross negligence, and breaches of fiduciary duties.

4 7. Colbourne is liable for the damages he caused the Bank as a result of  
5 his gross negligence and breaches of fiduciary duties.

## 6 **II. THE PARTIES**

### 7 **A. Plaintiff**

8 8. The Federal Deposit Insurance Corporation ("FDIC") is an  
9 instrumentality of the United States of America, established under the Federal  
10 Deposit Insurance Act, 12 U.S.C. §§ 1811-1831aa, with its principal place of  
11 business in Washington, D.C. 12 U.S.C. §§ 1811(a), 1813(z). Among other duties,  
12 the FDIC, as receiver, is charged with the orderly liquidation of failed banks. 12  
13 U.S.C. § 1821(c)(2)(A)(ii).

14 9. On February 19, 2010, the Bank was closed by the Office of Thrift  
15 Supervision ("OTS"), and the FDIC-R was appointed as receiver. At that time, the  
16 FDIC-R succeeded to all rights, titles, and privileges of the Bank and its depositors,  
17 account holders, and stockholders. 12 U.S.C. § 1821(d)(2)(A)(i).

### 18 **B. Defendants**

19 10. Colbourne was Chairman of the LJB Board of Directors from 1983 to  
20 the Bank's closure. Colbourne also served as a member of the Bank's Executive  
21 Loan Committee ("ELC") at all material times.

22 11. Hall was President and Chief Executive Officer ("CEO") from June 3,  
23 1996 until January 7, 2010. Hall also served on the ELC at all material times. At  
24 all material times, Hall oversaw the day-to-day operations of the Bank.

25 12. Rodriguez was a Quality Control Loan Funder from January 10, 1993  
26 until January 28, 1998, when he was promoted to Assistant Vice President ("AVP")  
27 of Loan Operations. Rodriguez was promoted to Vice President ("VP") of Loan  
28 Operations on May 31, 2000, and to VP and Chief Credit Officer ("CCO") on

1 June 3, 2008, a position Rodriguez held until December 8, 2009. As VP of Loan  
2 Operations and as CCO, Rodriguez was charged with initiating and maintaining the  
3 quality, safety, and soundness of the Bank's credit portfolio.

4 **III. JURISDICTION AND VENUE**

5 13. This Court has subject matter jurisdiction over this case pursuant to 12  
6 U.S.C. § 1819(b)(1) and (2); 12 U.S.C. § 1821(d) and (k); and 28 U.S.C. §§ 1331  
7 and 1345.

8 14. This Court has personal jurisdiction over Defendants, who at all  
9 relevant times were residents of, and conducted the business of the Bank, in the  
10 State of California.

11 15. Venue is proper in this District under 28 U.S.C. § 1391(b) because a  
12 substantial portion of the events and/or omissions giving rise to the claims and  
13 damages asserted herein occurred in this District.

14 **IV. THE BANK'S LENDING FUNCTION**  
15 **AND LOAN PORTFOLIO**

16 16. Loan underwriting practices are the primary determinant of bank credit  
17 risk and bank credit availability and one of the most critical aspects of loan  
18 portfolio management. Loan underwriting standards define a bank's desired level  
19 of creditworthiness for borrowers and guarantors and provide uniform criteria for  
20 evaluating loans. Loan underwriting standards are also important in protecting  
21 bank capital, which can erode from imprudent, unsafe, or unsound lending  
22 practices.

23 17. Underwriting practices (which are described in Parts 364 and 365 of  
24 the FDIC Rules and Regulations) are characterized by the criteria used to qualify  
25 borrowers, loan pricing, repayment terms, sources of repayment, and collateral  
26 requirements. Underwriting practices also encompass the management and  
27 administration of the loan portfolio, including its growth, concentrations in specific  
28 markets, out-of-area lending, written lending policies, and adherence to written

1 underwriting policies.

2 18. Commercial real estate (“CRE”) and acquisition, development, and  
3 construction (“ADC”) loans are known to be more speculative than other types of  
4 loans because of, among other reasons, the lack of a present cash flow source,  
5 uncertainties of development and sale, and the need for adequate secondary sources  
6 of repayment. Prudent lending in this segment of banking requires sound  
7 underwriting, timely evaluation and response to economic trends affecting the  
8 industry, and strict adherence to prudent lending policies and standards. Moreover,  
9 concentrating a loan portfolio in CRE/ADC loans increases a bank’s risk for  
10 numerous reasons, including: (a) concentration in any sector of the economy  
11 increases risk resulting from that sector’s downturn; (b) the housing market, in  
12 particular, is cyclical by nature; (c) the primary source of repayment is cash flow  
13 from the sale of the real estate collateral; and (d) historically, bank failure rates  
14 closely correlate with high CRE/ADC concentrations. In short, a bank’s loan  
15 committee members and credit officers must vigilantly adhere to their bank’s loan  
16 policies and prudent, safe, and sound lending practices when recommending or  
17 approving CRE or ADC loans because these loans are inherently riskier.

18 19. Regulatory agencies periodically reminded financial institutions of the  
19 risks involved in CRE/ADC lending. On October 8, 1998, the FDIC issued  
20 Financial Institution Letter 110-98, which warned financial institutions of the risk  
21 inherent in ADC lending in a favorable real estate market, including an oversupply  
22 of developed property. Among other things, FIL 110-98 stated that “ADC lending  
23 is a highly specialized field with inherent risks that must be managed and controlled  
24 to ensure that this activity remains profitable.”

25 20. Similarly, on December 12, 2006, the Office of the Comptroller of the  
26 Currency (“OCC”), FDIC, and Board of Governors of the Federal Reserve System  
27 jointly issued “Concentrations in Commercial Real Estate Lending, Sound Risk  
28 Management Practices,” which specifically warned banks that “[c]oncentrations of

1 credit exposure add a dimension of risk that compound the risk inherent in  
2 individual loans.”

## 3 V. FACTS

### 4 A. History of LJB

5 21. Frank Warren (“Warren”) founded LJB on December 5, 1985, as La  
6 Jolla Village Savings Bank, a state-chartered bank in La Jolla, California. The  
7 Bank was wholly owned by a bank holding company, La Jolla Bancorp  
8 (“Bancorp”), which is in turn owned by five Warren family trusts. On July 1, 1992,  
9 LJB became a federal stock savings bank and changed its name to La Jolla Bank,  
10 FSB. At the time of the Bank’s closing, it operated nine branches in California and  
11 one branch in Texas. The Bank also had four loan production centers—two in  
12 California, one in New York, and one in Arizona.

13 22. The Warren family trusts are also owners of Warren Properties, Inc.  
14 (“Warren Properties”), which manages commercial and residential properties in 15  
15 states and is headquartered in Escondido, California. Hall, along with being  
16 President of the Bank, was president of Warren Properties.

17 23. In 2003, Hall assumed control of the Bank and its operations. Hall’s  
18 compensation consisted of a guaranteed annual base salary of \$500,000 and an  
19 incentive bonus based on the Bank’s adjusted pre-tax income. With this financial  
20 incentive, Hall rapidly increased the Bank’s high-risk loan portfolio to boost profits  
21 despite violations of the Bank’s policies, underwriting requirements, and prudent,  
22 safe, and sound lending practices.

23 24. The Bank’s total loans grew from \$1.3 billion in 2003 to over \$2.9  
24 billion in 2008—an increase of 223 percent—with a large expansion in CRE and  
25 ADC loans. In 2001, ADC loans equaled 53 percent of Tier 1 capital. By 2008, the  
26 Bank’s ADC loan concentration had nearly tripled to 153 percent of Tier 1 capital.  
27 Coinciding with the Bank’s increasing concentration in CRE and ADC loans,  
28 Defendants knew or should have known of the impending real estate market decline

1 and the associated risks that decline posed for the Bank's loan portfolio. Board  
2 packets for the December 28, 2004 Board of Directors meeting, which Colbourne  
3 and Hall received, contained an Allowance for Loan Losses report dated September  
4 30, 2004 (the "ALL Report"). The ALL Report contained the following conclusion  
5 as to the state of real estate market conditions: "Increasing housing prices have  
6 international roots like the tech boom of the 90's and will have the same boom bust  
7 result. This is a bubble in its early stages and will end badly." Rodriguez received  
8 a copy of the report via email on January 14, 2005. Rather than take steps to  
9 mitigate the Bank's exposure to the impending market bust, Defendants approved  
10 or recommended loans with clear deficiencies and increased the Bank's  
11 concentration in CRE and ADC lending.

12 25. As a result of the rapid loan growth, in 2004 Hall received a  
13 \$1,611,574 million bonus. In 2008, his salary increased to \$1 million annually.  
14 Between 2006 and 2008, Hall earned \$10.3 million, almost seven times more than  
15 the next highest paid officer at the Bank.

16 26. In 2005, Hall's control of the Bank was solidified when he was  
17 appointed to the three-person ELC and given individual loan approval authority of  
18 up to \$10 million. In practice, Hall routinely gave oral approval of loans over the  
19 telephone. Hall's oral approval is reflected in loan files by the notation "Verbal  
20 RFH."

21 27. Hall gave preferential treatment to certain borrowers, whom Bank  
22 employees referred to as "Friends of the Bank" or "FOBs." Rodriguez, whose  
23 compensation was also tied to loan production, assisted Hall. Hall and Rodriguez  
24 pressured underwriters into recommending loans for approval, especially loans to  
25 Friends of the Bank. Bank underwriters prepared credit memoranda (when  
26 singular, "Credit Memorandum," and when plural, "Credit Memoranda") that  
27 recommended FOB loans, but they often refused to initial the Credit Memoranda  
28 because they believed the loans were imprudent or that borrower or guarantor

1 information was unverified. Bank underwriters also prepared Credit Memoranda  
2 for some FOB loans after the ELC had already approved the loan.

3 28. On January 13, 2006, Jim Masonbrink (“Masonbrink”), who was then  
4 the manager of the Bank’s Internal Asset Review (“IAR”) department, sent an  
5 email to Lynn Hein (“Hein”), the Bank’s Chief Financial Officer, complaining of  
6 numerous questionable loan practices that he had witnessed in just one day.  
7 Masonbrink warned: “If you do not get some controls and a governor . . . the car  
8 will run in the ditch! Times Change and this Bank has Certainly Changed!”  
9 Rodriguez acknowledged the Bank’s underwriting failures in an email dated  
10 September 18, 2008, stating: “I don't think I need to remind you that all of these  
11 issues with the Mortgage Giants are pushing us into the stone age, as it relates to  
12 underwriting. I explained this to you the last time we talked, the days of Fico [sic]  
13 Scoring, LTVing, States Assets BS is long gone. We have to once again  
14 underwrite, verify, justify, confirm and ascertain everything presented in a loan  
15 request. That is the only way we are doing business (notice we are one of a handful  
16 of banks still lending).”

17 29. In addition to pressuring Bank personnel to recommend loans to  
18 Friends of the Bank with little or no underwriting, Hall and Rodriguez used their  
19 ability to dominate Bank operations to conceal troubled FOB loans, prevent loss  
20 recognition on FOB loans, and maintain loan production. They also made new  
21 loans to existing borrowers to refinance or to fund the interest payments on those  
22 borrowers’ troubled loans.

23 30. The Bank maintained its IAR department for the purpose of  
24 continuously reviewing asset quality and the adequacy of the Bank’s allowance for  
25 loan and lease losses (“ALLL”). The IAR function was supposed to be the Bank’s  
26 early warning system for troubled assets, which included identifying, classifying,  
27 and reporting loans with potential and actual credit weaknesses so that the Bank  
28 could take timely action to minimize losses, including providing additional scrutiny



1 to new credit to borrowers or guarantors associated with adversely classified loans.  
2 Masonbrink abruptly retired as the IAR manager in June 2006. Instead of hiring a  
3 qualified person to take on the role of IAR manager, the Bank hired 22-year-old  
4 Nancy Dong (“Dong”), Masonbrink’s former assistant, as the “Interim” IAR  
5 manager. Dong was a former bank teller who had a high school education and no  
6 asset review experience when she was promoted to Interim IAR manager.  
7 Notwithstanding the “Interim” title, Dong served as IAR manager for three years,  
8 until the second quarter of 2009. By her own admission, Dong was not qualified to  
9 be the IAR manager, nor did she have any qualified assistants.

10 31. According to Bank policy, Dong was to report to the Audit Committee  
11 of the Bank’s Board of Directors and an IAR Committee, which, according to Bank  
12 policy, was to be composed of individuals who did not have approval authority over  
13 the loans they reviewed. This did not occur. Instead, Dong was supervised by an  
14 informal “Ad Hoc” IAR Committee, which was composed of Hall, Rodriguez, and  
15 other senior managers. Colbourne was aware of the Ad Hoc IAR Committee by no  
16 later than July 31, 2008. The Ad Hoc IAR Committee, including Hall and  
17 Rodriguez, discredited Dong as young and inexperienced. Hall and Rodriguez,  
18 through the Ad Hoc IAR Committee, did not allow Dong the independence to  
19 manage IAR functions or make classification decisions as to FOBs, pressured and  
20 fought Dong to delay classification of troubled loans to FOBs, and defended  
21 borrowers that were FOBs.

22 32. Due to its poor credit administration and malfunctioning IAR process,  
23 the Bank failed to timely classify assets. As a consequence, the Bank’s 2008  
24 financial statements materially misstated its ALLL and, by extension, its net  
25 income by \$22 million. In 2009, LJB’s independent auditor, Grant Thornton LLP  
26 (“Grant Thornton”), reported that the Bank “did not maintain effective internal  
27 control over the financial reporting for the accounting for the allowance for loan  
28 losses” and that this constituted a “material weakness” in the Bank’s controls. In

1 September 2009, an independent review by auditor Squar, Milner, Peterson,  
2 Miranda & Williamson, LLP (“Squar Milner”) concluded that, as of September 30,  
3 2009, loan loss reserves were underfunded by at least \$180 million. By the end of  
4 2009, Squar Milner recommended that the Bank needed an additional \$308 million  
5 in loss reserves.

6 33. By late 2009, Chairman of the Audit Committee of the Board of  
7 Directors, Kenneth Bien (“Bien”), had “lost confidence” in Hall and Rodriguez.  
8 Bien concluded in notes from a conversation with Colbourne on November 13,  
9 2009 that, among other things: “[Hall and Rodriguez] made [line of credit]  
10 increases, modifications and have ‘hidden’ the status of the financial condition of  
11 key borrowers . . . . [T]his management team is unable to objectively resolve the  
12 majority of distressed loans as they made these loans, have a close relationship with  
13 the borrowers and have made modifications to [lines of credit] that are detrimental  
14 to the financial stability of the Bank. . . . [T]he financial aspects of the Bank will  
15 continue to deteriorate until these 2 are replaced.”

16 34. The Bank was unable to raise sufficient capital to remedy its liquidity  
17 problems, and it failed on February 19, 2010.

18 **B. Regulatory History**

19 35. LJB was subject to the supervision of the OTS, which conducted  
20 regular examinations of the Bank and provided a Report of Examination (“RoE”) at  
21 the conclusion of each examination.

22 36. The May 3, 2004, RoE criticized the Bank’s IAR function, finding it  
23 “less than fully effective.” Among other things, the RoE observed that the IAR  
24 department did not review construction loans, renewable business loans, or land  
25 loans, even though these high-risk loans were a rapidly increasing percentage of the  
26 Bank’s assets. The OTS directed the Bank to increase IAR resources and to expand  
27 the scope of IAR review.

28 37. The July 25, 2005, RoE warned that the Bank’s asset quality was “less

1 than satisfactory” and “identified a number of credit administration weaknesses,  
2 including an [IAR] system that needs to be enhanced.” The OTS warned that “the  
3 IAR policies and procedures should establish specific performance criteria and  
4 periods that adequately support the rationale for declassifying an asset.

5 38. The July 31, 2006, RoE concluded that underwriting and monitoring of  
6 commercial loans “did not include adequate analysis and documentation of cash  
7 flows and liquid resources to be used to ensure repayment of the loans.” The OTS  
8 warned again that review of commercial loans needed to be expanded and needed to  
9 occur more frequently.

10 39. In the September 10, 2007, RoE examiners again criticized IAR  
11 processes and noted significant failures in connection with larger and more complex  
12 relationships, including certain Friends of the Bank. The December 29, 2008, RoE,  
13 which was delivered on March 16, 2009, concluded that the Bank’s IAR function  
14 had completely failed and that the Bank had not properly classified troubled loans  
15 made in prior years or adequately reserved for loan losses.

16 40. On September 9, 2009, the OTS issued a Cease and Desist Order to  
17 both the Bank and its holding company based on its conclusion that both the Bank  
18 and Bancorp had engaged in unsafe and unsound practices. The OTS closed the  
19 Bank on February 19, 2010.

20 **C. LJB’s Loan Policy**

21 41. LJB’s directors established the Loan Policy, which is dated July 27,  
22 2006 and was amended from time to time thereafter. The Loan Policy set forth the  
23 specific requirements for underwriting and loan approvals.

24 42. The Loan Policy established loan approval processes and authorities.  
25 Underwriters were required to submit Credit Memoranda, which included their  
26 analyses and recommendations, for review to the VP of Loan Operations, who was  
27 Rodriguez during the relevant time period. The VP of Loan Operations  
28 (Rodriguez) then submitted and recommended the loan to the delegated authority

1 for approval. Loan approval authorities were based on the total amount of the  
2 proposed loan at the time of approval and were as follows: Any two members of the  
3 ELC constituted a quorum, but any one member had loan approval authority up to  
4 \$10 million. Loans in excess of \$10 million up to the Bank's legal lending limit  
5 required the approval of two ELC members.

6 43. The Loan Policy contained extensive provisions regarding the  
7 underwriting of various types of loans, including but not limited to real estate loans  
8 and construction loans. Defendants recommended or approved the Loans, which  
9 violated numerous provisions of the Loan Policy, including but not limited to the  
10 following:

11 a. Objective and reliable financial statements of borrowers and  
12 guarantors, including credit reports and two years of tax returns, were  
13 to be obtained.

14 b. Every proposed loan required a Credit Memorandum in which  
15 the underwriter was required to analyze borrower and guarantor  
16 creditworthiness, including liquidity, cash flow, credit history,  
17 character, motivation, and desire to repay the loan, and project  
18 collateral. Credit Memoranda were accompanied by a Commercial  
19 Financial Analysis or Underwriting Analysis. Underwriters  
20 recommended a loan and ELC members approved a loan by initialing  
21 or signing either the Commercial Financial Analysis or the  
22 Underwriting Analysis.

23 c. The loan was required to have a documented secondary source  
24 of repayment. The Bank was also to be sensitive to changing market  
25 conditions.

26 d. Underwriters were required to thoroughly review appraisals to  
27 determine completeness, reasonableness, and other items.

28 e. The maximum loans-to-any-one-borrower, LTAOB, limit was

1 15 percent of the Bank's capital.

2 f. LTV ratio limits were 65 percent for raw land loans, 75 percent  
3 for acquisition and development loans and loans for developed lots, 80  
4 percent for multifamily unit construction and commercial loans, and  
5 85 percent for nonowner-occupied construction and nonowner-  
6 occupied residential loans.

7 **D. Loan Underwriting Violations and Deficiencies**

8 44. Between March 15, 2007, and March 25, 2009, Defendants  
9 recommended or approved numerous loans in violation of the Loan Policy and  
10 prudent, safe, and sound underwriting standards by some or all of the following acts  
11 or omissions, among others:

12 a. Speculative Lending — Causing or permitting speculative, high-  
13 risk loans to be made, many after the economic decline of the real  
14 estate market was well known;

15 b. Loans to Non-Creditworthy Borrowers — Causing or permitting  
16 loans to be made to borrowers who were uncreditworthy and/or in  
17 financial difficulty;

18 c. Loans to Non-Creditworthy Guarantors — Causing or  
19 permitting loans to be made with guarantors who were uncreditworthy  
20 and/or in financial difficulty;

21 d. Lack of Underwriting Analysis — Causing or permitting loans  
22 to be made with no or marginal underwriting analysis;

23 e. Inadequate Appraisals — Causing or permitting loans to be  
24 made on the basis of inadequate appraisals;

25 f. LTAOB Violations — Causing or permitting loans to be made  
26 that violated LTAOB limitations in the Loan Policy; and

27 g. Excessive LTV Ratios — Causing or permitting the Bank to  
28 approve loans with excessive LTV ratios.

1           **E.     Transactions Causing Damages**

2           45.       Defendants are liable for the damages that they caused the Bank to  
3 suffer. In this lawsuit, the FDIC-R seeks to collect damages flowing from Hall's  
4 and Rodriguez' negligence, gross negligence, and breaches of fiduciary duties and  
5 from Colbourne's gross negligence and breaches of fiduciary duties. The loan  
6 transactions set forth below illustrate the very types of failures, breaches, and  
7 violations of duty referenced above committed by each of the Defendants, resulting  
8 in damages to the Bank. The FDIC-R seeks compensatory damages and other relief  
9 as a result of Defendants' conduct as described below.

10           ***Borrower A<sup>2</sup>***

11           46.       On or about March 15, 2007, Defendants Colbourne and Hall  
12 approved a loan to Borrower A in the amount of \$7.5 million (the "Borrower A  
13 Loan") by signing the Commercial Financial Analysis. Hall initially approved the  
14 Borrower A Loan orally, as indicated by the notation "Verbal RFH" on the  
15 Commercial Financial Analysis. Defendant Rodriguez recommended the Borrower  
16 A Loan for approval by initialing the Commercial Financial Analysis. One of the  
17 guarantors of the Borrower A Loan was Borrower C, who was a lending customer  
18 of the Bank on a loan discussed below. Borrower C was a Friend of the Bank.

19           47.       The purpose of the Borrower A Loan was to finance the acquisition of  
20 two single story commercial buildings and 17,300 square feet of land for the  
21 development of luxury condominiums in Rancho Santa Fe, California.

22           48.       According to the Credit Memorandum, the repayment sources were the  
23 "Take out from proposed development loan," "Guarantor income along with  
24 [property in question] lease income," and "Sale or liquidation of [property in  
25 question]," in that order.

26  
27           <sup>2</sup> Borrowers A, B, C, D, E, F, and G referenced herein represent individual  
28 borrowers or limited liability companies that were closely held by individual  
principals. The names of these borrowers and LLCs have been withheld to protect  
the privacy of the individual borrowers and principals, but will be provided once an  
appropriate protective order is in place.

1           49.     The Borrower A Loan was secured by a first deed of trust on property  
2 located in Rancho Santa Fe, California.

3           50.     In recommending or approving the Borrower A Loan, Colbourne, Hall,  
4 and Rodriguez engaged in imprudent, unsafe, and unsound lending practices and  
5 violated the Loan Policy as evidenced by, among other things, the following:

6               a.     The Borrower A Loan was speculative and high risk, relying on  
7 the success of the underlying project to repay the loan and was  
8 otherwise without a viable repayment source.

9               b.     Borrower A was a stand-alone entity created to own the property  
10 and therefore had no independent resources to support the debt.

11              c.     The guarantor, Borrower C, was heavily involved in the real  
12 estate market and susceptible to a market decline. Further, according  
13 to the Credit Memorandum, the guarantor's tax returns showed a loss  
14 for the 2005 tax year and limited income for the 2004 tax year.

15              d.     Defendant Rodriguez recommended and Defendants Colbourne  
16 and Hall approved the Borrower A Loan despite the loan underwriter  
17 withholding recommendation of the loan.

18              e.     Based upon the above-listed deficiencies, Defendants  
19 Colbourne, Hall, and Rodriguez should not have recommended or  
20 approved the Borrower A Loan or allowed the Bank to fund the  
21 Borrower A Loan, and their acts and omissions have caused damages.

22           51.     On or about April 1, 2008, Borrower A defaulted on the Borrower A  
23 Loan.

24           52.     Colbourne's, Hall's, and Rodriguez's negligent and/or grossly  
25 negligent actions and inactions and breaches of fiduciary duties with respect to the  
26 Borrower A Loan caused damages in excess of \$6.8 million. Had Defendants  
27 Colbourne, Hall, and Rodriguez performed or insisted upon the required credit  
28 analysis and otherwise complied with the Bank's Loan Policy, the Bank would not

1 have made the Borrower A Loan, and the resulting damages would not have  
2 occurred.

3 ***Borrower B***

4 53. On or about April 27, 2007, Defendants Colbourne and Hall approved  
5 a loan to Borrower B in the amount of \$30.5 million (the “Borrower B Loan”) by  
6 signing the Underwriting Analysis. Hall initially approved the Borrower B Loan  
7 orally, as indicated by the notation “Verbal RFH” on the Underwriting Analysis.  
8 Defendant Rodriguez recommended the Borrower B Loan for approval by initialing  
9 the Underwriting Analysis. The guarantor of the Borrower B Loan was  
10 Borrower C, the same Friend of the Bank who guaranteed the Borrower A Loan.

11 54. The purpose of the Borrower B Loan was to refinance existing debt on  
12 a vacant 10 story office building located in Phoenix, Arizona, as well as to fund  
13 demolition of the building. Borrower B intended to develop 160 townhomes on the  
14 project property following demolition.

15 55. The repayment sources were take-out financing from a construction  
16 lender, sale of guarantor assets, and liquidation of collateral, in that order.

17 56. The Borrower B Loan was secured by a first deed of trust on property  
18 located in Phoenix, Arizona, including an abundance of caution lien.

19 57. In recommending or approving the Borrower B Loan, Colbourne, Hall,  
20 and Rodriguez engaged in imprudent, unsafe, and unsound lending practices and  
21 violated the Loan Policy as evidenced by, among other things, the following:

22 a. The Borrower B Loan was speculative and high risk, relying on  
23 the success of the underlying project to repay the loan and was  
24 otherwise without a viable repayment source.

25 b. Borrower B and the guarantor, Borrower C, were heavily  
26 involved in the real estate market and susceptible to a market decline.  
27 Further, according to the Credit Memorandum, the guarantor’s tax  
28 returns showed a loss for the 2005 tax year and limited income for the



1           2004 tax year. In addition, the Credit Memorandum contains only  
2           marginal underwriting analysis of, among other things, the financial  
3           condition of the borrower and guarantor.

4           c. Defendant Rodriguez recommended and Defendants Colbourne  
5           and Hall approved the Borrower B Loan despite the loan underwriter  
6           withholding recommendation of the loan.

7           d. Based upon the above-listed deficiencies, Defendants  
8           Colbourne, Hall, and Rodriguez should not have recommended or  
9           approved the Borrower B Loan or allowed the Bank to fund the  
10          Borrower B Loan, and their acts and omissions have caused damages.

11          58. On or about April 1, 2008, Borrower B defaulted on the Borrower B  
12          Loan.

13          59. Colbourne's, Hall's, and Rodriguez's negligent and/or grossly  
14          negligent actions and inactions and breaches of fiduciary duties with respect to the  
15          Borrower B Loan caused damages in excess of \$29.6 million. Had Defendants  
16          Colbourne, Hall, and Rodriguez performed or insisted upon the required credit  
17          analysis and otherwise complied with the Bank's Loan Policy, the Bank would not  
18          have made the Borrower B Loan, and the resulting damages would not have  
19          occurred.

20                   ***Borrower C***

21          60. On or about December 11, 2008, Defendant Hall approved a loan to  
22          Borrower C in the amount of \$5 million (the "Borrower C Loan") by signing the  
23          Underwriting Analysis. Hall initially approved the Borrower C Loan orally, as  
24          indicated by the notation "Verbal RFH" on the Underwriting Analysis. Defendant  
25          Rodriguez recommended the Borrower C Loan for approval by initialing the  
26          Underwriting Analysis. Borrower C was a Friend of the Bank, and he guaranteed  
27          the Borrower A and B Loans.

28          61. The Borrower C Loan was a line of credit for the purpose of funding

1 home improvements for Borrower C.

2 62. The repayment sources were to be refinancing or sale of the project  
3 property and sale of collateral, in that order.

4 63. The Borrower C Loan was secured by deeds of trust on three  
5 properties, two located in Coronado, California, and one located in Rancho Santa  
6 Fe, California.

7 64. In recommending or approving the Borrower C Loan, Hall and  
8 Rodriguez engaged in imprudent, unsafe, and unsound lending practices and  
9 violated the Loan Policy as evidenced by, among other things, the following:

10 a. The Borrower C Loan was speculative and high risk, relying on  
11 the success of Borrower C's real estate projects to repay the loan and  
12 was otherwise without a viable repayment source.

13 b. Borrower C was heavily involved in the real estate market and  
14 susceptible to a market decline. In addition, underwriting of cash flow  
15 and other financial attributes was marginal.

16 c. Defendant Rodriguez recommended and Defendant Hall  
17 approved the Borrower C Loan despite the loan underwriter  
18 withholding recommendation of the loan.

19 d. Based upon the above-listed deficiencies, Defendants Hall and  
20 Rodriguez should not have recommended or approved the Borrower C  
21 Loan or allowed the Bank to fund the Borrower C Loan, and their acts  
22 and omissions have caused damages.

23 65. Borrower C defaulted on the Borrower C Loan after the Bank's  
24 closure.

25 66. Hall's and Rodriguez's negligent and/or grossly negligent actions and  
26 inactions and breaches of fiduciary duties with respect to the Borrower C Loan  
27 caused damages in excess of \$4.9 million. Had Defendants Hall and Rodriguez  
28 performed or insisted upon the required credit analysis and otherwise complied with

1 the Bank's Loan Policy, the Bank would not have made the Borrower C Loan, and  
2 the resulting damages would not have occurred.

3 ***Borrower D***

4 67. On or about June 8, 2007, Defendants Colbourne and Hall approved a  
5 loan to Borrower D in the amount of \$7.537 million (the "Borrower D Loan") by  
6 signing the Underwriting Analysis. Defendant Rodriguez recommended the  
7 Borrower D Loan for approval by initialing the Underwriting Analysis. Borrower  
8 D was a Friend of the Bank.

9 68. The purpose of the Borrower D Loan as described in the Credit  
10 Memorandum was to fund the acquisition of property located in Anza, California,  
11 pay for mapping costs, and establish an interest reserve. A settlement statement for  
12 the Borrower D Loan showed that the true purpose was to pay unrelated expenses,  
13 make payments on other delinquent loans involving Borrower D, and pay off earlier  
14 loans of Borrower D.

15 69. According to the Credit Memorandum, the repayment sources were the  
16 "Sale of [the property in question] / Take-out Construction Loan" and "Liquidation  
17 of Guarantor Assets," in that order.

18 70. The Borrower D Loan was secured by a first deed of trust on property  
19 located in Anza, California.

20 71. In recommending or approving the Borrower D Loan, Colbourne, Hall,  
21 and Rodriguez engaged in imprudent, unsafe, and unsound lending practices and  
22 violated the Loan Policy as evidenced by, among other things, the following:

23 a. The Borrower D Loan was speculative and high risk, relying on  
24 the success of Borrower D and the guarantor's real estate projects to  
25 repay the loan and was otherwise without a viable repayment source.

26 b. Borrower D and the guarantor were heavily involved in the real  
27 estate market and susceptible to a market decline, were delinquent on  
28 other loans to the Bank, and had marginal liquidity. The guarantor's

1 tax returns also showed a loss for the 2005 tax year.

2 c. The appraisal supporting the Borrower D Loan was flawed in  
3 several particulars, including its selection of comparable sales and  
4 improper aggregation of individual property values.

5 d. The stated LTV ratio of 55 percent was based on the improper  
6 aggregate of individual lot values.

7 e. Defendant Rodriguez recommended and Defendants Colbourne  
8 and Hall approved the Borrower D Loan despite the loan underwriter  
9 withholding recommendation of the loan.

10 f. Based upon the above-listed deficiencies, Defendants  
11 Colbourne, Hall, and Rodriguez should not have recommended or  
12 approved the Borrower D Loan or allowed the Bank to fund the  
13 Borrower D Loan, and their acts and omissions have caused damages.

14 72. On or about January 1, 2009, Borrower D defaulted on the Borrower D  
15 Loan.

16 73. Colbourne's, Hall's, and Rodriguez's negligent and/or grossly  
17 negligent actions and inactions and breaches of fiduciary duties with respect to the  
18 Borrower D Loan caused damages in excess of \$4.1 million. Had Defendants  
19 Colbourne, Hall, and Rodriguez performed or insisted upon the required credit  
20 analysis and otherwise complied with the Bank's Loan Policy, the Bank would not  
21 have made the Borrower D Loan, and the resulting damages would not have  
22 occurred.

23 ***Borrower E***

24 74. On or about November 20, 2007, Defendants Colbourne and Hall  
25 approved a loan to Borrower E in the amount of \$29.9 million (the "Borrower E  
26 Loan") by signing the Underwriting Analysis. Hall initially approved the Borrower  
27 E Loan orally, as indicated by the notation "Verbal RFH" on the Underwriting  
28 Analysis. Defendant Rodriguez recommended the Borrower E Loan for approval

1 by initialing the Underwriting Analysis. Borrower E was a Friend of the Bank.

2 75. The Borrower E Loan was a line of credit for the purpose of  
3 purchasing from the Bank three non-performing acquisition and development loans,  
4 along with funding working capital to complete development on the projects  
5 associated with those loans. Those projects were located in Escondido, Chino  
6 Hills, and Perris, California.

7 76. According to the Credit Memorandum, the repayment sources were the  
8 “Successful development and sale of land development projects” and “Guarantor  
9 assets along with liquidation of collateral properties,” in that order.

10 77. The Borrower E Loan was secured by three LJB loans and second  
11 deeds of trust of three properties, two of which were located in El Centro,  
12 California and the third located in Belen, New Mexico.

13 78. In recommending or approving the Borrower E Loan, Colbourne, Hall,  
14 and Rodriguez engaged in imprudent, unsafe, and unsound lending practices and  
15 violated the Loan Policy as evidenced by, among other things, the following:

16 a. The Borrower E Loan was speculative and high risk, relying on  
17 the success of Borrower E and the guarantor’s real estate projects to  
18 repay the loan and was otherwise without a viable repayment source.

19 b. Borrower E and the guarantor were heavily involved in the real  
20 estate market and susceptible to a market decline. According to the  
21 Credit Memorandum, tax returns for Borrower E showed a loss for the  
22 2005 tax year. The guarantor’s financial statements showed deficient  
23 available cash and losses for the 2006 and 2005 tax years.

24 c. The appraisal supporting the loan was flawed in several  
25 particulars, including its use of “up market” values. The appraiser was  
26 also retained by Borrower E, not the Bank.

27 d. Defendant Rodriguez recommended and Defendants Colbourne  
28 and Hall approved the Borrower E Loan despite the loan underwriter

1 withholding recommendation of the loan.

2 e. Based upon the above-listed deficiencies, Defendants  
3 Colbourne, Hall, and Rodriguez should not have recommended or  
4 approved the Borrower E Loan or allowed the Bank to fund the  
5 Borrower E Loan, and their acts and omissions have caused damages.

6 79. Borrower E defaulted on the Borrower E Loan after the Bank's  
7 closure.

8 80. Colbourne's, Hall's, and Rodriguez's negligent and/or grossly  
9 negligent actions and inactions and breaches of fiduciary duties with respect to the  
10 Borrower E Loan caused damages in excess of \$7.7 million. Had Defendants  
11 Colbourne, Hall, and Rodriguez performed or insisted upon the required credit  
12 analysis and otherwise complied with the Bank's Loan Policy, the Bank would not  
13 have made the Borrower E Loan, and the resulting damages would not have  
14 occurred.

15 ***Borrower F***

16 81. On or about July 26, 2008, Defendant Hall approved a loan to  
17 Borrower F in the amount of \$4.2 million (the "Borrower F Loan") by signing the  
18 Underwriting Analysis. Hall initially approved the Borrower F Loan orally, as  
19 indicated by the notation "Verbal RFH" on the Underwriting Analysis. Defendant  
20 Rodriguez recommended the Borrower F Loan for approval by initialing the  
21 Underwriting Analysis. Borrower F was a Friend of the Bank.

22 82. The Borrower F Loan was a line of credit for the purpose of funding  
23 mapping expenses on an unspecified development, as well as to make interest  
24 payments on other loans to the Bank.

25 83. According to the Underwriting Analysis, the repayment sources were  
26 "Sale of the properties in which [the line of credit are] designated to carry" and  
27 "Liquidation of borrower/guarantor net worth," in that order.

28 84. In recommending or approving the Borrower F Loan, Hall and

1 Rodriguez engaged in imprudent, unsafe, and unsound lending practices and  
2 violated the Loan Policy as evidenced by, among other things, the following:

3 a. The Borrower F Loan was speculative and high risk, relying on  
4 the success of Borrower F and the guarantor's real estate projects to  
5 repay the loan and was otherwise without a viable repayment source.

6 b. The Borrower F Loan was unsecured.

7 c. Borrower F and the guarantor were heavily involved in the real  
8 estate market and susceptible to a market decline. Further, according  
9 to the Underwriting Analysis, the guarantor's tax returns showed a loss  
10 for the 2006 and 2005 tax years. The guarantor also had marginal  
11 liquidity, which largely consisted of loan proceeds from the Bank.

12 d. The Borrower F Loan violated the Bank's LTAOB limit. At the  
13 time Defendants Hall and Rodriguez recommended or approved the  
14 Borrower F Loan, the Bank's overall loans to Borrower F and the  
15 guarantor amounted to \$74.4 million, which exceeded the Bank's  
16 LTAOB limit of \$52.7 million as of August 18, 2008.

17 e. Defendant Rodriguez recommended and Defendant Hall  
18 approved the Borrower F Loan despite the loan underwriter  
19 withholding recommendation of the loan.

20 f. Based upon the above-listed deficiencies, Defendants Hall and  
21 Rodriguez should not have recommended or approved the Borrower F  
22 Loan or allowed the Bank to fund the Borrower F Loan, and their acts  
23 and omissions have caused damages.

24 85. On or about August 4, 2009, Borrower F defaulted on the Borrower F  
25 Loan.

26 86. Hall's and Rodriguez's negligent and/or grossly negligent actions and  
27 inactions and breaches of fiduciary duties with respect to the Borrower F Loan  
28 caused damages in excess of \$3.8 million. Had Defendants Hall and Rodriguez

1 performed or insisted upon the required credit analysis and otherwise complied with  
2 the Bank's Loan Policy, the Bank would not have made the Borrower F Loan, and  
3 the resulting damages would not have occurred.

4 ***Borrower G***

5 87. On or about March 25, 2009, Defendants Colbourne and Hall  
6 approved a loan to Borrower G in the amount of \$5.775 million (the "Borrower G  
7 Loan") by signing the Underwriting Analysis. Hall initially approved the Borrower  
8 G Loan orally, as indicated by the notation "Verbal RFH" on the Underwriting  
9 Analysis.

10 88. The purpose of the Borrower G Loan was to refinance the second  
11 home of the guarantor, which was located in Rancho Santa Fe, California, with the  
12 cash out proceeds to be used by Borrower G for real estate investments.

13 89. According to the Credit Memorandum, the repayment sources were to  
14 be "Guarantor Income" and "Sale [of the property in question]," in that order.

15 90. The Borrower G Loan was secured by a first deed of trust on property  
16 subject to the refinancing.

17 91. In approving the Borrower G Loan, Colbourne and Hall engaged in  
18 imprudent, unsafe, and unsound lending practices and violated the Loan Policy as  
19 evidenced by, among other things, the following:

20 a. The Borrower G Loan was speculative and high risk, relying on  
21 the success of Borrower G and the guarantor's real estate projects to  
22 repay the loan and was otherwise without a viable repayment source.

23 b. Borrower G and the guarantor were heavily involved in the real  
24 estate market and susceptible to a market decline. The guarantor's  
25 stated liquidity was marginal in light of liabilities. Further, according  
26 to the Credit Memorandum, the guarantor's tax returns showed a loss  
27 for the 2007 and 2006 tax years.

28 c. Based upon the above-listed deficiencies, Defendants Colbourne



1 and Hall should not have approved the Borrower G Loan or allowed  
2 the Bank to fund the Borrower G Loan, and their acts and omissions  
3 have caused damages.

4 92. Borrower G defaulted on the Borrower G Loan after the Bank's  
5 closure.

6 93. Colbourne's and Hall's negligent and/or grossly negligent actions and  
7 inactions and breaches of fiduciary duties with respect to the Borrower G Loan  
8 caused damages in excess of \$575,000. Had Defendants Colbourne and Hall  
9 performed or insisted upon the required credit analysis and otherwise complied with  
10 the Bank's Loan Policy, the Bank would not have made the Borrower G Loan, and  
11 the resulting damages would not have occurred.

12 **CAUSES OF ACTION**

13 **COUNT I**

14 **ORDINARY NEGLIGENCE UNDER CALIFORNIA LAW**

15 94. The FDIC-R re-alleges and incorporates by reference the allegations  
16 contained in paragraphs 1-93 above as if fully set out in this count.

17 95. Defendants Hall and Rodriguez, as Bank officers, owed LJB a duty of  
18 care under California law to exercise the diligence, care, and skill that ordinarily  
19 prudent persons would exercise under similar circumstances in like position. As  
20 Bank officers, Defendants Hall and Rodriguez were further obligated to diligently  
21 and honestly administer the affairs of the Bank and were under a duty to ensure that  
22 the Bank operated in compliance with all applicable rules and policies of the Bank.

23 96. Defendant Hall, as CEO and a member of the Bank's ELC, was  
24 responsible for the day-to-day management and operation of the Bank and had the  
25 obligation to exercise the degree of diligence, care, and skill that ordinarily prudent  
26 persons in like positions would exercise under similar circumstances in  
27 management, oversight, and conduct of the Bank's business. These duties  
28 included, but were not limited to, preserving the Bank's resources; ensuring that the

1 Bank had adequate policies, procedures, and internal controls relating to, among  
2 other things, ADC/CRE and other high-risk lending; ensuring that the Bank adhered  
3 to its lending and credit policies, loan approval processes, and loan and credit  
4 administration practices; ensuring that the Bank did not make imprudent loans and  
5 extensions of credit; and requiring the loans that he approved to comply with the  
6 Bank's Loan Policy and prudent, safe, and sound lending practices. In addition, as  
7 a member of the Bank's ELC, Hall was responsible for reviewing Credit  
8 Memoranda and approving loans.

9 97. Defendant Rodriguez, as CCO, reported to Defendant Hall and was  
10 responsible for implementing the Bank's Loan Policy. Rodriguez had the  
11 obligation to exercise the degree of diligence, care, and skill that ordinarily prudent  
12 persons in like positions would exercise under similar circumstances in  
13 management, oversight, and conduct of the Bank's business. These duties  
14 included, but were not limited to, ensuring that the Bank had adequate loan policies,  
15 procedures, and internal controls relating to, among other things, ADC/CRE and  
16 other high-risk lending; that the Bank adhered to its policies, procedures, and  
17 controls; and that the Bank complied with prudent, safe, and sound lending  
18 practices. As CCO, Rodriguez was responsible for reviewing Credit Memoranda  
19 and recommending loans to LJB's ELC.

20 98. Defendants Hall and Rodriguez breached their duties to the Bank as  
21 described in this Complaint and as follows:

22 a. Defendant Hall, among other things:

- 23 (1) Failed to ensure that the Bank's lending complied with  
24 the Bank's policies and procedures and prudent, safe, and  
25 sound lending practices;
- 26 (2) Approved ADC/CRE and other high-risk loans that  
27 violated the Bank's Loan Policy and were imprudent,  
28 unsafe, and unsound;

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- (3) Approved loans that had not been properly underwritten prior to funding;
- (4) Failed to ensure that ADC/CRE and other high-risk loans made by the Bank were prudent, safe, and sound, and that the Bank had a reasonable prospect of being repaid by the debtors;
- (5) Failed to implement and follow sound loan underwriting and credit administration practices;
- (6) Failed to implement prudent risk management strategies by, among other things, allowing dangerous concentrations in ADC/CRE loans;
- (7) Failed to adhere to the Bank's Loan Policy and failed to ensure that Bank personnel followed the Loan Policy; and
- (8) Failed to properly preserve the Bank's resources.

b. Defendant Rodriguez, among other things:

- (1) Failed to ensure that the Bank's lending complied with the Bank's policies and procedures and prudent, safe, and sound lending practices;
- (2) Recommended ADC/CRE and other high-risk loans that violated the Bank's Loan Policy and were imprudent, unsafe, and unsound;
- (3) Recommended loans that had not been properly underwritten prior to funding;
- (4) Failed to ensure that ADC/CRE and other high-risk loans made by the Bank were prudent, safe, and sound, and that the Bank had a reasonable prospect of being repaid by the debtors;

- 1 (5) Failed to implement and follow sound loan underwriting  
2 and credit administration practices;
- 3 (6) Failed to implement prudent risk management strategies  
4 by, among other things, allowing dangerous  
5 concentrations in ADC/CRE loans;
- 6 (7) Failed to adhere to the Bank's Loan Policy and failed to  
7 ensure that Bank personnel followed the Loan Policy; and
- 8 (8) Failed to properly preserve the Bank's resources.

9 99. Hall's and Rodriguez's acts and omissions alleged in this Complaint  
10 directly and proximately caused the Bank to suffer millions of dollars in damages,  
11 in an amount to be proved at trial.

12 100. With respect to their negligent acts and omissions, each Defendant is  
13 jointly and severally liable for the damages he caused the Bank to incur.

14 101. Defendants Hall and Rodriguez served as officers of the Bank.

15 102. Accordingly, Defendants Hall and Rodriguez are not protected by  
16 California's Business Judgment Rule, which does not apply to officers or to  
17 directors who also served as officers. In any event, a fundamental requirement of  
18 the Business Judgment Rule is the obligation to exercise reasonable diligence,  
19 which is an obligation that the Defendants did not meet.

## 20 **COUNT II**

### 21 **GROSS NEGLIGENCE CLAIMS UNDER 12 U.S.C. § 1821(K)**

22 103. Plaintiff re-alleges and incorporates by reference the allegations  
23 contained in paragraphs 1-98 and 101-102 above as if fully set out in this count.

24 104. Under the Financial Institutions Reform, Recovery and Enforcement  
25 Act, directors and officers of failed financial institutions may be held liable to FDIC  
26 receiverships for loss or damage caused by their "gross negligence," as defined by  
27 applicable state law. 12 U.S.C. § 1821(k). California law defines "gross  
28 negligence" as the extreme departure from the ordinary standard of conduct.

1           105. In the alternative to the Count I negligence claim in this Complaint, the  
2 acts and omissions of Defendants Hall and Rodriguez, particularly those  
3 specifically alleged in paragraphs 44-93 and 98, constitute gross negligence under  
4 California law, but are especially grossly negligent given the cumulative nature of  
5 Hall's and Rodriguez's repeated acts and omissions, the Bank's significant over-  
6 concentration in speculative ADC and CRE loans, and the deteriorating local and  
7 national real estate market when Hall and Rodriguez committed the acts and  
8 omissions alleged in this Complaint.

9           106. Defendant Colbourne, as a director and a member of the Bank's ELC,  
10 had the obligation to exercise the degree of diligence, care, and skill in a manner  
11 that was not an extreme departure from the ordinary standard of conduct in  
12 management, oversight, and conduct of the Bank's business.

13           107. Defendant Colbourne breached his duties to the Bank as described in  
14 this Complaint, and he, among other things:

- 15           a. Failed to ensure that the Bank's lending complied with the  
16 Bank's policies and procedures and prudent, safe, and sound lending  
17 practices;
- 18           b. Approved ADC/CRE and other high-risk loans that violated the  
19 Bank's Loan Policy and were imprudent, unsafe, and unsound;
- 20           c. Approved loans that had not been properly underwritten prior to  
21 funding;
- 22           d. Failed to ensure that ADC/CRE and other high-risk loans made  
23 by the Bank were prudent, safe, and sound, and that the Bank had a  
24 reasonable prospect of being repaid by the debtors;
- 25           e. Failed to implement and follow sound loan underwriting and  
26 credit administration practices;
- 27           f. Failed to implement prudent risk management strategies, by,  
28 among other things, allowing dangerous concentrations in ADC/CRE

1 loans; and

2 g. Failed to adhere to the Bank's Loan Policy and failed to ensure  
3 that Bank personnel followed the Loan Policy.

4 108. Defendant Colbourne's acts and omissions, particularly those  
5 specifically alleged in paragraphs 44-93 and 107, constitute gross negligence under  
6 California law, but are especially grossly negligent given the cumulative nature of  
7 Colbourne's repeated acts and omissions, the Bank's significant over-concentration  
8 in speculative ADC and CRE loans, and the deteriorating local and national real  
9 estate market when Colbourne committed the acts and omissions alleged in this  
10 Complaint.

11 109. Defendants' acts and omissions alleged in this Complaint directly and  
12 proximately caused the Bank to suffer millions of dollars in damages, in an amount  
13 to be proved at trial.

14 110. With respect to their grossly negligent acts and omissions, each  
15 Defendant is jointly and severally liable for the damages he caused the Bank to  
16 incur.

17 **COUNT III**

18 **BREACH OF FIDUCIARY DUTY**

19 111. Plaintiff re-alleges and incorporates by reference the allegations  
20 contained in paragraphs 1-98, 101-102, and 105-108 above as if fully set out in this  
21 count.

22 112. Under California law, as officers and/or directors of the Bank,  
23 Defendants owed LJB fiduciary duties of loyalty, obedience, due care, and  
24 diligence, as well as the duty to act in good faith and in the best interests of the  
25 Bank. Thus, Defendants owed a duty to the Bank to adhere diligently and in good  
26 faith to the Bank's Loan Policy as well as laws, regulations, and guidelines  
27 established to ensure that LJB operated in a safe and sound matter.

28 113. In the alternative to Counts I and II in this Complaint, the acts and

1 omissions of each Defendant, described herein and particularly in paragraphs 44-  
2 93,98, and 107 of this Complaint, constitute breaches of their fiduciary duties to the  
3 Bank.

4 114. Defendants' breaches of fiduciary duty alleged in this Complaint  
5 directly and proximately caused the Bank to suffer millions of dollars in damages,  
6 in an amount to be proved at trial.

7 115. With respect to their breaches of fiduciary duty, each Defendant is  
8 jointly and severally liable for the damages he caused the Bank to incur.

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**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff, the Federal Deposit Insurance Corporation as Receiver for La Jolla Bank, FSB, demands a trial by jury and judgment in its favor against Defendants as follows:

1. For compensatory damages and other damages, jointly and severally, against Defendants for their negligence, gross negligence, and/or breaches of fiduciary duty that resulted in damages;
2. For prejudgment and other appropriate interest pursuant to 12 U.S.C. § 1821(l) and California law;
3. Such other and further relief as the Court deems just and proper; and
4. Plaintiff demands a trial by jury on all issues.

DATED: February 13, 2013

PROCOPIO, CORY, HARGREAVES &  
SAVITCH LLP

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***Attorneys for Plaintiff***



JS 44 (Rev. 12/12)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

<p><b>I. (a) PLAINTIFFS</b>                  FEDERAL DEPOSIT INSURANCE CORPORATION as Receiver for LA JOLLA BANK, FSB</p> <p>(b) County of Residence of First Listed Plaintiff <u>Washington, D.C.</u>                  (EXCEPT IN U.S. PLAINTIFF CASES)</p> <p>(c) Attorneys (Firm Name, Address, and Telephone Number)                  Anthony J. Dain / Frederick K. Taylor / Heather A. Cameron                  Procopio Cory Hargreaves &amp; Savitch LLP                  525 B Street, Suite 2200, San Diego CA 92101                  (619) 238-1900</p>	<p><b>DEFENDANTS</b>                  RICHARD K. COLBOURNE, RICK F. HALL and MARTIN RODRIGUEZ</p> <p>County of Residence of First Listed Defendant <u>San Diego</u>                  (IN U.S. PLAINTIFF CASES ONLY)</p> <p>NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.                  Attorneys (If Known) <span style="background-color: black; color: black;">[REDACTED]</span></p>
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<p><b>II. BASIS OF JURISDICTION</b> (Place an "X" in One Box Only)</p> <p><input checked="" type="checkbox"/> 1 U.S. Government Plaintiff</p> <p><input type="checkbox"/> 2 U.S. Government Defendant</p> <p><input type="checkbox"/> 3 Federal Question (U.S. Government Not a Party)</p> <p><input type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)</p>	<p><b>III. CITIZENSHIP OF PRINCIPAL PARTIES</b> (Place an "X" in One Box for Plaintiff and One Box for Defendant)</p> <table border="1" style="width:100%; border-collapse: collapse;"> <tr> <td style="width:33%;">Citizen of This State</td> <td style="width:10%;">PTF <input type="checkbox"/> 1</td> <td style="width:10%;">DEF <input type="checkbox"/> 1</td> <td style="width:33%;">Incorporated or Principal Place of Business In This State</td> <td style="width:10%;">PTF <input type="checkbox"/> 4</td> <td style="width:10%;">DEF <input type="checkbox"/> 4</td> </tr> <tr> <td>Citizen of Another State</td> <td>PTF <input type="checkbox"/> 2</td> <td>DEF <input type="checkbox"/> 2</td> <td>Incorporated and Principal Place of Business In Another State</td> <td>PTF <input type="checkbox"/> 5</td> <td>DEF <input type="checkbox"/> 5</td> </tr> <tr> <td>Citizen or Subject of a Foreign Country</td> <td>PTF <input type="checkbox"/> 3</td> <td>DEF <input type="checkbox"/> 3</td> <td>Foreign Nation</td> <td>PTF <input type="checkbox"/> 6</td> <td>DEF <input type="checkbox"/> 6</td> </tr> </table>	Citizen of This State	PTF <input type="checkbox"/> 1	DEF <input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	PTF <input type="checkbox"/> 4	DEF <input type="checkbox"/> 4	Citizen of Another State	PTF <input type="checkbox"/> 2	DEF <input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	PTF <input type="checkbox"/> 5	DEF <input type="checkbox"/> 5	Citizen or Subject of a Foreign Country	PTF <input type="checkbox"/> 3	DEF <input type="checkbox"/> 3	Foreign Nation	PTF <input type="checkbox"/> 6	DEF <input type="checkbox"/> 6
Citizen of This State	PTF <input type="checkbox"/> 1	DEF <input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	PTF <input type="checkbox"/> 4	DEF <input type="checkbox"/> 4														
Citizen of Another State	PTF <input type="checkbox"/> 2	DEF <input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	PTF <input type="checkbox"/> 5	DEF <input type="checkbox"/> 5														
Citizen or Subject of a Foreign Country	PTF <input type="checkbox"/> 3	DEF <input type="checkbox"/> 3	Foreign Nation	PTF <input type="checkbox"/> 6	DEF <input type="checkbox"/> 6														

**IV. NATURE OF SUIT** (Place an "X" in One Box Only)

<p><b>CONTRACT</b></p> <p><input type="checkbox"/> 110 Insurance</p> <p><input type="checkbox"/> 120 Marine</p> <p><input type="checkbox"/> 130 Miller Act</p> <p><input type="checkbox"/> 140 Negotiable Instrument</p> <p><input type="checkbox"/> 150 Recovery of Overpayment &amp; Enforcement of Judgment</p> <p><input type="checkbox"/> 151 Medicare Act</p> <p><input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans)</p> <p><input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits</p> <p><input type="checkbox"/> 160 Stockholders' Suits</p> <p><input type="checkbox"/> 190 Other Contract</p> <p><input type="checkbox"/> 195 Contract Product Liability</p> <p><input type="checkbox"/> 196 Franchise</p>	<p><b>TORTS</b></p> <p><b>PERSONAL INJURY</b></p> <p><input type="checkbox"/> 310 Airplane</p> <p><input type="checkbox"/> 315 Airplane Product Liability</p> <p><input type="checkbox"/> 320 Assault, Libel &amp; Slander</p> <p><input type="checkbox"/> 330 Federal Employers' Liability</p> <p><input type="checkbox"/> 340 Marine</p> <p><input type="checkbox"/> 345 Marine Product Liability</p> <p><input type="checkbox"/> 350 Motor Vehicle</p> <p><input type="checkbox"/> 355 Motor Vehicle Product Liability</p> <p><input type="checkbox"/> 360 Other Personal Injury</p> <p><input type="checkbox"/> 362 Personal Injury - Medical Malpractice</p>	<p><b>PERSONAL INJURY</b></p> <p><input type="checkbox"/> 365 Personal Injury - Product Liability</p> <p><input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability</p> <p><input type="checkbox"/> 368 Asbestos Personal Injury Product Liability</p> <p><b>PERSONAL PROPERTY</b></p> <p><input type="checkbox"/> 370 Other Fraud</p> <p><input type="checkbox"/> 371 Truth in Lending</p> <p><input type="checkbox"/> 380 Other Personal Property Damage</p> <p><input type="checkbox"/> 385 Property Damage Product Liability</p>	<p><b>FORFEITURE/PENALTY</b></p> <p><input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881</p> <p><input type="checkbox"/> 690 Other</p>	<p><b>BANKRUPTCY</b></p> <p><input type="checkbox"/> 422 Appeal 28 USC 158</p> <p><input type="checkbox"/> 423 Withdrawal 28 USC 157</p> <p><b>PROPERTY RIGHTS</b></p> <p><input type="checkbox"/> 820 Copyrights</p> <p><input type="checkbox"/> 830 Patent</p> <p><input type="checkbox"/> 840 Trademark</p> <p><b>LABOR</b></p> <p><input type="checkbox"/> 710 Fair Labor Standards Act</p> <p><input type="checkbox"/> 720 Labor/Management, Relations</p> <p><input type="checkbox"/> 740 Railway Labor Act</p> <p><input type="checkbox"/> 751 Family and Medical Leave Act</p> <p><input type="checkbox"/> 790 Other Labor Litigation</p> <p><input type="checkbox"/> 791 Employee Retirement Income Security Act</p> <p><b>IMMIGRATION</b></p> <p><input type="checkbox"/> 462 Naturalization Application</p> <p><input type="checkbox"/> 465 Other Immigration Actions</p>	<p><b>OTHER STATUTES</b></p> <p><input type="checkbox"/> 375 False Claims Act</p> <p><input type="checkbox"/> 400 State Reapportionment</p> <p><input type="checkbox"/> 410 Antitrust</p> <p><input checked="" type="checkbox"/> 430 Banks and Banking</p> <p><input type="checkbox"/> 450 Commerce</p> <p><input type="checkbox"/> 460 Deportation</p> <p><input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations</p> <p><input type="checkbox"/> 480 Consumer Credit</p> <p><input type="checkbox"/> 490 Cable/Sat TV</p> <p><input type="checkbox"/> 850 Securities/Commodities/Exchange</p> <p><input type="checkbox"/> 890 Other Statutory Actions</p> <p><input type="checkbox"/> 891 Agricultural Acts</p> <p><input type="checkbox"/> 893 Environmental Matters</p> <p><input type="checkbox"/> 895 Freedom of Information Act</p> <p><input type="checkbox"/> 896 Arbitration</p> <p><input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision</p> <p><input type="checkbox"/> 950 Constitutionality of State Statutes</p>
<p><b>REAL PROPERTY</b></p> <p><input type="checkbox"/> 210 Land Condemnation</p> <p><input type="checkbox"/> 220 Foreclosure</p> <p><input type="checkbox"/> 230 Rent Lease &amp; Ejectment</p> <p><input type="checkbox"/> 240 Torts to Land</p> <p><input type="checkbox"/> 245 Tort Product Liability</p> <p><input type="checkbox"/> 290 All Other Real Property</p>	<p><b>CIVIL RIGHTS</b></p> <p><input type="checkbox"/> 440 Other Civil Rights</p> <p><input type="checkbox"/> 441 Voting</p> <p><input type="checkbox"/> 442 Employment</p> <p><input type="checkbox"/> 443 Housing/Accommodations</p> <p><input type="checkbox"/> 445 Amer. w/Disabilities - Employment</p> <p><input type="checkbox"/> 446 Amer. w/Disabilities - Other</p> <p><input type="checkbox"/> 448 Education</p>	<p><b>PRISONER PETITIONS</b></p> <p><b>Habeas Corpus:</b></p> <p><input type="checkbox"/> 463 Alien Detainee</p> <p><input type="checkbox"/> 510 Motions to Vacate Sentence</p> <p><input type="checkbox"/> 530 General</p> <p><input type="checkbox"/> 535 Death Penalty Other:</p> <p><input type="checkbox"/> 540 Mandamus &amp; Other</p> <p><input type="checkbox"/> 550 Civil Rights</p> <p><input type="checkbox"/> 555 Prison Condition</p> <p><input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement</p>			<p><b>FEDERAL TAX SUITS</b></p> <p><input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)</p> <p><input type="checkbox"/> 871 IRS—Third Party 26 USC 7609</p>

**V. ORIGIN** (Place an "X" in One Box Only)

1 Original Proceeding

2 Removed from State Court

3 Remanded from Appellate Court

4 Reinstated or Reopened

5 Transferred from Another District (specify)

6 Multidistrict Litigation

**VI. CAUSE OF ACTION**

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):  
12 U.S.C. Section 1821(K); 12 U.S.C. Section 1821(I)

Brief description of cause:  
Negligence; Gross Negligence; Breach of Fiduciary Duties

**VII. REQUESTED IN COMPLAINT:**

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$ \_\_\_\_\_

CHECK YES only if demanded in complaint:  
 JURY DEMAND:  Yes  No

**VIII. RELATED CASE(S) IF ANY** (See instructions): JUDGE \_\_\_\_\_ DOCKET NUMBER \_\_\_\_\_

DATE: 2/13/2013

SIGNATURE OF ATTORNEY OF RECORD: Heather A. Cameron

FOR OFFICE USE ONLY

RECEIPT # \_\_\_\_\_ AMOUNT \_\_\_\_\_ APPLYING IFP \_\_\_\_\_ JUDGE \_\_\_\_\_ MAG. JUDGE \_\_\_\_\_