

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

FEDERAL DEPOSIT)
INSURANCE CORPORATION,)
AS RECEIVER FOR)
FREEDOM BANK OF GEORGIA,)

Plaintiff,)

v.)

RICHARD ADAMS, KEITH ARIAIL,)
CLAUDE PHILIP BROWN,)
VINCE D. CATER, HAROLD C. DAVIS,)
BRUCE GROUT, THOMAS H. HARDY,)
JAMES PURCELL, VERLIN REECE,)
DONALD SWAIN SCHUBERT,)
RONALD SILVA, and)
HAROLD L. SWINDELL,)

Defendants.)

Civil Action File No.:

JURY TRIAL DEMANDED

COMPLAINT

Plaintiff Federal Deposit Insurance Corporation, as Receiver for Freedom Bank of Georgia ("FDIC"), states its complaint against the Defendants, and each of them, as follows:

I. INTRODUCTION

1. The FDIC brings this action in its receivership capacity against certain former directors and officers of Freedom Bank of Georgia of Commerce, Georgia (“Freedom” or “Bank”).

2. Freedom was closed by the Georgia Department of Banking & Finance (“GDBF”) on March 6, 2009, less than six (6) years after it was formed.

3. The loss to the Deposit Insurance Fund is currently estimated to be \$48.1 million.

4. The FDIC, as Receiver for Freedom, brings this action to recover at least \$11,050,623 million in damages caused by Defendants’ simple negligence and gross negligence.

5. The \$11,050,623 damage claim is based on losses from twenty-one (21) Commercial Real Estate (“CRE”) and Acquisition Development and Construction (“ADC”) loans (collectively, the “Loss Loans”) approved by the Bank from May 16, 2005 through June 20, 2007.

6. In derogation of their duty to engage in safe and sound banking practices, Defendants implemented a growth strategy that pursued rapid asset growth concentrated in approving high-risk loans that exceeded the projections in its business plan.

7. Defendants approved the Loss Loans despite: (1) a lack of internal controls in the Loan Policy limiting the amount of CRE and ADC loans; (2) the absence of a requirement in its Loan Policy to conduct a global cash flow analysis of all contingent liabilities for the Bank's borrowers and guarantors; (3) inadequate due diligence market research when making loans outside the Bank's normal market area; (4) a failure to obtain and regularly update borrower and guarantor repayment information when making credit decisions; (5) insufficient analysis of borrowers' and guarantors' ability to repay loans; (6) inadequately securing the Bank's loans with sufficient collateral; (7) ensuring that appropriate loan-to-value ("LTV") ratios existed when approving loans; (8) relying upon incomplete or inaccurate appraisals when making loans; and (9) improper inspection and documentation of the progress of construction loans and disbursement of loan draws according to the percentage of work completed.

8. Defendant Bruce Grout ("Grout") breached his fiduciary duty with respect to certain of the Loss Loans by releasing collateral without authority.

9. The Defendants who were directors of the Bank failed to properly train and supervise Grout and failed to conduct a more thorough investigation of Grout and his actions.

10. The actions and inactions of Defendants were the direct and proximate cause of the loan losses the FDIC now seeks to recover.

II. JURISDICTION AND VENUE

11. This Court has subject matter jurisdiction of this matter as actions in which the FDIC is a party are deemed to arise under federal law pursuant to 12 U.S.C. § 1811, et seq.; 12 U.S.C. § 1819(b)(1) and (2), and 28 U.S.C. §§ 1331 and 1345. The FDIC has the power to bring suit in any court of law. 12 U.S.C. § 1819.

12. This Court has personal jurisdiction over the Defendants who at all relevant times were residents of and conducted the Bank's business in the State of Georgia.

13. Venue is proper in this district under 28 U.S.C. § 1391(b) as all or substantially all of the events and/or omissions giving rise to the claims asserted herein occurred in this district.

III. THE PARTIES

14. The FDIC is a corporation organized and existing under the laws of the United States of America with its principal place of business in Washington, D.C. 12 U.S.C. § 1811, et seq.

15. The FDIC is an instrumentality of the United States of America and is charged with, among other duties, the orderly liquidation of failed banks. 12 U.S.C. § 1821(d).

16. The FDIC was appointed as the Receiver of Freedom pursuant to 12 U.S.C. §1821(c) on March 6, 2009.

17. Pursuant to 12 U.S.C. § 1821(d)(2)(A) and §1823(d)(3)(A), the FDIC succeeded to all rights, titles, powers, and privileges of Freedom, including, but not limited to, claims against the Bank's former directors and officers.

18. Defendant Richard Adams (“Adams”) served on Freedom’s Board of Directors (“Board”) from 2003 until March 6, 2009. Adams served on Freedom’s Loan Committee from 2004 until March 6, 2009. Adams is a resident of the State of Georgia residing in Jefferson, Georgia.

19. Defendant Keith W. Ariail (“Ariail”) served on Freedom’s Board from 2003 to March 6, 2009. Ariail served on Freedom’s Loan Committee from 2004 until March 6, 2009. Ariail is a resident of the State of Georgia residing in Jefferson, Georgia.

20. Defendant Claude Philip Brown (“Brown”) served on Freedom’s Board from 2003 to March 6, 2009. Brown served on Freedom’s Loan Committee

from 2004 until March 6, 2009. Brown is a resident of the State of Georgia residing in Commerce, Georgia.

21. Defendant Harold C. Davis ("Davis") served on Freedom's Board from 2003 to March 6, 2009. Davis served on Freedom's Loan Committee from 2004 to March 6, 2009. Davis is a resident of the State of Georgia residing in Bogart, Georgia.

22. Defendant Thomas H. Hardy ("Hardy") served on Freedom's Board from 2003 to March 6, 2009. Hardy did not serve on Freedom's Loan Committee. Hardy is a resident of the State of Georgia residing in Athens, Georgia.

23. Defendant Verlin L. Reece ("Reece") served on Freedom's Board from 2003 to March 6, 2009. Reece did not serve on Freedom's Loan Committee. Reece is a resident of the State of Georgia residing in Commerce, Georgia.

24. Defendant Donald Swain Shubert ("Shubert") served on Freedom's Board from 2003 to March 6, 2009. Shubert did not serve on Freedom's Loan Committee. Shubert is a resident of the State of Georgia residing in Maysville, Georgia.

25. Defendant Harold L. Swindell ("Swindell") served on Freedom's Board from 2003 to March 6, 2009. Swindell did not serve on Freedom's Loan

Committee. Swindell is a resident of the State of Georgia residing in Canton, Georgia.

26. Defendant Vince D. Cater (“Cater”) served on Freedom’s Board as a Director, President, and Chief Executive Officer from 2003 to March 6, 2009. Cater served on Freedom’s Loan Committee from 2004 until March 6, 2009. Cater is a resident of the State of Georgia residing in Atlanta, Georgia.

27. Defendant Bruce Grout (“Grout”) served as a Freedom’s loan officer from February 15, 2006 to March 10, 2008. Grout did not serve on Freedom’s Loan Committee. Grout is a resident of the State of Georgia residing in Bogart, Georgia.

28. Defendant James S. Purcell, Sr. (“Purcell”) served on Freedom’s Board as a Director and Executive Vice President from 2003 to March 6, 2009. Purcell also was the Bank’s Senior Loan Officer from 2004 to March 6, 2009. Purcell served on Freedom’s Loan Committee from 2004 until March 6, 2009. Purcell is a resident of the State of Georgia residing in Athens, Georgia.

29. Defendant Ronald R. Silva, Jr. (“Silva”) served on Freedom’s Board as a Director, Chief Operating Officer, and Senior Credit Officer from 2004 to March 6, 2009. Silva served on Freedom’s Loan Committee from 2005 until

March 6, 2009. Silva is a resident of the State of Georgia residing in Barnesville, Georgia.

IV. FACTUAL BACKGROUND

30. Freedom opened on February 17, 2004 with its principal place of business in Commerce, Georgia.

31. The Bank's initial trade area was Jackson County, Georgia.

32. The Bank's trade area was later expanded in January 2007 to add Banks County, Georgia and Barrow County, Georgia.

33. Adams, Ariail, Brown, Cater, Davis, Hardy, Purcell, Reece, Shubert, Silva and Swindell were members of the Bank's Board (said individuals being collectively referred to herein as the "Directors" or "Director Defendants").

34. Adams, Ariail, Brown, Cater, Davis, Purcell, and Silva were members of the Bank's Loan Committee.

35. From the time the Bank opened until its closure, the Bank maintained a Loan Policy manual ("Loan Policy") which was approved by the Directors and made the Board of Directors, the Loan Committee and each of its members responsible for approving, reviewing and maintaining the Bank's loan policies to, among other things, ensure that loan applications were properly analyzed and documented.

36. To ensure that the Bank pursued prudent lending practices, the Loan Policy required that the Bank (a) establish a loan portfolio of safe, sound, and profitable assets maximizing the return on these assets while still serving the credit needs of its trade area; (b) adhere to all applicable bank laws, administrative rules and regulatory requirements; (c) promote the Bank as an institution of high integrity; and (d) provide a guideline for the Bank's lending officers to ensure loans were made in a sound, uniform, and precise manner.

37. The Loan Policy required the Board to approve loans in excess of \$750,001, which amount was raised to \$1,000,001 on January 17, 2007.

38. The Board delegated authority to the Loan Committee to approve loans greater than \$300,001, which amount was raised to \$500,001 on January 17, 2007.

39. On or about January 17, 2007, the Board further delegated its lending authority for loans between \$300,001 and \$500,000 to the Executive Loan Authority which consisted of the President, Senior Credit Officer, Executive Vice President, and an alternate member, the Loan Committee Chairperson.

40. Defendant Cater's responsibilities included, among other things, (a) assisting the Senior Lending Officer and Senior Credit Officer in ensuring that the Bank had adequate loan policies, procedures, and internal controls; (b) assisting the

Senior Lending Officer and Senior Credit Officer in ensuring that the Bank adhered to those loan policies, procedures, and internal controls; and (c) assisting the Senior Lending Officer and Senior Credit Officer in ensuring that the Bank pursued a business model consistent with safe and sound banking practices.

41. Among his other duties as Senior Credit Officer, Defendant Silva was responsible for (a) the implementation of the Loan Policy; (b) the origination and approval of loans and acting within the approved loan limits and guidelines approved by the Board; (c) the establishment and maintenance of all loan policies, while paying particular attention to underwriting guidelines, loan administration policies, credit information and collection procedures; (d) the maintenance of the Loan Committee meeting minutes; (e) the maintenance of the Allowance for Loan and Lease Losses (“ALLL”) methodology and calculations; (f) the maintenance and accuracy of the loan rating system including testing by an outside review firm; (g) the supervision of all problem credits which included assignments of accurate ratings, timely action plans to correct deficiencies, and documentation to support specific reserves required for these credits; (h) responding to and correcting criticisms concerning loan function from government regulators, outside CPAs, audit or loan review companies; and (i) assisting all lenders with specific loan underwriting to insure maximum compliance with the standards set by this policy.

42. Among his other duties as Senior Lending Officer, Defendant Purcell shared responsibility with Defendant Silva in implementing the responsibilities listed above in paragraph "41."

43. Among his other duties as Vice President and Loan Officer of the Bank, Defendant Grout was responsible for making loans as directed by the Senior Credit Officer and under the guidelines of the Bank's Loan Policy.

44. Some of the specific duties of Defendant Grout included, but were not limited to, (a) understanding and familiarizing himself with the Bank's Loan Policy in order to adequately analyze a potential borrower's ability to repay what it borrowed from the Bank; (b) properly document and underwrite each loan; (c) perfect the Bank's security interest in any collateral taken; (d) properly grade each credit at its inception and monitor the credit for grade changes; and (e) ensure that any exceptions to the Loan Policy were approved in accordance with the Bank's Loan Policy.

45. The Bank adopted a business plan ("Business Plan") that proposed a concentration in high risk Commercial Real Estate ("CRE") and Acquisition, Development and Construction ("ADC") loans.

46. CRE loans are loans in which a bank takes a security interest in real property used for commercial purposes as an additional source of repayment for a

loan related to that property. Freedom's loan policy required that a commercial borrower have the ability to repay the loan without regard to the real property collateral.

47. CRE loans are inherently risky as many loans are made to developers, builders, and speculators who may have several concurrent projects, making their incomes subject to fluctuations in real estate values.

48. Fluctuations in real estate values occur in cycles and are foreseeable risks for banks that issue CRE loans.

49. ADC loans are a type of CRE loan in which the loan proceeds are used to acquire commercial real property and/or develop it by grading it, installing utilities and roads and/or used to finance construction of a commercial project, such as single family residences, apartments, condominiums, or commercial office buildings.

50. ADC loans are even more inherently risky than CRE loans and are more susceptible to fluctuations in real estate values.

51. Banks account for the inherent risks in CRE and ADC loans by placing limits on the number and amount of such loans, monitoring concentrations of these types of loans by type and geographic area, and charging higher fees for these loans.

52. Many CRE and ADC loans are made to single purpose entities, formed solely to hold the real property and operate the project.

53. Banks routinely require that principals of these single purpose entities personally guarantee loans made to these entities.

54. Because many land developers have several concurrent projects, many banks require an analysis of all debts guaranteed by a principal of a single purpose entity which weighs that guarantor's ability to repay the loan against all his/her obligations, not just the debt service for the loan for a single project.

55. The Director Defendants, as officers and directors, were responsible for the overall management of the Bank, including but not limited to, ensuring that the Bank (a) had adequate loan policies, procedures and internal controls; (b) adhered to those loan policies, procedures and internal controls; (c) hired and retained qualified loan underwriting and administration employees who would ensure that loans were properly documented and otherwise satisfied Freedom's lending policies as well as prudent lending practices; and (d) had a business model consistent with safe and sound banking practices.

56. During the Bank's brief operating life, the Board did not implement sound risk management, loan underwriting, or credit administration practices

commensurate with the significant concentrations in ADC and CRE loans in many different counties.

57. Freedom's assets grew quickly and exceeded projections in its business plan. From December 31, 2004 until December 31, 2007, Freedom's assets grew from \$50.305 million to \$147.114 million, an increase of 192%. This growth was more than double the growth envisioned in Freedom's business plan.

58. By December 31, 2007, Freedom's concentration of CRE loans was 707% and its concentration of ADC loans was 428% of its capital. These concentrations were at least twice the concentrations of CRE and ADC loans among Freedom's peer group institutions.

59. Freedom's Loan Policy did not establish sufficient policies, procedures, and risk limits for the CRE and ADC concentrations it aimed to and actually developed.

60. The Loan Policy did not limit the amount of CRE or ADC loans, did not require a global cash flow analysis of all contingent liabilities for borrowers and guarantors, and did not institute other measures that would have mitigated the Bank's overall loan risk until the Loan Policy revision of January 23, 2009, a few months before the Bank failed.

61. While Freedom's Loan Policy stated that management must perform "additional analysis" or take "appropriate actions" as CRE and ADC concentrations equaled or exceeded 300% of capital, no such actions were actually taken.

62. The Loan Policy did not discuss what specific measures should be taken or what additional analysis should be performed to address the increased concentration risks.

63. Freedom's Loan Policy did attempt to partially compensate for the risks of CRE and ADC loans by limiting residential construction loans to 40% of the Bank's total loans and requiring that residential construction loans be limited to ten lots in a development.

64. Despite acknowledging the risks of CRE and ADC lending in the Bank's business plan and the Bank's loan policy, the Director Defendants ignored both of these limitations.

65. The Bank's extreme concentration of ADC loans was not reasonable as the Director Defendants did not adopt and implement strict guidelines to manage the high risk created by the depth of this concentration.

66. Rather than create and implement conservative and safe loan underwriting and administration practices, the Director Defendants created an

environment in which unsafe, and unsound lending practices abounded. They approved high-risk loans based on grossly deficient underwriting and questionable appraisals. They failed to monitor and put into place controls to ensure that loans were closed on the same terms and conditions as they were approved. They permitted successive renewals of delinquent loans in violation of the Bank's Loan Policies and based on an over-reliance on perceived collateral protection from rising real estate values even though the Bank's existing loans collateralized by real estate were in default.

67. The Bank's asset growth was fueled by a heavy reliance on wholesale and high cost volatile fund sources such as Federal Home Loan Bank borrowings, time deposits of \$100,000 or greater, and Internet Certificates of Deposits, each of which required Freedom to pay a high rate of interest.

68. Even as Freedom grew rapidly, an increasing number of poorly written ADC loans caused its financial condition to deteriorate.

69. If a borrower stops making payments on a CRE or ADC loan, a bank is required to make a reserve for the possible loss that may be incurred on that loan. Usually the amount of the reserve is the difference between the amount owed on the loan and the current market value of the underlying collateral. This reserve is deducted from the bank's capital, limiting the funds the bank has to operate.

70. Because banks routinely issue loans in total amounts of several times its capital, losses on large loans can quickly reduce a bank's capital to a point at which its survival is in question.

71. The Director Defendants approved the Loss Loans in violation of Freedom's Loan Policy by failing to maintain adequate oversight of loan officers and loan administration.

72. The Director Defendants' approval of grossly imprudent loans shows an absence of care by them as directors and officers and thus demonstrates the Director Defendants' negligence and gross negligence in the performance of their duties.

V. THE LOSS LOANS

73. The Director Defendants approved 21 loans despite underwriting deficiencies and Loan Policy violations that were, and should have been, readily apparent to the Defendants. These loans resulted in losses to Freedom totaling \$11,050,623 (the "Loss Loans").

74. On May 16, 2005, the Director Defendants approved a loan for \$1.5 million to Estate Builders. On April 19, 2006, an additional \$400,000 was approved for Estate Builders. On August 16, 2006, another \$350,000 was

approved for Estate Builders. The loss on all three of these advances totals \$1.367 million.

75. On May 24, 2005, the Director Defendants approved a loan for \$1.565 million to Jackson County Investments. On June 21, 2006, another \$1.4 million was approved for Jackson County Investments. The loss on both these advances totals \$590,000.

76. On January 18, 2006, the Director Defendants approved a loan for \$1.243 million to Worthy Homes. On March 16, 2007, an additional \$863,000 was approved for Worthy Homes. On March 16, 2007, another \$825,000 was approved for Worthy Homes. The loss on all three of these advances totals \$1.554 million.

77. On March 15, 2006, the Director Defendants approved a loan for \$2.0 million to Moredia Holdings. On August 16, 2006, another \$365,000 was approved for Moredia Holdings. The loss on both these advances totals \$2.1 million.

78. On April 19, 2006, the Directors Defendants approved a loan for \$1.3 million to Skitts Mountain Development. On January 17, 2007, another \$300,000 was approved for Skitts Mountain Development. The loss on both these advances totals \$354,000.

79. On June 21, 2006, the Director Defendants approved a loan for \$1.5 million to C.J. Johnson Custom Homes. The loss on this loan is at least \$351,000.

80. On August 16, 2006, the Director Defendants approved a loan for \$1.845 million to Westminster. The loss on this loan is at least \$490,000.

81. On September 30, 2006, the Director Defendants approved a loan for \$2.6 million to Towns Walk and a related loan to McLeroy Investments. On April 18, 2007, \$330,000 was approved for McLeroy Investments. The loss on both these advances totals at least \$2,349,623.

82. On November 15, 2006, the Director Defendants approved loans for \$388,000 and \$210,000 to Carter Real Estate. The loss on these loans totals at least \$354,000.

83. On February 21, 2007, the Director Defendants approved a loan for \$1.2 million to G.D. Evans. The loss on this loan is at least \$478,000.

84. On April 18, 2007, the Director Defendants approved a loan for \$2.2 million to M&R Homebuilders. The loss on this loan is at least \$354,000.

85. On June 20, 2007, the Director Defendants approved a loan for \$1.235 million to DJB Enterprises. The loss on this loan is at least \$709,000.

86. In seventeen (17) of the Loss Loans, the Director Defendants approved the loans despite their failure to perform due diligence market research

prior to making loans outside their normal trade area of Jackson, Banks and Barrow counties. The Director Defendants' actions resulted in loan losses stemming from construction loans that were economically unfeasible, that were for homes which were uncharacteristic to their surrounding neighborhoods, or that were for homes in areas unfamiliar to the Bank.

87. In all the Loss Loans, the Director Defendants approved the loans despite plainly inadequate, incomplete, or outdated financials of the borrowers and guarantors, resulting in loans advanced to borrowers with no apparent ability to repay or otherwise service the loans.

88. In all the Loss Loans, the Director Defendants approved the loans with missing, incomplete, and inadequate loan documents and despite a lack of financial analysis to determine the borrower's ability to repay the loan.

89. In nineteen (19) of the Loss Loans, the Director Defendants approved the loans despite the fact that appraisals on loan collateral were either not performed or were performed and accepted by the Bank based upon valuation as a "Project To Be Completed" rather than an "As-Is" project value.

90. In seventeen (17) of the Loss Loans, the Director Defendants approved the loans despite the fact that the loan amounts exceeded the Bank's approved LTV ratios.

91. In many Loss Loans, the Director Defendants approved renewals of the loans despite the fact that building inspections were not conducted or inadequately conducted, resulting in careless loan losses such as cost overruns and over-advancement of construction draws.

92. Each of the Loss Loans contained deficiencies that were readily identifiable to the Director Defendants; however, the Director Defendants approved the Loss Loans despite these deficiencies.

93. The Director Defendants failed to exercise reasonable care in their review, evaluation, and approval of the Loss Loans, causing losses totaling at least \$11,050,623.

94. The Director Defendants failed, neglected, or refused to fully and properly discharge their duties and obligations and failed, neglected, or refused to exercise that degree of diligence, care, and skill which ordinarily prudent persons would exercise under similar circumstances in like positions.

95. In connection with the aforementioned acts and omissions, the Director Defendants, individually and collectively, made uninformed decisions without meaningful deliberation and disregarded advice of auditors and regulators designed to assist the Director Defendants in their decision-making.

96. The Director Defendants' actions and inactions displayed such an absence of care in the exercise of their affairs as to constitute gross negligence.

97. The breaches of the duties of care each Director Defendant owed to the Bank proximately caused the damages complained of herein, as measured by the Loss Loans.

VI. GROUT'S UNAUTHORIZED RELEASE OF ASSETS

98. On September 28, 2007, \$1.5 million was owed on a loan issued to Skitts Mountain Development ("Skitts Mountain Loan").

99. The principal of Skitts Mountain Development was Bruce Trefren. Grout was Trefren's partner in another land development company.

100. As additional collateral for the Skitts Mountain Loan, Skitts Mountain Development provided deeds of trust on two single-family residences to Freedom.

101. On September 28, 2007, Grout signed a quitclaim deed for each single-family residence that was part of the collateral for the Skitts Mountain Loan. The quitclaim deeds were recorded on October 4, 2007.

102. Grout did not have authority to issue the quitclaim deeds.

103. After Grout issued the quitclaim deeds, the single-family residences were sold to a third party.

104. Grout informed Freedom that he released the collateral so that Trefren could generate money to pay personal income taxes.

105. Cater learned of these facts on March 10, 2008.

106. Notwithstanding the knowledge of these facts, which constituted a claim under the Bank's fidelity bond, no claim was ever asserted.

VII. CLAIMS FOR RELIEF

Count 1 - Negligence against All Defendants.

107. The FDIC incorporates by reference each of the allegations in the above paragraphs of this complaint as if fully restated herein.

108. Each of the Defendants, as officers or directors of the Bank, owed the Bank the obligation to exercise the degree of diligence, care, and skill that ordinarily prudent persons in like positions would exercise under similar circumstances in the management, supervision and conduct of the Bank's business and financial affairs, including its lending practices.

109. By their actions and inactions, as described specifically and generally herein, each of the Defendants failed and neglected to perform his respective duties as officer and/or director of the Bank, constituting breaches of his statutory and common law duties of care owed to the Bank.

110. By way of example and not of limitation, Defendants failed to adhere to lending policies, applicable requirements, and sound lending practices and thus knew or, in the exercise of reasonable diligence, should have known that their practices and the practices of other Bank officers and employees over whom they exercised supervisory control were improper, imprudent, and harmful to the Bank.

111. Among other things, Defendants rejected or disregarded the advice of third parties and regulators designed to assist Defendants in their decision-making with respect to the Bank's lending policies.

112. Among other things, Defendants were aware or, in the exercise of reasonable diligence, should have been aware of significant weaknesses in the Bank's underwriting practices and procedures.

113. Defendants were also aware or, in the exercise of reasonable diligence, should have been aware of the deterioration of the Bank's loan portfolio caused by imprudent CRE and ADC lending.

114. Defendants were also aware or, in the exercise of reasonable diligence, should have been aware of the negative impact on the Bank's earnings, liquidity and capital caused by high-risk CRE and ADC loans.

115. Defendants were also aware or, in the exercise of reasonable diligence, should have been aware of the deficiencies in underwriting and loan

support exhibited by the Loss Loans yet approved the Loss Loans despite this knowledge.

116. As a direct and proximate result of the negligent acts and omissions of each Defendant, the Bank suffered damage and sustained losses exceeding \$11,050,623 or such other amount as may be proved at trial.

117. With respect to their actions and inactions in managing the affairs of the Bank, Defendants pursued a common plan or design, and each Defendant is therefore jointly and severally liable for all losses.

Count 2 - Gross Negligence against All Defendants.

118. The FDIC incorporates by reference each of the allegations in the above paragraphs as if fully restated herein.

119. Section 1821 (k) of FIRREA holds directors or officers of financial institutions personally liable for loss or damage to the institution caused by their "gross negligence," as defined by applicable state law.

120. Defendants owed a duty to exercise even the slight diligence that every person of common sense, however inattentive he or she may be, exercises under the same or similar circumstances.

121. Defendants' actions and inactions as described herein demonstrate an absence of the slight diligence expected from a person with common

sense and instead exhibited such a degree of carelessness and/or inattention to the performance of their duties as to constitute gross negligence under Georgia law.

122. By way of example and not of limitation, Defendants failed to adhere to lending policies, applicable requirements, and sound lending practices and thus knew or, in the exercise of reasonable diligence, should have known that their practices and the practices of other Bank officers and employees over whom they exercised supervisory control were improper, imprudent, and harmful to the Bank.

123. Among other things, Defendants rejected or disregarded the advice of third parties and regulators designed to assist them in their decision-making with respect to the Bank's lending policies.

124. Among other things, Defendants were aware or, in the exercise of reasonable diligence, should have been aware of significant weaknesses in the Bank's underwriting practices and procedures.

125. Defendants were also aware or, in the exercise of reasonable diligence, should have been aware of the deterioration of the Bank's loan portfolio caused by imprudent CRE and ADC lending.

126. Defendants were also aware or, in the exercise of reasonable diligence, should have been aware of the negative impact on the Bank's earnings, liquidity, and capital-to-asset ratio caused by high risk CRE and ADC loans.

127. Defendants were also aware or, in the exercise of reasonable diligence, should have been aware of the deficiencies in underwriting and loan support exhibited by the Loss Loans, yet approved the Loss Loans despite this knowledge.

128. As a direct and proximate result of the Defendants' grossly negligent actions and omissions as described herein, the Bank suffered damage and sustained losses exceeding \$11,050,623 or such other amount as may be proved at trial.

129. With respect to their grossly negligent actions and inactions in managing the affairs of the Bank, Defendants pursued a common plan or design, and each Defendant is therefore jointly and severally liable for all losses.

Count 3 – Breach of Fiduciary Duty against All Defendants

130. The FDIC incorporates by reference each of the allegations in the above paragraphs as if fully restated herein.

131. The FDIC, in addition to the allegations of negligence and gross negligence, alleges that Defendants breached their fiduciary duty in approving Loss Loans and failing to create and implement policies to prevent the actions taken by Defendant Grout.

132. As a direct and proximate result of the Defendants' breach of fiduciary duty as described herein, the Bank suffered damage and sustained losses exceeding \$11,050,623 or such other amount as may be proved at trial.

133. With respect to Defendants' breach of fiduciary duties in managing the affairs of the Bank, Defendants pursued a common plan or design, and each Defendant is therefore jointly and severally liable for all losses.

Count 4 – Negligence against Defendant Grout

134. The FDIC incorporates by reference each of the allegations in the above paragraphs as if fully restated herein.

135. Defendant Grout owed the Bank the obligation to exercise the degree of diligence, care, and skill that an ordinarily prudent person in like position would exercise under similar circumstances in the management, supervision and conduct of the Bank's business and financial affairs, including its lending practices.

136. By his actions and inactions, as described specifically and generally herein, Defendant Grout failed and neglected to perform his respective duties as officer of the Bank, constituting breaches of his statutory and common law duties of care owed to the Bank.

137. By way of example and not of limitation, Defendant Grout signed a quitclaim deed for each single-family residence that was part of the collateral for

the Skitts Mountain Loan despite the fact that Defendant Grout did not have authority to issue the quitclaim deed.

138. Among other things, Defendant Grout issued the quitclaim deeds and thus released the collateral for the Skitts Mountain Loans so that Bruce Trefen, Skitts Mountain Development's principal and Defendant Grout's partner in another land development company, could generate money to pay Trefen's personal income taxes.

139. Defendant Grout failed to adhere to lending policies, applicable requirements, and sound lending practices and thus knew or, in the exercise of reasonable diligence, should have known that Defendant's practices were improper, imprudent, and harmful to the Bank.

140. As a direct and proximate cause of Grout's actions, the Bank was damaged in the amount of at least \$354,000, the amount lost on the Skitts Mountain Loan.

Count 5 – Gross Negligence against Defendant Grout

141. The FDIC incorporates by reference each of the allegations in the above paragraphs as if fully restated herein.

142. Section 1821 (k) of FIRREA holds directors or officers of financial institutions personally liable for loss or damage to the institution caused by their “gross negligence,” as defined by applicable state law.

143. Defendant Grout owed a duty to exercise even the slight diligence that every person of common sense, however inattentive he or she may be, exercises under the same or similar circumstances.

144. Defendant Grout’s actions and inactions as described herein demonstrate an absence of the slight diligence expected from a person with common sense and instead exhibited such a degree of carelessness and/or inattention to the performance of their duties as to constitute gross negligence under Georgia law.

145. By way of example and not of limitation, Defendant Grout signed a quitclaim deed for each single-family residence that was part of the collateral for the Skitts Mountain Loan despite the fact that Defendant Grout did not have authority to issue the quitclaim deed.

146. Among other things, Defendant Grout issued the quitclaim deeds and thus released the collateral for the Skitts Mountain Loans so that Bruce Trefen, Skitts Mountain Development’s principal and Defendant Grout’s partner in another

land development company, could generate money to pay Trefen's personal income taxes.

147. Defendant Grout failed to adhere to lending policies, applicable requirements, and sound lending practices and thus knew or, in the exercise of reasonable diligence, should have known that Defendant's practices were improper, imprudent, and harmful to the Bank.

148. As a direct and proximate result of the Defendant Grout's grossly negligent actions and omissions as described herein, the Bank suffered damage and sustained losses at least in the amount of \$354,000, the amount lost on the Skitts Mountain Loan.

Count 6 – Breach of Fiduciary Duty against Defendant Grout

149. The FDIC incorporates by reference each of the allegations in the above paragraphs as if fully restated herein.

150. The FDIC, in addition to the allegations of negligence and gross negligence against Defendant Grout, alleges, among other things, that Defendant Grout breached his fiduciary duty in signing a quitclaim deed for each single-family residence that was part of the collateral for the Skitts Mountain Loan despite the fact that Defendant Grout did not have authority to issue the quitclaim deed.

151. Among other things, Defendant Grout breached his fiduciary duty in issuing the quitclaim deeds and thus releasing the collateral for the Skitts Mountain Loans so that Bruce Trefen, Skitts Mountain Development's principal and Defendant Grout's partner in another land development company, could generate money to pay Trefen's personal income taxes.

152. As a direct and proximate result of the Defendant Grout's breach of fiduciary duty as described herein, the Bank suffered damage and sustained losses at least in the amount of \$354,000, the amount lost on the Skitts Mountain Loan, or such other amount as may be proved at trial.

VIII. RELIEF REQUESTED

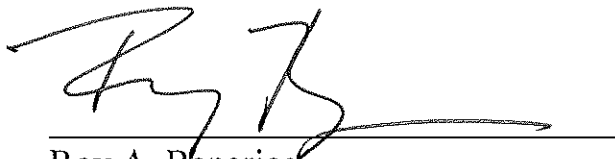
I. Pursuant to Rule 38 of the Federal Rules of Civil Procedure, the FDIC demands a trial by jury on all claims.

II. On Counts 1 – 3, the FDIC requests judgment against all Director Defendants, jointly and severally, in sums to be proven at trial, together with appropriate interest pursuant to 12 U.S.C. § 1821(1), the costs of this action, and such other and further relief as the Court deems just and proper.

III. On Counts 4 – 6, the FDIC requests judgment against Defendant Grout, in sums to be proven at trial, together with appropriate interest pursuant to

12 U.S.C. § 1821(1), the costs of this action, and such other and further relief as the Court deems just and proper.

Respectfully submitted this 2nd day of March, 2012.



Roy A. Banerjee

Georgia Bar No. 035917

Nikhil R. Prabhu

Georgia Bar No. 586610

Angelina M. Kim

Georgia Bar No. 370141

Attorneys for the Federal Deposit Insurance Corporation, as Receiver for Freedom Bank of Georgia

Kumar, Prabhu, Patel & Banerjee, LLC

1117 Perimeter Center West

Suite W 311

Atlanta, Georgia 30338

Telephone: (678) 443-2220

Facsimile: (678) 443-2230

rbanerjee@kppblaw.com

nprabhu@kppblaw.com

akim@kppblaw.com