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UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF NEVADA

FEDERAL DEPOSIT INSURANCE CORPORATION, AS RECEIVER OF SILVER STATE BANK Plaintiffs, vs. COREY L. JOHNSON; DOUGLAS E. FRENCH; GARY A. GARDNER; and TIMOTHY S. KIRBY Defendants,	Case No.: 2:12-CV-209

1 **COMPLAINT**
2 **JURY TRIAL DEMANDED**
3
4 **TO THE HONORABLE COURT:**

5 Now comes the Federal Deposit Insurance Corporation ("FDIC"), in its capacity as
6 Receiver of Silver State Bank ("Silver State" or "the Bank"), and files its Complaint. Its
7 attorneys will comply with LR 1A 10-2 within 45 days.
8
9 **I. JURISDICTION AND VENUE**

10 1. This Court has jurisdiction over this action pursuant to 12 U.S.C.
11 § 1819(b)(1)-(2)(a) and 28 U.S.C. §§ 1331 and 1345. Supplemental jurisdiction over the FDIC's
12 state law claims may be exercised by the Court under 28 U.S.C. § 1367.

13 2. Pursuant to 28 U.S.C. § 1391(b), venue is proper in the District of Nevada
14 because the claims and causes of action asserted in this Complaint arose in this district.
15
16 **II. THE PLAINTIFF**

17 3. The FDIC is an instrumentality of the United States, established under the
18 Federal Deposit Insurance Act, 12 U.S.C. §§ 1811-1833(e).

19 4. Silver State, which prior to its demise was headquartered in Henderson, Nevada,
20 and was founded on July 1, 1996. The Bank operated out of its headquarters in Henderson,
21 Nevada, with 12 branch offices in Clark County, Nevada, and 4 branch offices in Maricopa
22 County, Arizona. The Bank also had 12 loan production offices in Nevada, California,
23 Washington, Oregon, Utah, Colorado, and Florida. Silver State was a state nonmember bank
24 that was wholly owned by its holding company, Silver State Bancorp ("Bancorp"), which filed
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for Chapter 7 bankruptcy protection on January 6, 2009. Since its inception, the Bank was jointly examined by the FDIC and the State of Nevada.

5. On September 5, 2008, the Bank was closed by the Nevada Financial Institutions Division, and the FDIC was appointed as receiver pursuant to 12 U.S.C. § 1821(c). As set forth in 12 U.S.C. § 1821(d)(2)(A)(i), the FDIC succeeded to all rights, titles and privileges of Silver State and its stockholders, account holders and depositors.

III. DEFENDANTS

6. Defendant Corey L. Johnson ("Johnson") co-founded the Bank and became a director of the Bank in July 1996. In January 2006, he became the Bank's Chief Executive Officer, Chairman of the Executive Management Committee, and Chairman of the Senior Loan Committee. He served in these capacities during the period of time relevant to this complaint and, in fact, until he resigned in July 2008. Johnson may be served with process through his attorney, John McMillan, Flangas McMillan Law Group, 3275 South Jones Boulevard, Suite 105, Las Vegas, Nevada 89146.

7. Defendant Douglas E. French ("French") was hired in February 1997 as the Bank's Executive Vice President of Real Estate Lending and was a member of the Senior Loan Committee. He served in these capacities during the period of time relevant to this Complaint and, in fact, until he resigned in lieu of termination in May 2008.[1] French may be served with process through his attorney, Patrick J. Egan, Fox Rothschild, 2000 Market Street, 20th Floor, Philadelphia, PA 19103-3222.

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[1] The FDIC's Enforcement Section initiated a prohibition and civil money penalties action against French in connection with several multi-million dollar loans, some of which are the loss loans on which the claims herein are based. French has entered into a Consent Agreement with respect to that action.

8. Defendant Gary A. Gardner ("Gardner") was hired in March 2006 as a Senior Vice President and loan officer.[2] He served in those capacities during the period of time relevant to this Complaint and, in fact, until he was terminated by the Board of Directors in May 2008. Gardner may be served with process through his attorney, Allen D. Emmel, Coppedge Emmel & Kiegeman, PC, 5586 South Fort Apache, Suite 110, Las Vegas, Nevada 89148.

9. Defendant Timothy S. Kirby ("Kirby") was hired in July 2006 as an Assistant Vice President and loan officer and was quickly promoted to Vice President. He served in those capacities during the period of time relevant to this Complaint and, in fact, until he was terminated by the Board of Directors in March 2008. Kirby may be served with process through his attorney, Maureen Beyers, Osborn Maledon, The Phoenix Plaza, 2929 North Central Avenue 21st Floor, Phoenix, Arizona 85012-2793.

IV. NATURE OF THIS SUIT

10. This suit seeks to recover in excess of $86 million in damages for losses incurred by Silver State in connection with certain loan transactions, as described more particularly below. The losses were caused by the gross negligence and breaches of fiduciary duties of the defendants, all of whom were Officers of the Bank and directly involved in the transactions. Johnson was also a member of the Board of Directors and owed fiduciary duties in that capacity.

11. The damages are based on losses from numerous acquisition, development, and construction ("ADC") loans made between January 2006 and February 2008. All of the

[2] The FDIC's Enforcement Section initiated a prohibition and civil money penalties action against Gardner in connection with several multi-million dollar loans, some of which are the loss loans on which the claims herein are based. Gardner has entered into a Consent Agreement with respect to that action.

defendants were grossly negligent and breached their fiduciary duties in originating, recommending, approving, and/or administering the loss loans in violation of Silver State's loan policies, applicable regulations, and prudent lending practices. Ultimately, as one witness testified in a sworn statement, the Bank's failure was caused by land loans of this nature.

V. FACTUAL BACKGROUND

A. Silver State's Background and Growth in Risky Lending Practices

12. Silver State was a state-chartered, non-member institution established on and FDIC-insured since July 1, 1996. Silver State Bank was 100% owned by Silver State Bancorp (Bancorp), a one-bank holding company, also located in Henderson, Nevada.

13. In a cash transaction consummated in September 2006, the holding company acquired Choice Bank, a state-chartered non-member bank operating in Arizona. On April 1, 2008, Choice Bank merged with Silver State Bank, ultimately returning Bancorp to a one-bank holding company.

14. In its Call Report as of June 30, 2008, the Bank had total assets of $1.957 billion, total loans of $1.639 billion, and total deposits of $1.733 billion. The Bank represented the only operating subsidiary of Bancorp. The stock of Bancorp is closely held, with the principal shareholder being Linda Yanke (the mother-in-law of Director and former-Chairman of the Board Bryan Norby). Bancorp stock was listed on the NASDAQ Global Select Market under the symbol "SSBX." Trading in Bancorp stock was halted on September 9, 2008, when the share price dropped to eight cents.

15. Tod Little ("Little"), a co-founder of Silver State, was Chairman of the Board and CEO during the first ten years of the Bank's existence. Under his guidance, the Bank's growth was steady and controlled, with conservative lending focused on Small Business

1 Administration ("SBA") loans to qualified borrowers. After ten years, Silver State had grown to
2 $805 million in assets. In January 2006, Little was forced out of the Bank when Johnson used
3 Little's marital problems to convince the Board to remove him. The Board appointed Johnson
4 as CEO to replace Little.
5
6 16. Johnson abandoned the Bank's prior conservative lending strategy in favor of a
7 high-risk ADC lending strategy funded by brokered deposits. Through this strategy, Johnson
8 planned to grow Silver State into a $2 billion bank within two years. At Johnson's direction, the
9 Bank increased ADC loans by $345 million in 2006, $394 million in 2007, and $124 million in
10 2008 (before the Bank failed on September 5), and continued to make ADC loans when other
11 similarly sized banks in the same market had virtually ceased making such loans.
12
13 17. To accomplish this, Johnson put French in charge of the ADC lending program.
14 Both Johnson and French pursued this program aggressively despite indications and other
15 warnings, beginning in mid-2005 and continuing until the Bank failed, of declining real estate
16 markets in the Bank's principal lending areas – Las Vegas, Nevada and Phoenix, Arizona.
17 French has testified that he knew that the Las Vegas market was a speculative bubble and that
18 the economy was a "house of cards." Moreover, French has admitted that Silver State should
19 not have made any new loans on Las Vegas residential real estate developments after mid-2007.
20
21 18. By the end of 2007, 67 percent of Silver State's loans were ADC loans. Rather
22 than offsetting the risks associated with this concentration in ADC loans by strengthening the
23 Bank's underwriting and credit administration, Johnson and French openly rejected proposed
24 solutions to address the Bank's known underwriting and credit administration weaknesses, and
25 essentially ignored the risk involved.
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19. Contributing to the risks inherent in loans of this nature, the Bank's pay structure for loan officers provided a strong incentive for them to make loans without regard to quality or risk. Loan officers (including French), in addition to their regular salary, earned a commission equal to 10 percent of the Bank's fee income on all loans they originated. French, Kirby, and Gardner earned a substantial portion of their compensation in commissions from 2006 through 2008.

20. For example, French's loan origination commissions were $338,584 in 2006, more than twice his regular salary. In 2007, French earned $231,658 in commissions on loans that he originated, compared to a salary of $230,462. This made him second only to former CEO Johnson in compensation. Despite the link between his compensation and the continued involvement of the Bank in loans of this nature, French was one of the main presenters of information regarding the condition of the economy and real estate market to the Board.

21. As discussed in detail below, French had serious concerns and doubts about the real estate market and the economy. Yet he failed to share these concerns and doubts with the Board - instead providing it with an optimistic overview of both.

22. Johnson, who consulted regularly with French, was privy to French's doubts about the condition of the economy in general and the Las Vegas market in particular. In spite of numerous indications of a declining market, Johnson allowed French to advise the Board and SLC that the Las Vegas market was one with continuing opportunities for growth.

23. During this period of significant loan growth, French led the charge into ever-increasing ADC growth, especially loans to fund residential development and construction and land loans. The majority of these were speculative in nature and heavily dependent on the value

of the underlying collateral to ensure full payment. French and his department originated the vast majority of the Bank's problem loans.

24. By January 2007, however, a significant downturn in real estate values and construction activity had begun in the Bank's primary markets. Non-performing loans increased dramatically, and the Bank began to experience significant losses. Despite this downturn, the defendants continued to make large loans, yet failed to take any measures to assure that the loans were credit-worthy, let alone that the proceeds were used for their intended purposes.

25. These practices are confirmed by a review of the Bank's Uniform Bank Performance Report (UBPR). The UBPR for the following three semi-annual periods (from June 30, 2007 through June 30, 2008) reveals the numerous issues the Bank was facing. As a general rule, extremely high or low percentiles are typically indicative of an "outlier" and often call for remedial action. The UBPR reveals that Silver State Bank was between the percentiles shown below for the listed category:

- the 96th and 97th percentile for interest income (at the upper end of peers),
- the 86th and 94th percentile for interest expense (at the upper end of peers),
- the 15th and 24th percentile for non-interest income (toward the low end of peers),
- the 90th and 96th percentile for asset growth (at the upper end of peers),
- the 90th and 99th percentile for commercial real estate loans (at the upper end of peers),
- the 94th and 99th percentile for commercial real estate, other construction, and land loans (at the upper end of peers).

26. These UBPR comparisons indicate that the Institution was earning an above average yield on earning assets and, correspondingly, paying an above average rate on liabilities. This is indicative of an institution which is making high rate—and high-risk—loans and/or charging large fees on the loans and funding growth with volatile funding sources. The defendants were doing all of these things routinely.

27. The UBPR shows that the Bank had few sources of non-interest income (fees) and that the defendants aggressively pursued growth well above that of the Bank's peers. As for the make-up of loans, the UBPR bears out what will be the central theme of the bank failure: The defendants pursued loan growth in commercial real estate, other construction, and speculative land without regard for what the rest of the banking industry (particularly in the Las Vegas market) was doing. In fact, defendants pursued growth in these loan categories at a time when most other successful institutions were either maintaining the status quo or "pulling back" on these types of loans.

B. Johnson and French dominated the management of the Bank; led the charge for increased speculative ADC lending; and limited the enactment of policies governing loan officers' abilities to administer such loans.

28. French was, by all accounts, an intimidating person who was used to getting his way within the Bank. Organizationally, however, Johnson had ample opportunity to control the situation. During the time that aggressive growth was taking place, management was made aware that there were weaknesses in internal controls and processes in the loan department. Yet because of Johnson and French's influence, remedial action was not taken. For example, the following situations, among others of like kind, existed and were brought to management's attention between February and March of 2007:

- there was no formally documented policy regarding Loan Disbursements;
- there were too many employees with the ability to print and sign cashier's checks (allowing, for example, loan officers to choose and pay appraisers directly); and,
- many construction loans were being funded without using the standard voucher control company (which would have required, for example, site inspections).

29. In September 2007 a decision was made by a working group at the Bank that the best way to fully close the gaps in internal controls surrounding loan disbursements was to create a loan funding role in the note department. Eventually, however, Johnson and French stopped the newly created loan funding roles. It was their position that this would cause too many obstacles for the loan officers and would interfere with the loan officers' ability to provide the "small, local bank feel" that they believed was vital to maintaining the Bank's position in the community.

30. Instead, loan officers had permission to print checks for loan draws on approved loans. While these checks were supposed to be supported by construction inspection reports and/or site visitations, the loan officers had authority to approve and authorize these draws without any appropriate controls. In the SBA loan section of the Bank, however, loan officers were removed from the disbursement approval function. Reportedly, Johnson and other executive officers met with loan officers to discuss centralizing disbursement controls, but the loan officers did not like the change and no action was taken. The reason, of course, was that Johnson wanted to keep the "engines" of the Bank happy (i.e., the loan officers). As described below, the engines, French, Kirby, and Gardner, used their authority to breach their duties in

numerous ways, in large part by engaging in the very conduct these controls would have been designed to prevent.

31. In any event, as a result of the push by defendants for ADC loans, Silver State increased total loans by $500 million in 2006 and $400 million in 2007, which was timed precisely with the downturn in the Las Vegas residential real estate market. French and those under his supervision, such as Gardner and Kirby, originated and managed virtually all of the land, development, and construction loans geared to that market, and the Bank (now the FDIC), paid and continues to pay the price.

32. Johnson, as chairman of the SLC, approved those loans, and rejected the occasional objections to French's loans raised by other SLC members. President Regan, who was the most frequent objector to French's loans, was derisively labeled "Dr. No" by French, and Regan's concerns were ignored.

33. As such, French was virtually the sole advisor to the Senior Loan Committee ("SLC") and the Board of Directors ("BOD") on the condition of the Las Vegas residential real estate market. French continued to provide the SLC and BOD optimistic reports on the Las Vegas residential real estate market through the first quarter of 2008, and Johnson echoed French's reports.

34. In reality the Las Vegas residential real estate market was declining during the years 2006 and 2007, and both French and Johnson were well aware of that fact. In fact, French and Johnson were aware that the decline would be hitting these markets in as early as 2005. And they were certainly aware of the risk the concentration in ADC loans presented to the Bank.

35. When the veil covering the Bank's lending practices was lifted, the Bank's twenty largest depositors withdrew $247 million from Silver State between June 30, 2008 and

August 5, 2008. In addition, as a result of the Bank's downgrade to "Adequately Capitalized," $62 million in brokered money market accounts were withdrawn on or near August 1, 2008. The release of the Bank's second quarter financial statements created additional negative press, and deposit outflows continued and accelerated. The Bank lost its borrowing capacity at the Federal Home Loan Bank (FHLB), and a $20 million unsecured Federal Funds line of credit from a correspondent bank was cancelled. A planned stock offering of approximately $65 million was expected to close in July 2008 but did not. Failure was inevitable.

C. Kirby and Gardner Joined Forces with Johnson and French to increase the Bank's ADC Loan Portfolio

36. In order to grow the ADC portfolio as explosively as they planned, French and Johnson needed help. Thus, French hired Kirby and Gardner as loan officers and each was soon managing a loan portfolio in excess of $200 million under the supposed supervision of French. French's "supervision," however, consisted of little more than telling Kirby and Gardner to go out and make loans.

37. Unfortunately, Kirby had little or no experience in credit analysis, appraisal review, or many other routine practices required of a loan officer. French knew this, hired him anyway, and then ignored Kirby's pleas for help and admissions of incompetence. Kirby, in his own right, continued to make loans despite his knowledge of his own inability to satisfy his duties as a Vice President and loan officer - and continued to reap the rewards attendant thereto. He was soon so stressed out by his own incompetence, however, that he began abusing drugs and finally had a nervous breakdown—but not before his incompetence resulted in major losses to the Bank.

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38. Gardner, unlike Kirby, was an experienced loan officer. As opposed to Kirby, who just continued on in his position despite his knowledge that he was unable to perform his duties, Gardner knew what his duties were as a Senior Vice-President and Loan Officer but ignored them. Despite a huge loan portfolio, Gardner repeatedly violated the Bank's policies and applicable regulations in his lending practices.

39. Further exacerbating the problem was the compensation package for not only Kirby and Gardner, but also French. Near the time of the Bank's failure, examiners reviewed several target loans. One of their observations was that the loan officer compensation program appeared to contribute to the low-quality assets being booked. Loan officers received a percentage of the origination fees booked without regard to credit quality, encouraging them to disregard prudent underwriting guidelines. In addition, it appeared that incomplete information was used to conceal material facts from the Board. For example, in several instances loan officers pulled numbers from an appraisal to improve the "perceived" collateral protection afforded a loan, leading the way to approval by the SLC.

D. French Predicted the Decline Yet Defendants Continued Lending to Developers.

40. French, who has a keen interest in economics, testified that the cause of the Bank's failure was that low interest rates spurred people to buy houses, creating housing shortages and exploding prices. This, in turn, caused developers to buy land and begin development, using debt every step of the way. As the market overheated more and more, banks got in the land loan business despite the inherent risk in land lending.

41. Beginning in 2005-2006, however, the Federal Reserve raised the federal funds rate dramatically, which multiplied the cost of funds for developers. As carrying costs

increased, loans to developers began staying on the Bank's books longer. By mid-2007, many of the Bank's major developer borrowers were in workout situations and French was routinely waiving late fees for the growing number of problem borrowers. In fact, French and his team admit that no new money should have been advanced after July 1, 2007.

42. If that was not enough to show the writing on the wall, French's own writings, as well as the commentary of other market observers, stated that the Las Vegas residential market was declining and predicted greater troubles ahead - in other words French and others foresaw exactly what happened. In fact, French testified in a sworn statement that, as of 2005, his view was that the market could get no better and likely only worse in 2006 and 2007.

43. On July 11, 2005, French wrote an article entitled Condo Mania, which stated that real estate values were already inflated beyond reason, discussed the carrying costs of holding property for years with no resale, and stated that French was putting his spare cash in gold and paying off his mortgage. French commented that condos are the last segment to catch fire and the first to go down in a bust and *he felt the bust was close*. (emphasis added).

44. Then, on March 6, 2006, French wrote an article quoting Countrywide Mortgage CEO Angelo Mozilo's statements that Las Vegas is an overheated market that may plunge 40%. French also reported that net sales per subdivision were down 20% according to Home Builders Research. Furthermore, French reported, Builders had told him that their traffic was half what it was in the prior year, and that cancellations were soaring because buyers could not qualify for mortgages. Of course, those borrowers who could qualify for mortgages were using that leverage to obtain free options and upgrades. As one realtor told French, the market was a blood bath.

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45. On September 22, 2006, French read a Las Vegas Review Journal article stating that Las Vegas housing analyst Dennis Smith expected to see some fairly significant price cuts in the resale segment of the market in the next few months to move some of the 20,384 homes listed for sale in the Valley. French followed this by writing an October 3, 2006 article entitled "Boom Madness." French stated that in 2004 there were only 2,500 homes listed for resale on the MLS, but that number had now risen to 20,000, and that builders were giving away thousands of dollars in incentives to entice homebuyers to take the plunge. According to French, for those who believed the way to riches was buying as many houses as possible with no money down, "reality now bites." French also rejected the views of the Wall Street Journal that there was no housing bubble. After writing that article, French read a December 7, 2006 Las Vegas Review Journal article stating that residential home sales continued to decline dramatically.

46. Of course all this meant little to French and Johnson. Then, on January 24, 2007, Tom Russell, Executive V.P. of Credit, and Kirk Viau issued Silver State's Quarterly Loan Loss Reserve Analysis and discussed the Las Vegas residential real estate. The analysis stated that "[b]uilders are offering purchase incentives, with incentive packages ranging from $10,000 to $100,000," "with contract cancellations reaching 42% in some subdivisions, builders are cutting staff and prices of new homes by tens of thousands of dollars," and a "full 40 percent of all the area's homes for resale aren't even occupied—**a sign of a market that has been inflated by speculative fever."** (emphasis added).

47. Despite this, French attended the Silver State BOD meeting on February 27, 2007 and essentially rejected the negative findings of his own writings and the January 2007 Loan Loss Reserve Analysis. As set forth in the minutes for that meeting, "[t]he Board also reviewed economic factors relating to the local economy, including local real estate market and

home sales. Mr. French pointed out that although economists are reporting housing troubles, the Las Vegas housing market, as well as the Phoenix market is upbeat."

48. After providing that report, however, French read an April 20, 2007, Business Las Vegas article stating that "Las Vegas housing slump worsens; prices plummet as existing home inventory hurts new sales. The price on new homes has tumbled nearly 10% this year, the inventory of existing homes has reached an all time high, and bank repossessions accounted for a greater percentage of existing home sales in Las Vegas." On the same day, the Las Vegas Review Journal reported, "[h]ome sales stats bleak; closings from bank repossessions rise, but resale prices remain fairly constant."

49. Then, on July 21, 2007, French wrote an article titled "The Unbloody Streets of Las Vegas." French stated that the market was "en fuego" in 2005 with 60-70 people per week visiting subdivisions looking for homes, but that the number had now dropped to 20. He also mentioned that the MLS had 23,642 homes listed in June, of which 40% were vacant and likely owned by speculators, as well as the belief among housing analysts that Las Vegas was the poster child of the housing bust. Contrary to what he and Johnson had been advising the BOD and the SLC, French stated that they were in a housing slump that had begun in April 2006.

50. French followed this with an August 4, 2007 article called "When It Hits the Fan." French discussed the views of Peter Schiff, who believed that the U.S. Economy was a house of cards built on excess money creation by the Fed. Schiff noted that while all looks well now, economic disaster is right around the corner. In French's words, "Schiff doesn't know, but, when the bubble is this big, there are just so many potential pins that it is impossible to guess which one it will find first. Ignore Mr. Schiff at your financial peril."

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51. Finally, on January 7, 2008, French wrote an article called "Booms, Busts and Construction Cranes," which focused on the fact that the building of skyscrapers goes in tandem with bubbles. French opined that the creation of liquidity by the world's central banks had led to frenzied high-rise construction. According to French, however, before the construction party ends the economy wakes up with a bad hangover. As put by French, "[b]etter stock up on aspirin. There is a lot of pain coming." French provided most, if not all, of the articles to Corey Johnson at or near the date of the articles.

52. Gardner also testified in a sworn statement that there was a downturn in the Las Vegas residential real estate market in the beginning of 2007, if not before. Both Gardner and French discussed the downturn in the market throughout 2007, yet did nothing.

53. Despite these obvious and repeated warnings, French's own writings regarding the economic downturn, and Gardner and French's agreement regarding the downturn in the market, defendants continued lending at the same pace as before.

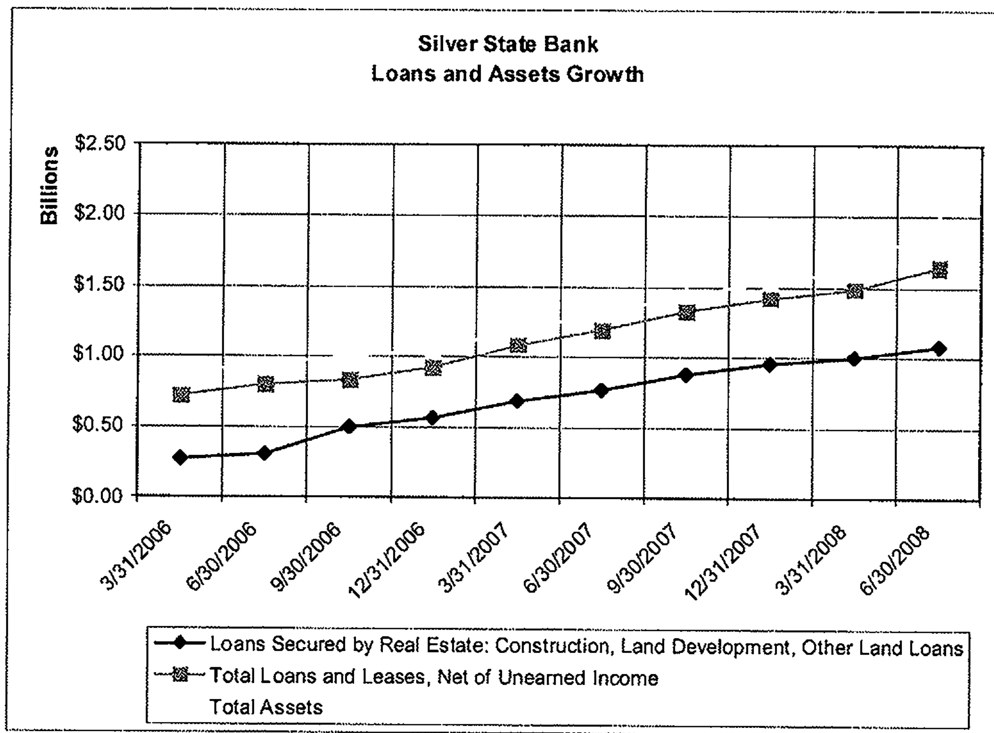
E. Bank Examiners also Warned Defendants Repeatedly of the Risks Involved in Defendants' Loan Strategy

54. Between 1997 and 2005, the Bank was examined eight times jointly by both the FDIC and the Nevada Financial Institutions Division (NFID) and was given a CAMELS "2" rating at each examination. Additionally, the Bank was visited four times during this period; at three of the visits, the bank was given a CAMELS rating of "2," while no rating was given at the most recent visit—in 2002.

55. Since 2005, however, the Bank has been jointly examined three times by the FDIC and the NFID—in 2006, 2007, and 2008. In addition, the Bank was visited once and has been the subject of at least two Regional Office Problem Bank Memoranda. As discussed

below, concerns regarding the defendants' lending practices were raised repeatedly—and ignored.

56. The following graph (of information taken from the Institution's quarterly Call Reports) is provided for reference in reviewing examination comments regarding the bank's level of investment in Construction, Land Development, and Other Land Loans (all secured by real estate) and relating that number to total loans and total assets of the Institution at various dates.



57. Included below are synopses of all the examinations completed.

58. A Joint FDIC and NFID examination was performed as of March 31, 2006, with the formal report issued on May 30, 2006. As stated by examiners, although asset quality and capital adequacy continued to be satisfactory, there was a concern over the high level of investment in commercial real estate (CRE) and loans extended for speculative purposes. The

examiners noted that the CRE portfolio approximated 913.43% of Tier 1 Capital. Further, CRE loans extended to finance construction and development (C&D) and loans extended for speculative purposes were in excess of Board-approved parameters (as a percent of Tier 1 Capital).

59. In the 2006 examination, examiners also cautioned that there had been an increase in the Bank's credit risk profile due to an increase in the extension of loans secured by raw land and those extended for speculative purposes. The examiners further found several problems in loan underwriting and credit administration practices, including the need to adopt policy guidelines addressing the use of interest reserves.

60. In response to the examiner's concerns over the high levels of CRE loans (which includes permanent CRE financing, construction loans, acquisition and development credit, and various land loans), Johnson stated that the Board did not plan to increase approved CRE lending limitations, but that it would be looking to either maintain the current parameters or reduce them should marked changes in the CRE market become evident. In addition, Johnson stated that the Board had given management until the end of third quarter 2006 to reduce exposure down to the currently approved limit levels. In the exit meeting with examiners, Johnson stated that, in a timely manner, management would review and consider all policy and procedure recommendations from examiners. Specifically, Johnson stated that management and the Board would address the deficiencies noted, "especially those related to management's efforts to effectively measure and monitor CRE concentrations."

61. Notably, the regulators reminded the Bank of the inherent risk that is generally associated with CRE concentrations, specifically concentrations in loans secured by raw land and those extended for speculative purposes, and the ongoing concerns about the direction of

the local CRE market. Johnson replied by stating that management was of the opinion that the overall real estate market was returning to a more stable rate of growth compared to what was experienced during the last several years, and that management did not believe the overall market would experience a significant correction in values. Johnson also attempted to reassure the examiners by stating that a portion of the "speculative loans" were incorrectly categorized and when the ongoing concentration project was completed, the volume of such loans would decline due to proper categorization.

62. A Joint FDIC and NFID examination was next performed as of March 31, 2007, with the formal report issued on May 14, 2007. Examiners stated that concentrations in CRE lending remained at heightened levels. In fact, examiners noted that the loan portfolio remained highly concentrated in CRE loans, with total CRE loans and unfunded commitments representing 898% of Total Risk Based Capital. There was also discussion of the ongoing need to address interest reserves, limits on their use, and the failure to monitor the volume of loans being paid with interest reserves. The examiners further stated that management and the Board should expand the Bank's liquidity contingency plan to provide more comprehensive discussion and funding guidelines for various types of potential liquidity stress events.

63. The next Joint FDIC and NFID examination was performed as of March 31, 2008, with the formal report issued on June 9, 2008. Examiners stated that the overall condition of the Bank had deteriorated significantly and was now deemed to be critically deficient. The level of problem assets had increased dramatically in the past year, while the ability to maintain adequate liquidity and overall liquidity position had decreased significantly - to a "woefully insufficient" crisis level - and was jeopardizing the Bank's ability to meet its ongoing obligations and the demands of its depositors. In addition, bank earnings performance declined

as the need to adequately fund the Allowance for Loan and Lease Losses dramatically increased.

64. Examiners also discussed management concerns within the June 9, 2008 Report of Examination. As set forth therein, the majority of the problems were a by-product of the Bank's high-risk business operating plan. The plan allowed management to undertake a number of high-risk operating strategies and utilize potentially problematic banking practices. These strategies allowed management to operate the Bank with an elevated risk profile, and resulted in the origination of a very high volume of CRE loans, including a high volume of residential and commercial construction, residential land development, raw land loans, and loans funded for speculative purposes; and the origination of a very high volume of land development and raw land loans with associated interest reserves.

65. Examiners further noted that construction draw controls and administration of construction loans was weak. In fact, the report noted that the Bank's external auditor cited a significant internal control deficiency for weaknesses in the administration and monitoring of construction loans while performing audit procedures after the first quarter of 2008. While reviewing the Silver Dollar loans, which are a part of the claims in this suit, the examiners determined that almost all of the draws were funded without accompanying inspection reports, and the circumvention of procedures led to the possibly fraudulent extension of two additional loans to construct homes on the purportedly finished lots.

66. The construction budget review process was also discussed. It was considered weak and the reallocation of construction budgets to create interest reserves was considered "unacceptable." As noted by examiners, such imprudent use of budget allocations results in the masking of the borrower's inability to perform, an understatement of the true delinquency and

troubled asset levels, overstated income, depleted funds to complete the project, and increased losses through the eventual write-off of capitalized interest.

67. Ultimately, management, such as Johnson and French, failed to ensure that adequate risk identification, measurement, and management systems were established. During the examination, inadequacies were noted in the following areas: internal loan review and problem loan identification; management loan approval practices and authorities; ALLL adequacy and methodology review; and, audit coverage of loan disbursement controls.

68. Under the direction of Johnson, the practices utilized by management to implement the business plan were found to be unsatisfactory in a number of instances. Inappropriate and objectionable practices noted during the examination included the following: the origination of loans without adequate analysis of borrower and guarantor cash flow and liquidity; the excessive origination of collateral dependent loans with associated interest reserves; an over reliance on the reported value of underlying collateral and contractor/developer past performance to support loan origination decisions; the origination of a high volume of speculative construction and land development loans; the origination of loans in excess of established loan-to-value guidelines; the failure to discontinue the advancement of funds to pay loan interest when the viability of the underlying real estate project was questionable; the extension of additional credit to problem borrowers without adequate analysis of the borrower's ability to repay the loan; and, the allowing of originating loan officers to revise approved budgets associated with construction loans.

69. Some of the aforementioned management practices led to the dramatic increase in the level of problem loans held by the Bank. As the condition of the real estate market declined, especially the residential sector, a significant number of the Bank's customers who

obtained loans to fund construction and development faced a dramatic decline in the level of product sales. The financial problems of many of these contractors and developers were masked for a period of time while the interest payments associated with their loans were kept current through the use of draws from other budget line items. This allowed the Bank to continue to generate interest income on a number of these loans, delayed the recognition of a potentially impaired loan, and deferred the establishment of an adequate loan loss reserve to reflect any identified impairment.

70. It was stated that, since the last examination, the policies and practices of the management team led directly to a dramatic increase in the level of problem loans held by the bank.

71. Notwithstanding the inadequacy of the bank's business operating plan and the inappropriateness of a number of management policies and practices, examiners also noted that bank management failed to realize the depth of the weakness in the real estate markets and the potential level of exposure to the financial viability of the bank. The inability to recognize the change in the market and the bank's exposure to this change in a timely manner severely limited the Board and management's ability to effect corrective action. Examples of these failures included the following: the initial mention of potential weakness in the local real estate market and the bank's potential level of exposure were not mentioned in the Board meeting minutes until October 2007; while management noted that the condition of the real estate markets were discussed at each meeting, they concluded that the overall condition of their real estate markets were satisfactory because the level of loan growth continued through the end of the fourth quarter of 2007; and, at least $170.7 million of total classified loans were originated by management since the beginning of 2007.

72. Examiners further observed that most of the bank's locally domiciled competitors (greater than $1 billion) had dramatically reduced or all together discontinued the origination of new construction and development loans by this time. While management had marginally increased its monthly provision expense level during 2007, it was not significantly increased until the Bank's external auditor required a marked increase in the provision level at the end of the fourth quarter of 2007, citing significant weaknesses associated with, among other things, internal problem loan recognition and loan grading and construction loan disbursement controls.

73. Thereafter, management began to make changes to address these issues, whereupon it recognized its increasing level of problem loans. It was not until then that re-appraisal of the underlying collateral of a significant number of impaired and/or collateral dependent loans was ordered.

74. Despite all this, the bank continued to fund the payment of interest through approved interest reserves on a number of impaired loans, which is an objectionable practice. In addition to masking borrower financial problems, the continued payment of interest on these loans inflated bank interest income and net income. Management was advised that this practice should be discontinued and interest earned since the loan became impaired should be reversed.

75. If management had acted appropriately on its own accord to establish adequate practices, these risk measurement and management and internal control deficiencies and weaknesses could have been addressed.

76. As a result of these issues, Silver State Bank was closed by the Nevada Financial Institutions Division, and the Federal Deposit Insurance Corporation was appointed as Receiver.

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F. **Loan Approval Process and Procedures at Silver State Bank**

77. While examiners noted many deficiencies in the Bank's policies and procedures, defendants ignored even those policies that were in place. As an initial matter, the Bank's Code of Ethics required that all employees become familiar with all laws and regulations applicable to the Bank, "as such laws and regulations relate to daily work requirements and professional responsibilities." In addition, it provided that "all employees, officers and directors shall carry out their responsibilities in accordance with applicable laws, regulations and policy statements." Furthermore, all "directors, officers and employees owe Silver State a duty of loyalty" and they "are expected to make business decisions on behalf of Silver State free from conflicting outside interest." In short, "[i]t is a violation of this Code and of Silver State policy to foster personal or business interests (or those of others with whom such persons have a personal or business relationship) at the expense of Silver State."

78. Silver State's Loan Manual also included policies, although not entirely adequate, to ensure that the Bank's lending was conducted prudently, as well as provisions acknowledging a need for diversification and limits on speculative lending. Specifically, the Manual provided that all loans should have a "sound, non-speculative purpose" and that "Silver State Bank strives to maintain a diverse loan portfolio as a means of limiting the undue build up of risk in any one particular loan type or industry."

79. The Manual also provided that "[t]he percentage of the construction budget disbursed should be supported by a commensurate amount of work completed at the project," which is also required under federal regulations, and that an appraisal should be performed by a state-certified appraiser in compliance with FDIC regulations for any loans above $1 million. It also had specific and detailed requirements regarding borrower analysis, project analysis,

repayment source analysis, minimum loan-to-value ("LTV") ratios, and appraisal evaluation. For example, for an ADC loan, the Manual required that the LTV ratio be based on the lower of the income or cost approach valuation set forth in the appraisal.

80. The Manual further provided that: "Voting members cannot be present to vote on a loan to their customer in the loan committee. If you do vote, you are not eligible to receive an incentive on that loan." As one example of the numerous policy violations by defendants, French was present and voted for the loss loans that he originated and recommended. Notwithstanding that he voted to approve his own loans, French nevertheless received his standard 10 percent commission on the loan origination fee.

81. Furthermore, under the Bank's policies, loan officers were responsible for preparing the analyses and presentation packets for the SLC. The loan presentation packets included a loan summary and approval sheet; a form identifying exceptions to policy; an affiliated debt and deposit schedule; a written narrative describing the action requested, details of the loan, and a justification for making the loan; analysis of the borrower and guarantor financial status; and identification of the collateral. Notably, copies of any appraisals related to the loans were not included in the loan presentation packets for the loss loans, although the Bank's Loan Manual specifically required them.

82. The Bank's Real Estate Lending Policy also provided requirements relating to construction loan disbursements and loan officer responsibilities. With respect to construction loans, in addition to requiring a commensurate amount of work to be performed in relation to each disbursement, progress payment inspections were required to be performed by qualified outside vendors. The inspections were required to include pictures and an estimation of the percentage of completion of the line items being drawn from, as well as an estimated overall

project percentage completed. A loan officer other than the originating officer was also required to review appraisals to determine if the appraiser met Bank standards and that the appraisal had been performed properly and met all requirements of Part 323 of the FDIC Rules and Regulations, FIRREA and USPAP.

83. With respect to loan officer responsibilities, the policy required loan officers to comply with all regulatory requirements, review appraisals to determine compliance with Bank policies, Part 323 of the FDIC Rules and Regulations, FIRREA, and USPAP, and provide subordination information in the CAM. The loan officer was responsible for accurate completion of all documentation, analysis of evidence of a borrower's financial capacity and ability to repay a loan, maintenance of credit quality and identification of credit deterioration, and approval of only those draws that were commensurate with the amount of work completed on the project.

84. Despite these internal procedural requirements, defendants consistently made loans without complying with the loan policies and without proper underwriting or credit administration. As a result, loans were made to borrowers with insufficient equity in the project and/or insufficient liquidity, and draws were approved with little or no oversight.

G. The Loss Transactions

85. Defendants, in originating and approving the loss loans, engaged in the following misconduct: they failed to disclose and/or provide material information to the Bank's SLC and Board to be used as an informed and integral part of their decision-making process; they failed to calculate accurate loan-to-value ratios; they failed to use appropriate appraisals and appraisal-related information and, as a result, did not comply with FDIC regulations, regulatory appraisal guidelines, the Financial Institution Reform, Recovery, and Enforcement Act ("FIRREA") and

the Uniform Standards of Professional Appraisal Practice ("USPAP"); they failed to comply with provisions of the Bank's 2005-2008 Loan Policies; they failed to disclose a conflict of interest involving French; and, they failed to conduct an adequate financial analysis of the borrowers and their interests.

86. Furthermore, defendants paid inappropriate, unsubstantiated, and/or non-construction related expenses from loan funds without appropriate approval, permitted the reallocation of construction budget line items without analysis of the adverse effect of the reallocation on the loan and the underlying project, and consistently and improperly disbursed loan proceeds without required third-party construction reports.

87. In addition, defendants' poor underwriting practices were evident in connection with each of the loss loans and, once the loans were made, poor loan administration practices magnified losses associated with each of them. Defendants caused loan funds to be disbursed repeatedly for an array of inappropriate and unauthorized purposes which were not at all consistent with loan approval terms, caused multiple budget reallocations to occur within a project without questioning their need or analyzing their ultimate adverse effect on the project, and caused loan funds to be disbursed over and over again without required inspections – inspections which would have revealed that, because actual construction had not progressed, additional funds should not have been disbursed.

88. These repeated violations of the Bank's loan policies and prudent lending practices occurred at the origination, approval, and credit administration stages. The officers who originated the loans – Kirby, Gardner, and French – were grossly negligent and breached their fiduciary duties in recommending approval because they failed to disclose all material

information necessary for the SLC to make informed decisions, and then they disbursed loan funds after approval in violation of loan conditions, Bank policy, and applicable regulations.

89. Johnson's and French's approvals were grossly negligent and breached their fiduciary duties because, for each loss loan, Johnson and French received information in their loan packets that identified deficiencies in the loans. For example, the LTV ratios presented in the loan packets violated Bank loan policy for almost every loan, many of the loans were identified as "speculative" with no "non-speculative" purpose identified, and most of the loan packets lacked meaningful analysis of project viability, which was especially critical in light of Johnson's and French's knowledge of the declining real estate market. Notwithstanding these red flags, as well as objections by other SLC members, Johnson and French voted to approve each of the loss loans.

90. Moreover, Johnson and French knew that Gardner and Kirby were advancing funds on loans without progress inspections because the regulators had warned Johnson and French in 2006 about this very problem. Johnson and French refused, however, to implement controls to prevent such disbursements. In fact, French regularly violated this policy in connection with his own loans. Ultimately, most, if not all, of the loss loans were fully disbursed but the loan projects were never completed.

91. The following loans caused significant loss to the Bank, although the FDIC's investigation continues to reveal additional loans in which the defendants engaged in similar misconduct.

92. Ultimately, each of the loans were originated, recommended, and/or approved by defendants in violation of the duties they owed to the Bank. The following chart illustrates the specific loan transactions on which defendants are being sued, as well as an overview of the

misconduct involved. Following the chart is a more detailed description of each of the loans.

Loan	Loan Relationship	Date	Kirby	Gardner	French	Johnson	Deficiencies (key follows table)
Tangelo	Stapley	09/06/06	O/R		A	A	1, 2, 3, 4, 5
Happy Valley	Kohner	02/21/07	O/R		A	A	1, 2, 3, 4, 5
		06/13/07	O/R		A	A	1, 2, 3, 4, 5
Mineral Creek	Dragoo	05/30/07	O/R		A	A	1, 2, 3, 4
Carefree Equestrian	Petrie	06/13/07	O/R		A	A	1, 2, 3, 4, 5
Silver Dollar	Rexroad	03/06/07		O/R	A	A	1, 3, 4, 5, 6
		06/22/07		O/R	A	A	1, 3, 4, 5, 6
Desert Mesa		06/27/07		O/R	A	A	1, 2, 3, 4, 5, 6
		06/27/07		O/R	A	A	1, 2, 3, 4, 5, 6
Speedway	Jurbala	02/06/08			O/R/A	A	1, 2, 3, 4, 5, 6
Mazmel		02/16/06			O/R/A	A	1, 2, 3, 6
		05/16/06			O/R/A	A	1, 2, 3, 6
		09/20/07			O/R/A	A	1, 2, 3, 6
Santa Fe		08/10/06			O/R/A	A	1, 2, 3, 6
Red Vistas		01/31/06			O/R/A	A	1, 2, 3, 6
		04/09/07			O/R/A	A	1, 2, 3, 6

O = Originating loan officer; R= Recommended for approval; A = approval

Deficiency Description	
1. Insufficient analysis of viability of proposed project	4. Speculative loan in violation of loan policy
2. Failure to determine borrower's ability to repay	5. Excessive interest reserve
3. Insufficient collateral and/or exceeds allowed LTV ratio	6. Credit administered in violation of loan policy, including improper and unauthorized disbursements

93. In addition, an additional loss loan, Robindale Villas, is addressed separately in subsection K below.

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H. Happy Valley 160, L.L.C.

94. Kirby originated and recommended approval of a $20,145,000 loan to Happy Valley 160 LLC ("Happy Valley") on February 21, 2007 in order to acquire and develop a 157-acre residential project in Peoria, Arizona, despite his knowledge that the project was not viable.

95. A portion of the loan was intended to refinance an existing loan by Mortgages L.T.D. That loan, which was paid with loan proceeds, was based on a raw land acquisition in the amount of $8,500,000, and the payoff was budgeted at $13,800,000 due to draws on the previous loan's construction and development budget. Although the borrower had pledged both the land at issue and other property in support of its previous loan, Kirby refinanced 100% of that loan, as well as 162% of the acquisition cost, but did not get a lien on all of the property that had previously been provided as collateral for the Mortgages L.T.D. loan.

96. In the CAM presented to the SLC, Kirby used the projected income value of the property of $57 million, rather than the cost value of $30 million, which had itself been inflated by the use of improper comparables in the appraisal. Furthermore, Kirby did not disclose that no "as is" appraisal had been performed.

97. The Bank's 2005 Loan Policy, however, requires that a loan officer be responsible for the accurate completion of all loan documentation; that the loan officer comply with applicable regulatory requirements and, specifically regarding appraisals, that "the loan officer will review the appraisal to determine if the appraisal meets bank standards and has been performed properly and that it meets all requirements of Part 323 of the FDIC Rules and Regulations, FIRREA, and USPAP" as "it is the intent of the Bank, and responsibility of all loan officers to conform to all standards of FIRREA and USPAP."

98. Section D.1. and D.2. of USPAP's Statement on Appraisal Standards No. 10 ("SMT-10") (2005 Edition), however, requires an appraisal to include "as is" information and an "as is" value. Kirby failed to obtain and disclose this additional information and value to the SLC in its consideration of the loan. In addition, by utilizing the projected income approach, Kirby did not provide an accurate LTV ratio to the SLC and the appraisal violated USPAP and related regulatory requirements. In fact, the following regulations and guidelines required Kirby to obtain and employ a "bulk sales" value (derived by discounting retail values to present value by appropriate discount) in calculating the LTV ratio: Section 4(c)-(d) of Part 323 of FDIC Rules and Regulations, 12 C.F.R. § 323.4(c), 323.4(d); 1994 Interagency Appraisal and Evaluation Guidelines used to support real estate-related financial transactions; FIL-90-2005 re: Residential Tract Development Lending FAQs; USPAP Standard 1-4(e). Each of these sources requires an analysis and reporting of appropriate deductions and discounts for tract developments with unsold units.

99. Kirby also admitted that he did not verify borrower assets prior to loan approval, which in and of itself is a violation of the Bank's loan policies and regulatory requirements.

100. Happy Valley was also provided with a $3,500,000 line of credit. When an increase to $7,850,000 was presented to the SLC in June 2007, Kirby failed, in violation of FDIC Regulations, to obtain a new appraisal, and the combined loans – the original loan and the increase – exceeded the Bank's authorized LTV ratio as well as applicable regulations.

101. Kirby recommended and obtained approval of the increase of the line of credit despite the fact that the developer told him: "Development of the A&D component has stagnated due to current market conditions but the borrower still intends to move forward with

develop [sic] of the project. They are waiting for the market conditions to rebound before starting to market finished residential home lots."

102. Notably, an October 2009 appraisal shows that despite the approval and disbursement of funds, the property has never been developed. Thus, the disbursements violated both the Bank's policies and regulatory requirements, including requirements that disbursements are commensurate with completion, as well as site inspection requirements.

103. The FDIC has incurred losses in excess of $22,000,000 from the loan and increased line of credit.

I. RED VISTAS, LLC

1. Red Vistas 1

104. One of the purposes of Red Vistas 1 was to pay off a previous loan but, in establishing the value of the property being acquired from that loan, French used an "as completed" appraised value and failed to disclose the "as is" value to the SLC, resulting in the overfunding of Red Vistas 1.

105. The Bank's 2005 Loan Policy requires that a loan officer be responsible for the accurate completion of all loan documentation; that the loan officer comply with applicable regulatory requirements and, specifically regarding appraisals, that "the loan officer will review the appraisal to determine if the appraisal meets bank standards and has been performed properly and that it meets all requirements of Part 323 of the FDIC Rules and Regulations, FIRREA, and USPAP" as "it is the intent of the Bank, and responsibility of all loan officers to conform to all standards of FIRREA and USPAP."

106. The December 15, 2005 appraisal of the property underlying Red Vistas 1 provides both an "as completed" and "as is" value of the property being acquired in paying off

the previous loan. In the Credit Authorization Memo ("CAM") that French prepared and presented to the SLC for approval of Red Vistas 1, French chose to use the "as completed" value as the pay off amount and failed to disclose the "as is" value to the SLC. The "as is" value would have revealed a higher Loan to Value ("LTV") ratio and would have alerted the SLC that the pay off amount exceeded the Bank's internal LTV ratio of 75% for development loans as well as regulatory policy statement guidelines (Part 365 Appendix A of FDIC Rules and Regulations).

107. Section D.1. and D.2. of USPAP's Statement on Appraisal Standards No. 10 ("SMT-10") (2005 Edition) requires an appraisal to include "as is" information and an "as is" value. French failed to disclose this additional information and value to the SLC in its consideration of the loan. As a result of French's actions, the loan was overfunded and increased the risk to the Bank that the remaining construction funds for the Red Vistas 1 loan would not be sufficient to construct the condominium units underlying the loan. In fact, none of the condominiums were subsequently built.

108. French, by calculating the Red Vistas 1 LTV ratio based on individual retail sales of completed units, did not provide an accurate LTV ratio to the SLC. French's calculation of a 69% LTV ratio in Red Vistas 1 was based on the individual retail sales of completed units. However, both Section E.3. of USPAP' s SMT-10 (2005 Edition) and Financial Institution Letter ("FIL") dated March 22, 2005 ("FIL-90-2005") re: Residential Tract Development Lending FAQs (Question 12) prohibit the use of retail valuations as the market value to calculate an LTV ratio.

109. Instead, the following regulations and guidelines required French to obtain and employ a "bulk sales" value (derived by discounting retail values to present value by

appropriate discount) in calculating the LTV ratio: Section 4(c)-(d) of Part 323 of FDIC Rules and Regulations, 12 C.F.R. § 323.4(c), 323.4(d); 1994 Interagency Appraisal and Evaluation Guidelines used to support real estate-related financial transactions; FIL-90-2005 re: Residential Tract Development Lending FAQs (Questions 2, 4, 8,9); USPAP Standard 1-4(e).

110. Each of these sources requires an analysis and reporting of appropriate deductions and discounts for tract developments with unsold units, as in the case of the condominiums to be constructed in connection with Red Vistas 1. French, by not providing an accurate LTV ratio to the SLC in the CAM, caused the SLC to approve the loan in excess of the Bank's internal LTV ratio of 75% for development loans and in non-compliance with regulatory policy statement guidelines (Part 365 of FDIC Rules and Regulations).

111. French also failed to disclose to the SLC the existence of a superior lien. The Bank's Loan Policy states that a loan officer is to include subordination information in a CAM to be presented for approval of a loan. However, French states only in the CAM that the Bank is in the first lien position on the property taken as collateral for the loan. French failed to disclose the existence of any superior lien, and failed to disclose that the Bank was able to take a first lien position only because the lien holder had agreed to subordinate their lien position to the Bank. French's failure to disclose to the SLC this material information prevented the SLC from considering the effect of the subordination in its decision to approve Red Vistas 1.

112. French further failed to develop and analyze Jurbala's global cash flow position and projections in connection with Red Vistas 1. The Bank's 2005 Loan Policy requires evidence and analysis of a borrower's financial capacity and ability to repay a loan. In the CAM that French prepared and presented to the SLC for approval of Red Vistas 1 French, although required by the Bank's Loan Policy to establish that Jurbala had sufficient net worth and cash

flow to support the loan, failed to significantly analyze or request sufficient information that would have allowed him to determine Jurbala's finances and ability to repay (French notes in the CAM that he completed the financial analysis without the benefit of audited financial statements) and, by doing so, prevented the SLC from obtaining an accurate picture of Jurbala's financial capacity.

113. After Red Vistas 1 was approved by the SLC, French was aware of or approved disbursements of loan proceeds to pay for inappropriate, unsubstantiated and/or non-construction expenses from Red Vistas 1 loan proceeds without disclosure to, or approval by, the SLC.

114. Between February 2006 and April 2007, French was aware of or approved loan draw requests and disbursements for the following: $287,880.00 disbursement on February 27, 2006 for insurance; $41,200.00 disbursement on April 11, 2006 for insurance; $53,724.33 disbursement on August 30, 2006 for insurance; $43,724.33 disbursement on September 21, 2006 for insurance; $230,000.00 disbursement on February 1, 2007 for another Jurbala loan; $105,103.00 disbursement on February 26, 2007 to increase interest reserve; $40,435.00 disbursement on March 27, 2007 to increase interest reserve; $89,440.00 disbursement on April 20, 2007 to increase interest reserve.

115. French's disbursements of Red Vistas 1 loan proceeds for these purposes all but insured that the construction of the condominium units underlying the loan would not be completed according to the loan terms of Red Vistas 1. In fact, none of the condominiums were subsequently built.

116. French also was aware of or approved the reallocation of loan construction budget items without analysis of the effect on the underlying project.

1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28

117. From February, 2006 through February, 2007, French was aware of or approved the following draw requests from Jurbala for the reallocation of loan construction budget items: $35,805.33 reallocation on February 17, 2006; ($30,000.00 reallocated from appliances to contingency, $5,805.33 reallocated from flooring to contingency); $41,200.00 reallocation on April 11, 2006 ($22,005.33 reallocated from permits/water to contingency, $19,194.67 reallocated from flooring to contingency); $53,724.33 reallocation on August 24, 2006 ($25,000.00 reallocated from permits to contingency, $28,724.33 reallocated from finished carp. to contingency); $60,000.00 reallocation on September 7, 2006 ($20,000.00 reallocated from permits to contingency, $5,000.00 reallocated from carports to contingency, $5,000.00 reallocated from int. clean to contingency, $10,000.00 reallocated from drywall to contingency, $10,000.00 reallocated from supervision to contingency, $10,000.00 reallocated from plumbing to contingency); $144,971.09 reallocation on September 19, 2006 ($39,971.09 reallocated from plumbing to G&A; $50,000.00 reallocated from framing to utilities/paving, $30,000.00 reallocated from stucco to utilities/paving, $25,000.00 reallocated from drywall to utilities/paving); $94,240.10 reallocation on October 11, 2006 ($697.12 reallocated from permits to G&A; $93,542.98 reallocated from framing to utilities/grading); $56,331.90 reallocation on October 25, 2006 ($56,331.90 reallocated from framing to utilities/grading); and, a $34,665.00 reallocation on November 20, 2006 ($15,000 reallocated from flatwork to utilities/paving, $19,665.00 reallocated from foundation to utilities/paving); $18,563.04 reallocation on February 23, 2007 ($18,563.04 reallocated from plumbing to contingency).

118. There is no indication that French ever questioned the basis for, or frequency of, these multiple budget reallocations or engaged in any analysis regarding how the reallocations would affect the ability to complete the construction with the remaining funds available,

especially considering the fact that the reallocations were made within the hard cost portion of the Red Vistas 1 loan construction budget with the majority of funds reallocated to development and non-vertical related construction costs.

119. Ultimately, French allowed Jurbala to manipulate the Red Vistas 1 loan project budget by obtaining multiple budget reallocations and diverting loan funds.

120. Further, French was aware of or approved the disbursement of construction loan funds without timely third party construction progress reports. On at least the following three occasions between April, 2006 and November, 2006, French was aware of or approved the disbursement of construction loan funds without first obtaining an inspection report: disbursement on April 11, 2006 with inspection allegedly occurring on July 5, 2006; disbursement on August 29, 2006 with inspection allegedly occurring on September 5, 2006; and disbursement on October 11, 2006 with inspection allegedly occurring on November 21, 2006.

2. Red Vistas 2

121. French, by calculating the Red Vistas 2 LTV ratio based on individual retail sales of completed units, did not provide an accurate LTV ratio to the SLC.

122. The Bank's 2006-2007 Loan Policy requires that an originating loan officer comply with applicable regulatory requirements and, specifically regarding appraisals, that the Bank and its loan officers comply with, and conform to, all requirements and standards of Part 323 of the FDIC Rules and Regulations, FIRREA, and USPAP, and that it is the intent of the Bank, and responsibility of all loan officers, to conform to all standards of FIRREA and USPAP. French's calculation of a 79% LTV ratio was based on the individual retail sales of completed units. However, both Section E.3. of USPAP's SMT-10 (2006 Edition) and FIL-90-

2005 re: Residential Tract Development Lending FAQs (Question 12) prohibit the use of retail valuations as the market value to calculate the LTV ratio.

123. Instead, the following regulations and guidelines required French to obtain and employ a "bulk sales" value (derived by discounting retail values to present value by appropriate discount) in calculating the LTV ratio: Section 4(c)-(d) of Part 323 of FDIC Rules and Regulations, 12 C.F.R. § 323.4(c), 323.4(d); 1994 Interagency Appraisal and Evaluation Guidelines used to support real-estate related financial transactions; FIL-90-2005 re: Residential Tract Development Lending FAQs (Questions 2, 4, 8,9); USPAP Standard 1-4(e).

124. Each of these sources requires an analysis and reporting of appropriate deductions and discounts for tract developments with unsold units, as in the case of the condominiums to be constructed in connection with Red Vistas 2. French, by not providing an accurate LTV ratio to the SLC in the CAM, caused the SLC to approve the loan in excess of the Bank's internal LTV ratio of 75% for development loans and in non-compliance with regulatory policy statement guidelines (Part 365 of FDIC Rules and Regulations).

125. French also failed to disclose to the SLC that the purpose of Red Vistas 2 was to construct the very same 16 condominiums that Red Vistas 1 was intended to construct.

126. Both Red Vistas 1 and Red Vistas 2 were intended for the vertical construction of the same 16 condominium units. Despite significant disbursements from the construction budget of Red Vistas 1, no vertical construction of the 16 condominiums had taken place at the time that French presented the Red Vistas 2 CAM to the SLC. However, French, did not disclose to the SLC the complete lack of vertical construction, did not explain how it had come to pass, and did not explain and justify why the Bank should be funding the same construction yet again.

127. French further failed to comply with FDIC Rules and Regulations regarding the appraisal relied upon to support the loan amount of Red Vistas 2. French was required to comply with Part 323.4 of the FDIC Rules and Regulations regarding minimum appraisal standards. Part 323.4 states as follows:

> For federally related transactions, all appraisals shall, at a minimum:
>
> (a) Conform to generally accepted appraisal standards as evidenced by the Uniform Standards of Professional Appraisal Practice (USPAP) promulgated by the Appraisal Standards Board of the Appraisal Foundation, 1029 Vermont Ave., NW., Washington, DC 2005, unless principles of unsafe and unsound banking require compliance with stricter standards;
>
> (b) Be written and contain sufficient information and analysis to support the institution's decision to engage in the transaction;
>
> (c) Analyze and report appropriate deductions and discounts for proposed construction or renovation, partially leased buildings, non-market lease terms, and tract developments with unsold units;
>
> (d) Be based upon the definition of market value as set forth in the part; and
>
> (e) Be performed by state licensed or certified appraisers in accordance with requirements set forth in this part.

12 C.F.R. § 323.4.

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128. The January 29, 2007 appraisal relied upon by French was an update of the December 15, 2005 appraisal used to support Red Vistas 1. The updated appraisal was deficient, however, and did not comply with Part 323.4. For example, it did not provide enough detail on the condition of the partially completed lots or changes in the market that occurred in 2006 to support the extension of additional funds to finish lot development and begin vertical construction, and it did not provide an "as is" value of the 16 condominium lots or an estimation of the amount of funds that would be required to complete their development.

129. French also failed to disclose to the SLC that another appraisal regarding Red Vistas 2 had been completed which contained material information integral to the SLC's decision-making process. French had received an appraisal dated June 16, 2006 that had been completed for another financial institution. The June 16, 2006 appraisal valued four (4) partially completed condominium pads at a bulk value of $835,000 and provided an "as completed" bulk value to the condominiums of $2,604,000, an amount substantially below the approximately $3.5 million that French had represented the completed collateral to be worth. French's failure to either utilize and/or to disclose in the CAM the material information existing in the June 16, 2006 appraisal prevented this information from being considered by the SLC in its decision-making process and, in essence, caused the SLC to approve an inadequately secured loan.

130. French further failed to disclose to the SLC the existence of a superior lien.

131. In the CAM, French states that the Bank is in the first lien position on the property taken as collateral for the loan and fails to disclose to the SLC that a prior lien existed in the amount of over $500,000 by virtue of the prior lien holder's apparent refusal to subordinate its lien in connection with Red Vistas 2. When the SLC approved Red Vistas 2 on January 29, 2007, the prior lien was still in place, as well as on April 9, 2007, when Red Vistas

2 was booked. On that day, a suspense account in an amount of just over $500,000 was created against the Red Vistas 2 loan and, on April 23, 2007, funds were wired to the prior lien holder. French did not disclose to the SLC the need to obtain a second subordination, did not disclose that construction loan proceeds would be used to do so, and permitted the loan to go forward with the Bank holding only a second lien position.

132. French also failed to develop and analyze Jurbala's global cash flow position and projections in connection with Red Vistas 2.

133. After Red Vistas 2 was approved by the SLC, French was aware of or approved disbursements of loan proceeds to pay for inappropriate, non-substantiated and/or non-construction expenses without disclosure to, or approval by, the SLC. Between April 23, 2007 and August 28, 2007, French was aware of or approved loan draw requests and payments for the following: $523,553.00 disbursement on April 23, 2007 to Vestin Originations, Inc. (holder of a prior lien on the collateral); $26,657.08 disbursement on May 1, 2007 for insurance; $50,724.33 disbursement on May 1, 2007 for insurance; $50,724.33 disbursement on May 18, 2007 for insurance; $50,724.33 disbursement on June 11, 2007 for insurance; $205,614 disbursement into Alabruj LTD Partnership account on June 29, 2007 (characterized on the draw sheet as an extra reduction to Red Vistas 1); $93,742.35 disbursement into Robindale Villas account on June 29, 2007 (characterized on the draw sheet as an extra reduction to Red Vistas 1); $50,724.33 disbursement on July 25, 2007 for insurance; $40,910.56 disbursement on August 7, 2007 for insurance; and a $43,724.33 disbursement on August 28, 2007 for insurance.

134. French's disbursements of Red Vistas 2 loan proceeds for these purposes all but insured that the construction of the condominium units underlying the loan would not be

completed according to the terms of the Red Vistas 2 loan. In fact, none of the condominiums were subsequently built.

135. French was also aware of or approved the disbursement of construction loan funds without timely third party construction progress reports. On at least the following two occasions, French was aware of or approved the disbursement of construction loan funds without first obtaining an inspection report: funds were disbursed on May 7, 2007 with no inspection; and funds were disbursed on June 26, 2007 with a July 17, 2007 inspection date.

136. All of these actions violated applicable loan policies, applicable regulations, and prudent lending practices.

137. The FDIC has incurred losses in excess of $4,157,000 from these loans.

J. MAZMEL, LLC

1. <u>Mazmel 1</u>

138. In seeking and receiving approval for a renewal/extension and increase in the amount of the Mazmel 1 loan, French manipulated values taken from an appraisal to calculate the LTV ratio and, by doing so, failed to provide an accurate LTV to the SLC.

139. French's recommendation for a December 11, 2006 renewal and extension of additional funds for Mazmel 1 was based on French's own manipulation of values taken from a March 2, 2006 appraisal to arrive at aggregate retail sales prices of the individual units as the market value to calculate the LTV ratio. However, both Section E.3. of USPAP's SMT-10 and FIL-90-2005 re: Residential Tract Development Lending FAQs (Question 12) prohibit the use of retail valuations as the market value to calculate the LTV ratio.

140. Instead, the following regulations and guidelines required French to obtain and employ a "bulk sales" value (derived by discounting retail values to present value by

appropriate discount) in calculating the LTV ratio: Section 4(c)-(d) of Part 323 of FDIC Rules and Regulations, 12 C.F.R. § 323.4(c), 323.4(d); 1994 Interagency Appraisal and Evaluation Guidelines used to support real-estate related financial transactions; FIL-90-2005 re: Residential Tract Development Lending FAQs (Questions 2, 4, 8, 9); USPAP Standard 1-4(e).

141. Each of these sources requires an analysis and reporting of appropriate deductions and discounts for tract developments with unsold units. French, by manipulating the values as he did and by failing to obtain and employ a bulk sales value, violated, at a minimum, the Bank's Loan Policy, USPAP, Interagency Guidelines, and FDIC Rules and Regulations in that he inappropriately manipulated values taken from an appraisal and did not provide an accurate LTV ratio to the SLC during its consideration to renew and extend additional funds.

142. After Mazmel 1 was approved by the SLC, French was aware of or approved disbursements of loan proceeds to pay for inappropriate, non-substantiated and/or non-construction expenses without disclosure to, or approval by, the SLC.

143. In this regard, French was aware of or approved loan draw requests and payments for the following: $43,724.33 disbursement on April 11, 2006 for insurance; $49,500.00 disbursement on April 26, 2006 for insurance; and a $40,435.00 disbursement on March 27, 2007 to increase interest reserve.

144. French was also aware of or approved the reallocation of loan construction budget items without analysis of the effect on the underlying project. From March 20, 2006 to November 4, 2006, French was aware of or approved the following draw requests from Jurbala for the reallocation of loan construction budget items: $112,349.03 reallocation on March 20, 2006 ($102,423.23 reallocated from framing to power/water, $9,925.80 reallocated from

contingency to masonry walls); $175,968.93 reallocation on April 11, 2006 ($75,318.80 reallocated from framing to power/water, $52,000.00 reallocated from flooring to power/water, $24,000.00 reallocated from appliances to power/water, $24,650.13 reallocated from permits to contingency); $96,006.61 reallocation on April 26, 2006 ($4,421.31 reallocated from permits to arch./eng., $10,000.00 reallocated from permits to water, $10,000.00 reallocated from cabinets to water, $10,000.00 reallocated from counter tops to water, 10,085.30 reallocated from clean up to water, $2,000.00 reallocated from supervision to contingency, $27,000.00 reallocated from drywall to contingency, $5,000.00 reallocated from HVAC to contingency, $5,000.00 reallocated from iron to contingency, $2,500.00 reallocated from supervision to contingency, $10,000.00 reallocated from G&A to contingency); $41,471.44 reallocation on May 5, 2006 ($5,471.44 reallocated from electrical to permits, $8,000.00 reallocated from stucco to permits, $20,000.00 reallocated from counter tops to permits, $8,000.00 reallocated from supervision to permits); $98,483.47 reallocation on May 17, 2006 ($98,483.47 reallocated from framing to contingency); $28,440.00 reallocation on May 23, 2006 ($28,440.00 reallocated from plumbing to water); $17,667.16 reallocation on June 26, 2006 ($17,137.16 reallocated from concrete slabs to electrical, $520.00 reallocated from G&A to power); $145,235.98 reallocation on September 25, 2006 ($11,060.00 reallocated from supervision to plumbing, $6,705.38 reallocated from G&A to electrical, $20,000.00 reallocated from windows to framing, $21,770.76 reallocated from cabinets to framing, $32,000.00 reallocated from carpentry to concrete slabs, $30,000.00 reallocated from drywall to concrete slabs, $23,699.84 reallocated from insulation to concrete slabs); and, a $94,774.47 reallocation on November 4, 2006.

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145. There is no indication that French ever questioned the basis for, or frequency of, these multiple budget reallocations or engaged in any analysis regarding how the reallocations would affect the ability to complete the construction with the remaining funds available.

146. In addition, French was aware of or approved the disbursement of construction loan funds without timely third party construction progress reports. On the following six occasions between March 3, 2006 and January 9, 2007, French was aware of or approved the disbursement of construction loan funds without first obtaining an inspection report: funds distributed on March 3, 2006 with an inspection date of March 22, 2006; funds distributed on April 11, 2006 with an inspection date of April 18, 2006; funds distributed on April 26, 2006 with an inspection date of May 17, 2006; funds distributed on June 27, 2006 with an inspection date of July 5, 2006; funds distributed on November 3, 2006 with an inspection date of November 7, 2006; and funds distributed on January 9, 2007 with an inspection date of April 18, 2007.

147. French also failed to develop and analyze Jurbala's global cash flow position and projections in connection with Mazmel 1.

148. All of these actions violated applicable loan policies, regulations, and prudent lending practices.

2. **Mazmel 2**

149. After Mazmel 2 was approved by the SLC, French was aware of or approved disbursements of loan proceeds to pay for inappropriate, non-substantiated and/or non-construction expenses without disclosure to, or approval by, the SLC. Between May 23, 2006 and March 28, 2007, French was aware of or approved loan draw requests and payments for the following: $87,448.66 disbursement on May 23, 2006 for insurance; $53,724.33

disbursement on November 3, 2006 for insurance; $43,724.33 disbursement on December 4, 2006 for insurance; $49,724.33 disbursement on February 26, 2007 for insurance; $49,657.08 disbursement on March 28, 2007 for insurance; and a $74,225.00 disbursement on April 26, 2007 to increase interest reserve.

150. French was also aware of or approved the reallocation of loan construction budget items without analysis of the effect on the underlying project. From May 17, 2006 through March 29, 2007, French was aware of or approved the following draw requests from Jurbala for the reallocation of loan construction budget items: $138,813.36 reallocation on May 17, 2006 ($11,794.50 reallocated from appliances to arch./eng., $75,000.00 reallocated from flooring to curb & gutter, $30,000.00 reallocated from concrete slabs to curb & gutter, $22,018.86 reallocated from drywall to curb & gutter); $99,368.89 reallocation on June 26, 2006 ($6,000.00 reallocated from permits to arch./eng., $93,368.89 reallocated from framing to curb & gutter); $14,448.66 reallocation on July 19, 2006; $1,000.00 reallocation on August 3, 2006 ($1,000.00 reallocated from contingency to insurance); $195,072.54 reallocation on August 24, 2006 ($6,860.00 reallocated from permits to arch./eng., $20,697.00 reallocated from appliances to power/water, $27,025.00 reallocated from flooring to curb & gutter, $15,528.50 reallocated from appliances to curb & gutter, $61,000.00 reallocated from contingency to curb & gutter, $30,000.00 reallocated from G&A to curb & gutter, $33,982.04 reallocated from supervision to curb & gutter); $43,724.33 reallocation on November 2, 2006 ($36,000.00 reallocated from appliances to insurance, $7,724.33 reallocated from flooring to insurance); $33,776.80 reallocation on December 12, 2006 ($19,300.67 reallocated from flooring to power/water, $14,476.13 reallocated from contingency to power/water); $78,491.25 reallocation on January 12, 2007 ($28,440.00 reallocated from contingency to power/water, $50,051.25

reallocated from framing to permits); $183,768.54 reallocation on February 2, 2007 ($49,514.76 reallocated from cabinets to insurance, $40,000.00 reallocated from supervision to curb & gutter, $50,000.00 reallocated from plumbing to curb & gutter, $44,253.78 reallocated from stucco to curb & gutter); $87,172.00 reallocation on February 2, 2007 ($8,618.00 reallocated from concrete slabs to engineering, $30,000.00 reallocated from supervision to curb & gutter, $20,000.00 reallocated from G&A to curb & gutter, $28,554.00 reallocated from plumbing to curb & gutter); and a $97,173.00 reallocation on March 29, 2007.

151. There is no indication that French ever questioned the basis for, or frequency of, these multiple budget reallocations or engaged in any analysis regarding how the reallocations would affect the ability to complete the construction with the remaining funds available.

152. French allowed Jurbala to manipulate the Mazmel 2 loan project budget with multiple budget reallocations and to divert loan funds for other purposes.

153. French was further aware of or approved the disbursement of construction loan proceeds without timely third party construction progress reports. On the following nine occasions between May 24, 2006 and March 29, 2007, French was aware of or approved the disbursement of construction loan funds without first obtaining an inspection report: funds disbursed on May 24, 2006 with no inspection; funds disbursed on June 27, 2006 with the inspection on July 19, 2006 (Bank did not receive until July 24, 2006); funds disbursed on August 8, 2006 with no inspection; funds disbursed on August 29, 2006 with the inspection on September 5, 2006; funds disbursed on November 3, 2006 with the inspection on November 7, 2006; funds disbursed on December 4, 2006 with no inspection; funds disbursed on December 12, 2006 with the inspection on December 20, 2006; funds disbursed on February

26, 2007 with the inspection on March 6, 2007; and funds disbursed on March 29, 2007 with no inspection.

154. In addition, French failed to develop and analyze Jurbala's global cash flow position and projections in connection with Mazmel 2.

155. All of these actions violated applicable loan policies, applicable regulations, and prudent lending practices.

3. **Mazmel 3**

156. French, by calculating the Mazmel 3 LTV ratio based on individual retail sales of completed units, did not provide an accurate LTV ratio to the SLC. French's calculation of an 80% LTV ratio was based on the individual retail sales of completed units. However, both Section E.3. of USPAP's SMT-10 and FIL-90-2005 re: Residential Tract Development Lending FAQs (Question 12) prohibit the use of retail valuations as the market value to calculate the LTV ratio.

157. Instead, the following regulations and guidelines required French to obtain and employ a "bulk sales" value (derived by discounting retail values to present value by appropriate discount) in calculating the LTV ratio: Section 4(c)-(d) of Part 323 of FDIC Rules and Regulations, 12 C.F.R. § 323.4(c), 323.4(d); 1994 Interagency Appraisal and Evaluation Guidelines used to support real estate-related financial transactions; FIL-90-2005 re: Residential Tract Development Lending FAQs (Questions 2, 4, 8, 9); USPAP Standard 1-4(e).

158. Each of these sources requires an analysis and reporting of appropriate deductions and discounts for tract developments with unsold units. French, by not providing an accurate LTV ratio to the SLC in the CAM that the French prepared and presented to the SLC for approval of Mazmel 3, caused the SLC to approve the loan in excess of the Bank's internal

LTV ratio of 75% for development loans and in accordance with regulatory policy statement guidelines (Part 365 Appendix A of FDIC Rules and Regulations).

159. French also failed to disclose to the SLC the purpose of the Mazmel 3 loan.

160. In the CAM that French presented to the SLC for approval of Mazmel 3, French did not disclose to the SLC that the loan was intended, in part, to fund construction of the same Phase 4 of the project that Mazmel 2 had already been represented as funding, did not explain how this situation had come to pass, and did not explain and justify why the Bank should be funding the same construction yet again.

161. French further failed to disclose to the SLC that the appraisal used to support the funding of Mazmel 3 was stale and did not take into account material market deterioration. The Bank's 2006-2007 Loan Policy provides that an appraisal is generally valid for a period of 18 months from the date it was prepared and that "the Bank will accept appraisals completed for other regulated institutions and mortgage brokers, if . . . . the regulated institution determines that the appraisal conforms to the requirements of Part 323."

162. In the August 31, 2007 CAM that French presented to the SLC, French used a March 2, 2006 appraisal that was completed for another insured financial institution. The appraisal was almost 20 months old and, as there had been material changes in the condition of the local real estate market in 2006-2007, French should have obtained a new appraisal or an update of the existing appraisal as required by the Bank's loan policy and Part 323 of FDIC Rules and Regulations. French's failure to do so prevented the SLC from receiving current appraisal information in its consideration of the Mazmel 3 loan.

163. In addition, one of the purposes of Mazmel 3 was to pay off a previous loan held by another financial institution. In establishing the pay off amount, however, French used an

incorrect value based on a March 2, 2006 appraisal, which resulted in the overfunding of Mazmel 3.

164. The March 2, 2006 appraisal of the property underlying Mazmel 3 provides values in addition to the "prospective aggregate retail" value of the property being acquired in paying off the previous loan. In the CAM that French presented to the SLC for approval of Mazmel 3, however, French chose not to provide the SLC with any value other than the prospective aggregate retail value in support of French's LTV ratio of 80%, and with no further explanation of how the value of the collateral was specifically calculated.

165. Section D.1. and D.2. of USPAP's SMT-10 require an appraisal to include, at a minimum, "as is" information and an "as is" value. French failed to disclose this information and value to the SLC for its consideration, and, as a result of French's actions, the loan was essentially overfunded and increased the risk to the Bank that the remaining construction funds for this loan would not be sufficient to complete the underlying project.

166. After Mazmel 3 was approved by the SLC, French, without receiving any approval from the SLC, was aware of or approved a disbursement of $53,314.16 on October 11, 2006 for insurance, a disbursement which was inappropriate, unsubstantiated and/or for a non-construction expense.

167. French was also aware of or approved the disbursement of construction loan proceeds without timely third party construction progress reports. Within the course of the Mazmel 3 loan, at least 19 draws occurred. However, no inspection or construction progress reports were located in the Bank's files and there was no evidence that the Bank and/or Jurbala had been billed for any inspections. Given that the Bank's loan policy required French to obtain an inspection report completed by an outside, third-party vendor prior to disbursing any

construction loan funds – and there were no inspection reports found – one must assume that French disbursed funds, or caused funds to be disbursed, without an inspection report and in violation of Bank policy and applicable regulations.

168. Furthermore, French failed to develop and analyze Jurbala's global cash flow position and projections in connection with Mazmel 3.

169. All of these actions violated applicable loan policies, applicable regulations, and prudent lending practices.

170. The FDIC has incurred losses in excess of $1,557,000 in relation to these loans.

K. SANTA FE VILLAS, LLC

171. French failed to disclose to the SLC that the appraisal used to support the funding of Santa Fe Villas contained inaccurate information. In the July 11, 2006 CAM that French presented to the SLC for approval of Santa Fe Villas, French relied on a June 9, 2006 appraisal that used a proposed density that was higher than the actual density to generate the appraisal's "as is" and "as completed" values. The June 9, 2006 appraisal stated that the site was to be developed at a density of 9.62 units per acre when, in fact, the current zoning only allowed up to 8 units per acre. As a result, the actual loan value was less than the appraised amounts and the LTV ratio was higher than that presented by French for approval. French's use of the appraisal in this regard violates, at a minimum, the Bank's Loan Policy, the minimum appraisal standards set forth in Part 323.4 of the FDIC Rules and Regulations, and the 1994 Interagency Appraisal and Evaluation Guidelines ("For federally related transactions, an appraisal is to include the current market value of the property in its actual physical condition and subject to the zoning in effect as of the date of the appraisal.").

172. Furthermore, French, by calculating the Santa Fe Villas LTV ratio based on

individual retail sales of completed units, did not provide in accurate LTV ratio to the SLC. French's calculation of a 75% LTV ratio was based on the individual retail sales of completed units. However, both Section E.3. of USPAP's SMT-10 and FIL-90-2005 re: Residential Tract Development Lending FAQs (Question 12) prohibit the use of retail valuations as the market value to calculate the LTV ratio.

173. Instead, the following regulations and guidelines required French to obtain and employ a "bulk sales" value (derived by discounting retail values to present value by appropriate discount) in calculating the LTV ratio: Section 4(c)-(d) of Part 323 of FDIC Rules and Regulations, 12 C.F.R. § 323.4(c), 323.4(d); 1994 Interagency Appraisal and Evaluation Guidelines used to support real estate-related financial transactions; FIL-90-2005 re: Residential Tract Development Lending FAQs (Questions 2, 4, 8, 9); and USPAP Standard 1-4(e).

174. Each of these sources requires an analysis and reporting of appropriate deductions and discounts for tract developments with unsold units. French, by not providing an accurate LTV ratio to the SLC in the CAM, caused the SLC to approve the loan in excess of the Bank's internal LTV ratio for development loans and regulatory policy statement guidelines (Part 365 of FDIC Rules and Regulations).

175. French failed to disclose to the SLC the correct basis of a purported equity interest of $1 million in the underlying transaction.

176. In the July 11, 2006 CAM that French presented to the SLC for approval of Santa Fe Villas, French represented that the owners of Santa Fe Villas had equity of $1 million in the underlying transaction. However, the $1 million that French reported as equity was actually a second deed of trust provided by Mountain West Mortgage, an entity controlled by Jurbala. As a result, the Bank financed 100% of the purchase price of the underlying real

estate which had been purchased in March, 2006 for $3,750,000, in violation of federal regulations and SSB loan policies, and there was no information and/or documentation in the CAM regarding a release for the second deed of trust. French's failure to provide full disclosure of material information to the SLC in this regard prevented the SLC from establishing Jurbala's ability to convey clear title to purchasers of the finished lots.

177. French also failed to obtain an appraisal review by independent bank personnel. The Bank's 2006-2007 Loan Policy required French, as the originating officer of Santa Fe Villas, to obtain a review of an appraisal by independent bank personnel to determine if the appraisal met all bank and regulatory standards. French failed to comply with the Bank's policy in this regard by seeking and receiving a March 17, 2008 renewal/extension of Santa Fe Villas which was supported by appraised values contained in an updated appraisal dated January 28, 2008 that was not reviewed by independent bank personnel.

178. After Santa Fe Villas was approved by the SLC, French was aware of or approved disbursements of loan proceeds to pay for inappropriate, non-substantiated and/or non-construction expenses without disclosure to, or approval by, the SLC.

179. Between September 15, 2006 and September 11, 2007 French was aware of or approved loan draw requests and payments for the following: $1,111.75 disbursement on July 12, 2006 for insurance; $43,724.33 disbursement on January 3, 2007 for insurance; $50,123.00 disbursement on January 26, 2007 for insurance; $75,204,00 disbursement on February 26, 2007 for insurance; $46,185.00 disbursement on March 28, 2007 for insurance; $46,185.00 disbursement on April 16, 2007 for insurance; $26,657.08 disbursement on August 2, 2007 for insurance; $29,322.78 disbursement on August 23, 2007 for insurance; and a $27,989.93 disbursement on September 11, 2007 for insurance.

1 180. French was also aware of or approved the reallocation of loan construction
2 budget items without analysis of the effect on the underlying project. From October 25, 2006 to
3 January 4, 2008, French was aware of or approved the following draw requests from Jurbala for
4 the reallocation of loan construction budget items: $5,000.00 reallocation on October 25, 2006
5 ($5,000.00 reallocated from contingency to civil engineering); $25,000.00 reallocation on
6 December 15, 2006 ($25,000 reallocated from contingency to civil engineering); $20,000.00
7 reallocation on January 3, 2007 ($20,000.00 reallocated from contingency to civil engineering);
8 $39,959.08 reallocation on January 24, 2007 ($1,055.36 reallocated from supervision to
9 insurance, $18,903.72 reallocated from contingency to insurance, $20,000.00 reallocated from
10 grading/paving to civil eng.); $77,704.00 reallocation on February 23, 2007; ($75,204.00
11 reallocated from grading to insurance, $2,500.00 reallocated from soils engineering to
12 contingency); $21,067.00 reallocation on March 7, 2007 ($21,067.00 reallocated from grading
13 to contingency); $20,250.00 reallocation on March 9, 2007 ($20,250.00 reallocated from
14 grading to contingency); $46,185.00 on March 28, 2007 ($46,185.00 reallocated from grading
15 to insurance); $24,137.50 reallocation on April 10, 2007 ($24,137.50 reallocated from grading
16 to soils engineering); $46,185.00 on April 16, 2007 ($46,185.00 reallocated from grading to
17 insurance); $32,426.78 reallocation on August 2, 2007 ($5,769.70 reallocated from supervision
18 to permits, $26,657.08 reallocated from water/sewer to insurance); $27,989.93 reallocation on
19 September 11, 2007 ($27,989.93 reallocated from grading to insurance); $9,500.00 reallocation
20 on September 27, 2007 ($9,500.00 reallocated from permits to civil engineering); $8,500.00
21 reallocation on October 18, 2007 ($8,500.00 reallocated from grading/paving to civil
22 engineering); $15,000.00 reallocation on December 13, 2007 ($15,000.00 reallocated from
23 grading/paving to civil engineering); and a $14,164.50 reallocation on January 4, 2008
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($14,164.50 reallocated from grading/paving to civil engineering).

181. There is no indication that French ever questioned the basis for, or frequency of, these multiple budget reallocations or engaged in any analysis regarding how the reallocations would affect the ability to complete the construction with the remaining funds available.

182. French allowed Jurbala to manipulate the Santa Fe Villas loan project budget with multiple budget reallocations and to divert loan funds for other purposes.

183. French was further aware of or approved the disbursement of construction loan funds without timely third party construction progress reports. On the following six occasions between January 3, 2007 and April 16, 2007, French was aware of or approved the disbursement of construction loan funds without first obtaining an inspection report: funds disbursed on January 3, 2007 with no inspection; funds disbursed on January 25, 2007 with a February 7, 2007 inspection; February 26, 2007 with a March 6, 2007 inspection; funds disbursed on March 29, 2007 with no inspection; funds disbursed on April 10, 2007 with no inspection; and funds disbursed on April 16, 2007 with an April 18, 2007 inspection.

184. All of these actions violated applicable loan policies, applicable regulations, and prudent lending practices.

185. The FDIC has incurred losses in excess of $1,633,000 in relation to this loan.

L. Speedway Hospitality Development II, LLC

186. French recommended to the SLC and the Board that Speedway be approved by the SLC and the Board even though French knew that Jurbala was no longer creditworthy based on the deterioration of Jurbala's real estate portfolio, that Jurbala could not make timely payments on his loans at the Bank, that the collateral securing Speedway was worth far less than the amount of the loan, and that the appraisal used to support the loan was grossly inflated. In

fact, at the time of the Speedway loan, its principal, Jurbala, had properties in foreclosure proceedings brought by other lenders, his bank accounts were overdrawn by $400,000, and two of his borrower entities would file for Chapter 11 protection within one week of the Speedway loan's closing.

187. Prior to coming to French, Jurbala had unsuccessfully shopped the Speedway loan to "bunches" of lenders. French recommended the $24 million Speedway loan in order to provide a workout solution for six of the Jurbala Loans: Red Vistas 1, Mazmel 1, Mazmel 2, Mazmel 3, Santa Fe Villas, and Jurbala's personal line of credit in the amount of $680,000. At the time of French's recommendation, each of these loans was past due and had exhausted interest reserves. French has admitted in sworn testimony that he knew that Jurbala's loans or bank accounts were overdrawn. However, in recommending Speedway to the SLC and Board, French placed Jurbala's interests above the Bank by increasing the Bank's exposure while, at the same time, failing to disclose and/or provide material information to the SLC and the Board to be used as an integral part of their decision-making process regarding this loan.

188. For example, in the January 28, 2008 CAM that French presented to the SLC for approval of Speedway, French represented that the value of the property supporting the loan (comprised of a combined 11.38 acre parcel (Speedway I) and a 2.5 acre parcel (Speedway II)) was based on an appraisal dated December 13, 2007 by appraiser Keith Harper which assigned an "as is" value of $35,100,000 to the property. However, Jurbala had acquired Speedway I in July of 2007 (7 months earlier) for just $7,545,000 and spent approximately $100,000 to obtain an entitlement with gaming designation. French has admitted in sworn testimony that he knew before the Speedway loan was made that Jurbala had acquired the Speedway I portion of the property for $7 million in July, 2007 and the Speedway II portion for 1.3 million in 2005, well

below Keith Harper's appraised value. French knew of the extreme increase in value reflected in the Keith Harper appraisal (365.21% over 7 months, or 52.17% per month) and that the Keith Harper appraisal lacked proper analysis and support in this regard. French also did not disclose the loan was over 400% of cost and thus blatantly violated federal regulations.

189. At a minimum, French violated Standards Rule 1-5(b) of USPAP which requires an analysis of all sales of property occurring within three years prior to the effective date of an appraisal. The December 13, 2007 Keith Harper appraisal reflected an "as is" value of $35,100,000 of the property, with the same property closing escrow 7 months earlier for $7 million. French should have taken action to analyze and support the extreme increase in value within the appraisal and disclosed this information to the SLC and the Board.

190. French also failed to disclose to the SLC and the Board that the Keith Harper appraisal used by French to support Speedway was not completed at the time that French presented Speedway to the SLC and the Board for consideration and approval. In the January 28, 2008 CAM that French presented to the SLC and the Board for approval of Speedway, French represented that appraiser Keith Harper had prepared an appraisal - dated December 13, 2007 - of the collateral supporting the loan. However, no appraisal with that date has ever been found in the Bank's files. Rather, the Keith Harper appraisal was actually dated February 11, 2008 with an "as is" date of February 1, 2008, *after* French presented the CAM to the SLC and the Board for consideration and approval. At a minimum, French violated the appraisal standards set forth in Part 323.4 of the FDIC Rules and Regulations by incorrectly representing to the SLC and the Board that Keith Harper's appraisal had been completed on December 13, 2007.

191. French further failed to disclose to the SLC and the Board that the Keith Harper

appraisal used to support Speedway did not use similar comparables to estimate the value of the property securing the loan. At the FDIC's request, Bank management obtained another appraisal of the property and, on July 29, 2008, appraiser CBRE provided an "as is" value of $19,200,000. In an attempt to reconcile the Keith Harper and CBRE appraisals, Bank management obtained an appraisal from Matthew Lubawy of Lubawy & Associates, who concluded, on August 24, 2008, that the Keith Harper appraisal had used sales from a tourist/resort area that was superior to the subject property and that the small 10% downward adjustment made by Keith Harper for the superior location was not reasonable (Lubaway & Associates provided an "as is" value of $18,150,000). Current valuations of the Speedway collateral are less than $5,000,000.

192. French, by initially accepting and using Keith Harper's February 11, 2008 appraisal report that contained comparables that were not similar violated, at a minimum, Part 323.4 of FDIC Rules and Regulations, 12 C.F.R. § 323.4, which require that an appraisal contain sufficient information and analysis.

193. French also failed to disclose the existence of a conflict of interest between French and Keith Harper, the appraiser who conducted the appraisal used to support Speedway. In the January 28, 2008 CAM that French presented to the SLC and the Board for approval of Speedway, French failed to disclose that he had a business relationship with Keith Harper; that French frequently collaborated with Keith Harper on business ventures, outside the Bank, throughout 2006 and 2007; that French and Keith Harper regularly saw each other on a social basis; and that French had facilitated personal loans for Keith Harper at the Bank. In fact, French did not even disclose that Harper's provision of the appraisal was only provided upon assurances that French would cause Harper to be paid for previous appraisal services performed

for Jurbala entities that Jurbala failed to pay.

194. The Bank's 2008 Loan Policy requires employees of the Bank to be "especially careful" in the area of conflicts of interest. In fact, on June 18, 2003, French executed the Bank's Code of Ethics/Conflict of Interest Policy which requires each officer and director of the Bank to avoid conflicts of interest, the appearance of conflicts of interest, and any violations of fiduciary responsibilities and duties as further confirmed in that document. French's failure to disclose his relationships to Keith Harper, in all of their various forms, to the SLC and Board in connection with Speedway violated, at a minimum, the Bank's Loan Policy and the Bank's Code of Ethics/Conflict of Interest Policy.

195. In addition, the Bank's 2008 Loan Policy requires an originating loan officer to comply with applicable regulatory requirements and, specifically regarding appraisals, that the Bank and its loan officers comply with, and conform to, all requirements and standards of Part 323 of the FDIC Rules and Regulations, FIRREA, and USPAP, and that it is the intent of the Bank, and responsibility of all loan officers, to conform to all standards of FIRREA and USPAP. By virtue of the relationship between French and Keith Harper, French violated, at a minimum, USPAP's Ethics Rule (Conduct) which requires an appraiser to "perform assignments with impartiality, objectivity, and independence, and without accommodation of personal interests."

196. French also failed to analyze and develop Jurbala's global cash flow position and projections in connection with Speedway.

197. Following approval of Speedway by the SLC and the Board, but before the loan was funded, French failed to disclose that a third party claimed an ownership interest in one of the two Speedway parcels. On February 12, 2008, French received an e-mail from Jurbala

stating that a hedge fund in Iceland, through Hardhat Enterprises, LLC ("Hardhat") as its representative, claimed a 40% interest in Speedway. Despite this red flag, French violated Bank policy by doing nothing to fully document the credit by verifying Speedway's ownership before the loan funded, and by not disclosing to the SLC or the Board the potential problem with the loan. Shortly after this problem came to light, the legal enforceability of payment of the Speedway loan was thrown into question. In March, 2008, the Bank was sued by Hardhat on the basis that Hardhat owned a 40% interest in Speedway and that Jurbala did not have the authority to pledge the property as collateral on the loan.

198. After the Speedway loan was made, French was also aware of or approved the use of loan funds for expenditures in excess of the amount approved by the Board and approved disbursements of loan proceeds to pay for inappropriate and unsubstantiated expenses.

199. After the Speedway loan was made, French authorized $9,243,000 in loan proceeds to pay down, among other items, affiliate debt and past due interest, despite the fact that the Board had only approved the use of loan proceeds in the amount of $8,380,000 for such purposes. In addition, French, without receiving any approval from the SLC, was aware of or approved the disbursement of loan proceeds of more than $750,000 to pay for inappropriate and unsubstantiated expenses that were not identified as part of the intended purpose of the funds when Speedway was approved. This included a $15,500.00 disbursement to pay past due invoices to appraiser Keith Harper for appraisal work unrelated to Speedway, a $750,000.00 disbursement to Hard Hat Enterprises, LLC, various payments to creditors and disgruntled investors in Jurbala's projects, and payment of Jurbala's own overdrafts.

200. When shown the closing statement during his sworn statement, French could not explain the purposes of more than $2,000,000 in disbursements and was "surprised" by

disbursements used by Jurbala to acquire other real property in Mesquite, Nevada on which the Bank did not have a lien.

201. French also explained in his sworn statement that he had approved a disbursement of $290,000 for furnishings, which were eventually liquidated for $50,000, when no work was completed.

202. Furthermore, Johnson directed that French receive a $48,000 commission on the Speedway loan despite the fact that the loan was occasioned by a series of non-performing loans French had previously originated and received commissions from. Cal Regan, the Bank's president, opposed the Speedway loan at the SLC and directed that French not receive any commission. Johnson, however, secretly overruled Regan and instructed Bank personnel not to tell Regan that the payment was being made.

203. All of these actions violated applicable loan policies, applicable regulations, and prudent lending practices.

204. The FDIC has incurred losses in excess of $18,919,000 in relation to this loan.

M. Tangelo Avenue, LLC

205. Kirby originated and recommended this loan for approval in the amount of $5,500,000 on September 6, 2006 and it was approved by both French and Johnson.

206. In the CAM that Kirby presented, it provided that the loan was intended to "buy-out" a previous loan made by Mortgages LTD, five months earlier, in the amount of $3,900,000, for this very project. With respect to the loan amount, the funds were intended to pay-off the previous loan, provide interest reserves, and provide a small amount of development costs to be used in conjunction with additional funds provided by the borrower. In fact, the loan breakdown analysis confirms that $3,900,000 of the loan was used to pay off a previous raw land loan on

land that only had an appraised value of $4,520,000.

207. In support of the loan Kirby obtained an Appraisal from Waldrop Real Estate Group, dated August 17, 2006. It listed an as-is value of $4,520,000 and a proposed value upon completion of the retail lots of $9,700,000. Instead of using the as-is value of the appraisal, however, Kirby obtained approval of the loan based on the loan to cost appraisal, which violates both the Bank's underwriting guidelines and regulatory LTV rations for raw land. As the appraiser noted, to "the best of my knowledge there are NO improvements upon the site." This obviously raised a huge red flag given that a majority of the loan was being used to pay off a previous $3.9 million loan for the land that in and of itself exceeded guidelines.

208. Ultimately, Kirby allowed more than 100% of the construction funds identified in this loan to be disbursed with, according to a November 11, 2007 inspection prepared by a third-party, only 80% of the work completed. In fact, when Kirby's work was reviewed in 2007-2008, it was determined that the project was $356,927.11 over budget with draws still being made. As of January 2010 the work still had not been completed, yet 97.38% of the entire budget had been disbursed.

209. These actions violated both Bank policies and regulatory requirements, including those related to disbursements commensurate with completion and site inspections.

210. The FDIC has incurred losses in excess of $5,208,991.71 in relation to this loan.

N. Mineral Creek, LLC

211. Kirby originated and recommended this loan for approval in an amount of $5,758,800,000 and it was approved by both French and Johnson.

212. The project, however, was $251,199.00 over budget with draws still being made. Much of the budget issues stemmed from contract changes to allow payments related to heavy

supervision, which is in and of itself a very questionable category, and there has not been any explanation or justification for such re-allocations.

213. In a sworn statement, Deanna Forbush, French's significant other, recalled driving by this site with French. She remembered that his reaction upon seeing the site was to question why more work had not been done.

214. Kirby's actions in relation to this loan violated both Bank policies and regulatory requirements, including those related to disbursements commensurate with completion and site inspections.

215. The FDIC has incurred losses in excess of $4,277,908.81 in relation to this loan.

O. Carefree Equestrian

216. Kirby originated and recommended this loan for approval in the amount of $14,940,000. It was intended to fund a nineteen lot custom home subdivision and it was approved by both French and Johnson in May 2007.

217. The use of funds breakdown shows that Kirby intended that the loan refinance a raw land acquisition loan plus interest reserves, develop a spec house, and develop the land.

218. In seeking approval of the loan, Kirby used the "as completed" value of the project rather than the "as is" value, and failed to use LTC in his evaluation as required by the Bank's loan policy and regulatory requirements. Both French and Johnson approved the loan despite these violations.

219. Kirby admitted in sworn testimony that he was not aware of any infrastructure being built on the property, and a January 5, 2009 appraisal prepared for the FDIC shows that the property was undeveloped and mountainous, with hills, valleys and a wash. It also

confirmed that there were no utilities to the site and access was poor. Bank personnel have testified that this was a loan on which there was no control over draws and a problem from day one.

220. The loan violated FDIC LTV Regulations and the Bank's loan policies because it was made without a compliant appraisal. Also, in violation of Bank loan policies, the loan proceeds were advanced without proof of completion of the improvements. Ultimately, the development is still not complete, and the land is worth very little, yet all the loan funds were advanced.

221. The FDIC has incurred losses in excess of $9,126,263.32 in relation to this loan.

P. Silver Dollar Land Company, LLC

222. The Silver Dollar loans consist of two separate loans originated and recommended by Gary Gardner and approved by Johnson and French.

223. On March 6, 2007, Gardner originated an $8,550,000 loan to Silver Dollar Land Company for the purpose of taking out Silver Dollar's loan at Community Bank and funding interest and development costs. The Community Bank loan had also supposedly been for acquisition and development, and the $7,914,278 initial advance on the loan was used to pay off Community Bank.

224. Gardner conducted little or no analysis as to whether the funds advanced by Community Bank were commensurate with the development on the ground, but based the loan entirely on appraised value, which was consistent with the lending practices of French and Kirby.

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225. Then, on June 22, 2007, Gardner originated two more loans to Silver Dollar, one for $3,968,000 to refinance a note and build 15 homes, and one for $1,052,000 to build three model homes – both loans were collateralized by the same land as the $8,550,000 loan.

226. Gardner advanced funds on all the Silver Dollar loans contrary to the stated purposes of the loans. The developers never got the development work finished nor were the houses completed. Gardner candidly testified that the loans were "a mess."

227. Furthermore, Gardner requested approval based on a July 31, 2006 appraisal performed for a different bank in which the as completed value, based upon completion of the lots, was listed at $11,400,000. Gardner failed to disclose, however, that the as-is value of the land was listed as $7,095,000. The loan was approved by Johnson and French despite LTV and LTC violations of both Bank policy and regulations.

228. In addition, throughout the loan Gardner approved loan draws from Silver Dollar to fund overages and interest payments on another loan issued to an entity associated with the borrower - Desert Mesa II, LLC.

229. Then, when interest reserves were depleted, Gardner diverted funds to the interest reserves through a loan draw in order to keep payments current. Gardner also approved the use of funds from the second loan - funds that were to be used to develop fifteen town homes - to the first loan. By doing so, this depleted the funds designated to complete the projects identified in the second loan.

230. Ultimately, despite the approval and expenditure of loan funds, no development or vertical construction was done in relation to these loans, and pictures from a September 2009 appraisal show the ultimate outcome to be little more than a dirt lot. As Gardner stated in sworn testimony, he "was probably just being scammed," and in March or April of 2008 the borrower

finally admitted to him that there were insufficient funds in the loans to finish construction. In fact, as the September 2009 appraisal showed, and Gardner admitted, the model homes for these projects had not even been built.

231. In April 2008 French confirmed by e-mail that three to four million of the loan amounts were in doubt. French also testified that he and Gardner toured some of the sites in Gardner's portfolio shortly after a March 2008 exam and that funding had advanced ahead of completion. As testified to by French, Gardner had no explanation for this violation of Bank policy and applicable regulations. Other personnel at the Bank, however, noted that Gardner's failure to perform site inspections and improper disbursements were apparent. By May 2008, Cal Regan indicated that the problems were worse than anticipated and that the Bank stood to lose approximately $6,000,000 from these loans.

232. These actions violated both Bank policies and regulatory requirements, including those related to disbursements commensurate with completion and site inspections.

233. The FDIC has incurred losses in excess of $9,049,000 in relation to these loans.

Q. Desert Mesa I, LLC

234. On June 27, 2007, Gardner originated two loans to Desert Mesa I LLC, another entity controlled by the owners of Silver Dollar Land Company. One loan was in the amount of $5,175,000 and was for the purpose of acquisition and development of land in Las Vegas. The other loan was for $5,600,750, of which $3,819,323 was set aside for construction.

235. The collateral for both of these loans was a property containing 14 partially built houses which Desert Mesa was acquiring from a developer who had failed to complete planned development of the project. The developer's previous lender, who was paid out of proceeds from these loans, was again Community Bank.

236. Gardner performed little or no analysis of whether the amount of the Community Bank loan to be paid, however, was commensurate with the amount of work on the ground. In addition, as was the case with the Silver Dollar loans, there was very little work performed with the Bank's loan disbursements and the houses were never completed. The Bank's policies on loan advances were violated repeatedly on both loans in that advances were made without proof of the existence of the improvements for which the advances were made. For example, Gardner approved a $308,000 loan draw for Metro Development, another entity owned by the borrower, for concrete work that was not performed.

237. Ultimately, it was determined that all of the loans by this borrower, both the Silver Dollar Loans and the Desert Mesa loans, were out of balance - which isn't surprising given that Gardner was allowing a common borrower to use funds from one loan to pay the other loan.

238. Ultimately, a January 2009 appraisal showed that the property was never completed and consisted of seventy-nine partially completed lots and fourteen single family homes that were near completion.

239. These actions violated both Bank policies and regulatory requirements, including those related to disbursements commensurate with completion and site inspections.

240. The FDIC has incurred losses in excess of $8,041,000 in relation to these loans.

R. Robindale Villas and Associated loans

241. Robindale Villas was a $2,783,000 loan that was intended to fund the construction of 15 townhomes in the Robindale Villas townhome project. It was recommended for approval by French in September 2004, extended five times, and increased to $3,000,000.

242. The extensions were approved in September 2005, September 2006, April 2007,

October 2007, and February 2008. The extensions were requested by French and approved by both French and Johnson. Several of the extensions noted that anywhere from five to six of the homes were already sold - although only three were actually finished.

243. Throughout these extensions French was regularly approving late fee waivers, clear evidence of a failing borrower and a declining economy, and when many of the extensions were requested and approved, French himself had been predicting the failure of the economy.

244. In an apparent attempt to improve the "look" of this loan, all three of the finished Robindale Villas townhomes were sold to two persons, and the sales were financed by the Bank. Notably, in order to "make the deal work," French approved extremely high commission bonuses well above the normal 3% commissions that brokers normally received.

245. These actions violated both Bank policies and regulatory requirements, including those related to disbursements commensurate with completion and site inspections.

246. The FDIC has incurred losses in excess of $348,000 from the Desert Mesa loans.

247. The FDIC has incurred losses in excess of $834,000 on the three defaulted loans made in relation to this project.

VI. CLAIMS FOR RELIEF

Conduct violating the Claims below for Gross Negligence and Breach of Fiduciary Duty

248. The FDIC realleges and incorporates by reference each of the allegations contained in paragraphs 3-247 of this Complaint as though fully set forth herein. Although the defendants' conduct is described in detail above, the conduct by defendants rendering them liable includes, but is not limited to, the following. In addition, as these loans are subjected to further review, additional violations are being identified, and as additional loans are examined,

more and more egregious conduct and additional damages are being discovered, including on loans originated by French to Shannon Nounna.

French

249. Repeatedly violating Bank appraisal policies and requirements and causing violations of appraisal regulations.

250. Repeatedly violating Bank policies and federal regulations regarding loan disbursements.

251. Continuing to originate and support loans on the security of Las Vegas real estate long after he had no reasonable basis to believe the market could support such lending and after he had concluded that it was a speculative bubble.

252. Hiring an incompetent loan officer and then giving him a $250 million portfolio to manage without providing training or supervision.

253. Ignoring pleas for help from a subordinate who claimed that he was overwhelmed and did not know what he was doing.

254. Failing to disclose or misrepresenting numerous material facts to the SLC and BOD regarding the loans.

Johnson

255. Failing to implement, and in fact opposing, policies and procedures to assure that loan disbursements went toward the approved purposes of the loans.

256. Condoning repeated violations of Bank policies and federal regulations regarding loan disbursements

257. Approving numerous loans that violated appraisal regulations and bank appraisal policies.

258. Failing to supervise or control French.

259. Creating a bonus system for loan officers that resulted in incentives for bad loans.

260. Approving the Speedway loan and hiding the commission to French from the Bank president.

261. Recommending and approving the 2007 strategic plan for the Bank, which was premised on massive increases in real estate lending when the real estate market was declining.

Kirby

262. Undertaking fiduciary responsibilities for which he knew himself to be incompetent.

263. Repeatedly recommending approval of loans that violated appraisal regulations and Bank policies without disclosing such violations to the SLC.

264. Repeatedly approving disbursements on loans that violated Bank policies and federal regulations or were contrary to the approved purposes of the loans.

265. Repeatedly recommending approval of loans on the security of real estate in markets he knew to be stagnant or declining.

Gardner

266. Failing to determine before recommending the Silver Dollar loan the extent to which a prior loan to be paid from the Silver State loan had been used to make improvements on the collateral.

267. Repeatedly violating Bank loan policies by approving disbursements that violated Bank policies, federal regulations, or were contrary to the stated purposes of the loan.

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268. Violating appraisal regulations and Bank appraisal policies and failing to disclose such violations to the SLC.

Claim for Gross Negligence (Nevada law and 12 U.S.C. § 1821(k)

269. The FDIC realleges and incorporates by reference each of the allegations contained in paragraphs 3-268 of this Complaint as though fully set forth herein. Section 1821(k) of The Financial Institutions Reform, Recovery and Enforcement Act holds directors and officers of financial institutions personally liable for loss or damage to the institution caused by their "gross negligence," as defined by applicable state law.

270. As described more particularly herein, the defendants were grossly negligent in that their manner of carrying out their duties and responsibilities to the Bank failed to constitute even a slight degree of care and demonstrated a lack of diligence that even careless men are accustomed to exercising. Moreover their actions demonstrated a complete disregard for the interests of the Bank, its policies, and the laws and regulations governing the Banking industry.

271. The decisions made by the defendants as described more particularly herein were not good faith business decisions made in an informed and deliberate manner. The defendants repeatedly violated Bank policies and federal regulations, continued to make loans when they knew the market was cratering in order to increase their bonuses and compensation, and failed to disclose numerous material facts to the SLC and the Board of Directors. As a direct and proximate result of the gross negligence of the defendants the FDIC has suffered damages in an amount to be determined at trial.

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Count Two

Claim for Breach of Fiduciary Duties

272. The FDIC realleges and incorporates by reference each of the allegations contained in paragraphs 3-271 of this Complaint as though fully set forth herein.

273. The Defendants occupied a fiduciary relationship with the Bank and are thus held to the standard of utmost good faith and loyalty. These defendants failed to discharge their fiduciary duties as detailed in this Complaint and described in relation to the claim for gross negligence.

274. As a direct and proximate result of the breaches of fiduciary duties of the Defendants, the FDIC has suffered damages in an amount to be determined at trial.

VII. JURY DEMAND

275. The FDIC respectfully demands a trial by jury for all issues in this case that are triable by the jury.

VIII. PRAYER

WHEREFORE, PREMISES CONSIDERED, the FDIC prays for relief as follows:

A. For compensatory and consequential damages, jointly and severally against the Defendants as follows (together with prejudgment interest):

a. Judgment in excess of $22,000,000 against Kirby, French, and Johnson for their gross negligence and breaches of fiduciary duty in connection with the Happy Valley loans;

b. Judgment in excess of $4,157,000 against French and Johnson for their gross negligence and breaches of fiduciary duty in connection with the Red Vista loans;

c. Judgment in excess of $1,557,000 against French and Johnson for their gross negligence and breaches of fiduciary duty in connection with the Mazmel loans;

d. Judgment in excess of $1,633,000 against French and Johnson for their gross negligence and breaches of fiduciary duty in connection with the Sante Fe Villas loans;

e. Judgment in excess of $18,919,000 against French and Johnson for their gross negligence and breaches of fiduciary duty in connection with the Speedway loan;

f. Judgment in excess of $5,208,991 against Kirby, French, and Johnson for their gross negligence and breaches of fiduciary duty in connection with the Tangelo Avenue loan;

g. Judgment in excess of $4,277,908 against Kirby, French, and Johnson for their gross negligence and breaches of fiduciary duty in connection with the Mineral Creek loan;

h. Judgment in excess of $9,126,123 against Kirby, French, and Johnson for their gross negligence and breaches of fiduciary duty in connection with the Carefree Equestrian loan;

i. Judgment in excess of $9,049,000 against Gardner, French, and Johnson for their gross negligence and breaches of fiduciary duty in connection with the Silver Dollar Land Company loans;

j. Judgment in excess of $8,041,000 against Gardner, French, and Johnson for their gross negligence and breaches of fiduciary duty in connection with the Desert Mesa loans;

k. Judgment in excess of $1,182,000 against French and Johnson for their gross negligence and breaches of fiduciary duty in connection with the Robindale Villas and related loans;

B. For its costs of suit against all Defendants;

C. For attorneys' fees, costs for investigation and litigation against all Defendants; and

D. For such other and further relief as this Court deems just and proper.

Respectfully submitted,

//s// Kerry L. Earley
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